



Item No. 11.1.4
Halifax Regional Council
September 17, 2013

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: August 23, 2013

SUBJECT: **Encroachment Agreement – Brunello Estates, Timberlea**

ORIGIN

Application by Brunello Estates Inc.

LEGISLATIVE AUTHORITY

- *Encroachment By-Law* (E-200)
- *Administrative Order 15*, Respecting License, Permit and Processing Fees

RECOMMENDATION

It is recommended that Halifax Regional Council approve the Encroachment Agreement, as provided in Attachment A, to enable the installation of two golf cart bridges and associated cart pathways within the Timberlea Village Parkway right-of-way.

BACKGROUND

Brunello Estates is a mixed use development that enables residential and commercial uses, as well as a golf course. It is located on both sides of the Timberlea Village Parkway (TVP) between Highway 103 and St Margarets Bay Road. The project includes the construction of two golf cart bridge crossings and associated cart pathways within the TVP right-of-way which will service the golf course, as well as offer public access to the bridges during non-golfing times.

The Brunello Estates (formerly Westgate) Development Agreement (Case 00025) was approved by Western Regional Community Council in 2001. The development agreement contemplated that two pedestrian bridge crossings over the TVP would be permitted, subject to entering into an encroachment license agreement.

As outlined in the *Encroachment By-Law*, permanent encroachments located upon, under or over the HRM street right-of-way, require an encroachment agreement, as well as authorization from Regional Council. The proposed golf cart bridges and cart pathways within the right-of-way is a type of encroachment which requires approval from Regional Council, and is also subject to an annual fee as outlined in Administrative Order 15.

DISCUSSION

The bridge crossings are required to allow safe and unobstructed access to the various golf course holes located on either side of the TVP. The bridge crossings have been located and designed to accommodate the future widening of the TVP, and it is not expected that they will interfere with pedestrian safety or any public infrastructure. The location of the two golf cart bridge crossings and associated cart paths within the TVP right-of-way are illustrated in Attachment C.

The encroachment area of the Bridge Crossing #1 and associated cart paths will be 136 square metres. The encroachment of the Bridge Crossing #2 and associated cart paths will be 305 square metres. Combined, the total encroachment area within the right-of-way will be 441 square metres. In accordance with By-law E-200, the encroachments will be subject to an annual encroachment fee of \$4410 (\$10.00 per square metre).

Regional Council has approved similar overhead crossings in the downtown area, such as the pedways crossing Albemarle Street, Barrington Street and Duke Street. These encroachments are all privately owned and maintained, and also permit public access.

If Council chooses to allow these encroachments, the attached draft encroachment agreement (Attachment A) would apply which includes the following requirements:

- a. Construction and maintenance of the encroachments must comply with the Streets By-law, S-300.
- b. The cart pathways are required to meet current HRM Municipal Design Specifications.
- c. The property owner(s) would be responsible for ownership and maintenance of

- the approved encroachments.
- d. If requested by HRM, the encroachments would be removed or relocated by the property owner(s) and the area within the right-of-way reinstated at their expense.
 - e. Record information shall be provided to HRM.

The encroachment agreement would be effective concurrently with the approval of Streets and Services permits.

There are some design and construction details to be finalized prior to the issuance of the Streets and Services permits for these structures, however, the encroachment agreement can be approved with the information included in this report.

In consideration of the above, staff recommend approval of the encroachment requests.

FINANCIAL IMPLICATIONS

Should Regional Council choose to approve the encroachment, cost centre R112-4912, Right-of-Way Approval – Signs and Encroachments will be used to record this new annual revenue.

COMMUNITY ENGAGEMENT

Community Engagement as described by HRM's *Community Engagement Strategy* is not applicable to the process.

ENVIRONMENTAL IMPLICATIONS

No implications identified.

ALTERNATIVES

1. Council may choose not to allow the encroachment. The implication of this is that the developer would need to substantially revise the entire subdivision plan and golf course design which would require amendments to the development agreement. This alternative is not recommended as the encroachments are not seen to impact public safety or interfere with any public infrastructure. The encroachments are also consistent with the approved development agreement.
2. Council may choose to approve the encroachment and include other terms and conditions in the encroachment agreement as it deems appropriate as per clause 10(a) of By-law E200. Such modifications may require further discussion with the applicant.

ATTACHMENTS

Attachment A:	Draft Encroachment Agreement
Attachment B:	Brunello Estates Encroachment Request
Attachment C:	Bridge Crossing Locations and Details

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Ashley Blissett, Development Engineer, 490-6848

Report Approved by: _____
Kelly Denty, Manager, Development Approvals, 490-4800

Financial Approval by: _____
Greg Keefe, Director of Finance & ICT/CFO, 490-6308

Report Approved by: _____
Brad Anguish, Director, Community & Recreation Services, 490-4933

Report Approved by: _____
Ken Reashor, P.Eng., Director, Transportation & Public Works, 490-4855

Legal Review by: _____
Claire Gillivan, Solicitor, Legal, Insurance and Risk Management Services 490-2003

Attachment A
Brunello Estates Encroachment Agreement

This **Encroachment License Agreement** made this ____ day of _____, 20__.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
(“HRM”)

and

BRUNELLO ESTATES INC., a body corporate
(the “Licensee”)

Recitals

- A. **Whereas** the Licensee owns property at 120 Brunello Boulevard, Timberlea and wishes to construct two golf cart bridge crossings and associated cart paths (the “Encroachment”) within the HRM street right of way as shown and described in Schedule “A”;
- B. **And Whereas** by resolution of the Halifax Regional Municipal Council on _____, 20____, the HRM agreed to give the Licensee an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-law E-200, being the Encroachment By-law, and as contained in this license agreement.

In consideration of the mutual promises contained in this agreement the parties agree as follows:

License

1. Subject to the terms of this encroachment license agreement, HRM hereby grants to the Licensee, its officers, servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of Timberlea Village Parkway, identified in Schedule “A” to install and maintain the Encroachment.

Ownership

2. The Licensee retains ownership of the Encroachment.

Relocation

3. If the Encroachment must be relocated for HRM purposes, as determined at the sole discretion of HRM, such relocation will be at the sole expense of the Licensee. Should the Licensee wish to relocate the Encroachment, such shall be done only upon receipt of the written consent of HRM, which may be withheld at the sole discretion of HRM, and said relocation shall be at the sole expense of the Licensee.

Permits

4. (1) The Licensee agrees to comply with all municipal By-laws including the

Streets By-law, S-300 for the original construction and maintenance of the Encroachment and all subsequent work which involves the excavation of the street.

(2) The application for a Streets & Services permit shall include an engineering plan and profile of the Encroachment stamped by a professional engineer. The engineering plan shall clearly indicate area (in square metres) of the Encroachment proposed over, on, or under the HRM street right of way.

(3) The final location of the Encroachment shall be subject to the approval of the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer").

(4) For the purposes of the construction of the Encroachment, the Licensee agrees:

(a) to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;

(b) to file with the Engineer a written undertaking stating that the professional engineer has been engaged by the Licensee to supervise and set out the Encroachment;

(c) that the Encroachment will be done in accordance with the approved plans; and

(d) that the project shall be subject to full time inspection and approval by the professional engineer or his representative.

(5) For the purposes of the construction of the Encroachment, the Licensee agrees to arrange a preconstruction meeting with HRM staff.

(6) Upon completion, the Licensee shall provide HRM with a certificate from a professional engineer certifying that the Encroachment was completed according to the approved drawings, any applicable municipal services specifications and standard drawings, and approved changes.

Record Drawings

5. The Licensee shall provide a copy of the record drawings immediately upon completion of the Encroachment, and immediately upon completion of any temporary or minimal relocation.

Maintenance

6. The Licensee agrees, at its sole expense, to maintain the Encroachment in a safe condition and so that it is not dangerous or hazardous to traffic, pedestrians or the public at large.

7. HRM may at any time and without notice inspect the Encroachment and, to the extent required to inspect the Encroachment, enter upon the Licensee's land.

8. If HRM determines in its sole discretion that the Encroachment is unsafe or dangerous, HRM may:

(1) Notify the Licensee that the Licensee, at its sole expense, shall repair or alter the Encroachment in any manner that HRM determines in its sole discretion is necessary to make it safe; and

(2) If the Licensee does not, within 15 business days of receiving notice to repair or alter the Encroachment, begin the repair or alteration, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs of the repair, alteration and restoration of the street right of way, and for all expenses incurred by HRM for the work.

9. If HRM determines in its sole discretion that the Encroachment is an immediate safety issue, danger or hazard, HRM may without notice and without compensating the Licensee remove the Encroachment and restore the street right of way or remedy the safety issue in any manner.

10. (1) The Licensee agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9 within 15 business days of receiving notice of the costs of the work or expense incurred.

(2) HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM for the work.

Street Maintenance

11. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, occurring as a result of required street maintenance, snow and ice removal, and street cleaning.

Indemnity

12. (1) The Licensee agrees to indemnify and save harmless HRM, its Mayor, Councillors, employees, agents, contractors and volunteers from all claims, including actions for negligence, death, and injurious affection, liabilities, damages and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the Encroachment however caused, except to the extent that the loss arises out of the gross negligence of HRM.

(2) This section shall survive the termination of this license agreement.

Insurance

13. A Licensee that is not a natural person shall purchase and maintain, during the term of this license agreement, commercial general liability insurance in the amount of not less than \$2 million in a form and with an insurer acceptable to HRM and with HRM named as an additional insured with respect to any claim arising out of the maintenance or use of the Encroachment or out of this license agreement. Evidence of such insurance shall be provided to HRM at the time of applying for this license and at any renewal of the insurance.

Fees

14. The Licensee shall be invoiced for, and shall pay, the fees set out in Encroachment By-law E-200 and Administrative Order 15, as amended, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the Encroachment is 441 square metres.

15. The Licensee acknowledges that the fee prescribed by Administrative Order 15 is subject to review by HRM Council and may be increased at any time by HRM Council.

Occupational Health and Safety Act, SNS 1996, c 7

16. The Licensee agrees to comply with the requirements of the *Occupational Health and Safety Act* and all regulations enacted pursuant thereto. Specifically, the Licensee agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the *Occupational Health and Safety Act* and its regulations are followed by its employees, contractors or agents.

Termination

17. (1) HRM may terminate this license agreement, in writing, at any time. Upon receipt of notice that HRM intends to terminate this license agreement, the Licensee shall:

- (a) pay to HRM all encroachment fees owing;
- (b) pay to HRM the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9; and
- (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty calendar days, unless otherwise agreed to between the parties.

(2) The Licensee may terminate this license agreement under the following conditions:

- (a) notification to HRM in writing of its intention to terminate this licence agreement;
- (b) payment to HRM of all encroachment fees owed ;
- (c) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9;
- (d) at the Licensee's sole expense, removal of the Encroachment and restoration of the street right of way to the satisfaction of HRM within sixty calendar days of notice to HRM, unless otherwise agreed to between the parties; and
- (e) any other terms and conditions as may be necessary in the opinion of the Building Inspector for the Municipality, (the "Inspector"), or the Engineer for the restoration of the street.

(3) If the Licensee does not, within the sixty calendar days or such other time agreed to between the parties, remove the Encroachment and restore the street right of way, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs and expenses of the work. HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM.

(4) The termination of this Encroachment License Agreement shall not relieve the Licensee from any obligations under this Agreement including:

- (a) paying all fees, costs and expenses owed to HRM under this Encroachment License Agreement; and
- (b) restoring the street right of way to the satisfaction of HRM.

Notices

18. Any written notice or communication relating to the administration of this license agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality
Director of Transportation & Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5

and

Brunello Estates Inc.
Cogswell Tower
2000 Barrington Street, Suite 1300
Halifax, N.S. B3J 3K1

19. This license agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee takes the place of the Licensee under this license agreement.

20. This license agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors in title and permitted assigns.

21. The Licensee shall not acquire any right, title or interest in or to HRM property or HRM's public road allowance, or the portion thereof affected by the Encroachment, except the right to maintain the Encroachment in accordance with this license agreement.

22. This license agreement shall be construed according to the laws of the Province of Nova Scotia.

23. The parties agree this is a public document within the meaning of Part XX of the *Municipal Government Act*, SNS 1998, c 18.

24. If the Licensee is not a natural person the signatory declares that he or she has the authority to bind the corporation or organization.

IN WITNESS WHEREOF the parties hereto have executed this license agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in
The presence of:

BRUNELLO ESTATES INC.

Witness

Name:
Title:

Witness

Name:
Title:

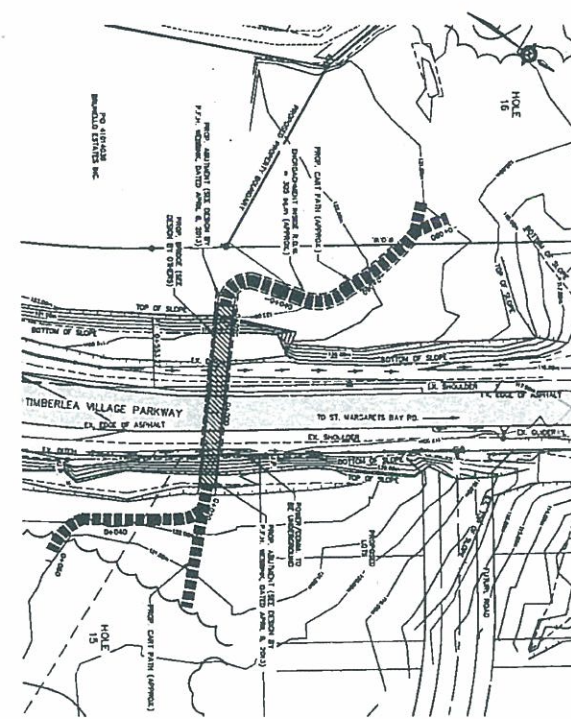
HALIFAX REGIONAL MUNICIPALITY

Witness

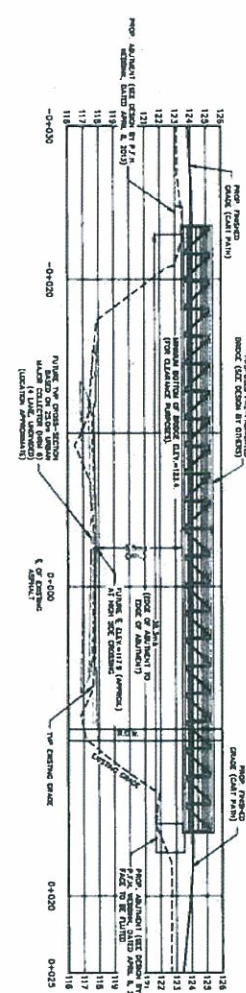
Mayor

Witness

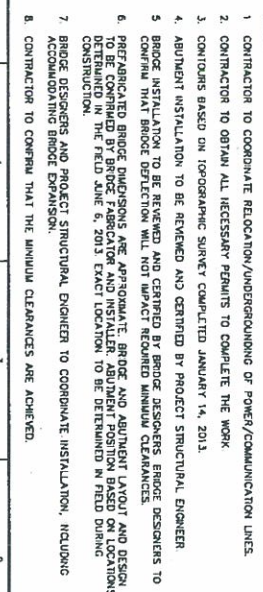
Municipal Clerk



PROPOSED BRIDGE CROSSING #2
SCALE = 1/8" = 1'-0"



PROPOSED BRIDGE CROSSING #2 PROFILE



PROPOSED BRIDGE CROSSING #1 PROFILE

1. CONTRACTOR TO COORDINATE RELOCATION/UNDERGROUNDING OF POWER/COMMUNICATION LINES.
2. CONTRACTOR TO OBTAIN ALL NECESSARY PERMITS TO COMPLETE THE WORK.
3. CONDUITS BASED ON TOPOGRAPHIC SURVEY COMPLETED JANUARY 14, 2013.
4. ABUTMENT INSTALLATION TO BE REVIEWED AND CERTIFIED BY PROJECT STRUCTURAL ENGINEER.
5. BRIDGE INSTALLATION TO BE REVIEWED AND CERTIFIED BY BRIDGE DESIGNERS. BRIDGE DESIGNERS TO CONFIRM THAT BRIDGE DETENTION WILL NOT IMPACT REQUIRED MINIMUM CLEARANCES.
6. PREFABRICATED BRIDGE DIMENSIONS ARE APPROXIMATE. BRIDGE AND ABUTMENT LAYOUT AND DESIGN TO BE CONFIRMED BY BRIDGE FABRICATOR AND INSTALLER. ABUTMENT POSITION BASED ON LOCATION OF THE FIELD JOINT. 6, 2013 EXACT LOCATION TO BE DETERMINED AT FIELD DURING CONSTRUCTION.
7. BRIDGE DESIGNER AND PROJECT STRUCTURAL ENGINEER TO COORDINATE INSTALLATION, INCLUDING RECOMMENDED BRIDGE EXPANSION.
8. CONTRACTOR TO CONFIRM THAT THE MINIMUM CLEARANCES ARE ACHIEVED.

[illegible]

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared _____ a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that ____ **Brunello Estates Inc.** , one of the parties thereto, signed, sealed and delivered the same in his presence

A Commissioner of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared before me _____ the subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that the **Halifax Regional Municipality**, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of _____, its Mayor and _____, its Municipal Clerk, its duly authorized officers in his presence.

A Commissioner of the Supreme Court of Nova Scotia

Attachment B
Brunello Estates Encroachment
Request



April 9, 2013

Halifax Regional Municipality
7071 Bayers Road
Suite 2005
Halifax, N.S.

Att : Mr. Hugh Morrison P.Eng.

Re: Brunello Estates – Golf Cart Bridge Crossings – Timberlea Village Parkway

Dear Hugh,

As a follow up to our ongoing discussion around the two golf cart bridge crossings and the Timberlea Village Parkway, please accept this as an official written request, by Brunello Estates Inc. to enter into an encroachment agreement as per HRM Bylaw E-200 to permit these two structures. Our intention is to have these two crossings in place during the summer of 2013, once we have the necessary approvals in place from HRM. Both of these crossings are identified in the Development Agreement for the project under section 2.5.3 (p) and identified on Schedule B1A. Also enclosed is information regarding the crossings to aid you in the processing of this request.

Based on our last meeting, the following points were raised by you and I would like to re-iterate our understanding and commitment on them.

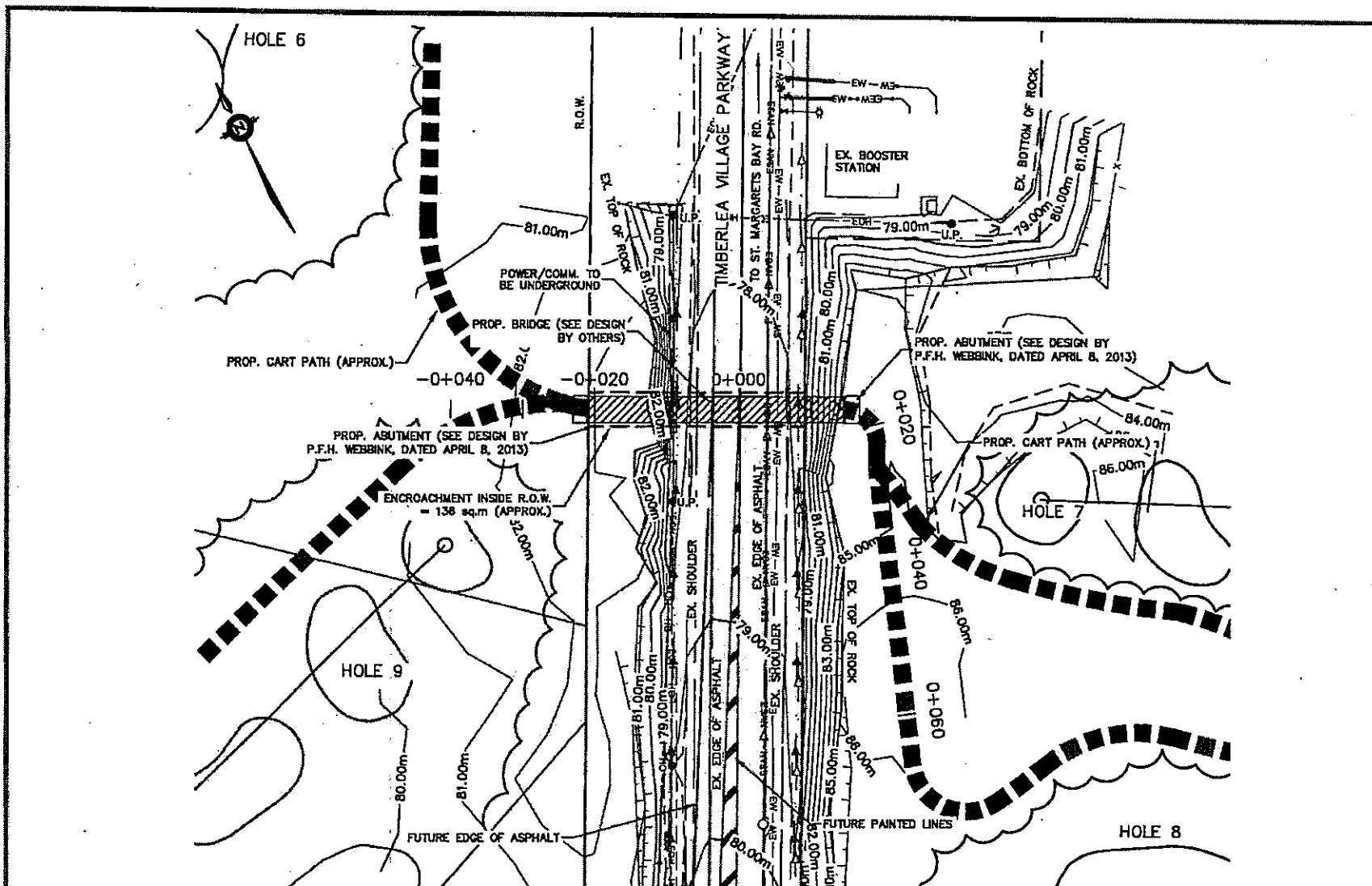
1. Both structures will be owned and maintained by Brunello Estates Inc. who will also own, operate and maintain the golf course.
2. The bridges will be accessible to the community during non golfing times and we feel these structures will be a great benefit as part of the recreational trail system for the entire community and therefore ask for the yearly licensing fee to be waived.
3. If the Timberlea Village Parkway is widened in the future we will be responsible to move the structures and modify them to accommodate the new travelled way and would request that construction plans be co-ordinated with Brunello Estates Inc.
4. The bridges are designed to accommodate golf carts and maintenance equipment and will be posted for design weight and clearance above the Timberlea Village Parkway.
5. Any winter maintenance will be the responsibility of Brunello Estates and as a safety precaution for snow removal; we have incorporated a 600mm solid railing along the lower section of the bridge to eliminate the possibility of snow being pushed onto the Timberlea Village Parkway below.

If you have any questions please feel free to contact the undersigned at 

Regards,



Andrew Giles P.Eng., NSLS
Vice President Development
Attach:



GENIVAR

1 SPECTACLE LAKE DRIVE
DARTMOUTH, NOVA SCOTIA
CANADA, B3B 1X7
PHONE: 902 635-8855 - FAX: 902 635-1645
WWW.GENIVAR.COM

PROJECT:

A SENSE OF PLACE



TITLE:

PROPOSED BRIDGE CROSSING #1: PROFILE VIEW

SCALE:

1:750

DATE: (YYYY/MM/DD)

2013/07/08

PROJECT NO:

121-25875

REVISION:

1

SHEET NO:

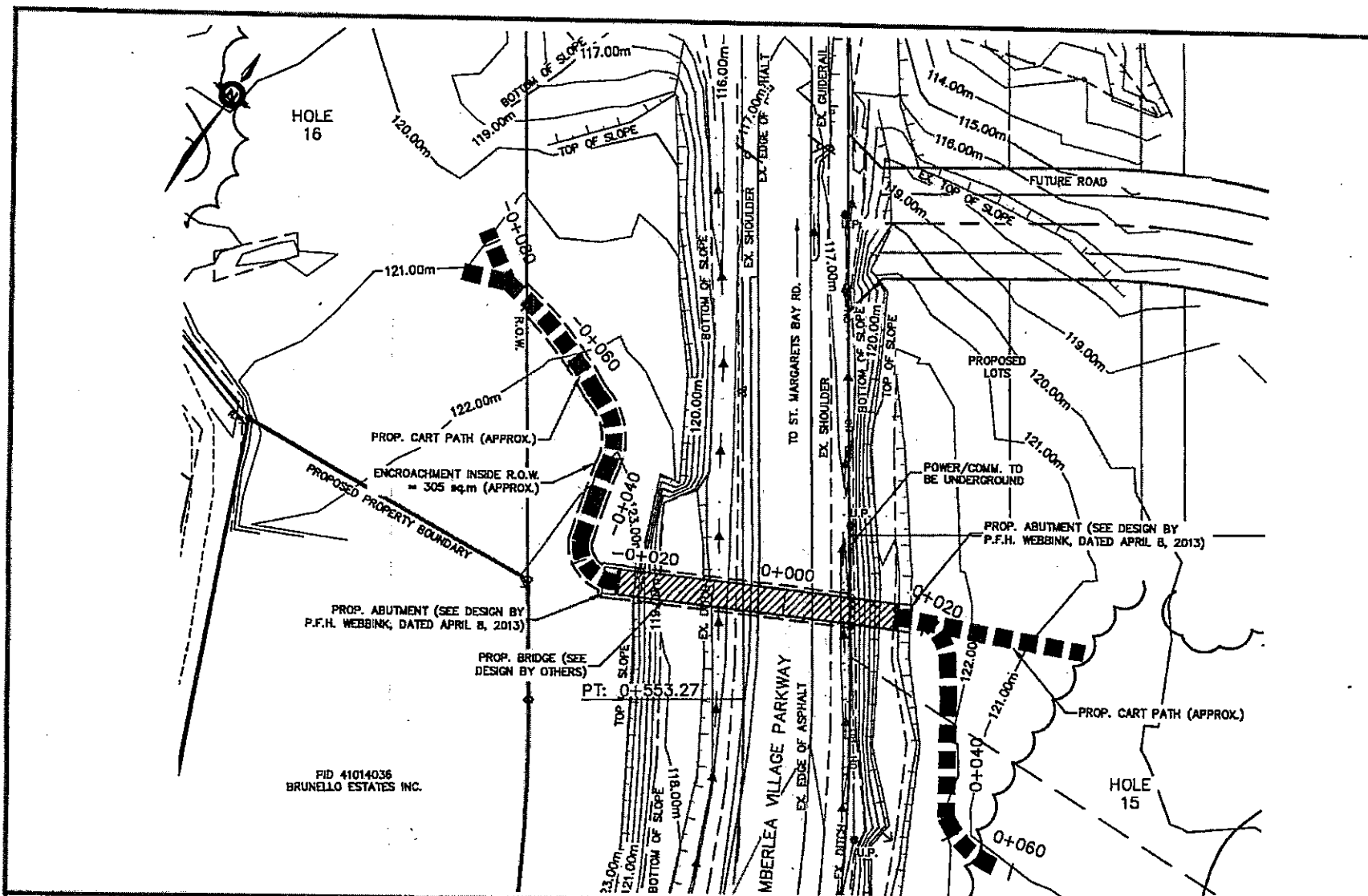
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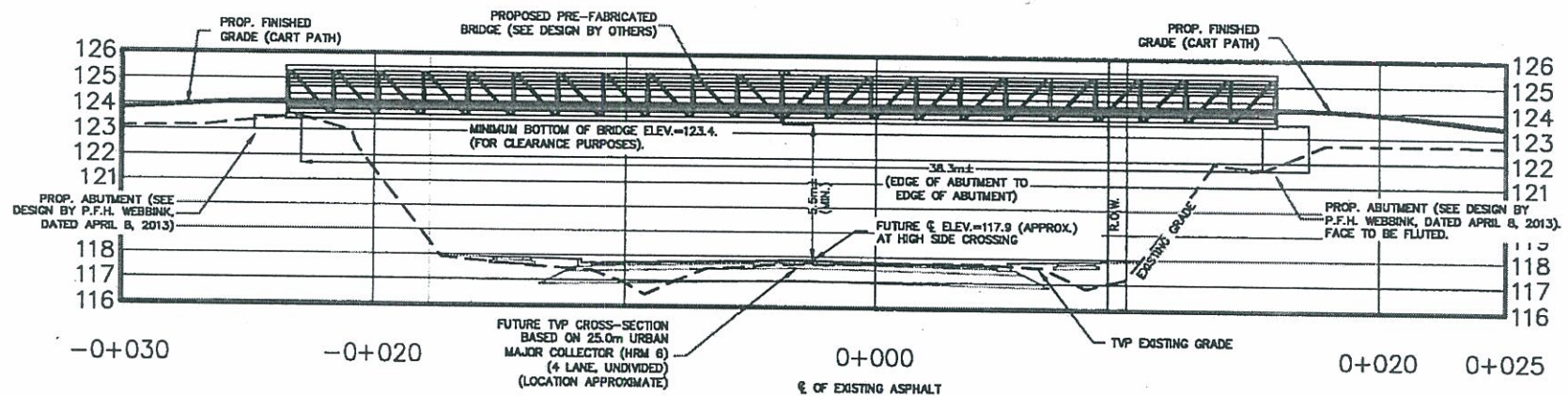
1 SPECTACLE LAKE DRIVE
DARTMOUTH, NOVA SCOTIA
CANADA B3B 1X7
PHONE: 902 835-8955 - FAX: 902 835-1645
WWW.GENTVAR.COM

Brunello Estates

2



 GENIVAR 1 SPECTACLE LAKE DRIVE DARTMOUTH, NOVA SCOTIA CANADA, B0B 1X7 PHONE: 902 835-3055 - FAX: 902 835-1645 WWW.GENIVAR.COM	PROJECT: A SERIES OF PLANS 	TITLE: PROPOSED BRIDGE CROSSING #2: PLAN VIEW	SCALE: 1:750 DATE: (YYYY/MM/DD) 2013/07/08 PROJECT NO: 121-25875	REVISION: 1 SHEET NO: 3
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1 SPECTACLE LAKE DRIVE
DARTMOUTH, NOVA SCOTIA
CANADA B3B 1X7
PHONE: 902 835-0955 - FAX: 902 835-1645
WWW.GENIVAR.COM

PROJECT: A SENSE OF PLACE



TITLE:

PROPOSED BRIDGE CROSSING #2: PLAN VIEW

SCALE:

1:250

DATE: (YYYY/MM/DD)

2013/07/08

PROJECT NO:

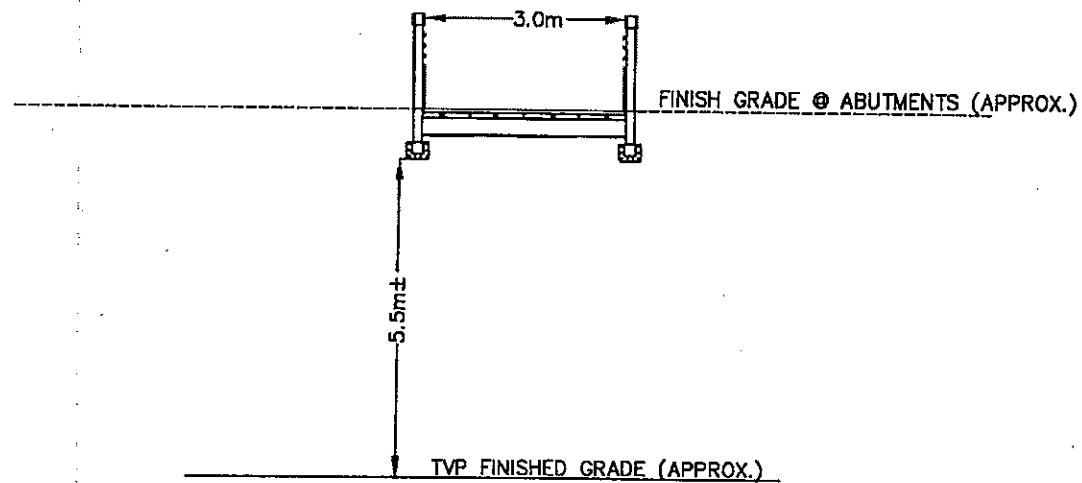
121-25875

REVISION:

1

SHEET NO:

3



GENIVAR

1 SPECTACLE LAKE DRIVE
DARTMOUTH, NOVA SCOTIA
CANADA, B3B 1J7
PHONE: 902 835-0955 - FAX: 902 835-1645
WWW.GENIVAR.COM

PROJECT:



Brunello Estates

TITLE:

PROPOSED BRIDGE DETAIL

SCALE:

N.T.S.

DATE: (YYYY/MM/DD)

2013/07/08

PROJECT NO:

121-25875

REVISION:

1

SHEET NO:

5

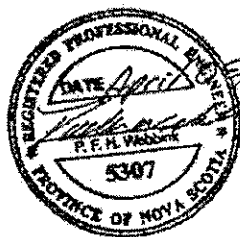
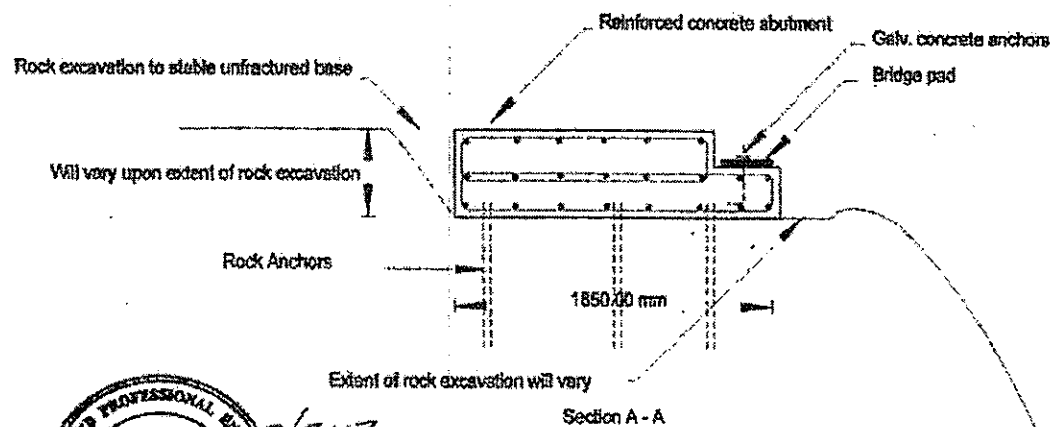
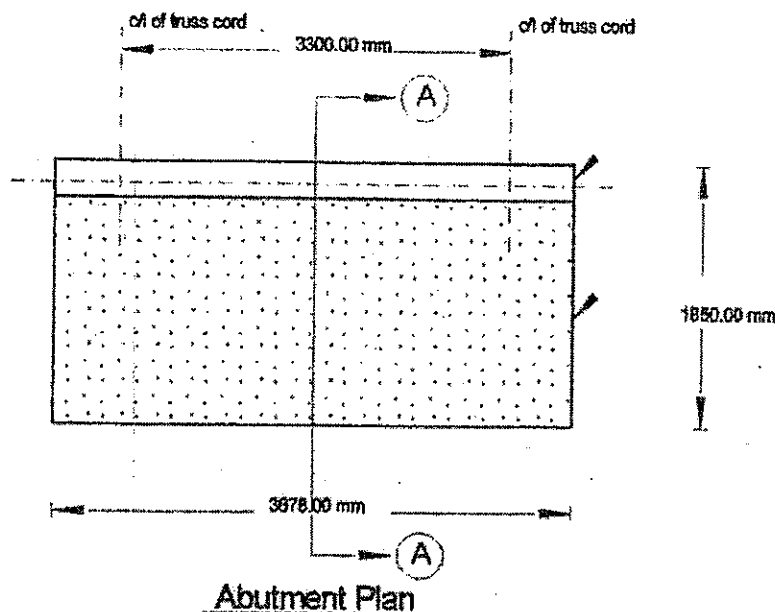
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BRIDGE DETAIL

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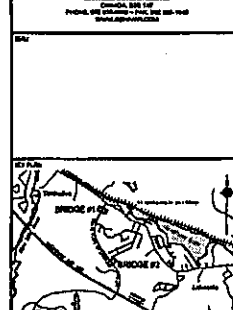
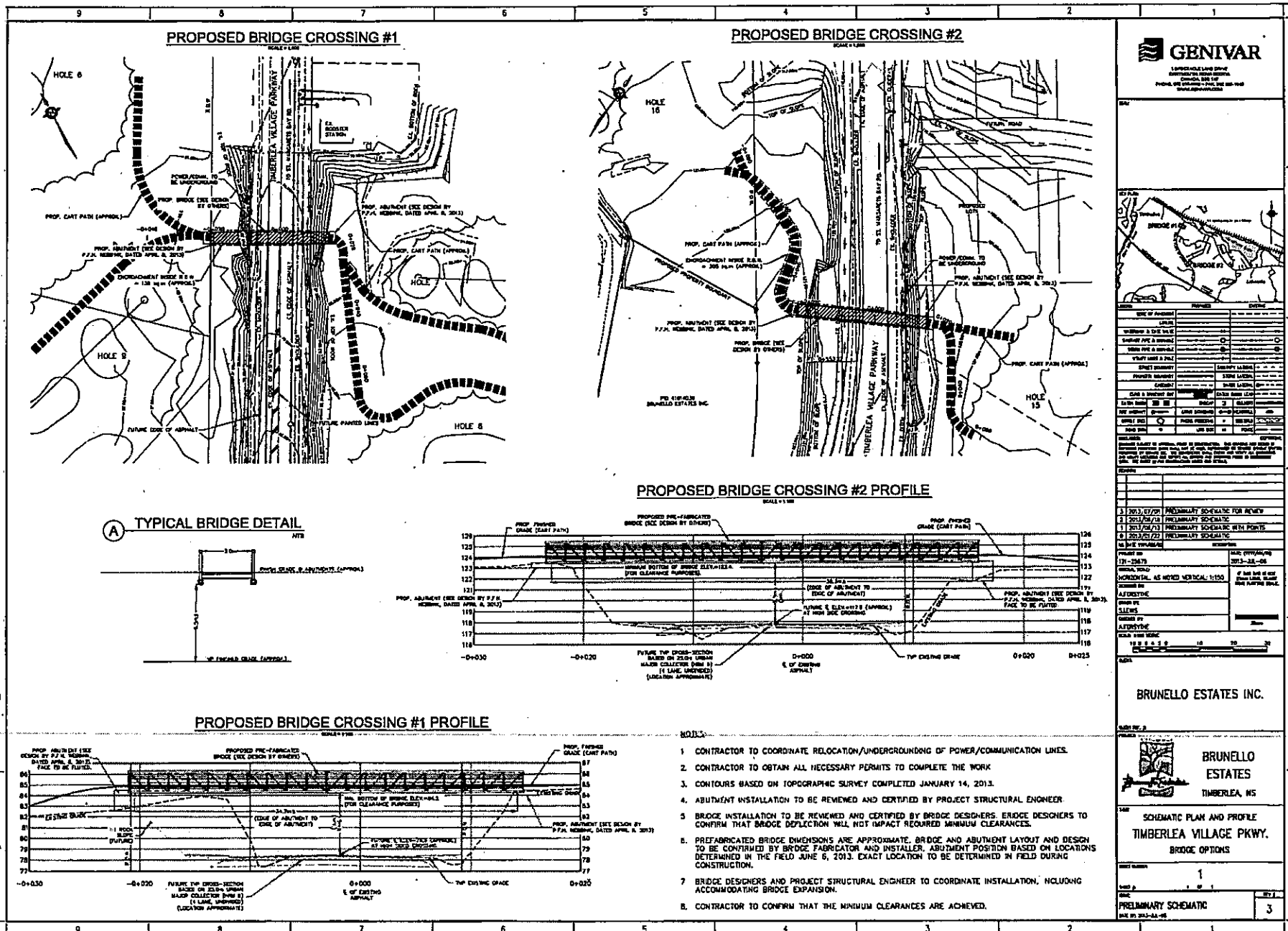
BY: SUZANNA LEWIS



Concrete Notes

- 1) All concrete forms, materials etc. to conform to Can. A23.1-00
- 2) Concrete to have at least one test per abutment
- 3) No admixtures to be used without approval
- 4) Min. compressive strength of concrete to be 35 mpa after 28 days
- 5) All concrete shall conform to exposure classification C - 1 portland cement type 10 with 15% fly ash. Air entrainment 6 - 7 % slump 40 - 75 mm with a water cement ratio of 0.45 and a max coarse aggregate of 20 mm
- 6) All reinforcing steel to have a yield of 400 mpa and conform to CSA G30.12 - M77
- 7) All reinforcing steel shall be detailed fabricated placed and supported in accordance with reinforcing steel manual of standard practice by the reinforcing steel institute of Canada
- 8) All reinforcing steel splices shall be tension lap splice class "B"
- 9) Reinforcing steel cover to be 75 mm
- 10) Abutment base to rest on stable bedrock. Approved by Engineer
- 11) All work and materials shall conform to the requirements set out in the latest edition of the national building code of Canada

Project Name	Westgate Bridge Abutments
Client	Enzebo Estates
Location	West Gate Golf Community
Date	April 09 / 2013
Scale	N.T.S.
Issued for	Review SK 100
Drawn by	P.W.
Designed by	P.W.



NO.	REVISION	DATE
1	ISSUED FOR PERMIT	01/14/13
2	REVISED FOR BRIDGE DESIGN	01/14/13
3	REVISED FOR BRIDGE DESIGN	01/14/13
4	REVISED FOR BRIDGE DESIGN	01/14/13
5	REVISED FOR BRIDGE DESIGN	01/14/13
6	REVISED FOR BRIDGE DESIGN	01/14/13
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BRUNELLO ESTATES INC.



BRUNELLO ESTATES
TIMBERLEA, MS

SCHEMATIC PLAN AND PROFILE
TIMBERLEA VILLAGE PKWY.
BRIDGE OPTIONS

PRELIMINARY SCHEMATIC
DATE: 01/14/13