

CAUSE NO. 19-850

CITY OF FAIR OAKS RANCH, TEXAS
Plaintiff/Counter-Defendant

VS.

VINCENT CALDAROLA AND NANCY
CALDAROLA
Defendants/Counter-Plaintiffs

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§
§

IN THE DISTRICT COURT

451ST JUDICIAL DISTRICT

KENDALL COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this date came on for consideration by the Court the Agreed Final Judgment of the Parties, Plaintiff/Counter-Defendant, City of Fair Oaks Ranch, Texas ("Plaintiff") and Defendants/Counter-Plaintiffs, Vincent Caldarola and Nancy Caldarola ("Defendants"). The Court, noting its rulings in this case, including, but not limited to the October 7, 2020 interlocutory Order Granting Plaintiff's Traditional Motion for Summary Judgment and the Court's October 7, 2020 interlocutory Order Granting Plaintiff's First Amended Second Motion for Summary Judgment (which such motions Defendants opposed), and the Court's October 27, 2020, interlocutory Order Denying Defendants' Traditional Motion for Summary Judgment (which motion Plaintiff opposed) and noting that the Parties (1) have entered into a formal written Settlement Agreement, which the Court has reviewed and approves, and (2) have agreed to both the terms, provisions, and conditions of this Agreed Final Judgment, and agreed to waive any and all rights to appeal the same, finds that Final Judgment shall be entered as follows:

IT IS ORDERED, ADJUDGED AND DECREED, that Plaintiff is determined to be the owner of the fee estate of one certain tract of land containing .006 acres, more or less, out of Lot 36A, Unit 4, Fair Oaks Ranch Subdivision, Kendall County, Texas, according to the Plat Records recorded in Volume 1, Pages 295-296 of the Kendall County Plat Records, said .006 acres being



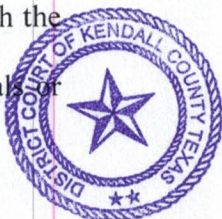
described legally in the attached metes and bounds description and surveyed plat included herewith as Exhibit "A" (the "K-3 Well Tract").

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Plaintiff is determined to be the owner of the following specific easements located on Lots 36A and 172 of Unit 4, Fair Oaks Ranch Subdivision, Kendall County, Texas, according to the Plat Records recorded in Volume 1, Pages 295-296, of the Kendall County Plat Records, as follows:

1. Two Sanitary Control Easements, recorded in Volume 242, Page 533, and Volume 242, Page 536, respectively, of the Official Public Records of Kendall County, Texas (the "Sanitary Control Easements"); and
2. Maintenance Easement for Water Well recorded in Volume 242, Page 539, as amended in Volume 283, Page 226, both recorded in the Official Public Records of Kendall County, Texas (the "Maintenance Easements"); and

The Sanitary Control Easements and the Maintenance Easements, collectively referred to herein as the "Easements," are valid, subsisting, in full force and effect, and remain enforceable by Plaintiff and its successors and assigns according to their terms effective upon the entry of this Agreed Final Judgment (the "Settlement Agreement").

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Plaintiff's request for a permanent injunction is granted as follows: Defendants, along with their agents, servants, employees, and other persons in active concert or participation with them, are **RESTRAINED** and **ENJOINED** from in any way interfering with or obstructing: (i) Plaintiff's ownership or use of the Easements, (ii) Plaintiffs' ownership or use of the K-3 Well Tract for the maintenance and operation of the K-3 Well, or (iii) Plaintiff's use and enjoyment of any groundwater produced from the K-3 Well and removed from the K-3 Well Tract, and from preventing or interfering with the Plaintiffs construction of fencing or berms, as Plaintiff deems necessary, to exclude animals or



potential pollutants from the area contained within a 50 foot radius of the K-3 Well in any manner that is inconsistent with this Final Judgment and the Settlement Agreement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendants' Counterclaims pleaded in this lawsuit against Plaintiff, and all other claims for relief expressly asserted by Defendants in this lawsuit and that Defendants could have asserted against Plaintiff in this lawsuit concerning property ownership, title, and access concerning the Easements, the K-3 Well, the K-3 Well Tract and the title to the groundwater rights relating thereto are hereby in all respects DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Plaintiff's claims pleaded in this lawsuit against Defendants, and all other claims for relief expressly asserted by Plaintiff in this lawsuit and that Plaintiff could have asserted against Defendants (excluding any claim for condemnation) in this lawsuit concerning property ownership, title, and access concerning the Easements, the K-3 Well, the K-3 Well Tract and the title to the groundwater rights relating thereto are hereby in all respects DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Settlement Agreement, a copy of which is included herewith as Exhibit "B," is approved, and that in the event of a conflict of interpretation between the Settlement Agreement and this Final Judgment, the Settlement Agreement shall control.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Plaintiff shall cause a copy of both this Agreed Final Judgment and the Settlement Agreement to be recorded in the Official Public Records of Kendall County within 2 days after the entry of this Agreed Final Judgment.



IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Parties' respective attorneys' fees and litigation costs shall be borne by each of them, respectively

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that all relief relating to the property ownership, title, and access claims between, on the one hand, the City, and, on the other hand, the Caldarolas, concerning the Easements, the K-3 Well, the K-3 Well Tract and the title to the groundwater rights relating thereto not expressly granted herein is **DENIED**. This Agreed Final Judgment finally disposes of all such claims and all Parties, and is final and appealable.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that pursuant to TRCP 131 all taxable court costs not otherwise addressed herein are charged against the Defendants Vincent and Nancy Caldarola.

Signed this 20th day of November, 2020.



HONORABLE KIRSTEN COHOON
JUDGE PRESIDING

SUSAN J. JONES, DISTRICT CLERK
KENDALL COUNTY, TEXAS
BY: Susan J. Jones
CLERK

2020 NOV 20 AM 9:35

FILED

APPROVED AS TO FORM AND SUBSTANCE:

BRANSCOMB, PLLC
8023 Vantage Drive, Suite 560
San Antonio, Texas 78230
Telephone: (210) 598-5400
Facsimile: (210) 598-5405

/s/ Joe M. Davis

Joe M. Davis
State Bar No. 05520350
jdavis@branscomblaw.com
Clint Buck
State Bar No. 24078280
cbuck@branscomblaw.com

GOODE CASSEB JONES
RIKLIN CHOATE & WATSON, P.C.
P.O. Box 120480
San Antonio, Texas 78212
Telephone: (210) 733-6030
Facsimile: (210) 733-0330

/s/ Fred R. Jones

Fred R. Jones
State Bar No. 10886700
jones@goodelaw.com



LAW OFFICES OF CHARLES S.
FRIGERIO

Riverview Towers
111 Soledad, Suite 840
San Antonio, Texas 78205
Telephone: (210) 271-7877
Facsimile: (210) 271-0602

/s/ Charles S. Frigerio

Charles S. Frigerio
State Bar No. 07477500
frigeriolaw1995@sbcglobal.net
Hector X. Saenz
State Bar No. 17514850

**ATTORNEYS FOR CITY OF FAIR OAKS RANCH, TEXAS, PLAINTIFF/COUNTER-
DEFENDANT,**

MCCARTHY & MCCARTHY, LLP
1122 Colorado St., Suite 2399
Austin, Texas 78701
Telephone: (512) 904-2313
Facsimile: (512) 692-2826

/s/ Edmond R. McCarthy, Jr.

Edmond R. McCarthy, Jr.
State Bar No. 13367200
ed@ermlawfirm.com

ENOCH KEVER PLLC
7600 N. Capital of Texas Highway
Building B, Suite 200
Austin, Texas 78731
Telephone: (512) 615-1223
Facsimile: (512) 615-1198

/s/ Gary E. Zausmer

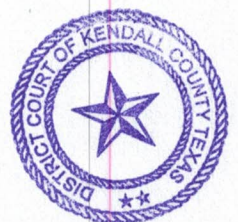
Gary E. Zausmer
State Bar No. 22251350
gzausmer@enochkever.com

**ATTORNEYS FOR VINCENT CALDAROLA, M.D. AND NANCY CALDAROLA,
DEFENDANTS/ COUNTER-PLAINTIFFS**



EXHIBIT "A"
TO THE AGREED FINAL JUDGMENT

**Metes and Bounds Description with Survey
Plat of .006 acres prepared by Pape-Dawson
Engineering, Inc., dated September 11, 2020,
aka the "K-3 Well Tract"**



**METES AND BOUNDS DESCRIPTION
FOR A WATER WELL EASEMENT
WELL K-3**

A 0.006 of an acre, or 269 square feet more or less, easement located on Lot 36A, Fair Oaks Ranch Kendall County Unit 4 recorded in Volume I, Page 295 in the Map in Plat Records of Kendall County, Texas, in the City of Fair Oaks Ranch, Kendall County, Texas. Said 0.006 of an acre easement being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00:

COMMENCING: At a found $\frac{1}{4}$ " iron rod on the south right-of-way line of Silver Spur Trail, a 60-foot right-of-way dedicated in Volume I, Page 295 in said Map and Plat Records, at the northwest corner of said Lot 36A and the northeast corner of Lot 172 of said Fair Oaks Ranch Kendall County Unit 4, from which a found $\frac{1}{4}$ " iron rod on the south right-of-way line of said Silver Spur Trail and the north line of said Lot 36A bears northeasterly, along and non-tangent curve to the left, said curve having a radius of 331.45 feet, a central angle of $08^{\circ}40'21''$, a chord bearing and distance of $N 77^{\circ}23'55'' E$, 50.12 feet, for an arc length of 50.17 feet;

THENCE: $S 14^{\circ}04'22'' E$, departing the south right-of-way line of said Silver Spur Trail, over and across said Lot 36A, a distance of 139.00 feet to a wood fence corner, at the POINT OF BEGINNING of the herein described easement;

THENCE: Continuing over and across said Lot 36A, the following bearings and distances:

$N 46^{\circ}06'36'' E$, a distance of 11.99 feet to a wood fence corner;

$S 43^{\circ}53'24'' E$, a distance of 12.05 feet to a wood fence corner;

$S 40^{\circ}36'47'' E$, a distance of 10.98 feet to a post and rail fence corner;

$S 50^{\circ}28'57'' W$, a distance of 11.82 feet to a post and rail fence corner;

$N 41^{\circ}05'01'' W$, a distance of 10.01 feet to a wood fence corner;

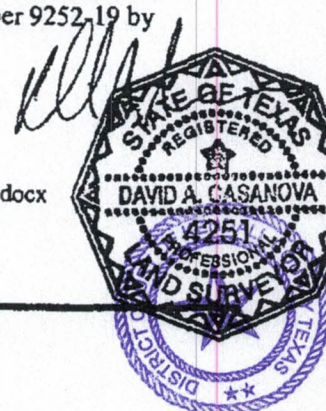
$N 44^{\circ}12'12'' W$, a distance of 12.11 feet to the POINT OF BEGINNING and containing 0.006 of an acre in the City of Fair Oaks Ranch, Kendall County, Texas. Said easement being described in conjunction with an exhibit prepared under job number 9252-19 by Pape-Dawson Engineers, Inc.

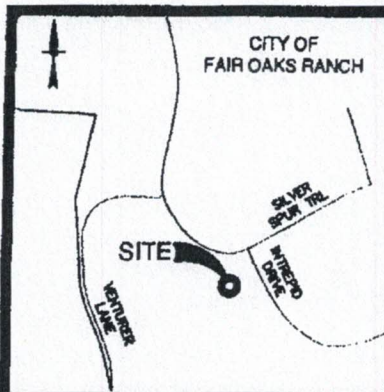
PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: September 11, 2020

JOB NO. 9252-19

DOC. ID. N:\Survey\19\19-9200\9252-19\Word\Well K-3\9252-19 ESWW 0.006 AC.docx





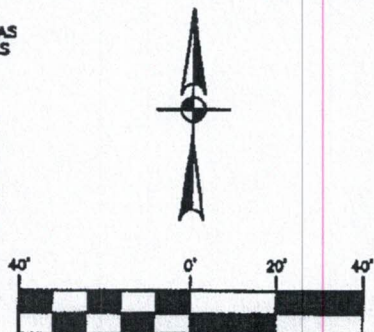
LOCATION MAP
NOT-TO-SCALE

LEGEND:

DR DEED RECORDS OF KENDALL COUNTY, TEXAS
OPR OFFICIAL PUBLIC RECORDS OF KENDALL COUNTY, TEXAS
MPR MAP AND PLAT RECORDS OF KENDALL COUNTY, TEXAS
FD FOUND
IR IRON ROD

NOTES:

1. THIS EXHIBIT IS ISSUED IN CONJUNCTION WITH A METES AND BOUNDS DESCRIPTION PREPARED UNDER JOB NO. 9252-19 BY PAPE-DAWSON ENGINEERS, INC.
2. THE BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE SOUTH CENTRAL ZONE FROM THE NORTH AMERICAN DATUM OF 1983 NAD 83 (NA2011) EPOCH 2010.00.
3. THE LOCATION OF THE IMPROVEMENTS SHOWN HEREON IS BASED ON FIELD WORK CONDUCTED BY PAPE-DAWSON ENGINEERS, INC. DURING JANUARY, 2020.



SCALE: 1" = 40'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N48°08'36"E	11.89'
L2	S43°53'24"E	12.05'
L3	S40°36'47"E	10.98'
L4	S50°28'57"W	11.82'
L5	N41°05'01"W	10.01'
L6	N44°12'12"W	12.11'

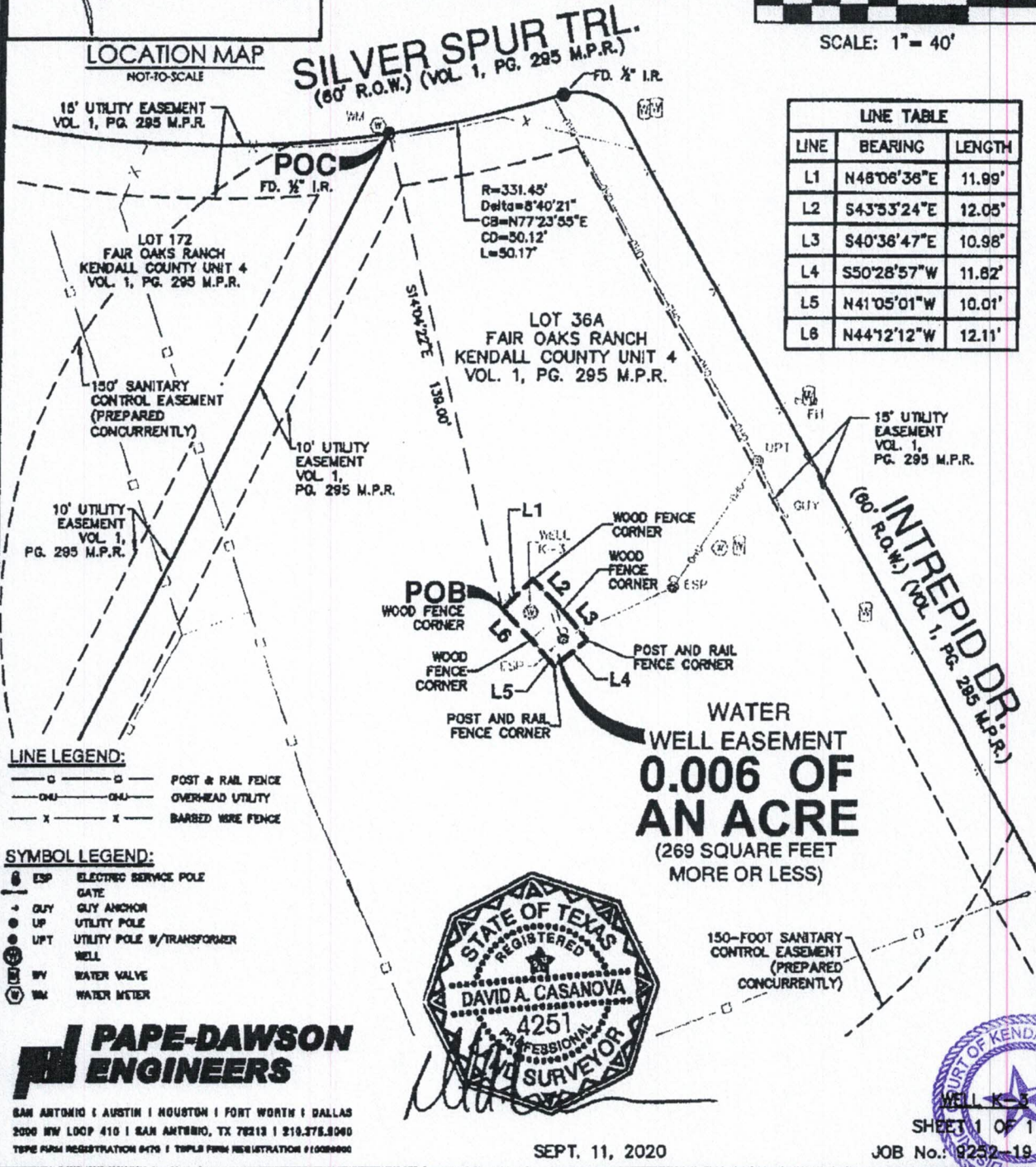


EXHIBIT "B"
TO THE AGREED FINAL JUDGMENT

**Executed Settlement Agreement Between
the Plaintiff/ Counter-Defendant, City of Fair Oaks
Ranch, Texas and Defendants/ Counter-Plaintiffs
Vincent Caldarola and Nancy Caldarola**



CAUSE NO. 19-850

CITY OF FAIR OAKS RANCH, TEXAS	§	IN THE DISTRICT COURT
Plaintiff/Counter-Defendant	§	
	§	
VS.	§	451 ST JUDICIAL DISTRICT
	§	
VINCENT CALDAROLA AND NANCY	§	
CALDAROLA	§	KENDALL COUNTY, TEXAS
Defendants/Counter-Plaintiffs	§	

Settlement Agreement

This Settlement Agreement entered into to be effective November 19, 2020 (the "Settlement Agreement"), by and between the City of Fair Oaks Ranch, Texas, a Home Rule City (the "City"), acting by and through its duly elected City Council in an open and duly noticed public meeting and Dr. Vincent Caldarola and his wife, Nancy Caldarola (the "Caldarolas") to resolve and settle all matters in dispute between them as specifically set forth herein related to the legal rights related to the property ownership, title and access claims that are the subject matter of this litigation pending before the 451st Judicial District Court of Kendall County, Texas, and styled as Cause No. 19-850, City of Fair Oaks Ranch, Texas (Plaintiff/Counter-Defendant) v. Vincent Caldarola and Nancy Caldarola (Defendants/Counter-Plaintiffs) (the "Lawsuit"). The City and Caldarolas may be collectively referred to herein as the "Parties," and singularly as a "Party."

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the receipt and sufficiency of which is hereby agreed to and confessed by the Parties, the City and the Caldarolas agree as follows:

- 1. Entry of an Agreed Final Judgment:** The Parties agree to present to the Court as an "Agreed Final Judgment" the Agreed Final Judgment appended hereto as Exhibit "A" incorporated herein for all purposes (the "Agreed Final Judgment"). The Parties agree jointly to request entry of the Agreed Final Judgment by the Court. The Parties further agree that immediately upon entry of the Agreed Final Judgment, the City shall cause the same to be recorded in the Official Public Records of Kendall County, Texas. The City will also contemporaneously cause a copy of this Settlement Agreement to be recorded in the Official Public Records of Kendall County, Texas.
- 2. Waiver of Rights of Appeal:** The Caldarolas and the City waive and surrender any and all right to appeal the Agreed Final Judgment entered by the Court in the Lawsuit.
- 3. Permanent Injunction/Fencing Issues:** (a) The Parties agree to the inclusion of the following permanent injunction language in the Agreed Final Judgment:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Plaintiff's request for a permanent injunction is granted as follows: Defendants, along with their agents, servants, employees, and other persons



in active concert or participation with them, are **RESTRAINED** and **ENJOINED** from in any way interfering with or obstructing: (i) Plaintiff's ownership or use of the Easements related to the K-3 Well, (ii) Plaintiffs' ownership or use of the K-3 Well Tract for the maintenance and operation of the K-3 Well, or (iii) Plaintiff's use and enjoyment of any groundwater produced from the K-3 Well and removed from the K-3 Well Tract, in any manner that is inconsistent with this Final Judgment and the Settlement Agreement.

- (b) The Parties further agree to the following as a matter of contract which may, if necessary, be specifically enforced by injunction, consistent with the terms of this Settlement Agreement:

The Caldarolas, along with their heirs and assigns, agents, servants, employees, attorneys, and other persons in active concert or participation with them will be prohibited from interfering with or restraining the City's rights related to the K-3 Well, the K-3 Well Tract and the Sanitary Control Easements and Well Maintenance Easements, including if necessary the City's construction of fencing or berms aesthetically similar to existing fences on the Caldarolas' Property, as Plaintiff deems necessary, to exclude animals or potential pollutants from the area contained within a 50-foot radius of the K-3 well if the Caldarolas violate the provisions relating the "No Livestock Zone" as defined in this Settlement Agreement, including Paragraph 4., and subject to the Notice and opportunity to cure in subparagraphs 6.(a) and 6.(b), below.

The Caldarolas will be allowed to put a lock on the gate used to access the Well Maintenance and Sanitary Control Easements from Intrepid Dr., provided that the City is provided either a key or the combination to said lock. The City will also be allowed to maintain its own lock for access independent of the Caldarolas' lock if it chooses.

4. **"No Livestock Zone":** To avoid the necessity immediately to build any new fencing on Lot 36A, Unit 4 of the Fair Oaks Ranch Subdivision in Kendall County, the Parties have agreed to the creation of a "No Livestock Zone" around the K-3 Well on Lot 36A, Unit K-4, Kendall County Fair Oaks Ranch Subdivision (the "Zone"). The Zone is located around the K-3 Well within the boundaries of the existing interior white rail fence the location of which as surveyed on the ground is shown and highlighted on the copy of the October 31, 2017, Pfeiffer Survey of the Caldarola Property attached hereto as Exhibit "B" and incorporated herein by reference for all purposes. In addition to incorporating the existing limitations and prohibitions prescribed by the two Sanitary Control Easements for the protection of the quality of groundwater to be produced from the K-3 Well, pursuant to the "No Livestock Zone," the Parties agree as follows:



(a) **The Caldarolas:**

1. Will NOT place, pasture, or allow any livestock to remain inside of the No Livestock Zone for any purpose; and
2. Will NOT deposit, store, dispose, stockpile or otherwise suffer, tolerate or cause any animal waste within the No Livestock Zone; and

(b) **The City:**

1. So long as the Caldarolas, their successors, heirs and/or assigns, honor the terms of the above Subparagraph 4.(a) of the Settlement Agreement denominated the "No Livestock Zone," the City agrees NOT to exercise its rights under the Agreed Final Judgment Permanent Injunction, to build any new, or additional, fences or berms within the No Livestock Zone for any purpose including to exclude livestock within the area located with a fifty foot radius of the K-3 Well; and
2. IN THE EVENT THE CALDAROLAS, OR THEIR SUCCESSORS, HEIRS AND/OR ASSIGNS, VIOLATE THE "NO LIVESTOCK ZONE" REQUIREMENTS AND FAIL TO TIMELY CURE SUCH VIOLATION WITHIN THE SHORTENED CURE PERIOD PRESCRIBED IN SUBPARAGRAPH 6.b., BELOW, THE CITY SHALL HAVE THE RIGHT TO EXERCISE ITS RIGHTS PURSUANT TO THE TERMS OF THIS SETTLEMENT AGREEMENT AND THE PERMANENT INJUNCTION CONTAINED IN THE AGREED FINAL JUDGMENT, AND IMMEDIATELY, AND WITHOUT FURTHER APPROVAL OR ACTION BY THE COURT OR THE CALDAROLAS, TO CONSTRUCT A FENCE OR BERM DESIGNED TO EXCLUDE LIVESTOCK OR POTENTIAL POLLUTANTS FROM THE AREA LOCATED WITHIN A FIFTY FOOT RADIUS OF THE K-3 WELL ON LOT 36A OF UNIT K-4, KENDALL COUNTY, FAIR OAKS RANCH SUBDIVISION; PROVIDED, HOWEVER, THAT ANY SUCH FENCE CONSTRUCTED SHALL BE AESTHETICALLY SIMILAR TO AND COMPATIBLE WITH THE EXISTING FENCES ON THE CALDAROLA PROPERTY.

5. **Waiver of Claims for Fees, Litigation Costs:** As additional consideration for the Settlement Agreement, the Parties have agreed that they shall each be responsible for and pay their own costs of litigation, including their respective attorneys' fees and other litigation costs, including expert consultants, deposition expenses, appraisers and surveyors. Clerk's Bill of Taxable Costs of Court which are unpaid as of the date of entry of the Agreed Final Judgment will be adjudged against and charged to the Caldarolas.



6. **Miscellaneous Provisions:**

- (a) **Default Under or Breach of the Settlement Agreement.** Any default after notice and opportunity to cure as set forth in Subparagraph 6.(b), below, the other Party may exercise any remedy authorized at law or in equity, including filing suit in a court of competent jurisdiction to seek any available remedy, including by way of example only, injunctive relief, specific performance and/or monetary damages. The prevailing Party in any such litigation may recover costs of court, including attorney's fees and expert, consultant, and witness fees incurred in enforcing or defending a claim under this Settlement Agreement.
- (b) **Notice and Opportunity to Cure.** Notwithstanding any provision in this Settlement Agreement to the contrary, if any Party (referred to herein as the "Defaulting Party") fails to comply with its obligations under this Settlement Agreement or is otherwise in breach of or default under this Settlement Agreement (collectively, a "Default"), then the other Party (referred to herein as the "Non-Defaulting Party") shall not have any right to invoke any rights or remedies with respect to any Default until and unless: (i) the Non-Defaulting Party delivers to the Defaulting Party a written notice (the "Default Notice") that specifies all of the particulars of the Default and specifies the actions necessary to cure the Default; and (ii) the Defaulting Party fails to commence the cure of any matters specified in the Default Notice within a reasonable period of time after the Defaulting Party's receipt of the Default Notice, but not less than 30 days, or fails to thereafter pursue curative action with reasonable diligence to completion; **PROVIDED, HOWEVER, IF THE DEFAULT INVOLVES THE CALDAROLAS ALLOWING LIVESTOCK INTO THE NO LIVESTOCK ZONE, THEN IN SUCH EVENT THE OPPORTUNITY TO CURE SHALL BE REDUCED TO TWO FULL CALENDAR DAYS FROM THE DATE THE CITY PROVIDES ACTUAL NOTICE TO THE CALDAROLAS, OR FIVE BUSINESS DAYS FOLLOWING THE DELIVERY OF MAILED NOTICE TO THE CALDAROLAS. IN THE EVENT THE CALDAROLAS FAIL TO CURE THE VIOLATION OF THE NO LIVESTOCK ZONE REQUIREMENTS, THEN IN SUCH EVENT THE CITY SHALL HAVE THE OPTION, BUT NOT THE OBLIGATION, TO CONSTRUCT A FENCE TO EXCLUDE LIVESTOCK FROM THE AREA WITHIN A FIFTY-FOOT RADIUS MEASURED FROM THE WELL HEAD OF THE K-3 WELL.**
- (c) **Remedies Cumulative, Not Exclusive.** Except as expressly provided otherwise in this Settlement Agreement, all remedies authorized and/or contemplated by this Settlement Agreement are intended to be cumulative, not exclusive, of any other remedy available to a Party either at law or in equity.
- (d) **Equitable Remedies.** It is not intended hereby to specify (and this Settlement Agreement will not be considered as specifying) an exclusive remedy for any default, but all remedies existing at law or in equity may be availed of by any party hereto and will be cumulative of the remedies provided herein. Recognizing



however, that the failure in the performance of a Party's obligations hereunder could not be adequately compensated in money damages alone, the Parties agree, in the event of any default on its part, that the other Party will have available to them equitable remedies, including injunctive relief, in addition to any other legal or equitable remedies which may also be available.

- (e) **Good Faith.** The Parties agree to cooperate with each other and act in good faith in the performance of this Settlement Agreement.

- (f) **Notices.** Any notice required or permitted to be delivered under this Settlement Agreement shall be forwarded via hand delivery or the United States Postal Service, postage prepaid, to the addresses shown below:

To Caldarolas: 7830 Silver Spur Trail
Fair Oaks Ranch, Texas 78015
Ph: (210) 861-3566
E-mail: caldarola@sbcglobal.net

To City: Attn: Tobin Maples, City Manager
City of Fair Oaks Ranch
7286 Dietz Elkhorn
Fair Oaks Ranch, Texas 78015
E-mail: tmaples@fairoaksranchtx.org

- (g) **Address Change Procedure.** The addresses of the Parties shall, until changed as hereinafter provided, be as shown above. The Parties may at any time change their respective addresses by giving written notice of same to the other Party.
- (h) **Severability.** Except as specifically set forth in this Settlement Agreement, the provisions of this Settlement Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Settlement Agreement or the application thereof to any person or circumstances is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Settlement Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Settlement Agreement to other persons or circumstances will not be affected thereby and this Settlement Agreement will be construed as if such invalid or unconstitutional portion had never been contained herein. If such effectuation is not possible, the court should then modify or delete only that portion of the provision only as required, and in such a manner as, to best effectuate the provision's original intent.
- (i) **Entire Agreement.** This Settlement Agreement, including all Exhibits attached hereto, which are expressly made a part hereof by reference for all purposes, constitutes the entire agreement between the Parties relative to the subject matter of this Settlement Agreement and supersedes all prior or contemporaneous



agreements, representations, covenants or warranties, whether oral or in writing, respecting the subject matter hereof.

- (j) **Amendment.** No amendment of this Settlement Agreement is effective unless and until it is duly approved by each party and reduced to a writing signed by the Authorized Representatives of both Parties.
- (k) **No Third Party Beneficiary.** Nothing in this Settlement Agreement may be construed to confer any right, privilege or benefit on any person or entity not a party hereto or otherwise creates any vested right or third party beneficiary relationship.
- (l) **Governing Law.** This Settlement Agreement will be construed under the laws of the State of Texas and all obligations of the Parties are deemed performable in Kendall County, Texas.
- (m) **Venue.** Venue for any suit arising under this Settlement Agreement is in Kendall County.
- (n) **Assignment.** Except as expressly provided in this Settlement Agreement, no party may assign its rights and obligations hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld; **PROVIDED, HOWEVER, THAT THE PARTIES AGREE THAT THIS SETTLEMENT AGREEMENT SHALL RUN WITH THE LAND AND BE A BINDING COVENANT, BOTH BINDING UPON AND INURING TO THE BENEFIT OF THE RESPECTIVE OWNER OR OWNERS OF LOTS 36A AND 172, UNIT 4, FAIR OAKS RANCH SUBDIVISION OF KENDALL COUNTY, TEXAS AND THE K-3 WELL TRACT CONTAINING .006 ACRES, MORE OR LESS, AS LEGALLY DESCRIBED IN EXHIBIT "C" APPENDED TO THIS SETTLEMENT AGREEMENT AND INCORPORATED HEREIN BY REFERENCE FOR ALL PURPOSES.**
- (o) **Consultation with Counsel/Drafting and Rules of Construction/Interpretation.** The Parties agree and acknowledge that (i) they have read and understand the terms and conditions of both this Settlement Agreement and the Agreed Final Judgment to be presented to the Court in the Form attached hereto as Exhibit "A" and incorporated herein by reference, (ii) that they have consulted with their respective legal counsel, and (iii) have entered into this Settlement Agreement without any questions or reservations as to the meaning and intent of the same. The Parties further agree and acknowledge that the drafting of both this Settlement Agreement and the Agreed Final Judgment has been accomplished as a joint effort of the Parties respective legal counsel on behalf of the Party that they represent. Accordingly, the rule of construction relating to the requirement that any term or terms be construed against the party responsible for drafting the same does not apply to either this Settlement Agreement or the Agreed Final Judgment.



- (p) **Enforcement or Breach of this Settlement Agreement:** In a suit to enforce, or for the breach of this Settlement Agreement, the prevailing party shall be entitled to recover reasonable and necessary attorneys' fees and litigation expenses.
- (q) **Release of Claims/Covenant Not to Sue:**
- (i) The Parties respectively **FOREVER RELEASE** and **DISCHARGE** each other concerning all property ownership, title, and access claims specifically asserted in the pleadings in this lawsuit between, on the one hand, the City, and, on the other hand, the Caldarolas, concerning the Easements, the K-3 Well, the K-3 Well Tract and the title to the groundwater rights relating thereto, from the beginning of time through the Effective Date of this Settlement Agreement; and
 - (ii) The release of claims granted in Subparagraph (q)(i) above, shall not constitute a waiver or release of any claims for the breach of or to enforce the terms of either this Settlement Agreement and/or the Agreed Final Judgment; and
 - (iii) Each Party hereby AGREES, PROMISES, AND FOREVER COVENANTS not to file, prosecute, or continue to prosecute any lawsuit, arbitration, legal, administrative or other non-judicial or quasi-judicial proceeding, or other dispute resolution procedure with respect to the other Party concerning any of the claims released in this Settlement Agreement. Notwithstanding any other provision in this Settlement Agreement, each Party reserves the right to bring an action to enforce this Settlement Agreement or the Agreed Final Judgment, or to assert a claim for breach of this Settlement Agreement or the Agreed Final Judgment.
- (r) **Counterpart Originals.** This Settlement Agreement may be executed in multiple counterpart originals each of equal dignity.
- (s) **Effective Date.** This Settlement Agreement becomes effective on November 19, 2020, upon the execution of all of the Parties.
- (t) **Exhibits.** The following Exhibits are incorporated in this Settlement Agreement for all purposes:
- (i) Exhibit "A" - "Agreed Final Judgment";
 - (ii) Exhibit "B" - October 31, 2017, Pfeiffer Survey of the Caldarola Property depicting the location of the "No Livestock Zone"; and
 - (iii) Exhibit "C" - Metes and Bounds Description and Surveyed Plat of .006 acres prepared by Pape Dawson Engineering, Inc., dated September 11, 2020.



- (u) Easement(s). The term Easement or Easements, as used herein, means those two Sanitary Control Easements and the Maintenance Easement, as amended, found by the Court to be owned by the City and more particularly described in the Agreed Final Judgment attached hereto as Exhibit "A".

Executed in multiple counterparts, each to be considered an original, to be effective upon execution by all Parties:

CITY OF FAIR OAKS RANCH, TEXAS:

By: Garry Manitzas
Garry Manitzas, Mayor
City of Fair Oaks Ranch, Texas

Attest: Christina Picioccio
Christina Picioccio, Secretary
City of Fair Oaks Ranch, Texas

VINCENT CALDAROLA AND NANCY CALDAROLA:

Vincent A. Caldarola
Vincent A. Caldarola

Nancy Caldarola
Nancy Caldarola



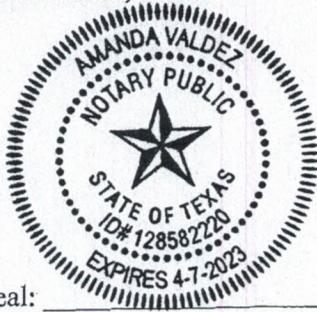
ACKNOWLEDGMENT

STATE OF TEXAS

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§
§

COUNTY OF KENDALL

This Settlement Agreement was acknowledged before me on this 19th day of November, 2020, by Garry Manitzas, Mayor, City of Fair Oaks Ranch, Texas, acting on behalf of the City of Fair Oaks Ranch, Texas.



Notary Seal: _____

Amanda Valdez
Notary Public, State of Texas
Printed Name: Amanda Valdez
Notary No. 128582220
My Commission Expires: 4-7-23



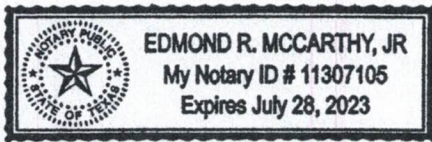
ACKNOWLEDGMENT

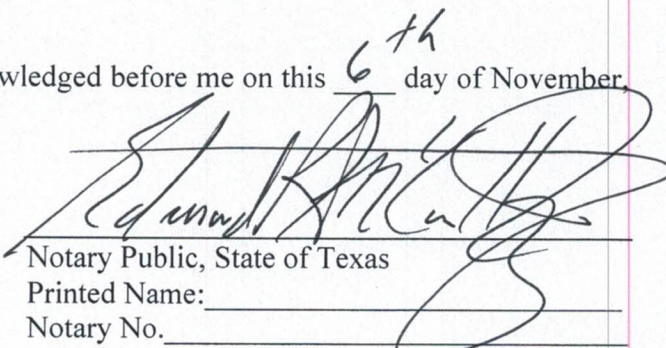
STATE OF TEXAS

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COUNTY OF KENDALL

This Settlement Agreement was acknowledged before me on this 6th day of November, 2020 by Dr. Vincent A. Caldarola.




Notary Public, State of Texas

Printed Name: _____

Notary No. _____

My Commission Expires: _____

Notary Seal: _____

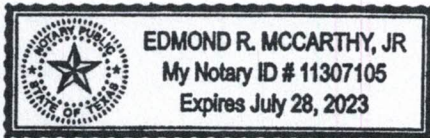
ACKNOWLEDGMENT

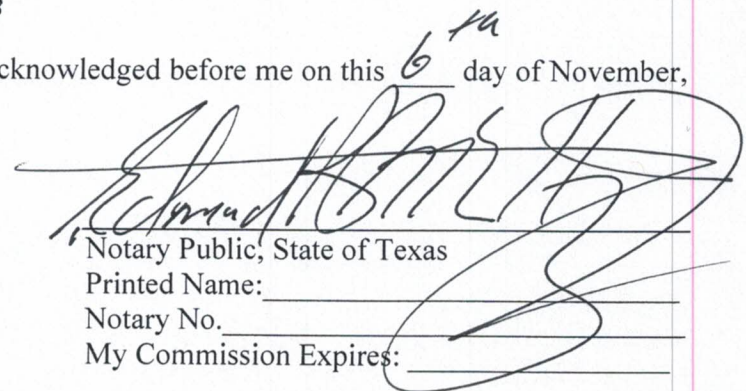
STATE OF TEXAS

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COUNTY OF KENDALL

This Settlement Agreement was acknowledged before me on this 6th day of November, 2020, by Nancy Caldarola.




Notary Public, State of Texas

Printed Name: _____

Notary No. _____

My Commission Expires: _____

Notary Seal: _____



EXHIBIT "A"
TO THE SETTLEMENT AGREEMENT

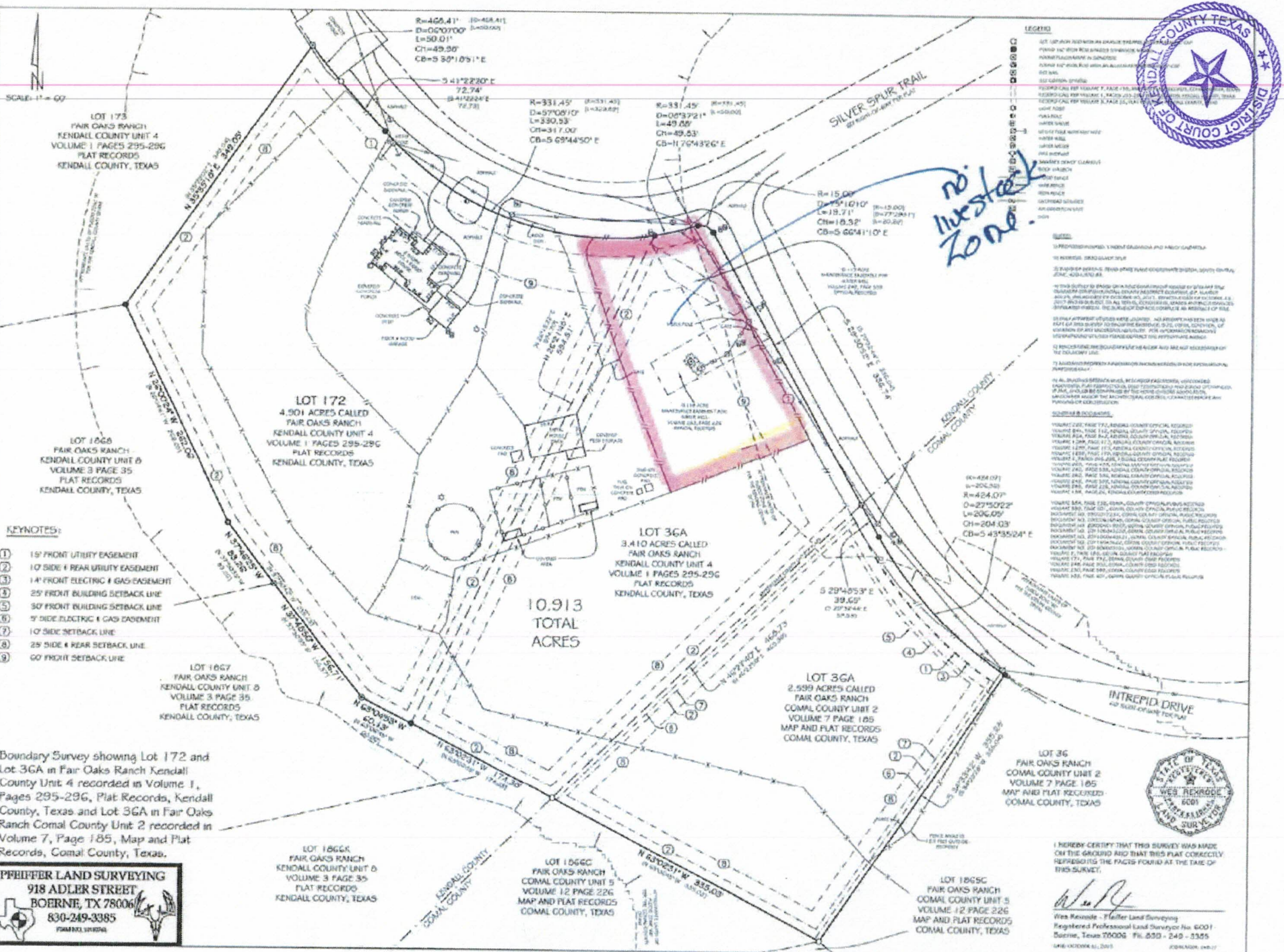
Agreed Final Judgment



EXHIBIT "B"
TO THE SETTLEMENT AGREEMENT

October 31, 2017, Pfeiffer Survey of the Caldarola Property





- LEGEND**
- 1 LOT 172 FAIR OAKS RANCH KENDALL COUNTY UNIT 4 VOLUME 1 PAGES 295-296 PLAT RECORDS KENDALL COUNTY, TEXAS
 - 2 LOT 36A FAIR OAKS RANCH KENDALL COUNTY UNIT 4 VOLUME 1 PAGES 295-296 PLAT RECORDS KENDALL COUNTY, TEXAS
 - 3 LOT 36G FAIR OAKS RANCH COMAL COUNTY UNIT 2 VOLUME 7 PAGE 185 MAP AND PLAT RECORDS COMAL COUNTY, TEXAS
 - 4 LOT 186G FAIR OAKS RANCH KENDALL COUNTY UNIT 5 VOLUME 12 PAGE 226 MAP AND PLAT RECORDS KENDALL COUNTY, TEXAS
 - 5 LOT 186G FAIR OAKS RANCH COMAL COUNTY UNIT 5 VOLUME 12 PAGE 226 MAP AND PLAT RECORDS COMAL COUNTY, TEXAS
 - 6 LOT 186G FAIR OAKS RANCH KENDALL COUNTY UNIT 5 VOLUME 12 PAGE 226 MAP AND PLAT RECORDS KENDALL COUNTY, TEXAS
 - 7 LOT 186G FAIR OAKS RANCH COMAL COUNTY UNIT 5 VOLUME 12 PAGE 226 MAP AND PLAT RECORDS COMAL COUNTY, TEXAS
 - 8 LOT 186G FAIR OAKS RANCH KENDALL COUNTY UNIT 5 VOLUME 12 PAGE 226 MAP AND PLAT RECORDS KENDALL COUNTY, TEXAS
 - 9 LOT 186G FAIR OAKS RANCH COMAL COUNTY UNIT 5 VOLUME 12 PAGE 226 MAP AND PLAT RECORDS COMAL COUNTY, TEXAS
- NOTES**
1. THIS SURVEY WAS MADE FOR THE PURPOSE OF DIVIDING THE LAND DESCRIBED INTO LOTS AND SUBDIVISIONS.
 2. THE SURVEY WAS MADE BY MEASURING THE DISTANCES AND ANGLES AND BY THE USE OF THE FOLLOWING DATA:
 3. THE SURVEY WAS MADE BY MEASURING THE DISTANCES AND ANGLES AND BY THE USE OF THE FOLLOWING DATA:
 4. THE SURVEY WAS MADE BY MEASURING THE DISTANCES AND ANGLES AND BY THE USE OF THE FOLLOWING DATA:
 5. THE SURVEY WAS MADE BY MEASURING THE DISTANCES AND ANGLES AND BY THE USE OF THE FOLLOWING DATA:
 6. THE SURVEY WAS MADE BY MEASURING THE DISTANCES AND ANGLES AND BY THE USE OF THE FOLLOWING DATA:
 7. THE SURVEY WAS MADE BY MEASURING THE DISTANCES AND ANGLES AND BY THE USE OF THE FOLLOWING DATA:
 8. THE SURVEY WAS MADE BY MEASURING THE DISTANCES AND ANGLES AND BY THE USE OF THE FOLLOWING DATA:
 9. THE SURVEY WAS MADE BY MEASURING THE DISTANCES AND ANGLES AND BY THE USE OF THE FOLLOWING DATA:

- KEYNOTES:**
- 1 15' FRONT UTILITY EASEMENT
 - 2 10' SIDE & REAR UTILITY EASEMENT
 - 3 14' FRONT ELECTRIC & GAS EASEMENT
 - 4 25' FRONT BUILDING SETBACK LINE
 - 5 30' FRONT BUILDING SETBACK LINE
 - 6 5' SIDE ELECTRIC & GAS EASEMENT
 - 7 10' SIDE SETBACK LINE
 - 8 25' SIDE & REAR SETBACK LINE
 - 9 60' FRONT SETBACK LINE

Boundary Survey showing Lot 172 and Lot 36A in Fair Oaks Ranch Kendall County Unit 4 recorded in Volume 1, Pages 295-296, Plat Records, Kendall County, Texas and Lot 36A in Fair Oaks Ranch Comal County Unit 2 recorded in Volume 7, Page 185, Map and Plat Records, Comal County, Texas.

Pfiffer Land Surveying
918 ADLER STREET
BOERNE, TX 78006
830-249-3385

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND THAT THIS PLAT CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THIS SURVEY.

W. R. Pfiffer
Wes R. Pfiffer - Pfiffer Land Surveying
Registered Professional Land Surveyor No. 6001
Boerne, Texas 78006 Ph. 830-249-3385

EXHIBIT "C"
TO THE SETTLEMENT AGREEMENT

**Metes and Bounds Description with Survey
Plat of .006 acres prepared by Pape-Dawson
Engineering, Inc., dated September 11, 2020**





METES AND BOUNDS DESCRIPTION
FOR A WATER WELL EASEMENT
WELL K-3

A 0.006 of an acre, or 269 square feet more or less, easement located on Lot 36A, Fair Oaks Ranch Kendall County Unit 4 recorded in Volume 1, Page 295 in the Map in Plat Records of Kendall County, Texas, in the City of Fair Oaks Ranch, Kendall County, Texas. Said 0.006 of an acre easement being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00:

COMMENCING: At a found $\frac{1}{2}$ " iron rod on the south right-of-way line of Silver Spur Trail, a 60-foot right-of-way dedicated in Volume 1, Page 295 in said Map and Plat Records, at the northwest corner of said Lot 36A and the northeast corner of Lot 172 of said Fair Oaks Ranch Kendall County Unit 4, from which a found $\frac{1}{2}$ " iron rod on the south right-of-way line of said Silver Spur Trail and the north line of said Lot 36A bears northeasterly, along and non-tangent curve to the left, said curve having a radius of 331.45 feet, a central angle of $08^{\circ}40'21''$, a chord bearing and distance of $N 77^{\circ}23'55'' E$, 50.12 feet, for an arc length of 50.17 feet;

THENCE: $S 14^{\circ}04'22'' E$, departing the south right-of-way line of said Silver Spur Trail, over and across said Lot 36A, a distance of 139.00 feet to a wood fence corner, at the POINT OF BEGINNING of the herein described easement;

THENCE: Continuing over and across said Lot 36A, the following bearings and distances:

$N 46^{\circ}06'36'' E$, a distance of 11.99 feet to a wood fence corner;

$S 43^{\circ}53'24'' E$, a distance of 12.05 feet to a wood fence corner;

$S 40^{\circ}36'47'' E$, a distance of 10.98 feet to a post and rail fence corner;

$S 50^{\circ}28'57'' W$, a distance of 11.82 feet to a post and rail fence corner;

$N 41^{\circ}05'01'' W$, a distance of 10.01 feet to a wood fence corner;

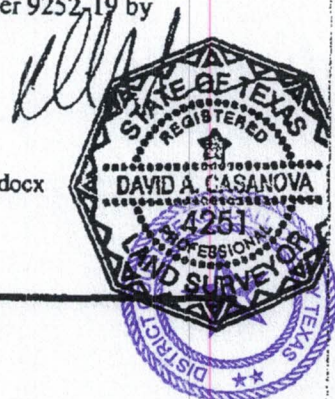
$N 44^{\circ}12'12'' W$, a distance of 12.11 feet to the POINT OF BEGINNING and containing 0.006 of an acre in the City of Fair Oaks Ranch, Kendall County, Texas. Said easement being described in conjunction with an exhibit prepared under job number 9252-19 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: September 11, 2020

JOB NO. 9252-19

DOC. ID. N:\Survey\19\19-9200\9252-19\Word\Well K-3\9252-19 ESWW 0.006 AC.docx

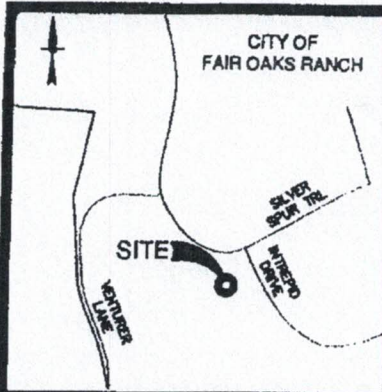


Transportation | Water Resources | Land Development | Surveying | Environmental

telephone: 210-375-9000 address: 2000 NW LOOP 410 SAN ANTONIO, TX 78213 website: PAPE-DAWSON.COM

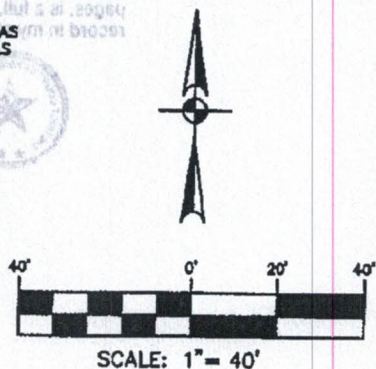
San Antonio | Austin | Houston | Fort Worth | Dallas Texas Engineering Firm #470 Texas Surveying Firm #10028500

EXHIBIT "A"

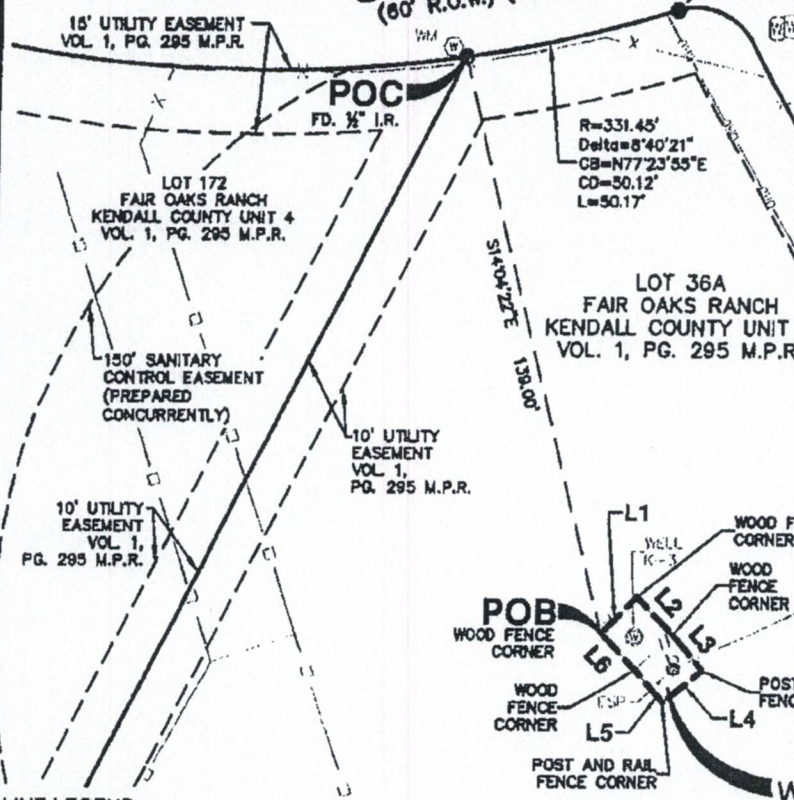


LEGEND:
 DR DEED RECORDS OF KENDALL COUNTY, TEXAS
 OPR OFFICIAL PUBLIC RECORDS OF KENDALL COUNTY, TEXAS
 MPR MAP AND PLAT RECORDS OF KENDALL COUNTY, TEXAS
 FD FOUND
 IR IRON ROD

NOTES:
 1. THIS EXHIBIT IS ISSUED IN CONJUNCTION WITH A METES AND BOUNDS DESCRIPTION PREPARED UNDER JOB NO. 9252-19 BY PAPE-DAWSON ENGINEERS, INC.
 2. THE BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE SOUTH CENTRAL ZONE FROM THE NORTH AMERICAN DATUM OF 1983 NAD 83 (NA2011) EPOCH 2010.00.
 3. THE LOCATION OF THE IMPROVEMENTS SHOWN HEREON IS BASED ON FIELD WORK CONDUCTED BY PAPE-DAWSON ENGINEERS, INC. DURING JANUARY, 2020.



SILVER SPUR TRL.
 (60' R.O.W.) (VOL. 1, PG. 295 M.P.R.)

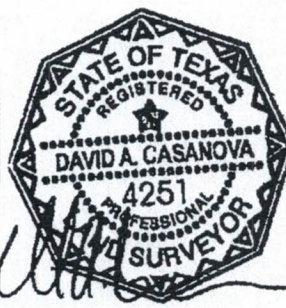


LINE TABLE		
LINE	BEARING	LENGTH
L1	N48°08'36"E	11.99'
L2	S43°53'24"E	12.05'
L3	S40°36'47"E	10.98'
L4	S50°28'57"W	11.82'
L5	N41°05'01"W	10.01'
L6	N44°12'12"W	12.11'

LINE LEGEND:
 —○— POST & RAIL FENCE
 —OHU— OVERHEAD UTILITY
 —X— BARBED WIRE FENCE

SYMBOL LEGEND:
 ESP ELECTRIC SERVICE POLE
 GATE GATE
 GUY GUY ANCHOR
 UP UTILITY POLE
 UPT UTILITY POLE W/TRANSFORMER
 WELL WELL
 WV WATER VALVE
 WM WATER METER

WATER WELL EASEMENT
0.006 OF AN ACRE
 (269 SQUARE FEET MORE OR LESS)



PAPE-DAWSON ENGINEERS

SAN ANTONIO | AUSTIN | HOUSTON | FORT WORTH | DALLAS
 2000 NW LOOP 410 | SAN ANTONIO, TX 78213 | 210.375.5060
 TYPE FIRM REGISTRATION 0479 | TRIPLE FIRM REGISTRATION #1008880

SEPT. 11, 2020

WELL K-3
 SHEET OF 1
 JOB No.: 9252-19

EXHIBIT "A"



VERIFIED TRUE AND CORRECT COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF KENDALL

The document to which this certificate is affixed, containing 25 pages, is a full, true and correct copy of the original on file and of record in my office.



ATTEST: November 20, 2020

SUSAN JACKSON
KENDALL COUNTY, TEXAS

BY Jacoby Higgins DEPUTY



Handwritten signature

County of Kendall, Texas

Telephone: (817) 341-1111

County of Kendall, Texas

County of Kendall, Texas

County of Kendall, Texas

County of Kendall, Texas

Telephone: (817) 341-1111

Telephone: (817) 341-1111

San Antonio, Texas 78201

1052 Avenida Paredes, Suite 200

San Antonio, Texas

San Antonio, Texas

San Antonio, Texas

San Antonio, Texas

CERTIFICATE OF AWARD