#### WATER REFUNDING AGREEMENT

This AGREEMENT ("AGREEMENT") is made and entered into as of the day of
, 2020, by and between the CITY OF NORTH LAS VEGAS, NEVADA, a political
subdivision of the State of Nevada, (hereinafter referred to as "CITY"), and RICHMOND
AMERICAN HOMES OF NEVADA, INC., a Colorado Corporation (hereinafter referred to as
"DEVELOPER").

#### RECITALS

- A. The CITY provides water service to the North Las Vegas Service District.
- B. The DEVELOPER desires to improve and develop real property located on approximately 9.73. acres, located in the vicinity of Elkhorn Road and Commerce Street (the "PROPERTY").
- C. The DEVELOPER desires to obtain water service from the CITY for the PROPERTY, which the CITY is willing to provide.
- D. To provide such water service will require an extension of the water main over a greater distance than is ordinarily included within the initial fees to obtain water service ("WATER MAIN EXTENSION").
- E. Adjacent property owners have not applied for such service to cover the costs of said WATER MAIN EXTENSION, and the DEVELOPER is willing to advance such costs.
- F. The North Las Vegas Municipal Code (the "CODE") 13.04.030(E) provides that the CITY may reimburse the DEVELOPER for a portion of the cost of such extension according to the terms in 13.04.030(D) and (E) of the CODE.
- G. The CITY is willing to reimburse a portion of the costs that the DEVELOPER will incur in extending the water main in accordance with the CODE and this AGREEMENT.

NOW, THEREFORE, in consideration of the above recitals and mutual promises contained herein, the parties hereto agree to the following terms, conditions, and covenants:

### 1. THE DEVELOPER'S RIGHTS AND RESPONSIBILITIES

1.1. The DEVELOPER is responsible for all costs, expenses, and liabilities associated with the design, construction, and financing of the WATER MAIN EXTENSION, subject to the right of the CITY to designate the type of improvements,

- appurtenances, and any other relevant matter which it considers necessary for the construction of its water system. The CITY agrees to reimburse the DEVELOPER, in annual installments, all front footage (Water Construction) charges collected from customer connections to the WATER MAIN EXTENSION within ten (10) years from the acceptance date of the main(s) as those costs are calculated pursuant to the terms of Section 3 below.
- 1.2. The DEVELOPER shall cause to be performed all work necessary to design and construct the WATER MAIN EXTENSION in accordance with the improvement plans entitled "IMPROVEMENT PLANS FOR LYNMAR" and the CITY's current adopted Uniform Design and Construction Standards for Potable Water Systems (UDACS), accepted engineering practices, and the CODE. The DEVELOPER agrees that it will engage an engineer duly licensed by the State of Nevada to perform engineering and design work necessary to fully design the WATER MAIN EXTENSION. The DEVELOPER agrees that it will engage a contractor duly licensed by the State of Nevada to perform the work necessary to construct the WATER MAIN EXTENSION.
- 1.3 It is acknowledged that the costs for which the DEVELOPER is entitled to reimbursement for constructing and installing the WATER MAIN EXTENSION is not to exceed fifty-six thousand six hundred forty six dollars (\$56,646) as depicted in Exhibit "B," of this Agreement. The CITY shall make payment to the DEVELOPER as indicated in Section 1.1 above, and only after the CITY has inspected and accepted the WATER MAIN EXTENSION, and received all documentation as set forth in Section 9. The DEVELOPER's right to reimbursement for the extending costs shall be limited to the estimated costs described herein.
- 1.4. The period for completion of the WATER MAIN EXTENSION shall not exceed 24 months from the date of approval of the project improvement plans of the WATER MAIN EXTENSION. The schedule may be revised and amended upon a mutual agreement of the parties to extend the timeframe. The DEVELOPER shall utilize commercially reasonable efforts to complete the project within such timeframe. The completion timeframe shall be reasonably extended in the event of natural events or disasters, unforeseen circumstances unable to be contemplated through the bidding

process, any delays by government agencies or other third parties not in privity or control of the DEVELOPER, any material or supply shortages unknown at the time of the acceptance of the contractor's bid, or any other ordinary events of force majeure, war, acts of terrorism, vandalism or other events that may cause delay to complete construction.

- 1.5. The DEVELOPER must obtain and pay for any customary construction permits for the WATER MAIN EXTENSION, or portions thereof, in accordance with the CITY'S normal construction permitting processes for such project.
- 1.6. The DEVELOPER agrees that the WATER MAIN EXTENSION will be designed, constructed, and installed in a good and workmanlike manner in compliance with the CODE, the CITY's current adopted Uniform Design and Construction Standards for Potable Water Systems (UDACS), accepted engineering practices, and in accordance with the design and engineering plans approved by the CITY.
- 1.7. The DEVELOPER acknowledges that the WATER MAIN EXTENSION may not serve the PROPERTY without additional water system improvements that the DEVELOPER will design and construct, at the DEVELOPER'S sole cost.
- 1.8. The DEVELOPER hereby acknowledges that during construction of the WATER MAIN EXTENSION, compliance with any federal, state, or local laws or regulations, including the Endangered Species Act ("ENVIRONMENTAL REGULATIONS"), shall be the responsibility of the DEVELOPER and nothing herein shall be deemed to constitute approval by the CITY, either directly or indirectly, of any activity that results in violations of any such laws or regulations.

#### 2. RIGHT OF REIMBURSEMENT

- 2.1. It is understood and agreed that the DEVELOPER may be reimbursed for a portion of the costs which it incurs in constructing and installing the WATER MAIN EXTENSION subject to the limitations of 13.04.030 of the CODE and as set forth in this AGREEMENT.
- 2.2. It is understood and agreed that all of the costs and expenses of installing a water system from the WATER MAIN EXTENSION to and within the PROPERTY for the PROPERTY'S benefit are the sole responsibility of the DEVELOPER without any right of reimbursement from the CITY.

# 3. CONSTRUCTION CHARGES AND AMOUNT REIMBURSABLE

- 3.1. DEVELOPER is responsible for payment of the entire cost of the WATER MAIN EXTENSION. WATER MAIN EXTENSION construction charges shall be refunded at a rate of eighteen dollars (\$18.00) per foot of property frontage wherein the main rendering the service to the property is located. The amount of the refund to DEVELOPER is limited to those water construction charges collected by the CITY on the extension of the main during the ten (10) years following the acceptance of the main by CITY and shall not exceed ninety-five (95) percent of the cost to the DEVELOPER for the main extension (less any portion of the cost applicable to any portion of the main adjacent to property owned by the DEVELOPER).
- 3.2. It is understood and agreed that the not-to-exceed or maximum costs of the construction and installation of the WATER MAIN EXTENSION which are subject to reimbursement under the terms of this AGREEMENT have been determined pursuant to the calculations set forth on Exhibit "B" pursuant to the limitations set forth in Paragraph 3.1. DEVELOPER agrees that the cost of reimbursement for the WATER MAIN EXTENSION is not to exceed fifty-six thousand six hundred forty six dollars (\$56,646).

## 4. CITY RIGHTS AND RESPONSIBILITIES

- 4.1. The CITY will reimburse Water Construction Fees up to the maximum amount depicted in Exhibit "B" of this AGREEMENT and set out in Section 3 of this Agreement and shall make payment to the DEVELOPER pursuant to the terms of this AGREEMENT after the CITY has inspected and accepted each segment of the WATER MAIN EXTENSION and received all documentation as outlined in Section 9 hereof.
- 4.2. As a condition precedent to any reimbursement, the DEVELOPER must submit to the CITY a written request for payment, a statement of completion that the WATER MAIN EXTENSION was constructed pursuant to the approved plans and specifications, lien releases from the DEVELOPER'S contractor(s) and materials suppliers for all materials and labor, and a written instrument transferring the

ownership of the WATER MAIN EXTENSION and appurtenances to the CITY, as set forth in Section 9 herein.

## 5. TIME OF PERFORMANCE

5.1. This AGREEMENT shall become effective upon final signature by the CITY and continue for a period of ten (10) years from the acceptance of the main by the City or until DEVELOPER has received the maximum reimbursement allowed under this AGREEMENT. The right of the DEVELOPER to reimbursement hereunder shall cease and terminate with respect to the WATER MAIN EXTENSION when either the DEVELOPER has received full reimbursement of the costs which it was entitled to pursuant to Section 3 and which it incurred for the WATER MAIN EXTENSION, or after the time period of this AGREEMENT has expired.

## 6. LIMITATION ON AMOUNT OF REIMBURSEMENT

6.1. The right of reimbursement for the WATER MAIN EXTENSION shall be limited to the costs of the WATER MAIN EXTENSION which are set forth on Exhibit "B" and in Section 3 above.

#### 7. INSPECTION

7.1. The CITY shall participate from time to time in the inspection and approval of the construction and installation of any part of the WATER MAIN EXTENSION. The DEVELOPER agrees that any inspection of the installation of the WATER MAIN EXTENSION which is conducted by the CITY hereunder or the CITY'S subsequent acceptance of the WATER MAIN EXTENSION shall not relieve or release the DEVELOPER from its responsibility to correct any defective material or faulty workmanship, or both, in the construction and installation of the WATER MAIN EXTENSION or any problem which results from the negligent design thereof as provided in Section 8 hereof.

# 8. CORRECTION OF DEFECTIVE MATERIALS, FAULTY WORKMANSHIP AND NEGLIGENT DESIGN

8.1. The DEVELOPER shall guarantee all material and workmanship and the design thereof for a period of one (1) year from the date of acceptance by the CITY of the entire WATER MAIN EXTENSION. Should any defective material or workmanship affecting water lines and related facilities installed by the

DEVELOPER or any problem which results from the negligent design thereof be discovered within one (1) year of the date of completion and acceptance of the entire WATER MAIN EXTENSION by the CITY, the DEVELOPER shall, within commercially reasonable time, either (a) cause the defect to be corrected, or (b) reimburse the CITY for all costs incurred by CITY in correcting said defect.

# 9. OWNERSHIP OF WATER MAIN EXTENSION

- 9.1. Upon completion of installation of the WATER MAIN EXTENSION and, as a condition precedent to the acceptance thereof by the CITY, the DEVELOPER will convey by written instrument to the CITY all rights, title, and interest in the WATER MAIN EXTENSION and appurtenances and warrant that it is free of all liens and other encumbrances.
- 9.2. It is understood and agreed that the WATER MAIN EXTENSION shall thereafter, upon its acceptance by the CITY, become and remain the exclusive property of the CITY.
- 9.3. The DEVELOPER shall transfer to the CITY all warranties in the improvements that have been provided by the DEVELOPER'S contractors.

## 10. INDEMNIFICATION

- 10.1. The DEVELOPER shall protect, indemnify, and hold harmless the CITY, its elected officials, officers, attorneys and employees from any and all claims, damages, losses, expenses, suits, actions, decrees, judgments, attorneys' fees, and court costs which the CITY, its elected officials, officers, attorneys or employees may suffer, or which may be sought against, recovered from or obtainable against the CITY, its elected officials, officers, attorneys or employees as a result of, by reason of, or arising out of the negligent acts or omissions of the DEVELOPER, its subcontractors, or agents or anyone employed by the DEVELOPER or its subcontractors or agents, for the design, construction, and installation of the WATER MAIN EXTENSION or relating to the subject matter of this AGREEMENT.
- 10.2. It is expressly agreed that the CITY and the DEVELOPER shall each initially pay their respective costs in defending themselves in any and all suits or actions which may be brought against them, their elected officials, officers, attorneys or employees

because of, or by reason of, the negligent act or omission of either of them unless such suit or action is defended on their behalf by the WATER MAIN EXTENSION contractor. However, the parties hereto agree that in the event the suit or action is reduced to judgment then the cost of such defense shall be ultimately divided or distributed between the parties in the following manner:

- (a) An adjudication by the court or trier of fact that neither the CITY nor the DEVELOPER is responsible or liable for the plaintiffs' injuries or damages, then each party shall bear its own costs and expenses of litigation.
- (b) An adjudication by the court or trier of fact that the DEVELOPER is solely or partly responsible and liable for the plaintiffs' injuries or damages while the CITY is relieved of any responsibility and liability, then the DEVELOPER shall reimburse the CITY for all of its costs and expenses of litigation;
- (c) An adjudication by the court or trier of fact that the CITY is solely or partly responsible for the plaintiffs' injuries or damages while the DEVELOPER is relieved of any responsibility and liability, then the CITY shall reimburse the DEVELOPER for its costs and expenses of the litigation;
- (d) An adjudication by the court or trier of fact which determines responsibility and liability on a comparative basis between the parties, then the CITY and the DEVELOPER shall share in the total costs and expenses of litigation in that amount determined by multiplying the total percentage of fault or liability attributable to the respective parties by the total costs and expenses of litigation.
- (e) In the event that the suit or action is settled between the litigants, each party shall be responsible for all of its costs and expenses of litigation, unless the settlement agreement provides otherwise.

### 11. TERMINATION

- 11.1. The following event shall constitute an EVENT OF DEFAULT hereunder:
  - (a) failure by the DEVELOPER to perform or observe any of the covenants, agreements, or conditions for which it's responsible for under this AGREEMENT; or

- (b) failure by the DEVELOPER to meet the deadlines in the schedule of completion.
- 11.2. The CITY shall have the right to terminate this AGREEMENT at any time, for such Events of Default pursuant to Section 11.1 (a) and (b) above, upon thirty (30) days' prior written notice to the DEVELOPER after first providing the DEVELOPER written notice and reasonable opportunity to cure any such alleged default. Such notice shall be deemed to have been given on the date on which it is delivered in person to a representative of the DEVELOPER as set forth in Section 15.4 herein. Funds which have been expended by or on behalf of the DEVELOPER for the construction and installation of the WATER MAIN EXTENSION as of the date of the DEVELOPER'S termination, shall be reimbursed to the DEVELOPER as hereinabove provided, up to the amount of the corresponding estimated costs for completed phases acceptable to the CITY, and such reimbursement shall by paid to the DEVELOPER within forty-five (45) days of the date this AGREEMENT is terminated, provided that ownership of the WATER MAIN EXTENSION is conveyed in a manner acceptable to the CITY pursuant to Section 9 herein.

# 12. ASSIGNMENT AND TRANSFER; NO THIRD-PARTY BENEFICIARIES

- 12.1. The CITY and the DEVELOPER are hereby bound and the successors, executors, administrators, and legal representatives of the CITY and the DEVELOPER are hereby bound to the other party to this AGREEMENT and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this AGREEMENT.
- 12.2. The DEVELOPER shall not voluntarily assign, sell, convey, grant, sublet, transfer, pledge, mortgage, subordinate, or otherwise encumber its rights under or interest (including, but without limitation, money that is due or may become due except to the DEVELOPER'S financial institution as may be required by the DEVELOPER'S financing) in this AGREEMENT without the advance written consent of the CITY. All transfers of interest by the DEVELOPER, shall be subject to the CITY's review of and approval of transfer documentation to assure the transfer is consistent with the terms and goals of this AGREEMENT, and with the public interest.

12.3. This AGREEMENT is intended to be only for the benefit of the CITY and DEVELOPER and not for the benefit of any third party. The parties expressly declare that they would not have executed the AGREEMENT if it conferred a benefit upon any person not named as a party to it.

## 13. REPRESENTATIONS AND WARRANTIES

The DEVELOPER hereby represents and warrants for, in addition to any other representations and warranties made in this AGREEMENT, with the knowledge and expectation of the CITY's reliance thereon, as follows:

- 13.1. DEVELOPER is a limited liability company duly formed, licensed, validly existing, and in good standing under the laws of the State of Nevada, and duly authorized to do business in the State of Nevada.
- 13.2. The execution, delivery and performance of this AGREEMENT and the taking of all other lawful actions necessary to consummate the project contemplated hereunder, by the persons executing, delivering or performing the same on behalf of the DEVELOPER, have been duly and validly authorized (and by their execution hereof or of any document delivered in connection with the WATER MAIN EXTENSION contemplated hereunder such persons individually represent and warrant that they are so authorized), and this AGREEMENT and the other agreements and instruments contemplated hereby, constitute legal, valid, and binding obligations of the DEVELOPER enforceable against the DEVELOPER in accordance with its terms.
- 13.3. The execution, delivery and performance by the DEVELOPER of this AGREEMENT and such other instruments and documents to be executed and delivered in connection herewith by the DEVELOPER do not, and will not, result in any violation of, or conflict with, or constitute a default under, any provisions of any instrument to which the DEVELOPER is a party or by which the DEVELOPER is bound or of any judgment, decree or order of any court or governmental body or any law, rule or regulation applicable to the DEVELOPER.
- 13.4. The DEVELOPER or its contractor(s) has obtained or will obtain any and all licenses, certificates, and permits that are required to be obtained by the DEVELOPER by the Nevada Revised Statutes and the Nevada Administrative

Code, and by any other law, rule, regulation, or ordinance applicable to the DEVELOPER and to the DEVELOPER's performance in connection with the WATER MAIN EXTENSION.

- 13.5. The DEVELOPER has examined and carefully studied the exhibits attached hereto, and all data and reference items identified in the exhibits.
- 13.6. The DEVELOPER is familiar with and is satisfied as to all laws and regulations that may affect the project.
- 13.7. The DEVELOPER or its contractor(s) has the skills and experience necessary for successful performance of its obligations under this AGREEMENT.
- 13.8. The DEVELOPER or its contractor(s) will provide a performance bond or other satisfactory instrument in an amount equal to the statutory maximum (but not less than 110 percent) of the construction and installation costs.
- 13.9. The DEVELOPER is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the WATER MAIN EXTENSION within the time period required by this AGREEMENT, and to perform its obligations under this AGREEMENT.

The representations and warranties made by the DEVELOPER herein shall survive the completion of the WATER MAIN EXTENSION and the termination or expiration of this AGREEMENT.

## 14. **DISPUTE RESOLUTION**

14.1 The CITY and the DEVELOPER agree that they shall submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to the project, this AGREEMENT, or the alleged breach thereof ("DISPUTE"), to mediation by a mediator selected by the CITY and the DEVELOPER. If the parties are unable to select a mutually acceptable mediator, the party asserting the DISPUTE shall commence a mediation through the American Arbitration Association. The CITY and the DEVELOPER agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within 120 days of submission to mediation. The mediator's fees and related charges shall be shared equally by the CITY and the DEVELOPER.

14.2. If such mediation is unsuccessful in resolving a DISPUTE, then (a) the parties may mutually agree to a dispute resolution procedure of their choice, or (b) either party may seek to have the DISPUTE resolved by a court of competent jurisdiction in Clark County, Nevada.

## 15. MISCELLANEOUS

- 15.1. Nothing contained in this AGREEMENT shall be construed to create or imply a joint venture, a partnership, or a principal and agent relationship between the CITY and the DEVELOPER and neither party shall have any right, power or authority to create any obligation, expressed or implied, on behalf of the other.
- 15.2. This AGREEMENT may not be amended or modified by any expressed or implied statement or any action or inaction of any officer or employee of the CITY or the DEVELOPER. Any amendments to this AGREEMENT must be in writing and must be formally executed by the CITY and the DEVELOPER.
- 15.3. This Agreement is to be governed by the laws of the State of Nevada.
- 15.4. Any notice required to be given hereunder shall be deemed to have been given when received by the party to whom it is directed by personal services, hand delivery or U.S. mail at the following addresses:

To CITY: CITY OF NORTH LAS VEGAS

Attention: Utilities Director

2250 Las Vegas Blvd., N., Suite 250

North Las Vegas, NV 89030

With a copy to: CITY OF NORTH LAS VEGAS

Attention: City Attorney

2250 Las Vegas Blvd. N, Suite 810

North Las Vegas, NV 89030

To DEVELOPER: RICHMOND AMERICAN HOMES OF NEVADA.

INC., a Colorado Corporation

Attention: John Prlina

# 7770 S. Dean Martin Drive, Suite 308 Las Vegas, NV 89139

## With a copy to:

- 15.5. All express representations, waivers, indemnifications, and limitations of liability included in this AGREEMENT will survive its completion or termination for any reason.
- 15.6. Any provision or part of this AGREEMENT held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the CITY and the DEVELOPER, which agree that this AGREEMENT shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 15.7. A party's failure to enforce any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this AGREEMENT.
- 15.8. The terms of the RECITALS are incorporated into the AGREEMENT as if set forth therein as negotiated and agreed upon terms binding against the parties.
- 15.9. With the execution of this AGREEMENT, the DEVELOPER and the CITY shall designate specific individuals to act as the DEVELOPER'S and the CITY'S representatives with respect to the responsibilities under this AGREEMENT. Such individual(s) shall have authority to transmit instructions, receive information, and render decisions relative to the project on behalf of the respective party whom the individual represents.
- 15.10. Pursuant to NRS 239.010, each and every document provided to the CITY is a "public record" open to inspection and copying by any person, except for those documents otherwise declared by law to be confidential. The CITY shall not in any way be liable to the DEVELOPER for the disclosure of any public record.
- 15.11. The headings of the various Sections of this AGREEMENT have been inserted only for convenience, and shall not be deemed in any manner to modify or limit any of

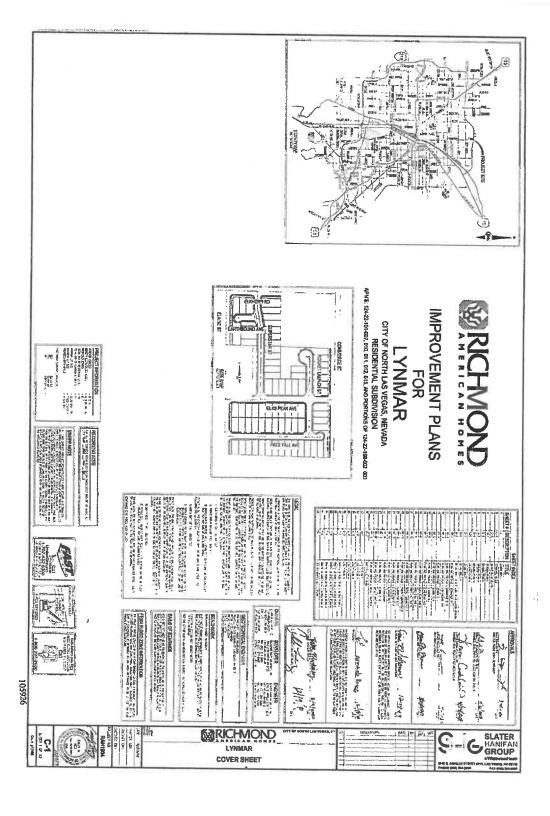
the provisions of this AGREEMENT, or to be used in any manner in the interpretation of this AGREEMENT.

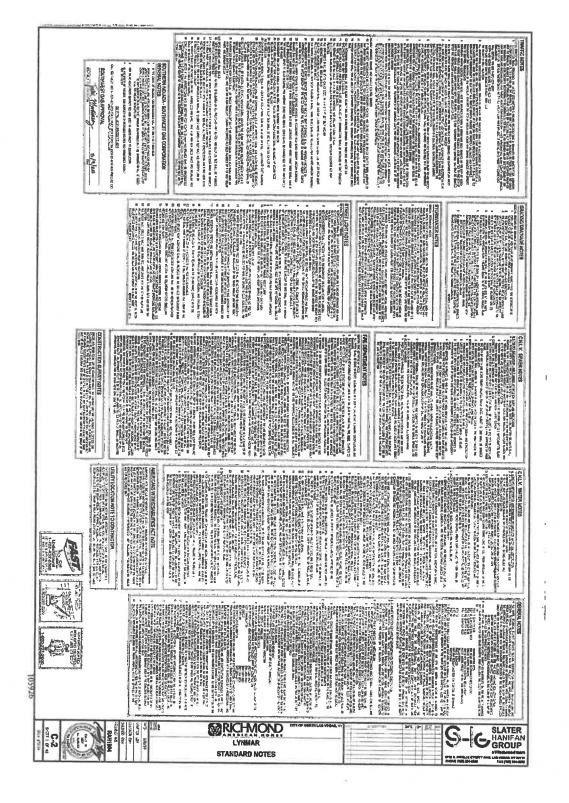
15.12. This AGREEMENT constitutes the entire agreement between the CITY and the DEVELOPER and supersedes all prior written or oral understandings. This AGREEMENT may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their duly authorized representatives the day and year first above written.

CITY OF NORTH LAS VEGAS, a Nevada Municipal Corporation	RICHMOND AMERICAN HOMES OF NEVADA, INC., a Colorado Corporation
By: JOHN J. LEE, MAYOR	By:  NAME: John Prlina  TITLE: Vice President Land Acquisition
ATTEST:	•
By:CATHERINE RAYNOR, CITY CLERK	
APPROVED AS TO FORM:	
By: Mcala Rustia Moore, City Attorn	NEY

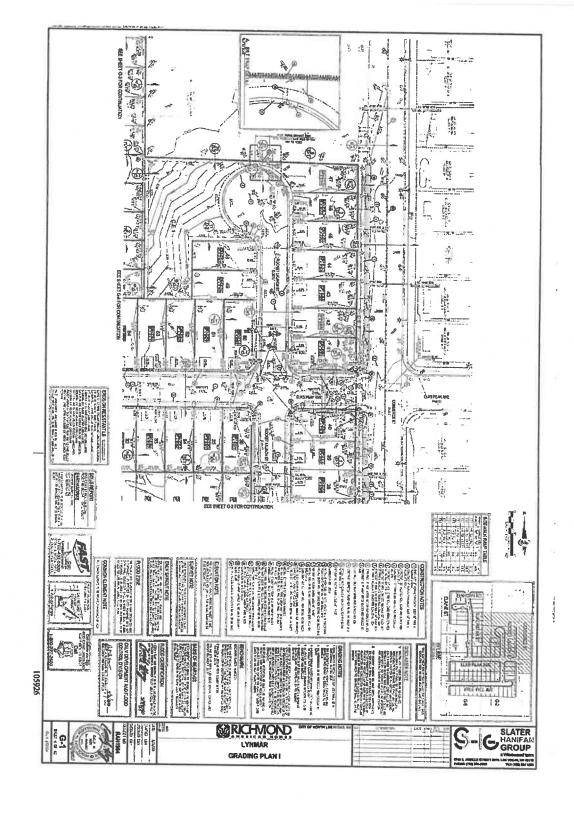
# EXHIBIT "A" CIVIL IMPROVEMENT PLANS

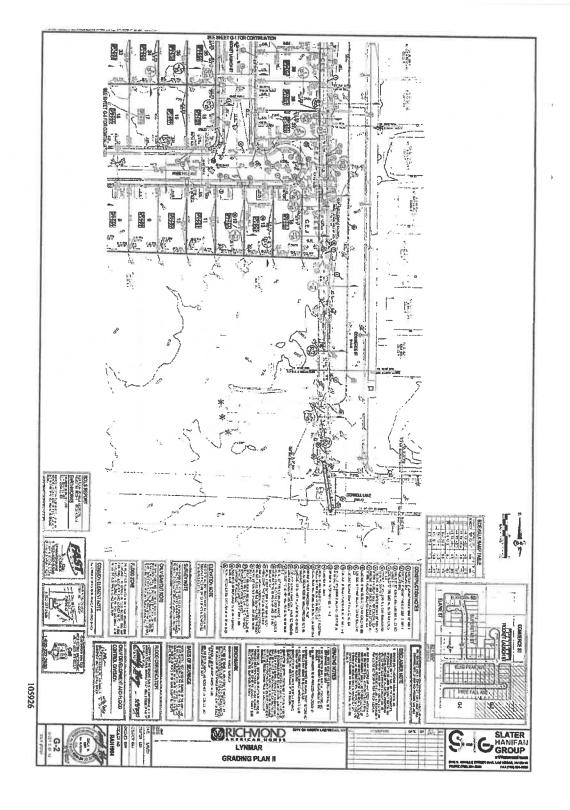


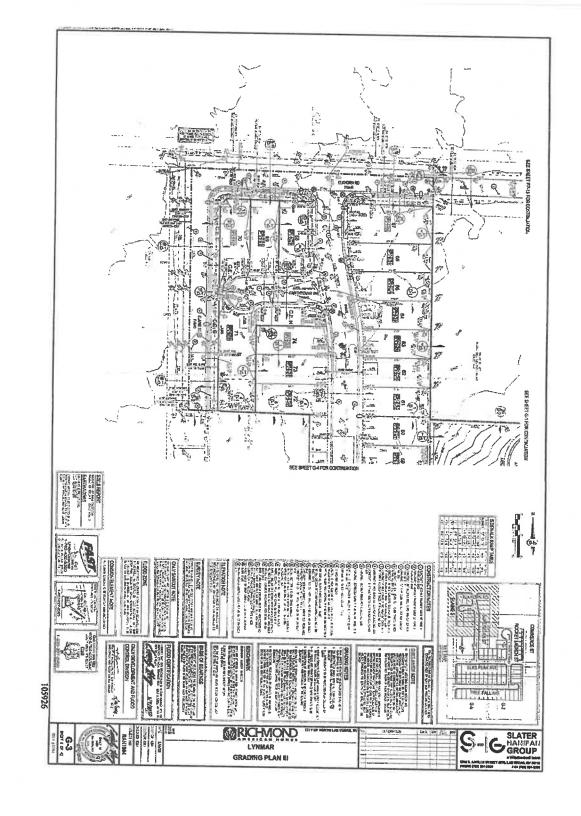


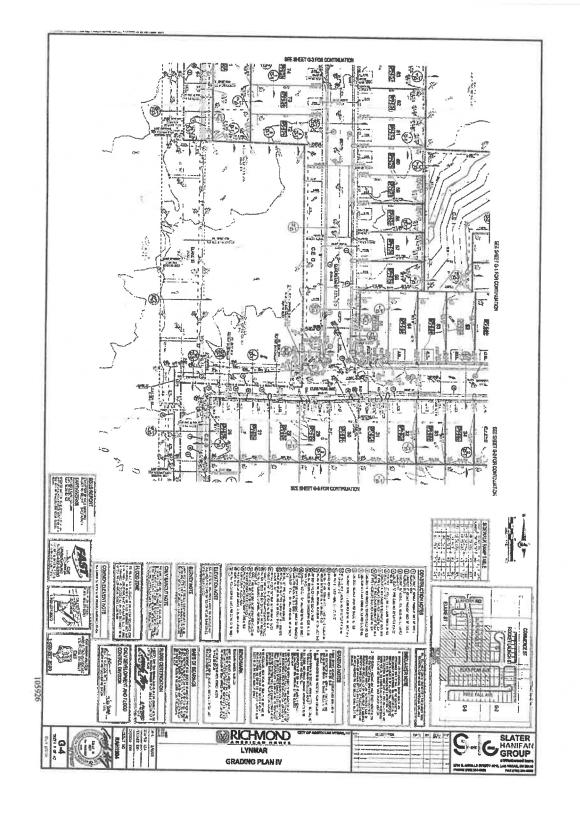
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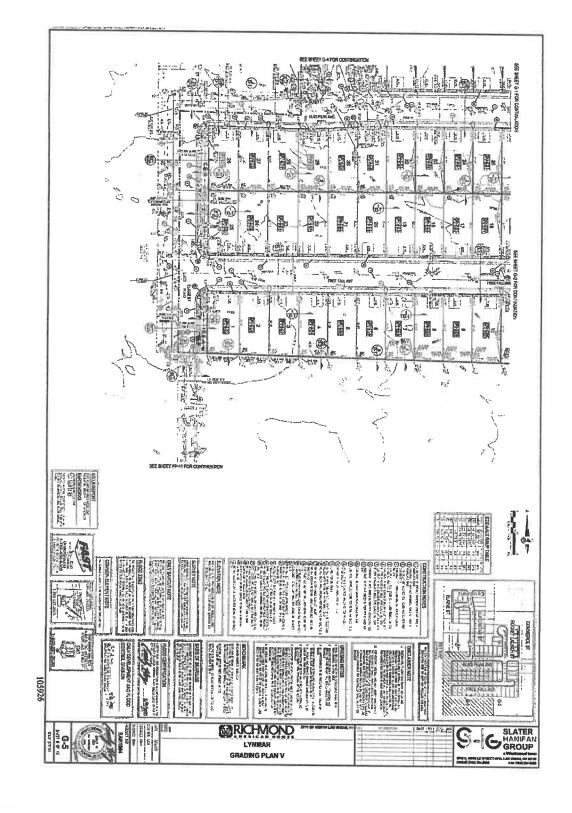
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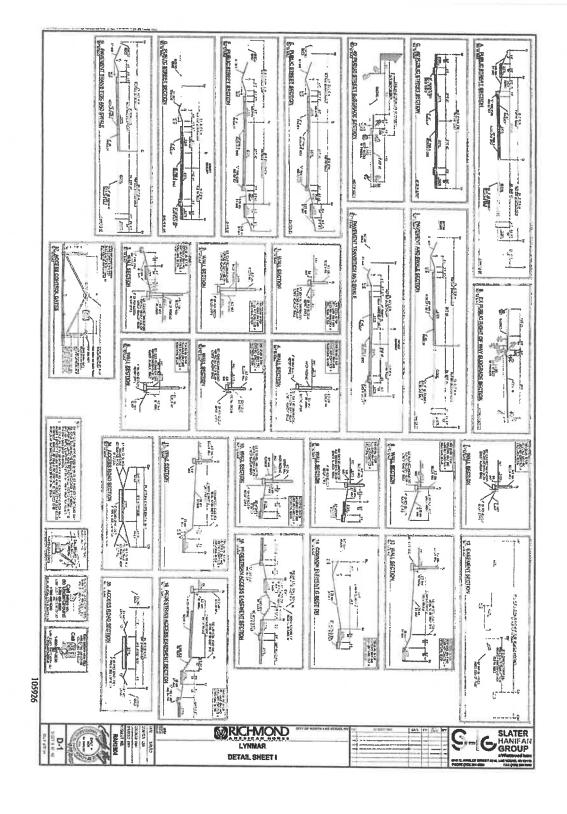


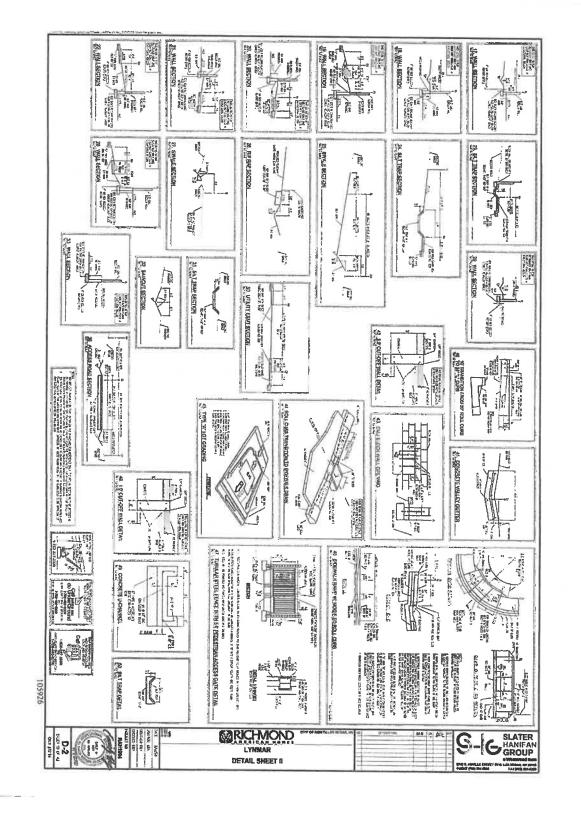


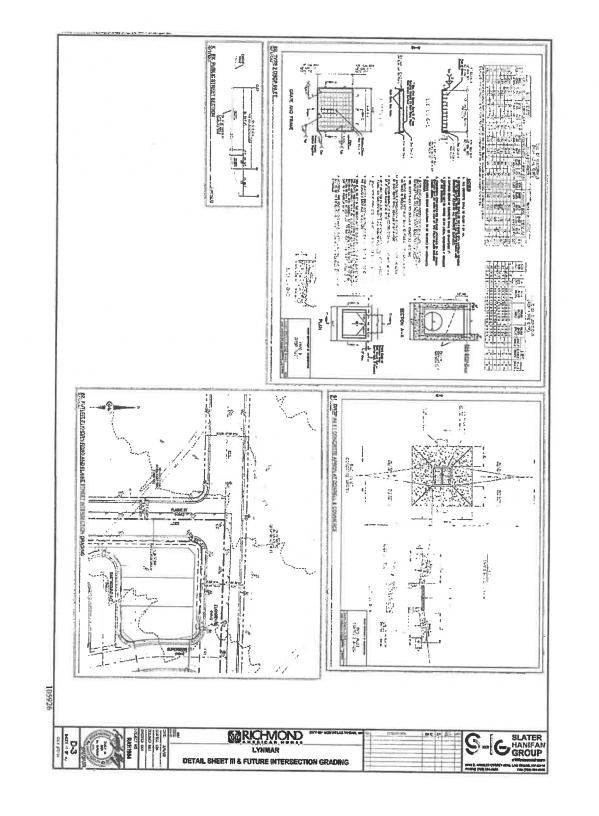


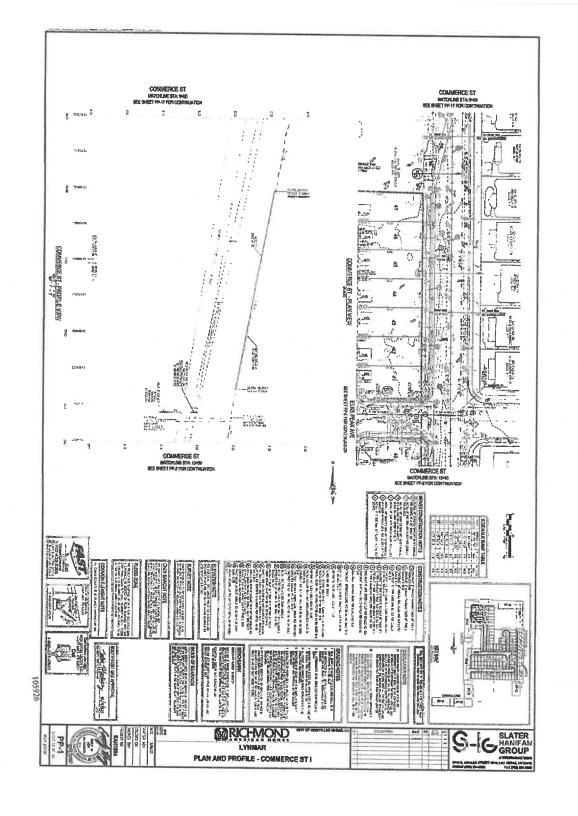


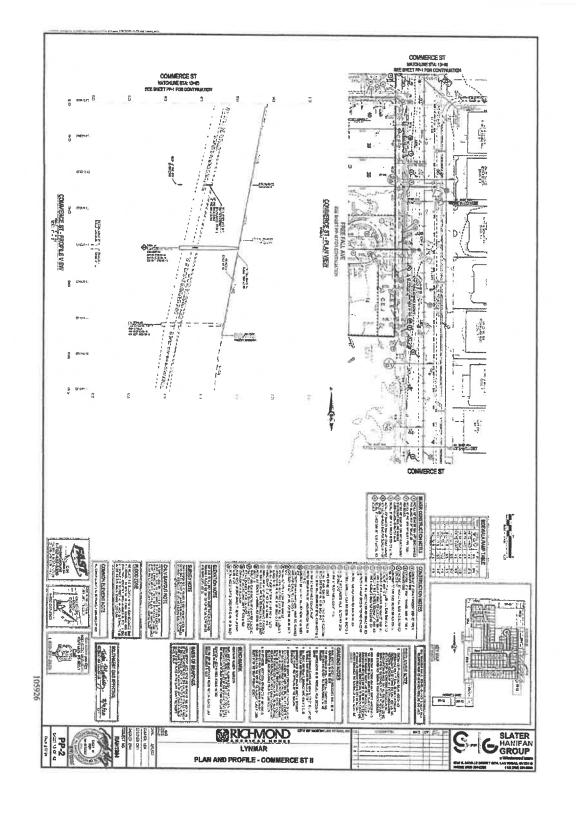


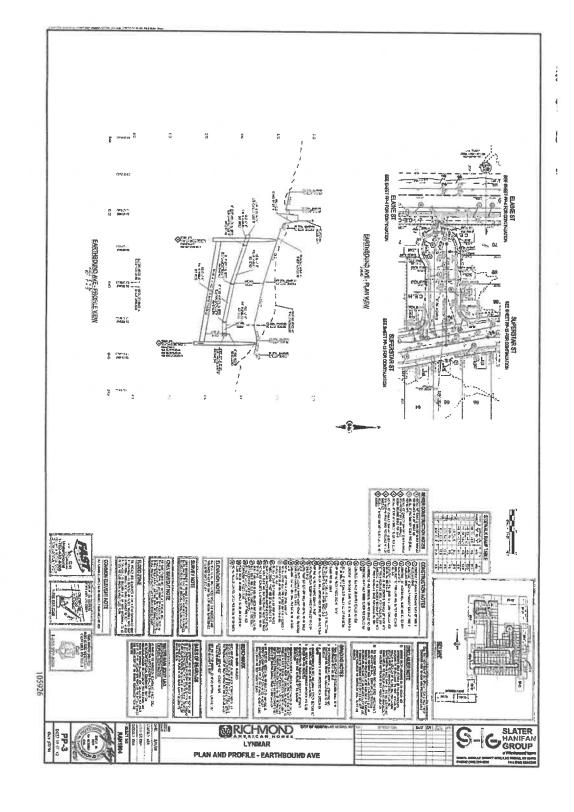


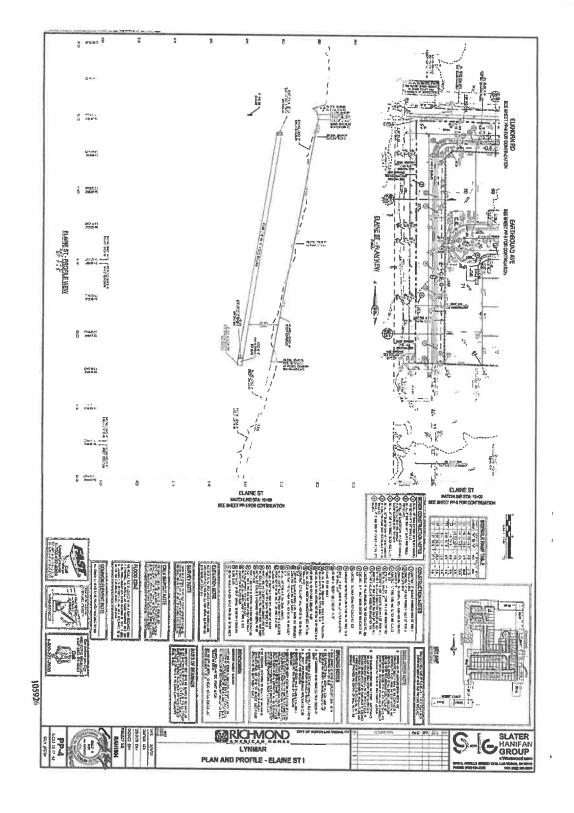


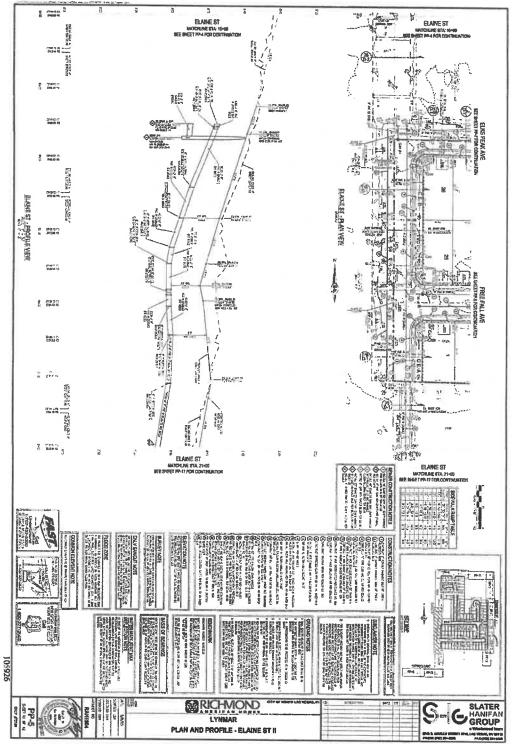


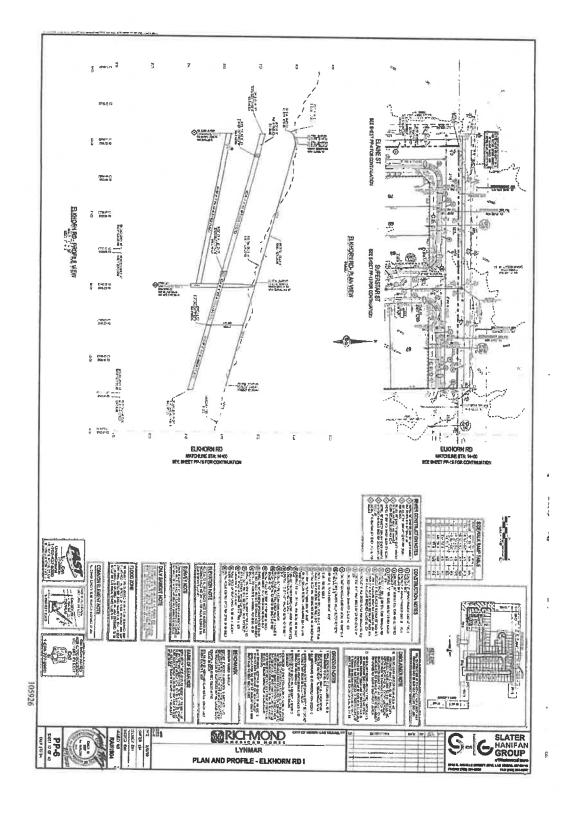


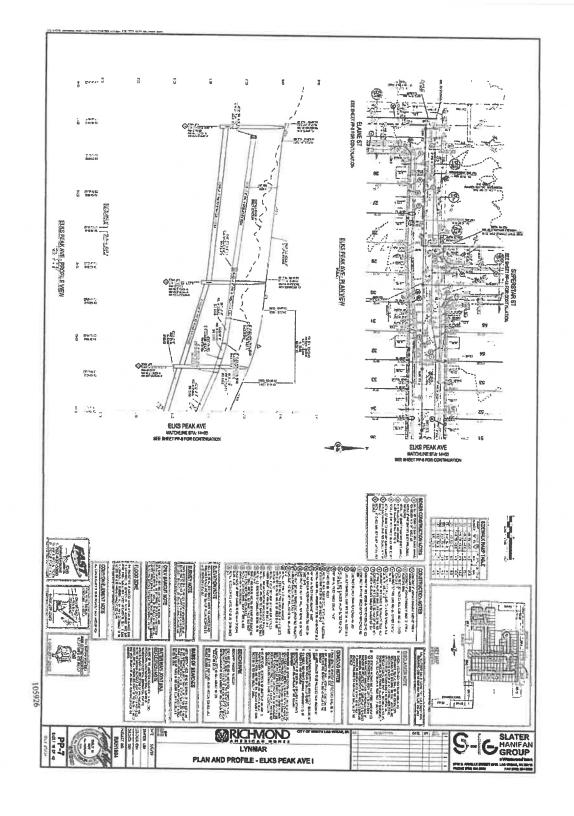


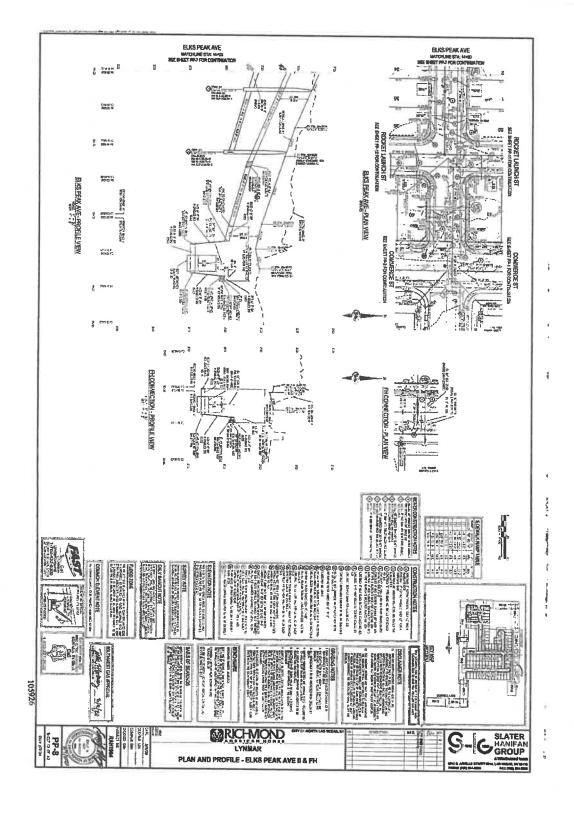


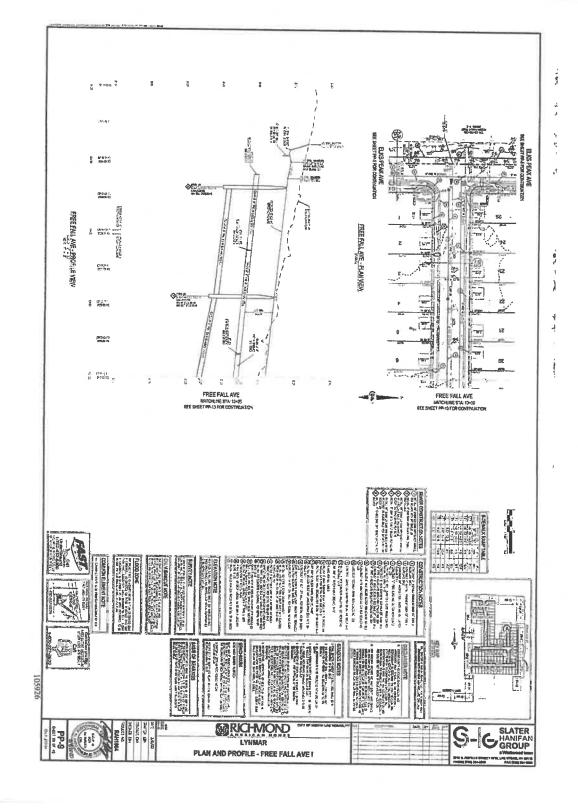


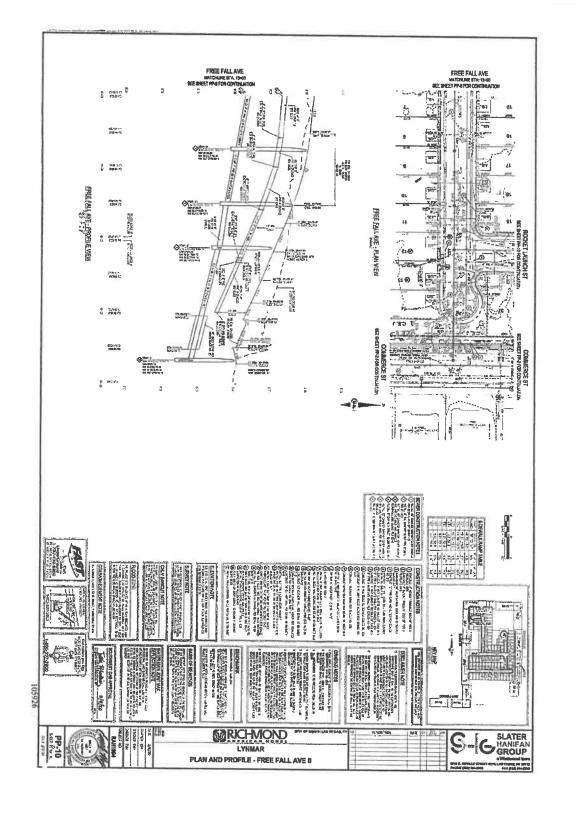


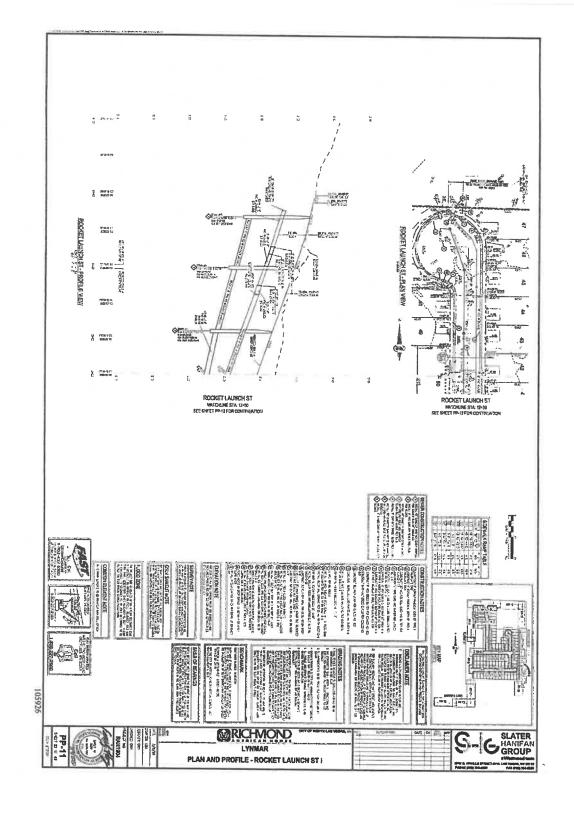


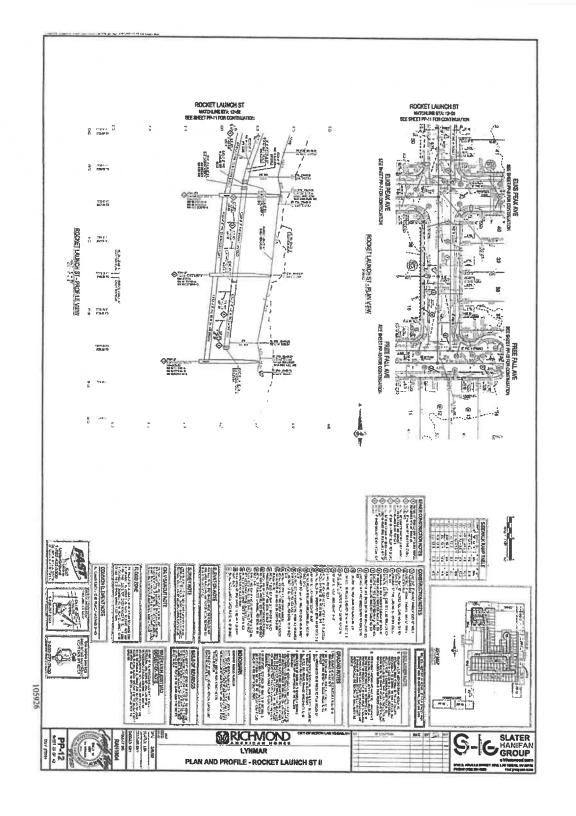


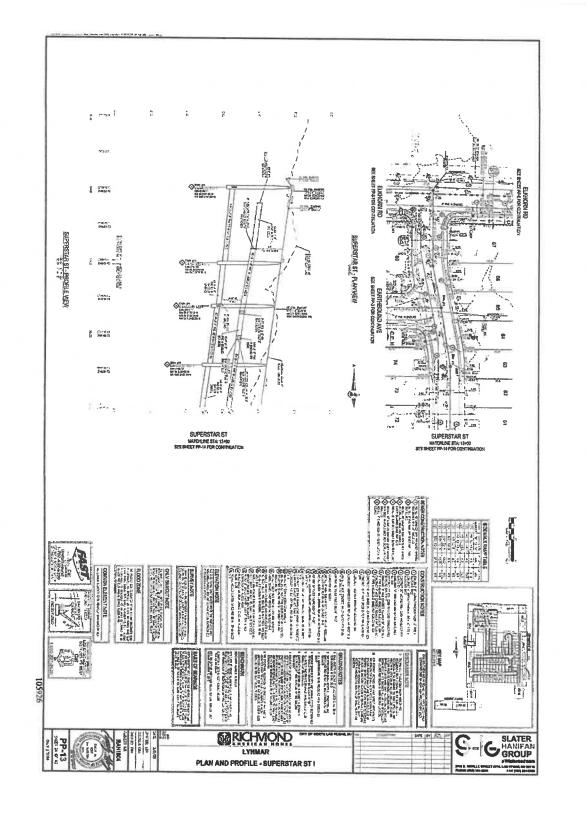


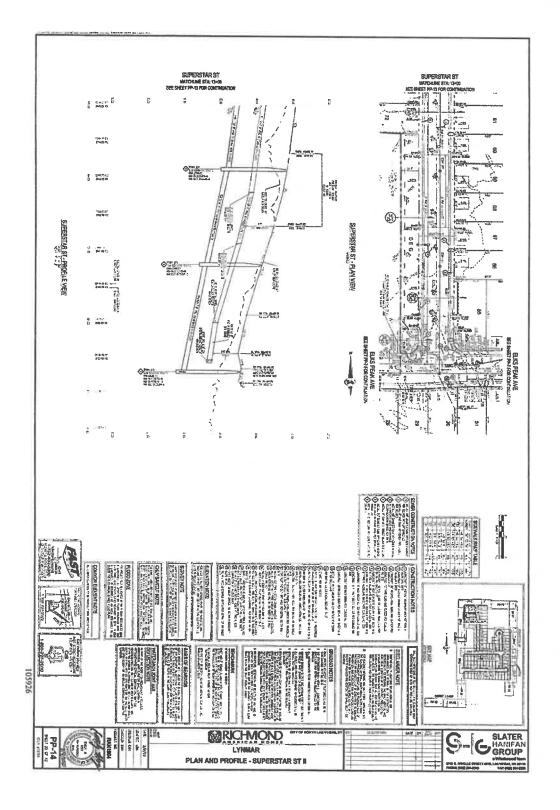


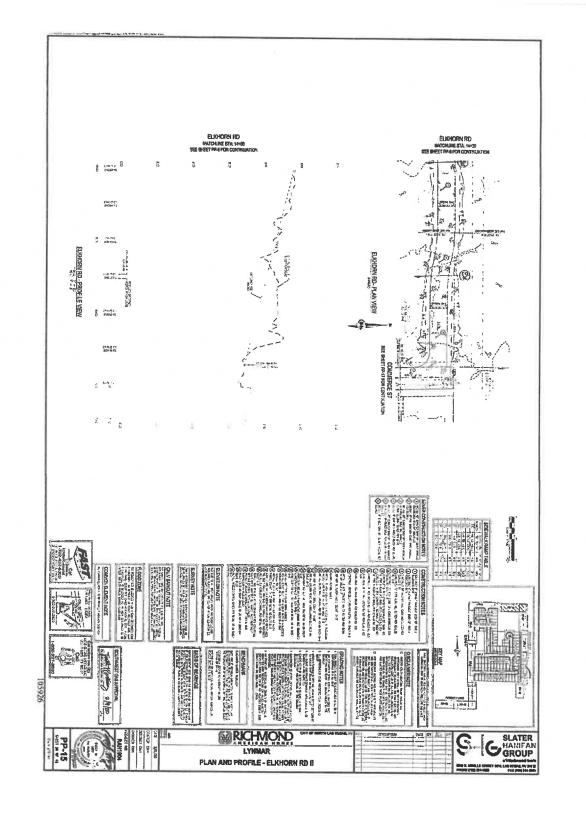


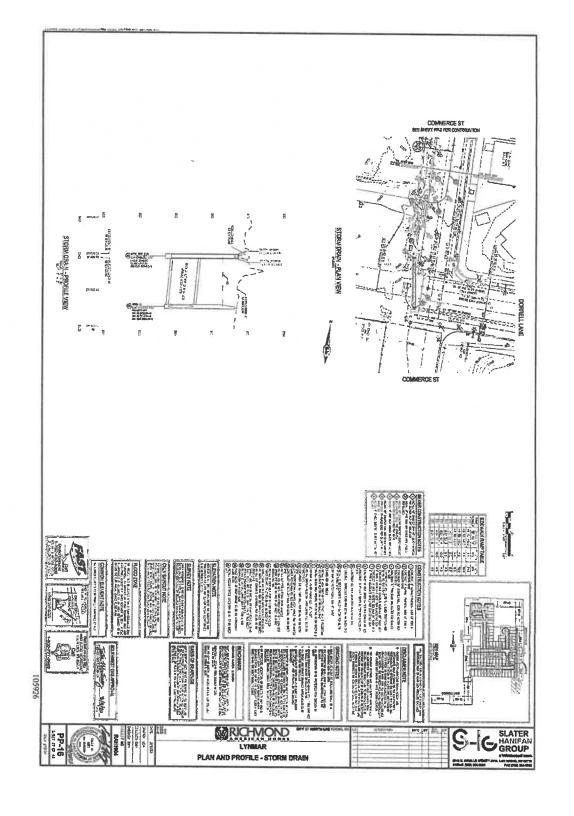


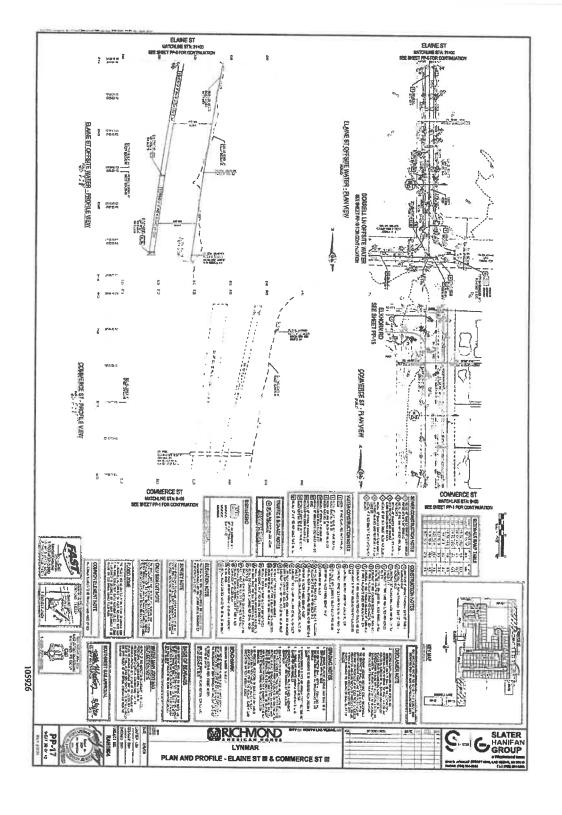


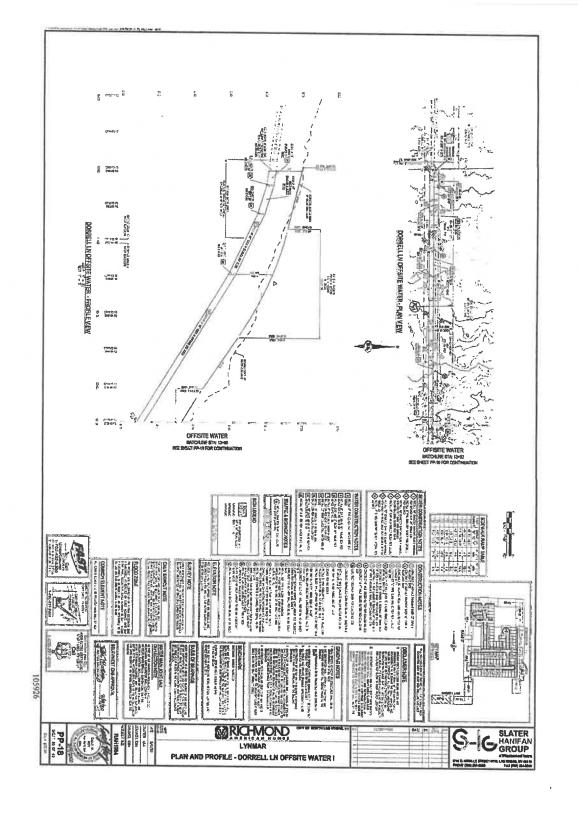


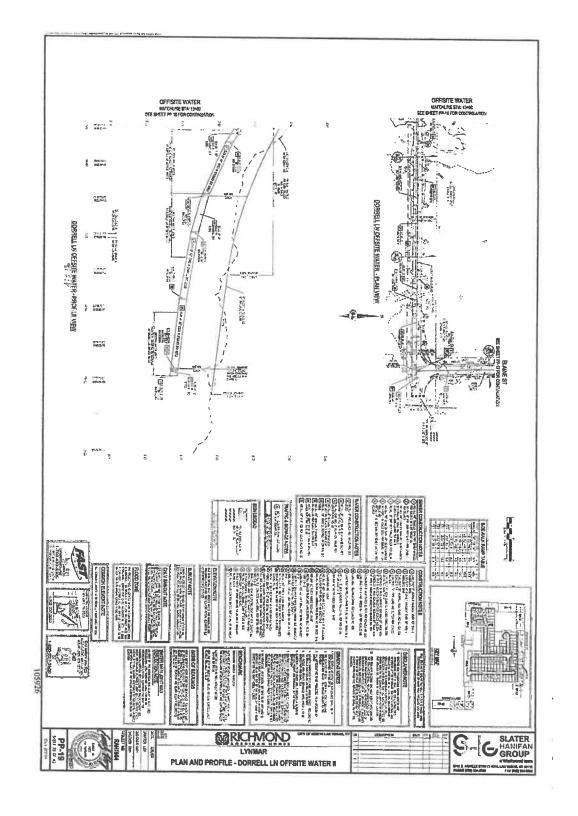


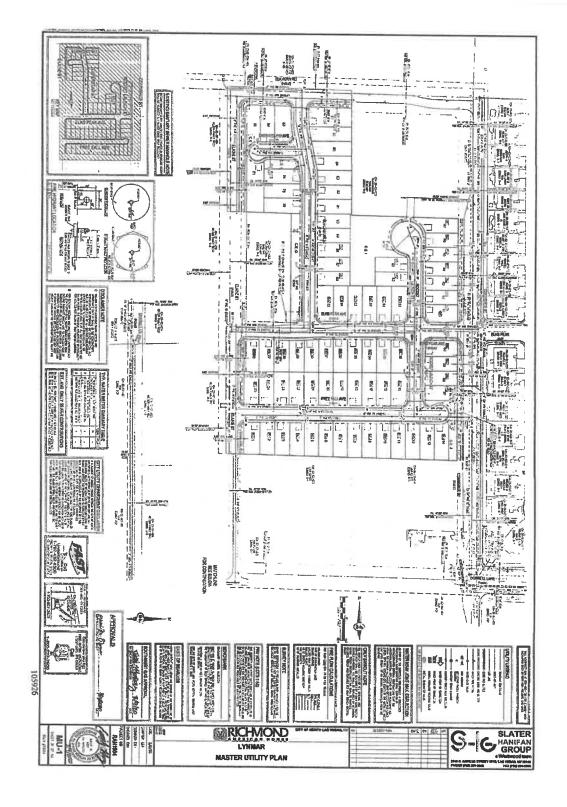


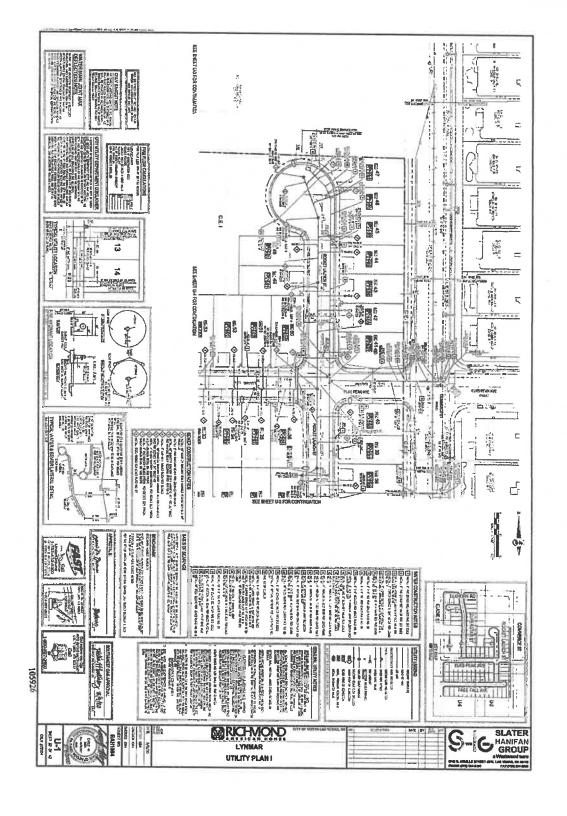


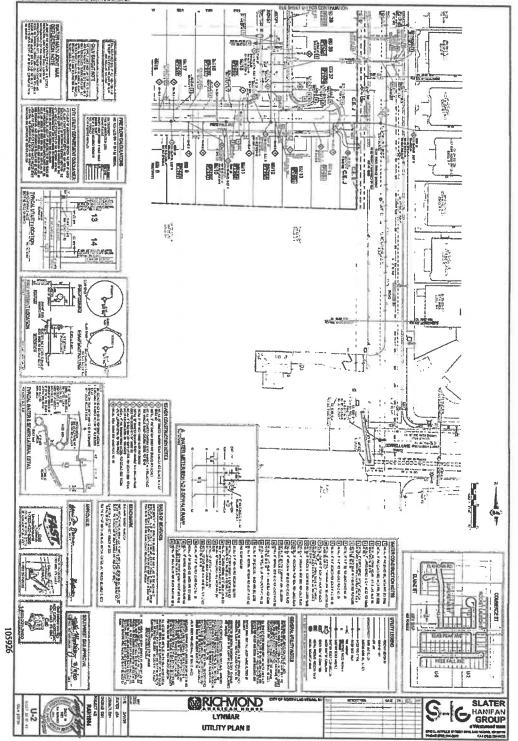


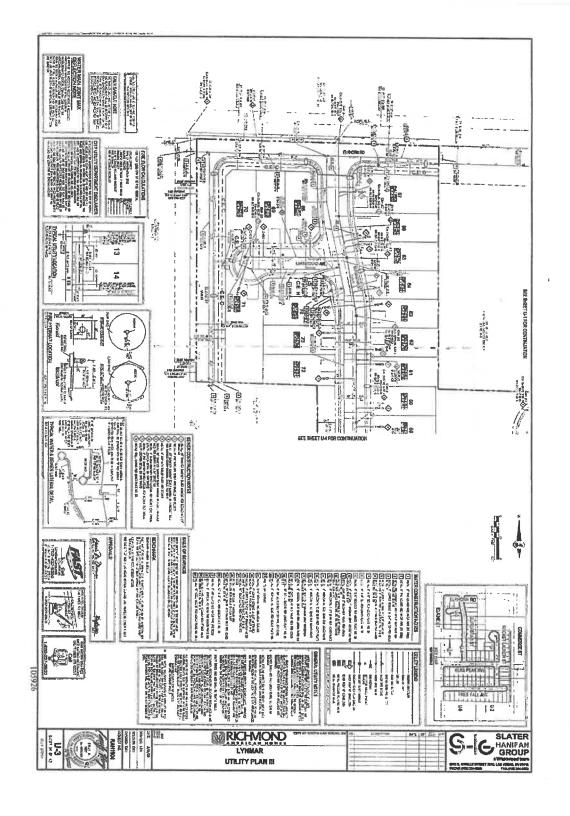


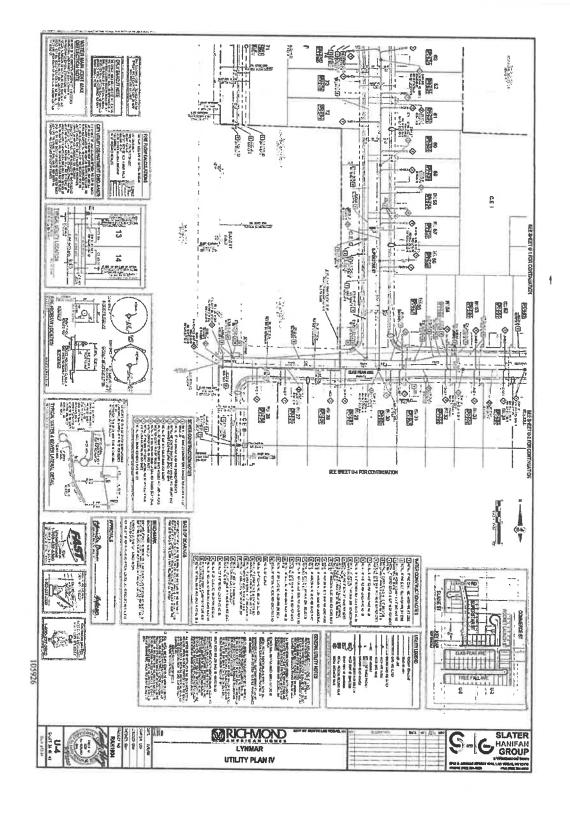


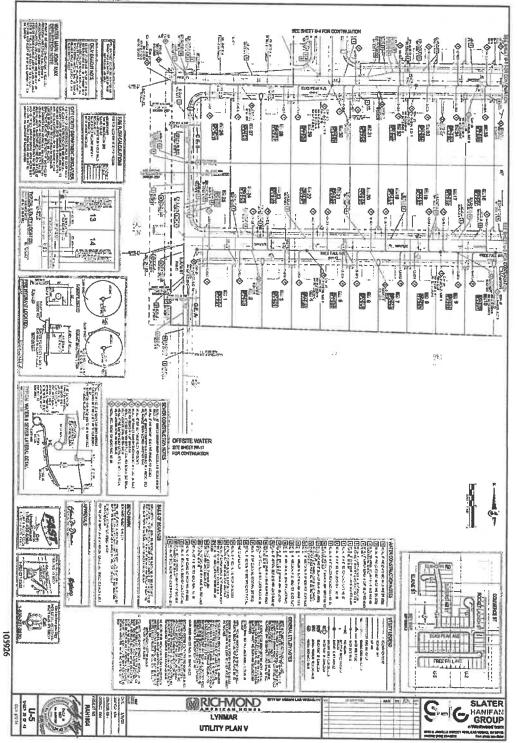


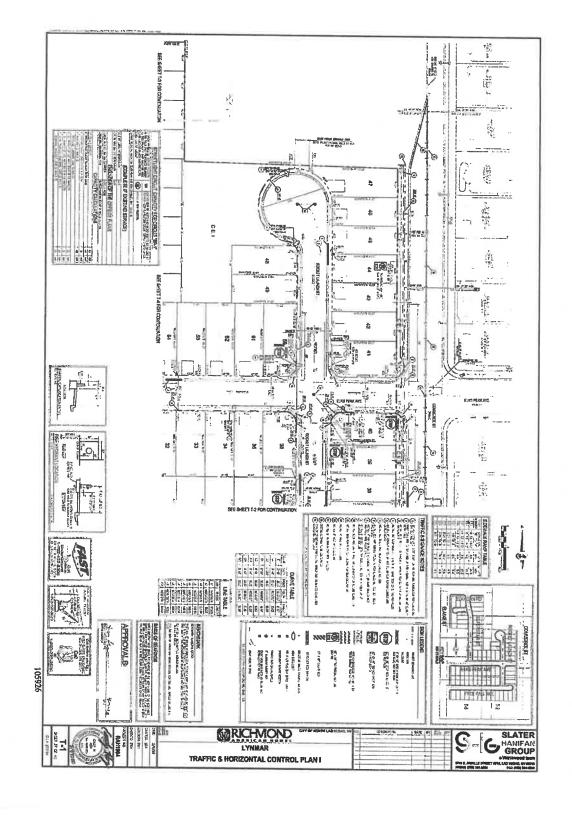


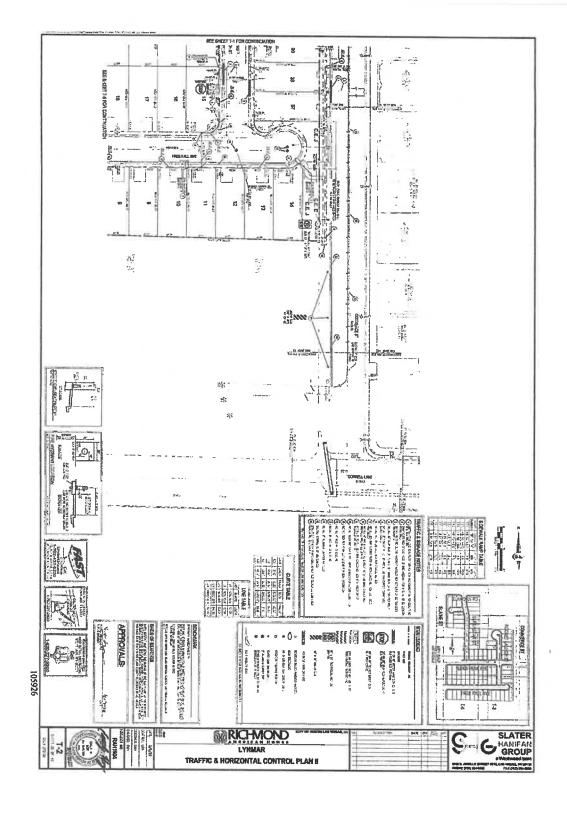


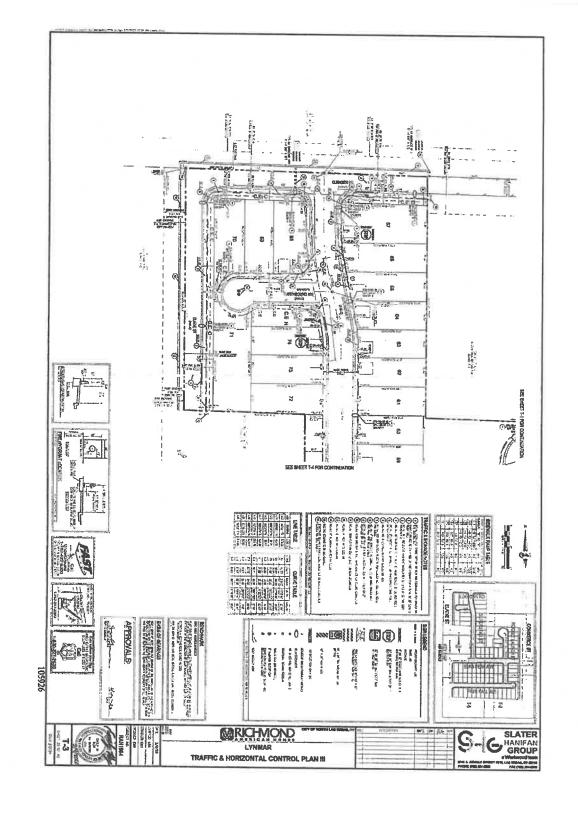


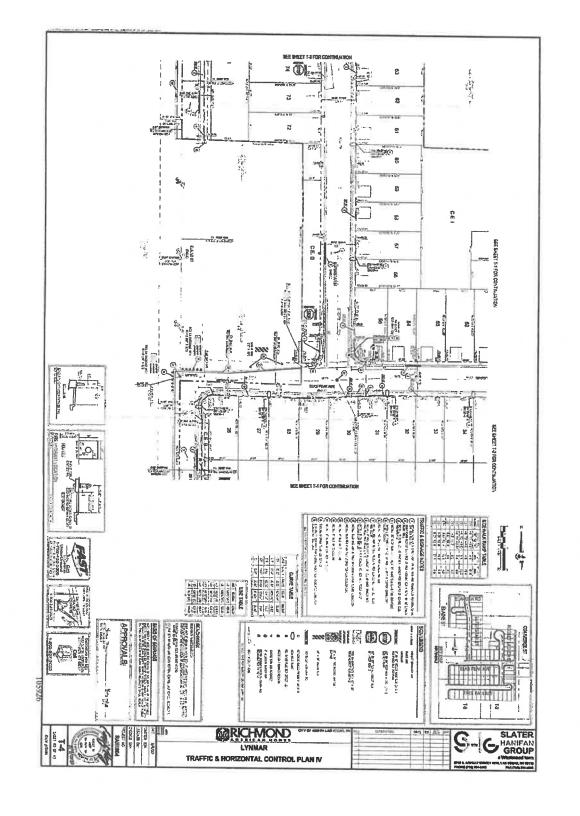


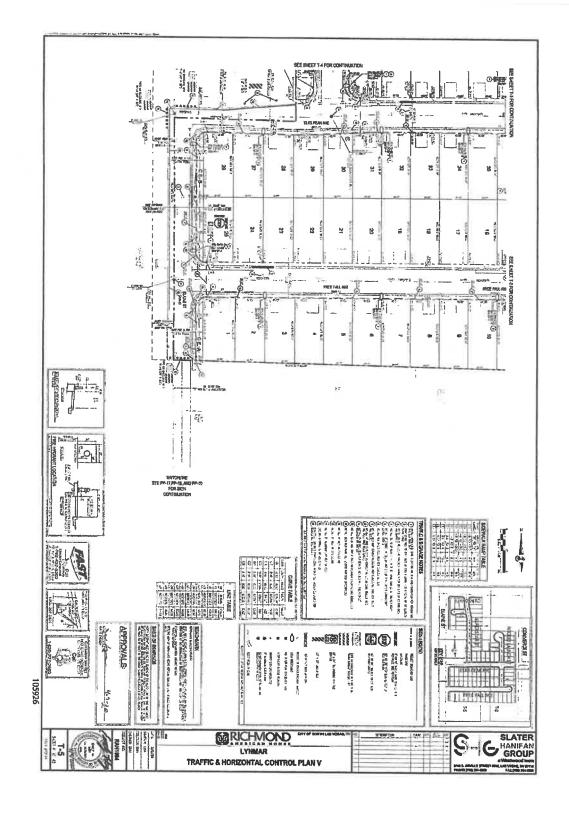


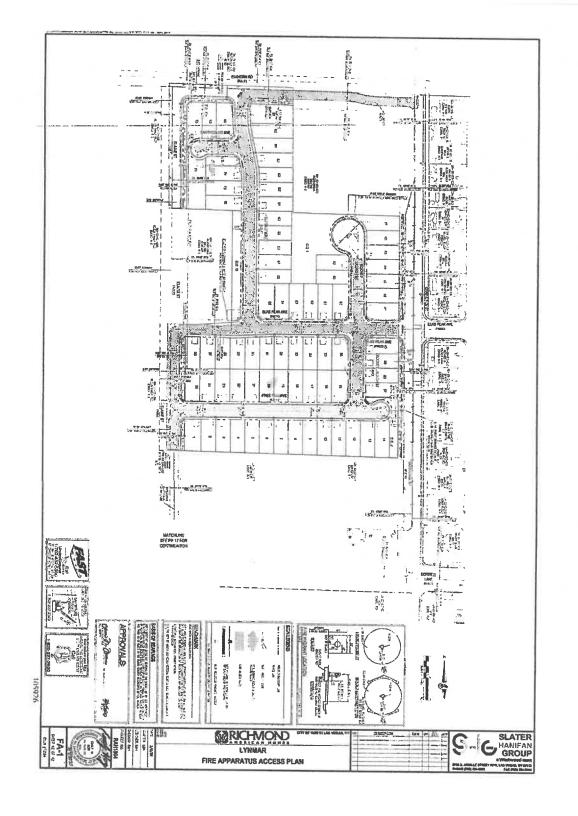






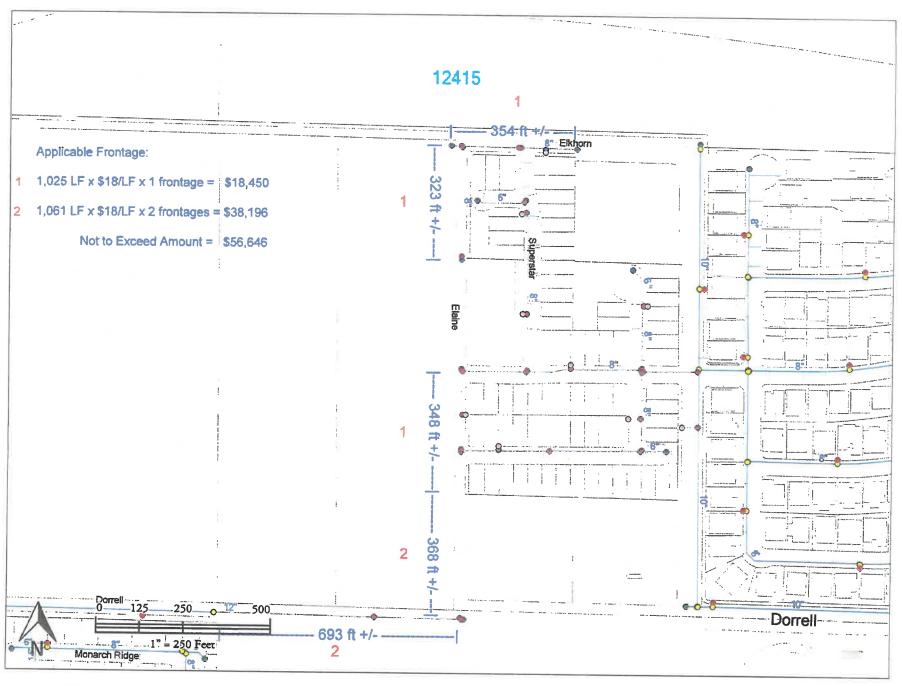






## **EXHIBIT "B"**

Lynmar - Water Refund



THE INFORMATION DELINEATED HEREON WAS COMPILED FROM AVAILABLE RECORD DATA; NO LIABILITY IS ASSUMED FOR ACCURACY. 10/5/2020 3:05 PM