RESOLUTION NO. 11-1374

A RESOLUTION APPROVING A TAX ABATEMENT AGREEMENT BY AND BETWEEN THE CITY OF EULESS, TEXAS, AND M.A.D. TRIANGLE, LLC AND AUTHORIZING EXECUTION OF SAME BY THE MAYOR OF THE CITY OF EULESS.

WHEREAS, the City Council of the City of Euless, Texas, has adopted guidelines and criteria for potential tax abatements within the City of Euless; and

WHEREAS, the Euless City Council has created Euless Reinvestment Zone Number 1 for the purpose of retention or expansion of primary employment and attracting major investment in the zone that will be a benefit to properties in the zone and that will contribute to the economic development of the City of Euless; and

WHEREAS, M.A.D. Triangle, LLC owns real property within Euless Reinvestment Zone Number 1 and has applied to the City of Euless for a tax abatement agreement in accordance with the guidelines and criteria adopted by the City; and

WHEREAS, the Euless City Council finds and determines that the terms of the tax abatement agreement with M.A.D. Triangle, LLC and the property subject to the agreement meet the guidelines and criteria for tax abatements currently in force within the City; and

WHEREAS, written notice of the City's intent to enter into the attached tax abatement agreement, along with a copy of said agreement, was delivered to the presiding officer of each other taxing unit with jurisdiction over said property at least seven (7) days prior to the adoption of this Resolution, as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EULESS, TEXAS:

SECTION 1

The tax abatement agreement between the City of Euless and M.A.D. Triangle, LLC attached hereto as **Exhibit A** is hereby approved by the City Council of the City of Euless, Texas, and the Mayor is hereby authorized to execute said tax abatement agreement on behalf of the City of Euless, Texas.

PASSED AND APPROVED by the City Council of the City of Euless, Texas, and effective, on this 22nd day of November 2011, by a vote of ____ ayes, ____ nays, and ____ abstentions.

APPROVED:

_____
Mary Lib Saleh, Mayor

ATTEST:

_____
Kim Sutter, TRMC, City Secretary

THE STATE OF TEXAS §

COUNTY OF TEXAS §

TAX ABATEMENT AGREEMENT

This Agreement is entered into by and between the City of Euless, Texas, a home rule municipality located in Tarrant County, Texas, acting by and through Mary Lib Saleh, it's duly elected Mayor, hereinafter referred to as CITY, and M.A.D. Triangle, LLC, duly acting by and through its duly authorized representative, Mr. Dan Fry, hereinafter referred to as OWNER.

WITNESSETH:

WHEREAS, on the 22nd day of November, 2011, the City Council of the City of Euless, Texas, passed Ordinance No. 1932 establishing Euless Reinvestment Zone Number 1 pursuant to the Property Redevelopment and Tax Abatement Act, codified in Chapter 312 of the Texas Tax Code; and

WHEREAS, in accordance with Chapter 312 the City has adopted Guidelines For Tax Abatement in a Reinvestment Zone (the "GUIDELINES"); and

WHEREAS, the GUIDELINES constitutes appropriate guidelines and criteria governing tax abatement agreements to be entered in to by the CITY as contemplated by Chapter 312; and

WHEREAS, the CITY has adopted a Resolution stating that it elects to be eligible to participate in tax abatement; and

WHEREAS, the PREMISES as hereinafter defined are wholly located within Euless Reinvestment Zone Number 1; and

WHEREAS, the following Agreement and the improvements contemplated herein should maintain and enhance the commercial and economic and employment base of the City of Euless to the long term interest and benefit of the CITY in accordance with Resolution No. 10 - 1330 and Chapter 312; and

WHEREAS, the contemplated use of the PREMISES, the contemplated improvements to the PREMISES in the amount set forth in this Agreement and the other terms hereof are consistent with encouraging development in accordance with the purposes and intent of the GUIDELINES, and all applicable law.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1.
DEFINITIONS

1.1 The property which is the subject of this Agreement is that property described in Exhibit "A" attached hereto and made a part hereof, and shall be hereinafter referred to as the PREMISES.

1.2 The improvements to be constructed include sales, warehouse and office space for commercial and residential disaster restoration services and related activities to be erected on or affixed to

the PREMISES, and tangible personal property (except inventory or supplies) installed on the PREMISES, which shall be collectively referred to hereinafter as the IMPROVEMENTS. The kind, number and location of all proposed IMPROVEMENTS are more specifically contained in the site plan (#11-02-SP) approved by the City Council on April 25, 2011 and attached hereto as Exhibit B.

2.
DUTIES OF OWNER

2.1 The OWNER shall substantially complete construction of the IMPROVEMENTS on the PREMISES at an initial expenditure of not less than One Million Dollars ($1,000,000.00) on or before April 1, 2012; provided that OWNER shall have such additional time to complete the IMPROVEMENTS as may be required if OWNER is diligently pursuing completion of the IMPROVEMENTS but is impeded from doing so due to an event of "force majeure", or if in the sole opinion of the CITY the OWNER has made substantial progress toward completion of the IMPROVEMENTS. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of OWNER including, without limitation, act of GOD or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of OWNER), fire, explosion or flood, and strikes. The date of substantial completion of the IMPROVEMENTS shall be defined as the date a Certificate of Occupancy is issued for the IMPROVEMENTS by the CITY.

2.2 As a good and valuable consideration for this Agreement, OWNER covenants and agrees that it will diligently and faithfully pursue the completion of the IMPROVEMENTS in a good and workmanlike manner. OWNER further covenants and agrees that all construction of the IMPROVEMENTS will be in accordance with all applicable state and local laws and regulations or valid waiver thereof. In further consideration, OWNER shall thereafter, from the date a Certificate of Occupancy is issued until expiration of this Agreement, continuously operate, maintain and occupy the PREMISES as a sales, warehouse and office space for commercial and residential disaster restoration services and related activities.

2.3 OWNER further agrees that the CITY and its agents and employees shall have reasonable right of access to the PREMISES to inspect the IMPROVEMENTS in order to insure that the construction of the IMPROVEMENTS is in accordance with this Agreement and all applicable state and local laws and regulations or valid waiver thereof; and subject to OWNER'S reasonable security requirements, the CITY shall have a continuing right to inspect the PREMISES to insure that the PREMISES are thereafter maintained, operated and occupied in accordance with this Agreement.

2.4 The PREMISES shall at all times be used in a manner that is in compliance with state and local laws and is consistent with the general purpose of encouraging development within the reinvestment zone. Both parties agree that the use of the PREMISES for commercial and residential disaster restoration services and related activities, in accordance with this Agreement, is consistent with such purpose.

2.5 Prior to October 1st of each year this Agreement is in effect, OWNER shall certify to the governing body of the CITY that OWNER is in compliance with applicable terms of this Agreement.

3.
ABATEMENT ALLOWED

3.1 Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the CITY, a portion of ad valorem real property taxes from the PREMISES otherwise owed to the CITY shall be abated. Said abatement shall be as set forth below on the taxes assessed upon the value of the IMPROVEMENTS in the year of abatement, but only on the amount that the value of the IMPROVEMENTS exceeds the value of said IMPROVEMENTS in the year in which this Agreement is executed, in accordance with the requirements of Chapter 312; provided, however, that OWNER shall have the right to protest and/or contest any assessment of the PREMISES and said abatement shall be applied to the amount of taxes finally determined to be due as a result of any protest and/or contest. In accordance with these terms, the abatement granted shall be as follows, with "year one" beginning January 1, 2012:

Year	Percent of Value of IMPROVEMENTS Exempted from Taxation
1	35%
2	35%
3	35%
4	35%
5	35%
6	35%
7	35%
8	35%
9	35%
10	35%

4.
BREACH AND RECAPTURE

4.1 In the event that (1) the IMPROVEMENTS for which an abatement has been granted are not substantially completed in accordance with this Agreement; or (2) OWNER fails to occupy the IMPROVEMENTS for the purposes required by this Agreement; (3) OWNER allows ad valorem taxes owed to the CITY to become delinquent and fails to timely and properly follow the legal procedures for protesting or contesting the assessment of any such ad valorem taxes; or (4) OWNER breaches any of the terms or conditions of this Agreement, then OWNER shall be in default under this Agreement. In the event that OWNER defaults in its performance of (1), (2), (3) or (4) above, then the CITY shall give OWNER written notice of such default and if OWNER has not cured such default, or obtained a waiver thereof from the CITY, within thirty (30) days of said written notice, or if the default is not capable of being cured within said thirty day period if OWNER does not commence to cure such default within said thirty day period and thereafter diligently proceed with its efforts to cure the same, this Agreement may be terminated or modified by the CITY. Notice shall be in writing as provided below. If the CITY terminates this Agreement for default, OWNER shall pay to the CITY all taxes which otherwise would have been paid to the CITY without the benefit of abatement (with interest being charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Texas Tax Code, but without the addition of penalty), together with any related costs within sixty (60) days after the expiration of the above mentioned applicable cure period. After sixty days, if said taxes and other amounts owed remain unpaid by OWNER, the penalties and interest will accrue as provided by law. This Agreement may be terminated by the mutual consent of the parties in the same manner that the Agreement was approved and executed. If the IMPROVEMENTS have not been completed at the time of the termination, the CITY

shall recapture any property tax revenue lost as a result of this Agreement, together with all other costs described herein.

4.2 It is expressly agreed and acknowledged between the parties that nothing in this Agreement shall be deemed or construed to affect the ability of the CITY to place a lien for taxes against the property as established by Section 32.01 of the Tax Code. Such lien shall secure the payment of all taxes abated and subject to recapture under this Agreement. Any such lien may be fully enforced pursuant to the provisions of the Tax Code. For purposes of this subsection, "property" refers to the PREMISES and all IMPROVEMENTS described herein.

5.
GENERAL PROVISIONS

5.1 Notices required to be given to any party to this Agreement shall be given personally or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address set forth below, and given by mail, shall be deemed delivered as of the date personally delivered or three days after deposit in the United States mail:

For CITY by notice to:

City of Euless
Attention: City Manager
201 N. Ector Drive
Euless, Texas 76039-3595

For OWNER by notice to:

Mr. Daniel J. Fry
M.A.D. Triangle, LLC
1205 Texas Star Parkway, Suite 100,
Euless, Texas 76040

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

5.2 OWNER in performing its obligations under this Agreement is acting independently, and the CITY assumes no responsibilities or liabilities to third parties in connection with the PREMISES or IMPROVEMENTS. OWNER agrees to indemnify, defend, and hold harmless the CITY, its officers, agents, employees, and volunteers in both their public and private capacities, from and against claims, suits, demands, losses, damages, causes of action, and liability of every kind, including, but not limited to, expenses of litigation or settlement, court costs, and attorneys fees which may arise due to any death or injury to a person or the loss of, loss of use of, or damage to property, arising out of or occurring as a consequence of the performance of this Agreement, save and except for the actual negligence of the City, its officers or employees.

5.3 It is the belief of both parties that the PREMISES do not include any property that is owned or leased by a member of the city council or by a member of the Euless Planning and Zoning Commission or any other board or commission of the CITY having responsibility for approval of this Agreement. The parties recognize and understand that any property so owned is excluded by law from property tax abatement.

5.4 The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by OWNER unless written permission is first granted by the CITY, which permission shall be at the sole discretion of the CITY; provided, however, that upon written notice to the CITY, OWNER may assign its rights under this Agreement to a wholly owned subsidiary.

5.5 Should any lawsuit be filed arising out of the provisions of this Agreement, venue shall be in Tarrant County, Texas.

5.6 This Agreement was authorized by Resolution of the City Council at its council meeting on the 22nd day of November 2011, authorizing the Mayor to execute the Agreement on behalf of the CITY.

5.7 This Agreement was entered into by M.A.D. Triangle, LLC pursuant to authority granted by its Board of Directors, whereby Mr. Daniel Fry, Member, was authorized to execute this Agreement on behalf of M.A.D. Triangle, LLC.

5.8 This Agreement shall be effective on the latest date that one of the parties signs below.

M.A.D. Triangle, LLC

By: _____
Mary Lib Saleh, Mayor

By: _____
Daniel J. Fry/Designated Representative

SIGNED this ___ day of _____, 2011.

SIGNED this ___ day of _____, 2011.

BUFFALO CREEK SURVEYOR, LLC

709 S. Walnut Street
Cleburne, Texas 76033
Phone 817-774-3338
Fax 817-774-3339
Email:
surveyingtexasland@sbcglobal.net
buffalocreeksurveyor.com

SITUATED ON BUFFALO CREEK

PROPERTY DESCRIPTION

Being all of that certain tract or parcel of land situated in the ALLEN M. DOWNEN SURVEY, a.k.a. A.M. DOWNING SURVEY, ABSTRACT NO. 415, City of Euless, Tarrant County, Texas, and being a portion of that certain called 5.393 acre tract of land as conveyed by Donald H. Dilmore, Trustee to Mad Triangle, LLC, by the Warranty Deed with Vendors Lien recorded as Instrument No. D210279836, of the Official Public Records of Tarrant County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a capped (stamped "Prism") 1/2 inch iron rod found on an easterly right-of-way line of Debra Dr., said iron rod found for the most westerly northwest corner of said 5.393 acre tract of land, and said iron rod found being the southwest corner of Lot 13, Block 21 of Oakwood Terrace North, 1st Filing, an addition to the City of Euless according to the plat recorded in Volume 388-31, Page 73 of the Plat Records of Tarrant County, Texas;

THENCE along the common lines between said 5.393 acre tract and said Block 21, of Oakwood Terrace North, 1st Filing the following courses and distances:

South 89 degrees 57 minutes 57 seconds East, leaving said right-of-way and along a common line of said Lot 13 and said 5.393 acre tract, a distance of 119.32 feet to a 3/8 inch iron rod found for an inset ell corner of said 5.393 acre tract and said iron rod found being the southeast corner of said Lot 13;

North 00 degrees 30 minutes 20 seconds East, a distance of 249.82 feet, to a 1/2 inch iron rod found for the most northerly northwest corner of said 5.393 acre, and said iron rod found for the common corner of Lot 10 and Lot 8;

South 89 degrees 24 minutes 37 seconds East, a distance of 513.06 feet, to a capped (stamped "Prism") 1/2 inch iron rod found for the most northerly northeast corner of said 5.393 acre tract, said iron rod found being the southeast corner of Lot 1, and said iron rod found being on a westerly line of Tract B, Common Area;

THENCE South 00 degrees 36 minutes 32 seconds West, a distance of 156.74 feet, to a 1/2 inch iron rod found for a common corner of said 5.393 acre tract of land and of said Tract B;

THENCE North 68 degrees 52 minutes 26 seconds East, along a northwesterly line of said 5.393 acre tract, a distance of 9.05 feet, to a capped (stamped "Prism") 1/2 inch iron rod found for an outset corner of said 5.393 acre tract of land;

THENCE South 00 degrees 47 minutes 39 seconds East, along an easterly line of said 5.393 acre tract, a distance of 158.48 feet, to a capped (stamped "RPLS 3946") 1/2 inch iron rod found for the southeast corner of said 5.393 acre tract, said iron rod found being on a northwesterly right-of-way line of State Highway No. 10;

THENCE South 66 degrees 39 minutes 29 seconds West, along a southwesterly line of said 5.393 acre tract, and along a northwesterly right-of-way line of State Highway No. 10, at a distance of 14.06 feet, passing a capped (stamped "RPLS 3946") 1/2 inch iron rod found, and continuing in all, a distance of 63.46 feet, to a 1/2 inch iron rod found for an outset corner of said 5.393 acre tract of land, said iron rod found for the southeast corner of that certain tract of land conveyed to Susan G. Masure, dba In The Wind, by the deed recorded in Volume 14048, Page 463, of the Deed Records of Tarrant County, Texas;

THENCE along the common lines between said 5.393 acre tract and said In The Wind tract the following courses and distances:

THENCE North 01 degrees 55 minutes 40 seconds West, a distance of 87.73 feet to a 1/2 inch in diameter pipe found for a common corner between said tracts;

THENCE North 89 degrees 33 minutes 46 seconds West, a distance of 157.55 feet to a 5/8 inch iron rod found for a common corner between said tracts;

THENCE South 89 degrees 18 minutes 48 seconds East, along a southerly line of the herein described tract of land, a distance of 193.64 feet, to a capped (stamped "RPLS 5614") 1/2 inch iron rod set for an outset ell corner of the herein described tract of land;

THENCE South 00 degrees 02 minutes 03 seconds West, along an easterly line of the herein described tract, a distance of 17.34 feet, to a capped (stamped "RPLS 5614") 1/2 inch iron rod set for an angle point and a corner of the herein described tract of land;

THENCE South 41 degrees 39 minutes 13 seconds West, along a southeasterly line of the herein described tract, a distance of 62.14 feet, to a capped (stamped "RPLS 5614") 1/2 inch iron rod set for an angle point and a corner of the herein described tract of land;

THENCE South 89 degrees 57 minutes 57 seconds East, along a southerly line of the herein described tract, a distance of 190.39 feet, to a capped (stamped "RPLS 5614") 1/2 inch iron rod set for the most westerly southwest corner of the herein described tract, said iron rod set on a westerly line of said 5.393 acre tract, and said iron rod set on an easterly right-of-way line of Debra Dr.;

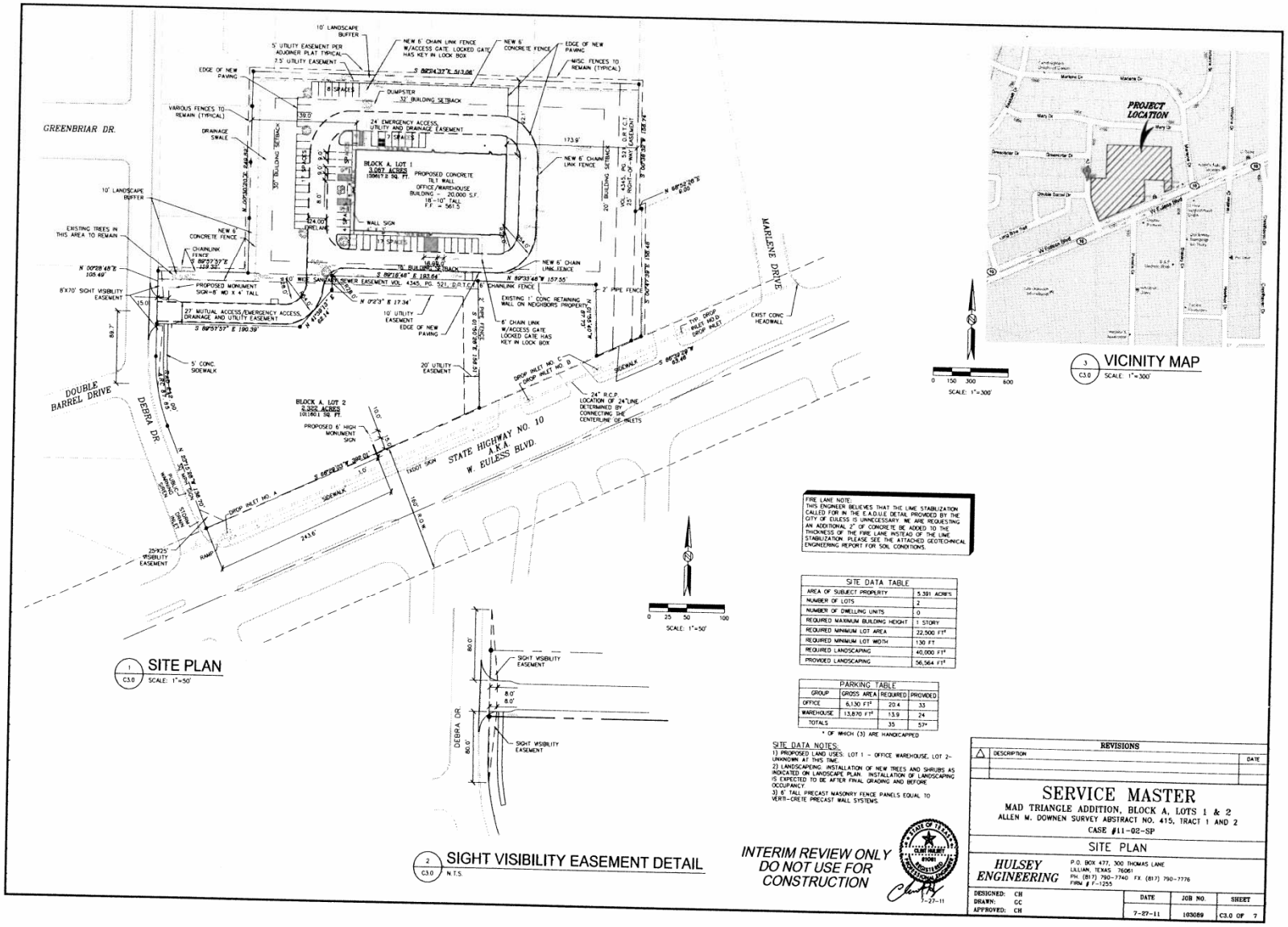
THENCE North 00 degrees 28 minutes 48 seconds East, along a westerly line of said 5.393 acre tract, and along an easterly right-of-way line of Debra Dr., a distance of 65.07 feet, to the POINT OF BEGINNING and containing 3.390 acres of land more or less, as surveyed by Buffalo Creek Surveyor, LLC, Joe Davis Ballard, RPLS No. 5614.

STATE OF TEXAS
REGISTERED
Joe Davis Ballard
5614
PROFESSIONAL
LAND SURVEYOR

REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5614

Job No. 04911

Exhibit B


SITE PLAN
SCALE: 1"=50'
SIGHT VISIBILITY EASEMENT DETAIL
N.T.S.
VICINITY MAP
SCALE: 1"=300'
PROJECT LOCATION
GREENBRIAR DR.
DOUBLE BARREL DRIVE
DEBRA DR.
MARLENE DRIVE
STATE HIGHWAY NO. 10 A.K.A. W. EULESS BLVD.
BLOCK A, LOT 1
BLOCK A, LOT 2
PROPOSED CONCRETE TILT WALL OFFICE/WAREHOUSE BUILDING - 20,000 S.F.
FIRE LANE NOTE:
THIS ENGINEER BELIEVES THAT THE LIME STABILIZATION CALLED FOR IN THE E.A.D.U.E DETAIL PROVIDED BY THE CITY OF EULESS IS UNNECESSARY. WE ARE REQUESTING AN ADDITIONAL 2" OF CONCRETE BE ADDED TO THE THICKNESS OF THE FIRE LANE INSTEAD OF THE LIME STABILIZATION. PLEASE SEE THE ATTACHED GEOTECHNICAL ENGINEERING REPORT FOR SOIL CONDITIONS.
SITE DATA TABLE
AREA OF SUBJECT PROPERTY | 5.391 ACRES
NUMBER OF LOTS | 2
NUMBER OF DWELLING UNITS | 0
REQUIRED MAXIMUM BUILDING HEIGHT | 1 STORY
REQUIRED MINIMUM LOT AREA | 22,500 FT²
REQUIRED MINIMUM LOT WIDTH | 130 FT
REQUIRED LANDSCAPING | 40,000 FT²
PROVIDED LANDSCAPING | 56,564 FT²
PARKING TABLE
GROUP | GROSS AREA | REQUIRED | PROVIDED
OFFICE | 6,130 FT² | 20.4 | 33
WAREHOUSE | 13,870 FT² | 13.9 | 24
TOTALS | | 35 | 57*
* OF WHICH (3) ARE HANDICAPPED
SITE DATA NOTES:
1) PROPOSED LAND USES: LOT 1 - OFFICE WAREHOUSE, LOT 2- UNKNOWN AT THIS TIME.
2) LANDSCAPING INSTALLATION OF NEW TREES AND SHRUBS AS INDICATED ON LANDSCAPE PLAN. INSTALLATION OF LANDSCAPING IS EXPECTED TO BE AFTER FINAL GRADING AND BEFORE OCCUPANCY.
3) 6' TALL PRECAST MASONRY FENCE PANELS EQUAL TO VERTI-CRETE PRECAST WALL SYSTEMS.
INTERIM REVIEW ONLY
DO NOT USE FOR CONSTRUCTION
REVISIONS
DESCRIPTION
DATE
SERVICE MASTER
MAD TRIANGLE ADDITION, BLOCK A, LOTS 1 & 2
ALLEN M. DOWNEN SURVEY ABSTRACT NO. 415, TRACT 1 AND 2
CASE #11-02-SP
SITE PLAN
HULSEY ENGINEERING
P.O. BOX 477, 300 THOMAS LANE
LILLIAN, TEXAS 76061
PH. (817) 790-7740 FX. (817) 790-7776
FIRM # F-1255
DESIGNED: CH
DRAWN: CC
APPROVED: CH
DATE 7-27-11
JOB NO. 103089
SHEET C3.0 OF 7