



Exhibit K  
(See Section 3.16 of Declaration)

STATE OF TEXAS  
COUNTY OF TRAVIS

**GRANT OF ACCESS AND RESTRICTIVE COVENANTS REGARDING  
MAINTENANCE AND MONITORING FOR CRITICAL FEATURES,  
WATER QUALITY FACILITIES, AND RELATED FACILITIES IN THE  
BRODIE SPRINGS II SUBDIVISION, PHASES ONE AND TWO, AUSTIN, TEXAS**

This agreement ("Agreement") is between the City of Austin, Texas ("City"), the Brodie Springs Homeowners Associations, Inc. ("Association"), and Larry Niemann, and Georgia Duke, Trustee, the undersigned owners of all lots in the Brodie Springs II Subdivision Phase One and the Brodie Springs II Subdivision Phase Two in Austin, Travis County, Texas ("Developer"). The legal title to the Subdivision is currently in the name of Georgia Duke, Trustee, as Trustee for Larry Niemann (who holds equitable title). The plats for the Brodie Springs II Subdivision Phase One and the Brodie Springs II Subdivision, Phase Two are recorded as Document Nos. 200400181 and 200400182, respectively, in the Official Plat Records of Travis County, Texas (the "Subdivision"). This Agreement relates to the maintenance and monitoring of critical environmental features, water quality facilities, and related facilities in the Subdivision and right of the City to access the features and facilities.

The Subdivision covers approximately 91.552 acres at the northeast quadrant of Brodie Lane and Squirrel Hollow Drive in southwest Austin. The Subdivision includes two branches of Slaughter Creek, two sinkholes (Kentucky Sink and Niemann Sink), a clay filled depression (Frog Sink) and one cave (Brodie Cave). Kentucky Sink is located adjacent to Brodie Lane. Frog Sink is located adjacent to Squirrel Hollow Drive on the south boundary of the Subdivision. Niemann Sink is located in the south fork of the creek. Brodie Cave is located in the north fork of the creek.

General Recitals

A. Definitions.

- (1) "Owner" means, individually, and the term "Owners" means, collectively, Developer, the current owner of legal title, and all future owners of the fee interest of any lot or other portion of the Subdivision (whether the fee interest is obtained through a purchase from Developer or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.
- (2) "Water Quality Facilities" means all Subdivision improvements relating to drainage, water quality, and critical environmental feature protection facilities that are generally described on **ATTACHMENT A**, attached hereto and incorporated by reference. The Water Quality Facilities include, without limitation, all swales, berms, required elevations, vegetative buffers, drainage conveyances, collection and treatment systems, pumps and irrigation systems, water quality/retention facilities, surface water irrigation facilities, and required fencing and protective berms related to Kentucky Sink, Frog Sink, and water quality/retention facilities.
- (3) "Association" means the Brodie Springs Homeowners Association Inc., which is the mandatory homeowner association for the Subdivision referred to under Section D of these General Recitals and Section 7 of the section of this Agreement entitled "Specific Agreements and Restrictions."

21

- (4) "Access" Tracts means Lot 21, Block A and Lot 18, Block B of Brodie Springs II Subdivision Phase One and Lot 33, Block E of Brodie Springs II Subdivision Phase Two.
- B. In consideration for the City allowing Owner and Association to own and maintain the Water Quality Facilities rather than requiring dedication of the Water Quality Facilities to the City, Owner, and Association have agreed to place restrictions on the Subdivision to help ensure that critical environmental features in the Subdivision will be protected and the water quality and drainage facilities, including berms, swales, drainage conveyances, water quality/retention ponds, vegetative buffers, fencing, pumps, and irrigation systems for the surface water runoff will be maintained;
- C. Owner and Association have additionally agreed to grant access and monitoring rights to the City, the Barton Springs Edwards Aquifer Conservation District, the Texas Cave Management Association, and the Save Barton Creek Association to help assure that the Water Quality Facilities function in accordance with the construction plans for the Subdivision as approved by the City;
- D. Developer has agreed to duly form under Texas laws a mandatory membership homeowners association covering all lots in the Subdivision. The Association must be filed with the Secretary of State and the Declaration creating the Association filed of record before subdivision construction may begin; and
- E. The Declaration must grant the Association regular and special assessment powers and fining powers to: (1) require the Owners to pay for, among other normal obligations of a homeowners association, the maintenance obligations for the Water Quality Facilities, with a lien on all Lots to secure payment of the assessments; (2) require the Owners to comply with any mandatory provisions of the Declaration relating to the Environmental Management Plan and Integrated Pest Management which are part of the Declaration. Under the Declaration, the Association shall perform the following activities, including without limitation, the duty to: (1) monitor, maintain, and repair, as designed, all berms, drainage swales, and drainage lines; (2) construct additional berms and swales, if necessary, to prevent any developed water from the Subdivision from entering Kentucky Sink or Frog Sink; (3) monitor, maintain, and repair vegetation and grades, as designed, of roadside swales draining to ponds; and (4) monitor, maintain, and repair, as designed, all vegetative filter strips.

NOW, THEREFORE, it is declared that the Subdivision is subject to the following covenants, conditions and restrictions, which run with the Subdivision and will be binding upon all parties having right, title, or interest in or to such portion of the Subdivision, or any part, and upon their heirs, successors, and assigns and inures to the benefit of each Owner. Each contract, deed or conveyance of any kind conveying all or part of the Subdivision must conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether the same are set out in full or by reference in said contract, deed, or conveyance.

#### Specific Agreements and Restrictions

1. Recitals Incorporated. The above recitals, including the definitions, are incorporated herein for all purposes.
2. Water Quality Facilities Operating Permit. Developer and Association shall obtain and cause to be maintained at all times an Operating Permit from the City for all water quality ponds in the Subdivision, which are the same operating permits and same types of requirements for water quality ponds as required for commercial property within the Barton Springs Zone in the City.
3. Access Granted. Developer, Owner, or Association, as applicable, grants to the City, the Texas Cave Management Association ("TCMA"), the Barton Springs Edwards Aquifer Conservation District ("District"), and the Save Barton Creek Association ("SBC"), a non-exclusive perpetual right of access on, over, across, and under the Access Tracts to inspect and monitor the Water Quality Facilities. Developer, Owner, or Association, as applicable, further grants unto the City a non-exclusive perpetual right of access on, over, across, and under the Access Tracts to perform work under Section 6 of this Agreement.

Kentucky Sink and Frog Sink will be fully fenced along the CEF setback lines as shown on the Subdivision plats and on **ATTACHMENT B** hereto with a six-foot wrought iron fence constructed by the developer and maintained by the Association. The risers in the fence and gate will be on four-inch centers. The bottom of the risers will be no higher than 4 inches above the ground. The top of the risers will extend above the topmost horizontal structural element of the fence at least 4 inches in order to minimize the possibility of persons climbing over it. The entrance to Brodie Cave, shown on **ATTACHMENT C** hereto, will be protected with a heavy grate, installed by the Developer and maintained by the Association, to prevent small children from gaining access. If an entrance to Niemann Sink is discovered in the future, the Association will install and maintain a heavy grate to protect the entrance. Access to these features will require notice as specified in this Agreement. As a condition for granting these access rights, TCMA, the District, and SBC must individually reimburse the Association for any substantial damage each one individually may negligently cause to the Subdivision.

Developer, officers of the Association, and the Association's management company will maintain current keys to all Access Tracts that have locks. The key will be provided to the City, TCMA, the District, or SBC within one hour of receipt of a request.

4. Monitor and Inspect. Through the access rights granted in Section 3 of this Agreement, the City, TCMA, District, and SBC may access the Access Tracts to monitor water quality and inspect the Water Quality Facilities. There is no restriction on the type of monitoring permitted, provided the monitoring does not interfere with reasonable use of the Subdivision by Owners or Association.
5. Notice by City, TCMA, District, and SBC. City, TCMA, District, and SBC shall give the Owner or the Association seven-day notice of intent to enter the Access Tracts to monitor or inspect; however, only one hour's advance notice is required for a rain event. Rain event means any time rain results in an accumulation of water in any water quality/retention pond on the Property.
6. Maintenance. The Association shall maintain the Water Quality Facilities and perform all other obligations in accordance with: (1) the requirements in the City's Environmental Criteria Manual and Drainage Criteria Manual, as amended, (2) the Operating Plan attached and incorporated as **ATTACHMENT D**, and (3) a technical manual, which must be approved by the City and added hereto as an amendment before acceptance of the Subdivision. The Association must levy assessments against each Owner to discharge the maintenance obligations in this Agreement. If the Association fails to maintain the Water Quality Facilities as required by this Agreement, after notice and a reasonable opportunity to perform, the City may cause the necessary work to be done and recover all its costs from the Association. The Association must reimburse the City for its costs no later than 14 days after receipt of an invoice from the City. The City must provide 30 days notice to the Association prior to undertaking required maintenance. This 30-day period may overlap the time granted to the Association to perform said maintenance.
7. Association. Before commencing construction of the Subdivision, Developer shall in accordance with Texas law: (1) form a mandatory membership homeowners association, and (2) file of record in the Official Public Records of Travis County, Texas a Declaration of Covenants, Conditions, and Restrictions for the Subdivision (the "Declaration"). The portions of the Declaration regarding the Water Quality Facilities, including maintenance and assessments for maintenance, must be approved by the City Attorney before recordation.
8. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Agreement entitles the Association, Developer or any Owner to cancel, rescind or otherwise terminate this Agreement. These limitations do not affect in any manner any other rights or remedies which the Association, Developer, or any Owner may have hereunder by reason of any breach of this Agreement.
9. Excusable Delays. Whenever performance is required under this Agreement, the Association, Developer, or Owners shall use due diligence to perform and take all reasonable and necessary measures in good faith to perform. Provided, however, if completion of performance is delayed at any time by reasons of: acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or

21

material, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Association, Developer, or Owner then the time for performance specified will be extended by the amount of delay actually so caused. Financial inability, imprudent management or negligence are not excusable delays.

10. General Provisions.

- A. Inurement. Upon expiration of the warranty period, which begins on City's acceptance of all the Subdivision improvements required by the Construction Plans; recordation of the Declaration in the Travis County Official Public Records; and incorporation of the Association of all of Developer's obligations under this Agreement cease and Association expressly assumes all obligations under this Agreement.
- B. Duration. Unless terminated in accordance with Paragraph 10(K) below, this Agreement remains in effect in perpetuity.
- C. Non-Merger. This Agreement is not subject to the doctrine of merger, even though the underlying fee ownership of the Subdivision, or any parts thereof, is vested in one party or entity.
- D. Severability. The provisions of this Agreement must be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.
- E. Entire Agreement. This Agreement and the attachments hereto contain all the representations and the entire agreement between the parties to this Agreement with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are superseded in total by this Agreement. The provisions of this Agreement must be construed as a whole according to their common meaning and not strictly for or against any Owner.
- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and must be disregarded in the construction and interpretation of this Agreement.
- G. Governing Law; Place of Performance. This Agreement and all rights and obligations created hereby must be governed by the laws of the State of Texas. This Agreement is performable only in Travis County, Texas, where the Subdivision is located.
- H. Notices. Any notice to the Association, Developer, Owner of legal title, the City, TCMA, the District, or SBC, must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Agreement will be deemed given, received, made, or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Addresses for notice are listed herein and may be changed by written notice to all parties.

Notice to Developer:

Larry Niemann  
1122 Colorado Street, Suite 313  
Austin, Texas 78701  
Telephone: (512) 474-6901  
Fax: (512) 474-0717

Georgia Duke, Trustee  
823 Congress, Suite 1400  
Austin, Texas 78701

157

Notice to City: Director of Watershed Protection and  
Development Review Department  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-1088

Notice to TCMA: Texas Cave Management Association  
P.O. Box 202853  
Austin, Texas 78720-2853

Notice to the District: Barton Springs/Edwards Aquifer Conservation District  
1124 Regal Row  
Austin, Texas 78748

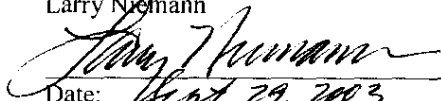
Notice to SBCA: Save Barton Creek Association  
P.O. Box 5923  
Austin, Texas 78763

- I. Negation of Partnership. None of the terms or provisions of this Agreement will be deemed to create a partnership between or among the Developer, the Association, Owner of legal title, the City, TCMA, the District, or SBC in their respective businesses or otherwise; nor does it cause them to be considered joint venturers or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character violates or attempt to violate this Agreement, it is lawful for the City of Austin, its successors and assigns, to prosecute proceedings at law, or in equity, against said person, or entity violating or attempting to violate such covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Agreement by the City of Austin, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.
- K. Modification and Amendment. This Agreement may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Records of Travis County, Texas, executed, acknowledged and approved by (a) the Director of the Watershed Protection and Development Review Department of the City of Austin; and (b) the Developer before the homeowners association is formed, or a majority of the Board of Directors of the Association at the time of such modifications, amendment, or termination.
- L. Consent of Lienholder. The lienholder of the Subdivision has consented to this Agreement in ATTACHMENT E hereto.

Executed to be effective this 29 day of September, 2003.

**DEVELOPER:**

Larry Niemann

  
Date: Sept. 29, 2003

**OWNER OF LEGAL TITLE:**

Georgia Duke, Trustee

Georgia Duke, Trustee  
Date: 10/7/03

**ASSOCIATION:**

Brodie Springs Homeowners Association, Inc.

By: Larry Neimann  
President  
Date: October 8, 2003

Attachments:

- A - Description of Water Quality Facilities
- B - Map of Kentucky Sink and Frog Sink location
- C - Map of Brodie Cave and Niemann Sink location
- D - Water Quality Facilities Operating Plan
- E - Lienholder Consent

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 7th day of Oct., 2003, by GEORGIA DUKE, TRUSTEE, on behalf of Georgia Duke, Trustee.

Jessamine M. West  
Notary Public Signature



THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 8th day of October, 2003, by Larry Neimann, on behalf of Larry Neimann.

Margaret Ann Young  
Notary Public Signature

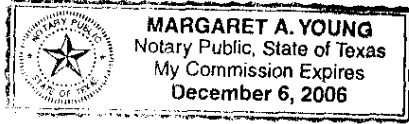


21

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 8<sup>th</sup> day of October, 2003, by Mary Heimann on behalf of Brodie Springs Homeowners Association, Inc.



Margaret A. Young  
Notary Public Signature

ACCEPTED: CITY OF AUSTIN

By: Tammie H. Williamson  
Name: TAMMIE H. WILLIAMSON  
Title: ACTING ASSISTANT DIRECTOR

APPROVED AS TO FORM:

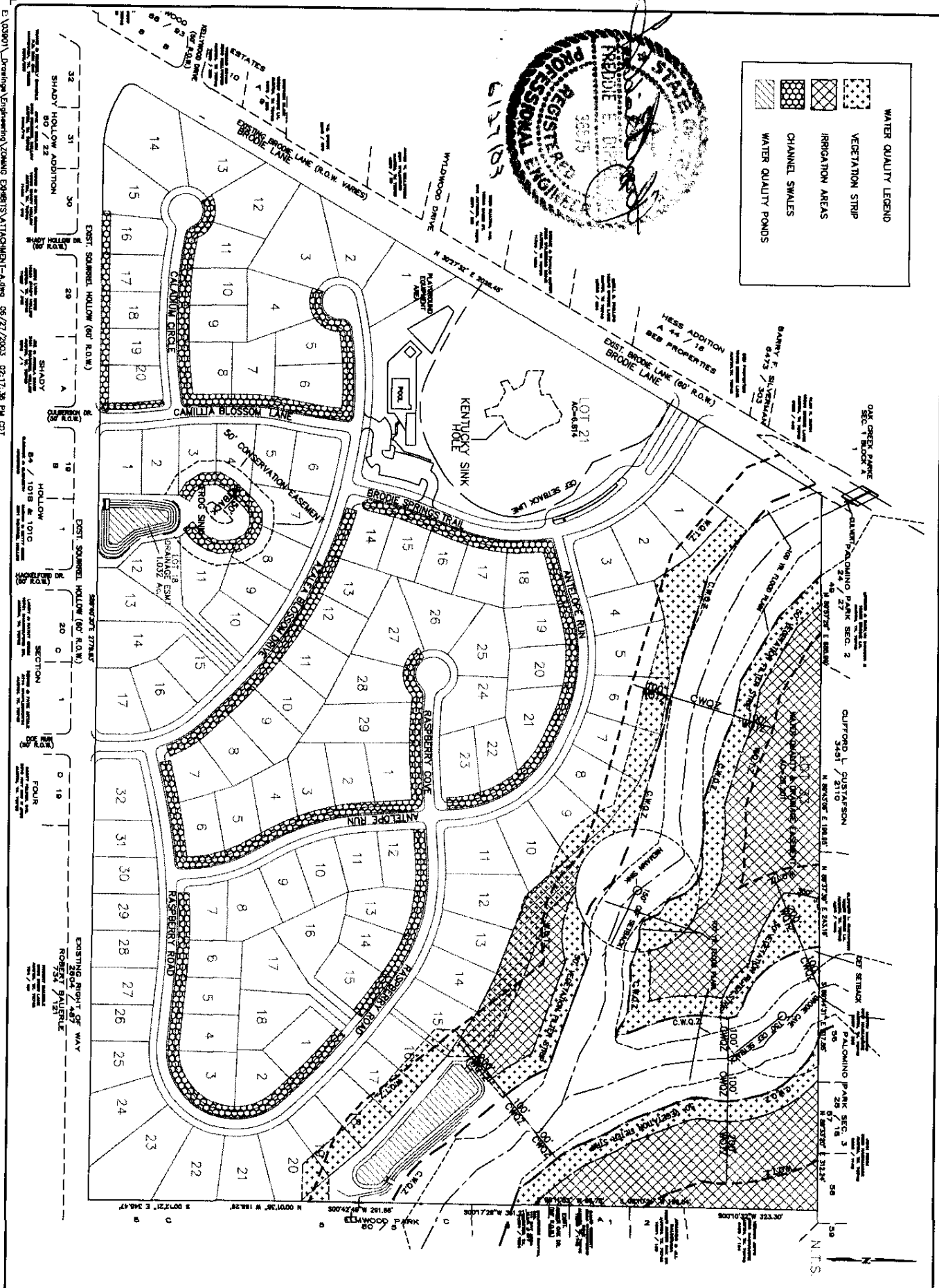
By: Deborah Thomas

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**WATER QUALITY LEGEND**

	VEGETATION STRIP
	IRRIGATION AREAS
	CHANNEL SWALES
	WATER QUALITY PONDS



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DATE	BY	REVISION

ATMG  
PROFESSIONAL  
SHEET  
1 OF 1

**BRODIE SPRINGS II  
WATER QUALITY CONTROL  
ATTACHMENT A**



**Cunningham Allen**  
 Engineers • Surveyors  
 3103 Elm Creek Road, Suite 202  
 Austin, Texas 78748-6819  
 Tel: (512) 387-2846  
 Fax: (512) 387-2872





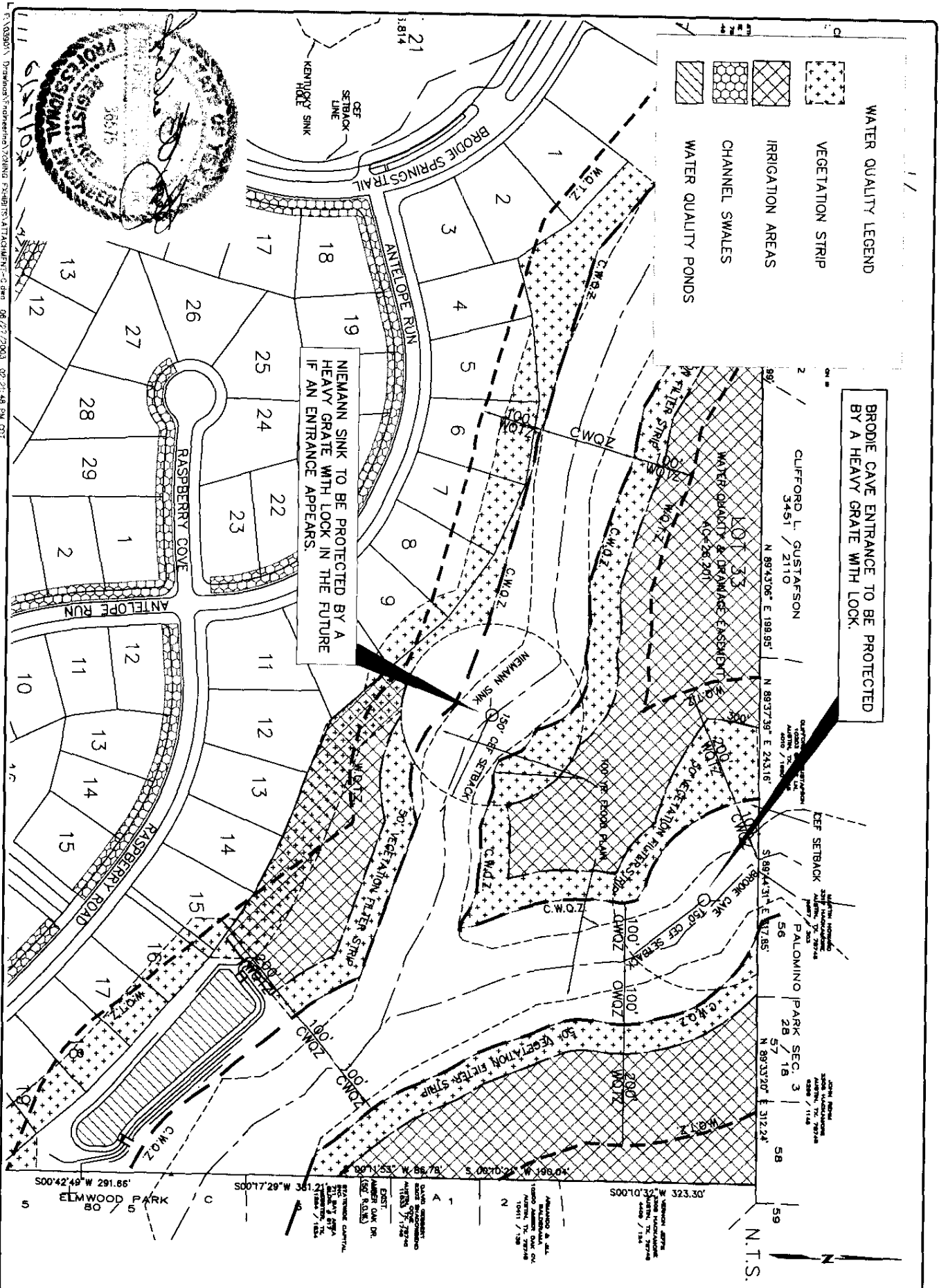
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WATER QUALITY LEGEND

	VEGETATION STRIP
	IRRIGATION AREAS
	CHANNEL SWALES
	WATER QUALITY PONDS

BRODIE CAVE ENTRANCE TO BE PROTECTED BY A HEAVY GRATE WITH LOCK.

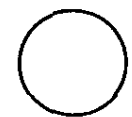
NIEMANN SINK TO BE PROTECTED BY A HEAVY GRATE WITH LOCK IN THE FUTURE IF AN ENTRANCE APPEARS.



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DATE	DESCRIPTION
08/27/03	ATTACHMENT C
08/27/03	SHEET
08/27/03	1 OF 1

**BRODIE SPRINGS II  
WATER QUALITY CONTROL  
ATTACHMENT C**



3103 Brodie Road, Suite 202  
 Austin, Texas 78746-6819  
 Tel: (512) 327-2946  
 Fax: (512) 327-2971

COUNTESS & ASSOCIATES  
 ENGINEERS & SURVEYORS

**BRODIE SPRINGS II SUBDIVISION  
WATER QUALITY AND DRAINAGE FACILITIES OPERATING PLAN**

INTRODUCTION

This is a Water Quality and Drainage Facilities Operating Plan ("Plan") for the water quality and drainage facilities located in Brodie Springs II Subdivision Phase One and the Brodie Springs II Subdivision Phase Two in Austin, Travis County, Texas (the "Subdivision"). The Plan is required by and attached to that certain restrictive covenant entitled "Grant of Access and Restrictive Covenants regarding Maintenance and Monitoring for Critical Water Quality Features, Water Quality Facilities, and Related Facilities in the Brodie Springs II Subdivision, Phases One and Two, Austin, Texas" (the "Restrictive Covenant").

The Subdivision covers approximately 91.552 acres at the northeast quadrant of Brodie Lane and Squirrel Hollow Drive in southwest Austin. The Subdivision includes two branches of Slaughter Creek, two sinkholes (Kentucky Sink and Niemann Sink), a clay filled depression (Frog Sink) and one cave (Brodie Cave). Kentucky Sink is located adjacent to Brodie Lane. Frog Sink is located adjacent to Squirrel Hollow Drive on the south boundary of the Subdivision. Niemann Sink is located in the south fork of the creek. Brodie Cave is located in the north fork of the creek.

The purpose of this plan is to generally describe elements of an overall plan to achieve water quality in the Subdivision and to assure maintenance and repair of all elements of the overall water quality and drainage plan, including drainage conveyances, swales, berms, overland flow, vegetative filter strips, water quality/retention ponds, and a pumping and irrigation system, (collectively called the "Water Quality Facilities").

The Water Quality Facilities required by the City of Austin exist throughout the Subdivision. The Brodie Springs Homeowners Association, Inc. (the "Association") must maintain the Water Quality Facilities.

A. DESCRIPTION OF PLAN ELEMENTS

1. Maintenance and Monitoring Requirements. Periodic requirements for maintenance and monitoring of the Water Quality Facilities for the Subdivision are contained in Section B of this Plan.
2. Technical Manual. A technical manual for operating and maintaining the Water Quality Facilities will be prepared by the Developer's engineers and approved by the City of Austin prior to acceptance of the Subdivision by City. The technical manuals must be filed of record in the Official Public Records of Travis County, Texas and kept on file at the Association's professional management company's office.
3. Independent Third Party Inspection. An independent professional, qualified to provide the documentation and testing required in Section C, shall be retained by the Association to perform annual inspection, testing, and evaluation of the pumping and irrigation system.
4. Environmental Management Plan and Integrated Pest Management Plan. An Integrated Pest Management Plan is on file with the City in file numbers C8-00-2135.1B and C8-00-2135.2B, and attached as Exhibit J to the Declaration of Covenants and Restrictions for the Brodie Springs II Subdivision (the "Declaration"). The Declaration also contains a comprehensive Environmental Management Plan (see Exhibit I of the Declaration).
5. Homeowner Education. State statute (Section 207.003 of the Texas Property Code) requires that each new homeowner be furnished with a copy of the Declaration which has been recorded and which is incorporated into each homeowner's chain of title. Exhibit I of the Declaration provides for annual seminars to which all homeowners are invited and which are sponsored by the Association. The subjects covered in that education will include, among other subjects, responsibilities under the Agreement to which this Plan is attached, use of pesticides and fertilizers, silt control, vegetation and oak wilt.

6. Subdivision Construction Plans. The Construction Plans for the Subdivision will be prepared by professional engineers for review and approval by the City of Austin (the "Construction Plans"). The Construction Plans include streets, water/wastewater plans, and water quality and drainage facility plans for the Subdivision. The Association must retain a copy of the Construction Plans since they are an integral part of the drainage and water quality program for the Subdivision. The Construction Plans for the amenities areas immediately west of Kentucky Sink must comply with the drainage plan approved by the City as part of the preliminary plan for the Subdivision, subject to a detailed site plan to be prepared by professional engineers and approved by the City. The improvements in the amenities area shall not vary substantially from the map.

#### B. PERIODIC REQUIREMENTS FOR MAINTENANCE AND MONITORING BY THE ASSOCIATION

The following are general requirements for maintenance and monitoring of the Water Quality Facilities. A technical manual for detailed maintenance operations will be prepared by engineers and approved by the City of Austin.

1. All ponds, pumps, swales, berms, vegetative filter strips, sinkholes and cave entry points, and other important aspects of the overall Water Quality and Drainage Facilities must be inspected quarterly by the Association.
2. At least once a year (during or immediately following wet weather) the Water Quality and Drainage Facilities must be inspected by a third party professional at the Association's expense as described in Section C below.
3. During each inspection, all erosion areas must be identified and repaired or revegetated promptly.
4. Grass areas in and around the ponds must be mowed and the debris removed as needed to limit the vegetation height to 18 inches.
5. Debris and litter accumulated in the Water Quality and Drainage Facilities must be removed after each major rainfall event but no less than quarterly.
6. Sediment from inlet structure/sediment forebay and from around the sump area of all conveyances and ponds must be removed when the sediment depth reaches 3 inches.
7. Draw down time for the water quality volume is designed to begin 12 hours after the event. If water remains in the ponds longer than 72 hours after the last rainfall, repairs to the inoperative portions of the Water Quality and Drainage Facilities must occur immediately.
8. With each inspection, any damage to or malfunction of the structural elements of the Water Quality Facilities (pipes, concrete drainage structures, retaining walls, pumps, etc.) must be identified and repaired immediately.
9. Accumulated silt must be properly disposed of in accordance with City of Austin requirements. Refer to Environmental Criteria Manual, currently Section 1.2.2.6(f)(4).
10. The irrigation system must be inspected and tested (or observed while in operation) to assure proper operation, at least once annually in accordance with Section C of this Plan.
11. If the City notifies the Association that there is a grade or elevation discrepancy from the grades and elevations established in the Construction Plans, the Association will cause the ponds and drainage conveyances to be corrected to comply with Construction Plan requirements. All silt removed from the ponds or drainage conveyances must be disposed of as set out in Section B.9. above.

### C. INDEPENDENT THIRD PARTY INSPECTION

Once a year, an independent third party qualified to perform these tests and provide these reports shall be engaged by the Association to perform an annual inspection and test of the operation of the irrigation system. This test must be scheduled to be performed within 48 hours of a significant rainfall event to utilize rainfall runoff as test water.

Each irrigation system inspection and test must include at a minimum the following:

1. Alarm system test, including alarm light and horn.
2. Pump cycle test to insure pumps alternate with the start-stop cycles.
3. The pump cycle times function with the pump timer.
4. The irrigation field zones alternate with the pump timer.
5. The irrigation system is dosing at the required pressure heads.
6. The "well" chamber for the pumps is free of vegetation, trash and debris.
7. The "low-level pump off" switch is working.
8. The "pump-on" switch is working.
9. The distribution and irrigation piping is intact, not broken, and where appropriate is covered with soil having adequate vegetation.
10. Clean-outs in the distribution system and in each irrigation line are exposed and accessible for testing.
11. All automatic and manual switches in the control panel are operational.

A report of each inspection, test, and results must be submitted to the City of Austin and the Association. Any operational deficiencies must be noted and included in the report together with recommended remediation necessary to bring the Water Quality Facilities into permit compliance regarding system operations.

### D. GOVERNMENT INSPECTION

1. Inspection and advance notice. The City of Austin and the Barton Springs/Edward's Aquifer Conservation District have the right to inspect the Water Quality and Drainage Facilities and critical environmental features upon notice as required in paragraph 5 of the section entitled "Specific Agreements and Restrictions" of the Restrictive Covenant.
2. Reports and remediation. The City of Austin may notify the Owner and/or Association of any malfunction of the Water Quality Facilities or any need for repair or maintenance. Notification from the City shall be in writing addressed to the Owner and/or the Association, outlining what problems need to be remedied. The Association shall have 45 days within which to begin to make necessary repairs or modifications or corrections to remedy the problems. Commencement of such repair must be within a reasonable period of time after notice, considering weather and the need to get bids (if any). In no event shall commencement of such work commence later than 45 days from the time of notice from the City. The Developer and/or the Association shall communicate to the City of Austin in writing its plan of action for remediation prior to commencement of the work.
3. Water testing. The City will use results from water testing only as indicators that something may be malfunctioning in the Water Quality Facilities, as designed, for the Subdivision. If the City for good reason believes that the water testing results are inconsistent with the projections of the originally designed Construction Plans approved by the City, the City can: (1) require the Association to notify its members of actions recommended by the City that individual homeowners should take to improve water quality, (2) require immediate clean out of the pond, if needed; (3) require immediate repair of any part of system that is not functioning as designed; and (4) require the Association to report back to the City what remedial actions were taken.

### E. DOCUMENTATION

1. Permanent documents. The approved Construction Plans for the Subdivision and the engineering reports for the Subdivision that are submitted to the City during the approval process must be permanent records of the Association, along with Declaration and the Restrictive Covenant (including this Plan). All of the foregoing

documents contain important aspects of the overall water quality plan for the Subdivision. The Restrictive Covenant (to which this Plan is attached) are recorded in the Travis County Official Public Records. The construction drawings and engineering reports are retained by both the City and by the Developer and/or the Association. The City's records are retained by the Watershed Protection and Development Review Department or successor department of the City of Austin. The Association's records shall be kept in the possession of the Association's professional management company and/or officers of the Association.

2. Permanent records. Records of the Association's inspection and actions and third-party professional inspections shall be kept by the Association for a period of at least three years, along with any governmental correspondence relating to the water quality.
3. Points of Contact. The point of contact for the City of Austin is the Director of the Watershed Protection and Development Review Department or his successor or designee. The contact for the Developer is Larry Niemann or his successors. The contact for the Association shall be the Association's management company. When the Association is created, a certificate of management will be recorded in the Travis County Official Public Records, indicating the name, address and phone number and contact person within the professional management company managing the Association. The certificate of management may change from time to time as management companies for the Association change.

STATE OF TEXAS  
COUNTY OF TRAVIS

LIENHOLDER CONSENT TO GRANT OF RESTRICTIVE COVENANTS

WHEREAS, Georgia A. Duke, Trustee, is the legal title Owner ("Owner"), of the property described below (the "Property") and Larry Niemann is the equitable owner of such Property for whom Georgia A. Duke holds legal title as trustee; and

WHEREAS, Georgia A. Duke holds legal title pursuant to a Development Agreement with Travis County in which title is held by an approved third-party trustee until letters of credit are posted for infrastructure improvements or such infrastructure improvements are actually constructed; and

WHEREAS, the Property referred to above is situated in Travis County, Texas, and described as follows:

All lots in the Brodie Springs II Subdivision, Phase One and in Brodie Springs II Subdivision, Phase One and Phase Two, according to the Plats thereof recorded respectively in Document Nos. \_\_\_\_\_ and \_\_\_\_\_, respectively, Plat Records of Travis County, Texas.

(The above property is a total resubdivision of what formerly was Brodie Springs Subdivision, Sections 1, 2, and 3, according to the Plats thereof recorded in Volume 95, Page 33, Volume 95, Page 36, and Volume 95, Page 39, Plat Records of Travis County, Texas.)

WHEREAS, Interfirst Bank Austin, N.A., ("Lienholder") succeeded by Bank of America, holds a lien against the Property under the following described document:

Deed of Trust dated June 18, 1986, from Larry Niemann to Dan Ellinor, Trustee, securing the payment of one promissory note of even date in the original principal amount of \$5,322,700.00, payable to Interfirst Bank Austin, N.A. of record in Volume 9748, Page 392, of the Real Property Records of Travis County, Texas; and

WHEREAS, the above note to the bank has been paid in full, but the deed of trust remains as collateral for certain letters of credit posted with the City of Austin and/or Travis County in connection with the above-described Property. Georgia A. Duke, Trustee for Larry Niemann, and Larry Niemann, individually, have executed a document entitled "Grant of Access and Restrictive Covenants Regarding Maintenance and Monitoring for Critical Environmental Features, Water Quality Facilities, and Related Facilities in the Brodie Springs II Subdivision, Phases One and Two, Austin, Texas" referred to hereafter as the "Restrictive Covenants" against and running with the Property.

Agreement

In consideration of \$10, and other good and valuable consideration, the receipt of which is acknowledged, the undersigned Lienholder agrees as follows:

1. Bank of America consents to the grant of Restrictive Covenants against and running with the Property to the City which is executed contemporaneously herewith.
2. Lienholder subordinates all of its liens on the Property to the rights and interests of the City, its successors and assigns, and any foreclosure of its liens will not extinguish City's rights and interests under the Restrictive Covenants.
3. Lienholder affirms that the undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

Lienholder Consent to Grant of Restrictive Covenants

WHEREAS, Georgia A. Duke, Trustee, is the legal title Owner ("Owner"), of the property described below (the "Property") and Larry Niemann is the equitable owner of such Property for whom Georgia A. Duke holds legal title as trustee; and

WHEREAS, Georgia A. Duke holds legal title pursuant to a Development Agreement with Travis County in which title is held by an approved third-party trustee until letters of credit are posted for infrastructure improvements or such infrastructure improvements are actually constructed; and

WHEREAS, the Property referred to above is situated in Travis County, Texas, and described as follows:

All lots in the Brodie Springs II Subdivision, Phase One and in Brodie Springs II Subdivision, Phase One and Phase Two, according to the Plats thereof recorded respectively in Document Nos. \_\_\_\_\_ and \_\_\_\_\_, respectively, Plat Records of Travis County, Texas.

(The above property is a total resubdivision of what formerly was Brodie Springs Subdivision, Sections 1, 2, and 3, according to the Plats thereof recorded in Volume 95, Page 33, Volume 95, Page 36, and Volume 95, Page 39, Plat Records of Travis County, Texas.)

WHEREAS, Interfirst Bank Austin, N.A., ("Lienholder") succeeded by Bank of America, holds a lien against the Property under the following described document:

Deed of Trust dated June 18, 1986, from Larry Niemann to Dan Ellinor, Trustee, securing the payment of one promissory note of even date in the original principal amount of \$5,322,700.00, payable to Interfirst Bank Austin, N.A. of record in Volume 9748, Page 392, of the Real Property Records of Travis County, Texas; and

WHEREAS, the above note to the bank has been paid in full, but the deed of trust remains as collateral for certain letters of credit posted with the City of Austin and/or Travis County in connection with the above-described Property. Georgia A. Duke, Trustee for Larry Niemann, and Larry Niemann, individually, have executed a document entitled "Grant of Access and Restrictive Covenants Regarding Maintenance and Monitoring for Critical Environmental Features, Water Quality Facilities, and Related Facilities in the Brodie Springs II Subdivision, Phases One and Two, Austin, Texas" referred to hereafter as the "Restrictive Covenants" against and running with the Property.

Agreement

In consideration of \$10, and other good and valuable consideration, the receipt of which is acknowledged, the undersigned Lienholder agrees as follows:

1. Bank of America consents to the grant of Restrictive Covenants against and running with the Property to the City which is executed contemporaneously herewith.
2. Lienholder subordinates all of its liens on the Property to the rights and interests of the City, its successors and assigns, and any foreclosure of its liens will not extinguish City's rights and interests under the Restrictive Covenants.
3. Lienholder affirms that the undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

Executed on 10-8, 2003.

Bank of America

By: 

Name: TODD C. JORDAN

Title: VICE PRESIDENT



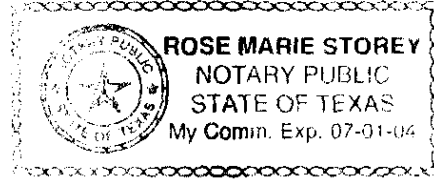
STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the Sunday of October, 2003, by Todd C. Jordan, on behalf of Lienholder Bank of America stated above.

Rose Marie Storey  
Notary Public Signature

AFTER RECORDING, RETURN TO:  
City of Austin  
Watershed Protection and Development Review Department  
P.O. Box 1088  
Austin, Texas 78767  
Project Name: Brodie Springs II Phase 1  
Attn: PAUL WATLORA (Project Manager)  
Case No. CA-03-0119.1A



Fileserver:larry:brodiespringsIIdecl-9-29-03

# FISCAL SURETY INTAKE MEMORANDUM

<u>Brook Springs 2.1</u>	<u>C8-D3-D119.1A</u>
Project Name/Address	File/Permit Number
<u>David Wahlgren</u>	<u>5-12-04</u>
Case Manager/Reviewer	Date Received
<u>Larry Niemann</u>	
Developer's Name	Contact Person/Telephone No.
<u>1122 Colorado St. Westgate Bldg Ste 313</u>	<u>78701</u>
Developer's Street Address	City/State/Zip Code
<u>Bank of America</u>	<u>4-26-05</u>
Financial Institution	Expiration Date
<u>3062981</u>	<u>Travis</u>
LOC/Bond/Receipt No.	County Jurisdiction

The developer has posted surety in the form of LOC for the specified improvements below:

	Internal	External
Water Infrastructure	\$ _____	\$ _____
Wastewater Infrastructure	\$ _____	\$ _____
Street Construction	\$ _____	\$ _____
Drainage Collection System	\$ _____	\$ _____
Sidewalks	\$ _____	\$ _____
Erosion Controls	\$ <u>25,141.00</u>	\$ _____
Restoration	\$ <u>82,042.00</u>	\$ _____
Detention Pond(s)	\$ <u>9357.20</u>	\$ _____
Water Quality Pond(s)	\$ <u>221,305.45</u>	\$ _____
Landscaping	\$ _____	\$ _____
Parkland	\$ _____	\$ _____
Transportation	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____

TOTAL \$ 423,479.65

Kim Ernest  
Approved By

Comments:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: MAY 3, 2004

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3062981

BENEFICIARY  
CITY OF AUSTIN  
505 BARTON SPRINGS ROAD, 4TH FLOOR  
AUSTIN, TX 78704  
ATTN: CAROL KAML

APPLICANT  
LARRY NIEMANN  
1122 COLORADO ST.  
WESTGAGE BLDG., SUITE 313  
AUSTIN, TX 78701

WATERSHED PROTECTION AND  
DEVELOPMENT REVIEW DEPT.

AMOUNT  
NOT EXCEEDING USD 423,479.65  
NOT EXCEEDING FOUR HUNDRED TWENTY  
THREE THOUSAND FOUR HUNDRED SEVENTY  
NINE AND 65/100'S US DOLLARS

EXPIRATION  
APRIL 26, 2005 AT OUR COUNTERS

WE HEREBY ISSUE THIS LETTER OF CREDIT ("CREDIT") AND AUTHORIZE YOU TO DRAW AT SIGHT DRAWN ON BANK OF AMERICA N.A., FOR THE ACCOUNT OF LARRY NIEMANN, THE ("CUSTOMER"), UP TO THE AGGREGATE AMOUNT OF FOUR HUNDRED TWENTY THREE THOUSAND FOUR HUNDRED SEVENTY NINE DOLLARS AND 65/100 (US\$423,479.65) (THE "STATED AMOUNT"), AVAILABLE BY YOUR DRAFT, ACCOMPANIED BY THE ORIGINAL OF THIS LETTER OF CREDIT AND BENEFICIARY'S STATEMENT SIGNED BY THE DIRECTOR OF THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT, CERTIFYING THAT THE FOLLOWING CONDITION EXISTS:

" A CONDITION OF DRAW EXISTS UNDER THE SUBDIVISION CONSTRUCTION AGREEMENT FOR THE BRODIE SPRINGS II PHASE ONE C8-030119.1A DATED APRIL 13, 2004 BY AND BETWEEN THE SUBDIVIDER AND THE CITY OF AUSTIN (THE "AGREEMENT"). CITY IS IN SUBSTANTIAL COMPLIANCE WITH THE TERMS OF SAID AGREEMENT AND HAS CALCULATED THE AMOUNT OF THIS DRAFT IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT."

DRAFTS MUST BE DRAWN AT SIGHT ON US AND PRESENTED ON OR BEFORE APRIL 26, 2005 BY THE CLOSE OF BUSINESS OF THE ISSUER OF THIS CREDIT AND MUST SPECIFY THE DATE AND NUMBER OF THIS CREDIT.

WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN AND PRESENTED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS CREDIT SHALL BE DULY HONORED.

PARTIAL DRAWS ARE PERMITTED AND THE LETTER OF CREDIT SHALL BE REDUCED BY THE AMOUNT OF SUCH PARTIAL DRAWS. THE SUM OF SUCH PARTIAL DRAWS SHALL ON NO ACCOUNT EXCEED THE STATED AMOUNT OF THIS CREDIT, AND UPON ANY DRAW OR REDUCTION LETTER WHICH EXHAUSTS THIS CREDIT, THE ORIGINAL OF THIS LETTER OF CREDIT WILL BE SURRENDERED TO US.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY REDUCED WITHOUT AMENDMENT UPON OUR RECEIPT OF A STATEMENT FROM THE BENEFICIARY AUTHORIZING BANK OF AMERICA N.A. TO REDUCE THE AMOUNT OF USD \_\_\_\_\_.

EXCEPT AS EXPRESSLY STATED, THIS CREDIT SHALL BE SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 213-345-0065.

ORIGINAL

# FISCAL SURETY INTAKE MEMORANDUM

Brodie Springs 22  
Project Name/Address

C8 D3 D119.2A  
File/Permit Number

David Wahlgren  
Case Manager/Reviewer

5-12-04  
Date Received

Larry Niemanh  
Developer's Name

Contact Person/Telephone No.

1122 Colorado St.  
Developer's Street Address

Westgate Blvd Ste 313  
City/State/Zip Code

78701

Bank of America  
Financial Institution

4-26-05  
Expiration Date

3062980  
LOC/Bond/Receipt No.

ID No.

Travis  
County Jurisdiction

The developer has posted surety in the form of LOC for the specified improvements below:

	Internal	External
Water Infrastructure	\$ _____	\$ _____
Wastewater Infrastructure	\$ _____	\$ _____
Street Construction	\$ _____	\$ _____
Drainage Collection System	\$ _____	\$ _____
Sidewalks	\$ _____	\$ _____
Erosion Controls	\$ <u>30,143.00</u>	\$ _____
Restoration	\$ <u>50,432.00</u>	\$ _____
Detention Pond(s)	\$ <u>137,743.85</u>	\$ _____
Water Quality Pond(s)	\$ <u>252,443.30</u>	\$ _____
Landscaping	\$ _____	\$ _____
Parkland	\$ _____	\$ _____
Transportation	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____

TOTAL

\$ 444,562.15

Kim Eures  
Approved By

Comments:

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DATE: MAY 3, 2004

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3062980

BENEFICIARY  
CITY OF AUSTIN  
505 BARTON SPRINGS ROAD, 4TH FLOOR  
AUSTIN, TX 78704  
ATTN: CAROL KAML

APPLICANT  
LARRY NIEMANN  
1122 COLORADO ST.  
WESTGAGE BLDG., SUITE 313  
AUSTIN TX 78701

WATERSHED PROTECTION AND  
DEVELOPMENT REVIEW DEPT.

AMOUNT  
NOT EXCEEDING USD 444,562.15  
NOT EXCEEDING FOUR HUNDRED FORTY  
FOUR THOUSAND FIVE HUNDRED SIXTY TWO  
AND 15/100'S US DOLLARS

EXPIRATION  
APRIL 26, 2005 AT OUR COUNTERS

WE HEREBY ISSUE THIS LETTER OF CREDIT ("CREDIT") AND AUTHORIZE YOU TO DRAW AT SIGHT DRAWN ON BANK OF AMERICA N.A., FOR THE ACCOUNT OF LARRY NIEMANN, THE ("CUSTOMER"), UP TO THE AGGREGATE AMOUNT OF FOUR HUNDRED FORTY FOUR THOUSAND FIVE HUNDRED SIXTY TWO AND 15/100 (US\$444,562.15) (THE "STATED AMOUNT"), AVAILABLE BY YOUR DRAFT, ACCOMPANIED BY THE ORIGINAL OF THIS LETTER OF CREDIT AND BENEFICIARY'S STATEMENT SIGNED BY THE DIRECTOR OF THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT, CERTIFYING THAT THE FOLLOWING CONDITION EXISTS:

" A CONDITION OF DRAW EXISTS UNDER THE SUBDIVISION CONSTRUCTION AGREEMENT FOR THE BRODIE SPRINGS II PHASE TWO C8-030119.2A DATED APRIL 13, 2004 BY AND BETWEEN THE SUBDIVIDER AND THE CITY OF AUSTIN (THE "AGREEMENT"). CITY IS IN SUBSTANTIAL COMPLIANCE WITH THE TERMS OF SAID AGREEMENT AND HAS CALCULATED THE AMOUNT OF THIS DRAFT IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT."

DRAFTS MUST BE DRAWN AT SIGHT ON US AND PRESENTED ON OR BEFORE APRIL 26, 2005 BY THE CLOSE OF BUSINESS OF THE ISSUER OF THIS CREDIT AND MUST SPECIFY THE DATE AND NUMBER OF THIS CREDIT.

WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN AND PRESENTED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS CREDIT SHALL BE DULY HONORED.

PARTIAL DRAWS ARE PERMITTED AND THE LETTER OF CREDIT SHALL BE REDUCED BY THE AMOUNT OF SUCH PARTIAL DRAWS. THE SUM OF SUCH PARTIAL DRAWS SHALL ON NO ACCOUNT EXCEED THE STATED AMOUNT OF THIS CREDIT, AND UPON ANY DRAW OR REDUCTION LETTER WHICH EXHAUSTS THIS CREDIT, THE ORIGINAL OF THIS LETTER OF CREDIT WILL BE SURRENDERED TO US.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY REDUCED WITHOUT AMENDMENT UPON OUR RECEIPT OF A STATEMENT FROM THE BENEFICIARY AUTHORIZING BANK OF AMERICA N.A. TO REDUCE THE AMOUNT OF USD \_\_\_\_\_.

EXCEPT AS EXPRESSLY STATED, THIS CREDIT SHALL BE SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 213-345-0065.

ORIGINAL

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2004 Jun 15 01:59 PM 2004114140

WALKERA \$56.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS