

EASEMENT AGREEMENT

This Easement Agreement (this "Easement") is made as this ____ day of _____, 2018 (the "Execution Date"), by and between Heritage Oaks Subdivision Association ("Association"), a Michigan non-profit corporation, whose registered address is 1565 W. Hamlin Road, Rochester Hills, MI 48309, as Grantor, and City of Rochester Hills ("City"), a Michigan municipal corporation, whose address is 1000 Rochester Hills Drive, Rochester Hills, MI 48309, as Grantee.

RECITALS

WHEREAS, in connection with the City's Riverbend Park Master Plan, a copy of which is attached hereto as Exhibit A (the "Plan"), the City has asked the Association to grant an easement to the City to use part of the Heritage Oaks Subdivision Open Space, located south and west of the Clinton River and adjacent to Innovation Hills Park (f/k/a Riverbend Park) (the "Park"), for Ecological Restoration (as hereinafter defined) and Passive Recreation (as hereinafter defined), including the restoration of the pond that straddles the property line separating the Park from the Subdivision Open Space, in order to control invasive species, to connect the Park's internal trail network with regional trail amenities, and to install wayfinding signage; and

WHEREAS, under the Building and Use Restrictions for Heritage Oaks Subdivision, recorded at Liber 10311, Page 238, and the Agreement for Subdivision Open Space Plan, recorded at Liber 10311, Page 228, the Association has control and jurisdiction over its Common Areas (as defined in the Agreement for Subdivision Open Space Plan), including the authority to grant easements; and

WHEREAS, the Association has received written assurance from the City that this Easement will not impact the open space status of the Heritage Oaks Subdivision nor affect building rights or density for the Heritage Oaks Subdivision (the "Subdivision").

AGREEMENT

THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the Association and the City agree:

1. The Association grants an easement to the City on and across a portion of the Heritage Oaks Subdivision Open Space described as follows, and depicted in grey on attached Exhibit B (the "Easement Area"):

That part of Riverview Park (Private Park) of "Heritage Oaks Subdivision" being

a part of the Southeast ¼ of Section 20 and part of the Northeast ¼ of Section 29, T.3N., R.11E., City of Rochester Hills, Oakland County, Michigan, as recorded in Liber 199 of Plats, Pages 3-5, Oakland County Records, lying Southwesterly of the Clinton River, North right of way line of now known as Old Hamlin Road (platted as Hamlin Road) and East of the North and South ¼ line of said Section 20 and East of the North and South ¼ line of said Section 29.

Part of parcel no. 15-20-456-016.

2. This Easement is for the limited purpose of ecological restoration, including the restoration of the pond that straddles the property line separating the Park from the Subdivision Open Space, the eradication of invasive species, the planting of trees or other vegetation, the repair and protection with respect to erosion, the facilitation of water flow and drainage, and the undertaking of similar and/or related ecological activities (collectively, "Ecological Restoration"), and recreational activities related to trail use or nature observation, including, walking, running, bicycling, dog walking, sitting, birdwatching, studying and observing, and similar activities, but not including team sports, ball fields, playgrounds, picnic shelters, camping, bonfires, or other common forms of active recreation (collectively, "Passive Recreation"), to connect the Park's internal trail network with regional trail amenities, and to install wayfinding signage, together with the right of ingress and egress by the City and the public over and across the Easement Area for the sole purpose of Passive Recreation, and for such lawful purposes as may be incidental to such Ecological Restoration and Passive Recreation, such as the placement of a limited number of benches and/or trash receptacles. Notwithstanding the foregoing, and subject to the reasonable and uniform enforcement by the City of the Park rules and Park hours, the Association reserves the right to occupy and/or use the Easement Area at all times and for all purposes not inconsistent with the rights herein granted.

3. The improvements made within the Easement Area shall not materially deviate from the Plan. Notwithstanding the foregoing, the City shall post signage in the Easement Area, acceptable to the Association in the Association's sole discretion, stating that the property on the other side of the Clinton River is "private property."

4. After completing the improvements, the City shall repair any damage to the Easement Area or the Subdivision caused by such improvements and restore the Easement Area to substantially the same condition that existed as of the date hereof. Upon the expiration or termination of this Easement, the City shall, at the City's sole cost and expense, restore the Easement Area to substantially the same condition that existed as of the date hereof, including removing any benches and/or trash receptacles.

5. The City shall maintain the Easement Area, and the improvements thereto, including the inspection and emptying of any trash receptacles located within the Easement Area, at its sole cost and expense, to preserve the design and aesthetics depicted in the Plan and to keep the Easement Area free from rubbish. The City shall restore any portion of the Subdivision damaged or disturbed in connection with the performance of such work to substantially the same condition as existed immediately prior to such damage or disturbance. The City's maintenance obligations under this Section 5 shall include, but not be limited to, any and all maintenance obligations of the Association under the Agreement for Subdivision Open Space with respect to the Easement Area, which maintenance obligations shall be the City's sole responsibility, at the City's sole cost and expense.

6. This Easement is not assignable, except with the express written permission of the Association, which permission may be withheld in the Association's sole and absolute discretion. If this Easement is assigned by the City, with the Association's express written permission, use of the Easement Area shall remain expressly limited to the same uses made by the City and for only the purposes set forth herein.

7. The Association shall be notified by the City in writing prior to any scheduled construction to be performed in, on, over, or under the Easement Area. The Association shall also be notified by the City in writing prior to any significant maintenance required to, in, over, or under the Easement Area. For the purpose of this Easement, the term "significant maintenance" shall mean any maintenance work which will not be fully completed within five (5) days.

8. The City acknowledges and agrees that this Easement and the Association's granting of the same will not impact the open space status of the Subdivision, nor affect building rights or density for the Subdivision.

9. The City further agrees as follows:

(a) Until such time as this Easement terminates, the City shall, on an ongoing basis, as determined by the City's pathway trimming requirements, maintain, at the City's sole cost and expense, the portion of the Subdivision walking path on the west side of Crooks Road, extending from Hamlin Road to the Northern boundary of the Subdivision, as depicted in pink as Number "1" on Exhibit C attached hereto and incorporated herein (the "Crooks Path"), including providing any and all bush and tree shrub maintenance necessary to maintain pathway clearance;

(b) Until such time as this Easement terminates, the City shall, on an ongoing basis, at the City's sole cost and expense, as determined by the City's pathway trimming requirements, trim the bushes and trees along the Subdivision path running along Old Hamlin Road between Crooks Road and the westerly property line of the Subdivision, as depicted in green as Number "2" on Exhibit C attached hereto and incorporated herein (the "Hamlin Path");

(c) Until such time as this Easement terminates, the City shall, at the City's sole cost and expense, conduct yearly risk assessments of the trees on the green space property that abuts the property lines of the homes on the west side of Clinton View Circle, as depicted in yellow as Number "3" on Exhibit C attached hereto and incorporated herein (the "Western Green Space"). The City further agrees, at the City's sole cost and expense, to remove any trees that pose a risk to residents' dwellings, as reasonably determined by the City;

(d) Until such time as this Easement terminates, the City shall, at the City's sole cost and expense, perform yearly informal risk assessments (the "Informal Assessments") of the trees behind the homes on Clinton View Circle that do not abut the green space property, and which are depicted in purple as Number "4" on Exhibit C attached hereto and incorporated herein (the "Clinton View Circle Homes"). The Informal Assessments required by this Section 9(d) shall be provided to the President of the Association by U.S. Mail or electronic mail. The Association hereby acknowledges and agrees that the Informal Assessments are not a substitute for due diligence by the Association. The City assumes no liability to the Association or the private landowners of the Subdivision for the damage caused by trees on private land;

(e) Until such time as this Easement terminates, the City shall remove, on an ongoing basis, at the City's sole cost and expense, invasive species, including, but not limited to, phragmites, on the Subdivision property north of the Hamlin Path and south of the Clinton View Circle Homes, as depicted in orange stripes as Number "5" on Exhibit C attached hereto and incorporated herein (the "Lowlands");

(f) Until such time as this Easement terminates, the City, at the City's sole cost and expense, shall assume the responsibility of removing any trash or refuse in Subdivision open spaces resulting from the Park or this Easement;

(g) Until such time as this Easement terminates, the City, at the City's sole cost and expense, shall remove invasive species, including, but not limited to, phragmites, in the small wetland open space area on the north side of Reagan Drive, bordering the property of Christian Hills Subdivision, as depicted in blue as Number "6" on Exhibit C attached hereto and incorporated herein;

(h) Until such time as this Easement terminates, the City shall refer the City's selected tree trimming vender to the Association; and

(i) The City shall cooperate with the Association to address any potential issues experienced by the Association or with respect to the Subdivision property, which may arise as a result of the existence of the Park, including increased traffic, parking, and/or refuse.

(j) Until such time as this Easement terminates, the City shall not construct any parking lots or similar improvements at the end of Reagan Drive or Blue Skies Drive on the westerly perimeter of the Subdivision.

10. This Easement does not grant or convey any oil, gas or mineral interests, nor does it grant or convey any right to explore, extract or develop any oil, gas or minerals in the Easement Area. Such rights are expressly retained by the Association.

11. This Easement shall continue in force and effect as long as the City uses the Easement for the purpose— and only for the purpose— stated in Section 2, above. This Easement shall terminate if or when the Easement Area is no longer used for the purpose for which this Easement has been granted. The rights, restrictions, covenants, and hold harmless provisions herein shall attach to and run with the land and shall bind the parties and their successors in interest and all persons claiming thereunder.

12. To the full extent permitted by law, the City shall indemnify, defend and hold the Association harmless from any and all claims, lawsuits, liabilities, judgments, litigation expenses or other costs, including attorney fees, incurred by the Association for any injury or damages of any kind or nature to persons or property resulting from the operations and activities of the City on, and/or the public use of, this Easement. With respect to defense or litigation to which this indemnification provision applies, the Association, at the City's expense, will have the right to select counsel of its choice and direct defense and any settlement as it deems appropriate. The City's obligations under this Section 12 shall survive the termination of this Easement with respect to the period of time prior to such termination.

13. In the event the City shall fail to perform any of its covenants and/or obligations

hereunder, which failure is not cured within five (5) business days after the City's receipt of written notice of default from the Association (provided, however, that if such failure is not reasonably susceptible to cure within five (5) business days, then, so long as the City commences the cure within such five (5) business day period and thereafter diligently pursues such cure to completion, the City shall have a reasonable period of time to complete such cure, not to exceed sixty (60) days), in addition to exercising any and all remedies available to the Association at law or in equity, the Association may, at the Association's option: (1) elect to cure such default, and, upon completion thereof, recover from the City the actual cost of such cure; (2) seek (without any requirement to post bond) (A) a decree or order of specific performance to enforce the observance and performance of such covenant and/or obligation, or (B) an injunction or temporary restraining order restraining such breach or threatened breach; and/or (2) terminate this Easement. In the event that the Association elects to terminate this Easement pursuant to this Section 13, the City shall execute, within ten (10) days after receipt thereof, any and all documents required by the Association to document and/or record such termination, including, but not limited to a Termination and Release of Easement. In the event that the Association commences legal action against the City under this Section 13 and prevails in such action, the Association shall be entitled to recover from the City all reasonable attorneys' fees and costs incurred by the Association.

14. This Easement is governed by Michigan law. The venue for any legal dispute shall be Oakland County, Michigan.

15. This Easement is for the exclusive benefit of the Association and the City, and not for the benefit of any third person or entity, nor shall this Easement be deemed to confer any rights, express or implied, upon any third party. Further, nothing contained in this Easement nor any act of the parties shall be deemed or construed to create the relationship of principal and agent, of partnership, of joint venture, or of any association between the parties.

16. This Easement constitutes the entire agreement between the parties hereto. Once executed and delivered, this Easement may not be modified or altered except in writing executed and dated by the parties or their successors.

17. Nothing contained in this Easement shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public or for any public purposes whatsoever, it being the intention of the parties that this Easement will be strictly limited to and for the purposes expressed in this Easement.

18. Any notice or consent required to be given pursuant to this Easement or otherwise desired to be delivered by one party to the other, shall be effective only if in writing which is either (a) personally delivered to such party at its address set forth above (or to such other place as the party to receive such notice shall have specified by notice in advance thereof); (b) sent by certified mail with postage prepaid, return receipt requested to such party at such address; (c) sent by Federal Express or other similar overnight air courier; or (d) sent by facsimile or electronic transmission, provided that the sender simultaneously utilize one of the notice methods listed in Sections 18(a), 18(b), or 18(c). Notice shall be deemed given upon personal delivery, two (2) business days following mailing, one (1) business day following deposit with an overnight air courier, upon confirmation by the sender of completion of a facsimile transmission, or upon sending an electronic transmission.

19. This Easement may be executed in several counterparts, each of which, for all purposes, shall be deemed to constitute an original and all of which counterparts, when taken together,

shall be deemed to constitute one and the same Easement, even though all of the parties hereto may not have executed the same counterpart.

20. The Recitals to this Easement set forth above, and the Exhibits attached hereto, are all incorporated herein by reference.

IN WITNESS WHEREOF, the Grantor and Grantee caused this Easement to be executed as of the Execution Date.

GRANTOR:

HERITAGE OAKS SUBDIVISION ASSOCIATION

By: _____
Name: _____
Its: President

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

On this _____ day of _____, 2018, before me, a notary public, personally came _____, President of the Heritage Oaks Subdivision Association, who executed the foregoing agreement on behalf of the Heritage Oaks Subdivision Association.

_____, Notary Public
Oakland County, Michigan, Acting in _____
My Commission Expires: _____

[Additional Signature Page Follows]

GRANTEE:

CITY OF ROCHESTER HILLS

By: _____
Name: Bryan K. Barnett
Its: Mayor

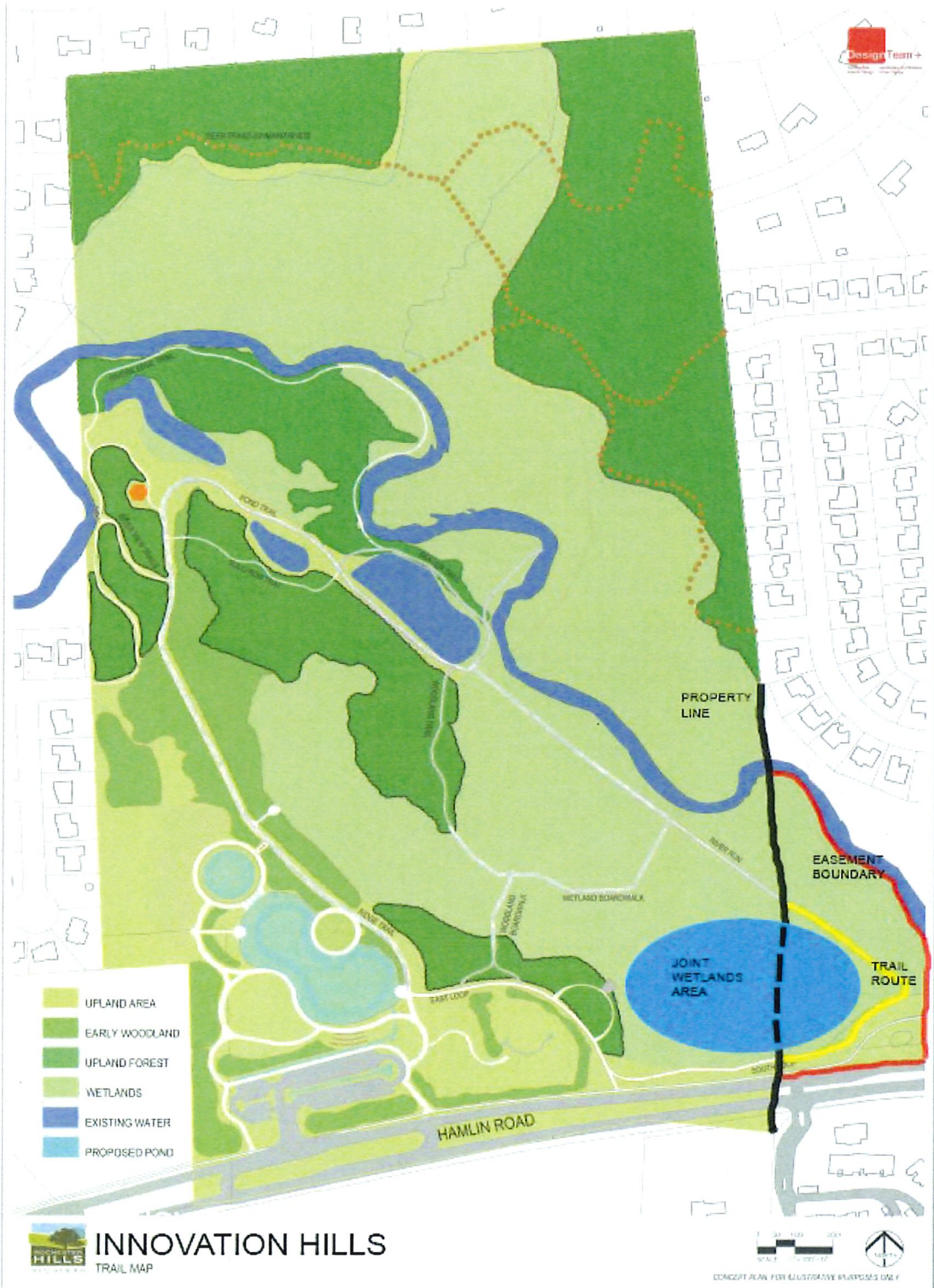
STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

On this _____ day of _____, 2018, before me, a notary public, personally came Bryan K. Barnett, Mayor of the City of Rochester Hills, who executed the foregoing agreement on behalf of the City of Rochester Hills.

_____, Notary Public
Oakland County, Michigan, Acting in _____
My Commission Expires: _____

Drafted By: John D. Staran, Esq. Hafeli Staran & Christ, P.C. 2055 Orchard Lake Road Sylvan Lake, MI 48320	When Recorded Return to: Ms. Tina Barton, Clerk City of Rochester Hills 1000 Rochester Hills Drive Rochester Hills, MI 48309
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EXHIBIT A THE PLAN



**EXHIBIT B
DEPICTION OF THE EASEMENT AREA**

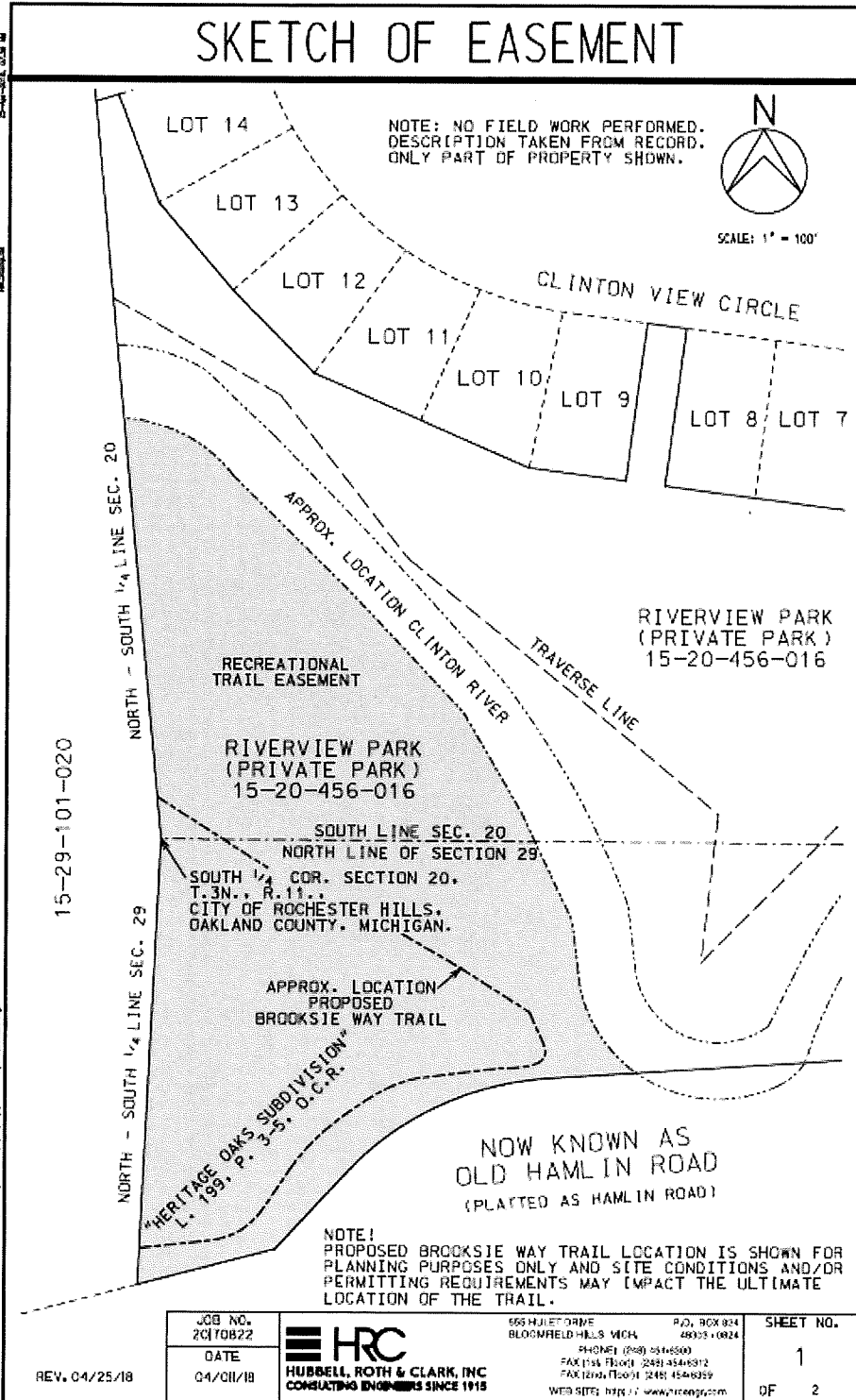
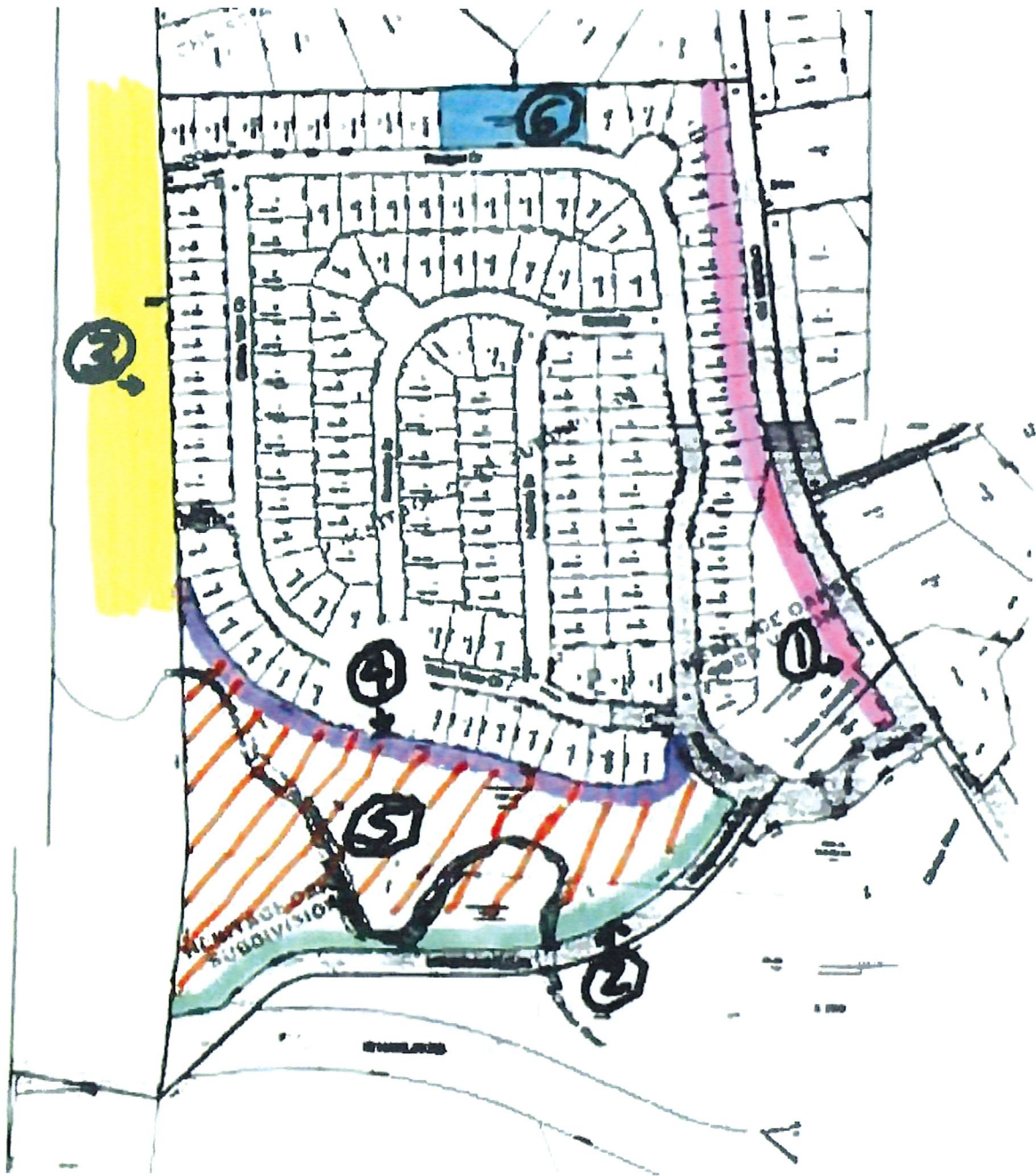


EXHIBIT C



BLOOMFIELD 74394-1 1849347v6