

RESOLUTION NO. 2022- 341

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, AND REQUIREMENTS OF A MAINTENANCE AND HOLD HARMLESS AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA AND ELM CREEK HOMEOWNERS ASSOCIATION, INC. REGARDING INSTALLATION AND MAINTENANCE OF CONCRETE PAVERS WITHIN THE RIGHT-OF-WAY OF ELM CREEK DRIVE; AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.**

**WHEREAS**, Elm Creek Homeowners Association, Inc. (“Association”) is a homeowner's association responsible for the operation and maintenance of stormwater ponds and other common areas within a residential community within St. Johns County, Florida known as Elm Creek; and

**WHEREAS**, certain improvements consisting of concrete pavers have been installed and constructed within a certain portion of the right-of-way, commonly referred to as Elm Creek Drive, which is owned by St. Johns County (“County”); and

**WHEREAS**, the County has agreed to allow the installation and maintenance of the concrete pavers within the right-of-way of Elm Creek Drive subject to certain conditions including, but not limited to, the Association’s agreement to indemnify and hold the County harmless, to the extent permitted by Florida law, from damages and expenses which may be incurred as a direct or indirect result of such use of the County Right-of-Way, as well as certain other conditions as set forth in the Maintenance and Hold Harmless Agreement attached hereto as Exhibit A and incorporated herein; and

**WHEREAS**, upon completion and installation of the concrete pavers, the Association shall have the responsibility for the maintenance, repair, replacement and removal of the concrete pavers, subject to the County’s right, but not the obligation, to perform such maintenance, repair, replacement or removal, if not timely performed by the Association, and to invoice the Association for the cost and expense; and

**WHEREAS**, the County has determined that entering into the Maintenance and Hold Harmless Agreement will serve the interests of the County.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are incorporated into the body of this Resolution and adopted as findings of fact.

**Section 2.** The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, provisions, and conditions and requirements of the Maintenance and Hold Harmless Agreement between St. Johns County, Florida and Elm Creek Homeowners Association, Inc., and authorizes the County Administrator, or designee, to execute the agreement on behalf of the County, in substantially the same form and format as attached.

**Section 3.** To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or content of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

**Section 4.** This Resolution shall be effective upon adoption by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, State of Florida, this 20 day of September, 2022.

**BOARD OF COUNTY  
COMMISSIONERS OF ST. JOHNS  
COUNTY, FLORIDA**

By: Henry Dean  
Henry Dean, Chair

ATTEST: Brandon Patty, Clerk of the  
Circuit Court and Comptroller

By: Pam Halterman  
Deputy Clerk

Rendition Date 9/20/22



**EXHIBIT A TO THE  
RESOLUTION**

MAINTENANCE AND HOLD HARMLESS AGREEMENT

THIS MAINTENANCE AND HOLD HARMLESS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, Florida 32084, (the "County"); and ELM CREEK HOMEOWNERS ASSOCIATION, INC., whose address is 112 North Ponce de Leon Boulevard, Unit C, St Augustine, Florida 32084 (the "Association").

Recitals

WHEREAS, the Association is a homeowner's association that is responsible for the operation and maintenance of stormwater ponds and other common areas within a residential community within St. Johns County, Florida known as Elm Creek, under the Declaration of Covenants, Conditions, Restrictions and Easements for Elm Creek and Notice of Assessments for Elm Creek Homeowners Association, Inc. recorded in Official Records Book 5485 beginning at Page 1093, Public Records of St. Johns County, Florida; and

WHEREAS, certain improvements consisting of concrete pavers ("Improvements") have been installed and constructed within a certain portion of the County-owned right-of-way commonly referred to as Elm Creek Drive (the "County Right-of-Way"), as more particularly depicted in Exhibit "A" attached hereto and incorporated by reference; and

WHEREAS, the County has agreed to allow the installation and maintenance of the Improvements within the County Right-of-Way subject to certain conditions, including but not limited to the Association's agreement to indemnify and hold the County harmless, to the extent permitted by Florida law, from damages and expenses which may be incurred as a direct or indirect result of such use of the County Right-of-Way, as well as certain other conditions as hereinafter set forth; and

WHEREAS, upon completion and installation of the Improvements, the Association shall have the responsibility for the maintenance, repair, replacement and removal of the Improvements, subject to the County's right, but not the obligation, to perform such maintenance, repair, replacement or removal, if not timely performed by the Association, and to invoice the Association for the cost and expense; and

NOW, THEREFORE, based upon good and valuable consideration and mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the County and the Association agree as follows:

Section 1. Recitals. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

Section 2. Right-of-Way Utilization. The Association may place, construct and maintain, or cause to be placed, constructed and maintained, the Improvements in the County Right-of-Way as depicted on Exhibit "A", subject to the terms and conditions contained in this Agreement. The Improvements shall be constructed in accordance with the plans approved by the

County in File No. MODCP 2021-71. It is expressly stipulated that this Agreement is a license for permissive use only and that neither the placement nor maintenance of the Improvements within the County Right-of-Way shall operate to create or vest any property rights to the Association. Moreover, whenever necessary for the construction, repair, improvement, maintenance, safe and efficient operation, alteration or relocation of all or any portion of the County Right-of-Way, as solely determined by the County in its reasonable discretion, any or all of the Improvements shall be promptly removed from the County Right-of-Way at the sole cost and expense of the Association and shall be relocated or reset only as the Parties may agree.

If the County, in its sole reasonable discretion, determines that the Improvements, or any part thereof, require repair, replacement or removal, the County shall notify the Association in writing of said determination. If such notice advises that any condition, damage or deterioration of the Improvements, or any part thereof, constitutes a safety hazard, the Association shall have seventy-two (72) hours from its receipt of such notice to secure the safety hazard, including but not limited to installing a temporary safety barrier or barricade, if necessary, and fourteen (14) days from its receipt of such notice to complete such repair, replacement or removal as necessary to eliminate or otherwise remedy any safety hazard. In the event of an immediate safety hazard, the County may promptly secure the safety hazard in advance of the Association's action and invoice the Association for the cost and expense. The Association shall have sixty (60) days from the date of said notification to complete any other required repair, replacement or removal. Should the Association fail to timely complete any repair, replacement or removal, the County shall have the right, but not the obligation, to complete the repair, replacement or removal of the Improvements and invoice the Association for reimbursement of the costs and expenses incurred of any such repair, replacement, or removal.

Section 3. Indemnification. To the extent permitted by Florida law, and subject to the limits of liability set forth in Section 768.28, Florida Statutes, the Association, its successors and assigns agree to protect, defend, indemnify, and hold the County and its tenants, elected officials, officers, employees, agents, and assigns free and unharmed from and against any and all claims, liability, damages, losses and/or causes of action (including without limitation court costs and reasonable attorneys' fees) of any and all third party (including but not limited to employees of the Association and its contractors and subcontractors) arising or relating to or arise from any negligent act or omission of the , associated or connected with the use of the County Right-of-Way by the Association, including but not limited to the keeping and maintaining of the Improvements in the County Right-of-Way by the Association. This indemnification shall survive the termination of this Agreement. Nothing contained in this section is intended to nor shall be construed to operate as a waiver on the part of the County of the limitations of liability set forth in Section 768.28, Florida Statutes, or of the County's sovereign immunity.

Section 4. Covenant with Land. This Agreement shall touch and concern the land and shall be a covenant running with the fee interest underlying the County Right-of-Way, whether in existence on the date hereto or constructed in the future.

Section 5. Severability. If any word, phrase, sentence, part, subsection, section or other portion of this Agreement, or any application thereof, to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, subsection,

other portion or the proscribed application thereof, shall be severable, and the remaining portion of this Agreement, and all applications thereof, not having been declared void, unconstitutional or invalid shall remain in full force and effect.

Section 6. Governing Law and Venue. This Agreement shall be constructed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida, and any trial shall be nonjury.

~~Section 7. Attorney's Fees. In connection with any administrative and/or legal action arising under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs at all levels of the proceedings in addition to any other relief granted.~~

Section 8. Procedure for Achieving Assignment. In light of the scope and rationale for this Agreement, neither the County nor the Association may assign, transfer, and/or sell any of the rights noted in this Agreement without the express prior written approval of the other party. Should either County or the Association assign, transfer, or sell any the rights of the Agreement without such prior express written approval of the other party, then such action on the part of either the County or the Association, shall result in the automatic termination of this Agreement, without further notice or action required on the part of the other party.

Section 9. Entire Agreement. Both the County and the Association acknowledge that this Agreement constitutes the entire agreement among the parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings, or agreements, either oral or written, among the parties hereto relating to the subject matter of this Agreement except those fully expressed herein, and each party agrees that, in entering into this Agreement, it has not relied on and is not entitled to rely on any statements, promises, or representations other than those set forth herein.

Section 10. Amendments to Agreement. Both the County and the Association acknowledge that any amendments to this Agreement shall be in writing and shall be executed by duly authorized representatives of both the County and the Association.

Section 11. Access to Records. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and materials associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes) and other applicable state or federal law. Access to such public records may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party or an unaffiliated party.

Section 12. Notices. All notices pertaining to this Agreement shall be delivered either by hand or by certified mail, return receipt requested, to:

The County:                   St. Johns County  
  County Administrator  
  500 San Sebastian View  
  St. Augustine, FL 32084

With copy to: St. Johns County  
Office of the County Attorney  
500 San Sebastian View  
St. Augustine, FL 32804

The Association: Elm Creek Homeowners Association, Inc.  
Association President  
112 North Ponce de Leon Blvd.  
St Augustine, FL 32084

With copy to: Richmond American Homes of Florida, LP  
Division President  
10255 Fortune Pkwy, Suite 150  
Jacksonville, FL 32256

Section 13. Section Headings. Section headings in this Agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

Section 14. Negotiated Agreement. This Agreement was negotiated and prepared by both parties with the participation of counsel and advisers of their own choosing. The parties have agreed to the text of this Agreement, and none of the provisions hereof shall be construed against either party on the ground that such party is the author of this Agreement or any part thereof

Section 15. Authority to Execute. Each party to this Agreement covenants to the other that it has the lawful authority to enter into this Agreement and that it has authorized the execution of this Agreement by the representative noted below.

Section 16. Effective Date. This Agreement shall be effective on the date of the last signature of the parties hereto.

*Signatures on following page.*

IN WITNESS WHEREOF, the County and The Association have caused these presents to be executed on the day and year first written above.

Signed, sealed and delivered  
In our presence as Witnesses:

(sign) \_\_\_\_\_

(print) \_\_\_\_\_

(sign) \_\_\_\_\_

(print) \_\_\_\_\_

**ST. JOHNS COUNTY**, a political  
subdivision of the State Florida

By: \_\_\_\_\_

(INDIVIDUAL)

County Administrator

**LEGALLY SUFFICIENT**

\_\_\_\_\_  
**Name**

**Date:** \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Signed, sealed and delivered  
in our presence as Witnesses:

ELM CREEK HOMEOWNERS  
ASSOCIATION, INC., a Florida not-for-  
profit corporation

(sign) \_\_\_\_\_  
(print) \_\_\_\_\_

By: \_\_\_\_\_

(sign) \_\_\_\_\_  
(print) \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_  
\_\_\_\_\_

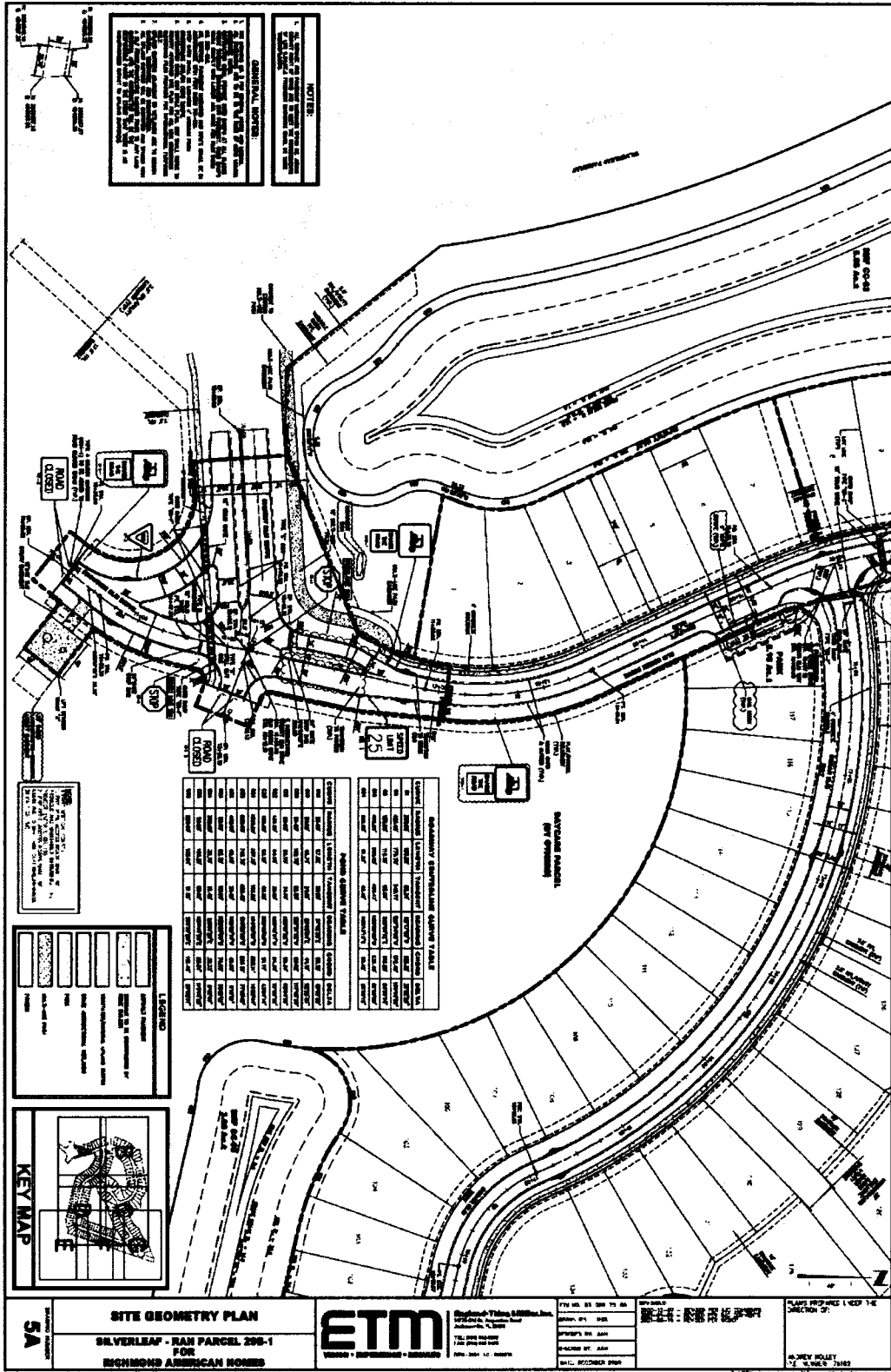
STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence  
or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_,  
2022, by \_\_\_\_\_, as \_\_\_\_\_ of the Elm Creek  
Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation.  
He/she is personally known to me or has produced \_\_\_\_\_ as identification.

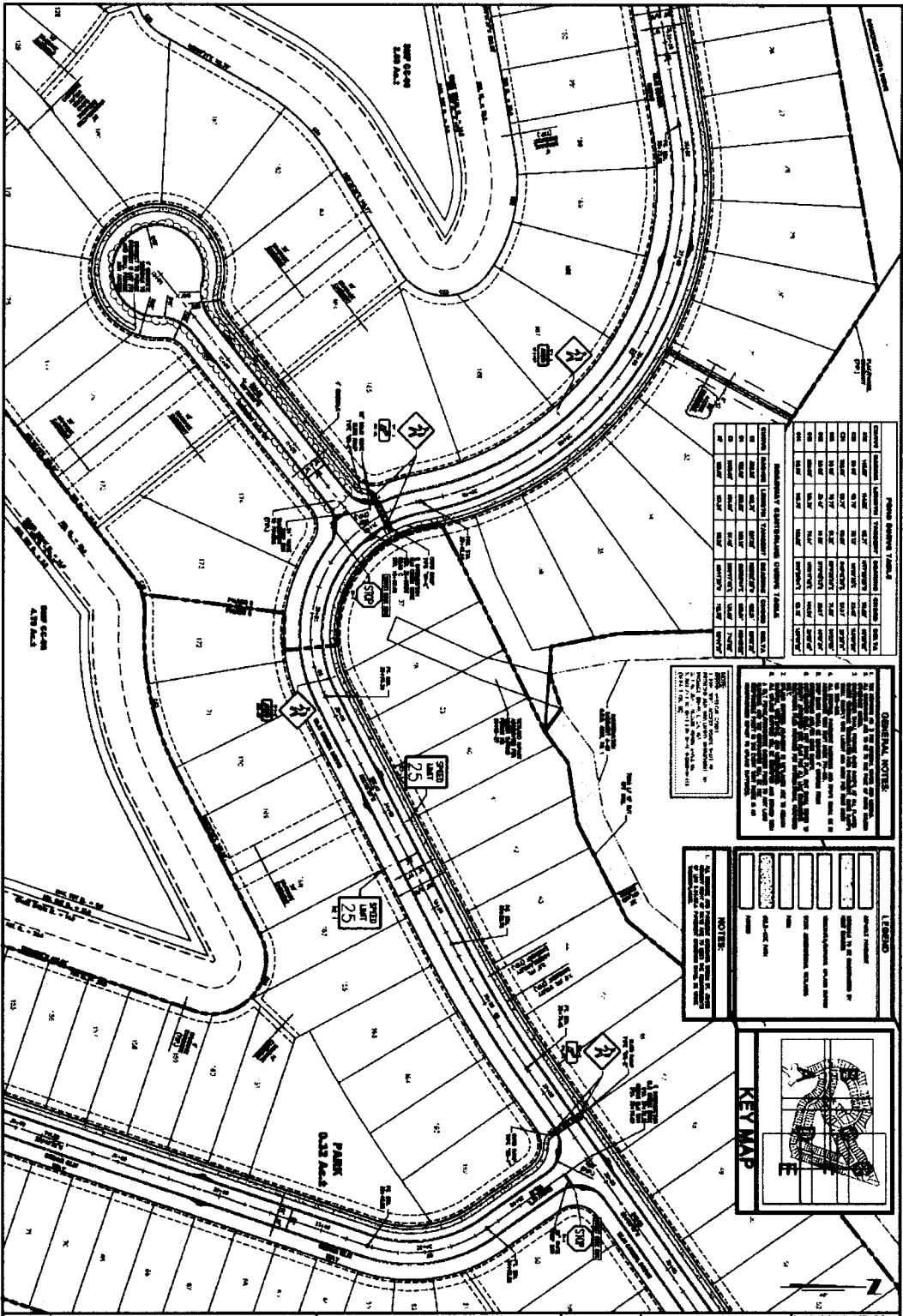


# Exhibit "A"

## Improvements



**SA** **SITE GEOMETRY PLAN** **ETM** **776 NO. 81 3RD ST. 66** **PLANS PREPARED UNDER THE**  
**SILVERLEAF - RAN PARCEL 296-1** **Engineering & Planning, Inc.** **San Diego, CA 92108** **DIRECTION OF:**  
**FOR** **755 5TH STREET** **761-333-3333** **761-333-3333**  
**IRVINGTON AMERICAN HOMES** **761-333-3333** **761-333-3333**  
**SA** **761-333-3333** **761-333-3333** **761-333-3333**



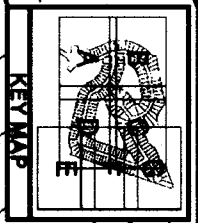
GENERAL NOTES		LEGEND		KEYMAP	
1	THIS PLAN IS THE PROPERTY OF ETM CONSULTANTS INC. ALL RIGHTS ARE RESERVED.	1	EXISTING ROADWAY	1	PROJECT AREA
2	THIS PLAN IS TO BE USED IN CONNECTION WITH THE SITE SPECIFICATIONS AND THE GENERAL NOTES.	2	PROPOSED ROADWAY	2	ADJACENT PROPERTIES
3	ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.	3	PROPOSED SIDEWALK	3	ADJACENT STREETS
4	ALL UTILITIES SHOWN ARE BASED ON THE LATEST AVAILABLE RECORD DRAWINGS AND FIELD SURVEY.	4	PROPOSED CURB	4	ADJACENT ALLEYS
5	THE CLIENT ACCEPTS THE RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED TO ETM CONSULTANTS INC.	5	PROPOSED DRIVEWAY	5	ADJACENT LOT
6	ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CURRENT MUNICIPAL BY-LAW AND THE NATIONAL BUILDING CODE.	6	PROPOSED BIKEWAY	6	ADJACENT DRIVEWAY
7	ALL UTILITIES SHALL BE DEPTHERED TO THE PROPOSED ROADWAY AND SIDEWALK.	7	PROPOSED BIKEWAY	7	ADJACENT DRIVEWAY
8	ALL UTILITIES SHALL BE DEPTHERED TO THE PROPOSED ROADWAY AND SIDEWALK.	8	PROPOSED BIKEWAY	8	ADJACENT DRIVEWAY
9	ALL UTILITIES SHALL BE DEPTHERED TO THE PROPOSED ROADWAY AND SIDEWALK.	9	PROPOSED BIKEWAY	9	ADJACENT DRIVEWAY
10	ALL UTILITIES SHALL BE DEPTHERED TO THE PROPOSED ROADWAY AND SIDEWALK.	10	PROPOSED BIKEWAY	10	ADJACENT DRIVEWAY

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**LEGEND:**

- EXISTING ROADWAY
- PROPOSED ROADWAY
- PROPOSED SIDEWALK
- PROPOSED CURB
- PROPOSED DRIVEWAY
- PROPOSED BIKEWAY



**SC**

**SITE GEOMETRY PLAN**  
SILVERLEAF - BAR PARCEL 200-1  
FOR  
RICHMOND AMERICAN HOMES

**ETM**

Engineering & Technology  
2250 East Beaver Creek Road  
Richmond, BC V6X 1Y6  
Tel: 604-273-1111  
Fax: 604-273-1112  
www.etm.ca

DATE: 2024-08-15

SCALE: AS SHOWN

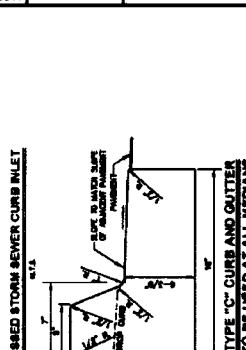
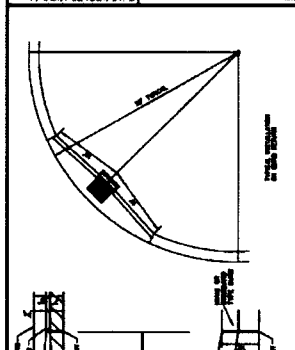
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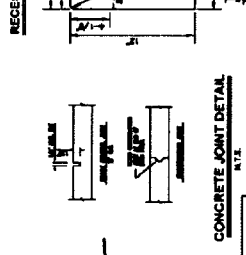
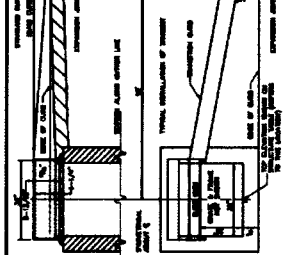
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APPROVED BY: J.S.

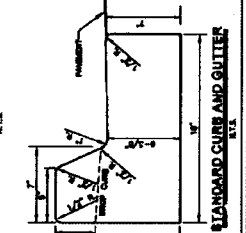
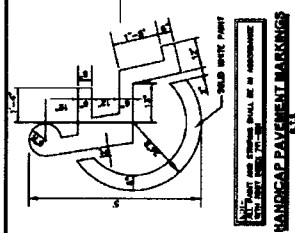
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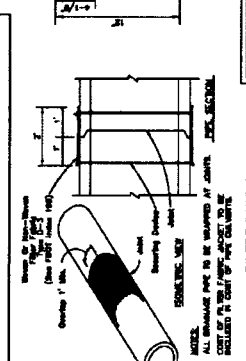
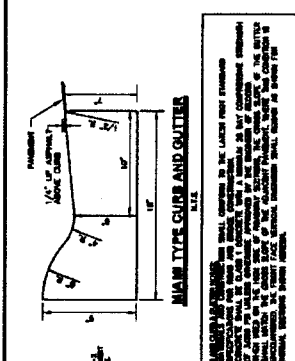
**CONCRETE CURB AND GUTTER**  
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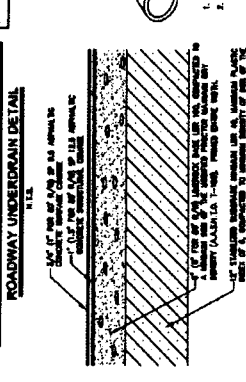
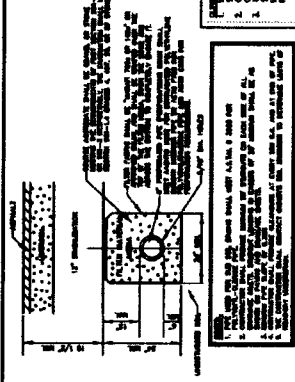
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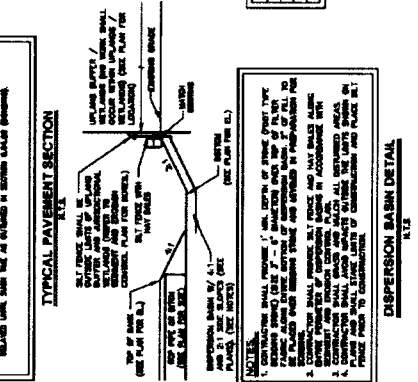
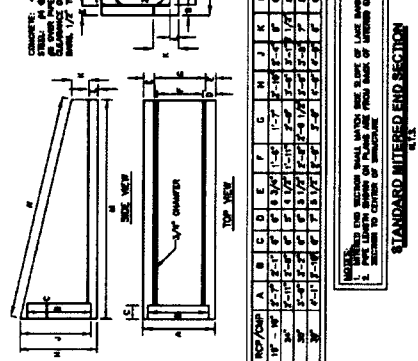
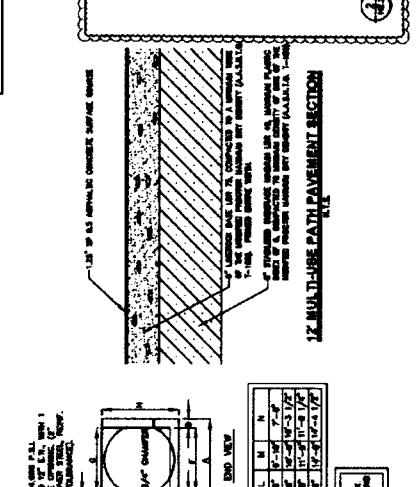
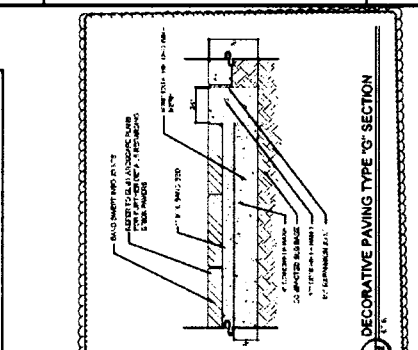
**CONCRETE JOINT DETAIL**  
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**RECESSED STORM SEWER CURB INLET**  
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