

ORDINANCE NO. 012605-A

AN ORDINANCE AMENDING ORDINANCE NO. 122000-A, AS AMENDED, PROVIDING FOR VARIOUS AMENDMENTS TO THE SUBDIVISION REGULATIONS OF THE CITY OF NIEDERWALD; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Niederwald desires to amend Ordinance No. 122000-A, as previously amended, in accordance with and as authorized by Chapter 212 of the Texas Local Government Code; Now Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS:

I.

That Section 5 of Ordinance No. 122000-A is hereby amended to add a new definition of “Industrial Street” and “Subdivision,” to reorganize the definitions to appear in alphabetical order, and to reorganize other provisions contained therein, to read as follows:

Section 5. Definitions

Any office referred to in this Ordinance by title means the persons employed or appointed by the City in that position, or his duly authorized representative. Definitions not expressly prescribed herein are to be construed in accordance with customary usage in municipal planning and engineering practices. For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning ascribed to them in this Section:

- A. Alley:** A minor public right-of-way, not intended to provide the primary means of access to abutting lots, which is used primarily for vehicular service access to the back or sides of properties otherwise abutting on a street.
- B. Building Setback Line:** The line within a property defining the minimum horizontal distance between a building and the adjacent street line or property boundary line.
- C. City:** The City of Niederwald, Texas.
- D. City Engineer:** A person duly authorized under the provisions of the Texas Engineering Registration Act, as heretofore or hereafter amended, to practice the profession of engineering, that is employed/contracted by the City of Niederwald to perform required engineering functions.

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- E. Commission:** The Planning Commission or a person designated by the Commission.
- F. Council:** The City Council or person designated by the Council.
- G. Crosswalk Way:** Public right-of-way, ten (10) feet or more in width between property lines, which provides pedestrian circulation.
- H. Cul-de-sac:** A street having one outlet to another street, and terminated on the opposite end by a vehicular turn around.
- I. Dead-end Street:** A street, other than a cul-de-sac, with only one outlet.
- J. Edwards Aquifer Recharge Zone:** Any area identified as such by the Edwards Aquifer Rules. In the event an Applicant cannot determine with specificity the location of the boundary of the Edwards Aquifer Recharge Zone, the Applicant may submit appropriate maps and other evidence as may be requested by the Planning Commission for assistance in such determination from the Planning Commission. Any determination by the Planning Commission will affect only these Regulations and will not in any manner be binding upon the Texas Natural Resource Conservation Commission. The Planning Commission may require the applicant to obtain a determination from the TNRCC and any determination by the TNRCC regarding the location of the Recharge Zone will control for purposes of these Regulations. The intent of these Regulations is to coordinate applicable state and local regulations such as that the definition of the Edwards Aquifer Recharge Zone under these Regulations shall be identical with the definition found within the Edwards Aquifer Rules 2.10 - The Regulations promulgated by the TNRCC relating to the Edwards Aquifer, currently set forth in Title 30 Texas Administrative Code Chapter 213, as amended from time to time.
- K. Engineer:** A person duly authorized under the provisions of the Texas Engineering Registration Act, as heretofore or hereafter amended, to practice the profession of engineering.
- L. Impervious Cover:** All paving, walks, rooftops and other surfaces that shed runoff. Impervious cover includes gravel surfaces and other surfaces that support vehicular or pedestrian traffic.
- M. Lot:** An undivided tract or parcel of land having frontage on a public street and which is, or in the future may be sold, conveyed, transferred or improved; and which is designated by a tract or lot number or symbol, or by metes and bounds, consisting of not less than one acre for an unsewered lot; not less than one-half acre for a sewered lot. Proposed lots must have at least one acre out of the floodplain for an unsewered lot and at least one-half acre out of the floodplain for a sewered lot.

a) Regular lot: A regular lot has four (4) sides of equal length as in a square, or two (2) pair of equal length sides as in a rectangle. Sides are considered equal in length if they vary by no more than 15%. Side A/Side B must be between 85% and 115%.

b) Irregular lot: An irregular lot has more than four (4) sides or has opposite sides of unequal length as described above.

c) Flag lot: A flag lot has a relatively narrow strip of land providing road frontage. The narrow strip does not provide adequate width to support a typical building site as on a regular lot. The flag lot has a wider area away from the R.O.W. that supports a building site. The minimum road frontage of a flag lot is 25'. The minimum width of the flag portion of the lot is 25'.

N. Manufactured Building: Either an independent, individual building, a combination of modules, or a module for combination with other elements to form a building, not a mobile, which has been mass-produced in a factory and designed and constructed for transportation to a site for installation and use on a permanent foundation when connected to required utilities at that site. All manufactured buildings must either meet the standards set by the City of Niederwald's codes as determined by an onsite inspection by inspectors or be certified as meeting the codes and standards established by the Texas Department of Labor and Standards or the United States Department of Housing and Urban Development (HUD), as appropriate.

O. May: The word "may" is merely directory.

P. Manufactured Home: A structure constructed on or after June 15, 1976 according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. This term shall not include a recreational vehicle. A manufactured building, or portion of a building designed for long-term residential use.

Q. Mobile Home: A structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

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- R. Pavement Width:** The portion of a street available for vehicular traffic. Where curbs are laid, they are not included in the pavement width.
- S. Permanent Foundation:** A concrete slab or wooden, concrete, and/or steel pier and beam substructure upon which a building is permanently fastened and attached so as to preclude the transport of the building on its own chassis.
- T. Person:** An individual, association, firm, corporation, government agency, political subdivision or other entity.
- U. Shall:** The word “shall” is always mandatory.
- V. Street:** A public right-of-way, however designated, which provides vehicular access to adjacent land.
1. A “**major arterial street**” is a divided, limited-access roadway designed to provide vehicular circulation between major traffic generator such as large high-density residential neighborhoods, commercial centers, industrial areas, and other municipalities.
 2. A “**minor arterial street**” is a divided or undivided, limited-access roadway designed to provide vehicular circulation between secondary traffic generators, such as neighborhood/community shopping centers, office complexes, high schools, and municipal or regional park/recreation areas, and between major arterial streets and streets of lower classification.
 3. A “**collector street**” is an undivided roadway generally providing access to major arterials from local streets but generally without direct access from adjacent properties except for elementary schools, small apartment complexes, and neighborhood commercial centers.
 4. A “**local street**” provides access to individual adjacent properties.
 5. An “**industrial street**” provides access to areas zoned for (or used or intended to be used for) industrial, manufacturing, warehousing, distribution, recycling or resource extraction uses. The City reserves the right to determine if a particular use is industrial, and the right to require construction of an industrial street.
- W. Subdivider:** Any person or any agent thereof, dividing or proposing to divide land so as to constitute a subdivision as that term is defined herein. In any event, the term “subdivider” shall be restricted to include only the owner, equitable owner or authorized agent of such owner or equitable owner, of land sought to be subdivided.

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- X. **Subdivision:** The division of any tract, lot, piece, or parcel of land, or any portion or fraction thereof (whether by block or lot numbers, by metes and bounds description, or in any other manner), situated within the corporate limits, or within the City's extraterritorial jurisdiction, in two or more parts for the purpose of transfer of ownership, suburban lots or sites, building lots or sites, or any lots or sites for development or improvement, whether all or any portion thereof be intended for public use, or only for the use of purchasers, short or long-term lessees, guest and/or agents. Subdivision also includes resubdivision of any tract, lot, piece, or parcel of land, or any portion or fraction thereof. Division of land into parcels of five (5) or more acres each shall not be included in this definition of subdivision where each parcel has access to a public street and no public improvement is being dedicated. "Access to a public street" means that each parcel abuts a public street.
- Y. **Surveyor:** A licensed State Land Surveyor or a Registered Public Surveyor, as authorized by the State statutes to practice the profession of surveying.
- Z. **Utility Easement:** An interest in land granted to the City, to the public generally, and/or to private utility corporations, for installing or maintaining utilities across, over or under private land, together with the right to enter thereon with machinery and vehicles necessary for the maintenance of said utilities.

II.

That Section 9.C. of Ordinance No. 122000-A is hereby amended to read as follows:

C. Filing Fee; Preliminary Construction Plan Review Fee; Preliminary Construction Inspection Fee. The preliminary plat application shall be accompanied by a filing fee of \$395.00 + \$30.00 per lot, the preliminary construction plan review fee, and the preliminary construction inspection fee. Such application shall be considered incomplete until said fees are paid. No action by the Commission shall be valid until the fees have been paid. The filing fee shall not be refunded should the subdivider fail to perfect his formal application for preliminary plat approval or should the plat be disapproved. The preliminary plat application shall include preliminary cost estimates for all proposed site improvements. The City of Niederwald reserves the right to have the City Engineer review the preliminary estimated construction costs and require changes to the preliminary cost estimates, if in the City Engineer's opinion the preliminary cost estimates are not accurate. These site improvements shall include, but not be limited to, the following:

- a. Streets, alleys, and walks.

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- b. Sanitary sewer systems, including, where appropriate, treatment and disposal systems.
- c. Water supply, including, pipes and hydrants and, where appropriate, wells and reservoirs, and pumping stations.
- d. Storm drainage system, including detention and storm water conveyance design and calculations;
- e. Water Quality improvements as specified in the current City of Austin Environmental Criteria Manual or in TNRCC Document No. RG-348 dated June 1999, "Complying with Edwards Aquifer Rules: Technical Guidance on Best Management Practices".
- f. Erosion and sedimentation controls, where appropriate.

Preliminary Construction Plan Review Fee: The preliminary plat shall be accompanied by a fee in the amount of one percent (1%) of the estimated total construction costs outside the incorporated limits of the City, and eight-tenths of one percent (0.8%) of estimated total construction costs within the corporate limits of the City, with a \$750.00 minimum.

Preliminary Construction Inspection Fee: The preliminary plat shall be accompanied by a fee in the amount of five percent (5%) of estimated total construction costs outside the corporate limits of the City, and three percent (3%) of estimated total construction costs within the corporate limits of the City, with a \$500.00 minimum.

III.

That Section 10.B.4. of Ordinance No. 122000-A is hereby amended to read as follows:

4. Final Plat Fees. When the final plat application is filed with the City Secretary, it shall be accompanied by the following fees:

a. Filing Fee: \$30.00 per lot, with a minimum fee of \$750.00 per plat.

b. Construction Plan Review Fee: One percent (1%) of estimated total construction costs outside the incorporated limits of the City, and eight-tenths of one percent (0.8%) of estimated total construction costs within the corporate limits of the City, with a \$750.00 minimum. The City of Niederwald reserves the right to have the City Engineer review the estimated construction cost and require changes to the cost estimate, if in the City Engineer's opinion the cost estimate is not accurate. The amount due to the City pursuant to this subsection shall be reduced by the amount of the Preliminary Construction Plan Review Fee previously paid to the City in accordance with Section 9.C.of this Ordinance.

c. Construction Inspection Fee: Five percent (5%) of estimated total construction costs outside the corporate limits of the City, and three percent (3%) of estimated total construction costs within the corporate limits of the City, with a \$500.00 minimum. The amount due to the City pursuant to this subsection shall be reduced by the amount of the Preliminary Construction Inspection Fee previously paid to the City in accordance with Section 9.C. of this Ordinance.

IV.

That Section 10.B.5 of Ordinance No. 122000-A is hereby amended to read as follows:

5. Council Approval or Disapproval of Final Plat. The Council shall disapprove the proposed final plat unless:

- a. The plat complies with the provisions of this Ordinance and any other applicable laws, ordinances, or regulations;
- b. The uses proposed for the property being subdivided are consistent with its zoning; and

It conforms to the engineering design standards and other specifications of the City and its current and future streets, alleys, parks, playgrounds, and public utility facilities.

Disapproval of the final plat shall indicate refusal to accept any offered dedications. Approval of the plat shall not be deemed acceptance of such dedications until such time as the City has appropriated same by entry, use, or maintenance, and by the approval of the construction improvements therein. Approval of the final plat, plans, and specifications required herein shall not prevent the Council or the entity responsible for reviewing such documents from thereafter requiring the correction of errors in said plans and specifications and in the construction of the associated improvements.

V.

That Section 10.B. of Ordinance No. 122000-A is hereby amended to add a new subsection 10.B.7, to read as follows:

7. **Expiration of Final Plat.** Except as otherwise provided herein, an unrecorded final plat expires twelve (12) months from the date the City Council officially approves the final plat. Upon expiration, the City Council's approval of the

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unrecorded final plat shall be void. The City Council, if a written application and appropriate fee is received from the subdivider prior to the expiration of the final plat, may, for just cause, grant one (1) extension of up to six (6) additional months. If any changes to the final plat are required by the City Council, the City Council may require the submission of a revised final plat. Further, within six (6) months after final approval by the City Council, the subdivider shall complete construction of the required public improvements or file an appropriate financial surety instrument guaranteeing the completion of the required improvements, or such approval of the unrecorded final plat shall be void.

VI.

That Section 11 of Ordinance No. 122000-A is hereby amended to read as follows:

Section 11. Guarantee of Performance

- A. Construction Inspection and Certification.** All plans and actual construction of required improvements shall be inspected by the City Engineer of the City of Niederwald or his designated representative. No plans or completed construction will be considered for approval or acceptance by the Council without certification from said engineer that such plans and calculations and such construction is complete and that they are in accordance with specifications and standards contained or referenced herein, and/or with plans previously approved for the subject subdivision. The engineer shall make frequent field inspections during the construction period and arrange for testing in accordance with accepted civil engineering practice. The engineer shall submit periodic progress reports to the Council during the construction period. The final responsibility for the adequacy and acceptability of all plans and actual construction of required improvements shall rest with the subdivider.
- B. Assurances for Completion of Improvements.**
- 1. Purpose.** The provisions herein are designed and intended to insure that, for all subdivision of land within the jurisdiction of the City (i.e. within the corporate limits and extraterritorial jurisdiction of the City), all improvements as required herein are installed in a timely manner in order that:
 - a.** The City can provide for the orderly and economical extension of public facilities and services.
 - b.** All purchasers of property within the subdivision shall have a usable, buildable parcel of land.
 - c.** All required improvements are constructed in accordance with the City's engineering design standards and all other applicable ordinances, codes, policies and regulations.
 - 2. General Policy.** Upon approval of the a final plat by the City, and prior to it being signed by the Mayor of the City, and before said final plat shall be

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allowed to be recorded in the plat records of the county, the applicant requesting final plat approval shall, within the time period for which the final plat has been conditionally approved by the City:

a. Construct all improvements as required by this Ordinance and the City's engineering design standards, and provide a surety instrument guaranteeing their maintenance as required herein.

b. Provide a surety instrument guaranteeing the construction of all improvements required by this Ordinance and the City's engineering design standards, and as provided for herein.

In all instances, the original copy of the final plat, without the benefit of required signature of the Mayor, shall be held in escrow by the City and shall not be released for any purpose until such time as the conditions of this Section are satisfied.

Upon the requirements of this Section being satisfied, the final plat shall be considered fully approved, except as otherwise provided for in this Ordinance, and the original copy of the final plat shall be signed by the Mayor of the City, and the subdivider may shall file said final plat in the plat records of the county.

3. Completion of Improvements. Prior to the signing of the approved final plat by the Mayor of the City of Niederwald, the subdivider shall:

a. Complete all improvements required by this Ordinance in accordance with the approved construction plans, engineering design standards, and other applicable ordinances, codes, regulations, and policies, and subject to the approval of the City Engineer and acceptance by the City, except as otherwise provided for in this Ordinance.

4. Alternative to Completing Improvements. The City may waive the requirement that the subdivider complete all improvements required by this Ordinance and the City's engineering design standards prior to the signing of the approved final plat, contingent upon securing from the subdivider a guarantee, as provided for by this Section, for completion of all required improvements, including the City's cost for collecting the guarantee funds and administering the completion of improvements, in the event the subdivider defaults. The Planning Commission and the City Council must be notified that this waiver is being requested by the subdivider at the time of preliminary plat application and submission. Such guarantee shall take one of the following forms:

a. Performance Bond. The subdivider shall post a performance bond with the City, as set forth herein, in an amount equal to one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements, using a City-approved form.

b. Escrow Account. The subdivider shall deposit cash, or other instrument readily convertible into cash at face value, either with the City, or in escrow with a bank or savings and loan institution. The use of any instrument other than cash shall be subject to the approval of the City. The amount of the

deposit shall equal one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements. In the case of any escrow account, the subdivider shall file with the City an agreement, using a City-approved form, between the financial institution and the subdivider guaranteeing the following:

i. That the funds of said escrow account shall be held in trust until released by the City and may not be used or pledged by the subdivider as security in any other matter during that period.

ii. That in the case of a failure on the part of the subdivider to complete said improvements, the financial institution shall immediately make the funds in said account available to the City for use in the completion of those improvements.

c. Letter of Credit. The subdivider shall provide a letter of credit from a bank or other reputable institution or individual. This letter shall be submitted to the City, using the standard City form, and shall certify the following:

i. That the creditor does guarantee funds equal to one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements.

ii. That, in the case of failure on the part of the subdivider to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.

iii. That this letter of credit may not be withdrawn, or reduced in amount, until approved by the City according to the provisions of this Ordinance.

d. Cost Estimates. A registered professional engineer licensed to practice in the State of Texas shall furnish estimates of the costs of all required improvements to the City Engineer. The City Engineer shall review the estimates in order to determine the adequacy of the guarantee instrument for insuring the construction of the required facilities.

e. Surety Acceptance. The bank, financial institution, insurer, person or entity providing any letter of credit, bond or holding any escrow account, pursuant to this Ordinance, shall meet or exceed the minimum requirements established by City ordinance and shall be subject to approval by the City.

f. Sufficiency. Such surety shall comply with all statutory requirements and shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution. All such surety instruments shall be both a payment and performance guarantee.

g. If the project is located in the extraterritorial jurisdiction of the City, and is subject to the bonding requirements of the County for the construction of roadways, then that amount of money shall be reduced from the amount required to be posted with the City, provided that the instrument is transferable from the County to the City upon annexation.

5. Time Limit for Completing Improvements. The period within which

required improvements must be completed shall be incorporated in the surety instrument and shall not in any event, without prior approval of the City, exceed six (6) months from the date of final plat approval.

a. The Planning Commission may, upon application of the subdivider and upon proof of hardship, recommend to the City Council extension of the completion date set forth in such bond or other instrument for a maximum period of six (6) additional months. An application for extension shall be accompanied by an updated estimate of construction costs prepared by a registered professional engineer, licensed to practice in the State of Texas. A surety instrument for guaranteeing completion of remaining required improvements must be filed in an amount equal to one hundred ten percent (110%) of the updated estimate of construction costs as approved by the City Engineer.

b. The City Council may at any time during the period of such surety instrument accept a substitution of principal sureties.

6. Failure to Complete Improvements. Approval of final plats shall be deemed to have expired in subdivisions for which no assurances for completion have been posted or the improvements have not been completed within six (6) months of final plat approval, unless otherwise approved by the City. In those cases where a surety instrument has been required and improvements have not been completed within the terms of said surety instrument, the City may declare the subdivider and/or surety to be in default and require that all the improvements be installed.

7. Acceptance of Construction. The City Engineer shall inspect such improvements upon completion of construction to determine compliance with City requirements, approved construction plans, City engineering design standards, and all other applicable ordinances, codes, policies and regulations. The City Engineer shall notify the subdivider and the City Council in writing as to his acceptance or rejection of the improvements. The City Engineer shall reject such improvements if the improvements fail to comply with the standards and specifications contained or referred to herein. If the City Engineer rejects such improvements, the City Engineer shall issue a punch list to the subdivider denoting items remaining to be completed. If the City Engineer rejects such improvements, the Council may proceed to enforce the guarantees provided for in this Ordinance. The City shall not accept dedications of required improvements nor release or reduce a performance bond or other assurance, until such time as it determines that:

a. All improvements have been satisfactorily completed.

b. Two (2) copies of as-built plans have been submitted to and approved by the City Engineer, along with a statement by a licensed professional engineer that all improvements have been installed and constructed in accordance with the submitted as-built plans.

c. Copies of all inspection reports, shop drawings and certified test results of construction materials have been submitted to and approved by the City Engineer.

d. Diskette(s) containing computer generated drawings of all public improvements shown on the construction plans have been submitted to the City Engineer to update City record drawings.

e. The required maintenance guarantee has been provided.

f. Any and all other requirements of the final plat process have been satisfied.

8. Reduction or Release of Improvement Surety Instrument.

a. A surety instrument may be reduced, upon recommendation of the City Engineer and with the approval of the City Council, upon actual construction of required improvements by a ratio that the completed improvements bear to the total public improvements required for the subdivision, as determined by the City Engineer.

b. Before the City shall reduce said surety instrument, the subdivider shall provide a new surety instrument in an amount equal to one hundred ten percent (110%) of the estimated cost of the remaining required improvements, and such new surety instrument shall comply with this Ordinance.

c. The substitution of a new surety instrument shall in no way change or modify the terms and conditions of the performance surety instrument or the obligation of the subdivider as specified in the performance surety instrument.

d. in no event shall surety instrument be reduced below ten percent (10%) of the principal amount of the original estimated total costs of improvements for which surety was given, prior to completion of all required improvements.

e. The City shall not release a surety instrument unless and until all the conditions of this Ordinance have been met.

C. Maintenance Guarantee.

1. Before the release of any surety instrument guaranteeing the construction of required subdivision improvements or the signing of the final plat where subdivision improvements were made prior to the filing of the final plat for recordation, the subdivider shall furnish the City with a maintenance bond or other surety to assure the quality of materials and workmanship, and maintenance of all required improvements including the City's costs for collecting the guaranteed funds and administering the correction and/or replacement of covered improvements in the event the subdivider defaults.

2. The maintenance bond or other surety instrument shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution.

3. Said bond or other instrument shall be in an amount equal to ten percent (10%) of the cost of improvements verified by the City Engineer and shall run for a period of one (1) calendar year measured from the date of release of the performance surety instrument, or signing and recording of the final plat, whichever occurs later.

4. In an instance in where a maintenance bond or other surety instrument has been posted and a defect or failure of any required improvement occurs within the period of coverage, the City may declare said bond or surety to be in default and require that the improvements be repaired or replaced.

5. Whenever a defect or failure of any required improvement occurs within the period of coverage, the City shall require that a new maintenance bond or other surety instrument be posted for a period of one (1) full calendar year sufficient to cover the corrected defect or failure.

VII.

That Section 12 of Ordinance No. 122000-A is hereby amended to read as follows:

Section 12. Standards and Specifications

No preliminary or final plat shall be approved by the Council, and no completed improvements shall be accepted by the Council unless they conform to the following standards and specification:

A. General

1. **Conformity with Regulations.** The subdivision shall conform to any Master Plans, Codes, Regulations, Ordinances and engineering design standards of the City.
2. **Conformity with the City of Niederwald Zoning Ordinance.** For subdivisions or portions of subdivisions inside the corporate limits of the City of Niederwald, the development standards and specifications of the respective zoning districts covering that subdivision or portion thereof shall supersede any conflicting standards in this Subdivision Ordinance.
3. **Provision for Future Subdivisions.** If a tract is subdivided into parcels larger than ordinary building lots, such parcels shall be arranged to allow the opening of future streets.
4. **Reserve Strips Prohibited.** There shall be no reserve strips controlling access to land dedicated or intended to be dedicated to public use.
5. **Driveways.** Each lot shall have a separate driveway.
6. **Housing.** All housing shall comply with the following standards:

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1. The structure shall be secured on a permanent foundation as defined in this ordinance or other applicable law.
2. The main roof shall be pitched, rather than flat.
3. The house shall appear to face the street and have a gabled entry or other such break in the façade of equivalent proportions.
4. The exterior walls shall look like wood or masonry, regardless of the actual composition.
5. The foundation shall form a complete enclosure under exterior walls.
6. Size shall be consistent with other houses in the neighborhood.

7. Conformity with Flood Damage Prevention Ordinance. The subdivision shall conform to the Flood Damage Prevention Ordinance of the City. A subdivider that is required by the Flood Damage Prevention Ordinance to submit a development permit application shall pay to the City of Niederwald a fee of \$750.00 for review of the development permit application. Said fee must accompany the application, and the application shall be considered incomplete until said development review fee is paid. Said fee is in addition to any other fee that may be required by this or any other ordinance of the City of Niederwald.

B. Streets

1. **Street Layout.** Adequate streets shall be provided by the subdivider, and the arrangement, character, extent, width, grade, and location of each shall conform to the engineering design standards and all other specifications of the City. Proposed streets shall be considered in their relation to existing and other planned streets, to topographical conditions, to public safety and convenience, and in their appropriate relationship to the proposed uses of land to be served by such streets. The street layout shall be devised for the most advantageous development of the entire neighborhood. Trees which are required to be shown on the preliminary plat shall be avoided whenever possible in the construction of streets.
2. **Relation to Adjoining Street System.** Where necessary to the neighboring pattern, existing streets in adjoining areas shall be continued, and shall be at least as wide as such existing streets and in alignment therewith.
3. **Projection of Streets.** Where adjoining areas are not subdivided the arrangement of streets in the subdivision shall make provisions for the proper projection of streets into such unsubdivided areas.
4. **Street Jogs.** Street jogs with centerline offsets of less than one hundred twenty-five feet (125') shall be avoided.

5. **Half-Streets of Adjacent Streets.** In the case of local or collector streets, no new half-streets shall be platted.
6. **Street Intersections.** Street intersections shall be at right angles wherever practicable, giving due regard to terrain and topography. In no case will intersections at angles more acute than eighty degrees (80°) be permitted.
7. **Dead-End Streets.** Dead-end streets shall be prohibited except as short stubs to permit future extension.
8. **Cul-de-sacs.** In general, cul-de-sacs shall not exceed six hundred feet (600') in length. Cul-de-sacs shall conform to the requirements of the City's engineering design standards.
9. **Discouragement of Through Traffic on Local Streets.** Local streets shall be laid out so as to discourage their use by through traffic.

10. **Design and Construction Standards.**

- a. **General.** Street design proposals shall comply with the City's engineering design standards and this Ordinance. The subdivider shall excavate, fill, grade and pave all streets, including sidewalk areas. No street shall be surfaced until the underground utilities, which are to be installed in the portions of the streets, intended for vehicular traffic have been so installed and inspected. Due to the expansive soils in the area, the City reserves the right to require Lime-Stabilized subgrade or other subgrade stabilization methods as determined by the City Engineer. Developer shall be required to pay the cost of subgrade and pavement testing. Testing shall be done by a qualified geotechnical engineer acceptable to the City.

Flexible Base. Flexible Base shall be at least twelve inches (12") of compacted crushed limestone or an acceptable equivalent according to the City's engineering design standards.

- c. **Surface or Pavement Types.** Surfacing shall comply with the City's engineering design standards. Curbing type and/or style shall be determined by the City Engineer.

- d. **Shoulders.** Where shoulders are required, they shall

have a base and be sealed or paved with side slopes no steeper than 12:1.

11. Streets on Master Plan. Where a subdivision embraces a street as shown on the Master Plan of the City, such street shall be platted in the location and of the width indicated by the Master Plan. Area-wide roadway needs shall be considered by the subdivider to the degree that such needs may relate to the subject subdivision. Area-wide needs shall be addressed through the procedures specified in Section 8 of this Ordinance.

12. Pavement Widths and Rights-Of-Way.

- a. Minimum Requirements (See Table I).** Pavement widths and rights-of-way and shoulder width (where required) shall comply with the minimum requirements specified in Table I.
- b. Right-of-Way Coverage.** As a general requirement, the right-of-way shall include the entire traveled way, including shoulders and vehicles recovery area, walkways, and the parallel and contiguous drainage ways. Extra widths may be required where these facilities cannot reasonably be placed in the minimum widths specified above. The extra width, however, may be in the form of a right-of-way easement, rather than dedication, and may be vacated should final plans demonstrate a lesser width is sufficient to comply with this Ordinance and the City's engineering design standards.
- c. Streets Improvements by the Developer.** When the City determines that a proposed development will impact the transportation infrastructure of the City, the City will require the Developer to post fiscal security in an amount sufficient to fund all costs of improving the transportation infrastructure adequately to offset the impact of the development. The City will draw on the fiscal security as it sees fit to make the needed improvements. Improvements to be funded in this manner include, but are not limited to, sidewalks, paving and widening existing streets adjacent to the proposed development, or improving off-site streets or intersections as needed to offset the burden of the proposed development on the City. The need for these improvements and the amount of improvements

necessary to offset the effects of the development will be determined by the City. The developer will be required to dedicate additional right-of-way adjacent to the proposed development as needed to meet City Standards. Where a county road is adjacent to a proposed development or planned through a development, the developer must coordinate road improvements within and adjacent to the proposed development with both the City and the County, and obtain City and County approval of the proposed roads, including posting fiscal security for road improvements as described in this paragraph. The City may allow actual construction of road improvements in lieu of fiscal security, under circumstances satisfactory to the City.

13. Drainage

General. Street drainage shall comply with the City's engineering design standards.

b. Standards for Roadside Channels. Roadside channels shall comply with the City's engineering design standards.

c. Fordable Driveways Preferred. Driveways and Roadways shall comply with the City's engineering design standards.

d. Culvert Design and Location. Driveway culverts shall comply with the City's engineering design standards.

TABLE I.

MINIMUM REQUIREMENTS FOR STREETS

R o a d C l a s s i f i c a t i o n	Lot Front age	Drive way Spacin g	Rig ht- of- Wa y	Pavem ent Width
L o c a l S t r e e t	125'	25'	50'	30'
M i n o r C o l l e c t o r	125'	75'	60	40'

M a j o r C o l l e c t o r	150'	100'	70'	48'
M i n o r A r t e r i a l	150'	100'	90'	70'
M a j o r A r t e r i a l	150'	100'	120'	100'

I n d u s t r i a l S t r e e t	150'	100'	80'	60'
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14. Street Names. Names of new streets shall not duplicate or cause confusion with the names of existing streets, unless the new streets are a continuation of or in alignment with existing streets, in which case names of existing streets shall be used.

15. Street Signs. Street name signs shall be installed by the subdivider at all intersections within or abutting the subdivision. Such signs shall be of a type approved by the City and shall conform to the City's engineering design standards and the standards set forth in the Texas Department of Transportation Manual on Uniform Traffic Control Devices for Streets and Highways.

Traffic regulatory signs and safety signs shall be installed by the subdivider in accordance with the Texas Department of Transportation Manual on Uniform Traffic Control Devices for Streets and Highways.

C. **Alleys.** Alleys shall not be permitted.

C. **Utility Installation & Easements.** Each block shall have utility easements reserved for the use of all public utility lines, conduits and equipment. All utilities shall be installed underground except as otherwise provided in the City's engineering design standards.

E. Reserved for future use.

F. **Water Installations.**

1. **Availability of Service.** If the subdivision is not to be served immediately by a water utility, a restriction prohibiting occupancy of any lot until water satisfactory for human consumption is available will be in effect.
2. **Water Supply and Distribution.** All items pertaining to water supply and distribution shall be in accordance with the City's engineering design standards.
3. **Fire Hydrants.** Purchase and installation of fire hydrants within the proposed subdivision shall be at the expense of the subdivider and shall be in accordance with the City's engineering design standards.
4. **Storage and Pumping for Fire Flow.** All items pertaining to storage and pumping for fire flow shall be in accordance with the City's engineering design standards.

G. Sewers.

1. **General.** All subdivisions shall be provided with sewage treatment and disposal services that comply with the City's engineering design standards. Where septic tanks are to be installed, the subdivider shall conduct percolation tests, if required, under the supervision of the Caldwell and/or Hays County Health Department or another duly authorized official in order to determine the adequacy of proposed lot sizes. If a sanitary sewer disposal system is to be installed, the plans for such system must be approved by the Texas Commission on Environmental Quality and the Niederwald City Council, prior to approval of the final plat by the Council.
2. **Availability of Service.** Occupancy of any lot shall be prohibited until a septic tank system is installed in accordance with the rules and regulations of the Caldwell and/or Hays County Health Department and has been inspected and approved by Caldwell and/or Hays County.
3. **Design Criteria.** Each sewage treatment and disposal system shall comply with this Ordinance and the City's engineering design standards.

H. Utility Lines. All utility lines that pass under a street shall be installed before the street is paved. When it is necessary that utility lines pass under the street pavement, they shall be installed to a point at least two (2) feet beyond the edge of the pavement.

I. Monuments. Shall be in compliance with this Ordinance and the City's engineering design standards.

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J. Drainage.

1. **General.** The interpretation of the requirements set forth in this section shall be made by the City Engineer, unless specified otherwise by the Council. The subdivider shall be responsible for the conveyance of all storm drainage flowing through or abutting the subject property, including drainage directed to the property by prior development as well as that naturally flowing by reason of topography. Where new drainage improvements are required along the boundary of a subdivision, the owner proposing development shall be responsible for designing and constructing all the required improvements at or before the time of development, including the dedication of all necessary right-of-way or easements necessary to accommodate the improvements. Where the subdivider proposes to subdivide only a portion of the property, only the drainage improvements for the portion being subdivided shall be required to be installed, except as drainage improvements outside the portion being subdivided are deemed necessary by the City of Niederwald for proper drainage of the portion being subdivided.
2. **Drainage Facilities.** The responsibility of the subdivider shall extend to the provision of adequate off-site drainage facilities and improvements to accommodate the full effects of the development of his property. The subdivider will stand the full cost of acquiring said property rights and constructing the off-site improvements and facilities. This does not relieve the subdivider of the responsibility for providing storm water detention on-site.
3. **Design Criteria.** Shall be in compliance with this Ordinance and the City's engineering design standards. Natural drainage channels shall be preserved whenever possible. Open surface drainage through grass-lined swales shall be preferred over the use of streets and street rights-of-way as the central drainage network. The provisions of Section 12.B.13 shall apply in regard to street drainage. The rate of runoff after construction shall be less than or equal to the site's runoff prior to construction.
4. **Easements.** All drainage easements across private property shall contain the necessary language to permit the required water flow, required maintenance of vegetation by the property owner(s), and permit the necessary access by a City representative for inspection. All easements, twenty-five (25) and one hundred (100) year flood plain boundaries shall be clearly shown on drainage plans and the final plat whenever such plans and plats contain flood plains or floodway segments.

K. Erosion and Sedimentation Control.

1. Purpose. The purpose of controlling erosion and sedimentation during the construction stages in a subdivision are to minimize nuisances on adjacent properties, avoid siltation and water quality degradation of streams, and preserve the natural and traditional character of watercourses running through the area.

2. Temporary Erosion and Sedimentation Control, Required Program. The developer shall be required to submit plans for and execute a program of erosion and sedimentation control during the construction period for all parts of the proposed project, and adjacent lands, including easements and right-of-ways. The control plans must be approved by the City Engineer, and must comply with this Ordinance and the City's engineering design standards.

3. Permanent Water Quality Control, Required Program. For all development within the City, the Developer shall be required to provide permanent water quality controls adequate to provide for mitigation of non-point source pollution. The control plans must be approved by the City Engineer, and must comply with this Ordinance and the City' engineering design standards.

4. Drainage Channel Stabilization. All new drainage channels on the site shall be designed to minimize potential erosion. All constructed and altered drainage channels shall be stabilized and vegetated immediately after final grading. All culverts shall be constructed with concrete riprap around each opening. All drainage channels must comply with this Ordinance and the City's engineering design standards.

L. Blocks. Block length shall not exceed fifteen hundred feet (1,500'), nor be less than three hundred feet (300').

M. Lots.

1. Minimum Lot Size. All lots shall consist of a minimum area of one (1) acre for an unsewered lot and one-half (1/2) acre for a sewered lot. In the case of irregularly shaped lots, the minimum width shall be measured at the front of the building setback line.

2. Unsewered Lots.

a. All lots in a subdivision shall be laid out in such a

manner as to facilitate connection to a sanitary sewer system in the future in a logical and orderly fashion.

- b. Commission review and approval of site suitability occur prior to or concurrently with preliminary plat review and approval.
 - c. Approval of a subdivision plat under these criteria does not mean that every lot is suitable for a conventional septic tank-soil absorption system. The Council may require, on the basis of recommendation by the Commission, that a plat note or restrictive covenant be attached to the plat and recorded with the County Clerk specifying that lots within the subdivision may not be suitable for conventional septic tank-soil absorption systems.
 - d. No water connection will be made for any lot without installation of approved septic or soil absorption system.
 - e. No property in the Niederwald area lies within the Edwards Aquifer Recharge Zone.
3. **Flag Lots.** Flag-shaped lots shall be prohibited except in unique circumstances where prior ownership boundaries require such a configuration. City Council approval shall be required.
 4. **Frontage.** Each lot shall front upon a public street. Lots of irregular shape shall not be allowed unless they have a street frontage of at least one hundred fifty feet (150') for an unsewered lot and one hundred twenty five feet (125') for a sewerred lot. Lots on a cul-de-sac street shall have a minimum street frontage of sixty feet (60'). Lots of irregular shape shall be discouraged.
 5. **Side Lot Lines.** Side lot lines shall be substantially at right angles to straight street lines and radial to curved street lines.
 6. **Minimum Setback Lines.** Minimum front building setback lines shall be required of at least forty feet (40'). Corner lots shall have at least the minimum forty feet (40').
 7. **Rear Yards.** Minimum rear yard depths of forty feet (40') shall be required.
 8. **Side Yards.** Minimum side yard width of twenty feet (20') shall be

required on each side of interior lots and on the interior side of corner lots.

- 9. Extra Depth and Width in Certain Cases.** Where a lot in a residential area backs up to a railroad right-of-way, a high pressure gasoline, oil or gas line, an arterial street, an industrial area, or other land use which has a depreciating effect on the residential use of the property, and where no street is provided at the rear of such lot, additional depth shall be required by the Council. In no case shall a depth in excess of fifty feet (50') be required. Where a lot sides to any of the above, additional width shall be required by the Council, but in no event shall a width in excess of fifty feet (50') be required.
- 10. Flood Plain Setback Lines.** Where a lot is adjacent to a natural watercourse or drainage way (determination regarding what is a natural drainage way shall be made by the city, however, if the drainage way serves an area of sixty-four (64) acres or more, it shall be considered a natural drainage way), a minimum building setback line shall be established along the one hundred (100) year flood plain boundary on each such lot. The building setback shall be fifty feet (50') from the 100-year floodplain for drainage ways serving areas of two hundred (200) acres or less and one hundred feet (100') for drainage ways serving over two hundred (200) acres. The subdivider shall demonstrate that each lot with such a setback can support the proposed use of the lot while leaving the floodplain and setback in a natural state. Within the flood plain area and setback, construction of residential structures and other structures intended for human occupancy shall be prohibited. Other construction related to subdivision development, including streets, utilities, and fill material, shall be minimized within the flood plain setback area. The City may prohibit the construction of streets, ponds, or other improvements within the floodplain and setback. Clearing or removal of natural ground cover and trees within the flood plain setback area of a natural watercourse shall be minimized, and may be prohibited by the city. The subdivider shall clearly show on his development plans the locations of any trees with a trunk diameter of ten inches (10") or more, measured at a height of four feet from the ground. The City will require replacement of all such trees removed at a rate of two times the caliper inches of tree removed. No tree of eighteen inches (18") diameter or more shall be removed.
- 11. Setbacks Shown on Plat.** The minimum setback lines, minimum lot depths, side yard widths, and other such features as required by the Council and by this Ordinance shall be clearly indicated on the final plat, either by delineation or by statement, and in deed restrictions and private covenants that must accompany the plat.

- N. **Easements.** When the Council finds that easements in areas adjoining a proposed subdivision are necessary to provide drainage thereof, or to serve such subdivision with utilities, the subdivider shall obtain such easements.
- O. **Parks.** A space equivalent to five percent (5%) of the total property to be subdivided shall be dedicated in fee simple to the City for recreational or conservational use. The developer shall show on the preliminary plat the land that is suggested for such public dedication. The land must be suitable for development of a public park. If it is recommended by the Commission to the Council, that the proposed site is not suitable, the developer will be given prompt notice of such determination and may offer cash in lieu of the dedication of land, such amount to be determined as set forth below, or the developer may offer a revision to the preliminary plat and dedicate land that is acceptable to the Council. Alternatively, the developer may appeal the recommendation of the Commission to the Council, who shall exercise final jurisdiction over all such appeals. In lieu of dedication of land within the subdivision for parks and conservation purposes the developer may, subject to the approval and acceptance by the Council, pay cash in lieu of dedication of parkland. The cash contribution shall be determined in accordance with the following schedule:

(a)**Classification Residential:** Two hundred fifty dollars (\$250.00) for each single family lot in the subdivision.

(b) **Classification Commercial:** Five percent (5%) of the raw land value of the area. Raw land value shall be established by a State of Texas registered appraiser at the expense of the developer/owner.

(c)**Classification Public:** Churches, schools and public buildings are exempt and shall not be required to pay cash or dedication land for parks and conservation as a condition to plat approval.

In the event a developer elects to pay cash in lieu of dedication of land for parks and conservation, the cash shall be paid at the time the subdivision plat is approved.

All cash paid in lieu of parkland dedication shall be deposited by the City into a special park fund account and shall be spent by the City on the acquisition of parklands or the improvement of park land/or facilities within the City or ETJ within five (5) years after receipt of such funds by the City. The funds shall not be spent for any other purposes. If the funds are not spent within five (5) years the funds shall be paid to the owners of lots in the subdivision on an equitable basis.

No area or facility shall be dedicated for such public purposes unless approved and accepted by the Council.

P. Responsibility for Payment of Installation Costs.

1. Any subdivision requiring services to be provided by the City shall obtain advance approval of such extension of services from the Council.
2. In no event shall the City incur any expenses within any subdivision.

VIII.

That Section 13 of Ordinance No. 122000-A is hereby amended to read as follows:

Section 13. Summary of Fees

- A. Variances:** \$50.00 per variance requested.
- B. Preliminary Conference:** \$300.00 per conference.
- C. Preliminary Plat Filing Fee:** Filing fee of \$395.00 plus \$30.00 per lot.
- D. Final Plat Filing Fee:** \$30.00 per lot, with a minimum fee of \$750.00 per plat.
- E. Construction Plan Review Fee:**
- 1. Outside City Limits:** 1.0% of estimated construction costs, with a \$750.00 minimum.
 - 2. Inside City Limits:** 0.8% of estimated construction costs, with a \$750.00 minimum.
- F. Construction Inspection Fee.**
- 1. Outside City Limits:** 5% of estimated construction costs, with a \$500.00 minimum.
 - 2. Inside City Limits:** 3% of estimated construction costs, with a \$500.00 minimum.
- G. Park Land Dedication:** 5% of total property to be subdivided or, at the City's option, \$250.00 per residential lot or a 5% raw land value for commercial lot.
- H. Plat Vacation:** \$500.00 per plat.
- I. Replat Filing Fee:** Same as for final plat.
- J. Plat Correction Fee:** \$ 500.00 per plat.
- K. Final Plat Extension Fee:** \$500.00 per plat
- L. Fine for Violations:** Up to \$500.00 per offense per day for as long as the

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violation continues.

M. Flood Damage Prevention Ordinance: \$750.00 per development permit application review submitted to the City pursuant to the Flood Damage Prevention Ordinance.

IX.

That should any of the various clauses, sentences, paragraphs, sections or parts of this Ordinance be held for any reason invalid, unconstitutional, or unenforceable as applied to a subdivision or a particular property, building, or structure therein, the same shall not be construed to affect any other valid portion of this Ordinance; but all valid portions hereof shall remain in full force and effect.

X.

All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

XI.

That this Ordinance shall become effective upon its passage and publication as required by law.

READ, PASSED AND APPROVED this _____ day of _____, 2005.

HON. SHIRLEY WHISENANT, Mayor
City of Niederwald, Texas

ATTEST:

ANGIE SCHULZE, City Secretary
City of Niederwald, Texas

ORDINANCE NO. 012605-B

AN ORDINANCE AMENDING ORDINANCE NO. 122000-A, AS AMENDED, PROVIDING FOR AN AMENDMENT TO THE SUBDIVISION REGULATIONS OF THE CITY OF NIEDERWALD RELATED TO PARKLAND DEDICATION REQUIREMENTS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Niederwald desires to amend Ordinance No. 122000-A, as previously amended, in accordance with and as authorized by Chapter 212 of the Texas Local Government Code; Now Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS:

I.

That Section 12.O of Ordinance No. 122000-A is hereby amended to read as follows:

O. Parks.

1. Dedication of Public Park Land Required. It shall be required that a subdivider of any subdivision (except for public uses such as schools, public buildings, churches, etc.) within the City's territorial jurisdiction set aside and dedicate to the public sufficient and suitable lands for the purpose of public park land or make an in-lieu financial contribution for the acquisition of such park land and/or improvements and amenities in accordance with the provisions of this Ordinance.

All plats receiving Final Plat approval based on this Ordinance shall conform to the requirements of this section.

The Council and subdivider may negotiate the combination of public park land dedication and/or payment of fees-in-lieu of required park land to satisfy the provisions of this Ordinance.

In the event the subdivider offers to dedicate land for a public park classification that is defined in the City's Master Plan, that meets the design standards of this Ordinance, and that is three (3) or more acres in size, the City shall be obligated to accept the park land dedication; provided that the Council may waive this requirement, or may designate a different tract or parcel to be dedicated.

Where a subdivider proposes to pay an in-lieu-fee as provided for in this Section, the Council may accept such payment as satisfying the park land dedication requirements of

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this Ordinance, except that the City reserves the right to require the dedication of land for public park purposes in accordance with this Section when one (1) or more acres of land would be required to satisfy the park land dedication requirements of this Ordinance.

2. Formula for Calculating Area of Park Land. The acreage of park land to be contributed prior to final approval by the Council of any residential subdivision shall be equal to one (1) acre for each one hundred (100) new dwelling units projected to occupy the fully developed subdivision, or 5% of the total project area, whichever is greater.

The acreage of park land to be contributed prior to final approval by the Council of any non-residential subdivision shall be equal to 5% of the total project area.

3. Fee Payment In-lieu of Park Land Dedication. When the amount of land required to be contributed is less than three (3) acres, the Council may require the subdivider to pay a fee-in-lieu of park land dedication.

In the case of a residential subdivision, where the payment of a fee-in-lieu of park land dedication is required by or acceptable to the Council as provided for in this Ordinance, such fee shall be in an amount equal to two hundred fifty dollars (\$250.00) per new dwelling unit projected to occupy the fully developed subdivision.

In the case of a non-residential subdivision, where the payment of a fee-in-lieu of park land dedication is required by or acceptable to the Council as provided for in this Ordinance, such fee shall be in an amount equal to five percent (5%) of the raw land value of the land comprising the non-residential subdivision. The land value shall be established by an appraisal obtained from a State of Texas licenses appraiser. The expense incurred in obtaining the appraiser shall be paid for by the subdivider.

The subdivider shall tender and pay over to the City said fee-in-lieu of park land dedication at the time the Final Plat is approved by the City. No plat shall be approved for recordation until said fee is paid to the City in full.

4. Subdivision Changes. In the event a subdivider obtains City approval to deviate from the approved Preliminary Plat thereby increasing the number of dwelling units projected, or where the use of property is changed from a non-residential use to a residential use, the owner or subdivider shall be obligated to provide additional land or fee and provide the park land or amenities required for the additional dwellings prior to the City approving the Final Plat for recordation.

5. Final Platting of a Portion of an Approved Preliminary Plat. Whenever a subdivider applies for approval of a Final Plat which contains only a portion of the land encompassed in the approved Preliminary Plat, the subdivider's park land contribution shall be based on the ultimate number of dwelling units or land acreage (non-residential subdivision) shown on the approved Preliminary Plat, and shall be satisfied prior to City approval of the first Final Plat.

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6. Design Standards for Park Land. Any land to be dedicated as park land shall be reasonably located near the geographic center of the development, adaptable for use as a public park and recreation facility as defined by the Master Plan, and designed and located so as to satisfy the following general requirements:

The dedicated land should form a single parcel or tract of land at least three (3) acres in size unless it is determined that a smaller tract would be in the public interest, or that additional contiguous land will be reasonably available for dedication to or purchase by the City.

Public access to public park land delineated on a Preliminary Plat shall be ensured by provision of at least fifty (50) feet of street frontage, in a manner satisfactory to the City. Likewise, adequate space for public parking should also be considered.

At the time the land abutting the delineated areas is developed, the subdivider of such abutting land shall construct streets along all abutting street frontage, and shall provide water and wastewater utilities to the boundary of one (1) side of the delineated area to meet minimum requirements of this Ordinance.

The land to be dedicated to meet the requirements of this Ordinance should be suitable for public parks and recreation activities. In that regard, fifty percent (50%) of the dedicated land area should not exceed five percent (5%) grade. The City's Master Plan shall be considered when evaluating land proposals for dedication.

Any disturbed park land shall be restored and the soil stabilized by vegetative cover by the subdivider.

Areas within the regulatory one hundred (100) year flood plain may be utilized to partially meet the parkland dedication requirements. Areas in the one hundred (100) year flood plain may constitute up to fifty percent (50%) of the requirement of land dedication; provided that credit may not be obtained for such land that is also dedicated for another public purpose.

Areas within a school site may be utilized to partially meet the parkland dedication requirements upon approval from the Planning and Zoning Commission, City Council, and the school district. Areas in a school site may constitute up to fifty percent (50%) of the requirement of land dedication; provided that credit may not be obtained for such land that is also dedicated for another public purpose.

The location of park land may be required at the edge of a subdivision so that additional land may be added at such time as adjacent land is subdivided or acquired for public use. Otherwise a centralized location is preferred.

City staff and consultants shall make recommendations based upon the park land design standards and the provisions contained herein, concerning the amount and location of park land, credit for private park land and/or facilities, credit for land in the one hundred

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(100) year flood plain, and fees-in-lieu of park land dedication.

All park areas and playground equipment shall be in accordance with the U.S Consumer Products Safety Commission, Publication 325, as currently amended.

7. Neighborhood Park Land Credit. Where park areas and recreational facilities are to be provided in a proposed residential subdivision, and where such areas and facilities are to be privately owned and maintained by the future residents of the subdivision, these areas and facilities shall satisfy the requirements of park land dedication if the following standards are met:

That the private ownership and maintenance of such areas and facilities are adequately provided for by recorded written agreement, conveyance, or restrictions.

That the use of such areas and facilities are restricted for park and recreational purposes by a recorded covenant, which runs with the land in favor of the future owners of property and which cannot be defeated or eliminated without the consent of the City Council.

That such areas and facilities are reasonably similar to what would be required to meet public park and recreational needs, taking into consideration such factors as size, shape, topography, geology, access, and location.

That such areas and facilities for which credit is given shall include improvements for the basic needs of a local park. These improvements shall include one (1) or more children's play areas, picnic areas, game court areas, turf play fields, swimming pools, recreational buildings, trails (sidewalks, walkways or bike trails), and landscaped sitting areas.

8. Park Fund Established. A separate fund to be entitled "Park Fund" shall be and is hereby created and the money paid by subdividers at Final Plat approval in-lieu of the dedication of land and interest thereon, shall be held in said fund to be used solely and exclusively for the purpose of purchasing and/or equipping public park and recreational land. Such fund shall be invested or held in an interest bearing account and all earnings and interest shall accrue to the Park Fund.

At such time as the City Council, based upon the recommendations of the Commission and/or City staff determines that there are sufficient funds derived from a certain area in the Park Fund to purchase usable park land, the Council shall cause negotiations to be undertaken to purchase the site by mutual agreement or by condemnation proceedings. In making such determination for the purchase of said site, the conditions of this Ordinance shall be taken into consideration.

The principal and interest deposited and kept in the Park Fund shall be used solely for the purpose of purchasing and/or equipping or improving land for public park and recreation uses, and shall never be used for maintaining or operating public park facilities, or for any other purpose.

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9. Method of Dedication. Land accepted for dedication under the requirements of this Ordinance shall be conveyed by either of the following methods:

By dedication within the plat to be filed for record in Official County Records.

By warranty deed transferring the property in fee simple to the City.

In any event, land must be free and clear of any mortgages or liens at the time of such dedication or conveyance.

II.

That should any of the various clauses, sentences, paragraphs, sections or parts of this Ordinance be held for any reason invalid, unconstitutional, or unenforceable as applied to a subdivision or a particular property, building, or structure therein, the same shall not be construed to affect any other valid portion of this Ordinance; but all valid portions hereof shall remain in full force and effect.

III.

All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

IV.

That this Ordinance shall become effective upon its passage and publication as required by law.

READ, PASSED AND APPROVED this _____ day of _____, 2005.

HON. SHIRLEY WHISENANT, MAYOR

ATTEST:

CITY SECRETARY

ORDINANCE NO. 072103

AN ORDINANCE AMENDING ORDINANCE NO. 122000-A, AS AMENDED, CHANGING THE FILING FEES FOR PRELIMINARY PLATS AND FINAL PLATS; TEXAS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Niederwald desires to amend Ordinance No. 122000-A, as previously amended, in accordance with and as authorized by Chapter 212 of the Texas Local Government Code; Now Therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS:

I.

That Section 9.C. of Ordinance No. 122000-A is hereby amended to read as follows:

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C. Filing Fee. The preliminary plat application shall be accompanied by a filing fee of \$395.00 + \$30.00 per lot. Such application shall be considered incomplete until the filing fee is paid. No action by the Commission shall be valid until the filing fee has been paid. This fee shall not be refunded should the subdivider fail to perfect his formal application for preliminary plat approval or should the plat be disapproved.

II.

That Section 10.B.4. of Ordinance No. 122000-A is hereby amended to read as follows:

4. Final Plat Fees. When the final plat application is filed with the City Secretary, it shall be accompanied by the following fees:

a. Filing Fee: \$30.00 per lot, with a minimum fee of \$750.00 per plat.

b. Construction Plan Review Fee: One percent (1%) of estimated total construction costs outside the incorporated limits of the City, and eight-tenths of one percent (0.8%) of estimated total construction costs within the corporate limits of the City, with a \$750.00 minimum. The City of Niederwald reserves the right to have the City Engineer review the estimated construction cost and require changes to the cost estimate, if in the City Engineer's opinion the cost estimate is not accurate.

c. Construction Inspection Fee: Five percent (5%) of estimated total construction costs outside the corporate limits of the City, and three percent (3%) of estimated total construction costs within the corporate limits of the City, with a \$500.00 minimum.

III.

That Section 13 of Ordinance No. 122000-A is hereby amended to read as follows:

Section 13. Summary of Fees

A. Variances: \$50.00 per variance requested.

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- B. Preliminary Conference: \$300.00 per conference.
- C. Preliminary Plat Filing Fee: Filing fee of \$395.00 plus \$30.00 per lot.
- D. Final Plat Filing Fee: \$30.00 per lot, with a minimum fee of \$750.00 per plat.
- E. Construction Plan Review Fee:
 - 1. Outside City Limits: 1.0% of estimated construction costs, with a \$750 minimum.
 - 2. Inside City Limits: 0.8% of estimated construction costs, with a \$750 minimum.
- F. Construction Inspection Fee.
 - 1. Outside City Limits: 5% of estimated construction costs, with a \$500 minimum.
 - 2. Inside City Limits: 3% of estimated construction costs, with a \$500 minimum.
- G. Park Land Dedication: 5% of total property to be subdivided or, at the City's option, \$250.00 per residential lot or a 5% raw land value for commercial lot.
- H. Plat Vacation: \$500.00 per plat.
- I. Replat Filing Fee: Same as for final plat.
- J. Plat Correction Fee: \$ 500.00 per plat.
- K. Fine for Violations: Up to \$500.00 per offense per day for as long as the violation continues.
- L. Flood Damage Prevention Ordinance: \$750.00 per development permit application review submitted to the City pursuant to the Flood Damage Prevention Ordinance.

IV.

That should any of the various clauses, sentences, paragraphs, sections or parts of this Ordinance be held for any reason invalid, unconstitutional, or unenforceable as applied to a subdivision or a particular property, building, or structure therein, the same shall not be construed to affect any other valid portion of this Ordinance; but all valid portions hereof shall remain in full force and effect.

V.

That this Ordinance shall become effective on the ____ day of _____, 2003.

READ, PASSED AND APPROVED this the _____ day of _____, 2003.

HON. SHIRLEY WHISENANT, Mayor
City of Niederwald, Texas

ATTEST:

Angie Schulze, City Secretary

ORDINANCE NO. 050602-A

AN ORDINANCE AMENDING ORDINANCE NO. 122000-A, AS AMENDED, SETTING FORTH REQUIREMENTS AND OBLIGATIONS FOR SUBDIVISIONS IN THE CITY OF NIEDERWALD, TEXAS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Niederwald desires to amend Ordinance No. 122000-A in accordance with and as authorized by Chapter 212 of the Texas Local Government Code; Now Therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS:

I.

That Section 9.B. of Ordinance No. 122000-A is hereby amended to read as follows:

- B. Time for Filing and Copies Required.** After the preliminary conference has been held, formal application for preliminary plat approval shall be made by the subdivider in writing to the City Secretary at least fifteen (15) working days prior to the official meeting of the Commission for consideration. At that time, the subdivider shall also submit twenty (20) copies of the preliminary plat, along with all accompanying data and exhibits.

I.

That Section 10.A.3. of Ordinance No. 122000-A is hereby amended to read as follows:

- 3. Number of Copies, Inclusion of Construction Plans and Supporting Data, and Timing of Submittal.** Twenty (20) copies of the final plat along with

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complete construction plans, construction cost estimates, and other supporting data and information as required by this Ordinance shall be submitted to the City Secretary at least fifteen (15) working days prior to the Council meeting at which final plat approval is sought.

III.

That Section 10.B.3. of Ordinance No. 122000-A is hereby amended to read as follows:

3. **Submittal of the Final Plat Application.** A complete, formal application for final plat approval shall be made by the subdivider in writing to the City Secretary at least fifteen (15) working days prior to the official meeting of the Council at which approval is sought. Twenty (20) copies of the final plat, together with all the accompanying plans and exhibits, shall be filed. The City Secretary or the entity responsible for reviewing the proposed final plat shall determine whether the proposed plat and all required plans and exhibits are complete and fees paid. The fifteen (15) working day period specified in this Paragraph and the thirty (30) day period specified in Section 10.B.1, of this Ordinance shall not commence until the proposed plat and plans and exhibits are complete.

IV.

That Section 10.B.5. of Ordinance No. 122000-A is hereby amended to read as follows:

5. **Council Approval or Disapproval of Final Plat.** The Council shall disapprove the proposed final plat unless:
 - a. The plat complies with the provisions of this Ordinance; and
 - b. The uses proposed for the property being subdivided are consistent with its zoning; and
 - c. It conforms to the Master Plan of the City and its current and future streets, alleys, parks, playgrounds, and public utility facilities.It conforms to the Flood Damage Prevention Ordinance of the City.

Disapproval of the final plat shall indicate refusal to accept any offered dedications. Approval of the plat shall not be deemed acceptance of such dedications until such time as the City has appropriated same by entry, use, or maintenance, and by the approval of the construction improvements therein. Approval of the final plat, plans, and specifications required herein shall not prevent the Council or the entity responsible for reviewing such documents from thereafter requiring the correction of errors in said plans and specifications and in the construction of the associated improvements.

V.

That Section 12.A. of Ordinance No. 122000-A is hereby amended to read as follows:

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Section 12. Standards and Specifications

No preliminary or final plat shall be approved by the Council, and no completed improvements shall be accepted by the Council unless they conform to the following standards and specification:

A. General

1. **Conformity with a Master Plan.** The subdivision shall conform to any Master Plans, Codes, Regulations, and Ordinance of the City.
2. **Conformity with the City of Niederwald Zoning Ordinance.** For subdivisions or portions of subdivisions inside the corporate limits of the City of Niederwald, the development standards and specifications of the respective zoning districts covering that subdivision or portion thereof shall supersede any conflicting standards in this Subdivision Ordinance.
3. **Provision for Future Subdivisions.** If a tract is subdivided into parcels larger than ordinary building lots, such parcels shall be arranged to allow the opening of future streets.
4. **Reserve Strips Prohibited.** There shall be no reserve strips controlling access to land dedicated or intended to be dedicated to public use.
5. **Driveways.** Each lot shall have a separate driveway.
6. **Housing.** All housing shall comply with the following standards:
 1. The structure shall be secured on a permanent foundation as defined in this ordinance.
 2. The main roof shall be pitched, rather than flat.
 3. The house shall appear to face the street and have a gabled entry or other such break in the façade of equivalent proportions.
 4. The exterior walls shall look like wood or masonry, regardless of the actual composition.
 5. The foundation shall form a complete enclosure under exterior walls.
 6. Size shall be consistent with other houses in the neighborhood.
7. **Conformity with Flood Damage Prevention Ordinance.** The subdivision shall conform to the Flood Damage Prevention Ordinance of the City. A subdivider that is required by the Flood Damage Prevention Ordinance to submit a development permit application shall pay to the City of Niederwald a fee of \$750.00 for review of the development permit application. Said fee must accompany the application, and the application shall be considered incomplete until said development review fee is paid. Said fee is in addition to any other fee that may be required by this or any other ordinance of the City of Niederwald.

VI.

That Section 13 of Ordinance No. 122000-A is hereby amended to read as follows:

Section 13. Summary of Fees

- A. **Variances:** \$50.00 per variance requested.
- B. **Preliminary Conference:** \$300.00 per conference.
- C. **Preliminary Plat Filing Fee:** Filing fee of \$395.00 plus \$42.00 per acre or any fractional part thereof.
- D. **Final Plat Filing Fee:** \$15.00 per acre or any fractional part thereof, with a minimum fee of \$750.00 per plat.
- E. **Construction Plan Review Fee:**
 - 1. Outside City Limits: 1.0% of estimated construction costs, with a \$750 minimum.
 - 2. Inside City Limits: 0.8% of estimated construction costs, with a \$750 minimum.
- F. **Construction Inspection Fee.**
 - 1. Outside City Limits: 5% of estimated construction costs, with a \$500 minimum.
 - 2. Inside City Limits: 3% of estimated construction costs, with a \$500 minimum.
- G. **Park Land Dedication:** 5% of total property to be subdivided or, at the City's option, \$250 per residential lot or a 5% raw land value for commercial lot.
- H. **Plat Vacation:** \$500.00 per plat.
- I. **Replat Filing Fee:** Same as for final plat.
- J. **Plat Correction Fee:** \$ 500.00 per plat.
- K. **Fine for Violations:** Up to \$500.00 per offense per day for as long as the violation continues.
- L. **Flood Damage Prevention Ordinance;** \$750.00 per development permit application review submitted to the City pursuant to the Flood Damage Prevention Ordinance.

VII.

That Section 18.B. of Ordinance No. 122000-A is hereby amended to read as follows:

- B. **Procedure** Twenty (20) copies of the request for waiver shall be submitted in writing to the City Secretary no less than eight (8) working days prior to the meeting at which the Planning Commission is to consider the waiver request.

VIII.

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That should any of the various clauses, sentences, paragraphs, sections or parts of this Ordinance be held for any reason invalid, unconstitutional, or unenforceable as applied to a subdivision or a particular property, building, or structure therein, the same shall not be construed to affect any other valid portion of this Ordinance; but all valid portions hereof shall remain in full force and effect.

IX.

That this Ordinance shall become effective on the ____7__ day of ____May____, 2002.

PASSED AND APPROVED this the ____6__ day of ____May____, 2002.

HON. RICKIE ADKINS, Mayor
City of Niederwald, Texas

SHIRLEY WHISENANT, Mayor Pro-Tem

JEANNEAN CALDWELL, Council member

EDDIE LOU HUNT, Council member

SHERRY PURCELL, Council member

ATTEST:

ORDINANCE NO. 122000-A

**AN ORDINANCE REPLACING ORDINANCE NO. 120699-A, AS AMENDED, AND
SETTING FORTH REQUIREMENTS AND OBLIGATIONS FOR SUBDIVISIONS IN
THE
CITY OF NIEDERWALD, TEXAS**

CITY OF NIEDERWALD, TEXAS, SUBDIVISION ORDINANCE

**ORDINANCE NO. 122000-A, REPLACING ORDINANCE NO. 120699-A
REQUIREMENTS AND OBLIGATIONS FOR SUBDIVISIONS IN THE
CITY OF NIEDERWALD, TEXAS**

**DECLARING CERTAIN FINDINGS OF FACT; CREATING NEW SECTIONS AND
PROVIDING NEW STANDARDS FOR THE DEVELOPMENT OF LAND WITHIN THE
INCORPORATED LIMITS AND EXTRATERRITORIAL JURISDICTION OF THE CITY
OF NIEDERWALD, TEXAS; SPECIFYING THE APPLICABILITY OF THIS
ORDINANCE TO PROPOSED SUBDIVISIONS AT CERTAIN STATES OF APPROVAL;
AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD,
TEXAS:**

AN ORDINANCE SETTING FORTH REQUIREMENTS AND OBLIGATIONS FOR

SUBDIVISIONS IN THE CITY OF NIEDERWALD, TEXAS.

PART I: AUTHORITY, APPLICATION OF ORDINANCE, BURDEN OF PROOF, AND PURPOSE AND FINDINGS (Sections 1-4)

Section 1. Authority

This ordinance is adopted under the authority of the Constitution and Laws of the State of Texas, including particularly Chapters 212, Texas Local Government Code, As Amended.

Section 2. Application of Ordinance

This ordinance sets out new standards and procedures for the subdivision of land located within the corporate limits and extraterritorial jurisdiction of the City of Niederwald, Texas.

Section 3. Burden of Proof

An applicant for subdivision plat approval under this Ordinance must establish that his or her plat complies with the requirements of this Ordinance.

Section 4. Purpose and Findings

The purpose of this Ordinance is to promote the health, safety and general welfare and provide for the orderly safe and healthful development of the area within the incorporated limits and the Extra-territorial jurisdiction of the City.

The City Council of the City of Niederwald finds that the previous Subdivision Ordinance requires certain revisions to correspond with the adopted Master Plan, the Zoning Ordinance, and revised procedures for reviewing proposed subdivisions. This Ordinance reaffirms that the citizens of Niederwald prefer a set of development standards and procedures which effectively manages the impacts of new development, provides for additional protection from flooding, non-point source pollution, and ensures the compatibility of new and existing development in the region.

PART II: DEFINITIONS, SPECIAL PROVISIONS AND VARIANCES (Sections 5-7)

Section 5. Definitions

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning ascribed to them in this Section:

- A. Alley:** A minor public right-of-way, not intended to provide the primary means of access to abutting lots, which is used primarily for vehicular service access to the back or sides of properties otherwise abutting on a street.
- B. Building Setback Line:** The line within a property defining the minimum horizontal distance between a building and the adjacent street line or property boundary line.

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- C. **City:** The City of Niederwald, Texas.
- D. **City Engineer:** A person duly authorized under the provisions of the Texas Engineering Registration Act, as heretofore or hereafter amended, to practice the profession of engineering, that is employed/contracted by the City of Niederwald to perform required engineering functions.
- E. **Council:** The City Council or person designated by the Council.
- F. **Crosswalk Way:** Public right-of-way, ten (10) feet or more in width between property lines, which provides pedestrian circulation.
- G. **Cul-de-sac:** A street having one outlet to another street, and terminated on the opposite end by a vehicular turn around.
- H. **Dead-end Street:** A street, other than a cul-de-sac, with only one outlet.
- I. **Edwards Aquifer Recharge Zone:** Any area identified as such by the Edwards Aquifer Rules. In the event an Applicant cannot determine with specificity the location of the boundary of the Edwards Aquifer Recharge Zone, the Applicant may submit appropriate maps and other evidence as may be requested by the Planning Commission for assistance in such determination from the Planning Commission. Any determination by the Planning Commission will affect only these Regulations and will not in any manner be binding upon the Texas Natural Resource Conservation Commission. The Planning Commission may require the applicant to obtain a determination from the TNRCC and any determination by the TNRCC regarding the location of the Recharge Zone will control for purposes of these Regulations. The intent of these Regulations is to coordinate applicable state and local regulations such as that the definition of the Edwards Aquifer Recharge Zone under these Regulations shall be identical with the definition found within the Edwards Aquifer Rules 2.10 - The Regulations promulgated by the TNRCC relating to the Edwards Aquifer, currently set forth in Title 30 Texas Administrative Code Chapter 213, as amended from time to time.
- J. **Engineer:** A person duly authorized under the provisions of the Texas Engineering Registration Act, as heretofore or hereafter amended, to practice the profession of engineering.
- K. **Impervious Cover:** All paving, walks, rooftops and other surfaces that shed runoff. Impervious cover includes gravel surfaces and other surfaces that support vehicular or pedestrian traffic.
- L. **Lot:** An undivided tract or parcel of land having frontage on a public street and which is, or in the future may be sold, conveyed, transferred or improved; and which is designated by a tract or lot number or symbol, or by metes and bounds, consisting of not less than one acre for an unsewered lot; not less than one-half acre for a sewerer lot. Proposed lots must have at least one acre out of the floodplain for an unsewered lot and at least one-half acre out of the floodplain for a sewerer lot.
 - a) Regular lot: A regular lot has four (4) sides of equal length as in a square, or two (2)

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pair of equal length sides as in a rectangle. Sides are considered equal in length if they vary by no more than 15%. Side A/Side B must be between 85% and 115%.

- b) Irregular lot: An irregular lot has more than four (4) sides or has opposite sides of unequal length as described above.
- c) Flag lot: A flag lot has a relatively narrow strip of land providing road frontage. The narrow strip does not provide adequate width to support a typical building site as on a regular lot. The flag lot has a wider area away from the R.O.W. that supports a building site. The minimum road frontage of a flag lot is 25'. The minimum width of the flag portion of the lot is 25'.
- M. Pavement Width:** The portion of a street available for vehicular traffic. Where curbs are laid, they are not included in the pavement width.
- N. Person:** An individual, association, firm, corporation, government agency, political subdivision or other entity.
- O. Shall, May:** The word "shall" is always mandatory. The word "may" is merely directory.
- P. Street:** A public right-of-way, however designated, which provides vehicular access to adjacent land.
1. A "**major arterial street**" is a divided, limited-access roadway designed to provide vehicular circulation between major traffic generator such as large high-density residential neighborhoods, commercial centers, industrial areas, and other municipalities.
 2. A "**minor arterial street**" is a divided or undivided, limited-access roadway designed to provide vehicular circulation between secondary traffic generators, such as neighborhood/community shopping centers, office complexes, high schools, and municipal or regional park/recreation areas, and between major arterial streets and streets of lower classification.
 3. A "**collector street**" is an undivided roadway generally providing access to major arterials from local streets but generally without direct access from adjacent properties except for elementary schools, small apartment complexes, and neighborhood commercial centers.
 4. A "**local street**" provides access to individual adjacent properties.
- Q. Subdivider:** Any person or any agent thereof, dividing or proposing to divide land so as to constitute a subdivision as that term is defined herein. In any event, the term "subdivider" shall be restricted to include only the owner, equitable owner or authorized agent of such owner or equitable owner, of land sought to be subdivided.
- R. Subdivision:** The legal division of any tract, lot, piece, or parcel of land, or any portion or fraction thereof (whether by block or lot numbers, or by metes and bounds

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description), situated within the corporate limits, or within the City's extraterritorial jurisdiction, in two or more parts for the purpose of transfer of ownership, or suburban lots or building lots, or any lots, whether all or any portion thereof be intended for public use, or only for the use of purchasers, short or long-term lessees, guest and/or agents. Subdivision also includes resubdivision of any tract, lot, piece, or parcel of land. Division of land into parcels of five (5) or more acres each shall not be included in this definition of subdivision, unless any such division of five (5) or more acres includes the planning or development of a new street or access easement and no public improvement is being dedicated.

- S. **Surveyor:** A licensed State Land Surveyor or a Registered Public Surveyor, as authorized by the State statutes to practice the profession of surveying.
- T. **Utility Easement:** An interest in land granted to the City, to the public generally, and/or to private utility corporations, for installing or maintaining utilities across, over or under private land, together with the right to enter thereon with machinery and vehicles necessary for the maintenance of said utilities.
- U. Any office referred to in this Ordinance by title means the persons employed or appointed by the City in that position, or his duly authorized representative.
- V. Definitions not expressly prescribed herein are to be construed in accordance with customary usage in municipal planning and engineering practices.
- W. **Commission:** The Planning Commission or a person designated by the Commission.
- X. **Manufactured Building:** Either an independent, individual building, a combination of modules, or a module for combination with other elements to form a building, not a mobile, which has been mass-produced in a factory and designed and constructed for transportation to a site for installation and use on a permanent foundation when connected to required utilities at that site. All manufactured buildings must either meet the standards set by the City of Niederwald's codes as determined by an onsite inspection by inspectors or be certified as meeting the codes and standards established by the Texas Department of Labor and Standards or the United States Department of Housing and Urban Development (HUD), as appropriate.
- Y. **Manufactured Home:** A structure constructed on or after June 15, 1976 according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. This term shall not include a recreational vehicle. A manufactured building, or portion of a building designed for long-term residential use.
- Z. **Mobile Home:** A structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis designed to be used as a dwelling with or without a

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permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

- AA. Permanent Foundation:** A concrete slab or wooden, concrete, and/or steel pier and beam substructure upon which a building is permanently fastened and attached so as to preclude the transport of the building on its own chassis.

Section 6. Special Provisions

- A. No permit shall be issued by the City for the installation of septic tanks upon any lot in a subdivision for which a final plat has not been approved and filed for record, or upon any lot in a subdivision in which the standards contained herein or referred to herein have not been complied with in full.
- B. No site development, building, repair, plumbing, or electrical permit shall be issued by the City for any structure on a lot in a subdivision for which a final plat has not been approved and filed for record, nor for any structures on a lot within a subdivision in which the standards contained herein have not been complied with in full.
- C. The City shall not repair, maintain, install or provide any streets or public utility services in any subdivision for which a final plat has not been approved and filed for record, nor in which the standards contained herein or referred to herein have not been complied with in full.
- D. The City shall not sell or supply any water, gas, electricity, or sewage service within a subdivision for which a final plat has not been approved and filed for record, and in which the standards contained herein or referred to herein have not been complied with in full.
- E. In behalf of the City, the City Attorney shall, when directed by the governing body, institute action in court of competent jurisdiction to enforce the provisions of this Ordinance or the standards referred to herein with respect to any violation thereof which occurs within the City or within the extraterritorial jurisdiction of the city as such jurisdiction is determined under the Municipal Annexation Act, or within any area subject to all or a part of the provisions of this Ordinance.
- F. If any subdivision exists for which a final plat has not been approved or in which the standards contained herein or referred to herein have not been complied with in full, and the Council shall pass a resolution reciting the fact of such noncompliance or failure to secure final plat approval, and reciting the fact that the provisions of Paragraphs A, B, C and D of this Section will apply to the subdivision and the lots therein, the City Secretary shall, when directed by the Council, cause a certified copy of such resolution under the corporate seal of the City to be filed in Deed Records of the county.

If full compliance and final plat approval are secured after the full filing of such resolution, the City Secretary shall forthwith file an instrument in the Deed Records of the county stating that Paragraphs A, B, C and D no longer apply.

- G. The provisions of this section, however, shall not necessarily be construed to prohibit the

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issuance of permits for any lots upon which a residence building exists and was in existence prior to passage of this subdivision ordinance; nor to prohibit the repair, maintenance, or installation of any street or public utility services for, to, or abutting any lot, the last recorded conveyance of which was by metes and bounds prior to passage of this Ordinance; and /or any subdivisions, or lot therein, recorded or unrecorded, that was in existence prior to the passage of this Ordinance.

Section 7. Variances

A. Consideration by the City Council

1. The Council may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance.
2. In granting a variance, the Council shall prescribe only conditions that it deems necessary to or desirable in the public interest.
3. In making the finding herein below required, the Council shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work in the proposed subdivision, and the probably effect of such variance upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity. The person requesting the variance shall provide information as required for the council to consider the effects of granting the variance.
4. Variances may be granted only when in harmony with the purpose and intent of this Ordinance so that the public health, safety, and welfare may be secured and substantial justice be done. Pecuniary hardship to the subdivider, standing alone, shall not be deemed to constitute undue hardship.

B. Criteria for Granting a Variance

No variance shall be granted unless the Council finds that:

1. The variance is necessary to allow for the division of land as a result of death, bequest or divorce decree; or
2. There are special circumstances or conditions affecting the land involved, such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his land; and
3. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
4. The granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
5. The granting of the variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this

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Ordinance.

Such findings of the Council, together with the specific facts upon which such findings are based, shall be incorporated into the official Minutes of the Council meeting at which such variance is granted.

C. Application Procedure

All requests for variances shall be made on a City of Niederwald Subdivision Variance Request Form No. 20013 and should be submitted at the earliest possible date at which the subdivider identifies the need for a variance. If the variance is requested subsequent to the original subdivision application, or development permit application as the case may be, including preliminary plat application, then the City may add time as required for review of the variance to the normal schedule of subdivision review. In any case, a request for variances shall be submitted to the City Secretary no later than fifteen (15) working days prior to the Council meeting at which approval is being sought.

D. Fees

1. Each request for variances shall be accompanied by a fee of **\$50.00 per variance requested.**

PART III: PRELIMINARY CONFERENCE, PRELIMINARY PLAT AND ACCOMPANYING DATA, FINAL PLAT, AND VACATION OF PLAT OR RESUBDIVISION (Sections 8-10)

Section 8. Preliminary Conference

- A. Procedure and Fee.** Prior to the official filing of a preliminary plat the subdivider and his engineer(s) and/or planner(s) shall pay a **non-refundable fee of \$300.00** to the City Secretary, for which the subdivider will receive a receipt, and shall consult with and present a proposed conceptual plan of development to the Planning Commission in a regularly scheduled meeting of the Commission.
- B. Information Required.** The proposed plan shall include, at a minimum, a large scale map showing the tract boundaries and conceptual plans for land use, roadways, drainage, utility service and US Soil Conservation Service soil map and soil description of the area to be developed for the purpose of determining the likelihood that special consideration will need to be taken in the design and construction of paving and foundations due to expansive soils.
- C. Subdividing Part of a Larger Tract.** Where the proposed subdivision constitutes a unit of a larger tract owned by the subdivider, which is intended to be subsequently subdivided as additional units of the same subdivision, the conceptual plan shall be accompanied by a conceptual land plan of the entire area, showing the tentative

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improvements for such areas.

- D. Conference Report.** The City's Planning Commission shall make a report to the Council, which includes a review of the plans, relationship to the City's Master Plan and recommendations for area wide improvements affecting said tract. If the City's Planning Commission has any interest or concerns of an area wide nature, which may directly affect the review of the proposed preliminary plat, the subdivider shall be so informed in writing. There may be additional interest or concerns to be addressed during the preliminary plat, final plat or development permit phase of a project.

Section 9. Preliminary Plat and Accompanying Data

- A. General.** The subdivider shall cause to be prepared a preliminary plat by a surveyor or engineer in accordance with this Ordinance. A registered professional engineer, licensed in the State of Texas, shall sign and seal the preliminary plat and supporting materials including the drainage plan if any improvements are proposed with the subdivision.
- B. Time for Filing and Copies Required.** After the preliminary conference has been held, formal application for preliminary plat approval shall be made by the subdivider in writing to the City Secretary at least fifteen (15) working days prior to the official meeting of the Commission for consideration. At that time, the subdivider shall also submit fifteen (15) copies of the preliminary plat, along with all accompanying data and exhibits.
- C. Filing Fee.** The preliminary plat application shall be accompanied by a filing fee of \$395 + \$42 per lot. Such application shall be considered incomplete until the filing fee is paid. No action by the Commission shall be valid until the filing fee has been paid. This fee shall not be refunded should the subdivider fail to perfect his formal application for preliminary plat approval or should the plat be disapproved.
- D. Form and Content.**
- 1.** The preliminary plat shall be drawn on plan sheets not to exceed 30" x 42" in size. The plat shall be drawn to a scale not to exceed one inch to 100 feet (1"=100'). When more than one sheet is necessary to accommodate the entire area, an index sheet showing the entire subdivision at an appropriate scale shall be attached to the plat. Upon approval of the preliminary plat the subdivider shall provide a Mylar copy and a digital CAD file, suitable to the City Engineer of the approved plat.
 - 2.** The plat shall show the following:
 - a.** Names and addresses of the subdivider, record owner, engineer and/or surveyor, duly notarized.
 - b.** Proposed name of the subdivision, which shall not have the same spelling as or be pronounced similar to the name of any other subdivision located within the City or within the City's extra-territorial jurisdiction.
 - c.** Names of contiguous subdivisions and the owners of

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contiguous parcels of unsubdivided land, and an indication of whether contiguous properties are platted.

- d.** Date of preparation, scale of plat, north arrow, and a general location map.
- e.** Brief legal description referencing the volume and page of the appropriate County Official Public Records and lot and block, if a resubdivision; the metes and bounds of the subdivision, including location of primary control points and ties to such control points to which all dimensions, angles, bearings, block numbers, and similar data shall be referred; and, either on the plat or by a separate instrument, a written metes and bounds description of the property to be subdivided.
- f.** Subdivision boundary lines, indicated by heavy lines, and the computed acreage of the subdivision.
- g.** Location of the city limit line, the outer border of the City's extra-territorial jurisdiction, and zoning district boundaries, if they traverse the subdivision, form part of the boundary of the subdivision, or are contiguous to such boundary.
- h.** Location of flood plain per Federal Emergency Management Agency criteria.
- i.** For development of land that is not raw land, but has previously been divided, or has existing roads, improvements or easements, provide the following additional items:
 - 1)** The location, scaled dimensions, name and description of all existing or recorded streets, alleys, reservations, easements or other public rights-of-way within the subdivision, intersecting or contiguous with its boundaries or forming such boundaries.
 - 2)** The location, scaled dimensions, description and name of all existing and recorded residential lots, parks, public areas, permanent structures, trees with a circumference of thirty (30) inches or larger measured at the height of four (4) feet above the ground, and other sites within or contiguous with the subdivision.
 - 3)** The location, scaled dimensions, description, and flow line of existing water courses and drainage structure within the subdivision of contiguous tracts.
 - 4)** Other topographical information within or adjacent to the site, which shall include contour lines at two (2) foot intervals and sufficient to permit the planning of

water lines, sanitary sewer lines, storm drainage facilities, streets, and other proposed improvements.

5) Flood plain data. The City Engineer may require a hydrologic/hydraulic study to be performed by the developer's engineer and approved by the City to determine the floodplain.

- j. The locations, scaled dimensions, descriptions and names of all proposed streets, alleys, drainage structures, parks, other public areas, reservations, easements or other right-of-way, blocks, lots and other sites within the subdivision.
- k. A number or letter to separately identify each lot and each block.
- l. Front building setback lines on all lots and sites, building setback lines at street intersections and crosswalk ways.
- m. Vicinity sketch or map at an appropriate scale showing the subdivision in relation to major roadways and landmarks.
- n. Possible storm sewer, water, gas, electric, and sanitary sewer connections points.
- o. The certification of a registered professional engineer surveyor that the preliminary plat is complete and accurate.
- p. Fire hydrants shall be in compliance with the local water supplier regulations and per specifications of the Fire Chief of the City.

3. The preliminary plat shall be accompanied by:

A preliminary drainage plan with drainage calculations of the 25-year and 100-year peak runoff rates for each proposed drainage conveyance within the proposed subdivision. Drainage conveyances include bar ditches, curbs, gutters, culverts, inlets, natural or man made channels, or other conveyances as required by the City Engineer. Hydraulic calculations showing the adequacy of each conveyance may be required by the City Engineer. Where a drainage conveyance drains 64 acres or more, a HEC-RAS computer model of the conveyance hydraulics and hydrologic computations satisfactory to the City Engineer shall be provided. The 100-year floodplain shall be shown on the preliminary plat and the accompanying plans. This shall include the FEMA floodplain and other non-mapped floodplains as required by the City. For projects that are more than 10% impervious cover (all paving, rooftops and other impervious cover) storm water detention facilities shall be required. Detention Facilities shall mitigate post development peak storm water runoff rates to pre-development rates or lower for the 2-year, 25-year

and 100-year frequency storms.

- b) A preliminary utility plan. The plan shall show at a minimum the water and wastewater lines to serve the proposed subdivision. All water and wastewater service shall be from a source approved by the Texas Natural Resource Conservation Commission (TNRCC), and acceptable to the City of Niederwald. Where wastewater service is not available, a Facility Plan for on-site sewage facilities shall be provided.
- c) A water quality plan shall be provided for projects that are more than 10% impervious cover. The water quality plan shall identify the means of providing Non-Point Source Pollution Control for storm water runoff. Acceptable means of providing water quality control is as specified in the current City of Austin Environmental Criteria Manual or in TNRCC Document No. RG-348 dated June 1999, "Complying with Edwards Aquifer Rules: Technical Guidance on Best Management Practices" The engineer shall refer to the standards being met and shall provide a signed and sealed engineering report demonstrating compliance with either of the above manuals.
- d) A completed City of Niederwald Subdivision Application-Form No. 20011.
- e) A completed City of Niederwald Utility Checklist-Form No. 20012.

E. Processing of Preliminary Plat

1. **Review by City's Planning Commission.** The Commission shall review the preliminary plat as to its conformity with the prevailing major street plan, land use plan, zoning districts, the standards and specifications set form by Ordinance and Code, and the result of the preliminary conference pertaining to said plat and shall submit a written report on that review to the Council at the next regularly scheduled meeting.
2. **Corrections to the Preliminary Plat.** In response to oral or written comments from the Commission to the subdivider, the subdivider shall forward fifteen (15) copies of the revised preliminary plat to the City Secretary no less than fifteen (15) working days prior to the official meeting at which preliminary plat approval is sought.
3. **Action by the Planning Commission.** Within thirty (30) days after the preliminary plat is formally filed, the Commission shall make a recommendation for approval or disapproval of such plat to the City Council. If the Commission recommends disapproval of a proposed preliminary plat, it shall reference, in writing, any and all deficiencies of the proposed preliminary plat, which were cause for disapproval. The subdivider shall be allowed to submit a revised preliminary plat, which resolves the deficiencies, and the Commission shall recommend approval or disapproval of the revised plat to the Council for Council action within thirty (30) days after the revised plat is formally filed.
4. **Approval of the Preliminary Plat.** Approval of a preliminary plat by the

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Council shall be deemed an expression of approval of the layout submitted on the preliminary plat as a guide to the installation of streets, water, sewer and other required improvements and utilities and to the preparation of the final or record plat. Approval of a preliminary plat shall not constitute automatic approval of the final plat.

5. **Effective Life of an Approved Preliminary Plat.** Approval of a preliminary plat by the Council shall be effective for six (6) month, provided that the requirements are met for submitting a final plat within sixty (60) days after approval of the preliminary plat, as required by Section 10.B.2. Any portion or all of the preliminary plat may be subject to modification or revision in light of information previously not brought to the attention of the Council. If in the light of new or significant information, the Council should require revisions to a previously approved preliminary plat, it shall so inform the subdivider in writing.
6. **Complete Submittal Required for Formal Filing.** The City Secretary or the entity responsible for reviewing the proposed preliminary plat shall determine whether the proposed plat and all required supporting materials are complete and fees paid. The thirty (30) day period specified in Section 9.E.3. of this Ordinance shall not commence unless the proposed plat and supporting materials are complete, and no action by the Council shall be valid unless the filing fees have been paid.
7. The **preliminary plat** is not to be recorded by the County Clerk.

Section 10. Final Plat

A. Requirements

1. **Conformance with the Preliminary Plat.** The final plat and accompanying data shall conform to the preliminary plat as approved by the Council incorporating any and all changes, modifications, alternatives, corrections and conditions imposed by the Council.
2. **Appearance and Composition.** The final plat shall be drawn and reproduced in duplicate on photographic Mylar acceptable to the Council. It shall be 24 inches wide and 18 inches long with a margin of at least two (2) inches on the left side of the sheet and margins of not less than one-half (1/2) inch on the other three sides. The plat shall be drawn at a scale not to exceed 200 feet to one (1) inch. When more than one sheet is necessary to accommodate the entire area, an index sheet showing the entire subdivision at an appropriate scale shall be attached to the plat.
3. **Number of Copies, Inclusion of Construction Plans and Supporting Data, and Timing of Submittal.** Fifteen (15) copies of the final plat along with complete construction plans, construction cost estimates, and other supporting data and information as required by this Ordinance shall be submitted to the City Secretary at least fifteen (15) working days prior to the Council meeting at which final plat approval is sought.

4. **Contents of the Final Plat.** The final plat shall include, either on the plat or in the construction plans, all the features required for preliminary plats in Section 9 above. The final plat shall also include the following information on the plat or as an attachment to the plat:

- a. A brief legal description by volume and page of the appropriate County Deed Records, a complete written legal description by metes and bounds, and the actual metes and bounds of the subdivision, including location of all monuments and primary control points and ties to such control points to which all dimensions, angles, bearings, and similar data in the description are referenced.
- b. The locations, scaled dimensions, names, and description of all existing or recorded streets, alleys, reservations, easements, or other public rights-of-way whether within the subdivision or intersecting or contiguous with its boundary or forming such boundary, and showing accurate dimensions, bearing or deflecting angles and radii, area, and central angle, degree of curvature, tangent distance and length of all curves where appropriate.
- c. The exact locations, dimensions, descriptions, and names of all proposed streets, alleys, parks, other public areas, reservations, easements or other rights-of-way, blocks, lots, and other sites within the subdivision with radii, area, and central angles, degree of curvature, tangent distance and length of all curves where appropriate. These proposed improvements shall comply with the standards and specifications in, or referenced in, Section 12 of this Ordinance.
- d. The final plat shall also be accompanied by a complete list of deed restrictions and restrictive covenants which shall be recorded along with the plat.

5. **Requirements for Construction Plans.** The detailed construction plans that shall accompany the submittal of the final plat shall include cost estimates for all proposed site improvements. All plans and engineering calculations shall bear the seal and signature of an engineer, certifying their completeness and accuracy. These site improvements shall include, but not be limited to, the following:

- a. Streets, alleys, and walks.
- b. Sanitary sewer systems, including, where appropriate, treatment and disposal systems.
- c. Water supply, including, pipes and hydrants and, where

appropriate, wells and reservoirs, and pumping stations.
Storm drainage system, including detention and storm water conveyance design and calculations;
Water Quality improvements as specified in the current City of Austin Environmental Criteria Manual or in TNRCC Document No. RG-348 dated June 1999, "Complying with Edwards Aquifer Rules: Technical Guidance on Best Management Practices".

f. Erosion and sedimentation controls, where appropriate.

6. **Statements and Certifications.** The final plat shall also include the following statements and certifications, appropriately executed:

a. Owner's Acknowledgment

STATE OF TEXAS *
 *
COUNTY OF _____ *

I (We), the undersigned, owner(s) of land shown on this plat, and designated herein as the _____ subdivision in the City of Niederwald, Texas, and whose name is subscribed hereto, hereby dedicate to the use of the public forever all streets, alleys, parks, water courses, drains, easements and public places thereon shown for the purpose and consideration therein expressed.

Owner
STATE OF TEXAS *
 *
COUNTY OF _____ *

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person(s) whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)he executed the same for the purposes and considerations therein stated.

Given under my hand and seal of office on this the _____ day of _____, 20__.

Notary Public in and for the State of Texas

b. Owner(s)' note incorporated by reference the terms and requirements of this Ordinance and warranting that the owner(s)' rights and obligations run with the land.

STATE OF TEXAS *
 *
COUNTY OF _____ *

I (We), the undersigned owner(s) of the land shown on this plat, warrant that any right, privilege, obligation, or remedy granted to me by the subdivision ordinance and other relevant laws of the City of Niederwald, Texas, shall also run in favor of my successors in interest, assigns, agents, employees, or any person acting pursuant to the directions of any of the foregoing, or under color of the same.

Owner

STATE OF TEXAS *
 *
COUNTY OF _____ *

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person(s) whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)he executed the same for the purposes and considerations therein stated.

Given under my hand and seal of office on this the ____ day of _____, 20__.

Notary Public in and for the State of Texas

c. Approval of the City Council of City

This plat, _____, has been submitted to and considered by the City Council of the City of Niederwald, Texas, and is hereby approved by such Council.

Mayor
ATTEST

BY:

City Secretary

[City's Seal]

d. Certification of the surveyor responsible for surveying the subdivision area, attesting to its accuracy

STATE OF TEXAS *
 *
COUNTY OF _____ *

I, the undersigned, a public surveyor in the State of Texas, hereby certify this plat is true and correct to the best of my knowledge and ability and that it was prepared from an actual survey of the property made on the ground with my direct supervision.

Registered Public Surveyor
No. _____
State of Texas

[Surveyor's Seal]

e. Certification by engineer responsible for the preparation of the final plat and supporting data and construction plans and cost estimates, attesting to their accuracy.

STATE OF TEXAS *
 *
COUNTY OF _____ *

I, the undersigned, a registered professional engineer in the State of Texas, hereby certify the plat and all plans and specifications which are included with the plat are, to the best of my professional capacity, complete and accurate and in compliance with all relevant City Ordinances, Codes, plans, and relevant State standards.

Registered Professional
Engineer
No. _____
State of Texas

[Engineer's Seal]

STATE OF TEXAS *
*
COUNTY OF _____ *

Goforth Water Supply Corporation, an approved public water supply system has adequate quantity to supply the subdivision and provisions have been made to provide service to each lot in accordance with the policies of the water supply system.

General Manager
Goforth Water Supply
Corporation

f. Owner's Dedication of Common Areas to Homeowners' Association (as appropriate).

A statement signed by the owner and acknowledged by a notary public that, with the approval of the City Council, the owner has provided perpetual maintenance of common areas within the subdivision through a homeowners' association established in the declaration of private covenants, deed restrictions, and regulations.

7. Disclaimer of Offered Dedications. Disapproval shall indicate refusal to accept any offered dedications. Approval of the plat shall not be deemed acceptance of such dedications until such time as the Council has approved same by entry, use, or maintenance.

B. Processing of Final Plat

1. General. A final plat shall not be filed for recordation with the County Clerk until the Council has approved the final plat and the accompanying constructions plans. Processing for final plat approval shall parallel that described in Section 9.E.1, 2, and 3 of this Ordinance for processing preliminary plats. Within thirty (30) days after the application for final plat approval is formally filed, the Council shall approve or disapprove such plat.

2. Relation to Preliminary Plat. A final plat of an approved preliminary plat or a portion thereof shall be submitted to the Commission within sixty (60) days of the date of approval of the preliminary plat. Otherwise, the approval of the preliminary plat by the City Council shall become null and void. No final plat shall be considered unless a preliminary plat has previously been submitted and approved.

3. Submittal of the Final Plat Application. A complete, formal application for final plat approval shall be made by the subdivider in writing to the City

Secretary at least fifteen (15) working days prior to the official meeting of the Council at which approval is sought. Fifteen (15) copies of the final plat, together with all the accompanying plans and exhibits, shall be filed. The City Secretary or the entity responsible for reviewing the proposed final plat shall determine whether the proposed plat and all required plans and exhibits are complete and fees paid. The fifteen (15) working day period specified in this Paragraph and the thirty (30) day period specified in Section 10.B.1, of this Ordinance shall not commence until the proposed plat and plans and exhibits are complete.

4. Fees and Taxes. When the final plat application is filed with the City Secretary, it shall be accompanied by the following fees:

- a. **Filing Fee:** \$15.00 per acre or any fractional part thereof, with a minimum fee of \$ 750.00 per plat.
- b. **Construction Plan Review Fee:** One percent (1%) of estimated total construction costs outside the incorporated limits of the City, and eight-tenths of one percent (0.8%) of estimated total construction costs within the corporate limits of the City, with a \$750.00 minimum. The City of Niederwald reserves the right to have the City Engineer review the estimated construction cost and require changes to the cost estimate, if in the City Engineer's opinion the cost estimate is not accurate.
- c. **Construction Inspection Fee:** Five percent (5%) of estimated total construction costs outside the corporate limits of the City, and three percent (3%) of estimated total construction costs within the corporate limits of the City, with a \$500.00 minimum.

5. Council Approval or Disapproval of Final Plat. The Council shall disapprove the proposed final plat unless:

- a. The plat complies with the provisions of this Ordinance; and
- b. The uses proposed for the property being subdivided are consistent with its zoning; and

It conforms to the specifications of the City and its current and future streets, alleys, parks, playgrounds, and public utility facilities.

Disapproval of the final plat shall indicate refusal to accept any offered dedications. Approval of the plat shall not be deemed acceptance of such dedications until such time as the City has appropriated same by entry, use, or maintenance, and by the approval of the construction improvements therein. Approval of the final plat, plans, and specifications required herein shall not prevent the Council or the entity responsible for reviewing such documents from thereafter requiring the correction of errors in said plans and specifications and in the construction of the associated improvements.

6. Recordation

- a. Approval by the Council.** A final plat shall not be filed for recordation with the County Clerk until the Council has approved the final plat and the accompanying construction plans and security and maintenance guarantees as hereinafter required, and certificates have been received from the county tax collectors stating that all taxes on the land being subdivided have been paid to the current year.
- b. Final Plat Approval.** After the final plat has been finally approved and the subdivider has constructed all the required improvements and such improvements have been approved and accepted by the City and a maintenance guarantee filed as hereinafter provided; or after the final plat has been finally approved and the subdivider has filed the security and maintenance guarantees as hereinafter provided, the developer/owner shall cause the final plat to be recorded with the County Clerk within thirty (30) days.

C. Vacation of Plat, Replat, and Amendment of Plat

- 1. Vacation of Plats.** Any plat, replat or amended plat previously recorded with the County Clerk may be vacated by the property owner(s) at any time prior to the sale of any lot therein by filing a written signed and acknowledged instrument declaring the same to be vacated and recorded with the County Clerk.
- 2.** If one (1) or more lots have been sold, the plat or amended plat may be vacated by the property owners by filing a written signed and acknowledged instrument with the Commission. The vacating instrument must be approved by the Commission and the Council in the same manner as the original plat, replat or amended plat. The Commission and the Council shall disapprove the vacating instrument, which abridges or destroys public rights in any of its public uses, improvements, streets, or alleys. Upon approval by the Commission and Council the vacating instrument may be recorded with the County Clerk and the vacated plat, replat or amended plat shall have no effect.
- 3. Replats without vacating preceding plat.** A replat may be recorded and controls over a previously recorded plat without vacation of that plat if the replat is signed and acknowledged by the owners of the property being platted, does not attempt to amend or remove any covenants or restrictions, and is approved, after a public hearing on the matter, by the Commission and the Council.
- 4. Additional requirements for certain replats.**
 - a.** In addition to compliance with Section 10.C.3, a replat without vacation of the preceding plat must conform to the requirements of this section if:
 - i.** During the preceding five (5) years, any of the area to

be replatted was limited by an interim or permanent zoning classification to residential use for not more than two (2) residential units per lot; or

ii. Any lot in the preceding plat was limited by deed restrictions to residential use for not more than two (2) residential units per lot.

b. Notice of the public hearing required under Section 10.C.3, shall be given before the fifteenth day before the date of the public hearing by publication in the newspaper and by written notice, with a copy of Section 10.C.4.c. attached, to the owners of any lots that are in the original subdivision and that are within two hundred (200) feet of the lots to be replatted, as indicated on the most recently approved tax rolls.

c. If the proposed replat requires a variance and is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths (3/4) of the members present at the meeting of the Commission and the Council, for a legal protest, written instrument signed by at least twenty percent (20%) of the owners of the lots or land immediately adjoining the area covered by the proposed replat and extending two hundred (200) feet from that area, but within the original subdivision, must be filed with the Commission and the Council prior to the close of the public hearing.

d. In computing the percentage of land area under Section 10.C.4.c., the area of streets and alleys shall be included.

5. Plat amendments or corrections. The Commission and the Council may approve and issue an amended plat, which may be recorded with the County Clerk and controls over the preceding plat without vacation of the plat, if the amended plat is signed by the applicant(s) and is solely for one (1) or more of the following reasons:

a. To correct an error in a course or distance shown on the preceding plat;

b. To add a course or distance that was omitted on the preceding plat;

c. To correct an error in the description of the real property shown on the preceding plat;

d. To indicate monuments set forth after death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;

- e. To show the property location or character of any monument which has been changed in location or character or which originally was shown incorrectly as to location or character on the preceding plat;
- f. To correct any other type of scrivener's or clerical error or omission previously approved by the Commission and the Council, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
- g. To correct an error in courses and distances of lot lines between two (2) adjacent lots where both owners join in the application for plat amendment and neither lot is abolished; provided, that such amendment does not attempt to remove recorded covenants or restrictions and does not have a material adverse effect on the property rights of the other owners in the plat;
- h. To relocate a lot line in order to cure an inadvertent encroachment of a building or improvement on a lot line or on an easement.
- i. To relocate one (1) or more lot lines between one (1) or more adjacent lots where the owner(s) of all such lots join in the application for the plat amendment; provided, that such amendment does not attempt to remove recorded covenants or restrictions and does not increase the number of lots; or
- j. To make necessary changes to the preceding plat to create six (6) or fewer lots in the plat if the changes do not affect applicable zoning and other regulations of the City, and the changes do not attempt to amend or remove any covenants of restrictions, and the area covered by the changes is located in an area that the Commission and the Council has approved, after a public hearing, as a residential improvement area;
- k. To replat one or more lots fronting on a existing street if the owners of all those lots join in the application for the amendment; the amendment does not attempt to remove recorded covenants or restrictions or increase the number of lots; and the amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.

Notice, a hearing, and the approval of other lots owners are not required for the approval and issuance of an amended plat.

4. Fees. Any application for plat vacation or replat or correction shall be accompanied by the following fees:

- a. Plat Vacation: \$500.00**

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- b. **Replat Filing Fee:** Same as for final plats.
- c. **Plat Correction:** \$500.00

PART IV: GUARANTEE OF PERFORMANCE, STANDARDS AND SPECIFICATIONS, AND SUMMARY OF FEES (Section 11-13)

Section 11. Guarantee of Performance

- A. **Construction Inspection and Certification.** All plans and actual construction of required improvements shall be inspected by the City Engineer of the City of Niederwald or his designated representative. No plans or completed construction will be considered for approval or acceptance by the Council without certification from said engineer that such plans and calculations and such construction is complete and that they are in accordance with specifications and standards contained or referenced herein, and/or with plans previously approved for the subject subdivision. The engineer shall make frequent field inspections during the construction period and arrange for testing in accordance with accepted civil engineering practice. The engineer shall submit periodic progress reports to the Council during the construction period. The final responsibility for the adequacy and acceptability of all plans and actual construction of required improvements shall rest with the subdivider.
- B. **Maintenance Guarantee.** The subdivider shall provide documentation of compliance with the Hays County requirements.
- C. **Construction Guarantee.** The subdivider shall provide documentation of compliance with the Hays County requirements.
- D. **Acceptance of Construction.** The City's engineer shall inspect such improvements upon completion of construction and shall notify the subdivider and the Council in writing as to his acceptance or rejection of the construction. He shall reject such construction if it fails to comply with the standards and specifications contained or referred to herein. If he rejects such construction, the Council shall proceed to enforce the guarantees provided in this Ordinance.
- E. **Extension of Time to Complete Construction.** Extension of time to complete construction is subject to Commission recommendation and Council approval.

Section 12. Standards and Specifications

No preliminary or final plat shall be approved by the Council, and no completed improvements shall be accepted by the Council unless they conform to the following standards and specification:

A. **General**

- 1. **Conformity.** The subdivision shall conform to any Codes, Regulations, Specifications and Ordinances of the City.
- 2. **Conformity with the City of Niederwald Zoning Ordinance.** For

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subdivisions or portions of subdivisions inside the corporate limits of the City of Niederwald, the development standards and specifications of the respective zoning districts covering that subdivision or portion thereof shall supersede any conflicting standards in this Subdivision Ordinance.

3. **Provision for Future Subdivisions.** If a tract is subdivided into parcels larger than ordinary building lots, such parcels shall be arranged to allow the opening of future streets.
4. **Reserve Strips Prohibited.** There shall be no reserve strips controlling access to land dedicated or intended to be dedicated to public use.
5. **Driveways.** Each lot shall have a separate driveway.
6. **Housing.** All housing shall comply with the following standards:
 1. The structure shall be secured on a permanent foundation as defined in this ordinance.
 2. The main roof shall be pitched, rather than flat.
 3. The house shall appear to face the street and have a gabled entry or other such break in the façade of equivalent proportions.
 4. The exterior walls shall look like wood or masonry, regardless of the actual composition.
 5. The foundation shall form a complete enclosure under exterior walls.
 6. Size shall be consistent with other houses in the neighborhood.
 7. All residential and/or commercial construction shall be connected to a sanitary sewer disposal system, if available or will soon be available.

B. Streets

1. **Street Layout.** Adequate streets shall be provided by the subdivider, and the arrangement, character, extent, width, grade, and location of each shall conform to the specifications of the City. Proposed streets shall be considered in their relation to existing and other planned streets, to topographical conditions, to public safety and convenience, and in their appropriate relationship to the proposed uses of land to be served by such streets. The street layout shall be devised for the most advantageous development of the entire neighborhood. Trees which are required to be shown on the preliminary plat shall be avoided whenever possible in the construction of streets.
2. **Relation to Adjoining Street System.** Where necessary to the neighboring pattern, existing streets in adjoining areas shall be continued, and shall be at least as wide as such existing streets and in alignment therewith.
3. **Projection of Streets.** Where adjoining areas are not subdivided the arrangement of streets in the subdivision shall make provisions for the proper projection of streets into such unsubdivided areas.
4. **Street Jogs.** Street jogs with centerline offsets of less than 125 feet shall be

avoided.

5. **Half-Streets of Adjacent Streets.** In the case of local or collector streets, no new half-streets shall be platted.
6. **Street Intersections.** Street intersections shall be at right angles wherever practicable, giving due regard to terrain and topography. In no case will intersections at angles more acute than eighty degrees (80) be permitted.
7. **Dead-End Streets.** Dead-end streets shall be prohibited except as short stubs to permit future extension.
8. **Cul-de-sacs.** In general, cul-de-sacs shall not exceed 600 feet in length, and shall have a turn-around of not less than 100 feet in diameter in residential areas, and not less than 200 feet in diameter in commercial and industrial areas.
9. **Discouragement of Through Traffic on Local Streets.** Local streets shall be laid out so as to discourage their use by through traffic.

10. Design and Construction Standards.

- a. **General.** Street Design proposals shall comply with Hays County regulations as to maintenance, operation, safety and traffic design with due regard to subgrade conditions, base and pavement specifications, grades, curves, speed limits and adequacy of drainage. The subdivider shall excavate, fill, grade and pave all streets, including sidewalk areas. No street shall be surfaced until the underground utilities, which are to be installed in the portions of the streets, intended for vehicular traffic have been so installed and inspected. Texas Department of Transportation Standard Specifications shall be an accepted guide. Due to the expansive soils in the area, the City reserves the right to require Lime-Stabilized subgrade or other subgrade stabilization methods as determined by the City Engineer. Developer shall be required to pay the cost of subgrade and pavement testing. Testing shall be done by a qualified geotechnical engineer acceptable to the City. The subgrade shall be compacted to a density of not less than 95% or no more than 100%, as determined by TxDOT Test Method Tex-114-E and TxDOT Test Method Tex-115-E. Lime treated subgrade shall be compacted to a density of 98% to 100%.

Flexible Base. Flexible Base shall be at least twelve (12) inches of compacted crushed limestone or an acceptable equivalent according to Hays County specifications. The flexible base shall be compacted to a density of not less than 100%, as determined by TxDOT Test Method Tex-113-E.

- c. **Surface or Pavement Types.** Surfacing shall be at least one and one-half (1-1/2) inches of hot mix asphalt concrete, bound on both sides by curbing. Curbing type and/or style shall be determined by the City Engineer.
- d. **Shoulders.** Where shoulders are required, they shall have a base and be sealed or paved with side slopes no steeper than 12:1.

11. Streets on Master Plan. Where a subdivision embraces a street as shown on the Master Plan of the City, such street shall be platted in the location and of the width indicated by the Master Plan. Area wide roadway needs shall be considered by the subdivider to the degree that such needs may relate to the subject subdivision. Area wide needs shall be addressed through the procedures specified in Section 8 of this Ordinance.

12. Pavement Widths and Rights-Of-Way.

- a. **Minimum Requirements (See Table I).** Pavement widths and rights-of-way and shoulder width (where required) shall comply with the minimum requirements specified in Table I.
- b. **Right-of-Way Coverage.** As a general requirement, the right-of-way shall include the entire traveled way, including shoulders and vehicles recovery area, walkways, and the parallel and contiguous drainage ways. Extra widths may be required where these facilities cannot reasonable be placed in the minimum widths specified above. The extra width, however, may be in the form of a right-of-way easement, rather than dedication, and may be vacated should final plans demonstrate a lesser width is sufficient, to comply with Hays County standards.
- c. **Streets Improvements by the Developer.** When the City determines that a proposed development will impact the transportation infrastructure of the City, the City will require the Developer to post fiscal security in an amount sufficient to fund all costs of improving the transportation infrastructure adequately to offset the impact of the development. The City will draw on the fiscal security as it sees fit to make the needed improvements. Improvements to be funded in this manner include, but are not limited to, sidewalks, paving and widening existing streets adjacent to the proposed development, or improving off-site streets or intersections as needed to offset the burden of the proposed development on the City. The need for these improvements and the amount of improvements necessary to offset the effects of the development will be determined by the City. The developer will be required to dedicate additional Right-of-Way adjacent to the proposed development as needed to meet City

Standards. Where a county road is adjacent to a proposed development or planned through a development, the developer must coordinate road improvements within and adjacent to the proposed development with both the City and the County, and obtain City and County approval of the proposed roads, including posting fiscal security for road improvements as described in this paragraph. The City may allow actual construction of road improvements in lieu of fiscal security, under circumstances satisfactory to the City.

13. Drainage

General. Street drainage shall be collected and conveyed in roadside channels (ditches). The minimum width of roadside channels shall be six (6) feet measured from the top of ditch on one side to the top of ditch on the other side. All roadside channels shall be sized to convey the 25-year peak runoff of the contributing area at a minimum, if it can be shown that a 100-year storm would not result in flooding of areas outside the Right-of Way. Drainage in areas that do not drain to streets shall be conveyed in natural channels. Proposed development shall be laid out so as to not encroach on the 100-year floodplain of natural channels under fully developed conditions. The City Council may approve road crossings of natural channels at its discretion. A variance is required for any construction in the 100-year floodplain of a natural channel that has a contributing area of 64-acres or more.

- b. Standards for Roadside Channels.** Roadside channels shall comply with Hays County Regulations, except as modified here.
- c. Fordable Driveways Preferred.** Driveways and Roadways shall comply with Hays County Regulations.
- d. Culvert Design and Location.** Driveway culverts shall comply with Hays County Regulations.

**TABLE I.
MINIMUM REQUIREMENTS FOR STREETS**

R o a d C l a s s i f i c a t i o n	L o t F r o n t a g e	D r i v e w a y S p a c i n g	R i g h t- o f- W a y	P a v e m e n t W i d t h
L o c a l S t r e e t	125'	25'	60'	30'
M i n o r C o l l e c t o r	125'	75'	70'	36'

M a j o r C o l l e c t o r	150'	100'	100'	40'
M i n o r A r t e r i a l	150'	100'	100'	60'
M a j o r A r t e r i a l	150'	100'	120'	70'

14. **Street Names.** Names of new streets shall not duplicate or cause confusion with the names of existing streets, unless the new streets are a continuation of



or in alignment with existing streets, in which case names of existing streets shall be used.

15. Street Signs. Street name signs shall be installed by the subdivider at all intersections within or abutting the subdivision. Such signs shall be of a type approved and shall be installed in accordance with the standards of Hays County.

Traffic regulatory signs and safety signs shall be installed by the subdivider in accordance with Hays County and State Regulations.

C. **Alleys.** Alleys shall not be permitted.

C. **Utility Installation & Easements.** Each block shall have utility easements reserved for the use of all public utility lines, conduits and equipment. All utilities shall be installed underground.

E. **Reserved for future use.**

F. **Water Installations.**

1. **Availability of Service.** If the subdivision is not to be served immediately by a water utility, a restriction prohibiting occupancy of any lot until water satisfactory for human consumption is available will be in effect.

2. **Water Supply and Distribution.** All items pertaining to water supply and distribution shall be in accordance with the local water supplier regulations.

3. **Fire Hydrants.** Purchase and installation of fire hydrants within the proposed subdivision shall be at the expense of the subdivider and shall be in accordance with the local water supplier regulations and per specifications of the Fire Chief of the City.

4. **Storage and Pumping for Fire Flow.** All items pertaining to storage and pumping for fire flow shall be in accordance with the local water supplier regulations.

G. **Sewers.**

1. **General.** All subdivisions shall be provided with an approved sewage treatment and disposal system. Where septic tanks are to be installed, the subdivider shall conduct percolation tests, if required, under the supervision of the Caldwell and/or Hays County Health Department or another duly authorized official in order to determine the adequacy of proposed lot sizes. If a sanitary sewer disposal system is to be installed, the plans for such system must be approved by the Texas Natural Resource Conservation Commission and the Niederwald City Council, prior to approval of the final plat by the Council.

2. **Availability of Service.** Occupancy of any lot shall be prohibited until a septic tank system is installed in accordance with the rules and regulations of

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the Caldwell and/or Hays County Health Department and has been inspected and approved by Caldwell and/or Hays County.

3. Design Criteria. Shall be in compliance with Caldwell and/or Hays County Regulations.

H. Utility Lines. All utility lines that pass under a street shall be installed before the street is paved. When it is necessary that utility lines pass under the street pavement, they shall be installed to a point at least two (2) feet beyond the edge of the pavement.

I. Monuments. Shall be in compliance with Caldwell and/or Hays County Regulations.

J. Drainage.

1. **General.** The interpretation of the requirements set forth in this section shall be made by the City of Niederwald Engineer, unless specified otherwise by the Council. The subdivider shall be responsible for the conveyance of all storm drainage flowing through or abutting the subject property, including drainage directed to the property by prior development as well as that naturally flowing by reason of topography.

Where new drainage improvements are required along the boundary of a subdivision, the owner proposing development shall be responsible for designing and constructing all the required improvements at or before the time of development, including the dedication of all necessary right-of-way or easements necessary to accommodate the improvements. Where the subdivider proposes to subdivide only a portion of the property, only the drainage improvements for the portion being subdivided shall be required to be installed, except as drainage improvements outside the portion being subdivided are deemed necessary by the City of Niederwald for proper drainage of the portion being subdivided.

2. **Drainage Facilities.** The responsibility of the subdivider shall extend to the provision of adequate off-site drainage facilities and improvements to accommodate the full effects of the development of his property. The subdivider will stand the full cost of acquiring said property rights and constructing the off-site improvements and facilities. This does not relieve the subdivider of the responsibility for providing storm water detention on-site.

3. **Design Criteria.** Shall be in compliance with Caldwell and/or Hays County Regulations. Natural drainage channels shall be preserved whenever possible. Open surface drainage through grass-lined swales shall be preferred over the use of streets and street rights-of-way as the central drainage network. The provisions of Section 12.B.13 shall apply in regard to street drainage. The rate of runoff after construction shall be less than or equal to the site's runoff prior to construction.

4. **Easements.** All drainage easements across private property shall contain the necessary language to permit the required water flow, required maintenance of vegetation by the property owner(s), and permit the necessary access by City

Building Inspector for inspection. All easements, twenty-five (25) and one hundred (100) year flood plain boundaries shall be clearly shown on drainage plans and the final plat whenever such plans and plats contain flood plains or floodway segments.

K. Erosion and Sedimentation Control.

1. **Purpose.** The purpose of controlling erosion and sedimentation during the construction stages in a subdivision are to minimize nuisances on adjacent properties, avoid siltation and water quality degradation of streams, and preserve the natural and traditional character of watercourses running through the area.

2. **Temporary Erosion and Sedimentation Control, Required Program.** The developer shall be required to submit plans for and execute a program of erosion and sedimentation control during the construction period for all parts of the proposed project, and adjacent lands, including easements and right-of-ways. The accepted guides for preparing control plans is the TNRCC Document No. RG-348 dated June 1999, "Complying with Edwards Aquifer Rules: Technical Guidance on Best Management Practices".

3. **Permanent Water Quality Control, Required Program.** For all development within the City, the Developer shall be required to provide permanent water quality controls adequate to provide for mitigation of non-point source pollution. The accepted guides for preparing control plans is the TNRCC Document No. RG-348 dated June 1999, "Complying with Edwards Aquifer Rules: Technical Guidance on Best Management Practices".

4. **Drainage Channel Stabilization.** All new drainage channels on the site shall be designed to minimize potential erosion. All constructed and altered drainage channels shall be stabilized and vegetated immediately after final grading. All culverts shall be constructed with concrete riprap around each opening.

L. **Blocks.** Block length shall not exceed 1,500 feet, nor be less than 300 feet.

M. Lots.

1. **Minimum Lot Size.** All lots shall consist of a minimum area of one (1) acre for an unsewered lot and one-half (1/2) acre for a sewer lot. In the case of irregularly shaped lots, the minimum width shall be measured at the front of the building setback line.

2. **Unsewered Lots.**

a. All lots in a subdivision shall be laid out in such a manner as to facilitate connection to a sanitary sewer system in the future in a logical and orderly fashion.

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- b. Commission review and approval of site suitability occur prior to or concurrently with preliminary plat review and approval.
 - c. Approval of a subdivision plat under these criteria does not mean that every lot is suitable for a conventional septic tank-soil absorption system. The Council may require, on the basis of recommendation by the Commission, that a plat note or restrictive covenant be attached to the plat and recorded with the County Clerk specifying that lots within the subdivision may not be suitable for conventional septic tank-soil absorption systems.
 - d. No water connection will be made for any lot without installation of approved septic or soil absorption system.
 - e. No property in the Niederwald area lies within the Edwards Aquifer Recharge Zone.
3. **Flag Lots.** Flag-shaped lots shall be prohibited except in unique circumstances where prior ownership boundaries require such a configuration. City Council approval shall be required.
 4. **Frontage.** Each lot shall front upon a public street. Lots of irregular shape shall not be allowed unless they have a street frontage of at least one hundred fifty (150) feet for an unsewered lot and one hundred twenty five (125) feet for a sewerred lot. Lots on a cul-de-sac street shall have a minimum street frontage of sixty (60) feet. Lots of irregular shape shall be discouraged.
 5. **Side Lot Lines.** Side lot lines shall be substantially at right angles to straight street lines and radial to curved street lines.
 6. **Minimum Setback Lines.** Minimum front building setback lines shall be required of at least forty (40) feet. Corner lots shall have at least the minimum forty (40) feet.
 7. **Rear Yards.** Minimum rear yard depths of forty (40) feet shall be required.
 8. **Side Yards.** Minimum side yard width of twenty (20) feet shall be required on each side of interior lots and on the interior side of corner lots.
 9. **Extra Depth and Width in Certain Cases.** Where a lot in a residential area backs up to a railroad right-of-way, a high pressure gasoline, oil or gas line, an arterial street, an industrial area, or other land use which has a depreciating effect on the residential use of the property, and where no street is provided at the rear of such lot, additional depth shall be required by the Council. In no case shall a depth in excess of fifty (50) feet be required. Where a lot sides to any of the above, additional width shall be required by the Council, but in no event shall a width in excess of fifty (50) feet be required.

10. Flood Plain Setback Lines. Where a lot is adjacent to a natural watercourse or drainage way (determination regarding what is a natural drainage way shall be made by the city however, if the drainage way serves an area of 64 acres or more, it shall be considered a natural drainage way), a minimum building setback line shall be established along the one hundred (100) year flood plain boundary on each such lot. The building setback shall be 50-feet from the 100-year floodplain for drainage ways serving areas of 200 acres or less and 100-feet for drainage ways serving over 200 acres. The subdivider shall demonstrate that each lot with such a setback can support the proposed use of the lot while leaving the floodplain and setback in a natural state. Within the flood plain area and setback, construction of residential structures and other structures intended for human occupancy shall be prohibited. Other construction related to subdivision development, including streets, utilities, and fill material, shall be minimized within the flood plain setback area. The City may prohibit the construction of streets, ponds, or other improvements within the floodplain and setback. Clearing or removal of natural ground cover and trees within the flood plain setback area of a natural watercourse shall be minimized, and may be prohibited by the city. The subdivider shall clearly show on his development plans the locations of any trees with a trunk diameter of 10” or more, measured at a height of four feet from the ground. The City will require replacement of all such trees removed at a rate of two times the caliper inches of tree removed. No tree of 18-inches diameter or more shall be removed.

11. Setbacks Shown on Plat. The minimum setback lines, minimum lot depths, side yard widths, and other such features as required by the Council and by this Ordinance shall be clearly indicated on the final plat, either by delineation or by statement, and in deed restrictions and private covenants that must accompany the plat.

N. Easements. When the Council finds that easements in areas adjoining a proposed subdivision are necessary to provide drainage thereof, or to serve such subdivision with utilities, the subdivider shall obtain such easements.

O. Parks. A space equivalent to five percent (5%) of the total property to be subdivided shall be dedicated in fee simple to the City for recreational or conservational use. The developer shall show on the preliminary plat the land that is suggested for such public dedication. The land must be suitable for development of a public park. If it is recommended by the Commission to the Council, that the proposed site is not suitable, the developer will be given prompt notice of such determination and may offer cash in lieu of the dedication of land, such amount to be determined as set forth below, or the developer may offer a revision to the preliminary plat and dedicate land that is acceptable to the Council. Alternatively, the developer may appeal the recommendation of the Commission to the Council, who shall exercise final jurisdiction over all such appeals. In lieu of dedication of land within the subdivision for parks and conservation purposes the developer may, subject to the approval and acceptance by the Council, pay cash in lieu of dedication of parkland. The cash contribution shall be determined in accordance with the following schedule:

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(a) Classification Residential: Two hundred fifty (250) dollars for each single family lot in the subdivision.

(b) Classification Commercial: Five percent (5%) of the raw land value of the area. Raw land value shall be established by a State of Texas registered appraiser at the expense of the developer/owner.

(c) Classification Public: Churches, schools and public buildings are exempt and shall not be required to pay cash or dedication land for parks and conservation as a condition to plat approval.

In the event a developer elects to pay cash in lieu of dedication of land for parks and conservation, the cash shall be paid at the time the subdivision plat is approved.

All cash paid in lieu of parkland dedication shall be deposited by the City into a special park fund account and shall be spent by the City on the acquisition of parklands or the improvement of park land/or facilities within the City or ETJ within five (5) years after receipt of such funds by the City. The funds shall not be spent for any other purposes. If the funds are not spent within five (5) years the funds shall be paid to the owners of lots in the subdivision on an equitable basis.

No area or facility shall be dedicated for such public purposes unless approved and accepted by the Council.

P. Responsibility for Payment of Installation Costs.

1. Any subdivision requiring services to be provided by the City shall obtain advance approval of such extension of services from the Council.
2. In no event shall the City incur any expenses within any subdivision.

Section 13. Summary of Fees

- A. Variances:** \$50.00 per variance requested.
- B. Preliminary Conference:** \$300.00 per conference.
- C. Preliminary Plat Filing Fee:** Filing fee of \$395.00 plus \$42.00 per acre or any fractional part thereof.
- D. Final Plat Filing Fee:** \$15.00 per acre or any fractional part thereof, with a minimum fee of \$750.00 per plat.
- E. Construction Plan Review Fee:**
1. Outside City Limits: 1.0% of estimated construction costs, with a \$750 minimum.
 2. Inside City Limits: 0.8% of estimated construction costs, with a \$750 minimum.
- F. Construction Inspection Fee.**
1. Outside City Limits: 5% of estimated construction costs, with a \$500 minimum.
 2. Inside City Limits: 3% of estimated construction costs, with a \$500 minimum.

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- G. **Park Land Dedication:** 5% of total property to be subdivided or, at the City's option, \$250 per residential lot or a 5% raw land value for commercial lot.
- H. **Plat Vacation:** \$500.00 per plat.
- I. **Replat Filing Fee:** Same as for final plat.
- J. **Plat Correction Fee:** \$ 500.00 per plat.
- K. **Fine for Violations:** Up to \$500.00 per offense per day for as long as the violation continues.

PART V: AUTHORITY OF THE COUNCIL AND INSPECTOR, RELATION TO OTHER ORDINANCES, SEVERABILITY, ENFORCEMENT PROVISIONS, AND EFFECTIVE DATE.

Section 14. Authority of the Council and Inspector

The City Council is hereby authorized to promulgate rules, regulations, standards and specifications for construction, installation, design, location and arrangement of streets, curbs, street lights, streets signs, alleys, utility layouts, utility easements, gates for utility easements, sidewalks, water supply and water distribution systems, fire hydrants, sewage disposal systems, septic tanks, water works, monuments, criteria for drainage easement requirements, drainage facilities, and crosswalks ways.

No such rules, regulations, standard and specifications shall conflict with this or any other Ordinances of the City.

All such improvements shall be constructed, installed, designed, located, and arranged by the subdivider in accordance with such rules, regulations, standards and specifications.

Section 15. Relation to Other Ordinances

Wherever, the requirements of this Ordinance are at variance with the requirement of any other applicable law, the most restrictive, or that imposing the higher standard, shall apply.

Section 16. Severability

Should any of the various clauses, sentences, paragraphs, sections or parts of this Ordinance be held for any reason invalid, unconstitutional, or unenforceable as applied to a subdivision or a particular property, building, or structure therein, the same shall not be construed to affect any other valid portion of this Ordinance; but all valid portions hereof shall remain in full force and effect.

Section 17. Enforcement Provisions

- A. Any person violating any provision of this Ordinance within the corporate limits of the City shall be guilty of a misdemeanor and, upon conviction, shall be fined an amount not exceeding five hundred dollars (\$500.00) per offense. Each day that such violation continues shall be a separate offense. Prosecution of conviction under this provision shall never be a bar to any other remedy or relief for violations of this Ordinance.
- B. In the event any provision of this Ordinance is violated within the corporate limits of the City, or outside such corporate limits but within the area of extraterritorial jurisdiction of the City, the City may institute any appropriate action or proceedings in District Court or another Court of Competent jurisdiction to restrain and enjoin the violation of such Ordinance.

Section 18. Waivers

- A. **Authority to Grant Waivers.** Waivers for any requirements of this Ordinance shall be granted only by the City Council unless otherwise specified or prohibited by law.
- B. **Procedure.** Fifteen (15) copies of the request for waiver shall be submitted in writing to the City Secretary no less than fifteen (15) working days prior to the meeting at which the Planning Commission is to consider the waiver request.
- C. **Reasons for Request.** The request shall specifically and clearly state the section or sections of the Ordinance for which the waiver is being requested and reasons for the request, including any supporting documentation.
- D. **Fees.** Any fees incurred by such request shall be paid by the applicant in full at the time of filing.

Section 19. Effective Date

This Ordinance shall become effective on the ____ day of _____, 2000.

PASSED AND APPROVED this the ____ day of _____, 2000.

Rickie R. Adkins, Mayor
 City of Niederwald, Texas

ATTEST:

APPROVED:

 City Secretary

Shirley Whisenant, Mayor Pro-Tem

Dena David, Council Member

Eddie Lou Hunt, Council Member

Reynell Smith, Council Member

(Vacant), Council Member

Legislative History

This ordinance was passed in order to replace Ordinance 120699-A, as amended, and to update and consolidate all existing ordinances pertaining to subdivisions.