

RESOLUTION NO. 2003-183

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
APPROVING THE FINAL MAP AND SUBDIVISION IMPROVEMENT AGREEMENT
FOR SUBDIVISION NO. 00-017.00 OF NEWTON RANCH**

BE IT RESOLVED AND ORDERED that the City Council of the City of Elk Grove pursuant to Government Code section 66458, hereby approves the Final Subdivision Map submitted at the Elk Grove City Council meeting in connection with **Elk Grove Water Works, LLC, a Limited Liability Company**, and the subdivision designated as Subdivision No. 00-017.00 of Newton Ranch; and

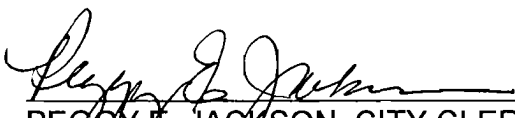
BE IT FURTHER RESOLVED AND ORDERED that the City Council of the City of Elk Grove hereby approves a Subdivision Improvement Agreement and that the Mayor is hereby authorized and directed to execute a Subdivision Improvement Agreement on behalf of the City of Elk Grove in connection with the above identified subdivision in the form hereto attached, and for all matters incidental thereto, and to do and perform everything necessary to carry out the purpose of this resolution.

PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 1st day of October 2003.




SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2003-183

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

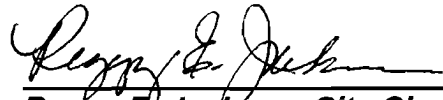
I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 1st day of October 2003 by the following vote:

AYES 5: COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper, Leary

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 0: COUNCILMEMBERS:



Peggy E. Jackson, City Clerk
City of Elk Grove, California

ATTACHMENT 2
SUBDIVISION IMPROVEMENT AGREEMENT

NO FEE DOCUMENT

Government Code §6103

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITYOF ELK GROVE
8400 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

The Above Space For Recorder's Use Only

O.K. to accept: _____
Date: _____

Name: Newton Ranch
Address: _____
APN: 134-0110-115
Project No.: EG-00-017-FM-00

SUBDIVISION IMPROVEMENT AGREEMENT

This Subdivision Improvement Agreement is made and entered into this _____ day of _____, _____, by and between the City of Elk Grove, a municipal corporation, hereinafter referred to as "City," and **Elk Grove Water Works, LLC, a Limited Liability Company**, hereinafter referred to as "Subdivider."

RECITALS

A. Subdivider has presented to the City a parcel map or final map of a proposed subdivision of land located within the corporate limits of the City that has been prepared in accordance with the Subdivision Map Act of the State of California, the subdivision ordinances of the City, and the tentative map of the Subdivision previously approved by the City Council.

B. The proposed subdivision of land is commonly known and described as **Subdivision No. 00-017.00 Newton Ranch**, and is hereinafter referred to as the "Subdivision" or the "Project."

C. Subdivider has requested approval of the parcel map or final map prior to the construction and completion of the public improvements, including, but not limited to streets, highways, public ways, sidewalks, curbs, gutters, storm drainage facilities, public utility facilities, design standards which are part of the provisions for lot grading and drainage in or appurtenant to the Subdivision, and other public improvements that are required by the Subdivision Map Act, the subdivision ordinances of the City, the tentative map (and approvals given in connection therewith), and final grading plan, if any, approved by the City. The foregoing improvements are hereinafter referred to as "the Required Improvements."

NOW, THEREFORE, the parties agree as follows:

1. Performance of Work. Subdivider agrees to furnish, construct and install at Subdivider's own expense the Required Improvements as shown on the plans and

specifications of the Subdivision, a copy of which is on file in the office of the City Manager, and is incorporated herein by reference, along with any changes or modifications as may be required by the City Manager or the City Manager's designee (hereinafter "City Manager") due to errors, omissions, or changes in conditions. The plans and specifications of the Required Improvements may be modified by the Subdivider as the development progresses, subject to the prior written approval of the City Manager. The total estimated cost of the Required Improvements, as determined by the City Manager, is **One Million Six Hundred Seventy Thousand Seven Hundred Eighty-Six Dollars (\$1,670,786.00)**.

2. **Work; Satisfaction of City Manager.** All of the work on the Required Improvements is to be done at the places, of the materials, and in the manner and at the grades, all as shown upon the approved plans and specifications and the City's Improvement Standards and Specifications, to the satisfaction of the City Manager.

3. **Injury to Public Improvements, Public Property or Public Utilities Facilities.** Subdivider shall replace or repair, or have replaced or repaired, all public improvements, public utility facilities, and surveying or subdivision monuments which are destroyed or damaged in the performance of any work under this Agreement. Subdivider shall bear the entire cost of replacement or repairs of any and all public or private utility property damaged or destroyed in the performance of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction of the City Manager.

4. **Inspection.** Subdivider shall at all times maintain proper facilities and safe access for inspection of the public improvements by City and to the shops wherein any work is in preparation. Upon completion of the work, the Subdivider may request a final inspection by the City Manager or the City Manager's representative. If the City Manager or the designated representative determine that the work has been completed in accordance with this Agreement, then the City Manager shall certify the completion of the public improvements to the City Council. No improvements shall be finally accepted unless all aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and City standards. Subdivider shall bear all costs of plan check, inspection and certification.

5. **Subdivider's Obligation to Warn Public During Construction.** Until final acceptance of the Required Improvements, Subdivider shall give good and adequate warning to the public of each and every dangerous condition existing in said improvements, and will take reasonable actions to protect the public from such dangerous condition.

6. **Superintendence by Subdivider.** Subdivider shall require each contractor and subcontractor to have a competent foreman on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing work on the Required Improvements. In addition, Subdivider shall maintain an office with a

telephone and Subdivider or a person authorized to make decisions and to act for Subdivider in Subdivider's absence shall be available on the job site within three (3) hours of being called at such office by the City during the hours of 9:00 A.M. through 5:00 P.M., Monday through Friday, or any other day or time when work is being performed on the Required Improvements.

7. Work; Time for Commencement and Performance. Work on the Required Improvements has been commenced by the Subdivider or shall commence on or before the **1st day of June, 2003**, and Work on the Required Improvements shall be completed on or before the **1st day of June, 2005**; provided, however, that the Required Improvements shall not be deemed to be completed until accepted in writing by the City.

8. Time of Essence; Extension.

a. Time is of the essence of this Agreement. The dates for commencement and completion of the Required Improvements may not be extended, except as provided in this paragraph. The City Manager may extend the dates for a maximum of one hundred and eighty (180) days due to delays in the work actually caused by inclement weather, riots, strikes, lockouts, fires, earthquakes, floods and conditions resulting therefrom, or for other reason beyond the control of the Subdivider. Extension of the dates for any other cause or beyond one hundred and eighty (180) days shall be made only by the City Council. Extensions shall be granted only upon a showing of good cause by the Subdivider. The City Council or City Manager, as appropriate, shall be the sole and final judge as to whether good cause has been shown to entitle the Subdivider to an extension.

b. Requests for extension of the commencement and/or completion date shall be in writing and delivered to the City in the manner hereinafter specified for service of notices. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on the City.

c. In the event the City extends the time of commencement and/or completion of the Required Improvements, such extension may be granted without notice by the City to the Subdivider's surety and shall in no way release any guarantee or security given by the Subdivider pursuant to this Agreement, or relieve or release those providing an improvement security pursuant to this Agreement. The surety or sureties, if any, in executing the securities shall be deemed to have expressly agreed to any such extension of time.

d. In granting any extension of time, the City may require new or amended improvement security in amounts increased to reflect increases in the costs of constructing the Required Improvements or impose other conditions to protect its interests and ensure the timely completion of the Required Improvements.

9. Utility Undergrounding and Relocation Costs. Subdivider shall assume all costs for utility and cable television undergrounding and/or relocation which is not the responsibility of the cable television, gas, electric, telephone, or other utility company

under the terms of the franchises with the City or otherwise imposed upon the utility companies by law.

10. Improvement Security. Concurrently with the execution of this Agreement, the Subdivider shall furnish the City with:

a. Faithful Performance Security. Subdivider shall provide faithful performance security as set forth in the Elk Grove Municipal Code section 22.80.005 to secure faithful performance of this Agreement (the "faithful performance" security). This security shall be in the amount of one hundred percent (100%) of the total estimated cost of the Required Improvements, as determined by the City Manager.

b. Payment Security. Subdivider shall also provide payment security as set forth in the Elk Grove Municipal Code section 22.80.005 to secure payment to the contractor, subcontractors and to persons renting equipment or furnishing labor or materials to them for the work (the "payment security"). This security shall be in the amount of fifty percent (50%) of the total estimated cost of the Required Improvements, as determined by the City Manager and shall secure the obligations set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

c. Guarantee and Warranty Security. Subdivider shall also file with this Agreement a "guarantee and warranty security" in the amount of ten percent (10%) of the total estimated cost of the Required Improvements, as determined by the City Manager, to guarantee and warrant the Required Improvements for a period of one year following their completion and acceptance against any defective work or labor done, or defective materials furnished.

d. Monument Security. Subdivider shall also file with this Agreement a "monument security" in the amount of one hundred percent (100%) of the total estimated cost of the installation of survey monuments in the Subdivision, as determined by the City Manager, which total cost is in the amount of **Seven Thousand Five Hundred Dollars (\$ 7,500.00)**, to guarantee and secure the placement of such monuments.

e. Any bonds submitted as security pursuant to this section shall be furnished by companies who are authorized and licensed by the Insurance Commissioner of the State of California as "admitted surety insurers," to act as surety upon bonds and undertakings. The company shall maintain in this State at least one office for the conduct of its business. Bonds must be approved by City. The bonds shall be furnished on the forms enclosed following this Agreement and shall be satisfactory to the City. All required securities shall be in a form approved by the City Attorney. The surety (or sureties) shall furnish reports as to its financial conditions from time to time as requested by the City. The premiums for said bonds shall be paid by Subdivider.

f. No change, alteration, or addition to the terms of this Agreement or the plans and specifications incorporated herein shall in any manner affect the obligation of the sureties, except as otherwise provided by the Subdivision Map Act.

g. The securities shall be irrevocable, shall not be limited as to time (except as to the one-year guarantee and warranty period) and shall provide that they may be released, in whole or part, only upon the written approval of the City Manager and as provided in paragraph 11. All securities provided pursuant to this Agreement shall expressly obligate the surety for any extension of time authorized by the City for Subdivider's completion of the Required Improvements, whether or not the surety is given notice of such an extension by the City.

h. The Attorney-in-Fact (resident agent) who executes the securities on behalf of the surety company must attach a copy of his/her Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond that it covers.

11. Release of Security.

a. Guarantee and Warranty Security. Any unused portion of the guarantee and warranty security may be released one year after acceptance of the Required Improvements by the City Council. The amount to be released shall first be reduced by the amount deemed necessary by the City to correct any defects in the Required Improvements that are known or believed by the City to exist at the end of the guarantee and warranty period.

b. Payment Security. The payment security may be released thirty-five (35) days after passage of the time within which claims of lien are required to be recorded pursuant to Article 3 of Chapter 2 of Title 15 of Part 4 of Division 3 of the Civil Code (commencing with Section 3114), but in no event shall such security be released prior to one hundred and twenty (120) days after acceptance of the Required Improvements by the City Council. The amount to be released shall first be reduced by the total of all claims on which an action has been filed and notice thereof given in writing to the City. City expressly may require the surety not to release the amount of security deemed necessary by City to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

c. Faithful Performance Security. The faithful performance security may be released upon acceptance of the Required Improvements by the City Council.

d. Monument Security. The monument security may be released upon acceptance of the required monument installation by the City Manager.

12. Inspection and Other Fees. The Subdivider shall pay to the City all fees imposed in connection with the construction and inspection of the Required Improvements. These fees must be paid in full prior to the City's acceptance of the Required Improvements. The fees referred to above are not necessarily the only City fees, charges or other costs that have been, or will be, imposed on the Subdivision and

its development, and this Agreement shall in no way exonerate or relieve the Subdivider from paying such other applicable fees, charges, and/or costs.

13. Defense, Indemnification and Hold Harmless. The Subdivider shall defend, indemnify, and hold harmless the City, its officers, employees, agents, and elective and appointive boards from any and all claims, losses, damages, including property damage, personal injury, including death, costs, including attorney fees, and liability of any kind or nature directly or indirectly arising out of or in any way connected with performance under this Agreement and/or the construction of the Required Improvements by the Subdivider, contractor or any subcontractor, or of any person directly or indirectly employed by, or acting as agent for the Subdivider, contractor or any subcontractor, save and except those matters arising from the sole, active negligence of the City.

This defense, indemnification and hold harmless provision shall extend to claims, losses, damage, injury, costs, including attorney fees, and liability for injuries occurring after completion of the construction of the Required Improvements as well as during construction, and shall apply regardless of whether or not the City has prepared, supplied or approved the plans and/or specifications for the Required Improvements or has inspected or accepted the same. Acceptance of insurance required under this Agreement shall not relieve Subdivider from liability under this defense, indemnification and hold harmless provision.

The parties intend that this provision shall be broadly construed to effectuate its purpose.

14. Environmental Warranty.

a. Prior to the acceptance of any dedications or improvements by City, Subdivider shall certify and warrant that: neither the property to be dedicated nor Subdivider are in violation of any environmental law and neither the property to be dedicated nor the Subdivider are subject to any existing, pending, or threatened investigation by any federal, state or local governmental authority under or in connection with any environmental law. Neither Subdivider nor any third party will use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any hazardous substance, except in compliance with all applicable environmental laws. Subdivider has not caused or permitted the release of, and has no knowledge of the release or presence of, any hazardous substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated. Subdivider's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated. Subdivider shall give prompt written notice to City at the address set forth herein of:

(i) Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the

property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated;

(ii) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and

(iii) Subdivider's discovery of any occurrence or condition on any property adjoining or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability, or suit under any environmental law.

b. As used in this Agreement, the term "hazardous substance" includes any hazardous or toxic substance or material or waste, including but not limited to all types of gasoline, oil, and other petroleum hydrocarbons, asbestos, radon, polychlorinated biphenols (PCBs), or any other chemical, material, controlled substance, object, condition, waste, living organism or any combination thereof which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful properties of effects, which is now, or in the future becomes, listed, defined or regulated in any manner by any federal, state, or local City based directly or indirectly upon such properties.

15. Subdivider's Insurance.

a. Subdivider Shall Maintain Insurance. Subdivider shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Agreement, the policies of insurance specified in this Section. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with an A.M. Best rating of no less than A:VII.

b. Subdivider to Provide Evidence of Insurance. Prior to the execution of this Agreement and prior to the commencement of any work, the Subdivider shall furnish to the City, and the City must approve, original certificates of insurance and endorsements effecting coverage for all policies required by the Agreement. Subdivider shall not allow any contractor or subcontractor to commence work until similar insurance first shall have been so obtained by such contractor or subcontractor. Certificates shall be signed by a person authorized by the insurer, or insurers, to bind coverage on their behalf. Certificate of insurance and endorsements shall be on standard Acord, Department of Insurance, and Insurance Services Office approved forms or on forms approved by the City. As an alternative to providing the City with approved forms of certificates of insurance and endorsements, the Subdivider may provide complete, certified copies of all required insurance policies, including endorsements, effecting the coverage required by this Section. At any time, at the written request of the City, Subdivider agrees to furnish one or more copies of each required policy including

declarations pages, conditions, provisions, endorsements, and exclusions. Such copies shall be certified by an authorized representative of each insurer.

c. No Suspension of Insurance. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, terminated by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

d. Deductibles. Any deductibles, or self-insured retentions, exceeding five thousand dollars (\$5,000) must be declared to, and approved by, the City. Upon request by the City, Subdivider shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

e. Coverages Shall Not Limit Obligations. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Subdivider are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Subdivider under the Agreement.

f. Required Limits. Subdivider and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the term of this Agreement, not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance of Subdivider and its contractors and subcontractors of the following coverage and limit of insurance is a material element of the Agreement. The failure of Subdivider or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Agreement.

(1) Workers' Compensation Insurance. Subdivider shall maintain, during the term of this Agreement, Workers' Compensation insurance for all of Subdivider's employees as required by Labor Code section 3700 of the State of California and Employer's Liability Act, including Longshoremen's and Harbor Workers' Act ("Acts"), if applicable. Employer's Liability limits shall not be less than one million dollars (\$1,000,000) per occurrence. The Subdivider shall execute a certificate in compliance with Labor Code section 1861, on the form provided in the Contract Documents. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work falling within the terms of this Agreement. Subdivider shall indemnify and hold harmless the City for any damage resulting to it, including attorney fees, from failure of either Subdivider or any contractor or subcontractor to take out and maintain such insurance.

(2) Commercial General Liability Insurance. Subdivider shall maintain during the term of this Agreement such commercial general liability insurance as shall insure the City, its elective and appointive boards and commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this Agreement. The insurance shall include, but not be limited to, protection against claims arising from death, bodily or personal injury, or damage to

property resulting from actions, failures to act, or operations of Subdivider, any contractor's or subcontractor's operations hereunder, whether such operations are by Subdivider or any contractor or subcontractor or by anyone directly or indirectly employed by either Subdivider or any contractor or subcontractor. The amount of insurance coverage shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) per policy aggregate. As an alternative to the policy aggregate the Subdivider may have an aggregate limit of one million dollars (\$1,000,000) per project apply. Coverage shall be at least as broad as Insurance Services Office "occurrence form CG 00 01 (ed. 10/01)" covering commercial general liability or its equivalent.

(3) Endorsements. Subdivider shall see that the commercial general liability insurance shall include, or be endorsed to include, the following:

(a) Provision or endorsement naming the City of Elk Grove, its officers, employees, agents, boards, commissions, and volunteers as Additional Insureds with respect to liability arising out of the performance of any work under this Agreement.

(b) Provision or endorsement stating that insurance is Primary insurance with respects the City, its officers, employees, agents, boards, commissions, and volunteers, to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, boards, commissions, and volunteers shall be excess of the Subdivider's insurance and shall not contribute with it.

(c) Provision or endorsement stating that the Subdivider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability (cross-liability).

(d) Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the City, its officers, employees, agents, boards, commissions, and volunteers.

16. Prevailing Wage. In the event it is determined that the Subdivider is required to pay prevailing wages for the work performed under this Agreement, the Subdivider shall pay all penalties and wages as required by applicable law.

17. Title to Required Improvements. The City shall not accept any real property to be dedicated or the Required Improvements unless they are constructed in conformity with the approved plans and specifications, approved modifications, if any, the approved final or parcel map, and City Improvement Standards and Specifications, to the satisfaction of the City Manager. Until such time as the Required Improvements are accepted by the City, Subdivider shall retain title and shall be responsible for, and bear the risk of loss to, any of the improvements constructed or installed.

Title to and ownership of any real property to be dedicated and the Required Improvements constructed under this Agreement by Subdivider shall vest absolutely in the City upon completion and acceptance in writing of such Required Improvements by City. The City shall not accept the Required Improvements unless title to the Required Improvements is entirely free from lien. Prior to acceptance, Subdivider shall supply the City with appropriate lien releases, at no cost to and in a form acceptable to the City.

18. Repair or Reconstruction of Defective Work. If, within a period of one year after final acceptance by the City Council of the Required Improvements, any improvement or part of any improvement furnished and/or installed or constructed, or caused to be installed or constructed by Subdivider, or any of the work done under this Agreement materially fails to fulfill any of the requirements of this Agreement or the specifications referred to herein, Subdivider shall without delay and without any cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the improvements. If the Subdivider fails to act promptly or in accordance with this requirement, or if the exigencies of the situation require repairs or replacements to be made before the Subdivider can be notified, then the City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Subdivider shall pay to City the actual cost of such repairs plus fifteen percent (15%) within thirty (30) days of the date of billing for such work by City.

19. Subdivider Not Agent of City. Neither Subdivider nor any of Subdivider's agents, contractors, or subcontractors are or shall be considered to be agents of the City in connection with the performance of Subdivider's obligations under this Agreement.

20. Notice of Breach and Default. The following shall constitute a default under this Agreement: If Subdivider refuses or fails to prosecute the work on the Required Improvements, or any part thereof, with such diligence as will ensure its completion within the time specified, or any extension thereof, or fails to complete the Required Improvements within such time; if Subdivider should be adjudged a bankrupt, or Subdivider should make a general assignment for the benefit of Subdivider's creditors, or if a receiver should be appointed in the event of Subdivider's insolvency; or if Subdivider or any of Subdivider's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement. In the event of Subdivider's default, Subdivider shall be deemed to be in breach of this Agreement and the City may serve written notice upon Subdivider and Subdivider's surety, if any, of the breach of this Agreement. Subdivider shall have fifteen (15) days from receipt of written notice by City to cure any default.

a. City reserves to itself all remedies available to it at law or in equity for breach of Subdivider's obligations under this Agreement. City shall have the right, subject to this section, to draw upon or utilize the appropriate security to mitigate City damages in event of default by Subdivider. The right of City to draw upon or utilize the security is additional to and not in lieu of any other remedy available to City. It is specifically recognized that the estimated costs and security amounts may not reflect

the actual cost of construction or installation of the improvements and, therefore, City damages for Subdivider's default shall be measured by the cost of completing the required improvements. The sums provided by the improvement security may be used by City for the completion of the public improvements in accordance with the improvement plans and specifications contained herein. The improvement security includes the Payment Security, Faithful Performance Security, guarantee and Warranty Security, Monument Security and any other improvement security required by Section 10 of this Agreement.

b. In the event of Subdivider's default under this Agreement, Subdivider authorizes City to perform such obligation twenty (20) days after mailing written notice of default to Subdivider and to Subdivider's Surety, and agrees to pay the entire cost of such performance by City.

c. City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdivider's Surety shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Subdivider as may be on the site of the work and necessary for performance of the work.

d. Failure of Subdivider to comply with the terms of this Agreement shall constitute consent to the filing by City of a notice of violation against all the lots in the Subdivision. The remedy provided by this Subsection is in addition to and not in lieu of other remedies available to City. Subdivider agrees that the choice of remedy or remedies for Subdivider's breach shall be within the discretion of City.

e. In the event that Subdivider fails to perform any obligation hereunder, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including costs of suit and reasonable attorneys' fees.

f. The failure of City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach of Subdivider.

g. Subdivider recognizes that by approval of the final map for Subdivision, City has conferred substantial rights upon Subdivider, including the right to sell, lease, or finance lots within the Subdivision, and has taken the final act necessary to subdivide the property within the Subdivision. As a result, City will be damaged to the extent of the cost of installation of the improvements by Subdivider's failure to perform its obligations under this Agreement, including, but not limited to, Subdivider's obligation to complete construction of the improvements by the time established in this Agreement. City shall be entitled to all remedies available to it pursuant to this Agreement and the Subdivision Laws in the event of a default by Subdivider.

21. Building Permit Sign-Off or Issuance of Certificate of Occupancy. The City will not final or sign off as complete any building permit or issue any certificate of occupancy for any building constructed within the Subdivision until and after such time as the City accepts the Required Improvements.

22. Notices. All notices required under this Agreement shall be in writing, and delivered in person or sent by registered or certified mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City Manager
CITY OF ELK GROVE
8400 Laguna Palms Way
Elk Grove, CA 95758

Notices required to be given to Subdivider shall be addressed as follows:

Elk Grove Water Works, LLC, a Limited Liability Company
775 Sunrise Avenue, Suite 270
Roseville, CA 95662

Any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

23. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

24. Attorney Fees. In the event any legal action is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees, in addition to any other relief to which it may be entitled.

25. Personal Nature of Subdivider's Obligations/Assignment. All of Subdivider's obligations under this Agreement are and shall remain the personal obligations of Subdivider notwithstanding a transfer of all or any part of the property within the Subdivision subject to this Agreement, and Subdivider shall not assign any of its obligations under this Agreement without the prior written consent of the City.

26. Acquisition and Dedication of Easements or Rights-of-Way. If any of the Required Improvements are to be constructed or installed on land not within the Subdivision or an already existing public right-of-way, no construction or installation shall be commenced before:

a. The irrevocable offer of dedication or conveyance to City of appropriate rights-of-way, easements or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Required Improvements, or

b. The issuance of an order of possession by a court of competent jurisdiction pursuant to the State Eminent Domain Law. Subdivider shall comply in all respects with any such order of possession.

Nothing in this paragraph shall be construed as authorizing or granting an extension of time to Subdivider for completion of the Required Improvements.

27. Compliance with Laws. Subdivider, its agents, employees, contractors, and subcontractors shall comply with all federal, state and local laws in the performance of the work required by this Agreement including, but not limited to, obtaining all applicable permits and licenses.

28. No Vesting of Rights. Entering into this Agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law or ordinance.

29. Approvals by City. Any approval or consent that is to be given by the City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on the City.

30. Construction and Interpretation. It is agreed and acknowledged by Subdivider that the provisions of this Agreement have been arrived at through negotiation, and that Subdivider has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

31. Successors and Assigns -- Covenant Running With the Land. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the respective parties. A memorandum of this Agreement in the form attached hereto shall be recorded in the Office of the Recorder of Sacramento County concurrently with the final map or parcel map of the Subdivision. This Agreement shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision.

32. Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

33. Actions. Any action by any party to this Agreement, or any action concerning a security furnished pursuant thereto, shall be brought in the appropriate court of competent jurisdiction within the County of Sacramento, State of California, notwithstanding any other provision of law which may provide that such action may be brought in some other location. The law governing this Agreement is the law of the State of California.

34. Integration. This Agreement is an integrated agreement. It supersedes all prior negotiations, representations, or agreements, either written or oral.

35. Modification. This Agreement may be amended only by a written instrument signed by the parties. Subdivider shall bear all costs of amendments to this Agreement that are requested by the Subdivider.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

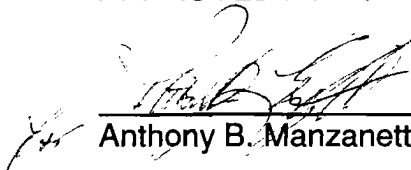
CITY OF ELK GROVE

By: _____
Sophia Scherman, Mayor

ATTEST:

Peggy E. Jackson, City Clerk

APPROVED AS TO FORM:



Anthony B. Manzanetti, City Attorney

SUBDIVIDER

By: _____
_____, [Title]

ELK GROVE WATER WORKS, LLC., A LIMITED LIABILITY COMPANY

BY: TOWNE DEVELOPMENT OF SACRAMENTO, INC.,
A CALIFORNIA CORPORATION, its manager

BY: William F Brown

NAME & TITLE WILLIAM F Brown JR V.P.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

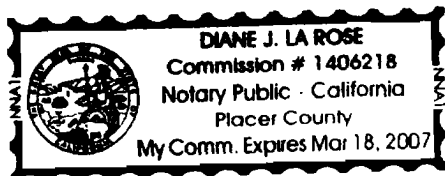
County of

Sacramento

ss.

On August 28, 2003 before me, Diane J. LaRose, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared William J. Brown, Jr.
Name(s) of Signer(s)

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Diane J. LaRose
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

ATTACHMENT 3
VICINITY MAP AND FINAL MAP

NEWTON RANCH

BAKER WILLIAMS ENGINEERING GROUP

STOCKTON

SHeldon DR

W. C. JORDAN DR

EMERSON

WEST DR

GROVE

VALLEY OAK DR

ELK

POFFY RIDGE RD

KAMMERER RD

W. C. MILLER DR

BOND

WATERMAN

GRANT LINE

GRANT AVE

PLEASANT GROVE RD

TITAN RD

JETMAR WY

FREEMAN RD

DILLARD

STOCKTON

93

S. F. S. S.

SITE

N

0 1 2 3 4 5 6 7 8 9 10

LOCATION MAP

N.T.S.

OWNER'S STATEMENT:

THE UNDERSIGNED HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS FINAL MAP OF NEWTON RANCH AND OFFERS FOR DEDICATION AND DOES HEREBY DEDICATED TO ANY AND ALL PUBLIC USES THE PUBLIC CIRCLES, DRIVE AND COURTS SHOWN HEREON WITHIN THESE BOUNDARIES AND ALSO OFFERS FOR DEDICATION AND DOES HEREBY DEDICATE TO SPECIFIC PURPOSES THE FOLLOWING

(A) AN EASEMENT FOR CONSTRUCTING AND MAINTAINING CENTRALIZED MAIL DELIVERY BOXES, PEDESTALS AND SLABS TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO INCLUDING PEDESTRIAN ACCESS FOR DELIVERY AND RECEIPT OF MAIL ON OVER, UNDER AND ACROSS THOSE STRIPS OF LAND FIVE FEET IN WIDTH LYING CONTIGUOUS TO THE PUBLIC DRIVE, ROADS, WAYS AND COURTS SHOWN HEREON LOCATION TO BE DETERMINED BY THE U.S. POSTAL SERVICE WITH THE FUTURE PLACEMENT OF MAIL DELIVERY BOXES

(B) RIGHT OF WAY AND EASEMENTS FOR THE INSTALLATION AND MAINTENANCE OF A PEDESTRIAN WALKWAY TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO ON OVER, UNDER, AND ACROSS LOT C AS WELL AS THOSE STRIPS OF LAND SHOWN HEREON AND DESIGNATED "PEDESTRIAN EASEMENT" (P/E)

(C) EASEMENTS FOR PLANTING AND MAINTAINING TREES, ELECTROLIERS, TRAFFIC CONTROL DEVICES, WATER AND GAS PIPES, AND FOR OVERHEAD AND UNDERGROUND WIRES AND CONDUITS FOR ELECTRIC, TELEVISION AND TELEPHONE SERVICES TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO, ON OVER, UNDER AND ACROSS LOTS C, D AND E AND STRIPS OF LAND 12.5 FEET IN WIDTH LYING CONTIGUOUS TO THE PUBLIC CIRCLES, DRIVE AND COURTS SHOWN HEREON AND DESIGNATED "PUBLIC UTILITY EASEMENT" (PUE)

(D) VISIBILITY EASEMENT(S) TO BE KEPT FREE FROM SIGNS, HEDGES, FENCES, STRUCTURES, NATURAL GROWTH OR OTHER OBSTRUCTIONS TO THE VIEW HIGHER THAN TWO FEET SIX INCHES (2 1/2) ABOVE THE NEAREST PAVEMENT SURFACE WITHIN THE AREA OVER AND ACROSS THAT LAND DESIGNATED HEREON AS "VISIBILITY EASEMENT"

(E) RIGHT-OF-WAY AND EASEMENTS FOR THE INSTALLATION AND MAINTENANCE OF A LANDSCAPE CORRIDOR TOGETHER WITH ANY AND ALL APPURTENANCES PERTAINING THERETO ON OVER, UNDER AND ACROSS LOTS D AND E AND THOSE STRIPS OF LAND SHOWN HEREON AND DESIGNATED "LANDSCAPE EASEMENT" (L/E)

LOT A SHALL BE GRANTED IN FEE BY SEPARATE DOCUMENT TO THE COUNTY OF SACRAMENTO FOR WELL SITE PURPOSES.

LOT B SHALL BE GRANTED BY SEPARATE DOCUMENT IN FEE TO THE ELK GROVE COMMUNITY SERVICES DISTRICT FOR PARK PURPOSES.

LOTS C, D AND E SHALL BE GRANTED BY SEPARATE DOCUMENT IN FEE TO ELK GROVE COMMUNITY SERVICES DISTRICT AS LANDSCAPE STRIPS.

ELKGROVE WATER WORKS, LLC, a Limited Liability Company

BY TOWNE DEVELOPMENT OF SACRAMENTO, INC. A CALIFORNIA CORPORATION
ITS MANAGER

BY William K. Baur

TITLE VICE PRESIDENT

NOTARY'S ACKNOWLEDGMENT:

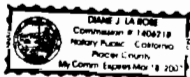
STATE OF CALIFORNIA)
COUNTY OF Sacramento) SS

ON THIS 28th DAY OF August 2003 BEFORE ME
Diane J. LaRose A NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE PERSONALLY APPEARED

William K. Baur
PERSONALLY KNOWN TO ME (OR PROVED TO ME ON BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL

MY COMMISSION EXPIRES MAR 18, 2007
COMMISSION NO. 1406474
IS IN Sacramento COUNTY



Diane J. LaRose
NOTARY PUBLIC

Diane J. LaRose
PRINT NAME

SUBDIVISION NO. 00-077.00 OF

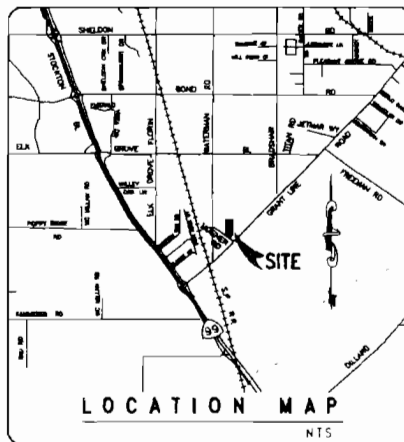
NEWTON RANCH

A PORTION OF THE NORTHWEST
ONE-QUARTER OF SECTION 8, T. 6 N., R. 6 E., M.D.M.
CITY OF ELK GROVE, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

OCTOBER, 2003

BAKER WILLIAMS ENGINEERING GROUP

Sheet 1 of 5

**TRUSTEE'S STATEMENT:**

STEWART TITLE OF SACRAMENTO A CALIFORNIA CORPORATION AS TRUSTEE UNDER DEED OF TRUST DATED NOVEMBER 25, 2002 AND FILED DECEMBER 31, 2002 IN BOOK 2002-12-31 PAGE 2228, OFFICIAL RECORDS.

BY Daniel P. Moreno
TITLE ASST VP

BY
TITLE

NOTARY'S ACKNOWLEDGMENT:

STATE OF CALIFORNIA)
COUNTY OF Sacramento) SS

ON THIS 19th DAY OF August 2003 BEFORE ME
Michelle Barnes A NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE PERSONALLY APPEARED Daniel P. Moreno

PERSONALLY KNOWN TO ME (OR PROVED TO ME ON BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL

MY COMMISSION EXPIRES 1422535 6-6-07
COMMISSION NO. 1422535
IS IN Sacramento COUNTY

M. Barnes
NOTARY PUBLIC

Michelle Barnes
PRINT NAME

SURVEYOR'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF BILLY BROWN, TOWNE DEVELOPMENT IN AUGUST 2002. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP THAT THE MONUMENTS WILL BE OF THE CHARACTER AND WILL OCCUPY THE POSITIONS INDICATED AND WILL BE SET BY OCTOBER 2004 AND THAT SAID MONUMENTS WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. THIS SUBDIVISION HAS A TOTAL ACREAGE OF 19.381 ACRES CONSISTING OF 84 RESIDENTIAL LOTS AND 4 MISCELLANEOUS LOTS.

DATE 8-18-03

Michael F. Williams
MICHAEL F. WILLIAMS L.S. 4732
EXPIRES 9/30/2003

**SOILS REPORT:**

A SOILS REPORT FOR THIS SUBDIVISION WAS PREPARED BY WALLACE KUH & ASSOCIATES, INC. DATED APRIL 10, 1992 (WKA NO. 2077.02). A COPY OF THIS REPORT IS AVAILABLE FOR PUBLIC INSPECTION AT THE CITY OF ELK GROVE PUBLIC WORKS DEPARTMENT.

CITY ENGINEER'S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP OF NEWTON RANCH AND FIND IT TO BE SUBSTANTIALLY THE SAME AS THE TENTATIVE MAP APPROVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SACRAMENTO AND ANY APPROVED ALTERATIONS THEREOF. THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES HAVE BEEN COMPLIED WITH AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT ADDITIONALLY, I HEREBY CONSENT TO ALL OF THE ABANDONMENTS HEREON AUTHORIZED BY SECTION 66499.20-1/2 OF THE GOVERNMENT CODE.

ROBERT L. LEE
CITY ENGINEER, CITY OF ELK GROVE
P.O.C. # 23018
EXPIRATION DATE 12-31-05
DATE

CITY CLERK'S STATEMENT:

I, CITY CLERK OF THE CITY OF ELK GROVE HEREBY STATE THE CITY COUNCIL OF THE CITY OF ELK GROVE HAS APPROVED THIS MAP OF NEWTON RANCH SUBDIVISION NO. 00-077.00 AND ACCEPTED SUBJECT TO IMPROVEMENT ON BEHALF OF THE PUBLIC, ANY REAL PROPERTY OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION ALL AS SHOWN ON THIS MAP. ADDITIONALLY, APPROVAL BY THE CITY COUNCIL EFFECTS AN ABANDONMENT BY THE CITY OF ELK GROVE PURSUANT TO SECTION 66499.20-1/2 OF THE GOVERNMENT CODE OF ALL PUBLIC EASEMENTS AND IRREVOCABLE OFFERS OF DEDICATION WITHIN THE HEAVY BORDER OF THIS MAP, CREATED BY DEED RECORDED IN BOOK 2002-08-22 PAGE 90 NOT SHOWN ON THIS MAP.

PEGGY E. JACKSON
CLERK OF CITY COUNCIL
CITY OF ELK GROVE
DATE

RECORDERS STATEMENT:

FILED THIS _____ DAY OF OCTOBER 2003, AT _____ M. IN BOOK _____ OF MAPS, AT PAGE _____ AT THE REQUEST OF BAKER WILLIAMS ENGINEERING GROUP, TITLE TO THE LAND INCLUDED IN THIS SUBDIVISION BEING VESTED AS PER CERTIFICATE NO. _____ ON FILE IN THIS OFFICE.

FEE _____

BOOK _____

PAGE _____

RECORDER OF SACRAMENTO COUNTY
STATE OF CALIFORNIA

BY _____
DEPUTY

SHEET 1 OF 5

JOB NO. 02-08-084

SEE SHEET 2 FOR NOTES, LEGEND
AND BASIS-OF-BEARING.

SUBDIVISION NO. 00-07-00 OF **NEWTON RANCH**

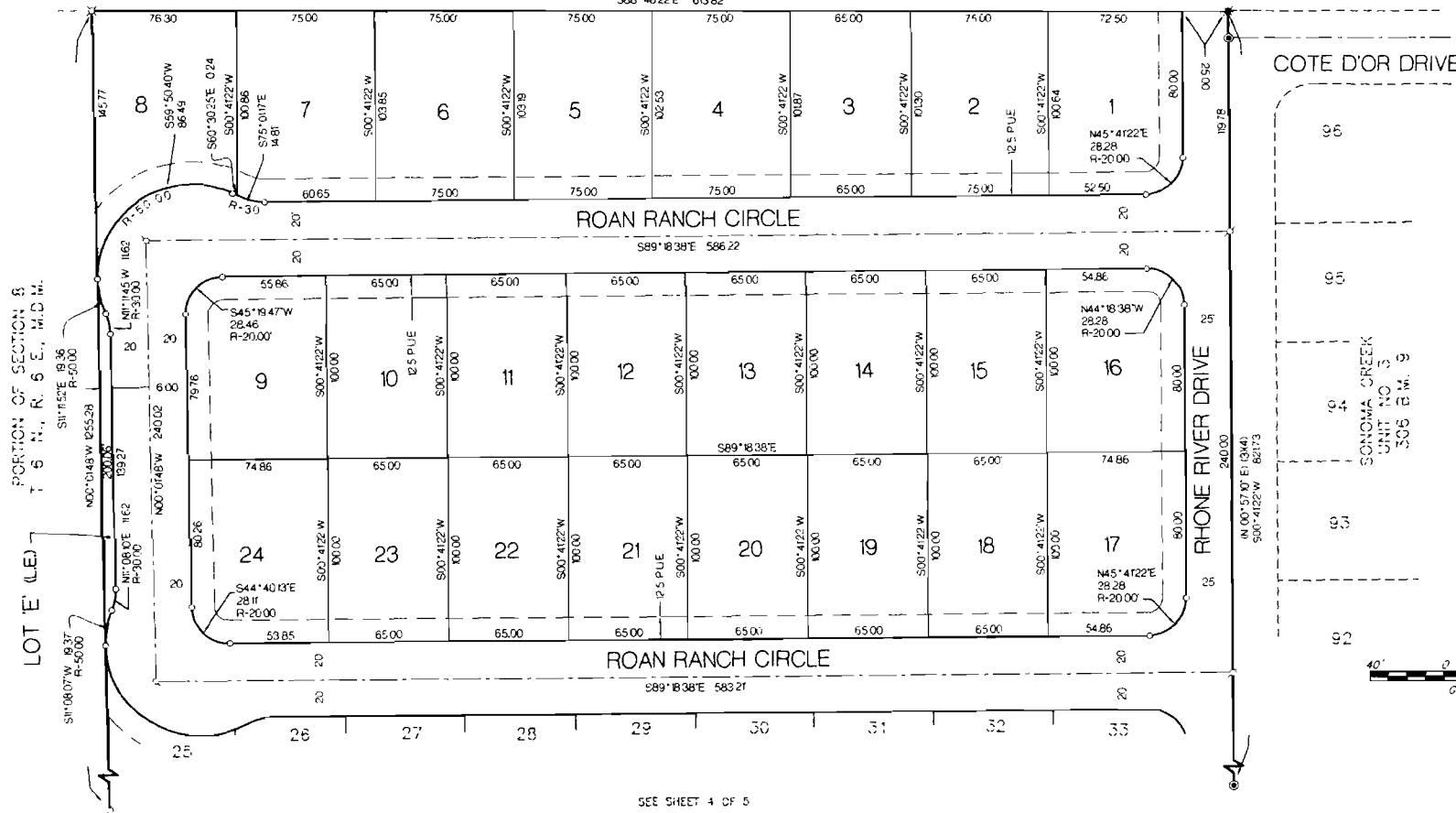
A PORTION OF THE NORTHWEST
ONE-QUARTER OF SECTION 8, T. 6 N., R. 6 E., M.D.M.
CITY OF ELK GROVE, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA
OCTOBER, 2003 SCALE: 1"=40'

BAKER WILLIAMS ENGINEERING GROUP

Sheet 3 of 5

PARCEL 2
21 PM 51

(N 87°52'W) (S)
588°48'22"E 613.82



SEE SHEET 4 OF 5

SUBDIVISION NO. 00-017.00 OF

A PORTION OF THE NORTHWEST
ONE-QUARTER OF SECTION 8, T. 6 N., R. 6 E., M.D.M.
CITY OF ELK GROVE, COUNTY OF SACRAMENTO

STATE OF CALIFORNIA

OCTOBER, 2003

SCALE: 1"=40'

BAKER WILLIAMS ENGINEERING GROUP

Sheet 4 of 5

AN RANCH CIRCLE

589*H38E 58321

OREO RANCH CIRCLE

589 1838E 540 19

OREO RANCH CIRCLE

SEE SHEET 5 OF 5

-C PINTO RANCH COURT

RHONE VALLEY
 WAY

LOIRE VALLEY

SEE SHEET 2 FOR NOTES, LEGEND AND
BASIS-OF-BEARING.

UNIT NO 15 03
306 E.M.

SONOMA CREEK
UNIT NO 2 BX
506 00 15 15

GRAPHIC SCALE 1"=40'

SHEET 4 OF 5

1000-0000-2004-0000-0000

SEE SHEET 2 FOR NOTES, LEGEND AND
BASIS-OF-BEARING

