

STATE OF TEXAS §

COUNTY OF BRAZOS §

**FIRST AMENDMENT TO
HOPE CROSSING DEVELOPER AGREEMENT**

This First Amendment to Hope Crossing Developer Agreement (“Amendment”) is entered into by and between Greens Prairie Investors, Ltd. (“Assignor”) and S.E. Investments, LLC (“Assignee”), subject to the written approval of the City of Bryan, Texas (“City”).

WHEREAS, on November 7, 2018, Assignor entered into the Hope Crossing Developer Agreement (“Agreement”) with the City; and

WHEREAS, Assignor wishes to assign all of its rights and responsibilities under the Agreement to Assignee; and

WHEREAS, pursuant to the Agreement, the City Council must approve of any assignment for it to be valid; and

WHEREAS, the Assignee has requested a modification of the deadlines provided for in the Agreement to allow for additional time to reach the benchmarks provided therein; and

WHEREAS, the City Council determines that it is in the best interests of the City to support this development and provide the new developer sufficient time to achieve the goals of the Agreement.

NOW THEREFORE IT IS AGREED AND ACKNOWLEDGED AS FOLLOWS

1. Subject to and effective upon obtaining approval from the City Council, Assignor conveys to Assignee, and Assignee accepts, all rights and responsibilities with respect to the Agreement.
2. Section 3.3 of the Agreement deleted and replaced with the following: “In lieu of parkland dedication, the Developer shall create a homeowner’s association to own and maintain the common areas, including the Ronnie Jackson Memorial Trail substantially as shown on Exhibit “B”. The walking trail shall be available for the use and benefit of the public. In lieu of the \$18,258 in parkland dedication fees, Developer will spend a substantially equivalent amount on repairs to the trail, which will be a concrete trail six feet (6’) wide and approximately 2,500 feet in length, provided that the design and cost of same meet with the approval the City Manager or his designee, in consultation with the City of Bryan Parks and Recreation Advisory Board.”
3. Section 4.1 of the Agreement is modified to replace subsections (i) – (iii) with the following:

- i. By September 9, 2020, begin building infrastructure;
- ii. By July 9, 2021, begin constructing homes; and
- iii. By January 9, 2024, complete construction and obtain certificates of occupancy for homes on no less than 50% of the lots platted within the subdivision.

4. Except as modified herein all other terms and conditions of the Agreement remain in full force and effect.

Executed to be effective upon approval by City Council on the 13 day of May, 2020.

ASSIGNEE

S.E. Investments, LLC

C. D. Smith
Carey D. Smith, Manager

ASSIGNOR

Greens Prairie Investors, Ltd.

Wallace Phillips
Wallace Phillips, Manager

CITY OF BRYAN, TEXAS

Andrew Nelson
Andrew Nelson, Mayor

ATTEST

Mary L. Stratta
Mary Lynne Stratta, City Secretary



APPROVED AS TO FORM

Janis Hampton
Janis K. Hampton, City Attorney

HOPE CROSSING DEVELOPER AGREEMENT

This Developer Agreement (the "Agreement") is made effective as of Nov. 7, 2018, (the "Effective Date") by and between **City of Bryan** (the "City"), a Texas home-rule corporation, and **Greens Prairie Investors, Ltd.**, a Texas Limited Partnership ("Developer").

RECITALS

WHEREAS, the City has the objective of providing for the development of moderate-income housing for citizens of the City; and

WHEREAS, Developer has responded to a competitive Request for Proposals #18-037 (the "Proposal") in order to provide for the development of adequate, decent, safe, and sanitary moderate-income housing for the City's citizens (the "Intended Use"); and

WHEREAS, in the RFP response, Developer has laid out a plan for the Hope Crossing Subdivision (the "Subdivision") and desires to develop the Subdivision including certain public infrastructure (the "Improvements"); and

WHEREAS, the City has previously acquired certain real property, approximately 8.853 acres, situated in the S.F. Austin No. 9 Survey, Abstract 62, ("Property") by means other than condemnation, more particularly described in the attached metes and bounds description and survey;

WHEREAS, the City has determined that transfer of the Property to the Developer will facilitate development of the Property into moderate-income housing and thereby serves a valid public purpose; and

WHEREAS, the City has determined that the Developer is qualified to receive real property conveyance(s) pursuant to Local Government Code §272.001(g) for the development of low-income or moderate-income housing; and

WHEREAS, the City has determined that it is appropriate to convey title of the Property to the Developer to facilitate the development of adequate, decent, safe, and sanitary moderate-income housing for the City's citizens and that this Agreement is sufficient to effectuate and maintain the public purpose herein described; and

WHEREAS, the City has determined that the Improvements and Intended Use will promote and encourage development of adequate, decent, safe, and sanitary moderate-income housing for the City's citizens,

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT

I. Definitions.

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

- 1.1 “City” shall mean the City of Bryan, Texas, a home-rule municipal corporation of the State of Texas.
- 1.2 “Certificate of Occupancy” means a Certificate of Occupancy permitting the lawful occupancy of the applicable improvements from the appropriate Governmental Authority having jurisdiction over the applicable portion of the Property.
- 1.3 “City Council” shall mean the elected City council of Bryan, Texas.
- 1.4 “Effective Date” shall mean the date contained in the first paragraph of this Agreement.
- 1.5 “Act of Default” shall mean any happening or occurrence described in Section VII hereof following notice and the expiration of a 30-day cure period.
- 1.6 “Payback Provisions” shall mean Developer’s payment obligations as described in Section 8.1 herein.
- 1.7 “Permitted Encumbrances and Reservations” as used herein shall mean municipal and zoning ordinances, recorded easements for public utilities serving the Property, and such other matters contained in the public records in advance of the date of this Agreement not objected to by Developer.
- 1.8 “Property” shall mean the property located in the City Bryan, Texas, being an 8.853 acre tract, more or less, located in the S.F. Austin Survey, A-62, Bryan, Brazos County, Texas, and being more particularly described in Exhibit “A” attached hereto.
- 1.9 “Proposal” shall mean Developers response to a competitive Request for Proposals #18-037.
- 1.10 “Related Agreement” shall mean any other agreement by and between City and the Developer, or any of its affiliated or related entities, relating to the Proposal.
- 1.11 “Subdivision” shall mean the Hope Crossing Subdivision described in the Proposal.
- 1.12 “Surface Estate” shall mean all rights and title to the Property except the rights to water and minerals.
- 1.13 “Zoning Approvals” shall the final approval by the Planning and Zoning Commission or City Council, as the case may be, for last to be approved of the platting and zoning of the Property as a Planned development-housing (PD-H) zoning district which only allows single-family detached dwelling units and as described in the Proposal and which allows lots having street frontage as narrow as forty feet (40’) as described in the Proposal.

II. City Consideration

In consideration for Developer’s agreement to satisfy the requirements set out in Section III, below, City hereby agrees as follows:

- 2.1 City shall convey to Developer by Special Warranty Deed, title to the Surface Estate, subject

to Permitted Encumbrances and Reservations, a n 8.853 acre tract, more or less, located in the S.F. Austin Survey, A-62, Bryan, Brazos County, Texas, and being more particularly described in Exhibit "A" attached hereto.

A. As Is. The Property will be conveyed "as is, without warranty", except that City will warrant title by Special Warranty Deed to the Property, subject only to the Permitted Encumbrances and Reservations. The conveyance shall be by Special Warranty Deed.

B. The Benefit. The value of the Property at the time of conveyance from the City to Developer is stipulated to be \$53,990.00. (the "**Benefit**"). It is acknowledged and agreed that, except for the Payback Provisions, no purchase price shall be required to be paid for the Property and the Property will be conveyed to Developer for no monetary consideration. Developer will pay any transfer or deed taxes applicable to the conveyance of the Property to Developer.

C. No Transfer. The parties agree that the Property shall not be subdivided or sold, transferred or conveyed to any third party during the Term of this Agreement, without the prior written consent of City.

2.2 City will waive development fees for the Hope Crossing Subdivision, excluding Park Development Fees. The waiver of fees shall not be deemed to include building permits for homes or other structures constructed within the subdivision.

III. Developer's Performance Obligations.

3.1 Developer will design Hope Crossing Subdivision as a Planned development-housing (PD-H) zoning district which only allows single-family detached dwelling units and as described in the Proposal and obtain plat approval and the appropriate zoning designation.

3.2 Developer will construct Hope Crossing Subdivision according to Section 3.1. The construction shall include public infrastructure, including streets, water supply, sanitary sewer and storm sewer, which shall be designed and constructed in accordance with City of Bryan Engineering Standards and Specifications. The Design Plans shall be subject to review by the City of Bryan Site Development Review Committee and final approval by the City Engineer.

3.3 Developer shall dedicate parkland of 2.0 acres or more within the Subdivision including the Ronnie Jackson Memorial Trail, each being substantially as depicted on Exhibit "B" and as described in the Proposal. The Trail shall meet the following minimum standards: six foot (6') wide, concrete surface, approximately twenty-five hundred feet (2,500') length.

3.4 Developer shall sell the homes according to affordability standards herein or shall impose enforceable conditions on the sale of any lots to other builders to sell the homes according to affordability standards herein. The purchase price of each home may not exceed 95 percent of the median purchase price for the area according to the affordable homeownership limits provided by HUD for new housing, as may be updated from time to time. For the College Station-Bryan MSA, the maximum homeownership sales price is currently \$228,000 (effective as of 4/1/18).

3.5 Developer shall maintain a certificate of deposit with the City of Bryan as payee to pay the Payback Provision for the amount of \$53,990.

IV. Developer's Performance Schedule

4.1. Developer further agrees to comply with the following progress milestones and performance schedule:

- (i) Within 8 months of the Zoning Approval, begin construction of infrastructure.
- (ii) Within 18 months of Zoning Approval, begin construction of homes.
- (iii) Within 48 months of Zoning Approval, complete construction and obtain certificates of occupancy for homes on no less than 50% of the lots platted within the Subdivision.

V. Developer's Failure to Achieve Progress Milestones

5.1 Failure to Achieve Progress Milestones. The failure of Developer to achieve any progress milestone by the deadline set forth in Section 4.1 shall be deemed a default of this Agreement and the Agreement may be terminated by City, subject to the provisions of Section 4.1 and Sections 5.2 and 5.3.

5.2 Extension. If Developer is rendered wholly or partly unable to meet any Progress Milestone by the deadline set forth in Section 2.5 because of an event of Force Majeure, Developer's time to meet such Progress Milestone date shall be extended to the extent such delay impacted its ability to maintain its schedule by the actual number of calendar days Developer was delayed to meet any such Progress Milestone Date as a direct and proximate result of such event of Force Majeure.

5.3 Notice of Event of Delay Required. As a condition precedent to Developer's entitlement to an appropriate extension of time to complete the Progress Milestones, Developer shall deliver to City written notice, describing in reasonable detail the event of delay, its cause, when and how Developer obtained knowledge of the event and of the actual or anticipated delay caused thereby and the date the event commenced or occurred, not later than 15 calendar days after the date Developer obtains both (a) knowledge or reasonable cause to believe that such event has commenced or occurred and (b) knowledge or reasonable cause to believe that the event either has resulted in or may result in delay in achieving a Progress Milestone. Developer shall use commercially reasonable efforts to remedy any inability to perform and minimize the impact of any delay.

VI. Condition Precedent

6.1 It shall be a condition precedent to Developer's obligations under Sections 3.2 through 3.5 that the platting and zoning described in Section 3.1 is approved. It is a material condition to Developer's participation in this Agreement that it will be allowed to design the Subdivision with lots having street frontage as narrow as forty feet (40') as described in the Proposal. ("Zoning Approvals")

6.2 In the event the Planning and Zoning Commission does not render decisions which will allow satisfaction of the condition precedent, Developer will re-convey the Property to City within thirty (30) days of the final decision which defeats the condition. City will pay any transfer or deed taxes applicable to the conveyance of the Property to City. Upon such re-conveyance, Developer will be relieved of the Payback Provision and any security for the Payback Provision will be released.

6.3 The Parties understand that such approvals depend upon the decisions of the Bryan Planning and Zoning Commission and that neither party has control over the Commission. Neither Party makes any

representation or promise as to the Commission's actions, nor does either Party rely on the other Party concerning such decisions.

VII. Substantial Compliance and Acts of Default

7.1 Failure by either Party to timely and substantially comply with any performance obligation, requirement, duty, or covenant shall be considered an Act of Default (subject to force majeure), if uncured within thirty (30) days of receiving written notice from the other Party. Failure of Developer to timely and substantially cure a default will give the City the right to terminate this Agreement, as reasonably determined by the City.

VIII. Payback Provision

8.1 Payback Provisions. In the event Developer defaults on any Developer performance obligations, covenants or the performance schedule pursuant to this Agreement (subject to force majeure), and such default is not cured within 90 days of written notice thereof, then, in any such event, Developer shall immediately pay to City the amount of the Benefit..

IX. Term of This Agreement

9.1 The Term of this Agreement shall be for a period of 72 months and shall begin on the Effective Date and end on Nov. 7, 2024 unless earlier terminated in connection with Developer's failure to comply with the terms of this Agreement. The Developer's payment obligations under the payback provisions of Section 8.1 of this Agreement shall survive the expiration of the Term.

X. Force Majeure

10.1 It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion acts of God, inclement weather, or other circumstances which are reasonably beyond the control or knowledge of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement shall be extended for a period of time equal to the period such party was delayed. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that Developer's failure to obtain adequate financing to complete the Proposal shall not be deemed to be an event of force majeure and this Section shall not operate to extend the Developer's Performance Schedule in such an event.

XI. Indemnity

11.1 DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY OF BRYAN, THE CITY, THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: (1) ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE CITY HAS ERRONEOUSLY ENTERED INTO THIS AGREEMENT AND OR ERRONEOUSLY MADE A GRANT UNDER TEXAS TRANSPORTATION CODE CHAPTER 431 SUBCHAPTER D, OR (2) AS A RESULT OF ANY CLAIM OF ANY KIND, MADE BY ANY PARTY WHO IS NOT A PARTY OF THIS AGREEMENT, WHEN THE BASIS OF SUCH CLAIM, IN WHOLE OR PART IS AN ACT OR

OMISSION OR BREACH OR NON-PERFORMANCE BY DEVELOPER UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED UNDER SUBPART (2) HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE ACTION OR OMISSIONS OF THE CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

XII. Miscellaneous

12.1 Authority. Each party hereby represents and warrants to each other party that this Agreement is within its authority and that such party has been duly authorized and empowered to enter into this Agreement. Developer acknowledges that this Agreement may be terminated and the conveyance withheld if Developer's certification pursuant to this section is inaccurate.

12.2 Representations and Warranties by Developer. Developer warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of such party has been duly authorized to act for and bind such party. Developer acknowledges that the agreement may be terminated and the conveyance withheld if this certification is inaccurate.

12.3 Franchise Tax Certification. As a business organization, Developer certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the business organization, is exempt from the payment of such taxes, whichever is applicable. Developer acknowledges that this Agreement may be terminated and the conveyance may be withheld if Developer's certifications pursuant to this section are inaccurate.

12.4 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Developer shall not assign this Agreement without the written approval of the City Council. An assignment to a subsidiary or affiliate company of Developer shall not be prohibited under the section. If Developer assigns this Agreement without written approval of the City Council, this Agreement shall terminate immediately and the partial abatement of taxes on personal Property and equipment provided for herein shall cease from the date such unauthorized assignment occurred.

12.5 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

12.6 Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue shall be in a court of appropriate jurisdiction in Brazos County, Texas.

12.7 Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

12.8 No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement

are not intended to and shall not be deemed to create any partnership of joint venture among the parties.

12.9 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

12.10 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

12.11 No Waiver. City's failure to take action to enforce this Agreement in the event of Developer's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.

12.12 Notices. City and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

City

Kean Register, City Manager
P.O. Box 1000
Bryan, Texas 77805-1000

DEVELOPER

Greens Prairie Investors, Ltd.
P.O. Box 280
Wellborn, Texas 77881

12.13 Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

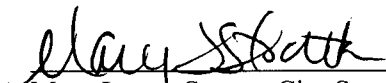
12.14 Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

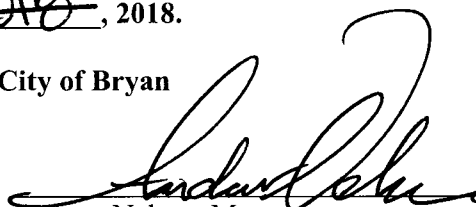
12.15 Duplicate Originals. The parties hereto have executed this Agreement in duplicate originals, each of equal dignity. Each party has stated the execution date below the signature of its authorized representative. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

EXECUTED THIS THE ^{7th} ~~24~~ DAY OF ^{November} ~~2018~~, 2018.

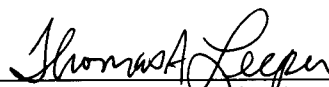
ATTEST:

City of Bryan


Mary Lynne Stratta, City Secretary


Andrew Nelson, Mayor

APPROVED AS TO FORM:


for Janis K. Hampton, City Attorney

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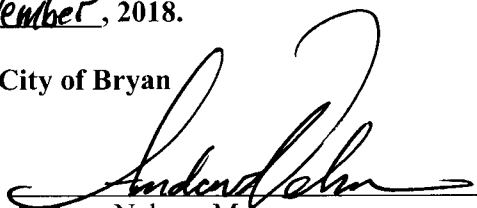
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EXECUTED THIS THE 7 DAY OF November, 2018.

ATTEST:

City of Bryan


Mary Lynne Stratta, City Secretary


Andrew Nelson, Mayor

APPROVED AS TO FORM:


for Janis K. Hampton, City Attorney

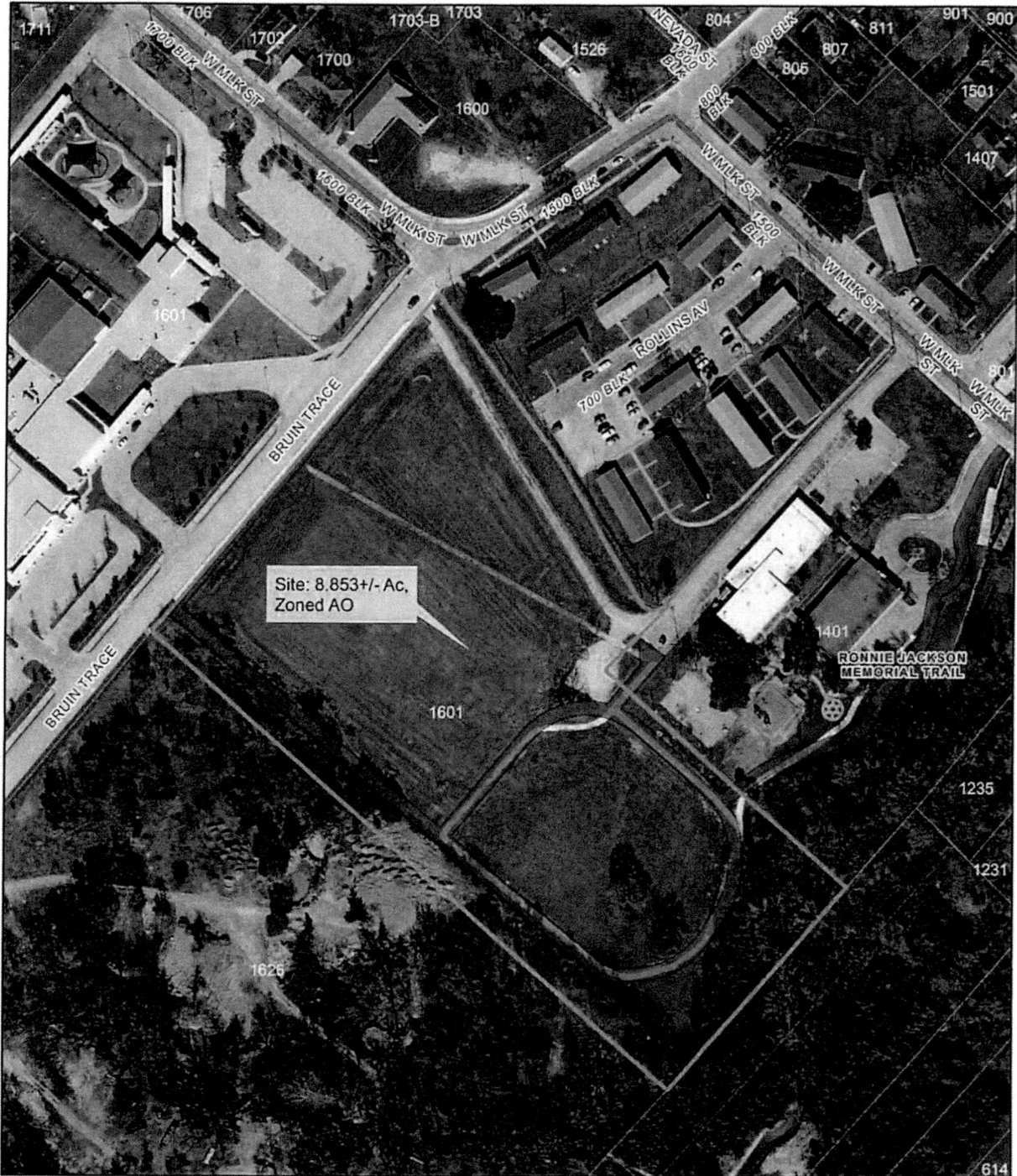
DEVELOPER

Wallace Phillips III
Signature

WALLACE Phillips Manager
Printed Name, Title

Exhibit "A"

Hope Crossing Site



B [Small, illegible text]

HOPE CROSSING SUBDIVISION

RFP #18-030

EXHIBIT B - 53 LOTS

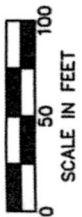
MAY 2018



LEGEND

	PARKLAND
	RESIDENTIAL GRASS AREAS
	RONNIE JACKSON MEMORIAL TRAIL
	CONCRETE PAVEMENT
	SINGLE FAMILY HOME
	GARAGE

NOTE:
BUILDING SIZE AND
LOCATIONS SHOWN ON THIS
PLAN ARE APPROXIMATE.



SCALE IN FEET

SUBDIVISION SIGN

BRUNN TRACE
of R.O.M. (0615/174)

