

ORDINANCE NUMBER 2008 - 34

GRANTING AN AMENDMENT TO
BRIGHTON OAKS PUD

WHEREAS, Fox Valley View, Inc., has filed a petition for an amendment to their PUD in regards to their emergency access route; all PUD's are Special Uses. The property is located one mile south of Legion Road on the west side of Highpoint Road, commonly known as the Brighton Oaks Subdivision, in Section 18 of Kendall Township which consists of 25.95 acres; and

WHEREAS, said property is identified with the tax identification numbers: 05-18-250-001; 05-18-250-002; 05-18-250-003; 05-18-250-004; 05-18-250-005; 05-18-250-006; 05-18-250-007; 05-18-250-008; 05-18-250-009; 05-18-401-010; 05-18-250-011; 05-18-250-012; 05-18-250-013; 05-18-250-014; 05-18-250-015; 05-18-401-001; 05-18-401-002; 05-18-401-003; 05-18-401-004; 05-18-401-005; 05-18-401-006 and is legally described on the attached "Exhibit A": Legal Description; and

WHEREAS, a petition granting the rezoning was approved by the Kendall County Board on February 18, 2003, as Ordinance Number 03-02 to allow rezoning of the 25.95 Acre property from A-1 to R-3 PUD; and

WHEREAS, the petitioner would like to amend the final plat with regards to the emergency access route; and

WHEREAS, all procedures required by the Kendall County Zoning Ordinance were followed including notice for public hearing, preparation of the findings of fact, and recommendation for approval by the Special Use Hearing Officer on July 22, 2008; and

WHEREAS, the Kendall County Board finds that said petition is in conformance with the provisions and intent of the Kendall County Zoning Ordinance; and

WHEREAS, any change or modification to the Special Use that does not modify the original intent, purpose, or need for the Special Use, shall be submitted to and reviewed by the Planning, Building, & Zoning Department. Notice that a change or modification is sought shall be provided by the applicant in the manner provided in 55 ILCS 5/5-12009.5. Upon proper notice, the Planning, Building, & Zoning Department shall forward the request for change or modification to the Planning, Building & Zoning Committee. The Committee may return the matter to ZPAC and/or Plan Commission for further consideration and findings or forward the matter to the full County Board to grant, deny, or return the requested change or modification to the Committee for further consideration and findings, and

NOW, THEREFORE, BE IT ORDAINED, that the Kendall County Board hereby grants an amendment to the PUD on the tract of land depicted on the site plan attached as "Exhibit B," the plat of Easement for the emergency access route attached as "Exhibit C" and the easement provisions attached as "Exhibit D" hereto and incorporated herein, subject to the following conditions:

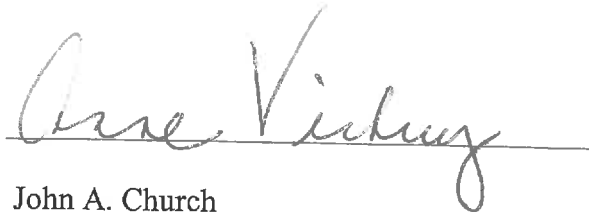
1. Recording of the revised landscape plan and revised final plat reflecting the changes to the emergency access and trail plan by October 1, 2008.
2. The punch list/ check list for the remaining subdivision improvements shall be done and closed out by December 30, 2008.

IN WITNESS OF, this ordinance has been enacted on August 19, 2008.

Attest:



Rennetta Mickelson
Kendall County Clerk



John A. Church
Kendall County Board Chairman

**EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY**

THAT PART OF SECTION 18, TOWNSHIP 36 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT A STONE IN THE CENTER OF LISBON ROAD SAID TO BE THE SOUTHWEST CORNER OF SAID SECTION 18; THENCE NORTH 39°42'39" EAST, 1899.10 FEET TO THE INTERSECTION OF THE CENTERLINE OF HIGHPOINT ROAD AND THE LINE OF A FENCE EXTENDED FROM THE NORTH; THENCE SOUTH 59°22'11" EAST, ALONG SAID ROAD CENTERLINE, 304.89 FEET TO THE SOUTHERLY EXTENSION OF THE EAST LINE OF A TRACT CONVEYED TO WAYNE L. BORNEMAN AND RUBY F. BORNEMAN BY WARRANTY DEED RECORDED MAY 16, 1983 AS DOCUMENT NO. 83-1988; THENCE NORTH 09°50'46" EAST, ALONG SAID EAST LINE AND ITS EXTENSION, 1531.82 FEET TO THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 18 AND THE NORTHEAST CORNER OF SAID BORNEMAN TRACT FOR THE POINT OF BEGINNING; THENCE SOUTH 09°50'46" WEST, ALONG SAID EAST LINE, 310.0 FEET TO THE CENTERLINE OF A CREEK; THENCE NORTH 89°17'49" EAST, ALONG SAID CREEK CENTERLINE, 898.98 FEET; THENCE SOUTH 71°33'59" EAST, ALONG SAID CREEK CENTERLINE, 106.90 FEET; THENCE SOUTH 64°02'05" EAST, ALONG SAID CREEK CENTERLINE, 479.97 FEET; THENCE SOUTH 45°58'36" EAST, ALONG SAID CREEK CENTERLINE, 38.82 FEET; THENCE SOUTH 41°10'10" EAST, ALONG SAID CREEK CENTERLINE, 816.47 FEET TO THE CENTERLINE OF HIGHPOINT ROAD; THENCE NORTHEASTERLY, ALONG SAID ROAD CENTERLINE BEING A CURVE TO THE LEFT WITH A CHORD BEARING OF NORTH 43°25'19" EAST AND A RADIUS OF 580.02 FEET, AN ARC LENGTH OF 277.48 FEET; THENCE NORTH 29°43'00" EAST, ALONG SAID ROAD CENTERLINE, 801.65 FEET TO A SOUTHERLY LINE OF A TRACT (AS OCCUPIED AND MONUMENTED) DESCRIBED IN A QUIT CLAIM DEED TO DONALD L. LINDHOLM RECORDED AS DOCUMENT NO. 80-363 ON JANUARY 30, 1980; THENCE NORTH 89°49'40" WEST, ALONG SAID SOUTHERLY LINE OF SAID LINDHOLM TRACT (AS OCCUPIED AND MONUMENTED), 885.96 FEET TO THE SOUTHWESTERLY CORNER THEREOF; THENCE NORTH 00°19'14" EAST ALONG THE WESTERLY LINE OF SAID LINDHOLM TRACT (AS OCCUPIED AND MONUMENTED) 860.93 FEET TO A SOUTHERLY LINE OF A TRACT (AS OCCUPIED AND MONUMENTED) DESCRIBED IN A WARRANTY DEED TO HARRY ANDERSON AND RECORDED AS DOCUMENT NO. 910426 ON JANUARY 22, 1991; THENCE NORTH 53°55'38" WEST, ALONG SAID SOUTHERLY LINE OF SAID ANDERSON TRACT (AS OCCUPIED AND MONUMENTED), 471.22 FEET TO THE WESTERLY LINE OF LOT 19, AS DEPICTED IN PLAT BOOK 3 AT PAGE 75; THENCE SOUTH 27°19'33" WEST, ALONG SAID WESTERLY LINE, 946.63 FEET TO THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 18; THENCE NORTH 89°41'54" WEST, ALONG SAID NORTH LINE, 823.54 FEET TO THE POINT OF BEGINNING IN KENDALL TOWNSHIP, KENDALL COUNTY, ILLINOIS AND CONTAINING 37.543 ACRES, MORE OR LESS.

EXHIBIT D

TEMPORARY EMERGENCY ACCESS EASEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 19th day of August, 2008, by and between FOX VALLEY VIEW, INC. (hereinafter referred to as "Grantor"), and the COUNTY OF KENDALL, a _____ (hereinafter referred to as "Grantee"). Grantor and Grantee may hereinafter individually be referred to as a "Party" and collectively be referred to as the "Parties."

WITNESSETH:

WHEREAS, Grantor is the owner of the Property located on the west side of Highpoint Road, south of Brighton Oaks Drive, and is legally described on Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the Property); and

WHEREAS, an easement has previously been granted on the Final Plat for Brighton Oaks, recorded on October 2, 2003 as Document Number 200300035615, for access to the Bio-Reactor, which connects Brighton Oaks Drive to the Property (hereinafter referred to as "Easement") as shown on the Final Plat, attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, Grantee is seeking a temporary, non-exclusive, emergency access easement over the Property for the purpose of utilizing an emergency access roadway in the event that Brighton Oaks Drive is impassable in an emergency situation until such time as right of way is

“Improvements”). Grantee shall not be responsible for the cost of any Improvements. Grantor shall at all times and at its sole cost maintain the Temporary Easement and the Improvements so that the Improvements perform as intended, until such time as the Temporary Easement is released or is terminated. Grantee shall not be responsible for any maintenance costs. If Grantor fails to maintain the Temporary Easement or Improvements, Grantee may send written notice to Grantor of said failure. Grantor shall perform the required maintenance within 30 days of written notice from Grantee, or thereafter Grantee may, at Grantee’s sole discretion, perform said maintenance. Grantor shall reimburse Grantee for the reasonable maintenance costs incurred by Grantee within 15 days of receipt of an invoice for said maintenance.

2. Relocation of Temporary Easement.

It is understood by Grantee that Grantor may sell the Property or develop the Property in Kendall County or the City of Yorkville (hereinafter referred to as “City”), but currently does not have a designated location for the future roadway system. Therefore, upon notice to Grantee, Grantee agrees to allow Grantor to relocate the Temporary Easement at Grantor’s expense in the event that the Property is sold or the installation of the infrastructure necessary for the development of the Property necessitates relocation. Grantor agrees that the Temporary Easement shall remain in place until such time as the Grantor has relocated the Temporary Easement and installed the emergency access roadway in the relocated Temporary Easement. Grantee and Grantor agree to sign any and all documents necessary to relocate and release the Temporary Easement as may be required at the time of relocation upon the approval of the Kendall County Highway Engineer, which approval shall not be unreasonably withheld, conditioned or delayed.

3. Termination of Temporary Easement.

If the Property is developed in Kendall County or annexed and developed in the City, right-of-way across the Property will be dedicated to the appropriate governmental entity connecting the

easements, established herein shall be covenants running with the land. Said covenants, restrictions, conditions, reservations, and easement shall inure to the benefit of and shall be binding upon the Grantor and Grantee and his, her or its respective mortgagees, heirs, administrators, executors, legal representatives, successors and assigns, purchasers and lessees. By the recording or acceptance of a deed of conveyance of property or any interest therein, the person or entity to whom such interest is conveyed shall be deemed to accept and agree to be bound by the provisions of this Agreement.

6. Enforcement.

Failure by a Party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. No covenants, restrictions, conditions, reservations, easement, and/or charges contained in this Agreement shall be deemed to be waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may have occurred.

Each Party reserves the right to enforce these covenants, restrictions, conditions, reservations, easement, and charges for so long as they shall exist.

In addition to all other remedies available at law or in equity, upon the failure of any Party to cure a breach of this Agreement within thirty (30) days following written notice thereof from another Party hereto (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Party commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), the non-defaulting Party shall have the right to perform such breached obligation on behalf of such defaulting Party and to be reimbursed by such defaulting Party upon demand for the reasonable costs thereof, together with interest at a per annum rate equal to the maximum rate of interest allowed by law. Without limitation of the foregoing, in the case of any breach of this Agreement or threat thereof involving (i) loss or material impairment in the good faith determination of the non-defaulting Party, or (ii) an

807 John Street
Yorkville, Illinois 60560

Notices and demands shall be deemed effective upon receipt. The person and place to which notices are to be given may be changed by a Party by written notice to the other Parties.

9. Severability.

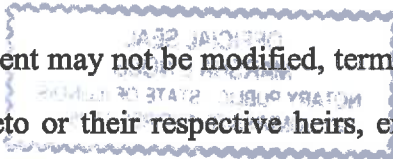
Invalidation of any one of these covenants, restrictions, conditions, reservations, easements, charges and liens by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

10. Inurement.

This Agreement and the easements, covenants, benefits and obligations created hereby shall inure to the benefit and be binding upon each Party and its successors and assigns; provided, if Grantor conveys any portion or all of its interest in the property owned by it, Grantor shall thereupon be released and discharged from any and all further obligations under this Agreement.

11. Amendment.

Except as otherwise provided herein, this Agreement may not be modified, terminated or rescinded except in writing executed by the Parties hereto or their respective heirs, executors, administrators, successors or assigns and then only by written instrument duly executed and acknowledged by such Parties. Any amendment must be approved by the Kendall County Board.



12. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and no representations, undertakings, or promises, whether written or oral, expressed or implied have been made by the Parties, or their representatives, unless expressly stated herein.

IN WITNESS WHEREOF, the undersigned have affixed their signatures effective the date first set forth above.

FOX VALLEY VIEW, INC.

COUNTY OF KENDALL

By:

Arne Feunoy 3/18/09

Attest:

Bonetta Mickelson 3/24/09

Prepared by and return to:

Patti A. Bernhard

Dommermuth, Brestal, Cobine & West, Ltd.

123 Water Street, PO Box 565

Naperville, Illinois 60566-0565

EXHIBIT B FINAL PLAT FOR BRIGHTON OAKS

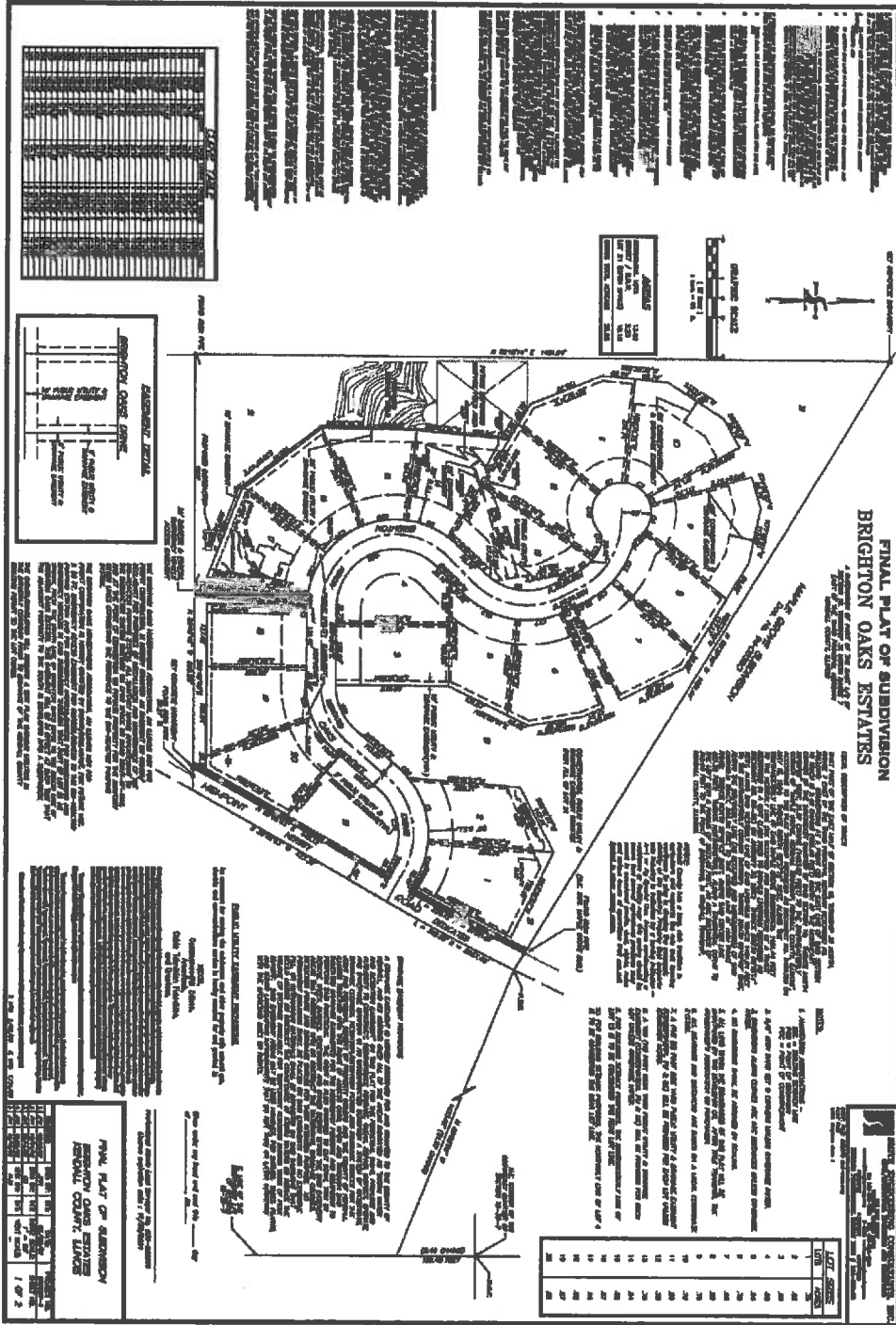


EXHIBIT C
LEGAL DESCRIPTION OF TEMPORARY EASEMENT

PART OF SECTION 18, TOWNSHIP 36 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF BRIGHTON OAKS ESTATES, RECORDED AS DOCUMENT NO. 200300035615; THENCE SOUTH 89 DEGREES 49 MINUTES 40 SECONDS EAST, ALONG THE SOUTH LINE OF SAID BRIGHTON OAKS ESTATES, 467.08 FEET, FOR A POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTH LINE, SOUTH 89 DEGREES 49 MINUTES 40 SECONDS EAST, 20.27 FEET; THENCE SOUTH 09 DEGREES 30 MINUTES 58 SECONDS WEST, 123.05 FEET; THENCE ALONG A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 40.00 FEET, AN ARC LENGTH OF 42.05 FEET; THENCE SOUTH 50 DEGREES 42 MINUTES 55 SECONDS EAST, TANGENT WITH LAST DESCRIBED ARC, 48.90 FEET; THENCE THENCE ALONG A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 40.00 FEET, AN ARC LENGTH OF 11.73 FEET; THENCE SOUTH 67 DEGREES 31 MINUTES 21 SECONDS EAST, TANGENT WITH LAST DESCRIBED CURVE, 215.09 FEET TO THE CENTERLINE OF HIGHPOINT ROAD; THENCE SOUTH 29 DEGREES 43 MINUTES 57 SECONDS WEST, ALONG SAID CENTERLINE 20.16 FEET; THENCE NORTH 87 DEGREES 31 MINUTES 21 SECONDS WEST, 212.55 FEET; THENCE ALONG A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 60.00 FEET, AN ARC LENGTH OF 17.60 FEET; THENCE NORTH 50 DEGREES 42 MINUTES 55 SECONDS WEST, TANGENT WITH LAST DESCRIBED ARC, 48.90 FEET; THENCE ALONG A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT WITH LAST DESCRIBED COURSE AND HAVING A RADIUS OF 60.00 FEET, AN ARC LENGTH OF 63.07 FEET; THENCE NORTH 09 DEGREES 30 MINUTES 58 SECONDS EAST, TANGENT WITH LAST DESCRIBED ARC, 119.76 FEET TO SAID POINT OF BEGINNING, ALL IN KENDALL COUNTY, ILLINOIS.

EXHIBIT E
KENDALL COUNTY IMPROVEMENT SPECIFICATIONS

zn standards

All private driveways shall conform to the following

- a. *The pavement shall be at 12" of crushed limestone the top 6" of which shall be grade CA6 with a suitable subgrade or the equivalent.*

- b. *The pavement shall be 10' wide per lane. Individual driveways which provide access to one lot only may be one lane. Shared driveways shall be two lanes.*

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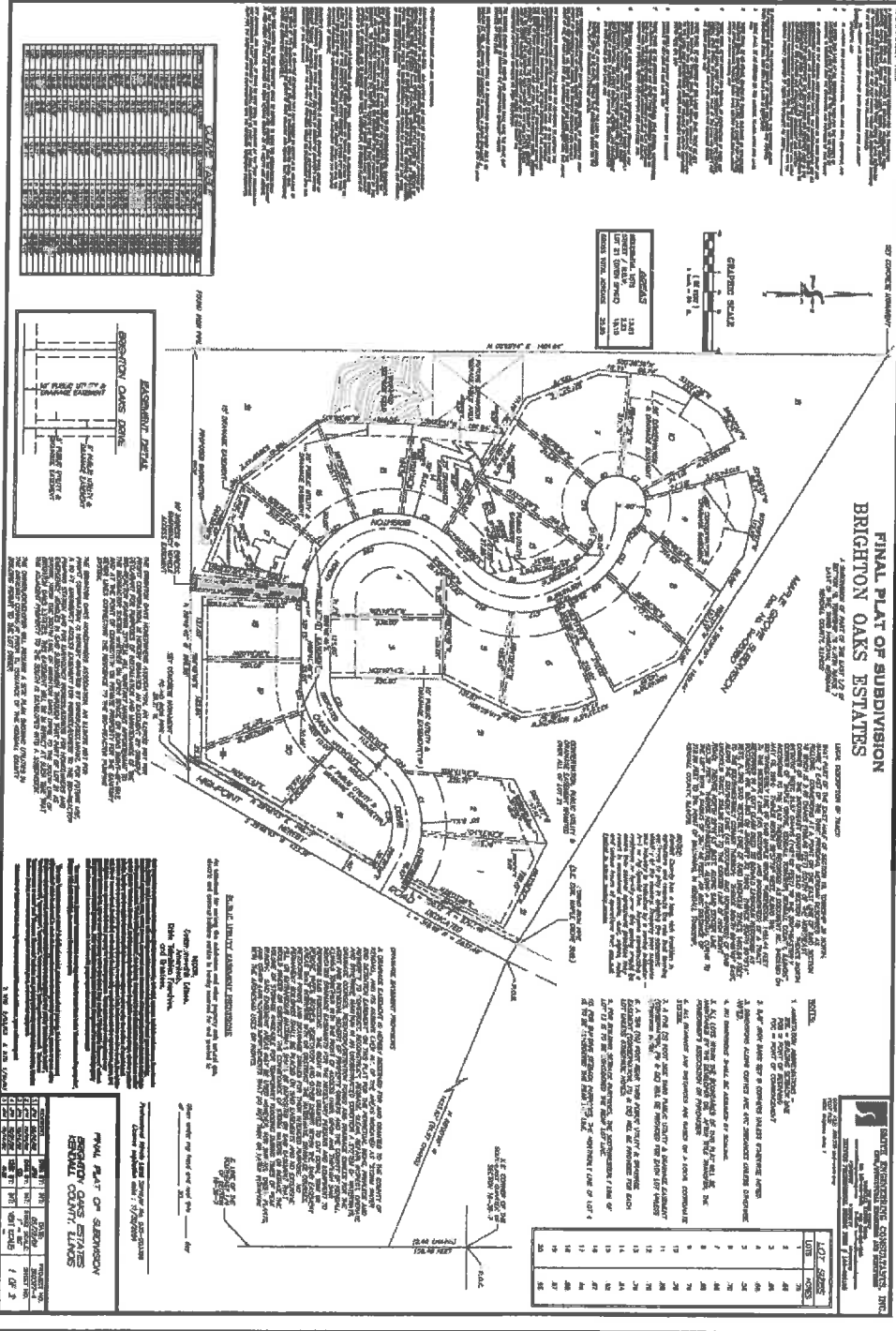


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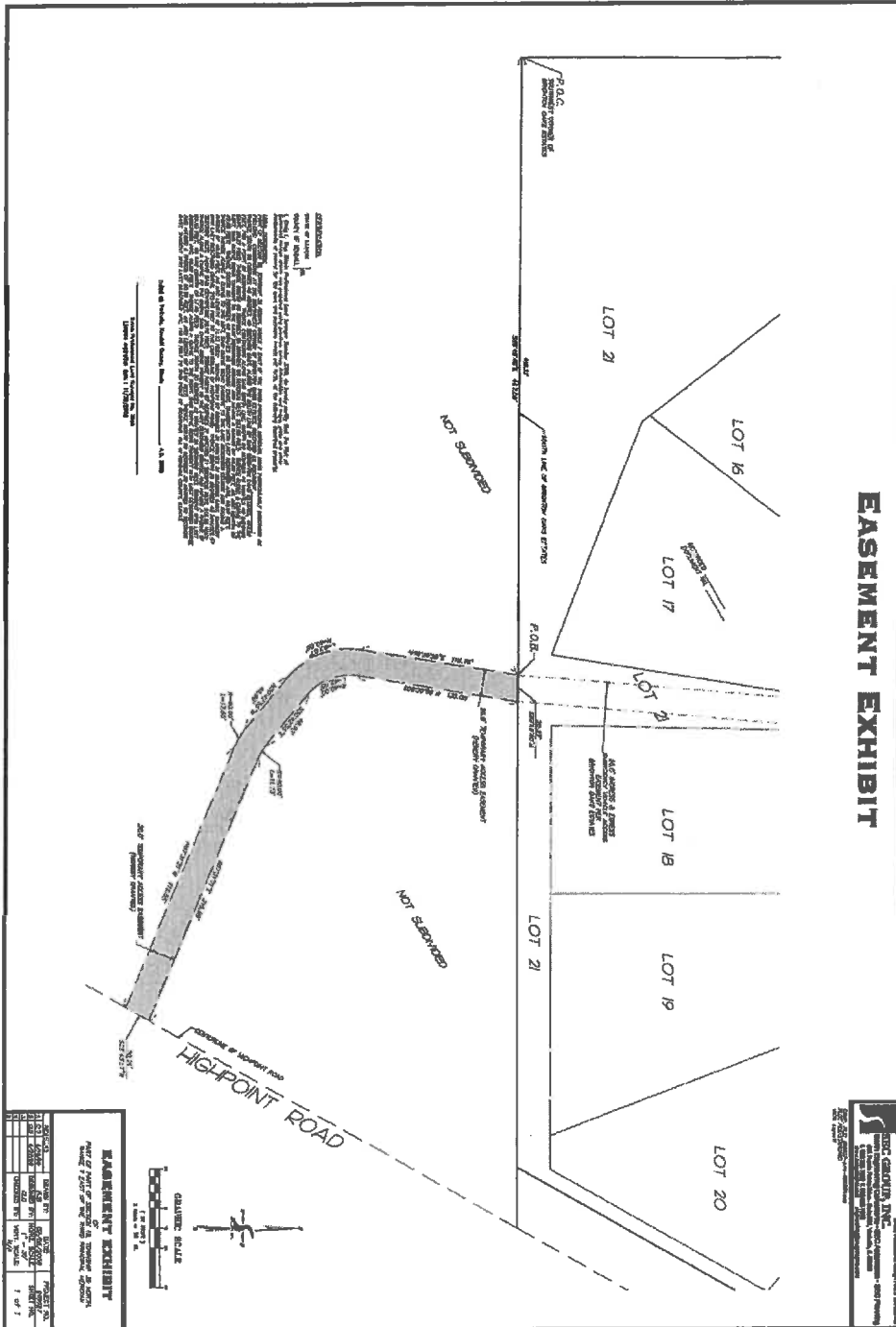


EXHIBIT E
KENDALL COUNTY IMPROVEMENT SPECIFICATIONS

in standards

All private driveways shall conform to the following

- a. *The pavement shall be at 12" of crushed limestone the top 6" of which shall be grade CA6 with a suitable subgrade or the equivalent.*

- b. *The pavement shall be 10' wide per lane. Individual driveways which provide access to one lot only may be one lane. Shared driveways shall be two lanes.*

- c. *All trees and bushes shall be kept at least 10' away from the edge of the pavement and 15' above the pavement.*

Shared private driveways that provide access to three or more lots shall conform to the following.

- d. *Shall not be approved by the County unless there is some desirable condition on the site that could not otherwise be preserved if a public road was provided such as significant trees, topography, water features, historic sites, rural character, etc. Connections to two public streets which would allow through traffic shall not be allowed.*
- e. *Length from the public street - 500' maximum.*
- f. *Pavement horizontal alignment radius on centerline - 100' minimum.*
- g. *Pavement vertical curve - 10 times the difference in grade, minimum.*
- h. *Pavement gradient - 10% maximum.*
- I. *Pavement return radius - 25' minimum.*
- j. *Where turnarounds are required, they shall have an inside radius 20' and outside radius 45'.*
- k. *The ownership, maintenance responsibility, covenants, and signage requirements are specified in the Appendix of the Subdivision Ordinance.*
- l. *The private shared driveway shall not be named. The County shall assign addresses on the nearest public street with the suffix A ,B, C etc. corresponding to each lot.*



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