

**NORTH LAS VEGAS CITY COUNCIL
AGENDA ITEM**

Number: **25**

SUBJECT: Acceptance and execution of Landscape Warranty Agreement with Fifth and Centennial Associates, LLC for the landscape medians, trail and parkways on North Fifth Street.

REQUESTED BY: Mike Henley, Parks and Recreation Department

RECOMMENDATION OR RECOMMENDED MOTION:

That City Council accept the Landscape Warranty Agreement offered by Fifth and Centennial Associates.

FISCAL IMPACT:

Amount: \$ 0

Explanation: The Developer will fund the maintenance for one year

ACCOUNT NUMBER:

N/A

STAFF COMMENTS AND BACKGROUND INFORMATION:

The City Council has previously directed staff to require landscape and irrigation improvements for beautification in newly developed 100' and wider streets. The landscape warranty agreement was developed by the City Attorney's office and Parks and Recreation Department staff to allow for the orderly inclusion of the median island maintenance costs into the City Budget.

The Developer will be responsible for maintenance of the median islands, trail and parkway, within the right-of-way, for a period of one-year from substantial completion at no cost to the City. After the one-year period the City will assume maintenance responsibilities.

Duties required of the Developer include landscape and irrigation maintenance, plant replacement and trash pick-up.

LIST CITY COUNCIL GOAL(S): 1) Establish entryways, gateways, streetscapes, and other features that distinctively delineate various areas of the City. 2) Aggressively seek out all available funding from grants and other sources that can be applied to fulfilling the needs outlined by the Strategic Plan (Visioning 2025)

PREPARED BY:

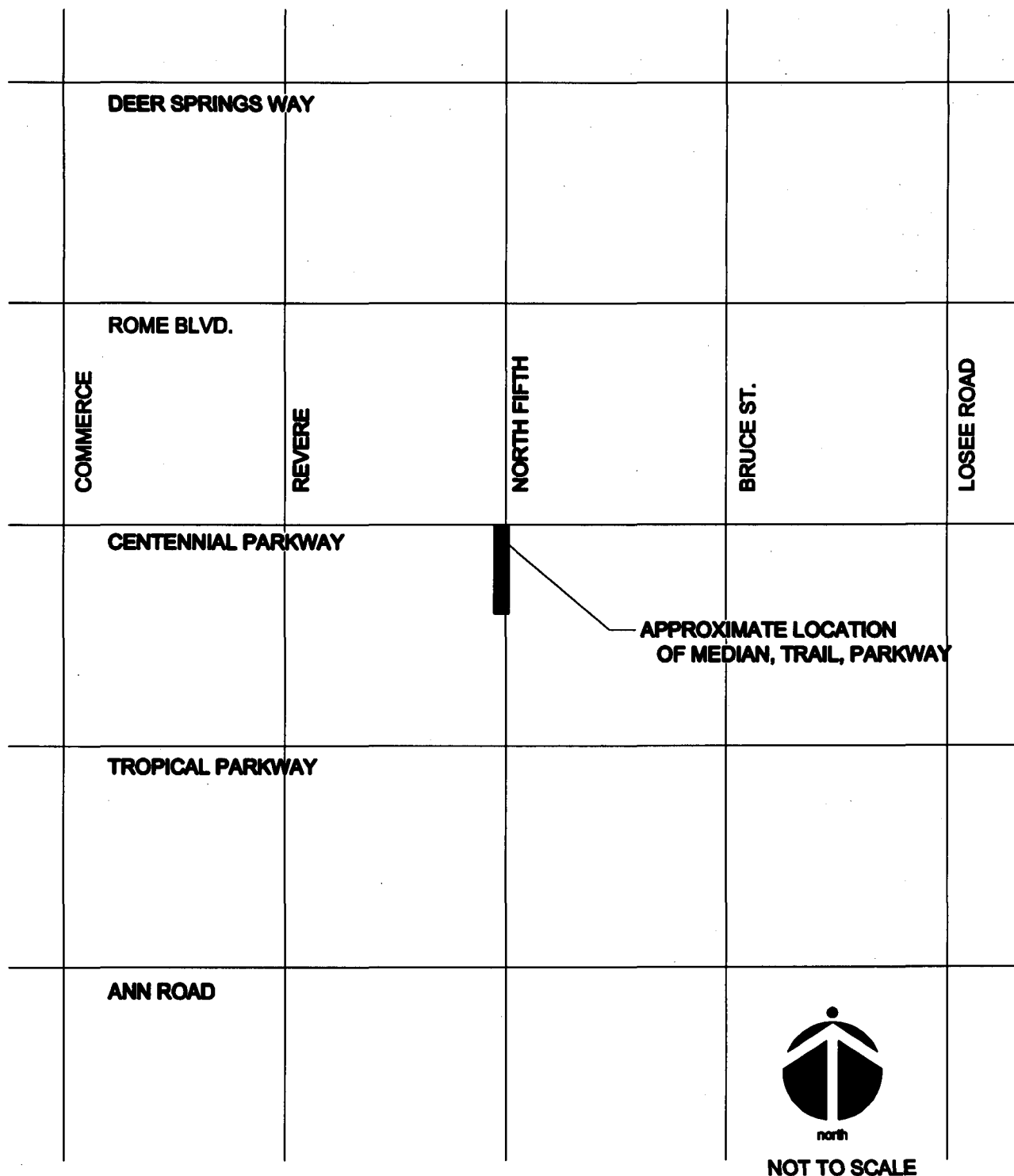

Mike Henley
Director

**RESPECTFULLY
SUBMITTED:**


Gregory E. Rose
City Manager

**CITY COUNCIL
MEETING DATE:**

May 7, 2008



NORTH FIFTH - CENTENNIAL LANDSCAPE WARRANTY VICINITY MAP

APRIL 2, 2008

LANDSCAPE WARRANTY AGREEMENT

THIS LANDSCAPE WARRANTY (AGREEMENT) (this "Agreement") is made and entered into as of this ____ day of ____, 200__ by and between the City of North Las Vegas, a Nevada municipal corporation (the "City") and Fifth and Centennial Associates, LLC, a Nevada limited liability company (the "Developer").

RECITALS

A. The City and the Developer entered into the Commercial Developments Off-Site Improvements Agreement as of the ____ day of ____, 200__ (the "Off-Site Improvements Agreement") the terms of which are hereby incorporated by reference.

B. The Developer has agreed to install the landscaping on certain real property that will eventually be turned over to the City for permanent maintenance (The "Landscaping") pursuant to the terms of the Off-Site Improvements Agreement and any currently applicable ordinances, regulations, standards and specifications, or other requirements of the City.

C. The City and Developer desire to enter into an agreement to set forth the obligations of the Developer to provide a limited warranty of the Landscaping.

NOW, THEREFORE, upon good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer agree to the following terms, conditions and covenants:

SECTION ONE LIMITED WARRANTY ON THE LANDSCAPING

In addition to any other obligations of Developer under the Off-Site Improvements Agreement, the Developer agrees to the following with regard to the limited warranty of the Landscaping:

1.1 The Developer agrees to maintain the Landscaping in a healthy and well-manicured manner from the date of installation for twelve (12) months following the substantial walk through inspection, that the City accepts the Landscaping pursuant to the terms of the Off-Site Improvements Agreement (the "City's Acceptance") as set forth in the attached Exhibit "A", the terms of which are hereby incorporated by reference.

1.2 The Developer warrants all materials and workmanship for the Landscaping for twelve (12) months following the City's Acceptance as set forth in the attached Exhibit "A", the terms of which are hereby incorporated by reference.

1.3 At its sole cost, the Developer shall replace shrubs, plants, sod, or other organic materials that do not survive every three (3) months following the City's Acceptance after

substantial completion walk through with the same or comparable materials as set forth in the attached Exhibit "A", the terms of which are hereby incorporated by reference.

SECTION TWO REPRESENTATIONS AND WARRANTIES

2.1 Developer hereby represents and warrants for the benefit of the City, in addition to any representations and warranties made in this Agreement, with the knowledge and expectation of City's reliance thereon, as follows:

A. Developer is a duly formed and validly existing corporation and is in good standing pursuant to the laws of the State of Nevada, and is duly qualified to do business in, and is in good standing in, Nevada and has the full power, authority and legal right to execute, and deliver and perform under this Agreement.

B. Developer and any subcontractors of Developer are duly licensed and authorized to do business in the City, and the business licenses of the Developer and any subcontractor of the Developer are in full force and effect.

2.2 The Developer and any subcontractor of the Developer shall at its own expense comply at all times with all municipal, county, state and federal laws, regulations, rules, codes, ordinances and other applicable legal requirements, including, without limitation, the Americans with Disabilities Act, as such may be amended or modified from time to time in performing this Agreement.

SECTION THREE TERMINATION

The City may terminate the Agreement upon thirty (30) days prior written notice to the Developer.

SECTION FOUR INDEMNIFICATION

Notwithstanding any of the insurance requirements herein above set forth or limits of liability set forth therein, Developer shall defend, protect, indemnify and hold harmless the City, and its officers, agents and employees, from any liabilities, claims, damages, losses, expenses, proceedings, suits, actions, decrees, judgments, reasonable attorneys' fees, and court costs which the City suffers, and/or its officers, agents or employers suffer, as a result of, or arising out of, the negligent or intentional acts or omissions of the Developer, its subcontractors, agents, and employees, or anyone employed by any of them, in fulfillment or performance of the terms, conditions or covenants of this Agreement. This Section 4 shall survive the completion of the Landscaping and the termination or expiration of the Agreement until such time as the applicable statutes of limitation expire.

SECTION FIVE NOTICES

5.1 All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to the Agreement shall be in writing and signed by the notifying party, or officer, agent or attorney of the notifying party, and shall be deemed to have been effective upon delivery in writing if served personally, including without limitation, delivery by personal delivery, by overnight courier service, by facsimile or by overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City of North Las Vegas
Attention: Director of Parks and Recreation
2200 Civic Center Drive
North Las Vegas, Nevada 89030
Fax: (702) 633-1611

with a copy to: City of North Las Vegas
City Attorney
2200 Civic Center Drive
North Las Vegas, Nevada 89030

To Developer: Picerne Development Corporation
Attention: Aaron Schein
1420 E. Missouri Ave., Ste. 100
Phoenix, AZ 85014
Fax: (602) 285-6600

5.2 The address to which any notice, demand or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

SECTION SIX MISCELLANEOUS

6.1 Nevada and City Law. The laws of the State of Nevada and the North Las Vegas Municipal Code shall govern the validity, construction, performance and effect of this Agreement, without regard to conflicts of law.

6.2 Successors. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.3 Assignment. Any attempt to assign this Agreement by the Developer without the prior written consent of the City shall be void.

6.4 Non-Waiver. The failure to enforce or the delay in enforcement of any provision of

this Agreement by a party hereto or the failure of a party to exercise any right hereunder shall in no way be construed to be a waiver of such provision or right (or of any other provision or right) unless such party expressly waives such provision or right in writing.

6.5 Attorneys' Fees. In the event any action is commenced by either party against the other in connection herewith (including any action to lift a stay or other bankruptcy proceeding), the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees, as determined by the court. This Section 6.5 shall survive the completion of the warranty of the Landscaping and continue until the applicable statutes of limitation expire.

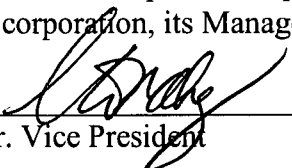
IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed as of the day and year first above written.

City of North Las Vegas,
a Nevada Municipal corporation

By: _____
Michael L. Montandon, Mayor

Fifth and Centennial Associates, LLC
a Nevada limited liability company

By: Picerne Development Corporation, an
Arizona corporation, its Manager

By:  _____
Title: Sr. Vice President

Attest:

By: _____
Karen Storms, City Clerk, CMC

Approved as to Form:
City Attorney

By:  _____
Bethany Sanchez, Deputy City Attorney

EXHIBIT "A"

CITY OF NORTH LAS VEGAS PARKS AND RECREATION LANDSCAPE MAINTENANCE SPECIFICATIONS FOR PUBLIC STREETSCAPES

PART 1 - GENERAL

1.1 SUMMARY

- A. Section Includes:
 - 1. Traffic Control
 - 2. Pruning
 - 3. Lawn/Turf Maintenance
 - 4. Staking
 - 5. Disease and Insect Control
 - 6. Weed Control
 - 7. Fertilizing
 - 8. Trash Pick-up
 - 9. Plant Replacement
 - 10. Soil/Salt Leaching
 - 11. Irrigation System Maintenance
 - 12. Inspection and Final Acceptance

1.2 REFERENCES

- A. Johnson's Guide to Gardening, Plants for the Arid West, Pruning, Planting and Care, c. 1997, Ironwood Press, Tucson, AZ. (abbreviated in these specifications as Pruning, Planting and Care)

1.3 QUALITY ASSURANCE

- A. Regulatory Requirements, Codes, and Standards:
 - 1. Comply with all regulatory agencies for fertilizer, insecticide and herbicide application and composition.

1.4 PROJECT CONDITIONS

- A. Utilities: Determine location of underground utilities and perform work in a manner which will avoid possible damage. Hand excavate, as required.
- B. Weather Conditions:
 - 1. Do not spray chemical disease control on plants when detrimental conditions exist.

2. Do not spray plants when wind velocity exceeds 10 mph.

C. Vehicular and Pedestrian Traffic:

1. Provide all means necessary to ensure the safety of workers and public vehicular and pedestrian traffic that occurs in and around the Project Site in the performance of the specified work.

1.5 SEQUENCING AND SCHEDULING

- A. Follow best maintenance practices for performing various tasks in seasons as outlined in these specifications and Pruning, Planting and Care.

1.6 WARRANTY

- A. Warranty period of one calendar year applies to this work. Warranty period begins when irrigation and landscape installation is substantially complete as determined by the City's Representative and issued in writing.

1.7 MAINTENANCE SERVICE LENGTH

- A. Maintain landscape and irrigation systems for 365 calendar days. Maintenance period begins when irrigation and landscape installation is substantially complete as determined by the City's Representative and issued in writing.

PART 2 - PRODUCTS

2.1 CHEMICALS

- A. Fertilizer: Granular, Synthetic, Homogeneous with micronutrients.
- B. Herbicides:
 1. Pre-emergent: Surflan or equal
 2. Contact Herbicide: As required, approved for use by all regulatory agencies.
 3. Systemic Herbicide: Round-up or equal
- C. Pesticides, Fungicides, Disease Control agents:
 1. As required, approved for use by all regulatory agencies.
 2. Integrated Pest Management: encouraged, but not required unless necessary.
 3. Insecticidal Soaps: encouraged, but not required unless necessary.

2.2 PLANT MATERIALS

- A. Provide replacement plant material in accordance with contract drawing for the project, unless otherwise approved by the Owner's Representative.

2.3 MISCELLANEOUS LANDSCAPE MATERIALS

- A. Rock Mulch: Size, color and type as used on the project.
- B. Stakes and Guys: As shown in the contract drawings.

PART 3 - EXECUTION

3.1 GENERAL

- A. Traffic Control: provide traffic control as required by all governing agencies including the Nevada Department of Transportation during the performance of this work.
- B. Maintenance shall be conducted every Monday, Wednesday and Friday before 9:00 a.m.
- C. All complaints or requests for service shall be completed by email. The Developer's point of contact shall be his project manager and he shall interface with City of North Las Vegas' Parks Maintenance Supervisor.
- D. Dead or declining plants shall be replaced at 3 month intervals, and within 1 week of notification by the City of North Las Vegas' Parks Maintenance Supervisor, and prior to Final Acceptance. Developer shall be responsible for replacement and/or repairs necessary, including those due to vandalism, theft and auto accidents.
- E. Developer shall perform irrigation inspections weekly and repairs conducted immediately. All irrigation control and programming will be the responsibility of the Developer and shall follow The City of North Las Vegas Watering Schedules.
- F. The Developer will be responsible for all power and water bills until final turn over and end of maintenance period.

3.2 TREE PRUNING

- A. General:
 - 1. Use the three step pruning technique.
 - 2. Prune no more than 20% of a trees canopy at one time. Allow 2 months minimum between pruning. If possible, do not prune in summer.
 - 3. Keep lower branches in place to develop caliper of main trunk(s). If these "short-term" branches start to become dominant, remove them.
 - 4. Prune to develop form: remove crossing branches and "water-sprouts".

5. Prune to remove narrow branching patterns. Ten o'clock and two o'clock angles are preferred.
6. Do not top trees.
7. Prune to remove off-balance growth.
8. Avoid heavy pruning during summer.
9. Thin or "lace-out" trees to reduce wind damage from late August to late September and from early February to mid-March.
10. Pruning shall be performed in Late-Winter whenever possible, just prior to Spring growth surges.
11. Remove all branches that present a hazard immediately.

B. Hazardous Trees:

1. Remove hazardous trees and trees that cause obstructions to traffic, including sight line encroachments within 4 hours of notification by Construction Manager, his designee, Public Works Director, Parks and Recreation Director, Police or Fire Department officials.

3.1 SHRUB PRUNING

A. General:

1. Prune back shrubs that freeze to ground in winter after coldest part of winter has passed. Such as *Caesalpinia* spp. and *Salvia* spp.
2. Prune back frost damaged plants in later winter just before dormancy breaks such as *Lantana* spp. and *Verbena* spp.
3. Prune back shrubs that will flower on this year's growth just prior to breaking winter dormancy.
4. Prune back shrubs that flower on last year's growth after they bloom, such as *Cassia* spp. and *Sophora* spp.
5. When in doubt about flowering sequence prune after flowering.
6. Hardy non-blooming shrubs such as *Xylosma*, *Photinia*, *Myrtus*, *Euonymus* shall be pruned in February and March.
7. Do not prune plants prior to flowering unless necessary to remove a hazardous condition.
8. Whenever possible prune in Late Winter to remove off-balance growth.
9. A late winter "clean-up" of deciduous and frost-damaged shrubs shall be performed by the Contractor.

3.4 TREE STAKES AND GUYS

- A. Check ties and stakes for overtightened condition. Loosen if necessary to prevent cutting of tree trunks or branches
- B. Tighten ties and stakes if necessary.
- C. Add stakes and ties in an orderly fashion if necessary for wind protection.
- D. Replace broken stakes and ties.

- E. Remove stakes and ties if tree can stand on it own in severe winds.

3.5 DISEASE AND INSECT CONTROL

- A. Chemical, Integrated Pest Management, or use of insecticidal soaps are acceptable methods providing all methods used meet all regulatory requirements.
- B. Use of chemical methods require the applications by a Certified Pest Control Operator.
- C. All damage to plants must be repaired or plants replaced.
- D. Follow all regulatory requirements for the application of chemicals.
- E. Follow all safety regulations for the application of all methods.

3.6 WEED CONTROL

- A. Chemical or Hand-Labor Methods are acceptable.
- A. Use of chemical methods require the applications by a Certified Pest Control Operator.
- B. All unintended damage to plants must be repaired or plants replaced.
- C. Use of systemic herbicide is indicated for Bermuda grass and Nut grass.
- D. Contact herbicides may be used on annual weeds.
- E. Follow all regulatory requirements for the application of chemicals.

3.7 FERTILIZING

- A. Fertilizing is required for plant health when required after visual inspection and diagnosis up to 4 times per year.
- F. Major nutrients, Nitrogen, Phosphorus and Potassium may be applied to the root zone soil or as a foliar spray, a maximum of twice per year as a part of this work.
- G. Micro-nutrients, such as Manganese, Magnesium, Zinc, Iron, etc. are best applied as a foliar spray during Spring growing season in morning hours. Applications are required a maximum of 4 times per year as a part of this work.
- H. Surface applications of fertilizers must be watered in with sufficient water from a quick coupler and hose to incorporate the nutrients into the plant root zone.
- I. All unintended damage to plants must be repaired or plants replaced.
- J. Follow all regulatory requirements for the application of chemicals.
- K. Follow all safety requirements for workers, public pedestrian and vehicular traffic.

3.8 SOIL LEACHING

- A. In and July and August of each year apply extra water through irrigation system to soil to leach salts below root zones of plants.

3.9 TRASH PICK-UP

- A. Gather all debris that accumulates in the landscape project, including gutters, and legally dispose of.
- B. Perform this service three times per week for the duration of the maintenance period.
- C. Follow all safety requirements for workers, public pedestrian and vehicular traffic.
- D. Bags of debris will be allowed to remain in islands over one night only.

3.10 PLANT REPLACEMENT

- A. Provide and install replacement plants in accordance with the requirements of the original Contract drawings for all declining or dead plants during the warranty period. Determination of dead or declining plants shall be at the sole determination of the Owner's Representative. Replace plants at 3 month intervals.
- B. Follow all safety requirements for workers, public pedestrian and vehicular traffic.
- C. Remove dead or declining plants and legally dispose of.
- D. Repair rock mulches and irrigation system to original or better condition.

3.11 IRRIGATION SYSTEM MAINTENANCE

- A. Visually inspect the system at emitters and valves on a weekly basis. Repair and replace damaged and non-functioning parts immediately.
- C. Adjust controller scheduling as weather patterns change, verify sufficient water is applied to all plant for vigorous growth. Adjust the controllers a minimum of once a month.
- D. Flush and clean filters as necessary.
- E. Unplug or replace clogged emitters immediately upon recognition.
- F. Repair broken pipes including mainlines within twenty-four hours of notification or recognition, whichever occurs first.
- G. Repair settling of trenches.

3.12 CLEANUP AND PROTECTION

- A. During landscape maintenance work, keep pavements clean and work area in an orderly condition.

3.13 INSPECTION AND FINAL ACCEPTANCE

- A. Three weeks prior to end of maintenance period notify the Owner's Representative for a final inspection of the project. Give 72 hours advance notice.
- A. Prior to the inspection have all work of maintenance complete for that time of year.
- B. Perform a final trash pick-up prior to the inspection.
- C. Replace all plants deemed dead or declining.
- D. If there are incomplete items of maintenance work the Owner's Representative will write a "punchlist" of work to be completed. This work shall be complete within two weeks and prior to a second final inspection.

- E. When the Owner's Representative is satisfied that the maintenance work is complete, he shall issue a letter stating Final Acceptance of the Project.

END OF SECTION