

CITY OF ROCKWALL
FACILITIES AGREEMENT

For the PD-5, Caruth Lake Development

THIS AGREEMENT entered into on the 7th day of March, 1994, by and between the City of Rockwall, Texas, hereinafter known as the "CITY", and Caruth Lake Development Company, whose address is P.O. Box 369, Rockwall, Texas 75087, hereinafter known as the "DEVELOPER", witnesseth that:

WHEREAS, the Developer has requested the City to permit the platting and/or development of a tract of land known as Villages of Caruth Lake; and

WHEREAS, the City has approved such platting and/or development as being in compliance with all requirements of the Zoning Ordinance and Subdivision Regulations of the City, except as herein agreed upon; and,

WHEREAS, the Developer, its vendors, grantees, assigns, successors, trustees and all others holding any interest now or in the future, agree and enter into this contract which shall operate as a covenant running with the land and be binding upon the Developer and its representatives;

NOW, THEREFORE, the City and Developer, in consideration of the mutual covenants and agreements contained herein do mutually agree as follows:

A. ZONING, PLATTING AND SITE PLANNING

All property owned by the Developer and located within the limits of the development shall be zoned and platted in accordance with the Zoning Ordinance and Subdivision Regulations of the City before any Building Permit will be issued. The Developer shall dedicate, at no cost to the City, all street rights-of-way, alleys, drainage easements, floodways, and other dedications as required by the City at the time of platting.

B. PUBLIC IMPROVEMENTS

All public improvements, including streets, utilities, drainage, sidewalks, street lighting, street signage, and all other required improvements, shall be provided by the Developer, at no cost to the City, unless otherwise provided herein, in accordance with the Subdivision Regulations of the City, and as approved by the City Engineer or his agent. Such improvements shall be installed within all applicable time frames in accordance with the Subdivision Regulations of the City unless approved herein. Engineering studies, plan/profile sheets, and other construction documents shall be provided by the Developer at the time of platting as required by the Subdivision Regulations. Such plans shall be

approved by the City Engineer or his agent prior to approval of a Final Plat. Construction of such improvements shall not be initiated until a preconstruction conference has been held regarding the proposed construction.

Construction of all public improvements shall be subject to routine review by the City Engineer or his agent to evaluate conformance with the construction plans and City standards and specifications. However, such review and evaluation shall not relieve the Developer, its engineer or agent or its obligations for the design, construction and maintenance of the improvements as set out in this Agreement and other relevant ordinances of the City. Any modification, review or evaluation by the City Engineer shall substantially conform to accepted engineering practices.

The Developer will be responsible for the installation of any required street lighting and for the cost of installation of all street name signs. All required street lighting shall be installed and the City shall be reimbursed for the cost of all street name signs prior to final acceptance of any public improvements, and the issuance of any Building Permits, unless otherwise provided herein.

Upon completion of construction of public improvements as required by this Agreement and as required by the Subdivision Regulations, the Developer shall deliver to the City a reproducible copy of as-built construction plans of the public improvements constructed or engineered by the Developer.

C. THOROUGHFARES

In conjunction with the platting and development of PD-5, Caruth Lake Development, the Developer shall complete the following:

1. All required Rights-of-way shall be dedicated to the City at the time of platting.
2. In accordance with the City's Subdivision Ordinance, all internal roads shall be fully constructed of the development unless otherwise approved herein. The City shall be responsible for construction of any pavement in excess of 48 feet. Such construction shall be in accordance with the Subdivision Regulations, and plans shall be approved by the City Engineer or his agent prior to Final Plat approval.

D. UTILITIES

1. Water -
 - a. All required onsite and offsite water lines and other improvements shall be constructed by the Developer and accepted by the City prior to the issuance of any Building Permit, unless otherwise approved herein.

2. Sewer -
 - a. All required onsite and offsite sewer lines and other improvements shall be constructed by the Developer and accepted by the City prior to the issuance of any Building Permit, unless otherwise approved herein.
3. Drainage -
 - a. All required onsite and offsite improvements shall be constructed by the Developer and accepted by the City prior to the issuance of any Building Permit unless otherwise approved herein.

E. PARKS

1. Pursuant to the requirements of the Zoning Ordinance for PD-5, the Developer hereby agrees to dedicate all of the property described in "Exhibit A - Legal Description of Property to be Dedicated to the City of Rockwall for Parkland" and shown in "Exhibit B - Drawing of Property to be Dedicated to City of Rockwall for Parkland" hereto attached, at such time as the City of Rockwall has funding available for the development of the property as a public park.
2. It is hereby agreed by the Developer and the City that:
 - a. That the development of the park shall provide for inclusion of a multi-purpose trail, activity stations including (but not limited to) playground equipment, passive areas, picnic areas, unorganized playing fields, and parking. The City agrees not to build lighted ballfields or lighted playfields on the park.
 - b. That the development of the park and dedication of land to the City of Rockwall may be accomplished on a phased basis or in total as the City may deem appropriate due to funding requirements for said park's development. The dedication of the property to the City shall occur when the City notifies the Developer that funding is available for installation of a trail on all or a portion of the property described in Exhibit "A".
 - c. The City is authorized to erect a temporary sign(s) to be installed at appropriate locations on the property described in Exhibit "A" which sign(s) shall contain a notice that the property may be developed by the City of Rockwall as a public park.
 - d. The Developer hereby agrees to formally notify any purchaser of lots that the property described in Exhibit "A" may be developed by the City of Rockwall as a public park. If the Developer sells any lot to any person

other than the purchaser of a home built upon a platted lot within the development, the Developer shall require that the purchaser(s) of property formally notify all purchasers that the property described in Exhibit "A" may be developed by the City of Rockwall as a public park.

3. Upon a determination by City of Rockwall that funding is available for park development (as described in 2.b. above), the City shall notify the Developer of funding availability for all or for a specific portion described in "Exhibit A". The Developer shall then execute the necessary dedication of documents to convey the associated property to the City of Rockwall within thirty (30) days of said notification. Notification to the Developer shall be in writing. The City shall bear the expense of preparation of all documents required to accomplish the dedication of the property to the City.
4. The City hereby agrees that no lighted ballfields or soccer fields will be constructed on the parkland that may be acquired under the terms of this agreement.

F. PUBLIC FACILITIES TO BE PROVIDED BY THE CITY

1. The City makes no guarantee that water supply or wastewater treatment capacity will be available at any particular time or place, it being fully understood by both parties hereto that the ability of the City to supply water and wastewater services is subject to the City's water and wastewater system capacity. The City shall be the sole judge of the availability of such capacity to supply such water and/or wastewater services, provided, however, that the City will use its best efforts to insure that said water supply and wastewater treatment capacity is available.

G. FEES TO BE PAID BY THE DEVELOPER

1. The Developer and subsequent subdividers within the Development hereby agree to pay the City all required fees, including impact fees, at the time specified in the applicable City ordinances.

H. MAINTENANCE

1. Prior to final acceptance of any public improvements, the Developer shall furnish to the City a good and sufficient maintenance bond in the amount of ten per cent (10%) of the contract price of such improvements, or in such amount as approved by the City, to indemnify the City against any repairs which may become necessary to any part of the construction work performed in connection with the subdivision and/or development, arising from defective workmanship or materials used therein, for a period of one (1) year from the date of final acceptance of such improvements.

I. WAIVER

The Developer expressly acknowledges that by entering into this contract, the Developer, its successors, assigns, vendors, grantees, and/or trustees, shall never construe this contract as waiving any of the requirements of the Zoning Ordinance or Subdivision Regulations or any other ordinance of the City, except as herein agreed upon.

J. HOLD HARMLESS AGREEMENT

The Developer, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully release, indemnify, and hold harmless the City from all claims, suits, judgments, and demands which have accrued or which may accrue because of such development.

K. AMENDMENTS

This Agreement may be changed or modified only with the written consent of the Developer and of the governing City Council of the City. Such modification may be requested by either party, but shall not in any event be effective unless and until approved by the City Council of the City.

L. REVOCATION

In the event the Developer fails to comply with any of the provisions of this Agreement, the City shall be authorized to cease issuance of any further Certificates of Occupancy or Building Permits on property owned by the Developer, and the City shall be further authorized to file this instrument in the Mechanic's Lien records of rockwall County as Mechanic's Lien against the Developer's property; and in the alternative, the City shall be authorized to levy assessment against the Developer's property for public improvements to be held as tax lien against the property by the City.

M. CONTINUITY

This Agreement shall be a covenant running with the land and shall be binding upon the Developer, its successors, heirs, assigns, grantees, trustees and/or representatives.

N. SEVERABILITY

This provisions of this Agreement are severable and, in the event any word, phrase, sentence, paragraph, section or other provisions of this Agreement, or the application thereof to any person or circumstance, shall ever be determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect and the application thereof to any other person or circumstance shall not be affected thereby. The invalid, illegal or

unenforceable provision shall be rewritten by the parties to this Agreement to accomplish the parties' original intent as nearly as possible.

O. TERMINATION AND RELEASE

Upon the satisfactory completion by the Developer and final acceptance by the City of all requirements of this Agreement, this Agreement shall terminate and the City will execute a release of covenant to the Developer, its assigns, successors, grantees, trustees and/or representatives and the City shall file said release in the Rockwall County Deed Records.

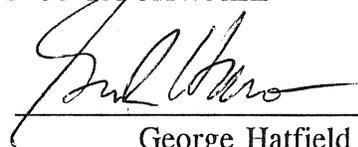
In Witness whereof, each of the parties hereto have caused this Agreement to be executed by its undersigned duly authorized representative as of the date hereinafter first mentioned.

CARUTH LAKE DEVELOPMENT COMPANY

By: 
Robert Whittle
President

Date: 5/4/94

CITY OF ROCKWALL

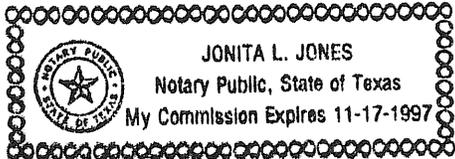
By: 
George Hatfield
Mayor Pro-Tem

Date: 3-10-94

THE STATE OF TEXAS §

COUNTY OF ROCKWALL §

This instrument was acknowledged before me on March 10, 1994, by George Hatfield of the City of Rockwall, Texas



My Commission Expires:

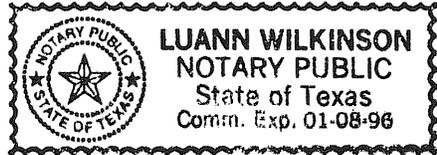
11-17-97

Jonita L. Jones
Notary Public in and for The State of Texas

Jonita L. Jones
(Printed Name)

THE STATE OF TEXAS §

COUNTY OF ROCKWALL §



This instrument was acknowledged before me on May 4, 1994, by Robert S. Whittle of the Caruth Lake Development Company.

My Commission Expires:

1-8-96

Luann Wilkinson
Notary Public in and for The State of Texas

Luann Wilkinson
(Printed Name)

STATE OF TEXAS
COUNTY OF ROCKWALL

BEING a tract of land situated in the S.S. McCurry Survey, Abstract Number 146, Rockwall County, Texas, and being a part of that 502.566 acre tract of land described in Deed recorded in Volume , Page , Plat Records, Rockwall County, Texas, and being more particularly described as follows:

COMMENCING at a point on the East line of SH-205, a 100 foot right-of-way, at the Northwest corner of Harris Heights Phase Four, an Addition to the City of Rockwall recorded in Slide B, Page 184, Plat Records, Rockwall County, Texas, said point being on a curve to the left having a central angle of 10 degrees 15' 14", a radius of 3869.84 feet, and a chord that bears North 09 degrees 07' 40" West a distance of 691.63 feet;

THENCE: Along the East lines of said SH-205 as follows: Along said curve an arc distance of 692.53 feet to the Point of said curve, North 14 degrees 15' 16" West a distance of 34.60 feet to a point for a corner; North 12 degrees 15' 37" East a distance of 112.00 feet to a point for a corner; and North 14 degrees 15' 16" West a distance of 320.59 feet to a point for a corner at the Southwest corner of that called 21.76 acre tract of land described in Deed recorded in Volume 152, Page 77, Deed Records, Rockwall County, Texas;

THENCE: Along the South line of said 21.76 acre tract as follows: North 24 degrees 30' 55" East a distance of 84.07 feet to a point for a corner; North 00 degrees 30' 56" East a distance of 9.04 feet to a point for a corner and North 88 degrees 47' 05" East a distance of 1067.00 feet with the South line of said 21.76 acre tract to the Southeast corner of said tract and the Point of Beginning;

THENCE: North 31 degrees 35' 05" East a distance of 35.00 feet to a point for a corner in Caruth Lake;

THENCE: North 58 degrees 24' 55" West a distance of 57.95 feet to a point for a corner in Caruth Lake;

THENCE: North 06 degrees 19' 25" East a distance of 303.16 feet to a point for a corner in Caruth Lake;

THENCE: North 89 degrees 24' 49" West a distance of 379.69 feet leaving said Caruth Lake to a point for a corner in Squabble Creek;

THENCE: Downstream with the meanders of Squabble Creek, all to points for a corner, as follows: North 50 degrees 22' 33" West a distance of 77.30 feet; North 12 degrees 35' 27" East a distance of 67.90 feet; North 50 degrees 57' 33" West a distance of 155.40 feet; North 73 degrees 28' 33" West a distance of 126.30 feet; North 27 degrees 08' 33" West a distance of 62.60 feet; North 76 degrees 22' 33" West a distance of 91.80 feet; North 59 degrees 45' 33" West a distance of 79.10 feet; North 04 degrees 10' 27" East a distance of 126.90 feet; North 20 degrees 57' 33" West a distance of 132.70 feet; South 89 degrees 47' 27" West a distance of

82.00 feet; North 78 degrees 43' 33" West a distance of 48.70 feet; North 57 degrees 07' 33" West a distance of 83.60 feet; North 45 degrees 56' 33" West a distance of 97.50 feet; North 73 degrees 00' 33" West a distance of 153.40 feet; North 50 degrees 28' 33" West a distance of 59.30 feet; North 49 degrees 16' 33" West a distance of 176.20 feet and North 78 degrees 14' 33" West a distance of 29.60 feet to a point for a corner on the East line of SH-205;

THENCE: North 14 degrees 13' 17" West a distance of 156.14 feet with said East line to a point for a corner;

THENCE: Leaving said East line and traversing said 502.566 acre tract, all to points for a corner as follows: South 60 degrees 17' 00" East a distance of 805.00 feet; North 84 degrees 17' 00" East a distance of 305.00 feet; North 67 degrees 54' 00" East a distance of 540.00 feet; South 73 degrees 59' 00" East a distance of 460.00 feet; West a distance of 900.00 feet; South 90 degrees 00' 00" East a distance of 600.00 feet; South 40 degrees 27' 00" East a distance of 2963.92 feet, and North 63 degrees 59' 00" East a distance of 1321.73 feet to a point for a corner on the West line of FM-1141;

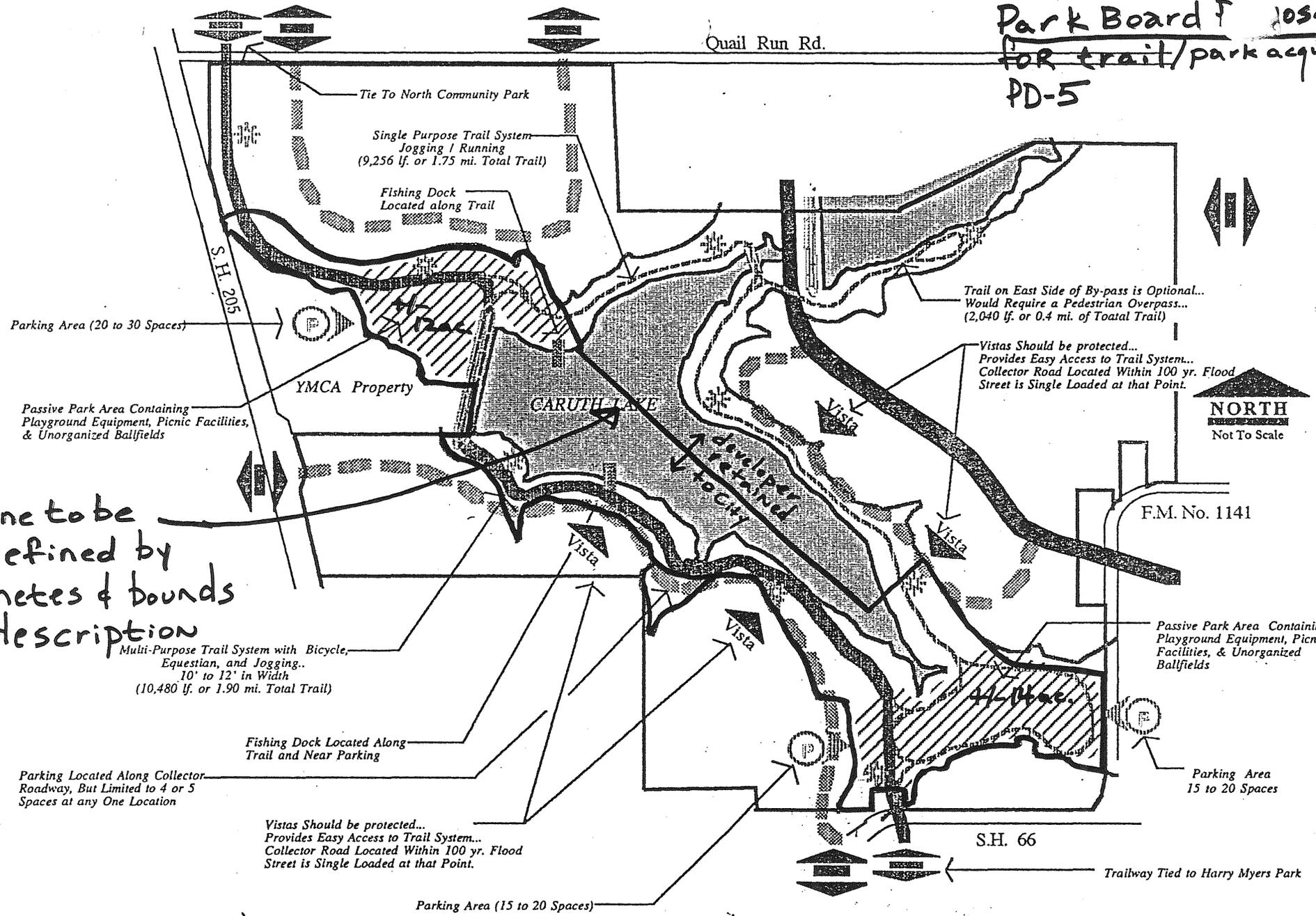
THENCE: South 01 degrees 20' 34" East a distance of 450.00 feet with said West line to a point for a corner;

THENCE: Leaving said West line and traversing said 502.566 acre tract, all to points for a corner, as follows: South 63 degrees 59' 00" West a distance of 1695.62 feet; North 25 degrees 48' 00" West a distance of 1000.00 feet; North 40 degrees 16' 00" West a distance of 502.00 feet; North 48 degrees 01' 00" West a distance of 1140.00 feet; North 72 degrees 43' 38" West a distance of 950.00 feet; and North 15 degrees 38' 59" West a distance of 284.62 feet to the Point of Beginning and containing 83.249 acres of land.

**Park Board Proposal
for trail/park acquisition
PD-5**

Exhibit "B"

line to be defined by metes & bounds description



NORTH
Not To Scale



EXHIBIT "A"

STATE OF TEXAS COUNTY OF ROCKWALL

BEING a tract or parcel of land situated in the S.S. McCurry Survey, Abstract No. 146, Rockwall County, Texas and being a part of that 502.566 acre tract of land described in Deed to Caruth Lake Development Corporation recorded in Volume 694, Page 47, Deed Records, Rockwall County, Texas, and being that 1.58 acre tract of land conveyed to Henry H. Crumbley by Deed recorded in Volume 91, Page 202, Deed Records, Rockwall County, Texas, and being more particularly described as follows:

BEGINNING at a ½" iron rod set at the intersection of the Northeast line of State Hwy. 205, a 100-foot right-of-way, with the center of Quail Run Road, said point being the northwest corner of said Crumbley tract:

THENCE: North 88° 25' 16" East with the center of Quail Run Road, said point being the North line of said Crumbley tract and then the north line of said 502.566 acre tract a distance of 759.40 feet to a ½" iron rod set for corner:

THENCE: North 89° 35' 13" East a distance of 73.91 feet continuing with said lines to a ½" iron rod set for corner:

THENCE: Leaving said line and traversing said 502.566 acre tract as follows:
South 1° 25' 40" East a distance of 1,401.79 feet to a ½" iron rod set for a corner;
North 60° 17' 00" West a distance of 6999.27 feet to a ½" iron rod set for a corner on the previously mentioned line of said State Hwy. 205:

THENCE: North 14° 13' 17" West a distance of 1,185.90 feet with said line to the Point of Beginning and containing **852,904.80 square feet** or **19.58 acres** of land.

EXHIBIT "A"