

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## NOTICE OF AN APPLICATION FOR A WATER USE PERMIT APPLICATION NO. 13762

MRSS Partners, LTD (Permittee/Applicant) seeks authorization to maintain an existing dam and reservoir on East Fork Crystal Creek, San Jacinto River Basin, impounding 43 acre-feet of water for recreational purposes in Montgomery County and to maintain the reservoir with groundwater from the Chicot Aquifer. More information on the application and how to participate in the permitting process is given below.

**APPLICATION.** MRSS Partners, LTD, 12651 Briar Forest Drive Houston, Texas, 77077, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to Texas Water Code (TWC) §11.143 and TCEQ Rules Title 30 Texas Administrative Code (TAC) §§ 295.1, *et seq.* Notice is being mailed to downstream water right holders of record in the San Jacinto River Basin and mailed to the Lone Star Groundwater Conservation District pursuant to Title 30 TAC §295.153.

Applicant seeks authorization to maintain an existing dam and reservoir on East Fork Crystal Creek, tributary of Crystal Creek, tributary of the West Fork San Jacinto River, San Jacinto River Basin, impounding 43 acre-feet of water for recreational purposes in Montgomery County, with no right of diversion.

The centerline of the dam is located at Latitude 30.409418° N, Longitude 95.483618° W in Montgomery County, ZIP Code 77378.

Applicant provided evidence of an alternate source to maintain the reservoir being groundwater from the Chicot Aquifer.

Applicant will discharge up to 19.2 acre-feet of groundwater per year, at a maximum discharge rate of 0.0267 cfs (12.0 gpm), at a point on the perimeter of the reservoir, located at Latitude 30.409418° N, Longitude 95.483618° W, in Montgomery County, ZIP Code 77378.

Ownership of the land to be inundated is evidenced by a *Deed of Trust, Assignment of Rents, Security Agreement and Financial Statement*, recorded as Document No. 2019085409 on September 13, 2019, in the Official Public Records of Montgomery County.

The application and partial fees were received on April 26, 2021. Additional information and fees were received on June 14 and 22, 2021 and January 18 and 20, 2022. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 2, 2021.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to the maintaining an alternate source. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: [https://www.tceq.texas.gov/permitting/water\\_rights/wr-permitting/view-wr-pend-apps](https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps). Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the

Chief Clerk at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

**PUBLIC COMMENT / PUBLIC MEETING.** Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by April 12, 2022. A public meeting is intended for the taking of 2public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

**CONTESTED CASE HEARING.** The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by April 12, 2022. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by April 12, 2022.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**INFORMATION.** Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRPERM 13762 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>. Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.texas.gov>.

Issued: March 25, 2022

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## WATER USE PERMIT

PERMIT NO. 13762 TYPE § 11.143

Permittees: MRSS Partners, LTD Address: 12651 Briar Forest Drive  
Houston, TX 77077

Filed: July 2, 2021 Granted:

Purpose: Recreation County: Montgomery

Watercourse: East Fork Crystal Creek, Watershed: San Jacinto River Basin  
tributary of Crystal Creek,  
tributary of the West Fork  
San Jacinto River

WHEREAS, MRSS Partners, LTD (Applicant) seeks authorization to maintain an existing dam and reservoir on East Fork Crystal Creek, tributary of Crystal Creek, tributary of the West Fork San Jacinto River, San Jacinto River Basin, impounding 43 acre-feet of water for recreational purposes in Montgomery County, with no right of diversion; and

WHEREAS, a point on the centerline of the dam is located at Latitude 30.409418° N, Longitude 95.483618° W; and

WHEREAS, Applicant provided evidence of an alternate source to maintain the reservoir being groundwater from the Chicot Aquifer; and

WHEREAS, Applicant will discharge groundwater into the reservoir at a maximum discharge rate of 0.0267 cfs (12.0 gpm), at a point on the perimeter of the reservoir, located at Latitude 30.409418° N, Longitude 95.483618° W; and

WHEREAS, ownership of the land to be inundated is evidenced by a *Deed of Trust, Assignment of Rents, Security Agreement and Financial Statement*, recorded as Document No. 2019085409 on September 13, 2019 in the Official Public Records of Montgomery County; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends that special conditions be included in the permit; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this permit;

NOW, THEREFORE, this permit, designated Water Use Permit No. 13762, is issued to MRSS Partners, LTD, subject to the following terms and conditions:

1. IMPOUNDMENT

- A. Permittee is authorized to maintain an existing dam and reservoir on East Fork Crystal Creek, San Jacinto River Basin, impounding 43 acre-feet of water, with a point on the centerline of the dam located at Latitude 30.409418° N, Longitude 95.483618° W in Montgomery County.
- B. Ownership of the land to be inundated is evidenced by a *Deed of Trust, Assignment of Rents, Security Agreement and Financial Statement*, recorded as Document No. 2019085409 on September 13, 2019, in the Official Public Records of Montgomery County.

2. USE

Permittee is authorized to maintain the reservoir described in PARAGRAPH 1. IMPOUNDMENT for recreational purposes, with no right of diversion.

3. DISCHARGE

Permittee may discharge up to 19.2 acre-feet of groundwater per year, at a maximum discharge rate of 0.0267 cfs (12 gpm), at a point on the perimeter of the reservoir, located at Latitude 30.409418° N, Longitude 95.483618° W.

4. TIME PRIORITY

- A. The time priority for the right to maintain the reservoir is July 2, 2021.

5. SPECIAL CONDITIONS

- A. Permittee is not authorized to impound state water. Permittee shall maintain the reservoir full and spilling at all times with an alternate source of water so that all inflows of state water pass downstream of the reservoir. Permittee shall provide and maintain a pump, siphon or other acceptable device capable of passing all inflows to the reservoir to ensure that all inflows of state water are passed downstream.
- B. Permittee shall maintain and operate an alternate source of water with sufficient production to ensure that no state water is used. Permittee will utilize groundwater from the Chicot Aquifer as the alternate source of water for this permit. In the event groundwater from the Chicot Aquifer will no longer be used as the alternate source of water for this permit, Permittee shall immediately cease impoundment of water and either apply to amend the permit with a new alternate source, or voluntarily forfeit the permit.
- C. Permittee shall install and maintain, at the well head of the groundwater well, a measuring device capable of measuring the daily volume discharged into the reservoir within plus or minus 5% accuracy and maintain records of the daily amount of groundwater discharged into the reservoir.
- D. Permittee shall allow representatives of the Texas Commission on Environmental Quality reasonable access to the property to inspect the records.

This permit is issued subject to all superior water rights in the San Jacinto River Basin.

Permittee agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

This water use permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

For the Commission

DATE ISSUED:

DRAFT

**From:** [Jonathan White, P.E.](#)  
**To:** [Sam Sewell](#)  
**Subject:** Re: MRSS Partners 13762 Draft Permit and Notice Applicant Review  
**Date:** Thursday, March 10, 2022 7:51:59 AM

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Sam,

I do not have any comments. Please let me know if you have any questions.

Thank you,

**Jonathan White, PE**  
Senior Project Manager, Partner  
O: 936.647.0420  
C: 713.444.6819  
[L Squared Engineering](#)  
3307 West Davis, Suite 100  
Conroe, TX 77304



CONFIDENTIALITY: This message and accompanying documents are covered by the Federal Electronic Communications Privacy Act, 18 U.S.C., Sections 2510 - 2521, and contains information intended for the specified individual(s) only. This information is confidential. If you are not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited and may subject you to prosecution. If you have received this communication in error, please notify by e-mail, and delete this message.

On Mon, Mar 7, 2022 at 2:53 PM Sam Sewell <[Sam.Sewell@tceq.texas.gov](mailto:Sam.Sewell@tceq.texas.gov)> wrote:

Mr. Jonathan White,

Please review and make comments to the attached draft permit, notice, technical memos, and letter for MRSS Partners 13762 by COB 3/21/22.

*Samuel Alan Sewell MSc.*

*Project Manager, Water Rights Permitting*


*Water Availability Division MC-160*

Texas Commission on Environmental Quality

12100 Park 35 Circle, Bldg. F, 3<sup>rd</sup> Floor

Austin, Texas 78753

[Sam.Sewell@Tceq.Texas.Gov](mailto:Sam.Sewell@Tceq.Texas.Gov)

: (512) 239-4008

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 7, 2022

Mr. Jonathan White  
L Squared Engineering  
3307 W. Davis St., Suite 100  
Conroe, Tx 77304-1844

VIA E-MAIL

Re: MRSS Partners, LTD  
WRPERM 13762  
CN605883040, RN111249991  
Application No. 13762 for a Water Use Permit  
Texas Water Code § 11.143, Requiring Limited Mailed Notice  
East Fork Crystal Creek, San Jacinto River Basin  
Montgomery County

Dear Mr. White:

Drafts, subject to revision, of the public notice, proposed Water Use Permit No. 13762, and the related technical memoranda are attached.

Staff is recommending that the referenced application be granted in accordance with the attached drafts. Please review the drafts and contact me no later than March 21, 2022, with any comments or questions as the notice will be forwarded to the Office of the Chief Clerk for mailing after that date.

Please note this application requires a two-week comment period and once the comment period has closed, Water Use Permit No. 13762 may be issued as drafted given no hearing requests are received.

If you have any questions concerning this matter, please contact me via email at [sam.sewell@tceq.texas.gov](mailto:sam.sewell@tceq.texas.gov) or by telephone at (512) 239-4008.

Sincerely,

*Sam Sewell*

Sam Sewell, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

Attachments



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## WATER USE PERMIT

PERMIT NO. 13762 TYPE § 11.143

Permittees: MRSS Partners, LTD Address: 12651 Briar Forest Drive  
Houston, TX 77077

Filed: July 2, 2021 Granted:

Purpose: Recreation County: Montgomery

Watercourse: East Fork Crystal Creek, Watershed: San Jacinto River Basin  
tributary of Crystal Creek,  
tributary of the West Fork  
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WHEREAS, MRSS Partners, LTD (Applicant) seeks authorization to maintain an existing dam and reservoir on East Fork Crystal Creek, tributary of Crystal Creek, tributary of the West Fork San Jacinto River, San Jacinto River Basin, impounding 43 acre-feet of water for recreational purposes in Montgomery County, with no right of diversion; and

WHEREAS, a point on the centerline of the dam is located at Latitude 30.409418° N, Longitude 95.483618° W; and

WHEREAS, Applicant provided evidence of an alternate source to maintain the reservoir being groundwater from the Chicot Aquifer; and

WHEREAS, Applicant will discharge groundwater into the reservoir at a maximum discharge rate of 0.0267 cfs (12.0 gpm), at a point on the perimeter of the reservoir, located at Latitude 30.409418° N, Longitude 95.483618° W; and

WHEREAS, ownership of the land to be inundated is evidenced by a *Deed of Trust, Assignment of Rents, Security Agreement and Financial Statement*, recorded as Document No. 2019085409 on September 13, 2019 in the Official Public Records of Montgomery County; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends that special conditions be included in the permit; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this permit;

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4. TIME PRIORITY

- A. The time priority for the right to maintain the reservoir is July 2, 2021.

5. SPECIAL CONDITIONS

- A. Permittee is not authorized to impound state water. Permittee shall maintain the reservoir full and spilling at all times with an alternate source of water so that all inflows of state water pass downstream of the reservoir. Permittee shall provide and maintain a pump, siphon or other acceptable device capable of passing all inflows to the reservoir to ensure that all inflows of state water are passed downstream.
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This permit is issued subject to all superior water rights in the San Jacinto River Basin.

Permittee agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

This water use permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

For the Commission

DATE ISSUED:

DRAFT

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## NOTICE OF AN APPLICATION FOR A WATER USE PERMIT

APPLICATION NO. 13762

MRSS Partners, LTD (Permittee/Applicant) seeks authorization to maintain an existing dam and reservoir on East Fork Crystal Creek, San Jacinto River Basin, impounding 43 acre-feet of water for recreational purposes in Montgomery County and to maintain the reservoir with groundwater from the Chicot Aquifer. More information on the application and how to participate in the permitting process is given below.

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Executive Director's draft permit are available for viewing on the TCEQ web page at: [https://www.tceq.texas.gov/permitting/water\\_rights/wr-permitting/view-wr-pend-apps](https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps). Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

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Issued:

# Texas Commission on Environmental Quality

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## INTEROFFICE MEMORANDUM

**To:** Sam Sewell, Project Manager  
Water Rights Permitting Team

**Date:** December 1, 2021

**Through:** Leslie Patterson, Team Leader  
Resource Protection Team

**From:** Kenneth Coonrod, Aquatic Scientist  
Resource Protection Team

**Subject:** MRSS Partners, LTD  
WRPERM 13762  
CN605883040  
East Fork Crystal Creek, San Jacinto River Basin  
Montgomery County

Environmental reviews of water right applications are conducted in accordance with applicable provisions of the Texas Water Code (TWC) and the administrative rules of the Texas Commission on Environmental Quality (TCEQ). The provisions applicable to environmental reviews can vary according to the type and the location of the authorization requested.

### APPLICATION SUMMARY

MRSS Partners, LTD (Applicant) requests authorization to maintain a reservoir on East Fork Crystal Creek, San Jacinto River Basin, impounding 43 acre-feet of water, for recreational purposes in Montgomery County. Applicant requests authorization to maintain the reservoir with groundwater from the Chicot aquifer.

### ENVIRONMENTAL ANALYSIS

**Aquatic and Riparian Habitats:** The Applicant's reservoir is located on East Fork Crystal Creek, a perennial water body, in the Southern Tertiary Uplands ecoregion (Griffith et al. 2007).

The checklist for the San Jacinto River Basin identified 75 species of ichthyofauna occurring within the West Fork San Jacinto hydrologic unit (United States Geologic Survey code 12040101) (Hendrickson and Cohen 2015). The western creek chubsucker (*Erimyzon claviformis*) and the alligator snapping turtle (*Macrochelys temminckii*), high-interest aquatic species; and a mayfly (*Tricorythodes curvatus*), a high-interest aquatic-dependent species, are known to occur in Montgomery County (TPWD 2015). This permit is not expected to have an effect on any high-interest aquatic or aquatic-dependent species, because no additional state water is being requested by the Applicant.

On April 20, 2011, the TCEQ adopted environmental flow standards for the Trinity and San Jacinto Rivers, and Galveston Bay (Title 30 Texas Administrative Code (TAC) Chapter 298 Subchapter B). These environmental flow standards are considered adequate to support a sound ecological environment (Title 30 TAC § 298.210). The Applicant does not request a new appropriation of water or an amendment that increases the amount of water stored, taken, or diverted; therefore, the environmental flow standards do not apply. The Applicant proposes to use groundwater as an alternate source of water. The Applicant's request is not expected to adversely impact aquatic and riparian habitats in the area.

**Recreational Uses:** The Applicant's reservoir has a presumed primary contact recreation 1 use (TCEQ 2018). The Applicant's request should not adversely impact recreational uses.

**Water Quality:** The Applicant's reservoir has a presumed high aquatic life use (TCEQ 2018). The Applicant's request should not adversely impact water quality.

The Applicant indicates that the reservoir will be maintained with groundwater from three wells in the Chicot aquifer. Resource Protection staff have reviewed the Applicant's groundwater quality information, and the groundwater to be used is of sufficient quality that it should not adversely impact water quality.

**Freshwater Inflows:** Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The application does not request a new appropriation of water; therefore, the Applicant's request should not have any impact to Trinity Bay.

## RECOMMENDATIONS

Resource Protection staff have no recommendations regarding this proposed permit, if granted.

## LITERATURE CITED

Griffith GE, Bryce SA, Omernik JM, Rogers AC. 2007. Ecoregions of Texas - Project Report to Texas Commission on Environmental Quality. Reston (VA): U.S. Geological Survey. Report No.: AS-199. 125p.

Hendrickson DA, Cohen AE. 2015. Fishes of Texas Project Database [Internet]. [cited 2021 Nov 10]; Version 2.0. Available from <http://doi.org/10.17603/C3WC70>.

TCEQ. 2018. Texas Surface Water Quality Standards §§307.1-307.10. Austin (TX): Texas Commission on Environmental Quality.

TPWD. 2015. TPWD County Lists of Texas Protected Species and Species of Greatest Conservation Need [Internet]. Austin (TX): Montgomery County, revised October 1, 2021. [cited 2021 Nov 10]. Available from <http://tpwd.texas.gov/gis/rtest/>.



**Texas Commission on Environmental Quality**

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INTEROFFICE MEMORANDUM

To: Sam Sewell, Project Manager  
Water Rights Permitting Team

Date: January 24, 2021

Through ~~K~~ ~~A~~ Kathy Alexander, Ph.D., Policy and Technical Analyst  
Water Availability Division

TG Trent Gay, Team Leader  
Surface Water Availability Team

From: Andrew Garcia, Hydrologist  
Surface Water Availability Team

Subject: MRSS Partners, LTD  
WRPERM 13762  
CN605883040  
East Fork Crystal Creek, San Jacinto River Basin  
Montgomery County

**HYDROLOGY REVIEW**

**Application Summary**

MRSS Partners, LTD (Applicant) requests authorization to maintain a reservoir on East Fork Crystal Creek, San Jacinto River Basin, impounding 43 acre-feet of water for recreational purposes in Montgomery County. Applicant requests authorization to maintain the reservoir with groundwater from the Chicot aquifer.

The application was declared administratively complete on July 2, 2021.

**Hydrology Review**

Resource Protection staff did not recommend instream flow requirements for this application. See Resource Protection memo dated December 1, 2021.

The application does not request a new appropriation of water; therefore, a water availability analysis is not necessary. However, the application must be reviewed to ensure that no water rights are affected by the request.

The application was evaluated to determine if the alternate source provided is adequate to compensate for evaporative losses from the reservoir. Based on evaporation from the TCEQ Water Availability Model (WAM) for the San Jacinto River Basin, Quadrangle 712, staff determined the annual maximum evaporation from the reservoir to be 13.8 acre-feet with an estimated monthly maximum of 3.4 acre-feet. The groundwater well to be used as the alternate source is capable of

producing 19.2 acre-feet of water per year which is adequate to offset the maximum evaporative losses from the reservoir (13.8 acre-feet). Staff finds the alternate source provided in the application is sufficient to ensure that no state water is used.

## **Conclusion**

Staff can support granting the application as requested provided that any permit granted includes the following special conditions:

1. Permittee is not authorized to impound state water. Permittee shall maintain the reservoir full and spilling at all times with an alternate source of water so that all inflows of state water pass downstream of the reservoir. Permittee shall provide and maintain a pump, siphon or other acceptable device capable of passing all inflows to the reservoir to ensure that all inflows of state water are passed downstream.
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3. Permittee shall install and maintain, at the well head of the groundwater well, a measuring device capable of measuring the daily volume discharged into the reservoir within plus or minus 5% accuracy and maintain records of the daily amount of groundwater discharged into the reservoir.

*Andrew Garcia*

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Andrew Garcia, Hydrologist

# Texas Commission on Environmental Quality

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**To:** Sam Sewell, Project Manager  
Water Rights Permitting Team

**Date:** December 1, 2021

**Through:** Leslie Patterson, Team Leader  
Resource Protection Team  


Jennifer Allis, Senior Water Conservation Specialist  
Resource Protection Team  


**From:**  Trent Jennings, Water Conservation Specialist  
Resource Protection Team

**Subject:** MRSS Partners, LTD  
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### APPLICATION SUMMARY

MRSS Partners, LTD (Applicant) requests authorization to maintain a reservoir on East Fork Crystal Creek, San Jacinto River Basin, impounding 43 acre-feet of water for recreational purposes in Montgomery County. Applicant requests authorization to maintain the reservoir with groundwater from the Chicot aquifer.

### WATER CONSERVATION REVIEW

Pursuant to Title 30 Texas Administrative Code §295.9(5), applications to impound water for in-place use are exempt from submitting a water conservation plan.

The application is consistent with the 2021 Region H Water Plan and the 2022 State Water Plan because there is nothing in the water plans that conflicts with issuing this proposed permit.

### RECOMMENDATIONS

Resource Protection Staff have no recommendations regarding the proposed permit, if granted.

## Re: MRSS\_Partners\_LTD\_13762\_Technical\_Request\_for\_Information

Chris Kozlowski <chris.kozlowski@tceq.texas.gov>

Tue 2/15/2022 2:19 PM

To: Jonathan White, P.E. [REDACTED]; Lillian Beerman <Lillian.Beerman@Tceq.Texas.Gov>; Sam Sewell <Sam.Sewell@Tceq.Texas.Gov>

Cc: Andrew Garcia <Andrew.Garcia@Tceq.Texas.Gov>

Mr. White, we currently have a draft permit in review and will likely send it to you for review in the next couple of weeks to review.

---

**From:** Jonathan White, P.E. <[REDACTED]>

**Sent:** Tuesday, February 15, 2022 1:35 PM

**To:** Lillian Beerman <Lillian.Beerman@Tceq.Texas.Gov>; Sam Sewell <Sam.Sewell@Tceq.Texas.Gov>

**Cc:** Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Andrew Garcia <Andrew.Garcia@Tceq.Texas.Gov>

**Subject:** Re: MRSS\_Partners\_LTD\_13762\_Technical\_Request\_for\_Information

Lillian/Sam,

Do you have a status on the overall review of this project?

**Thank you,**

**Jonathan White, PE**

Senior Project Manager, Partner

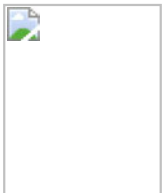
O: 936.647.0420

C: 713.444.6819

[L Squared Engineering](#)

3307 West Davis, Suite 100

Conroe, TX 77304



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On Thu, Jan 20, 2022 at 12:58 PM Jonathan White, P.E. <[REDACTED]> wrote:

Lillian,

Per my conversation with Andrew today:

Lonestar Groundwater Conservation District (LSGWCD) will not require a permit for this well under the exempt well ruling. This well will be used for irrigation purposes to maintain the water level in the existing pond and per the application, the well will use 19.2 Ac-ft annually, or 17,140 GPD.

LSGWCD non exempt wells are wells that will produce 25,000 GPD, which we are under that limitation. Based on these two facts, there is no need for a permit through LSGWCD.

Please let me know if you have any questions.

**Thank you,**

**Jonathan White, PE**  
Senior Project Manager, Partner  
O: 936.647.0420  
C: 713.444.6819  
[L Squared Engineering](#)  
3307 West Davis, Suite 100  
Conroe, TX 77304



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On Mon, Jan 17, 2022 at 7:55 AM Jonathan White, P.E. <[REDACTED]> wrote:

Lillian,

Lonestar Groundwater Conservation District only requires a permit for commercial wells or wells that can produce in excess of 25,000 GPD. This well would be used more for irrigation purposes to maintain the water level in the existing pond and per the application expect to use 19.2 Ac-ft annually, or 17,140 GPD.

Is this acceptable? Or will additional documentation be required?

**Thank you,**

**Jonathan White, PE**  
Senior Project Manager, Partner  
O: 936.647.0420  
C: 713.444.6819  
[L Squared Engineering](#)  
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On Thu, Jan 13, 2022 at 4:41 PM Lillian Beerman <[Lillian.Beerman@tceq.texas.gov](mailto:Lillian.Beerman@tceq.texas.gov)> wrote:

Mr. White,

Attached is a Request for Information for MRSS Partners, LTD's Application No. 13762. The information is needed to complete Technical Review of the Application.

Please respond by COB Monday, February 14, 2022.

If you have any questions, do not hesitate to contact me.

Thank You,

Lillian E. Beerman, Ph.D.

Water Rights Permitting Team

Water Availability Division

512-239-4019

[lillian.beerman@tceq.texas.gov](mailto:lillian.beerman@tceq.texas.gov)

**Re: MRSS\_Partners\_LTD\_13762\_Technical\_Request\_for\_Information**

Jonathan White, P.E. [REDACTED]

Thu 1/20/2022 12:58 PM

To: Lillian Beerman <Lillian.Beerman@Tceq.Texas.Gov>

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**Thank you,**

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Senior Project Manager, Partner

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Conroe, TX 77304



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Thank You,

Lillian E. Beerman, Ph.D.

Water Rights Permitting Team

Water Availability Division

512-239-4019

[lillian.beerman@tceq.texas.gov](mailto:lillian.beerman@tceq.texas.gov)



Re: MRSS\_Partners\_LTD\_13762\_Technical\_Request\_for\_Information

Jonathan White, P.E. <[REDACTED]>

Mon 1/17/2022 7:55 AM

To: Lillian Beerman <Lillian.Beerman@Tceq.Texas.Gov>

Cc: Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Sam Sewell <Sam.Sewell@Tceq.Texas.Gov>

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Lillian E. Beerman, Ph.D.

Water Rights Permitting Team

Water Availability Division

512-239-4019

[lillian.beerman@tceq.texas.gov](mailto:lillian.beerman@tceq.texas.gov)

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 13, 2022

Mr. Jonathan White  
L Squared Engineering  
3307 W Davis St., Suite 100  
Conroe, Tx 77304-1844

VIA E-MAIL

RE: MRSS Partners, LTD  
WRPERM 13762  
CN605883040, RN111249991  
Application No. 13762 for a Water Use Permit  
Texas Water Code § 11.143, Requiring Limited Mailed Notice  
East Fork Crystal Creek, San Jacinto River Basin  
Montgomery County

Dear Mr. White:

Before we can continue to process the referenced application, additional information is required for technical review.

Provide a copy of any groundwater well permit(s) from the Lone Star Groundwater Conservation District, or evidence that a groundwater well permit is not required, for the groundwater wells identified as an alternate source for the application.

Please provide the requested information by February 14, 2022 or the application may be returned pursuant to 30 Texas Administrative Code § 281.19. Alternatively, you may have the question of the necessity of the requested data (or the sufficiency of the information already submitted) referred to the commission for a decision. To be considered, a request for a referral must be provided by February 14, 2022.

If you have any questions concerning this matter, please contact me via email at [lillian.beerman@tceq.texas.gov](mailto:lillian.beerman@tceq.texas.gov) or by telephone at (512) 239-4019.

Sincerely,

*Lillian E. Beerman, Ph.D.*

Lillian E. Beerman, Ph.D., Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

## MRSS\_Partners\_LTD\_13762\_Technical\_Request\_for\_Information

Lillian Beerman <Lillian.Beerman@Tceq.Texas.Gov>

Thu 1/13/2022 4:41 PM

To:

Cc: Lillian Beerman <Lillian.Beerman@Tceq.Texas.Gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Sam Sewell <Sam.Sewell@Tceq.Texas.Gov>

 1 attachments (211 KB)

MRSS\_Partners\_13762\_TECH\_RFI\_Sent\_01.13.2022.pdf;

Mr. White,

Attached is a Request for Information for MRSS Partners, LTD's Application No. 13762. The information is needed to complete Technical Review of the Application.

Please respond by COB Monday, February 14, 2022.

If you have any questions, do not hesitate to contact me.

Thank You,

Lillian E. Beerman, Ph.D.

Water Rights Permitting Team

Water Availability Division

512-239-4019

lillian.beerman@tceq.texas.gov

# TCEQ Interoffice Memorandum

---

TO: Office of the Chief Clerk  
Texas Commission on Environmental Quality

THRU: Chris Kozlowski, Team Leader  
Water Rights Permitting Team

FROM: Sam Sewell, Project Manager  
Water Rights Permitting Team

DATE: July 2, 2021

SUBJECT: MRSS Partners LTD.  
WRPERM 13762  
CN605883040, RN111249991  
Application No. 13762 for a Water Use Permit  
Texas Water Code §§ 11.121, 11.143, Requiring Limited Mailed  
Notice  
East Fork Crystal Creek, San Jacinto River Basin  
Montgomery County

The application was received on April 26, 2021. Additional information and fees were received on June 14, and June 22, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 2, 2021. Mailed notice to downstream water right holders of record in the San Jacinto River Basin is required pursuant to Title 30 Texas Administrative Code § 295.153(c)(1) and mailed notice to the Lonestar Groundwater Conservation District Pursuant to Title 30 TAC § 295.153(c)(2).

All fees have been paid and the application is sufficient for filing.

*Samuel Sewell*

Sam Sewell, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

OCC Mailed Notice Required

YES

NO

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 2, 2021

Mr. Jonathan White  
L Squared Engineering  
3307 W Davis St., Suite 100  
Conroe, Tx 77304-1844

VIA E-MAIL

RE: MRSS Partners LTD.  
WRPERM 13762  
CN605883040, RN111249991  
Application No. 13762 for a Water Use Permit  
Texas Water Code §§ 11.121, 11.143, Requiring Limited Mailed Notice  
East Fork Crystal Creek, San Jacinto River Basin  
Montgomery County

Dear Mr. White:

This acknowledges receipts on June 14 and 22, 2021, of additional information and fees in the amount of \$153.38 (Receipt Nos. M119175A and M119175B, copies attached)

The application was declared administratively complete and filed with the Office of the Chief Clerk on July 2, 2021. Staff will continue processing the application for consideration by the Executive Director.

Please be advised that additional information may be requested during the technical review phase of the application process.

If you have any questions concerning the application, please contact me at [sam.sewell@tceq.texas.gov](mailto:sam.sewell@tceq.texas.gov) or by phone at (512) 239-4008.

Sincerely,

*Samuel Sewell*

Sam Sewell, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

Attachments



16-JUN-21 10:57 AM

TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u> <u>Account#</u> <u>Account Name</u>	<u>Ref#1</u> <u>Ref#2</u> <u>Paid In By</u>	<u>Check Number</u> <u>Card Auth.</u> <u>User Data</u>	<u>CC Type</u> <u>Tran Code</u> <u>Rec Code</u>	<u>Slip Key</u> <u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
WTR USE PERMITS	WUP	M119175A	20803		BS00087369	16-JUN-21	-\$142.10
	WUP	13762	061621	N	D1803582		
WATER USE PERMITS		L SQUARED	RHDAVIS	CK			
		ENGINEERING					
Total (Fee Code):							-\$142.10

RECEIVED  
JUN 17 2021  
Water Availability Division



16-JUN-21 10:57 AM

TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u> <u>Account#</u> <u>Account Name</u>	<u>Ref#1</u> <u>Ref#2</u> <u>Paid In By</u>	<u>Check Number</u> <u>Card Auth.</u> <u>User Data</u>	<u>CC Type</u> <u>Tran Code</u> <u>Rec Code</u>	<u>Slip Key</u> <u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
NOTICE FEES-WUP- WATER USE PERM	PTGU PTGU	M119175B 13762	20803 061621	 N	BS00087369 D1803582	16-JUN-21	-\$11.28
	NOTICE FEES WUP WATER USE PERMITS	L SQUARED ENGINEERING	RHDAVIS	CK			
					Total (Fee Code):		-\$11.28



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## TCEQ WATER RIGHTS PERMITTING APPLICATION

### ADMINISTRATIVE INFORMATION CHECKLIST

Complete and submit this checklist for each application. See Instructions Page. 5.

APPLICANT(S): MRSS Partners, LTD

Indicate whether the following items are included in your application by writing either Y (for yes) or N (for no) next to each item (all items are not required for every application).

Y/N

**Administrative Information Report**  
 Additional Co-Applicant Information  
 Additional Co-Applicant Signature Pages  
 Written Evidence of Signature Authority

**Technical Information Report**

USGS Map (or equivalent)  
 Map Showing Project Details  
 Original Photographs  
 Water Availability Analysis

**Worksheet 1.0**  
 Recorded Deeds for Irrigated Land  
 Consent For Irrigation Land

**Worksheet 1.1**  
 Addendum to Worksheet 1.1  
**Worksheet 1.2**  
 Addendum to Worksheet 1.2

**Worksheet 2.0**  
 Additional W.S 2.0 for Each Reservoir  
 Dam Safety Documents  
 Notice(s) to Governing Bodies  
 Recorded Deeds for Inundated Land  
 Consent For Inundation Land

Y/N

**Worksheet 3.0**  
 Additional W.S 3.0 for each Point  
 Recorded Deeds for Diversion Points  
 Consent For Diversion Access

**Worksheet 4.0**  
 TPDES Permit(s)  
 WWTP Discharge Data  
 24-hour Pump Test  
 Groundwater Well Permit  
 Signed Water Supply Contract

**Worksheet 4.1**  
 **Worksheet 5.0**  
 Addendum to Worksheet 5.0

**Worksheet 6.0**  
 Water Conservation Plan(s)  
 Drought Contingency Plan(s)  
 Documentation of Adoption

**Worksheet 7.0**  
 Accounting Plan

**Worksheet 8.0**  
 Fees

**For Commission Use Only:**

Proposed/Current Water Right Number: \_\_\_\_\_

Basin: \_\_\_\_\_ Watermaster area Y/N: \_\_\_\_\_

# ADMINISTRATIVE INFORMATION REPORT

The following information is required for all new applications and amendments.

**\*\*\* Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Staff to discuss Applicant's needs prior to submitting an application. Call the Water Rights Permitting Team to schedule a meeting at (512) 239-4600.**

## 1. TYPE OF APPLICATION (Instructions, Page. 6)

Indicate, by marking X, next to the following authorizations you are seeking.

- New Appropriation of State Water
- Amendment to a Water Right \*
- Bed and Banks

***\*If you are seeking an amendment to an existing water rights authorization, you must be the owner of record of the authorization. If the name of the Applicant in Section 2, does not match the name of the current owner(s) of record for the permit or certificate or if any of the co-owners is not included as an applicant in this amendment request, your application could be returned. If you or a co-applicant are a new owner, but ownership is not reflected in the records of the TCEQ, submit a change of ownership request (Form TCEQ-10204) prior to submitting the application for an amendment. See Instructions page. 6. Please note that an amendment application may be returned, and the Applicant may resubmit once the change of ownership is complete.***

Please summarize the authorizations or amendments you are seeking in the space below or attach a narrative description entitled "Summary of Request."

Seeking request to utilize an existing lake as a detention pond for a proposed commercial  
and residential development

**2. APPLICANT INFORMATION (Instructions, Page. 6 )**

**a. Applicant**

Indicate the number of Applicants/Co-Applicants 1  
(Include a copy of this section for each Co-Applicant, if any)

What is the Full Legal Name of the individual or entity (applicant) applying for this permit?

MRSS Partners, LTD

*(If the Applicant is an entity, the legal name must be spelled exactly as filed with the Texas Secretary of State, County, or in the legal documents forming the entity.)*

If the applicant is currently a customer with the TCEQ, what is the Customer Number (CN)? You may search for your CN on the TCEQ website at

<http://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=cust.CustSearch>

CN : \_\_\_\_\_ (leave blank if you do not yet have a CN).

What is the name and title of the person or persons signing the application? Unless an application is signed by an individual applicant, the person or persons must submit written evidence that they meet the signatory requirements in 30 TAC § 295.14.

First/Last Name: Will Stolz

Title: Partner

Have you provided written evidence meeting the signatory requirements in 30 TAC § 295.14, as an attachment to this application?

What is the applicant’s mailing address as recognized by the US Postal Service (USPS)? You may verify the address on the USPS website at

<https://tools.usps.com/go/ZipLookupAction!input.action>.

Name: MRSS Partners, LTD

Mailing Address: 12651 Briar Forest Dr

City: Houston

State: TX

ZIP Code: 77077

Indicate an X next to the type of Applicant:

Individual

Sole Proprietorship-D.B.A.

Partnership

Corporation

Trust

Estate

Federal Government

State Government

County Government

City Government

Other Government

Other \_\_\_\_\_

For Corporations or Limited Partnerships, provide:

State Franchise Tax ID Number: 32070305787 SOS Charter (filing) Number: 0803282690

### 3. APPLICATION CONTACT INFORMATION (Instructions, Page. 9)

If the TCEQ needs additional information during the review of the application, who should be contacted? Applicant may submit their own contact information if Applicant wishes to be the point of contact.

First and Last Name: Jonathan White

Title: Professional Engineer

Organization Name: L Squared Engineering

Mailing Address: 3307 W Davis St, STE 100

City: Conroe

State: TX

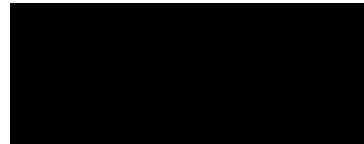
ZIP Code: 77304

Phone No.: 936-647-0420

Extension:

Fax No.: 936-647-2366

E-mail Address:



#### 4. WATER RIGHT CONSOLIDATED CONTACT INFORMATION (Instructions, Page. 9)

This section applies only if there are multiple Owners of the same authorization. Unless otherwise requested, Co-Owners will each receive future correspondence from the Commission regarding this water right (after a permit has been issued), such as notices and water use reports. Multiple copies will be sent to the same address if Co-Owners share the same address. Complete this section if there will be multiple owners and all owners agree to let one owner receive correspondence from the Commission. Leave this section blank if you would like all future notices to be sent to the address of each of the applicants listed in section 2 above.

I/We authorize all future notices be received on my/our behalf at the following:

First and Last Name:

Title:

Organization Name:

Mailing Address:

City:

State:

ZIP Code:

Phone No.:

Extension:

Fax No.:

E-mail Address:

## 5. MISCELLANEOUS INFORMATION (Instructions, Page. 9)

a. The application will not be processed unless all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol by all applicants/co-applicants. If you need assistance determining whether you owe delinquent penalties or fees, please call the Water Rights Permitting Team at (512) 239-4600, prior to submitting your application.

1. Does Applicant or Co-Applicant owe any fees to the TCEQ? **Yes / No NO**

If **yes**, provide the following information:

Account number:

Amount past due:

2. Does Applicant or Co-Applicant owe any penalties to the TCEQ? **Yes / No NO**

If **yes**, please provide the following information:

Enforcement order number:

Amount past due:

b. If the Applicant is a taxable entity (corporation or limited partnership), the Applicant must be in good standing with the Comptroller or the right of the entity to transact business in the State may be forfeited. See Texas Tax Code, Subchapter F. Applicant's may check their status with the Comptroller at <https://mycpa.cpa.state.tx.us/coa/>

Is the Applicant or Co-Applicant in good standing with the Comptroller? **Yes / No Yes**

c. The commission will not grant an application for a water right unless the applicant has submitted all Texas Water Development Board (TWDB) surveys of groundwater and surface water use - if required. See TWC §16.012(m) and 30 TAC § 297.41(a)(5).

Applicant has submitted all required TWDB surveys of groundwater and surface water? **Yes / No No**

**6. SIGNATURE PAGE (Instructions, Page. 11)**

Applicant:

I, Will Stolz, Partner

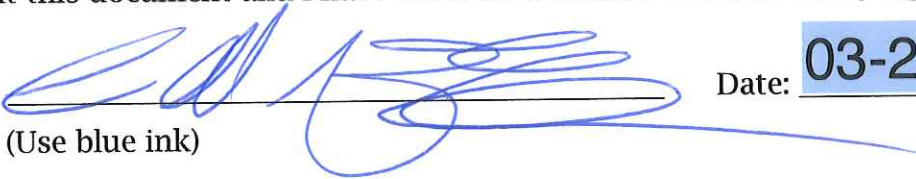
(Typed or printed name)

(Title)

certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that I am authorized under Title 30 Texas Administrative Code §295.14 to sign and submit this document and I have submitted written evidence of my signature authority.

Signature:



(Use blue ink)

Date:

03-23-2021

Subscribed and Sworn to before me by the said

on this 19<sup>th</sup> day of April, 2021.

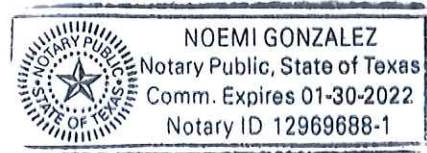
My commission expires on the 30<sup>th</sup> day of January, 2022.



Notary Public

[SEAL]

County, Texas



***If the Application includes Co-Applicants, each Applicant and Co-Applicant must submit an original, separate signature page***

# TECHNICAL INFORMATION REPORT

## WATER RIGHTS PERMITTING

This Report is required for applications for new or amended water rights. Based on the Applicant's responses below, Applicant are directed to submit additional Worksheets (provided herein). A completed Administrative Information Report is also required for each application.

**Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Permitting Staff to discuss Applicant's needs and to confirm information necessary for an application prior to submitting such application. Please call Water Availability Division at (512) 239-4600 to schedule a meeting.** Applicant attended a pre-application meeting with TCEQ Staff for this Application? Y / N<sup>Y</sup>\_\_\_\_\_ (If yes, date :03/23/2021\_\_\_\_\_).

### 1. New or Additional Appropriations of State Water. Texas Water Code (TWC) § 11.121 (Instructions, Page. 12)

**State Water is:** *The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state. TWC § 11.021.*

- a. Applicant requests a new appropriation (diversion or impoundment) of State Water? Y / N<sup>Y</sup>\_\_\_\_\_
- b. Applicant requests an amendment to an existing water right requesting an increase in the appropriation of State Water or an increase of the overall or maximum combined diversion rate? Y / N<sup>N</sup>\_\_\_\_\_ (If yes, indicate the Certificate or Permit number:\_\_\_\_\_)

*If Applicant answered yes to (a) or (b) above, does Applicant also wish to be considered for a term permit pursuant to TWC § 11.1381? Y / N<sup>N</sup>\_\_\_\_\_*

- c. Applicant requests to extend an existing Term authorization or to make the right permanent? Y / N<sup>N</sup>\_\_\_\_\_ (If yes, indicate the Term Certificate or Permit number:\_\_\_\_\_)

*If Applicant answered yes to (a), (b) or (c), the following worksheets and documents are required:*

- **Worksheet 1.0 – Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir requested in the application)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point and/or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach requested in the application)
- **Worksheet 5.0 – Environmental Information Worksheet**
- **Worksheet 6.0 – Water Conservation Information Worksheet**
- **Worksheet 7.0 – Accounting Plan Information Worksheet**
- **Worksheet 8.0 – Calculation of Fees**
- **Fees calculated on Worksheet 8.0 – see instructions Page. 34.**
- **Maps – See instructions Page. 15.**
- **Photographs - See instructions Page. 30.**

*Additionally, if Applicant wishes to submit an alternate source of water for the project/authorization, see Section 3, Page 3 for Bed and Banks Authorizations (Alternate sources may include groundwater, imported water, contract water or other sources).*

**Additional Documents and Worksheets may be required (see within).**



**2. Amendments to Water Rights. TWC § 11.122 (Instructions, Page. 12)**

This section should be completed if Applicant owns an existing water right and Applicant requests to amend the water right. *If Applicant is not currently the Owner of Record in the TCEQ Records, Applicant must submit a Change of Ownership Application (TCEQ-10204) prior to submitting the amendment Application or provide consent from the current owner to make the requested amendment. If the application does not contain consent from the current owner to make the requested amendment, TCEQ will not begin processing the amendment application until the Change of Ownership has been completed and will consider the Received Date for the application to be the date the Change of Ownership is completed. See instructions page. 6.*

Water Right (Certificate or Permit) number you are requesting to amend: \_\_\_\_\_

Applicant requests to sever and combine existing water rights from one or more Permits or Certificates into another Permit or Certificate? Y / N \_\_\_\_\_ (if yes, complete chart below):

List of water rights to sever	Combine into this ONE water right

a. Applicant requests an amendment to an existing water right to increase the amount of the appropriation of State Water (diversion and/or impoundment)? Y / N \_\_\_\_\_

*If yes, application is a new appropriation for the increased amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.*

b. Applicant requests to amend existing Term authorization to extend the term or make the water right permanent (remove conditions restricting water right to a term of years)? Y / N \_\_\_\_\_

*If yes, application is a new appropriation for the entire amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.*

c. Applicant requests an amendment to change the purpose or place of use or to add an additional purpose or place of use to an existing Permit or Certificate? Y / N \_\_\_\_\_

*If yes, submit:*

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 1.2 - Notice: "Marshall Criteria"**

d. Applicant requests to change: diversion point(s); or reach(es); or diversion rate? Y / N \_\_\_\_\_

*If yes, submit:*

- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach)
- **Worksheet 5.0 - Environmental Information** (Required for any new diversion points that are not already authorized in a water right)

e. Applicant requests amendment to add or modify an impoundment, reservoir, or dam? Y / N \_\_\_\_\_

*If yes, submit: Worksheet 2.0 - Impoundment/Dam Information Worksheet* (submit one worksheet for each impoundment or reservoir)

- f. Other - Applicant requests to change any provision of an authorization not mentioned above? Y / N \_\_\_\_\_ *If yes, call the Water Availability Division at (512) 239-4600 to discuss.*

**Additionally, all amendments require:**

- **Worksheet 8.0 – Calculation of Fees; and Fees calculated – see instructions Page. 34**
- **Maps – See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

N/A **3. Bed and Banks. TWC § 11.042 (Instructions, Page 13)**

- a. Pursuant to contract, Applicant requests authorization to convey, stored or conserved water to the place of use or diversion point of purchaser(s) using the bed and banks of a watercourse? TWC § 11.042(a). Y/N \_\_\_\_\_

*If yes, submit a signed copy of the Water Supply Contract pursuant to 30 TAC §§ 295.101 and 297.101. Further, if the underlying Permit or Authorization upon which the Contract is based does not authorize Purchaser's requested Quantity, Purpose or Place of Use, or Purchaser's diversion point(s), then either:*

1. *Purchaser must submit the worksheets required under Section 1 above with the Contract Water identified as an alternate source; or*
2. *Seller must amend its underlying water right under Section 2.*

- b. Applicant requests to convey water imported into the state from a source located wholly outside the state using the bed and banks of a watercourse? TWC § 11.042(a-1). Y / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps and fees from the list below.*

- c. Applicant requests to convey Applicant's own return flows derived from privately owned groundwater using the bed and banks of a watercourse? TWC § 11.042(b). Y / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.*

- d. Applicant requests to convey Applicant's own return flows derived from surface water using the bed and banks of a watercourse? TWC § 11.042(c). Y / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 6.0, 7.0, 8.0, Maps, and fees from the list below.*

***\*Please note, if Applicant requests the reuse of return flows belonging to others, the Applicant will need to submit the worksheets and documents under Section 1 above, as the application will be treated as a new appropriation subject to termination upon direct or indirect reuse by the return flow discharger/owner.***

- e. Applicant requests to convey water from any other source, other than (a)-(d) above, using the bed and banks of a watercourse? TWC § 11.042(c). Y / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.*

*Worksheets and information:*

- **Worksheet 1.0 – Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir owned by the applicant through which water will be conveyed or diverted)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for the downstream limit of each diversion reach for the proposed conveyances)
- **Worksheet 4.0 – Discharge Information Worksheet** (for each discharge point)

- **Worksheet 5.0 – Environmental Information Worksheet**
- **Worksheet 6.0 – Water Conservation Information Worksheet**
- **Worksheet 7.0 – Accounting Plan Information Worksheet**
- **Worksheet 8.0 – Calculation of Fees; and Fees calculated – see instructions Page. 34**
- **Maps – See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

**4. General Information, Response Required for all Water Right Applications (Instructions, Page 15)**

a. Provide information describing how this application addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement (*not required for applications to use groundwater-based return flows*). Include citations or page numbers for the State and Regional Water Plans, if applicable. Provide the information in the space below or submit a supplemental sheet entitled “Addendum Regarding the State and Regional Water Plans”:

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b. Did the Applicant perform its own Water Availability Analysis? Y / N N

*If the Applicant performed its own Water Availability Analysis, provide electronic copies of any modeling files and reports.*

c. Does the application include required Maps? (Instructions Page. 15) Y / N Y

# WORKSHEET 1.0

## Quantity, Purpose and Place of Use

### 1. New Authorizations (Instructions, Page. 16)

Submit the following information regarding quantity, purpose and place of use for requests for new or additional appropriations of State Water or Bed and Banks authorizations:

Quantity (acre-foot) <i>(Include losses for Bed and Banks)</i>	State Water Source (River Basin) or Alternate Source <i>*each alternate source (and new appropriation based on return flows of others) also requires completion of Worksheet 4.0</i>	Purpose(s) of Use	Place(s) of Use <i>*requests to move state water out of basin also require completion of Worksheet 1.1 Interbasin Transfer</i>
19.2	Groundwater	Recreation	Montgomery county

19.23 Total amount of water (in acre-feet) to be used annually (*include losses for Bed and Banks applications*)

If the Purpose of Use is Agricultural/Irrigation for any amount of water, provide:

a. Location Information Regarding the Lands to be Irrigated

i) Applicant proposes to irrigate a total of \_\_\_\_\_ acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of \_\_\_\_\_ acres in \_\_\_\_\_ County, TX.

ii) Location of land to be irrigated: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_.

***A copy of the deed(s) or other acceptable instrument describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds.***

***If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.***

***Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.***

**2. Amendments - Purpose or Place of Use (Instructions, Page. 12)**

a. Complete this section for each requested amendment changing, adding, or removing Purpose(s) or Place(s) of Use, complete the following:

Quantity (acre-foot)	Existing Purpose(s) of Use	Proposed Purpose(s) of Use*	Existing Place(s) of Use	Proposed Place(s) of Use**

\*If the request is to add additional purpose(s) of use, include the existing and new purposes of use under "Proposed Purpose(s) of Use."

\*\*If the request is to add additional place(s) of use, include the existing and new places of use under "Proposed Place(s) of Use."

*Changes to the purpose of use in the Rio Grande Basin may require conversion. 30 TAC § 303.43.*

b. For any request which adds Agricultural purpose of use or changes the place of use for Agricultural rights, provide the following location information regarding the lands to be irrigated:

i. Applicant proposes to irrigate a total of \_\_\_\_\_ acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of \_\_\_\_\_ acres in \_\_\_\_\_ County, TX.

ii. Location of land to be irrigated: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_.

***A copy of the deed(s) describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds. If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other legal right for Applicant to use the land described.***

***Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.***

c. Submit Worksheet 1.1, Interbasin Transfers, for any request to change the place of use which moves State Water to another river basin.

d. See Worksheet 1.2, Marshall Criteria, and submit if required.

e. See Worksheet 6.0, Water Conservation/Drought Contingency, and submit if required.

# WORKSHEET 1.1

## N/A INTERBASIN TRANSFERS, TWC § 11.085

Submit this worksheet for an application for a new or amended water right which requests to transfer State Water from its river basin of origin to use in a different river basin. A river basin is defined and designated by the Texas Water Development Board by rule pursuant to TWC § 16.051.

Applicant requests to transfer State Water to another river basin within the State? Y / N\_\_\_\_\_

### 1. Interbasin Transfer Request (Instructions, Page. 20)

- a. Provide the Basin of Origin. \_\_\_\_\_
- b. Provide the quantity of water to be transferred (acre-feet). \_\_\_\_\_
- c. Provide the Basin(s) and count(y/ies) where use will occur in the space below:  
\_\_\_\_\_

### 2. Exemptions (Instructions, Page. 20), TWC § 11.085(v)

Certain interbasin transfers are exempt from further requirements. Answer the following:

- a. The proposed transfer, which in combination with any existing transfers, totals less than 3,000 acre-feet of water per annum from the same water right. Y/N\_\_
- b. The proposed transfer is from a basin to an adjoining coastal basin? Y/N\_\_
- c. The proposed transfer from the part of the geographic area of a county or municipality, or the part of the retail service area of a retail public utility as defined by Section 13.002, that is within the basin of origin for use in that part of the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin? Y/N\_\_
- d. The proposed transfer is for water that is imported from a source located wholly outside the boundaries of Texas, except water that is imported from a source located in the United Mexican States? Y/N\_\_

### 3. Interbasin Transfer Requirements (Instructions, Page. 20)

For each Interbasin Transfer request that is not exempt under any of the exemptions listed above Section 2, provide the following information in a supplemental attachment titled "Addendum to Worksheet 1.1, Interbasin Transfer":

- a. the contract price of the water to be transferred (if applicable) (also include a copy of the contract or adopted rate for contract water);
- b. a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category;
- c. the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users (example - expert plans and/or reports documents may be provided to show the cost);

- d. describe the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years (the need can be identified in the most recently approved regional water plans. The state and regional water plans are available for download at this website: (<http://www.twdb.texas.gov/waterplanning/swp/index.asp>);
- e. address the factors identified in the applicable most recently approved regional water plans which address the following:
  - (i) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;
  - (ii) the amount and purposes of use in the receiving basin for which water is needed;
  - (iii) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;
  - (iv) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;
  - (v) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and
  - (vi) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under Sections 11.147, 11.150, and 11.152 in each basin (*if applicable*). If the water sought to be transferred is currently authorized to be used under an existing permit, certified filing, or certificate of adjudication, such impacts shall only be considered in relation to that portion of the permit, certified filing, or certificate of adjudication proposed for transfer and shall be based on historical uses of the permit, certified filing, or certificate of adjudication for which amendment is sought;
- f. proposed mitigation or compensation, if any, to the basin of origin by the applicant; and
- g. the continued need to use the water for the purposes authorized under the existing Permit, Certified Filing, or Certificate of Adjudication, if an amendment to an existing water right is sought.

N/A

## WORKSHEET 1.2 NOTICE. “THE MARSHALL CRITERIA”

This worksheet assists the Commission in determining notice required for certain **amendments** that do not already have a specific notice requirement in a rule for that type of amendment, and *that do not change the amount of water to be taken or the diversion rate*. The worksheet provides information that Applicant **is required** to submit for such amendments which include changes in use, changes in place of use, or other non-substantive changes in a water right (such as certain amendments to special conditions or changes to off-channel storage). These criteria address whether the proposed amendment will impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

*This worksheet is **not required for Applications in the Rio Grande Basin** requesting changes in the purpose of use, rate of diversion, point of diversion, and place of use for water rights held in and transferred within and between the mainstems of the Lower Rio Grande, Middle Rio Grande, and Amistad Reservoir. See 30 TAC § 303.42.*

*This worksheet is **not required for amendments which are only changing or adding diversion points, or request only a bed and banks authorization or an IBT authorization**. However, Applicants may wish to submit the Marshall Criteria to ensure that the administrative record includes information supporting each of these criteria*

### 1. The “Marshall Criteria” (Instructions, Page. 21)

Submit responses on a supplemental attachment titled “Marshall Criteria” in a manner that conforms to the paragraphs (a) – (g) below:

- a. Administrative Requirements and Fees. Confirm whether application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) Chapters 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.
- b. Beneficial Use. Discuss how proposed amendment is a beneficial use of the water as defined in TWC § 11.002 and listed in TWC § 11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.
- c. Public Welfare. Explain how proposed amendment is not detrimental to the public welfare. Consider any public welfare matters that might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.
- d. Groundwater Effects. Discuss effects of proposed amendment on groundwater or groundwater recharge.



- e. State Water Plan. Describe how proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at:  
<http://www.twdb.texas.gov/waterplanning/swp/index.asp>.
- f. Waste Avoidance. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC § 11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC Chapter 288.
- g. Impacts on Water Rights or On-stream Environment. Explain how proposed amendment will not impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

# WORKSHEET 2.0

## Impoundment/Dam Information

This worksheet **is required** for any impoundment, reservoir and/or dam. Submit an additional Worksheet 2.0 for each impoundment or reservoir requested in this application.

*If there is more than one structure, the numbering/naming of structures should be consistent throughout the application and on any supplemental documents (e.g. maps).*

### 1. Storage Information (Instructions, Page. 21)

- a. Official USGS name of reservoir, if applicable: East Fork Crystal Creek
- b. Provide amount of water (in acre-feet) impounded by structure at normal maximum operating level: 43.
- c. The impoundment is on-channel X or off-channel \_\_\_\_\_ (mark one)
  - i. Applicant has verified on-channel or off-channel determination by contacting Surface Water Availability Team at (512) 239-4600? Y / NY
  - ii. If on-channel, will the structure have the ability to pass all State Water inflows that Applicant does not have authorization to impound? Y / NY
- d. Is the impoundment structure already constructed? Y / NY
  - i. For already constructed **on-channel** structures:
    1. Date of Construction: Unknown for existing structure
    2. Was it constructed to be an exempt structure under TWC § 11.142? Y / NY
      - a. If Yes, is Applicant requesting to proceed under TWC § 11.143? Y / NY
      - b. If No, has the structure been issued a notice of violation by TCEQ? Y / N
    3. Is it a U.S. Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service (SCS)) floodwater-retarding structure? Y / NN
      - a. If yes, provide the Site No. \_\_\_\_\_ and watershed project name \_\_\_\_\_;
      - b. Authorization to close "ports" in the service spillway requested? Y / N
  - ii. For **any** proposed new structures or modifications to structures:
    1. Applicant **must** contact TCEQ Dam Safety Section at (512) 239-0326, *prior to submitting an Application*. Applicant has contacted the TCEQ Dam Safety Section regarding the submission requirements of 30 TAC, Ch. 299? Y / NY  
Provide the date and the name of the Staff Person TBD
    2. As a result of Applicant's consultation with the TCEQ Dam Safety Section, TCEQ has confirmed that:
      - a. No additional dam safety documents required with the Application. Y / NN
      - b. Plans (with engineer's seal) for the structure required. Y / NY
      - c. Engineer's signed and sealed hazard classification required. Y / NY
      - d. Engineer's statement that structure complies with 30 TAC, Ch. 299 Rules required. Y / NY

3. Applicants **shall** give notice by certified mail to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir to be constructed, will be located. (30 TAC § 295.42). Applicant must submit a copy of all the notices and certified mailing cards with this Application. Notices and cards are included? Y / NY\_\_\_\_\_

iii. Additional information required for **on-channel** storage:

1. Surface area (in acres) of on-channel reservoir at normal maximum operating level: 5.63.
2. Based on the Application information provided, Staff will calculate the drainage area above the on-channel dam or reservoir. If Applicant wishes to also calculate the drainage area they may do so at their option. Applicant has calculated the drainage area. Y/NY\_\_\_\_\_ If yes, the drainage area is .9414 sq. miles. (If assistance is needed, call the Surface Water Availability Team prior to submitting the application, (512) 239-4600).

## 2. Structure Location (Instructions, Page. 23)

- a. On Watercourse (if on-channel) (USGS name): East Fork Crystal Creek
- b. Zip Code: 77378
- c. In the HENDERSON F K Original Survey No. \_\_\_\_\_, Abstract No. 248,  
MONTGOMERY County, Texas.

**\* A copy of the deed(s) with the recording information from the county records must be submitted describing the tract(s) that include the structure and all lands to be inundated.**

**\*\*If the Applicant is not currently the sole owner of the land on which the structure is or will be built and sole owner of all lands to be inundated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.**

- d. A point on the centerline of the dam (on-channel) or anywhere within the impoundment (off-channel) is:

Latitude 30.409418 °N, Longitude -95.483618 °W.

**\*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places**

- di. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Mapping Program (Google Maps/Earth)
- dii. Map submitted which clearly identifies the Impoundment, dam (where applicable), and the lands to be inundated. See instructions Page. 15. Y / NY\_\_\_\_\_

N/A **WORKSHEET 3.0**

**DIVERSION POINT (OR DIVERSION REACH) INFORMATION**

This worksheet **is required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

*The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).*

**1. Diversion Information (Instructions, Page. 24)**

a. This Worksheet is to add new (select 1 of 3 below):

1. \_\_\_ Diversion Point No.
2. \_\_\_ Upstream Limit of Diversion Reach No.
3. \_\_\_ Downstream Limit of Diversion Reach No.

b. Maximum Rate of Diversion for **this new point** \_\_\_\_\_ cfs (cubic feet per second)  
or \_\_\_\_\_ gpm (gallons per minute)

c. Does this point share a diversion rate with other points? **Y / N** \_\_\_\_\_  
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* \_\_\_\_\_ cfs or \_\_\_\_\_ gpm

d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / N** \_\_\_\_\_

*\*\* An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed:

Check one		Write: Existing or Proposed
	Directly from stream	
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / N** \_\_\_\_\_

If yes, the drainage area is \_\_\_\_\_ sq. miles.

*(If assistance is needed, call the Surface Water Availability Team at (512) 239-4600, prior to submitting application)*

## 2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): \_\_\_\_\_
- b. Zip Code: <sup>77077</sup>\_\_\_\_\_
- c. Location of point: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_, \_\_\_\_\_ County, Texas.

***A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure.***

***For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.***

- d. Point is at:  
Latitude \_\_\_\_\_°N, Longitude \_\_\_\_\_°W.  
***Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): \_\_\_\_\_
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38.
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

# WORKSHEET 4.0

## DISCHARGE INFORMATION

This worksheet required for any requested authorization to discharge water into a State Watercourse for conveyance and later withdrawal or in-place use. Worksheet 4.1 is also required for each Discharge point location requested. **Instructions Page. 26. Applicant is responsible for obtaining any separate water quality authorizations which may be required and for insuring compliance with TWC, Chapter 26 or any other applicable law.**

- a. The purpose of use for the water being discharged will be recreation.
- b. Provide the amount of water that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses \_\_\_\_\_% and explain the method of calculation: Avg Evaporation = 41"/year Lake is 5.63 acres = Results in 19.23 Ac-Feet of loss per year

Is the source of the discharged water return flows? Y / N N If yes, provide the following information:

1. The TPDES Permit Number(s). \_\_\_\_\_ (attach a copy of the **current** TPDES permit(s))
2. Applicant is the owner/holder of each TPDES permit listed above? Y / N \_\_\_\_\_

*PLEASE NOTE: If Applicant is not the discharger of the return flows, the application should be submitted under Section 1, New or Additional Appropriation of State Water, as a request for a new appropriation of state water. If Applicant is the discharger, then the application should be submitted under Section 3, Bed and Banks.*

3. Monthly WWTP discharge data for the past 5 years in electronic format. (Attach and label as "Supplement to Worksheet 4.0").
  4. The percentage of return flows from groundwater \_\_\_\_\_, surface water \_\_\_\_\_?
  5. If any percentage is surface water, provide the base water right number(s) \_\_\_\_\_.
- c. Is the source of the water being discharged groundwater? Y / N Y If yes, provide the following information:

1. Source aquifer(s) from which water will be pumped: Chicot
2. Any 24 hour pump test for the well if one has been conducted. If the well has not been constructed, provide production information for wells in the same aquifer in the area of the application. See <http://www.twdb.texas.gov/groundwater/data/gwdbbrpt.asp>. Additionally, provide well numbers or identifiers 34193, 345376, 439228.
3. Indicate how the groundwater will be conveyed to the stream or reservoir.  
Irrigation well that will be discharged into the recreational pond
4. A copy of the groundwater well permit if it is located in a Groundwater Conservation District (GCD) or evidence that a groundwater well permit is not required.

ci. Is the source of the water being discharged a surface water supply contract? Y / N N  
If yes, provide the signed contract(s).

cii. Identify any other source of the water \_\_\_\_\_

# WORKSHEET 4.1

## DISCHARGE POINT INFORMATION

This worksheet is required for **each** discharge point. Submit one Worksheet 4.1 for each discharge point. If there is more than one discharge point, the numbering of the points should be consistent throughout the application and on any supplemental documents (e.g. maps).  
**Instructions, Page 27.**

**For water discharged at this location provide:**

- a. The amount of water that will be discharged at this point is 19.2 acre-feet per year. The discharged amount should include the amount needed for use and to compensate for any losses.
- b. Water will be discharged at this point at a maximum rate of \_\_\_\_\_ cfs or <sup>12</sup> \_\_\_\_\_ gpm.
- c. Name of Watercourse as shown on Official USGS maps: Crystal Creek
- d. Zip Code 77378
- f. Location of point: In the Henderson F K Original Survey No. \_\_\_\_\_, Abstract No. 248, Montgomery County, Texas.
- g. Point is at:  
Latitude 30.409418 °N, Longitude -95.483618 °W.  
***\*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***
- h. Indicate the method used to calculate the discharge point location (examples: Handheld GPS Device, GIS, Mapping Program): Mapping Program (Google Maps/Earth)

**Map submitted must clearly identify each discharge point. See instructions Page. 15.**

# WORKSHEET 5.0 ENVIRONMENTAL INFORMATION

## 1. Impingement and Entrainment

This section is required for any new diversion point that is not already authorized. Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on any new diversion structure that is not already authorized in a water right). **Instructions, Page 29.**

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## 2. New Appropriations of Water (Canadian, Red, Sulphur, and Cypress Creek Basins only) and Changes in Diversion Point(s)

This section is required for new appropriations of water in the Canadian, Red, Sulphur, and Cypress Creek Basins and in all basins for requests to change a diversion point. **Instructions, Page 30.**

Description of the Water Body at each Diversion Point or Dam Location. (Provide an Environmental Information Sheet for each location),

a. Identify the appropriate description of the water body.

Stream

Reservoir

Average depth of the entire water body, in feet: 6

Other, specify: \_\_\_\_\_

b. Flow characteristics

If a stream, was checked above, provide the following. For new diversion locations, check one of the following that best characterize the area downstream of the diversion (check one).

Intermittent - dry for at least one week during most years

Intermittent with Perennial Pools - enduring pools

Perennial - normally flowing

Check the method used to characterize the area downstream of the new diversion location.

USGS flow records

Historical observation by adjacent landowners



Personal observation

Other, specify: \_\_\_\_\_

c. Waterbody aesthetics

Check one of the following that best describes the aesthetics of the stream segments affected by the application and the area surrounding those stream segments.

- Wilderness: outstanding natural beauty; usually wooded or unpastured area; water clarity exceptional
- Natural Area: trees and/or native vegetation common; some development evident (from fields, pastures, dwellings); water clarity discolored
- Common Setting: not offensive; developed but uncluttered; water may be colored or turbid
- Offensive: stream does not enhance aesthetics; cluttered; highly developed; dumping areas; water discolored

d. Waterbody Recreational Uses

Are there any known recreational uses of the stream segments affected by the application?

- Primary contact recreation (swimming or direct contact with water)
- Secondary contact recreation (fishing, canoeing, or limited contact with water)
- Non-contact recreation

Submit the following information in a Supplemental Attachment, labeled Addendum to Worksheet 5.0:

1. Photographs of the stream at the diversion point or dam location. Photographs should be in color and show the proposed point or reservoir and upstream and downstream views of the stream, including riparian vegetation along the banks. Include a description of each photograph and reference the photograph to the map submitted with the application indicating the location of the photograph and the direction of the shot.
2. If the application includes a proposed reservoir, also include:
  - i. A brief description of the area that will be inundated by the reservoir.
  - ii. If a United States Army Corps of Engineers (USACE) 404 permit is required, provide the project number and USACE project manager.
  - iii. A description of how any impacts to wetland habitat, if any, will be mitigated if the reservoir is greater than 5,000 acre-feet.

### 3. Alternate Sources of Water and/or Bed and Banks Applications

This section is required for applications using an alternate source of water and bed and banks applications in any basins. **Instructions, page 31.**

- a. For all bed and banks applications:
  - i. Submit an assessment of the adequacy of the quantity and quality of flows remaining after the proposed diversion to meet instream uses and bay and estuary freshwater inflow requirements.

b. For all alternate source applications:

- i. If the alternate source is treated return flows, provide the TPDES permit number\_\_\_\_\_

- ii. If groundwater is the alternate source, or groundwater or other surface water will be discharged into a watercourse provide:

Reasonably current water chemistry information including but not limited to the following parameters in the table below. Additional parameters may be requested if there is a specific water quality concern associated with the aquifer from which water is withdrawn. If data for onsite wells are unavailable; historical data collected from similar sized wells drawing water from the same aquifer may be provided. However, onsite data may still be required when it becomes available. Provide the well number or well identifier. Complete the information below for each well and provide the Well Number or identifier.

Parameter	Average Conc.	Max Conc.	No. of Samples	Sample Type	Sample Date/Time
Sulfate, mg/L	20	250	1	GRAB	3/29/21 (14:30)
Chloride, mg/L	<b>200</b>	<b>250</b>	<b>1</b>	<b>GRAB</b>	3/29/21 (14:30)
Total Dissolved Solids, mg/L	582	500	1	GRAB	3/29/21 (14:30)
pH, standard units	<b>7.4</b>	<b>6.5-8.5</b>	<b>1</b>	<b>GRAB</b>	3/29/21 (14:30)
Temperature*, degrees Celsius	21.78	N/A	1	GRAB	3/29/21 (14:30)

\* Temperature must be measured onsite at the time the groundwater sample is collected.

- iii. If groundwater will be used, provide the depth of the well 300-400 and the name of the aquifer from which water is withdrawn Chicot.

N/A

# WORKSHEET 6.0

## Water Conservation/Drought Contingency Plans

This form is intended to assist applicants in determining whether a Water Conservation Plan and/or Drought Contingency Plans is required and to specify the requirements for plans.

**Instructions, Page 31.**

*The TCEQ has developed guidance and model plans to help applicants prepare plans. Applicants may use the model plan with pertinent information filled in. For assistance submitting a plan call the Resource Protection Team (Water Conservation staff) at 512-239-4600, or e-mail [wras@tceq.texas.gov](mailto:wras@tceq.texas.gov). The model plans can also be downloaded from the TCEQ webpage. **Please use the most up-to-date plan documents available on the webpage.***

### 1. Water Conservation Plans

a. The following applications must include a completed Water Conservation Plan (30 TAC § 295.9) for each use specified in 30 TAC, Chapter 288 (municipal, industrial or mining, agriculture - including irrigation, wholesale):

1. Request for a new appropriation or use of State Water.
2. Request to amend water right to increase appropriation of State Water.
3. Request to amend water right to extend a term.
4. Request to amend water right to change a place of use.  
*\*does not apply to a request to expand irrigation acreage to adjacent tracts.*
5. Request to amend water right to change the purpose of use.  
*\*applicant need only address new uses.*
6. Request for bed and banks under TWC § 11.042(c), when the source water is State Water  
*\*including return flows, contract water, or other State Water.*

b. If Applicant is requesting any authorization in section (1)(a) above, indicate each use for which Applicant is submitting a Water Conservation Plan as an attachment:

1. \_\_\_\_Municipal Use. See 30 TAC § 288.2. \*\*
2. \_\_\_\_Industrial or Mining Use. See 30 TAC § 288.3.
3. \_\_\_\_Agricultural Use, including irrigation. See 30 TAC § 288.4.
4. \_\_\_\_Wholesale Water Suppliers. See 30 TAC § 288.5. \*\*

**\*\*If Applicant is a water supplier, Applicant must also submit documentation of adoption of the plan. Documentation may include an ordinance, resolution, or tariff, etc. See 30 TAC §§ 288.2(a)(1)(J)(i) and 288.5(1)(H). Applicant has submitted such documentation with each water conservation plan? Y / N\_\_\_\_**

c. Water conservation plans submitted with an application must also include data and information which: supports applicant's proposed use with consideration of the plan's water conservation goals; evaluates conservation as an alternative to the proposed

appropriation; and evaluates any other feasible alternative to new water development.  
See 30 TAC § 288.7.

Applicant has included this information in each applicable plan? Y / N\_\_\_\_

## 2. Drought Contingency Plans

- a. A drought contingency plan is also required for the following entities if Applicant is requesting any of the authorizations in section (1) (a) above - indicate each that applies:
1. \_\_\_\_Municipal Uses by public water suppliers. See 30 TAC § 288.20.
  2. \_\_\_\_Irrigation Use/ Irrigation water suppliers. See 30 TAC § 288.21.
  3. \_\_\_\_Wholesale Water Suppliers. See 30 TAC § 288.22.
- b. If Applicant must submit a plan under section 2(a) above, Applicant has also submitted documentation of adoption of drought contingency plan (*ordinance, resolution, or tariff, etc.* See 30 TAC § 288.30) Y / N\_\_\_\_

N/A      **WORKSHEET 7.0**  
**ACCOUNTING PLAN INFORMATION WORKSHEET**

The following information provides guidance on when an Accounting Plan may be required for certain applications and if so, what information should be provided. An accounting plan can either be very simple such as keeping records of gage flows, discharges, and diversions; or, more complex depending on the requests in the application. Contact the Surface Water Availability Team at 512-239-4600 for information about accounting plan requirements, if any, for your application. **Instructions, Page 34.**

## **1. Is Accounting Plan Required**

Accounting Plans are generally required:

- For applications that request authorization to divert large amounts of water from a single point where multiple diversion rates, priority dates, and water rights can also divert from that point;
- For applications for new major water supply reservoirs;
- For applications that amend a water right where an accounting plan is already required, if the amendment would require changes to the accounting plan;
- For applications with complex environmental flow requirements;
- For applications with an alternate source of water where the water is conveyed and diverted; and
- For reuse applications.

## **2. Accounting Plan Requirements**

- a. A **text file** that includes:
1. an introduction explaining the water rights and what they authorize;
  2. an explanation of the fields in the accounting plan spreadsheet including how they are calculated and the source of the data;
  3. for accounting plans that include multiple priority dates and authorizations, a section that discusses how water is accounted for by priority date and which water is subject to a priority call by whom; and
  4. Should provide a summary of all sources of water.
- b. A **spreadsheet** that includes:
1. Basic daily data such as diversions, deliveries, compliance with any instream flow requirements, return flows discharged and diverted and reservoir content;
  2. Method for accounting for inflows if needed;
  3. Reporting of all water use from all authorizations, both existing and proposed;
  4. An accounting for all sources of water;
  5. An accounting of water by priority date;
  6. For bed and banks applications, the accounting plan must track the discharged water from the point of delivery to the final point of diversion;
  7. Accounting for conveyance losses;
  8. Evaporation losses if the water will be stored in or transported through a reservoir. Include changes in evaporation losses and a method for measuring reservoir content resulting from the discharge of additional water into the reservoir;
  9. An accounting for spills of other water added to the reservoir; and
  10. Calculation of the amount of drawdown resulting from diversion by junior rights or diversions of other water discharged into and then stored in the reservoir.

## WORKSHEET 8.0 CALCULATION OF FEES

This worksheet is for calculating required application fees. Applications are not Administratively Complete until all required fees are received. **Instructions, Page. 34**

### 1. NEW APPROPRIATION

	Description	Amount (\$)
<b>Filing Fee</b>	Circle fee correlating to the total amount of water* requested for any new appropriation and/or impoundment. Amount should match total on Worksheet 1, Section 1. Enter corresponding fee under <b>Amount (\$)</b> . <u>In Acre-Feet</u> a. Less than 100                      \$100.00 b. 100 - 5,000                         \$250.00 c. 5,001 - 10,000                     \$500.00 d. 10,001 - 250,000                 \$1,000.00 e. More than 250,000                \$2,000.00	100
<b>Recording Fee</b>		\$25.00
<b>Agriculture Use Fee</b>	<i>Only for those with an Irrigation Use.</i> Multiply 50¢ x ____ Number of acres that will be irrigated with State Water. **	
<b>Use Fee</b>	<i>Required for all Use Types, excluding Irrigation Use.</i> Multiply \$1.00 x <u>19.2</u> Maximum annual diversion of State Water in acre-feet. **	19.2
<b>Recreational Storage Fee</b>	<i>Only for those with Recreational Storage.</i> Multiply \$1.00 x <u>19.2</u> acre-feet of in-place Recreational Use State Water to be stored at normal max operating level.	19.2
<b>Storage Fee</b>	<i>Only for those with Storage, excluding Recreational Storage.</i> Multiply 50¢ x ____ acre-feet of State Water to be stored at normal max operating level.	
<b>Mailed Notice</b>	Cost of mailed notice to all water rights in the basin. Contact Staff to determine the amount (512) 239-4600.	
<b>TOTAL</b>		<b>\$ 163.40</b>

### 2. AMENDMENT OR SEVER AND COMBINE

	Description	Amount (\$)
<b>Filing Fee</b>	Amendment: \$100 <b>OR</b> Sever and Combine: \$100 x ____ of water rights to combine	
<b>Recording Fee</b>		\$12.50
<b>Mailed Notice</b>	Additional notice fee to be determined once application is submitted.	
<b>TOTAL INCLUDED</b>		<b>\$</b>

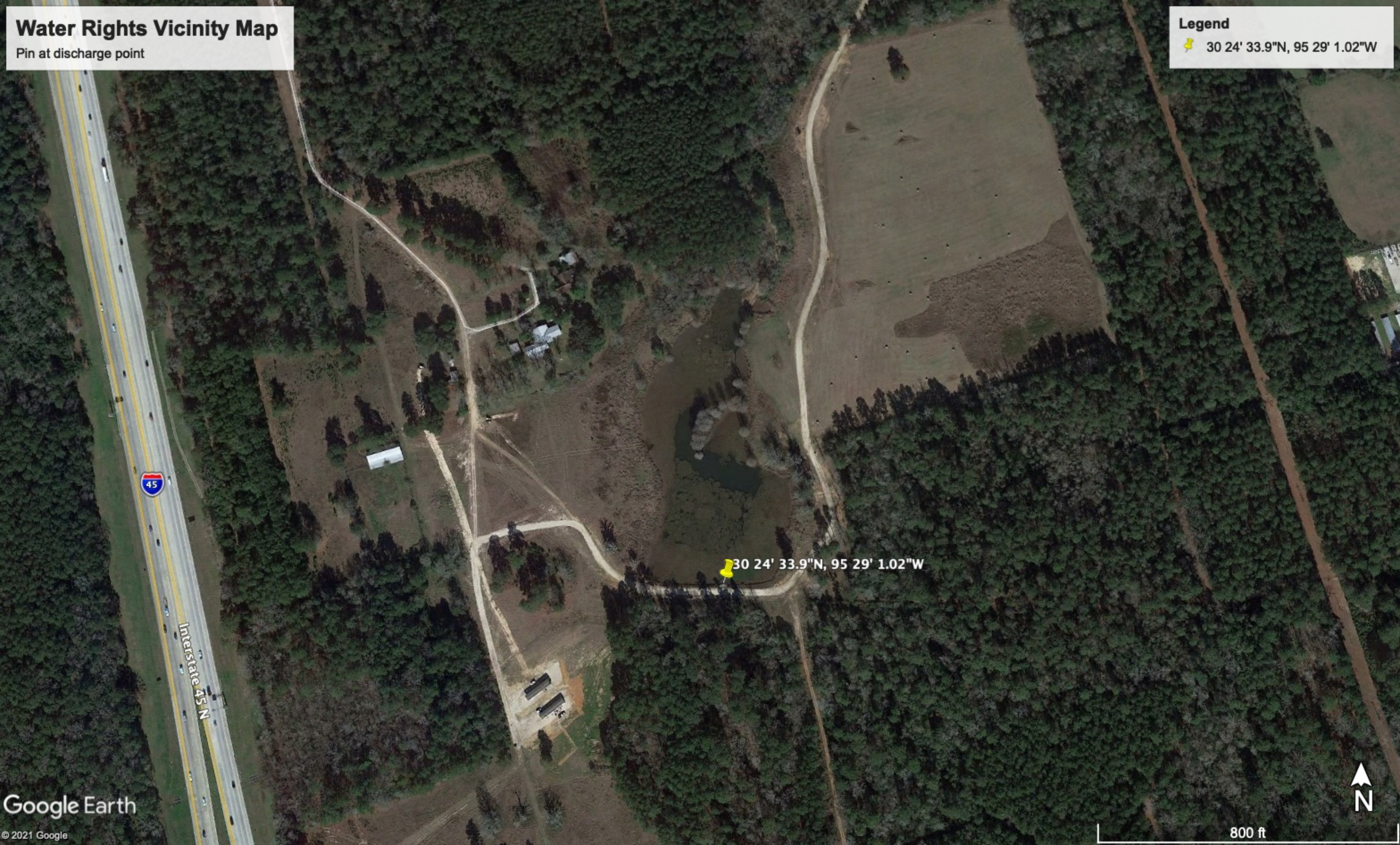
### 3. BED AND BANKS

	Description	Amount (\$)
<b>Filing Fee</b>		\$100.00
<b>Recording Fee</b>		\$12.50
<b>Mailed Notice</b>	Additional notice fee to be determined once application is submitted.	
<b>TOTAL INCLUDED</b>		<b>\$</b>

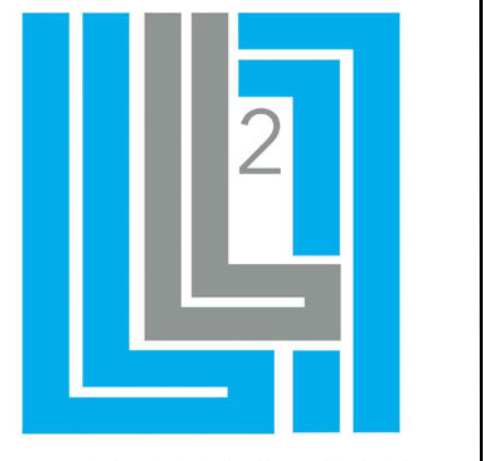
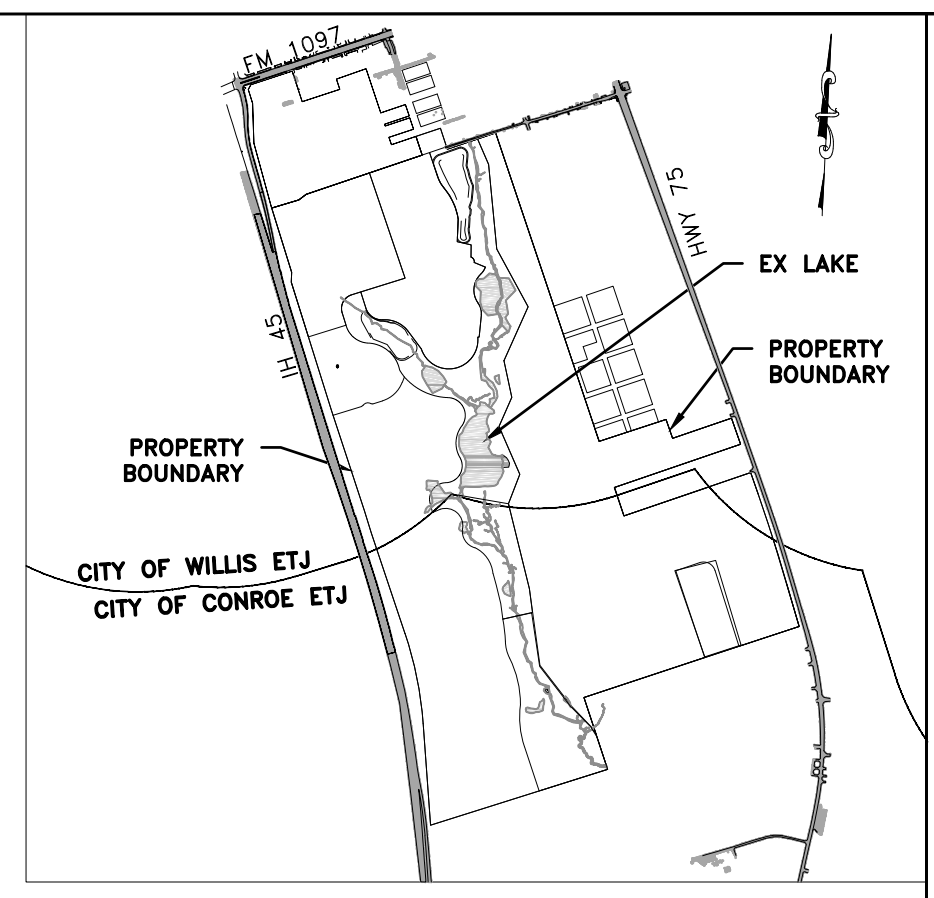
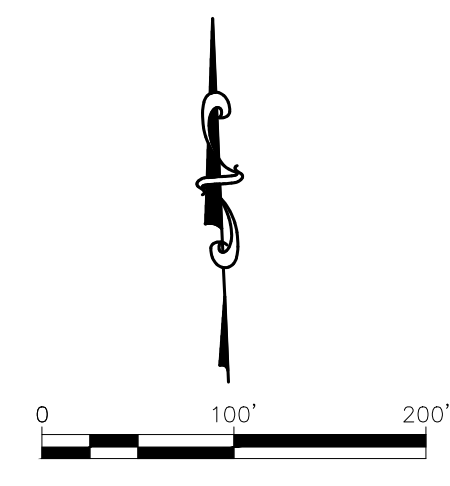
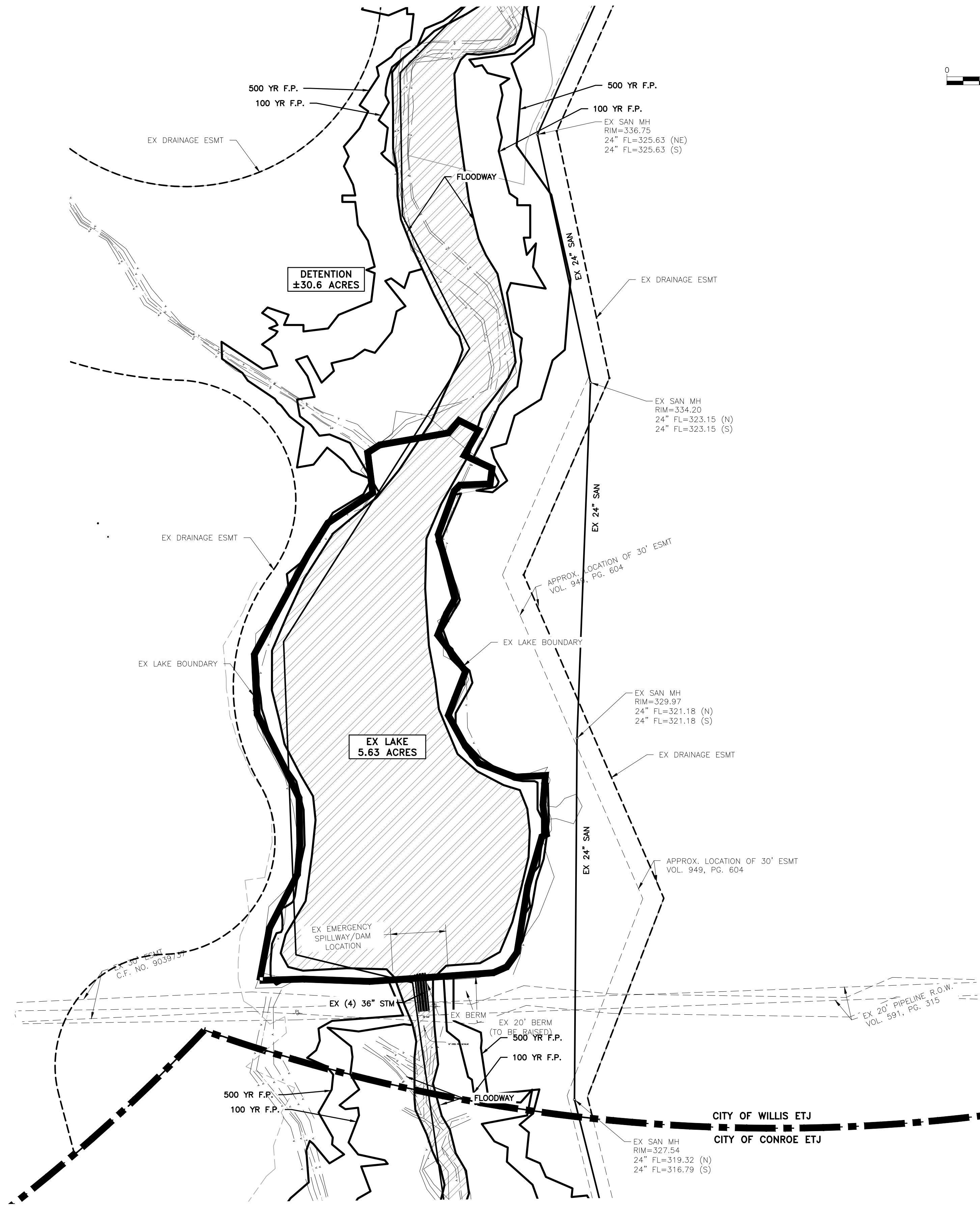
# Water Rights Vicinity Map

Pin at discharge point

**Legend**  
📌 30 24' 33.9"N, 95 29' 1.02"W



S:\ENGINEERING PROJECTS\10502 - MORAN RANCH PRELIMINARY ENGINEERING\10502-003 - MASTER DRAINAGE\03 CAD\DESIGN SET\EXHIBITS\WATER RIGHTS EXHIBIT.DWG Apr. 16, 2021 - 10:52 AM GARI LYNN



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OFFICE 936-667-0800

# MORAN RANCH

## WATER RIGHTS EXHIBIT 1 OF 2

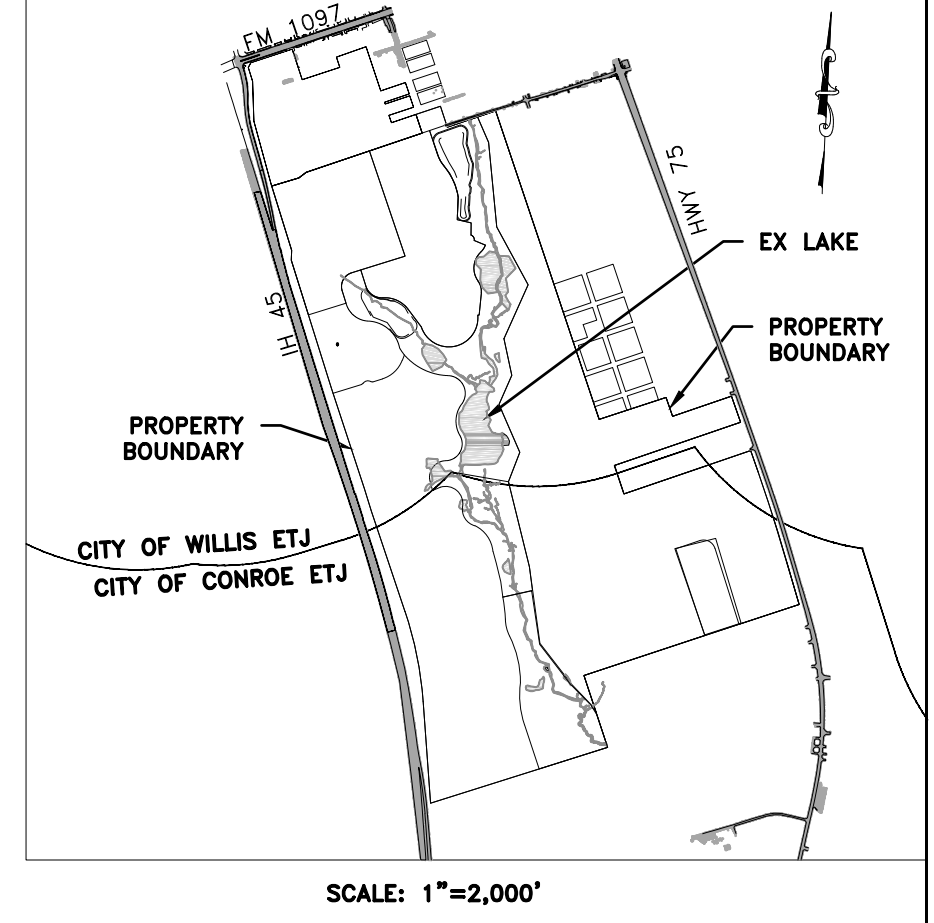
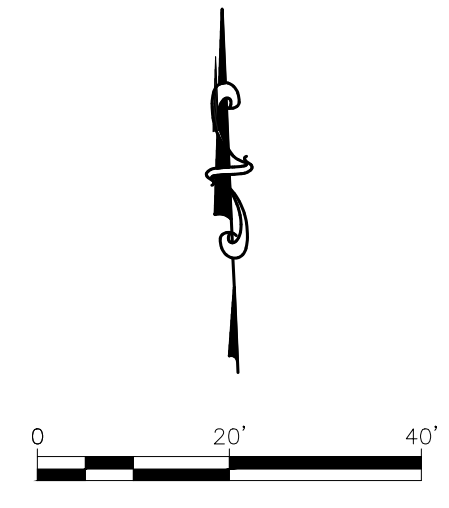
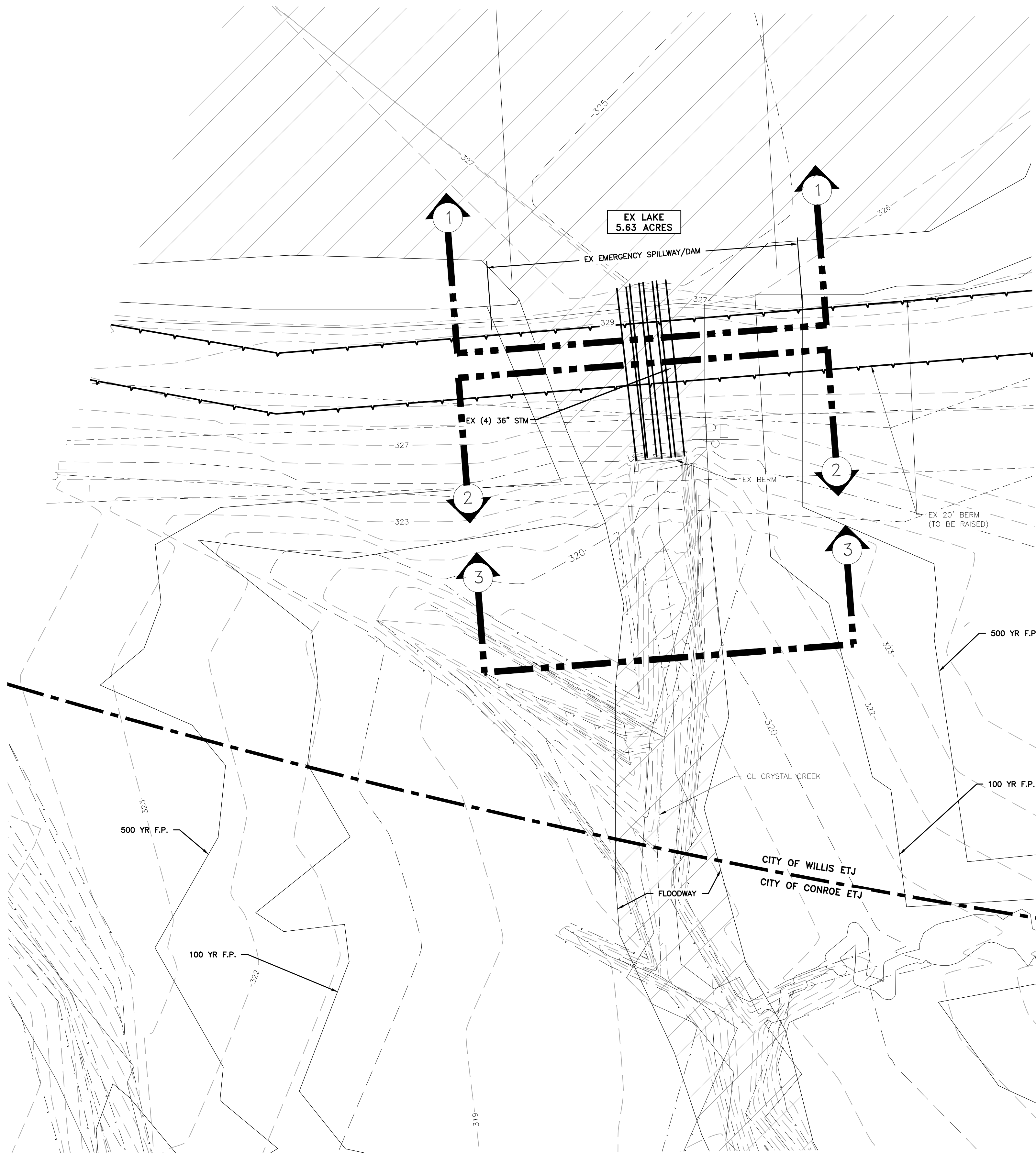
DRAWING INFORMATION			
PROJECT	10502	TDLR	**
DRAWN	GLH	CHECKED	JTW
SCALE	SHEET		<b>01</b>
1" = 100' (24x36)	1" = 200' (11x17)		



*[Signature]* 4/15/2021



S:\ENGINEERING PROJECTS\10502 - MORAN RANCH PRELIMINARY ENGINEERING\10502-003 - MASTER DRAINAGE\03 CAD\DESIGN SET\EXHIBITS\WATER RIGHTS EXHIBIT.DWG Apr. 16, 2021 - 10:53 AM GARI LYNN



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PHOTO #1



PHOTO #2



PHOTO #3



**LEGEND**  
3 PHOTO DIRECTION AND PHOTO NUMBER

**MORAN RANCH**  
**WATER RIGHTS EXHIBIT 2 OF 2**

DRAWING INFORMATION			
PROJECT	10502	TDLR	**
DRAWN	GLH	CHECKED	JTW
SCALE	SHEET		<b>02</b>
1" = 20' (24x36)	1" = 40' (11x17)		

4/15/2021

**To:** Texas Commission on Environmental Quality, Sam Sewell  
**From:** Jonathan White, PE  
**Date:** June 14, 2021  
**Re:** Water Rights Application

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Please find a list of your comments with an explanation of revision in **bold underline** below:

1. Confirm that the application requests authorization to maintain a 43-acre-foot reservoir with groundwater from the Chicot aquifer  
**43 acre-foot reservoir has been confirmed.**
2. Confirm the discharge rate for the discharged groundwater. The application indicates that groundwater will be discharged into the reservoir at a discharge rate of 1736 cubic feet per second (cfs).  
**1736 cfs discharge rate confirmed.**
3. Provide a recorded copy of the deed(s) for the property where the proposed dam and reservoir are located. The deed should include the legal description of the land (metes and bounds). Please note that the application must be in the name(s) of all landowners as shown on the deeds; otherwise, proper consent of the application must be provided pursuant to Title 30 Texas Administrative Code (TAC) 295.12.  
**Copy of the deed has been attached.**
4. Provide documentation evidencing signature authority for Will Stolz, on behalf of MRSS Partners, LTD., pursuant to Title 30 Texas Administrative Code (TAC) 295.14(3) which states:  
  
If the application is by a partnership, the application shall be signed by one of the general partners. If the applicant is a partnership doing business under an assumed name, it shall attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.  
**Attached is the documentation evidencing signature authority for Will Stolz, on behalf of MRSS Partners, LTD.**
5. Before the application can be declared administratively complete, remit fees in the amount of \$153.38 as described below. Please make checks payable to the TCEQ or Texas Commission on Environmental Quality  
**A new check has been mailed to the TCEQ for the correct amount of \$153.38.**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FINANCING STATEMENT**

THE STATE OF TEXAS       §  
  §  
COUNTY OF                 §  
MONTGOMERY

Section 1.

A. KNOW ALL PERSONS BY THESE PRESENTS, THAT I, WE, or EITHER OF US, MRSS Partners, Ltd., a Texas limited partnership, 12651 Briar Forest Drive, Suite 300, Houston, Texas 77077 of the County of Harris, State of Texas, sometimes hereinafter called Grantors (whether one or more) for the purposes of securing the Indebtedness (as hereinafter defined), and in consideration of the sum of TEN DOLLARS (\$10.00) to us in hand paid by the Trustee hereinafter named, the receipt and sufficiency of which is hereby acknowledged, and for the further consideration of the uses, purposes and the trusts hereinafter set forth, have GRANTED, SOLD, AND CONVEYED, and by these presents do GRANT, SELL, and CONVEY unto Jay Rogers, Trustee, of International Bank of Commerce, 5615 Kirby Drive, Houston, Texas 77005, and his substitutes or successors, all of the following described property situated in Montgomery County, Texas (hereinafter the "Property"), to-wit:

See Exhibit "A" attached to the Addendum hereto for property description.

**TO HAVE AND TO HOLD** the above described Property, together with the rights, privileges and appurtenances thereto belonging unto the said Trustee, and to his substitutes or successors forever, and Grantors do hereby bind themselves, their heirs, executors, administrators, successors and assigns to warrant and forever defend the said premises unto the said Trustee, his substitutes or successors and assigns forever, against the claim or claims of all persons claiming or to claim the same any part thereof.

B. This conveyance, however, is made in TRUST to secure payment of the following-described promissory note(s) (hereinafter referred to as the "Note(s)", whether one or more):

That certain Real Estate Lien Note/Promissory Note dated the 12 day of September, 2019, in the original principal sum of Thirty Four Million Six Hundred Seventy Five Thousand Dollars and No Cents (\$34,675,000.00), executed by the makers of said Note, MRSS Partners, Ltd., who, together with the above named Grantors and the guarantors, sureties and endorsers of said Note, shall hereinafter collectively and interchangeably be referred to as Grantors, payable to the order of International Bank of Commerce, 5615 Kirby Drive, Houston, Texas 77005, hereinafter referred to as Beneficiary, in the City of Houston, Harris County, Texas and payable as therein provided, including late charges; bearing interest as therein stipulated, providing for acceleration of maturity and for reasonable and necessary attorney's fees;

C. Should Grantors do and perform all of the covenants and agreements herein contained, and make payment of the Indebtedness as the same shall become due and payable, then this conveyance shall become null and void and of no further force and effect, and shall be released at the expense of Grantors, by the holder thereof, hereinafter called Beneficiary (whether one or more). All references herein to the "Note" shall mean the first promissory note listed above.

Section 2.

A. Grantors COVENANT and AGREE as follows:

(1) That they are lawfully seized of said Property, in fee simple absolute, and have the right to convey the same; that said Property is free from all liens and encumbrances, except as herein provided, or provided in the Title Insurance (as defined in the Loan Agreement).

(2) To protect the title and possession of said Property, and to pay when due all taxes and assessments now existing or hereafter levied or assessed upon said Property, or the interest therein created by this Deed Of Trust, and to preserve and maintain the lien hereby created as a first and prior lien on said Property including any improvements hereafter made a part of the realty.

(3) To keep the improvements on said Property in good repair and condition, and not to permit or commit any waste thereof; to keep the buildings thereon occupied so as not to impair the insurance carried thereon.

(4) To insure and keep insured all improvements now located upon or hereafter erected upon said Property against loss or damage by fire and windstorm, and any other hazard or hazards as may be reasonably required from time to time by Beneficiary during the term of the Indebtedness, to the extent of the total amount of the Indebtedness, or to the extent of the full insurable value of said improvements, whichever is the lesser, containing a standard mortgagee clause in favor of Beneficiary; and Grantors agree that any proceeds which Beneficiary may receive under such policy or policies may be applied by Beneficiary, at its option, to reduce the Indebtedness, whether then matured or to mature in the future, and in such manner as Beneficiary may elect, or Beneficiary may permit Grantors to use said proceeds to repair or replace all improvements damaged or destroyed and covered by said policy or policies. Grantors shall also procure and maintain

comprehensive general liability insurance in such coverage amounts as Beneficiary may request with Beneficiary being named as additional insured in such liability insurance policies. Additionally, Grantors shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Beneficiary may require. Policies shall be written by such insurance companies and in such form as is approved by Beneficiary. Grantors shall deliver to Beneficiary certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Beneficiary and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Beneficiary will not be impaired in any way by any act, omission or default of Grantors or any other person. Should the Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantors agree to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Beneficiary that the Property is located in a special flood hazard area, for full unpaid principal balance of the Loan and any prior liens on the property securing the Loan, up to the maximum policy limits set under the national Flood Insurance Program, or as otherwise required by Beneficiary, and to maintain such insurance for the term of the Loan. Upon Beneficiary's request Grantors shall deliver true and complete copies of any policies of insurance Grantors are required to maintain hereunder.

TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) GRANTORS ARE REQUIRED TO (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT SPECIFIED HEREIN; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER OR OTHERWISE AS PROVIDED HEREIN; AND (iii) NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS AS PROVIDED HEREIN; (B) SUBJECT TO THE PROVISIONS HEREOF, GRANTORS MUST, IF REQUIRED BY BENEFICIARY, DELIVER TO BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) SUBJECT TO THE PROVISIONS HEREOF, IF GRANTORS FAIL TO MEET ANY REQUIREMENT LISTED IN THE FOREGOING SUBPARTS (A) OR (B), BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTORS AT GRANTORS' EXPENSE.

(5) That Beneficiary may employ counsel for advice or other legal service at Beneficiary's discretion in connection with (i) any dispute as to the Indebtedness hereby secured or lien securing same or this instrument, or (ii) any litigation or arbitration proceeding to which the Beneficiary may be made a party on account of this lien or which may affect the title to the Property on account of this lien or which may affect the title to the Property securing the Indebtedness hereby secured or which may affect said debt or lien. Any reasonable and necessary attorney's fees so incurred shall be added and be part of the Indebtedness hereby secured.

(6) In addition to the land and improvements above described, the lien of this Deed Of Trust covers and includes all abstracts and title papers furnished or to be furnished in connection with the making of the loan evidenced by said Note(s) (the "Loan"), the payment of which is secured hereby. The Note(s), this Deed Of Trust, and all other documents executed by Grantors in connection with the Loan are collectively referred to herein as the "Loan Documents".

(7) Grantors agree to pay on demand for all abstracts, title policies, appraisals, recording fees and attorney's fees incurred in connection with either the closing of the Loan or the renewal, extension, modification and/or rearrangement of any part of the Indebtedness, or, in the alternative, such amounts expended by Beneficiary shall be added to and be a part of the Indebtedness hereby secured.

(8) That in the event Grantors shall fail to keep the improvements on the Property hereby conveyed in good repair and condition, or to pay promptly when due all taxes and assessments thereon, as aforesaid, or to preserve the prior lien of this Deed Of Trust on said Property, or to keep the buildings and improvements thereon insured, as aforesaid, or to deliver the policy or policies of insurance or any renewals thereof to Beneficiary, as aforesaid, then Beneficiary may, at its option, but without being required to do so, make such repairs, pay such taxes and assessments, purchase any tax title thereon, remove any prior liens, and prosecute or defend any suits in relation to the preservation of the prior lien of this Deed Of Trust on said Property, or insure and keep insured the improvements thereon in any amount not to exceed that amount above stipulated (including, without limitation, to the extent allowed by law, the purchase of Single Interest Insurance which may provide coverage only for Beneficiary); that any sums which may be so paid out by Beneficiary, including the costs, expenses and attorney's fees paid in any suit affecting said Property when necessary to protect the lien hereof and all other expenses and costs agreed to be paid by Grantors under the Deed Of Trust which are not paid when due, shall bear interest from the dates of such payments at the prematurity interest rate stated in the Note hereby secured, shall be paid by Grantors to Beneficiary upon demand, at the same place at which the Note is payable, and shall be deemed a part of the Indebtedness hereby secured and recoverable as such in all respects.

(9) Grantors expressly agree to furnish Beneficiary annually validated receipts evidencing payment of all taxes assessed against, and insurance covering, the said Property. Such tax receipts shall be furnished on or before fifteen (15) days prior to the date such taxes become delinquent. The insurance receipt shall be furnished on or before ten (10) days prior to the date the then current insurance coverage expires. If Grantors fail to furnish such receipts, Beneficiary may require Grantors to deposit monthly with Beneficiary on the payment dates specified in the Note hereby secured, in addition to the monthly payment of principal and interest provided in the Note hereby secured, a sum equal to 1/12 of the estimated annual taxes and insurance premiums covering such Property, such estimates to be made by Beneficiary. Beneficiary shall hold such deposits, without bond and without accrual of interest thereon, to pay taxes and insurance premiums as they become due, until the Indebtedness is fully paid, and thereupon the balance shall be delivered to Grantors. Grantors shall not, without Beneficiary's prior written consent, authorize any person to pay ad valorem taxes assessed against the Property pursuant Section 32.06 of the Texas Tax Code, as may be amended from time to time (the "Tax Lien Transfer Statute"), or any successor statute. Unless Beneficiary shall give prior written consent thereto, any such authorization given by Grantors shall be void and of no force or effect, and any transfer of tax lien under such authority, and/or any deed of trust executed by Grantors for the benefit the transferee of any such tax lien (a "Transferee"), shall likewise be void and of no force or effect. In order to be effective, written consent by the Beneficiary under this subsection must be duly executed by an officer of Beneficiary and recorded prior to date of the authorization by Grantors to which it relates in the real property records of each county in which the Property, or any portion thereof, is located. The transfer of a tax lien

with respect to the Property pursuant to the Tax Lien Transfer Statute in violation of this subsection shall constitute an Event of Default hereunder, and Beneficiary may immediately and without notice of any kind exercise any and all rights or remedies available under Section 3 hereof notwithstanding any agreement herein by Beneficiary to provide Grantors with notice of and an opportunity to cure an Event of Default prior to exercising such remedies. Grantors authorize Beneficiary to deal directly with any Transferee, and hereby irrevocably constitute and appoint Beneficiary (and all officers, employees or agents designated by Beneficiary), with full power of substitution, as Grantors' true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantors and in the name of Grantors or their own name, from time to time in Beneficiary's discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary or desirable to (a) deal in any manner with any Transferee; (b) pay or discharge any taxes, liens, or other encumbrances levied or placed on or threatened against Grantors or the Property or any portion thereof in connection with any transferred tax lien in connection with all or any portion of the Property, including, without limitation, payment to any Transferee; (c) defend any suit, action or proceeding brought against Grantors if Grantors do not defend such suit, action or proceeding or if Beneficiary believes that Grantors are not pursuing such defense in a manner that will maximize the recovery to Beneficiary, and settle, compromise or adjust any suit, action or proceeding and, in connection therewith, give such discharges or releases as Beneficiary may deem appropriate; (d) communicate in its own name with any Transferee with regard to the assignment of any tax lien in connection with the Property or any portion thereof, and other matters relating thereto, including, without limitation, requesting payoff statements from any Transferee; and (e) do, at Beneficiary's option and Grantors' expense, at any time or from time to time, all acts and other things that Beneficiary deems necessary in connection with this power of attorney, all as fully and effectively as Grantors might do. Grantors hereby ratify, to the extent permitted by law, all that said Beneficiary shall lawfully do or cause to be done by virtue hereof. No person to whom this power of attorney is presented, as authority for Beneficiary to take any action or actions contemplated hereby, shall be required to inquire into or seek confirmation from Grantors as to the authority of Beneficiary to take any action set forth herein, or as to the existence of or fulfillment of any condition to this power of attorney, which is intended to grant to Beneficiary unconditionally the authority to take and perform the actions contemplated herein, and Grantors irrevocably waive any right to commence any suit or action, in law or equity, against any person or entity which acts in reliance upon or acknowledges the authority granted under this power of attorney. The power of Beneficiary granted hereby is coupled with an interest, and may not be revoked or canceled by Grantors without Beneficiary's prior written consent recorded of record in the real property records of each county in which the Property, or any portion thereof, is located.

(10) Subject to applicable law and notwithstanding the preceding paragraph, at Beneficiary's option, and in its sole discretion, Beneficiary may require Grantors to pay Beneficiary on the day monthly payments are due under the Note, until the Indebtedness is paid in full, a sum (hereinafter referred to as "Funds") for (a) yearly taxes and assessments which may attain priority over the lien of this Deed Of Trust as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Grantors to Beneficiary, in accordance with the immediately preceding paragraph, in lieu of the payment of mortgage insurance premiums. The items described above in this paragraph are herein called "Escrow Items". Beneficiary may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Grantor's escrow account under the Federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601, et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. In such event, Beneficiary may, at any time, collect and hold Funds in any amount not to exceed such lesser amount. Beneficiary may from time to time estimate the amount of Funds due on the basis of then current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

(11) The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Beneficiary, if Beneficiary is such an institution) or in any Federal Home Loan Bank. Beneficiary shall apply the Funds to pay the Escrow Items. Beneficiary may not charge Grantors for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Beneficiary pays Grantors interest on the Funds and applicable law permits Beneficiary to assess such a charge. However, Beneficiary may require Grantors to pay a one-time charge for an independent real estate tax reporting service used by Beneficiary in connection with the Loan, unless applicable law provides otherwise. Unless agreement is made or applicable law requires interest to be paid, Beneficiary shall not be required to pay Grantors any interest or earnings on the Funds. Grantors and Beneficiary may agree in writing, however, that interest shall be paid on the Funds. If required by law, Beneficiary shall give to Grantors, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all Indebtedness secured by this Deed Of Trust.

(12) If the Funds held by Beneficiary exceed the amounts permitted to be held by applicable law, Beneficiary shall account to Grantors for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Beneficiary at any time is not sufficient to pay the Escrow Items when due, Beneficiary may so notify Grantors in writing, and in such case Grantors shall pay to Beneficiary the amount necessary to make up the deficiency. Grantors shall make up the deficiency in no more than twelve (12) monthly payments, at Beneficiary's sole discretion.

(13) Upon payment in full of all Indebtedness secured by this Deed Of Trust, Beneficiary shall promptly refund to Grantors any Funds held by Beneficiary. If, under foreclosure proceedings, Beneficiary shall acquire or sell the Property, Beneficiary shall, upon the acquisition or sale of the Property, apply any Funds held by Beneficiary at the time of the acquisition or sale as a credit against the Indebtedness secured by this Deed Of Trust. Beneficiary, in its sole discretion, may apply any Funds to pay the balance of the Indebtedness hereby secured if the principal balance of the Indebtedness hereby secured falls below the amount of the Funds held by Beneficiary.

(14) Grantors shall not impose, or permit to be imposed, any restrictive covenants upon the Property herein described or execute or file, or permit to be filed, any subdivision plat or condominium declaration or other instrument affecting said Property without the prior written consent of Beneficiary.

**(15) All agreements between any of the parties hereto are hereby limited by the provisions of this paragraph which shall override all such agreements, whether now existing or hereafter arising. If, from a construction of any document related to any transaction between Lender, Grantors and/or any other person or entity executing this Deed Of Trust, any term(s) or provision(s) of any document is in conflict with applicable law, such document**

shall be automatically reformed and modified so as to comply with applicable law, without the necessity of execution of any amendment or new document.

(16) GRANTORS AND EACH SURETY, ENDORSER AND GUARANTOR OF THE NOTE(S) HEREBY EXPRESSLY WAIVE ALL NOTICES OF NON-PAYMENT, PRESENTMENTS FOR PAYMENT, PRESENTATIONS FOR PAYMENT, DEMANDS FOR PAYMENT, NOTICES OF INTENTION TO ACCELERATE MATURITY, NOTICES OF ACTUAL ACCELERATION OF MATURITY, PROTESTS, AND NOTICES OF PROTEST, TO THE EXTENT PERMITTED BY LAW.

(17)(a) Subject to subparagraph 17(b), if the Loan finances a commercial real estate project, as such term is used in the definition of "high volatility commercial real estate (HVCRE) exposure" set out in 12 C.F.R. 3.2 and similar federal regulations (the "HVCRE Definition"), the following provision shall apply:

Grantors shall not withdraw any of the capital contributed by Grantors to the commercial real estate project, or any capital subsequently generated by the commercial real estate project, prior to the occurrence of any of the following events:

- (i) The Loan is converted to permanent financing satisfactory to Beneficiary in Beneficiary's sole discretion;
- (ii) The Property is sold and the Loan is paid in full; or
- (iii) The Loan is otherwise paid in full.

(b) Subparagraph (17)(a) shall not apply if the Loan is not a "high volatility commercial real estate (HVCRE) exposure" pursuant to paragraphs (1), (2) or (3) of the HVCRE Definition.

### Section 3.

A. The occurrence of any of the following events, subject to any applicable notice and cure periods, shall constitute an event of default ("Event of Default") under this Deed of Trust:

- (1) Grantors, or any of them, fail to pay any of the Indebtedness when the same shall become due and payable; or
- (2) Grantors, or any of them, fail to perform any of Grantors' obligations under the Note(s) or other Loan Documents, or any other event of default or breach occurs under the Note(s) or the other Loan Documents, ~~or (ii) to the extent allowed by law, and except as to loans for homestead, homestead equity, home equity lines of credit, and/or household or other consumer goods, fail to perform any of Grantors' obligations under any other promissory note, security agreement, loan agreement or other agreement between Beneficiary and Grantors or any other event of default or breach occurs thereunder;~~ or
- (3) any (i) statement, representation or warranty made by Grantors in this Deed of Trust, the Note(s), the other Loan Documents, or in any other agreement between Beneficiary and Grantors, or (ii) any information contained in any financial statement or other document delivered to Beneficiary by or on behalf of Grantors contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement, representation or warranty therein not misleading in light of the circumstances in which they were made; or
- (4) Grantors, or any of them, (i) die or become physically or mentally incapacitated; or (ii) in the case of Grantors who are not natural persons, dissolve, terminate or in any other way cease to legally exist or have their entity powers or privileges suspended or revoked for any reason; or (iii) make an assignment for the benefit of creditors, or enter into any composition, marshalling of assets or similar arrangement in respect of their creditors generally; or (iv) become insolvent or generally do not pay their debts as such debts become due; or (v) conceal, remove, or permit to be concealed or removed, any part of Grantors' property, with intent to hinder, delay or defraud their creditors or any of them, or make or suffer a transfer of any of Grantors' property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law, or make any transfer of Grantors' property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or
- (5) a trustee, receiver, agent or custodian is appointed or authorized to take charge of any property of Grantors, or any of them, for the purpose of enforcing a lien against such property or for the purpose of administering such property for the benefit of its creditors; or which continues for a period of thirty (30) days
- (6) an order (i) for relief as to Grantors, or any of them, is granted under Title 11 of the United States Code or any similar law, or (ii) declaring Grantors, or any of them, to be incompetent is entered by any court; or
- (7) Grantors, or any of them, file any pleading seeking, or authorize or consent to, any appointment or order described in subsections A (5) or A (6) of this section, whether by formal action or by the admission of the material allegations of a pleading or otherwise, or which is not vacated within thirty (30) days
- (8) application is made for or there is an enforcement of any lien, levy, seizure, garnishment or attachment of any property of the Grantors, or any of them, for the purposes of collecting a lawful debt; or
- (9) any action or proceeding seeking any appointment or order described in subsections A (5) or A (6) of this section is commenced without the authority or consent of Grantors, and is not dismissed within thirty (30) days after its commencement; or
- (10) Grantors, or any of them, shall become involved (whether as plaintiff or defendant) in any material litigation (including, without limitation, matrimonial litigation) or arbitral or regulatory proceedings that, if determined adversely to Grantors, or any of them, could materially and adversely affect the financial position of Grantors, or any of them, or could affect the ability of Grantors, or any of them, to repay the Indebtedness, or could adversely affect the Property or the Collateral or any portion thereof or Beneficiary's lien or security interest therein; or as evidenced by financial statements of Grantors
- (11) Grantors, or any of them, in Beneficiary's opinion, have suffered a material change in financial condition which, in Beneficiary's opinion, impairs the ability of Grantors, or any of them, to repay the Indebtedness or to properly perform Grantors' obligations under this Deed of Trust, the Note(s), or the other Loan documents; or
- (12) Beneficiary believes, as a result of any material change in condition whether or not described herein, that Beneficiary will be adversely affected, that the Indebtedness is inadequately secured, or that the prospect of payment of any of the Indebtedness or performance of any of Grantors' obligations under the Loan Documents is impaired; or
- (13) to the extent allowed by law, and except as to loans for homestead, homestead equity, home equity lines of credit, and/or household or other consumer goods, as to each of the Grantors with regard to any other credit facility with any other lender, any monetary default and/or any non-monetary default occurs which results in acceleration of the indebtedness by any such other lender; and Grantors agree to notify Beneficiary of any default on any credit facility with

any other lender within fifteen (15) days after the occurrence of the default; or  
(14) the Property or the Collateral (as hereinafter defined), or any portion thereof, is sold, conveyed, or otherwise disposed of without the prior written consent of the Beneficiary, or there occurs any levy, seizure or attachment thereof or thereon; or  
~~(15) the Property or the Collateral becomes, in the judgment of Beneficiary, unsatisfactory or insufficient in character or value; or~~  
(16) Grantors, or any of them, fail to timely deliver any and all financial statements, income tax returns, inventory reports, cash flow information, balance sheets, accounts receivable reports, or any other business, tax or financial information requested by Beneficiary.

B. Upon the occurrence of an Event of Default Beneficiary may, at Beneficiary's option, accelerate the maturity of all or any portion of the Indebtedness hereby secured and declare all such sums immediately due and payable, and in the event of default in the payment of any portion of the Indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or his successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the above described and conveyed Property, then subject to the lien hereof, for at least twenty-one (21) days preceding the date of sale by posting written or printed notice thereof at the County Courthouse of the county where the Property is located and by filing a copy of such notice in the office of the County Clerk of the county where the Property is situated, which notice may be posted by the Trustee acting, or by any person acting for him, and the Beneficiary has, at least twenty-one (21) days preceding the date of sale, served written or printed notice of the proposed sale by certified mail on each person and/or entity(s) obligated to pay the Indebtedness secured by this Deed Of Trust according to the records of Beneficiary by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to such person(s) and/or entity(s) at such person's and/or entity(s) most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service, the Trustee shall sell the above described property, then subject to the lien hereof, at public auction in accordance with such notice at the Courthouse of said county where such Property is situated (provided where said Property is situated in more than one county, the notice to be posted as herein provided shall be posted at the Courthouse of each of such counties, and filed with the County Clerk of each of such counties where said Property is situated, and said above described and conveyed Property may be sold at the Courthouse of any one of such counties, and the notices so posted and filed shall designate the county where the Property will be sold), on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Property as an entirety or in such parcels as the Trustee acting may elect and make due conveyance to the Purchaser or Purchasers, with general warranty binding Grantors, their heirs, representatives, successors and assigns; and of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to himself, which commission shall be due and owing in addition to the attorney's fees provided for in said Note(s), and then to Beneficiary the full amount of principal, interest, attorney's fees and late charges due and unpaid on said Note(s) and all other Indebtedness, rendering the balance of the sales price, if any, to Grantors, their heirs, representatives, successors or assigns; and the recitals in the conveyance to the Purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against Grantors, their heirs, representatives, successors and assigns.

C. Beneficiary may remedy any default, without waiving same, or may waive any default without waiving any prior or subsequent default.

D. It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or his substitute or successor, Beneficiary may at any time before the sale of said Property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said Note(s), and for the foreclosure of this Deed Of Trust lien; it is further agreed that if the Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this Deed Of Trust lien, that Beneficiary may at any time before the entry of a final judgment in said suit dismiss same and require the Trustee, his substitute or successor, to sell the Property in accordance with the provisions of this Deed Of Trust. Beneficiary shall have the right to purchase at any sale of the Property, being the highest bidder, and to have the amount for which such Property is sold credited on the debt secured hereby.

E. Beneficiary, in any event, is hereby authorized to appoint a substitute trustee, or a successor trustee, to act in the place and stead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the Indebtedness has been paid in full, or until said Property is sold hereunder, and each substitute and successor trustee shall succeed to all the rights and powers of the original trustee named herein.

F. In the event any sale is made of the above described Property, or any portion thereof, under the terms of this Deed Of Trust, Grantors, their heirs and assigns, shall forthwith upon making of such sale surrender and deliver possession of the Property so sold to the Purchaser at such sale, and in the event of their failure to do so they shall thereupon from and after the making of such sale be and continue as tenants at will of such Purchaser, and in the event of their failure to surrender possession of said Property upon demand, the Purchaser, his heirs, representatives, successors or assigns, shall be entitled to institute and maintain an action for forcible detainer of said Property in the Justice of the Peace Court in the Justice Precinct in which such Property, or any part thereof, is situated.

G. Grantors agree that any resale by Beneficiary of the Property described in this Deed Of Trust after foreclosure may be made for a price below the fair market value (i.e. at wholesale) and that Beneficiary is not required to re-sell the Property for a price equal to or above fair market value (i.e. retail). Grantors agree that the sales price obtained by Beneficiary at any such resale will not be used in determining the fair market value of the Property for the purposes of determining value under Section 51.003 of the Texas Property Code.

H. To the greatest extent permitted by law, Grantors hereby waive all rights and remedies created under Section 51.003 of the Texas Property Code including, without limitation, the right introduce evidence of the amount of the sales price of the Property sold by Beneficiary following any foreclosure of the liens pursuant to the terms of this Deed Of Trust.

#### Section 4.

A. It is agreed that the lien hereby created shall take precedence over and be a prior lien to any other lien of any character, whether vendor's, materialmen's, or mechanic's lien hereafter created on the above described Property, and in the event the proceeds of the Indebtedness as set forth herein are used to pay off and satisfy any liens heretofore existing on said Property, then Beneficiary is, and shall be, subrogated to all of the rights, liens and remedies of the holders of the Indebtedness so paid.

B. Grantors hereby transfer and assign unto Beneficiary, to be applied on the Indebtedness secured hereby: (i) all eminent domain or condemnation award moneys which may hereafter be awarded or paid for the condemnation of the hereinabove described Property, or any part thereof, or for any portion of the premises which may be appropriated for any public or quasi-public use, or by virtue of private sale in lieu thereof and any sums which may be awarded or become payable to Grantors for damages caused by public works or construction on or near the Property; (ii) all the bonuses, rents, royalties, damages and delay moneys that may be due or that may hereafter become due and payable to the Grantors or their assigns under any oil, gas, mining or mineral lease or leases of any kind now existing, or which may hereafter come into existence (including agricultural and/or hunting contracts of every kind) covering the above-described Property or any part thereof; and (iii) all proceeds from the sale of crops grown on the Property, as well as all pasturage and/or grazing or hunting fees. Grantors authorize and direct payment of such money to said Beneficiary until the debt secured hereby is paid. Such money may, at the option of the Beneficiary, be applied on the debt whether due or not. The Beneficiary shall not be obligated, in any manner to collect said moneys or any part thereof, and shall be responsible only for amounts received by the Beneficiary. Nothing herein contained shall be construed as a waiver or prejudice to the priority of this lien or the options hereunder in favor of said Beneficiary.

C. It is agreed that any extension or extensions may be made as to the time of payment of all or part of the Indebtedness secured hereby, and that any part of the above described Property may be released from this lien without altering or affecting the priority of the lien created by this Deed Of Trust in favor of any junior encumbrancer, mortgagee or purchaser, or any person acquiring an interest in the Property hereby conveyed, or any part thereof; it being the intention of the parties hereto to preserve this lien on the Property herein described and all improvements thereon, and that may be hereafter constructed thereon, first and superior to any liens that may be placed thereon, or that may be fixed, given or imposed by law thereon after the execution of this instrument, notwithstanding any such extension of the time of payment, or the release of a portion of said Property from this lien.

D. In the event any portion of the Indebtedness cannot be lawfully secured by this Deed Of Trust lien on said Property, it is agreed that the first payments made on the Indebtedness shall be applied to the discharge of that portion of the Indebtedness.

**E. Nothing contained herein or in the Note(s) or the other Loan Documents shall ever entitle Beneficiary, upon the arising of any contingency whatsoever, to receive or collect interest in excess of the highest rate allowed by the laws of the State of Texas, or to the extent Federal Law permits a greater rate, then such greater rate, on the principal Indebtedness or on any money obligation hereunder, and in no event shall Grantors be obligated to pay interest thereon in excess of such rate.**

F. If this Deed Of Trust is executed by only one person or by a corporation, the plural reference to Grantors shall be held to include the singular, and all of the covenants and agreements herein undertaken to be performed by and the rights conferred upon the respective Grantors named herein shall be binding upon and inure to the benefit of not only said parties respectively but also their respective heirs, executors, administrators, grantees, successors and assigns.

G. In the event Grantors should seek a temporary restraining order or an injunction or other legal action, be it temporary or permanent, to prevent, hinder or delay the exercise by Beneficiary of its rights and remedies under this Deed Of Trust, including, without limitation, its foreclosure rights upon the occurrence of a default as herein provided, then Grantors agree to pay and/or reimburse Beneficiary for all costs and expenses, including its reasonable and necessary attorney's fees, incurred by Beneficiary in connection with its defense, appearance and/or other action taken by Beneficiary with respect thereto, and such payment and/or reimbursement shall be made whether or not Beneficiary is the prevailing party in any such injunction or temporary restraining order or legal or arbitration proceeding. Grantors agree to contact, in writing, Dennis E. Nixon, at 1200 San Bernardo Avenue, Laredo, Texas 78042, prior to the institution of any such legal or arbitration proceedings so as to permit Beneficiary the opportunity to appear and defend itself.

H. Grantors hereby grant Beneficiary the right to protest any and all ad valorem taxes and special assessments made against the Property covered by this Deed Of Trust. In that regard, Grantors shall deliver to Beneficiary true and correct copies, when received, of all tax assessments, valuations, re-appraisals and other notices received by Grantors from all tax authorities. Beneficiary shall have the right to appear in all tax proceedings and file appeals concerning taxes affecting the Property or any portion thereof.

I. Grantors expressly represent that this Deed Of Trust and the Note(s) hereby secured are given for the following purpose(s), to-wit:

The Note represents sums advanced and paid or to be advanced and paid to or on behalf of Borrower for the purpose of the construction of improvements on the Property and for the acquisition of the Property. Accordingly, this Deed Of Trust constitutes a "construction mortgage" under the provisions of Section 9.334 of the Code. Grantors and Beneficiary have entered into a Development Loan Agreement in connection with the indebtedness secured hereby, and Grantors agree that they shall perform and observe all of their covenants and agreements as set forth therein and acknowledge that the liens and security interests of this Deed Of Trust shall also secure the performance of all obligations of Grantors under said Development Loan Agreement.

J. To the extent allowed by law, this conveyance is also made in trust to secure and enforce the payment of any and all



other indebtedness of Grantors, or any Grantor, to Beneficiary, whether presently existing or which may in any manner or means be hereafter incurred or created by Grantors and evidenced in any manner whatsoever, which other or future indebtedness Grantors acknowledge to be currently contemplated by Grantors including without limitation:

- (1) any commercial loan or indebtedness;
- (2) any credit card or other consumer type of loan;
- (3) any indebtedness relating to checking or savings accounts (overdrafts, fees, etc.);
- (4) any expenses incurred in the protection or maintenance of the collateral securing any of the liabilities, loans, and obligations described in this paragraph;
- (5) any expenses incurred in the collection of any indebtedness and/or obligation of the Grantors, or any of them, to Beneficiary whether arising out of this agreement or otherwise;
- (6) any letters of credit and/or indebtedness arising out of, or advanced to pay, letters of credit transactions;
- (7) any indebtedness, however evidenced, whether by promissory note, bookkeeping entry, electronic transfer or by any other manner or form;
- (8) any other indebtedness of Grantors, or any of them, to any financial institution affiliated with International Bancshares Corporation, jointly and/or severally, and in any capacity, whether as maker, guarantor, or otherwise, now or hereafter owing and regardless of how evidenced or arising; and
- (9) any and all extensions, modifications, substitutions and/or renewals of any of the indebtedness described in this paragraph

K. To the extent allowed by law, for purposes hereof it is intended that the Indebtedness secured hereby shall include all classes of indebtedness, whether evidenced by notes, open accounts, overdraft, or otherwise, and whether direct, indirect or contingent, regardless of class, form or purpose, and including but not limited to, loans for consumer, agricultural, business or personal purposes; provided that the indebtedness secured hereby does not include amounts owing pursuant to a homestead loan, homestead equity loan and/or home equity line of credit. The Note(s) and the other indebtedness secured by this Deed of Trust as described herein are collectively sometimes referred to herein as the "Indebtedness."

L. It is expressly agreed and understood that any and all sums now owed to or hereafter advanced by Beneficiary to Grantors shall be payable at the main offices of Beneficiary at 5615 Kirby Drive, Houston, Texas 77005, and shall bear interest as may be provided in the promissory notes or other evidences of indebtedness given by Grantors to Beneficiary; and this instrument is also executed for the purpose of securing and enforcing the payment of any renewal, extension and/or modification of any such promissory notes or other indebtedness or of any part thereof, and including any further loans and advancements made by Beneficiary to Grantors. To the extent allowed by law, repayment of all then existing Indebtedness shall not terminate this Deed Of Trust unless the same be so released by Beneficiary at the request of Grantors, but otherwise it shall remain in full force and effect to secure all future advances and Indebtedness, regardless of any additional security that may be taken as to any past or future Indebtedness, and shall be unaffected by any renewals, extensions or partial releases hereunder.

N. GRANTORS WILL NEITHER CREATE NOR PERMIT ANY JUNIOR OR SUBSEQUENT LIEN OR ENCUMBRANCE AGAINST THE PROPERTY OR THE COLLATERAL WITHOUT THE PRIOR WRITTEN CONSENT OF BENEFICIARY.

#### Section 5.

A. Applicable to Prior Liens. If this Deed Of Trust is or becomes subordinate to any other liens, security interests, assignments of leases or rents or any other encumbrances (collectively, the "Prior Liens") affecting any portion of the Property, all documents creating the Prior Liens and evidencing and governing the indebtedness secured thereby shall be collectively called the "Prior Lien Documents," and this paragraph shall apply. Grantors shall not enter into any renewal, extension, modification, increase or refinancing of any of the Prior Lien Documents or the indebtedness secured thereby without prior written consent of Beneficiary. Grantors shall pay when due all indebtedness evidenced and secured by the Prior Lien Documents and shall timely perform all other obligations of the Grantors under the Prior Lien Documents. Beneficiary may, but shall not be obligated to, pay any such indebtedness or perform any such obligations for the account of Grantors and any sum so expended shall be secured hereby. Grantors shall pay to Beneficiary on demand all amounts so expended by Beneficiary with interest on such amounts from the date and at the rate set forth in the Note, but not in excess of the highest rate permitted by applicable law. Beneficiary's cure of any default under any of the Prior Lien Documents shall not constitute a cure of the default under this Deed Of Trust. Grantors shall send to Beneficiary a copy of each notice of default or notice of acceleration or other notice received by Grantors from the holder of any of the Prior Lien Documents within one (1) business day after receipt thereof by Grantors. Notwithstanding the foregoing, Beneficiary does not consent to any Prior Lien unless otherwise expressly permitted in this Deed Of Trust.

B. Security Agreement/Financing Statement. This Deed Of Trust lien shall cover all property now or hereafter affixed or attached or incorporated into the Property now or hereafter owned by Grantors in which Grantors now or hereafter have an interest which, to the fullest extent permitted by law, shall be deemed fixtures and part of the Property. In addition, this Deed Of Trust lien shall cover, and Grantors, to the extent of any present or hereafter created rights of Grantors in such Property, hereby grant to Beneficiary to secure the repayment of the Indebtedness, a security interest in the following described personal property (the "Collateral"): (i) all building materials, fixtures, equipment and other personal property to be incorporated into any improvements constructed on the Property; (ii) all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings and other personal property which are now or may hereafter be appropriated for use on (whether such items are stored on the Property or elsewhere), located on or used in connection with the Property; (iii) all rents, issues and profits, proceeds, profits, renewals, income or other benefit derived from the payments received for lodging from interests and/or materials, and all inventory, accounts, accounts receivable, contract rights, general intangibles, causes of action, choses in action, intellectual property, chattel paper, instruments, documents, permits, plans, specifications, drawings, governmental approvals, notes, drafts, letters of credit, indebtedness arising from and/or to pay an advance on letters of credit, accounts due from credit, debit and/or charge card companies, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted on the Property by Grantors; and (iv) all replacements and substitutions for or

additions to, all products and proceeds of, and all books, records and files relating to any of the foregoing. This Deed Of Trust lien constitutes a security agreement and is intended to create a security interest in the Collateral in favor of Beneficiary to secure the repayment of the Indebtedness in accordance with the provisions of the Texas Business and Commerce Code (the "Code"). This Deed Of Trust shall be self-operative with respect to the Collateral, and upon the occurrence of an Event of Default Grantors expressly grant to Beneficiary the right to enter upon the property where the Collateral is located for the purpose of enforcing its rights to the Collateral, and Grantors agree to execute and deliver, on demand, such security agreements and other instruments as Beneficiary may request in order to impose the lien hereof made more specifically upon any of the Collateral. If the lien of this Deed Of Trust on any property shall be subject to any prior security agreement covering the Collateral, then upon the occurrence of an Event of Default, all the rights, title and interest of Grantors in and to any and all deposits made in connection with the transaction whereby such prior security agreement was made are hereby presently assigned to Beneficiary, together with the benefit of any payments now or hereafter made in connection with such transaction.

C. Financing Statements. In addition to Beneficiary's other rights set forth in this Deed Of Trust, Beneficiary shall have all rights of a secured party under the Code with respect to the Collateral. Beneficiary is authorized to file any and all financing statements, amendments thereto and continuations thereof that may be required by Beneficiary in its sole discretion to establish and maintain the validity and priority of Beneficiary's security interest in the Collateral, and Grantors shall bear all costs thereof and of any and all lien searches and Secretary of State reports required by Beneficiary in connection with the Collateral. If Beneficiary should dispose of any of the property covered by the security interest created under this Deed Of Trust pursuant to the Code, ten (10) days prior written notice by Beneficiary to Grantors shall be deemed to be reasonable notice of such disposition; provided however, Beneficiary may at its option dispose of such property in accordance with the foreclosure procedures of this Deed Of Trust in lieu of proceeding under the Code as provided in the Texas Property Code. Grantors further authorize Beneficiary to file any financing statements, amendments thereto and continuations thereof that may be required by Beneficiary in its sole discretion describing any agricultural liens or other statutory liens held by Beneficiary.

D. Beneficiary may sell, lease, or otherwise dispose of any of the Collateral in accordance with the rights, remedies, and duties of a Secured Party under Articles 2 and 9 of the Code after giving notice as required by those articles; unless the Collateral threatens to decline rapidly in value, is perishable, or would typically be sold on a recognized market, Beneficiary will give Grantors reasonable notice of any public sale of the Collateral or of a time after which it may be otherwise disposed of without further notice to Grantors; in this event, notice will be deemed reasonable if it is mailed, postage prepaid, to Grantors at the address for Grantors set forth on page 1 hereof at least ten days before any public sale or ten days before the time when the Collateral may be otherwise disposed of without further notice to Grantors. Grantors authorize Beneficiary to disclaim or modify any and all warranties set forth in Section 9.610(d) of the Code (or any successor statute) and stipulate and agree that such a disclaimer and/or modification will not render the sale commercially unreasonable. Beneficiary may retain all or part of the Collateral in full and/or partial satisfaction of the Indebtedness pursuant to Section 9.620 of the Code (or any successor statute).

#### Section 6.

A. Grantors agree that they will not, without the prior written consent of Beneficiary, until the Indebtedness secured hereby is paid in full: in one transaction or a series of related transactions, merge into or consolidate with any other entity, sell all or substantially all of its assets, or in any way jeopardize its existence as a corporation or other business entity; change the state of its incorporation, organization or registration; change its name; change the address and/or location of its Chief Executive Office (as defined in the Code); or file any instrument attempting to amend or terminate a Financing Statement, including without limitation a UCC-3 amendment or termination form.

B. Grantors shall give advance notice in writing to Beneficiary of any proposed change in Grantors' name, identity, organizational structure, or principal place of business, and Beneficiary is authorized, prior to or concurrently with the occurrence of any such change, to file any and all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the property described or referred to herein.

C. Grantors expressly represent that the Property hereinabove mentioned and conveyed to the Trustee forms no part of any property owned, used or claimed by Grantors as exempted from forced sale under the laws of the State of Texas as either personal or business homestead, and Grantors renounce all and every claim thereto under any such law or laws and hereby expressly designate as their homestead, personal and business, and as constituting all the property owned, used or claimed by them as exempt either as personal and/or business under such laws the following described property:

2404 Chatham Court, Houston, Harris County, Texas  
(Personal and Business Homestead)

#### Section 7.

A. (1) Assignments of Rents, Profits, etc. All of the rents, royalties, bonuses, issues, contracts for deed, proceeds, profits, revenue, income and any other benefit derived from the Property and improvements thereto, or arising from the use or enjoyment of any portion of the Property or from any lease or agreement pertaining thereto and liquidated and other damages payable by any tenant upon default under any such leases, and all proceeds payable under any policy or policies of insurance covering loss of rents or caused by damage to any part of the Property, together with any and all rights that Grantors may have against any tenant under such leases or any subtenants or occupants of any part of the Property (collectively hereinafter called the "Rents"), are hereby assigned to Beneficiary as security for the repayment of the Indebtedness. Grantors shall apply all Rents collected by Grantors first to the payment of the Indebtedness in such manner as Beneficiary elects and thereafter to the account of Grantors. All such Rents shall be deposited in deposit accounts maintained at the offices of Beneficiary. Nothing in this Deed Of Trust shall be deemed to constitute a waiver or modification of any rights or remedies of Beneficiary under Chapter 64, Subtitle B, Title 5 of the Texas Property Code, as amended (the "Assignment of Rents Statute"). Upon the occurrence of an Event of Default, Beneficiary may enforce the

assignment of the Rents set out in this paragraph pursuant to the provisions of the Assignment of Rents Statute or any other applicable law, at the option of Beneficiary.

(2) Assignment of Leases. Grantors hereby assign to Beneficiary all existing and future leases, including subleases thereof, and any and all extensions, renewals, modifications, and replacements thereof, upon any part of the Property (the "Leases"). Grantors hereby further assign to Beneficiary all guaranties of tenants' performance under the Leases. Prior to an Event of Default, Grantors shall have the right, without joinder of Beneficiary, to enforce the Leases, unless Beneficiary directs otherwise.

(3) Warranties Concerning Leases and Rents. Grantors represent and warrant that: (a) Grantors have good title to the Leases and Rents hereby assigned and authority to assign them, and no other person or entity has any right, title or interest therein; (b) all existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder; (c) unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged; (d) no Rents have been or will be anticipated, waived, released, discounted, set-off or compromised; and (e) Grantors have not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents.

(4) Grantor's Covenants of Performance as to Leases. Grantors covenant to: (a) perform all of their obligations under the Leases and give prompt notice to Beneficiary of any failure to do so; (b) give immediate notice to Beneficiary of any notice Grantors received from any tenant or subtenant under any of the Leases specifying any claimed default by any party under such Leases, excluding, however, notice of defaults under residential leases; (c) enforce the tenant's obligations under the Leases; (d) defend, at Grantor's expense, any proceeding pertaining to the Leases, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party; and (e) neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Deed Of Trust and any other encumbrances permitted by this Deed Of Trust.

(5) Prior Approval for Action Affecting Leases. Grantors shall not, without the prior written consent of Beneficiary, (a) receive or collect Rents more than one month in advance, (b) encumber or assign future Rents, (c) waive or release any obligations of any tenant under the Leases, (d) cancel, terminate or modify any of the Leases, (e) cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for dispossession of any tenant under any of the Leases, except upon default by the tenant thereunder, or (f) permit any assignment of the Leases whereby a tenant is released from its obligations thereunder.

B. Rejection of Leases in Bankruptcy. Grantors agree that no settlement for damages for termination of any of the Leases under the United States Bankruptcy Code, or under any other federal, state, or local statute, shall be made without the prior written consent of Beneficiary, and any check in payment of such damages shall be made payable to both Grantors and Beneficiary. Grantors hereby assign any such payment to Beneficiary, to be applied to the Indebtedness as Beneficiary may elect, and Grantors agree to endorse any check for such payment to the order of Beneficiary.

C. Beneficiary's Rights. Beneficiary's acceptance of this assignment shall not, prior to, upon, or after entry upon and taking possession of the Property by Beneficiary or any foreclosure of the lien hereunder or conveyance of the Property herein described in lieu thereof, be deemed to constitute Beneficiary as a "mortgagee in possession", nor obligate Beneficiary to appear in or defend any proceeding relating to any of the Leases or to the Property, take any action hereunder, expend any money, incur any expenses or perform any obligation or liability under the Leases, or assume any obligation or liability under the Leases, or assume any obligation in regard to any security deposits held by any party pursuant to the Leases. Beneficiary shall not, by virtue of its acceptance of this assignment of the Rents and the Leases or entry upon the Property as aforesaid, be liable for any injury or damage to any person or property in or about the Property. Beneficiary shall not be obligated to perform, satisfy, or otherwise adhere to any terms of any of the Leases or any covenant of Grantors to any tenant unless Beneficiary agrees to do so in writing, which shall be in Beneficiary's sole and absolute discretion.

D. Appointment of Attorney-In-Fact. Grantors hereby appoint Beneficiary its attorney-in-fact, coupled with an interest, empowering Beneficiary to subordinate any of the Leases to this Deed Of Trust.

E. Indemnification. Beneficiary shall not be obligated to perform or discharge, nor does Beneficiary hereby undertake to perform or discharge, any obligation, duty or liability under the Leases or by reason of the assignment of the Rents and/or Leases to Beneficiary hereunder. Grantors hereby agree to indemnify, defend and hold Beneficiary harmless from all liability, loss, cost, damage, or expense incurred by Beneficiary from any claims under the Leases or under or by reason of the assignment of the Rents and/or Leases to Beneficiary hereunder, including, without limitation, the management, operation and maintenance of the Property by Beneficiary, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Beneficiary incur any liability, loss or damage under the Leases or under or by reason of the assignment of the Rents and/or Leases to Beneficiary hereunder, or in the defense of any such claims or demands, the amount thereof, including costs and expenses incurred by Beneficiary in connection therewith, including, without limitation, reasonable attorney's fees, shall bear interest at the maximum lawful rate and shall be payable by Grantors immediately upon demand by Beneficiary and shall be secured hereby.

save and except any liability, cost, damage or expense arising out of Beneficiary's gross negligence or willful misconduct.

F. Records, etc. Upon request by Beneficiary, Grantors shall deliver to Beneficiary executed originals of all Leases and copies of all records relating thereto. There shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Mortgaged Property without the prior written consent of Beneficiary.

G. Notices to Tenants. Grantors hereby irrevocably authorize and direct each of the tenants under the Leases to pay Rents directly to Beneficiary at all times from and after receipt by any tenant of written notice in compliance with the Assignment of Rents Statute from Beneficiary that an Event of Default has occurred, without necessity of further consent

of Grantors. The tenants may rely upon any written statement delivered by Beneficiary to the tenants. Any such payment to Beneficiary shall constitute payment to Grantors under the Leases.

#### Section 8.

Fixtures. In the event there are items on the Property that are goods that are or are to become fixtures related to said Property, it is intended that, as to those goods, this Deed Of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing of record in the real estate records of the county in which the Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as Secured Party, at the address of Beneficiary set forth on the first page of this Deed Of Trust. The mailing address of the Grantors, as Debtor, is as set forth below.

#### Section 9.

A. Environmental Compliance. Grantors' use of the Property will at all times comply with all laws, statutes, ordinances, rules and regulations ("Laws") of any governmental, quasi-governmental or regulatory authority which relate to the transportation, storage, placement, handling, treatment, discharge, generation, production, removal or disposal (collectively, "Treatment") of any waste, petroleum product (including, without limitation, gasoline and diesel fuel), waste products, poly-chlorinated biphenyl, asbestos, hazardous materials, and/or any other substance, the Treatment of which is regulated by any Laws (collectively, "Waste"). Grantors will comply with all Laws regarding underground storage tanks used to hold gasoline, diesel fuel, or any other petroleum products on the Property.

B. To the best of Grantors' knowledge, no Waste is now located on the Property, and neither Grantors nor, to the best of Grantors' knowledge, any other person has ever caused or permitted any Treatment of any Waste on, under or at the Property or any part thereof, and, to the best of Grantors' knowledge, no property adjoining the Property is being used, or has ever been used at any previous time, for the Treatment of Waste.

C. To the best of Grantors' knowledge, no investigation, administrative order, consent order and agreement, litigation or settlement with respect to Waste or the Treatment of Waste is proposed, threatened, anticipated or in existence with respect to the Property. The Property is not currently listed on, and to Grantors' knowledge, after diligent investigation and inquiry, has never been listed on, any federal or state "Superfund" or "Superlien" list.

D. Grantors agree to (a) give notice to Beneficiary immediately upon Grantors acquiring knowledge of any Waste on the Property with a full description thereof; (b) promptly comply with any Laws applicable to Grantors or the Property requiring the removal, treatment or disposal of such Waste and provide Beneficiary with satisfactory evidence with such compliance; and (c) provide Beneficiary within thirty (30) days after demand by Beneficiary with a bond, letter of credit or similar financial assurance evidencing to Beneficiary's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Waste and to discharge any assessments that may be established or imposed on the Property as a result thereof.

E. Any environmental spill, discharge or other event upon or adjacent to the Property which Beneficiary determines materially and adversely affects the value and/or use of the Property shall constitute an Event of Default under this Deed Of Trust and shall further constitute an event of default under the Note(s) and under all other Indebtedness secured hereby.

F. Grantors agree to perform an asbestos survey and obtain any necessary permits, and to provide a copy of said survey and permits to Beneficiary, prior to commencing any renovation and/or demolition of a public or commercial building. Grantors further agree to comply with all other Laws regarding asbestos and asbestos removal.

G. Site Assessments. Beneficiary (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of any Event Of Default, may contract for the services of any person or firm ("Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Property for the purposes of determining whether there exists on the Property any environmental condition which could reasonably be expected to result in any liability, cost or expense to the owner, occupier or operator of such Property arising under any Laws relating to Waste or the Treatment of Waste. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Grantors which do not impede the performance of the Site Assessments. Grantors agree that any Site Assessment shall be for the sole and exclusive use, benefit and reliance of Beneficiary in assessing the value of its security interest in the Property and will not be relied on by Grantors for any purpose. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform above and below ground testing for environmental damage or the presence of Waste on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Grantors will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will be available for meetings with Site Reviewers if requested. The cost of performing such Site Assessments shall be paid by Grantors upon demand of Beneficiary and any such expenses borne by Beneficiary not immediately reimbursed by Grantors shall be part of the Indebtedness secured by this Deed Of Trust.

H. Indemnification. Whether or not any Site Assessments are conducted, and regardless of whether or not an Event Of Default occurs, and regardless of whether any remedies in respect of the Property are exercised by Beneficiary, Grantors will defend, indemnify and hold Beneficiary and Trustee harmless from and against any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, attorneys fees and expenses, and remedial costs), suit costs of any settlement or judgment, and claims of any and every kind whatsoever, (a) which may now or in the future (whether before or after the release or foreclosure of this Deed Of Trust) be paid, incurred or suffered by Beneficiary or asserted against Beneficiary or Trustee by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, (i) the presence of any Waste on or under the Property, or (ii) the escape, seepage, leakage, spillage, discharge, emission or release of any Waste from, on or affecting the

Property, or (b) which arise out of or result from the environmental condition of the Property or the applicability of any Laws relating to Waste (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., as amended from time to time, or any federal, state or local so-called "Superfund" or "Superlien" law, statute, law, ordinance, code, rule, regulation, order or decree), regardless of whether or not caused by or within the control of Grantors, Beneficiary or Trustee. The representations, covenants, warranties and indemnification herein contained with regard to Waste and the Treatment thereof shall survive the release and/or judicial or non-judicial foreclosure (or transfer in lieu thereof) of the lien of this Deed Of Trust. For the purpose of this paragraph and notwithstanding any other provision contained herein to the contrary, the term "Grantors" shall refer not only to the Grantors named herein, but also to all other persons who may hereafter assume the Note(s) and the obligations of Grantors under this Deed Of Trust.

Section 10.

**BINDING ARBITRATION AGREEMENT  
PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.**

**GRANTORS, BENEFICIARY AND TRUSTEE AGREE TO ARBITRATION AS FOLLOWS (hereinafter referred to as the "Arbitration Provisions"):**

**I. Special Provisions and Definitions applicable to both CONSUMER DISPUTES and BUSINESS DISPUTES:**

- (a) **Informal Resolution of Customer Concerns.** Most customer concerns can be resolved quickly and to the customer's satisfaction by contacting your account officer, branch manager or by calling the Customer Service Department in your region. The region and numbers are:

1.	Laredo	956-722-7611
2.	Austin	512-397-4506
3.	Brownsville	956-547-1000
4.	Commerce Bank	956-724-1616
5.	Corpus Christi	361-888-4000
6.	Eagle Pass	830-773-2313
7.	Houston	713-526-1211
8.	McAllen	956-686-0263
9.	Oklahoma	405-841-2100
10.	Port Lavaca	361-552-9771
11.	San Antonio	210-518-2500
12.	Zapata	956-765-8361

The indemnification set forth herein shall not be applicable to any liability arising from the willful misconduct or gross negligence of Beneficiary, or which relates to the conduct, event or contamination not caused by Grantors and arising after a release of lien, foreclosure or deed in lieu of foreclosure of the Property.

In the unlikely event that your account officer, branch manager or the customer service department is unable to resolve a complaint to your satisfaction or if the Beneficiary has not been able to resolve a dispute it has with you after attempting to do so informally, you and the Beneficiary agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.

- (b) **Sending Notice of Dispute.** If either you or the Beneficiary intend to seek arbitration, then you or the Beneficiary must first send to the other by certified mail, return receipt requested, a written Notice of Dispute. The Notice of Dispute to the Beneficiary should be addressed to: Dennis E. Nixon, President, at International Bancshares Corporation, P.O. Drawer 1359, Laredo, Texas 78042-1359 or if by email, [ibcchairman@ibc.com](mailto:ibcchairman@ibc.com). The Notice of Dispute must (a) describe the nature and basis of the claim or dispute; and (b) explain specifically what relief is sought. You may download a copy of the Notice of Dispute at [www.ibc.com](http://www.ibc.com) or you may obtain a copy from your account officer or branch manager.
- (c) **If the Dispute is not Informally Resolved.** If you and the Beneficiary do not reach an agreement to resolve the claim or dispute within thirty (30) days after the Notice of Dispute is received, you or the Beneficiary may commence a binding arbitration proceeding. During the binding arbitration proceeding, any settlement offers made by you or the Beneficiary shall not be disclosed to the Arbitrator.
- (d) **"DISPUTE(S)".** As used herein, the word "DISPUTE(S)" includes any and all controversies or claims between the PARTIES of whatever type or manner, including without limitation, any and all claims arising out of or relating to this Deed Of Trust, compliance with applicable laws and/or regulations, any and all services or products provided by the Beneficiary, any and all past, present and/or future loans, lines of credit, letters of credit, credit facilities or other form of indebtedness and/or agreements involving the PARTIES, any and all transactions between or involving the PARTIES, and/or any and all aspects of any past or present relationship of the PARTIES, whether banking or otherwise, specifically including but not limited to any claim founded in contract, tort, fraud, fraudulent inducement, misrepresentation or otherwise, whether based on statute, regulation, common law or equity.
- (e) **"CONSUMER DISPUTE"** and **"BUSINESS DISPUTE"**. As used herein, "CONSUMER DISPUTE" means a DISPUTE relating to an account (including a deposit account), agreement, extension of credit, loan, service or product provided by the Beneficiary that is primarily for personal, family or household purposes. "BUSINESS DISPUTE" means any DISPUTE that is not a CONSUMER DISPUTE.
- (f) **"PARTIES" or "PARTY"**. As used in these Arbitration Provisions, the term "PARTIES" or "PARTY" means Grantors, Beneficiary, Trustee and each and all persons and entities signing this Deed Of Trust or any other agreements between or among any of the PARTIES as part of this transaction. "PARTIES" or "PARTY" shall be broadly construed and include individuals, beneficiaries, partners, limited partners, limited liability members, shareholders, subsidiaries, parent companies, affiliates, officers, directors, employees, heirs, agents and/or representatives of any party to such documents, any

other person or entity claiming by or through one of the foregoing and/or any person or beneficiary who receives products or services from the Beneficiary and shall include any other owner and holder of this Deed Of Trust. Throughout these Arbitration Provisions, the terms "you" and "your" refer to Grantors, and the term "Arbitrator" refers to the individual arbitrator or panel of arbitrators, as the case may be, before which the DISPUTE is arbitrated.

- (g) **BINDING ARBITRATION.** The PARTIES agree that any DISPUTE between the PARTIES shall be resolved by mandatory binding arbitration pursuant to these Arbitration Provisions at the election of either PARTY. **BY AGREEING TO RESOLVE A DISPUTE IN ARBITRATION, THE PARTIES ARE WAIVING THEIR RIGHT TO A JURY TRIAL OR TO LITIGATE IN COURT** (except for matters that may be taken to small claims court for a CONSUMER DISPUTE as provided below).
- (h) **CLASS ACTION WAIVER.** The PARTIES agree that (i) no arbitration proceeding hereunder whether a CONSUMER DISPUTE or a BUSINESS DISPUTE shall be certified as a class action or proceed as a class action, or on a basis involving claims brought in a purported representative capacity on behalf of the general public, other customers or potential customers or persons similarly situated, and (ii) no arbitration proceeding hereunder shall be consolidated with, or joined in any way with, any other arbitration proceeding. **THE PARTIES AGREE TO ARBITRATE A CONSUMER DISPUTE OR BUSINESS DISPUTE ON AN INDIVIDUAL BASIS AND EACH WAIVES THE RIGHT TO PARTICIPATE IN A CLASS ACTION.**
- (i) **FEDERAL ARBITRATION ACT AND TEXAS LAW.** The PARTIES acknowledge that this Deed Of Trust evidences a transaction involving interstate commerce. The Federal Arbitration Act shall govern (i) the interpretation and enforcement of these Arbitration Provisions, and (ii) all arbitration proceedings that take place pursuant to these Arbitration Provisions. **THE PARTIES AGREE THAT TEXAS SUBSTANTIVE LAW WILL APPLY IN ANY BINDING ARBITRATION PROCEEDING OR SMALL CLAIMS COURT ACTION REGARDLESS OF WHO INITIATES THE PROCEEDING, WHERE YOU RESIDE OR WHERE THE DISPUTE AROSE, UNLESS EXPRESSLY PROHIBITED BY LAW.**

## II. Provisions applicable only to a CONSUMER DISPUTE:

- (a) Any and all CONSUMER DISPUTES shall be resolved by arbitration administered by the American Arbitration Association ("AAA") under the Commercial Arbitration Rules and the Supplemental Procedures for Resolution of Consumer Disputes and Consumer Due Process Protocol (which are incorporated herein for all purposes). It is intended by the PARTIES that these Arbitration Provisions meet and include all fairness standards and principles of the American Arbitration Association's Consumer Due Process Protocol and due process in predispute arbitration. If a CONSUMER DISPUTE is for a claim of actual damages above \$250,000 it shall be administered by the AAA before three neutral arbitrators at the request of any PARTY.
- (b) Instead of proceeding in arbitration, any PARTY hereto may pursue its claim in your local small claims court, if the CONSUMER DISPUTE meets the small claims court's jurisdictional limits. If the small claims court option is chosen, the PARTY pursuing the claim must contact the small claims court directly. **The PARTIES agree that the class action waiver provision also applies to any CONSUMER DISPUTE brought in small claims court.**
- (c) For any claim for actual damages that does not exceed \$2,500, the Beneficiary will pay all arbitration fees and costs provided you submitted a Notice of Dispute with regard to the CONSUMER DISPUTE prior to initiation of arbitration. For any claim for actual damages that does not exceed \$5,000, the Beneficiary also agrees to pay your reasonable attorney's fees and reasonable expenses your attorney charges you in connection with the arbitration (even if the Arbitrator does not award those to you) plus an additional \$2,500 if you obtain a favorable arbitration award for your actual damages which is greater than any written settlement offer for your actual damages made by the Beneficiary to you prior to the selection of the Arbitrator.
- (d) Under the AAA's Supplemental Procedures for Consumer Disputes, if your claim for actual damages does not exceed \$10,000, you shall only be responsible for paying up to a maximum of \$125 in arbitration fees and costs. If your claim for actual damages exceeds \$10,000 but does not exceed \$75,000, you shall only be responsible for paying up to a maximum of \$375 in arbitration fees and costs. For any claim for actual damages that does not exceed \$75,000, the Beneficiary will pay all other arbitrator's fees and costs imposed by the administrator of the arbitration. With regard to a CONSUMER DISPUTE for a claim of actual damages that exceeds \$75,000, or if the claim is a non-monetary claim, the Beneficiary agrees to pay all arbitration fees and costs you would otherwise be responsible for that exceed \$1,000. The fees and costs stated above are subject to any amendments to the fee and cost schedules of the AAA. The fee and cost schedule in effect at the time you submit your claim shall apply. The AAA rules also permit you to request a waiver or deferral of the administrative fees and costs of arbitration if paying them would cause you financial hardship.
- (e) Although under some laws, the Beneficiary may have a right to an award of attorney's fees and expenses if it prevails in arbitration, the Beneficiary agrees that it will not seek such an award in a binding arbitration proceeding with regard to a CONSUMER DISPUTE for a claim of actual damages that does not exceed \$75,000.
- (f) To request information on how to submit an arbitration claim, or to request a copy of the AAA rules or fee schedule, you may contact the AAA at 1-800-778-7879 (toll free) or at [www.adr.org](http://www.adr.org).

### III. Provisions applicable only to a BUSINESS DISPUTE:

- (a) Any and all **BUSINESS DISPUTES** between the **PARTIES** shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the AAA in effect at the time of filing, as modified by, and subject to, these Arbitration Provisions. A **BUSINESS DISPUTE** for a claim of actual damages that exceeds \$250,000 shall be administered by AAA before at least three (3) neutral arbitrators at the request of any **PARTY**. In the event the aggregate of all affirmative claims asserted exceeds \$500,000, exclusive of interest and attorney's fees, or upon the written request of any **PARTY**, the arbitration shall be conducted under the AAA Procedures for Large, Complex Commercial Disputes. If the payment of arbitration fees and costs will cause you extreme financial hardship you may request that AAA defer or reduce the administrative fees or request the Beneficiary to cover some of the arbitration fees and costs that would be your responsibility.
- (b) The **PARTIES** shall have the right to (i) invoke self-help remedies (such as setoff, notification of account debtors, seizure and/or foreclosure of collateral, and nonjudicial sale of personal property and real property collateral) before, during or after any arbitration, and/or (ii) request ancillary or provisional judicial remedies (such as garnishment, attachment, specific performance, receiver, injunction or restraining order, and sequestration) before or after the commencement of any arbitration proceeding (individually, and not on behalf of a class). The **PARTIES** need not await the outcome of the arbitration proceeding before using self-help remedies. Use of self-help or ancillary and/or provisional judicial remedies shall not operate as a waiver of either **PARTY**'s right to compel arbitration. Any ancillary or provisional judicial remedy which would be available from a court at law shall be available from the Arbitrator. The **PARTIES** agree that the AAA Optional Rules for Emergency Measures of Protection shall apply in an arbitration proceeding where emergency interim relief is requested.
- (c) Except to the extent the recovery of any type or types of damages or penalties may not be waived under applicable law, the Arbitrator shall not have the authority to award either **PARTY** (i) punitive, exemplary, special or indirect damages, (ii) statutory multiple damages, or (iii) penalties, statutory or otherwise.
- (d) The Arbitrator may award attorney's fees and costs including the fees, costs and expenses of arbitration and of the Arbitrator as the Arbitrator deems appropriate to the prevailing **PARTY**. The Arbitrator shall retain jurisdiction over questions of attorney's fees for fourteen (14) days after entry of the decision.

### IV. General provisions applicable to both CONSUMER DISPUTES and BUSINESS DISPUTES:

- (a) The Arbitrator is bound by the terms of these Arbitration Provisions. The Arbitrator shall have exclusive authority to resolve any **DISPUTES** relating to the scope or enforceability of these Arbitration Provisions, including (i) all arbitrability questions, and (ii) any claim that all or a part of these Arbitration Provisions are void or voidable (including any claims that they are unconscionable in whole or in part).
- (b) **These Arbitration Provisions shall survive any termination, amendment, or expiration of this Deed Of Trust, unless all of the PARTIES otherwise expressly agree in writing.**
- (c) If a **PARTY** initiates legal proceedings, the failure of the initiating **PARTY** to request arbitration pursuant to these Arbitration Provisions within 180 days after the filing of the lawsuit shall be deemed a waiver of the initiating **PARTY**'S right to compel arbitration with respect to the claims asserted in the litigation. The failure of the defending **PARTY** in such litigation to request arbitration pursuant to these Arbitration Provisions within 180 days after the defending **PARTY**'S receipt of service of judicial process, shall be deemed a waiver of the right of the defending **PARTY** to compel arbitration with respect to the claims asserted in the litigation. If a counterclaim, cross-claim or third party action is filed and properly served on a **PARTY** in connection with such litigation, the failure of such **PARTY** to request arbitration pursuant to these Arbitration Provisions within ninety (90) days after such **PARTY**'S receipt of service of the counterclaim, cross-claim or third party claim shall be deemed a waiver of such **PARTY**'S right to compel arbitration with respect to the claims asserted therein. The issue of waiver pursuant to these Arbitration Provisions is an arbitrable dispute. Active participation in any pending litigation described above by a **PARTY** shall not in any event be deemed a waiver of such **PARTY**'S right to compel arbitration. All discovery obtained in the pending litigation may be used in any subsequent arbitration proceeding.
- (d) Any **PARTY** seeking to arbitrate shall serve a written notice of intent to any and all opposing **PARTIES** after a **DISPUTE** has arisen. The **PARTIES** agree a timely written notice of intent to arbitrate by either **PARTY** pursuant to these Arbitration Provisions shall stay and/or abate any and all action in a trial court, save and except a hearing on a motion to compel arbitration and/or the entry of an order compelling arbitration and staying and/or abating the litigation pending the filing of the final award of the Arbitrator.
- (e) Any Arbitrator selected shall be knowledgeable in the subject matter of the **DISPUTE** and be licensed to practice law.
- (f) For a one (1) member arbitration panel, the **PARTIES** are limited to an equal number of strikes in selecting the arbitrator from the AAA neutral list, such that at least one arbitrator remains after the **PARTIES** exercise all of their respective strikes. For a three (3) member arbitration panel, the **PARTIES** are limited to an equal number of strikes in selecting the arbitrators from the AAA neutral list, such that at least three arbitrators remain after the **PARTIES** exercise all of their respective strikes. After exercising all of their allotted respective strikes, the **PARTIES** shall rank those potential arbitrators remaining numerically in order of preference (with "1" designating the most preferred). The AAA shall review the

**PARTIES** rankings and assign a score to each potential arbitrator by adding together the ranking given to such potential arbitrator by each **PARTY**. The arbitrator(s) with the lowest score total(s) will be selected. In the event of a tie or ties for lowest score total and if the selection of both or all of such potential arbitrators is not possible due to the required panel size, the AAA shall select the arbitrator(s) it believes to be best qualified.

- (g) The **PARTIES** and the Arbitrator shall treat all aspects of the arbitration proceedings, including, without limitation, any documents exchanged, testimony and other evidence, briefs and the award, as strictly confidential; provided, however, that a written award or order from the Arbitrator may be filed with any court having jurisdiction to confirm and/or enforce such award or order.
- (h) Any statute of limitation which would otherwise be applicable shall apply to any claim asserted in any arbitration proceeding under these Arbitration Provisions, and the commencement of any arbitration proceeding tolls such statute of limitations.
- (i) If the AAA is unable for any reason to provide arbitration services, then the **PARTIES** agree to select another arbitration service provider that has the ability to arbitrate the **DISPUTE** pursuant to and consistent with these Arbitration Provisions. If the **PARTIES** are unable to agree on another arbitration service provider, any **PARTY** may petition a court of competent jurisdiction to appoint an Arbitrator to administer the arbitration proceeding pursuant to and consistent with these Arbitration Provisions.
- (j) The award of the Arbitrator shall be final and Judgment upon any such award may be entered in any court of competent jurisdiction. The arbitration award shall be in the form of a written reasoned decision and shall be based on and consistent with applicable law.
- (k) Unless the **PARTIES** mutually agree to hold the binding arbitration proceeding elsewhere, venue of any arbitration proceeding under these Arbitration Provisions shall be in the county and state where Beneficiary is located, which is Beneficiary's address set out in Section 1.A. hereof.
- (l) If any of these Arbitration Provisions are held to be invalid or unenforceable, the remaining provisions shall be enforced without regard to the invalid or unenforceable term or provision.

**JURY WAIVER: IF A DISPUTE BETWEEN YOU AND BENEFICIARY OR TRUSTEE PROCEEDS IN COURT RATHER THAN THROUGH MANDATORY BINDING ARBITRATION, THEN YOU AND BENEFICIARY AND TRUSTEE EACH WAIVE THE RIGHT TO A JURY TRIAL, AND SUCH DISPUTE WILL BE TRIED BEFORE A JUDGE ONLY.**

#### Section 11.

A. Notwithstanding the provision above relating to conducting a foreclosure sale(s) pursuant to the provisions of this Deed Of Trust, the Trustee shall, and is hereby directed to, comply with the provisions of Chapter 51 of the Texas Property Code as it may be amended and in effect as of the date or dates of any foreclosure proceedings conducted pursuant to this Deed Of Trust. Without limiting the generality of the foregoing, the location and time of sale shall be held in accordance with Section 51.002 of the Texas Property Code or successor statute.

B. This Section 11.B shall apply in the event an arbitrator or court of competent jurisdiction determines that the waiver by Grantors set out in Section 3.H above is unenforceable. Grantors stipulate and agree that for purposes of determining the fair market value of the Property (or any portion thereof), as such term is used in Section 51.003 of the Texas Property Code, which is sold at a non-judicial foreclosure sale pursuant to the terms of this Deed Of Trust (and in accordance with Section 51.002 of the Texas Property Code), the following factors shall be used to determine such Property's fair market value, for such purposes: (a) the Property shall be valued "AS IS" without any value being anticipated for any improvements or refurbishing to be conducted, or constructed, after the date of the foreclosure sale, (b) the intention of the purchaser to re-sell the Property promptly, without any extensive holding period, (c) any re-sale shall be for cash only, without financing by the seller, (d) all reasonable costs of closing a re-sale shall be deducted from the estimate of fair market value, such as attorneys' fees, title policy premiums, surveyor fees and expenses, the then prevailing broker's or salesman commission, and unpaid ad valorem tax amounts, and (e) the application of a discount to the value to be applied to any future sales price to arrive at its then current fair market value. Grantors further stipulate that any value given to such Property in connection with Grantors' obtaining of the Loan or at any other time or times, shall not be used and shall not be considered for guidance in determining the fair market value of such Property on the date of any such foreclosure sale.

C. Leasehold Covenants. If the interest of Grantors in the Property is a leasehold interest and not a fee ownership interest, then the lien of this Deed Of Trust shall be upon the leasehold rights and benefits of Grantors, but, in no event shall any of the burdens or obligations under said leasehold be assumed by, or be the obligations of, Beneficiary, absent an express written instrument executed by Beneficiary assuming such obligations, which shall be within the sole discretion of Beneficiary.

D. To the extent Grantors own a leasehold interest in all or any portion of the Property, Grantors hereby covenant and agree as follows:

(a) Grantors will at all times fully perform and comply with all agreements, covenants, terms and conditions imposed upon or assumed by it, as tenant or lessee, under any and all leases affecting the Property (collectively, the "Lease"), true and correct copies of which Grantors shall deliver to Beneficiary, and that if Grantors shall fail to do so, Beneficiary may (but shall not be obligated to) take any action Beneficiary deems necessary or desirable to prevent or to



cure any default by Grantors in the performance of or compliance with any of Grantor's covenants or obligations under the Lease. Upon receipt by Beneficiary from the landlord under the Lease of any written notice of default by Grantors thereunder, regardless of whether any default or any written notice of default, or the nature thereof, be questioned or denied by Grantors or by any party on behalf of Grantors, Grantors hereby expressly grant to Beneficiary and agree that Beneficiary shall have the absolute and immediate right to enter in and upon the leased premises or any part thereof that Beneficiary deems necessary or desirable with or without notice in order to prevent or to cure any default by Grantors under the Lease and take any other action that Beneficiary deems necessary or prudent in its sole discretion. Beneficiary may pay and expend such sums of money as Beneficiary in its sole discretion deems necessary for any such purpose, Beneficiary will be fully subrogated to the rights of the landlord under the Lease, and Grantors hereby agree to pay to Beneficiary, immediately upon demand, all such sums so paid and expended by Beneficiary. All sums so paid and expended by Beneficiary shall accrue interest at the prematurity rate of interest set forth in the Note and be added to and be secured by the lien of this Deed Of Trust.

(b) Grantors will not surrender the leasehold estate and interest hereinabove described, nor terminate or cancel the Lease; and Grantors will not, without the express written consent of Beneficiary, modify, change, supplement, alter or amend the Lease either orally or in writing. Any such termination, cancellation, modification, change, supplementation, alteration or amendment of the Lease without the prior written consent thereto by Beneficiary shall be void and of no force and effect. As further security to Beneficiary, Grantors shall deposit with Beneficiary an original of the Lease and all amendments thereto or a certified copy thereof, to be retained by Beneficiary until the Indebtedness secured hereby is fully paid.

(c) No release or forbearance of any of Grantors' obligations under the Lease, pursuant to the Lease or otherwise, shall release Grantors from any of its obligations under this Deed Of Trust, including obligations with respect to the payment of rent as provided for in the Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Lease to be kept, performed and complied with by Grantors therein.

(d) Unless Beneficiary shall otherwise expressly consent in writing, the fee title to the property demised by the Lease and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in the landlord or in the tenant, or in a third party by purchase or otherwise.

(e) If there shall be filed by or against Grantors a petition under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), and Grantors, as lessee under the Lease, shall determine to reject the Lease pursuant to Section 365(a) of the Bankruptcy Code, Grantors shall give Beneficiary not less than thirty (30) days prior notice of the date on which Grantors shall apply to the Bankruptcy Court for authority to reject the Lease. Beneficiary shall have the right, but not the obligation, to serve upon Grantors within such thirty (30) day period a notice stating that (i) Beneficiary demands that Grantors assume and assign the Lease to Beneficiary pursuant to Section 365 of the Bankruptcy Code, and (ii) Beneficiary covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under the Lease. If Beneficiary serves upon Grantors the notice described in the preceding sentence, Grantors shall not seek to reject the Lease, and Grantors shall comply with the demand provided for in the clause (i) of the preceding sentence within thirty (30) days after such notice shall have been given, subject to the performance by Beneficiary of the covenant provided for in clause (ii) of the preceding sentence. Further, effective upon the entry of an order for relief in respect of Grantors under Chapter 7 of the Bankruptcy Code, Grantors hereby assign and transfer to Beneficiary a non-exclusive right to apply to the Bankruptcy Court under Subsection 365(d)(1) of the Bankruptcy Code for an order extending the period during which the Lease may be rejected or assumed.

**Section 12. Swap Transactions.** As used in the paragraph, the term "Lender" means Beneficiary. Without limiting the generality of any other provisions of this Deed Of Trust, Grantors and Lender agree that the following obligations of Grantors are secured by this Deed Of Trust and constitute "Indebtedness", as that term is used in this Deed Of Trust: (i) any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of the Grantors to Lender or any Lender Affiliate (as hereinafter defined) arising under or in connection with any Swap Transaction, and (ii) any Swap Related Loss (as defined in the Note) that becomes due and payable in accordance with the terms of the Note. The term "Swap Transaction", as used herein, means (i) any transaction evidenced by one or more agreements now existing or hereafter entered into between Grantors and Lender and/or any financial institution affiliated with International BancShares Corporation (a "Lender Affiliate") which is a rate swap, swap option, interest rate option or other financial instrument or interest (including an option with respect to any such transaction), (ii) any type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets and which is a forward swap, future, option or other derivative on one or more rates, or any combination of the foregoing transactions, or (iii) any transaction that is similar to any transaction referred to in clause (i) or (ii) above except that it is between Lender or a Lender Affiliate and any party or entity other than Grantors and it is entered into by Lender or such Lender Affiliate on account of a corresponding Swap Transaction that is described in clause (i) or (ii) above. The occurrence or existence of any default, event of default or other similar condition or event (however described) on the part of Grantors arising under or with respect to any Swap Transaction shall constitute an Event of Default under this Deed Of Trust.

### Section 13.

#### **NO ORAL AGREEMENTS**

**THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

Dated this 12 day of September, 2019.

**GRANTOR(S):**

MRSS Partners, Ltd.  
A Texas Limited Partnership

By: GP MR, LLC  
A Texas Limited Liability Company  
Title: General Partner

By: [Signature]  
Name: Gopal Bathija  
Title: President

Address: 12651 Briar Forest Drive, Suite 300  
Houston, Texas 77077

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT  
(LLC General Partner)

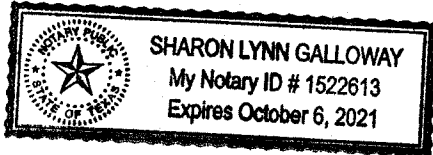
STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on the 10th day of Sept, 2019 by Gopal Bathija President of GP MR, LLC, a Texas Limited Liability Company, General Partner of MRSS Partners, Ltd. a Texas Limited Partnership, on behalf of said partnership.

[Signature]  
Notary Public, State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Commission No. \_\_\_\_\_



After recording, return to Beneficiary, at its mailing address, as follows:

International Bank of Commerce  
5615 Kirby Drive  
Houston, Texas 77005

**ADDENDUM TO  
DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FINANCING STATEMENT**

The attached Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement ("Deed of Trust") between MRSS PARTNERS, LTD., a Texas limited partnership, as Grantors, JAY ROGERS, as Trustee, and INTERNATIONAL BANK OF COMMERCE, as Beneficiary, shall govern the relationship between the parties thereto except as amended by the supplemental terms contained in this Addendum. In the event of conflict between the terms of the Deed of Trust and this Addendum, this Addendum shall control, and prevail. Accordingly, the Deed of Trust is hereby amended and supplemented as hereinafter set forth and, except as hereby amended and supplemented, shall remain in full force and effect. All capitalized terms used herein not otherwise defined herein shall have the meaning ascribed to such terms in the Deed of Trust.

1. **Property.** The term "Property" shall include (a) all rights, titles, interests, estates, reversions and remainders owned and to be owned by Grantors in and to the Property and in and to the properties covered hereby and all lands owned or to be owned by Grantors next or adjacent to any land herein described or herein mentioned; (b) all buildings and improvements now or hereafter located on the lands described or mentioned; (c) all rights, titles and interests now owned or hereafter acquired by Grantors in and to all easements, streets and rights-of-way of every kind and nature adjoining the said lands, and all public or private utility connections thereto, and all appurtenances, servitudes, rights, ways, privileges and prescriptions thereunto; (d) the escrowed sums described herein, if any, all goods, equipment, fixtures, inventory, machinery, furniture, furnishings and other personal property that is now owned or hereafter acquired by Grantors and now or hereafter affixed to, or located on, the above described real estate and used or usable for any present or future operation of any building or buildings now or hereafter located on said lands, including without limitation, all rights, titles and interests of Grantors in and to any such personal property that may be subject to any title retention or security agreement superior in lien or security interest to the lien or security interest of this Deed of Trust; (e) all permits, licenses, franchises, certificates, utility commitments and/or reservations, wastewater capacity reservations and other rights and privileges obtained in connection with the property described herein; (f) all rights, titles and interests of Grantors in and to all timber to be cut, or crops to be harvested, from the real estate covered hereby and all minerals in, under, and upon, produced and to be produced from said real estate; and without limitation of the foregoing, any and all rights, rents, revenues, benefits, leases, contracts, accounts, general intangibles, money, instruments, documents, tenements, hereditaments and appurtenances now or hereafter owned by Grantors and appertaining to, generated from, arising out of or belonging to the above-described properties or any part thereof; and (g) all rights to reimbursement from any city or municipal utility district.

2. **Deficiencies.** In furtherance of Sections 3.G, 3.H and 11.B of the Deed of Trust, notwithstanding the provisions of §§ 51.003, 51.004 and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Grantors agree that Beneficiary shall be entitled to seek a deficiency judgment from Grantors and any other party obligated on the Note, including any guarantor of the Note, equal to the difference between the amount owing on the Note and the amount for which the Property was sold pursuant to a judicial or nonjudicial foreclosure sale. Grantors expressly recognize that this section constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Grantors independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Property as of the date of foreclosure and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantors further recognize and agree that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Grantors, other borrowers on the Note, guarantors and others against whom recovery of a deficiency is sought. The foregoing to the contrary notwithstanding, nothing herein shall prevent Beneficiary from pursuing its remedies directly against any guarantor prior to any foreclosure in accordance with the provisions of such guaranty agreement. Alternatively, in the event the waiver provided for above and/or in Section 3.H of the Deed of Trust is determined by a court of competent jurisdiction to be unenforceable, then notwithstanding the provisions of §§ 51.003, 51.004 and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Grantors agree that Beneficiary shall be entitled to seek a deficiency judgment from Grantors and any other party obligated on the Note or any guaranty of the Note equal to the difference between the amount owing on the Note and the fair market value of the Property. The provisions of Section 11.B shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale in proceedings governed by §§ 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time).

3. **Construction Mortgage.** This Deed of Trust secures an obligation incurred for the construction of improvements on the above described land and accordingly constitutes a "construction mortgage" under the terms of the Code. Grantors agree that they shall perform and observe all of their covenants and agreements as set forth in the Loan Agreement (as hereinafter defined) of even date herewith between Grantors and Beneficiary and acknowledge that this Deed of Trust shall also secure performance of all obligations of Grantors thereunder.

4. **Liability Insurance.** Grantors shall obtain and maintain in force and effect such liability insurance policies as Beneficiary may from time to time specify.

5. **Partial Releases.** Beneficiary agrees that, at the time and from time to time upon receiving written request from Grantors, Beneficiary will, with reasonable dispatch in the normal course of business, mail or deliver to such place designated in writing by Grantors as may be acceptable to Beneficiary, an instrument prepared by Beneficiary releasing from the lien and security interests of this Deed of Trust one or more tracts comprising the Property, it being contemplated that the Property will be sold and/or developed for commercial development and residential development, each such tract for commercial development being herein called a "Commercial Tract" and

each such tract for residential development being herein called a "Residential Tract", as the case may be, and sometimes collectively a "Tract"; provided, however, Beneficiary's obligations to grant partial releases shall be subject to compliance by Grantors with the following conditions with respect to each partial release:

- (a) At the time Beneficiary is to transmit such instrument, Grantors shall not be in default (i) under the Note, (ii) under any of the provisions of this Deed of Trust, (iii) under the Loan Agreement, or (iv) under any other instrument held by Beneficiary as additional security for the Note;
- (b) Beneficiary shall have been furnished by Grantors, at Grantors' expense and at least five (5) days prior to the date such release is desired, an exact metes and bounds legal description (or other legal description satisfactory to Beneficiary) of the Tract to be released, which description shall be satisfactory to Beneficiary and shall be in accordance with an accurate on-the-ground survey with plat and field notes certified by a licensed Texas land surveyor or professional engineer, all certified by such surveyor or engineer for the benefit of Beneficiary and describing the property to be released, a certified counterpart of which survey plat and field notes shall be furnished Beneficiary at Grantors' expense at the time the release is requested;
- (c) With respect to each Residential Tract to be released, Grantors shall have paid to Beneficiary for the account of Beneficiary, by certified check or wire transfer at such place or account, as the case may be, designated by Beneficiary in writing, a sum on account of principal equal to the greater of \$50,000.00 times the gross number of acres within such Tract to be released, or ninety percent (90%) of the Net Sales Proceeds (as hereinafter defined) for such Residential Tract to be released with eighty percent (80%) of the remaining balance of the Net Sales Proceeds to be deposited in the Reserve Account and twenty percent (20%) of the remaining balance of the Net Sales Proceeds to be deposited in the Operating Account;
- (d) With respect to each Commercial Tract to be released, Grantors shall have paid to Beneficiary for the account of Beneficiary, by certified check or wire transfer at such place or account, as the case may be, designated by Beneficiary in writing, a sum on account of principal equal to the greater of \$6.00 times the gross square footage within such Tract to be released, or ninety percent (90%) of the Net Sales Proceeds for such Commercial Tract to be released with eighty percent (80%) of the remaining balance of the Net Sales Proceeds to be deposited in the Reserve Account and twenty percent (20%) of the remaining balance of the Net Sales Proceeds to be deposited in the Operating Account;
- (e) Without limiting the provisions of Section 5(c) above, for the Residential Tract containing approximately 232.4 acres depicted on Exhibit "A-1" (the "232.4 Acre Residential Tract"), Grantors shall have paid to Beneficiary for the account of Beneficiary, by certified check or wire transfer at such place or account, as the case may be, designated by Beneficiary in writing, a sum on account of principal equal to \$11,620,000.00, with eighty percent (80%) of the balance of the Net Sales Proceeds to be deposited in the Reserve Account and twenty percent (20%) of the remaining balance of the Net Sales Proceeds to be deposited in the Operating Account;
- (f) Without limiting the provisions of Section 5(d) above, for the Commercial Tract containing approximately 31.64 acres more particularly described on Exhibit "A-2" (the "31.64 Acre Commercial Tract") to be released, the sum of \$5,000,000.00 of the Net Sales Proceeds from the sale thereof shall be deposited in the Operating Account, and said \$5,000,000.00 shall constitute the Capital Contribution, with eighty percent (80%) of the balance of the Net Sales Proceeds from the sale thereof to be deposited in the Reserve Account and twenty percent (20%) of the remaining balance of the Net Sales Proceeds to be deposited in the Operating Account; for the avoidance of doubt, no Net Sales Proceeds from the sale of the 31.64 Acre Commercial Tract shall be applied to reduce the balance of the Note;
- (g) (i) In no event shall the total of said principal amounts paid for partial releases exceed the amount of the Note; and (ii) for each Tract to be released, accrued but unpaid interest to the date Grantors transmit or cause to be transmitted the release payment for such Tract, as the case may be, to Beneficiary (after satisfaction of the other requirements of this Section) at the rate then payable under the Note;
- (h) No requested release will have the effect of causing the remainder of the Property to be in violation of any zoning or other law or ordinance or any private restriction or contract;
- (i) That, in the reasonable judgment of Beneficiary, no requested release shall impair adequate access to the unreleased portions of the Property; and
- (j) Each Tract to be released shall be in a location, size and configuration acceptable to Beneficiary, and Beneficiary hereby consents to the size, location and configuration of the 232.4 Acre Residential Tract and the 31.64 Acre Commercial Tract.

The term "Net Sales Proceeds" shall mean the gross sales proceeds derived from the sale of each Tract, less normal and customary closing costs, including title insurance premiums, survey expenses, sales commission not to exceed six percent (6.0%) and escrow charges, but excluding proration of ad valorem taxes and attorneys' fees.

The locations of Residential Tracts and Commercial Tracts are roughly depicted on Exhibit "X" hereto as "COM" for Commercial Tracts and "Residential POD" and "MF" for Residential Tracts.

6. Loan Agreement. This Deed of Trust and Security Agreement is executed and delivered pursuant to and is entitled to the benefits of that certain Development Loan Agreement (the "Loan Agreement") of even date herewith between Grantors and Beneficiary. Capitalized terms used herein but not otherwise defined in this Addendum or the Deed of Trust shall have the meaning ascribed to such terms in the Loan Agreement.

**GRANTORS:**

MRSS PARTNERS, LTD., a Texas limited partnership

By: GP MR, LLC, a Texas limited liability company,  
its General Partner

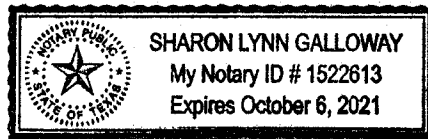
By: M. P. Bathija, Jr.  
Name: Gopal Bathija  
Title: President

STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 10th day of September, 2019, by Gopal Bathija, President of GP MR, LLC, a Texas limited liability company, in its capacity as General Partner of MRSS Partners, Ltd., a Texas limited partnership, for and on behalf of said limited partnership.

[ S E A L ]

Sharon Lynn Galloway  
Notary Public, State of Texas



**EXHIBIT "A"**  
**THE PROPERTY**

**Tract I:**

Being 443.96 acres (19,339,033 square feet) of land situated in the G.W. Lonis Survey, Abstract 313, and the F.K. Henderson Survey, Abstract 248, Montgomery County, Texas, being out of a residue of a called 29.75 acres ("second" tract) conveyed to W.T. Moran by deed recorded in Volume 226, Page 4 of the Deed Records of Montgomery County, Texas, a portion of Lots 20, 21, and 22, Block "A", Town of Willis, according to the map or plat thereof recorded in Volume 1, Page 2, of the Map Records of Montgomery County, Texas, a called 68 acres (2nd Tract) conveyed to W.T. Moran by deed recorded in Volume 537, Page 54 of the Deed Records of Montgomery County, Texas, a called 25 acres (1st Tract) conveyed to W.T. Moran by deed recorded in Volume 537, Page 54 of the Deed Records of Montgomery County, Texas, a residue of a called 33 acres conveyed to T.W. Smith by deed recorded in Volume 10, Page 131 of the Deed Records of Montgomery County, Texas, a called 3.581 acres (Tract 2-P2) conveyed to W.T. Moran by deed recorded in Volume 834, Page 618 of the Deed Records of Montgomery County, Texas, a called 8.3 acres (Tract 8) conveyed to W.T. Moran by deed recorded in Volume 264, Page 245 of the Deed Records of Montgomery County, Texas, a called 23 acres (Tract 7) conveyed to W.T. Moran by deed recorded in Volume 222, Page 627 of the Deed Record of Montgomery County, Texas, a called 61.6 acres (Tract No. 1) conveyed to W.T. Moran by deed recorded in Volume 488, Page 416 of the Deed Records of Montgomery County, Texas, a called 24.7 acres (Tract No. 2) conveyed to W.T. Moran by deed recorded in Volume 488, Page 416 of the Deed Records of Montgomery County, Texas, a called 4.8 acres conveyed to W.T. Moran by deed recorded in Volume 724, Page 181 of the Deed Records of Montgomery County, Texas, a called 57 acres (Third Tract) of land conveyed to W.T. Moran by deed recorded in Volume 225, Page 324 of the Deed Records of Montgomery County, Texas, a called 29½ acres (Fifth Tract) conveyed to W.T. Moran by deed recorded in Volume 225, Page 324 of the Deed Records of Montgomery County, Texas, a called 13.1 acres (Fourth Tract) conveyed to W.T. Moran by deed recorded in Volume 225, Page 324 of the Deed Records of Montgomery County, Texas, a residue of a called 42½ acres (Second Tract) conveyed to W.T. Moran by deed recorded in Volume 225, Page 324 of the Deed Records of Montgomery County, Texas, a residue of a called 116 acres conveyed to W.T. Moran by deed recorded in Volume 225, Page 324 of the Deed Records of Montgomery County, Texas, a residue of a called 15 acres conveyed to W.T. Moran by deed recorded in Volume 228, Page 456 of the Deed Records of Montgomery County, Texas, and a residue of a called 10 acres conveyed to W.T. Moran by deed recorded in Volume 230, Page 351 of the Deed Records of Montgomery County, Texas; said 443.96 acres being more particularly described by metes and bounds as follows with all bearings based on Texas State Plane Coordinate System, Central Zone, North American Datum 1983;

**BEGINNING** at a 5/8-inch iron rod with cap (stamped "Landpoint 10194172") set in the east right-of-way line of Interstate Highway 45 (right-of-way width varies) common to the west line of the herein described tract for the northwest corner of said residue of a called 10 acres and the southwest corner of said residue of a called 29.75 acres, same being a northwest angle point of the herein described tract;

THENCE North 17°15'01" West, 9.81 feet along said common line and common west line of said residue of 29.75 acres and the herein described tract to a 5/8-inch iron rod with cap (stamped "Landpoint 10194172") set for the northwest corner of the herein described tract;

THENCE North 73°29'04" East, 295.35 feet departing said common line over and across said residue of 29.75 acres and the northwest line of the herein described tract to an angle point;

THENCE North 52°43'58" East, 96.00 feet continuing along the northwest line of the herein described tract to an angle point;

THENCE North 71°17'58" East, 1,276.78 feet continuing along the northwest line of the herein described tract to a point for an interior north corner of the herein described tract;

THENCE North 18°28'09" West, 204.48 feet along a north line of the herein described tract to a point in the south right-of-way line of Mink Street (80 feet wide) common to the north line of said Lot 22 for a northeast corner of the herein described tract;

THENCE North 71°31'51" East, 268.80 feet along said common line continuing along the north line of said Lots 22, 21, and 20 to a point in the north line of said Lot 20 for the northern most northeast corner of the herein described tract;

THENCE South 18°06'06" East, 229.45 feet departing said common line over and across said Lot 20 along a northeast line of the herein described tract to a point in the north line of a said 25 acres (1st Tract) for an interior northeast corner of the herein described tract;

THENCE North 71°16'51" East, 530.89 feet along the north line of said 25 acres and the south right-of-way line of Powell Street (right-of-way width varies), same being the northeast line of the herein described tract to a 1/2-inch iron rod found for the northwest corner of Johnson Addition to the Town of Willis, according to the map or plat thereof recorded in Volume 5, Page 24 of the Map Records of Montgomery County, Texas and the northern most northeast corner of the herein described tract;

THENCE South 18°35'47" East, departing said south right-of-way line along the west line of said Johnson Addition, the west line of South Bend Section 1 according to the map or plat thereof recorded under Cabinet Z, Sheet 86 of the Map Records of Montgomery County, Texas, the west line of a called 4.65 acres conveyed to W.A. Dean by Deed recorded under Volume 592, Page 684 of the Deed Records of Montgomery County, Texas, the west line of a called 4.28 acres conveyed to Patsy Simmons Dean by Deed recorded under Clerk's File No. 9807667 of the Official Public

Records of Real Property of Montgomery County, Texas, the west line of a called 4.28 acres conveyed to Herbert L. Ross by Deed recorded under Clerk's File No. 9507829 of the Official Public Records of Real Property of Montgomery County, Texas, the east line of said 25 acres and the northern most east line of the herein described tract, passing at 310.63 feet, a found 1-inch iron pipe, passing at 370.48 feet, a found 1-inch iron pipe, passing at 675.92 feet, a found 1-inch iron pipe, passing at 732.09 feet, a found 1-inch iron pipe, passing at 1,340.55 feet, a found 5/8-inch iron rod, passing at 1,660.08 feet, a found concrete monument, continuing in all a total distance of 1745.01 feet to a fence post found in the west line of said Herbert L. Ross 4.28 acres for the northeast corner of said residue of a called 33 acres, the southeast corner of said 25 acres and an angle point of the herein described tract;

THENCE South  $18^{\circ}32'21''$  East, 311.37 feet along the east line of said residue of 33 acres, continuing along the west line of said Herbert L. Ross 4.28 acres, the west line of a called 4.28 acres conveyed to Martin Arriola and Maria Arriola by deed recorded under Clerk's File No. 2005-140005 of the Official Public Records of Real Property of Montgomery County, Texas, and continuing along the northern most east line of the herein described tract to a 5/8-inch iron rod with cap (stamped "Landpoint 10194172") set in the west line of South Park, according to the map or plat thereof recorded in Volume 5, Page 184 of the Map Records of Montgomery County, Texas for the southeast corner of said residue of 33 acres and an angle point of the herein described tract;

THENCE South  $18^{\circ}29'03''$  East, 1,333.32 feet continuing along the west line of said South Park and the northern most east line of the herein described tract to a 1/2-inch iron rod found in the east line of said 23 acres (Tract 7) for the southwest corner of said South Park and the northwest corner of said 3.581 acres (Tract 2-P2) and an interior east corner of the herein described tract;

THENCE North  $71^{\circ}52'24''$  East, 734.46 feet along the south line of said South Park and the north line of said 3.581 acres (Tract 2-P2), same being a north line of the herein described tract to a 5/8-inch iron rod with cap (stamped "Landpoint 10194172") set for the northwest corner of a called 3.02 acres conveyed to CAM Specialty by deed recorded under Clerk's File No. 2002-106887 of the Official Public Records of Real Property of Montgomery County, Texas, and the northeast corner of said 3.581 acres, same being an east corner of the herein described tract;

THENCE South  $19^{\circ}00'55''$  East, 207.61 feet along the west line of said 3.02 acres and a common east line of said 3.581 acres and the herein described tract to a 1-inch iron pipe found in the north line of said 8.3 acres (Tract 8) for the southwest corner of said 3.02 acres and the southeast corner of said 3.581 acres, same being an interior east corner of the herein described tract;

THENCE North  $71^{\circ}06'38''$  East, 648.85 feet along the south line of said 3.02 acres and the north line of said 8.3 acres, same being a north line of the herein described tract to a 1/2-inch iron rod found in the west right-of-way line of State Highway 75 (right-of-way width varies) for the southeast corner of said 3.02 acres and the northeast corner of said 8.3 acres, same being the northern most east corner of the herein described tract;

THENCE South  $19^{\circ}16'15''$  East, 288.24 feet along the west right-of-way line of said State Highway 75 and the east line of said 8.3 acres, same being an east line of the herein described tract to a 5/8-inch iron rod with cap (stamped "Landpoint 10194172") set for the southeast corner of said 8.3 acres and northeast corner of a called 10 acres conveyed to Guy C. Hulon by deed recorded in Volume 216, Page 526 of the Deed Records of Montgomery County, Texas, same being an east corner of the herein described tract;

THENCE South  $71^{\circ}04'26''$  West, 1,389.22 feet along the south line of said 8.3 acres common to the north line of said 10 acres, same being southeast line of the herein described tract to a 5/8-inch iron rod with cap (stamped "Landpoint 10194172") set in the east line of said 23 acres (Tract 7) for the northwest corner of said 10 acres and southwest corner of said 8.3 acres, same being an interior southeast corner of the herein described tract;

THENCE South  $18^{\circ}20'45''$  East, 312.45 feet along the east line of said 23 acres and the west line of said 10 acres, same being an interior southeast line of the herein described tract to a 1/2-inch iron rod found for the southwest corner of said 10 acres, the northwest corner of said 24.7 acres (Tract No. 2), same being same being an interior southeast corner of the herein described tract;

THENCE North  $71^{\circ}05'48''$  East, 1,394.89 feet along the south line of said 10 acres and the north line of said 24.7 acres, same being a southeast line of the herein described tract to a 1/2-inch iron rod found in the west right-of-way line of said State Highway 75 for a the southeast corner of said 10 acres, the northeast corner of said 24.7 acres, same being a southeast corner of the herein described tract;

THENCE South  $19^{\circ}16'25''$  East, 238.00 feet along the west right-of-way of said State Highway 75 common to the east line of said 24.7 acres common to the eastern most southeast line of the herein described tract to a 5/8-inch iron rod with survey cap (stamped "Landpoint 10194172") set for the beginning of a curve to the right;

THENCE continuing in a southeast direction along said common lines along said curve to the right having a radius of 17,188.73 feet, a central angle of  $03^{\circ}17'00''$ , an arc length of 985.00 feet, and a chord bearing of South  $17^{\circ}37'55''$  East, a distance of 984.86 feet to a 5/8-inch iron rod with survey cap (stamped "Landpoint 10194172") set in the east line of said residue of 61.6 acres (Tract No. 1) for the point of tangency;

THENCE South  $16^{\circ}15'13''$  East, 458.33 feet continuing along said right-of-way line and the east line of said residue of 61.6 acres, continuing along the eastern most southeast line of the herein described tract to a 5/8-inch iron rod with cap (stamped "Landpoint 10194172") for the southeast corner of said residue of 61.6 acres and the northeast corner of a called 0.806 acre conveyed to Todd Downie and Lawrence D. Keller Jr. by deed recorded under Clerk's File No. 8443942 of the Official Public Records of Real Property of Montgomery County, Texas and the southeast corner of the herein described tract;

THENCE South 71°47'50" West, 1,062.24 feet, departing the west right-of-way line of said State Highway 75 along the north line of said 0.806 acre tract, the north line of a called 0.1827 acre (Tract 1) conveyed to Todd Downie and Lawrence D. Keller, Jr. by deed recorded under Clerk's File No. 9103139 of the Official Public Records of Real Property of Montgomery County, Texas, the north line of a called 0.500 acre tract conveyed to South Willis Commercial Industrial Park, Inc. by Deed recorded under Clerk's File No. 8443942 of the Official Public Records of Real Property, Montgomery County, Texas, the north Line of a called 0.500 acre (Tract 2) conveyed to Todd Downie & Lawrence D. Keller, Jr. by Deed recorded under Clerk's File No. 9103139 of the Official Public Records of Real Property, Montgomery County, Texas, the north line of a called 3.543 acres conveyed to Todd Downie & Lawrence D. Keller, Jr. by Deed recorded under Clerk's File No. 2003-086315 of the Official Public Records of Real Property of Montgomery County, Texas, same being a southeast line of the herein described tract to a 1-inch pipe found for the northeast corner of a called residue of 24 acres conveyed to George B. Darden by deed recorded in Volume 258, Page 86 of the Deed Records of Montgomery County, Texas, and northwest corner of said 3.543 acres, same being an angle point of the herein described tract;

THENCE South 71°42'28" West, 1,298.65 feet along the north line of said residue of a called 24 acre tract and continuing along said southeast line of the herein described tract to a 5/8-inch iron rod with cap (stamped "Landpoint 10194172") set for the interior south corner of the herein described tract;

THENCE South 18°17'32" East, 788.68 feet along a south line of the herein described tract to a 5/8-inch iron rod with cap (stamped "Landpoint 10194172") set in the north line of a called 116.9 acres conveyed to George B. Darden by deed recorded in Volume 258, Page 84 of the Deed Records of Montgomery County, Texas (1/2 interest to W.T. Moran, Volume 285, Page 598, Deed Records of Montgomery County, Texas) for the south corner of the herein described tract;

THENCE South 72°30'19" West, 1,934.46 feet along the north line of said 116.9 acres, the north line of a called 20.478 acres conveyed to O. G. Williams by deed recorded in Volume 613, Page 164 of the Deed Records of Montgomery County, Texas, and the south line of said 13.1 acres, same being the south line of the herein described tract to a 1-inch iron pipe found in the east right-of-way line of said Interstate Highway 45 for the northwest corner of said 20.478 acres and the common southwest corner of said residue of 42½ acres and the herein described tract;

THENCE North 04°31'53" West, 8.19 feet along the east right-of-way line of said Interstate Highway 45 common to the west line of said residue of 42½ acres and the herein described tract to a concrete monument found for an angle point;

THENCE North 04°09'59" West, 1,055.46 feet continuing along said common line to a concrete monument found for the beginning of a curve to the left;

THENCE continuing in a northwest direction along said common line along said curve to the left having a radius of 3,818.71 feet, a central angle of 14°22'35", and arc length of 958.17 feet, and a chord bearing of North 11°24'11" West, 955.66 feet to a concrete monument found for the point of tangency;

THENCE North 18°30'03" West, 1,103.22 feet continuing along the east right-of-way line of said Interstate Highway 45, the west line of said residue of 42½ acres, the west line of said 57 acres (Third Tract), and the west line of said residue of 116 acres (Tract No. 5), same being the west line of the herein described tract to a concrete monument found for an angle point;

THENCE North 17°18'59" West, 241.81 feet continuing along the east right-of-way line of said Interstate Highway 45 and the common west line of said residue of 116 acres (Tract No. 5) and the herein described tract to a concrete monument found for an angle point;

THENCE North 18°13'38" West, 1,100.15 feet continuing along said common line to a concrete monument found in the west line of said residue of called 15 acres for an angle point;

THENCE North 17°20'13" West, 1,399.30 feet continuing along the east right-of-way line of said Interstate Highway 45, the west line of said residue of 15 acres, the west line of said residue of 10 acres common to the west line of the herein described tract to a concrete monument found in the west line of said residue of 10 acres for an angle point;

THENCE North 01°12'33" East, 105.12 feet continuing along said right-of-way line and the common west line of said residue of 10 acres and the herein described tract to a concrete monument found for an angle point;

THENCE North 17°18'59" West, 690.38 feet continuing along said common line to the **POINT OF BEGINNING**, containing 443.96 acres (19,339,033 square feet) of land in Montgomery County, Texas.

**Tract II:**

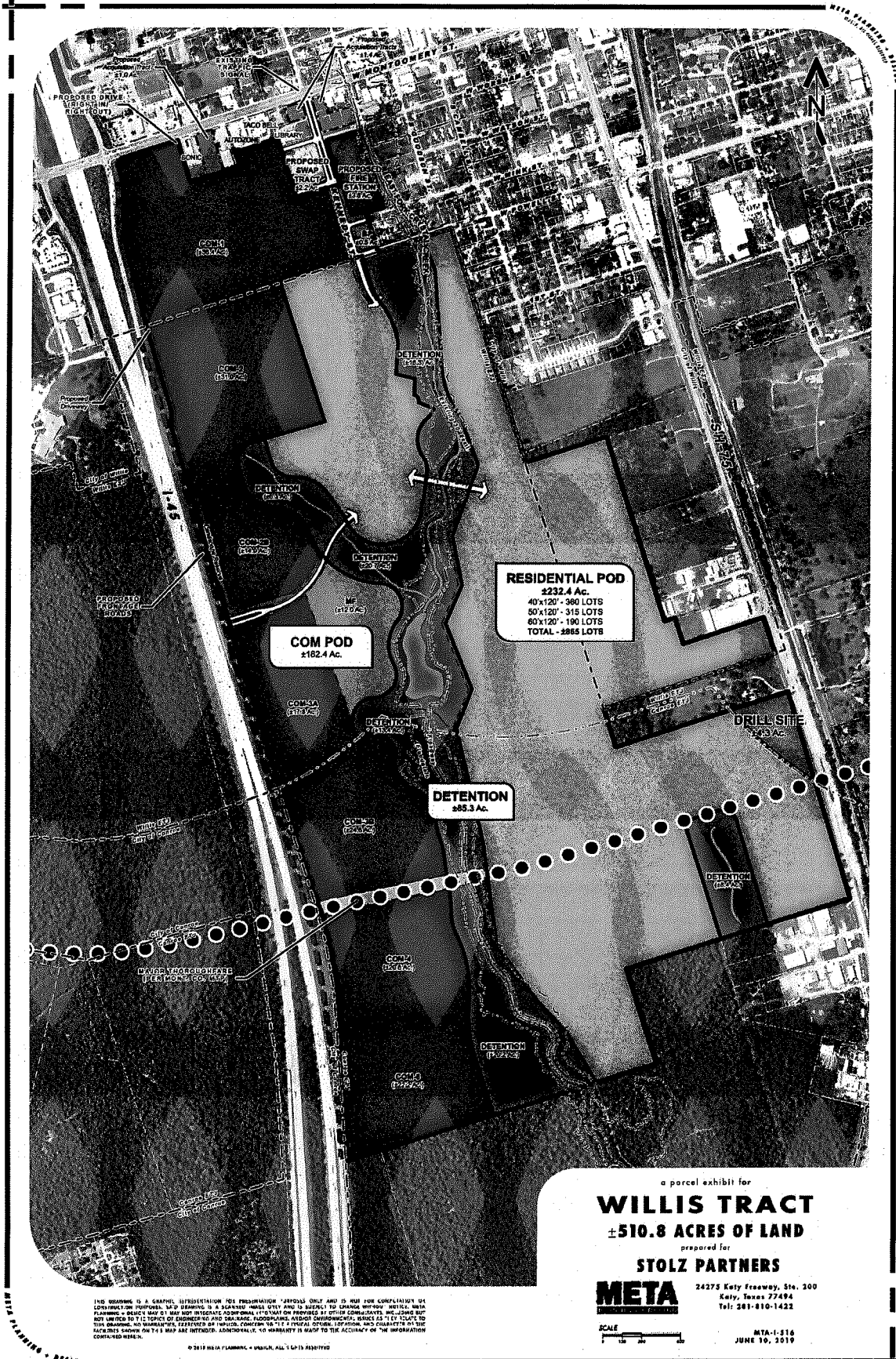
Being all of Lots 1-4, Block Thirty-Seven (37) and Lots 1-4, Block Thirty-Eight (38), Town of Willis, a subdivision in Montgomery County, Texas, according to the map or plat thereof recorded in Volume 1, Page 2, of the Map Records of Montgomery County, Texas.

**Tract III:**

All of Blocks 1, 2, 3, 5, 6, 7, 8, 9, 10 and Lots 3 through 8, Block 4 of South Park, a subdivision in Montgomery County, Texas, according to the map or plat thereof recorded in Volume 5, Page 164 of the Map Records of Montgomery County, Texas.



**EXHIBIT "A-1"**  
**DEPICTION OF THE 232.4 ACRE TRACT**



**RESIDENTIAL POD**  
 ±232.4 Ac.  
 40'x120' - 360 LOTS  
 60'x120' - 318 LOTS  
 80'x120' - 190 LOTS  
 TOTAL - 868 LOTS

**COM POD**  
 ±182.4 Ac.

**DETENTION**  
 ±85.3 Ac.

**DRILL SITE**  
 ±23.3 Ac.

a parcel exhibit for  
**WILLIS TRACT**  
 ±510.8 ACRES OF LAND  
 prepared for  
**STOLZ PARTNERS**

**META** 24275 Katy Freeway, Ste. 300  
 Katy, Texas 77494  
 Tel: 281-810-1422

SCALE  
 0 100 200

MTA-1-516  
 JUNE 10, 2019

THIS DRAWING IS A GRAPHIC REPRESENTATION FOR PRESENTATION PURPOSES ONLY AND IS NOT FOR CONSTRUCTION OR CONTRACT DOCUMENTS. NO DIMENSIONS, AREA, OR VOLUME SHALL BE USED TO CONSTRUCT, CONVEY, OR RECORD ANY RIGHTS OR INTERESTS IN REAL PROPERTY. THE INFORMATION CONTAINED HEREIN IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TO BE USED AS A BASIS FOR ANY DECISIONS. THE INFORMATION CONTAINED HEREIN IS NOT TO BE USED AS A BASIS FOR ANY DECISIONS. THE INFORMATION CONTAINED HEREIN IS NOT TO BE USED AS A BASIS FOR ANY DECISIONS.

**EXHIBIT "A-2"**  
**THE 31.64 ACRE COMMERCIAL TRACT**

Being a 31.64 acre (1,378,027 square feet) tract situated in the F.K. Henderson Survey, Abstract 248, and the G.W. Lonis Survey, Abstract 313, Montgomery County, Texas, being out of a called 68 acres conveyed to W.T. Moran by deed recorded in Volume 537, Page 54 of the Deed Records of Montgomery County, Texas, a residue of a called 10 acres conveyed to W.T. Moran by deed recorded in Volume 230, Page 351 of the Deed Records of Montgomery County, Texas, a residue of a called 15 acres conveyed to W.T. Moran by deed recorded in Volume 228, Page 456 of the Deed Records of Montgomery County, Texas, and a called 29.75 acres conveyed to W.T. Moran by deed recorded in Volume 226, Page 4 of the Deed Records of Montgomery County, Texas, said 31.64 acres being more particularly described by metes and bounds as follows with all bearings based on Texas State Plane Coordinate System, Central Zone, North American Datum 1983;

BEGINNING at a 5/8-inch iron rod set with cap (stamped "Landpoint 10194172") being in the east right-of-way of Interstate Highway 45 (right-of-way width varies) and west line of said 29.75 acre tract, from which a concrete monument found for reference bears North 15°14'35" West, 700.45 feet, same point being the northwest corner of the herein described tract;

THENCE North 73°29'04" East, 295.35 feet to a 5/8-inch iron rod set with cap (stamped "Landpoint 10194172") for an angle point;

THENCE North 52°43'58" East, 96.00 feet to a 5/8-inch iron rod set with cap (stamped "Landpoint 10194172") for an angle point;

THENCE North 71°17'58" East, 696.17 feet to a 5/8-inch iron rod set with cap (stamped "Landpoint 10194172") for the northeast corner of the herein described tract;

THENCE South 18°43'09" East, 1,156.82 feet over and across said 68 acres along the east line of the herein described tract to a 5/8-inch iron rod set with cap (stamped "Landpoint 10194172") for the southeast corner of the herein described tract;

THENCE South 72°40'09" West, 583.18 feet along the southeast line of the herein described tract to a 5/8-inch iron rod set with cap (stamped "Landpoint 10194172") for the beginning of a curve to the left;

THENCE in a southwest direction along a southerly line of the herein described tract along said curve to the left having a radius of 150.00 feet, a central angle of 90°00'00", an arc length of 235.62 feet, and a chord bearing of South 27°40'09" West, 212.13 feet to a 5/8-inch iron rod set with cap (stamped "Landpoint 10194172") for a point of tangency;

THENCE South 17°19'51" East, 134.73 feet continuing along a southerly line of the herein described tract to a 5/8-inch iron rod set with cap (stamped "Landpoint 10194172") for a south corner of the herein described tract;

THENCE South 72°40'09" West, 409.94 feet along the southwest line of the herein described tract to a 5/8-inch iron rod set with cap (stamped "Landpoint 10194172") being in the east right-of-way line of said Interstate Highway 45 and the west line of said 15 acres for the southwest corner of the herein described tract;

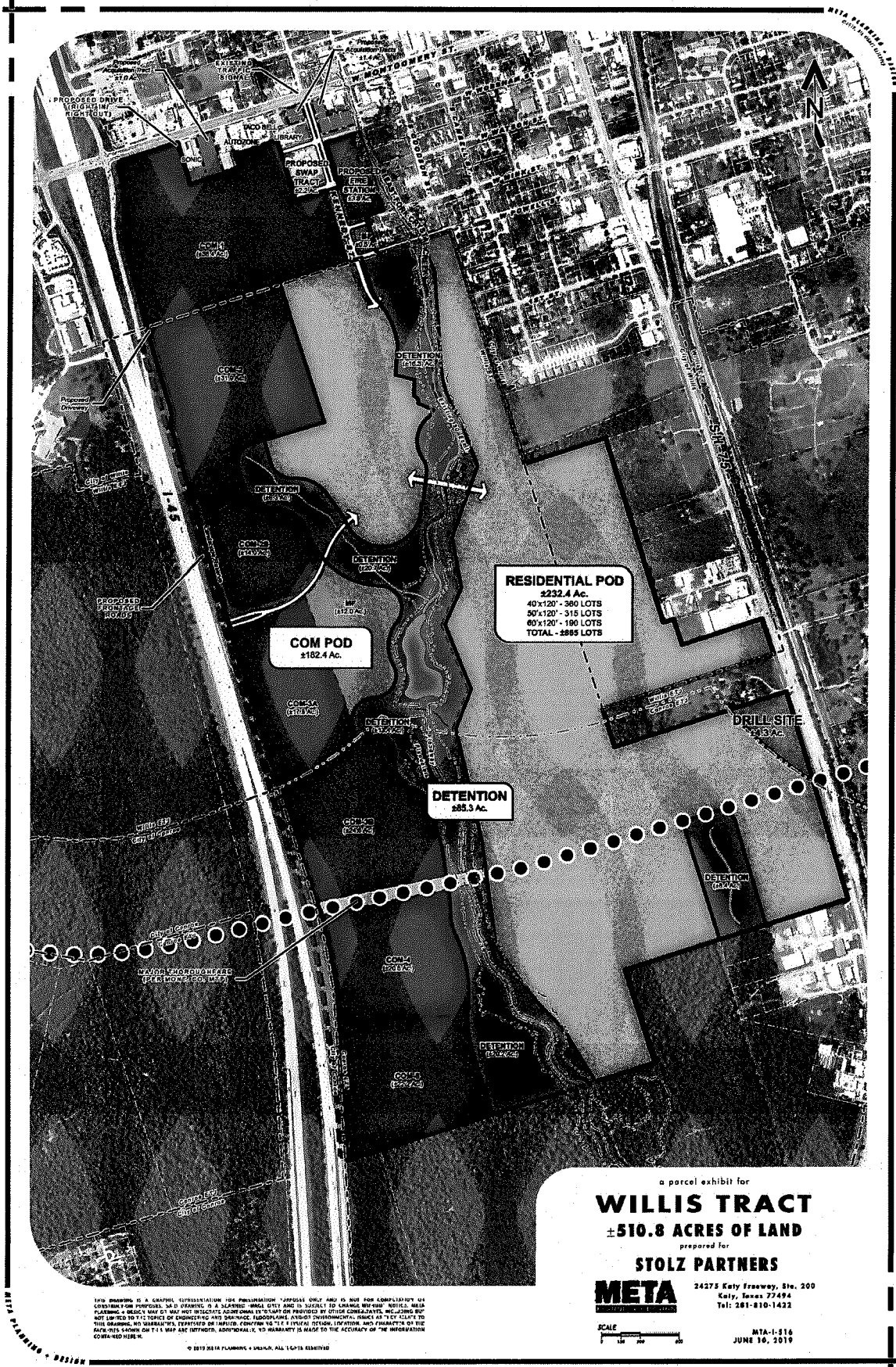
THENCE North 17°20'13" West, 596.19 feet along the east right-of-way line of said Interstate Highway 45 and the west line of said residue of 15 acres, continuing along the west line of said residue of said 10 acres, common to the west line of the herein described tract to a found concrete monument for angle point;

THENCE North 01°12'33" East, 105.12 feet continuing along said common line to a found concrete monument for an angle point;

THENCE North 17°18'59" West, 690.38 feet continuing along said common line to a 5/8-inch iron rod set with cap (stamped "Landpoint 10194172") for an angle point;

THENCE North 17°15'01" West, 9.81 feet continuing along said common line to the POINT OF BEGINNING, containing 31.64 acres (1,378,027 square feet) of land in Montgomery County, Texas.

EXHIBIT "X"



THIS DRAWING IS A GRAPHIC REPRESENTATION FOR ILLUSTRATION PURPOSES ONLY AND IS NOT FOR CONSTRUCTION OR CONTRACTING. THE INFORMATION IS SUBJECT TO CHANGE WITHOUT NOTICE. META PLANNING & DESIGN, INC. MAY BE CONTACTED FOR MORE INFORMATION. THIS DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF META PLANNING & DESIGN, INC. THE INFORMATION IS SUBJECT TO CHANGE WITHOUT NOTICE. META PLANNING & DESIGN, INC. IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE INFORMATION IS SUBJECT TO CHANGE WITHOUT NOTICE. META PLANNING & DESIGN, INC. IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS.

**E-FILED FOR RECORD**

**09/13/2019 11:52AM**



COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS,  
COUNTY OF MONTGOMERY

I hereby certify that this instrument was e-filed in the file number sequence on the date and time stamped herein by me and was duly e-RECORDED in the Official Public Records of Montgomery County, Texas.

**09/13/2019**



County Clerk  
Montgomery County, Texas

**LIMITED PARTNERSHIP AGREEMENT**

**OF**

**MRSS PARTNERS, LTD.**

**THE INTERESTS OF THE PARTNERSHIP HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER EITHER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. SUCH INTERESTS MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED AT ANY TIME, EXCEPT UPON REGISTRATION OR UPON DELIVERY TO THE PARTNERSHIP OF AN OPINION OF COUNSEL SATISFACTORY TO THE GENERAL PARTNER THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER OR THE SUBMISSION TO THE GENERAL PARTNER OF THE PARTNERSHIP OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE GENERAL PARTNER TO THE EFFECT THAT ANY SUCH TRANSFER WILL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, APPLICABLE STATE SECURITIES LAWS OR ANY RULE OR REGULATION PROMULGATED THEREUNDER. THE SALE, PLEDGE OR OTHER TRANSFER OF THESE SECURITIES IS ALSO SUBJECT TO THE CONTRACTUAL RESTRICTIONS SET FORTH IN THE AGREEMENT OF LIMITED PARTNERSHIP. THE PARTNERSHIP WILL FURNISH TO ANY PARTNER WITHOUT CHARGE A COPY OF THE AGREEMENT OF LIMITED PARTNERSHIP UPON WRITTEN REQUEST TO THE PARTNERSHIP AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.**

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and the following:

**EXHIBIT A NAMES, ADDRESSES, PERCENTAGES AND CAPITAL CONTRIBUTIONS OF INITIAL PARTNERS, AND EXHIBIT A-1 FOR EACH LIMITED PARTNER**

**EXHIBIT B SUBSCRIPTION AGREEMENT**

**EXHIBIT C CONTRIBUTION AGREEMENT**

**EXHIBIT D ADDITIONAL DISCLOSURES**

**LIMITED PARTNERSHIP AGREEMENT  
OF  
MRSS PARTNERS, LTD.**

This LIMITED PARTNERSHIP AGREEMENT (this "*Agreement*," ) as it may be amended from time to time as provided below) is initially made and entered into as of May 01, 2019, by and among the Persons (as defined below) executing this Agreement below.

**ARTICLE I  
THE PARTNERSHIP GENERALLY**

**Section 1.1**      **Formation.** The Partners hereby associate as and form a limited partnership (the "*Partnership*") under and pursuant to Chapters 151, 153 and 154 and Title 1, to the extent applicable to limited partnerships, of the Texas Business Organizations Code and in accordance with and subject to the terms and conditions set forth in this Agreement, effective on the commencement of the Partnership as provided in Section 1.3. The rights, duties, status and liabilities of the Partners shall, except as hereinafter expressly stated to the contrary, be as provided for in the TBOC.

**Section 1.2**      **Name.** The name of the limited partnership shall be MRSS PARTNERS, LTD. The Partnership shall conduct business under that name or such other names complying with applicable law as the General Partner may determine from time to time.

**Section 1.3**      **Duration.** The Partnership shall commence on the first proper filing of a certificate of formation for the Partnership as provided in TBOC and shall continue until its business and affairs are wound up as provided in Article VIII. The General Partner shall file the Certificate of Formation for the Partnership promptly following the execution of this Agreement. The Partnership shall not conduct any business before the Certificate of Formation is filed.

**Section 1.4**      **Purpose.** The purposes of the Partnership shall be (a) to own, hold, sell, develop, lease, dispose of, exchange, convert, manage, exercise voting rights with respect to, and otherwise exercise all of the rights, duties and obligations of an owner of the Partnership Property; (b) to reinvest, in any manner and in any real or personal property which the General Partner deems appropriate, all proceeds derived from the Partnership Property; (c) to invest the Partnership Property in any manner deemed reasonable by the General Partner, in any real or personal property; and (d) to conduct any other business or make any investment which a limited partnership may make without violating the TBOC or any other applicable law.

**Section 1.5**      **Principal Place of Business.** The Partnership's principal place of business shall be at such place or places as the General Partner may determine from time to time. All records of the Partnership required by Section 153.551 of the TBOC will be maintained at the Principal Office.



**Section 1.6 Registered Office and Registered Agent.** The initial address of the registered office of the Partnership in the State of Texas shall be 12651 Briar Forest Drive, Suite 300, Houston, Texas 77077 and the name of the Partnership's initial registered agent at that address shall be GP MR, LLC. The General Partner may change the registered office and the registered agent of the Partnership from time to time. The General Partner may cause the Partnership to qualify to do business as a limited partnership (or a partnership or other entity in which the Limited Partners have limited liability) in any other jurisdiction and to designate any registered office or registered agent in any such jurisdiction.

**Section 1.7 Partnership Property.** All real and personal property including but not limited to real estate, investment limited partnerships, cash, stocks, bonds and similar investments, which is contributed to or acquired by the Partnership shall be deemed owned by the Partnership as an entity and held in its name. No Partner shall have any ownership interest in any such property.

**Section 1.8 Merger and Conversion.** The Partnership may merge with, or convert into, another entity only in accordance with a plan of merger or conversion approved by the Required Partners.

**Section 1.9 Definitions and Construction.**

(a) As used in this Agreement, the following terms have the following meanings:

"*Affiliate*" means, with respect to a Partner, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or under common control with such Partners. The term "control," as used in this definition means: (i) with respect to a Person that is an entity, the right to exercise, directly or indirectly, more than ten percent (10%) of the voting rights attributable to the shares or ownership interests of the controlled entity; (ii) with respect to a Person that is not an entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person through any means; and (iii) any officer, director, trustee, or general partner of such Person.

"*Agreement*" which is called from time to time the Agreement of Limited Partnership and Limited Partnership Agreement has the meaning specified in the introduction to this Agreement and includes all exhibits and addendums attached thereto.

"*Allocated Interest*" shall have the meaning set forth in Section 7.2(a).

"*Bankruptcy*" means, with respect to any Person, a Voluntary Bankruptcy or an Involuntary Bankruptcy, as hereinafter defined.

"*Book Value*" means the Capital Account attributable to each applicable Interest as of the last day of the calendar month preceding the calendar month in which the right or obligation under Article VII arises.

"*Business Day*" means a day of the year on which banks are not required or authorized to close in Houston, Texas.

"*Capital Account*" has the meaning specified in Section 3.2.

"*Cash Call Notice*" has the meaning specified in Section 3.1(b).

"*Claim*" has the meaning specified in Section 4.5.

"*Covered Person*" has the meaning specified in Section 4.5.

"*Cure Period*" shall have the meaning set forth in Section 7.4.

"*Deceased Partner*" shall have the meaning set forth in Section 7.1.

"*Deceased Spouse*" shall have the meaning set forth in Section 7.2(b).

"*Default*" has the meaning set forth in Section 7.4.

"*Defaulting Partner*" has the meaning set forth in Section 7.4.

"*Divorced Partner*" shall have the meaning set forth in Section 7.2(a).

"*Divorced Spouse*" shall have the meaning set forth in Section 7.2(a).

"*Event of Default*" has the meaning set forth in Section 7.4.

"*Fair Market Value*" means the price, on the relevant date, at which the applicable Partnership Interest would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts, including with respect to all Interests all facts relevant under sections 2031 and 2512 of the Code.

"*General Partner*" means any Person admitted to the Partnership as a general partner as provided in this Agreement but excludes any such Person that has ceased to be a general partner as provided in this Agreement or the TBOC.

"*Immediate Family*" means the ascendants and descendants of a Limited Partner, and any trust in which all of the beneficiaries are any one or more of them.

"*Initial Partner*" has the meaning specified in Section 2.1.

"*Interest*" means, with respect to any Partner at any time, that Partner's entire beneficial ownership interest in the Partnership at such time, including that Partner's Capital Account, voting rights, and right to share in profits, losses, cash distributions and all other benefits of the Partnership as specified in this Agreement, together with that Partner's obligations to comply with all of the terms of this Agreement.

"*Involuntary Bankruptcy*" means, with respect to any Person, without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other similar relief

under any present or future bankruptcy, insolvency or similar statute, law, or regulation, or the filing of any such petition against such Person which petition shall not be dismissed within 90 calendar days, or, without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver, or liquidator of such Person or of all or any substantial part of the property of such Person which order shall not be dismissed within 60 calendar days.

*"IRC"* or *"Code"* means the Internal Revenue Code of 1986, as amended.

*"Limited Partner"* means any Person admitted to the Partnership as a limited partner as provided in this Agreement, but excludes any such Person that has ceased to be a limited partner as provided in this Agreement or the TBOC.

*"Liquidating Agent"* has the meaning specified in Section 8.2(a).

*"Net Cash Flow"* means:

(A) Net proceeds received by the Partnership, after retirement of applicable mortgage debt or any portion thereof, payment of all current liabilities of the Partnership then due and owing, and the establishment of reasonable reserves by the General Partner, in the General Partner's sole and absolute discretion, upon the occurrence of any of the following events, provided such event does not cause or result in the dissolution of the Partnership: (1) any sale of all or a portion of the Partnership property, assets or business, (2) any insurance payments or damage recoveries paid to the Partnership in respect to the Partnership property, assets or business, (3) any condemnation proceeds paid to the Partnership for the taking of all or part of the Partnership Property, or (4) any proceeds derived from any refinancing of the mortgage loans or any expenses incurred in connection with the receipt or collection of such proceeds, not applied or set aside for the reduction of Partnership liabilities or the repair, restoration or improvement of the Partnership property, assets or business; or

(B) All cash funds of the Partnership generated by operations or otherwise (including Capital Contributions), less (1) current charges and expenses (including fees to be paid to the General Partner under this Agreement), (2) principal amortization and interest payments required on all mortgage loans and other Partnership liabilities, and (3) reasonable reserves for expenses and contingencies established by the General Partner in its sole and absolute discretion.

*"Noncontributing Partner"* has the meaning specified in Section 3.1(c).

*"Offered Interest"* has the meaning specified in Section 7.3(b).

*"Partner"* means any General Partner or Limited Partner.

*"Partnership"* has the meaning specified in Section 1.1.

*"Percentage"* for any Partner means the Percentage established for that Partner in accordance with this Agreement. The Percentage for each Initial Partner shall be as set out in Exhibit "A" to this Agreement. The Percentage for the General Partner

shall remain fixed, as set out in Exhibit "A." The Percentages of the Limited Partners are subject to adjustment in accordance with the provisions of the Agreement, based on the ratio of their respective capital contributions to the total amount of capital contributions from all Limited Partners.

"*Person*" means any individual, corporation, partnership, limited liability company, business trust or other entity, government or governmental agency or instrumentality.

"*Preferential Return*" No Preferential Return.

"*Purchased Interest*" shall have the meaning set forth in Section 7.7(1).

"*Remaining Partners*" or "*Remaining Partner*" shall have the meaning set forth in Section 7.5(a).

"*Required Partners*" means the General Partner plus 70% of the then outstanding ownership interest of the Limited Partners.

"*Required Sale Date*" shall have the meaning set forth in Section 7.7(n).

"*Required Sale Notice*" shall have the meaning set forth in Section 7.7(n).

"*RFR Period*" shall have the meaning set forth in Section 7.3(b).

"*Right of First Offer*" shall have the meaning set forth in Section 7.3(a).

"*Right of First Refusal*" shall have the meaning set forth in Section 7.3(b).

"*Sale Notice*" shall have the meaning set forth in Section 7.3(b).

"*Securities Act*" means the Securities Act of 1933, as amended.

"*Selling Partner*" shall have the meaning set forth in Section 7.3.

"*Shopped Interest*" shall have the meaning set forth in Section 7.3(a).

"*Shop Period*" shall have the meaning set forth in Section 7.3.

"*Shopping Notice*" shall have the meaning set forth in Section 7.3.

"*Surviving Partner*" shall have the meaning set forth in Section 7.2(b).

"*Surplus*" shall have the meaning set forth in Section 7.7(d).

"*TBOC*" means Chapters 151, 153 and 154 and Title 1, to the extent applicable to limited partnerships, of the Texas Business Organizations Code (hereinafter, as from time to time amended or any corresponding provisions of succeeding law).

"Third Party" shall have the meaning set forth in Section 7.7(n).

"Third Party Offer" shall have the meaning set forth in Section 7.3(b).

"Transfer" means, as a noun, any voluntary or involuntary, direct or indirect, transfer, sale, assignment, gift, pledge, hypothecation, encumbrance or other disposition and, as a verb, voluntarily or involuntarily, directly or indirectly, to transfer, sell, assign, give, pledge, hypothecate, encumber or otherwise dispose of an item. With respect to an Interest, the term Transfer shall refer to all or any part of the beneficial ownership of, the voting power associated with, or any other right, power, or interest in, the Interest.

"Unpurchased Interest" shall have the meaning set forth in Section 7.5(a).

"Unreturned Capital Contributions" means, as to each Partner, the excess of such Partner's cumulative Capital Contributions made pursuant to Section 3.1, less the aggregate distributions received or deemed received by such Partner pursuant to Section 3.5 (a); provided, however, that such amount shall not be reduced below zero.

"Vested Interest" shall have the meaning set forth in Section 7.2(b).

"Voluntary Bankruptcy" means, with respect to any Person, (a)(i) the inability of such Person generally to pay its debts as such debts become due, (ii) the failure of such Person generally to pay its debts as such debts become due, or (iii) an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors, (b) the filing of any petition or answer by such Person seeking to adjudicate it a bankrupt or insolvent, or seeking for itself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of such Person or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to, or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian, or other similar official for such Person or for any substantial part of its property, or (c) corporate action taken by such Person to authorize any of the actions set forth above.

"Wholly Owned Affiliate" means, with respect to any Person, (a) an Affiliate of such Person 100% of the capital stock (or its equivalent in the case of entities other than corporations) of which is owned beneficially (i) by such Person, directly or indirectly (through one or more Wholly Owned Affiliates), or (ii) by any Person who, directly or indirectly, owns beneficially 100% of the capital stock (or its equivalent in the case of entities other than corporations) of such Person, and (b) an Affiliate of such Person who, directly or indirectly, owns beneficially 100% of the capital stock (or its equivalent in the case of entities other than corporations) of such Person; *provided, however*, that, for purposes of determining the ownership of the capital stock of any Person, *de minimis* amounts of stock held by directors, nominees and similar persons pursuant to statutory or regulatory requirements shall not be taken into account.

(b) In this Agreement:

(i) Terms defined in the singular have the corresponding meaning in the plural and vice versa.

(ii) Reference to one gender includes the others.

(iii) The word "*include*" and its derivatives means "include without limitation."

(iv) References to Articles, Sections and Exhibits are to the specified Articles and Sections of and Exhibits to, this Agreement unless the context otherwise requires. Each Exhibit to this Agreement is made a part of this Agreement for all purposes.

(v) References to statutes or regulations are to those statutes or regulations as currently amended and to the corresponding provisions as they may be amended or superseded in the future.

## ARTICLE II PARTNERS AND INTERESTS

**Section 2.1** *Initial Partners.* Each of the Persons executing this Agreement as of the date of this Agreement as a general partner or a limited partner (each an "*Initial Partner*") is admitted to the Partnership as a general partner or a limited partner, as applicable, effective as of the commencement of the Partnership as provided in Section 1.3. The Percentage of each Initial Partner as of the commencement of the Partnership is set forth next to that Initial Partner's name on Exhibit A.

**Section 2.2** *Admission of Additional Limited Partners.* The General Partner may cause the Partnership to issue additional Interests and may admit additional Persons to the Partnership as limited partners on such terms as the General Partner shall determine, if but only if each such new Limited Partner agrees in writing to be bound by the provisions of this Agreement as a Limited Partner and notifies the other Partners of its address for notices under this Agreement.

## ARTICLE III FINANCE

### **Section 3.1** *Capital Contributions.*

(a) On the commencement of the Partnership, each Initial Partner shall make a contribution to the Partnership in the amount set forth next to its name on Exhibit A.

(b) Each Partner shall be required to contribute additional capital to the Partnership as may be required from time to time by the General Partner; provided, however, that the General Partner shall give the Partners fifteen (15) days' written notice of the demand for such additional contribution (the "*Cash Call Notice*"). The Cash Call Notice shall include a conspicuous statement advising the Partners that any failure or refusal to make such additional contribution shall result in the forfeiture of such Partner's Interest in the Partnership as set forth in

Section 3.1(c), below. Any additional contribution shall be made in proportion to the Partners' respective Percentages.

(c) In the event any Partner shall refuse or otherwise fail to make an additional contribution upon proper written notice from the General Partner (a "Noncontributing Partner"), the General Partner shall have the right to declare the Noncontributing Partner's interest in the Partnership forfeit by delivering a Forfeiture Notice to the Noncontributing Partner. At that time, the Noncontributing Partner shall be deemed to have withdrawn from the Partnership and said Partner, its heirs, successor and/or assigns shall have no further claim to any portion or interest in the Partnership, Partnership assets, or any portion of the Noncontributing Partner's Capital Account or any of its contributions. The forfeited Noncontributing Partner's Capital Account and/or contributions shall be considered liquidated damages for breaching its obligations herein. The General Partner shall offer the Noncontributing Partner's Interest in the Partnership to the remaining Partners, who may purchase same by paying the Partnership an amount equal to the additional contribution attributable to the Interest being purchased. Any Interest purchased will be added to the interest of the purchasing Partner. Should the remaining Partners not exercise their rights to purchase the Noncontributing Partner's Interest or purchase less than 100 Percent of the Noncontributing Partner's Interest in the Partnership, the General Partner may offer any remaining Partnership Interest to a new investor or investors who shall become Partner(s) upon payment of required contribution. Such new Partner shall be vested with all rights and subject to all the obligations of a Partner as set forth herein. Once the remaining Partners and/or new Partners have purchased 100 Percent of the Noncontributing Partner's Interest, the Percentages for each Partner shall be adjusted to reflect the portion of the Noncontributing Partner's Interest each purchased pursuant to this Section 3.1(c).

**Section 3.2 Capital Accounts.** Each Partner shall have a single capital account (its "Capital Account"), which shall be (a) increased by the amount of cash and the fair market value of any property (net of liabilities assumed by the Partnership and liabilities to which the property is subject) that Partner contributes to the Partnership, plus any additional contributions, and all items of income and gain of the Partnership allocated to that Partner, (b) decreased by the amount of distributions the Partnership makes to that Partner of cash or other property (net of liabilities assumed by that Partner and liabilities to which the property is subject), plus all items of loss and deduction of the Partnership allocated to that Partner. The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation § 1.704-1(b), and shall be interpreted and applied in a manner consistent with those Treasury Regulations.

**Section 3.3 Allocations.** All items of income, gain, loss, deduction and credit of the Partnership shall be allocated to the Partners for accounting and tax purposes pro rata according to their Percentages; provided, however, that any allocations pursuant to this Agreement shall comply with the qualified income offset requirements of Treasury Regulation § 1.704-1(b)(2)(ii)(d) and the nonrecourse deduction or minimum gain chargeback requirements of Treasury Regulation § 1.704-2.

**Section 3.4 Tax Matters.**

(a) The Partners intend that the Partnership be treated as a partnership for federal income tax purposes and any similar provisions of state or local law. This Agreement will be interpreted and construed consistent with such intent.

(b) The General Partner shall be the "tax matters partner" for purposes of IRC § 623 1(a)(7). The tax matters partner shall cause to be prepared and shall sign all returns of the Partnership, make any election which is available to the Partnership, and monitor any governmental tax authority in any audit that the authority may conduct of the Partnership's books and records or other documents. Each Partner shall take all actions required to cause the General Partner to be (and continue as) the tax matters partner and, if requested by the tax matters partner, to otherwise authorize and appoint the tax matters partner as that party with the sole authority to handle all tax matters of the Partnership. Each Partner agrees to execute, certify, deliver, file and record at appropriate public offices or deliver to the tax matters partner such documents as may be requested by the tax matters partner to facilitate the handling of any tax matter as the tax matters partner deems necessary.

(c) After the end of each fiscal year of the Partnership, the General Partner shall cause to be prepared and transmitted to each Partner, as promptly as possible, and in any event by the end of the third month following the close of the fiscal year, a federal income tax Form K-1 and any required similar state and local income tax form for each Partner.

**Section 3.5 Distribution of Net Cash Flow.** The General Partner, in its sole discretion, may cause the Partnership to distribute to the Partners cash available from the *Net Cash Flow*, which distributions shall be made to the Partners as follows:

(a) To the Limited Partners, in accordance with their respective Percentages, until they have received an amount equal to the sum of any unreturned Capital Contributions, and then

(b) To the Partners, as follows: seventy percent (70%) to the Limited Partners in accordance with their Percentages; and thirty percent (30%) to the General Partner.

**ARTICLE IV  
CONDUCT OF PARTNERSHIP AFFAIRS**

**Section 4.1 General Partner.**

(a) Subject to the other provisions of this Agreement, the General Partner shall have the right to, and shall be fully responsible for, the management and control over the business of the Partnership. The General Partner shall make all decisions affecting the business of the Partnership, except to the extent that this Agreement or nonwaivable provisions of the TBOC require the consent or approval of some or all other Partners. The General Partner shall have all rights, powers and authority generally conferred by the TBOC or as otherwise provided by law or necessary, advisable or consistent with accomplishing the purposes of the Partnership. The General Partner may make, enter into, deliver and perform all contracts, agreements, or undertakings, pay



all costs and expenses and perform all acts deemed appropriate by the General Partner to carry out the Partnership purposes, subject to the limitations of this Agreement and the TBOC.

(b) Without limiting the other provisions of Section 4.1, the General Partner has the power:

(i) to cause this Partnership to enter into other partnerships as a general or limited partner and to exercise the authority and to perform the duties required of this Partnership as a partner of any other partnership;

(ii) to acquire, hold, exchange, convert, sell, transfer, and dispose of property or any interest in it;

(iii) to protect and preserve the title to and the interest of the Partnership in all of its property and assets, real, personal and mixed;

(iv) to borrow money and incur any indebtedness on behalf of the Partnership and to encumber, mortgage, or pledge the Partnership assets or place title in the name of a nominee for purposes of obtaining financing, on such terms and conditions as the General Partner may determine in the General Partner's sole discretion;

(v) to employ from time to time, at the expense of the Partnership and upon such terms and provisions as the General Partner deems necessary and appropriate in its sole discretion, consultants, accountants and attorneys;

(vi) to pay all expenses incurred in the operation of the Partnership and all taxes, assessments, rents and other impositions applicable to the Partnership or any part thereof, and to collect and receive all money due the Partnership;

(vii) to sign and deliver deeds, notes, contracts, leases, and other instruments of every kind in the name and on behalf of the Partnership;

(viii) to make all filings with governmental authorities, including tax returns;

(ix) to issue Cash Call Notices and require additional capital contributions from the Limited Partners as deemed needed for the operation of the Partnership, its business and its property;

(x) to enforce the provisions, terms and conditions of this Agreement;

(xi) to assume any and all overall duties imposed on a general partner by the TBOC;

(xii) to open, maintain, and close bank accounts, brokerage accounts and checking accounts in the name of the Partnership, to designate and change

signatories on such accounts, and to draw checks and other orders for the payment of monies;

(xiii) to designate, from time to time, a depository of Partnership funds, and to draw upon the same for Partnership purposes;

(xiv) to enter into any transaction on behalf of the Partnership despite the fact that another party to the transaction may be (i) a trust of which a Partner is a trustee or beneficiary; (ii) an estate of which a Partner is a personal representative or beneficiary; (iii) a business controlled by one or more Partners or a business of which any Partner is also a director, officer or employee; (iv) any Affiliate, employee, stockholder, associate, manager, partner, or business associate; (v) any Partner, acting individually; or (vi) any relative of a Partner; provided the terms of the transaction are no less favorable than those the Partnership could obtain from unrelated third parties; and

(xv) The General Partner or his nominee shall hold legal title to the Partnership Property and shall have the sole authority to manage, deal with, negotiate and contract with respect to, and convey the Partnership Property on behalf of the Partnership.

(c) Notwithstanding any other provision of this Agreement to the contrary, the General Partner may do any of the following only with the prior written consent of the Required Partners (excluding for this purpose this General Partner):

(i) do any act in contravention of this Agreement;

(ii) do any act that would make it impossible to carry on the ordinary business of the Partnership, except as otherwise provided in this Agreement;

(iii) knowingly do any act that would subject any Limited Partner to liability as a general partner in any jurisdiction;

(iv) knowingly do any act that would cause the Partnership to be treated as an association taxable as, or otherwise taxed as, a corporation for federal income tax purposes unless at the time it already is so taxed;

(v) wind up the Partnership or authorize or agree to do so, other than in accordance with Article VII;

(vi) consolidate or merge the Partnership with, or convert the Partnership into, another entity, other than in accordance with Section 1.8; or

(vii) amend this Agreement, other than in accordance with Section 10.3.

(d) The General Partner may appoint such officers of the Partnership as it may deem appropriate and may remove any such officer at any time with or without cause. The General Partner may delegate to the Company's officers such powers and duties as it may deem appropriate and subsequently revoke or modify those powers and duties, and except to the extent that the General Partner determines otherwise, each officer will have the powers and duties normally associated with an officer having a similar title with a Texas corporation. The General Partner also may delegate authority to other Persons and revoke that delegation as it may deem appropriate include the power to delegate authority.

(e) Limited Partners owning in the aggregate at least 90% of the Percentages, by notice to the General Partner, may remove the General Partner if, but only if, in the notice the signing Limited Partners agree to continue the Partnership and appoint a successor General Partner that agrees in writing to be bound by the provisions of this Agreement as the General Partner and notifies the other Partners of its address for notices under this Agreement. The Person so appointed shall be admitted to the Partnership as a general partner effective on the removal and shall make such contribution to the Partnership and receive an Interest with such Percentage as the Limited Partners making the appointment may specify. As of the removal, the Interest of the removed General Partner automatically shall be canceled, and the Partnership shall pay the removed General Partner, on or before the first anniversary of the removal, an amount in cash equal to the positive balance (if any) in its Capital Account as of the removal in full liquidation and satisfaction of its Interest.

(f) If at any time there is more than one General Partner, the powers of the General Partner shall be exercised only by the first such Person to become General Partner except to the extent (if any) the Required Partners otherwise consent in writing in their sole discretion.

**Section 4.2 Limited Partners.** The Limited Partners shall have no authority to take part in the control, conduct or operation of the Partnership and shall have no right or authority to act for or bind the Partnership, including during the winding up of the Partnership. Other than as specifically provided in this Agreement or nonwaivable provisions of the TBOC, no Limited Partner shall have the right to vote upon any matter concerning the business and affairs of the Partnership.

**Section 4.3 Compensation of Partners and Affiliates.** No Partner shall receive any compensation for its services to the Partnership, except: (a) reimbursement to the General Partner for costs and expenses reasonably incurred by it on behalf of the Partnership; (b) compensation paid to Partners and Affiliates of Partners that are engaged on behalf of the Partnership to provide services or materials that are, in the reasonable judgment of the General Partner, necessary or desirable for the Partnership; or (c) as may be consented to in writing by the Required Partners in their sole discretion.

**Section 4.4 Good Faith Actions.** No Partner, or any of its officers, directors, shareholders, officers, constituent partners, managers, members, trustees, representatives, agents or employees, shall be liable to the Partnership or to any of the other Partners for any action taken (or any failure to act) by it in good faith on behalf of the Partnership and reasonably believed by it to be authorized or within the scope of its authority, unless that action (or failure to act) constitutes fraud, gross negligence, bad faith or willful misconduct, and then only to the extent otherwise provided by law.

**Section 4.5 Indemnification.** To the fullest extent permitted by law, the Partnership shall indemnify and hold harmless each Partner, and its respective officers, directors, shareholders, managers, members, employees, agents, subsidiaries and assigns (each, a "*Covered Person*"), from and against any and all losses, claims, demands, liabilities, expenses, judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative (each a "*Claim*"), in which the Covered Person may be involved, or threatened to be involved, as a party or otherwise, which relates to or arises out of the Partnership or its property, business or affairs; provided, however, that a Covered Person shall not be entitled to indemnification under this Section 4.5 with respect to (a) any Claim with respect to which the Covered Person has engaged in fraud, willful misconduct, bad faith or gross negligence or (b) any Claim initiated by a Covered Person unless that Claim (or part thereof) was brought to enforce that Covered Person's rights to indemnification under this Section 4.5. The Partnership shall pay in advance of the final disposition of any such Claim expenses incurred by a Covered Person in defending that Claim if, but only if, that Covered Person so requests and delivers to the Partnership an undertaking by or on behalf of that Covered Person to repay amounts so advanced if it ultimately is determined that the Covered Person is not entitled indemnification under this Section 4.5. The indemnification rights herein contained shall be cumulative of, and in addition to, any and all other rights, remedies, and resources to which the Covered Person, shall be entitled, whether pursuant to some other provisions of this Agreement, at law or in equity. A General Partner will not have liability for loss of income from or decrease in the value of the property which was retained in the form which such General Partner received it. In addition, the General Partner will not owe a fiduciary duty to the Partnership or to any Partner. The General Partner will owe a duty of loyalty and a duty of care to the Partnership. To the extent Texas law will permit, a General Partner who succeeds another will be responsible only for the property and records delivered by or otherwise acquired from the preceding General Partner, and may accept as correct the records of the preceding General Partner without duty to audit the records or to inquire further into the administration of the predecessor and without liability for a predecessor's errors or omissions.

**Section 4.6 Meetings of Partners.** The General Partner may call meetings of Partners at such times and places as the General Partner may determine in its sole discretion. The quorum requirement for any such meeting of the Partners shall be the attendance, in person or by proxy, of the General Partner and 10% of the then outstanding ownership interest of the Limited Partners.. Notice of any such meeting shall be given to all Partners not less than three (3) business days nor more than thirty (30) business days prior to the date of such meeting and shall state the nature of any business to be transacted thereof. Partners may vote in person or by proxy at such meeting. Whenever the vote or consent of Partners is permitted or required under this Agreement, such vote or consent may be given at a meeting of Partners. Except as otherwise expressly provided in this Agreement, the vote of a majority in interest of the Partners in attendance or by proxy shall control. For the purpose of determining the Partners entitled to vote on, or to vote at, any meeting of the Partners or any adjournment thereof, the General Partner or the Limited Partners requesting such meeting may fix, in advance, a date as the record date for any such determination. Such date shall not be more than thirty (30) business days nor less than ten (10) business days before any such meeting, but in no case to be earlier than the 60th day before the date the action requiring the

determination of Partners is originally to be taken. Each Limited Partner may authorize any Person or Persons to act for it by proxy on all matters in which a Limited Partner is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Limited Partner or its attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable by the Limited Partner executing it. Each meeting of the Partners shall be conducted by the General Partner or such other Person as the General Partner may appoint pursuant to such rules for the conduct of the meeting as the General Partner or such other Person deem appropriate.

Any action required or permitted to be taken at a meeting of the Partners (including meeting of the General Partners) may be taken without a meeting if written consent setting forth the action to be taken is signed by the Required Partners (or General Partners, if applicable) entitled to vote. This consent will have the same force as a unanimous vote of the Partners (or General Partners, if applicable). The original signed consents shall be kept with the Partnership records.

**Section 4.7**      **Limitations.** No Partner shall have the right or power to:

- (a) withdraw from the Partnership or withdraw any part of its contributions to the Partnership or its Capital Account except as a result of the winding up of the Partnership as provided in Article VII or as otherwise provided by nonwaivable provisions of law;
- (b) bring an action for partition of Partnership property;
- (c) cause the winding up of the Partnership, except as set forth in this Agreement;
- (d) demand or receive (i) interest on its contributions to the Partnership or its Capital Account or (ii) any property from the Partnership other than cash except as provided in Section 3.5; or
- (e) have priority over any other Partner either as to the return of contributions to the Partnership or as to items of Partnership income, gain, loss, deduction and credit, or distributions.

**Section 4.8**      **Other Transactions of Partners.**

(a) It is acknowledged that the Partners may in the future, from time to time, obtain additional opportunities to acquire property for investment, development or otherwise. Each Partner shall be free to acquire such interests in other property as such Partner may in such Partner's sole discretion deem desirable without having to offer interests in such property to the other Partners of this Partnership, and such action on the part of any Partner shall not be deemed a breach of any fiduciary relationship owed by that Partner to the other Partners or the Partnership. Participation in the Partnership shall not in any way act as a restraint on the other present or future business activities or investments of a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner, whether or not such activities are

competitive with the business of the Partnership. As a result of this Agreement, no Partner (or Affiliate of any Partner) shall be obligated or bound to offer or present offered to them or the Partnership or any of the other Partners any business opportunity presented to or offered to them or the Partnership as a prerequisite to the acquisition of or investment in such business opportunity by such Partner (or any Affiliate of a Partner) or any employee, officer, director, member, manager, or shareholder of such Partner for its account or the account of others. In furtherance thereof, the Partners hereby agree that any business activity in which a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner engages, conducts, or participates outside the Partnership shall be conclusively deemed not to be a business activity in competition with, or an opportunity of the Partnership. Any such business or activity of a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner may be undertaken with or without prior notice to or participation therein by the Partnership or the other Partners. Each Partner and the Partnership hereby waive any right or claim such Partner or the Partnership may have against a Partner (or any Affiliate of a Partner), or any employee, officer, director, member, manager, or shareholder of a Partner with respect to such business or activity or the income or profits thereof.

(b) The Partnership may contract with any of the Partners or their Affiliates for the purchase of goods and services for the benefit of the Partnership at any time provided that the compensation paid to such Person shall be commensurate with rates prevailing for such services at the time such services are performed, and any charges so incurred shall be deemed expenses of the Partnership. The General Partner shall have the authority to enter into any transaction on behalf of the Partnership despite the fact that another party to the transaction may be (a) a trust of which a Partner is a trustee or beneficiary; (b) an estate of which a Partner is a personal representative or beneficiary; (c) a business controlled by one or more Partners or a business of which any Partner is also a director, officer or employee; (d) any Affiliate, employee, stockholder, associate, manager, partner, or business associate; (e) any Partner, acting individually; or (f) any relative of a Partner; provided the terms of the transaction are no less favorable than those the Partnership could obtain from unrelated third parties.

## ARTICLE V BOOKS AND RECORDS

**Section 5.1** *Books and Records.* The General Partner shall keep complete and appropriate records and books of account of all transactions and other matters related to the Partnership's business. Except as otherwise expressly provided by this Agreement, such books and records shall be maintained in accordance with generally accepted accounting principles, consistently applied, and shall reflect the allocations provided in Section 3.3.

**Section 5.2** *Access by Limited Partners.* Subject to Section 5.3, all books and records of the Partnership shall be made available at the principal office of the Partnership and shall be open, upon three (3) Business Days written notice to the General Partner, to the reasonable inspection and examination of the Partners or their duly authorized representatives during normal business hours, and each Partner has the right to inspect, and copy during normal business hours, those records, and to obtain from the General Partner, promptly after becoming available, a copy of the Partnership's federal, state and local income tax or information returns for each year.

**Section 5.3 Confidential Information.** Notwithstanding the provisions of Section 5.2, the General Partner may withhold and keep confidential from any Partner trade secrets, personnel records and other information if the General Partner determines in good faith that making that information available to that Partner would not be in the best interest of the Partnership or the Partners generally in their capacities as such. Each Partner agrees that the restrictions in this Section 5.3 are just and reasonable.

## ARTICLE VI TRANSFERS OF INTERESTS AND INVESTMENT REPRESENTATIONS AND WARRANTIES OF ALL THE LIMITED PARTNERS

**Section 6.1 General Restrictions.** Except as otherwise permitted by this Agreement, no Limited Partner shall Transfer all or any portion of its Interest without the written consent of the General Partner whose consent may be withheld for any reason. Except as otherwise permitted by this Agreement, no General Partner shall Transfer all or any portion of its Interest without the written consent of the Required Partners (excluding such transferee).

**Section 6.2 Permitted Transfers by Limited Partners.** Subject to the conditions and restrictions set forth in Section 6.1 and 6.3, a Limited Partner may Transfer all or any portion of its Interest to (a) the Immediate Family of the Limited Partner for bona fide estate planning purposes, or (b) the Limited Partner's administrator, executor, guardian, legal representative, or trustee to whom such Interest is transferred involuntarily by operation of law subject in all cases to the provisions of Section 6.3. Subject to the provisions of Sections 6.1 and 6.3, a Limited Partner may Transfer all or any portion of its Interest to any other Partner.

**Section 6.3 Conditions to Permitted Transfers by Limited Partners.** In addition to the requirements of Section 6.1 and 6.2, a Transfer of an Interest by a Limited Partner shall not be permitted unless and until each of the following additional conditions are satisfied; provided, however, that any such conditions, either individually or collectively, may be waived in writing by the General Partner:

(a) Except in the case of a Transfer involuntarily by operation of law, the transferor and transferee shall execute and deliver to the Partnership such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Partnership to effect such Transfer, including without limitation the operative provisions of Article VI, and to confirm the agreement of the transferee to be bound by the provisions of this Agreement. In the case of a Transfer involuntarily by operation of law, the Transfer shall be confirmed by presentation to the Partnership of legal evidence of such Transfer, in form and substance satisfactory to counsel to the Partnership.

(b) Except in the case of a Transfer involuntarily by operation of law, the transferor shall furnish to the Partnership an opinion of counsel that the Transfer will not cause the Partnership to terminate for federal income tax purposes and the Transfer will not cause IRC Sections 168(g)(1)(B) and 168(h) (generally referred to as the "tax exempt entity leasing rules")

or other similar rules to apply to the Partnership, the Partnership Property, or the Partners. Such counsel and opinion shall be satisfactory to the other Partners, each of whom shall provide the counsel with such information in its possession that is relevant to the preparation of the opinion as the counsel might reasonably request.

(c) The transferor and transferee shall furnish the Partnership with the information required by the General Partner which shall include, but not be limited to, the transferee's taxpayer identification number, sufficient information to determine the transferee's initial tax basis in the Interest transferred, and any other information considered necessary to permit the Partnership to file all required federal, state and local tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Partnership shall not be required to make any distribution otherwise provided for in this Agreement with respect to any Transferred Interest until it has received such information.

(d) Except in the case of a Transfer of an Interest involuntarily by operation of law, either (i) such Interest shall be registered under the Securities Act, and any applicable state securities laws, or (ii) such Transfer will be exempt from all applicable registration requirements and will not violate any applicable laws regulating the Transfer of securities and, except in the case of a transfer to another Partner, the transferor shall provide an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the other Partners, to such effect.

(e) Except in the case of a Transfer of an Interest involuntarily by operation of law, such Transfer will not cause the Partnership to be deemed to be an "investment company" under the Investment Company Act of 1940, as amended, and the transferor shall provide an opinion of counsel, which opinion and counsel shall be satisfactory to the other Partners, to such effect and the Partners shall provide to such counsel any information available to such Partners relevant to such opinion.

(f) The transferee pays or reimburses the Partnership for all legal, administrative costs, and all other costs that the Partnership incurs in connection with the transfer.

**Section 6.4** *Permitted Transfers by General Partners.* Subject to the conditions and restrictions set forth in Section 6.5, a General Partner may at any time Transfer all or any portion of its Interest to (a) any Wholly Owned Affiliate of the General Partner, or (b) any Person to whom a Transfer of such Interest is approved by the Required Partners.

**Section 6.5** *Conditions to Permitted GP Transfers.* A Transfer by a General Partner of its Interest shall not be treated as a Permitted Transfer under Section 6.4 unless and until each of the requirements set forth in Section 6.3 is satisfied with respect to the Transfer of the Interest of the General Partner as if the General Partner were a Limited Partner attempting to Transfer its Interest.

**Section 6.6** *Prohibited Transfers.*

(a) Any purported Transfer of an Interest which is not permitted by Article VI of this Agreement shall be null and void and of no force or effect whatsoever; provided, however,



that, if the Partnership is required to recognize a Transfer that is not a Permitted Transfer (or if the Partnership, in its sole discretion, elects to recognize a Transfer that is not a Permitted Transfer), the Interest that is Transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the Transferred Interest, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Partnership) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of such Interest may have to the Partnership.

(b) In the case of a Transfer or attempted or threatened Transfer of an Interest that is not a Permitted Transfer, (a) the parties engaging, attempting to engage, or threatening to engage in such Transfer shall be liable to indemnify and hold harmless the Partnership and the other Partners from all cost, liability, and damage that any of such indemnified Partners may incur (including, without limitation, incremental tax liabilities, lawyers' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby, and (b) the Partnership and other Partners shall, to the extent permitted by applicable law, be entitled to (i) obtain injunctive relief, (ii) obtain a decree compelling specific performance, and/or (iii) obtain any other remedy legally allowed to them.

#### ***Section 6.7 Admission of Substituted Partners.***

(a) If a transferee of an Interest is admitted to the Partnership as a substituted Partner, the transferee shall have all of the rights, powers, benefits, obligations and duties provided by this Agreement with respect to such Interest in the hands of the transferor. Subject to the other provisions of this Article VI, a transferee of an Interest may be admitted to the Partnership as a substituted Partner only upon satisfaction of each of the following conditions:

(i) The General Partner (or the Required Partners, excluding such transferee, if the Interest is that of a General Partner) consent to such admission whose consent may be withheld for any reason.

(ii) The Interest with respect to which the transferee is being admitted was acquired by means of a Permitted Transfer;

(iii) The transferee becomes a party to this Agreement as a Partner and executes such documents and instruments as the General Partner (or, in the case of a Transfer of all Interests by the last remaining General Partner, the Limited Partners) may request (including, without limitation, amendments to the Certificate) as may be necessary or appropriate to confirm such transferee as a Partner in the Partnership and such transferee's agreement to be bound by the terms and conditions of this Agreement; and

(iv) The transferee pays or reimburses the Partnership for all legal, filing, publication, and administrative costs that the Partnership incurs in connection with the admission of the transferee as a substituted Partner with respect to the transferred Interest;

(b) In the event that the transferee of an Interest from a Partner is admitted as a substituted Partner under this Section 6.7, such transferee shall be deemed admitted to the Partnership as a substituted Partner immediately prior to the Transfer, and such transferee shall continue the business of the Partnership without dissolution.

**Section 6.8**      ***Rights of Unadmitted Transferees.***

(a) A Person who acquires an Interest by Transfer, but who is not admitted as a substituted Partner pursuant to Section 6.7, shall be entitled only to allocations and distributions with respect to such Interest in accordance with this Agreement, and shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership, shall not have the right to vote or attend Partnership meetings, and shall not have any of the rights of a General Partner or a Limited Partner under the TBOC or this Agreement.

(b) A transferee who acquires an Interest of a General Partner by Transfer, but who is not admitted as a substituted General Partner pursuant to Section 6.7, shall have no authority to act for or bind the Partnership, to inspect the Partnership's books, or otherwise to be treated as a General Partner of the Partnership. Following such a Transfer, the transferor shall not cease to be a General Partner of the Partnership and shall continue to be a General Partner until such time, if ever, as the transferee is admitted as a General Partner.

(c) In the event that a transferee who acquires an Interest of a Limited Partner by Transfer is not admitted as a substituted Limited Partner, the transferor shall not cease to be a Limited Partner of the Partnership and shall continue to be a Limited Partner until such time, if ever, as the transferee is admitted as a Limited Partner under this Agreement.

**Section 6.9**      ***Investment Representations and Warranties of the Limited Partners.***  
Each Limited Partner hereby represents and warrants with respect to such Limited Partner's execution of this Agreement (or by such Limited Partner's subscription and acceptance of this Agreement) and the interest in the Partnership to be acquired hereunder as follows:

(a) Each Limited Partner hereby represents, covenants and/or agrees with the Partnership for the benefit of the Partnership and all Partners, that (i) it is not currently making a market in the Interests and will not in the future make a market in the Interests, (ii) it will not Transfer its Interest on an established securities market, a secondary market (or the substantial equivalent thereof) within the meaning of IRC Section 7704(b) (and any Regulations, proposed Regulations, revenue rulings, or other official pronouncements of the Internal Revenue Service or Treasury Department that may be promulgated or published thereunder), and (iii) in the event IRC Section 7704(b) treats any or all arrangements which facilitate the selling of partnership interests and which are commonly referred to as "matching services" as being a secondary market or substantial equivalent thereof, it will not Transfer any Interest through a matching service that is not approved in advance by the Partnership.

(b) **EACH LIMITED PARTNER HEREBY REPRESENTS AND WARRANTS TO THE PARTNERSHIP AND THE GENERAL PARTNER THAT: (I) THE PARTNER UNDERSTANDS THAT SUCH PARTNER'S INTEREST HAS NOT, AND WILL NOT BE, REGISTERED UNDER THE SECURITIES ACT, OR UNDER ANY STATE SECURITIES LAWS, (II) THE PARTNER'S INTEREST IS BEING ACQUIRED FOR THE PARTNER'S OWN ACCOUNT FOR INVESTMENT AND NOT FOR RESALE OR DISTRIBUTION OF SUCH INTEREST, (III) THE PARTNER HAS THE KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO**

ENABLE HIM TO EVALUATE THE MERITS AND RISKS OF APPROVING THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING THE ACQUISITION OF THE PARTNER'S INTEREST, (IV) THE PARTNER IS ABLE TO BEAR THE ECONOMIC RISKS AND LACK OF LIQUIDITY INHERENT IN HOLDING THE PARTNER'S INTEREST, AND THE PARTNER IS FINANCIALLY ABLE TO COMPLY WITH HIS OBLIGATIONS HEREUNDER; AND SUCH PARTNER HAS ADEQUATE MEANS OF PROVIDING FOR CURRENT FINANCIAL NEEDS AND POSSIBLE PERSONAL CONTINGENCIES, EXCLUSIVE OF THE INVESTMENT OF SUCH PARTNER IN THE PARTNERSHIP, (V) THE PARTNER HAS BEEN, OR HAS HAD THE OPPORTUNITY TO BE, REPRESENTED BY LEGAL COUNSEL IN CONNECTION WITH THIS TRANSACTION, (VI) THE PARTNER AND THE PARTNER'S ADVISORS, INCLUDING LEGAL COUNSEL, HAVE BEEN GIVEN THE OPPORTUNITY TO ASK QUESTIONS OF, AND RECEIVE ANSWERS FROM, THE GENERAL PARTNER OF THE PARTNERSHIP CONCERNING THE TERMS OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE AFFAIRS AND THE BUSINESS AND FINANCIAL CONDITION OF THE PARTNERSHIP, AND THAT SUCH PARTNER HAS ASKED AND HAS ANSWERED TO THE SATISFACTION OF SUCH PARTNER ALL QUESTIONS WHICH SUCH PARTNER DESIRED TO ASK, (VII) THE PARTNER AND THE PARTNER'S ADVISORS HAVE HAD THE OPPORTUNITY TO OBTAIN ADDITIONAL INFORMATION AS DESIRED IN ORDER TO EVALUATE THE MERITS AND RISKS INHERENT IN HOLDING THE INTEREST, (VIII) THE PARTNER HAS MADE SUCH INQUIRIES DIRECTLY AND/OR THROUGH THE PARTNER'S ADVISORS IN MAKING A DECISION TO APPROVE THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREIN, AS THE PARTNER HAS DEEMED NECESSARY AND ADVISABLE, (IX) THE PARTNER UNDERSTANDS AND AGREES THAT THE PARTNER'S INTEREST MAY NOT BE DISPOSED OF EXCEPT IN ACCORDANCE WITH THE REQUIREMENTS OF THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS, (X) THE PARTNER IS AN "*ACCREDITED INVESTOR*" AS THAT TERM IS DEFINED IN RULE 501 OF REGULATION D PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION, (XI) THE PARTNER UNDERSTANDS AND AGREES THAT THE PARTNER'S INTEREST MAY NOT BE DISPOSED OF EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT, (XII) THE PARTNER FULLY UNDERSTANDS THE INHERENT RISK ASSOCIATED WITH ACQUIRING, OWNING AND HOLDING THE PARTNER'S INTEREST AND ACCEPTS THAT RISK IN ACQUIRING THE PARTNER'S INTEREST, (XIII) THE PARTNER RECOGNIZES THAT THE PARTNERSHIP WILL BE NEWLY ORGANIZED AND HAS NO HISTORY OF OPERATIONS OR EARNINGS AND IS OF A SPECULATIVE NATURE, (XIV) THE PARTNER UNDERSTANDS THAT NO STATE OR FEDERAL GOVERNMENTAL AUTHORITY HAS MADE ANY FINDING OR DETERMINATION RELATING TO THE FAIRNESS FOR PUBLIC INVESTMENT OF THE OWNERSHIP INTERESTS OFFERED BY THE PARTNERSHIP AND THAT NO STATE OR FEDERAL GOVERNMENT AUTHORITY HAS OR WILL RECOMMEND OR ENDORSE THESE SAID OWNERSHIP INTERESTS, (XV) THE PARTNER RECOGNIZES THAT PRIOR TO THIS OFFERING THERE HAS BEEN NO PUBLIC MARKET FOR THE OWNERSHIP INTERESTS OFFERED BY THE PARTNERSHIP, AND IT IS LIKELY

THAT AFTER THE OFFERING THERE WILL BE NO SUCH MARKET FOR THESE INTERESTS, (XVI) THE PARTNER UNDERSTANDS THAT THE INTERNAL REVENUE SERVICE (THE "SERVICE") MAY DISALLOW SOME OR ALL OF THE DEDUCTIONS TO BE CLAIMED BY THE PARTNERSHIP AND THAT THE SERVICE MAY ATTEMPT TO TREAT THE PARTNERSHIP AS AN ASSOCIATION TAXABLE AS A CORPORATION WHICH COULD HAVE AN ADVERSE ECONOMIC EFFECT ON THE PARTNERS BY (1) TAXATION AT THE PARTNERSHIP LEVEL RESULTING IN DOUBLE TAXATION AND NO FLOW THROUGH OF LOSS, AND (2) SUBSTANTIAL REDUCTION IN YIELD, IF ANY, ON THE PARTNERS' INVESTMENT IN THE PARTNERSHIP, AND (XVII) THE PARTNER IS AWARE THAT THE GENERAL PARTNER MAY BE OR MAY ENGAGE IN BUSINESS WHICH IS COMPETITIVE WITH THAT OF THE PARTNERSHIP, AND SUCH PARTNER AGREES TO SUCH ACTIVITIES EVEN THOUGH THERE ARE CONFLICTS OF INTEREST INHERENT THEREIN .

(c) Legends. Each Partner further hereby agrees that the following legend may be placed upon any counterpart of this Agreement, its Certificate, or any other document or instrument evidencing ownership of Interests:

"THE INTERESTS OF THE PARTNERSHIP HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN, NOR WILL BE, REGISTERED OR QUALIFIED UNDER FEDERAL OR STATE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED OR OTHERWISE TRANSFERRED AT ANY TIME, UNLESS AN EXEMPTION FROM REGISTRATION OR QUALIFICATION EXISTS. THE AVAILABILITY OF ANY EXEMPTION FROM REGISTRATION OR QUALIFICATION MUST BE ESTABLISHED BY AN OPINION OF COUNSEL FOR THE OWNER, WHICH OPINION MUST BE SATISFACTORY TO THE GENERAL PARTNER OF THE PARTNERSHIP, OR THE SUBMISSION TO THE GENERAL PARTNER OF THE PARTNERSHIP OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE GENERAL PARTNER TO THE EFFECT THAT ANY SUCH TRANSFER WILL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, APPLICABLE STATE SECURITIES LAWS OR ANY RULE OR REGULATION PROMULGATED THEREUNDER. THE SALE, PLEDGE OR OTHER TRANSFER OF THESE SECURITIES IS ALSO SUBJECT TO THE CONTRACTUAL RESTRICTIONS SET FORTH IN THE AGREEMENT OF LIMITED PARTNERSHIP. THE PARTNERSHIP WILL FURNISH TO ANY PARTNER WITHOUT CHARGE A COPY OF THE AGREEMENT OF LIMITED PARTNERSHIP UPON WRITTEN REQUEST TO THE

**PARTNERSHIP AT ITS PRINCIPAL PLACE OF BUSINESS  
OR REGISTERED OFFICE."**

**Section 6.10** *Treatment of Transferred Interests.* If any Interest is Transferred during any fiscal year of the Partnership in compliance with the provisions of this Article VI, profits, losses, each item thereof, and all other items attributable to the Transferred Interest for such fiscal year shall be divided and allocated between the transferor and the transferee by taking into account their varying Percentages during the fiscal year in accordance with IRC Section 706(d), using any conventions permitted by law and selected by the General Partners. All distributions occurring on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making such allocations and distributions, the Partnership shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer; provided, however, that, if the Partnership is given notice of a Transfer at least 10 Business Days prior to the Transfer, the Partnership shall recognize such Transfer as of the date of such Transfer; provided, further, that, if the Partnership does not receive a notice stating the date such Interest was Transferred and such other information as the General Partner may reasonably require within 30 calendar days after the end of the fiscal year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Partnership, was the owner of the Interest on the last day of such fiscal year. Neither the Partnership nor any General Partner shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 6.10, whether or not any General Partner or the Partnership has knowledge of any Transfer of ownership of any Interest.

**ARTICLE VII  
BUY-SELL PROVISIONS**

**Section 7.1** *Death of A Partner.* In the event a Limited Partner shall die ("*Deceased Partner*") and all such Deceased Partner's Interest does not pass to persons who are Partners at the time of the death of the Deceased Partner, the Partnership and the Limited Partners of the Partnership (other than the Deceased Partner, his heirs, beneficiaries, legatees or estate) shall have the right, in accordance with the provisions of Section 7.5, but shall not be required, to purchase the Interest then owned by such Deceased Partner which would otherwise pass to such persons.

**Section 7.2**

### ***Termination of Marital Relationship.***

(a) If, upon the final divorce of any Limited Partner ("*Divorced Partner*"), all or any portion of the Divorced Partner's Interest is allocated or set aside ("*Allocated Interest*") to his spouse ("*Divorced Spouse*"), such Divorced Partner, the Partnership and the other Limited Partners of the Partnership shall have the right, but shall not be required, to purchase such Allocated Interest pursuant to Section 7.2(c).

(b) If the spouse ("*Deceased Spouse*") of a Partner ("*Surviving Partner*") dies, and it is determined that all or any portion of the Surviving Partner's Interest would not vest in the Surviving Partner ("*Vested Interest*"), the Surviving Partner, the Partnership and the other Limited Partners shall have the right, but shall not be required, to purchase such Vested Interest pursuant to Section 7.2(c).

(c) Upon the divorce from his spouse and the determination that there is Allocated Interest, the Divorced Partner shall have, for thirty (30) days following the date of such determination, the right to purchase any or all shares of such Allocated Interest. Upon the death of his or her spouse and the determination that there is Vested Interest, the Surviving Partner shall have, for thirty (30) days following the date of such determination, the right to purchase any or all of such Vested Interest. If within such thirty (30) day period the Divorced Partner or Surviving Partner has not given written notice to the Divorced Spouse or the legal representatives of the Deceased Spouse whether or not such Divorced Partner or Surviving Partner will purchase all or part of the Allocated or Vested Interest, the Partnership and the Partners other than the Divorced Spouse or the legal representatives, heirs, legatees, beneficiaries or estate of the Deceased Spouse, shall have the right to purchase such remaining Allocated or Vested Interest in accordance with the provisions of Section 7.5 below. For purposes of such Section 7.5, the date on which the event which gives the Partnership and Partners of the Partnership, other than the Divorced Spouse or the legal representatives, heirs, legatees, beneficiaries or estate of the Deceased Spouse, the right to purchase such shares will be deemed to be the date the Divorced or Surviving Partner determines or is deemed to have determined to purchase less than all the Allocated or Vested Interest.

(d) All purchases of an Interest made pursuant to this Section 7.2 shall be made at a price and on terms as determined under Section 7.5 and 7.6 of this Agreement.

### ***Section 7.3 Transfers by Limited Partners.***

(a) If a Limited Partner (the "*Selling Partner*") desires to market (i.e., make an offer to sell or solicit an offer to purchase or otherwise acquire) all or any portion of the Selling Partner's Interest, the Selling Partner must first offer to sell or otherwise dispose of the portion of the Selling Partner's Interest that the Selling Partner desires to market to the Partnership by giving written notice to the Partnership (the "*Shopping Notice*"). The Partnership shall have the sole and exclusive right (the "*Right of First Offer*") for the period set forth in Section 7.5(a) following the date on which the Shopping Notice is given (the "*Shop Period*"), and in accordance with the procedures, terms and conditions set out in Section 7.5, to elect to purchase from the Selling Partner all or part of the Selling Partner's Interest in the Partnership that is covered by the Shopping Notice (the "*Shopped Interest*"). The election of the Partnership to not exercise the Right of First Offer to purchase the Shopped Interest shall not relieve the Selling Partner from the obligation to

comply with the provisions of Section 7.3(b), below, once a Third Party Offer (as defined in said Section 7.3(b)) for the Shopped Interest is received by the Selling Partner.

(b) If a Limited Partner (the "*Selling Partner*") receives a bona fide offer from a third party (the "*Third Party Offer*") for the purchase of all or part of the Selling Partner's Interest, the Selling Partner must first offer to sell the Selling Partner's Interest covered by the Third Party Offer to the Partnership by giving written notice to the Partnership (the "*Sale Notice*"), attaching a copy of the Third Party Offer thereto, and providing such additional information regarding the Third Party as the General Partner may reasonably require. The Partnership shall have the sole and exclusive right (the "*Right of First Refusal*") for the period set forth in Section 7.5(a) following the date on which the Sale Notice is given (the "*RFR Period*"), to elect to purchase from the Selling Partner all of the Selling Partner's Interest in the Partnership that is covered by the Sale Notice (the "*Offered Interest*") on the terms set out in the Third Party Offer. In the event the Partnership declines to exercise its Right of First Refusal to purchase the Offered Interest, and the General Partner has approved the sale of the Offered Interest to the Third Party who made the Third Party Offer under Section 6.1, then the Selling Partner may consummate the sale of the Offered Interest to the Third Party. In the event that the Partnership declines to exercise its Right of First Refusal to purchase the Offered Interest and the General Partner declines to approve the proposed sale to the Third Party, then the Selling Partner may either retain ownership of the Offered Interest or offer the Offered Interest to the other Limited Partners in accordance with the provisions set out in Section 7.5, but on the terms and conditions set out in the Third Party Offer.

**Section 7.4**      ***Events of Default.*** For purposes of this Agreement, an "*Event of Default*" or "*Default*" occurs with respect to any Limited Partner (the "*Defaulting Partner*") upon the first to occur of any of the following: (a) the Bankruptcy of the Limited Partner or (b) the material breach by the Limited Partner of any provision of this Agreement. Except as set forth in Section 3.1(b and c), upon the occurrence of an Event of Default, the defaulting Partner will have 30 calendar days from the date notice of such Event of Default is given by the Partnership or the General Partner to remedy or cure such Event of Default (the "*Cure Period*"). Except as set forth in Section 3.1(b and c), if such Default still exists after the Cure Period, then the Partnership and the non-defaulting Limited Partners shall have the option to purchase the entire Interest of the defaulting Limited Partner, and the defaulting Limited Partner shall have the obligation to sell such Interest upon an exercise of any such option, under terms and conditions provided under Section 7.5. Upon the occurrence of an Event of Default under Section 3.1(b and c), no additional notice and opportunity to cure shall be required, and the General Partner may immediately proceed with the remedy of forfeiture under Section 3.1(c).

**Section 7.5**      ***Procedures for Purchase of Interests.***

(a) Within thirty (30) calendar days after (i) the Partnership receives notice of the occurrence of an event which gives the Partnership the right to purchase any Interest pursuant to Sections 7.1 or 7.2 of this Agreement, (ii) a Shopping Notice pursuant to Section 7.3(a), (iii) a Sale Notice pursuant to Section 7.3(b), or (iv) the cure notice delivered pursuant to Section 7.4

(but only to the extent a Default is then outstanding and continuing), any director or officer of the General Partner shall call and cause to be held a special meeting of the Board of Managers of the General Partner to determine whether the Partnership desires to purchase any portion or all of such Interest. The General Partner shall have sixty (60) calendar days from the date such notice is received to exercise, by written notice to (a) the Selling Partner, (b) the personal representative of the Deceased Partner, (c) the personal representative of the Deceased Spouse, (d) the Divorced Spouse, or (e) the Defaulting Partner, as applicable, the right of the Partnership to purchase all or part of such Interest as provided in this Article VII. If no written notice is given, or the special meeting is not held within the prescribed time limits, the Partnership shall be deemed to have determined to purchase none of such Interest. Except as otherwise provided in Section 7.3(b) with respect to a Third Party Offer approved by the General Partner, if the Partnership determines or is deemed to have determined to purchase less than all of such Interest, the managers of the General Partner, or in their absence any authorized person, shall by written notice, offer any unpurchased portion of the Interest ("*Unpurchased Interest*") to all Partners of record of the Partnership other than the Selling Partner, the Deceased Partner, the Deceased Spouse, the Divorced Spouse, the Defaulting Partner, as applicable, or their respective heirs, legal representatives, or estates as the case may be ("*Remaining Partners*" or individually each a "*Remaining Partner*") on the same terms that were available to the Partnership.

(b) If there is an Unpurchased Interest, each Remaining Partner shall have the opportunity to purchase a pro rata portion of the Unpurchased Interest based on the ratio of the Interest owned by each Remaining Partner bears to the Interests owned by all Remaining Partners. Each of the Remaining Partners shall, within thirty (30) days after the receipt of the notice required under this Section, give written notice to the Partnership of the portion of Interest, if any, which such Remaining Partner desires to purchase.

(c) If there is any remaining Unpurchased Interest after the Remaining Partners have exercised their rights under Section 7.5(b), the Partnership immediately shall give written notice of such fact to all Remaining Partners. Each Remaining Partner who desires to purchase any portion of such remaining Unpurchased Interest may purchase a pro rata portion of the Unpurchased Interest based on the ratio which the Interest owned by each such Remaining Partner desiring to purchase additional Unpurchased Interest bears to the Interests owned by all Remaining Partners desiring to purchase additional Unpurchased Interests. Any Partner who exercises its rights to purchase a portion of the Interests under this Section 7.5(c) shall, within seven (7) days from the receipt of notice under this Section, give written notice to the Partnership of the portion of the Interest such Partner will purchase.

(d) If there is any portion remaining of the Unpurchased Interest after the Remaining Partners have exercised their rights under Section 7.5(c), the procedures in Section 7.5(c) shall be repeated until (i) no portion remains unpurchased, or (ii) no Remaining Partner desires to purchase any portion of such Interest.

(e) Any Limited Partner who does not purchase all of the Interest it is offered pursuant to Section 7.5(b) shall not be entitled to purchase such Interest pursuant to Section 7.5(c) and shall not be entitled to any notice of any future sales of such Interest pursuant to Section 7.5(c). Any Limited Partner who does not purchase all of the Interest it is offered pursuant to Section



7.5(c) shall not be entitled to purchase such Interest pursuant to Section 7.5(d) and shall not be entitled to any notice of any future sales of such Interest pursuant to Section 7.5(d).

(f) Any Remaining Partner who does not give a written notice prescribed by a Subsection of this Section 7.5 within the applicable time limits shall be deemed to have determined to purchase no Interest under such Subsection and shall henceforth not be considered a Remaining Partner with respect to such Interest pursuant to Section 7.5 hereof. If the Partnership fails to give in a timely manner a written notice to Partners required by this Section 7.5, such notice may be given by the Deceased Partner through his legal representative or the Selling Partner.

(g) For purposes of calculating the pro rata amount of the Interest under this Section 7.5, a Partner shall be deemed to own all of the Interest which such Partner has elected (up to the time of the circulation) to purchase pursuant to this Section 7.5 but does not yet own of record, in addition to any Interest that such Partner owns of record.

(h) Once all of the Interest of the Selling Partner, Defaulting Partner, Deceased Partner, Deceased Spouse, or Divorced Spouse has been purchased in accordance with the provisions of this Section 7.5, the Percentages of the Partners shall be adjusted to reflect the portion of such Interest each Partner acquired.

#### ***Section 7.6 Purchase Price.***

(a) Except as otherwise provided in Section 7.3(b) with respect to a Third Party Offer, for purposes of the rights and obligations provided under this Article VII, the purchase price shall be the Book Value of the Interest at the end of the calendar month immediately preceding the calendar month in which (i) the death of the a Limited Partner occurs (ii) the termination of a marital relation occurs resulting in a final divorce of any Limited Partner or (iii) there is an occurrence of an "event of default" that exists after the Cure Period, and the manner of payment shall be as provided in Section 7.7 of this Agreement.

(b) Each Limited Partner, and each spouse, hereby acknowledges and agrees that the Book Value for any Interest determined under this Article VII are not intended to necessarily reflect or approximate the Fair Market Value of the Partnership or any Interest that, for example, an appraiser or other person may determine is applicable if engaged to independently determine any such amounts. In particular, each Partner, and each spouse, hereby acknowledge and agree that the Book Value for any Interest may not provide a valuation for any goodwill or similar intangible items of the Partnership that reflects the amounts that an appraiser or other person engaged to independently determine any such amounts might attribute to such items.

#### ***Section 7.7 Terms of Purchase of Interest by the Partnership.***

(a) Except as otherwise provided in Section 7.3(b), any purchase price payable by the Partnership for its purchase of an Interest under this Article VII may be paid in cash, or, at the option of the Partnership, deferred over a period of not more than three (3) years in the manner set forth below.

(b) Any deferred portion of the purchase price shall be evidenced by a promissory note of the Partnership, the payment of which shall be secured at any time and from

time to time only by that portion of Interest which bears the same ratio to the total number of Interests purchased by the Partnership as that portion of the consideration remaining unpaid by the Partnership bears to the total consideration to be paid by the Partnership for all purchased Interests. Each such promissory note shall bear simple interest at the fixed rate of six and one-half percent (6.5%) per annum.

(c) Except during any period in which the installments of such note are tolled pursuant to Section 7.7(e), each such promissory note shall require annual installments of at least thirty-three and one third percent (33-1/3%) of the original principal amount of the note plus accrued, unpaid interest thereon. The first such installment shall be due and payable one (1) month subsequent to the closing of the Partnership's purchase hereunder, the subsequent installments shall be due and payable consecutively on the subsequent yearly anniversaries of such date. However, all or any part of the principal amount of such note may be prepaid without penalty. Interest shall cease to accrue on any amount so prepaid, and any principal prepayment shall be applied to the next maturing installment of principal due under such note.

(d) Notwithstanding the language above, the Partnership shall not issue any promissory note if counsel to the Partnership is of the view that the Partnership is not legally able to issue such note including, without limitation, that the Partnership has insufficient surplus as defined by applicable law ("*Surplus*"). If so advised by counsel to the Partnership and in order to comply with the requirement that the Interest be purchased only from Surplus or other legal requirements, the Partnership may, over a period of time and from time to time, issue a series of promissory notes, so long as the aggregate amount of annual installments payable under such series is no less than the amount which would have been payable under a single note issued in accordance with this Agreement.

(e) Any note issued by the Partnership pursuant to this Agreement shall provide that it is payable only out of Surplus or other funds legally available, and shall further provide that, in the event the Partnership shall not, at the time set for any payment, have adequate Surplus or other funds legally available from which to make such installment, or any portion thereof, the Partnership shall not make such installment, or such portion thereof, as the case may be, and the date for payment of such installment, or such portion thereof shall be tolled with interest until such Surplus or other legally available funds are available. The provisions of this Agreement regarding the Partnership's issuance and payment of promissory notes only from Surplus shall not be construed to impose on the Partnership any obligation to create or generate any surplus of any type whatsoever. However, each year the Partnership shall not declare any distribution or voluntarily cause any other charge to be made against earned surplus to fall below the level needed to pay any installment(s) on a promissory note(s) which is (are) payable during such year period or whose payment has been and is, at the time of such dividend or charge, tolled pursuant to this Section 7.7(e).

(f) Notwithstanding the provisions for tolling, should the payment of any installment on any note be tolled for a period of more than six (6) months, such note shall be in default, and the party holding such note may declare the principal and all interest accrued thereon to be forthwith due and payable and may foreclose on any portion of the Interest which shall be the security therefore.

(g) Any purchase price payable by a Remaining Partner for his purchase of Interest under this Agreement may be paid in cash, or, at the option of that Remaining Partner, deferred over a period of not more than three (3) years in the manner set forth below.

(h) Any deferred portion of the purchase price evidenced by a promissory note shall be secured at any time and from time to time only by that portion of the Interest which bears the same ratio to the total number of Interests purchased by such Remaining Partner as that portion of the consideration remaining unpaid by such Remaining Partner bears to the total consideration to be paid by such Remaining Partner for the portion of the Interest purchased by him. Each such promissory note shall bear simple interest at the rate of six and one-half percent (6.5%) per annum.

(i) Each such promissory note shall require quarterly installments of at least six and one-half percent (6.5%) of the original principal amount of the note, plus accrued, unpaid interest thereon. The first such installment shall be due and payable one (1) month subsequent to the exercise by the Remaining Partner making the note of his right to purchase hereunder, and subsequent installments shall be due and payable consecutively on such subsequent quarterly anniversary of such date. However, all or any part of the principal amount of such note may be prepaid without penalty. Interest shall cease to accrue on any amount so prepaid, and the interest due under such note shall be adjusted accordingly. Any prepayment of principal shall be applied to the next maturing installment of principal due under such note.

(j) Should any installment on any note become more than ninety (90) calendar days overdue, such note shall be in default, and the party holding such note may declare the principal and all interest accrued on such note to be forthwith due and payable and may foreclose on the security therefore.

(k) Unless the parties agree to the contrary, a closing of an acquisition under the terms and provisions of this Article VII shall be held in Houston, Texas no more than 60 calendar days after written notification is given to the selling party (or his or her personal representative) of the election by the purchasing parties to purchase all of part of the Interest under this Article VII; provided, however, that if a legal impediment exists that prevents the selling party (or his or her personal representative) from effectively transferring title to the Interests to the purchaser herein provided, then the closing date shall be extended until any such legal impediment is removed, so long as the selling party or other person responsible for having such impediment removed continues diligently and in good faith to remove it.

(l) If a purchasing party executes a promissory note pursuant to subparagraphs 7.7(b) or 7.7(h), the purchasing party shall execute a security agreement granting the selling party, or his or her personal representative, a security interest in the Interest purchased pursuant to Article VII (the "*Purchased Interest*") to secure payment of the promissory note (a "*Security Agreement*"). Each purchasing party shall be entitled to exercise the voting and other rights provided under the Act and this Agreement with respect to the Purchased Interest so long as such party has not by act or omission breached such Security Agreement. The Security Agreement shall further provide that a breach of any covenant, or a failure to pay any installment due on the note secured thereby, shall constitute a default, if not cured by the purchasing party within 30 days after his or her receipt of written notice thereof from the selling party or his or her personal representative. In the event of default, the selling party or his or her personal representative shall give notice of default to the

Partnership and Limited Partners (excluding the purchasing party(ies)), and the Partnership and Limited Partners (excluding the purchasing party(ies)) shall then have options to purchase the Interests held in escrow in full accordance with the procedures set forth in Section 7.5 of this Agreement, as applicable. Should the Partnership and Limited Partners (excluding the purchasing party(ies)) fail to thereby purchase all of the Purchased Interest, the selling party or his or her personal representative may then exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted by the State of Texas, including, but not limited to, the right to sell all Purchased Interest remaining in escrow at public or private sale or sales. The Security Agreement shall provide that all proceeds received in excess of sums remaining due under the note (plus reasonable costs) shall be paid over to the defaulting party. The Security Agreement shall provide for the giving of notice to the defaulting party and to all other Partners and the Partnership by certified mail, postage prepaid, at least 5 days before the time and place of any public sale of any Purchased Interest or of the time after which a private sale is to be made. Nothing herein shall limit the rights of the selling party or his or her personal representative to recover from the defaulting party all sums remaining due under the note. Each party, not already a Partner, who shall ultimately purchase the Purchased Interest pursuant to this subparagraph shall execute and become a party to this Agreement, shall hold such Interest subject to all of the terms and conditions provided in this Agreement, and shall not subsequently transfer such Interest except in accordance with the terms and conditions provided in this Agreement.

(m) Upon full payment of the purchase price and satisfaction of all provisions of this Agreement, the selling party or his or her personal representative shall release all security interests in the Interest sold pursuant to a closing under the terms and provisions of this Article VII, and the selling party shall deliver the documentation representing all of such Interests, properly endorsed, to the purchasing party.

(n) Sale of the Partnership.

(i) If the Partnership is presented with a bona fide proposal from one or more Persons who are not Affiliates of the Partnership or any of its Partners (the "Third Party") to engage in a transaction with the Partnership that would result in a Partnership Sale, all Limited Partners shall consent to (and if required by law, vote in favor of), and cause any and all of their respective designees to consent to and vote in favor of, and shall raise no objections against the Partnership Sale, and if the Partnership Sale is structured as (i) a merger or consolidation of the Partnership, or a sale of all or substantially all of the assets of the Partnership (and, each Limited Partner shall waive any dissenters rights, appraisal rights or similar rights in connection with such merger, consolidation or asset sale), or (ii) a sale or recapitalization of the Partnership, each Limited Partner shall agree to sell his or her Interest (or, in the case of a recapitalization or the sale or transfer of less than one hundred percent (100%) of the Percentages of the Partnership, its pro rata portion of such Interests) which are the subject of the Partnership Sale, on the terms and conditions set forth in the Required Sale Notice (as defined below). The Limited Partners shall take all necessary and desirable actions in connection with the consummation of the Partnership Sale, including causing their respective designees to approve the Partnership Sale (including acting in accordance with any required supermajority voting provisions) and the execution of such agreements and instruments and the taking of such other actions as may be reasonably necessary to (A) provide customary representations, warranties, indemnities,

and escrow arrangements relating to such Partnership Sale and (B) effectuate the allocation and distribution of the aggregate consideration upon the Partnership Sale as set forth in Section 7.7(n)(vi) below.

(ii) In the event this Section 7.7(n) is invoked, the General Partner shall deliver written notice (the "*Required Sale Notice*") to the Limited Partners; *provided, however*, that, no Limited Partner shall be obligated to participate in a Partnership Sale unless the following conditions are satisfied: (1) if any Limited Partner is given an option as to the form and amount of consideration to be received, all Limited Partners will be given the same option; (2) no Limited Partner shall be obligated to pay more than his, her or its pro rata share (based upon the amount of consideration received) of the costs of any Partnership Sale to the extent such costs are incurred for the benefit of all Limited Partners and are not otherwise paid by the Partnership or the acquiring party; and (3) in the event that the Limited Partners are required to make any indemnities for representations and warranties they may be required to make or that are made by the Partnership or its subsidiaries, then no Limited Partner shall be liable for more than his, her or its pro rata share (based upon the Percentage Interest of the Partnership held and not the amount of consideration received) of any liability and such liability shall not exceed the cash value of the total amount received by such Limited Partner as a result of his, her or its participation in such Partnership Sale.

(iii) The amount each Limited Partner will receive as a result of participation in the Partnership Sale shall equal the amount such Limited Partner would have received if one hundred percent (100%) of the Partnership's assets had been sold for the purchase price being paid in the Partnership Sale as set forth in the *Required Sale Notice*, and, immediately following the consummation of such hypothetical sale, the Partnership had been dissolved and its assets distributed in a liquidating distribution pursuant to Article VIII.

(iv) The *Required Sale Notice* shall set forth: (A) the date of such notice; (B) the name and address of the acquiring party; (C) the proposed amount and form of consideration and terms and conditions of payment offered by the acquiring party, together with written proposals or agreements, if any, with respect thereto; (D) the aggregate size of the Partnership Sale (i.e., sale of one hundred percent (100%) of the Partnership or recapitalization of a lesser percentage); (E) if the Partnership Sale is for less than one hundred percent (100%) of the Interests or assets of the Partnership, and if not otherwise set forth in clauses (A) through (D) of this Section 7.7(n)(iv), the extrapolated value of one hundred percent (100%) of the assets of the Partnership as derived from the purchase price proposed to be paid for such lesser percentage of Interests or assets; and (vi) the proposed date of the Partnership Sale (the "*Required Sale Date*"), which shall be not less than thirty (30) nor more than one hundred and twenty (120) calendar days after the date of such notice.

(v) All of the Limited Partners shall cooperate in good faith with Partnership and any potential purchaser in connection with consummating the Partnership Sale. Subject to the provisions of Section 7.7(n)(i), on the *Required Sale Date*, each Limited Partner shall execute and deliver to the acquiring party (to the extent necessary to effect the consummation of the Partnership Sale in accordance with this Section 7.7(n) written

instruments of transfer in form reasonably satisfactory to the Partnership, and the acquiring party, in the manner and at the address indicated in the Required Sale Notice and each Limited Partner shall be paid the amount to which he, she or it may be entitled as described in the Required Sale Notice. No Limited Partner shall be permitted to accept any management, investment banking or financial advisory fees as consideration (in whole or in part) for a Partnership Sale pursuant to this Section 7.7(n) unless such fees are shared pro rata among the Limited Partners based on the relative Interests sold by each such party.

(vi) If the Partnership enters into any negotiation or transaction (including a Partnership Sale) for which Rule 506 under the Securities Act (or any similar rule then in effect) may be available with respect to such negotiation or transaction (including a merger, consolidation or other reorganization), each Limited Partner who is not an accredited investor (as such term is defined in Rule 501 under the Securities Act) will, at the request of the Partnership appoint a purchaser representative (as such term is defined in Rule 501 under the Securities Act) reasonably acceptable to the Partnership.

## ARTICLE VIII WINDING UP

**Section 8.1** *Events Requiring Winding Up.* The Partnership shall be wound up only on the first to occur of any one or more of the following:

- (a) written consent of the Required Partners;
- (b) at such time as there is only one Partner remaining;
- (c) entry of a judicial order to wind up the Partnership;
- (d) an event of withdrawal of the General Partner under TBOC § 153.155(a), other than TBOC § 153.155(a)(3); provided, however, that if, but only if, on or before the 90th day following that event of withdrawal Limited Partners owning in the aggregate at least two-thirds of the Percentages owned by Limited Partners agree in writing to the continuation of the Partnership and to the appointment of a new General Partner that agrees in writing to be bound by the provisions of this Agreement as the General Partner and notifies the other Partners of its address for notices under this Agreement, then (i) the event requiring a winding up shall be revoked and the Partnership shall continue, (ii) effective with the event of withdrawal, the former General Partner shall cease to be a Partner, its Interest shall be converted to that of a Limited Partner, but the holder of that Interest shall not be admitted to the Partnership as a limited partner, and (iii) the Person so appointed as General Partner shall be admitted to the Partnership as a general partner effective as of the event of withdrawal and shall make such contribution to the Partnership and receive an Interest with such Percentage as the Limited Partners making the appointment may specify; and provided further that an event requiring winding up under TBOC may be revoked under TBOC 153.501(b) only as provided in Section 4.1(e) or this Section 8.1(d);  
or
- (e) within a reasonable period of time, as determined by the General Partner, after the sale, condemnation, foreclosure or other similar disposition of all of the

Partnership Property or upon the happening of any other event which makes it unlawful, impossible, or impractical to carry on the business of the Partnership.

**Section 8.2      *Winding Up Affairs and Distribution of Assets.***

(a) If an event requiring the winding up of the Partnership occurs, the General Partner or, if there is no General Partner, a Person designated for this purpose by written consent of Partners owning more than 50% of the outstanding Percentages owned by Partners (the General Partner or the Person so designated being called the "*Liquidating Agent*"), as soon as practicable shall wind up the affairs of the Partnership and sell and/or distribute the assets of the Partnership. The Liquidating Agent shall have all of the rights and powers with respect to the assets and liabilities of the Partnership in connection with the liquidation and termination of the Partnership that the General Partner would have with respect to the assets and liabilities of the Partnership during the term of the Partnership, and the Liquidating Agent is expressly authorized and empowered to execute any and all documents necessary or desirable to effectuate the liquidation and termination of the Partnership and the transfer of any assets. The Liquidating Agent shall apply and distribute the proceeds of the sale or liquidation of the assets and property of the Partnership in the following order of priority, unless otherwise required by nonwaivable provisions of applicable law:

(i) to pay (or to make provision for the payment of) all creditors of the Partnership (including Partners who are creditors of the Partnership), in the order of priority provided by law or otherwise, in satisfaction of all debts, liabilities or obligations of the Partnership due its creditors;

(ii) after the payment (or the provision for payment) of all debts, liabilities and obligations of the Partnership in accordance with clause (i) above, any balance remaining shall be distributed to the Partners having positive Capital Accounts in relative proportion to those Capital Accounts in accordance with Exhibit "B" attached hereto.

(b) The Liquidating Agent shall have sole discretion to determine whether to liquidate all or any portion of the assets and property of the Partnership and the consideration to be received for that property.

(c) Except as required by nonwaivable provisions of the TBOC, no Partner shall have any obligation at any time to contribute any funds to replenish any negative balance in its Capital Account.

**Section 8.3      *Termination.*** On compliance with the distribution plan described in Section 8.2(a), the Partnership shall cease to exist as a partnership, and the Liquidating Agent shall execute, acknowledge and cause to be filed a certificate of termination evidencing termination of the Partnership.

**ARTICLE IX  
DISPUTE RESOLUTION**

**Section 9.1**      *Dispute Resolution.* In the event of any dispute or disagreement by or among the Partners and/or the Partnership as to the interpretation of any provision of this Agreement (or the performance of obligations hereunder), including specifically, but not limited to, any dispute, disagreement or claim relating to, or arising from the formation of the Partnership and/or the execution of this Agreement, the Partners shall promptly meet in a good faith effort to resolve the dispute. Should such good faith effort fail to resolve the dispute, any Partner may seek such other remedies as may be available under this Agreement. All claims, disputes or controversies arising out of, in connection with or in relation to (i) this Agreement, (ii) the Partnership, or (iii) the business, property or assets of the Partnership, not otherwise resolved in accordance with this Section 9.1, and regardless of whether any such claim, dispute or controversy is based or claimed to be based in whole or in part on a claim by a Partner of a breach of this Agreement by another Partner, shall be decided by resort to arbitration utilizing a single arbitrator in accordance with the Commercial Rules of the American Arbitration Association. The arbitration shall be held in Houston, Texas. The decision of the arbitrator shall be final, binding and enforceable in any court of competent jurisdiction and the Parties agree that there shall be no appeal from the arbitrator's decision. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding. The right to arbitrate shall survive the termination of the Agreement. **BY EXECUTING THIS AGREEMENT (OR INSTRUMENT AGREEING TO BE BOUND BY THIS AGREEMENT AS TO ANY PARTNER SUBSEQUENTLY ADMITTED TO THE PARTNERSHIP) EACH PARTNER IS IRREVOCABLY AGREEING TO THE TERMS AND PROVISIONS OF THIS SECTION 9.1, INCLUDING, BUT NOT LIMITED TO REQUIREMENT THAT ANY AND ALL DISPUTES, DISAGREEMENTS, CONTROVERSIES AND CLAIMS BE SUBMITTED TO BINDING ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION.**

**Section 9.2**      *Waiver of Jury.* **BY EXECUTING THIS AGREEMENT (OR INSTRUMENT AGREEING TO BE BOUND BY THIS AGREEMENT AS TO ANY PARTNER SUBSEQUENTLY ADMITTED TO THE PARTNERSHIP) EACH PARTNER IS IRREVOCABLY AGREEING TO WAIVE THE RIGHT TO TRIAL BY JURY.**

**ARTICLE X**

**MISCELLANEOUS**

**Section 10.1**      *Notices.* Any notice required by this Agreement will be deemed to be given, delivered and effective (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient and (a) if to the Partnership, to the General Partner, and (b) if to a Limited Partner, at its address set forth on Exhibit A or, in the case of a Limited Partner subsequently admitted, in the instrument in which it agreed to be bound by this Agreement, or in either case at such other address as that Limited Partner may designate by written notice to the other Partners of such new address at least 30 days prior to the effective date of such new address. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile



transmission, e-mail, or other commercially reasonable means and with the exception of overnight courier delivery will be effective when actually received, provided that (a) any notice received on a Saturday, Sunday, or holiday will be deemed to have been received on the next day that is not a Saturday, Sunday, or holiday and (b) any notice received after 5:00 P.M. local time at the place of delivery on a day that is not a Saturday, Sunday, or holiday will be deemed to have been received on the next day that is not a Saturday, Sunday, or holiday. Communications sent by overnight courier shall be deemed effective on the first business day after the deposit date acknowledged by the overnight courier.

**Section 10.2 Entire Agreement.** This Agreement supersedes all prior agreements and understandings among the Partners with respect to the Partnership.

**Section 10.3 Amendments.** This Agreement may be modified only on the written consent of the Required Partners; provided, however, that an amendment adversely affecting a Partner's distributions, allocations, obligation to make contributions to the Partnership or rights to consent or approve is effective against that Partner only if that Partner agrees in writing.

**Section 10.4 Waivers.** A waiver of any breach of any of the terms of this Agreement shall be effective only if in writing and signed by the Partner against whom such waiver or breach is claimed. No waiver of any breach shall be deemed a waiver of any other subsequent breach.

**Section 10.5 Time of Essence.** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

**Section 10.6 Severability.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired, unless that provision was fundamental to the objectives of this Agreement.

**Section 10.7 Further Assurances.** Each Partner shall execute such deeds, assignments, certificates, endorsements, tax statements, tax returns and other documents as may be required by law to effectuate the provisions contained herein.

**Section 10.8 Construction.** Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Partner. The terms of this Agreement are intended to embody the economic relationship among the Partners and shall not be subject to modification by, or be conformed with, any actions by the Internal Revenue Service except as this Agreement may be explicitly so amended and except as may relate specifically to the filing of tax returns.

**Section 10.9 Governing Law.** This Agreement shall be governed by and construed in accordance with the law of Texas.

**Section 10.10 Power of Attorney.** Each Partner constitutes and appoints the General Partner as its true and lawful attorney with full power of substitution to make, execute, sign, acknowledge and file all certificates and instruments necessary to form or qualify, or continue the existence or qualification of the Partnership in any jurisdiction or before any governmental authority. This grant of a power of attorney is coupled with an interest and shall survive a Partner's disability, incompetence, death or assignment by such Partner of its Interest pursuant to this Agreement.

**Section 10.11 Successors and Assigns.** Except as expressly provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Partners and their respective successors and permitted assigns.

**Section 10.12 Counterparts.** This Agreement including all Exhibits may be executed in any number of counterparts or with counterpart signature pages, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

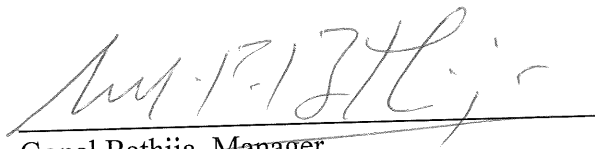
[SEPARATE SIGNATURE PAGES ATTACHED]

**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

The undersigned agrees to the terms and conditions of the Limited Partnership Agreement of MRSS PARTNERS, LTD.

**GENERAL PARTNER:**

GP MR, LLC

By:   
Gopal Bathija, Manager

Date: \_\_\_\_\_

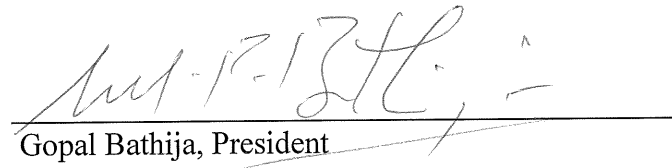
**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

The undersigned agrees to the terms and conditions of the Limited Partnership Agreement of MRSS PARTNERS, LTD., including the terms and conditions of the Subscription Agreement attached as Exhibit "B" to this Agreement.

**LIMITED PARTNER:**

Satya Properties, LTD

By: Satya, INC

  
\_\_\_\_\_  
Gopal Bathija, President

Date: \_\_\_\_\_

and signature pages continued for each limited partner

**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

The undersigned agrees to the terms and conditions of the Limited Partnership Agreement of MRSS PARTNERS, LTD., including the terms and conditions of the Subscription Agreement attached as Exhibit "B" to this Agreement.

**LIMITED PARTNER:**

Stolz Partners, LLC



Date: \_\_\_\_\_

and signature pages continued for each limited partner

**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

**EXHIBIT A**

**NAMES, ADDRESSES, PERCENTAGES AND CAPITAL  
CONTRIBUTIONS OF INITIAL PARTNERS**

<u>Name and Address</u>	<u>Investment Percentage</u>	<u>Profit Distribution Percentage</u>	<u>Amount of Capital Contributio</u>
<i>General Partner:</i>			
GP MR, LLC. 12651 BRIAR FOREST DR. SUITE 300 HOUSTON, TX 77077	0.000%	0.000%	\$ 000.00
<i>Limited Partner:</i>			
As per the attached Exhibit(s), Labeled Exhibit A-1 for each Limited Partner.	100.000%	1000.000% Aggregate for all Limited Partners	\$ 1,000 Aggregate for all Limited Partners
<b>TOTAL:</b>	100%	100%	\$1,000.00

**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

**EXHIBIT A-1**

**NAMES, ADDRESSES, PERCENTAGES AND CAPITAL  
CONTRIBUTIONS OF INITIAL LIMITED PARTNERS**

<b><u>Name and Address</u></b>	<b><u>Investment Percentage</u></b>	<b><u>Profit Distribution Percentage</u></b>	<b><u>Amount of Capital Contribution</u></b>
<b><i>Limited Partner:</i></b>			
Satya Properties, LTD 12651 Briar forest Dr. Suite# 300 Houston TX 77077	50.000%	50.00%	\$500.00

**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

**EXHIBIT A-1**

**NAMES, ADDRESSES, PERCENTAGES AND CAPITAL  
CONTRIBUTIONS OF INITIAL LIMITED PARTNERS**

<b><u>Name and Address</u></b>	<b><u>Investment Percentage</u></b>	<b><u>Profit Distribution Percentage</u></b>	<b><u>Amount of Capital Contribution</u></b>
<b><i>Limited Partner:</i></b>			
Stolz Partners, LLC 12645 Birmingham HWY Alpharetta GA 30004	50.000%	50.00%	\$500.00



**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

**EXHIBIT "B"  
SUBSCRIPTION AGREEMENT**

I, individually or as the authorized representative of a Limited Partner, have subscribed to an interest in MRSS PARTNERS, LTD. (the "Partnership") formed by written contract to which this acceptance is appended, and:

(1) Acknowledge that I have received and reviewed the Limited Partnership Agreement (the "Agreement") of the Partnership with the opportunity and encouragement to seek the advice and consultation of independent legal and tax counsel;

(2) Acknowledge and confirm my subscription to a Limited Partnership Interest in the Partnership equal to the value of the Limited Partnership Interest given to me;

(3) Acknowledge that this subscription agreement and my ownership interest in the Partnership will be subject to the restrictions against transfer stated in the Agreement and the following restriction:

**THE INTERESTS OF THE PARTNERSHIP HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN, NOR WILL BE, REGISTERED OR QUALIFIED UNDER FEDERAL OR STATE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED OR OTHERWISE TRANSFERRED AT ANY TIME, UNLESS AN EXEMPTION FROM REGISTRATION OR QUALIFICATION EXISTS. THE AVAILABILITY OF ANY EXEMPTION FROM REGISTRATION OR QUALIFICATION MUST BE ESTABLISHED BY AN OPINION OF COUNSEL FOR THE OWNER, WHICH OPINION MUST BE SATISFACTORY TO THE GENERAL PARTNER OF THE PARTNERSHIP, OR THE SUBMISSION TO THE GENERAL PARTNER OF THE PARTNERSHIP OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE GENERAL PARTNER TO THE EFFECT THAT ANY SUCH TRANSFER WILL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, APPLICABLE STATE SECURITIES LAWS OR ANY RULE OR REGULATION PROMULGATED THEREUNDER. THE SALE, PLEDGE OR OTHER TRANSFER OF THESE SECURITIES IS ALSO SUBJECT TO THE CONTRACTUAL RESTRICTIONS SET FORTH IN THE AGREEMENT OF LIMITED PARTNERSHIP. THE PARTNERSHIP WILL FURNISH TO ANY PARTNER WITHOUT CHARGE A COPY OF THE AGREEMENT OF LIMITED PARTNERSHIP UPON WRITTEN REQUEST TO THE PARTNERSHIP AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.**

(4) Agree to be bound by the terms and conditions of the Agreement and Certificate of Formation of Limited Partnership.

(5) Acknowledge that the following disclosures have been made prior to my execution of this subscription agreement:

**THE PERCENTAGES OF OWNERSHIP OF THE PARTNERSHIP HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE PERCENTAGES OF OWNERSHIP ARE OFFERED AND SOLD IN RELIANCE ON EXCEPTIONS FROM THE REGISTRATION REQUIREMENT OF THE SECURITIES ACT AND SUCH LAWS, AND PARTICULARLY REGULATION D. THE PARTNERSHIP WILL NOT BE SUBJECT TO THE REPORTING REQUIREMENTS OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND WILL NOT FILE REPORTS, PROXY STATEMENTS AND OTHER INFORMATION WITH THE SECURITIES AND EXCHANGE COMMISSION.**

Dated and effective: May 01, 2019

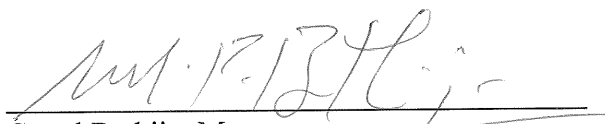


[Signature of Limited Partner]

On behalf of the Partnership, the undersigned consents to the subscription and acceptance of the Limited Partnership interest by the Limited Partner named above.

**GENERAL PARTNER:**

GP MR, LLC

By:   
Gopal Bathija, Manager

and signature pages continued for each limited partner

**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

**EXHIBIT "B"  
SUBSCRIPTION AGREEMENT**

I, individually or as the authorized representative of a Limited Partner, have subscribed to an interest in MRSS PARTNERS, LTD. (the "Partnership") formed by written contract to which this acceptance is appended, and:

(1) Acknowledge that I have received and reviewed the Limited Partnership Agreement (the "Agreement") of the Partnership with the opportunity and encouragement to seek the advice and consultation of independent legal and tax counsel;

(2) Acknowledge and confirm my subscription to a Limited Partnership Interest in the Partnership equal to the value of the Limited Partnership Interest given to me;

(3) Acknowledge that this subscription agreement and my ownership interest in the Partnership will be subject to the restrictions against transfer stated in the Agreement and the following restriction:

**THE INTERESTS OF THE PARTNERSHIP HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN, NOR WILL BE, REGISTERED OR QUALIFIED UNDER FEDERAL OR STATE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED OR OTHERWISE TRANSFERRED AT ANY TIME, UNLESS AN EXEMPTION FROM REGISTRATION OR QUALIFICATION EXISTS. THE AVAILABILITY OF ANY EXEMPTION FROM REGISTRATION OR QUALIFICATION MUST BE ESTABLISHED BY AN OPINION OF COUNSEL FOR THE OWNER, WHICH OPINION MUST BE SATISFACTORY TO THE GENERAL PARTNER OF THE PARTNERSHIP, OR THE SUBMISSION TO THE GENERAL PARTNER OF THE PARTNERSHIP OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE GENERAL PARTNER TO THE EFFECT THAT ANY SUCH TRANSFER WILL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, APPLICABLE STATE SECURITIES LAWS OR ANY RULE OR REGULATION PROMULGATED THEREUNDER. THE SALE, PLEDGE OR OTHER TRANSFER OF THESE SECURITIES IS ALSO SUBJECT TO THE CONTRACTUAL RESTRICTIONS SET FORTH IN THE AGREEMENT OF LIMITED PARTNERSHIP. THE PARTNERSHIP WILL FURNISH TO ANY PARTNER WITHOUT CHARGE A COPY OF THE AGREEMENT OF LIMITED PARTNERSHIP UPON WRITTEN REQUEST TO THE PARTNERSHIP AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.**

(4) Agree to be bound by the terms and conditions of the Agreement and Certificate of Formation of Limited Partnership.

(5) Acknowledge that the following disclosures have been made prior to my execution of this subscription agreement:

**THE PERCENTAGES OF OWNERSHIP OF THE PARTNERSHIP HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE PERCENTAGES OF OWNERSHIP ARE OFFERED AND SOLD IN RELIANCE ON EXCEPTIONS FROM THE REGISTRATION REQUIREMENT OF THE SECURITIES ACT AND SUCH LAWS, AND PARTICULARLY REGULATION D. THE PARTNERSHIP WILL NOT BE SUBJECT TO THE REPORTING REQUIREMENTS OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND WILL NOT FILE REPORTS, PROXY STATEMENTS AND OTHER INFORMATION WITH THE SECURITIES AND EXCHANGE COMMISSION.**

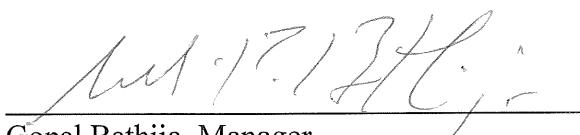
Dated and effective: May 01, 2019

  
\_\_\_\_\_  
[Signature of Limited Partner]

On behalf of the Partnership, the undersigned consents to the subscription and acceptance of the Limited Partnership interest by the Limited Partner named above.

**GENERAL PARTNER:**

GP MR, LLC

By:   
\_\_\_\_\_  
Gopal Bathija, Manager

and signature pages continued for each limited partner

**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

**EXHIBIT "C"  
CONTRIBUTION AGREEMENT**

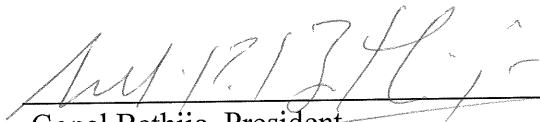
This Contribution Agreement is made effective as of May 01, 2019, by GP MR, LLC ("General Partner") and every person listed on each Exhibit A-1 ("Limited Partners), and MRSS PARTNERS, LTD. (the "Partnership").

The General Partner and the Limited Partners have contributed or agreed to contribute to the Partnership, effective as of the first date above written, in consideration for general and limited partnership interests in the Partnership aggregating 100% of the total partnership interests of the Partnership, the properties listed and described on Exhibit A and each Exhibit A-1 attached to the Limited Partnership Agreement. The respective partnership interests of the General Partner and the Limited Partners shall be in the ratio of the present fair market values of their contributed properties, with the interests of each Partner as reflected on Exhibit A and each Exhibit A-1 attached to the Limited Partnership Agreement.

**ASSIGNORS:**

Satya Properties, LTD

By: Satya, Inc

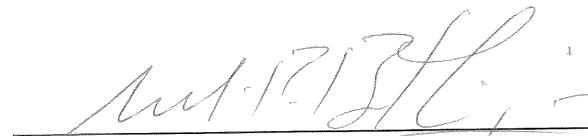
  
\_\_\_\_\_  
Gopal Bathija, President

**ASSIGNEE:**

MRSS PARTNERS, LTD.

By its Managing General Partner:

GP MR, LLC

By:   
\_\_\_\_\_  
Gopal Bathija, Manager

**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

**EXHIBIT "C"  
CONTRIBUTION AGREEMENT**

This Contribution Agreement is made effective as of May 01, 2019, by GP MR, LLC ("General Partner") and every person listed on each Exhibit A-1 ("Limited Partners), and MRSS PARTNERS, LTD. (the "Partnership").

The General Partner and the Limited Partners have contributed or agreed to contribute to the Partnership, effective as of the first date above written, in consideration for general and limited partnership interests in the Partnership aggregating 100% of the total partnership interests of the Partnership, the properties listed and described on Exhibit A and each Exhibit A-1 attached to the Limited Partnership Agreement. The respective partnership interests of the General Partner and the Limited Partners shall be in the ratio of the present fair market values of their contributed properties, with the interests of each Partner as reflected on Exhibit A and each Exhibit A-1 attached to the Limited Partnership Agreement.

**ASSIGNORS:**

Stolz Partners, LLC

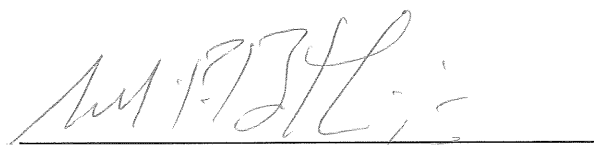
  
Irwin William Stolz III

**ASSIGNEE:**

MRSS PARTNERS, LTD.

By its Managing General Partner:

GP MR, LLC

By:   
Gopal Bathija, Manager

**LIMITED PARTNERSHIP AGREEMENT OF  
MRSS PARTNERS, LTD.**

**EXHIBIT D**

**Additional Disclosures**

Ameen Ali, CPA, will serve as the accountant for the Partnership. Ameen Ali is also a member of GP MR, LLC, which is a member of the General Partner.

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 7, 2021

Mr. Jonathan White  
L Squared Engineering  
3307 W Davis St., Suite 100  
Conroe, Tx 77304-1844

VIA-EMAIL

RE: MRSS Partners LTD.  
WRPERM 13762  
CN605883040, RN111249991  
Application No. 13762 for a Water Use Permit  
Texas Water Code § 11.143, Requiring Limited Mailed Notice  
East Fork Crystal Creek, San Jacinto River Basin  
Montgomery County

Dear Mr. White:

This acknowledges receipt on April 26, 2021 of the referenced application and partial fees in the amount of \$163.40 (Receipt No. M117126, copy attached).

Additional information and fees are required before the application can be declared administratively complete.

1. Confirm that the application requests authorization to maintain a 43-acre-foot reservoir with groundwater from the Chicot aquifer.
2. Confirm the discharge rate for the discharged groundwater. The application indicates that groundwater will be discharged into the reservoir at a discharge rate of 1736 cubic feet per second (cfs).
2. Provide a recorded copy of the deed(s) for the property where the proposed dam and reservoir are located. The deed should include the legal description of the land (metes and bounds). Please note that the application must be in the name(s) of all landowners as shown on the deeds; otherwise, proper consent of the application must be provided pursuant to Title 30 Texas Administrative Code (TAC) § 295.12.
3. Provide documentation evidencing signature authority for Will Stolz, on behalf of MRSS Partners, LTD., pursuant to Title 30 Texas Administrative Code (TAC) § 295.14(3) which states:

If the application is by a partnership, the application shall be signed by one of the general partners. If the applicant is a partnership doing business under an assumed name, it shall attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.



Mr. Jonathan White  
WRPERM 13762  
May XX, 2021  
Page 2 of 2

4. Before the application can be declared administratively complete, remit fees in the amount of \$153.38 as described below. Please make checks payable to the TCEQ or Texas Commission on Environmental Quality

Filing Fee (amendment)	\$	100.00
Recording Fee	\$	25.00
Notice Fee (\$.94 x 12 Water Right Holders)	\$	11.28
Storage Fee (\$1.00 x 43)	\$	43.00
<u>TOTAL FEES</u>	\$	<u>316.78</u>
<u>FEES RECEIVED</u>	\$	<u>163.40</u>
BALANCE DUE	\$	153.38

Please provide the requested information and fees by July 7, 2021 or the application may be returned pursuant to Title 30 TAC § 281.18.

If you have any questions concerning this matter, please contact me via email at [sam.sewell@tceq.texas.gov](mailto:sam.sewell@tceq.texas.gov) or by telephone at (512) 239-4008.

Sincerely,

*Samuel Sewell*

Sam Sewell, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

Attachment



28-APR-21 03:30 PM

TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u> <u>Account#</u> <u>Account Name</u>	<u>Ref#1</u> <u>Ref#2</u> <u>Paid In By</u>	<u>Check Number</u> <u>Card Auth.</u> <u>User Data</u>	<u>CC Type</u> <u>Tran Code</u> <u>Rec Code</u>	<u>Slip Key</u> <u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
WTR USE PERMITS	WUP	M117126	20736		BS00086824	28-APR-21	-\$163.40
	WUP		042821	N	D1803212		
<i>SSEWELL</i>	WATER USE PERMITS	L SQUARED	VHERNAND	CK			
		ENGINEERING					
						Total (Fee Code):	-\$163.40
						Grand Total:	-\$1,163.40

RECEIVED

APR 30 2021

Water Availability Division

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## TCEQ WATER RIGHTS PERMITTING APPLICATION

### ADMINISTRATIVE INFORMATION CHECKLIST

Complete and submit this checklist for each application. See Instructions Page. 5.

APPLICANT(S): MRSS Partners, LTD

Indicate whether the following items are included in your application by writing either Y (for yes) or N (for no) next to each item (all items are not required for every application).

**RECEIVED**

APR 26 2021

Water Availability Division

Y/N

- Administrative Information Report**
- Additional Co-Applicant Information
- Additional Co-Applicant Signature Pages
- Written Evidence of Signature Authority

**Technical Information Report**

- USGS Map (or equivalent)
- Map Showing Project Details
- Original Photographs
- Water Availability Analysis

**Worksheet 1.0**

- Recorded Deeds for Irrigated Land
- Consent For Irrigation Land

**Worksheet 1.1**

- Addendum to Worksheet 1.1

**Worksheet 1.2**

- Addendum to Worksheet 1.2

**Worksheet 2.0**

- Additional W.S 2.0 for Each Reservoir
- Dam Safety Documents
- Notice(s) to Governing Bodies
- Recorded Deeds for Inundated Land
- Consent For Inundation Land

Y/N

- Worksheet 3.0**
- Additional W.S 3.0 for each Point
- Recorded Deeds for Diversion Points
- Consent For Diversion Access
- Worksheet 4.0**
- TPDES Permit(s)
- WWTP Discharge Data
- 24-hour Pump Test
- Groundwater Well Permit
- Signed Water Supply Contract
- Worksheet 4.1**
- Worksheet 5.0**
- Addendum to Worksheet 5.0
- Worksheet 6.0**
- Water Conservation Plan(s)
- Drought Contingency Plan(s)
- Documentation of Adoption
- Worksheet 7.0**
- Accounting Plan
- Worksheet 8.0**
- Fees

**For Commission Use Only:**

Proposed/Current Water Right Number: \_\_\_\_\_

Basin: \_\_\_\_\_ Watermaster area Y/N: \_\_\_\_\_

# ADMINISTRATIVE INFORMATION REPORT

The following information is required for all new applications and amendments.

**\*\*\*Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Staff to discuss Applicant's needs prior to submitting an application. Call the Water Rights Permitting Team to schedule a meeting at (512) 239-4600.**

## 1. TYPE OF APPLICATION (Instructions, Page. 6)

Indicate, by marking X, next to the following authorizations you are seeking.

- New Appropriation of State Water
- Amendment to a Water Right \*
- Bed and Banks

**RECEIVED**  
APR 26 2021  
Water Availability Division

***\*If you are seeking an amendment to an existing water rights authorization, you must be the owner of record of the authorization. If the name of the Applicant in Section 2, does not match the name of the current owner(s) of record for the permit or certificate or if any of the co-owners is not included as an applicant in this amendment request, your application could be returned. If you or a co-applicant are a new owner, but ownership is not reflected in the records of the TCEQ, submit a change of ownership request (Form TCEQ-10204) prior to submitting the application for an amendment. See Instructions page. 6. Please note that an amendment application may be returned, and the Applicant may resubmit once the change of ownership is complete.***

Please summarize the authorizations or amendments you are seeking in the space below or attach a narrative description entitled "Summary of Request."

Seeking request to utilize an existing lake as a detention pond for a proposed commercial

and residential development

**2. APPLICANT INFORMATION (Instructions, Page. 6 )**

**a. Applicant**

Indicate the number of Applicants/Co-Applicants 1  
(Include a copy of this section for each Co-Applicant, if any)

What is the Full Legal Name of the individual or entity (applicant) applying for this permit?

MRSS Partners, LTD

*(If the Applicant is an entity, the legal name must be spelled exactly as filed with the Texas Secretary of State, County, or in the legal documents forming the entity.)*

If the applicant is currently a customer with the TCEQ, what is the Customer Number (CN)?

You may search for your CN on the TCEQ website at

<http://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=cust.CustSearch>

CN : \_\_\_\_\_ ( leave blank if you do not yet have a CN).

What is the name and title of the person or persons signing the application? Unless an application is signed by an individual applicant, the person or persons must submit written evidence that they meet the signatory requirements in 30 TAC § 295.14.

First/Last Name: Will Stolz

Title: Partner

Have you provided written evidence meeting the signatory requirements in 30 TAC § 295.14, as an attachment to this application?

What is the applicant's mailing address as recognized by the US Postal Service (USPS)? You may verify the address on the USPS website at

<https://tools.usps.com/go/ZipLookupAction!input.action>.

Name: MRSS Partners, LTD

Mailing Address: 12651 Briar Forest Dr

City: Houston

State: TX

ZIP Code: 77077

Indicate an X next to the type of Applicant:

- |   |   |
|---|---|
| <input type="checkbox"/> Individual             | <input type="checkbox"/> Sole Proprietorship-D.B.A. |
| <input checked="" type="checkbox"/> Partnership | <input type="checkbox"/> Corporation                |
| <input type="checkbox"/> Trust                  | <input type="checkbox"/> Estate                     |
| <input type="checkbox"/> Federal Government     | <input type="checkbox"/> State Government           |
| <input type="checkbox"/> County Government      | <input type="checkbox"/> City Government            |
| <input type="checkbox"/> Other Government       | <input type="checkbox"/> Other _____                |

For Corporations or Limited Partnerships, provide:

State Franchise Tax ID Number: 32070305787 SOS Charter (filing) Number: 0803282690

### 3. APPLICATION CONTACT INFORMATION (Instructions, Page. 9)

If the TCEQ needs additional information during the review of the application, who should be contacted? Applicant may submit their own contact information if Applicant wishes to be the point of contact.

First and Last Name: Jonathan White

Title: Professional Engineer

Organization Name: L Squared Engineering

Mailing Address: 3307 W Davis St, STE 100

City: Conroe


State: TX

ZIP Code: 77304

Phone No.: 936-647-0420

Extension:

Fax No.: 936-647-2366

E-mail Address: 

#### 4. WATER RIGHT CONSOLIDATED CONTACT INFORMATION (Instructions, Page. 9)

This section applies only if there are multiple Owners of the same authorization. Unless otherwise requested, Co-Owners will each receive future correspondence from the Commission regarding this water right (after a permit has been issued), such as notices and water use reports. Multiple copies will be sent to the same address if Co-Owners share the same address. Complete this section if there will be multiple owners and all owners agree to let one owner receive correspondence from the Commission. Leave this section blank if you would like all future notices to be sent to the address of each of the applicants listed in section 2 above.

I/We authorize all future notices be received on my/our behalf at the following:

First and Last Name:

Title:

Organization Name:

Mailing Address:

City:

State:

ZIP Code:

Phone No.:

Extension:

Fax No.:

E-mail Address:

## 5. MISCELLANEOUS INFORMATION (Instructions, Page. 9)

a. The application will not be processed unless all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol by all applicants/co-applicants. If you need assistance determining whether you owe delinquent penalties or fees, please call the Water Rights Permitting Team at (512) 239-4600, prior to submitting your application.

1. Does Applicant or Co-Applicant owe any fees to the TCEQ? **Yes / No NO**

If **yes**, provide the following information:

Account number:

Amount past due:

2. Does Applicant or Co-Applicant owe any penalties to the TCEQ? **Yes / No NO**

If **yes**, please provide the following information:

Enforcement order number:

Amount past due:

b. If the Applicant is a taxable entity (corporation or limited partnership), the Applicant must be in good standing with the Comptroller or the right of the entity to transact business in the State may be forfeited. See Texas Tax Code, Subchapter F. Applicant's may check their status with the Comptroller at <https://mycpa.cpa.state.tx.us/coa/>

Is the Applicant or Co-Applicant in good standing with the Comptroller? **Yes / No Yes**

c. The commission will not grant an application for a water right unless the applicant has submitted all Texas Water Development Board (TWDB) surveys of groundwater and surface water use - if required. See TWC §16.012(m) and 30 TAC § 297.41(a)(5).

Applicant has submitted all required TWDB surveys of groundwater and surface water? **Yes / No No**



**6. SIGNATURE PAGE (Instructions, Page. 11)**

Applicant:

I, Will Stolz, Partner

(Typed or printed name)

(Title)

certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that I am authorized under Title 30 Texas Administrative Code §295.14 to sign and submit this document and I have submitted written evidence of my signature authority.

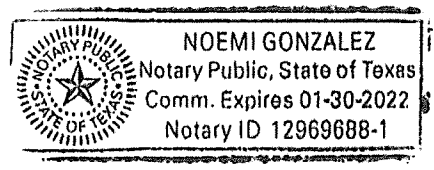
Signature: [Handwritten Signature] Date: 03-23-2021  
(Use blue ink)

Subscribed and Sworn to before me by the said  
on this 19<sup>th</sup> day of April, 2021.  
My commission expires on the 30<sup>th</sup> day of January, 2022.

[Handwritten Signature]  
Notary Public

[SEAL]

County, Texas



***If the Application includes Co-Applicants, each Applicant and Co-Applicant must submit an original, separate signature page***

# TECHNICAL INFORMATION REPORT

## WATER RIGHTS PERMITTING

This Report is required for applications for new or amended water rights. Based on the Applicant's responses below, Applicant are directed to submit additional Worksheets (provided herein). A completed Administrative Information Report is also required for each application.

**Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Permitting Staff to discuss Applicant's needs and to confirm information necessary for an application prior to submitting such application. Please call Water Availability Division at (512) 239-4600 to schedule a meeting.** Applicant attended a pre-application meeting with TCEQ Staff for this Application? Y / N<sup>Y</sup> (If yes, date :03/23/2021).

### 1. New or Additional Appropriations of State Water. Texas Water Code (TWC) § 11.121 (Instructions, Page. 12)

**State Water is:** *The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state. TWC § 11.021.*

- a. Applicant requests a new appropriation (diversion or impoundment) of State Water? Y / N<sup>Y</sup>
- b. Applicant requests an amendment to an existing water right requesting an increase in the appropriation of State Water or an increase of the overall or maximum combined diversion rate? Y / N<sup>N</sup> (If yes, indicate the Certificate or Permit number: \_\_\_\_\_)

*If Applicant answered yes to (a) or (b) above, does Applicant also wish to be considered for a term permit pursuant to TWC § 11.1381? Y / N<sup>N</sup>*

- c. Applicant requests to extend an existing Term authorization or to make the right permanent? Y / N<sup>N</sup> (If yes, indicate the Term Certificate or Permit number: \_\_\_\_\_)

*If Applicant answered yes to (a), (b) or (c), the following worksheets and documents are required:*

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir requested in the application)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point and/or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach requested in the application)
- **Worksheet 5.0 - Environmental Information Worksheet**
- **Worksheet 6.0 - Water Conservation Information Worksheet**
- **Worksheet 7.0 - Accounting Plan Information Worksheet**
- **Worksheet 8.0 - Calculation of Fees**
- **Fees calculated on Worksheet 8.0 - see instructions Page. 34.**
- **Maps - See instructions Page. 15.**
- **Photographs - See instructions Page. 30.**

*Additionally, if Applicant wishes to submit an alternate source of water for the project/authorization, see Section 3, Page 3 for Bed and Banks Authorizations (Alternate sources may include groundwater, imported water, contract water or other sources).*

**Additional Documents and Worksheets may be required (see within).**

**2. Amendments to Water Rights. TWC § 11.122 (Instructions, Page. 12)**

This section should be completed if Applicant owns an existing water right and Applicant requests to amend the water right. *If Applicant is not currently the Owner of Record in the TCEQ Records, Applicant must submit a Change of Ownership Application (TCEQ-10204) prior to submitting the amendment Application or provide consent from the current owner to make the requested amendment. If the application does not contain consent from the current owner to make the requested amendment, TCEQ will not begin processing the amendment application until the Change of Ownership has been completed and will consider the Received Date for the application to be the date the Change of Ownership is completed. See instructions page. 6.*

Water Right (Certificate or Permit) number you are requesting to amend: \_\_\_\_\_

Applicant requests to sever and combine existing water rights from one or more Permits or Certificates into another Permit or Certificate? Y / N \_\_\_\_\_ (if yes, complete chart below):

List of water rights to sever	Combine into this ONE water right

a. Applicant requests an amendment to an existing water right to increase the amount of the appropriation of State Water (diversion and/or impoundment)? Y / N \_\_\_\_\_

*If yes, application is a new appropriation for the increased amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.*

b. Applicant requests to amend existing Term authorization to extend the term or make the water right permanent (remove conditions restricting water right to a term of years)? Y / N \_\_\_\_\_

*If yes, application is a new appropriation for the entire amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.*

c. Applicant requests an amendment to change the purpose or place of use or to add an additional purpose or place of use to an existing Permit or Certificate? Y / N \_\_\_\_\_

*If yes, submit:*

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 1.2 - Notice: "Marshall Criteria"**

d. Applicant requests to change: diversion point(s); or reach(es); or diversion rate? Y / N \_\_\_\_\_  
*If yes, submit:*

- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach)
- **Worksheet 5.0 - Environmental Information** (Required for any new diversion points that are not already authorized in a water right)

e. Applicant requests amendment to add or modify an impoundment, reservoir, or dam? Y / N \_\_\_\_\_

*If yes, submit: Worksheet 2.0 - Impoundment/Dam Information Worksheet* (submit one worksheet for each impoundment or reservoir)

- f. Other - Applicant requests to change any provision of an authorization not mentioned above? Y / N \_\_\_\_\_ *If yes, call the Water Availability Division at (512) 239-4600 to discuss.*

**Additionally, all amendments require:**

- **Worksheet 8.0 - Calculation of Fees; and Fees calculated - see instructions Page. 34**
- **Maps - See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

N/A **3. Bed and Banks. TWC § 11.042 (Instructions, Page 13)**

- a. Pursuant to contract, Applicant requests authorization to convey, stored or conserved water to the place of use or diversion point of purchaser(s) using the bed and banks of a watercourse? TWC § 11.042(a). Y/N \_\_\_\_\_

*If yes, submit a signed copy of the Water Supply Contract pursuant to 30 TAC §§ 295.101 and 297.101. Further, if the underlying Permit or Authorization upon which the Contract is based does not authorize Purchaser's requested Quantity, Purpose or Place of Use, or Purchaser's diversion point(s), then either:*

1. *Purchaser must submit the worksheets required under Section 1 above with the Contract Water identified as an alternate source; or*
2. *Seller must amend its underlying water right under Section 2.*

- b. Applicant requests to convey water imported into the state from a source located wholly outside the state using the bed and banks of a watercourse? TWC § 11.042(a-1). Y / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps and fees from the list below.*

- c. Applicant requests to convey Applicant's own return flows derived from privately owned groundwater using the bed and banks of a watercourse? TWC § 11.042(b). Y / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.*

- d. Applicant requests to convey Applicant's own return flows derived from surface water using the bed and banks of a watercourse? TWC § 11.042(c). Y / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 6.0, 7.0, 8.0, Maps, and fees from the list below.*

***\*Please note, if Applicant requests the reuse of return flows belonging to others, the Applicant will need to submit the worksheets and documents under Section 1 above, as the application will be treated as a new appropriation subject to termination upon direct or indirect reuse by the return flow discharger/owner.***

- e. Applicant requests to convey water from any other source, other than (a)-(d) above, using the bed and banks of a watercourse? TWC § 11.042(c). Y / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.*

*Worksheets and information:*

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir owned by the applicant through which water will be conveyed or diverted)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for the downstream limit of each diversion reach for the proposed conveyances)
- **Worksheet 4.0 - Discharge Information Worksheet** (for each discharge point)

- **Worksheet 5.0 – Environmental Information Worksheet**
- **Worksheet 6.0 – Water Conservation Information Worksheet**
- **Worksheet 7.0 – Accounting Plan Information Worksheet**
- **Worksheet 8.0 – Calculation of Fees; and Fees calculated – see instructions Page. 34**
- **Maps – See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

#### **4. General Information, Response Required for all Water Right Applications (Instructions, Page 15)**

- a. Provide information describing how this application addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement (*not required for applications to use groundwater-based return flows*). Include citations or page numbers for the State and Regional Water Plans, if applicable. Provide the information in the space below or submit a supplemental sheet entitled “Addendum Regarding the State and Regional Water Plans”:

This application is within the Regional Planning Group H. The proposed project will convert an existing agriculturally exempt lake into an amenity for a future commercial and residential development. The project will not divert any surface water and will only impound surface water due to the berm. To ensure the water level will remain consistent, an irrigation well will be used to provide an alternate water source to assist with evaporation and/or droughts. This project will not conflict with the State and Regional Water Plan.

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- b. Did the Applicant perform its own Water Availability Analysis? Y / N

*If the Applicant performed its own Water Availability Analysis, provide electronic copies of any modeling files and reports.*

- c. Does the application include required Maps? (Instructions Page. 15) Y / N

# WORKSHEET 1.0

## Quantity, Purpose and Place of Use

### 1. New Authorizations (Instructions, Page. 16)

Submit the following information regarding quantity, purpose and place of use for requests for new or additional appropriations of State Water or Bed and Banks authorizations:

Quantity (acre-feet) <i>(Include losses for Bed and Banks)</i>	State Water Source (River Basin) or Alternate Source <i>*each alternate source (and new appropriation based on return flows of others) also requires completion of Worksheet 4.0</i>	Purpose(s) of Use	Place(s) of Use <i>*requests to move state water out of basin also require completion of Worksheet 1.1 Interbasin Transfer</i>
19.2	Groundwater	Recreation	Montgomery county

19.23 Total amount of water (in acre-feet) to be used annually (*include losses for Bed and Banks applications*)

If the Purpose of Use is Agricultural/Irrigation for any amount of water, provide:

a. Location Information Regarding the Lands to be Irrigated

i) Applicant proposes to irrigate a total of \_\_\_\_\_ acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of \_\_\_\_\_ acres in \_\_\_\_\_ County, TX.

ii) Location of land to be irrigated: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_.

***A copy of the deed(s) or other acceptable instrument describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds.***

***If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.***

***Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.***

**2. Amendments - Purpose or Place of Use (Instructions, Page. 12)**

a. Complete this section for each requested amendment changing, adding, or removing Purpose(s) or Place(s) of Use, complete the following:

Quantity (acre-feet)	Existing Purpose(s) of Use	Proposed Purpose(s) of Use*	Existing Place(s) of Use	Proposed Place(s) of Use**

*\*If the request is to add additional purpose(s) of use, include the existing and new purposes of use under "Proposed Purpose(s) of Use."*

*\*\*If the request is to add additional place(s) of use, include the existing and new places of use under "Proposed Place(s) of Use."*

*Changes to the purpose of use in the Rio Grande Basin may require conversion. 30 TAC § 303.43.*

b. For any request which adds Agricultural purpose of use or changes the place of use for Agricultural rights, provide the following location information regarding the lands to be irrigated:

i. Applicant proposes to irrigate a total of \_\_\_\_\_ acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of \_\_\_\_\_ acres in \_\_\_\_\_ County, TX.

ii. Location of land to be irrigated: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_.

***A copy of the deed(s) describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds. If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other legal right for Applicant to use the land described.***

***Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.***

c. Submit Worksheet 1.1, Interbasin Transfers, for any request to change the place of use which moves State Water to another river basin.

d. See Worksheet 1.2, Marshall Criteria, and submit if required.

e. See Worksheet 6.0, Water Conservation/Drought Contingency, and submit if required.

# WORKSHEET 1.1

## N/A INTERBASIN TRANSFERS, TWC § 11.085

Submit this worksheet for an application for a new or amended water right which requests to transfer State Water from its river basin of origin to use in a different river basin. A river basin is defined and designated by the Texas Water Development Board by rule pursuant to TWC § 16.051.

Applicant requests to transfer State Water to another river basin within the State? Y / N\_\_\_\_\_

### 1. Interbasin Transfer Request (Instructions, Page. 20)

- a. Provide the Basin of Origin. \_\_\_\_\_
- b. Provide the quantity of water to be transferred (acre-feet). \_\_\_\_\_
- c. Provide the Basin(s) and count(y/ies) where use will occur in the space below:  
\_\_\_\_\_

### 2. Exemptions (Instructions, Page. 20), TWC § 11.085(v)

Certain interbasin transfers are exempt from further requirements. Answer the following:

- a. The proposed transfer, which in combination with any existing transfers, totals less than 3,000 acre-feet of water per annum from the same water right. Y/N\_\_
- b. The proposed transfer is from a basin to an adjoining coastal basin? Y/N\_\_
- c. The proposed transfer from the part of the geographic area of a county or municipality, or the part of the retail service area of a retail public utility as defined by Section 13.002, that is within the basin of origin for use in that part of the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin? Y/N\_\_
- d. The proposed transfer is for water that is imported from a source located wholly outside the boundaries of Texas, except water that is imported from a source located in the United Mexican States? Y/N\_\_

### 3. Interbasin Transfer Requirements (Instructions, Page. 20)

For each Interbasin Transfer request that is not exempt under any of the exemptions listed above Section 2, provide the following information in a supplemental attachment titled "Addendum to Worksheet 1.1, Interbasin Transfer":

- a. the contract price of the water to be transferred (if applicable) (also include a copy of the contract or adopted rate for contract water);
- b. a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category;
- c. the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users (example - expert plans and/or reports documents may be provided to show the cost);



- d. describe the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years (the need can be identified in the most recently approved regional water plans. The state and regional water plans are available for download at this website: (<http://www.twdb.texas.gov/waterplanning/swp/index.asp>);
- e. address the factors identified in the applicable most recently approved regional water plans which address the following:
  - (i) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;
  - (ii) the amount and purposes of use in the receiving basin for which water is needed;
  - (iii) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;
  - (iv) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;
  - (v) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and
  - (vi) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under Sections 11.147, 11.150, and 11.152 in each basin (*if applicable*). If the water sought to be transferred is currently authorized to be used under an existing permit, certified filing, or certificate of adjudication, such impacts shall only be considered in relation to that portion of the permit, certified filing, or certificate of adjudication proposed for transfer and shall be based on historical uses of the permit, certified filing, or certificate of adjudication for which amendment is sought;
- f. proposed mitigation or compensation, if any, to the basin of origin by the applicant; and
- g. the continued need to use the water for the purposes authorized under the existing Permit, Certified Filing, or Certificate of Adjudication, if an amendment to an existing water right is sought.

N/A

## WORKSHEET 1.2 NOTICE. "THE MARSHALL CRITERIA"

This worksheet assists the Commission in determining notice required for certain **amendments** that do not already have a specific notice requirement in a rule for that type of amendment, and *that do not change the amount of water to be taken or the diversion rate*. The worksheet provides information that Applicant **is required** to submit for such amendments which include changes in use, changes in place of use, or other non-substantive changes in a water right (such as certain amendments to special conditions or changes to off-channel storage). These criteria address whether the proposed amendment will impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

*This worksheet is not required for Applications in the Rio Grande Basin requesting changes in the purpose of use, rate of diversion, point of diversion, and place of use for water rights held in and transferred within and between the mainstems of the Lower Rio Grande, Middle Rio Grande, and Amistad Reservoir. See 30 TAC § 303.42.*

*This worksheet is not required for amendments which are only changing or adding diversion points, or request only a bed and banks authorization or an IBT authorization. However, Applicants may wish to submit the Marshall Criteria to ensure that the administrative record includes information supporting each of these criteria*

### 1. The "Marshall Criteria" (Instructions, Page. 21)

Submit responses on a supplemental attachment titled "Marshall Criteria" in a manner that conforms to the paragraphs (a) - (g) below:

- a. Administrative Requirements and Fees. Confirm whether application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) Chapters 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.
- b. Beneficial Use. Discuss how proposed amendment is a beneficial use of the water as defined in TWC § 11.002 and listed in TWC § 11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.
- c. Public Welfare. Explain how proposed amendment is not detrimental to the public welfare. Consider any public welfare matters that might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.
- d. Groundwater Effects. Discuss effects of proposed amendment on groundwater or groundwater recharge.

- e. State Water Plan. Describe how proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at:  
<http://www.twdb.texas.gov/waterplanning/swp/index.asp>.
- f. Waste Avoidance. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC § 11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC Chapter 288.
- g. Impacts on Water Rights or On-stream Environment. Explain how proposed amendment will not impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

# WORKSHEET 2.0

## Impoundment/Dam Information

This worksheet is **required** for any impoundment, reservoir and/or dam. Submit an additional Worksheet 2.0 for each impoundment or reservoir requested in this application.

*If there is more than one structure, the numbering/naming of structures should be consistent throughout the application and on any supplemental documents (e.g. maps).*

### 1. Storage Information (Instructions, Page. 21)

- a. Official USGS name of reservoir, if applicable: East Fork Crystal Creek
- b. Provide amount of water (in acre-feet) impounded by structure at normal maximum operating level: 43.
- c. The impoundment is on-channel  or off-channel \_\_\_\_\_ (mark one)
- Applicant has verified on-channel or off-channel determination by contacting Surface Water Availability Team at (512) 239-4600? Y / NY
  - If on-channel, will the structure have the ability to pass all State Water inflows that Applicant does not have authorization to impound? Y / NY
- d. Is the impoundment structure already constructed? Y / NY But being modified
- For already constructed **on-channel** structures:
    - Date of Construction: Unknown for existing structure
    - Was it constructed to be an exempt structure under TWC § 11.142? Y / NY
      - If Yes, is Applicant requesting to proceed under TWC § 11.143? Y / NY
      - If No, has the structure been issued a notice of violation by TCEQ? Y / N
    - Is it a U.S. Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service (SCS)) floodwater-retarding structure? Y / NN
      - If yes, provide the Site No. \_\_\_\_\_ and watershed project name \_\_\_\_\_;
      - Authorization to close "ports" in the service spillway requested? Y / N
  - For **any** proposed new structures or modifications to structures:
    - Applicant **must** contact TCEQ Dam Safety Section at (512) 239-0326, *prior to submitting an Application*. Applicant has contacted the TCEQ Dam Safety Section regarding the submission requirements of 30 TAC, Ch. 299? Y / NY  
Provide the date and the name of the Staff Person TBD
    - As a result of Applicant's consultation with the TCEQ Dam Safety Section, TCEQ has confirmed that:
      - No additional dam safety documents required with the Application. Y / NN
      - Plans (with engineer's seal) for the structure required. Y / NY
      - Engineer's signed and sealed hazard classification required. Y / NY
      - Engineer's statement that structure complies with 30 TAC, Ch. 299 Rules required. Y / NY

3. Applicants **shall** give notice by certified mail to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir to be constructed, will be located. (30 TAC § 295.42). Applicant must submit a copy of all the notices and certified mailing cards with this Application. Notices and cards are included? Y / NY\_\_\_\_\_

iii. Additional information required for **on-channel** storage:

1. Surface area (in acres) of on-channel reservoir at normal maximum operating level: 5.63.
2. Based on the Application information provided, Staff will calculate the drainage area above the on-channel dam or reservoir. If Applicant wishes to also calculate the drainage area they may do so at their option. Applicant has calculated the drainage area. Y/NY\_\_\_\_\_ If yes, the drainage area is .9414 sq. miles. (If assistance is needed, call the Surface Water Availability Team prior to submitting the application, (512) 239-4600).

## 2. Structure Location (Instructions, Page. 23)

- a. On Watercourse (if on-channel) (USGS name): East Fork Crystal Creek
- b. Zip Code: 77378
- c. In the HENDERSON F K Original Survey No. \_\_\_\_\_, Abstract No. 248,  
MONTGOMERY County, Texas.

***\* A copy of the deed(s) with the recording information from the county records must be submitted describing the tract(s) that include the structure and all lands to be inundated.***

***\*\*If the Applicant is not currently the sole owner of the land on which the structure is or will be built and sole owner of all lands to be inundated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.***

- d. A point on the centerline of the dam (on-channel) or anywhere within the impoundment (off-channel) is:

Latitude 30.409418 °N, Longitude -95.483618 °W.

***\*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***

- di. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Mapping Program (Google Maps/Earth)
- dii. Map submitted which clearly identifies the Impoundment, dam (where applicable), and the lands to be inundated. See instructions Page. 15. Y / NY\_\_\_\_\_

N/A **WORKSHEET 3.0**

**DIVERSION POINT (OR DIVERSION REACH) INFORMATION**

This worksheet **is required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

*The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).*

**1. Diversion Information (Instructions, Page. 24)**

a. This Worksheet is to add new (select 1 of 3 below):

1.  Diversion Point No.
2.  Upstream Limit of Diversion Reach No.
3.  Downstream Limit of Diversion Reach No.

b. Maximum Rate of Diversion for **this new point** \_\_\_\_\_ cfs (cubic feet per second)  
or \_\_\_\_\_ gpm (gallons per minute)

c. Does this point share a diversion rate with other points? Y / N \_\_\_\_\_  
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches \_\_\_\_\_ cfs or \_\_\_\_\_ gpm*

d. For amendments, is Applicant seeking to increase combined diversion rate? Y / N \_\_\_\_\_

*\*\* An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
<input type="checkbox"/>	Directly from stream	
<input type="checkbox"/>	From an on-channel reservoir	
<input type="checkbox"/>	From a stream to an on-channel reservoir	
<input type="checkbox"/>	Other method (explain fully, use additional sheets if necessary)	

f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. Y / N \_\_\_\_\_

If yes, the drainage area is \_\_\_\_\_ sq. miles.

*(If assistance is needed, call the Surface Water Availability Team at (512) 239-4600, prior to submitting application)*

## 2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): \_\_\_\_\_
- b. Zip Code: \_\_\_\_\_
- c. Location of point: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_, \_\_\_\_\_ County, Texas.

***A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure.***

***For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.***

- d. Point is at:  
Latitude \_\_\_\_\_°N, Longitude \_\_\_\_\_°W.  
***Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): \_\_\_\_\_
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38.
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

# WORKSHEET 4.0

## DISCHARGE INFORMATION

This worksheet required for any requested authorization to discharge water into a State Watercourse for conveyance and later withdrawal or in-place use. Worksheet 4.1 is also required for each Discharge point location requested. **Instructions Page. 26. Applicant is responsible for obtaining any separate water quality authorizations which may be required and for insuring compliance with TWC, Chapter 26 or any other applicable law.**

- a. The purpose of use for the water being discharged will be recreation.
- b. Provide the amount of water that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses \_\_\_\_\_% and explain the method of calculation: Avg Evaporation = 41"/year Lake is 5.63 acres = Results in 19.23 Ac-Feet of loss per year

Is the source of the discharged water return flows? Y / N N If yes, provide the following information:

1. The TPDES Permit Number(s). \_\_\_\_\_ (attach a copy of the **current** TPDES permit(s))
2. Applicant is the owner/holder of each TPDES permit listed above? Y / N \_\_\_\_\_

*PLEASE NOTE: If Applicant is not the discharger of the return flows, the application should be submitted under Section 1, New or Additional Appropriation of State Water, as a request for a new appropriation of state water. If Applicant is the discharger, then the application should be submitted under Section 3, Bed and Banks.*

3. Monthly WWTP discharge data for the past 5 years in electronic format. (Attach and label as "Supplement to Worksheet 4.0").
  4. The percentage of return flows from groundwater \_\_\_\_\_, surface water \_\_\_\_\_?
  5. If any percentage is surface water, provide the base water right number(s) \_\_\_\_\_.
- c. Is the source of the water being discharged groundwater? Y / N Y If yes, provide the following information:

1. Source aquifer(s) from which water will be pumped: Chicot
2. Any 24 hour pump test for the well if one has been conducted. If the well has not been constructed, provide production information for wells in the same aquifer in the area of the application. See <http://www.twdb.texas.gov/groundwater/data/gwdbbrpt.asp>. Additionally, provide well numbers or identifiers 34193, 345376, 439228
3. Indicate how the groundwater will be conveyed to the stream or reservoir.  
Irrigation well that will be discharged into the recreational pond
4. A copy of the groundwater well permit if it is located in a Groundwater Conservation District (GCD) or evidence that a groundwater well permit is not required.

ci. Is the source of the water being discharged a surface water supply contract? Y / N N  
If yes, provide the signed contract(s).

cii. Identify any other source of the water \_\_\_\_\_



## WORKSHEET 4.1 DISCHARGE POINT INFORMATION

This worksheet is required for **each** discharge point. Submit one Worksheet 4.1 for each discharge point. If there is more than one discharge point, the numbering of the points should be consistent throughout the application and on any supplemental documents (e.g. maps).  
**Instructions, Page 27.**

**For water discharged at this location provide:**

- a. The amount of water that will be discharged at this point is 19.2 acre-feet per year. The discharged amount should include the amount needed for use and to compensate for any losses.
- b. Water will be discharged at this point at a maximum rate of 1736 cfs or \_\_\_\_\_ gpm.
- c. Name of Watercourse as shown on Official USGS maps: Crystal Creek
- d. Zip Code 77378
- f. Location of point: In the Henderson F K Original Survey No. \_\_\_\_\_, Abstract No. 248, Montgomery County, Texas.
- g. Point is at:  
Latitude 30.409418 °N, Longitude -95.483618 °W.  
*\*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places*
- h. Indicate the method used to calculate the discharge point location (examples: Handheld GPS Device, GIS, Mapping Program): Mapping Program (Google Maps/Earth)

**Map submitted must clearly identify each discharge point. See instructions Page. 15.**

## WORKSHEET 5.0 ENVIRONMENTAL INFORMATION

### 1. Impingement and Entrainment

**This section is required for any new diversion point that is not already authorized.** Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on any new diversion structure that is not already authorized in a water right). **Instructions, Page 29.**

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### 2. New Appropriations of Water (Canadian, Red, Sulphur, and Cypress Creek Basins only) and Changes in Diversion Point(s)

This section is required for new appropriations of water in the Canadian, Red, Sulphur, and Cypress Creek Basins and in all basins for requests to change a diversion point. **Instructions, Page 30.**

Description of the Water Body at each Diversion Point or Dam Location. (Provide an Environmental Information Sheet for each location),

a. Identify the appropriate description of the water body.

Stream

Reservoir

Average depth of the entire water body, in feet: 6

Other, specify: \_\_\_\_\_

b. Flow characteristics

If a stream, was checked above, provide the following. For new diversion locations, check one of the following that best characterize the area downstream of the diversion (check one).

Intermittent - dry for at least one week during most years

Intermittent with Perennial Pools - enduring pools

Perennial - normally flowing

Check the method used to characterize the area downstream of the new diversion location.

USGS flow records

Historical observation by adjacent landowners

Personal observation

Other, specify: \_\_\_\_\_

c. Waterbody aesthetics

Check one of the following that best describes the aesthetics of the stream segments affected by the application and the area surrounding those stream segments.

- Wilderness: outstanding natural beauty; usually wooded or unpastured area; water clarity exceptional
- Natural Area: trees and/or native vegetation common; some development evident (from fields, pastures, dwellings); water clarity discolored
- Common Setting: not offensive; developed but uncluttered; water may be colored or turbid
- Offensive: stream does not enhance aesthetics; cluttered; highly developed; dumping areas; water discolored

d. Waterbody Recreational Uses

Are there any known recreational uses of the stream segments affected by the application?

- Primary contact recreation (swimming or direct contact with water)
- Secondary contact recreation (fishing, canoeing, or limited contact with water)
- Non-contact recreation

Submit the following information in a Supplemental Attachment, labeled Addendum to Worksheet 5.0:

1. Photographs of the stream at the diversion point or dam location. Photographs should be in color and show the proposed point or reservoir and upstream and downstream views of the stream, including riparian vegetation along the banks. Include a description of each photograph and reference the photograph to the map submitted with the application indicating the location of the photograph and the direction of the shot.
2. If the application includes a proposed reservoir, also include:
  - i. A brief description of the area that will be inundated by the reservoir.
  - ii. If a United States Army Corps of Engineers (USACE) 404 permit is required, provide the project number and USACE project manager.
  - iii. A description of how any impacts to wetland habitat, if any, will be mitigated if the reservoir is greater than 5,000 acre-feet.

### 3. Alternate Sources of Water and/or Bed and Banks Applications

This section is required for applications using an alternate source of water and bed and banks applications in any basins. **Instructions, page 31.**

- a. For all bed and banks applications:
  - i. Submit an assessment of the adequacy of the quantity and quality of flows remaining after the proposed diversion to meet instream uses and bay and estuary freshwater inflow requirements.
- b. For all alternate source applications:
  - i. If the alternate source is treated return flows, provide the TPDES permit number\_\_\_\_\_
  - ii. If groundwater is the alternate source, or groundwater or other surface water will be discharged into a watercourse provide:  
Reasonably current water chemistry information including but not limited to the following parameters in the table below. Additional parameters may be requested if there is a specific water quality concern associated with the aquifer from which water is withdrawn. If data for onsite wells are unavailable; historical data collected from similar sized wells drawing water from the same aquifer may be provided. However, onsite data may still be required when it becomes available. Provide the well number or well identifier. Complete the information below for each well and provide the Well Number or identifier.

Parameter	Average Conc.	Max Conc.	No. of Samples	Sample Type	Sample Date/Time
Sulfate, mg/L	20	250	1	GRAB	3/29/21 (14:30)
Chloride, mg/L	<b>200</b>	<b>250</b>	<b>1</b>	<b>GRAB</b>	3/29/21 (14:30)
Total Dissolved Solids, mg/L	582	500	1	GRAB	3/29/21 (14:30)
pH, standard units	<b>7.4</b>	<b>6.5-8.5</b>	<b>1</b>	<b>GRAB</b>	3/29/21 (14:30)
Temperature*, degrees Celsius	21.78	N/A	1	GRAB	3/29/21 (14:30)

\* Temperature must be measured onsite at the time the groundwater sample is collected.

- iii. If groundwater will be used, provide the depth of the well 300-400 and the name of the aquifer from which water is withdrawn Chicot.

N/A

## WORKSHEET 6.0

### Water Conservation/Drought Contingency Plans

This form is intended to assist applicants in determining whether a Water Conservation Plan and/or Drought Contingency Plans is required and to specify the requirements for plans.  
**Instructions, Page 31.**

*The TCEQ has developed guidance and model plans to help applicants prepare plans. Applicants may use the model plan with pertinent information filled in. For assistance submitting a plan call the Resource Protection Team (Water Conservation staff) at 512-239-4600, or e-mail [wras@tceq.texas.gov](mailto:wras@tceq.texas.gov). The model plans can also be downloaded from the TCEQ webpage. Please use the most up-to-date plan documents available on the webpage.*

#### 1. Water Conservation Plans

a. The following applications must include a completed Water Conservation Plan (30 TAC § 295.9) for each use specified in 30 TAC, Chapter 288 (municipal, industrial or mining, agriculture - including irrigation, wholesale):

1. Request for a new appropriation or use of State Water.
2. Request to amend water right to increase appropriation of State Water.
3. Request to amend water right to extend a term.
4. Request to amend water right to change a place of use.  
*\*does not apply to a request to expand irrigation acreage to adjacent tracts.*
5. Request to amend water right to change the purpose of use.  
*\*applicant need only address new uses.*
6. Request for bed and banks under TWC § 11.042(c), when the source water is State Water  
*\*including return flows, contract water, or other State Water.*

b. If Applicant is requesting any authorization in section (1)(a) above, indicate each use for which Applicant is submitting a Water Conservation Plan as an attachment:

1. \_\_\_\_Municipal Use. See 30 TAC § 288.2. \*\*
2. \_\_\_\_Industrial or Mining Use. See 30 TAC § 288.3.
3. \_\_\_\_Agricultural Use, including irrigation. See 30 TAC § 288.4.
4. \_\_\_\_Wholesale Water Suppliers. See 30 TAC § 288.5. \*\*

\*\*If Applicant is a water supplier, Applicant must also submit documentation of adoption of the plan. Documentation may include an ordinance, resolution, or tariff, etc. See 30 TAC §§ 288.2(a)(1)(J)(i) and 288.5(1)(H). Applicant has submitted such documentation with each water conservation plan? Y / N \_\_\_\_

c. Water conservation plans submitted with an application must also include data and information which: supports applicant's proposed use with consideration of the plan's water conservation goals; evaluates conservation as an alternative to the proposed

appropriation; and evaluates any other feasible alternative to new water development.  
See 30 TAC § 288.7.

Applicant has included this information in each applicable plan? Y / N \_\_\_\_

## 2. Drought Contingency Plans

- a. A drought contingency plan is also required for the following entities if Applicant is requesting any of the authorizations in section (1) (a) above - indicate each that applies:
1. \_\_\_\_ Municipal Uses by public water suppliers. See 30 TAC § 288.20.
  2. \_\_\_\_ Irrigation Use/ Irrigation water suppliers. See 30 TAC § 288.21.
  3. \_\_\_\_ Wholesale Water Suppliers. See 30 TAC § 288.22.
- b. If Applicant must submit a plan under section 2(a) above, Applicant has also submitted documentation of adoption of drought contingency plan (*ordinance, resolution, or tariff, etc. See 30 TAC § 288.30*) Y / N \_\_\_\_

N/A      **WORKSHEET 7.0**  
**ACCOUNTING PLAN INFORMATION WORKSHEET**

The following information provides guidance on when an Accounting Plan may be required for certain applications and if so, what information should be provided. An accounting plan can either be very simple such as keeping records of gage flows, discharges, and diversions; or, more complex depending on the requests in the application. Contact the Surface Water Availability Team at 512-239-4600 for information about accounting plan requirements, if any, for your application. **Instructions, Page 34.**

**1. Is Accounting Plan Required**

Accounting Plans are generally required:

- For applications that request authorization to divert large amounts of water from a single point where multiple diversion rates, priority dates, and water rights can also divert from that point;
- For applications for new major water supply reservoirs;
- For applications that amend a water right where an accounting plan is already required, if the amendment would require changes to the accounting plan;
- For applications with complex environmental flow requirements;
- For applications with an alternate source of water where the water is conveyed and diverted; and
- For reuse applications.

**2. Accounting Plan Requirements**

- a. A **text file** that includes:
1. an introduction explaining the water rights and what they authorize;
  2. an explanation of the fields in the accounting plan spreadsheet including how they are calculated and the source of the data;
  3. for accounting plans that include multiple priority dates and authorizations, a section that discusses how water is accounted for by priority date and which water is subject to a priority call by whom; and
  4. Should provide a summary of all sources of water.
- b. A **spreadsheet** that includes:
1. Basic daily data such as diversions, deliveries, compliance with any instream flow requirements, return flows discharged and diverted and reservoir content;
  2. Method for accounting for inflows if needed;
  3. Reporting of all water use from all authorizations, both existing and proposed;
  4. An accounting for all sources of water;
  5. An accounting of water by priority date;
  6. For bed and banks applications, the accounting plan must track the discharged water from the point of delivery to the final point of diversion;
  7. Accounting for conveyance losses;
  8. Evaporation losses if the water will be stored in or transported through a reservoir. Include changes in evaporation losses and a method for measuring reservoir content resulting from the discharge of additional water into the reservoir;
  9. An accounting for spills of other water added to the reservoir; and
  10. Calculation of the amount of drawdown resulting from diversion by junior rights or diversions of other water discharged into and then stored in the reservoir.

## WORKSHEET 8.0 CALCULATION OF FEES

This worksheet is for calculating required application fees. Applications are not Administratively Complete until all required fees are received. **Instructions, Page. 34**

### 1. NEW APPROPRIATION

	Description	Amount (\$)	
<b>Filing Fee</b>	Circle fee correlating to the total amount of water* requested for any new appropriation and/or impoundment. Amount should match total on Worksheet 1, Section 1. Enter corresponding fee under <b>Amount (\$)</b> . <u>In Acre-Feet</u>	100	
	a. Less than 100		\$100.00
	b. 100 - 5,000		\$250.00
	c. 5,001 - 10,000		\$500.00
	d. 10,001 - 250,000		\$1,000.00
	e. More than 250,000		\$2,000.00
<b>Recording Fee</b>		\$25.00	
<b>Agriculture Use Fee</b>	<i>Only for those with an Irrigation Use.</i> Multiply 50¢ x _____ Number of acres that will be irrigated with State Water. **		
<b>Use Fee</b>	<i>Required for all Use Types, excluding Irrigation Use.</i> Multiply \$1.00 x <u>19.2</u> Maximum annual diversion of State Water in acre-feet. **	19.2	
<b>Recreational Storage Fee</b>	<i>Only for those with Recreational Storage.</i> Multiply \$1.00 x <u>19.2</u> acre-feet of in-place Recreational Use State Water to be stored at normal max operating level.	19.2	
<b>Storage Fee</b>	<i>Only for those with Storage, excluding Recreational Storage.</i> Multiply 50¢ x _____ acre-feet of State Water to be stored at normal max operating level.		
<b>Mailed Notice</b>	Cost of mailed notice to all water rights in the basin. Contact Staff to determine the amount (512) 239-4600.		
<b>TOTAL</b>		\$ 163.40	

### 2. AMENDMENT OR SEVER AND COMBINE

	Description	Amount (\$)
<b>Filing Fee</b>	Amendment: \$100	
	OR Sever and Combine: \$100 x ___ of water rights to combine	
<b>Recording Fee</b>		\$12.50
<b>Mailed Notice</b>	Additional notice fee to be determined once application is submitted.	
<b>TOTAL INCLUDED</b>		\$ 0

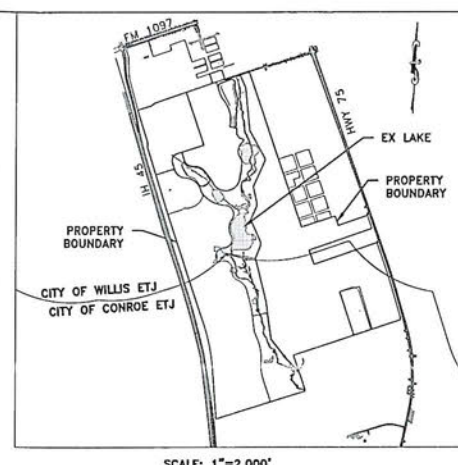
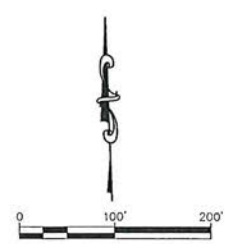
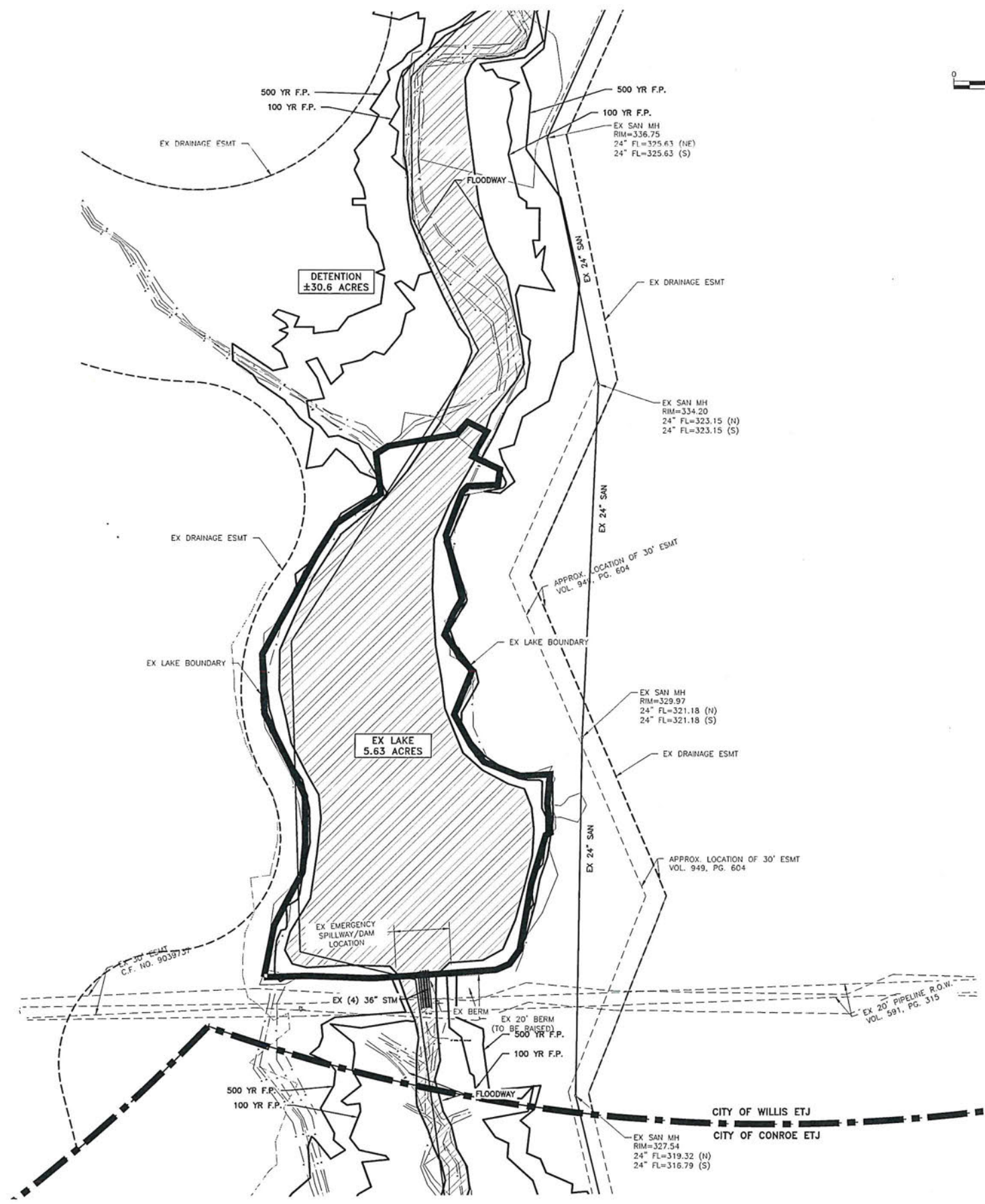
### 3. BED AND BANKS

	Description	Amount (\$)
<b>Filing Fee</b>		\$100.00
<b>Recording Fee</b>		\$12.50
<b>Mailed Notice</b>	Additional notice fee to be determined once application is submitted.	
<b>TOTAL INCLUDED</b>		\$ 0





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 CONROE, TEXAS 77384  
 OFFICE: 281-647-6420

# MORAN RANCH

## WATER RIGHTS EXHIBIT 1 OF 2

DRAWING INFORMATION			
PROJECT	10502	TDLR	**
DRAWN	GLH	CHECKED	JTW
SCALE	SHEET		01
1" = 100' (24x36)			
1" = 200' (11x17)			

STATE OF TEXAS  
 JONATHAN T. WHITE  
 127058  
 LICENSED PROFESSIONAL ENGINEER

*Jonathan T. White*  
 4/15/2021