

## **CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AND ETJ DEVELOPMENT AGREEMENT**

As of March 19, 2019 (the “**Effective Date**”) this Chapter 380 Economic Development Incentive and ETJ Development Agreement (the “**Agreement**”) is entered into between Curby D. Ohnheiser, Diane M. Deringer, Carolyn J. Scurlock, Van Lee, LLC, and Ohnheiser Properties, LP (collectively, the “**Owners**”), the City of San Marcos, Texas (the “**City**”), a Texas municipal corporation, and Texas Transportation Alliance, LTD, a Texas Limited Partnership (the “**Developer**”), Owners. Any owner of land subject to this Agreement that purchased or acquired the land from the Developer, or any owner of land, other than the Developer, that purchased or acquired the land directly from the Owners, is hereinafter, a “**Future Owner**”. The Owners, City, the Developer, the Owners and Future Owners may also be referred to collectively as the “**Parties**” or individually as a “**Party**”.

### **PART 1. RECITALS**

**Section 1.01.** The Owners currently own various tracts of land totaling approximately 888.772 acres in Caldwell County, as more particularly described by metes and bounds in Exhibit “A”, attached hereto and made a part hereof (the “**Property**”).

**Section 1.02.** The Developer intends to purchase the Property and to develop all or portions of the Property into a heavy industrial and transportation hub that is accessible by truck and rail service and adjacent to air transportation services at the City’s municipal airport.

**Section 1.03.** The Property is currently used for agriculture purposes and has an agricultural exempt tax status.

**Section 1.04.** The Owners and the Developer have requested that the City annex the Property in accordance with this Agreement.

**Section 1.05.** The Developer has informed the City that the provision by the City of water and wastewater utility services to the Property, together with incentives, would enable the Developer to develop the Property for its proposed heavy industrial and transportation hub.

**Section 1.06.** The City wishes to bring the development and related business activities proposed by the Developer into the City as doing so would benefit the City and its residents by ensuring measures are in place to mitigate the impacts of development otherwise not available to the City, and by creating new jobs and generating new tax revenues.

**Section 1.07.** The City is authorized by Chapters 43 and 212 of the Texas Local Government Code to annex property in the City's extraterritorial jurisdiction ("**ETJ**") under mutually agreed terms with a property owner. The City is further authorized by Chapter 380 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the City and the ETJ.

**Section 1.08.** The City has determined that annexing all or portions of the Property within the City's ETJ under mutually agreed terms with the Owners and providing economic development incentives to the Developer under this Agreement will promote local economic development and stimulate business and commercial activity in the City and the ETJ.

**Section 1.09.** For the reasons stated in these Recitals, which are incorporated into and made a part of this Agreement, and in consideration of the mutual benefits to and promises of the Parties set forth herein, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

## ARTICLE II ANNEXATION & ZONING

**Section 2.01. Consent to Annexation.** The Owners and the Developer acknowledge that they have requested that the City annex the Property and, by this Agreement, consent to the City's annexation of the Property. By virtue of this Agreement, the Owners and the Developer authorize the full purpose annexation by the City of the Property, subject to applicable provisions of Chapter 43 of the Texas Local Government Code. Except as provided in this Agreement, the Owners and the Developer specifically waive the offer of a development agreement under Chapters 43 and 212 of the Texas Local Government Code under which the City would have been required to defer annexation of all or portions of the Property.

**Section 2.02. Timing of Annexation.** The Parties agree that the City Council of the City will consider full purposes annexation of that certain 734.6-acre portion of the Property described by metes and bounds in Exhibit "B-1", attached hereto and made a part hereof (the "***First Annexation Tract***") immediately after approval by the City Council of this Agreement at the same meeting. The remainder of the Property, or portions of such remainder, within the City's ETJ may be annexed by the City at any time during the Term of this Agreement, and the City shall exercise good faith efforts to complete the annexation of the portion of the Katerra Tract (as defined in Section 4.01) not included in the First Annexation Tract within one hundred twenty (120) days following the Effective Date of this Agreement, subject to applicable provisions of Chapter 43 of the Texas Local Government Code

**Section 2.03. Zoning.** Immediately after approval, at the same meeting, of this Agreement and an ordinance annexing the First Annexation Tract, the San Marcos City Council will consider an ordinance amending the City's official zoning map to a zoning classification for the First Annexation Tract of Heavy Industrial ("***HI***") District. If additional portions of the Property are

annexed, City staff will, concurrently with the processing of such annexation, process a corresponding zoning map amendment request for a zoning designation of Heavy Industrial (“*HI*”) District for such portions for consideration by the San Marcos City Council.

**Section 2.04. Interim Agricultural Uses.** The Parties agree and acknowledge that the Property, or portions thereof, is currently used for agricultural purposes and subject to a property tax exemption under Chapter 23 of the Texas Tax Code. It is the intent of the Owners and the Developer to continue use of such portions of the Property for agricultural or wildlife preservation purposes until such time as the Property is developed. As portions of the Property are developed and taken out of agricultural use or wildlife preservation use, the Developer intends to continue use of the remaining, undeveloped portions of the Property for agricultural or wildlife preservation purposes. The City agrees that the Developer shall be permitted to continue such agricultural use or wildlife preservation uses even upon and after annexation and that the City will not oppose continuation of the property tax exemption.

### **ARTICLE III OWNERS’ AND DEVELOPER’S PRELIMINARY OBLIGATIONS**

**Section 3.01. Restrictive Covenants.** The City is entering into this Agreement based on the Developer’s representations that the Property will be developed under a comprehensive plan providing for uniform development standards, including standards required by the City to protect adjacent property owners and to mitigate adverse drainage and environmental impacts caused by development of the Property. Because the City will only be immediately annexing the First Annexation Tract upon approval of this Agreement, the Parties agree that restrictive covenants imposing standards required under this Agreement will be recorded to ensure that such uniform standards apply to the entire Property and not just to the First Annexation Tract. Accordingly, before or concurrent with the first sale of any portion of the Property by the Owners, the Owners



shall record the Restrictive Covenant Agreement in a form substantially in accordance with Exhibit “C,” attached hereto and made a part hereof, which will run with the land and bind the Owner’s successors and assigns.

**Section 3.02. Exchange and Dedication of Land.** The City and the Developer intend to exchange two triangular shaped tracts of land and the Developer agrees to dedicate to the City another triangular shaped tract of land along Highway 80, each as identified in Exhibit “D-1,” attached hereto and made a part hereof. The City and the Developer acknowledge and agree that the two tracts of land proposed to be exchanged are of comparable value. Within 180 days after the Owner of that certain 160.2-acre tract of land depicted on the survey of the 674.641-acre tract included a s part of Exhibit “A,” sells the area of said tract remaining after the Owners sell the Kattera Tract (defined in this Agreement below), the Developer or the Future Owner of the tract following conveyance of the Kattera Tract (as applicable) shall, at its sole cost, cause surveys and title commitments of the two exchange tracts and the tract to be dedicated to be prepared and delivered to the City for review and approval. Within 90 days after the mutual approval of the surveys and title commitments by the City and the Developer or Future Owner of such remaining tract, as applicable, the City and the Developer or such Future Owner, as applicable, shall exchange the two tracts, subject to the requirements of Section 272.001 of the Texas Local Government Code. Concurrently with the exchange, the Developer or such Future Owner, as applicable, will convey the third tract to the City. The conveyances of land under this section shall be by special warranty deed generally in the form prescribed by the State Bar of Texas. If no mutual approval of the surveys and title commitments is achieved within 30 days after delivery thereof to the City, any obligations to exchange or dedicate of land under this Section shall terminate.

**Section 3.03. Railway Easements.** In recognition of the immediate need for rail connections to the Property, the City hereby grants to the Developer and the Owners a blanket easement across that certain 57.976-acre tract of land owned by the City abutting the western boundary of said 160.2-acre tract and described in the instrument recorded in Volume 175, Page 866, Official Public Records of Caldwell County, Texas, for the purpose of allowing railroad access to the Property and the installation of associated rail infrastructure for purposes of such access, all to be located only within the triangular shaped area between the future alignment of Loop 110 and the northwest corner of the Property. The blanket easement shall automatically expire on the date the exchange of land under Section 3.02 occurs. If the exchange under Section 3.02 is not completed, the area of the blanket easement will be reduced to an area comprising only the location of the completed railroad improvements, together with any area minimally required for maintenance of such improvements in accordance with an as-built survey thereof, all to be located only within said triangular shaped area between the future alignment of Loop 110 and the northwest corner of the Property . If neither the exchange under Section 3.02 is consummated, nor any full build out of railroad infrastructure is completed within two years of the Effective Date, the blanket easement shall automatically expire.

#### **ARTICLE IV PLATTING AND PUBLIC IMPROVEMENTS**

**Section 4.01. Platting.** Except for development of that approximately 73.623-acre portion of the Property described in the attached Exhibit “B-2” (the “***Katerra Tract***”) and any required off-site public and other improvements associated with the approved plat of the Katerra Tract, including roadways, rail lines or utility service, no other development shall be allowed on the Property until either a concept plat, preliminary plat or final plat for remainder of the Property (as

adjusted to reflect the exchange and dedication of land under Section 3.03) is approved in accordance with applicable City of San Marcos ordinances.

**Section 4.02. Public Improvements Generally.** Except as provided in Section 4.03(a), inclusive of all subsections therein, when the Developer or any Future Owner of any portion of the Property plats all or any portion of the Property, the Developer or such Future Owner shall, at its sole cost, install all public improvements and dedicate all public facilities and any associated easements, including offsite easements, required in relation to such plat or plats in accordance with applicable City of San Marcos ordinances standards and engineering specifications in effect at the time of the Effective Date of this Agreement, except for the changes (if any) to such ordinances, standards and specifications that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code. To the extent the City determines that public facilities or infrastructure are required beyond what are necessary to serve an area of the Property being platted or beyond what is roughly proportional for the development of such platted area, the City may request an oversize agreement under Section 3.5.2.11 of the City's Development Code for the City's participation in the costs of oversizing any facilities or infrastructure.

**Section 4.03 Water and Wastewater Extensions.** Upon annexation, the City agrees to provide water supply and wastewater treatment to serve the Property within the City's CCN areas. However, except as otherwise provided in Subsection (a) below, it shall be the sole responsibility of the Developer or any Future Owner, as applicable, to install, at their sole cost, all water or wastewater facilities, including all extensions, and to acquire and dedicate any associated easements in accordance with Section 4.02.

**a. Water and Wastewater Impact Fee Projects.** The City has identified two capital improvements projects subject to the assessment of impact fees for water and

wastewater. The first project is a water main extension from the City's surface water treatment plant looped to the San Marcos Municipal Airport, as shown in Exhibit "D-2", attached hereto and made a part hereof (the "***Water Impact Fee Project***"). The second project is the extension of a wastewater force main from the City's wastewater treatment plant to a new wastewater lift station to be located along State Highway 80 on the southern portion of the previously mentioned 160.2-acre tract out of the Property as shown in Exhibit "D-2" (the "***Wastewater Impact Fee Project***"). Construction of either the Water Impact Fee Project or the Wastewater Impact Fee Project by the Developer or any Future Owner of any portion of the Property shall be subject to this Subsection (a). The requirements of Section 4.02, shall, otherwise, continue to apply to both the Water and Wastewater Impact Fee Projects, except as specifically modified by this Subsection (a).

**1. Water Impact Fee Project.** The engineering design and construction costs for the Water Impact Fee Project will be pro-rated between the City and the Developer based upon the percentage of total costs attributable to the service capacity required by the uses on the Property. The Developer or Future Owner executing the project will install all water extensions and facilities at its initial sole cost. The City will reimburse the Developer or Future Owner in the form of progress payments for the City's share of all costs associated with design, permitting and construction within 30 days of presenting invoices and payments to the City, subject to City approval. Final payment by the City will be subject to the City's acceptance of the completed improvements. Each connection to the City's water system within the Property will require the payment of impact fees by the end user in compliance with City ordinances. The City shall reimburse the

Developer or Future Owner executing the project an amount up to their pro rata share of costs from any impact fees collected in relation to the Water Impact Fee Project in compliance with Section 86.300 of the San Marcos City Code. The City shall be responsible for acquiring all off-site easements or land associated with the Water Impact Fee Project. However, the Developer, with the City's approval, may acquire any required off-site easements or land, in which event the City will reimburse the Developer for the cost of such acquisitions within 30 days of the Developer presenting invoices to the City for the cost thereof.

**2. Wastewater Impact Fee Project.**

**i. Design.** Within 60 days after the City of San Marcos' Gary Job Corps lift station has reached its maximum capacity, the Developer shall have entered into a contract for the design of the Wastewater Impact Fee Project. The final design and specifications are subject to approval by the City in accordance with applicable ordinances and engineering standards of the City.

**ii. Construction.** Within 360 days after receipt of final approvals from all authorities having jurisdiction over the design of the lift station and force main design(s) and acquisition of all necessary offsite easements and rights-of-way for the construction of said lift station and force main, the Developer shall commence construction of the lift station and force main improvements in accordance with the plans and specifications approved by the City. The Developer shall complete construction no later than two years from the date of commencement.

Completion of construction shall be evidenced by the City's acceptance of the improvements in accordance with the City's ordinances and customary practices applicable to the acceptance of public improvements associated with platting. Notwithstanding the foregoing, the City may, but is not obligated to, construct the Wastewater Impact Fee Project improvements, subject to the Developer repaying the City for the Developer's pro rata share as outlined Subsection (iii) below.

**iii. Costs.** The City shall pay its pro rata share, as defined below, in the form of progress payments, of all surveying, engineering and other design costs, if applicable, and fees within 30 days of the Developer presenting invoices to the City. Upon commencement of construction, the City shall pay all construction costs as each progress payment is presented and approved by the City for payment. Within two years after the new regional lift station becomes operational, as determined by the City, the Developer shall repay the City the full amount of construction and acquisition costs associated with the Developer's pro rata share (as defined below) of such improvements. The City shall apply a credit against the repayment amount due from the Developer under this subsection, or refund to the Developer from such repayment amount paid, a sum equal to the amount of any impact fees collected from development within the Property within four years of the date the Developer's repayment obligation begins. Such credit or refund amount, however, may not exceed the Developer's repayment amount due.

iv. **Property Acquisition.** The City shall be responsible for acquiring all off-site easements or land associated with Wastewater Impact Fee Project. However, the Developer, with the City's approval, may acquire any required off-site easements or land, in which event the City will reimburse the Developer for the cost of such acquisitions with the City's reimbursement to the Developer under Subsection (iii) above.

v. **Pro Rata Share.** For the purposes of subsection 4.03(a)(2)(iii), the Developer's pro rata share is defined as the wastewater flow generated by the Property divided by the total wastewater flow generated by the total basin being served by the regional lift station and force main as calculated in the City's Master Wastewater Plan by Friese and Nichols dated December 2014.

b. **Dedication of Easements within the Property.** It is understood by the Owners and the Developer that easements or land associated with the Water and the Wastewater Impact Fee Projects within the Property will be located in the approximate locations shown in Exhibit "D-2" but that no surveys of such easement areas are presently available. In consideration of the blanket easement dedicated by the City under Section 3.03, the Owners hereby dedicate to the City a blanket easement across the previously mentioned 160.2 acre tract and the 171.80 and 237.06 acre tracts shown in Exhibit "A", save and except any portion of such three tracts contained within the Katerra Tract, for the installation, operation, maintenance, repair and replacement of, and vehicular access to, the facilities associated with the Water and Wastewater Impact Fee Projects in the approximate locations shown on Exhibit "D-2". As any portions of the Property are platted, the City

shall release such platted portions from the blanket easement if: (i) the platted area is outside the proposed location of any such facilities and associated access areas; or (ii) the plat dedicates a smaller specific easement area, including associated access areas, for the facilities. The dedication of easements within the Property by the Developer will be at no cost to the City. It is understood and agreed by the City that current uses on the Property (and uses of the Property permitted by the City, including other utility crossings, rail lines and driveways, may continue and are deemed not to interfere with the blanket easement granted hereunder.

**c. Water CCN Exchange.** The City will consider an agreement with Maxwell Water Supply Corporation to trade or otherwise exchange water CCN areas under mutually agreed terms and subject to approval by the Texas Public Utility Commission.

**d. Adequate Public Facilities (Wastewater).** Wastewater service is to be provided through a centralized wastewater system. Provision for temporary on-site sewage facilities may be approved under Section 3.5.2.1 of the City's Development Code.

**e. Other Owners.** It is expressly agreed that all of the obligations of Developer set forth under this Section 4.03 are personal to Developer and shall not bind Future Owners of any portion of the Property, except as provided in Section 4.04. Nonetheless, if the Developer fails to comply with this Section 4.03, any Owner or Future Owner of any portion of the Property may undertake the Developer's obligations under this Section 4.03. In such event, such Owner or Future Owner shall be entitled to reimbursement by the City in accordance with this Section 4.03.

**Section 4.04. No Waiver of Platting Requirements.** Subject to possible oversize participation by the City under applicable ordinances, nothing in this Article IV shall be construed



as a waiver of any platting requirements to construct all public improvements, including water and wastewater facilities, and to acquire and dedicate to the City such improvements and any associated easements or land, all at the sole expense of the owner of any portion of the Property for which plat approval is requested, as required by the City's Development Code, Chapter 86 of the San Marcos City Code or any other ordinance applicable to the construction of public improvements in relation to platting, subject to applicable limitations under state or federal law. For example, and for the avoidance of doubt, if a future purchaser of any portion of the Property seeks to plat such portion before the date the Developer is required to construct the Wastewater Impact Fee Project improvements, yet the improvements are necessary for the plat to qualify for approval by the City's Planning and Zoning Commission, the plat would be subject to denial unless such future purchaser either completes the extent of the necessary improvements prior to final plat approval or submits to the City, with its final plat request, a subdivision improvement agreement, together with financial security guaranteeing the completion of the improvements. The City acknowledges and represents, however, that adequate wastewater service capacity is currently available to serve the Katerra Tract as presently proposed to be developed and platted.

**4.05. Van Lee Boulevard and Innovation Parkway Improvements.** Reference is hereby made to certain Right of Way ("ROW") that is required for road improvements on Van Lee Boulevard and Innovation Parkway to connect the San Marcos Air Rail Terminal to Highway 80, such ROW depicted on the attached Exhibit "F" at the same time the Katerra Tract is platted. Developer shall dedicate the ROW to Caldwell County for these improvements and the City hereby approves for purposes of Section 251.012 of the Texas Transportation Code, the improvements by Caldwell County of such portions of ROW that may be located within the San Marcos municipal boundaries.

## **ARTICLE V DEVELOPMENT STANDARDS**

**Section 5.01. Building and Development Code Compliance.** Except as specifically waived in Article VI, or any agreements approved by the City related to development on the Property, all phases of development and construction on the Property shall be subject to compliance with the City's utility, building and development ordinances, including Chapters 14, 38, 39, 86 and Subpart B of the City's Code of Ordinances. Such compliance shall include consent to building permitting and inspections by the City, and payment of any application fees, impact fees, permit fees and inspection fees and the City's issuance of certificates of occupancy with respect to any development on the Property shall be considered on the basis of this Agreement as long as the development complies with the City's ordinances referenced above as modified by this Agreement.

**Section 5.02. Enhanced Water Quality Safeguards.** Development of the Property shall adhere to the supplemental water quality standards under this section. Measures shall be implemented by the Developer applying applicable best management practices ("**BMP's**") to ensure that, after full development of the Property, at least 70 percent of increased total suspended solids are removed from stormwater and a water quality volume produced by a 1.25-inch rainfall is captured. The water quality volume will provide stream protection to preserve the natural character of downstream waterways. Appropriate stormwater treatment measures include: the use of de-centralized, low impact development features (e.g., rain gardens, pervious pavement, biofiltration, etc.), stormwater detention facilities and extended detention basins. The City's Stormwater Technical Manual in effect on the Effective Date of this Agreement shall govern or guide, as applicable, BMP selection and design, except for the changes to such manual (if any) that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code.

**Section 5.03. Water Quality Zone Reclamation.** Reclamation of water quality zones shall incorporate natural channel design techniques and address aesthetics by implementing a natural channel shape that includes varying cross section widths, depths, and side slopes and native vegetation. Trees shall be planted at the top of channel banks. Either or both the natural channel design techniques adopted and accepted by the City of Austin and the Natural Design Protocol developed by the San Antonio River Authority, or similar techniques shall be used as guidance. The design of channels shall strive to attain natural channel function. Hike and bike trails may also be implemented along the tops of banks of reclaimed water quality zone channels. This Section 5.03 does not apply to the Kattera Tract provided development on the tract is in substantially in accordance with the material aspects of the plans and specifications pending with the City on the Effective Date.

**Section 5.04. Reduced Impervious Cover.** Impervious cover on the Property, after full development, shall not exceed 70 percent of the entire gross acreage of the Property. The total impervious cover for an individual lot within the Property shall not exceed 80 percent of the gross area of the lot. It is expressly acknowledged that: (a) the Kattera Tract will be permitted for up to 70 percent total impervious cover; and (b) the owners of the Kattera Tract shall have no liability or obligation with respect to the 70 percent impervious cover limitation across the entire gross acreage of the Property as future development occurs elsewhere on the Property (unless such owners of the Kattera Tract later develop other portions of the Property), with it being understood that the responsibility for tracking, limiting and administering such 70 percent requirement rests solely with the Developer and any Future Owners of any portions of the Property being developed after development of the Kattera Tract.

**Section 5.05. Enhanced Drainage Requirements.** On-site stormwater controls will be designed to reduce overall post-development peak rates of discharge so that they are at least 10 percent less than existing pre-development peak rates for the 2, 10, 25 and 100-year storm events at each point of discharge from the Property. Pre and post development peak rates of discharge will be calculated based upon Atlas 14 precipitation data and drainage impacts will be mitigated under applicable City ordinances in effect on the Effective Date of this Agreement, except for the changes (if any) to such ordinances, standards and specifications that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code. In addition, the Developer or any Future Owner, as applicable, will work in good faith with the City to convey stormwater runoff from up-gradient areas consistent with the City's Stormwater Technical Manual in effect on the Effective Date of this Agreement, except for the changes (if any) to such ordinances, standards and specifications that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code. This Section 5.05 does not apply to the Katerra Tract provided development on the tract is substantially in accordance with the material aspects of the plans and specifications pending with the City on the Effective Date.

**Section 5.06. Traffic Impact Analysis.** Except for the plat associated with the Katerra Tract, prior to or concurrent with the submittal of the first plat application for development on the Property or any portion thereof, a traffic impact analysis ("**TIA**") will be required in accordance with Sections 3.5.2.7 and 3.5.2.8 and other applicable provisions of Chapters 2 and 3 of Subpart B of the San Marcos Code of Ordinances. At the time of submittal of the TIA, the traffic impacts shall be evaluated based on assumptions regarding the full build-out development of the Property and not on the individual plat. It is understood that the requirements concerning a traffic impact

analysis have been addressed with the application for final plat of the Kattera Tract pending before the City on the Effective Date.

**Section 5.07. Maximum Permissible Sound Levels.** No activity or sound source within the Property may produce a measurable sound that exceeds 90 decibels when measured 200 feet from the boundary of the Property. In addition, the Developer agrees to conduct a study to determine the establishment of a Quiet Zone, if requested by the City to do so. Notwithstanding, locomotives may sound their horns in accordance with local, State and Federal requirements.

**Section 5.08. Smoke and Noxious Odors or Emissions.** All activities on the Property shall be conducted so as to reasonably minimize the emission of smoke, odors, particulate matter or noxious matter in accordance with sections 7.4.2.2, 7.4.2.5 and 7.4.2.3 of the Development Code and any stricter standards under applicable state or federal laws. No emissions containing hazardous wastes or materials as defined by the Resource Conservation and Recovery Act, Federal Toxic Substances Control Act or the Federal Insecticide, Fungicide, and Rodenticide Act, or subsequent amendments of said Acts will be allowed from any source. The Developer specifically agrees that manufacturing of finished products producing the release of volatile organic compounds, or toxic or poisonous emissions at levels unsafe for human inhalation will not be allowed on the Property.

**Section 5.09. Compatibility with Airport Operations.** No development shall be permitted on the Property that interferes with the safe flight, take of or landing of aircraft at the San Marcos Municipal Airport in accordance with Federal Aviation Administration rules and standards. Until an ordinance is approved by the San Marcos City Council creating overlay zoning district standards designed to mitigate adverse impacts on airport activities, all building plans shall be subject to review by the City for a determination of adverse impacts on the airport's activities,

provided, however, nothing under this Section 5.09 shall require modification of the plans and specifications for development of the Kattera Tract as proposed in development applications pending with and permits approved by the City as of the Effective Date, other than the dedication at the time of platting of an avigation easement as noted below. The determination of adverse impacts under this section assumes the condition of the airport following the addition of one or more runways as part of the expansion proposed in the City's Airport Master Plan. In addition, each final plat of any portion of the Property shall include the dedication to the City of an avigation easement granting a right of overflight in the airspace above the platted portion of the Property, the right to create such noise or other effects as may result from the lawful operation of aircraft in such airspace, and the right to remove any obstructions to such easement.

**Section 5.10. Pollutants.** In addition to compliance with applicable ordinances and applicable state and federal laws, all development on the Property will adhere to standards of the Texas Commission on Environmental Quality ("**TCEQ**") multi-sector general permit, and the Environmental Protection Agency's ("**EPA**") spill prevention, control and countermeasure rules applicable to petroleum storage and runoff. Activities on the Property shall be conducted to meet or exceed such TCEQ and EPA standards in effect as of November 1, 2016. If any activity on the Property is subject to the rules or regulations of the TCEQ or EPA, no variances from or waivers of TCEQ or EPA rules or regulations shall be permitted.

## **ARTICLE VI WAIVER OF DEVELOPMENT STANDARDS**

**Section 6.01 Waiver of Development Standards.** Pursuant to the City's authority under section 2.4.5.1 of the City's Development Code and under Section 212.172 of the Texas Local Government Code, the City hereby waives the following requirements of such Development Code with respect to the Property or any portion of the Property, as applicable:

**a.** The requirements of Section 3.6.2.1, Table 3.1 regarding block perimeters and dead end street lengths in EC, HC, HI and LI zoning districts.

**b.** The requirements of Section 4.3.5.3 regarding blank wall area are waived to allow typical industrial construction, using concrete tilt wall as primary building material, as provided in Section 4.3.5.17 (d)(1)(a).

**c.** The requirements of Section 4.3.5.3 regarding blank wall area are waived to allow typical industrial construction, using concrete tilt wall as primary building material, as provided in Section 4.3.5.17 (d)(1)(a).

**d.** The requirements of Section 7.2.6.2(E)(1) are modified to allow the use of black vinyl coated chain link fencing.

**e.** The requirements of Section 7.1.4.3 are waived in part to waive the requirement for landscaping in parking areas designated for trailers (as defined under Chapter 8 (Definition No. 249) of the City's Development Code), provided that, for each tree that is not planted as a result of this waiver, a replacement tree shall be planted elsewhere within the Property in addition to the minimum number of trees already required to be planted.

**f.** The requirement to install sidewalks under applicable sections of Chapter 3 are waived in part such that sidewalks will only be required to enable pedestrian access from rights-of-way adjacent to daycare facilities, hotels, retail establishments, bars and restaurants, or entertainment venues, and along SH 80, FM 1984 and the west side of the future extension of Loop 110.

g. The limitations on cut and fill of no more than eight feet under Section 6.1.2.3(C) of the City's Development Code are waived for the Katerra Tract only, to allow cuts of no more than eight feet, and fill of no more than 11 feet.

**Section 6.02. Cut and Fill Alternative Compliance.** Under Section 6.1.2.3(C) of the City's Development Code, the Developer or any Future Owner of any portion of the Property may submit a request for alternative compliance approved by the San Marcos City Council to allow cut and fill in excess of eight feet. As allowed under current ordinances, however, City administrative staff shall have the authority to approve cut and fill on any portion of the Property in excess of eight feet provided the cut and fill in excess of eight feet is within the perimeter of a building foundation and has vertical foundation walls or grade beams containing said cut fill. If an application for alternative compliance to allow cut and fill in excess of eight feet is filed, City staff will endeavor to expedite processing of the application and to promptly place such application on the agendas of the City's Planning and Zoning Commission for a recommendation and the City Council for final consideration in accordance with Section 2.8.4.3(C) of the City's Development Code.

**Section 6.03. Extended Construction Hours.** Pursuant to Section 14.011 of the San Marcos City Code, the City's Building Official will consider requests to allow construction activities between the hours of 9:00 p.m. and 7:00 a.m.

## **ARTICLE VII LAND USES**

Development of the Property is subject to the Permitted Uses and Prohibited Uses listed in Exhibit "E" attached hereto and made apart hereof for all purposes. Notwithstanding any restrictions, rights or privileges under applicable laws or the City's Development Code and other ordinances, the Permitted Uses shall be allowed on the Property and the Prohibited Uses are



expressly prohibited on the Property. The Parties hereto agree and acknowledge that the proposed Kattera Facility as a warehouse and distribution facility for the purpose of receiving, storing, shipping, distributing, displaying and selling Kattera's products, materials and merchandise, for processing customer returns, for general warehouse use, general office use and administrative and other ancillary and related uses, is a Permitted Use and does not violate any of the Prohibited Uses.

## **ARTICLE VIII COMPLIANCE WITH LAWS**

In performing its obligations under this Agreement, the Owners and the Developer shall comply with all applicable laws, regulations and ordinances.

## **ARTICLE IX TERM AND CONTINGENCY**

**Section 9.01. Term.** The Initial term of this Agreement will commence on the Effective Date and continue for 15 years thereafter. If, however, no progress toward completion of the Project, as defined under Section 245.005 of the Texas Local Government Code, is made within five years of the Effective Date, this Agreement shall expire. This Agreement may be extended for additional terms for up to 45 years upon mutual written agreement of the Parties.

**Section 9.02. Contingent Upon Zoning.** This Agreement and any annexation are specifically contingent on the City zoning the First Annexation Tract as Heavy Industrial (HI) use. If the City fails to do so within 14 days of annexing the First Annexation Tract, this Agreement and the annexation shall become null and void.

## **ARTICLE X REPRESENTATIONS AND WARRANTIES OF OWNERS AND DEVELOPER**

As of the Effective Date, the Developer and the Owners each represent and warrant to the City with respect to the matters pertaining to each, as follows:

**Section 10.01. Organization.** The Developer, Van Lee, LLC and Ohnheiser Properties, LP are duly organized, validly existing and in good standing under the laws of the State of Texas and are authorized to conduct business or own real property in the State of Texas.

**Section 10.02. Authority.** The execution, delivery and performance by the Owners and the Developer of this Agreement are within their respective powers and have been duly authorized, as applicable, and do not require joinder or consent of any other party.

**Section 10.03. Valid and Binding Obligation.** This Agreement is the legal, valid and binding obligation of the Owners and the Developer, enforceable against each in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

**Section 10.04. No Defaults.** Neither the Owners nor the Developer are in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which they are parties or by which they or any of their property is bound that would have any material adverse effect on their ability to perform under this Agreement.

## **ARTICLE XI PERSONAL LIABILITY OF PUBLIC OFFICIALS AND LIMITATIONS ON CITY OBLIGATIONS**

**Section 11.01. Personal Liability of Public Officials.** No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement.

**Section 11.02. Limitations on City Obligations.** The financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and

appropriated by the City each applicable fiscal year during the Term as provided in this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Owners and the Developer shall have no recourse against the City for the City's failure to budget and appropriate funds during any fiscal year to meet the purposes of and satisfy its obligations under this Agreement and such failure shall not constitute a breach of this Agreement.

## **ARTICLE XII INFORMATION**

**Section 12.01. Information.** The Developer, the Owners or any Future Owners performing the work contemplated under Section 4.03, shall, at such times and in such form as the City may reasonably request, provide information concerning the performance of or compliance with the obligations under Section 4.03.

**Section 12.02. Review of Developer Records.** The City will have the right to review the business records of the Developer, the Owners or any Future Owners that relate to the activities under Section 4.03 this Agreement in order to determine compliance with the terms of Section 4.03 of this Agreement. Such review shall occur at any reasonable time during regular daytime business hours and upon at least seven days' prior notice from the City. To the extent reasonably possible, all such records shall be made available in electronic form or otherwise available to be accessed through the internet.

## **ARTICLE XIII DEFAULT, TERMINATION, REMEDIES AND ESTOPPEL**

**Section 13.01. Default and Termination.** Except as otherwise provided herein, at any time during the Term of this Agreement that a Party is in default of its obligations under this Agreement, a non-defaulting Party may send written notice of such default to the defaulting Party.

If such default is not cured within 30 days after receipt of such notice or, if the default is not reasonably susceptible to cure within 30 days and a cure is not begun within such 30-day period and thereafter continuously and diligently pursued to completion on a schedule approved by the non-defaulting Party (in either event, a “**Cure**”), then the non-defaulting Party may, at its sole discretion, pursue such remedies as are available at law or in equity for breach of contract, including the recovery of reasonable attorney fees and costs of litigation. Notwithstanding the foregoing, the City shall not, in any case, be liable for special, incidental, consequential, indirect, or other similar damages. Notwithstanding any other provision contained herein, no Future Owner shall be liable for a breach of this Agreement or indemnity under this Agreement by the Developer, any Owner, any other Future Owner, or any other party not under the control of such Future Owner (collectively, an “**Unrelated Party Default**”), and neither may the rights and benefits under this Agreement accruing to any Future Owner, including without limitation the waivers and modification of the City ordinances and regulations described under Article VI, be terminated as a result of any Unrelated Party Default.

**Section 13.02. Force Majeure.** An event of *force majeure* means an event beyond the reasonable control of a Party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations. If a *force majeure* event occurs and such event prevents a Party from fulfilling its obligations hereunder, the applicable time period for performing such obligations shall be extended by the period of delay resulting from the *force majeure*.

**Section 13.03. Indemnification.** The City shall not be obligated to pay any indebtedness or obligations of the Developer. The Developer hereby agrees to indemnify and hold the City, and the City's elected officials and employees, harmless from and against (i) any indebtedness or obligations of the Developer; (ii) any other loss, claim, demand, lawsuit, liability or damages arising from the gross negligence or intentional misconduct of the Developer in the performance of its obligations under this Agreement, or (iii) breach of any representation, warranty, covenant or agreement of the Developer contained in this Agreement. The Developer's indemnification obligation hereunder shall include payment of the City's reasonable attorneys' fees, costs and expenses with respect thereto.

**Section 13.04. Estoppel Certificates.** Within twenty (20) days following written request to City by Developer, any Future Owner or any other authorized assignee under this Agreement, the City will execute an estoppel certificate: (a) running to the benefit of the requesting party and any tenant, prospective tenant, purchaser or lender of such requesting party; and (b) indicating (i) whether, to the City's knowledge, this Agreement is in full force and effect, (ii) whether the requesting party or any party is in default under the terms of this Agreement, and (iii) whether any event exists that, with notice or the passage of time, or both, would constitute a default by the requesting party or any other party under this Agreement.

#### **ARTICLE XIV ASSIGNMENT**

Except as provided in this paragraph below, neither the Developer or any Owner may assign any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the City. The Developer may assign this Agreement without the City's consent to: (a) an affiliated business organization that is wholly owned by the Developer or under common ownership with the Developer; (b) as collateral to a lender; or (c) in connection

with the sale or conveyance of any portion of the Property, provided the Developer shall first provide written notice of any such assignment to the City. The Owners and any Future Owners may also assign their rights and obligations under this Agreement only in connection with the sale or conveyance of such Owner's or Future Owners' interest in any portion of the Property without any requirement for City consent, provided written notice of such assignment is first provided to the City.

## **ARTICLE XV MISCELLANEOUS**

**Section 15.01. Entire Agreement.** This Agreement, including the Recitals and the exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein.

**Section 15.02. Amendments.** This Agreement may only be amended, altered, or terminated by written instrument signed by all Parties and, except as expressly provided herein, approved by the San Marcos City Council.

**Section 15.03. Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

**Section 15.04. Notices.** Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, or reputable overnight carrier, or by email, and shall be deemed delivered when received at the respective address of the recipient Party set forth below, or at such other address furnished in writing to the other Party hereto:

**Owners:** To each named owner:  
c/o 19330 San Marcos Hwy.  
San Marcos, TX 78666

E-mail (as applicable):  
*curbydon@gmail.com*  
*cscurlock@austin.rr.com*  
*dderinger@austin.rr.com*

**Developer:** Texas Transportation Alliance, LTD  
Attn: Mike Schroeder  
110 San Antonio St., S. 3111  
Austin, TX 78701  
E-mail: *mike@schroedercompany.net*

With a copy to:

Andy Barrett & Associates, PLLC  
3300 Bee Cave Rd, S.650 #189  
Austin, Texas 78746  
E-mail: *andy@thebarrettfirm.com*

**City:** City of San Marcos  
630 E. Hopkins  
San Marcos, Texas 78666  
Attn: City Manager  
E-mail: *citymanagerinfo@sanmarcostx.gov*

Parties, Future Owners and other assignees may change their notices addresses by written notice to the other Parties.

**Section 15.05. Applicable Law and Venue.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in the state courts in Hays County, Texas having appropriate jurisdiction, or if in federal court, the United States District Court for the Western District of Texas, Austin Division.

**Section 15.06. Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceable, either as between the Parties or with respect to any portion of the Property, under the applicable present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the

intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**Section 15.07. Third Parties.** The Parties intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the Parties or permitted assignees or successors of the Parties, except that the indemnification and hold harmless obligations by the Developer shall inure to the benefit of the indemnitees named therein.

**Section 15.08. No Joint Venture.** Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any Party as an agent of another for any purpose whatsoever. Except as otherwise specifically provided herein, no Party shall in any way assume any of the liability of the other for acts of the other or obligations of any other.

**Section 15.09. Immunity.** The City, in entering this Agreement does not waive its immunity from suit or any other limitations on its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas.

**Section 15.10. Recordation and Binding Effect.** This Agreement shall be recorded in the official public records of Caldwell County, Texas. The terms of this Agreement shall be covenants running with the land and binding upon the Parties, the Parties' successors and assigns, the Property, and future owners of all or any portion of the Property.



**Section 15.11. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument, and facsimile or electronic (in PDF) copies of this Agreement and facsimile or electronic (in PDF) signatures to this Agreement shall be authorized and deemed effective.

EXECUTED to be effective as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGES]

**CITY OF SAN MARCOS, TEXAS:**

By: \_\_\_\_\_  
Bert Lumbreras, City Manager

STATE OF TEXAS           §

§

COUNTY OF HAYS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by Bert Lumbreras, City Manager of the City of San Marcos, in such capacity, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**

\_\_\_\_\_  
Curby D. Ohnheiser

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
Curby D. Ohnheiser.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**

\_\_\_\_\_  
Diane M. Deringer

ACKNOWLEDGMENT

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
Diane M. Deringer

.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**

\_\_\_\_\_  
Carolyn J. Scurlock

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
Carolyn J. Scurlock.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**  
**VAN LEE, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS           §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
\_\_\_\_\_, \_\_\_\_\_ of Van Lee, LLC, in such capacity, on behalf of  
said entity.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**  
**OHNEHEISER PROPERTIES, LP.**

By: \_\_\_\_\_, General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS           §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, general partner of  
Ohnheiser Properties, LP, in such capacity, on behalf of said entity.

\_\_\_\_\_  
Notary Public, State of Texas

**TEXAS TRANSPORTATION ALLIANCE, LTD.:**

By: Schroeder Development, LLC, General Partner

By: \_\_\_\_\_  
Michael A. Schroeder, Manager

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
                                      §  
COUNTY OF TRAVIS      §

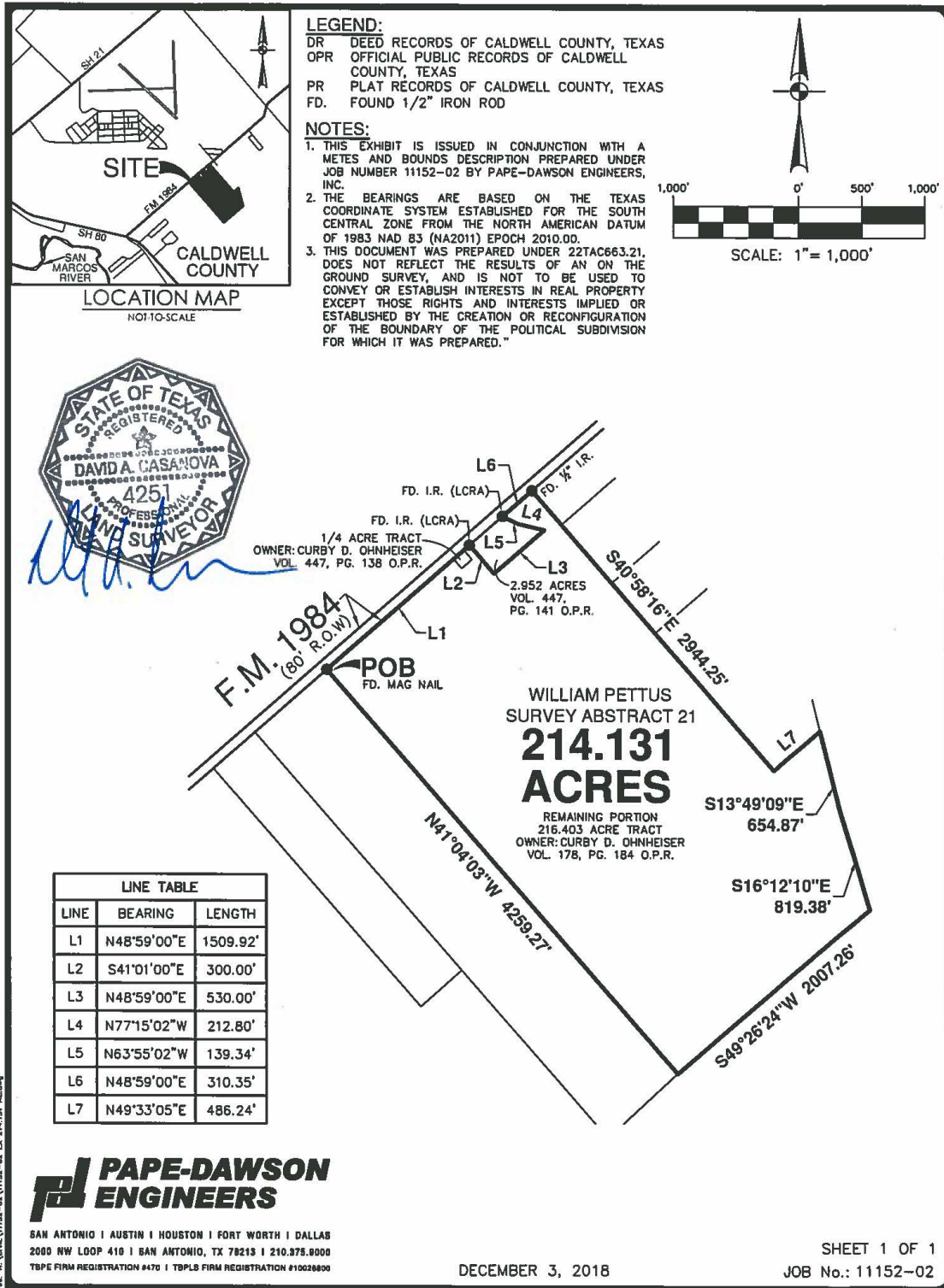
This instrument was acknowledged before me on \_\_\_\_\_, 2019, by Michael Schroeder, in his capacity as Manager for Schroeder Development, LLC, General Partner to Texas Transportation Alliance, Limited.

\_\_\_\_\_  
Notary Public, State of Texas



# EXHIBIT "A"

## Legal Description of the Property



A 214.131 acre tract of land comprised of all of the remaining portion of the 216.403 acre tract described in instrument to Curby D. Ohnheiser recorded in Volume 178, Page 184 in the Official Public Records of Caldwell County, Texas, and all of the 1/4 acre tract described in instrument to Curby D. Ohnheiser recorded in Volume 447, Page 138 in said Official Public Records, in the William Pettus Survey, Abstract 21, Caldwell County, Texas. Said 214.131 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

**BEGINNING:** At a found mag nail on the southeast right-of-way line of F.M. 1984, an 80-foot right-of-way, at the west corner of said 216.403 acre tract;

**THENCE:** N 48°59'00" E, along and with the southeast right-of-way line of said F.M. 1984, the northwest line of said 216.403 acre tract and the northwest line of said 1/4 acre tract, a distance of 1509.92 feet to a found 1/2" iron rod with cap marked "LCRA", at the west corner of the 2.952 acre tract described in Volume 447, Page 141 in said Official Public Records;

**THENCE:** Departing the southeast right-of-way line of said F.M. 1984, along and with said 2.952 acre tract, the following bearings and distances:

S 41°01'00" E, a distance of 300.00 feet to a point;

N 48°59'00" E, a distance of 530.00 feet to a point;

N 77°15'02" W, a distance of 212.80 feet to a point;

N 63°55'02" W, a distance of 139.34 feet to a found 1/2" iron rod with cap marked "LCRA" on the southeast right-of-way line of said F.M. 1984 and the northwest line of said 216.403 acre tract, at the north corner of said 2.952 acre tract;

**THENCE:** N 48°59'00" E, along and with the southeast right-of-way line of said F.M. 1984 and the northwest line of said 216.403 acre, a distance of 310.35 feet to a found 1/2" iron rod, at the north corner of said 216.403 acre tract;

**THENCE:** Departing the southeast right-of-way line of said F.M. 1984, along and with said 216.403 acre tract, the following bearings and distances:

Page 1 of 2

TBPE Firm Registration #470 | TBPLS Firm Registration #10028800

San Antonio | Austin | Houston | Fort Worth | Dallas

Transportation | Water Resources | Land Development | Surveying | Environmental

2000 NW Loop 410, San Antonio, TX 78213 T: 210.375.9000 [www.Pape-Dawson.com](http://www.Pape-Dawson.com)

S 40°58'16" E, a distance of 2944.25 feet to a point;

N 49°33'05" E, a distance of 486.24 feet to a point;

S 13°49'09" E, a distance of 654.87 feet to a point;

S 16°12'10" E, a distance of 819.38 feet to a point;

S 49°26'24" W, a distance of 2007.26 feet to a point;

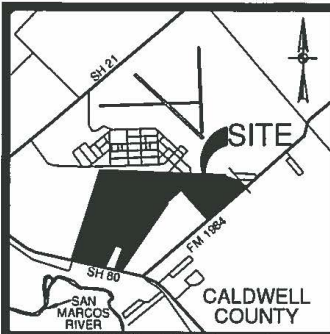
N 41°04'03" W, a distance of 4259.27 feet to the POINT OF BEGINNING and containing 214.131 acres in the Caldwell County, Texas. Said tract being described in conjunction with an exhibit prepared under job number 11152-02 by Pape-Dawson Engineers, Inc.

"This document was prepared under 22TAC663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: December 3, 2018  
JOB NO. 11152-02  
DOC. ID. N:\CIVIL\11152-02\Word\11152-02 FN 214.131 AC.docx





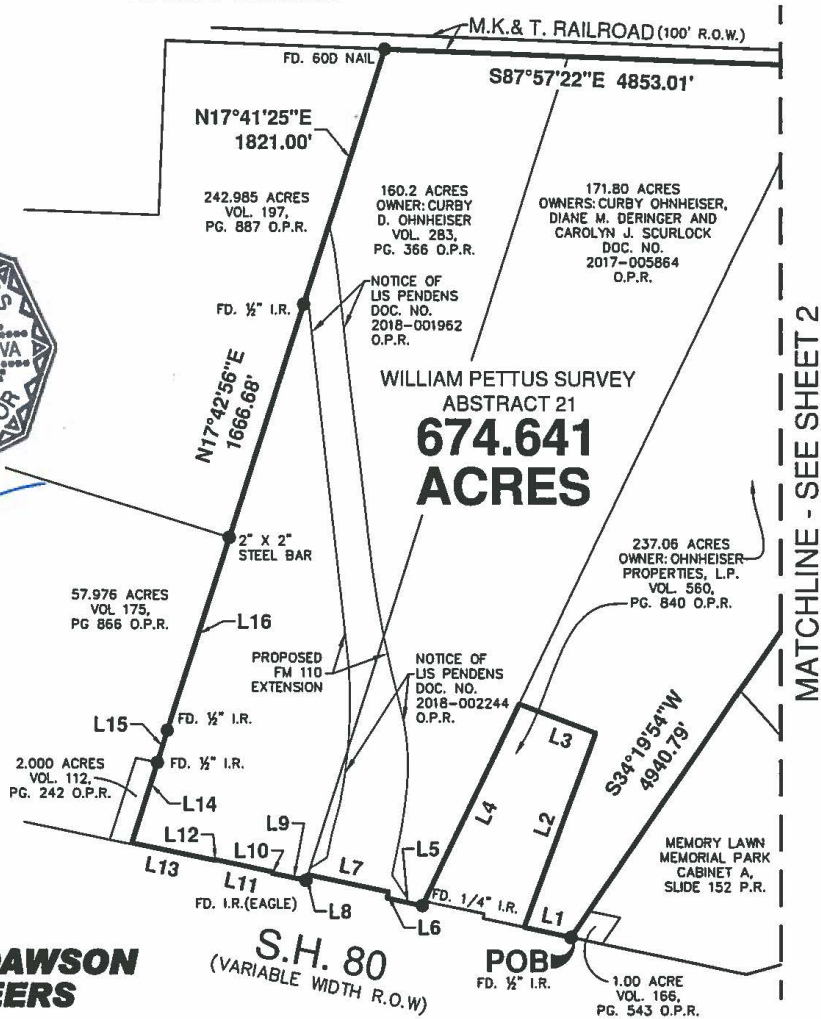
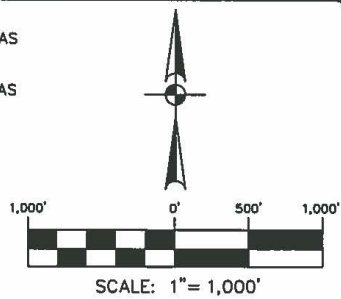


# LEGEND:

DR DEED RECORDS OF CALDWELL COUNTY, TEXAS  
OPR OFFICIAL PUBLIC RECORDS OF CALDWELL COUNTY, TEXAS  
PR PLAT RECORDS OF CALDWELL COUNTY, TEXAS  
FD. FOUND 1/2" IRON ROD

## NOTES:

1. THIS EXHIBIT IS ISSUED IN CONJUNCTION WITH A METES AND BOUNDS DESCRIPTION PREPARED UNDER JOB NUMBER 11152-02 BY PAPE-DAWSON ENGINEERS, INC.
2. THE BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE SOUTH CENTRAL ZONE FROM THE NORTH AMERICAN DATUM OF 1983 NAD 83 (NA2011) EPOCH 2010.00.
3. THIS DOCUMENT WAS PREPARED UNDER 22TAC663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED



**PAPE-DAWSON ENGINEERS**

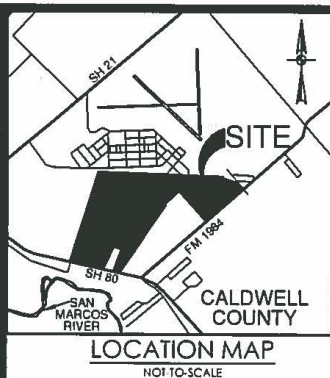
SAN ANTONIO | AUSTIN | HOUSTON | FORT WORTH | DALLAS  
2000 HW LOOP 410 | SAN ANTONIO, TX 78213 | 210.375.9000  
TBPE FIRM REGISTRATION #470 | TBPLS FIRM REGISTRATION #10028800

DECEMBER 3, 2018

SHEET 1 OF 3  
JOB No.: 11152-02

Date: Dec 03, 2018, 8:54am User: D. Dittus  
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DECEMBER 3, 2018

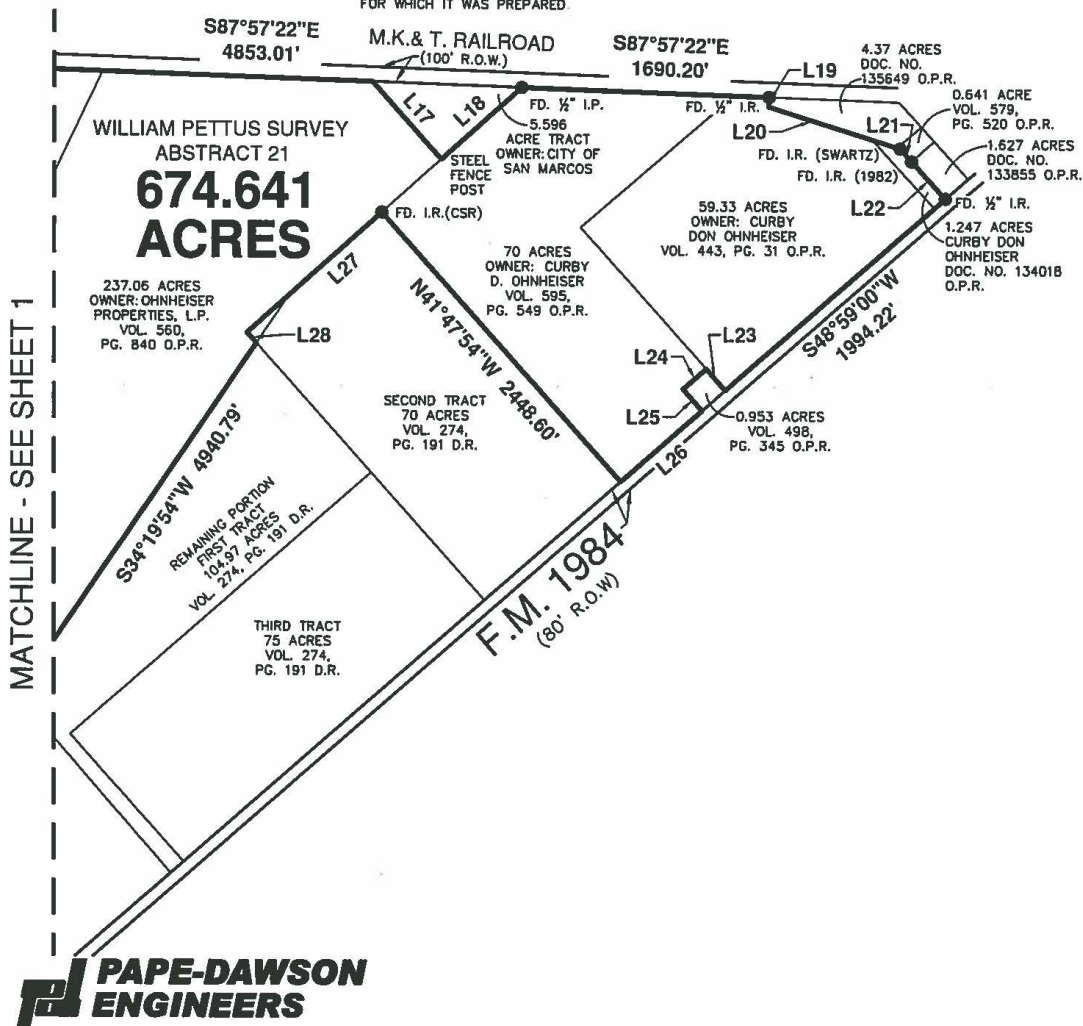
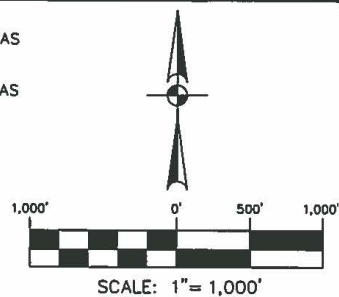


#### LEGEND:

DR DEED RECORDS OF CALDWELL COUNTY, TEXAS  
 OPR OFFICIAL PUBLIC RECORDS OF CALDWELL COUNTY, TEXAS  
 PR PLAT RECORDS OF CALDWELL COUNTY, TEXAS  
 FD. FOUND 1/2" IRON ROD

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PAPE-DAWSON ENGINEERS, INC.  
 2000 HW LOOP 410 | SAN ANTONIO, TX 78219 | 210.375.9000  
 TBPB FIRM REGISTRATION #470 | TBPB FIRM REGISTRATION #10028800

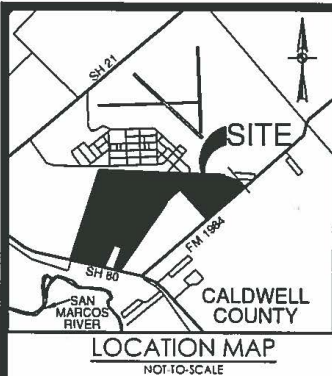
**PAPE-DAWSON ENGINEERS**

SAN ANTONIO | AUSTIN | HOUSTON | FORT WORTH | DALLAS  
 2000 HW LOOP 410 | SAN ANTONIO, TX 78219 | 210.375.9000  
 TBPB FIRM REGISTRATION #470 | TBPB FIRM REGISTRATION #10028800

DECEMBER 3, 2018

SHEET 2 OF 3  
 JOB No.: 11152-02

DECEMBER 3, 2018

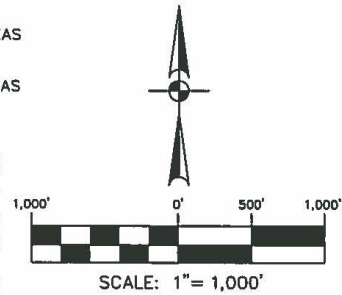


# **LEGEND:**

DR DEED RECORDS OF CALDWELL COUNTY, TEXAS  
 OPR OFFICIAL PUBLIC RECORDS OF CALDWELL COUNTY, TEXAS  
 PR PLAT RECORDS OF CALDWELL COUNTY, TEXAS  
 FD. FOUND 1/2" IRON ROD

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3. THIS DOCUMENT WAS PREPARED UNDER 22TAC663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.



LINE TABLE		
LINE	BEARING	LENGTH
L1	N78°02'13"W	329.75'
L2	N20°31'11"E	1409.58'
L3	N69°28'49"W	562.64'
L4	S25°43'58"W	1524.74'
L5	N78°18'15"W	246.61'
L6	N11°41'45"E	45.00'
L7	N78°18'15"W	561.32'
L8	S17°45'08"W	40.23'
L9	N78°18'15"W	234.94'
L10	N12°28'57"E	10.00'
L11	N78°18'15"W	399.76'
L12	S10°46'10"W	5.00'
L13	N78°18'15"W	581.63'
L14	N17°40'25"E	572.83'

LINE TABLE		
LINE	BEARING	LENGTH
L15	N17°34'43"E	229.02'
L16	N17°57'02"E	1380.33'
L17	S41°51'57"E	706.78'
L18	N48°19'32"E	736.76'
L19	S02°02'38"W	64.55'
L20	S72°35'22"E	942.42'
L21	S42°08'17"E	115.61'
L22	S42°20'31"E	343.49'
L23	N41°01'00"W	197.00'
L24	S48°59'00"W	210.00'
L25	S41°01'00"E	197.00'
L26	S48°59'00"W	737.30'
L27	S48°19'32"W	1232.90'
L28	S41°48'04"E	96.84'



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 2000 NW LOOP 410 | SAN ANTONIO, TX 78213 | 210.375.9000  
 TBPE FIRM REGISTRATION #470 | TBPLS FIRM REGISTRATION #10026800

DECEMBER 3, 2018

SHEET 3 OF 3  
 JOB No.: 11152-02

Date: Dec 01, 2018, 8:54am User: B. Dwyer  
 File: H:\11152-02\11152-02.dwg Plot: 11/22/18

DECEMBER 3, 2018



A 674.641 acre tract of land being comprised of all of the 160.2 acre tract described in instrument to Curby D. Ohnheiser recorded in Volume 283, Page 366 in the Official Public Records of Caldwell County, Texas, all of the 171.80 acre tract described in instrument to Curby Ohnheiser, Diane M. Deringer and Carolyn J. Scurlock recorded Document No. 2017-005864 in said Official Public Records, all of the 70 acre tract described in instrument to Curby D. Ohnheiser recorded in Volume 595, Page 549 in said Official Public Records, all of the 59.33 acre tract described in instrument to Curby Don Ohnheiser recorded in Volume 443, Page 31 in said Official Public Records, all of the 1.247 acre tract described in instrument to Curby Don Ohnheiser recorded in Document No. 134018 in said Official Public Records and a portion of the 237.06 acre tract described in instrument to Ohnheiser Properties, L.P. by instrument recorded in Volume 560, Page 840 in said Official Public Records, in the William Pettus Survey Abstract 21, Caldwell County, Texas. Said 674.641 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

**BEGINNING:** At a found ½" iron rod on the north right-of-way line of State Highway 80, a variable width right-of-way, on the southeast line of said 237.06 acre tract, at the southwest corner of the 1.00 acre tract described in Volume 166, Page 543 in said Official Public Records;

**THENCE:** N 78°02'13" W, along and with the north right-of-way line of said State Highway 80, a distance of 329.75 feet to a point;

**THENCE:** Departing the north right-of-way line of said State Highway 80, over and across said 237.06 acre tract, the following bearing and distances:

N 20°31'11" E, a distance of 1409.58 feet to a point;

N 69°28'49" W, a distance of 562.64 feet to a point on the west line of said 237.06 acre tract and the east line of said 171.80 acre tract;

**THENCE:** S 25°43'58" W, along and with the west line of said 237.06 acre tract and the east line of said 171.80 acre tract, a distance of 1524.74 feet to a found ¼" iron rod on the north right-of-way line of said State Highway 80;

**THENCE:** Along and with the north right-of-way line of said State Highway 80, the following bearings and distances:

Page 1 of 5

TBPE Firm Registration #470 | TBPLS Firm Registration #10028800

San Antonio | Austin | Houston | Fort Worth | Dallas

Transportation | Water Resources | Land Development | Surveying | Environmental

2000 NW Loop 410, San Antonio, TX 78213 T: 210.375.9000 [www.Pape-Dawson.com](http://www.Pape-Dawson.com)

N 78°18'15" W, a distance of 246.61 feet to a point;

N 11°41'45" E, a distance of 45.00 feet to a point;

N 78°18'15" W, a distance of 561.32 feet to a point on the west line of said 171.80 acre tract and the east line of said 160.2 acre tract;

THENCE: S 17°45'08" W, along and with the east line of said 160.2 acre tract, a distance of 40.23 feet to a found ½" iron rod with cap marked "Eagle" on the north right-of-way line of said State Highway 80;

THENCE: Along and with the north right-of-way line of said State Highway 80, the following bearings and distances:

N 78°18'15" W, a distance of 234.94 feet to a point;

N 12°28'57" E, a distance of 10.00 feet to a point;

N 78°18'15" W, a distance of 399.76 feet to a point;

S 10°46'10" W, a distance of 5.00 feet to a point;

N 78°18'15" W, a distance of 581.63 feet to a point on the west line of said 160.2 acre tract and the east line of the 2.000 acre tract described in Volume 112, Page 242 in said Official Public Records;

THENCE: N 17°40'25" E, departing the north right-of-way line of State Highway 80, along and with the west line of said 160.2 acre tract and the east line of said 2.000 acre tract, a distance of 572.83 feet to a found ½" iron rod, at an angle point of said 160.2 acre tract, the northeast corner of said 2.000 acre tract and the most easterly southeast corner of the 57.976 acre tract described in Volume 175, Page 866 in said Official Public Records;

THENCE: Along and with west line of said 160.2 acre tract and the east line of said 57.976 acre tract, the following bearings and distances:

N 17°34'43" E, a distance of 229.02 feet to a found ½" iron rod;



N 17°57'02" E, a distance of 1380.33 feet to a found 2" X 2" steel bar, at an angle point of said 160.2 acre tract, the northeast corner of said 57.976 acre tract and the southeast corner of the 242.985 acre tract described in Volume 197, Page 887 in said Official Public Records;

THENCE: Along and with the west line of said 160.2 acre tract and the east line of said 242.985 acre tract, the following bearings and distances:

N 17°42'56" E, a distance of 1666.68 feet to a found ½" iron rod;

N 17°41'25" E, a distance of 1821.00 feet to a found 60D Nail on the south line of the 100-foot wide M. K. & T. Railroad right-of-way;

THENCE: S 87°57'22" E, along and with the south line of said railroad right-of-way, a distance of 4853.01 feet to a point, at the west corner of the 5.596 acre City of San Marcos tract;

THENCE: S 41°51'57" E, departing said railroad right-of-way, along and with the southwest line of said 5.596 acre tract, a distance of 706.78 feet to a found steel fence post, on the northwest line of said 70 acre tract, at the south corner of said 5.596 acre tract;

THENCE: N 48°19'32" E, along and with the northwest line of said 70 acre tract and the southeast line of said 5.596 acre tract, a distance of 736.76 feet to a found ½" iron pipe on the south line of said railroad right-of-way, at the most northerly northwest corner of said 70 acre tract;

THENCE: S 87°57'22" E, along and with the south line of said railroad right-of-way, the north line of said 70 acre tract and the north line of said 59.33 acre tract, a distance of 1690.20 feet to a found ½" iron rod, at the northeast corner of said 59.33 acre tract and the northwest corner of the 4.37 acre tract described in Document No. 135649 in said Official Public Records;

THENCE: S 02°02'38" W, departing the south line of said railroad right-of-way, along and with the east line of said 59.33 acre tract and the west line of said 4.37 acre tract, a distance of 64.55 feet to an angle point of said 59.33 acre tract and said 4.37 acre tract;

- THENCE: S 72°35'22" E, along and with the northeast line of said 59.33 acre tract, a northeast line of said 1.247 acre tract, the southwest line of said 4.37 acre tract and the southwest line of the 0.641 acre tract described in Volume 579, Page 520 in said Official Public Records, a distance of 942.42 feet to a found ½" iron rod with cap marked "Swartz", at an angle point of said 1.247 acre tract and of said 0.641 acre tract;
- THENCE: S 42°08'17" E, along and with a northeast line of said 1.247 acre tract and the southwest line of said 0.641 acre tract, a distance of 115.61 feet to a found ½" iron rod with cap marked "1982", at the south corner of said 0.641 acre tract and the west corner of the 1.627 acre tract described in Document No. 133855 in said Official Public Records;
- THENCE: S 42°20'31" E, along and with a northeast line of said 1.247 acre tract and the southwest line of said 1.627 acre tract, a distance of 343.49 feet to a found ½" iron rod on the northwest right-of-way line of F.M. 1984, an 80-foot right-of-way, at the east corner of said 1.247 acre tract and the south corner of said 1.627 acre tract;
- THENCE: S 48°59'00" W, along and with the northwest right-of-way line of said F.M. 1984, a distance of 1994.22 feet to a point, at the east corner of the 0.953 acre tract described in Volume 498, Page 345 in said Official Public Records;
- THENCE: N 41°01'00" W, departing the northwest right-of-way line of said F.M. 1984, along and with the southwest line of said 59.33 acre tract and the northeast line of said 0.953 acre tract, a distance of 197.00 feet to a point, at the north corner of said 0.953 acre tract and an angle point of said 70 acre tract;
- THENCE: S 48°59'00" W, along and with a southeast line of said 70 acre tract and the northwest line of said 0.953 acre tract, a distance of 210.00 feet to a point;
- THENCE: S 41°01'00" E, along and with a northeast line of said 70 acre tract and the southwest line of said 0.953 acre tract, a distance of 197.00 feet to a point on the northwest right-of-way line of said F.M. 1984, at the south corner of said 0.953 acre tract;
- THENCE: S 48°59'00" W, along and with the northeast right-of-way line of said F.M. 1984, a distance of 737.30 feet to a point on the southwest line of said 70 acre tract and the northeast line of the 70 acre tract described as Second Tract in Volume 274, Page 191 in the Deed Records of Caldwell County, Texas;

THENCE: N 41°47'54" W, departing the northwest right-of-way line of said F.M. 1984, along and with the southwest line of said 70 acre tract (Ohnheiser) and the northeast line of said 70 acre tract (Second Tract), a distance of 2448.60 feet to a found ½" iron rod with cap marked "CSR", at the west corner of said 70 acre tract (Ohnheiser) and the north corner of said 70 acre tract (Second Tract);

THENCE: S 48°19'32" W, along and with the northwest line of said 70 acre tract (Second Tract), a distance of 1232.90 feet to a point;

THENCE: S 41°48'04" E, along and with the southwest line of said 70 acre tract (Second Tract), a distance of 96.84 feet to a point on the southeast line of said 237.06 acre tract;

THENCE: S 34°19'54" W, along and with the southeast line of said 237.06 acre tract, the northwest line of Memory Lawn Memorial Park recorded in Cabinet A, Slide 152 in the Plat Records of Caldwell County and the northwest line of said 1.00 acre tract, a distance of 4940.79 feet to the POINT OF BEGINNING and containing 674.641 acres in the Caldwell County, Texas. Said tract being described in conjunction with an exhibit prepared under job number 11152-02 by Pape-Dawson Engineers, Inc.

"This document was prepared under 22TAC663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: December 3, 2018  
JOB NO. 11152-02  
DOC. ID. N:\CIVIL\11152-02\Word\11152-02 FN 674.641.docx



**EXHIBIT "B-1"**  
**Legal Description of the First Annexation Tract**



San Marcos ETJ  
Caldwell County, Texas

Exhibit " — "

7401B Highway 71 West, Suite 160  
Austin, TX 78735  
Office: 512.583.2600  
Fax: 512.583.2601

[Doucetengineers.com](http://Doucetengineers.com)  
TBPLS Firm # 10105800

**D&A Job No. 1808-001**  
**January 11, 2019**

**DESCRIPTION**  
**For a 734.6-Acre [32,000,847 Square Feet]**  
**San Marcos Annexation Tract**

BEING A NET OF 734.6 ACRES [32,000,847 SQUARE FEET] FOR AN ANNEXATION TRACT OUT OF THE WILLIAM PETTUS SURVEY, ABSTRACT NUMBER 21, CALDWELL COUNTY, TEXAS, SAID TRACT BEING COMPRISED OF A CALLED 160.20-ACRE TRACT RECORDED IN VOL. 283, PG. 366, A CALLED 171.80-ACRE TRACT RECORDED IN CLERK'S FILE NO. 2017005864, A CALLED 237.06-ACRE TRACT RECORDED IN VOL. 560, PG. 840, A CALLED 70-ACRE TRACT RECORDED IN VOL. 595, PG. 549, A CALLED 216.403-ACRE TRACT RECORDED IN VOL. 178, PG.184, AND A 59.33-ACRE TRACT TO CURBY OHNHEISER BY TAX RECORD, NO DEED OF RECORD FOUND, ALL BEING OF THE OFFICIAL PUBLIC RECORDS, AND OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, CALDWELL COUNTY, TEXAS [O.P.R.C.C.TX., O.P.R.R.P.C.C.TX.], SAVE AND EXCEPT A CALLED 0.953-ACRE TRACT RECORDED IN VOL. 498, PG. 345, AND A CALLED 2.952-ACRE TRACT RECORDED IN VOL. 447, PG. 141, BOTH OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF CALDWELL COUNTY, TEXAS; SAID 734.6 ACRE (NET) TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a point for the northwest corner of said 160.20-acre tract, same being at a point the northeast corner of a called 57.976-acre tract to the City of San Marcos, recorded in Vol. 175, Pg. 866 O.P.R.R.P.C.C.TX., and same being in the south line of the Missouri, Kansas, and Texas Railroad [M.K.&TX. RR.];

**THENCE** with the south line of said M.K.&TX. RR., and the north lines of said 160.20-acre, 171.80-acre, and 237.06-acre tracts, S88°01'32"E a distance of 4,842.33 feet to the northerly northeast corner of said 237.06-acre tract, same being the west corner of a tract of land owned by the City of San Marcos per tax record, no deed of record found;

**THENCE** with the northeast line of said 237.06-acre, and the southwest line of said City of San Marcos tract, S40°58'16"E a distance of 704.29 feet to a point at the southerly northeast corner of said 237.06-acre tract, same being at the south corner of said City of San Marcos tract, same being in the northwest line of said 70-acre tract;

**THENCE** with the southeast line of said City of San Marcos tract, and the northwest line of said 70-acre tract, N49°00'10"E a distance of 753.70 feet to the east corner of said City of San Marcos tract, same being in the south line of said M.K.&TX. RR., same being at the northerly northwest corner of said 70-acre tract;

**THENCE** with the north lines of said 70-acre tract and 59.33-acre tract, and the south line of said M.K.&TX. RR., S87°55'49"E a distance of 1687.28 feet to a point at the northerly northeast corner of said 59.33-acre tract;

**THENCE** with an east line of said 59.33-acre tract, S01°24'46"W a distance of 64.55 feet to a point at an internal ell corner, and continuing with a northeast line of said 59.33-acre tract S72°34'51"E a distance of 744.47 feet to a point at





the southerly northeast corner of said 59.33-acre tract, same being at the north corner of a called 1.247-acre tract, recorded in document number 134018 O.P.R.R.P.C.C.TX.;

**THENCE** with a northeast line of said 59.33-acre tract, and the southwest line of said 1.247-acre tract, S42°16'34"E a distance of 627.65 feet to a point at the east corner of said 59.33-acre tract, same being at the south corner of said 1.247-acre tract, and same being in the northwest right-of-way of Farm to Market Road 1984;

**THENCE** with the southeast line of said 59.33-acre tract, and the northwest right-of-way of Farm to Market Road 1984 S49°00'05"W a distance of 496.93 feet to a point in the south line of said 59.33-acre tract;

**THENCE** departing from and ending in the northwest right-of-way of Farm to Market Road 1984, and with the easterly, southerly, and westerly lines of said 216.403-acre tract, the following five (5) courses and distances:

- 1) S41°04'50"E a distance of 3,024.10 feet to a point,
- 2) N49°29'57"E a distance of 478.67 feet to a point,
- 3) S15°07'10"E a distance of 1,474.22 feet to a point,
- 4) S48°55'15"W a distance of 2,006.06 feet to a point,
- 5) N41°03'12"W a distance of 4,357.45 feet to a point in the northwest right-of-way of Farm to Market Road 1984, same being in the southeast line of said 70-acre tract;

**THENCE** with the southeast line of said 70-acre tract, same being the northwest right-of-way of said Farm to Market Road 1984, S49°00'05"W a distance of 196.03 feet to a point at the south corner of said 70-acre tract, same being at the east corner of a called 75-acre tract (Third Tract), recorded in Vol. 274, Pg. 191 O.P.R.R.P.C.C.TX.;

**THENCE** with said the southwest line of said 70-acre tract, same being the northeast line of said 75-acre tract (Third Tract), N41°54'08"W a distance of 2,462.07 feet to a point at the west corner of said 70-acre tract, same being at the north corner of said 75-acre tract (Third Tract), and same being in the east line of said 237.06-acre tract;

**THENCE** with the southeast line of said 237.06-acre tract, and the northwest line of said 75-acre tract (Third Tract), S49°05'37"W a distance of 806.82 feet to a point at the west corner of said 75-acre tract (Third Tract), same being at an angle point in the east line of said 237.06-acre tract, and same being at the north corner of the remainder of a called 104.97-acre tract (First Tract), recorded in Vol. 274, Pg. 191 O.P.R.R.P.C.C.TX. ;

**THENCE** with the east line of said 237.06-acre tract, and the west line of said 104.97-acre (First Tract) remainder tract, S34°03'23"W a distance of 2,871.91 feet to a point of intersection with the apparent 1980 City of San Marcos Extra Territorial Jurisdiction line;

**THENCE** continuing with the apparent 1980 City of San Marcos Extra Territorial Jurisdiction line, severing said 237.06-acre, 171.80-acre, and 160.20-acre tracts, the following twenty-one (21) courses and distances:

- 1) N46°52'30"W a distance of 192.10 feet to an angle point,
- 2) N43°07'30"W a distance of 345.51 feet to an angle point,
- 3) N39°22'30"W a distance of 154.39 feet to an angle point,
- 4) N38°36'29"W a distance of 256.97 feet to an angle point,
- 5) N34°54'36"W a distance of 345.46 feet to an angle point,
- 6) N31°09'35"W a distance of 345.46 feet to an angle point,
- 7) N27°24'35"W a distance of 33.71 feet to an angle point,
- 8) S77°35'24"W a distance of 312.03 feet to an angle point,



- 9) S81°20'25"W a distance of 18.65 feet to an angle point,
- 10) S51°12'13"W a distance of 260.05 feet to an angle point,
- 11) S52°12'34"W a distance of 185.32 feet to an angle point,
- 12) S55°05'24"W a distance of 345.46 feet to an angle point,
- 13) S58°50'24"W a distance of 345.46 feet to an angle point,
- 14) S62°35'24"W a distance of 95.29 feet to an angle point,
- 15) S43°50'24"W a distance of 325.16 feet to an angle point,
- 16) S47°35'24"W a distance of 345.46 feet to an angle point,
- 17) S51°20'24"W a distance of 345.46 feet to an angle point,
- 18) S55°05'24"W a distance of 345.46 feet to an angle point,
- 19) S58°50'24"W a distance of 345.46 feet to an angle point,
- 20) S62°35'24"W a distance of 345.46 feet to an angle point,
- 21) S66°20'23"W a distance of 186.76 feet to a point of intersection with the apparent 1980 City of San Marcos Extra Territorial Jurisdiction line with the west line of said 160.20-acre tract, and the east line of said 57.976-acre tract;

**THENCE** with the west line of said 160.20-acre tract, and the east line of said 57.976-acre tract, departing the apparent 1980 City of San Marcos Extra Territorial Jurisdiction line, N17°41'46"E a distance of 4,953.07 feet back to the **POINT OF BEGINNING** of the tract described herein, and containing a net of 734.6 Acres [32,000,847 Square Feet] subsequent to the heretofore said 0.953-acre and 2.952-acre save and except tracts.

Basis of bearings is the Texas Coordinate System, South Central Zone [4204], NAD83 (2011), Epoch 2010, U.S. Survey Feet.

This survey was performed without the benefit of a title commitment. Easements or other matters of record may exist where none are shown.

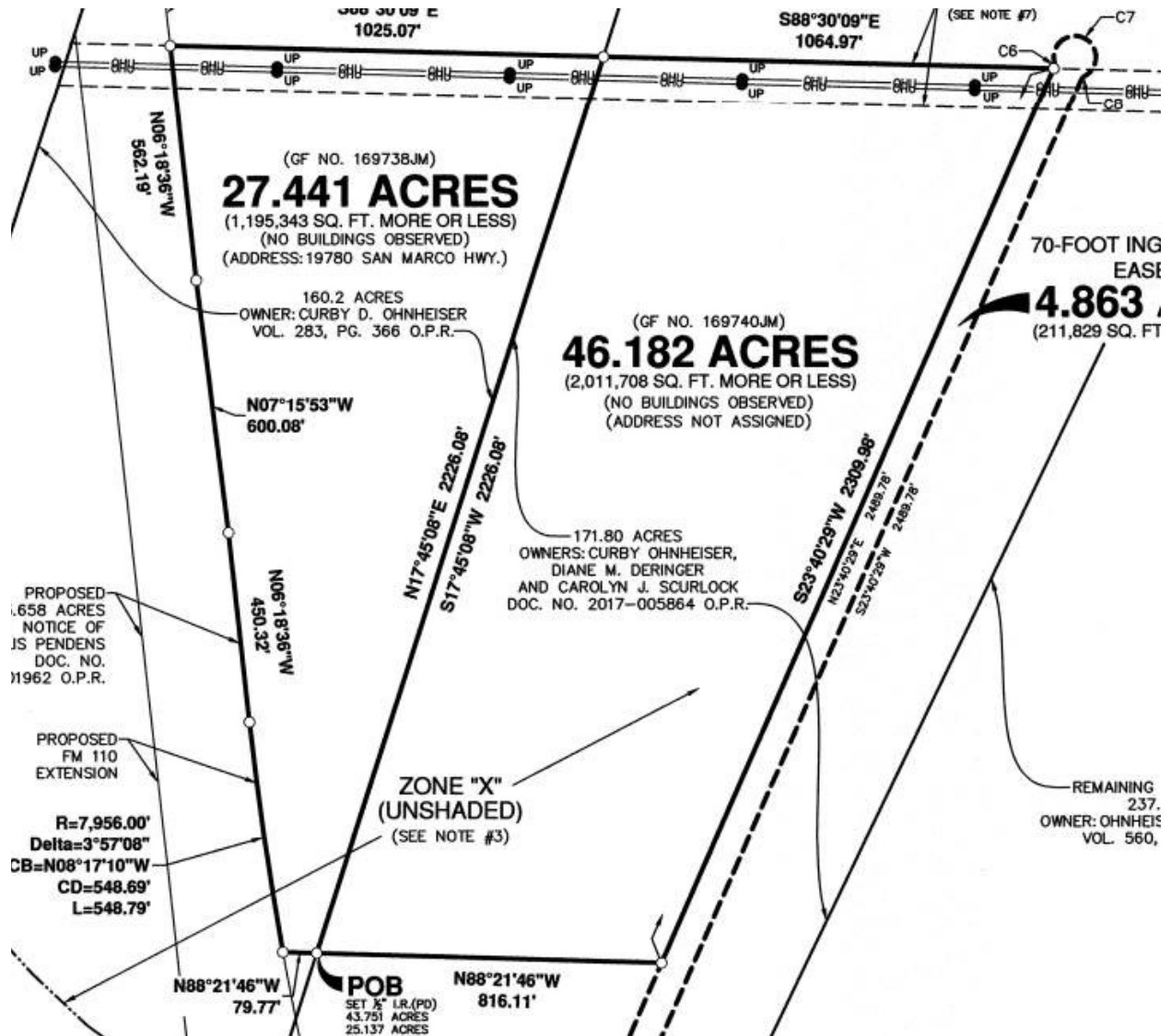
This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

  
Garrett Cavauiolo  
Registered Professional Land Surveyor  
Texas Registration No. 6714  
Doucet & Associates  
GCavauiolo@DoucetEngineers.com  
TBPLS Firm Registration No. 10105800

1/11/2019  
Date



**EXHIBIT "B-2"**  
**The Katerra Tract**



## EXHIBIT "C"

### RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between Curby D. Ohnheiser, Diane M. Deringer, Carolyn J. Scurlock, Van Lee, LLC, and Ohnheiser Properties, LP (individually, an "**Owner**" or, collectively, the "**Owners**"), and the City of San Marcos, Texas (the "**City**").

#### RECITALS:

A. Owners are the owners of various tracts of land totaling approximately 888.772 acres situated in Caldwell County, Texas, more particularly described in Attachment 1, attached hereto (the "**Property**").

B. In consideration of the mutual obligations of the parties in that certain Chapter 380 Economic Development Incentive and ETJ Development Agreement between the City, the Owners and Texas Transportation Alliance, LTD (the "**380 Agreement**"), the Owners have agreed to the imposition of certain restrictive covenants on the Property.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Owners and the City do hereby agree as follows:

1. Use Restrictions. The Owners hereby impose restrictive covenants on the Property and agree that development of the Property shall be subject to the development standards in Attachment 2, attached hereto, and that land uses on the Property shall be only as provided in Attachment 3, attached hereto. The Parties hereto agree and acknowledge that the proposed use of the that approximately 73.623-acre portion of the Property described in Attachment 4 (the "**Katerra Tract**") as a warehouse and distribution facility for the purpose of receiving, storing, shipping, distributing, displaying and selling Tenant's products, materials and merchandise, for processing customer returns, for general warehouse use, general office use and administrative and other ancillary and related uses is a Permitted Use as set forth in Attachment 3 and does not violate any of the Prohibited Uses in Attachment 3.

2. No Consent Required. The Owners and the City each hereby represent and warrant to the other that they have full requisite power and authority to enter into this Agreement without the joinder or further consent of any other party, including without limitation that of any lender, lienholder or tenant, and that this Agreement will not be subordinate to any existing lien or other monetary encumbrance.

3. Injunctive Relief. In the event of a breach of this Agreement by any Owner, the City or any non-breaching Owner shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The parties hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and the City shall be entitled to relief by any and all other available legal and equitable remedies from



the consequences of such breach. Any costs and expenses of any such proceeding, including reasonable attorney's fees, shall be paid by the Owner or Owners in breach.

4. No Waiver. The failure of the City or Owner to avail itself of any of the privileges, rights, covenants, agreements, terms and conditions of this Agreement for any period of time or at any time shall not be construed or deemed to be a waiver thereof, and nothing herein contained, nor anything done or omitted to be done by the City or Owner pursuant hereto, shall be deemed a waiver by the other of any of its rights and remedies hereunder or under the laws of the State of Texas. The enforcement of any right or remedy hereunder by the City, either prior to, simultaneously with, or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

5. Modification. This Agreement may not be modified or amended unless such modification or amendment has been reduced to writing and signed by all of the then-existing owners of the Property or portions thereof, approved and signed by the City and has been recorded in the Official Public Records of Caldwell County, Texas.

6. Binding Effect. The obligations created hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, heirs and assigns.

7. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter hereof, and no party has relied upon any statement, promise or representation not herein expressed.

8. Partial Invalidity. If any provision of this Agreement shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

9. Venue. Venue for any dispute arising under this Agreement shall be in the state courts in Caldwell County, Texas having appropriate jurisdiction, or if in federal court, the United States District Court for the Western District of Texas, Austin Division.

EXECUTED as of the date first written above.

[SIGNATURES ON FOLLOWING PAGE]

**OWNER:**

\_\_\_\_\_  
Curby D. Ohnheiser

ACKNOWLEDGMENT

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
Curby D. Ohnheiser.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**

\_\_\_\_\_  
Diane M. Deringer

ACKNOWLEDGMENT

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
Diane M. Deringer

.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**

\_\_\_\_\_  
Carolyn J. Scurlock

ACKNOWLEDGMENT

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
Carolyn J. Scurlock.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**  
**VAN LEE, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS           §

§

COUNTY OF \_\_\_\_\_ §

      This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
\_\_\_\_\_, \_\_\_\_\_ of Van Lee, LLC, in such capacity, on behalf of  
said entity.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**  
**OHNEHEISER PROPERTIES, LP.**

By: \_\_\_\_\_, General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS           §

                                  §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, general partner of  
Ohnheiser Properties, LP, in such capacity, on behalf of said entity.

\_\_\_\_\_  
Notary Public, State of Texas

**CITY:**

By: \_\_\_\_\_  
Bert Lumbreras, City Manager

**ACKNOWLEDGMENT**

STATE OF TEXAS                   §

§

COUNTY OF HAYS               §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2019, by Bert Lumbreras, City Manager, in such capacity, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

## CONSENT OF PURCHASER

Texas Transportation Alliance, LTD, as the Buyer of the Property under one or more agreements with the Owners for the purchase of all or portions of the Property, and as a party to the 380 Agreement described in paragraph B of this Restrictive Covenant Agreement, hereby consents to and accepts the terms and condition herein and to the recording of this Restrictive Covenant Agreement.

### TEXAS TRANSPORTATION ALLIANCE, LTD.:

By: Schroeder Development, LLC, General Partner

By: \_\_\_\_\_  
Michael A. Schroeder, Manager

## ACKNOWLEDGMENT

STATE OF TEXAS           §  
                                      §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by Michael Schroeder, in his capacity as Manager for Schroeder Development, LLC, General Partner to Texas Transportation Alliance, Limited.



## ATTACHMENT 1



A 214.131 acre tract of land comprised of all of the remaining portion of the 216.403 acre tract described in instrument to Curby D. Ohnheiser recorded in Volume 178, Page 184 in the Official Public Records of Caldwell County, Texas, and all of the 1/4 acre tract described in instrument to Curby D. Ohnheiser recorded in Volume 447, Page 138 in said Official Public Records, in the William Pettus Survey, Abstract 21, Caldwell County, Texas. Said 214.131 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

**BEGINNING:** At a found mag nail on the southeast right-of-way line of F.M. 1984, an 80-foot right-of-way, at the west corner of said 216.403 acre tract;

**THENCE:** N 48°59'00" E, along and with the southeast right-of-way line of said F.M. 1984, the northwest line of said 216.403 acre tract and the northwest line of said 1/4 acre tract, a distance of 1509.92 feet to a found 1/2" iron rod with cap marked "LCRA", at the west corner of the 2.952 acre tract described in Volume 447, Page 141 in said Official Public Records;

**THENCE:** Departing the southeast right-of-way line of said F.M. 1984, along and with said 2.952 acre tract, the following bearings and distances:

S 41°01'00" E, a distance of 300.00 feet to a point;

N 48°59'00" E, a distance of 530.00 feet to a point;

N 77°15'02" W, a distance of 212.80 feet to a point;

N 63°55'02" W, a distance of 139.34 feet to a found 1/2" iron rod with cap marked "LCRA" on the southeast right-of-way line of said F.M. 1984 and the northwest line of said 216.403 acre tract, at the north corner of said 2.952 acre tract;

**THENCE:** N 48°59'00" E, along and with the southeast right-of-way line of said F.M. 1984 and the northwest line of said 216.403 acre, a distance of 310.35 feet to a found 1/2" iron rod, at the north corner of said 216.403 acre tract;

**THENCE:** Departing the southeast right-of-way line of said F.M. 1984, along and with said 216.403 acre tract, the following bearings and distances:

Page 1 of 2

TBPE Firm Registration #470 | TBPLS Firm Registration #10028800

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S 40°58'16" E, a distance of 2944.25 feet to a point;

N 49°33'05" E, a distance of 486.24 feet to a point;

S 13°49'09" E, a distance of 654.87 feet to a point;

S 16°12'10" E, a distance of 819.38 feet to a point;

S 49°26'24" W, a distance of 2007.26 feet to a point;

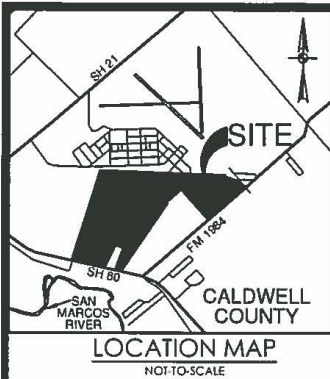
N 41°04'03" W, a distance of 4259.27 feet to the POINT OF BEGINNING and containing 214.131 acres in the Caldwell County, Texas. Said tract being described in conjunction with an exhibit prepared under job number 11152-02 by Pape-Dawson Engineers, Inc.

"This document was prepared under 22TAC663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: December 3, 2018  
JOB NO. 11152-02  
DOC. ID. N:\CIVIL\11152-02\Word\11152-02 FN 214.131 AC.docx





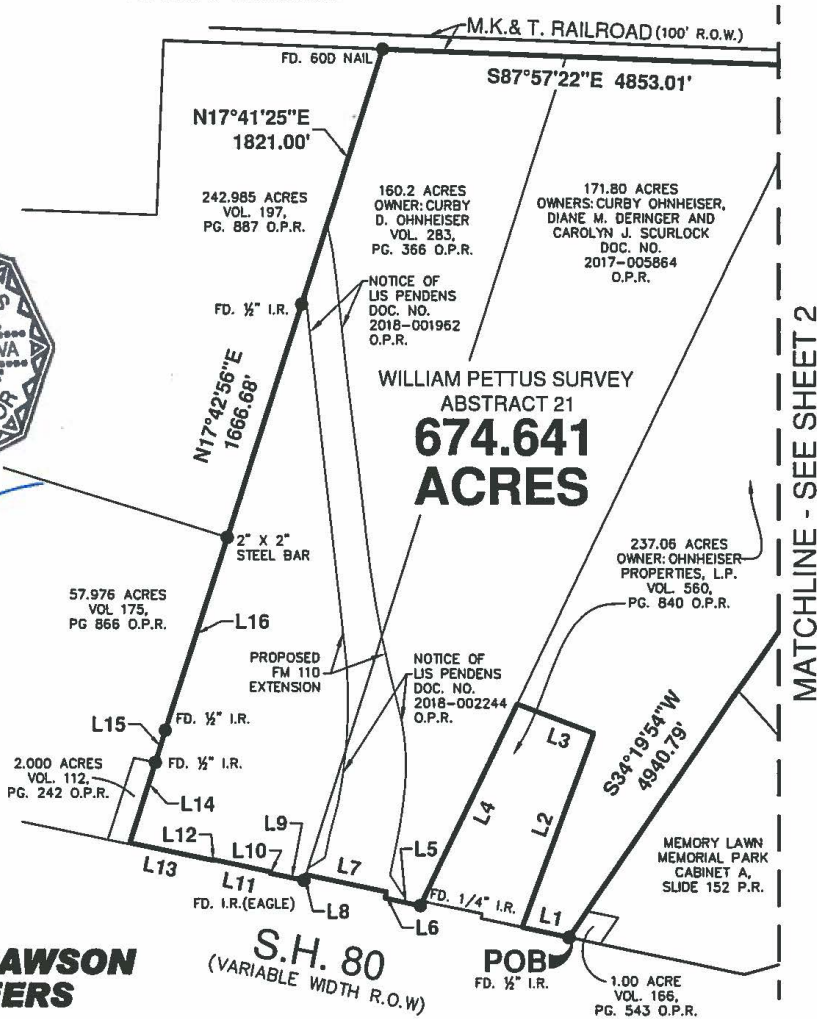
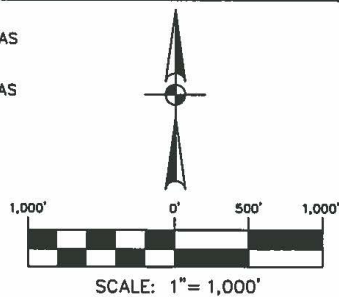


# **LEGEND:**

DR DEED RECORDS OF CALDWELL COUNTY, TEXAS  
 OPR OFFICIAL PUBLIC RECORDS OF CALDWELL COUNTY, TEXAS  
 PR PLAT RECORDS OF CALDWELL COUNTY, TEXAS  
 FD. FOUND 1/2" IRON ROD

## **NOTES:**

1. THIS EXHIBIT IS ISSUED IN CONJUNCTION WITH A METES AND BOUNDS DESCRIPTION PREPARED UNDER JOB NUMBER 11152-02 BY PAPE-DAWSON ENGINEERS, INC.
2. THE BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE SOUTH CENTRAL ZONE FROM THE NORTH AMERICAN DATUM OF 1983 NAD 83 (NA2011) EPOCH 2010.00.
3. THIS DOCUMENT WAS PREPARED UNDER 22TAC663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED



MATCHLINE - SEE SHEET 2

**PAPE-DAWSON ENGINEERS**

SAN ANTONIO | AUSTIN | HOUSTON | FORT WORTH | DALLAS  
 2000 HW LOOP 410 | SAN ANTONIO, TX 78213 | 210.375.9000  
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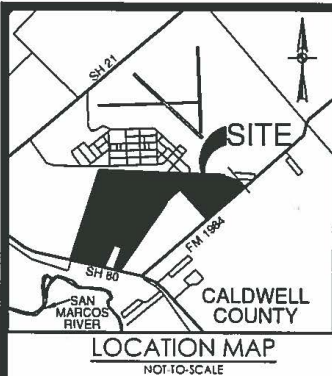
DECEMBER 3, 2018

SHEET 1 OF 3  
 JOB No.: 11152-02

Date: Dec 03, 2018, 8:54am User: D. Dittus  
 File: N:\CADD\11152-02\11152-02 EX 87A.S1 AC.dwg

DECEMBER 3, 2018



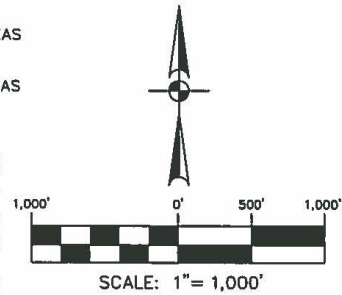


# **LEGEND:**

DR DEED RECORDS OF CALDWELL COUNTY, TEXAS  
 OPR OFFICIAL PUBLIC RECORDS OF CALDWELL COUNTY, TEXAS  
 PR PLAT RECORDS OF CALDWELL COUNTY, TEXAS  
 FD. FOUND 1/2" IRON ROD

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3. THIS DOCUMENT WAS PREPARED UNDER 22TAC663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.



LINE TABLE		
LINE	BEARING	LENGTH
L1	N78°02'13"W	329.75'
L2	N20°31'11"E	1409.58'
L3	N69°28'49"W	562.64'
L4	S25°43'58"W	1524.74'
L5	N78°18'15"W	246.61'
L6	N11°41'45"E	45.00'
L7	N78°18'15"W	561.32'
L8	S17°45'08"W	40.23'
L9	N78°18'15"W	234.94'
L10	N12°28'57"E	10.00'
L11	N78°18'15"W	399.76'
L12	S10°46'10"W	5.00'
L13	N78°18'15"W	581.63'
L14	N17°40'25"E	572.83'

LINE TABLE		
LINE	BEARING	LENGTH
L15	N17°34'43"E	229.02'
L16	N17°57'02"E	1380.33'
L17	S41°51'57"E	706.78'
L18	N48°19'32"E	736.76'
L19	S02°02'38"W	64.55'
L20	S72°35'22"E	942.42'
L21	S42°08'17"E	115.61'
L22	S42°20'31"E	343.49'
L23	N41°01'00"W	197.00'
L24	S48°59'00"W	210.00'
L25	S41°01'00"E	197.00'
L26	S48°59'00"W	737.30'
L27	S48°19'32"W	1232.90'
L28	S41°48'04"E	96.84'

Drawn: Dec 01, 2018, 8:54am User: B. Dwyer  
 File: H:\11152-02\11152-02.dwg Plot: 11/15/2018 11:02:02 AM 87/3/1 AC.dwg

**PAPE-DAWSON ENGINEERS**

SAN ANTONIO | AUSTIN | HOUSTON | FORT WORTH | DALLAS  
 2000 NW LOOP 410 | SAN ANTONIO, TX 78213 | 210.375.9000  
 TBPE FIRM REGISTRATION #470 | TBPLS FIRM REGISTRATION #10026800

DECEMBER 3, 2018

SHEET 3 OF 3  
 JOB No.: 11152-02

DECEMBER 3, 2018



A 674.641 acre tract of land being comprised of all of the 160.2 acre tract described in instrument to Curby D. Ohnheiser recorded in Volume 283, Page 366 in the Official Public Records of Caldwell County, Texas, all of the 171.80 acre tract described in instrument to Curby Ohnheiser, Diane M. Deringer and Carolyn J. Scurlock recorded Document No. 2017-005864 in said Official Public Records, all of the 70 acre tract described in instrument to Curby D. Ohnheiser recorded in Volume 595, Page 549 in said Official Public Records, all of the 59.33 acre tract described in instrument to Curby Don Ohnheiser recorded in Volume 443, Page 31 in said Official Public Records, all of the 1.247 acre tract described in instrument to Curby Don Ohnheiser recorded in Document No. 134018 in said Official Public Records and a portion of the 237.06 acre tract described in instrument to Ohnheiser Properties, L.P. by instrument recorded in Volume 560, Page 840 in said Official Public Records, in the William Pettus Survey Abstract 21, Caldwell County, Texas. Said 674.641 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

**BEGINNING:** At a found ½" iron rod on the north right-of-way line of State Highway 80, a variable width right-of-way, on the southeast line of said 237.06 acre tract, at the southwest corner of the 1.00 acre tract described in Volume 166, Page 543 in said Official Public Records;

**THENCE:** N 78°02'13" W, along and with the north right-of-way line of said State Highway 80, a distance of 329.75 feet to a point;

**THENCE:** Departing the north right-of-way line of said State Highway 80, over and across said 237.06 acre tract, the following bearing and distances:

N 20°31'11" E, a distance of 1409.58 feet to a point;

N 69°28'49" W, a distance of 562.64 feet to a point on the west line of said 237.06 acre tract and the east line of said 171.80 acre tract;

**THENCE:** S 25°43'58" W, along and with the west line of said 237.06 acre tract and the east line of said 171.80 acre tract, a distance of 1524.74 feet to a found ¼" iron rod on the north right-of-way line of said State Highway 80;

**THENCE:** Along and with the north right-of-way line of said State Highway 80, the following bearings and distances:

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N 78°18'15" W, a distance of 246.61 feet to a point;

N 11°41'45" E, a distance of 45.00 feet to a point;

N 78°18'15" W, a distance of 561.32 feet to a point on the west line of said 171.80 acre tract and the east line of said 160.2 acre tract;

THENCE: S 17°45'08" W, along and with the east line of said 160.2 acre tract, a distance of 40.23 feet to a found ½" iron rod with cap marked "Eagle" on the north right-of-way line of said State Highway 80;

THENCE: Along and with the north right-of-way line of said State Highway 80, the following bearings and distances:

N 78°18'15" W, a distance of 234.94 feet to a point;

N 12°28'57" E, a distance of 10.00 feet to a point;

N 78°18'15" W, a distance of 399.76 feet to a point;

S 10°46'10" W, a distance of 5.00 feet to a point;

N 78°18'15" W, a distance of 581.63 feet to a point on the west line of said 160.2 acre tract and the east line of the 2.000 acre tract described in Volume 112, Page 242 in said Official Public Records;

THENCE: N 17°40'25" E, departing the north right-of-way line of State Highway 80, along and with the west line of said 160.2 acre tract and the east line of said 2.000 acre tract, a distance of 572.83 feet to a found ½" iron rod, at an angle point of said 160.2 acre tract, the northeast corner of said 2.000 acre tract and the most easterly southeast corner of the 57.976 acre tract described in Volume 175, Page 866 in said Official Public Records;

THENCE: Along and with west line of said 160.2 acre tract and the east line of said 57.976 acre tract, the following bearings and distances:

N 17°34'43" E, a distance of 229.02 feet to a found ½" iron rod;



N 17°57'02" E, a distance of 1380.33 feet to a found 2" X 2" steel bar, at an angle point of said 160.2 acre tract, the northeast corner of said 57.976 acre tract and the southeast corner of the 242.985 acre tract described in Volume 197, Page 887 in said Official Public Records;

THENCE: Along and with the west line of said 160.2 acre tract and the east line of said 242.985 acre tract, the following bearings and distances:

N 17°42'56" E, a distance of 1666.68 feet to a found ½" iron rod;

N 17°41'25" E, a distance of 1821.00 feet to a found 60D Nail on the south line of the 100-foot wide M. K. & T. Railroad right-of-way;

THENCE: S 87°57'22" E, along and with the south line of said railroad right-of-way, a distance of 4853.01 feet to a point, at the west corner of the 5.596 acre City of San Marcos tract;

THENCE: S 41°51'57" E, departing said railroad right-of-way, along and with the southwest line of said 5.596 acre tract, a distance of 706.78 feet to a found steel fence post, on the northwest line of said 70 acre tract, at the south corner of said 5.596 acre tract;

THENCE: N 48°19'32" E, along and with the northwest line of said 70 acre tract and the southeast line of said 5.596 acre tract, a distance of 736.76 feet to a found ½" iron pipe on the south line of said railroad right-of-way, at the most northerly northwest corner of said 70 acre tract;

THENCE: S 87°57'22" E, along and with the south line of said railroad right-of-way, the north line of said 70 acre tract and the north line of said 59.33 acre tract, a distance of 1690.20 feet to a found ½" iron rod, at the northeast corner of said 59.33 acre tract and the northwest corner of the 4.37 acre tract described in Document No. 135649 in said Official Public Records;

THENCE: S 02°02'38" W, departing the south line of said railroad right-of-way, along and with the east line of said 59.33 acre tract and the west line of said 4.37 acre tract, a distance of 64.55 feet to an angle point of said 59.33 acre tract and said 4.37 acre tract;

- THENCE: S 72°35'22" E, along and with the northeast line of said 59.33 acre tract, a northeast line of said 1.247 acre tract, the southwest line of said 4.37 acre tract and the southwest line of the 0.641 acre tract described in Volume 579, Page 520 in said Official Public Records, a distance of 942.42 feet to a found ½" iron rod with cap marked "Swartz", at an angle point of said 1.247 acre tract and of said 0.641 acre tract;
- THENCE: S 42°08'17" E, along and with a northeast line of said 1.247 acre tract and the southwest line of said 0.641 acre tract, a distance of 115.61 feet to a found ½" iron rod with cap marked "1982", at the south corner of said 0.641 acre tract and the west corner of the 1.627 acre tract described in Document No. 133855 in said Official Public Records;
- THENCE: S 42°20'31" E, along and with a northeast line of said 1.247 acre tract and the southwest line of said 1.627 acre tract, a distance of 343.49 feet to a found ½" iron rod on the northwest right-of-way line of F.M. 1984, an 80-foot right-of-way, at the east corner of said 1.247 acre tract and the south corner of said 1.627 acre tract;
- THENCE: S 48°59'00" W, along and with the northwest right-of-way line of said F.M. 1984, a distance of 1994.22 feet to a point, at the east corner of the 0.953 acre tract described in Volume 498, Page 345 in said Official Public Records;
- THENCE: N 41°01'00" W, departing the northwest right-of-way line of said F.M. 1984, along and with the southwest line of said 59.33 acre tract and the northeast line of said 0.953 acre tract, a distance of 197.00 feet to a point, at the north corner of said 0.953 acre tract and an angle point of said 70 acre tract;
- THENCE: S 48°59'00" W, along and with a southeast line of said 70 acre tract and the northwest line of said 0.953 acre tract, a distance of 210.00 feet to a point;
- THENCE: S 41°01'00" E, along and with a northeast line of said 70 acre tract and the southwest line of said 0.953 acre tract, a distance of 197.00 feet to a point on the northwest right-of-way line of said F.M. 1984, at the south corner of said 0.953 acre tract;
- THENCE: S 48°59'00" W, along and with the northeast right-of-way line of said F.M. 1984, a distance of 737.30 feet to a point on the southwest line of said 70 acre tract and the northeast line of the 70 acre tract described as Second Tract in Volume 274, Page 191 in the Deed Records of Caldwell County, Texas;

THENCE: N 41°47'54" W, departing the northwest right-of-way line of said F.M. 1984, along and with the southwest line of said 70 acre tract (Ohnheiser) and the northeast line of said 70 acre tract (Second Tract), a distance of 2448.60 feet to a found ½" iron rod with cap marked "CSR", at the west corner of said 70 acre tract (Ohnheiser) and the north corner of said 70 acre tract (Second Tract);

THENCE: S 48°19'32" W, along and with the northwest line of said 70 acre tract (Second Tract), a distance of 1232.90 feet to a point;

THENCE: S 41°48'04" E, along and with the southwest line of said 70 acre tract (Second Tract), a distance of 96.84 feet to a point on the southeast line of said 237.06 acre tract;

THENCE: S 34°19'54" W, along and with the southeast line of said 237.06 acre tract, the northwest line of Memory Lawn Memorial Park recorded in Cabinet A, Slide 152 in the Plat Records of Caldwell County and the northwest line of said 1.00 acre tract, a distance of 4940.79 feet to the POINT OF BEGINNING and containing 674.641 acres in the Caldwell County, Texas. Said tract being described in conjunction with an exhibit prepared under job number 11152-02 by Pape-Dawson Engineers, Inc.

"This document was prepared under 22TAC663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: December 3, 2018  
JOB NO. 11152-02  
DOC. ID. N:\CIVIL\11152-02\Word\11152-02 FN 674.641.docx



## ATTACHMENT 2

### (Development Standards Required)

**1. Building and Development Code Compliance.** Except as specifically waived in any agreements approved by the City related to development on the Property, all phases of development and construction on the Property shall be subject to compliance with the City's utility, building and development ordinances, including Chapters 14, 38, 39, 86 and Subpart B of the City's Code of Ordinances. Such compliance shall include consent to building permitting and inspections by the City, and payment of any application fees, impact fees, permit fees and inspection fees and the City's issuance of certificates of occupancy with respect to any development on the Property shall be considered on the basis of this Agreement as long as the development complies with the City's ordinances referenced above as modified by this Agreement.

**2. Enhanced Water Quality Safeguards.** Development of the Property shall adhere to the supplemental water quality standards under this section. Measures shall be implemented by the Developer applying applicable best management practices ("**BMP's**") to ensure that, after full development of the Property, at least 70 percent of increased total suspended solids are removed from stormwater and a water quality volume produced by a 1.25-inch rainfall is captured. The water quality volume will provide stream protection to preserve the natural character of downstream waterways. Appropriate stormwater treatment measures include: the use of decentralized, low impact development features (e.g., rain gardens, pervious pavement, biofiltration, etc.), stormwater detention facilities and extended detention basins. The City's Stormwater Technical Manual in effect on the Effective Date of the 380 Agreement shall govern or guide, as applicable, BMP selection and design, except for the changes (if any) to such ordinances, standards

and specifications that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code.

**3. Water Quality Zone Reclamation.** Reclamation of water quality zones shall incorporate natural channel design techniques and address aesthetics by implementing a natural channel shape that includes varying cross section widths, depths, and side slopes and native vegetation. Trees shall be planted at the top of channel banks. Either or both the natural channel design techniques adopted and accepted by the City of Austin and the Natural Design Protocol developed by the San Antonio River Authority, or similar techniques shall be used as guidance. The design of channels shall strive to attain natural channel function. Hike and bike trails may also be implemented along the tops of banks of reclaimed water quality zone channels. This paragraph 3 does not apply to the Katerra Tract, provided development on the tract is in substantially in accordance with the material aspects of the plans and specifications pending with the City on the Effective Date of the 380 Agreement.

**4. Reduced Impervious Cover.** Impervious cover on the Property, after full development, shall not exceed 70 percent of the entire gross acreage of the Property. The total impervious cover for an individual lot within the Property shall not exceed 80 percent of the gross area of the lot. It is expressly acknowledged that: (a) the Katerra Tract will be permitted for up to 70 percent total impervious cover; and (b) the owners of the Katerra Tract shall have no liability or obligation with respect to the 70 percent impervious cover limitation across the entire gross acreage of the Property as future development occurs elsewhere on the Property (unless such owners of the Katerra Tract later develop other portions of the Property), with it being understood that the responsibility for tracking, limiting and administering such 70 percent requirement rests solely with Texas

Transportation Alliance, LTD (the “***Developer***”) and any subsequent owner (a “***Future Owner***”) of any portions of the Property being developed after development of the Katterra Tract.

**5. Enhanced Drainage Requirements.** On-site stormwater controls will be designed to reduce overall post-development peak rates of discharge so that they are at least 10 percent less than existing pre-development peak rates for the 2, 10, 25 and 100-year storm events at each point of discharge from the Property. Pre and post development peak rates of discharge will be calculated based upon Atlas 14 precipitation data and drainage impacts will be mitigated under applicable City ordinances in effect on the Effective Date of the 380 Agreement, except for the changes (if any) to such ordinances, standards and specifications that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code. In addition, the Developer or any Future Owner, as applicable, will work in good faith with the City to convey stormwater run-off from up-gradient areas consistent with the City’s Stormwater Technical Manual in effect on the Effective Date of this Agreement, except for the changes (if any) to such ordinances, standards and specifications that fall within the exemptions listed under Section 245.004 of the Texas Local Government Code. This Section 5 does not apply to the Katterra Tract provided development on the tract is substantially in accordance with the material aspects of the plans and specifications pending with the City on the Effective Date of the 380 Agreement.

**6. Traffic Impact Analysis.** Except for the plat associated with the Katterra Tract, prior to or concurrent with the submittal of the first plat application for development on the Property or any portion thereof, a traffic impact analysis (“***TIA***”) will be required in accordance with Sections 3.5.2.7 and 3.5.2.8 and other applicable provisions of Chapters 2 and 3 of Subpart B of the San Marcos Code of Ordinances. At the time of submittal of the TIA, the traffic impacts shall be evaluated based on assumptions regarding the full build-out development of the Property and not

on the individual plat. It is understood that the requirements concerning a traffic impact analysis have been addressed with the application for final plat of the Katterra Tract pending before the City on the Effective Date of the 380 Agreement.

**7. Maximum Permissible Sound Levels.** No activity or sound source within the Property may produce a measurable sound that exceeds 90 decibels when measured 200 feet from the boundary of the Property. In addition, the Developer agrees to conduct a study to determine the establishment of a Quiet Zone, if requested by the City to do so. Notwithstanding, locomotives may sound their horns in accordance with local, State and Federal requirements.

**8. Smoke and Noxious Odors or Emissions.** All activities on the Property shall be conducted so as to reasonably minimize the emission of smoke, odors, particulate matter or noxious matter in accordance with sections 7.4.2.2, 7.4.2.5 and 7.4.2.3 of the Development Code and any stricter standards under applicable state or federal laws. No emissions containing hazardous wastes or materials as defined by the Resource Conservation and Recovery Act, Federal Toxic Substances Control Act or the Federal Insecticide, Fungicide, and Rodenticide Act, or subsequent amendments of said Acts will be allowed from any source. The manufacturing of finished products producing the release of volatile organic compounds, or toxic or poisonous emissions at levels unsafe for human inhalation will not be allowed on the Property.

**9. Compatibility with Airport Operations.** The Developer agrees that no development shall be permitted on the Property that interferes with the safe flight, take off or landing of aircraft at the San Marcos Municipal Airport in accordance with Federal Aviation Administration rules and standards. Until an ordinance is approved by the San Marcos City Council creating overlay zoning district standards designed to mitigate adverse impacts on airport activities, all building plans shall be subject to review by the City for a determination of adverse impacts on the airport's

activities, provided, however, nothing under this paragraph 9 shall require modification of the plans and specifications for development of the Kattera Tract as proposed in development applications pending with and permits approved by the City as of the Effective Date of the 380 Agreement, other than the dedication at the time of platting of an aviation easement as noted below. The determination of adverse impacts under this section assumes the condition of the airport following the addition of one or more runways as part of the expansion proposed in the City's Airport Master Plan. In addition, each final plat of any portion of the Property shall include the dedication to the City of an aviation easement granting a right of overflight in the airspace above the platted portion of the Property, the right to create such noise or other effects as may result from the lawful operation of aircraft in such airspace, and the right to remove any obstructions to such easement.

**10. Pollutants.** In addition to compliance with applicable ordinances and applicable state and federal laws, all development on the Property will adhere to standards of the Texas Commission on Environmental Quality ("**TCEQ**") multi-sector general permit, and the Environmental Protection Agency's ("**EPA**") spill prevention, control and countermeasure rules applicable to petroleum storage and runoff. Activities on the Property shall be conducted to meet or exceed such TCEQ and EPA standards in effect as of November 1, 2016. If any activity on the Property is subject to the rules or regulations of the TCEQ or EPA, no variances from or waivers of TCEQ or EPA rules or regulations shall be permitted.



### ATTACHMENT 3

A. *Permitted Uses.* The following uses (the “***Permitted Uses***”) are allowed on the Property. Except where otherwise indicated, such uses shall have the meaning as defined or described in Subpart B of the San Marcos Code of Ordinances and any associated technical manuals when defined therein.

1. Office (Health Services)
2. Offices (Medical Office)
3. Offices (Professional)
4. Call Service Center
5. Communication Equipment (Installation and/or Repair – no outdoor sales or storage)
6. Medical Supplies and Equipment
7. Cabinet Shop (manufacturing)
8. Retail Store (misc.) w drive thru
9. Retail Store (misc.) w/o drive thru (under 100,000 sq./ft. building)
10. Security Systems Installation Company
11. Upholstery Shop (non-auto)
12. Woodworking Shop (ornamental)
13. Electrical Substation
14. Governmental Building or Use (municipal, state or federal)
15. Philanthropic Organization
16. Auction Sales (non-vehicle)
17. Bio-Medical Facilities
18. Caterer
19. Extermination Service
20. Furniture Manufacture
21. Urban Farm
22. Maintenance/Janitorial Service
23. Metal Fabrication Shop
24. Moving Storage Company
25. Warehouse/Office and Storage
26. Welding Shop
27. Manufacturing
28. Airport Support and Related Services
29. Distribution Center
30. Electronic Assembly/High Tech Manufacturing
31. Engine Repair/Motor Manufacturing Re-Manufacturing and/or Repair
32. Food Processing (no outside public consumption)
33. Laboratory Equipment Manufacturing
34. Machine Shop
35. Manufacturing Processes not Listed
36. Micro-Brewery (onsite mfg. and sales)
37. Plastic Products Molding/Reshaping
38. Research Lab (non-hazardous)
39. Sign Manufacturing
40. Stone/Clay/Glass Manufacturing

41. Hotel or Motel
42. Vehicle Repair (Train maintenance)
43. Building Material Sales
44. Day Care Services
45. Data Center\*
46. Distribution and processing of construction materials
47. All Heavy Industrial Uses authorized by the COSM Zoning Code, not specifically prohibited by Subsection (B)

**A-1.** *Service and Retail Permitted Uses on Parcels west of Loop 110.*

1. Bank or Savings and Loan (w/o drive-thru)
2. Convenience Store w/o Gas Sales
3. Restaurant/Prepared Food Sales
4. Restaurant/Prepared Food Sales with beer/wine off-premises consumption
5. Retail Store (100,000 sq./ft. or more building)
6. Retail Store (over 100,000 sq./ft. or more building) outside sales
7. Retail Store (under 100,000 sq./ft. or more building) outside sales
8. Retail Store (under 100,000 sq./ft. or more building) no outside sales

\*Although not defined or described in Subpart B of the San Marcos Code of Ordinances, a “data center” shall mean a facility of networked computer systems and associated components, such as telecommunications and storage systems, that businesses or other organizations use to organize, process, store and disseminate large amounts of data.

**B.** *Prohibited Uses.* The following uses and activities (the “**Prohibited Uses**”) are expressly prohibited on the Property. When defined by Subpart B of the San Marcos Code of Ordinances and any associated technical manuals, the uses and activities below shall have such meaning.

1. Acid manufacturing
2. Gas manufacturing
3. Vehicle wrecking yard
4. Junk yard, including storage, sorting, bailing or processing of rags
5. Manufacturing or storage of hazardous materials or explosives, except for fuels contained in vehicles
6. Manufacturing or storage of fertilizer
7. Manufacturing of carbon batteries
8. Manufacturing of paint, lacquer, oil, turpentine, varnish, enamel and similar products
9. Manufacturing of rubber, glucose, or dextrin
10. Manufacturing of paper or pulp
11. Manufacturing or distillation of tar
12. Monument or marble works
13. Oil compounding and barreling plant
14. Operation of a business that provides the services of disposal, storage, reduction or incineration of solid or hazardous waste (including garbage, refuse, trash, sewage, offal, dead animals)
15. Extraction or refining of petroleum or its products

16. Distillation of bones
17. Smelting of iron, tin, zinc, copper or other ores
18. Fat rendering
19. Stockyards or slaughter of animals
20. Cemeteries
21. Labor camps
22. Jails or honor farms
23. Refining or retail sale or bulk storage of fuel, liquified petroleum and flammable liquids
24. Manufacturing of cement, lime, and gypsum plaster
25. Rock crushers,
26. Sugar refining

**SMART Terminal**  
City of San Marcos, TX

**Legend**

- SMART Terminal
- FM 110
- City Limit
- Street Names
- Railroad
- River

**Key Areas:**

- Gary Job Corps abandoned wastewater treatment site ~5.5 acres
- City-owned property proposed for swap
- Developer-owned property proposed for swap
- Potential developer "parkland" dedication
- City-owned property considered for potential Blanco River long-term projects

**SMART Terminal**  
*City of San Marcos, TX*



Water Main Extension from Water Plant looped to Airport

San Marcos CCN

Maxwell CCN

Wastewater Lift Station

Force Main to WWTP

Surface Water Treatment Plant

Wastewater Treatment Plant

HWY 20

HWY 60

Arnold Ave

Steady St

Ferris St

HWY 10

HWY 12

HWY 14

HWY 16

HWY 18

HWY 22

HWY 24

HWY 26

HWY 28

HWY 30

HWY 32

HWY 34

HWY 36

HWY 38

HWY 40

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HWY 660

HWY 6

## EXHIBIT “E”

A. *Permitted Uses.* The following uses (the “*Permitted Uses*”) are allowed on the Property. Except where otherwise indicated, such uses shall have the meaning as defined or described in Subpart B of the San Marcos Code of Ordinances and any associated technical manuals when defined therein.

1. Office (Health Services)
2. Offices (Medical Office)
3. Offices (Professional)
4. Call Service Center
5. Communication Equipment (Installation and/or Repair – no outdoor sales or storage)
6. Medical Supplies and Equipment
7. Cabinet Shop (manufacturing)
8. Retail Store (misc.) w drive thru
9. Retail Store (misc.) w/o drive thru (under 100,000 sq./ft. building)
10. Security Systems Installation Company
11. Upholstery Shop (non-auto)
12. Woodworking Shop (ornamental)
13. Electrical Substation
14. Governmental Building or Use (municipal, state or federal)
15. Philanthropic Organization
16. Auction Sales (non-vehicle)
17. Bio-Medical Facilities
18. Caterer
19. Extermination Service
20. Furniture Manufacture
21. Urban Farm
22. Maintenance/Janitorial Service
23. Metal Fabrication Shop
24. Moving Storage Company
25. Warehouse/Office and Storage
26. Welding Shop
27. Manufacturing
28. Airport Support and Related Services
29. Distribution Center
30. Electronic Assembly/High Tech Manufacturing
31. Engine Repair/Motor Manufacturing Re-Manufacturing and/or Repair
32. Food Processing (no outside public consumption)
33. Laboratory Equipment Manufacturing
34. Machine Shop
35. Manufacturing Processes not Listed
36. Micro-Brewery (onsite mfg. and sales)
37. Plastic Products Molding/Reshaping
38. Research Lab (non-hazardous)
39. Sign Manufacturing
40. Stone/Clay/Glass Manufacturing

41. Hotel or Motel
42. Vehicle Repair (Train maintenance)
43. Building Material Sales
44. Day Care Services
45. Data Center\*
46. Distribution and processing of construction materials
47. All Heavy Industrial Uses authorized by the COSM Zoning Code, not specifically prohibited by Subsection (B)

**A-1.** *Service and Retail Permitted Uses on Parcels west of Loop 110.*

1. Bank or Savings and Loan (w/o drive-thru)
2. Convenience Store w/o Gas Sales
3. Restaurant/Prepared Food Sales
4. Restaurant/Prepared Food Sales with beer/wine off-premises consumption
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KATERRA SAN MARCOS











BEING A TOTAL OF 11,035 ACRES, 12,260,518 SQR. FT. OF 27.44 ACRES IS OUT OF A 1962-2000 TRACT OF LAND RECORDED IN VOLUME 203, PAGES 306-371 OF THE OFFICIAL PUBLIC RECORDS OF CALIFORNIA COUNTY, TEXAS. 53.00 ACRES IS OUT OF A 17.18 ACRES TRACT OF LAND RECORDED IN DOCUMENT NUMBER 207, 006969 OF THE OFFICIAL PUBLIC RECORDS OF CALIFORNIA COUNTY, TEXAS, AND 33.54 ACRES IS OUT OF A 237.00 ACRES TRACT OF LAND RECORDED IN VOLUME 600, PAGES 040-045 OF THE OFFICIAL PUBLIC RECORDS OF CALIFORNIA COUNTY, TEXAS. OUT OF THE OFFICIAL PUBLIC RECORDS OF CALIFORNIA COUNTY, TEXAS, OUT OF WILLIAM PETERUS SURVEY, ALIBRACKET 21, IN THE CITY OF SAN MARCOS, CALIFORNIA COUNTY, TEXAS.



DATE: Feb 20, 2018, 3:55pm User ID: 60692  
Path: \\1156020\org\60692\org\60692\115602-4

I, G.E. Buchanan, am authorized under the laws of the State of Texas to practice the profession of surveying, and hereby certify that this plat is true and correct and was prepared from an actual survey of the property made under my supervision and that the monuments were properly placed under my supervision.

THE STATE OF TEXAS  
COUNTY OF BEXAR

That I, W.R. Wood, do hereby certify that proper engineering has been given this plat to the matters of streets, lots and drainage layout. To the best of my knowledge this plat conforms to all requirements of the development code.

Date \_\_\_\_\_

Before me, the undersigned authority on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and he/she acknowledged to me that he/she executed this same for the purpose and considerations therein expressed and in the capacity therein stated. Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_.

Notary Public, State of Texas

Printed Notary's Name  
My Commission Expires

Approved and authorized to be recorded on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the Planning and Zoning Commission of the City of San Marcos, Texas.

Shannon Mattingly  
Director of Development Services

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I, Teresa Rodriguez, County Clerk of Caldwell County, Texas, do hereby certify that the foregoing Instrument of Writing, with its Certificate of Authentication was filed for record in my office on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, A.D. at \_\_\_\_ o'clock \_\_\_\_ M. and duly recorded on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, A.D. at \_\_\_\_ o'clock \_\_\_\_ M. in the plat records of Caldwell County, Texas in CFI# \_\_\_\_\_.

WITNESS MY HAND AND SEAL OF THE COUNTY CLERK OF said County the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ A.D.

Teresa Rodriguez, County Clerk  
Caldwell County, Texas