ORDINANCE NO. 20050324-048

AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT RELATING TO *CITY OF SUNSET VALLEY, TEXAS, SAVE BARTON CREEK ASSOCIATION, INC., AND SAVE OUR SPRINGS ALLIANCE, INC. V. CITY OF AUSTIN, TEXAS AND LOWE'S HOME CENTER, INC.*, CAUSE NO. GV-400101 IN THE 201ST JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS; SUPERSEDING THE REQUIREMENTS OF THE CITY CODE, INCLUDING CHAPTER 25-8, SUBCHAPTER A, ARTICLE 12 (SAVE OUR SPRINGS INITIATIVE), TO THE EXTENT OF CONFLICT WITH THE TERMS OF THE SETTLEMENT AGREEMENT OR THIS ORDINANCE; AND PROVIDING FOR EMERGENCY PASSAGE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The council approves a settlement agreement relating to *City of Sunset Valley, Texas, Save Barton Creek Association, Inc., and Save Our Springs Alliance, Inc., v. City of Austin, Texas and Lowe's Home Center, Inc.*, Cause No. GV-400101 in the 201st Judicial District Court of Travis County, Texas, in substantially the form attached as Exhibit A to this ordinance.

PART 2. The settlement agreement and this ordinance supersede the requirements of the City Code, including Chapter 25-8, Subchapter A, Article 12 *(Save Our Springs Initiative)*, to the extent of conflict.

PART 3. This ordinance is approved by a favorable vote of at least six members of the council.

PART 4. There is an urgent need for this ordinance to be immediately effective and allow the parties to take the necessary action to have the Court enter appropriate orders permitting the settlement agreement to take effect, which constitutes an emergency. Because of this emergency, this ordinance takes effect immediately upon its passage for the immediate preservation of the public peace, health, and safety.

PASSED AND APPROVED

March 24, 2005 § Will Wynn
Mayor

APPROVED: David Allan Smith
City Attorney

ATTEST: Shirley A. Brown
City Clerk

Exhibit A

CAUSE NO GV400101

CITY OF SUNSET VALLEY, TEXAS, SAVE BARTON CREEK ASSOCIATION, INC , and SAVE OUR SPRINGS ALLIANCE, INC	§	IN THE DISTRICT COURT
Plaintiff,	§	
VS	§	TRAVIS COUNTY, TEXAS
CITY OF AUSTIN, TEXAS, and LOWE'S HOME CENTERS, INC	§	
Defendant	§	201st JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

1 0 INTRODUCTION.

This Settlement Agreement is made effective on the last date executed by the parties below (the "***Effective Date***") between and among the City of Sunset Valley ("***Sunset Valley***"), Save Our Springs Alliance, Inc ("***SOS Alliance***"), Save Barton Creek Association, Inc ("***SBCA***"), Lowe's Home Centers, Inc ("***Lowe's***"), and the City of Austin ("***Austin***"), which are each individually referred to herein as a "***Party***" and collectively as the "***Parties*** "

2 0 RECITALS.

2 1 WHEREAS, impervious ground cover such as parking lots and buildings, when built over the Edward's Barton Springs segment of the Edward's Aquifer Recharge Zone, can have a direct negative impact on the portion of the Edward's Barton Springs segment of the Edward's Aquifer that provides water to Sunset Valley's water wells as well as Austin's Barton Springs Pool and a portion of Austin's drinking water; and

2 2 WHEREAS, impervious cover can degrade water quality, negatively impact endangered species and increase flood potential, and

2 3 WHEREAS, during 2002, Lowe's began the process of seeking to build a home center on certain real property (the Lowe's Tract), which is located over the Edward's Aquifer Recharge Zone The Lowe's Tract was, at that time, within the extraterritorial jurisdiction of Sunset Valley, and

2 4 WHEREAS, Lowe's contends that in September and November, 2002, it submitted documentation to Sunset Valley, as part of its effort to obtain Sunset Valley's approval and issuance of subdivision-related permits for the Lowe's Tract, and

2 5 WHEREAS, in November 2002, Sunset Valley's impervious cover restrictions allowed forty percent impervious cover over the Edward's Barton Springs segment of the Edward's Aquifer Recharge Zone and Sunset Valley contends that it was concerned about

Lowe's building a "big box" store over the Edward's Barton Springs segment of the Edward's Aquifer Recharge zone, and

2 6 WHEREAS, since 1992, Austin's Save Our Springs Ordinance has restricted impervious cover to 15 percent over portion's of the Edward's Aquifer Recharge Zone within Austin's jurisdiction, and

2 7 WHEREAS, on November 4, 2002, Sunset Valley's City Council voted to release the Lowe's Tract from its ETJ which may have caused the Lowe's Tract to become part of Austin's ETJ, and therefore, be subject to the Austin's impervious cover restrictions, and

2 8 WHEREAS, in December 2002 Lowe's then submitted a plat application for the Lowe's Tract to Austin which did not comply with the SOS Ordinance, and

2 9 WHEREAS, in March 2003, Lowe's sued Austin in cause number GN- 300629 (the First Lawsuit) in which Lowe's alleged that the Lowe's Tract was grandfathered to Sunset Valley's forty percent impervious cover restrictions, or in the alternative, that the Lowe's Tract had not been released into Austin's ETJ, and therefore, none of Austin's impervious cover restrictions applied, and

2 10 WHEREAS, Sunset Valley intervened in the First Lawsuit as a third party defendant alleging that Lowe's could not grandfather development rights on the Lowe's Tract, and

2 11 WHEREAS, in the Spring of 2003, the Texas legislature enacted Tex Local Gov Code Section 242 001(i) which Lowe's believed would exempt the Lowe's Tract from any development regulation by Austin, and

2 12 WHEREAS, during 2003, Lowe's submitted an application to Travis County seeking approval of its subdivision plat for the Lowe's Tract and Travis County approved this subdivision, and

2 13 WHEREAS, Austin determined that resolution of the First Lawsuit was in the best interest of the Barton Springs segment of the Edward's Aquifer because Austin was concerned that, pursuant to Tex Local Gov Code Section 242 001 (i), Travis County's development regulations, which are less protective of the Barton Springs segment of the Edward's Aquifer, could be applied to the property, and thereby would damage the Barton Springs segment of the Edward's Aquifer, and

2 14 WHEREAS, on or about December 12, 2003, Austin's City Council voted 4 to 3 to approve Austin's execution of a settlement agreement with Lowe's (the December 2003 Settlement Agreement) through Ordinance No 031211-74, which was thereafter executed by Austin and Lowe's, and

2 15 WHEREAS, the December 2003 Settlement Agreement between Austin and Lowe's limited impervious cover to forty percent on the Lowe's Tract and required Lowe's to build water treatment systems that would treat water to SOS technical manual standards,

2 16 WHEREAS, pursuant to the December 2003 Settlement Agreement, Lowe's provided $1 million to Austin for the purchase of undeveloped land or conservation easements in order to mitigate the impact of forty percent impervious cover on the Lowe's tract,

2 17 WHEREAS, pursuant to the December 2003 Settlement Agreement, a copy of which is attached hereto as Exhibit B , Lowe's nonsuited all its claims against Austin, leaving only the matter of Sunset Valley's intervention as a third party defendant pending in the First Lawsuit, and

2 18 WHEREAS, on or about January 28, 2004, Sunset Valley, SOS Alliance and SBCA(Plaintiffs) filed Cause No GV-400101 (the Pending Lawsuit) in the 201st Judicial District Court of Travis County, Texas, against Lowe's and Austin initially seeking, and successfully obtaining, an interlocutory declaration that the December 2003 Settlement Agreement was void ab initio because it was not approved by a super majority vote of Austin's City Council, and later requesting that the court enjoin Lowe's from further developing the Lowe's Tract in conformance with the December 2003 Settlement Agreement, and

2 19 WHEREAS, the court in the Pending Lawsuit has temporarily enjoined Lowe's development activities as requested by Plaintiffs, and

2 20 WHEREAS, Lowe's maintains that its planned development on the Lowe's Tract will not pose an increased risk of harm to the Barton Springs portion of the Edward's Aquifer and will exceed the environmental protection criteria for any similar "big box" project in Central Texas, and

2 21 WHEREAS, Lowe's has filed cross claims (the *Lowe's vs COA* Claims) against Austin in the Pending Lawsuit, which have been severed therefrom, and are now the subject of a separate suit Cause No GV-402301 (the *Lowe's vs COA* Lawsuit) pending in the 201st Judicial District Court of Travis County, and

2 22 WHEREAS, the Pending Lawsuit is currently set for a jury trial to commence on April 25, 2005, and

2 23 WHEREAS, the parties to this Agreement seek to settle both the Pending Lawsuit, the *Lowes vs COA* Lawsuit, and the First Lawsuit, and

2 24 WHEREAS, Plaintiffs have been successful in obtaining trial court rulings that prohibit construction on the Lowe's Tract, however, Austin, Sunset Valley, SOS and SBCA recognize the possibility of an outcome favorable to Lowe's on appeal of the Pending Lawsuit, or as a result of new legislation, which may endanger the Edward's Aquifer more than would have occurred had Lowe's built in compliance with the December 2003 Settlement Agreement, and

2 25 WHEREAS, Plaintiffs and Austin are concerned that the legislature may take some action that would negatively impact water quality in the Edward's Barton Springs segment of the Edward's Aquifer, and

2 26 WHEREAS, Lowe's, Austin, Sunset Valley, SOS and Save Barton Creek Association seek to protect the Edward's Barton Springs segment of the Edward's Aquifer, and

2 27 WHEREAS, Lowe's contends that it is entitled to develop its land in conformance with the December 2003 Settlement Agreement and that such development will not result in any degradation of water quality, and

2 28 1 WHEREAS, to avoid the uncertainty and expense inherent in the litigation process, the Parties have agreed to the following settlement agreement

3 0 **DEFINITIONS.** Capitalized terms used but not otherwise defined herein shall have the meanings provided below

3 1 "***The Agreement***" or "***This Agreement***" refers to this document

3 2 The "***Pending Lawsuit***" refers to the lawsuit filed under Cause No GV-400101 filed in the 201 Judicial District of Travis County, Texas, styled *City of Sunset Valley, SOS Alliance and Save Barton Creek Association v Lowe's Home Centers, Inc. and The City of Austin*

3 3 The "***Lowe's v Austin Lawsuit***" refers to the cross claim filed by Lowe's against Austin (which was severed from the Pending Lawsuit) under Cause No GV-402301 pending in the 201st Judicial District of Travis County Texas

3 4 The "***First Lawsuit***" refers to the lawsuit filed in 2003by Lowe's against Austin under Cause No GN-300629 in the 98th Judicial District of Travis County Texas

3 5 The "***December 2003 Settlement Agreement***" refers to the agreement in which Lowe's and Austin attempted to resolve disputes between them in the First Lawsuit

3 6 The "***Settlement Fund***" refers to the sum total of $ 1,050,000, which is comprised of $350,000 contributed by Austin, $350,000 contributed by Lowe's and $350,000 contributed by Sunset Valley

3 7 The "***Lowe's Tract***" refers to the property located on Brodie Lane in Travis County, Texas upon which Lowe's plans to build a home center **See map attached as Exhibit A.**

3 8 "***Trustee***" refers to the law firm of Scanlan, Buckle and Young, P C

3 9 "***Direct Recharge Property***" is property located within one mile of the Lowe's Tract from which water directly enters the Edward's Aquifer

3 10 "***Impervious Cover Reduction Property***" refers to property over the Edward's Barton Springs segment of the Edward's Aquifer Recharge Zone located within three-quarters mile from any boundary of the Lowe's Tract, with property closest to the Lowe's Tract being the express preference of the Mitigation Parties

3 11 "***Mitigation Property***" refers to (a) the Direct Recharge Property, (b) Impervious Cover Reduction Property, and/or (c) other property located over the Barton Springs segment of the Edward's Aquifer Recharge Zone upon which the Mitigation Parties unanimously agree to obtain Property Rights

3 12 "***Property Rights***" refers to certain development rights and other rights attributable to ownership of real property which may be purchased and/or restricted by the acquisition of fee simple title or conservation easements or imposition of restrictive covenants

3 13 "***Acquisition Expenses***" refers to fees and expenses charged against Austin or Sunset Valley as follows (a) any fees payable to a third party for the appraisal of Property Rights pertaining to Mitigation Property, including a land plan associated with such appraisal, (b) Closing Costs payable to a third party associated with obtaining or restricting a Property Interest in Mitigation Property, including fees for obtaining a title policy and other incidental fees associated with a title company, (c) reasonable attorney's fees, court costs, and fees of experts in connection with any condemnation proceedings or claims arising out of use of condemnation authority by Sunset Valley for acquisition of Mitigation Property, (d) any real estate broker's fee payable in connection with acquisition of Mitigation Property or fee payable to a non-profit organization, such as the Trust for Public Lands for services provided in connection with the purchase of Property Rights pertaining to Mitigation Property, and (e) any award of costs against Sunset Valley in any condemnation proceedings

3 14 The "***Mitigation Parties***" refers to Austin, Sunset Valley, SOS Alliance and SBCA

4 0 THE SETTLEMENT FUND.

4 1 Lowe's, Sunset Valley, and Austin each agree to pay and contribute the amount of $350,000 each, for an aggregate of $1,050,000 into the Settlement Fund on the terms and for the uses provided in this Agreement Lowe's shall pay the amount of $350,000 to Trustee within 10 days after the Effective Date Trustee is authorized to disburse from the Settlement Fund Lowe's $350,000 contribution in order to pay the cost for acquiring or restricting of Property Rights for Mitigation Property and any Acquisition Expenses in connection therewith upon written request for same made by designated agents of Sunset Valley, SOS Alliance and SBCA The portions of the Settlement Fund to be paid by Austin and Sunset Valley, shall be held by each, respectively, and paid or expended pursuant to the terms of this Agreement

5 0 PROTECTION OF DIRECT RECHARGE PROPERTY.

5 1 ***Expenditure of Austin's $350,000 contribution to the Settlement Fund.*** Subject to the provisions below, Austin's $350,000 contribution to the Settlement Fund shall be expended by Austin to (a) obtain or restrict Property Rights in Direct Recharge Property, (b) to

restore natural drainage on Direct Recharge Property, and (c) to pay for Acquisition Expenses related to Direct Recharge Property

5 2 **Process for Identifying Property.** In order for Austin to determine which tracts of Direct Recharge Property shall become the focus of Austin's attempt to acquire or restrict Property Rights therein, agents of Austin shall confer with agents of other Mitigation Parties Until further written notice provided by Austin, such designated agents of Austin shall be Nancy McClintock and Nico Hauwert In obtaining or restricting Property Rights in Direct Recharge Property, Austin shall in good faith consider any information and recommendations provided by agents of other Mitigation Parties

5 3 **Deadline for Acquisition** During the one-year period after the Effective Date of this Agreement (**"Year One"**) Austin may use its $350,000 contribution to the Settlement Fund to enter into a binding contract to acquire or restrict Property Rights in Direct Recharge Property located in the City of Sunset Valley If Austin has not entered into such a binding agreement during Year One, Sunset Valley shall be permitted a one year period (**"Year Two"**) commencing with the expiration of Year One to acquire Property Rights in Direct Recharge Property located in the City of Sunset Valley. When using Austin's contribution to the Settlement Fund, Sunset Valley shall restrict its efforts to acquiring all or part of the Property Rights for which Austin had either made a purchase offer or negotiated for such purchase, as disclosed to Sunset Valley by Austin Austin shall pay to Sunset Valley the purchase price and Acquisition Expenses incurred by Sunset Valley for such Property Rights, up to the maximum amount of $350,000 less any Acquisition Expenses then incurred in Year One by Austin, when Sunset Valley provides proof of a binding right to purchase or acquire such property Any amount so paid to Sunset Valley by Austin shall be used only for Acquisition Expenses and the amount paid for such Property Rights If Sunset Valley has not obtained a binding right to acquire such Property Rights during Year Two, Austin may use its contribution to the Settlement Fund to purchase Property Rights in Direct Recharge Property located anywhere within one mile o the Lowe's Tract during the one year period (**"Year Three"**) following Year Two If any part of Austin's contribution to the Settlement Fund has not been used to acquire Property Rights in Direct Recharge Property prior to expiration of Year Three, except as anticipated by Section 5 4 of this Agreement, then such amount shall be used as provided pursuant to Section 11 0 of this Agreement The expiration of any given deadline and all subsequent deadlines in connection with Years One through Three, respectively, shall be tolled during any period that either Austin or Sunset Valley has commenced any legal proceeding in connection with its attempt to acquire Property Rights using Austin's contribution to the Settlement Fund, and for three weeks following the conclusion of such legal proceeding, whether by settlement, or non-appealable judgment (including the period of re-trial and subsequent appeals in the event a judgment is remanded to the trial court)

5.4 Expenditures Related to Restoration of Natural Drainage. Austin may utilize a portion of the $350,000 remaining after it acquires or restricts Property Rights in Direct Recharge Property to re-grade and/or take such other actions as may be necessary in order to restore and/or enhance natural drainage patterns on such Direct Recharge Property to protect against flooding of homes or businesses in the area or to protect the quality of water entering any sinkhole or direct recharge feature After Austin has acquired a Property Interest in Direct

Recharge Property; Austin has two years from the date of such acquisition to complete restoration and/or enhancement of natural drainage on said Property If at the end of this two year period, any of Austin's $350,000 contribution to the Settlement Fund remains, then those remaining funds shall be transferred to Sunset Valley for the purchase of Mitigation Property or utilized by Sunset Valley to reimburse itself for any previously made Acquisition Expenses utilized for obtaining Mitigation Property If Austin has taken substantial steps toward designing and/or obtaining permits for such drainage improvements then Sunset Valley shall confer with Austin to discuss an extension of time

5.5 **Continuing Role of Austin's Advisors** Nancy McClintock and Nico Hauwert or such other individuals designated by Austin shall maintain an advisory role vis-à-vis Sunset Valley during Sunset Valley's attempt to obtain or restrict such Property Rights using funds paid by Austin to Sunset Valley However, if Sunset Valley determines that it will utilize its power of eminent domain to obtain such Property Rights, Ms McClintock and Mr. Hauwert or such other individuals designated may voluntarily relinquish their advisory role -

5.6 **Expenditures of Additional Funds by Austin.** This Agreement does not prohibit Austin from contributing more funding to acquire or restrict Property Rights in, or to otherwise protect, Direct Recharge Property or other Mitigation Property Such expenditures over and above Austin's contribution of $350,000 to the Settlement Fund as described in this **Section 5.7** shall be at the sole discretion of Austin

5.7 **Expenditures of Additional Funds by Sunset.** This Agreement does not prohibit Sunset Valley from contributing any part of the amount of $700,000 from the Settlement Fund, designated for Impervious Cover Reduction Property, to purchase or restrict Property Rights for part or all of Direct Recharge Property or to otherwise protect such Direct Recharge Property Nor does this Agreement prohibit Sunset Valley from expending funds outside of the Settlement Fund to purchase or restrict all, or part, of the Direct Recharge Property or other Mitigation Property Such expenditures as described in this **Section 5.7** shall be at the sole discretion of Sunset Valley

5.8 **Expenditures of Additional Funds by Third Parties or by SBCA/SOS.** This Agreement does not prohibit SBCA or SOS Alliance or other third parties from contributing funds to Austin and/or Sunset Valley to assist in the acquisition or restriction of Property Rights in, or to otherwise protect, Direct Recharge Property or other Mitigation Property

5.9 **Role of Other Mitigation Parties regarding Additional Expenditures.** If any party proposes expenditures as described in **Sections 5.6, 5.7,** or **5.8** then Austin and/or Sunset Valley shall consider the good faith recommendations of the other Mitigation Parties

5.10 **Replacement of Austin Agents/Advisors.** If Nancy McClintock and Nico Hauwert are no longer willing or able to maintain their roles as set forth in **Article 5** of this Agreement, then Austin shall provide written notice to all Mitigation Parties and shall designate different agents/advisors(s) who are willing and able to perform the duties set forth in **Article 5** of this Agreement and who are acceptable to all Mitigation Parties (such acceptance not to be

unreasonably withheld, conditioned or delayed) In the event that Sunset Valley choses to exercise its power of eminent domain to obtain Property Rights in Mitigation Property, Austin may voluntarily withdraw its agents as advisors during the eminent domain process

5.11 Right of Entry. To the extent permitted by any conservation easement or restrictive covenant, Austin shall have a right to enter Direct Recharge Property in order to study recharge features, to re-grade such property and/or to take other actions reasonably necessary in order to restore and/or enhance water flow to recharge features In the event that Sunset Valley acquires Direct Recharge Property in fee simple, then Austin shall have a right of entry for study, re-grading and other drainage enhancement activities as described above

6 0 IMPERVIOUS COVER REDUCTION PROPERTY.

6 1 **Expenditure of $700,000 contribution to the Settlement Fund.** Sunset Valley's and Lowe's combined $700,000 contribution to the Settlement Fund shall be expended by Sunset Valley to obtain or restrict Property Rights in Impervious Cover Reduction Property

6.2 **Process for Identifying Property.** Sunset Valley shall attempt to obtain or restrict Property Rights for Impervious Cover Reduction Property, the boundaries of which are located within three quarters of a mile from any boundary of the Lowe's Tract Sunset Valley shall attempt to obtain or restrict Property Rights in approximately 26 acres of Impervious Cover Reduction Property

6 3 **Deadline for Acquisition.** Sunset Valley shall acquire or, have a binding contract to acquire or restrict, Property Rights in Impervious Cover Reduction Property not later than three years after the Effective Date of this Agreement or three years after Lowe's provides its $350,000 to the Trustee, whichever occurs last This three year period shall be abated if Sunset Valley determines that is it necessary to acquire Impervious Cover Reduction Property, or other Mitigation Property, including Direct Recharge Property, by way of an eminent domain proceeding. The period of such abatement shall expire 21 days after the date when all such eminent domain proceedings are concluded, whether by agreement or upon expiration of the deadline for appeal of any award or appellate decision, whether originally or on remand by any appellate court

6 4 **Disposition of Remainder of Sunset Valley's Contribution.** . If any portion of the Settlement Fund referenced in **Section 6.1** remains after the deadline for acquisition provided in section 6 3 (as extended by abatement in the event of condemnation proceedings), then Sunset Valley shall utilize this remaining amount for protection of the Barton Springs segment of the Edward's Aquifer in a manner that is acceptable to all Mitigation Parties

6 5 **Expenditures of Additional Funds by Sunset Valley.** This Agreement does not prohibit Sunset Valley from contributing other funding, over and above the $700,000 amount from the Settlement Fund, to acquire or restrict Property Rights in, or to otherwise protect, Impervious Cover Reduction Property or other Mitigation Property Such expenditures as described in this **Section 6.5** shall be at the sole discretion of Sunset Valley

6 6 **Expenditures of Additional Funds by Third Parties or by SBCA/SOS.** This Agreement does not prohibit SBCA, SOS Alliance or other third parties from contributing funds to Sunset Valley to assist in the acquisition or restriction of Property Rights in, or to otherwise protect, Impervious Cover Reduction Property or other Mitigation Property.

6 7 ***Role of Other Mitigation Parties regarding Additional Expenditures.*** If any party proposes expenditures as described in **Sections 6.5** and **6.6**, then Sunset Valley shall consider the good faith recommendations of the other Mitigation Parties

7.0 PROPERTY HELD IN FEE SIMPLE.

7 1 **Title of Property Held in Fee Simple** For any fee simple title or ownership of Mitigation Property acquired by Austin with funds from the Settlement Fund, that is located in the corporate limits or in the extraterritorial jurisdiction (***"ETJ"***) of Sunset Valley, such fee simple title shall be conveyed by Austin to Sunset Valley within 90 days of acquisition by Austin In the event that Sunset Valley utilizes any of the $700,000 contributed by Lowe's or Sunset Valley to the Settlement Fund to purchase a fee simple interest in property in Austin, said fee simple title shall be held by Sunset Valley In the event that Austin purchases, with the consents of the Mitigation Parties, a fee simple interest in Acceptable Mitigation Property in Austin using its $350,000 contribution to the Settlement Fund, then such fee simple title shall be held by Austin Any property acquired by Austin or Sunset Valley pursuant to this Agreement that is held in fee simple shall be subject to a restrictive covenant or conservation easement that is enforceable by the City that does not hold fee simple title in said property as well as by SBCA. Said conservation easement or restrictive covenant shall restrict any use of the property described in this section 7.1 to public park or greenbelt uses, and restricting the construction of new improvements thereon to hike and bike trails and incidental playground equipment, unless otherwise approved by the party not holding the fee simple title and by SBCA.

7 2 **Protection of Recharge Features** In no event shall any construction related to such new improvements, as described in **Section 7.1**, occur within 150 feet of a sinkhole or other recharge feature The following construction is permitted within 150 feet of a sinkhole or recharge feature construction for the purposes of restoring natural drainages as permitted within the confines of existing state and local codes and regulations ("Permissible construction") Such Permissible Construction shall include clearing accumulated debris blocking flow to a sinkhole or recharge feature, constructing of a cave gate, and other drainage improvements to a sinkhole or recharge feature

7 3 **Sale of Impervious Cover Reduction Property** Notwithstanding paragraphs 7 1 or 8 1, with respect to undeveloped lots of Impervious Cover Reduction Property acquired by Sunset Valley or Austin in fee simple, Sunset Valley or Austin may, after restricting impervious cover to the lesser of 9% of the total square footage of the tract or 2500 square feet and limiting to residential use, sell such restricted property and apply the proceeds to the acquisition of additional Property Rights on Acceptable Mitigation Property Any Property Rights sold as anticipated by this Section 7 3 must contain the restrictions set forth in section 8 1 and shall also contain any other optional restrictions that have been approved by all Mitigation Parties

7 4 **Sale of Direct Recharge Property** Direct Recharge Property that is held by Sunset Valley or Austin that contains an improvement, such as a house, may be sold by either entity, however, the impervious cover restrictions on said property are limited as set forth in Section 8 1 a and b Direct Recharge Property that is held by Sunset Valley or Austin upon which no improvement, such as a house, is located may be sold by either entity with no additional impervious cover allowances Any proceeds from the sale of Direct Recharge Property must be utilized to purchase Property Rights on Acceptable Mitigation Property Any Property Rights purchased as anticipated by this Section 7.4 must contain the restrictions set forth in sections 8 1 and shall also contain any other optional restrictions that have been approved by all Mitigation Parties

7.5 **Cooperation between Austin and Sunset Valley.** Austin and Sunset Valley shall cooperate and execute such deeds, restrictive covenants and other documents reasonably necessary to obtain or restrict Property Rights as intended by **this section** 7

8 0 MITIGATION PROPERTY PROTECTED BY CONSERVATION EASEMENT OR RESTRICTIVE COVENANT.

8 1 **Required Restrictions.** In the event that any portion of the Settlement Fund is used to acquire a conservation easement or restrictive covenant on Mitigation Property, the following shall apply The conservation easement or restrictive covenant shall be in favor of Austin, Sunset Valley, and SBCA and (a) shall restrict any use of the property to single-family residential and related uses, (b) for property on which a residence has already been constructed, shall restrict the impervious cover allowed on such property to 10% more than the impervious cover existing on such property on the date of acquisition, (c) for property on which no residential structure is located, shall permit a maximum total of the lesser of 9% of the area of such property or 2,500 square feet of impervious cover for a residential structure and ancillary improvements,

8 2 **Optional Restrictions.** The Mitigation Parties anticipate that Sunset Valley and Austin may desire to include other terms, conditions and restrictions in the conservation easement or restrictive covenants pertaining to Mitigation Property Austin and Sunset Valley will negotiate these provisions at a later date during discussions with the landowners

9 0 INSPECTIONS OF MITIGATION PROPERTY.

9 1 **Inspections by Sunset Valley.** On at least a yearly basis, Sunset Valley shall perform inspections of Mitigation Property, acquired by Austin or Sunset Valley pursuant to this Agreement, located within the jurisdiction of Sunset Valley to assure that the terms of the conservation easements or other restrictive covenants are being met by the landowners However, if landowners are constructing or placing improvements on such Mitigation Property, then Sunset Valley shall inspect at the start of such construction or placement project to assure that the requirements of the conservation easements or restrictive covenants are being met Sunset Valley may inspect more often as necessary until the construction or placement project is complete Within 30 days after such inspections, Sunset Valley shall issue Easement Document Reports to the other Mitigation Parties regarding Sunset Valley's findings during inspection

Upon request by Austin to Sunset Valley, Austin may designate an agent or representative to accompany Sunset Valley during these inspections

9.2 Inspections by Austin On at least a yearly basis Austin shall perform inspections of Mitigation Property, acquired by Austin or Sunset Valley pursuant to this Agreement, located within the jurisdiction of Austin to assure that the terms of the conservation easements or other restrictive covenants are being met by the landowners However, if landowners are constructing or placing improvements on such Mitigation Property, then Austin shall inspect at the start of such construction or placement project to assure that the requirements of the conservation easements or restrictive covenants are being met Austin may inspect more often as necessary until the construction or placement project is complete Within 30 days after such inspections, Austin shall issue Easement Documentation Reports to the other Mitigation Parties regarding Austin's findings during inspection Upon request by Sunset Valley to Austin, Sunset Valley may designate an agent or representative to accompany Austin during these inspections

10 0 AUTHORIZATION OF FUNDS BY AUSTIN AND SUNSET VALLEY.

The governing bodies of Austin and Sunset Valley shall appropriate sufficient funds in the current fiscal year to pay the entirety of their own respective $350,000 obligation provided by this Agreement Austin and Sunset Valley each warrant and represent that its governing body has authorized the expenditure of, and has appropriated, such amount from current funds, and shall maintain such amounts funded and unexpended for use as provided in this Agreement

11 0 DELAY IN ACQUIRING OR RESTRICTING PROPERTY RIGHTS.

11 1 **Good Faith Negotiations.** If the Mitigation Parties are unable to obtain a binding contract to expend all mitigation funds to acquire or restrict Property Rights in Mitigation Property within three years of the Effective Date, and after the expiration of any eminent domain abatement period, as described in **Section 6.3** of this Agreement, Mitigation Parties agree to confer in good faith to negotiate an extension of the deadline or an acceptable alternative use for the Settlement Fund (or the balance thereof) for the purpose of mitigating any potential adverse impact on the Barton Springs segment of the Barton Springs segment of the Edward's Aquifer that might result from the development of the Lowe's Tract

11 2 **Mediation.** The Mitigation Parties agree to participate in mediation before a qualified mediator if good faith negotiations, as set forth in **Section11.1**, are unsuccessful

11 3 **Court Action.** If no agreement, as contemplated by Section 11 1 of this Agreement, has been reached by the later of four years of the Effective Date, or one year after the expiration of any abatement period as described in **Sections 5.3 or 6.3** of this Agreement, then any of the Mitigation Parties may file a petition in State District Court of Travis County, Texas seeking reformation of this Agreement in accordance with the principles of equity and the objectives for the Settlement Fund identified herein

12 0 *LOWE'S PROJECT DESIGN MODIFICATIONS.*

Lowe's will make the modifications set forth on Exhibit C to its previously designed project on the Lowe's Tract

12 1. **Lowe's may Proceed.** The Parties agree that, Lowe's shall be allowed to proceed with construction as previously designed and permitted by Travis County and as modified by Sections 12 and 13 of this Agreement The Parties agree that no presently-existing permit issued to Lowe's or plat filed by Lowe's (including the Travis County plat for the Lowe's Tract) establishes, or grants Lowe's any right-of-way or rights to construct an extension of Ben Garza Lane west of the Lowe's Tract or any other roadway connecting the Lowe's Tract and MoPac or Brodie and MoPac

12 2 **City of Austin permits Revived and Supplemented** Any City of Austin permits that were previously issued to Lowe's as a result of the December 2003 Settlement Agreement shall be revived and supplemented to include the modifications set out in Exhibit C. Any Austin permits shall be subject to the provisions of this Agreement to the extent that permits issued by Austin to Lowe's are inconsistent with this Agreement

13 0 PROVISIONS OF THE DECEMBER 2003 SETTLEMENT AGREEMENT.

As set forth in this Section, certain provisions of the December 2003 Settlement Agreement are ratified and reaffirmed and certain provisions are superceded by this Agreement

13 1 **Provisions ratified and reaffirmed by the Parties.** The following provisions of the December 2003 Settlement Agreement are hereby ratified and reaffirmed by the Parties

(a) Section 1 02 (with the impervious cover allowances only applying to the Garza Tract),

(b) Section 1.03,

(c) Section 1 05,

(d) Section 1 07,

(e) Section 1 08,

(f) Section 1 10,

(g) Section 3 02 as to the first three sentences only, with the following additional language

> To enforce any requirements set forth herein related to development or redevelopment on the Garza Tract, the City of Austin may pursue any method or means of enforcement available to it including those set out in the City Land Development Code provided that nothing contained herein shall constitute a stipulation or consent by Lowe's that before annexation all aspects of the City Land Development Code are applicable to the Garza Tract,

(h) Section 4 01 (with the deadline extended to December 31,2005),

(i) Section 4 02 (excluding the last two sentences thereof, with that omission not intending to comment on the applicability of Local Government Code Section 43 002),

(j) Exhibit E-1 to the December 2003 Settlement Agreement is hereby superceded and replaced with Exhibit E-1 attached hereto

13 2 **Provisions superseded in their Entirety.** Except to the extent it is expressly reaffirmed and ratified in Section 13 01, the Parties agree that the December 2003 Settlement Agreement is hereby superseded in its entirety

14 0 BOYCOTT TERMINATION.

Beginning within 30 days of the date that this Agreement is executed and continuing for a six month period, Lowe's agrees to engage in discussions with SOS Alliance concerning Lowe's activities in the Edward's Aquifer Recharge Zone SOS Alliance agrees to immediately suspend its boycott activities related to Lowe's , and agrees not to resume any efforts to boycott Lowe's stores for a period of at least six months thereafter SOS Alliance agrees that the Lowe's store to be built on the Lowe's tract will never be the target of an SOS Alliance-sponsored or supported boycott, even after the expiration of this initial six month period Nothing contained herein shall operate to limit or preclude SOS Alliance from encouraging people to boycott the Shops at Galleria project in Bee Caves, or to make Lincoln Properties the target of a boycott (without naming Lowe's during the initial six month period)

15 0 LOBBYING.

Lowe's agrees not to use its resources to encourage or support any legislation in the Texas Legislature during any 2005 or 2006 legislative session that is designed or intended to weaken or lessen regulations protecting the Barton Springs watershed or the Edward's Barton Springs segment of the Edward's Aquifer

16 0 DISMISSAL OF LAWSUITS.

Within 10 days after the Effective Date, the Parties will file the pleadings necessary to effect the dismissal of the Pending Lawsuit, the First Lawsuit, and the *Lowe's v Austin* Lawsuit with prejudice, with all parties bearing their own costs and attorneys' fees

17 0 APPROVAL AND AUTHORITY.

This Agreement will not be effective until approved by (a) representatives of Lowe's, (b) SOS Alliance and (c) SBCA (d) by a majority of Sunset Valley's city council, and (e) by a sixth-sevenths majority of Austin's city council If these approvals are not obtained and this Agreement is not fully executed by March 28, 2005, this Agreement shall be of no further force and effect, even if partially executed Any person signing this agreement in a representative

capacity individually represents and warrants that he or she has the requisite authority to enter into this agreement and bind the respective party hereto

18 0 **VENUE AND CHOICE OF LAW.**

Any dispute arising because of this Agreement shall be brought in State District Court of Travis County, Texas The laws of the State of Texas shall govern any dispute regarding this Agreement

19 0 **AUTHORITY OF PARTIES.**

Each Party executing this Agreement represents that it does so with full authority, of its own free will, and after discussing this agreement with its attorney

20 **CONTACT PERSONS FOR MITIGATION PARTIES.**

When this Agreement calls for conference between Mitigation Parties, or for information to be distributed to Mitigation Parties, the following individuals shall serve as contact persons until further written notice designating another contact person

(a) **SOS Alliance** - Brad Rockwell for SOS 221 East 9th Street Austin, TX 78701. 512-477-2320 (fax) 512- 477-6410,

(b) **SBCA** - Programs Manager for SBCA P O Box 5923 Austin, TX 78763 When calling SBCA please phone Harold Daniel, President of SBCA, at 512-656-5686

(c) **Sunset Valley** - Sunset Valley may be contacted through its attorney Doug Young at 602 West 11th Street Austin, TX 78701 512-478-4651, (fax) 512 478-7750

(d) **Austin** - City of Austin may be contacted through the City Attorney's Office as follows Laurie Eiserloh Assistant City Attorney, or her successor, 301 W 2nd Street P O Box 1536 Austin, TX 78767-1546, 412-974-2188 (fax) 512-974-6490

21 **CLOSING BINDER DISTRIBUTION.**

After each acquisition of Property Rights, the Party responsible for said acquisition shall provide a closing binder, containing all recorded documents regarding the acquisition, to all other Mitigation Parties within 30 days of closing

22 **COPIES HAVE SAME EFFECT AS ORIGINAL**

It is anticipated that there will be one original copy of this document kept by Austin Other parties shall receive copies of said document Those copies shall have the same force and effect as the original

[Signatures on following page]

LOWE'S HOME CENTERS, INC.,
a North Carolina corporation

By David E. Shelton f/B
Name David E. Shelton
Title: Senior Vice President

DATE 3-23-05

STATE OF North Carolina
}
COUNTY OF Wilkes }

BEFORE ME, a Notary Public, on this day personally appeared David E. Shelton, ☑ known to me, or ☐ proved to me on the oath of _____, or ☐ proved to me through _____, to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of **Lowe's Home Centers, Inc.**, a North Carolina corporation, and that s/he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23rd day of March, 2005

Carla H. Reavis
Notary Public

CARLA H. REAVIS
NOTARY ★★★ PUBLIC
WILKES COUNTY, N.C.

CARLA H. REAVIS
Printed Name of Notary Public

My commission expires
Sept. 22, 2006

CITY OF AUSTIN, TEXAS,
a Texas municipal corporation

By: Toby H. H. Futrell
Name Toby Hammett Futrell
Title City Manager

DATE 03-24-05

STATE OF TEXAS }
}
COUNTY OF TRAVIS }

BEFORE ME, a Notary Public, on this day personally appeared Toby Hammett Futrell, ☒ known to me, or ☐ proved to me on the oath of _____, or ☐ proved to me through _____, to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of **City of Austin**, a Texas municipal corporation, and that s/he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 24th day of March, 2005

Annette M Bogusch
Notary Public
State of Texas
My Commission Expires
APRIL 30, 2007

Annette M Bogusch
Notary Public

Annette M. Bogusch
Printed Name of Notary Public

My commission expires

04-30-2007

CITY OF SUNSET VALLEY, TEXAS,
a Texas municipal corporation

By _____
Name TERRY COWAN
Title MAYOR

DATE 3-23-2005

STATE OF TEXAS }
}
COUNTY OF TRAVIS }

BEFORE ME, a Notary Public, on this day personally appeared TERRY COWAN, ☒ known to me, or ☐ proved to me on the oath of _____, or ☐ proved to me through _____, to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of **City of Sunset Valley, Texas**, a Texas municipal corporation, and that s/he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23RD day of MARCH, 2005

Jayme S. Foley
Notary Public

JAYME S. FOLEY
Printed Name of Notary Public

My commission expires
3-15-2005

JAYME S FOLEY
Notary Public
STATE OF TEXAS
My Comm Exp 03-15-2005

SAVE OUR SPRINGS ALLIANCE,
a Texas corporation

By. _____
Name BRAD ROCKWELL
Title DEPUTY DIRECTOR

DATE: MARCH 23, 2005

STATE OF TEXAS }
}
COUNTY OF Travis }

BEFORE ME, a Notary Public, on this day personally appeared Brad Rockwell, ☒ known to me, or ☐ proved to me on the oath of _____, or ☐ proved to me through _____, to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of **Save Our Springs Alliance**, a Texas corporation, and that s/he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23rd day of March, 2005

Denise Lynne Mansfield
Notary Public
State of Texas
My Commission Expires
JANUARY 23, 2006

_____
Notary Public

Denise Lynne Mansfield
Printed Name of Notary Public

My commission expires:
1/23/06

SAVE BARTON CREEK ASSOCIATION,
a non-profit corporation

By Harold Daniel, Jr.
Name Harold Daniel
Title President

DATE 3/23/2005

STATE OF TEXAS }
}
COUNTY OF TRAVIS }

BEFORE ME, a Notary Public, on this day personally appeared Harold Daniel, ☐ known to me, or ☐ proved to me on the oath of _____, or ☒ proved to me through personal identification to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of **Save Barton Creek Association**, a non-profit corporation and that s/he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23rd day of March, 2005

Lindsey Engelman
Notary Public

LINDSEY TAMAR ENGELMAN
Notary Public, State of Texas
My Commission Expires
October 29, 2008

Lindsey Engelman
Printed Name of Notary Public

My commission expires
10/29/08

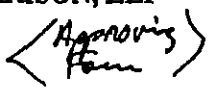
LOWERRE & KELLY
44 East Avenue, Suite 101
Austin, Texas 78701
Telephone (512) 482-9345
Telecopier (512) 482-9346

By. _____
Layla Aflatooni
State Bar No 24040394

COUNSEL FOR SAVE BARTON CREEK ASSOCIATION

Stephen Adler
State Bar No 00927700
BARRON ADLER & ANDERSON, LLP
808 Nueces
Austin, Texas 78701
Telephone (512) 478-4995
Telecopier. (512) 478-6022

FRITZ, BYRNE, HEAD & HARRISON, LLP
98 San Jacinto Blvd , Suite 2000
Austin, Texas 78701
Telephone (512) 476-2020
Telecopier. (512) 477-5267



By. _____
Daniel H. Byrne
State Bar No 03565600

ATTORNEYS FOR DEFENDANT LOWE'S HOME CENTERS, INC.

CITY OF AUSTIN
City of Austin Law Department
P O Box 1546
Austin, Texas 78767-1546
Telecopier (512) 974-6490

By. _____
Dana Johnson, Esq
Laurie R Eiserloh, Esq

David O Frederick
State Bar No 07412300
FREDERICK LAW
David O Frederick, Esq
44 East Avenue, Suite 102
Austin, Texas 78701
Telephone (512) 469-6000
Telecopier (512) 469-0743

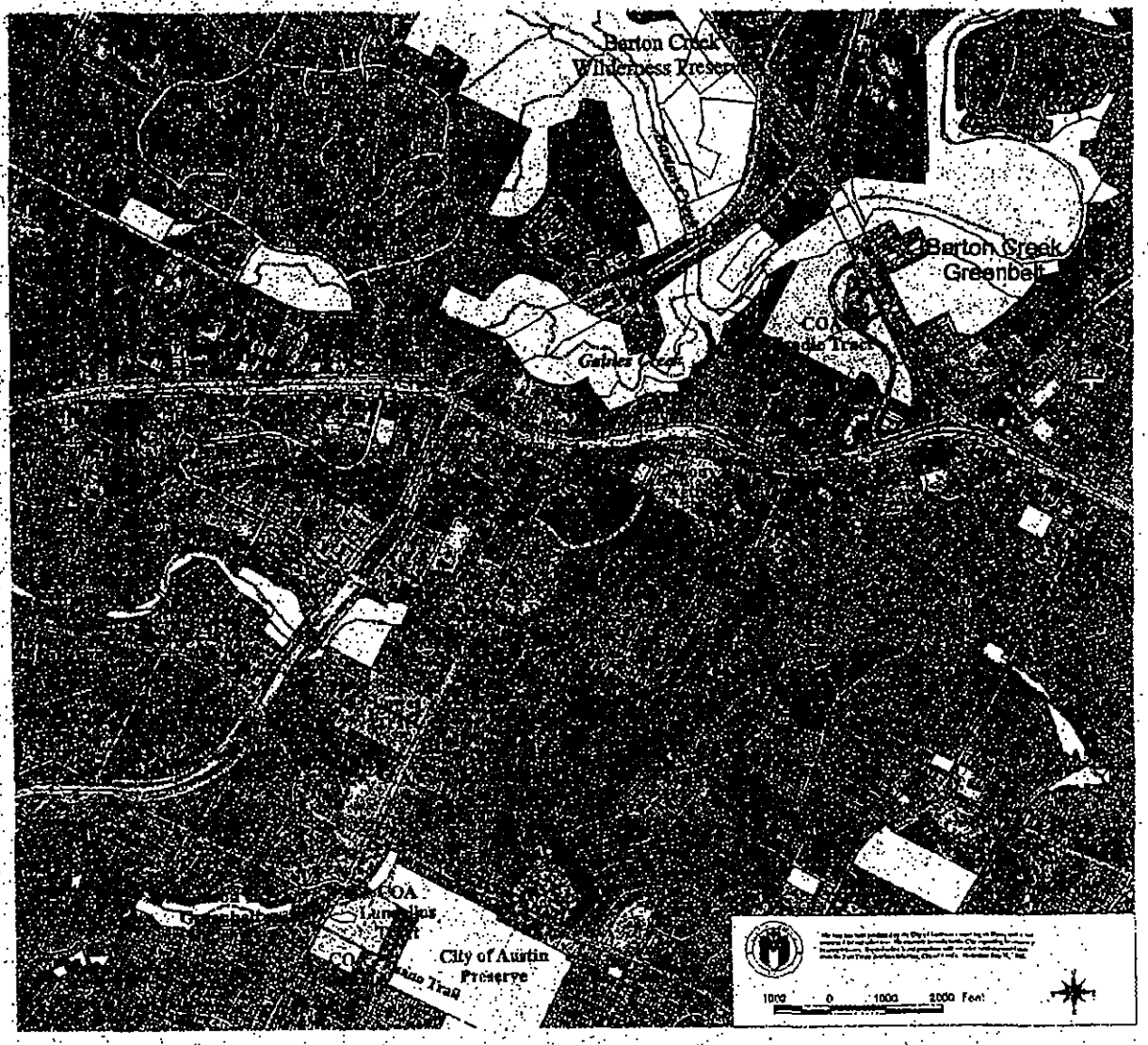
SCANLAN, BUCKLE & YOUNG, P.C.
602 West 11th Street
Austin, Texas 78701
Telephone (512) 478-4651
Telecopier (512) 478-7750

By _____
Doug Young
State Bar No 22180650

ATTORNEYS FOR PLAINTIFF CITY OF SUNSET VALLEY, TEXAS

SAVE OUR SPRINGS ALLIANCE
221 East 9th Street, Suite 201
Austin, TX 78701
Telephone (512) 477-2320
Telecopier (512) 477-6410

By _____
Brad Rockwell
State Bar No 17129600


Barton Creek
Wilderness Preserve
Barton Creek
Greenbelt
City of Austin
Preserve
1000 0 1000 2000 Feet

A

ORDINANCE NO. 031211-74

AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT IN THE LAWSUIT STYLED *LOWE'S HOME CENTERS, INC. V. CITY OF AUSTIN*, CAUSE NO. GN300629, IN THE 98TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The "Garza Brodie Settlement Agreement", attached as Exhibit A and incorporated by reference, settling disputes in the lawsuit styled *Lowe's Home Centers, Inc. v. City of Austin*, Cause No. GN300629, 98th Judicial District Court of Travis County, Texas, and settling other disputes and potential claims between the parties to the Settlement Agreement, is approved

PART 2. The City Manager or her designee is authorized to execute the Settlement Agreement and all related documents on behalf of the City.

PART 3. This ordinance takes effect on December 23, 2003.

PASSED AND APPROVED

December 12, 2003 § Will Wynn
Mayor

APPROVED: David Allan Smith
City Attorney

ATTEST: Shirley A. Brown
City Clerk

EXHIBIT B

GARZA BRODIE SETTLEMENT AGREEMENT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into effective as of the date the Agreement is signed by all of the Parties, ("Effective Date") by and among ELI J. GARZA, GERALDINE FLEMING, acting through her attorney in fact, EDMUND J. FLEMING, MARCIA ROSE WHITE, TRUSTEE, WILLIAM D REESE, (occasionally referred to herein collectively as the "Garza Owners"), the CITY OF AUSTIN (the "City"), a Texas municipal corporation, and LOWE'S HOME CENTERS, INC ("Lowe's"), a North Carolina corporation. The City, Lowe's, and the Garza Owners are occasionally referred to herein collectively as the "Parties".

RECITALS

Eli J Garza is the owner of 16 445 acres in Travis County, Texas, more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes. Geraldine Fleming is the owner of 4.837 acres of land in Travis County, Texas, more particularly described on Exhibit "B" attached hereto and made a part hereof for all purposes. Marcia Rose White, Trustee is the owner of 4.838 acres of land in Travis County, Texas, more particularly described on Exhibit "C" attached hereto and made a part hereof for all purposes William D. Reese is the owner of 3.869 acres of land in Travis County, Texas, more particularly described on Exhibit "D" attached hereto and made a part hereof for all purposes. In this Agreement, the land described in Exhibits A, B, C and D may be collectively referred to as the "Property "

The Garza Owners and Lowe's entered into earnest money contracts dated July 29, 2002, pursuant to which the Garza Owners agreed to sell the Property to Lowe's (the "Lowe's Contracts") Lowe's, as agent for the Garza Owners, filed a subdivision application with Travis County on March 4, 2003, subdividing the Property. The subdivision is hereinafter referred to as the "Garza/Brodie Subdivision". Due to disagreement with the City concerning alleged vested development rights accruing to the Property comprising Garza/Brodie Subdivision, Lowe's filed suit against the City seeking to enforce said development rights, styled Lowe's Home Centers, Inc v. City of Austin, Cause No. GN300629 in the 98th Judicial District Court of Travis County, Texas (the "Lawsuit"). The City disputed the Lawsuit's allegations.

The City, Lowe's and the Garza Owners desire to resolve and settle all controversies between them regarding City and County development ordinances, regulations, and standards which apply to the Property and the Garza/Brodie Subdivision, in order to provide certainty with regard to the development rights applicable to the Property and the Garza/Brodie Subdivision. The City, Lowe's, and the Garza Owners have agreed on terms and conditions for development of the Property, the Garza/Brodie Subdivision, and the settlement of the Lawsuit.

The Parties hereto intend for this Agreement to be binding upon the Garza Owners, Lowe's, their respective successors and assigns, and the City, as set forth herein

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1.

DEVELOPMENT STANDARDS

1.01 General Development Standards of Garza/Brodie Subdivision The City, Garza Owners, and Lowe's agree that the Property and the Garza/Brodie Subdivision will be developed in accordance with such final plat as may be approved by the Travis County Commissioners Court, and in accordance with the Travis County Code, Rules and Regulations in effect on March 4, 2003, pursuant to Texas Local Government Code Chapter 242, except as otherwise specified in this Agreement. The Parties agree that the final plat referred to in this Section shall include a plat note, which states as follows: "Development in this subdivision shall be subject to the terms and conditions of a restrictive covenant recorded in Document # _____, Official Public Records of Travis County, Texas, incorporating the terms and conditions of that certain Garza Brodie Settlement Agreement dated effective as of the ____ day of _____, 2003."

1.02 Impervious Cover Restrictions of the Garza/Brodie Subdivision. The City, Garza Owners and Lowe's hereby agree that the Property and the Garza/Brodie Subdivision will be developed subject to the following impervious cover restriction:

> Lowe's will construct improvements resulting in not more than forty percent (40%) impervious cover, as impervious cover is defined by the City of Austin Land Development Code, inclusive of not more than 42-foot pavement width of the realigned Ben Garza Lane and not more than 21-foot pavement width of Allegro Lugar and as more specifically described by the site plan attached hereto as Exhibit "E". Boundary streets will not be included in any impervious cover calculation

1.03 Drainage and Water Quality Standards. The City, Garza Owners and Lowe's agree that the Property and the Garza/Brodie Subdivision will be developed in accordance with the standards for water quality treatment set forth in the City of Austin Environmental Criteria Manual for compliance with the SOS Ordinance, as of the Effective Date of this Agreement. The project will be deemed to be in compliance with SOS equivalent water quality control standards if the land contains the following elements (collectively "Water Quality Improvements").

a. A storm water ponding system which shall consist of an unlined detention pond, two sedimentation ponds with impermeable liners, and related drainage conveyance works. The two sedimentation ponds will have a water quality

capture volume determined in accordance with Table 1-12 of the City of Austin Environmental Criteria Manual pages 1-193 and 1-194, and the sedimentation ponds' volume shall include the capture of runoff from the Property and the Garza/Brodie Subdivision, including the realigned Ben Garza Lane The storm water ponding system shall control and limit the outflow for the entire 2-year frequency storm event to pre-development rates or less for the purpose of downstream erosion control, as well as limiting the outflow to pre-development rates for the 10-year, 25-year, and 100-year frequency storms for flood control The storm water ponding system shall capture runoff from the developed areas on the Property and the Garza/Brodie Subdivision, including the realigned Ben Garza Lane and all other impervious cover and associated landscaping situated on the Property and the Garza/Brodie Subdivision

b. A re-irrigation system designed to meet or exceed the Texas Commission on Environmental Quality Standards contained in "Complying with the Edwards Aquifer Rules· Technical Guidance on Best Management Practices". The sedimentation ponds shall be emptied by spray irrigating the undeveloped portions of the Property and the Garza/Brodie Subdivision, and if necessary, the embankment and other areas surrounding the detention pond within 72 hours of a rainfall event. Irrigation shall not commence for at least 12 hours after the rainfall event.

c Facilities discharging storm water designed to minimize erosion

Lowe's shall provide as built drawings and a Texas licensed engineer's certification that the Water Quality Improvements have been constructed and will operate in accordance with this Agreement. Lowe's shall provide an on-the-ground survey which shows that required volumes have been achieved in the detention and sedimentation ponds Additional design, operation and maintenance standards and requirements for the Water Quality Improvements are attached as Exhibit H Lowe's agrees to design, operate and maintain the Water Quality Improvements in accordance with the standards and requirements set forth on Exhibit H

1 04 Realignment of Camino Largo/Ben Garza Lane The City agrees not to oppose the realignment of Camino Largo/Ben Garza Lane off-site of the Property and the Garza/Brodie Subdivision between the western boundary of said Subdivision and MoPac Blvd., as detailed on Exhibit "F", provided, however, that such alignment shall not interfere with Critical Environmental Features as defined by City Code

1 05 Water and Wastewater Service. The Parties acknowledge that Lowe's has applied for the approval of City water and wastewater services for the Property in Water Service Extension Request ("SER") No 2284 and Wastewater SER No. 2285, respectively. The Parties further agree that water and wastewater utility services to the Property shall be provided in accordance with the conditions and limitations set forth in Water SER No. 2284 and Wastewater SER No. 2285. Water SER No. 2284 and Wastewater SER No.

2285 shall be approved and signed by the Director of the City's Water and Wastewater Utility concurrent with the City's execution of this Settlement Agreement and, upon the Director's execution thereof, a true copy of the signed Water SER No. 2284 and Wastewater SER No. 2285 shall be denominated as the "Lowe's Water and Wastewater Service Plan," attached hereto as Exhibit "G" to this Settlement Agreement, and incorporated herein for all purposes The Parties agree that this Settlement Agreement shall constitute an "approved development application" for purposes of City Code Section 25-9-38

1.06 Impact of Ordinances on Impervious Cover No city ordinance, rule or land development regulation shall have the effect of reducing the allowable impervious cover percentages for the Property and/or the Garza/Brodie Subdivision stated in Section 1.02 herein; provided, however, that Lowe's and/or the Garza Owners shall provide funds to the City for use as impervious cover mitigation, as set out in Section 5.01 below.

1 07 Planting. Ninety percent (90%) of the total plant material used in the project (exclusive of turf) shall be native to Central Texas, and/or native and adapted plants recommended in the Grow Green Native and Adapted Landscape Plants Guide prepared by the City of Austin and the Texas Cooperative Extension, and published August 2003 Plants listed on the Invasive Species list or the Problem Plants list in the Grow Green Plants Guide may not be included. Lowe's may remove trees as required to develop the Lowe's store or its storm water ponding system. Landscaping shall be provided as shown on the landscaping exhibit E-1 to the site plan attached as Exhibit E.

1.08 Green Builder Program and other Standards Lowe's will incorporate, at a minimum, the following "Green Builder Program" measures, and other standards described below, in the construction and operation of the Lowe's building

a Lowe's will not use coal tar-containing pavement sealers on parking lot surfaces on the site and shall not sell coal tar- containing pavement sealers on the site.

b. Lowe's agrees that it will construct all parking lot areas with concrete in lieu of asphalt surfaces.

c. Lowe's will incorporate a down spout rainwater recovery system in its building

d. Lowe's will establish and perform a street sweep parking lot maintenance program, sweeping the parking lot at least once per week with a vacuum-assisted sweeper.

e Lowe's store will utilize a white reflective roof system exceeding the minimum roof insulation standards.

f. Lowe's store will utilize a high efficiency electronic ballast floor up fluorescent lighting system and will utilize high efficiency HVAC rooftop units.

g. Lowe's will store all arsenic-treated wood under cover.

h Lighting on the property will be in compliance with Chapter 2 of the City of Sunset Valley's Land Development Code in effect on December 12, 2003.

1.09 a. Redevelopment or Change In Use. The Parties agree that the provisions of this Agreement shall apply and shall continue to apply to and govern any and all development

activity that has commenced or will commence on the Property or the Garza/Brodie Subdivision, or any portion thereof, within 10 years from and after the Effective Date. After the expiration of 10 years from the Effective Date redevelopment of the Property or the Garza/Brodie Subdivision shall be subject to all municipal regulations, without reference to this Agreement; provided, however, that notwithstanding the application of municipal regulations after the expiration of 10 years or any other provision of this Agreement to the contrary, the Property and the Garza/Brodie Subdivision may be redeveloped in accordance with the 40% impervious cover requirement as set out in this Agreement, provided, however, that Lowe's and/or the Garza Owners shall provide funds to the City for use as impervious cover mitigation, as set out in Section 5 01 below, and provide the Water Quality Improvements set forth in this Agreement.

b Definition of Development For purposes of this Agreement, development or redevelopment means the construction or reconstruction of a building or road; the placement of a structure on land, the excavation, mining, dredging, grading, or filling of land; the removal of vegetation from land; or the deposit of refuse or waste on land. Development or redevelopment does not include·

i. lawn and yard care, including mowing, gardening, tree care and maintenance of landscaped areas;

ii. removal of trees or vegetation damaged by natural forces:

iii. agricultural activity that is not prohibited by City Code Section 25-8-321 (Clearing of Vegetation), or

iv. the repair, maintenance, or installation of a utility, drainage or street system that does not disturb undeveloped land or increase impervious cover

1 10 Structural Requirements Notwithstanding anything in this Agreement to the contrary, construction of any structures on the Property or the Garza/Brodie Subdivision will comply with technical requirements set out in City Code Chapter 25-12 "Technical Codes."

1.11 Regulations and Ordinances not Impacted by this Agreement. This Agreement establishes development rules for the Property and the Garza/Brodie Subdivision, but unless specifically set out in this Agreement, nothing herein shall waive or modify other local, state or federal laws or regulations that do not affect development permitted by this Agreement.

II.

DISMISSAL OF LAWSUIT AND RELEASE

2.01 Dismissal of Lawsuit. In consideration of this Agreement, Lowe's, and the Garza Owners agree to dismiss the Lawsuit with prejudice within seven (7) days of the Effective Date of this Agreement.

2.02 Release of Claims In consideration of this Agreement, the City, Lowe's and the Garza Owners do hereby release, acquit, discharge, and forever hold each other harmless (collectively "Release") from any and all statutory and common-law, legal and equitable, claims, demands, and causes of action for damages or performance of any kind, known and unknown, that were possessed by, or could have been asserted by and between, the Parties as of the Effective Date of this Agreement, in the Lawsuit, or in any legal, equitable, or administrative proceeding that relates to the Garza/Brodie Subdivision or the Property. The Release includes, without limitation, all claims, demands, and causes of action by and between the Parties for recovery of actual damages, general damages, special damages, consequential damages, economic damages, compensatory damages, exemplary damages, expenses, costs, or attorneys' fees, injunctive relief, or declaratory relief that arise out of or are related in any way to the allegations in the Lawsuit or to the Garza/Brodie Subdivision or the Property. This Release also includes, without limitation, all claims that the Parties might have asserted against each other in the Lawsuit or that relate to the Garza/Brodie Subdivision or the Property pursuant to Texas Local Government Code Chapter 242, as amended by the 78th Regular Session of the Texas Legislature, and Texas Local Government Code Chapter 245.

III.

GOVERNING REGULATIONS

3.01 Certification Letter The City agrees to provide a letter to Lowe's, the Garza Owners, and the Travis County Clerk within seven (7) days of the Effective Date of this Agreement, certifying that City approval of the Garza/Brodie Subdivision is not required for the platting of the Property. The Director or Acting Director of the City's Department of Watershed Protection and Development Review is authorized to provide such a letter.

3.02 Site Plan, Inspection, Compliance. Lowe's and the Garza Owners agree to develop the Garza/Brodie Subdivision and the Property in accordance with this Agreement and the site plan attached as Exhibit E. The site plan attached as Exhibit E, including the square footage for the improvements shown on the site plan, is approved. The City may inspect the Garza/Brodie Subdivision and the Property to assure compliance of development with this Agreement, and the site plan attached as Exhibit E, including but not limited to utilities, and Water Quality Improvements, and their operation and maintenance, and other improvements. The City will also establish a special team of its inspectors to confirm that development on the Garza/Brodie Subdivision and the Property is in compliance with the terms hereof. Prior to beginning construction on the Garza/Brodie

Subdivision or the Property. Lowe's or the Garza Owners will provide the City with engineering and architectural drawings showing the planned development on the Garza/Brodie Subdivision and the Property, in order for the City to verify that development will be in compliance with the terms hereof Lowe's or the Garza Owners will also participate in a pre-construction meeting with the City's inspectors Upon notice by a City inspector that development on the Garza/Brodie Subdivision or the Property is not in compliance with the terms hereof, the Parties shall immediately meet to resolve the non-conformity claims and if such claims cannot be resolved, the Parties agree to seek outside mediation within ten (10) days of the non-conformity notification. If mediation fails to resolve the non-conformity claim, either party may pursue the remedies provided in Section 6 07 of this Agreement. After annexation, save and except for compliance issues related to the original construction of the improvements shown on the site plan attached as Exhibit E, the City may pursue any method or means of enforcement available to it for requirements related to development or redevelopment on the Garza/Brodie Subdivision or the Property that are set out in the City Land Development Code; and shall not be required to utilize mediation or civil remedies as set out in Sections 3.02 or 6 07.

3.03 Change of Law The Parties acknowledge and agree as a material term of this Agreement that their respective obligations under this Agreement will continue and will be binding even if other laws currently in effect or enacted, or modified after the Effective Date, would otherwise limit, eliminate, modify, enhance or impair the City's regulatory power or ability to enforce the obligations of Lowe's or the Garza Owners, or any limitation on development, set forth in this Agreement

IV.

ANNEXATION AND ZONING

4.01 Annexation Lowe's and the Garza Owners request that the Property and the Garza/Brodie Subdivision be annexed into the City of Austin for full purposes The City agrees that the effective date of any annexation shall not be prior to the opening of the Lowe's Home Improvement Warehouse on the Property, or December 31, 2004, whichever date occurs first

4.02 Zoning The City Manager shall initiate and process a zoning case for the Garza/Brodie Subdivision and the Property to be finally acted upon by Council at the time of annexation, and that the City staff will recommend for approval by the City Council, original permanent zoning of "CS-CO, Commercial Services-Conditional Overlay", or other use district classification and applicable regulations, under which the Lowe's Home Improvement Warehouse Store built on the Garza/Brodie Subdivision or the Property would constitute a conforming use to the zoning district classification. The staff recommendation on the "CS-CO," Conditional Overlay will include these conditions: 1) allow GR "General Retail" permitted and conditional uses also allowed in a CS district: 2) allow a construction sales and service use (that would permit the "Lowe's" use), and 3) prohibit all other CS uses not permitted in a GR district Regardless of any action on the

zoning case, the City recognizes that the Garza/Brodie Subdivision and the Property may be developed as a construction, sales and service use in accordance with the provisions of Section 43.002 of the Local Government Code and this Agreement. This Agreement constitutes an application for purposes of Local Government Code Section 43.002.

V.

ADDITIONAL MITIGATION

5.01 Additional Mitigation Fees and Conditions for Payment. Lowe's will pay Additional Mitigation Fees to the City of Austin in the amount of $1,000,000.00. Lowe's will pay these Additional Mitigation Fees within seven (7) days of closing its purchase of the Property or within twenty (20) days of the date the plat referenced in Section 1.01 is recorded, whichever occurs first. Lowe's and the City agree that the Additional Mitigation Fees will be used to purchase mitigation land for protection of water quality and/or for the construction of water quality improvements for existing developments. Development may not commence on the Property or the Garza/Brodie Subdivision until the Garza Owners, Lowe's, or a successor or assign of either the Garza Owners or Lowe's, pays the required Additional Mitigation Fees to the City of Austin.

5.02 Criteria for Selecting Mitigation Land. The following factors shall be considered by the City in evaluating and selecting any land for purchase to mitigate the amount of impervious cover proposed to be developed on the Property and the Garza/Brodie Subdivision under this Agreement:

a. Distance from the Property
b. Whether the landowners have made a colorable claim for development entitlements inconsistent with the requirements of the SOS ordinance
c. Whether the land is within the same watershed as the Property, and over the Barton Springs Recharge Zone
d. Whether the land would provide enough site area to meet the SOS impervious cover requirement when included and averaged with the impervious cover allowed on the Property under this Agreement
e. Whether the land is within the City of Sunset Valley's well groundwater area
f. Whether the land contains Critical Environmental Features
g. Whether the land would provide an opportunity for retrofit of untreated storm water runoff
h Whether the City has already identified the land as desirable for watershed protection by placing it under contract

The criteria listed above are advisory only. The decision on which mitigation land to purchase is within the discretion of the Austin City Council.

VI.

MISCELLANEOUS PROVISIONS

6 01 Entire Agreement This Agreement contains the entire agreement of the Parties and can be amended only by written agreement signed by all Parties

6 02 Binding Effect. This Agreement will inure to the benefit of and be binding upon the successors and permitted assigns of each of the Parties, subject to the assignment provisions set forth at Section 6 05.

6 03 Notice. Any notice or other communication ("Notice") given under this Agreement must be in writing Notice, unless otherwise provided, may be given· (a) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified with return receipt requested, (b) by delivering the same to such party, or an agent of such party; or (c) via facsimile with confirmation of receipt Notice deposited in the mail in the manner as described herein will be effective three days after deposit. Notice given in any other manner will be effective only if and when received by the party to be notified. For the purposes of notice the addresses of the Parties, until changed by Notice given as described in this Section, will be as follows.

the City.	Toby Futrell, City Manager The City of Austin 124 West 8th Street Austin, Texas 78701 Fax: 512-499-2832
Garza:	3712 Ben Garza Lane Austin, TX 78749 Fax: 512-892-0593
White:	3304-E Serene Hills Drive Austin, Texas 78738
Fleming:	NAICIP 7320 N. MoPac, Ste. 101 Austin, TX 78731
Reese:	3510 Ben Garza Lane Austin, TX 78749-1504
Copies to:	C. Daniel Wheelus, Attorney at Law 3103 Bee Cave Road, Suite 201 Austin, Texas 78746 Fax: 512-328-2080

Lowe's: Attention. LAW DEPARTMENT
Lowe's Home Centers, Inc.
P. O Box 1111
(Highway 268 East – East Dock)
No. Wilkesboro, NC 28659

Copies to: Terrence L. Irion, Attorney at Law
3660 Stone Ridge Road, Suite B-102
Austin, Texas 78746
Fax: 512-347-7085

6.04 Time Time is of the essence in this Agreement. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or a legal holiday, the applicable period will be extended to the next business day.

6.05 a. Assignment by Lowe's Lowe's, following its purchase of the acreage comprising the Garza/Brodie Subdivision, may transfer and assign this Agreement to third parties

b. Assignment by the Garza Owners The Garza Owners, in the event the Lowe's Contracts shall terminate for any reason, may transfer and assign this Agreement to subsequent contract vendees and/or grantees; provided, however, that the Garza Owners and their subsequent contract vendees and/or grantees, successors and assigns are bound by and subject to this Agreement, save and except for the requirement to develop the Property and/or the Garza/Brodie Subdivision in accordance with the site plan attached hereto as Exhibit E The Garza Owners and/or their subsequent contract vendees and/or grantees, successors and assigns, may either develop the Property and/or the Garza/Brodie Subdivision in accordance with the site plan attached hereto as Exhibit E, or may submit for review and approval by the City a substitute site plan which complies with the development requirements and/or restrictions of Sections 1.02, 1.03, 1.07, 1.08, 1.09, and 1.10 of this Agreement; the City shall approve a substitute site plan that complies with these development requirements and/or restrictions. Notwithstanding the continuing applicability of this Agreement, if the Lowe's Contracts terminate, the Garza Owners shall not be required to pay the mitigation fees required by Section 5.01 to the City until such time as the Property and/or the Garza/Brodie Subdivision is to be developed.

c. Notice to City, Successors and Assigns. The Garza Owners, Lowe's, or their successors and assigns, shall provide notice (a) of this Agreement to any successor interest or assign of any portion of the Property or the Garza/Brodie Subdivision, and (b) to the City of any change in ownership of the Property or the Garza/Brodie Subdivision

6.06 Restrictive Covenant. This Agreement touches and concerns the Property and will be recorded in the Official Records of Travis County, Texas, and constitutes restrictive covenants required by the City; and runs with the Property and is binding on each and

every successor-in-interest of the Garza Owners or Lowe's. The restrictive covenant may not be amended or revoked without written approval by the City.

6.07 Default. If any party defaults in the performance of its obligations for any reason, the non-defaulting Parties will be entitled to pursue all remedies available at law or in equity. In the event of any lawsuit based on this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and related costs of litigation In the event of the actual or threatened breach of any of the provisions of this Agreement by any party, or their successors and assigns, the non-defaulting party(s) shall be entitled to seek a temporary restraining order and/or injunction, restraining any such breach by the defaulting party. Lowe's, the Garza Owners and the City acknowledge that the City shall be irreparably harmed by the material breach or threatened breach of this Agreement by Lowe's or the Garza Owners, and that monetary damages would be an inadequate remedy at law and consent and agree that in the event of any such material breach or threatened breach, injunctive relief would be an appropriate remedy for the City to seek.

FURTHERMORE, IT IS EXPRESSLY AGREED THAT IN THE EVENT ANY MATTER RELATING TO THIS AGREEMENT RESULTS IN THE INSTITUTION OF LEGAL PROCEEDINGS, THE PREVAILING PARTY IN SUCH LEGAL PROCEEDING MAY ONLY RECOVER THE ACTUAL DAMAGES, TO THE EXTENT SUCH RECOVERY OF ACTUAL DAMAGES IS AVAILABLE UNDER THE LAW, AND NOT ANY INCIDENTIAL OR CONSEQUENTIAL DAMAGES, SUCH PREVAILING PARTY MAY SUFFER OR INCUR AS A RESULT OF THE NON-PREVAILING PARTY'S DEFAULT HEREUNDER. TO THE EXTENT THE RIGHT TO ANY INCIDENTIAL OR CONSEQUENTIAL DAMAGES WOULD EXIST AT LAW OR IN EQUITY, SAME IS HEREBY RELEASED, WAIVED AND FOREVER RELINQUISHED. THIS PROVISION DOES NOT RESTRICT OR WAIVE ANY RIGHT TO EQUITABLE RELIEF OTHERWISE AFFORDED TO ANY PARTY TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF.

6.08 Waiver Any failure by a party to insist, or any election by a party not to insist upon strict performance of any of the terms, provisions, or conditions of this Agreement will not be deemed to be a waiver of any other term, provision, or condition and such party will have the right at any time thereafter to insist upon strict performance of any and all of the terms, provisions and conditions.

6.09 Applicable Law. The construction and validity of this Agreement will be governed by the laws of the State of Texas

6.10 Severability. If any provision of this Agreement shall, for any reason whatsoever, be held invalid, then the remainder of this Agreement shall be deemed severable from the invalid provision, and the invalidity of any such provision shall in no way affect the validity or enforceability of the other provisions of this Agreement or the rights of the Parties hereto.

6.11 Venue and Jurisdiction. The Parties agree that the exclusive, mandatory venue for any dispute arising out of or relating to this Agreement is the State District Courts of Travis County, Texas. Lowe's and the Garza Owners specifically waive any rights they may have to challenge the personal jurisdiction of the State District Courts of Travis County, Texas, and also specifically waive any rights they may have to challenge venue in Travis County on the basis that Travis County is not a convenient forum. Lowe's and the Garza Owners also specifically waive any rights they may have to remove any lawsuit filed in the State District Courts of Travis County, Texas to federal court.

6.12 Section Headings The section headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several sections

6.13 Grammatical Construction. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa.

Exhibits A, B, C and D: Property Descriptions
Exhibit E: Site Plan and also Landscaping Plan, as Exhibit E-1
Exhibit F: Ben Garza Lane Roadway Plan
Exhibit G: Water and Wastewater Service Plan
Exhibit H: Design, Operation and Maintenance Standards and Requirements for Water Quality Improvements

AGREED.

ELI J. GARZA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Eli J. Garza, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration expressed therein

SUBSCRIBED AND SWORN TO BEFORE ME on the 15th day of December, 2003, to certify which witness my hand and official seal.

ELIZABETH FOWLER
Notary Public, State of Texas
My Commission Expires
MAY 13, 2006

NOTARY PUBLIC, STATE OF TEXAS

398664

AGREED.

GERALDINE FLEMING

Geraldine Fleming by Ed Fleming, Att'y-in-Fact

By: ED FLEMING, Attorney-in-Fact

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Ed Fleming, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in the capacity stated, and for the purposes and consideration expressed therein

SUBSCRIBED AND SWORN TO BEFORE ME on the 15th day of December, 2003, to certify which witness my hand and official seal.

ELIZABETH FOWLER
Notary Public, State of Texas
My Commission Expires
MAY 13, 2006

Elizabeth Fowler

NOTARY PUBLIC, STATE OF TEXAS

398664

AGREED:

Marcia Rose White, Trustee

MARCIA ROSE WHITE, TRUSTEE

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Marcia Rose White, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same in the capacity stated, and for the purposes and consideration expressed therein

SUBSCRIBED AND SWORN TO BEFORE ME on the 15th day of December, 2003, to certify which witness my hand and official seal

ELIZABETH FOWLER
Notary Public, State of Texas
My Commission Expires
MAY 13, 2006

Elizabeth Fowler

NOTARY PUBLIC, STATE OF TEXAS

308664

AGREED.

WILLIAM D. REESE

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared William D. Reese, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration expressed therein.

SUBSCRIBED AND SWORN TO BEFORE ME on the 15th day of December, 2003, to certify which witness my hand and official seal.

ELIZABETH FOWLER
Notary Public, State of Texas
My Commission Expires
MAY 13, 2006

NOTARY PUBLIC, STATE OF TEXAS

398664

AGREED:

LOWE'S HOME CENTERS, INC ,
a North Carolina corporation

By. David E Shelton
Name
Title: David E. Shelton
Senior Vice President

THE STATE OF NORTH CAROLINA §
§
COUNTY OF Wilkes §

BEFORE ME, the undersigned authority, on this day personally appeared the person whose name is subscribed to the foregoing instrument, who is known to me to be said person, and acknowledged to me that he or she executed the same in the capacity stated, and for the purposes and consideration expressed therein.

SUBSCRIBED AND SWORN TO BEFORE ME on the 12th day of December, 2003, to certify which witness my hand and official seal

CARLA H. REAVIS
NOTARY ★★★ PUBLIC
WILKES COUNTY, N.C.

Carla H. Reavis
NOTARY PUBLIC, STATE OF NORTH CAROLINA

306488

AGREED.

THE CITY OF AUSTIN,
a Texas municipal corporation

By: Lisa Y Gordon
Name Lisa Y Gordon
Title: Assistant City Manager

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared the person whose name is subscribed to the foregoing instrument, who is known to me to be said person, and acknowledged to me that he or she executed the same in the capacity stated, and for the purposes and consideration expressed therein

SUBSCRIBED AND SWORN TO BEFORE ME on the 16th day of December, 2003, to certify which witness my hand and official seal.

Sharon McKinney
NOTARY PUBLIC, STATE OF TEXAS

SHARON McKINNEY
Notary Public, State of Texas
My Commission Expires
OCTOBER 01, 2006

398664

EXHIBIT A to

Garza Brodie Settlement Agreement

Legal Description
16 445 Acres

State of Texas
County of Travis

All that certain tract or parcel of land situated in the Thomas Anderson League No. 17, Abstract Nr 2, Travis County, Texas being part of a called 17.516 acre tract described in a deed to Eli James Garza dated February 9, 1982, recorded in Volume 7684 on Page 700 in the Deed Records of Travis County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron rod (found) in the northwest right of way line of Brodie Lane and in the southwest line of the above referenced 17 516 acre tract, same being the northeast line of Lot 1, Block A of the H.E B./Austin # 23 Addition as recorded in Book 100, on Page 237 in the Plat Records of Travis County Texas;

THENCE North 60 deg. 00 min. 00 sec. West with the northeast line of said Lot 1, Block A and the southwest line of the 17.516 acre tract, at a distance of 1127.89 feet pass a 1/2" iron rod (set) for the east corner of a called 0 192 acre tract, described in a deed to Eli James Garza, dated January 24, 1976, recorded in Volume 6091 on Page 194 in the said Deed Records, continuing with the southwest line of the 17.516 acre tract and with the northeast line of said 0 192 acre tract for a total distance of 1228 16 feet to a 1/2" iron rod (found) for the westernmost corner of said 17 516 acre tract;

THENCE North 29 deg 22 min. 36 sec East with the westernmost northwest line of said 17.516 acre tract, a distance of 340 32 feet to a 1/2" iron rod (found) for the westernmost north corner of same, and being an ell corner in the southwest line of Ben Garza Lane (unimproved in this area) recorded in Volume 3513 on Page 459 in the said Deed Records;

THENCE South 60 deg 01 min. 41 sec. East with the southwest line of said Ben Garza Lane and a northeast line of said 17 516 acre tract, a distance of 269 83 feet to a 1/2" iron rod (found) for corner;

THENCE North 13 deg 22 min. 07 sec East continuing with a common line of said Ben Garza Lane and said 17.516 acre tract, a distance of 307.46 feet to a 1/2" iron rod (found) for the easternmost north corner of said 17 516 acre tract,

THENCE South 60 deg 01 min 01 sec. East continuing with a common line of said Ben Garza Lane and northeast line of said 17 516 acre tract, a distance of 1053 42 feet to a 1/2" iron rod (found) for the east corner of the 17 516 acre tract and in the northwest right of way line of the aforementioned Brodie Lane,

THENCE South 30 deg 18 min. 21 sec. West with the northwest right of way line of Brodie Lane, a distance of 835 35 feet to the **PLACE OF BEGINNING**, containing 16 445 acres (716,328 sq ft) of land.

Joe W Clark 02/01/03
Joe W Clark Date
Registered Professional Land Surveyor No 4366

STATE OF TEXAS REGISTERED JOE W CLARK 4366 PROFESSIONAL LAND SURVEYOR

SUMMIT SURVEYING LTD., 2040 DEERBROOK DRIVE TYLER TEXAS 75703 (903) 561-9544

EXHIBIT B to

Garza Brodie Settlement Agreement

Legal Description
4 837 Acres

State of Texas
County of Travis

All that certain tract or parcel of land situated in the Thomas Anderson League No 17, Abstract No 2 Travis County Texas, being all of a called 4 84, described in a deed to Edmund J Flemming, et ux, dated January 21, 1954, recorded in Volume 1449 on Page 487 in the Deed Records of Travis County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2" iron rod (found) for the south corner of the above referenced 4 84 acre tract, same being the west corner of a called 4 70 acre tract, described in a deed to William D Reese, dated October 6, 2001, recorded under Clerk File No. 2001171175 in the Real Property Records of Travis County, Texas, and in a northeast line of a 50 feet wide strip of land (Ben Garza Lane) dedicated to the public for use as a street and road way, described in a Dedication Document from Rosa Garza to the Public, dated July 29, 1968, recorded in Volume 3513 on Page 459 in said Deed Records,

THENCE North 60 deg. 01 min. 01 sec. West with the southwest line of said 4 84 acre tract and with a northeast line of said 50 feet wide strip of land, a distance of 408 87 feet to a 1/2" iron rod (found) for the west corner of said 4 84 acre tract, same being the south corner of another called 4 84 acre tract, described in a deed to Marcia Rose White, Trustee, dated July 25, 1988, recorded in Volume 10738 on Page 17 in said Real Property Records,

THENCE North 30 deg 00 min 22 sec. East with the northwest line of said 4 84 acre tract (Volume 1449 on Page 487) and with the southeast line of said 4.84 acre tract (Volume 10738 on Page 17), a distance of 517 05 feet to a 1/2" iron rod (found) for the north corner of said 4 84 acre tract (Volume 1449 on Page 487) and the east corner of said 4 84 acre tract (Volume 10738 on Page 17) and being in the southwest line of Lot 1 of the Offer Subdivision, as recorded in Book 42 on Page 03 in the Plat Records of Travis County, Texas,

THENCE South 59 deg 41 min 32 sec East with the northeast line of said 4 84 acre tract (Volume 1449 on Page 487) and with the southwest line of Lot 1 and Lot 2 of said Offer Subdivision, and the with the southwest line of Lot 3 of the Rayford Subdivision No 2, as recorded in Book 53 on Page 84 in said Plat Record, a distance of 408 00 feet to a 1/2" iron pipe (found) for the east corner of said 4 84 acre tract (Volume 1449 on Page 487), same being the north corner of the aforementioned 4 70 acre tract,

THENCE South 29 deg 54 min. 31 sec. West with the southeast line of said 4 84 acre tract (Volume 1449 on Page 487) and the northwest line of the 4 70 acre tract, a distance of 514 74 feet to the PLACE OF BEGINNING, containing 4 837 acres (210,709 sq ft.) of land

Joe W Clark 08/01/03
Joe W Clark Date
Registered Professional Land Surveyor No. 4366

STATE OF TEXAS REGISTERED JOE W CLARK 4366 PROFESSIONAL LAND SURVEYOR

SUMMIT SURVEYING LTD., 2040 DEERBROOK DRIVE TYLER TEXAS 75703 (903) 561-9544

EXHIBIT C to

Garza Brodie Settlement Agreement

Legal Description
4.838 Acres

State of Texas
County of Travis

All that certain tract or parcel of land situated in the Thomas Anderson League No 17, Abstract No 2 Travis County, Texas, being all of a called 4 84 acre tract, described in a deed to Marcia Rose White, Trustee, dated July 25, 1988, recorded in Volume 10738 on Page 17 in the Real Property Records of Travis County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron rod (found) for the south corner of the above referenced 4 84 acre tract, same being the west corner of a called 4.84 acre tract, described in a deed to Edmund J Flemming, et ux, dated January 21, 1954, recorded in Volume 1449 on Page 487 in the Deed Records of Travis County, Texas, and in a northeast line of a 50 feet wide strip of land (Ben Garza Lane) dedicated to the public for use as a street and road way, described in a Dedication Document from Rosa Garza to the Public, dated July 29, 1968, recorded in Volume 3513 on Page 459 in said Deed Records;

THENCE North 80 deg 01 min. 01 sec. West with the southwest line of said 4 84 acre tract (Volume 10738 on Page 17) and with a northeast line of said 50 feet wide strip of land, a distance of 329 03 feet to a 1/2" iron rod (found) for the west corner of said 4 84 acre tract;

THENCE North 13 deg 22 min. 07 sec East with the northwest line of said 4.84 acre tract (Volume 10738 on Page 17), a distance of 842 52 feet to a 1/2" iron rod (found) for north corner of same and being in the southwest line of a called 6 61 acre tract, described in a deed to Harold G Kennedy and B Joy Kennedy, dated March 29, 1971, recorded in Volume 4026 on Page 1507 in said Deed Records,

THENCE South 59 deg. 40 min 58 sec East with the northeast line of said 4 84 acre tract (Volume 10738 on Page 17) and the southwest line of said 6 61 acre tract, and then with the southwest line of Lot 1 of the Offer Subdivision, as recorded in Book 42 on Page 03 in the Plat Records of Travis County, Texas, a distance of 484.36 feet to a 1/2" iron rod (found) for east corner of said 4 84 acre tract (Volume 10738 on Page 17), same being the north corner of the aforementioned 4.84 acre tract (Volume 1449 on Page 487);

THENCE South 30 deg 00 min. 22 sec. West with the southeast line of said 4.84 acre tract (Volume 10738 on Page 17) and the northwest line of the 4 84 acre tract (Volume 1449 on Page 487), a distance of 517.05 feet to the PLACE OF BEGINNING, containing 4 838 acres (210,744 sq ft.) of land.

Joe W. Clark 08/01/03
Joe W. Clark Date
Registered Professional Land Surveyor No 4366

STATE OF TEXAS REGISTERED JOE W CLARK 4366 PROFESSIONAL LAND SURVEYOR

SUMMIT SURVEYING LTD , 2040 DEERBROOK DRIVE TYLER TEXAS 75703 (903) 561-9344

EXHIBIT D to

Garza Brodie Settlement Agreement

Legal Description
3 869 Acres

State of Texas
County of Travis

All that certain tract or parcel of land situated in the Thomas Anderson League No 17, Abstract No. 2 Travis County, Texas, being part of a called 4 70 acre tract, described in a deed to William D Reese, *dated October 8, 2001, recorded under Clerk File No. 2001171175 in the Real Property Records of Travis* County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2" iron rod (found) for corner in the southwest line of the above referenced 4.70 acre tract, same being in a northeast line of a 50 feet wide strip of land (Ben Garza Lane) dedicated to the public for use as a street and road way, described in a Dedication Document from Rosa Garza to the Public, dated July 29, 1968, recorded in Volume 3513 on Page 459 in said Deed Records, and in the northwest right of way line of Brodie Lane,

THENCE *North 60 deg. 01 min. 01 sec West with the southwest line of said 4.70 acre tract and with a northeast line of said 50 feet wide strip of land, a distance of 330 94 feet to a 1/2" iron rod (found) for the* west corner of said 4.70 acre tract, same being the south corner of a called 4 84 acre tract, described in a deed to Edmund J. Flemming, et ux, dated January 21, 1954, recorded in Volume 1449 on Page 487 in the Deed Records of Travis County, Texas;

THENCE North 29 deg 64 min. 31 sec. East with the northwest line of said 4 70 acre tract and with the southeast line of said 4 84 acre tract, a distance of 514 74 feet to a 1/2" iron pipe (found) for the north corner of said 4 70 acre tract and the east corner of said 4 84 acre tract and being in the southwest line of Lot 3 of the Rayford Subdivision No. 2, as recorded in Book 53 on Page 64 in the Plat Records of Travis County, Texas,

THENCE South 59 deg. 39 min 31 sec East with the northeast line of said 4 70 acre tract and with the southwest line of Lot 3 and Lot 2 of said Rayford Subdivision No. 2, a distance of 325 28 feet to a 1/2" iron rod (found) for corner in the northwest right of way line of said Brodie Lane,

THENCE South 29 deg 18 min. 28 sec. West with the northwest right of way line of said Brodie Lane, a distance of 512 74 feet to the **PLACE OF BEGINNING**, containing 3 869 acres (168,551 sq. ft.) of land

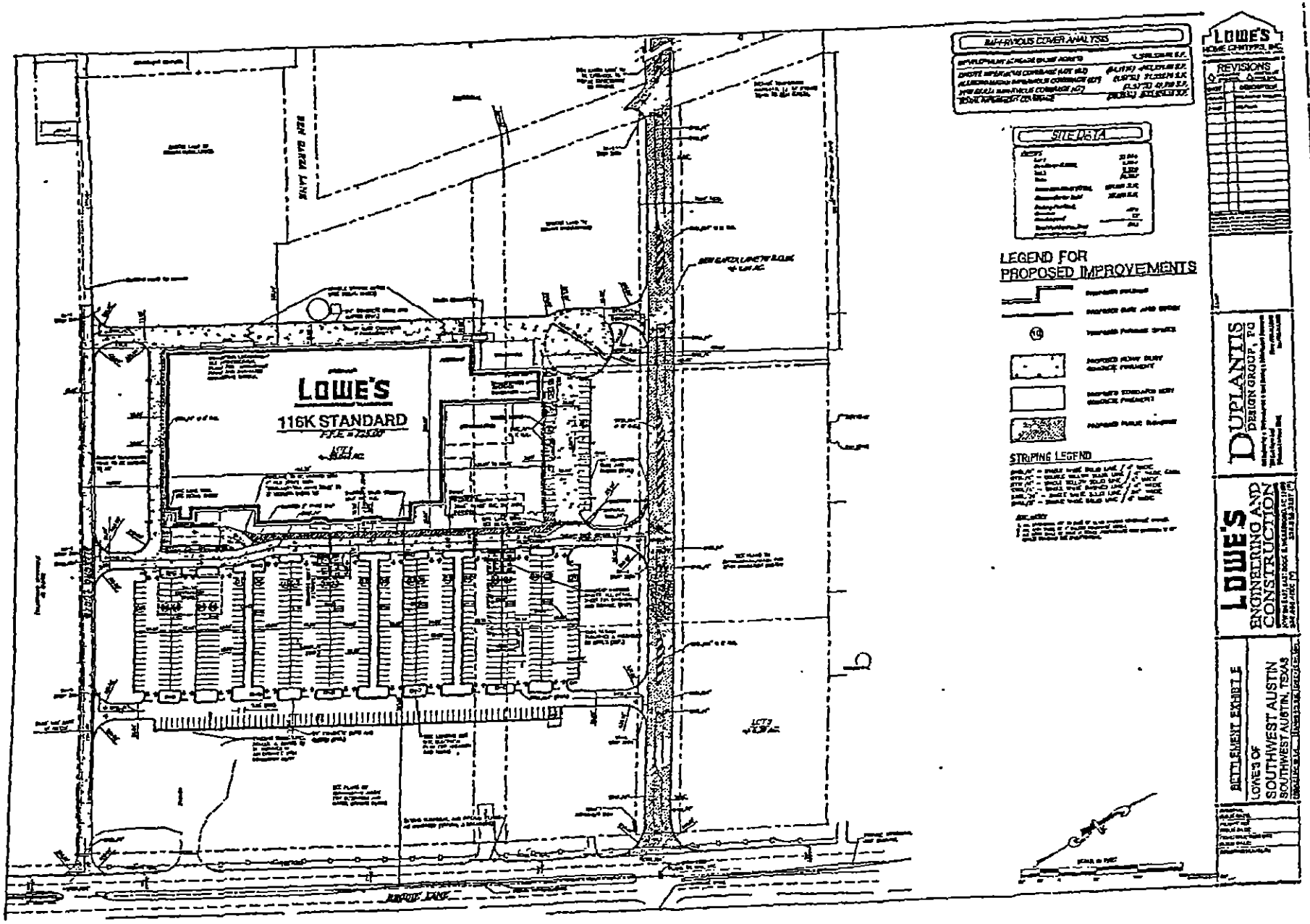
Joe W Clark 08/01/03
Joe W Clark Date
Registered Professional Land Surveyor No. 4366

STATE OF TEXAS REGISTERED JOE W. CLARK 4366 PROFESSIONAL LAND SURVEYOR

SUMMIT SURVEYING LTD , 2040 DEERBROOK DRIVE TYLER, TEXAS 75703 (903) 561 9544

EXHIBIT E to

Garza Brodie Settlement Agreement


IMPERVIOUS COVER ANALYSIS
SITE DATA
LEGEND FOR
PROPOSED IMPROVEMENTS
STRIPING LEGEND
LOWE'S
116K STANDARD
BEN GARZA LANE
JEROME LANE
LOWE'S
HOME CENTERS, INC.
REVISIONS
DUPLANTIS
DESIGN GROUP, PC
LOWE'S
ENGINEERING AND
CONSTRUCTION
SETTLEMENT EXHIBIT E
LOWE'S OF
SOUTHWEST AUSTIN
SOUTHWEST AUSTIN, TEXAS

PLANTING PALETTE

Proposed plants to be selected from the City of Austin Grow Green recommended plant list. The plant list may include but is not limited to the following plants:

Shade Trees

Bald Cypress
Red Oak
Cedar Elm
Chinese Pistache
Chinquapin Oak
Live Oak
Shumard Oak
Texas Ash

Ornamental Trees

Australian Cordyl Tree
Crape Myrtle
Desert Willow
Mexican Buckeye
Mexican Plum
Parsonsbur Holly
Texas Mountain Laurel
Texas Persimmon
Tree Yaupon

Grasses

Mexican Grass/Wildflower Mix
"Dallas" Hybrid Bermuda Grass

Flowering Perennials

Blackeyed Susan
Butterfly Iris
Crape Ginger Lily
Gaillardia
Gerbera
Giant Sedum
Gaura
Gray Sage
Gray Santa
Hymenocallis
Indian Grass Grass
Jerusalem Sage
Mexican Gold Bush
Mexican Oregano
Purple Verbena
River Fern
Trailing Lantana
Yellow Columbine
Zinnia

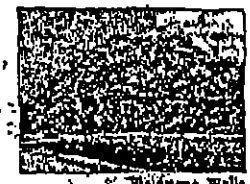
Vines & Groundcovers

Coral Honeysuckle
Crossvine
Lady Banksia Rose
Lilyvine
Periwinkle

Shrubs & Ornamental Grasses

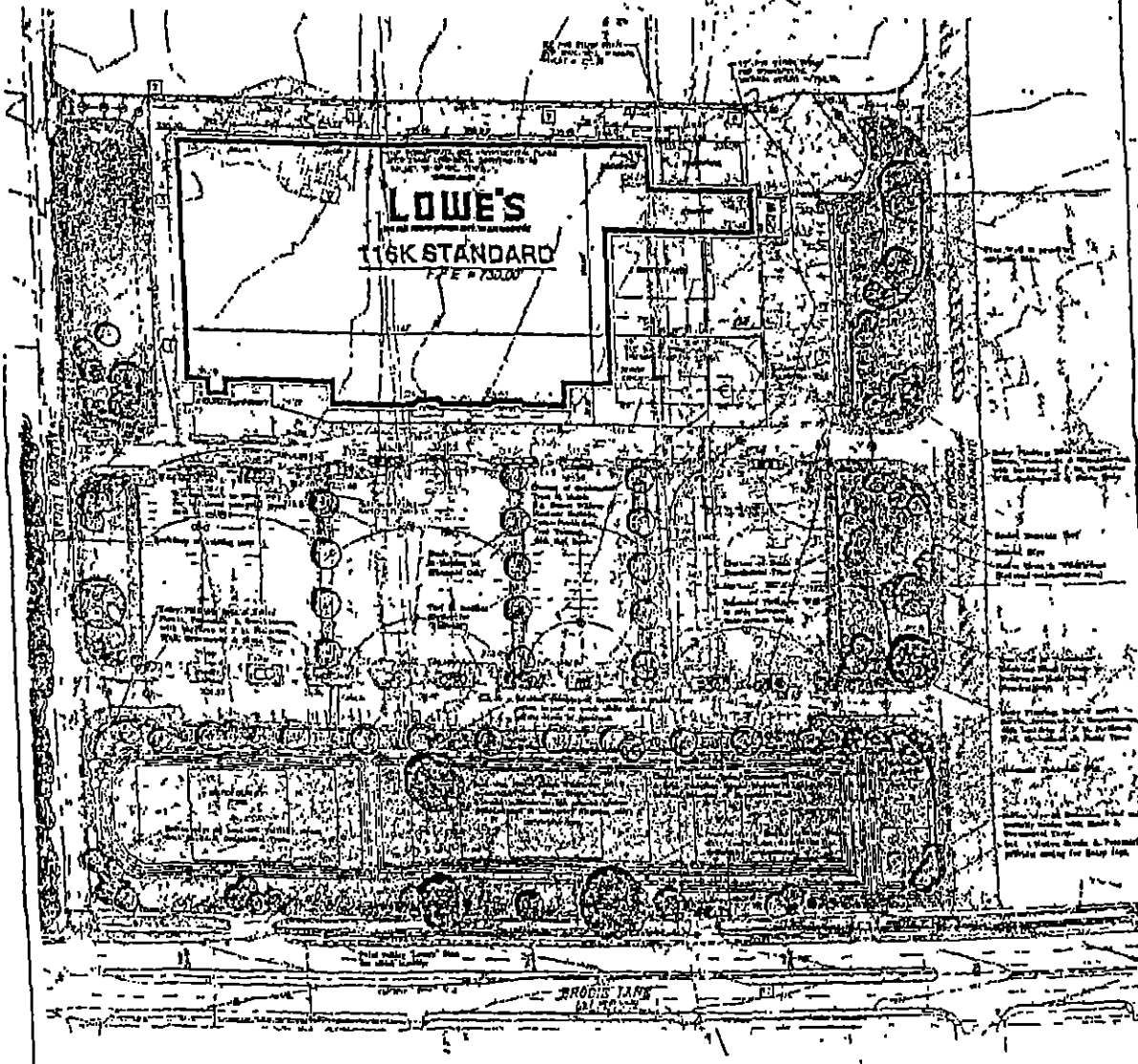
American Beautyberry
Acanthus
Boston Fern
Big Muhly
Blue Mistflower
Butterfly Bush
Dwarf Burford Holly
Dwarf Yaupon Holly
Hesperaloe/Yucca Hybrids
Texas Acanthus
Giant Acanthus
Dwarf Dwarf Nandina
Gulf Muhly
Lantana
Mexican Feathergrass
Mistflower
Nandina
Pampas Grass
Rosemary
Salvia Farinacea
Southern Wax Myrtle
Texas Sage
Texas Sotol
Turks Cap

SITE PHOTOS



Fieldstone Walls

Majestic Trees



SETTLEMENT EXHIBIT E-1

DUPLANTIS DESIGN GROUP, PC

LOWE'S of SOUTHWEST AUSTIN
AUSTIN, TEXAS

SCHEMATIC DESIGN

EXHIBIT F to

Garza Brodie Settlement Agreement

EXHIBIT F
REALIGNED BEN GARZA LANE

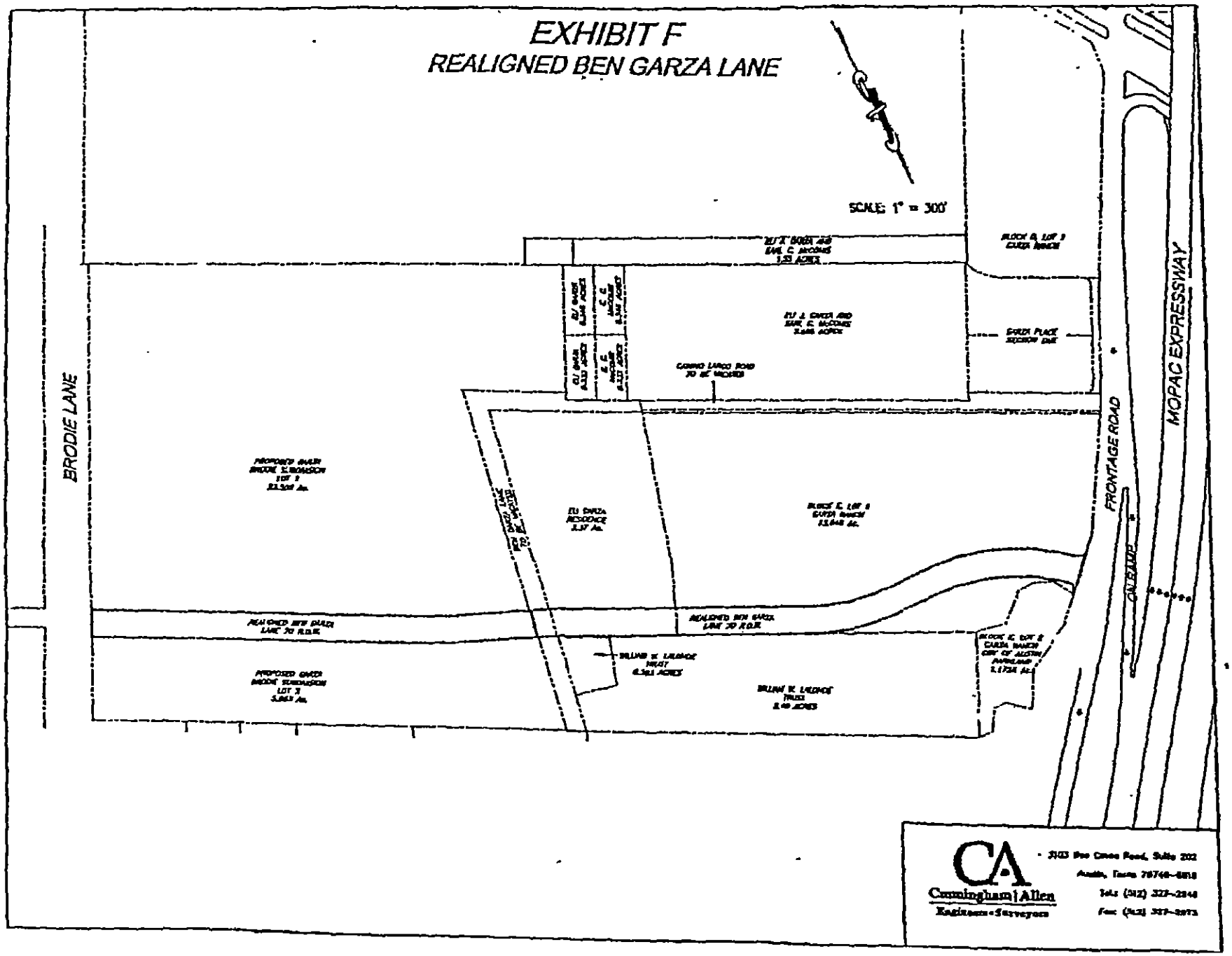


EXHIBIT G *to*

Garza Brodie Settlement Agreement

EXHIBIT H

DESIGN, OPERATION AND MAINTENANCE STANDARDS AND REQUIREMENTS FOR WATER QUALITY IMPROVEMENTS

Requirements for Maintenance and Monitoring

Lowe's will operate and maintain the Water Quality Improvements in accordance with City Code Sections 25-7-153 and 25-8-233. Lowe's will comply with the City annual operating permit program for the Water Quality Improvements in accordance with City Code Section 25-8-233, subject to the requirements set out in the Garza Brodie Settlement Agreement, including without limitation this Exhibit H

Additional Retention/Irrigation Water Quality Control Design Standards

1. A separate wet well shall be included that is located outside of any basin.

2. A dual pump system is required, each delivering 100% of the design capacity to provide an available backup system.

3. The dual pumps shall alternate on start-up and a manual control shall be provided so that both pumps can be turned on if necessary

4. The pumps shall be submersible well pumps capable of operating with a total dynamic head of at least 150 feet.

5. The well pump manufacturers must have a local representative with the ability to supply parts within 48 hours.

6. Simple float controls shall be used to control the operation of the pumps. Four controls should be used - one for starting the pump, one for shutting off the pump, one for backup to shut off the pump in case the first shut-off fails and one to turn on a red silent alarm light on top of the wet well to indicate a high water level.

7. The wet well shall be concrete, either rectangular or circular (RCP pipe).

8. Plug valves shall be located on the discharge of each pump above grade to isolate the pumps for maintenance and for throttling if necessary. Butterfly valves and gate valves should not be used

9. The pump installation in the wet well shall be capable of allowing the pumps to be removed using truck-mounted hydraulic hoist equipment without entering the wet well.

10. Self-priming pumps shall not be used and wet well-dry well designs shall not be used.

11. A complete operation manual shall be provided that includes pump curves, electrical schematic and components of the control panel, and pump maintenance recommendations with required frequencies and written warranty

Requirements for Periodic Maintenance and Monitoring

The following are general requirements for maintenance and monitoring of the Water Quality Improvements. A technical manual for detailed maintenance operations will be prepared by engineers and approved by the City of Austin

1. All ponds, pumps, swales, berms, vegetative filter strips and other important aspects of the overall Water Quality Improvements must be inspected quarterly by Lowe's.

2. *At least once a year (during or immediately following wet weather)* the Water Quality Improvements must be inspected by a third party professional at Lowe's expense as described in "Independent Third Party Inspection."

3. During each inspection, all erosion areas must be identified and repaired or re-vegetated promptly.

4. Grass areas in and around the ponds must be mowed and the debris removed as needed to limit the vegetation height to 18 inches.

5. Debris and litter accumulated in the Water Quality Improvements must be removed after each major rainfall event, but no less than quarterly.

6. Sediment from inlet structure/sediment forebay and from around the sump area of all conveyances and ponds must be removed when the sediment reaches a depth of three inches.

7. Draw down time for the water quality volume is designed to begin 12 hours after the event. If water remains in the storm water ponding system longer than 72 hours after the last rainfall, repairs to the inoperative portions of the Water Quality Improvements must occur immediately.

8. With each inspection, any damage to or malfunction of the structural elements of the Water Quality Improvements (pipes, concrete drainage structures, retaining walls, pumps, etc.) must be identified and repaired immediately.

9. Accumulated silt must be properly disposed of in accordance with City of Austin requirements. Refer to Environmental Criteria Manual, currently Section 1.2 2.6(l)(4).

10. The re-irrigation system must be inspected and tested (or observed while in operation) to assure proper operation, at least once annually in accordance with "Independent Third Party Inspection"

11 If the City notifies Lowe's that there is a grade or elevation discrepancy from the grades and elevations established in the Construction Plans, Lowe's will cause the ponds and drainage conveyances to be corrected to comply with Construction Plan requirements All silt removed from the storm water ponding system or drainage conveyances must be disposed of as set out above.

12. The City shall have a right of entry onto the Property to inspect, operate, maintain, or repair any portion of the Water Quality Improvements as deemed necessary in the City's reasonable determination.

Independent Third Party Inspection

Once a year an independent third party qualified to perform these tests and provide these reports shall be engaged by Lowe's, or its successor, to perform an annual inspection and test of the operation of the re-irrigation system This test must be scheduled to be performed within 48 hours of a significant rainfall event to utilize rainfall runoff as test water.

Each re-irrigation system inspection and test must include at a minimum the following·

1. Alarm system test, including alarm light and horn,

2. Pump cycle test to insure pumps alternate with the start-stop cycles;

3. The pump cycle times function with the pump timer;

4. The re-irrigation field zones alternate with the pump timer;

5. The re-irrigation system is dosing at the required pressure heads;

6. The "well" chamber for the pumps is free of vegetation, trash and debris;

7. The "low level pump off" switch is working;

8. The "pump on" switch is working;

9. The distribution and re-irrigation piping is intact, not broken, and where appropriate, is covered with soil having adequate vegetation,

10. Clean-outs in the distribution system and in each re-irrigation line are exposed and accessible for testing; and

11. All automatic and manual switches in the control panel are operational

A report of each inspection, test, and results must be submitted to the City of Austin and Lowe's. Any operational deficiencies must be noted and included in the report together with recommended remediation necessary to bring the Water Quality Facilities into permit compliance regarding system operations.

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

I, Yvonne Spence, Deputy City Clerk of the City of Austin, Texas, do hereby certify that the foregoing instrument is a true and correct copy of Ordinance No. 20031211-74 consisting of 44 duplex pages passed by the City Council of Austin, Texas, at a Regular Meeting on the 11th day of December 2003, as on file in the Office of the City Clerk.

WITNESS my hand and official seal of the City of Austin at Austin, Texas, this 1st day of March 2004.

Yvonne Spence

YVONNE SPENCE
DEPUTY CITY CLERK
CITY OF AUSTIN, TEXAS

EXHIBIT C

C 1 Berm Changes Lowe's agrees to construct a berm between Brodie Lane and the ponds with a minimum height of four feet above natural grade except in areas where it is prohibited due to right-of-way restrictions or potential damage to trees being preserved (based upon input from qualified landscape experts) In those areas, the berm will be constructed as close to four feet in height as practical, with any "gaps" in the four foot height of the berm being replaced by either fencing or vegetative screening

C 2 Non-Deciduous Tree Ratios Lowe's agrees to increase the non-deciduous tree ratio of landscaping to be installed to 60%

C 3 Buffalo v Bermuda Sod Lowe's agrees to switch from bermuda to buffalo sod

C 4 Traffic Issues Lowe's will post "No trucks" signs at the entrance to Allegro Lugar The fixtures and equipment (except for the signal head) for a left turn signal for traffic traveling southbound on Brodie Lane at Oakdale Drive shall be installed (but not activated absent later approval and action of the appropriate governmental agency) at such intersection The fixtures and equipment for a left turn signal for traffic traveling southbound on Brodie Lane at Oakdale Drive shall be installed (but not activated absent later approval and action of the appropriate governmental agency) at such intersection

C 5 Additional Landscape Changes Lowe's will make the tree and shrub enhancements shown on RVI Planning's January 19, 2005 landscape plan attached hereto as Exhibit E-1. Lowe's further agrees to transplant or replace any trees displaced during traffic median modifications to the area between the ponds and Brodie Lane, except for those transplanted by Sunset Valley at its option

C.6 Recycling Lowe's agrees to relocate its recycling bin to a location further away from Brodie Lane

C.7 Signs Lowe's agrees to reduce the size of its two monument signs at Brodie/Ben Garza and Ben Garza/Vestibule Drive locations to ten feet, and the internal lighting for those signs will be extinguished not later than 10 00 p m. daily. There will be no ground lighting of such signs The face of such signs will be approximately perpendicular to the adjoining street Lowe's withdraws its request for an immediate interstate pylon sign without prejudice to its later right to seek to install such a sign near Mopac at the time of any Ben Garza Lane extension to Mopac

C.8 Lighting Lowe's will comply with the lighting standards as set forth in Exhibit C-1

C 9 Fencing Lowe's will establish an allowance of $15,000 for pond fencing improvements Lowe's will use its best efforts to address the appearance of the pond fencing, including possible transformation of all or a portion of the pond fencing to steel/iron powder coated fence, with the fencing between the ponds and Brodie Lane the first priority

C 10 Trails Lowe's agrees to continue a dialogue with the City of Sunset Valley regarding a possible pedestrian trail across the Lowe's site Both Lowe's and the City of Sunset Valley agree to negotiate in good faith to facilitate establishment of a trail on the Lowe's site that connects with the Sunset Valley trail system Factors determining whether and how such modification will be implemented will include interference with store operations, incremental costs, user safety, and will be subject to all necessary regulatory approvals, including those required by Travis County and the City of Austin

C.11 Drainage Enhancements Lowe's agrees to install sufficient berms or other drainage features, including the modifications to its water quality ponds described in Exhibit C-2, such that the site will be constructed as designed to prevent runoff from two year storms from leaving the site and thus entering any potential recharge features in the vicinity of the northeast corner of the Lowe's Tract

Any and all of the foregoing modifications are subject to Lowe's obtaining the requisite approval from appropriate regulatory bodies, including Travis County.

Lighting Criteria from Sunset Valley Village – modified for Lowe's Home Improvement Centers.

1. Light screening requirements as set forth in the Sunset Valley Land Development Code shall be required.

2. Exterior lighting shall be designed to minimize glare and light trespass to preserve the rural character of the City of Sunset Valley. Illumination levels for driveway, parking lot, and security lighting should not exceed 3 foot-candles, average maintained, measured horizontally at finished ground/pavement level.

3. Exterior lights shall not be permitted to shine directly into the eyes of any occupant of any vehicle on any public or private road, onto adjacent property, or where the illumination interferes with the visibility or readability of any traffic signs or devices. Lighting levels shall conform to Illumination Engineering Society (IES) standards and Federal/State requirements. Commercial lighting other than that necessary for security should be turned off at the later of closing time or 11:00 PM. Lighted commercial signs should be turned off or reduced to half their original illumination after the later of closing time or 11:00 PM

4. Artificial lighting for parking areas should not exceed the following requirements:

   a Free standing light fixtures should not exceed a height of 28 feet measured from the ground/pavement to the bottom base of the fixture;

   b. Fixture wattage shall not exceed 250 lamp watts

   c Fixtures shall be limited to 2 per pole, shall have no uplight, nor lamps/light-refracting lenses extending below the plane of the lowest point of the fixture housing, and be of an IES controlled distribution of type 2, 3, 4 or 5. Fixtures will provide a cutoff not to exceed 90 degrees from nadir so that light is not emitted above the horizontal plane.

   d Building-mounted wall packs shall be configured with a full front metal shield with a sharp cutoff of 85 degrees or better to block the lamp source from line of sight view. Open faced wall packs of any wattage or size are prohibited.

   e Floodlights, not to exceed a lamp wattage of 100 watts, may be used if ground mounted and shielded/hooded. Other floodlights and dusk to dawn fixtures of any wattage or size are prohibited.

5. Landscaping Lighting

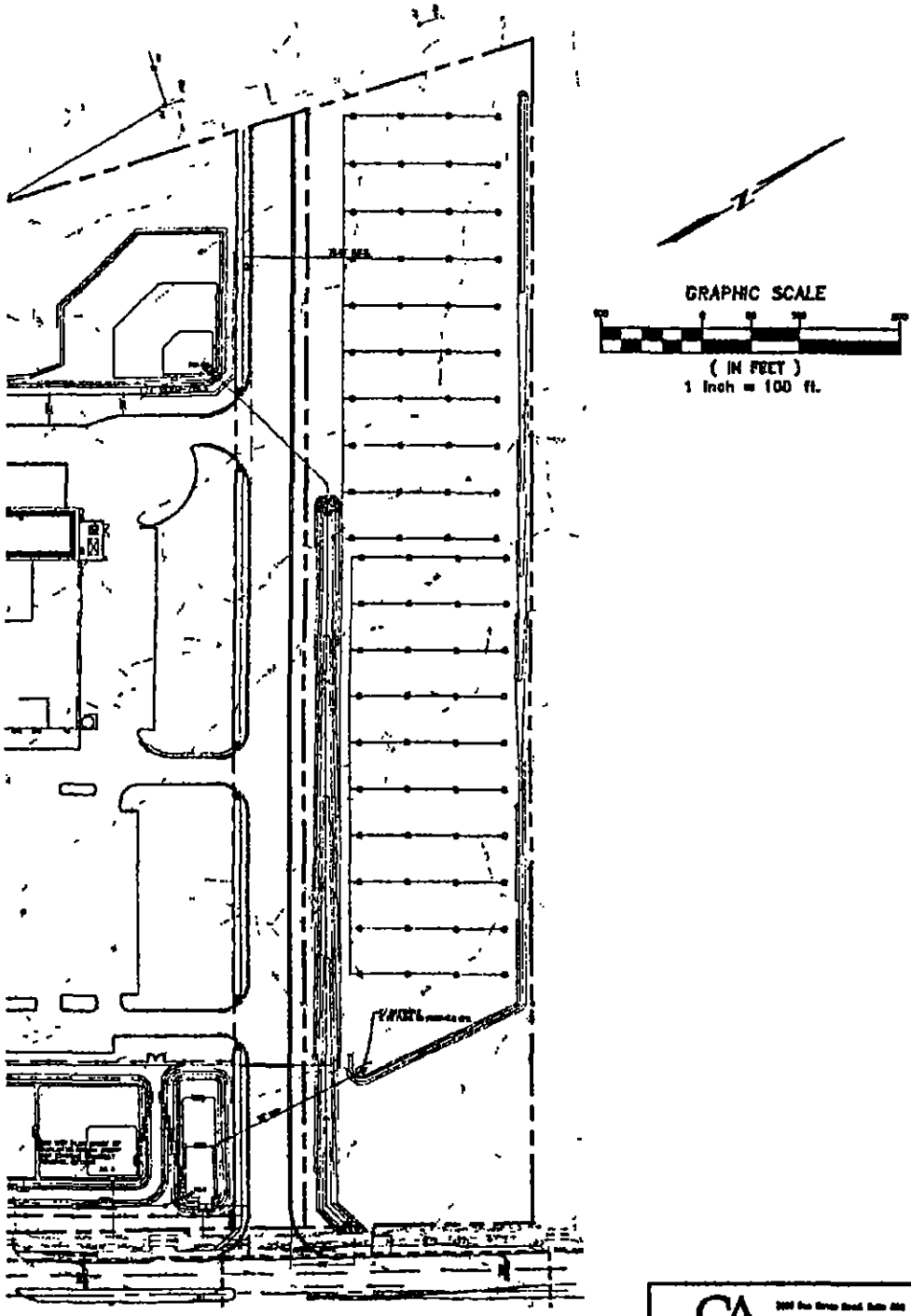
   a Landscape lighting such as tree lighting shall be achieved using the "moon lighting" method whereby the light source is located above and not on the ground. Uplighting using flood/well lights is prohibited except as provided in paragraph

(b) below. Fixtures shall be no higher than 28 feet measured from the ground to the bottom of the fixture. Fixture wattage shall not exceed 175 lamp watts Lamps shall be housed in bullet style enclosures with an extending truncated shield to maximize cutoff

b. Floodlights, not to exceed a lamp wattage of 100 watts, may be used if ground mounted and shielded/hooded. Other floodlights and dusk to dawn fixtures of any wattage or size are prohibited.

6. Fixture lamps shall be quartz halogen, fluorescent, metal halide, mercury vapor, or high pressure sodium.

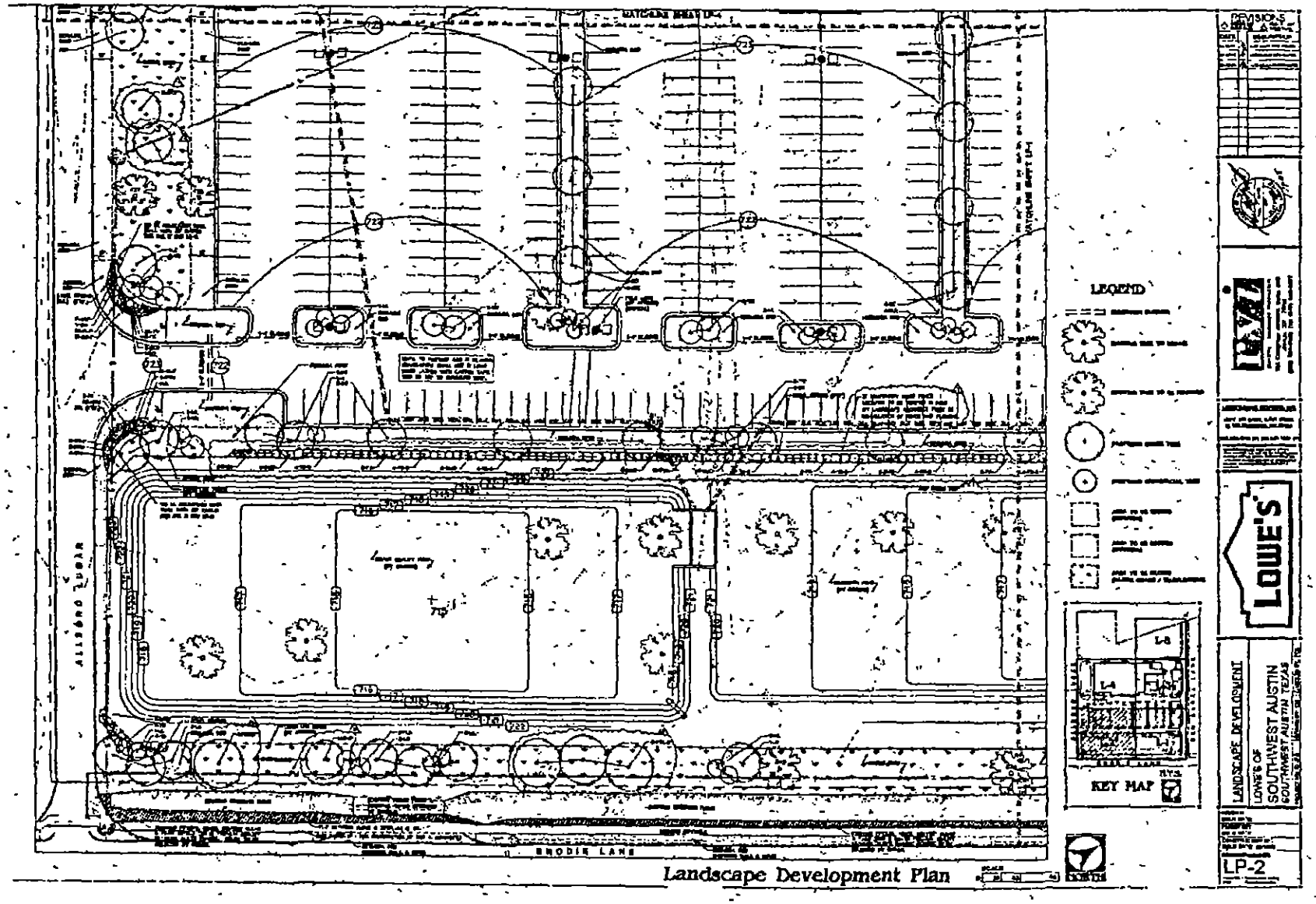
7. Exterior lights intended as holiday decorations are not exempt from the lighting requirements set forth herein.



Cunningham | Allen

MATCHLINE SHEET LP-2
BEN BARKER LANE
KEY MAP
LEGEND
LANDSCAPE DEVELOPMENT
LOWE'S OF
SOUTHWEST AUSTIN
SOUTHWEST AUSTIN TEXAS
LOWE'S

EXHIBIT
1



Landscape Development Plan

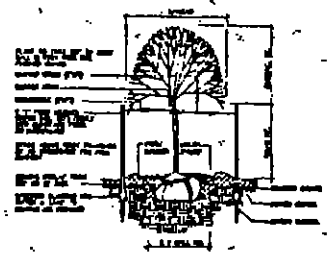
Landscape Planting Notes

Construction Notes for Decomposed Granite

Plant List

Shrub Bed Planting Detail

N.T.S.

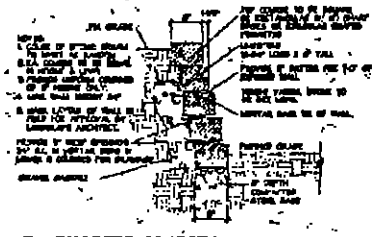


Tree Planting Detail

N.T.S.

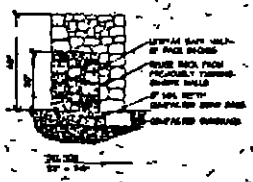
1 DECOMPOSED GRANITE

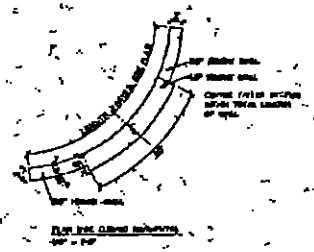
SCALE: 1" = 1'-0"



3 CHOPPED LIMESTONE TREE WELL

SCALE: 1" = 1'-0"





2 RELOCATED ROCK WALL

SCALE: AS NOTED

REVISIONS

LOWE'S

LANDSCAPE NOTES & DETAILS

LOWE'S OF SOUTHWEST AUSTIN
SOUTHWEST AUSTIN TEXAS

LP-6