



Travis County Commissioners Court Agenda Request

Meeting Date: January 21, 2014

Prepared By: Melinda Mallia, Environmental Project Manager

Phone #: (512) 854-4460

Division Director/Manager: Jon White, Division Director, Natural Resources
Environmental Quality Division Director

Department Head:  Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Daugherty, Precinct Three

Agenda Language: Consider and take appropriate action on a License Agreement for a driveway on Travis County property within the Balcones Canyonlands Preserve (BCP) in Precinct Three.

Background/Summary of Request:

The License Agreement allows a neighboring land owner continued access to an isolated portion of his property through a pre-existing driveway in the BCP. When Travis County purchased the Lucas West Side tract for the BCP in November 2008, the driveway had been in use for more than a decade, with permission from the owners, however neither a formal easement nor a License Agreement had been put in place.

This License Agreement will formalize the pre-existing use of the driveway. Under its terms, the licensee may continue to use the existing driveway as long as the use does not damage, compromise, or interfere with the ecological diversity, or resource quality of BCP lands or, the natural processes occurring within the BCP tract. The licensee may not expand the driveway or use BCP lands for any other purpose than that expressly granted in the agreement.

Staff Recommendations:

Staff recommends approval.

Issues and Opportunities:

The License Agreement documents a pre-existing use and restricts further encroachment onto BCP lands.

Fiscal Impact and Source of Funding:

The fiscal impact is positive. The licensee will pay a fee of \$300.

Attachments/Exhibits:

License Agreement for Use of Existing Driveway

Required Authorizations:

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429
Christopher Gilmore	Assistant County Attorney	County Attorney's Office	(512) 854-9513
Jon White	Natural Resources Environmental Quality Division Director	TNR	(512) 854-7212

CC:

Wendy Connally	Natural Resources Environmental Q Program Manager	TNR	(512) 854-7214
Julie Joe	Assistant County Attorney	County Attorney's Office	(512) 854-9513
Melinda Mallia	Environmental Project Manager	TNR	(512) 854-4460
Linda Laack	Natural Resources Environmental Quality Field Office Supervisor	TNR	(512) 219-6190

0901 - BCP

LICENSE AGREEMENT FOR USE OF EXISTING DRIVEWAY

STATE OF TEXAS

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COUNTY OF TRAVIS

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This Agreement is entered into by and between Travis County, a political subdivision of the State of Texas, hereinafter called the "County" or the "Licensor," and Louis Williams and wife, Pamela Williams, hereinafter called the "Licensee," whether one or more. Licensor and Licensee are sometimes referred to collectively as the "Parties."

WHEREAS, the Licensee owns certain property (the "Property") pursuant to a deed filed of record at Document No. 2003003797, Official Public Records of Travis County, Texas;

WHEREAS, the Licensor is the owner of the certain property (the "BCP Tract") pursuant to a deed filed of record at Document No. 2012216388, Official Public Records of Travis County, Texas;

WHEREAS, the BCP Tract adjoins the Property;

WHEREAS, the Licensee was using the Driveway (as defined below) prior to the County's acquisition of the BCP Tract;

WHEREAS, the Parties desire to document Licensee's use of the Driveway; and

WHEREAS, the Licensee desires to allow Licensee continued use of the Driveway;

NOW, THEREFORE, the Parties agree as follows:

I. Grant of License

- A. Licensor, for and in consideration of the sum of three hundred and no/100 Dollars (\$300.00) (the "License Fee") paid by Licensee to Licensor, does hereby grant and demise unto the Licensee the right to use the Driveway, as shown on Exhibit A (the "Driveway") which is attached hereto and incorporated herein for all purposes, to access the Property.
- B. The license granted herein is limited to the Driveway presently existing, or that may be redesignated by the Licensor pursuant to provisions below.

LICENSEE IS EXPRESSLY PROHIBITED FROM USING ANY PORTION OF THE BCP TRACT OTHER THAN THE DRIVEWAY.

- C. Licensee must pay the License Fee upon Licensee's execution of this Agreement.

II. Conditions

In consideration for the above-mentioned grant of license, Licensee agrees to the following:

- A. This access right is assignable by Licensee and his successors in the event of any sale or lease of the Property by providing written notice to Licensors.
- B. Licensee must obtain written approval from Licensors before making any improvements to the Driveway. If Licensors grants approval to Licensee for improvements, Licensee must comply with all applicable County, state, and federal rules and regulations.
- C. The Driveway is not a road within the Travis County roadway system. Access to the Driveway by Licensee is only by this License Agreement.

III. Release of Liability

- A. Licensee agrees to and shall release, waive, discharge and covenant not to sue Travis County, Texas, and its officers, agents, employees or servants for any personal injury, death, or property damage that may occur while the Licensee is for any purpose utilizing the Driveway.
- B. Licensee acknowledges and agrees that Licensee is solely responsible at all times for the actions and the safety of those persons utilizing the Driveway under this Agreement, including, without limitation, protecting such persons from injury or death and protecting the property of such persons from loss or damage, and protecting the Driveway from damage. This paragraph is intended only to establish responsibility by the Licensee to the Licensors and Licensors's officials, employees and agents and does not alter the Licensee's obligations or liability to third persons, as governed by applicable Texas law.
- C. Licensee agrees that this release shall bind the Licensee's agents, employees, guests, invitees, heirs, successors, and assigns.

- D. The Licensee agrees that this release, waiver and covenant not to sue is intended to be as broad and inclusive as permitted by the laws of the State of Texas and that if any portion of this agreement is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

IV. No Warranties as to Use or Suitability of Driveway

- A. LICENSEE ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE DRIVEWAY PRIOR TO EXECUTION OF THIS AGREEMENT, LICENSEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE DRIVEWAY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY LICENSOR. LICENSEE AGREES TO ACCEPT THE DRIVEWAY "AS-IS" AND WITH ALL FAULTS AND WAIVES ALL OBJECTIONS OR CLAIMS IN THIS REGARD AGAINST COUNTY (INCLUDING BUT NOT LIMITED TO ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE DRIVEWAY OR TO ANY HAZARDOUS MATERIALS IN THE DRIVEWAY. COUNTY WILL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE DRIVEWAY, OR THE OPERATION THEREOF FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE USE OF THE DRIVEWAY AS PROVIDED FOR IN THIS AGREEMENT IS MADE ON AN "AS-IS" CONDITION AND BASIS WITH ALL FAULTS. LICENSEE UNDERSTANDS AND AGREES THAT THE CONSIDERATION FOR THE USE OF THE DRIVEWAY HAS BEEN NEGOTIATED TO REFLECT THAT ALL OF THE DRIVEWAY IS LICENSED BY COUNTY AND ACCEPTED BY LICENSEE IN THE "AS-IS" CONDITION. THIS ACCEPTANCE BY THE LICENSEE IS AN ACKNOWLEDGMENT THAT LICENSEE HAS NO EXPECTATION OF WARRANTIES AS TO USE OR SUITABILITY OF THE DRIVEWAY.
- B. Licensee is prohibited from using the Driveway for any purpose other than that set forth in this Agreement.

V. Licensee's Special Acknowledgments Regarding BCP Tract

Licensee specifically acknowledges the following:

- A. The BCP Tract is part of an assemblage of properties known as the Balcones Canyonlands Preserve.
- B. The BCP Tract is in a substantially natural and open space condition and the United States Fish & Wildlife Service (the "USFWS") has determined that the BCP Tract contains natural habitat for the golden-cheeked warbler (*Setophaga chrysoparia*) ("GCWA") and/or the black-capped vireo (*Vireo atricapilla*) ("BCVI") and/or karst species of concern. The GCWA and BCVI have been listed as endangered species under the Federal Endangered Species Act of 1973, as amended, 16 U.S.C. Section 1531 et seq.
- C. Licensors are required to manage the BCP Tract in accordance with Permit No. TE 788841-2 (the "Regional Permit"), a regional permit issued by the USFWS on May 2, 1996 to the City of Austin and Travis County.
- D. Among other things, the Regional Permit requires the Licensor to protect endangered species habitat on the BCP Tract.

VI. Protection of BCP Tract

THE LICENSEE AGREES TO REFRAIN FROM ANY ACTIVITY WHICH MIGHT DAMAGE, COMPROMISE, OR INTERFERE WITH THE ECOLOGICAL DIVERSITY OR THE RESOURCE QUALITY OF THE BCP TRACT OR THE NATURAL PROCESSES OCCURRING WITHIN THE BCP TRACT.

VII. Termination

- A. This Agreement shall be effective upon approval and shall continue for **THIRTY YEARS** after approval. This Agreement shall be renewed for an additional thirty years, unless prior to renewal it is terminated by Licensor upon 6 months' notice given to Licensee. Notwithstanding the foregoing, if the Licensee does not comply with any of the above conditions, Licensor may terminate this Agreement upon 30 days' notice.
- B. Licensee shall at all times comply with the directions, restrictions, rules, and regulations of the Travis County Transportation and Natural Resources Department and the County's designated representatives while on the Driveway.
- C. Any disregard by Licensee of the directions, restrictions, rules, or regulations referenced in this Agreement shall be grounds for the County's

immediate revocation of the License granted hereunder and termination of this Agreement.

- D. In addition, County shall have the right to revoke the License and this Agreement shall automatically and immediately terminate if any of the following events occurs:
- (1) Licensee fails in any manner to adhere to the terms of this Agreement;
 - (2) Licensee breaches this Agreement and fails to remedy the breach within 30 days following receipt of County's written notice by certified mail to Licensee of the breach;
 - (3) County conveys or transfers the BCP Tract;
 - (4) the Travis County Commissioners Court determines that this License no longer serves the public interest or that it is no longer in the best interest of Travis County to continue this License;
 - (5) a governmental law, ordinance, regulation, or court order requires termination; or
 - (6) the County and Licensee mutually agree to such termination.

VIII. INDEMNIFICATION

- A. TO THE EXTENT PERMITTED BY LAW, LICENSEE AGREES TO AND SHALL INDEMNIFY, SAVE AND HOLD HARMLESS, AND DEFEND COUNTY, ITS AGENTS, OFFICIALS AND EMPLOYEES FROM ANY AND ALL NEGLIGENCE, LIABILITY, LOSS, COSTS, CLAIMS, INCLUDING ATTORNEYS FEES, OR EXPENSES OF WHATEVER TYPE OR NATURE FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, ARISING IN WHOLE OR IN PART OUT OF ANY AND ALL ACTS OF COMMISSION OR OMISSION OF LICENSEE, ITS AGENTS OR EMPLOYEES, ARISING OUT OF IN CONNECTION WITH THIS AGREEMENT OR LICENSEE'S USE OF THE DRIVEWAY FOR WHICH A CLAIM, INCLUDING ATTORNEYS FEES, DEMAND, SUIT OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY AGAINST LICENSEE OR COUNTY.
- B. Licensee will not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by County, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (i) health, welfare, or safety of persons, whether located on the Driveway or elsewhere, or (ii) the condition, use or enjoyment of the Park or any other real or personal property. Licensee must immediately notify County of any release of any

Hazardous Material on or near the Property whether or not such release is in a quantity that would otherwise be reportable to a public agency and must also comply with the notification requirements of any applicable state, local, or federal law or regulations.

IX. INSURANCE

Without in any way limiting the liability of Licensee or its obligations under this Agreement, Licensee agrees to maintain during the term of the License motor vehicle insurance in accordance with the laws of the State of Texas.

X. SAFETY

The Licensor reserves the right to prohibit persons from entering or otherwise using the Driveway at any time safety may be a concern.

XI. NON-WAIVER AND RESERVATION OF RIGHTS

- A. No act or omission by County may constitute or be construed as a waiver of any breach or default of Licensee which then exists or may subsequently exist. The failure of either party to exercise any right or privilege granted in this Agreement will not be construed as a waiver of that right or privilege.
- B. All rights of County under this Agreement are specifically reserved and any act or omission will not impair or prejudice any remedy or right of County under it. Any right or remedy stated in this Agreement will not preclude the exercise of any other right or remedy under this Agreement, the law or at equity, nor will any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

XII. Notices

Any notice to be given hereunder by either party to the other shall be in writing and may be effected by personal delivery or registered or certified mail, return receipt requested, addressed to the property party, at the following address:

LICENSOR: The Honorable Sam Biscoe (or his successor in office)
Travis County Judge
P.O. Box 1748
Austin, Texas 78767

COPY TO: Steven M. Manilla, P.E. (or his successor)
TNR County Executive
P.O. Box 1748
Austin, Texas 78767

AND TO: Honorable David Escamilla (or his successor in office)
Travis County Attorney
P.O. Box 1748
Austin, Texas 78767

LICENSEE: Louis Williams
Pamela Williams
12700 Hughes Park Road
Austin, Texas 78732

Each party may change the address of notice to it by giving notice of such change in accordance with the provisions in this paragraph.

XIII. Venue and Choice of Law

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THIS AGREEMENT ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.

XIV. Severability

In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

XV. Entire Agreement

This Agreement represents the entire and integrated agreement between Licensor and Licensee and supersedes all prior negotiations, representations, or agreements, either oral or written, relating to the subject matter hereof. This Agreement may be amended only by Licensor and Licensee or their successors. NO OFFICIAL REPRESENTATIVE, EMPLOYEE OR AGENT OF TRAVIS

COUNTY HAS ANY AUTHORITY TO AMEND OR MODIFY THIS LICENSE EXCEPT BY SPECIFIC AUTHORITY GRANTED BY THE COMMISSIONERS COURT OF TRAVIS COUNTY.

XVI. Mediation

When mediation is acceptable to both parties in resolving a dispute arising under this agreement, the parties agree to use the Dispute Resolution Center of Austin, Texas as the provider of mediators for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

XVII. Third Party Rights Not Created

This Agreement is not intended to and shall not be construed to create any rights or remedies in any person or legal entity that is not a party to it and the Parties are not waiving any defense or immunity to which they are entitled against any person or legal entity that is not a party to this Agreement.

County and Licensee have duly executed this Agreement effective as of the later date set forth below (the "Effective Date").

LICENSEE:



Louis Williams

Date: 12/16/13



Pamela Williams

Date: 12/16/13

LICENSOR: Travis County

Samuel T. Biscoe

County Judge

Date: _____

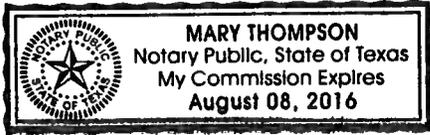
ACKNOWLEDGMENT

STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on _____, 2013, by Samuel T. Biscoe, County Judge of Travis County, Texas, on behalf of said county.



Notary Public in and for
The State of Texas

Name (typed or printed)
My Commission expires: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me on Dec 16, 2013, by Louis Williams.



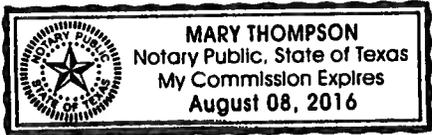
Mary Thompson
Notary Public in and for
The State of Texas

MARY THOMPSON
Name (typed or printed)
My Commission expires: August 08, 2016

ACKNOWLEDGMENT

STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me on December 16, 2013, by Pamela Williams.



Mary Thompson
Notary Public in and for
The State of Texas

MARY THOMPSON
Name (typed or printed)
My Commission expires: August 08, 2016

EXHIBIT A

LEGAL DESCRIPTION
OF A 0.111 ACRE TRACT
OF LAND, IN THE D. & W. R.R.
CO. SURVEY NO. 73,
ABSTRACT 241,
TRAVIS COUNTY, TEXAS

Being a 0.111 of an acre tract or parcel of land, situated in the D. and W. Railroad Company Survey No. 73, Abstract 241, Travis County, Texas, being a portion of that certain tract of land called 61.403 acres, as described in a deed to Travis County, recorded in Document No. 2012216388 of the Official Public Records of Travis County, Texas, and being more particularly described as follows:

BEGINNING at a nail set on a south line of the said Travis County tract, and on the north line of that certain tract of land called 3.45 acres, as described in a deed to Louis Williams and spouse, Pamela Williams, recorded in Document No. 2003003797 of the Official Public Records of Travis County, Texas, from which a 1/2" iron pipe found marking an interior corner of the said Travis County tract, and the northeast corner of the said Williams tract bears S 67° 02' 09" E, 132.12 feet, for the most southeasterly corner hereof;

THENCE, with the north line of the said Williams tract and the south line of the said Travis County tract, N 67° 02' 09" W, 30.79 feet to a nail set for an interior corner hereof;

THENCE, across the said Travis County tract, the following six (6) calls, each call to a nail set:

N 12° 03' 27" E, 33.42 feet;
N 03° 59' 38" E, 51.96 feet to a nail set at the beginning of a curve to the left;
With said curve to the left, having a radius of 10.98 feet, a long chord bears N 66° 46' 29" W, 20.91 feet, for an arc distance of 27.66 feet;
S 38° 56' 43" W, 21.38 feet;
S 59° 33' 52" W, 32.84 feet;
S 23° 27' 10" W, 35.20 feet to a nail set on the said south line of the Travis County tract and the north line of the said Williams tract, for an interior corner hereof;

THENCE, with the south line of the said Travis County tract, and the north line of the said Williams tract, N 66° 57' 34" W, 56.46 feet to a nail set for the most westerly corner hereof;

THENCE, across the said Travis County tract, the following nine (9) calls, each call to a nail set:

S 75° 19' 50" E, 32.29 feet;
N 27° 19' 17" E, 20.45 feet;
N 58° 30' 30" E, 44.43 feet;
N 44° 05' 36" E, 28.71 feet;
N 24° 06' 19" E, 22.91 feet to a nail set at the beginning of a curve to the right;
With said curve to the right, having a radius of 21.27 feet, a long chord bears S 66° 11' 33" E, 36.12 feet, for an arc distance of 43.14 feet;

LEGAL DESCRIPTION

**OF A 0.111 ACRE TRACT
OF LAND, IN THE D. & W. R.R.
CO. SURVEY NO. 73,
ABSTRACT 241,
TRAVIS COUNTY, TEXAS**

**S 08° 46' 14" E, 22.21 feet;
S 01° 35' 56" W, 84.58 feet;
S 10° 29' 04" E, 15.21 feet to the PLACE OF BEGINNING, and containing 0.111 of
an acre of land in all, more or less.**

*Bearing Basis is based on Texas State Plane Coordinate System, Nad 83, Central Zone.
A sketch accompanies this description.*

*I certify that this description represents an on the ground survey done under my supervision in
the month of May, 2013, and that it is true and correct to the best of my knowledge and belief.*


Richard Fink

11-7-2013

R.P.L.S. No. 5473



NUMBER	DIRECTION	DISTANCE
L11	N 67°02'09" W	30.79 FT
L12	N 12°03'27" E	33.42 FT
L13	N 03°59'38" E	51.96 FT
L14	S 38°56'43" W	21.38 FT
L15	S 59°33'52" W	32.84 FT
L16	S 23°27'10" W	35.20 FT
L17	N 66°57'34" W	56.46 FT
L18	S 75°19'50" E	32.29 FT
L19	N 27°19'17" E	20.45 FT
L20	N 58°30'30" E	44.43 FT
L21	N 44°05'36" E	28.71 FT
L22	N 24°06'19" E	22.91 FT
L23	S 08°46'14" E	22.21 FT
L24	S 01°35'56" W	84.58 FT
L25	S 10°29'04" E	15.21 FT

PARCEL 1
0.111 ACRES

CH = S 66°11'33" E
R = 21.27 FT
L = 43.14 FT
CL = 36.12 FT

CH = N 66°46'29" W
R = 10.98 FT
L = 27.66 FT
CL = 20.91 FT

TRAVIS COUNTY
61.403 AC
2012216388
OPRTCT

WITH LANDMARK
CAP

N 67°02'09" E
129.97 FT
344.99 FT

P.O.B.
N-10117272.79
E-3070282.04

LOUIS WILLIAMS AND
SPOUSE, PAMELA WILLIAMS
3.45 AC
2003003797
OPRTCT

D. & W. R.R. CO. SURVEY NO. 73
ABSTRACT 241



LEGEND

- FOUND 1/2" IRON ROD
- FOUND 1/2" IRON PIPE
- SET NAIL
- FOUND PK NAIL
- OFFICIAL PUBLIC RECORDS
- TRAVIS COUNTY, TEXAS
- REAL PROPERTY RECORDS
- TRAVIS COUNTY, TEXAS
- DEED RECORDS
- TRAVIS COUNTY, TEXAS
- EDGE OF ASPHALT
- EDGE OF GRAVEL



SCALE IN FEET



I CERTIFY THAT THIS PLAN REPRESENTS AN
ON THE GROUND SURVEY DONE UNDER MY
SUPERVISION IN THE MONTH OF MAY, 2013,
AND THAT IT IS CORRECT TO THE BEST OF
MY KNOWLEDGE.

Richard Fink

RICHARD FINK, RPLS NO. 5473
FILE: Q:\Project\Survey\Williams Tract, 110 SURVEY
Tom Hughes Park Rd\Parcel1.dgn
DATE: 04-Jun-13 15:26



TRAVIS COUNTY, TEXAS
TRANSPORTATION and NATURAL
RESOURCES DEPARTMENT

SKETCH TO ACCOMPANY FIELD NOTES OF A
0.111 ACRE TRACT OF LAND IN THE
D. & W. R.R. CO. SURVEY, NO. 73,
ABSTRACT 241,
TRAVIS COUNTY, TEXAS

NOTES:
BEARING BASIS AND COORDINATES SHOWN
ARE BASED ON THE TEXAS STATE PLANE
COORDINATE SYSTEM, NAD 83, CENTRAL ZONE.
A FIELD NOTE DESCRIPTION ACCOMPANIES
THIS PLAT.