

AFTER RECORDING, RETURN TO:

City Secretary
City of McKinney
P.O. Box 517
222 N. Tennessee Street
McKinney, Texas 75069

Second Amendment to Development Agreement (ETJ)
For the Estates of Willow Wood

This Second Amendment to Development Agreement (ETJ) for the Estates of Willow Wood (this "Second Amendment") is executed between the City of McKinney, Texas (the "City") and McKinney Partners 306, LP ("Owner") to be effective _____, 20__ (the "Effective Date"). The City and Owner are individually referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the City and PCB Properties, LLC entered into that certain *City of McKinney, Texas DEVELOPMENT AGREEMENT for The Estates of Willow Wood* covering approximately 306.591 acres (the "Property") effective May 7, 2013 (the "Development Agreement"); and

WHEREAS, Owner is the successor in interest to the rights and obligations of PCB Properties, LLC pursuant to that certain "Assignment and Assumption Agreement" effective August 29, 2013 (the delivery and receipt of which agreement was acknowledged by the City Manager of the City on September 9, 2013); and

WHEREAS, the City and McKinney Partners 306, LP entered into that certain City of McKinney, Texas FIRST AMENDMENT TO DEVELOPMENT AGREEMENT for The Estates of Willow Wood covering approximately 306.591 acres (the "Property") effective October 24, 2016 (the "First Amendment"); and

WHEREAS, Owner has rezoned and replatted a portion of the Property to increase the number of lots that will be available within The Estates of Willow Wood; and

WHEREAS, Owner still proposes to develop the Property in seven (7) Phases as shown on Exhibit A attached hereto (the "Phasing Plan"); and

WHEREAS, Owner desires to change the timing of constructing certain portions of the "Roadway Construction" set out in the Development Agreement and the First Amendment (the "Roadway Requirements"); and

WHEREAS, the Parties desire to amend the Roadway Requirements to more clearly define the obligations of Owner with respect to the phased construction of the Future Arterial; and

WHEREAS, the Parties desire to amend the Utility Requirements to more clearly define the obligations of Owner with respect to the construction of the 24-Inch Water Line Extension and the 36-Inch Water Line Extension; and

WHEREAS, the Parties also desire to acknowledge that the water and sewer infrastructure currently capable of serving 655 single-family connections within the Property south of the Future Arterial has been constructed sufficient to merit acceptance by the City, upon proper submittal under the Governing Regulations, and which includes the existing 12" waterline installed by NTMWD to serve the City of Melissa, Texas; and

WHEREAS, the Parties now desire to amend the Development Agreement and the First Amendment to accomplish the foregoing, among other things, and to further modify the Development Agreement and the First Amendment as set forth hereinbelow.

NOW, THEREFORE, for and in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Owner do hereby mutually agree to amend the Development Agreement and/or the First Amendment as follows:

I. DEFINITIONS

A. Unless otherwise amended hereby or defined in the body of this Second Amendment, terms used in this Second Amendment that have their initial letter capitalized shall have the meanings assigned to such terms in the Development Agreement as amended by the First Amendment. Any terms that are amended hereby or defined in this Second Agreement shall apply to the use of such terms in the Development Agreement and the First Amendment as well as this Second Amendment. The definitions for the following terms are hereby amended in the Development Agreement and the First Amendment to be and read as follows:

1. "Governing Regulations" means the Governing Regulations as defined in the Development Agreement, as amended by the First Amendment and as further amended by this Second Amendment including, but not limited to, any amendments to the revised Master General Development Plan attached hereto as Exhibit B.

2. "Lot Width" shall be defined in accordance with the City's Zoning Ordinance, Chapter 146 of the Code of Ordinances, City of McKinney, Texas, which definition currently reads "Lot width means the width of a lot at the front building line (see appendix E, illustration 1)." See, Code of Ordinances, City of McKinney, Texas, Section 146-46(66)k.
3. "Master General Development Plan," "General Development Plan" and "GDP" -- All references in the Development Agreement, First Amendment, and this Second Amendment to the phrases "Master General Development Plan," "General Development Plan," and "GDP" shall mean and refer to the Master General Development Plan that is attached to this Second Amendment as Exhibit B, and incorporated herein by reference for all purposes allowed by law.
4. "Phasing Plan" -- All references in the Development Agreement, First Amendment, and this Second Amendment to the phrase "Phasing Plan" shall mean and refer to the Phasing Plan that is attached to this Second Amendment as Exhibit A, and incorporated herein by reference for all purposes allowed by law.
5. "Site Plan" -- All references in the Development Agreement, First Amendment, and this Second Amendment to the phrase "Site Plan" shall mean and refer to the Site Plan that is attached to this Second Amendment as Exhibit C, and incorporated herein by reference for all purposes allowed by law.

II. AMENDMENTS TO DEVELOPMENT AGREEMENT

A. From and after the effective Date of this Second Amendment, Paragraph D of the Development Agreement is deleted in its entirety and replaced with a new Paragraph D to read as follows:

"D. RESTRICTIONS REGARDING USE OF PROPERTY DURING CONTINUING EXTRATERRITORIAL JURISDICTION STATUS

The OWNER covenants and agrees not to use the Property for any use other than for agriculture, wildlife management, and/or timber land consistent with Chapter 23 of the Texas Tax Code, except for single-family residential uses of the property consistent with the GDP, as hereinafter defined, and Section H of this

Agreement, without the prior written consent of the CITY. Save and except the Record Plat (including revisions to reflect multiple phases of development), and subsequent preliminary-final and record plats approved by City Staff, the Planning and Zoning Commission and/or CITY Council and conforming to Exhibit B, the Site Plan, as hereinafter defined, the OWNER also covenants and agrees that the OWNER will not file any type of subdivision plat or related development document for the Property with Collin County or the CITY until the Property has been annexed into, and zoned by, the CITY. The OWNER further covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a building permit if the Property were in the CITY'S corporate limits, until the Property has been annexed into, and zoned by, the CITY. Additionally, the OWNER also covenants and agrees that the CITY'S AG - Agricultural District and RS 72 – Single-Family Residence District zoning requirements, as such requirements are modified by this Agreement, shall apply to Phases 6 and 7 of the Property located north of the un-named east/west arterial roadway shown on the GDP and Site Plan (both as hereinafter defined) and on the Master Phasing Plan attached hereto as Exhibit A. In this regard, the OWNER agrees that the single-family lots located north of the un-named east/west arterial roadway shown on the GDP and Site Plan in:

- (1) Phase 6, depicted on the Master Phasing Plan, shall contain no more than 109 lots having a minimum lot area of 7,440 square feet with a minimum lot width of 62 feet and a minimum lot depth of 120 feet; and
- (2) Phase 7, depicted on the Master Phasing Plan, shall contain no more than 120 lots having a minimum lot area of 5,500 square feet with a minimum lot width of 50 feet and a minimum lot depth of 110 feet.

The portion of the Property located south of the un-named east/west arterial roadway shown on the GDP and Site Plan shall be used only for the uses described in Section H.

The OWNER covenants and agrees to indemnify, hold harmless, and defend the CITY from and against any and all claims, by any person claiming an ownership interest in the Property who has not signed this Agreement as of the

effective date of this Agreement, and which claims arise in any way from the CITY'S reliance on this Agreement."

B. From and after the effective Date of this Second Amendment, Paragraph H of the Development Agreement is deleted in its entirety and replaced with a new Paragraph H to read as follows:

"H. USE AND ZONING OF PROPERTY PRIOR TO AND UPON ANNEXATION

When the OWNER Commences Development, the OWNER agrees to submit a zoning application consistent with the Governing Regulations and this Agreement including, but not limited to, the uses depicted on the GDP, Exhibit A-1, including any retail uses conforming to Section 146-84 of the Code of Ordinances (BN – Neighborhood Business District), pending the CITY'S adoption of the property's permanent zoning in accordance with the provisions of applicable law and the CITY'S Code of Ordinances. The CITY reserves the right to process the zoning on the Property contemporaneously with the annexation of the Property.

The OWNER agrees that no more than 229 single-family lots shall be platted to the north of the un-named east/west arterial roadway and no more than 655 single-family lots shall be platted south of the un-named east/west arterial roadway.

The lot locations and sizes shall be as follows:

- a. North: 229 single-family lots in conformance to the following minimum lot area:
 - i. Phase 6, depicted on the Master Phasing Plan, shall contain no more than 109 lots having a minimum lot area of 7,440 square feet with a minimum lot width of 62 feet and a minimum lot depth of 120 feet; and
 - ii. Phase 7, depicted on the Master Phasing Plan, shall contain no more than 120 lots having a minimum lot area of 5,500 square feet with a minimum lot width of 50 feet and a minimum lot depth of 110 feet.
- b. South: 655 single-family lots in conformance to the following minimum lot area:

- i. 365 lots at a minimum lot area of 5,750 square feet with a minimum lot width of 50 feet and a minimum lot depth of 115 feet;
- ii. 250 lots at a minimum lot area of 6,900 square feet with a minimum lot width of 60 feet and a minimum lot depth of 115 feet; and
- iii. 40 lots at a minimum lot area of 7,400 square feet with a minimum lot width of 65 feet and a minimum lot depth of 115 feet.

Development of residential structures shall conform to all of the following standards: Single-family residential structures shall be approved if all the following requirements are satisfied.

1. RESIDENTIAL UNIT ARCHITECTURAL DESIGN REQUIREMENTS

- i. Front elevation: 100 percent of this elevation shall be finished with masonry materials to include brick, stone, or synthetic stone.
- ii. Side elevation: 75 percent of this elevation shall be finished with masonry materials to include brick, stone, or synthetic stone. The remaining 25 percent may be finished with wood lap siding, vinyl siding, cast concrete modular siding (including cementitious fiber siding; i.e., Hardie Board or Hardiplank), stucco, or EIFS. Sheet siding fabricated to look like wood lap siding is prohibited.
- iii. Rear elevation: 50 percent of this elevation shall be finished with masonry materials to include brick, stone, or synthetic stone. The remaining 50 percent may be finished with wood lap siding, vinyl siding, cast concrete modular siding (including cementitious fiber siding; i.e., Hardie Board or Hardiplank), stucco or EIFS. Sheet siding fabricated to look like wood lap siding is prohibited.

- iv. Walls provided in conjunction with an architectural element which is located above the roof line (example: walls for dormers or chimneys) may only be finished with brick, stone, synthetic stone, stucco, wood lap siding, vinyl siding, cast concrete modular siding (including cementitious fiber siding; i.e., Hardie Board or Hardiplank), or EIFS. Sheet siding fabricated to look like wood lap siding is prohibited.
- v. The percentages contained herein are to be calculated exclusive of doors and windows.
- vi. All single-family residential units shall be required to provide at least three (3) of the following architectural elements:
 - a. 100 percent of each elevation is finished with a masonry finishing material;
 - b. The front facade contains two types of complementary masonry finishing materials with each of the materials being used on at least 25 percent of the front facade;
 - c. A minimum of 10 percent of the unit's front facade features patterned brick work, excluding soldier or sailor brickwork provided in association with a door or window;
 - d. No pitched roof plane with a horizontal length of longer than 20 feet exists;
 - e. The unit only features one-car garage doors that have a carriage style design. These doors typically feature vertical slats, high windows, antiqued hardware, and additional detailing to give the appearance of swinging or sliding doors;
 - f. The unit's chimney is finished on all sides with 100 percent masonry finishing materials (brick, stone, or synthetic stone only);
 - g. A minimum of three offsets in the front facade measuring at least two feet deep are provided

or a minimum of one offset in the front façade measuring at least five feet is provided;

- h. The unit features an articulated front entrance through the use of lintels, pediments, keystones, pilasters, arches, columns, or other similar architectural elements;
- i. A covered front porch which is at least 100 square feet in area is provided;
- j. A covered back porch which is at least 200 square feet in area is provided;
- k. At least one dormer is provided for each roof plane over 500 square feet in area that faces a public street. The dormer must be appropriately scaled for the roof plane and shall not be wider than the windows on the building elevation below;
- l. All windows facing a street feature shutters. The shutters provided must be operational or appear operational and must be in scale with the corresponding window; or
- m. All ground-level mechanical, heating, ventilation, and air conditioning equipment shall be completely screened by an opaque screening device that is at least six feet tall.”

III. AMENDMENTS TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

A. From and after the effective Date of this Second Amendment, Section 1.8 of the of the First Amendment is deleted in its entirety and replaced with a new Section 1.8 to read as follows:

“1.8 WHEREAS, the Parties desire to acknowledge that the water and sewer infrastructure currently capable of serving 655 single-family connections within the Property south of the Future Arterial has been constructed sufficient to merit acceptance by the City, upon proper submittal under the Governing Regulations, and which includes the existing 12” waterline installed by NTMWD to serve the City of Melissa, Texas.”

B. From and after the effective Date of this Second Amendment, Sections 3.2 and 3.3 of the First Amendment are hereby deleted in its entirety and replaced with new Sections 3.2 and 3.3 to read as follows:

"3.2 Utility Requirements. Section J.2.f of the Development Agreement is revised in its entirety to read as follows. Unless otherwise specified, defined terms shall have the meanings given to them in the Development Agreement.

"The OWNER shall construct, at its sole cost, all necessary utility lines in accordance with the applicable Governing Regulations. No septic systems shall be permitted.

The 24-Inch Water Line Extension [as defined in this First Amendment] from SH 5 to Parkdale Drive shall be constructed and accepted by the City on or prior to the earlier to occur of (1) November 1, 2019, or (2) the time of a request for plat recordation for any portion of Phases 5A, 5B, 6, or 7 [as depicted in the Phasing Plan attached as Exhibit A to this First Amendment]. No building permits shall be issued for any structure in Phases 5B, 6, or 7 until such portion of the 24-Inch Water Line Extension has been constructed and accepted by the City.

The 24-Inch Water Line Extension from Parkdale Drive to the connection with the North Texas Municipal Water District line off-site of the Property shall be constructed and accepted by the City on or prior to the earlier to occur of (1) November 1, 2020, or (2) the time of a request for plat recordation for any portion of Phases 5B, 6 or 7 [as depicted in the Phasing Plan attached as Exhibit A to this First Amendment]. No building permits shall be issued for any structure in Phases 5B, 6 or 7 until such portion of the 24-Inch Water Line Extension has been constructed and accepted by the City.

Notwithstanding the phased construction of the 24-Inch Water Line Extension, Owner shall provide a continuous, looped waterline system once the 24-Inch Water Line Extension is tapped or utilized for any Phase of development such that there are no "dead end" waterlines in the development."

3.3 Water and Sewer Service; Building Permits. The City acknowledges and agrees that as of the Effective Date of this First Amendment the existing sewer lines within and outside the Property as shown on Exhibit B, together with the existing 12-Inch On-Site Looped Water Line have been constructed sufficient to merit acceptance by the City, upon proper submittal under the Governing Regulations. Subject to Owner's strict compliance with Section 3.2 above, the City further acknowledges and agrees that from and after the Effective Date of this First Amendment the City shall issue building permits for up to 655 lots within Phases 1, 2A, 2B, 3, 4, 5A and 5B within the Property and south of the Future Arterial in accordance with the applicable Governing Regulations. The City, as its sole and exclusive remedy, may suspend the issuance of building permits at any time Owner is in non-compliance with this First Amendment until such non-compliance is cured."

C. "From and after the effective Date of this Second Amendment, Sections 3.4.2 and 3.4.3 of the First Amendment are hereby deleted in their entirety and replaced with new Sections 3.4.2 through 3.4.9 to read as follows:

"3.4.2 The City and Owner have agreed to defer the design and construction of the two (2) northern lanes and two (2) southern lanes of the east-west Future Arterial from the eastern terminus of the full intersection of Parkdale Drive to the eastern boundary of the Property together with all related appurtenances thereto (the "Future Arterial Improvements") until such time as the City determines the entire length of the Future Arterial Improvements should be constructed.

3.4.3 Notwithstanding the deferral of Owner's obligation to design and construct the Future Arterial Improvements, the Owner shall dedicate the right-of-way for the Future Arterial Improvements to the City at no cost to City as follows:

(a) the southern one-half (1/2) of the right-of-way for the Future Arterial Improvements with the submittal of a plat of all or any part or portion of Phase 5B of the Property, as depicted on the Phasing Plan; and,

(b) the northern one-half (1/2) of the right-of-way for the Future Arterial Improvements with the submittal of a plat of all or any part

or portion of Phase 7 of the Property, as depicted on the Phasing Plan.

3.4.4 At such time as Owner submits a request for plat recordation of all or any part or portion of Phase 7 of the Property as depicted on the Phasing Plan the Owner shall, as a condition precedent to the recording of such plat:

(a) provide City with the completed and City-approved design plans for the two (2) southern lanes of the Future Arterial Improvements with no restrictions on City's use of said design plans for the construction of such roadway segment; and

(b) escrow a cash deposit with the City in an amount equal to one hundred percent (100%) of the total projected cost to:

(i) design the two (2) northern lanes of the Future Arterial Improvements and incorporate the design plans for the southern two lanes of the Future Arterial Improvements; and

(ii) construct all four (4) lanes of the Future Arterial Improvements.

The foregoing costs and expenses are hereinafter referred to collectively as the "Escrow Amount".

3.4.5 Payment of the Escrow Amount to the City and dedication of the right-of-way for the Future Arterial Improvements to City, at no cost to City, shall relieve Owner of the obligation to construct the Future Arterial Improvements and will also satisfy the Owner's obligations to construct the Future Arterial Improvements and enable Owner's continuing right to a waiver of roadway and utility impact fees in accordance with Section J.8 of the Development Agreement.

3.4.6 The Escrow Amount will be calculated based on an Opinion of Probable Construction Costs signed and sealed by a professional engineer licensed as such by the State of Texas and retained by Owner for that purpose. The Opinion of Probable Construction Costs shall be subject to review and final approval by the City's Director of Engineering

or his designee. The City shall hold the Escrow Amount in an interest-bearing escrow account in accordance with this Agreement. The escrow account interest rate shall be established in the City's discretion, and may vary. Any interest on the Escrow Amount shall be used by the City to cover unexpected or incidental costs of completion, including the City's administrative expenses.

3.4.7 The Opinion of Probable Construction Costs shall include the projected cost of purchasing a payment bond and performance bond, which meet the requirements of Chapter 252 of the Texas Local Government Code and Chapter 2253 of the Texas Government Code, in the full amount of the Future Arterial Improvements. The Opinion of Probable Construction Costs shall also include the projected cost of purchasing a maintenance bond in the amount of fifteen percent (15%) of the estimated cost of the Future Arterial Improvements from a reputable and solvent corporate surety, in favor of City, to indemnify City against any repairs arising from defective workmanship or materials used in any part of the construction of the Future Arterial Improvements, for a period of two (2) years from the date of final acceptance of such improvements.

3.4.8 The Owner agrees that the City shall have the right to enter upon Owner's property to survey, stake, bore, construct and install the Future Arterial Improvements at such time as the City deems necessary. The City may at its sole option and discretion enter into one or more agreements with third parties who shall be authorized to design and/or construct the Future Arterial Improvements and enter upon Owner's property to survey, stake, bore, construct and install the Future Arterial Improvements at the City's direction.

3.4.9 Owner specifically authorizes the City to utilize the Escrow Amount to pay for the design and construction of the Future Arterial Improvements and all necessary appurtenances to said improvements. Upon acceptance of the Future Arterial Improvements and the payment of any and all costs and expenses associated with the Future Arterial Improvements, any unused portion of the Escrow Amount held by City shall be returned to Owner."

IV. MISCELLANEOUS PROVISIONS

A. Except to the extent the Development Agreement and the First Amendment is modified by this Second Amendment, the remaining terms and conditions of the

Development Agreement shall remain unmodified and in full force and effect, and this Second Amendment to the Development Agreement and the First Amendment shall in no way release, affect or impair any other provision or responsibility contained in the Development Agreement or the First Amendment.

B. In the event of any conflict between the terms and conditions of the Development Agreement and/or the First Amendment and the terms and conditions of this Second Amendment, the terms and conditions of this Second Amendment shall prevail and control.

C. The Development Agreement, First Amendment, and this Second Amendment embody the entire understanding between the parties hereto with respect to its subject matter and can be changed only as set forth in the Development Agreement.

D. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same Second Amendment.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to Development Agreement (ETJ) for the Estates of Willow Wood as of the day first written above.

CITY OF MCKINNEY, TEXAS

By: _____
Paul G. Grimes
City Manager

Date Signed: _____

ATTEST:

EMPRESS DRANE
City Secretary
LISA SEWELL
Deputy City Secretary

[Signatures continue on following page.]

McKINNEY PARTNERS 306, LP

a Delaware limited partnership

By: TA GP, LLC

a Delaware limited liability company,
its general partner

By: 
John D. Hutchinson, President

Date Signed: 1/3/20

Exhibit A Phasing Plan

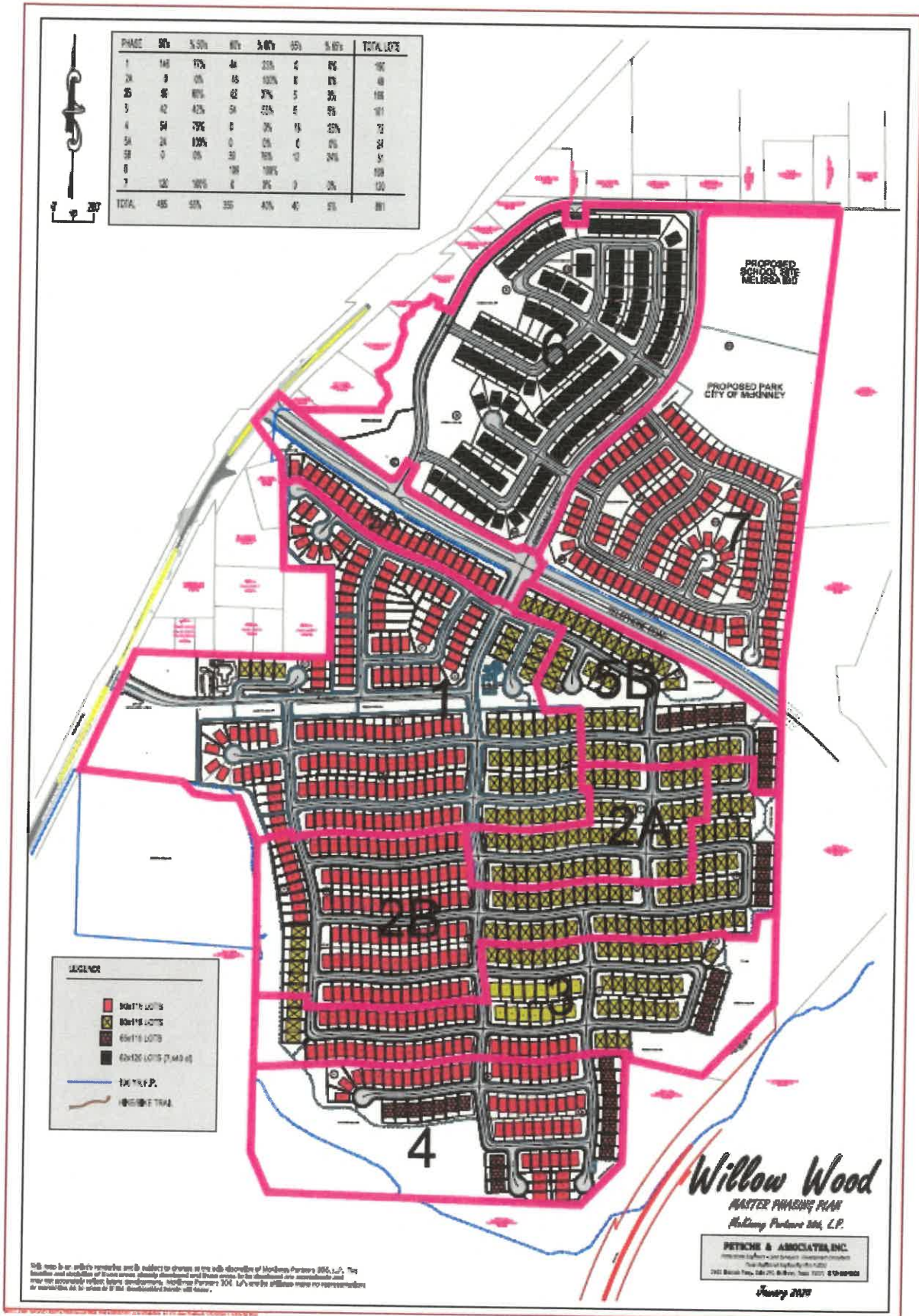
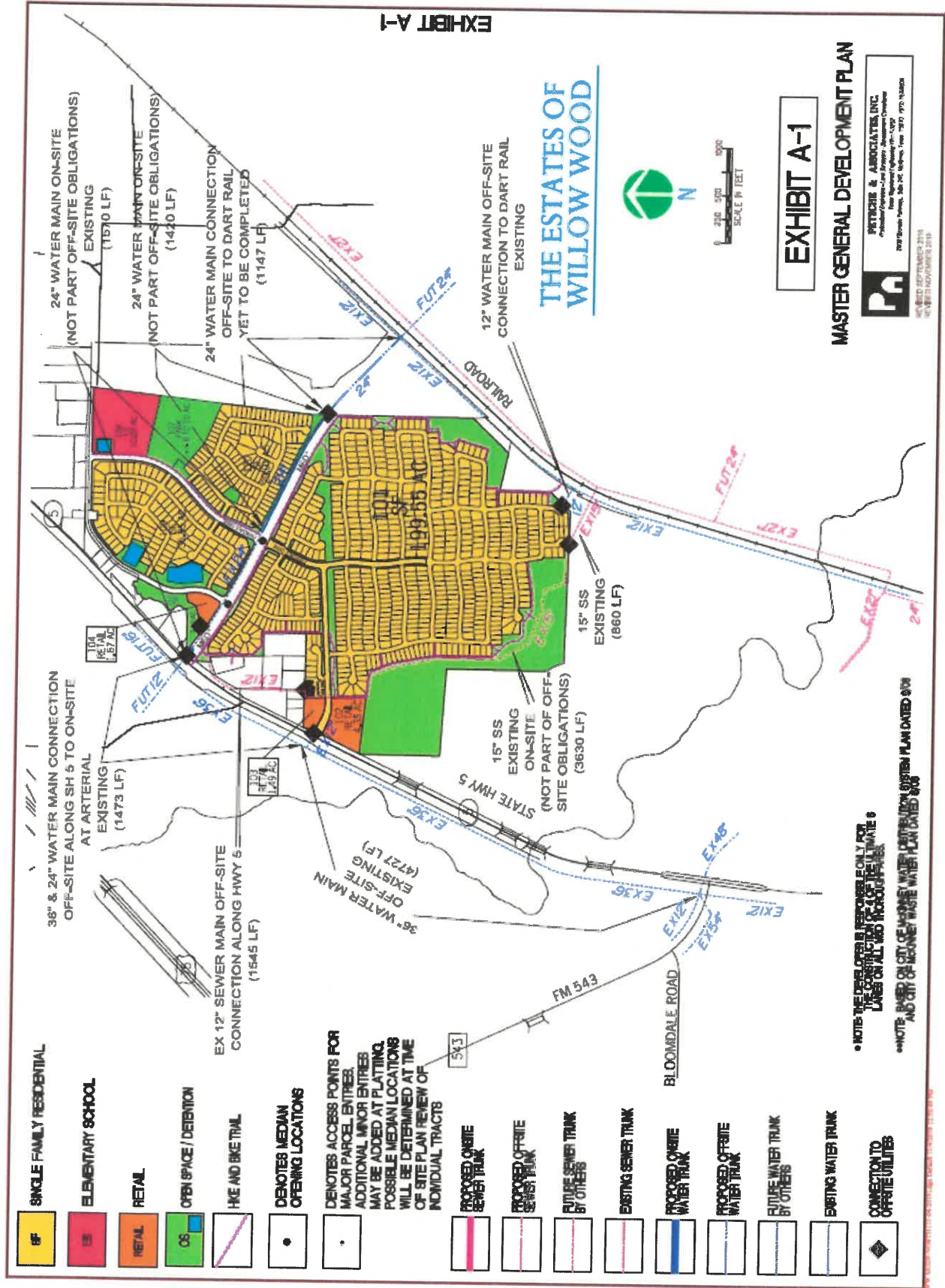


Exhibit B Master General Development Plan



- SINGLE FAMILY RESIDENTIAL
- ELEMENTARY SCHOOL
- RETAIL
- OPEN SPACE / DEBITION
- HKE AND BIKE TRAIL
- DENOTES MEDIAN OPENING LOCATIONS
- DENOTES ACCESS POINTS FOR MAJOR PARCEL ENTRIES. ADDITIONAL MINOR ENTRIES MAY BE ADDED AT PLATTING. POSSIBLE MEDIAN LOCATIONS WILL BE DETERMINED AT TIME OF SITE PLAN REVIEW OF INDIVIDUAL TRACTS
- PROPOSED ON-SITE SEWER TRUNK
- PROPOSED OFF-SITE SEWER TRUNK
- FUTURE SEWER TRUNK BY OTHERS
- EXISTING SEWER TRUNK
- PROPOSED ON-SITE WATER TRUNK
- PROPOSED OFF-SITE WATER TRUNK
- FUTURE WATER TRUNK BY OTHERS
- EXISTING WATER TRUNK
- CONNECTION TO OFF-SITE UTILITIES

NOTES: THE DEVELOPER IS RESPONSIBLE ONLY FOR THE CONSTRUCTION OF ALL UTILITIES LINES ON ALL LOTS AND PARCELS.

NOTE: BASED ON CITY OF HOUSTON WATER UTILITIES SYSTEM PLAN DATED 8/08 AND CITY OF HOUSTON WASTE WATER PLAN DATED 8/08

Exhibit C
Site Plan

