

This Instrument prepared by,  
and after recording return to:  
R. Link Loegler  
5811 Jack Springs Road  
Atmore, Alabama 36502

### **ACCESS AND UTILITY EASEMENT AGREEMENT**

**THIS ACCESS AND UTILITY EASEMENT AGREEMENT** (this "Agreement") is made and entered into as of this \_\_\_\_\_ day of February, 2016, by and among **THE CITY OF FOLEY, ALABAMA**, an Alabama municipal corporation (the "City"), **THE PUBLIC ATHLETIC AND SPORTS FACILITIES COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA**, an Alabama public corporation (the "Sports District"), and **BC FOLEY, LLC**, an Alabama limited liability company ("BC Foley").

#### **RECITALS:**

WHEREAS, BC Foley is the owner of an approximately 374.25 acre parcel of real property located in Baldwin County, Alabama, which is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (the "BC Master Parcel"); and

WHEREAS, the City is the owner of an approximately 17 acre parcel of real property located in Baldwin County, Alabama, which is a dedicated public right-of-way known as Pride Drive (the "Pride Drive Parcel"); and

WHEREAS, the Sports District is the owner of an approximately 39.64 acre parcel of real property located in Baldwin County, Alabama, which is more particularly described on Exhibit "B", attached hereto and incorporated herein by reference (the "Sports East Parcel"); and

WHEREAS, the City and Sports District desire a nonexclusive access and utility easement over approximately 12,507.64 square feet of the BC Master Parcel that abuts a part of Pride Drive which such easement area is legally described on Exhibit "C", attached hereto and incorporated herein by reference ("Easement Area"); and

WHEREAS, the Easement Area is also graphically depicted on Exhibit "D", attached hereto and incorporated herein by reference; and

WHEREAS, in order to facilitate the nonexclusive access easement contemplated by this Agreement, the City has agreed to a 30 foot wide commercial curb cut and relocating a City Party curb cut; and

WHEREAS, the parties wish to document their full understanding and agreement concerning the access and utility easements, rights, and benefits in this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises herein contained and for sum of Ten Dollars (\$10.00) in hand paid by each of the parties to the other and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and incorporated herein by this reference.

2. **ADDITIONAL DEFINITIONS.**

“City Parties” means, collectively, the City and the Sports District, and their respective successors and assigns, as relevant.

3. **RESERVATION OF RIGHTS.**

(a) **Non-Exclusive.** BC Foley hereby expressly reserves unto itself, its successors, assigns, grantees and invitees, the right, in its sole discretion, to use the BC Master Parcel, including but not limited to the Easement Area, for any purpose not inconsistent with the rights herein. In addition and not by limitation, BC Foley and its successors and assigns reserve the right, from time to time, to grant additional easements and licenses to third parties for access and utilities or any other purposes as it may deem necessary, over, upon, across and under any of the Easement Area, provided that such easements or licenses do not unreasonably interfere with any easement granted by this Agreement.

(b) **Replat of Lots.** BC Foley may, at its sole discretion, cause certain or any of the lots/parcels owned by BC Foley, including the BC Master Parcel, which are subject to this Agreement to be subdivided/re-platted/re-mapped in accordance with the applicable requirements of the City and Baldwin County, Alabama, by recorded plat or map (collectively, “Replat”). Notwithstanding the foregoing, the Parties acknowledge and agree that the City’s agreement to these terms is not usurping or limiting the role of the City or the City of Foley Planning Commission concerning the subdivision of lands, and BC Foley will still be required to follow, and will still be subject to, the same laws concerning any attempted Replat as would any private landowner.

4. **EASEMENTS.**

(a) **Access Easement.** Pursuant to the terms and conditions of this Agreement, BC Foley hereby creates, grants, bargains, sells, and conveys to the City Parties and their respective successors and assigns, a non-exclusive, permanent easement under, across, through and upon the Easement Area for vehicular and pedestrian ingress and egress, to have and to hold unto the City Parties and their respective successors and assigns, forever. The Easement Area may be used by the employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, subleases and concessionaires of the City Parties for vehicular and pedestrian ingress and egress.

(b) **Utility Easement.** Pursuant to the terms and conditions of this Agreement, BC Foley hereby creates, grants, bargains, sells, and conveys to the City Parties and their respective successors and assigns, a non-exclusive, permanent easement under, across, and through the

Easement Area for utility lines and related facilities, including but not limited to, sanitary sewers, storm water systems, water (fire and domestic), natural gas, power, data, telephone and communication lines, to have and to hold unto the City Parties and their respective successors and assigns, forever. To the extent commercially reasonable, the utility lines and related facilities shall be below ground.

(c) Construction and Maintenance. The City Parties shall be responsible for the design, construction, and maintenance of the roads, sidewalks, utilities and other improvements placed within the Easement Area pursuant to this Agreement. From and after substantial completion of the access and utility facilities placed within the Easement Area pursuant to this Agreement, the City Party that placed the improvement shall maintain such improvement in good condition and repair.

5. CURB CUTS. In order to facilitate the access easement granted by this Agreement, the relevant City Parties have agreed to allow a 30 foot wide commercial curb cut ("Curb Cut") to be placed on the southern border of the Easement Area. The Curb Cut is shown on Exhibit "E", attached hereto and incorporated herein by reference.

6. TERM OF EASEMENT. Except as expressly provided otherwise in this Agreement, the easements herein created and conveyed are perpetual in duration, and will not be changed, altered or amended except by a written instrument executed by BC Foley and the City Parties, or their respective assigns or successors-in-interest.

7. NO LIENS. A party performing construction or maintenance work on any other party's property pursuant to their rights as described herein will not permit any lien to be filed against the other party's parcel as a result of such work.

8. NOTICES. All notices and other communications given pursuant to this Agreement must be in writing and shall be sent by registered mail, return receipt registered, or by a national overnight receipted delivery services (e.g. *FedEx*). Such notices will be deemed given on the earlier of the following: (a) the date of actual receipt; or (b) the third business day after any registered or certified notice was deposited in a sealed envelope in the United States mail, postage prepaid; (c) the next business day after any notice was delivered (on a business day) to a receipted overnight delivery services; or (d) the first attempted delivery date of any notice hereunder (regardless of whether the recipient of said notice accepted same). All notices must be addressed to the parties hereto as provided below:

**BC Foley LLC:**

James T. Martin  
10113 Foley Beach Express  
Foley, AL 36535

City

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Sports District

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9. **BINDING EFFECT.** This Agreement and the rights and obligations of the parties hereto are intended and will be construed as covenants running with the land and not personal to any party. Nothing contained herein will be used or construed as a grant of rights to any third party, including without limitation any public or governmental authority or agency.

10. **GOVERNING LAW.** This Agreement will be governed by, construed under, interpreted and enforced in accordance with the Laws of the State of Alabama, including all rules relating to construction, enforcement and conflicts of Laws.

11. **CONSTRUCTION OF AGREEMENT.** This Agreement has been fully reviewed and negotiated by the parties hereto and their respective counsel. Accordingly, in interpreting this Agreement, no weight will be placed upon which party hereto or its counsel drafted the provisions being interpreted. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement or any portion thereof, will not affect the remaining portions hereof and this Agreement will be construed as if such covenant, agreement, condition, or provision had not been included herein.

12. **CAPTIONS, NUMBER AND GENDER.** The captions and headings are for convenience only and are not intended to be used in construing any provision of this Agreement. The singular and plural will each include the other where appropriate. Words of any gender will include other genders when the context so permits.

13. **NO IMPLIED WAIVER.** No course of dealing between the parties and no delay in exercising any right, power or remedy conferred hereby or now hereafter existing at Law, in equity, by statute or otherwise will operate as a waiver of, or otherwise prejudice, any such right, power or remedy.

14. **NO WARRANTY; ENTIRE AGREEMENT.** No representations, statements, warranties or agreements in connection with this Agreement have been made except as stated herein. This Agreement embodies the entire understanding of the parties hereto, and supersedes all prior discussions and agreements between the parties, and there are not further or other agreements or understanding, written or oral, in effect between the parties relating to the subject

matter hereof. This Agreement will not be modified or amended in any respect except by a written agreement executed by or on behalf of the parties hereto, in the same manner as executed herein.

15. **COUNTERPARTS.** This Agreement, and any modifications, may be executed in any number of counterparts each of which when executed and delivered will be an original, but all counterparts will together constitute one and the same instrument.

16. **TIME IS OF THE ESSENCE.** Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement.

17. **ATTORNEY'S FEES.** In connection with any litigation or proceeding maintained in connection with this Agreement the prevailing party will collect from the non-prevailing party all costs associated therewith and reasonable attorney's fees and costs at all trial and appellate levels whether or not suit is filed.

18. **WAIVER OF TRIAL BY JURY.** The parties hereby knowingly, voluntarily and intentionally waive the right they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Agreement, or in any course of contact, course of dealing, statement (whether verbal or written), or action of any party. This provision is a material inducement for each party to enter into this Agreement.

*[Remainder of this Page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have each executed this Agreement in manner and form sufficient to bind them as of the day and year first above written.

<p><b><u>CITY:</u></b> <b>THE CITY OF FOLEY, ALABAMA</b>, an Alabama municipal corporation</p> <p>By: _____ Name: _____ Its: _____</p>	<p><b><u>BC FOLEY:</u></b> <b>BC FOLEY, LLC</b>, an Alabama limited liability company</p> <p>By: <u>James J. Martin</u> Name: <u>James J. Martin</u> Its: <u>Margery Paulace</u></p>
<p><b><u>SPORTS DISTRICT:</u></b> <b>THE PUBLIC ATHLETIC AND SPORTS FACILITIES COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA</b>, an Alabama public corporation</p> <p>By: _____ Name: _____ Its: _____</p>	

This Agreement has been consented to by:  
**CREEK INDIAN ENTERPRISES DEVELOPMENT AUTHORITY:**

By: James J. Martin  
Name: James J. Martin  
Its: CEO

STATE OF ALABAMA     )  
COUNTY OF BALDWIN    )

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that \_\_\_\_\_ whose name as Mayor of THE CITY OF FOLEY, ALABAMA, a municipal corporation, is signed to the foregoing document, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA     )  
COUNTY OF BALDWIN    )

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of THE PUBLIC ATHLETIC AND SPORTS FACILITIES COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA, an Alabama public corporation, is signed to the foregoing document, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

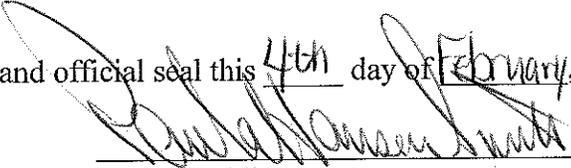
Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA )  
COUNTY OF Escambia )

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that James T. Martin whose name as managing partner of BC FOLEY, LLC, an Alabama limited liability company, is signed to the foregoing document, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 4th day of February, 2016.

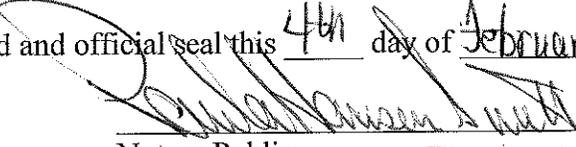
  
\_\_\_\_\_  
Notary Public

My Commission Expires: September 22, 2019

STATE OF ALABAMA )  
COUNTY OF Escambia )

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that JAMES T. MARTIN whose name as CEO/President of CREEK INDIAN ENTERPRISES DEVELOPMENT AUTHORITY, an unincorporated authority of the Poarch Band of Creek Indians, is signed to the foregoing document, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said authority.

Given under my hand and official seal this 4th day of February, 2016.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: September 22, 2019

**EXHIBIT "A"**

BC Master Parcel

**Lot 4, Blue Collar Country, Phase One, as recorded on Slide 2501-E, in the Office of the Judge of Probate, Baldwin County, Alabama.**

**EXHIBIT "B"**

Sports Ease Parcel

Lot 1, Blue Collar Country, Phase One, as recorded on Slide 2501-E, in the Office of the Judge of Probate, Baldwin County, Alabama.

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**EXHIBIT "C"**

Easement Area

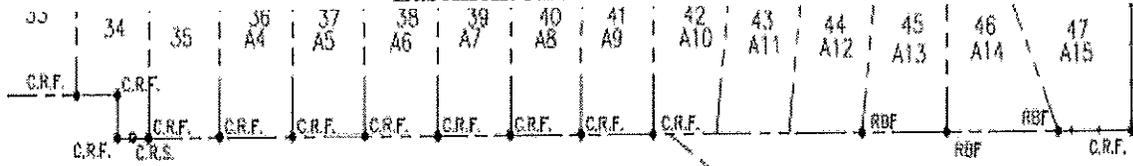
INGRESS/EGRESS AND UTILITY EASEMENT

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLUE COLLAR COUNTRY, PHASE 1, AS RECORDED AS SLIDE 2501-E, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA; THENCE RUN S28°11'18"W, ALONG THE WEST RIGHT-OF-WAY LINE OF PRIDE DRIVE, 102.46 FEET TO THE POINT OF BEGINNING; THENCE RUN S33°25'30"E, ALONG SAID WEST RIGHT-OF-WAY LINE, 87.05 FEET TO A POINT; THENCE RUN S56°34'28"W, LEAVING SAID WEST RIGHT-OF-WAY LINE, 114.96 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1; THENCE RUN N00°00'05"E, ALONG SAID EAST LINE OF LOT 1, 104.30 FEET TO A POINT; THENCE RUN N56°34'28"E, ALONG SAID EAST LINE OF LOT 1, 114.96 FEET TO THE POINT OF BEGINNING, CONTAINING 12,507.64 SQUARE FEET MORE LESS

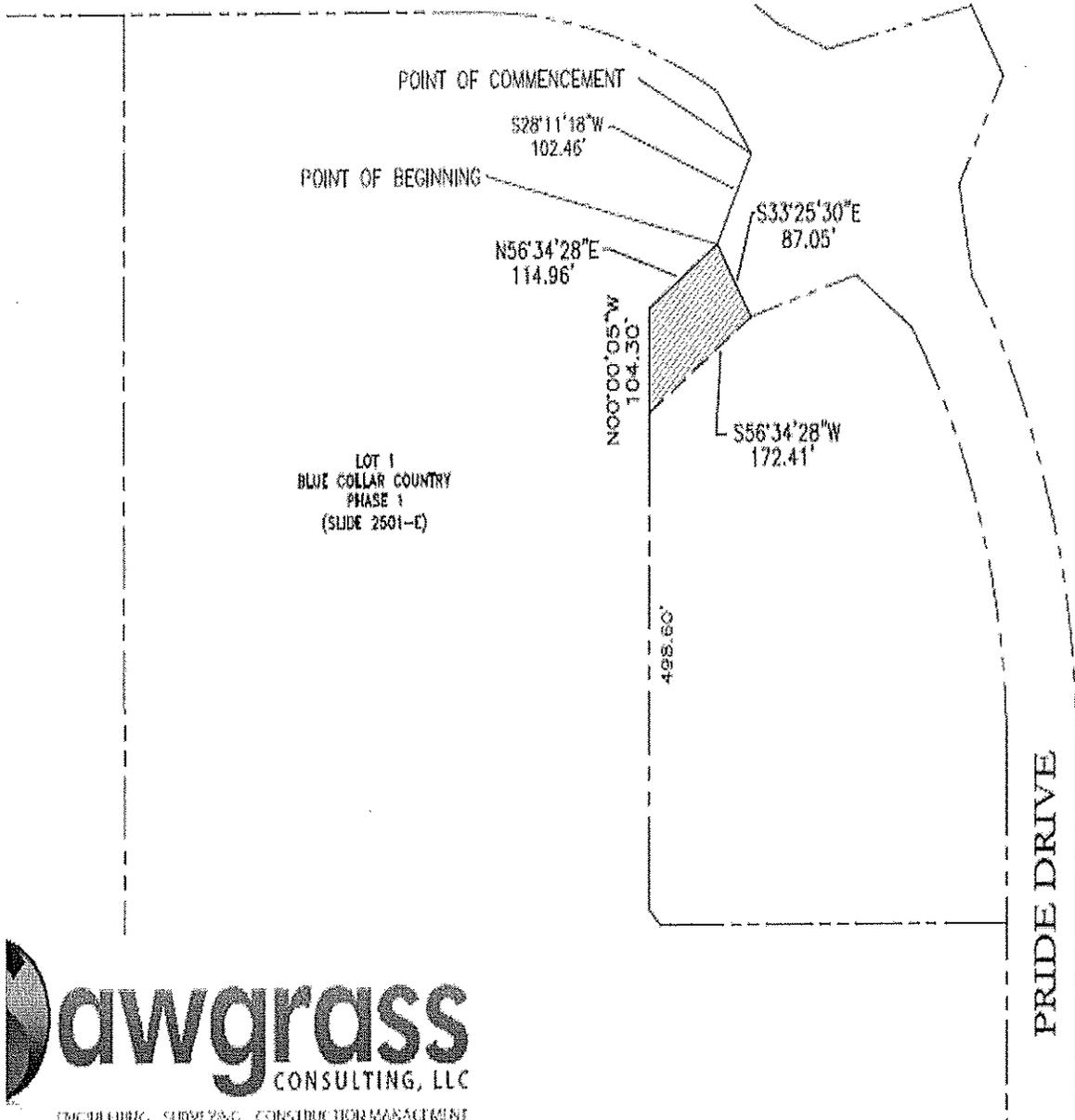
**EXHIBIT "D"**

Depiction of Easement Area

Easement Area is shaded below.

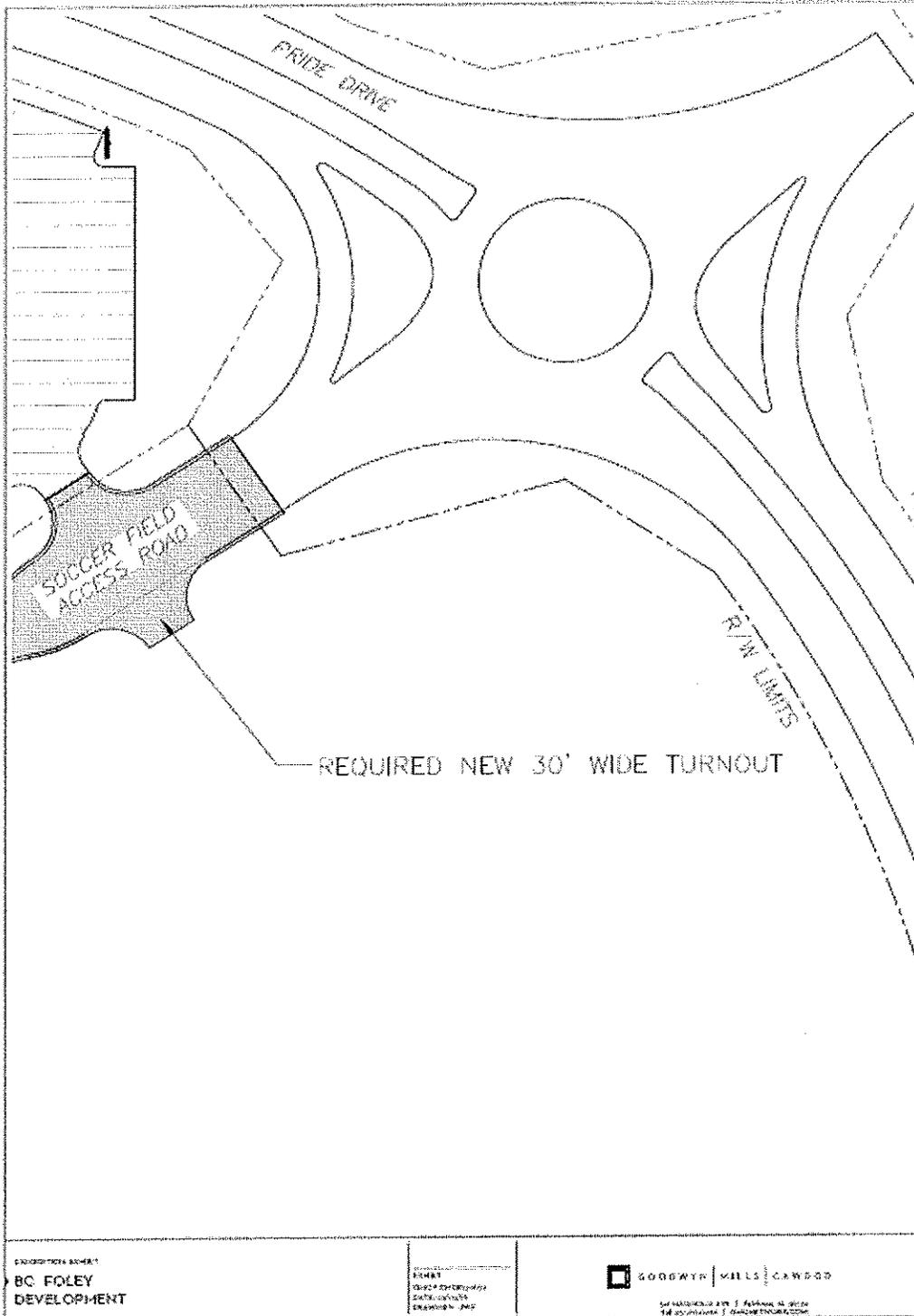


PRIDE DRIVE



**EXHIBIT "E"**

Curb Cut



ENGINEERING SHEET  
BC FOLEY  
DEVELOPMENT

EXHIBIT  
Curb Cut  
DATE: 01/15/2024  
DRAWN: JNP

 GOODWIN | MILLS | CASWOOD  
500 HARTSFIELD AVE. | FARMINGDALE, NY 11735  
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