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Mary Louise Nicholson
MARY LOUISE NICHOLSON
COUNTY CLERK

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BERRY CREEK VILLAGE

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BERRY CREEK VILLAGE (this "**Declaration**") is made as of the date recited below by Convergence Capital, LLC, a Texas limited liability company ("**Declarant**") located at 8913 Mid Cities, Suite 300, North Richland Hills, Texas, 76182.

Declarant is the owner of certain real property located in Tarrant County, Texas, described in the attached Exhibit "A" (the "**Property**") except for portions thereof that have been dedicated or conveyed to governmental entities for public rights-of-way or other public purposes. Declarant is or will be the developer of the Property. Declarant intends that the Property be developed as a high quality commercial community and that the Property be subject to the covenants, conditions, restrictions and easements set forth in this Declaration in order to establish a plan for the development, improvement and use of the Property with architectural, landscaping and maintenance controls.

Declarant has created Berry Creek Village Property Owners Association, Inc. a Texas non-profit corporation (the "Association"), to have and exercise the rights and duties and to perform on behalf of, and as agent for, the Owners (hereinafter defined) the functions set forth in this Declaration which include, without limitation, the maintenance of certain portions of the Property, the reviewing of plans for improvements to be constructed on the Property and the assessing, collecting and disbursing of assessments provided for herein.

NOW, THEREFORE, Declarant adopts, establishes, and imposes the following covenants, conditions, restrictions, easements, liens, and charges upon the Property and declare that the Property and all portions thereof are and shall be owned, held transferred sold, conveyed and occupied subject to such covenants, conditions, restrictions, easements, liens, and charges.

ARTICLE I
GENERAL

SECTION 1.1. PURPOSE. The purpose of this Declaration is to promote the orderly development and use of the Property; to encourage the construction of high-quality Improvements (hereinafter defined) on the Property; to restrict certain uses of the Property; to provide for certain development and maintenance standards; and generally to preserve the aesthetic appearance of the Property and Improvements constructed thereon from time to time.

SECTION 1.2. DEFINITIONS. The following words or phrases when used in this Declaration shall have the following meanings:

a. "**Assessments**" shall have the meaning set forth in Section 4.1 of this Declaration.

b. "**Association**" shall mean the non-profit corporation created under the laws of the State of Texas under the name "Berry Creek Village Property Owners Association, Inc.", above referenced

c. "**Association Documents**" shall mean the Certificate of Formation and the Bylaws of and the resolutions adopted by the Association, including any amendments thereto.

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d. "**Board**" shall mean the Board of Directors of the Association.

e. "**City**" shall mean the City of North Richland Hills, Tarrant County, Texas.

f. "**Conversion Date**" shall mean (i) the date Declarant no longer owns one (1) Lot within the Property and at such time shall voluntarily terminate its Class B Member status by recording a written notice of such termination in the Real Property Records of Tarrant County, Texas, or (ii) Declarant voluntarily elects to terminate its Class B Member status by recording a written notice of such termination in the Real Property Records of Tarrant County, Texas. Any Person owned or controlled by Declarant, by any partner of Declarant, or by any Person owning or controlling any partner of Declarant, shall be considered an "affiliate" of Declarant for the purpose of this definition.

g. "**Declarant**" shall mean Convergence Capital, LLC, a Texas limited liability company, and such assigns to whom rights and powers reserved herein to Declarant are expressly conveyed or assigned in writing but shall not include any person or entity merely purchasing one or more Lots, or portions thereof, from Declarant.

h. "**Declaration"** shall mean this DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BERRY CREEK VILLAGE and all amendments or restatements thereto filed for record in the Real Property Records of Tarrant County, Texas.

i. "**Default Rate of Interest**" means the lesser of: (i) eighteen percent (18%) per annum, or (ii) the maximum allowable contract rate of interest under applicable law.

j. "**Development Guidelines**" shall mean those guidelines adopted by the Board pursuant to the provisions of Section 5.3.m of this Declaration.

k. "**DRB**" shall mean the Development Review Board of the Association.

l. "**Governmental Entity**" shall mean the City of North Richland Hills, the County of Tarrant, the State of Texas and any agency or department thereof and the United States of America and any agency or department thereof.

m. "**Improvements**" shall mean any and all changes to the Property or any part thereof which are intended to be temporary or permanent in nature (other than changes made during a finite period of construction which will be removed when the construction period is complete), including, but not limited to, new buildings and structures, changes to building exteriors and exterior roof structures, loading areas, vehicle circulation lanes and approaches, private driveways and streets, utility and drainage systems, surface parking areas and parking structures, exterior lighting, sculptures, sidewalks, fences, walls, landscaping, poles, antennae, fountains, signs, changes in exterior color or shape, glazing or reglazing of exterior windows and any new exterior construction or exterior improvement which may not be included in any of the foregoing. "Improvements" include both the original improvements and all later changes, alterations, and

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additions.

n. "**Landscaping**" shall mean plants, including, but not limited to, grass, flowers, vines, ground cover, trees, shrubs, flowers, mulch and bulbs; rocks; landscape edging; water features; berms; lighting in landscaped areas; drainage and irrigation systems and related landscape improvements and materials, and the cost of water related to the irrigation of the foregoing landscaping.

o. "**Lot(s)**" shall mean the platted lots within the Property as shown on the Plat of the Property recorded under Clerk's Document No. D223009455, Plat records, Tarrant County, Texas, including any and all improvements thereon.

p. "**Majority Vote of the Members**" shall have the meaning set forth in Section 3.4 of this Declaration.

q. "**Member**" shall have the meaning set forth in Section 3.1 of this Declaration.

r. "**Member in Good Standing**" shall have the meaning set forth in Section 3.2 of this Declaration.

s. "**Non-Member Owners**" shall have the meaning set forth in Section 3.1 of this Declaration.

t. "**Notice of Unpaid Assessments**" shall have the meaning set forth in Section 4.7 of this Declaration.

u. "**Owner**" shall mean each Person (other than the Association) who is a record owner of a Lot within the Property, but excluding any Person who holds only a lien on any Lot of land within the Property as security for the performance of an obligation.

v. "**Person**" shall mean any natural person, corporation, limited liability company, general partnership, limited partnership, trust, or other legal entity.

w. "**Plat**" shall mean that certain plat filed of record on January 18, 2023, in the Plat records of Tarrant County, Texas, under Clerk's Document No. D223009455, as may be amended from time to time.

x. "**Project Identification Signage Areas**" shall mean (i) those portions of the Property designated in the Plat as an area in which a monument sign or sign wall shall be installed, or (ii) those portions of the Property designated by Declarant or the Association from time to time as an area(s) in which project signage identifying "Berry Creek Village" (or the development name for the Property, including "Berry Creek Village") or other entry features, structures or Landscaping are or are to be installed.

y. "**Property**" shall mean the real property described in the Plat and in Exhibit "A" attached hereto, subject to any additions thereto or deletions therefrom as provided in Section 1.3

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of this Declaration.

z. "**Quorum**" shall have the meaning set forth in Section 3.4 of this Declaration.

aa. "**Regular Assessments**" shall have the meaning set forth in Section 4.2 of this Declaration.

bb. "**Shared Use Areas"** shall mean:

(i) Project Identification Signage Areas;

(ii) creeks, waterways, drainage channels, detention ponds and other ponds and lakes and areas adjacent thereto within the Property that previously have been dedicated or conveyed by Declarant to the City or that are designated in writing by Declarant or the Association as Shared Use Areas at a time when such areas are owned by Declarant or the Association or by an entity created by Declarant or the Association for the express purpose of owning any such area or facility;

(iii) all driveways, fire lanes, parking spaces, sidewalks, walkways, and retaining walls, located within the Property;

(iv) any other areas designated as such by a Majority Vote of the Members.

cc. "**Shared Use Expenses**" shall mean any and all expenses incurred by or on behalf of the Association, as agent for the Owners, for the use, upkeep, maintenance, repair, or operation of: (i) the Shared Use Areas, (ii) the Landscaping, and (iii) the Shared Facilities for the provision of the Shared Services (including, but not limited to, any utility charges or assessments related to the provision of Shared Services other than monthly water charges related to the Landscaping), and (iv) as otherwise incurred in accordance with and as authorized in this Declaration.

dd. "**Maintenance and Repair**" as used in this Declaration includes not only all labor and materials necessary to keep the Shared Use Areas, the Landscaping and the Shared Facilities in good and neat appearance and in good operating condition but also all parts and replacement materials necessary to keep such in good appearance and operating condition and shall include, but not be limited to, replacement trees, plants, flowers, grass and other vegetation.

ee. "**Shared Facilities**" shall mean all: (i) all equipment, structures and improvements used for the driveway, parking lot, or parking lot lighting; (ii) all equipment, structures and improvements utilized within the Project Identification Signage Areas; (iii) all entry-way features, (iv) all equipment and facilities used in connection with any water features (and related equipment) installed in the Shared Use Areas, (v) all lighting or irrigation equipment and facilities used in connection with the Landscaping, (vi) all equipment and facilities used in connection with the repair, maintenance or operation of the Shared Use Areas, (vii) all equipment, structures and improvements related to the trash dumpster(s) or trash disposal for the Property, and, (viii) to the

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extent approved by a Majority Vote of the Members, other equipment, structures and improvements installed within the Property.

ff. "**Shared Services**" shall mean such services provided from time to time by Declarant or by the Association on behalf of, and for the common benefit of, the Owners that (i) have been approved by a Majority Vote of the Members, or (ii) are related to the use of the Shared Facilities.

gg. "**Special Purpose Assessment**" shall have the meaning set forth in Section 4.3 of this Declaration.

hh. "**Special Member Assessment**" shall have the meaning set forth in Section 4.4 of this Declaration.

ii. "**Street**" shall mean any land located within an easement or a right-of-way in or adjacent to the Property now or at any time hereafter dedicated to any Governmental Entity for public use as a roadway for motor vehicles.

jj. "**Reciprocal Parking and Cross-Access Agreement**" shall mean that certain Reciprocal Parking and Cross-Access Easements, Covenants & Restrictions relating to the Property, and filed of record in the Tarrant County, Texas Plat records, as may be amended from time to time.

Other terms used in this Declaration are defined in various provisions used herein.

SECTION 1.3. PROPERTY SUBJECT TO DECLARATION. Declarant, from time to time and without the necessity of the joinder of any other Person, may subject additional land to the provisions of this Declaration provided that such additional land is adjacent to the Property or to a Street adjacent to the Property. Declarant may do so by recording a supplement to this Declaration in the Real Property Records of Tarrant County, Texas. The term "**Property**" as used in this Declaration shall include any such additional tracts that from time to time are added as provided above (subject to the provisions of the preceding sentence). All of the Property, and any right, title or interest therein shall be owned, held, leased, sold and/or conveyed by Declarant, and any subsequent Owner, lessee, tenant or other occupant of all or any part thereof, subject to the Plat and this Declaration and the covenants, restrictions, easements, charges and liens set forth in this Declaration, as may be amended. Each Owner, lessee, tenant or other occupant of any portion of the Property, by the acceptance of a deed, lease or other conveyance or transfer of any interest in the Property or any portion thereof, shall be deemed to have covenanted and agreed to be bound by the provisions of the Plat and this Declaration.

SECTION 1.4. PURPOSE OF THE ASSOCIATION. The Association shall have and exercise the rights and shall perform the functions of the Association for the benefit of, and as agent for, the Owners as set forth in this Declaration.

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ARTICLE II
DESIGNATION OF LOTS, STREETS AND ZONING

SECTION 2.1. DESIGNATION OF LOTS. Declarant shall have the right and power, but not the obligation, to subdivide all or any portion of the Property owned by Declarant, without the necessity of the joinder of any other Person, into sub-parcels or platted lots. Declarant shall have the further right and power, but only with respect to portions of the Property owned by Declarant and without the necessity of the joinder of any other Person, to withdraw its designation of any part thereof as a lot, to re-designate previously designated areas thereof as a lot having different boundaries and configurations from those previously described and to divide or subdivide a lot into one or more lots.

SECTION 2.2. ZONING. No Owner other than Declarant shall have the right to change the zoning of any portion of the Property unless such zoning request is approved in writing by Declarant or the Association, which approval may be withheld in its sole discretion.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

SECTION 3.1. MEMBERSHIP. Each and every Owner automatically is a member of the Association ("**Member**"), except for the following ("**Non-Member Owners**"): (i) a Governmental Entity shall not be considered as a Member during such time that it owns only Streets, public utility easements, drainage easements or parcels used solely for a fire or police station or public park, unless the such Governmental Agency agrees in writing to become a Member of the Association and such membership is approved in writing by Declarant prior to the Conversion Date or by the Board after the Conversion Date, and (ii) any public utility shall not be considered a Member during such time that it owns only a utility easement or a parcel used solely for a utility sub-station, unless such utility agrees in writing to become a Member of the Association and such membership is approved in writing by: (A) Declarant, prior to the Conversion Date, or (B) the Board, after the Conversion Date. Membership in the Association is appurtenant to, and cannot be separated from, ownership of a Lot in the Property by an Owner other than a Non-Member Owner. The membership of a Person in the Association shall terminate automatically whenever such Person ceases to be an Owner, except that such termination shall not release or relieve such Person from any liability or obligation arising under this Declaration during his period of ownership. Any transfer of title to any Lot in the Property shall operate automatically to transfer (or, in cases of a transfer by a Non-Member Owner, to vest) membership in the Association appurtenant to such Lot to the new Owner, unless such new Owner is a Non-Member Owner. The term "**Owner**" as used in Article III and Article IV of this Declaration does not include any Non-Member Owner, except as otherwise specifically provided in Article IV below.

SECTION 3.2. MEMBER IN GOOD STANDING. A Member shall be considered to be a "**Member in Good Standing**" and eligible to vote if such Member:

i. has fully paid all Assessments or other charges levied by the Association, as such Assessments or charges are provided for hereunder;

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ii. does not have a Notice of Unpaid Assessments filed by the Association against the Lot in the Property owned by such Owner; and

iii. has discharged all other obligations to the Association as may be required of Members hereunder or under the Association Documents.

The Board shall have sole authority for determining the good standing status of any Member at any time and shall make such determination with respect to all Members prior to a vote being taken by the Association on any matter. The Board shall have the right and authority, in its sole discretion, to waive the prior payment requirement, if any, and require only that such payment be made at any time before such vote is taken if the Board shall determine, in its own judgment, that extenuating circumstances exist which have prevented prior payment. Any Member not conforming with the provisions of this Section 3.2 shall be declared by the Board not to be a Member in Good Standing and shall not be entitled to vote on matters before the Association until such time as Member in Good Standing status is attained and so declared by the Board.

SECTION 3.3. CLASSES OF VOTING MEMBERS. The Association shall have two (2) classes of voting membership.

a. Class A. "**Class A Members**" shall be all Members, including Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned by such Class A Member as of the date of the notice of the meeting at which such vote is to be cast. If any Lot is owned by more than one Owner, the number of votes attributable to such Lot shall be the same number of votes as if there were only one Owner of such Lot, and the votes attributable to such Lot may be cast only if all of the Owners owning such Lot, prior to the time of the vote in question, have delivered to the Association a written agreement as to how such votes are to be cast or a written designation of one of such Owners to cast the votes attributable to such Lot. Any Member who is not an individual must designate a representative to act for such Member in Association matters and to cast votes for such Member, such designation to be made in writing to the Board. A Member may delegate its right to vote to any tenant occupying its Lot provided such delegation is made in writing delivered to the Board.

b. Class B. The only "**Class B Member**" shall be Declarant. The Class B Member shall be entitled to a number of votes equal to 200% of the aggregate of all votes eligible to be cast by Class A Members; provided, however, the Class B membership shall cease on the Conversion Date, and Declarant thereafter shall only be a Class A Member for so long as it owns any portion of the Property.

SECTION 3.4. QUORUM, VOTING AND NOTICES. Members holding fifty-one percent (51%) of the aggregate votes entitled to be cast by Class A Members in Good Standing and the Class B Member, represented at a meeting of the Members in person or by a legitimate proxy in a form approved by the Board, shall constitute a quorum for voting on matters brought before the Members at meetings called by the Board (a "**Quorum**"). The vote of Members in Good Standing (considering all Class A Members and the Class B Member as one voting class) holding, in the aggregate, a majority of the votes entitled to be cast by the Members in Good Standing

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present or voting by legitimate proxy at a called meeting at which a Quorum is present (the "**Majority Vote of the Members**") shall be the act of the Members. Notice requirements for all actions proposed to be taken by the Association which require a voted approval by the Members shall be given as set forth in the Association Documents, as such may be amended from time to time.

ARTICLE IV
ASSESSMENTS

SECTION 4.1. COVENANTS FOR ASSESSMENTS. Each Owner, except for the Declarant, of a Lot within the Property, by acceptance of a deed or other conveyance or transfer of legal title to the Property or any portion thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have covenanted and agreed to pay to the Association, or to an independent entity or agency which may be designated by the Association to receive such monies, the following assessments "Assessments"):

a. Regular Assessments as provided for in Section 4.2 below;

b. Special Purpose Assessments as provided for in Section 4.3 below;

c. Special Member Assessments, as provided in Section 4.4 below; and

All Assessments shall remain the property of the Owner making such payment and shall be expended by the Association on behalf of the Owners only for the specified purposes provided in this Declaration. No profit, gain or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as agent for the Owners. All services contemplated to be paid from Assessments shall be obtained by the Association on behalf of the Owners. Upon termination of the Association, all assessments held at that time by the Association shall be allocated and returned to the Owners in the same manner as votes are allocated among Class A members as provided in Section 3.3.a above. Declarant is exempt from paying any and all Regular Assessments, Special Purpose Assessments and/or Special member Assessments and/or Assessment deficits at any time.

SECTION 4.2. REGULAR ASSESSMENTS. "**Regular Assessments**" shall be determined, assessed and expended on a calendar year basis or pro-rata share for a portion of the year, which shall be the fiscal year of the Association. The initial Regular Assessment shall be determined by the Board for the calendar year 2023. Regular Assessments shall be used for the payment of Shared Use Expenses and other expenses incurred by the Association or the Board on behalf of the Owners as authorized in this Declaration (exclusive of the expenses referenced in Section 4.3, and Section 4.4 below). Each following year while this Declaration is in force the Board shall set the amount of the Regular Assessments to be levied for the next calendar year, provided such Regular Assessments shall not be in excess of one hundred percent (100%) of the Regular Assessments for the prior calendar year. Regular Assessments for each calendar year beginning with 2023 shall be set by the Board on or about December 1 of the preceding year or as soon thereafter as such determination reasonably can be made by the Board. Regular Assessments shall be allocated among all Owners (not including Declarant) in the same manner as votes are

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allocated among Class A Members as provided in Section 3.3.a, that is, the percentage of the aggregate Regular Assessments allocated to a particular Lot in the Property shall be a fraction with the numerator equal to the number of Class A Member votes allocable to such Lot and with the denominator equal to the aggregate number of votes for all Class A Members. Should any surplus exist at the end of any year, the Board may reduce the amount required for the next year's Regular Assessments by an amount equal to such surplus, as determined by the Board in its discretion.

SECTION 4.3. SPECIAL PURPOSE ASSESSMENTS. The Board may, from time to time, levy a "**Special Purpose Assessment**" for the purpose of paying any unanticipated expense that normally would have been paid out of Regular Assessments which was not included in that year's budget for Regular Assessments. Such Special Purpose Assessments shall be allocated among Owners (not including Declarant) in the same manner as the Regular Assessments are allocated among the Owners.

SECTION 4.4. SPECIAL MEMBER ASSESSMENTS. The Board may levy a "**Special Member Assessment**" on any Member (not including Declarant), to the extent any directly related insurance proceeds paid to the Association are not sufficient to pay all such costs, for the purpose of:

a. Paying the cost of any damage or loss requiring maintenance, repairs or replacement of Shared Use Areas, Landscaping, or Shared Facilities which damage or loss has been determined by the Board to have been caused, either directly or indirectly, by the acts or omissions of such Member, or its agent, employee or occupant; or

b. Reimbursing the Association for any and all direct or indirect costs incurred by the Association with regard to the maintenance, repair or replacement of signs, screening, decorative walls, exterior lighting, sculptures, and equipment on such Member's Lot or serving such Member's Lot, including, but not limited to, the removal of trash, litter and abandoned items, that such Member fails to repair, maintain or replace as required by the provisions of this Declaration, provided such Member fails to correct such deficiency within seven (7) days after written notice thereof is given to such Owner by the Board (or in cases where such deficiency cannot reasonably be corrected within seven (7) days, within a reasonable period of time necessary to correct such deficiency provided that the Owner commences corrective work within such seven (7) day period and thereafter proceeds diligently to complete such corrective work). Notwithstanding the foregoing, after the second such notice for the same deficiency, the Association shall not thereafter be required to deliver such notice to such Owner to exercise the foregoing rights; or

The provisions of this Section 4.4 apply also to each Non-Member Owner, and each Non-Member Owner is liable for any Special Member Assessment made against such Non-Member Owner, and, to the fullest extent permitted by law, such Non-Member Owner's particular Lot is subject to a lien to secure payment of such a Special Member Assessment, all as provided in Section 4.6 and Section 4.7 below.

SECTION 4.5. DUE DATE OF ASSESSMENTS. The Regular Assessments provided for herein shall be payable annually within thirty (30) days after an invoice is delivered by the Association to an Owner; provided, however, the Board shall have the right to require payment of

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Regular Assessments at other intervals if it deems such is appropriate (but with payment not required any earlier than ten (10) days after delivery of the invoice therefor). The due date of any Assessment under Section 4.3 or Section 4.4 shall be fixed in the notice to the Owner or Owners providing for such Assessment, but will not be sooner than thirty (30) days after the date of such notice. Regular Assessments shall be due no later than January 31st for the calendar year.

SECTION 4.6. PERSONAL OBLIGATION FOR PAYMENT OF ASSESSMENTS. The Assessments provided for herein shall be the personal and corporate debt of the Owner of the portion of the Property with respect to which such Assessment is made. No Owner, for any reason, may exempt itself from liability for Assessments. In the event that any Assessment or part thereof is not paid when due, the Owner or Owners of such property shall be obligated to pay interest on such unpaid Assessment from such due date at the Default Rate of Interest together with all costs and expenses of collection thereof, including, but not limited to, reasonable attorneys' fees. The Board shall have the right to reject any partial payment of any Assessment with respect to a Lot made for any period of time that an Owner owns the Lot shall remain its personal or corporate obligation, as the case may be (notwithstanding any future sale or conveyance of its Lot) and shall not pass to unrelated third-party purchasers of such property or portion thereof unless expressly assumed by such purchaser. However, the lien for any unpaid Assessments shall be unaffected by any such property affected thereby, or portion thereof, and shall continue in full force and effect. In the event of full or partial sale of an ownership interest in any portion of the Property, it shall be the obligation of the then Owner of such interest to disclose to any buyer, assignee, title company designated to handle such transaction, financing entity or other party to such sale any unpaid Assessments, such notice to be given in writing to all parties to the intended transaction at least thirty (30) days before that date on which such transaction is to be consummated. A copy of such notice shall be sent to the Association at the same time. A former Owner shall not be liable for Assessments made with respect to a Lot after such Person no longer is the Owner of such Lot.

SECTION 4.7. ASSESSMENT LIEN AND FORECLOSURE. ALL SUMS ASSESSED IN THE MANNER PROVIDED FOR IN THIS ARTICLE OR OTHER AMOUNTS DUE FROM OWNER AS PROVIDED IN THIS DECLARATION, TOGETHER WITH INTEREST FROM SUCH DUE DATE AT THE DEFAULT RATE OF INTEREST AND THE COSTS OF COLLECTION, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ARE SECURED BY A CONTINUING CONTRACTUAL LIEN AND CHARGE ON THE PROPERTY COVERED BY SUCH ASSESSMENT OR TO WHICH SUCH AMOUNTS RELATE, WHICH SHALL BIND SUCH PROPERTY AND THE OWNER THEREOF AND ITS HEIRS, SUCCESSORS, DEVISEES PERSONAL REPRESENTATIVES AND ASSIGNEES. The aforesaid continuing contractual lien shall attach to such portion of the Property as of the date of the recording of this Declaration and shall be superior to all liens other than (a) a deed of trust or mortgage constituting a lien on the land of an Owner, (b) any sale and leaseback agreement or lease and sub-leaseback agreement whereby an Owner sells and simultaneously acquires a possessory interest under a lease from or other agreement with such transferee, and (c) the lien securing real estate taxes; provided, however, the types of liens referenced in (a) and (b) above shall be inferior and subordinate to the lien securing the obligation to pay Assessments to the extent of all unpaid Assessments set forth in any recorded Notice of Unpaid Assessment (as defined below) existing as of the date of such other lien that has not been duly released by the Association. The Association shall have the power to subordinate the aforesaid

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Assessment lien to any other lien. The exercise of such power shall be entirely discretionary with the Association. Except for a conveyance to a purchaser at a foreclosure sale pursuant to a lien to which the Assessment lien is subordinate as provided above, all parcels within the Property are conveyed to and accepted and held by the Owner thereof subject to the Assessment lien provided for in this Section 4.7. To evidence any unpaid Assessments, the Association may prepare a written notice of unpaid Assessment (the "**Notice of Unpaid Assessments**") setting forth the amount of the unpaid indebtedness, name of the Owner of the affected property and a description of the affected property. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Real Property Records of the county in which the affected Lot is located. The Association shall record an appropriate release of any recorded Notice of Unpaid Assessments when the amounts referenced therein have been paid. THE LIEN FOR PAYMENT OF ASSESSMENTS MAY BE ENFORCED BY FORECLOSURE OF THE LIEN UPON THE DEFAULTING OWNER'S PROPERTY BY THE ASSOCIATION SUBSEQUENT TO THE RECORDING OF THE NOTICE AS PROVIDED ABOVE EITHER BY JUDICIAL FORECLOSURE OR BY NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN LIKE MANNER AS A MORTGAGE ON REAL PROPERTY IN ACCORDANCE WITH SECTION 51.002, TEXAS PROPERTY CODE, AS SUCH MAY BE REVISED, AMENDED, SUPPLEMENTED OR REPLACED FROM TIME TO TIME. In addition, the Association may institute suit against the Owner personally to obtain a judgment for unpaid Assessments. In any foreclosure proceeding, whether judicial or nonjudicial, or in any other suit against the Owner, the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. The Association shall have the right and power to buy the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any mortgagee holding a lien on any part of the Property, the Association shall report to said mortgagee any Assessments which are delinquent and unpaid at the time of the report.

SECTION 4.8. CERTIFICATE. Upon request by an Owner, the Association shall furnish a certificate setting forth any unpaid Assessments owed by an Owner.

ARTICLE V
ASSOCIATION BOARD OF DIRECTORS

SECTION 5.1. CREATION OF BOARD. The Association shall be governed by a Board of Directors (the "Board"). The size and composition of the Board, its method of election and its duties and authorities shall be as provided in the Association Documents. The Board shall exist and function solely for the benefit of the Property, the Association and the Members.

SECTION 5.2. USE OF ASSESSMENT FUNDS. The Board shall be responsible for the setting, collection and disbursement of Assessments. In general, the Board shall be empowered to cause the Association to take the following actions and to expend Regular Assessment and Special Purpose Assessment funds for the following purposes:

a. the payment of the Shared Use Expenses;

b. the employment of independent consultants or independent contractors to manage

day to- day operations of the Association; provided, however, neither the directors of the Association nor members of the DRB shall be paid any salary or other compensation for serving in such capacity;

c. the employment of legal, accounting, engineering, architectural or other independent professional services, including, but not limited to, any services required to provide architectural review for any plans for the construction of Improvements on a Lot;

d. the purchase of a policy or policies of insurance insuring the Association, the Board and the DRB against any liability to the public or to the Owners (and/or visitors or occupants) incident to operation of the Association or the DRB;

e. the payment for materials, supplies, services, maintenance, repairs, alterations, insurance, ad valorem and other taxes on property owned by the Association or in which the Association has an easement and general and administrative expenses which, in the opinion of the Board, shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration, including, but not limited to, reasonable expenses of the DRB; and

f. the payment of costs incurred in the exercise and performance by the Board or the Association of any of their authorities, duties and rights set forth in this Declaration.

SECTION 5.3. ADDITIONAL AUTHORITIES AND DUTIES OF THE ASSOCIATION. Subject to the provisions of Section 7.1.b below, the Board shall have the following additional authorities and duties exercisable on behalf of the Association with respect to performance of the rights and obligations of the Association hereunder and the right to expend Assessment funds to pay the costs thereof:

a. to enter into agreements or contracts with respect to:

(i) insurance coverage for Shared Use Areas and the Shared Facilities;

(ii) utility consumption and services necessary for the operation of the Shared Use Areas and the Shared Facilities and the provision and operation of the Shared Services; and

(iii) maintenance, repair and operation of Shared Use Areas, the Shared Facilities.

(iv) Landscaping; and

(v) design, engineering and other consultant contracts.

b. to determine the Shared Services that should be obtained by the Association for the benefit of the Owners, subject to the approval of a Majority Vote of the Members;

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c. to designate Shared Use Areas and Shared Facilities not listed in Section 1.2.bb and Section 1.2.dd, subject to the approval of a Majority Vote of the Members;

d. to designate Project Signage Identification Areas and to promulgate rules related to the type of signage included therein;

e. to borrow funds to pay any costs of operation, secured by assignment or pledge of Assessments, as the Board may determine to be necessary and appropriate in accordance with this Declaration;

f. to enter into contracts for goods and services or other purposes, maintain one (1) or more bank accounts and generally to have all the powers necessary or incidental as may be required for prudent operation and management of the Association;

g. to use or to defend in any court of law on behalf of the Association;

h. to make, or cause to be made, any tax returns, reports or other filings required by federal, state or local governmental authorities;

i. to make available to each Owner within one hundred twenty (120) days after the end of any Association fiscal year a written annual report on financial affairs of the Association for the preceding year, and, upon written request of Members in Good Standing holding two-thirds (2/3) of the Class A Member votes eligible to be cast by all of the Class A Members in Good Standing, to have such report audited by an independent certified public accounting selected by the Board, which audited report, if required, shall be completed and made available to each Member as soon as practical after a request is received by the Board; provided, however, prior to the Conversion Date, (i) unless Declarant votes in favor of such audit, the cost shall be borne by all Class A Members other than Declarant, and the Association may require that such audit costs be paid in advance, and (ii) notwithstanding the above, Declarant shall pay the costs of the audit if such audit reveals a discrepancy of greater than one hundred ten percent (110%) in the accounting reports furnished by the Association that is adverse to the Association or the Members;

j. to adjust the amount, collect and use any insurance proceeds to repair or replace any damaged or lost property or to reimburse persons or entities entitled to receive reimbursement for injury, damage or losses, and, if said insurance proceeds are insufficient to provide full reimbursement as may be required, the Board may act to collect funds through Special Purpose Assessments, or Special Member Assessments, whichever is applicable;

k. to enforce the provisions of this Declaration and the Development Guidelines and to enjoin action or seek damages and/or remedial action from any Owner for violation of this Declaration or the Development Guidelines, which right shall include, but is not limited to, the right, but not the obligation, to enter into any part of the Property to perform obligations of the Owner thereof who has failed to do so in accordance with the provisions of this Declaration or the Development Guidelines;

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l. to maintain books and records with respect to all aspects of the operations of the Association and to the levy, collection, receipt, administration, expenditure and disposition of all Assessments and other funds held by the Association in accordance with sound accounting practices (that separately reflect all Association reserve funds), and to permit any Owner (or a person designated by such Owner in writing) to inspect, copy and audit the same upon reasonable notice during normal business hours at an office of the association or Declarant located in Tarrant County, Texas;

m. to promulgate Development Guidelines (the "**Development Guidelines**") to serve as a guide for Owners in the planning and construction of Improvements and as a guide for the DRB in reviewing and approving or disapproving plans and specifications for Improvements and to revise such from time to time as the Board, in its discretion, deems appropriate, with copies of revisions to be furnished to all Owners. The Development Guidelines shall not contain any provisions (i) that conflict with the provisions of this Declaration, (ii) that attempt to prohibit uses that comply with Section 7.1.a below and that are not prohibited by Section 7.2 below, or (iii) that restrict or diminish rights of Owners as specifically provided in this Declaration. The Developer Guidelines may be amended at any time by the Board.

n. to appoint members and advisory members of the DRB as described in Article VI below;

o. to own an easement interest to the Project Signage Identification Areas, the Shared Use Areas, and any other areas determined by the Board to be appropriate.

p. to promulgate reasonable rules governing the use of Shared Use Areas, the Shared Facilities and the Shared Services; and

q. to perform such other duties and functions as are necessary to carry out the rights and obligations of the Board and the Association under this Declaration.

The Association shall have the right to perform such other functions, and to utilize Assessments to pay the cost thereof, to the extent that such other functions and services are approved by a Majority Vote of the Members.

SECTION 5.4. AFFILIATED CONTRACTS. The Board, acting on behalf of the Association, shall have the full power and authority to contract with any Owner, including, without limitation, Declarant, for performance of services which the Association is obligated or authorized to obtain, such contracts to be at competitive rates then prevailing for such services and upon such other terms and conditions, and for such consideration as the Board may deem advisable and in the best interest of the Association provided that the level of service received is consistent with that available from third parties. In determining whether any such affiliated contract is competitive, the Board shall obtain estimates, bids or informal quotes from other possible providers of similar services, all of which shall be made available for review by any Owner upon written request submitted to the Association.

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SECTION 5.5. LIABILITY LIMITATIONS. No Member, director, officer or representative of the Association shall be personally liable for debts or liabilities of the Association. The directors and officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts, approval of actions that violate the provisions of Section 7.1.b. below or as provided in the Association Documents. Such directors and officers shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association, as a Common Expense of the Association, shall defend, indemnify and hold such directors and officers harmless from any and all expense, loss or liability to others on account of any such contract or commitment (to the extent not covered by insurance proceeds). In addition, each director and each officer of the Association shall be indemnified and held harmless by the Association, as a Common Expense of the Association, from any expense, loss or liability to others (to the extent not covered by insurance proceeds) by reason of having served as such director or as such officer and against all expenses, losses and liabilities, including court costs and reasonable attorneys' fees, incurred by or imposed upon such director or officer in connection with any proceeding to which he may be a party or have become involved by reason of being such director or officer at the time such expenses are incurred subject to any provisions regarding indemnity contained in the Association Documents, except in cases wherein the expenses, losses and liabilities arise from a proceeding in which such director or such officer is adjudicated guilty of willful misfeasance or malfeasance, misconduct, bad faith in the performance of his duties or intentional wrongful acts, approval of actions that violate the provisions of Section 7.1.b, below or any act specified in the Association Documents as an act specified in the Association documents as an act for which any limitation of liability set forth in the Association Documents is not applicable (this indemnity does cover liabilities resulting from such director's or officer's negligence). In the event of a settlement of any such proceeding, the indemnification provided hereby shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. Any right to indemnification provided for herein shall not be exclusive of any other rights to which a director or officer, or former director or officer, may be entitled. The Association shall have the right to purchase and maintain, as a Shared Expense, directors' and officers' insurance on behalf of any person who is or was a director or officer of the Association against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such.

SECTION 5.6. INSURANCE. The Association, acting through the Board, shall have the right to purchase, carry and maintain in force, to the extent such is available (a) liability insurance covering any employees and any and all portions of the Shared Use Areas, and any improvements thereon or appurtenant thereto, and covering the Shared Facilities, and Shared Services, for the interest of the Association, the Board, agents and employees, and of all Members, in such coverage and amounts and with such endorsements as shall be considered by the Board, in its sole discretion, to be reasonable; (b) errors and omissions insurance for the Board, officers of the Association and the DRB, and (c) fidelity bonds for all Board members, officers or employees of the Association. The Board shall carry such insurance at such limits of coverage and with financially sound companies licensed to do business in Texas as the Board deems appropriate, Notwithstanding the above, the Association shall carry and maintain, to the extent such coverage is reasonably available as determined by the Board liability insurance with policy limits of at least $2,000,000.00 covering occurrences in the Shared Use Areas or as the result of the operation of Shared Services or Shared

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Facilities. The Association shall use any net insurance proceedings for the purpose the insurance was intended, including, but not limited to, the repair and/or replacement of any damaged or lost property, whether real or personal. Any unused balance from the proceeds of insurance paid to the Association shall be retained by the Association for use in the payment of Shared Use Expenses. Should insurance proceeds be insufficient to fully reimburse any loss or damage, the Association may levy a Special Purpose Assessment, or a Special Member Assessment, whichever is applicable, to cover such deficiency.

ARTICLE VI
DEVELOPMENT REVIEW BOARD

SECTION 6.1. CREATION OF DEVELOPMENT REVIEW BOARD. The Association shall establish and maintain a Development Review Board (the "DRB") consisting of three (3) persons appointed by the Board. At least one (1) member shall be a representative of Declarant as long as Declarant or its affiliate owns a Lot subject to this Declaration. In addition, the Board, from time to time, may appoint non-voting advisory members to the DRB. Until the Conversion Date, the appointment of the three (3) voting members must be approved by Declarant, and such members of the DRB and the non-voting advisory members may be removed by the Board or Declarant with or without cause. After the Conversion Date, the Board then shall have the exclusive right and authority at any time, and from time to time thereafter, to create and fill the three (3) Owner vacancies on the DRB and to remove any of such Owner members of the DRB and the non-voting advisory members with or without cause. However, the Board shall not have the right to remove the one (1) representative of Declarant. The vote of the majority of the voting members of the DRB shall be the act of the DRB.

SECTION 6.2. FUNCTION OF DEVELOPMENT REVIEW BOARD. A function of the DRB is to review and approve or disapprove plans and specifications for Improvements proposed to be installed or modified on portions of the Property. NO IMPROVEMENTS SHALL BE ERECTED, CONSTRUCTED, PLACED, ALTERED, REMODELED, DEMOLISHED OR PERMITTED TO REMAIN ON SUCH PORTION OF THE PROPERTY UNTIL PLANS AND SPECIFICATIONS, IN SUCH FORM AND DETAIL AS THE DRB MAY DEEM NECESSARY, SHALL HAVE BEEN SUBMITTED TO THE DRB AND APPROVED BY IT IN WRITING. The vote of a majority of the members of the DRB shall be considered as the act of the DRB. The Board, from time to time, may establish and revise a standard review fee which must be paid by an Owner at the time plans are submitted for review. The DRB shall have the authority to select and employ professional consultants to assist it in discharging its duties if the DRB determines that it does not have sufficient expertise or time to review any submitted plans, the cost of such consultants to be paid by the Owner of the Lot for which plans have been submitted for approval, which cost shall be in addition to the review fee referenced above and the Association may use the deposit required in Section 6.3.j for the cost thereof. The process of reviewing and approving plans and specifications is one which of necessity requires that the DRB is called upon from time to time to make subjective judgments on items for which specific standards or guidelines are not expressly set forth in this Declaration or the Development Guidelines. The DRB has full power and authority to make any such subjective judgments and to interpret the intent and provisions of this Declaration and the Development Guidelines in such manner and with such results as the DRB, in its sole discretion, may deem appropriate, and in the absence of final

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adjudication by a court of competent jurisdiction that the DRB has abused its discretion, such action by the DRB shall be final and conclusive. While the Development Guidelines are intended as a general guide for development within the Property, the DRB shall have the right to grant variances form the Development Guidelines as it, in its sole judgment, deems appropriate; provided, however, such variances may not be used as to allow violations of this Declaration. The DRB shall have the sole discretion to determine whether plans submitted to it for approval are acceptable, and the DRB or the Association shall be entitled and empowered to enjoin or remove any construction undertaken pursuant to plans that have not been approved in writing by the DRB. Improvements for which DRB approval is required are to be constructed in accordance with the Development Guidelines in existence as of the date the preliminary plans therefor are submitted to the DRB as required hereunder. Subsequent changes to the Development Guidelines shall not require changes in existing construction or plans previously approved by the DRB. THE RIGHTS AND POWERS OF THE DRB UNDER THIS ARTICLE VI ARE SUBJECT TO THE PROVISIONS OF SECTION 7.1.b BELOW.

SECTION 6.3. PLANS & SPECIFICATIONS.

a. The DRB shall have the right to disapprove any submitted plans that are not in compliance with this Declaration and the Development Guidelines, if they are incomplete or if the DRB determines that such plans are deficient from an engineering or design standpoint. The DRB may base its approval or disapproval on, among other things:

(i) architectural character of all proposed Improvements, taking into consideration the aesthetic quality of any structures with respect to height, form, proportion, volume, siting, exterior materials and roofing materials (with regard to type, scale, texture, color and durability), proposed quality of workmanship and the appearance of the Improvements from the air;

(ii) adequacy of Lot dimensions for the proposed Improvements;

(iii) conformity and harmony of external design with Improvements on neighboring Lots and types of operations and uses thereof;

(iv) relation to topography, grade and finish ground elevation to that of neighboring Lots;

(v) screening of mechanical and other installations;

(vi) functional appropriateness with respect to vehicle handling, pedestrian circulation, siting of building (in relationship to other buildings, existing or proposed, located on other Lots), drainage, utility service systems and lighting;

(vii) type, extent and quality of landscaped areas;

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(viii) exterior signing; or

(ix) compliance with the purpose and general plan, intent and provisions of this Declaration and the Development Guidelines.

Each Owner shall follow the procedures and requirements for the submission of plans and specifications for proposed Improvements as set forth in the Development Guidelines. The DRB shall be available on a reasonable basis, upon reasonable request of an Owner, to meet with an Owner or its representatives to discuss and answer questions concerning proposed Improvements and their compliance with this Declaration and the Development Guidelines.

b. The development review process consists of three (3) phases: (i) the Concept Plan Phase, (ii) the Preliminary Plans Review, and (iii) the Final Plans Review.

c. The Concept Plan Phase is the opportunity for the DRB to communicate to an Owner any specific development requirement for the Owner's Lot and for the Owner to present to the DRB such Owner's concept design for the Improvements proposed to be constructed or installed on its Lot The concept design plan submitted by the Owner shall provide and show all information specified and required in the Development Guidelines. The DRB must approve in writing the Owner's design concept before the DRB will accept the Owner's submission for Preliminary Plans Review. THIS DESIGN CONCEPT PRESENTATION SHALL OCCUR AS EARLY AS POSSIBLE IN THE DESIGN PHASE FOR ANY IMPROVEMENTS. A PRIMARY PURPOSE OF THIS INITIAL PRESENTATION IS TO IDENTIFY ANY GENERAL DESIGN ASPECTS OF THE PROPOSED IMPROVEMENTS THAT ARE UNACCEPTABLE TO THE DRB AT A TIME PRIOR TO THE OWNER HAVING INCURRED SUBSTANTIAL DESIGN AND ENGINEERING COSTS.

d. Based on the design concept approved by the DRB, the Owner shall submit to the DRB its preliminary plans for the proposed Improvements on its Lot for Preliminary Plans Review by the DRB. Such plans shall provide and show all of the information, drawings and data specified and required in the Development Guidelines and such other information as may be required by the DRB. The DRB must approve in writing the Owner's preliminary plans for such Improvements before the DRB will accept the Owner's submission for Final Plans Review.

e. Based upon the preliminary plans approved by the DRB, the Owner shall submit to the DRB its final plans and specifications for the proposed Improvements on its Lot for Final Plans Review by the DRB. Such plans shall be prepared by an architect, professional engineer, landscape architect and land surveyor (as appropriate) registered under Texas law, bearing the signature, seal and certification of such architect, professional engineer, landscape architect and land surveyor and shall provide and show all of the information, drawings and data specified and required in the Development Guidelines and such other information as may be required by the DRB. The plans shall be accompanied by the written certification by the Owner's architect that the Improvements comply with the objective provisions of the Development Guidelines and this Declaration. If any of the plans that are submitted do not comply with the objective provisions of this Declaration or the Development Guidelines, the Owner's architect, in such certificate, shall specify and explain

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any noncompliance.

f. At the request of an Owner, the DRB shall review plans for phased or "fast-track" construction prior to reviewing plans for the completed construction project. All additional costs of consultants necessary to provide this type of review shall be paid by the Owner. Any such request for such approval procedure shall be at the risk of such Owner, because the DRB shall have the right to withhold further approvals or to withdraw its approval of plans previously submitted if later plans for further construction on such Lot result in such previously approved Improvements no longer being in substantial compliance with this Declaration or the Development Guidelines or being consistent in all material respect with plans for the Lot previously approved by the DRB. In such event, the Owner shall modify any such previously constructed Improvements as may be required by the DRB.

g. Approval of plans and specifications shall be based upon a determination by the DRB as to whether or not in its judgment such plans adequately meet objectives established for the Property with regard to aesthetic quality and the other requirements of this Declaration and the Development Guidelines. The DRB shall notify the Owner of the DRB's disapproval of any portion of the plans or other submissions and shall give the reasons for such disapproval. Approval of any plans with regard to certain Improvements on any Lot shall not be deemed a waiver of the DRB's right, in its discretion, to disapprove similar plans and specifications, or any of the features or elements included therein, for any other Improvements on such Lot or any other Lot or to refrain from granting similar variances.

h. If any submission of plans is not complete or does not include all data required by this Declaration or the Development Guidelines, the DRB, within ten (10) business days after such submission, shall notify the Owner of such deficiencies, and such plans shall not be considered to have been submitted until such deficiencies have been corrected. Should the DRB fail to approve or disapprove any concept design plans, preliminary plans or final plans, properly presented by an Owner as provided above, with twenty (20) days after submittal thereof to the DRB in a form and fully complete as required by the DRB and the Development Guidelines, it shall be presumed that the DRB has approved such properly submitted plans and specifications, unless prior to the end of such 20-day period, the DRB shall have notified the Owner submitting such plans and specifications in writing that an additional time period, not to exceed thirty (30) business days is needed for further review, after which disapproval in writing having been given by the DRB during such additional review period. The DRB in the future may modify, by provisions in the Development Guidelines, the procedure for the submission and review of plans provided the review times set forth above are not materially changed.

i. If work is not commenced (meaning completion of the pouring of the foundation) within one hundred twenty (120) days from the date of DRB approval of final plans, then the approval given pursuant to this Article VI shall be deemed revoked by the DRB, unless the DRB extends the time for commencing work. In any event, all work covered by such approval, once commenced, shall be constructed with due diligence and completed as soon as reasonably possible, but must be completed within eighteen (18) months of the commencement thereof, except for such period of time as such completion is rendered impossible or result in great hardship due to strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the

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control of the Owner, unless the DRB extends the time for completion. If the Owner fails to complete construction within the foregoing time period, the Association may upon thirty (30) days prior written notice, in its sole discretion and at the Owner's expense, either (i) complete such construction, or (ii) remove the incomplete Improvements; provided, however, if the Owner commences the construction within such thirty (30) day period and diligently pursues such construction to completion, the Association may not elect the remedies set forth above, unless the Owner fails to diligently complete such construction in which event the Association may elect such remedies and no further notice to the Owner shall be required.

j. The DRB shall not review any plans submitted in accordance with this Section 6.3 until the Owner delivers a deposit payable to the Association in an amount to be determined by the DRB in its sole discretion. Such deposit may be used by the Association if Owner fails to comply with any provisions of this Declaration relating to Owner's obligations hereunder with respect to the initial construction of Improvements and to pay fees incurred by the Association as permitted in this Declaration, including, but not limited to, the cost of consultants and costs for cleaning and governmental compliance. If the Association is required to use any portion of such deposit, Owner shall promptly upon request replenish such deposit. The Association shall return any unused portion of such deposit within sixty (60) days after the Association's receipt of a copy of the certificate of occupancy for the Improvements.

SECTION 6.4. INSPECTIONS. The DRB, or its designees, shall have the right, during reasonable business hours, to enter upon and inspect any Lot or Improvements then under construction to determine whether or not the plans therefor have been approved by the DRB. If the DRB shall determine that such plans have not been approved or that the plans which have been so approved are not being substantially complied with, the DRB may, in its discretion, give the Owner of such Lot and Improvements written notice to such effect, and, thereafter, the Board or the DRB, on behalf of the Association, shall be entitled to enjoin further construction and to require the removal or correction of any work in place that does not comply with approved plans.

SECTION 6.5. INTERIOR ALTERATIONS. Notwithstanding any other provisions of this Declaration or the Development Guidelines, an Owner may make improvements and alterations within the interior of any building on its Lot without first obtaining DRB approval, provided such do not change the exterior appearance of any Improvements or alter required parking ratios.

SECTION 6.6. CHANGES. No construction or installation of Improvements on a Lot that is inconsistent with, in addition to, or materially different from, any previously approved plans shall be commenced or permitted until the plans reflecting such change or addition have been submitted to and approved by the DRB in accordance with this Article VI; provided, however, no such approval is required for changes within the interior of any building that do not change exterior appearance.

SECTION 6.7. LIMITATION OF LIABILITY. Declarant, the Association, the Board or any of its members and the DRB or any of its members, shall not, individually or in combination, be liable in damages or otherwise to any Person submitting plans or specifications for approval or to any Owner of any portion of the Property, by reason of subjective decisions, mistake in

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judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications submitted; provided, however, this provision does not apply to acts of willful misfeasance or malfeasants, misconduct, bad faith, intentional wrongful acts, actions that violate the provisions of Section 7.1.b below or to any act specified in the Association Documents as an act for which any limitation of liability set forth in the Association Documents as an act for which any limitation of liability set forth in the Association Documents is not applicable. Declarant, the Association, the Board or any of its members and the DRB or any of its members shall not, individually or in combination, be liable in design, engineering or defect associated with any Improvement constructed on the Property. APPROVAL OF PLANS AND SPECIFICATIONS BY THE DRB DOES NOT CONSTITUTE ANY WARRANTY OR REPRESENTATION THAT SUCH PLANS AND SPECIFICATIONS COMPLY WITH GOVERNMENTAL REQUIREMENTS OR GOOD AND PRUDENT DESIGN, ENGINEERING AND CONSTRUCTION PRACTICES. IT IS THE SOLE RESPONSIBILITY OF THE OWNER TO DETERMINE AND SEE THAT ITS PLANS AND SPECIFICATIONS COMPLY WITH SUCH REQUIREMENTS AND PRACTICES.

SECTION 6.8. CERTIFICATE OF COMPLIANCE. Upon request by an Owner who has complied with the provisions of this Article VI, the Association shall deliver to such Owner, a written certificate of such compliance in recordable form, and such certificate shall be conclusive evidence of such compliance.

SECTION 6.9. DOCUMENTATION. Within thirty (30) days after completion of any Improvements, the Owner of such Lot shall provide to the Association as-built site plan, utility, drainage and landscape plans, plans for irrigation systems on and adjacent to such Lot and such other as-built information which may be requested by the Board or the DRB.

ARTICLE VII
DEVELOPMENT COVENANTS

SECTION 7.1. GENERAL.

a. No use shall be permitted on the Property that is not allowed under applicable public codes and ordinances either already adopted or as may be adopted by the City or other controlling public authority. Each Owner, occupant or other user of any portion of the Property at all times shall comply with the Plat, this Declaration, the Development Guidelines, and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. IN SOME INSTANCES, GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION AND THE DEVELOPMENT GUIDELINES. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION OR THE DEVELOPMENT GUIDELINES, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION OR THE DEVELOPMENT GUIDELINES WOULD RESULT IN A

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VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION OR THE DEVELOPMENT GUIDELINES EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NONCOMPLIANCE OF PROVISIONS OF THIS DECLARATION OR THE DEVELOPMENT GUIDELINES. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION OR THE DEVELOPMENT GUIDELINES BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION OR THE DEVELOPMENT GUIDELINES, THE PROVISIONS OF THIS DECLARATION AND THE DEVELOPMENT GUIDELINES SHALL PREVAIL. All portions of the Property shall be developed in accordance with this Declaration as such may be amended as herein provided. The provisions of this Article VII set forth certain requirements which, in addition to the other provisions of this Declaration and the Development Guidelines, shall apply with respect to the development and use of the Property.

b. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE PROVISIONS OF THIS DECLARATION OTHER THAN THIS SECTION 7.1.b, THE ASSOCIATION, THE BOARD AND THE DRB SHALL NOT HAVE THE RIGHT OR AUTHORITY TO EXERCISE ANY OF THE POWERS OR RIGHTS GRANTED TO ANY OF THEM IN THIS DECLARATION IN SUCH A MANNER AS TO PROHIBIT THE USE BY ANY OWNER OF ITS LOT FOR ANY USE (i) THAT COMPLIES WITH THE FOREGOING PROVISIONS OF SECTION 7.1.a ABOVE, AND (ii) THAT IS NOT PROHIBITED BY THE PROVISIONS OF SECTION 7.2 BELOW. BY WAY OF EXAMPLE, THE BOARD SHALL NOT ADOPT (INITIALLY OR BY AMENDMENT) DEVELOPMENT GUIDELINES THAT ARE DESIGNED TO PROHIBIT AN OWNER'S USE OF ITS LOT THAT OTHERWISE WOULD BE IN COMPLIANCE OF THE PROVISIONS OF SECTION 7.1.a ABOVE AND NOT PROHIBITED BY SECTION 7.2 BELOW. FURTHER, BY WAY OF EXAMPLE, THE DRB SHALL NOT EXERCISE ITS APPROVAL RIGHTS UNDER ARTICLE VI OF THIS DECLARATION IN A MANNER INTENDED TO PROHIBIT AN OWNER'S USE OF ITS LOT THAT OTHERWISE WOULD BE IN COMPLIANCE WITH THE PROVISIONS OF SECTION 7.1.a ABOVE AND NOT PROHIBITED BY SECTION 7.2 BELOW. THE PROVISIONS OF THIS SECTION 7.1.b. HOWEVER, DO NOT AFFECT (i) THE RIGHT AND AUTHORITY OF THE ASSOCIATION, THE BOARD OR THE DRB TO EXERCISE THEIR RIGHTS AND POWERS SET FORTH IN THIS DECLARATION, OR (ii) THE OBLIGATIONS OF EACH OWNER TO COMPLY FULLY WITH THE PROVISIONS OF THIS DECLARATION, SPECIFICALLY, BY WAY OF EXAMPLE, BUT NOT IN LIMITATION, THE PROVISIONS OF ARTICLE VI AND ARTICLE VII OF THIS DECLARATION NOTWITHSTANDING ANY INCIDENTAL EFFECT OF SUCH COMPLIANCE ON AN OWNER'S USE OF ITS LOT.

SECTION 7.2. PROHIBITED USES. Without limiting the generality of Section 7.1, above, the following uses are prohibited on the Property;

a. residential use, including dormitories, duplexes, multi-family, single family, retirement housing, or handicapped group homes.

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b. overnight parking of campers, mobile homes, boats, trailers or motor homes;

c. junk yard, salvage yard or storage facility for abandoned vehicles, abandoned aircraft or abandoned aircraft or vehicle parts;

d. the dumping and incineration of garbage or refuse of any nature, except as the DRB may specifically permit in writing;

e. the smelting of iron, tin, or zinc;

f. sanitary landfill;

g. pawn shop;

h. sexually-oriented business such as, but not limited to, x-rated movie or video sales, theater or rental facility, nude modeling studio, massage parlor, lounge or club featuring nude or semi-nude entertainers or escort service;

i. slaughterhouse or feedlot;

j. the raising, breeding or keeping of animals or poultry;

k. drive-in movie theater;

l. mineral refining facility or operations;

m. horse or dog racing track or any facility for off-track pari-mutuel betting;

n. jails, prison or honor farms;

o. drug, alcohol or substance abuse clinic;

p. sawmills;

q. munitions and related manufacturing facilities;

r. cemeteries;

s. flea markets;

t. auto auction; and

u. manufactured building sales.

SECTION 7.3. ADDITIONAL RESTRICTIONS FOR SPECIFIC LOTS. None.

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SECTION 7.4. LOT CIRCULATION. Declarant intends for the Property to be developed in such a manner to minimize the number of curb cuts on to and median cuts in Streets to those set forth in the Plat; all other curb and median cuts must be approved in writing in advance by the DRB and City. Each Owner, in accordance with the provisions of the Development Guidelines, shall install sidewalks on its Lot if, as, and when required to do so by the City. The design, materials and location of such sidewalks are subject to approval of the DRB. In addition, pedestrian circulation areas around buildings and parking areas shall be installed and landscaped as shown on the Preliminary Plans approved by the DRB. Each Owner acknowledges the existence of, agrees to abide by, and takes title to each Lot subject to, the terms and conditions of that certain Reciprocal Parking and Cross-Access Agreement.

SECTION 7.5. FIRE PROTECTION. All buildings shall be designed, constructed and maintained so as to comply fully at all times with any applicable public codes, ordinances, rules, regulations and orders relating to fire protection. All such buildings and their associated ingress and egress from and to Streets and surface parking areas shall be so related to one another and arranged as to permit ease of access for emergency fire vehicles. Designated fire lanes within any Lot shall be so located, marked and protected from encroachment as to function effectively at all times. Appropriate signage, subject to DRB approval, shall be installed for such fire lanes as may be required either by any public authority or by the DRB and be kept in readable condition.

SECTION 7.6. PARKING. Each Owner must provide on its Lot adequate parking areas for its employees, the handicapped, visitors and service vehicles. Each Owner shall abide by the terms and conditions of that certain Reciprocal Parking and Cross-Access Agreement.

SECTION 7.7. SIGNAGE. No sign or other advertising device of any nature shall be placed on the Property, except as may otherwise be approved by the DRB in advance. No rooftop signs shall be placed on the Property. Declarant may, at the expense of the Association, also provide an entryway monument that shall identify the Property with the name "Berry Creek Village" as the focal point of the sign.

SECTION 7.8. EXTERNAL ILLUMINATION. External lighting of buildings, drives, parking areas, walks and plazas on a Lot, pursuant to plans approved by the DRB, is required. Standards and requirements for illumination, with respect to fixture type, method of erection, height, material, finish, color and base installation, must be approved by the DRB in its sole discretion. To the extent practical, lighting on a Lot shall be from concealed sources unless otherwise approved by the DRB and shall be designed to minimize glare or light flow onto adjacent structures and property.

SECTION 7.9. ANTENNAE AND TOWERS. No Owner, except for Declarant, shall have the right to lease and/or install cell phone towers, tower antennae or satellite receiving or transmitting equipment. However, Declarant shall have the sole and exclusive right to lease the Property for the installation of cell phone towers, tower antennae or satellite receiving or transmitting equipment.

SECTION 7.10. UNDERGROUND UTILITIES. Any and all pipes, lines and wires used for the transmission of water, fuel, natural gas, electricity, telephone, television, sewage, sound or

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any other utilities that are not within a building shall be constructed and maintained underground within the Property unless required to be above ground for technical or environmental reasons and approved by the DRB. However, temporary above-grade utilities may be approved by the DRB for use during construction and until permanent underground services are available to the Lot upon written advance approval by the DRB. No well shall be constructed on the Property, except by Declarant or the Association on Property owned by Declarant or the Association unless otherwise approved by Declarant.

SECTION 7.11. SCREENING. All towers, tower antennae, satellite receiving and transmitting equipment, roof-mounted equipment, other equipment, outside storage areas and service areas on the Property, and such other items and areas as designated by the DRB shall be screened to the extent reasonably practical from ground level view. The DRB shall have full power to determine what facilities or areas must be screened and the screening materials and requirements for each.

SECTION 7.12. LANDSCAPING. Each Owner, contemporaneously with the development of Improvements on a Lot, shall install Landscaping on all unimproved areas on its Lot in accordance with plans that have been approved by the DRB (other than on land held for expansion purposes as approved by the DRB). The Association shall keep all of such Landscaping in good condition and repair and in a neat and orderly appearance and shall be responsible for all expenses relating to the maintenance, repair or replacement of Landscaping on each Owner's Lot. Automatic underground irrigation systems must be installed in all landscaped areas on a Lot. No changes shall be made to the Landscaping plan for a Lot without the prior written approval of the DRB.

SECTION 7.13. TRASH AND GARBAGE. No Lot, or part thereof, shall be used or maintained as a dumping ground for rubbish, trash or garbage before, during or after the installation of any Improvements. Trash collection containers areas shall be established by the Plat or DRB, and enclosed or otherwise screened as required by the DRB as not to be visible from Streets or other adjacent Lots. Each Owner shall observe and comply with any and all requirements established by the DRB in connection with the storage and removal of trash and garbage. If within two (2) days after the issuance of written notice by the Association to an Owner, said Owner shall have failed either to remove any trash, rubble or construction debris, or to exercise reasonable care or conduct to prevent or remedy a dangerous, unclean or unsightly condition, then the Association shall have the authority and right to go on the Lot for the purpose of cleaning said Lot and/or otherwise correcting said condition, or conditions and the Association may use the deposit required in Section 6.3.j for the cost thereof; provided, however, after the second such notice in any calendar year the Association shall not thereafter be required to deliver such notice to such Owner to exercise the foregoing rights. The provisions of this Section 7.15 shall supersede Section 4.4.b with respect to construction of Improvements. The Association shall be responsible at its own expense to maintain all outdoor trash receptacles in accordance with all requirements of the City.

SECTION 7.14. SURFACE WATER FLOW AND DRAINAGE. Plans for all dams, lakes, ponds, other "water features" of any kind and general Lot drainage must be submitted in advance for DRB approval. Each Owner shall control water runoff drainage from his Lot to prevent damage to adjacent tracts, Streets or any other area in the Property.

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SECTION 7.15. ENVIRONMENT.

a. No Owner, lessee, tenant, operator or other occupant of the Property or any portion thereof shall handle, store, deposit, use, process, manufacture, dispose of or release or allow any of its agents, employees, contractors or invitees to handle, store, deposit, use, process, manufacture, dispose of or release any Hazardous Substances (hereinafter defined) of any kind from, on, in, under or in the air above any part of the Property, including, but not limited to, any surface waters or groundwater located on the Property, or into public sanitary sewer systems serving the Property without complying with all Environmental Laws (hereinafter defined), including, but not limited to, performing pre-treatment, obtaining permits and giving notices as required by Environmental Laws. "Hazardous Substances" means those substances now or hereafter including within (whether as a result of such substance's inclusion on a list, physical characteristics or otherwise) any of the definitions of "hazardous substances", "hazardous waste", "hazardous materials", "pollutant", "contaminant" or "toxic substance" under, or otherwise regulated by, any Environmental Law; including, but not limited to: (i) mixtures containing listed Hazardous Substances and waste generated from the treatment, storage or disposal of Hazardous Substances, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) radioactive materials, and (v) petroleum (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquified natural gas and synthetic gas. "Environmental Laws" shall mean and include all present and future federal, state or local laws, rules, orders, ordinances and regulations pertaining to environmental regulation, or the use, processing, storage, disposal, generation or transportation of Hazardous Substances, or any contamination, cleanup or disclosure related thereto, including, but not limited to, the Solid Waste Disposal Act, Chapter 26 of the TEX. WATER CODE ANN., the Resource Conversation and Recovery Comprehensive Environmental Response, Compensation and Liability Act of 1976, 42 U.S.C. §6901 et. seq., the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., and such amendments as may be made to these statutes and such regulations as may be promulgated with respect thereto, including, but not limited to the regulations contained in 40 CFR Part 280.

b. Each Owner and each lessee, tenant, occupant and other user of any Lot shall be responsible for and shall pay all costs and expenses related to the disposal or release by such Owner, lessee, tenant, occupant or other user of such Lot of any Hazardous Substances, sewage or wastes of any kind, in, on, under or in the air above the Property, which costs and expenses shall include, but not be limited to, closure, removal, remediation, cleanup, containment and other response costs, injuries to persons, damages to property, legal expenses, and interest paid to any Governmental Entity, and the Association may use the deposit required in Section 6.3. for the cost thereof; provided, however, this covenant does not apply to Hazardous Substances generated on or migrating from other Lots or already existing on the Lot in question as of the date of the Acquisition of such Lot by such Owner. The covenant in the immediately preceding sentence itself does not create any obligation of an Owner or any lessee, tenant, occupant or other user of a Lot other than for the payment of the costs and expenses described in such sentence, and no Person has any rights under the covenant in such sentence to enforce any claim for any remedy against

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such Owner or such lessee, tenant, occupant or other user of such Lot other than for the payment or recovery of the costs and expenses described in such sentence.

c. The provisions of this Section 7.17 do not affect the rights, liabilities or obligations of any Person under Environmental Laws or other applicable laws.

SECTION 7.16. FENCES. The use of fences on the Property is permitted in only with advance approval in writing by the DRB.

SECTION 7.17. PROHIBITED ACTIVITIES. No dangerous, noxious, offensive or nuisance activities or any activities that violate any applicable laws shall be conducted or permitted to occur by any Owner or its agents, employees, contractors, occupants or invitees on any portion of the Property. No operation or use of any portion of the Property shall be permitted or maintained by any Owner or its agents, employees, contractors, occupants or invitees that causes or produces noise or sound that is objectionable be because of its volume, duration, frequency or shrillness, smoke, noxious, toxic, corrosive or unusual fumes or gases, obnoxious odors, dust or dirt or unusual fire or explosion hazards. The above prohibitions are in addition to those set forth in Sections 7.1 and 7.2 above.

SECTION 7.18. CERTAIN DECLARANT USES. Declarant may conduct its sales and marketing program for the Property from any permanent or temporary sales buildings or trailers and may conduct improvement work and activities on portions of the Property owned by Declarant and do all things reasonably necessary or convenient as required to expeditiously commence, continue and complete such improvement work, including, but not limited to, the provision of temporary buildings (including trailers), temporary storage of construction materials and equipment and the installation of temporary signage of such types, in such sizes and at such locations on portions of the Property owned by Declarant as Declarant deems appropriate. In addition, Declarant shall have the right, at its expense, to install on any Lot a standardized sign announcing a future development on such Lot, and such sign may remain on such Lot following its sale until completion of such development, and if Declarant chooses to do so, the Owner of such Lot shall not install another sign for the same purpose except for a sign that complies with standards established by the DRB for such type signs.

SECTION 7.19. CONSTRUCTION STANDARDS.

a. Any builder engaged to construct Improvements on any portion of any Lot may conduct its construction operations and activities and do all things reasonable necessary as required to expeditiously commence, continue and diligently complete construction of any such Improvements, including the provision of temporary buildings or trailers for administration of work and for the storage of materials and equipment, and the construction of temporary security fences and lighting, except that all construction activities, temporary structure, storage of materials and equipment, all construction-related parking and temporary security fences shall be confined entirely on such Lot. Topsoil shall be scraped and preserved before laying temporary parking lots.

b. Each Owner shall take such action as is necessary to keep the Property reasonably free from mud, dirt and debris resulting from construction activities on that Owner's Lot. Each

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Owner is responsible for, and shall cause, through appropriate contractual provisions, all costs of cleaning up any debris or waste improperly disposed of anywhere on the Property. Each Owner and its contractors must maintain an attractive, clean, nuisance-free environment during the period of construction. Declarant shall have the right to reasonably designate points of ingress and egress on the Lot and within the Property for construction vehicles, and each Owner of a Lot on which Improvements are being constructed shall keep all Streets reasonably cleared of mud and dirt left by construction vehicles entering such Lot. Once commenced, all construction on a Lot shall be continued with due diligence and good faith until completion. Each Owner shall cause its contractors to comply with the requirements of Declarant or the DRB regarding points of construction access to a Lot, cleaning mud and construction debris from Streets, keeping mud from washing into Streets and adjoining Lots and other matters set forth in the Development Guidelines.

c. Each Owner expressly covenants that it will use its reasonable good faith efforts to prevent adverse impacts (such as, but not limited to, air, soil and water pollution, soil erosion, elimination of trees without replacement or increased runoff rates) to areas outside its Lot in any way (negligent or otherwise) resulting from construction, alteration, maintenance, repair, replacement or removal of Improvements to the Lot and that it will defend, indemnify and hold harmless the Association, the DRB, Declarant and other Owners from any and all damages resulting therefrom. All possible contaminants must be stored in a containment facility that will not allow such to enter any soils on or off the Lot.

d. Prior to any excavation on Lot, the Owner will determine and mark the location of and will protect all existing utilities and landscape irrigation lines. Declarant or the Association, upon written request by an Owner, will furnish plans showing the location of any such facilities installed by Declarant or the Association. Utility lines and landscape irrigation lines are to be located before earth moving or drilling equipment operations are allowed to start near underground utilities or landscape irrigation lines. All backfill will be adequately compacted to prevent future settlement, especially under pavement and other structures.

SECTION 7.20. EXTERIOR BUILDING FINISHES. The sides or backs of any building constructed on the Property shall have substantially the same exterior facade finish treatment as the front of the building.

ARTICLE VIII
EASEMENTS

SECTION 8.1. UTILITY AND SERVICE EASEMENTS. Notwithstanding any provision in this Declaration to the contrary, Declarant reserves for itself and its successors and assigns, an easement for installation, maintenance, repair and removal of underground utilities or other underground services (including, but not limited to, electric power, water, fuel, storm drainage, sewer, industrial sewage, natural gas, telephone, security and other telecommunications systems such as closed-circuit cable television) on all portions of each Lot. Full right of ingress and egress shall be had by Declarant at all times over each Lot for the installation, operation, maintenance, repair or removal of any such utility or service together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility or service;

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provided, however, such activities shall be conducted in a manner so as to minimize disruption of other access to and use of a Lot by an Owner and its employees and business invitees. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved hereunder to one or more public utility companies, to the Association, to a City or to any other Person. In addition, Declarant reserves a temporary construction and maintenance easement within the easement areas specified above in this Section 8.1 only to such extent and only for such duration as is reasonably necessary for the construction and maintenance of Street, utilities, drainage facilities and related improvements. Declarant (or its assignee exercising such easement rights) shall repair any Landscaping or pavement damaged by the exercise by Declarant (or its assignee exercising such easement rights) of the rights set forth in this Section 8.1.

SECTION 8.2. OTHER EASEMENTS. Declarant and the Association shall have an easement for full right of ingress and egress at all times over and upon the Property for the exercise of rights under this Declaration and for the carrying out by the Association of their other rights, functions, duties and obligations set out in this Declaration, including, but not limited to, ingress and egress over the Property (i) for the use, upkeep, maintenance, or repair of the Shared Use Areas or Shared Facilities, or provision of Shared Services, and (ii) pursuant to the Reciprocal Parking and Cross-Access Agreement. Any such entry by Declarant or the Association upon the Property shall be made with as minimum inconvenience to the affected Owner as reasonably practical.

ARTICLE IX
MAINTENANCE

The Association shall have the duty and responsibility, at its sole cost and expense, to keep the Shared Use Areas, in a well-maintained, safe, clean, neat, orderly and attractive condition at all times. Such maintenance includes, but is not limited to, the following: prompt removal of all litter, trash, refuse, and wastes; lawn mowing; tree and shrub care; watering; other Landscaping maintenance; keeping exterior lighting and mechanical facilities in working order; keeping lawn and garden areas, driveways in good repair; keeping all signs in good repair; complying with all government, health and police requirements; and striping of parking areas and repainting of Improvements. The Association shall have the right, at the Owner's expense, to perform any action required of an Owner or its contractors under Section 7.19 above and to perform any maintenance, repair or replacement of Landscaping, signs, screening or decorative walls, surface parking areas, fountains, exterior lighting, sculptures, utilities, drainage systems, lighting and equipment on a Lot, upon the failure of the Owner to do so with such failure continuing for seven (7) days after written notice thereof is given by the Association to such Owner (or after such longer notice period as may be allowed by the DRB due to the nature of such deficiency; provided, however, after the second such notice in any calendar year, the Association shall not thereafter be required to deliver such notice to such Owner to exercise the foregoing rights).

ARTICLE X
GENERAL PROVISIONS

SECTION 10.1. BINDING EFFECT AND DURATION. The covenants and restrictions of this Declaration shall run with and bind the Property, shall be binding on all Owners and shall inure to the benefit of and be enforceable by Declarant, the Association and the Owners

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and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date of the recording of this Declaration, after which time this Declaration shall automatically be extended for three (3) successive periods of ten (10) years each, unless after such fifty (50) years an instrument executed and duly acknowledged by Owners owning, in the aggregate, at least a majority of the gross acreage (exclusive of acreage in the Streets and Shared Use Areas) in the Property has been recorded in the Real Property Records of Tarrant County, Texas, abolishing this Declaration.

SECTION 10.2. OTHER PERSONS. The covenants and restrictions contained in Articles VI, VII, VIII, and IX of this Declaration shall be binding upon and enforceable against not only the Owners but also all lessees, tenants or other occupants of a Lot.

SECTION 10.3. INTERPRETATION. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Board, will best affect the intent of Declarant's general plan of development as reflected in this Declaration. The Board shall have the right, power and authority to determine all questions arising under or in connection with this Declaration and to construe and interpret their provisions, and any determination, construction or interpretation made by the Board, in the absence of an adjudication by a court of competent jurisdiction that such action was an abuse of discretion, shall be binding on the Owners. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Real Property Records of Tarrant County, Texas. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. The singular wherever used herein shall be construed to mean the plural when applicable and vice versa, and the use herein of any gender shall mean any other gender when applicable. The exhibits referred to herein and attached hereto are made a part hereof by reference. This Declaration shall be construed under and in accordance with the laws of the State of Texas.

SECTION 10.4. AMENDMENTS. Except as otherwise provided in this Section 10.4, this Declaration, or any provision hereof, may be terminated, amended or vacated as to any portion of the Property only by a document duly executed and acknowledged by Owners owning in the aggregate, at least a majority of the Lots contained in the Property; provided, however, (a) that, until the Conversion Date, no such termination, amendment or vacation shall be effective without the written approval of Declarant; (b) Declarant, without the joinder of any other party, shall have the absolute right to make changes or amendments to this Declaration to correct or clarify errors, omissions, mistakes or ambiguities contained herein, and (c) Declarant shall have the right to supplement this Declaration for the inclusion of additional property or for the deletion of property as provided in Section 1.3. No such termination, amendment, supplement or vacation shall be effective until a written instrument setting forth the terms thereof has been executed by the parties by whom approval is required as set forth above and recorded in the Real Property Records of Tarrant County, Texas.

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SECTION 10.5. ENFORCEMENT. Declarant, its affiliates and/or its immediate successors, the Association and the Owners (and any lessees, tenants or other occupants of an Owner's Lot) shall have the right, but not the obligation, to enforce the covenants and restrictions set out in this Declaration. If Declarant or the Association is required to engage an attorney as a result of a breach by any Owner of such Owner's obligations hereunder, such Owner shall be responsible for the cost thereof and shall remit payment to Declarant or the Association promptly upon receipt of an invoice therefor and any unpaid amounts shall constitute a lien on that portion of the Property that is the subject of such breach. Enforcement may be made by any proceedings at law or in equity against any Person violating or attempting to violate any part of this Declaration, as such may be amended, either to restrain or enjoin violations or to recover damages. Damages shall not be deemed adequate compensation for any breach or violation of any provision of this Declaration, and Declarant, its affiliates and/or its immediate successors, the Association and each Owner (and any lessees, tenants or other occupants of any Owner's Lot) shall be entitled to relief by way of injunction, as well as any other remedy either at law or in equity. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing party. The rights, powers and remedies provided in this Declaration shall be cumulative and not restrictive of other remedies at law or in equity, and the exercise by a Person of any particular right, power or remedy shall not be deemed an election of remedies or to preclude such Person's resort to other rights, powers or remedies available to it.

SECTION 10.6. NO WAIVER OR OBLIGATION TO ENFORCE. No delay or failure on the part of Declarant, the Association or any other aggrieved party to invoke any available right, power or remedy in respect to a breach of this Declaration shall be held to be a waiver by that party (or estop that party from asserting) any right, power or remedy available to it upon the recurrence or continuance of said breach or the occurrence of a different breach. Declarant and the Association, or its officers or directors, shall not be under any obligation to take any action to enforce the terms of this Declaration.

SECTION 10.7. LIENS/VALIDITY AND SEVERABILITY. Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of the provisions of this Declaration or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of this Declaration conflicts with mandatory provisions of any ordinance or regulation promulgated by any appropriate governmental authority, then such governmental requirement shall control.

SECTION 10.8. OWNER/OCCUPANT RECORDS. Except for those Owners who purchase portions of the Property from Declarant, any person, on becoming an Owner of a Lot within the Property, shall furnish the Board a true and correct copy of the recorded instrument of the conveyance vesting such ownership in said Owner. Each Owner shall furnish to the Association the name of a contact person with such Owner and a street address for receiving notices from the Association. Each Owner shall notify the Association of the name and address of all lessees affecting the Owner's Lot. It shall be the responsibility of the Owner (and a non- Owner occupant of a Lot, if any) to keep such information current and to advise the Association of any changes.

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SECTION 10.9. NOTICES. Any notice required to be given to Declarant, the Association or any Owner under the provisions of this Declaration shall be deemed to have been properly delivered when actually delivered by hand-delivery or three (3) days after it is deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed, (a) for notice to an Owner to the address of the Owner as shown on the records of the Association at the time of such mailing, and (b) for notice to Declarant or the Association at 8913 Mid Cities Blvd., Ste. 300, North Richland Hills, Texas 76182, or at such other address specified by Declarant by a document recorded for such purpose in the Real Property Records of Tarrant County, Texas. Notices to be given to an Owner of a Lot also shall be given to any lessee of that Lot of whom Declarant and the Association has been given notice as provided in Section 10.8, such notices to be given in the manner specified in this Section 10.9.

SECTION 10.10. MORTGAGEES. The holder of a mortgage of any interest in a Lot shall be furnished with written notification from the Association of any default by the respective Owner or lessee of that Lot in the performance of obligations set forth in this Declaration, provided that the Association has theretofore been furnished, in writing, with the correct name and address of such mortgage holder and a request for such notification. A cure by said mortgage holder within the time herein provided for performance by the Owner or a lessee of such default shall be accepted by the Association. A mortgagee shall not be liable for Assessments made with respect to a portion of the Property during any period its only interest in the Lot is that of mortgagee.

SECTION 10.11. APPROVALS. No approval by Declarant, the Board or the DRB pursuant to the provisions hereof shall be effective unless in writing, except otherwise expressly provided herein.

SECTION 10.12. ORDINANCE 3663. The City of North Richland Hills granted the Declarant a variance to the distance requirements for the sale of alcohol for on-premises consumption on the Property and is required and may be conveyed by Declarant to sit-down restaurants with limitations at the full discretion of the Declarant.

Executed to be effective as of March 22, 2023.

(Signature & Acknowledgement to Follow)

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DECLARANT:

Convergence Capital, LLC,
A Texas limited liability company

By: John Fegan, Manager

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

This instrument was acknowledged before me on the 23 day of MARCH, 2023, by John Fegan in his capacity as Manager of Convergence Capital, LLC, a Texas limited liability company, on behalf of said entity.

Kari Bridges
Notary Public, State of Texas

KARI BRIDGES
Notary Public, State of Texas
Notary ID 3575893
My Commission Exp. 11-05-2025

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EXHIBIT "A"
Property Description

WHEREAS, Convergence Capital, LLC, is the owner of all that certain 4.141 acres of land, out of the 8.443 acre tract recorded in Document Number D222132829 in the Deed Records of Tarrant County, Texas (D.R.T.C.T.), in the T. K. Martin Survey, A–1055, City of North Richland Hills, Tarrant County, Texas and more particularly described by metes and bounds as follows: (All bearings shown hereon are based on the Texas Coordinate System of 1983, North Central Zone)

COMMENCING at a 1/2" iron rod found for the southwest corner of the said 8.443 acre tract, common to the southeast corner of Lot 4, Block C, Brynwyck, recorded in Document Number D208364504 in the Plat Records of Tarrant County, Texas (P.R.T.C.T.), in the north right–of–way line of Mid–Cities Boulevard (120' R.O.W), and being a point on a curve to the right, having a central angle of 05° 37' 28", a radius of 5789.56', and a chord bearing and distance of North 85° 48' 25" East – 568.10'; Then along said curve to the right, along the north right–of–way line of said Mid–Cities Boulevard, an arc distance of 568.32' to a 1/2" iron rod with a cap stamped 'SPRY 5647" set for the POINT OF BEGINNING and the southwest corner of the herein described tract;

THENCE North 00° 01' 03" West – 40.79' to a 1/2" iron rod with a cap stamped 'SPRY 5647" set for an angle corner of the herein described tract;

THENCE North 89° 59' 05" East – 22.54' to a 1/2" iron rod with a cap stamped 'SPRY 5647" set for an angle corner of the herein described tract;

THENCE North 00° 00' 55" West – 95.77' to a 1/2" iron rod with a cap stamped 'SPRY 5647" set for an angle corner of the herein described tract;

THENCE North 89° 58' 57" East – 27.00' to a 1/2" iron rod with a cap stamped 'SPRY 5647" set for an angle corner of the herein described tract;

THENCE North 00° 01' 03" West – 164.42' to a 1/2" iron rod with a cap stamped 'SPRY 5647" set for the northwest corner of the herein described tract, in the north line of said 8.443 acre tract, common to the south line of the 5.254 acre tract described in the deed to Ardella Lawon Bonham, recorded in Volume 7016, page 748, D.R.T.C.T., and from which a 1/2" iron rod found for the southwest corner of said 5.254 acre tract bears South 89° 09' 15" West – 231.33';

THENCE North 89° 09' 15" East – 580.23' to a 1/2" iron rod with cap stamped "HORIZON" found for the northeast corner of the herein described tract, common to the southeast corner of Lot 7, Block 1, Parkman Addition, recorded in Volume 388–9, Page 647 P.R.T.C.T. and in the west line of Lot 1R–1, Block 1, Home Depot Addition, recorded in Document Number D202210376 P.R.T.C.T.;

THENCE South 00° 29' 41" East – 304.95' to a 1/2" iron rod with cap stamped "WAI", found for the southwest corner of said Lot 1R–1, Block 1, Home Depot Addition, common to the southeast corner of the herein described tract and in the north right–of–way line of said Mid–Cities Boulevard;

THENCE South 89° 40' 08" West – 530.51' along the north right–of–way line of said Mid–Cities Boulevard to a TXDOT monument found for the beginning of a curve to the left, having a central angle of 01° 00' 25", a radius of 5789.58' and a chord bearing and distance of South 89° 07' 22" West – 101.76';

THENCE along said curve to the left, continuing along the north right–of–way line of said Mid–Cities Boulevard, an arc distance of 101.76', to the POINT OF BEGINNING and containing 4.141 acres of land.

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EXHIBIT "B"
Final Plat

(Following)

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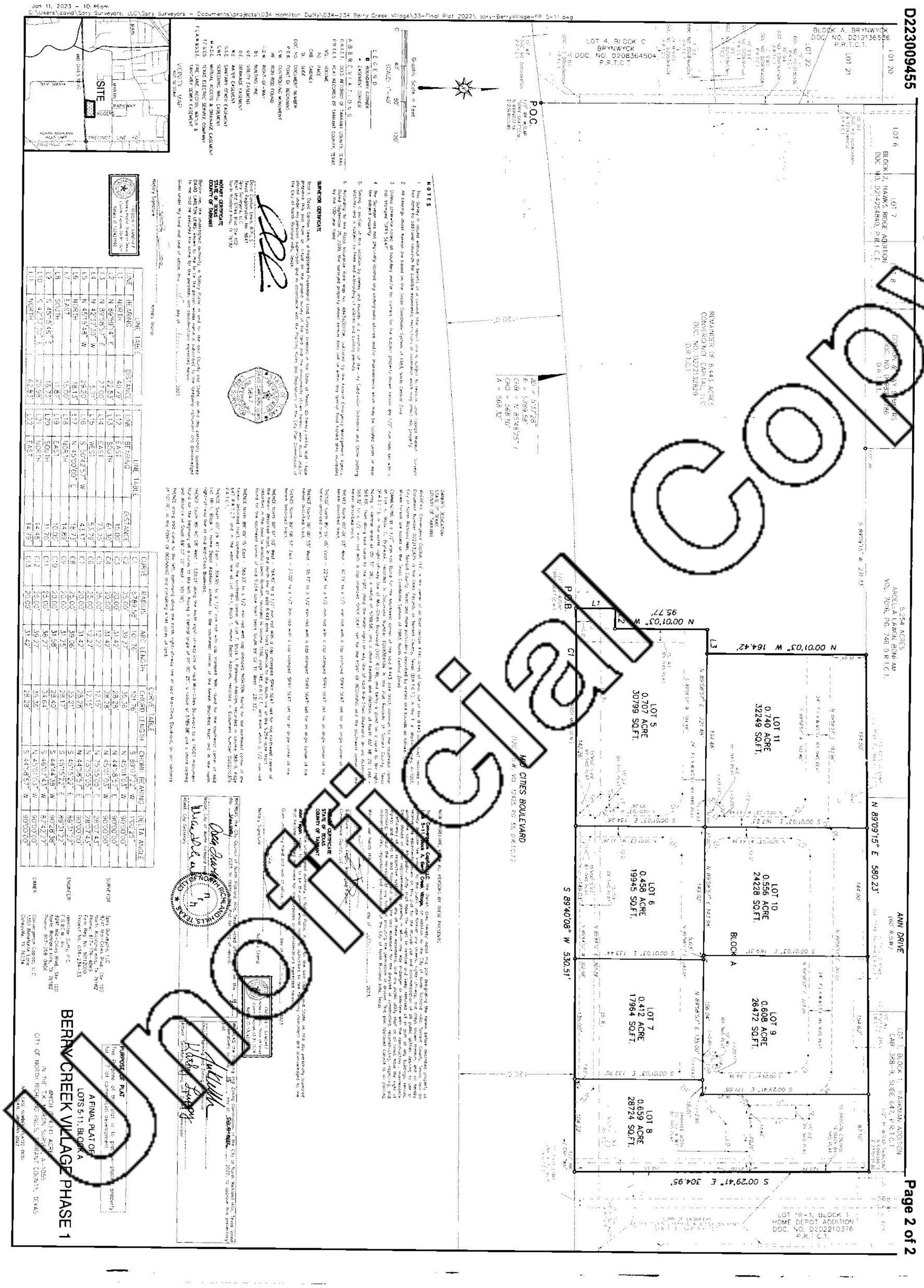
D223009455


BERRY CREEK VILLAGE PHASE 1
A FINAL PLAT OF
LOTS 5-11, BLOCK A
PURPOSE OF PLAT
SITE
P.O.B.
P.O.C.
N 89°09'15" E 580.23'
S 89°40'08" W 530.51'
N 00°10'03" W 164.42'
N 00°10'03" W 95.77'
S 00°29'41" E 304.95'
ANN DRIVE
(60' ROW)
LOT 11
0.740 ACRE
32249 SQ.FT.
LOT 10
0.556 ACRE
24228 SQ.FT.
LOT 9
0.608 ACRE
26472 SQ.FT.
LOT 8
0.659 ACRE
28724 SQ.FT.
LOT 7
0.412 ACRE
17964 SQ.FT.
LOT 6
0.458 ACRE
19945 SQ.FT.
LOT 5
0.707 ACRE
30799 SQ.FT.
BLOCK A
LOT 4, BLOCK C
BRYNWYCK
DOC. NO. D208364504
P.R.T.C.T.
BLOCK A, BRYNWYCK
DOC. NO. D212136586
P.R.T.C.T.
LOT 7
BLOCK 12, HAWKS RIDGE ADDITION
DOC. NO. D214254943, P.R.T.C.T.
LOT 8
SUMMER OF 5.643 ACRES
CONSERVATORSHIP CAPITAL, LLC
DOC. NO. D223123829
O.P.R.T.C.T.
LOT 1R-1, BLOCK 1
HOME DEPOT ADDITION
DOC. NO. D202210376
P.R.T.C.T.
NW CITIES BOULEVARD
(VAR. WIDTH PUBLIC ACCESS EASEMENT)
VOL. 12445, PG. 66, D.R.T.C.T.
5.364 ACRES
ANGELA LAWRENCE ADAMS
VOL. 7096, PG. 745, D.R.T.C.T.
LOT 20
LOT 21
LOT 22
LOT 6
LOT 7
LOT 8
LOT 1R-1
LOT 2R
LOT 3R
LOT 4R
LOT 5R
LOT 6R
LOT 7R
LOT 8R
LOT 9R
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LOT

EXHIBIT C
Site Plan

(Following)

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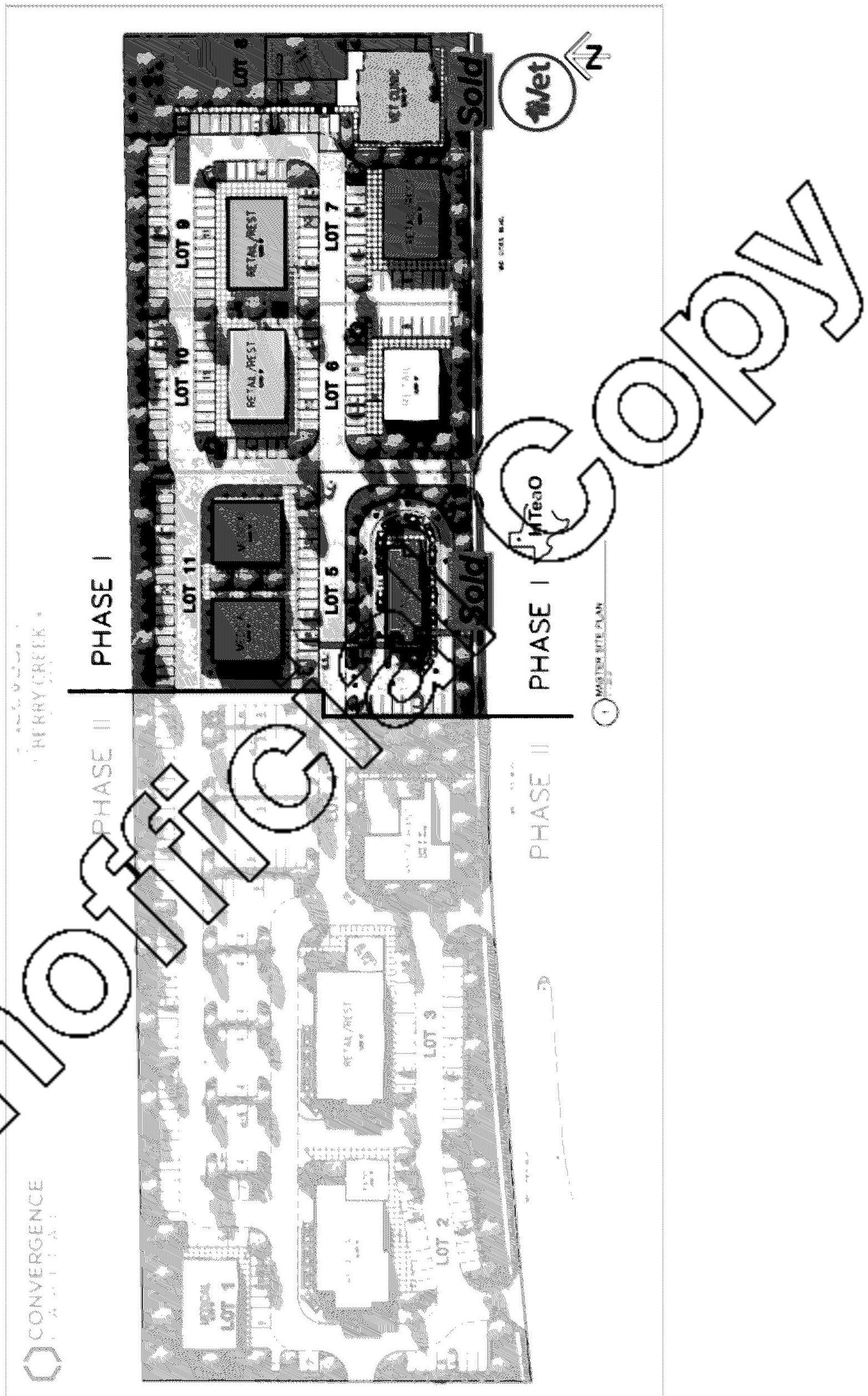

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EXHIBIT D
Development Guidelines

(Following)

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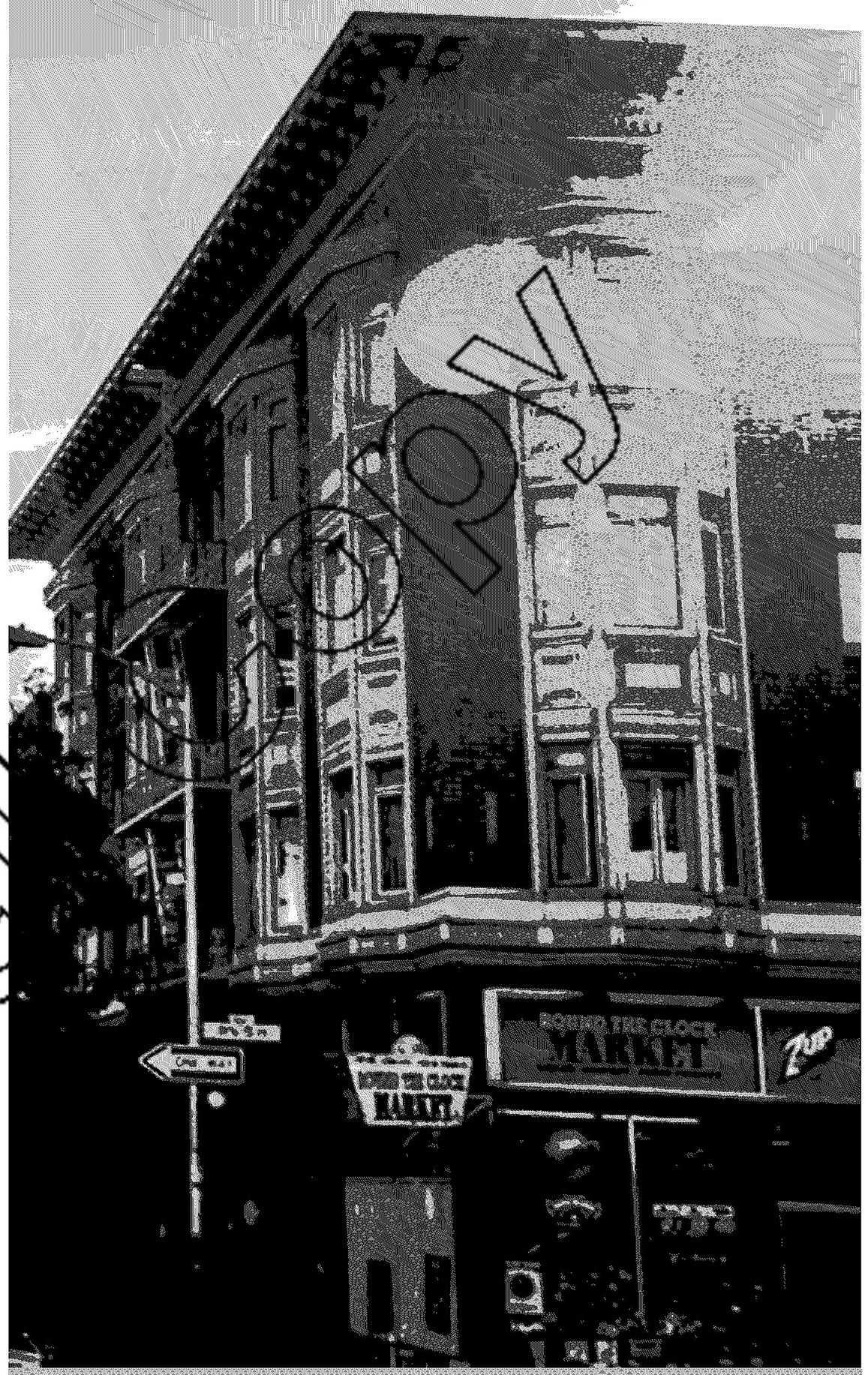
Berry Creek Village

Developmental Guidelines



CONVERGENCE CAPITAL

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PROPERTY OWNER'S ASSOCIATION

Mid Cities Boulevard

North Richard Hills, Texas

(edit 10.19.22)

Berry Creek Village Development

Summary

The purpose of the guidelines is to provide consistency and uniformity while allowing for creative design in an old town style reflecting modern appeal.

CONTENTS

I. Building
II. Documents Review
III. Closeout Procedures
IV. Construction Phase
V. Material Substitutions
VI. Environmental
VII. Regulatory Requirements
VIII. Renovations
IX. Site
X. Utilities
XI. Vegetation
XII. Illustrations
XIII. Appendix
    a. Substitution Request Form
    b. Masonry Color Options
    c. Bike Rack Cut Sheet
    d. Dark Skies Information Brochure

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I. Building

A. Canopies:

1. Canopy profiles allowed are flat with internal supports and upper rod and turnbuckle supports, or sloped metal roof, refer to page **A100** for profiles.

2. Fabric canopies are not allowed on buildings. Fabric canopies, umbrellas are allowed in patio areas.

B. **FAR** Floor Area Ratio: 1:4 Max

C. **Four (4) sided Architecture**: Required for the following lots: 5, 8, 9, 10, 13, 14, and 15.

D. **Lighting**: LED fixtures will be required. Provide lighting levels per building Code and City Ordinance. Dark skies implementation will be required. Note: Refer to BC Village Site Photometrics light levels. Each Lot shall meet the minimum/maximum light levels, Light locations to ensure minimum levels.

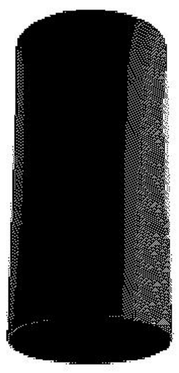
Dark Skies: All lighting where applicable shall be LED. Refer to International Dark Sky organization for basic guidelines.

a. Use Soft Bright White / Warm-white or filtered LED's (2500 – 3500 Kelvins) for exterior fixtures.

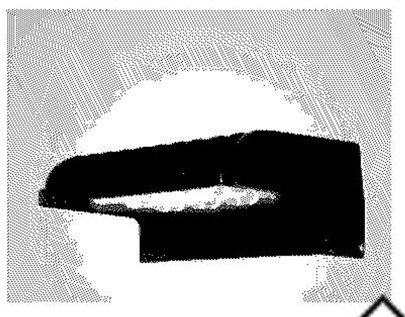
b. Where possible use products capable of accepting 7 pin controls: dimmers, timers, motions sensors and networking.
c. Design minimal lighting practice.
d. Fixtures to have shields.
e. Avoid up lighting, use shields where possible.

Contact for all lighting: Texas Lighting Solutions, Sheila Hunt Sheila@texaslighting.com, 817-267-9300.

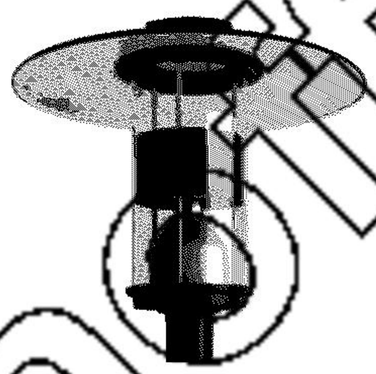
1. Building:
   a. Wall accent: Similar to "Progress Lighting" 866-344-3875, LED Two-Light Outdoor, Wall Mounted. # P5642-31. https://www.progress.lightingnewyork.com/. Other types are allowed with POA review and approval.



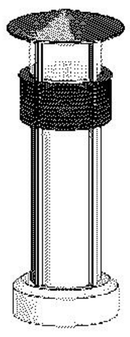
   Wall Pack at service areas: Similar to "Techlight" Medium Heat Sink LED wall pack, #LHMWP1CM2CIES.



2. Site:
   a. Parking: Similar to "DECO Lighting" D8514-LED



   b. Pedestrian: Similar to "DECO Lighting" D8514-LED
   c. Bicycle Parking: Refer to II Site, "J" Vehicular and Pedestrian Circulation, item 3 for Bike Rack. Provide lighting bollard similar to Crenshaw Pier Mount/Bollard Lantern # 3755-SEC, 540-745-3900, https://www.crenshawlighting.com/products/pier-mount-bollard-lantern-3755-sec/



E. **Theme:** Architectural Style should have a hint of the Old Town feel with modern influences, Refer to page **A100, A200, A300, A400, A500** for samples.

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F. **Trellis**: Wood trellis made from timber (i.e., cedar or red wood) are allowed at patios. Wood shall be treated to maintain the new look at all times, periodic replacement shall be required for woods that have turned in color or are showing signs of rot or wear.

G. **Tripartite Architecture:** All elements are subject to POA approval.

1. Horizontal articulation

Tier A: Consist of a wainscot and water table. 36" to 48" high. Refer to page A100, A200, A300, A400, A500 for theme elevations examples.

Tier B: Consist of the building mid-section which represents approx. 50% to 60% plus or minus of the building height. Refer to page A100, A200, A300, A400, A500 for theme elevations examples.

Tier C: Consist of the top portion of the building and will include the parapet, cornice, and coping. Refer to page A100, A200, A300, A400, A500 for theme elevations examples.

Crown/Pop-up Features: These are features that help the Architect balance the design or provide abstract pop-outs in the floor plan to provide needed area for internal space. Refer to Vertical articulation for more information. Refer to page A100, A200, A300, A400, A500 for theme elevations examples.

2. Vertical articulation
   a. Entry Features: Shall be proportional to the overall building mass and the entry must be apparent, may reflect special elements and materials that have been approved by POA.
   b. Other Features: Other features are those that rise above the building main/common parapet but might not necessarily contain a point of entry. These shall project back a min of 5'-0" over the roof.

3. Mass and Scale: Mass and scale are to be proportional and in keeping with the design intent of the themes. No overly embellished features will be allowed. Refer to page **A100, A200, A300, A400, A500** for theme elevations examples.

4. Parapets/Roof Top Screening: Shall Screen all Roof top equipment based upon a reasonable sight line view from street. Equipment shall be placed in a location that aids in its visual screening. Parapet walls do not have to necessarily be the same height or higher than the equipment, in order to provide proper screening.

5. Upper Banding: Can be multi-tiered of any shape, however the design needs to be proportional to mid-level band and should be at a height listed below.

   Minimum Height: 6"

   Maximum Height: 18"

   Refer to page A100, A200, A300, A400, A500 for profile examples.

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6. Mid-Level Banding: Can be multi-tiered of any shape, however the design needs to be proportional to upper band at parapet and should be at a height listed below.
   Minimum Height: 6”
   Maximum Height: 12”
   Refer to page A100, A200, A300, A400, A500 for profile examples.

7. Building Heights:
   Max structure (Top of parapet or articulated feature): 24’-0”

8. Building Security and Fire Access:
   Provide Knox box as required by Fire Department.
   Construction site and Finished Buildings shall be secure at all times.

H. **Mansards**: Mansards are not allowed.

I. **Material and Color Palette:**
   1. Brick Veneer: ACME King Size brick, Refer to appendix for masonry color selections. Contact: Denton Plant, 940-382-7414. dfwsales@brick.com
   2. Composite Siding / Simulated Wood: No natural wood on building façade is allowed, all wood products shall be simulated. Sample manufacture is: NewTechWood, recycled material fabricated in Texas or equal.
   3. EFIS: Similar Dryvit, Sto etc. for quality examples.
   4. Stucco: Similar Dryvit, Sto etc. for quality examples.
   5. Stone: Cast stone product or similar, Color to be White (Similar to Austin stone), Surface to be Flush, no split face.
   6. Cast Stone: Similar Ariscraft
   7. Prefinished Metal Coping and Flashing: Dark Bronze or as approved.
   8. Glazing: Shall be Clear in nature

J. **Storefront Systems:** Based off Kawneer Trifab VersaGlaze 451/451T Framing System, 4.5” deep center set with a 2” site line. High Thermal Performance, Storefront and Punched window (no Ribbon windows allowed) or Equal. All Frame colors to be Black unless noted or approved otherwise by POA.

J. **Movable Panel doors**: movable glass/alum or all glass panels are allowed at patio areas.

K. **Signage on Building:** All signage must follow North Richland Hills sign ordinances Chapter 106 Signs minimally. Sign package to be submitted to POA for review and approval. Per city Sign permit is required.

L. **Roof**:
   1. Access: Indoor access preferred, exterior is allowed provided the ladders are painted to match building field color and meet all OSHA guidelines.

   2. Roof Drainage System: Internal roof drains are preferred, however Primary Scupper with down spouts and Secondary overflow scuppers are allowed provided they are painted to match the

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building trim or field color. Down spouts are not allowed to deflect once they exist the building, all DS must run straight down to the ground. All drainage is to tie into underground storm. Gutters are not allowed.

3. Roof System:

TPO: Allowed at non restaurant occupancies.
PVA: Preferred on buildings with restaurant occupancy.

Preferred manufacturer:

Versico by Carlisle
20 Year NDL Warranty

Preferred Roofing Contractor:

C&C Ultimate Roofing and Waterproofing
Kyle Lawrence
kyle@mazerc.com
214-592-3837

M. **Vending:** Outdoor Equipment is allowed with POA approval. Vending equipment shall be screened with building feature to match or complement building and or be placed out of sight of Mid Cities Boulevard.

N. **Wall Murals:** All Wall murals and Artwork shall be approved by POA.

II. Documents Review

Owner/Tenant shall submit electronic pdf documents at the following phases for POA review and approval:

A. Design Review Phase
B. Permit Phase

III. Close out Procedures:

Owner/Tenant provide the following documents to the POA at the end of the construction phase.

A. As-Builts: Contractor shall keep good accurate records of as-built condition to hand over to POA in Hardcopy and Electronic copy.
B. Final Punch List: POA shall be given a copy off the Final punch list and be allowed to inspect completion of Final Punch List items.
C. O&M Manuals: G.C. shall provide the POA a copy of the O&M manual in electronic format.

IV. Construction Phase:

Owner/Tenant General Contractor shall meet the following industry standard construction requirements during the construction phase.

A. Contractor Certification.

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B. SWPPP shall be as required by code and ordinance.
C. Temporary Fencing: shall be required and be secure and in good standing condition at all times.
D. Staging: location shall be defined and approved by POA and shall be kept clean and free of debris.
E. Trailers: location shall be defined and approved by
F. Temporary Power: shall be secured by general contractor.
G. Posting of plans and permits: Hard copy shall be on site at all times.
H. Site Control and Security: General Contractor shall be responsible for control and security of site at all times and shall notify POA of the emergency contact for the G.C.
I. Existing protection of surrounding facilities during construction: General Contractor shall take care of all construction to ensure that the construction activities do not interfere with adjacent structures or occupants and occupants' daily business operations. In the event, that a disruption occurs the G.C. shall timely notify the adjacent tenants and the POA of such disruptions.

V. Material Substitutions:

All substitutions shall be approved by POA. Refer to attached Substitution Form.

VI. Environmental

A. HVAC: No ground mounted equipment is allowed unless properly screened and approved by POA.
B. Alternative Energy Sources
    1. Solar: No solar panels are allowed unless they can be properly screened from view.
    2. Wind: No windmills are allowed.
    3. Charging Stations: Require Pre-approval of the POA.

VII. Regulatory Requirements

B. City of North Richland Hills Texas
    1. "SUP" Special Use Purpose
    2. Fire Department
C. County: Tarrant
D. International Building Code (Latest version as adopted by City)
E. International Energy Code (Latest version as adopted by City)
F. International Mechanical Code (Latest version as adopted by City)
G. International Electrical Code (Latest version as adopted by City)
H. International Pluming Code (Latest version as adopted by City)
I. OSHA
J. TAS 2012 ed/ADA
K. POA Guidelines refer to this document.
L. Lighting: Refer to 1 Building, D1 for lighting guidelines.

VIII. Renovations:

Alterations to existing structures shall be approved by POA. Refer to Tenant- Finish outs.

IX. SITE

A. Amenities

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1. Storage – Shall be screened to match or complement building Field and trim materials.
2. Walk-in-coolers and Freezers Shall be screened to match or complement building field and trim materials.
3. Fencing: Aluminum metal fence painted black. Example: https://ntfencedeck.com/home/metal-fences/
4. Flatwork: Broom finished concrete, scored, Tile, Stamped, Pavers (Clay and concrete)
5. Fountains: design by approval of POA
6. Outdoor Furniture: outdoor suitable and durable
7. Patios: Design by approval of POA
8. Shade Structures: Parasols/umbrella (must be properly weighted down and durable), wood trellis, fabric structures are allowed final design by approval of POA. Any fabric canopies are to be maintained for vibrant colors at all times.
9. Bollards: Locations and design to be approved by POA, safety bollards to be of decorative concrete or metal wrapped steel, no painted concrete filled still round bollards are allowed. Light bollards refer to I Building, "D" Amenities item 2c.
10. Landscape may be used as Screening, see also city ordinance.

B. Building placement: The building shall be general by placed in the middle of the lot to allow for vehicular and pedestrian traffic all around. Final placement to be approved by POA.

C. Drive Thru's
   1. Drive Thru Lanes: must be 12'-0" wide
   2. Bi-pass Lane: must be 12'-0" wide
   3. Vehicular Detection: Must be placed in concrete prior to pour.
   4. Stripping: 4" wide white traffic coating paint.
   5. Menu Boards: refer to Sign Wayfinding and Building Sign Sections

D. Loading and Staging: Shall be placed at apparent rear of building, final location to be approved by POA, and properly stripped.

E. Traffic Controls: Includes headache bars, permanent or temporary traffic cones, all are to be submitted to POA for approval.

F. Parking
   1. Wheel Stops: Concrete or Rubber are allowed at Handicap and at parking spaces directly in front of buildings. All other parking spaces are not permitted to have wheel stops.
   2. Stripping: 4" wide white traffic rated paint.
   3. Accessible Parking: Provide as required by TAS/ADA use most restrictive code.

G. Setbacks: Follow all Survey set back note in POA master site plan. Refer to Civil Engineer for coordination.

H. Screening: Masonry screen walls are preferred. CMU with Stucco finish is allowed. Unit Brick veneer is allowed, verify unit size with POA. Landscape screen walls are allowed; however, plant species shall be approved POA. Plants must maintain screening ability during all seasons.

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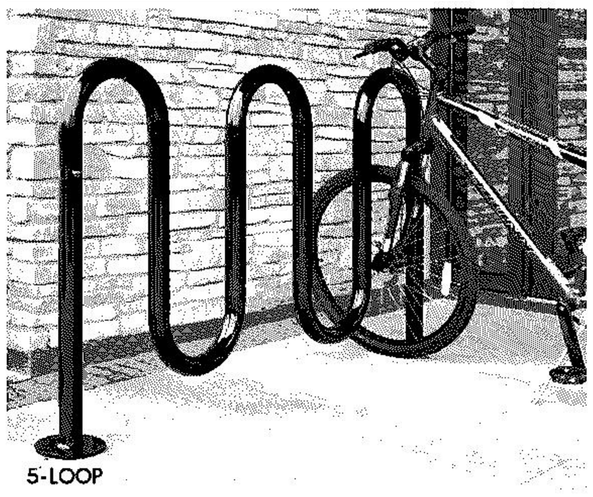
I. Vehicular and Pedestrian Circulation
   1. Vehicles: access paths shall meet Fire and industry standard withs and turning radius, POA shall approve site.
   2. Pedestrian: access paths shall be min 5’ wide sidewalks, unless otherwise specified by city ordinance, all lots shall connect with handicap access at all locations.
   3. Bicycle Racks: Uline Wave Bike Racks 5 loop, # H-2544, Color Black, 800-295-5510, https://www.uline.com/



J. Wayfinding and Tenant Signage
   1. Accessibility signs as required by TAS/ADA
   2. Building Identification (Address): 1” flat steel plate letter, pin mounted 1” from wall surface at a height of between 12’-0” to 14’-0” a.f.f. – painted black. Font: Arial Bold.
   3. Monument Signs: All signs placed on the BCV Monument signs shall be approved by POA.
   4. Pole Signs – Not allowed
   5. Post and Panel Signs (example Drive Thru directional signs) signs shall be approved by POA.
   6. Tenant Signage: signs shall be approved by POA and be placed on the building area allowed for signage.

K. Trash enclosure, Dumpsters, recycle: Trash enclosures shall match the building that they are assigned too. In-line retail building will have assigned spaces in the LL provided trash enclosures. Refer to page **A100** for theme elevations examples.

N. Storm runoff from building shall be directed via scuppers and decorative down spouts and shall daylight at back side of buildings. Primary and Secondary overflow scuppers shall be painted to match roof coping. Gutters are not allowed. Internal roof drains are allowed but not mandatory.

X. UTILITIES

All utilities must be located underground.

A. Mechanical: Tenant will coordinate location, equipment cut sheets, weight, utility requirements of all roof top equipment with POA.

B. Electrical: Tenant will coordinate with POA for power requirements and site capacities.

C. Plumbing:
   1. Water Line: Tenant shall coordinate power requirements and site capacities with POA.

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2. Gas: Tenant shall coordinate power requirements and site capacities with POA.

3. Sewer: Tenant shall coordinate power requirements and site capacities with POA.

4. Grease Traps: MEP to size to each tenant. Each tenant shall provide their own GT, Location shall be coordinated and approved by Landlord and or POA. In-line retail building shall have a designated area where grease traps may be located refer to site exhibit **A600**
   1. Above Ground – not allowed
   2. Below Ground – Locations are to be verified with and approved by Landlord. Concrete and or Hydro Mechanical Grese Interceptors are allowed.

XI. VEGETATION

Landscaping Regulations

A. Providing standards and criteria to promote value of property, enhance welfare, and improve appearance of the city.

B. Establish requirements for the installation and maintenance of landscaping and buffering elements and other means of site improvement on existing and newly developed properties within the community.

Application

A. When an existing building is proposed for remodeling, alteration, addition, or expansion, in which the value of the proposed construction exceeds **75 percent** of the current appraised value of the existing structures, excluding the value of the land.

B. When an existing building is proposed for an addition that will increase the square footage of the existing building by **30 percent or greater.**

C. Upon all **new construction**; or

D. As a requirement of the approval of a **special use permit or planned unit development**.

General Criteria

A. Landscaping shall be installed prior to the issuance of a **certificate of occupancy**. A certificate of occupancy will be issued only when it is determined that all landscaping is installed in accordance with the approved landscape plan. If it is determined that planting is hindered by adverse weather conditions, an extension of time may be granted up to six months.

B. All Landscape plans shall be prepared by a licensed landscape architect, certified nurseryman or master gardener and shall be submitted when a building permit on any site where these landscape regulations are applicable. The landscape plans shall be reviewed to determine compliance with these landscape regulations by the P.O.A.

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C. All Landscape Plans shall include as a minimum.

1. The date, scale, north arrow, title, and name of owner.
2. The Name, address, and phone number of person/firm preparing the Plans
3. A minimum scale of not less than one-inch equals 20 feet.
4. Existing and proposed building, existing and proposed utilities, paving areas, signage, walks and any other pertinent information.
5. Location and height of all trees being preserved
6. List of all plantings; including species name, size, height, and spacing of materials, which also includes but not limited to site furnishings, and other landscape features.
7. Definition of designated landscape area
8. Note all irrigation systems include a rain or freeze sensor control for all landscape areas

Definition

A. The following words, terms, and phrases, when used in this section, shall have the meanings described to them

1. Ground cover means, at a minimum, a four-inch pot.
2. Large island has a minimum dimension of six feet by 12 feet with a minimum of **one tree**.
3. Small spot has a minimum dimension of six feet by six feet square, or six feet circular. Small islands can only equate 60 percent of the total number of islands combined. A minimum of **one tree** is required.
4. Large shrub is a minimum of three feet high.
5. Small shrub is a minimum of two feet high.
6. Large tree means a minimum three-inch caliper.
7. Ornamental tree means a minimum of four feet high

Landscape Area Percentage

A. An area not less than **15 percent** of the total lot area shall be landscaped. No area shall be maintained with bare soil. All ground surfaces not used for buildings, sidewalks, roadways, or other impermeable surfaces shall be covered with live grass, turf, shrubbery, trees, ground cover, flowering plants, or appropriate mulching and only those areas with live plant materials shall be included in the calculation for determining compliance with the percentage of lot coverage.

Landscape Setback

A. There shall be a landscape setback area having a minimum width of **15 feet** adjacent to all public street rights-of-way. The landscape setback shall contain a minimum:

1. **one large tree** shall be planted per **50 feet of street frontage**. Existing trees situated within the landscaped edge may be included in this calculation. **Two ornamental trees may be substituted for a large tree.** Said tree(s) shall be planted at even repetitious spacing of 50 feet on center and shall include any one or combination of the following tree species: **Bur Oak, Live Oak, Texas Red Oak, Cedar Elm,** or any similar type of tree as approved by the city's development review committee. Live Oaks or other evergreen type trees shall be limited to a maximum of 50 percent of trees within the landscape setback

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2. Required shrubs. **Ten** small shrubs shall be planted per **50 linear feet** of street frontage. Shrubs planted for parking lot screening may be used to satisfy this requirement.

Parking Lot Screening

A. Parking lots shall be screened from view of public rights-of-way and open space as follows:

1. shall be a maximum height of **30 inches above grade** of the parking lot along the entire length unless screened by a building or adjacent fence.

2. Screen can be provided by **landscape, walls, or hardscape elements**

3. Screening shrubs shall be spaced a minimum of **three feet on center**, shall be planted a minimum of **two feet off the back of curbs**. Areas under the car bumpers shall be covered with ground cover or special paving treatments such as brick or concrete pavers. Screening shrubs may be counted toward required landscape setback shrubs.

4. Wall structures shall be masonry. There shall be a continuous concrete mow edge with a minimum of **12 inches** on the side of a wall facing the street right-of-way.

5. Screening shall not extend into any **visibility triangle**.

Landscape of Parking Lots

A. Parking lots shall be landscaped in accordance with the following regulations:

1. All landscaping shall be located within a landscape island. The island shall have a curb or barrier of not less than **six inches** in height around the perimeter.

2. **One large tree** shall be planted for every **20 parking spaces**. No parking space shall be located more than **100 feet from a large tree** within a landscaped island. All landscape islands shall be landscaped with at least **ground cover and one large tree**. Trees required by this section shall be located within an island in the interior of the parking lot.

3. Each drive approach for a property shall be constructed with parking entrance islands on each side of the driveway. The parking entrance islands shall be constructed perpendicular to the property line. The parking entrance island shall commence at the termination of the required landscaped setback and extend into the property. The parking entrance island shall be **18 feet in length and six feet wide**. The long dimension shall be perpendicular to the landscape setback. The landscape entrance island shall be planted with small shrubs placed at three-foot centers.

4. All shrubbery, flowering plants, and trees planted shall be **set back 2½ feet** from any curb and/or curb stops placed where vehicles may face.

5. All parking lots must be at least **five percent landscaped**. This percentage counts toward the overall landscape requirement for the lot.

Landscaping of Drive Thru's

Official COV Use

A. Drive thru's shall be screen with a row of evergreen shrubs a maximum height of **30 inches above grade** located closest to the adjacent access, additional shrub/ hardscape planting is encouraged. It is encouraged to have lower planting/ rock layers closer to the islands adjacent to the drive thru lane in order to maintain visibility of signage.

Required Hardscape

A. One of the following hardscape elements shall be incorporated into the required landscape setback:

1. Hardscape items may be made up of boulders. Dry Riverbeds formations, and/or fountains. With prior approval of the P.O.A.

2. Low wall. One or multiple 18- to 30-inch tall Leuders Limestone wall(s) or raised planter bed(s) with a minimum of 30 square feet of stone façade per 50 linear feet of street frontage. If applied adjacent to a parking lot, the parking lot screening requirements contained herein do not apply in the areas of the proposed wall.

3. Urban design monuments. Urban design monument features of Leuders Limestone in an ashlar pattern measured 36 inches tall by 30 inches wide with a solid cast stone cap of six inches in height applied to the top. Said monuments shall be evenly spaced 50 feet on-center and 25 feet on-center from required large trees.

Maintenance

A. All landscaping and related maintenance shall be the responsibility of the property owner. The following minimum standards shall be required:

1. All required landscape areas shall be permanently maintained and shall be irrigated. Irrigation adjacent to any parking and/or driving surfaces shall be installed so that a minimum amount of water is applied to parking and/or driving spaces.

2. Landscaped areas shall be kept free of trash, litter, weeds, and other such material or plants that are not a part of the landscaping.

3. All plant materials shall be maintained in a healthy and growing condition as appropriate for the season of the year. The property owner is responsible for regular weeding, mowing of grass, irrigation, fertilizing, pruning, and other maintenance of all plantings as needed.

4. Plant materials which die shall be replaced by the owner within a six-month period with plant material of similar variety and size.

Required Plant List

A. To increase conformity throughout the community planting shall only come from the approved list.

COMMON NAME	SCIENTIFIC NAME
LARGE TREES	

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DECIDUOUS	
* Chinese Pistache	*Pistachia chinensis*
* Panicled Goldenrain Tree	*Koelreuteria paniculata*
* Texas Red Oak (native)	*Quercus buckleyi*
* Bald Cypress	*Taxodium distichum var. distichum*
Bur Oak (native)	*Quercus macrocarpa*
* Cedar Elm	*Ulmus crassifolia*
EVERGREEN	
* Southern Live Oak	*Quercus virginiana*
Southern Magnolia	*Magnolia grandiflora*
ORNAMENTAL TREES	
DECIDUOUS	
* Crape Myrtle	*Lagerstroemia indica (cultivars)*
* Deciduous Holly (native)	*Llex decidua*
* Japanese Maple	*Acer palmatum (cultivars)*
EVERGREEN	
Little Gem Magnolia	*Magnolia grandiflora ('Little Gem')*
* Yaupon Holly	*Llex vomitoria*
LARGE SHRUBS	
EVERGREEN	
* Blue Point Juniper	*Juniperus chinensis var. chinensis*
Mary Nell Holly	*Llex cv. ('Mary Nell')*
* Ebbiges' Silberberry	*Elaeagnus x ebbingel*
* Nellie R. Stevens Holly	*Llex cv. ('Nellie R. Stevens')*
Yaupon Holly	*Llex vomitoria*
Thorny Elaeagnus	*Elaneagnus pungens*
Cleyera	*Temstromia gymnanthera*
Wax Leaf Ligustrum	*Ligustrum japonicum*
Wax Myrtle	*Myrica cerifera*
Fraser's Photinia	*Photinia x 'fraseri'*
SMALL SHRUBS	
DECIDUOUS	
* Crimson Pygmy Barberry	*Berberis thunbergii 'Crimson Pigmy'*
Dwarf Crape Myrtle	*Lagerstroemia indica (dwarf cultivars)*
* Semi-dwarf Crape Myrtle	*Lagerstroemia indica (semi-dwarf cultivars)*
Dwarf Burning Bush	*Euonymus alata 'Compacta'*
Flowering Quince	*Chaenomeles speciosa*
* Purple Leaf Japanese Barberry	*Berberis thunbergii 'Atropurpurea'*
Forsythia	*Forsythia x intermedia*
Pampas Grass	*Cortaderia selloana*
* Rose-of-Sharon	*Hibiscus syriacus (cultivars)*

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Vanhoutte Spiraea	*Spiraea x vanhouttei*
SEMI-EVERGREEN	
* Dwarf Glossy Abelia	*Abelia x grandiflora (dwarf cultivars)*
* Edward Goucher Abelia	*Abelia cy. 'Edward Goucher'*
* Glossy Abelia	*Abelia x grandiflora*
EVERGREEN	
Dwarf Indian Hawthorn	*Raphiolepis indica (dwarf cultivars)*
* Carissa Holly	*Ilex cornuta 'Carissa'*
Dwarf Chinese Holly	*Ilex cornuta 'Rotunda'*
Dwarf Nandina	*Nandina domestica (dwarf cultivars)*
* Dwarf Yaupon Holly	*Ilex vomitoria 'Nana'*
* Dwarf Burford Holly	*Ilex cornuta ('Burfordii Nana')*
* Japanese Aucuba	*Aucuba japonica (cultivars)*
* Texas Sage	*Leucophyllum frutescens (cultivars)*
* Cleyera	*Temstroemia gymnanthera*
* Nandina	*Nandina domestica*
Red Yucca	*Hesperaloe parviflora*
GROUND COVERS	
EVERGREEN	
Creeping Juniper	*Juniperus horizontalis (cultivars)*
* Asiatic Jasmine	*Trachelospermum asiaticum*
* Liriope or Lilly Turf	*Liriope muscari (cultivars)*
Ajuga or Carpet Bugle	*Ajuga reotans*
* English Ivy	*Hedera helix*
* Mondo Grass or Monkey Grass	*Ophiopogon japonicas*
VINES	
EVERGREEN	
* Trumpet or Coral Honeysuckle (native)	*Lonicera sempervirens*
GRASSES	
Common Bermuda Grass	*Cynodon dactylon*

An asterisk (*) denotes those plant materials which are particularly outstanding for this area.

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XII. Illustrations

A 100

A 200

A 300

A 400

A 500

A 600

XIII. Appendix

a. Substitution Request Form
b. Masonry Color Options
c. Bike Rack Cut Sheet
d. Dark Skies Information Brochure

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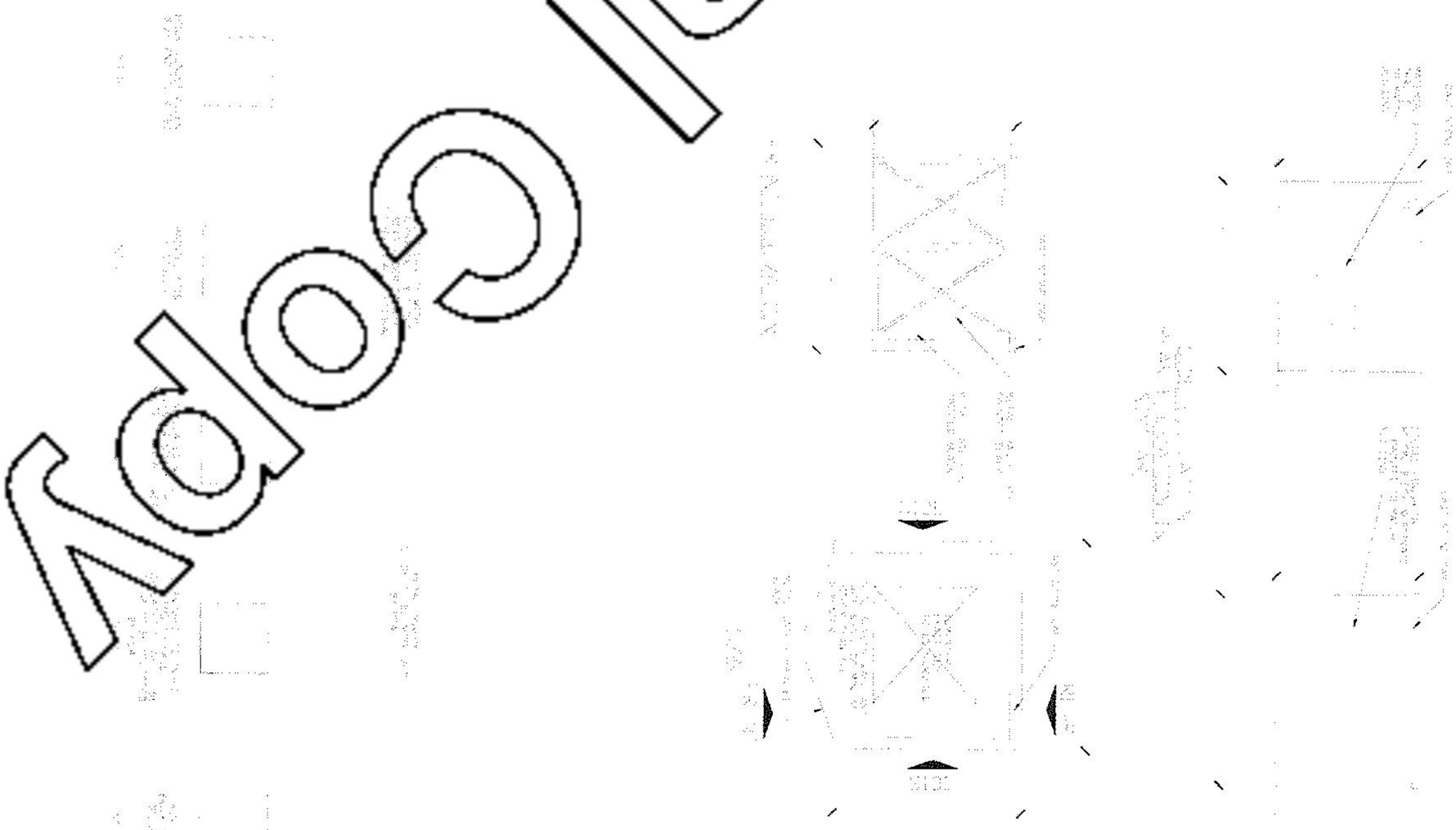
Additional Colors Unknown



A100
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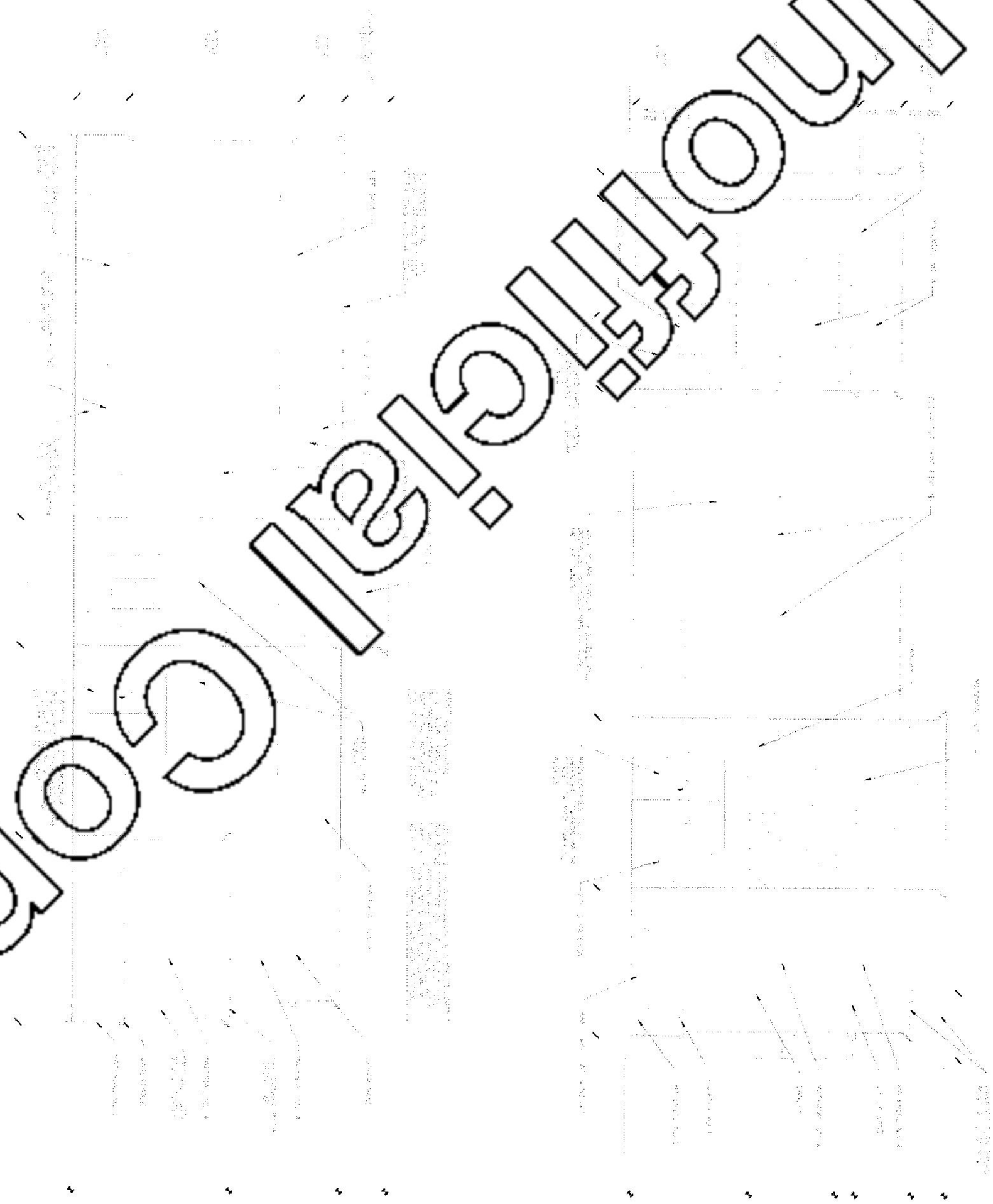
ELEVATIONS

Berry Creek Village
POA - EXTERIOR ELEVATION
THEME GUIDELINES

Approved



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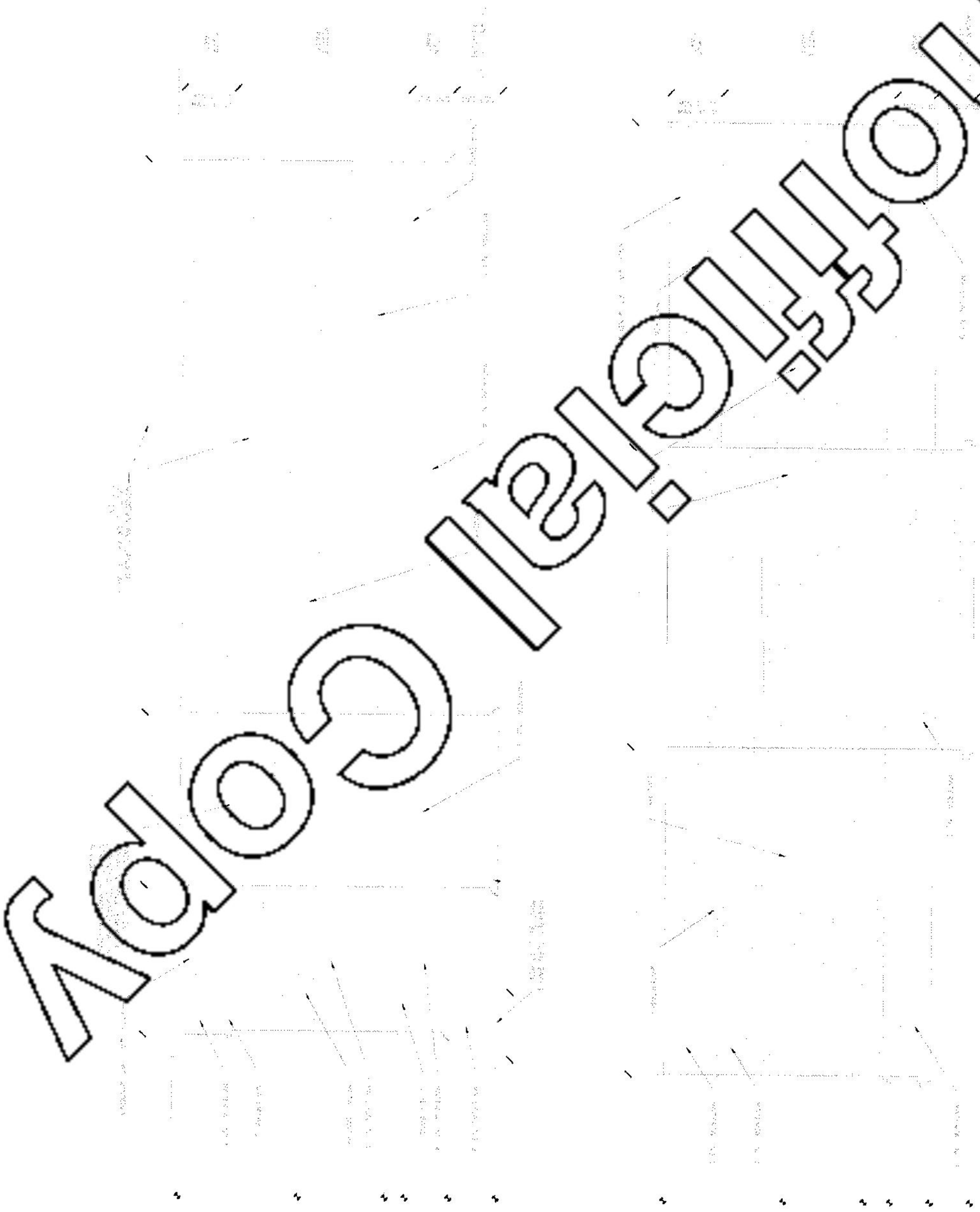
POA - EXTERIOR ELEVATION
THEME GUIDELINES



A300
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THEME GUIDELINES

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A400
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THEME GUIDELINES

Aaron Homes Colorado

A500
POA
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ELEVATIONS

Berry Creek Village

POA - EXTERIOR ELEVATION THEME GUIDELINES

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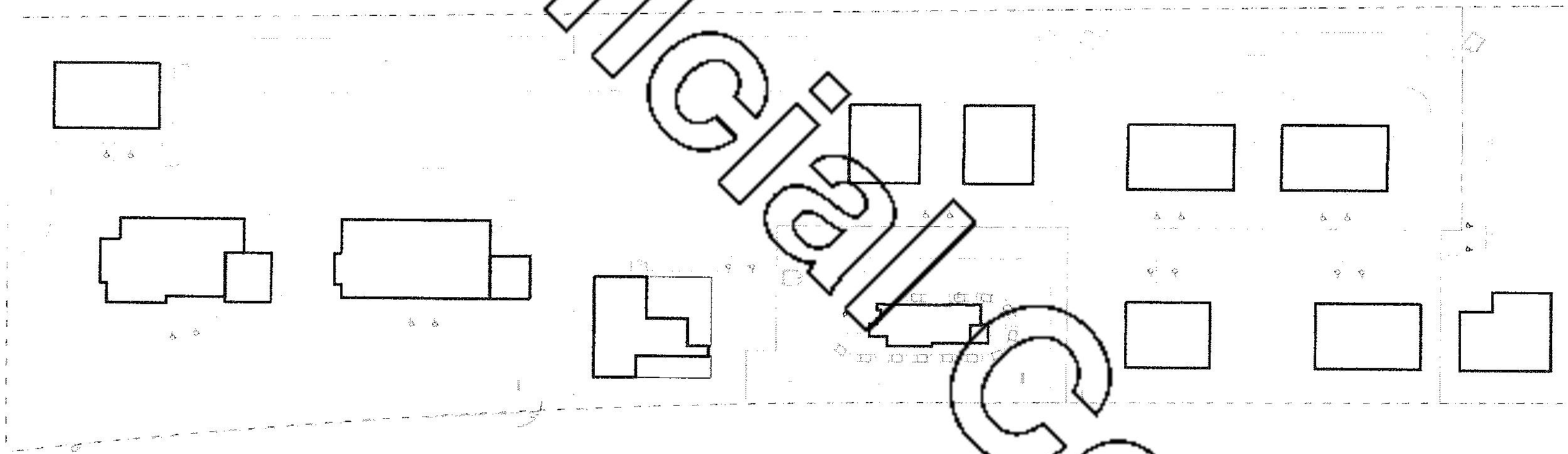

1 PREFERED GREASE TRAP ZONES

N

Berry Creek Village
POA - EXTERIOR ELEVATION
THEME GUIDELINES

A6.00
SITE PLAN
GT ZONES
AT RETAIL

XIII. Appendix

a. Substitution Request Form
b. Masonry Color Options
c. Bike Rack Cut Sheet
d. Dark Skies Information Brochure

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Substitution Request Form

Date:

Project No.:

Project Name:

Project Address:

Requested by:

Company:

Name:

Phone:

Email:

Reviewed by:

Response:

☐ Reviewed ☐ Furnish as Noted ☐ Rejected

Item or Material to be Substituted:

Proposed Substitution:

Manufacturer:

Attachments:

Include product data, shop drawings, calculations, samples, color swatches etc. as necessary for evaluation. Missing information will delay review.

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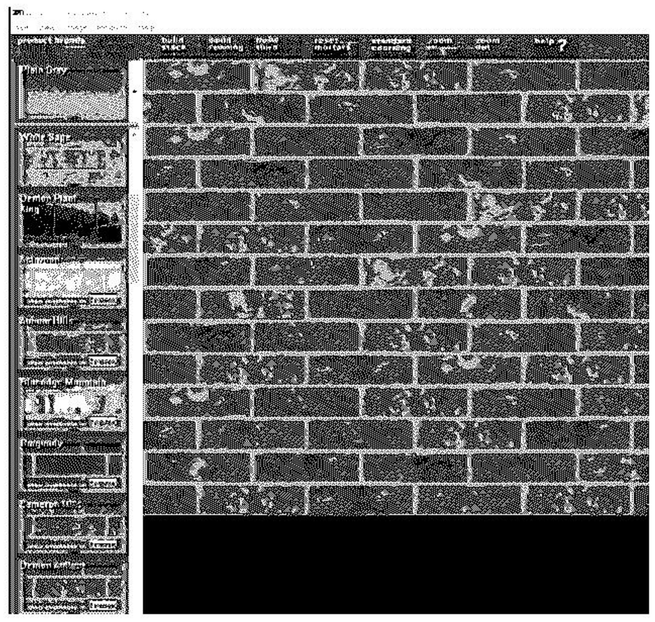
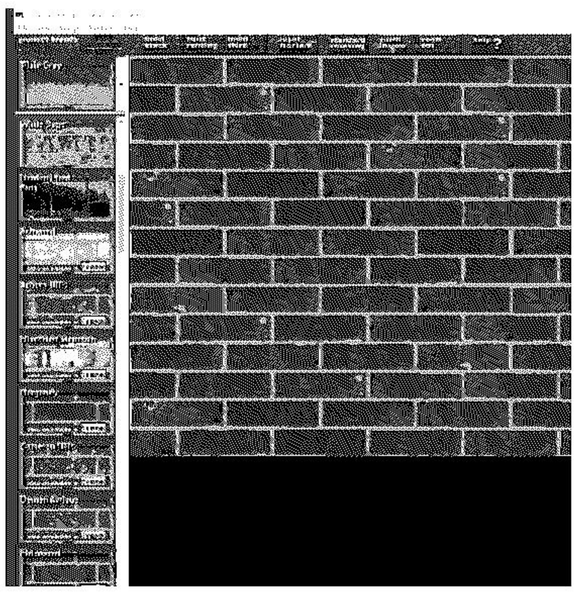
Masonry Color Options

ACME Denton – Antique

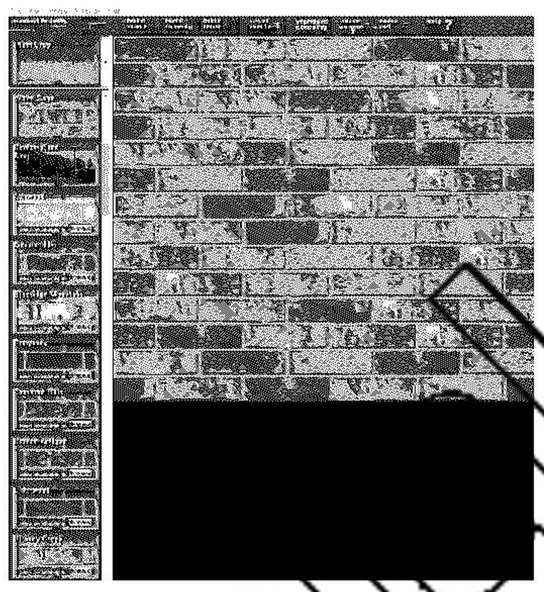


ACME Denton - Auburn Hills

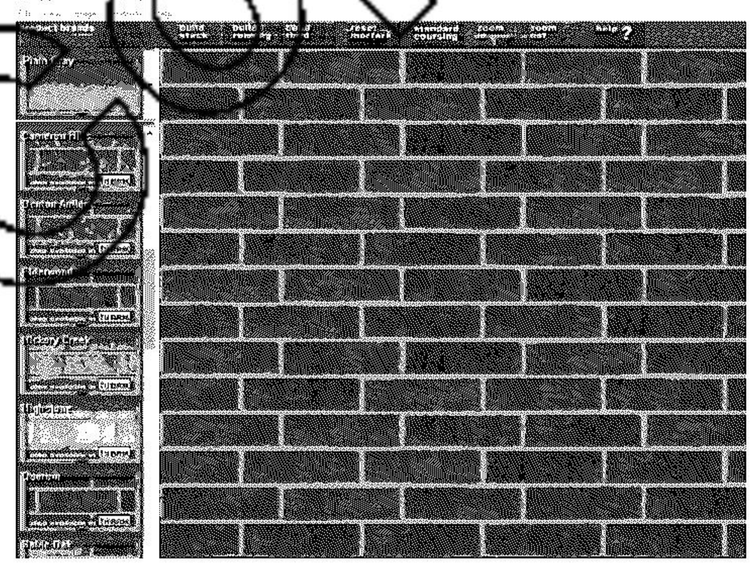
ACME Denton – Burgundy



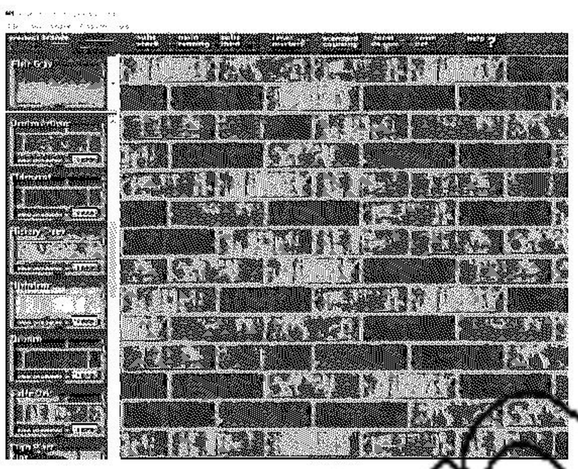
ACME Denton – Elderwood



ACME Denton - Hickory Creek

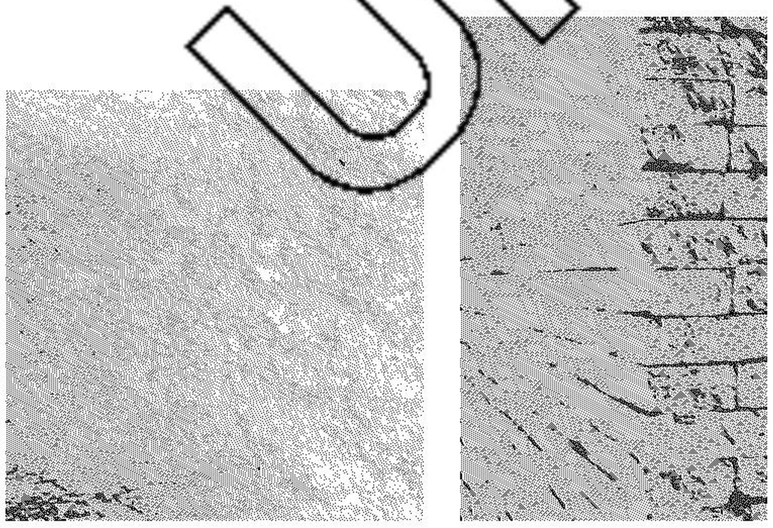


ACME Denton – Quorum



ACME Denton -Sable Oak

ACME OKC -Rivers Edge



White Austin Stone

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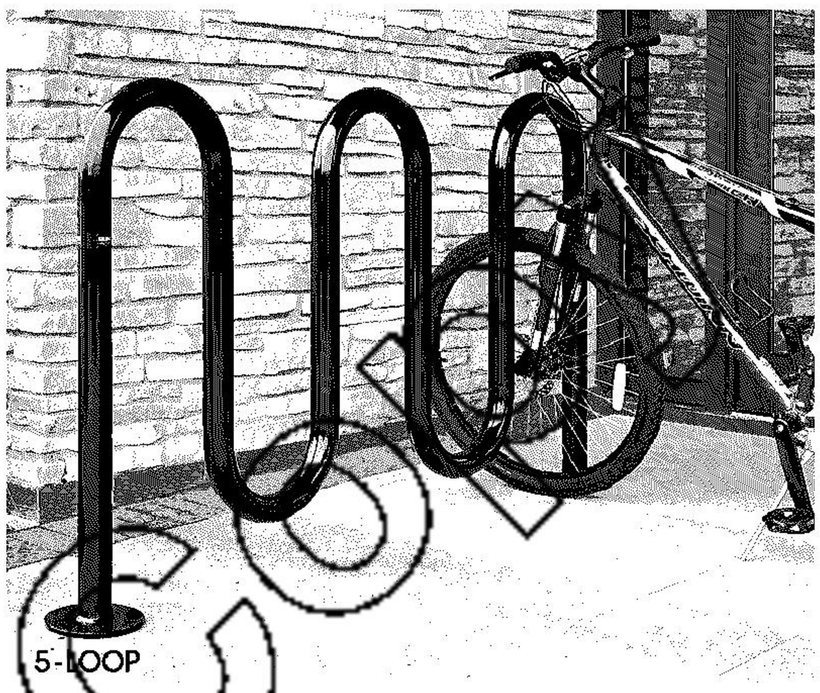
WAVE BIKE RACKS

1-LOOP

3-LOOP



5-LOOP

Upscale stylish look. Easy to secure your bike.

- 10-gauge galvanized steel or attractive powder coating.
- 2 3/8" diameter bar.
- For stadiums, parks and athletic fields.
- Mounting hardware included.

WAVE BIKE RACKS

Galvanized Black Green

MODEL NO.	DESCRIPTION	SIZE L x W x H	BIKE CAP.	WT. (LBS.)	PRICE EACH 1	PRICE EACH 3+	ADD TO CART
H-2892*	1-Loop	22 x 2 1/2 x 34"	3	27	230	220	Specify Color
■ H-2543	3-Loop	43 x 2 1/2 x 39"	5	56	395	375	Specify Color
■ H-2544	5-Loop	68 x 2 1/2 x 39"	7	80	515	495	Specify Color

* Galvanized and Black only

■ SHIPS VIA MOTOR FREIGHT

REPLACEMENT BIKE RACK MOUNTING HARDWARE

MODEL NO.	DESCRIPTION	FITS	PRICE EACH	ADD TO CART
H-2545	Replacement Mounting Hardware	H-2892, H-2543 or H-2544	$21	1 ADD

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THE PROMISE AND CHALLENGE OF LED LIGHTING
A PRACTICAL GUIDE

A PUBLICATION OF THE INTERNATIONAL DARK-SKY ASSOCIATION

Official Copy

The light-emitting diode (LED) is transforming the way we light our cities and towns, **offering a once-in-a-lifetime chance to radically improve how we use energy and our outdoor spaces at night**. With this opportunity comes an obligation to manage these changes responsibly and sustainably. The stakes are high and the potential rewards great, but outcomes depend critically on policymakers and the public having access to reliable information. IDA developed this document to provide planners, lighting designers and public officials an overview of the most important aspects of LED lighting and the choices and challenges involved in its municipal implementation.

What is LED?

LEDs use solid-state technology to convert electricity into light. Put simply, LEDs are very small light bulbs that fit into an electrical circuit. Unlike traditional incandescent bulbs, they don't have a filament that burns out and they don't get very warm. Initially, LEDs only emitted red, yellow, or green light, but now white LEDs are widely available. Early LEDs were also energy-inefficient and emitted relatively little light, but due to technological advances LED efficiency and light output have doubled about every three years. Because of their improved quality and falling prices, LEDs are now replacing conventional high-intensity discharge (HID) lamp types for outdoor lighting in communities around the world.

Why Adopt This Technology?

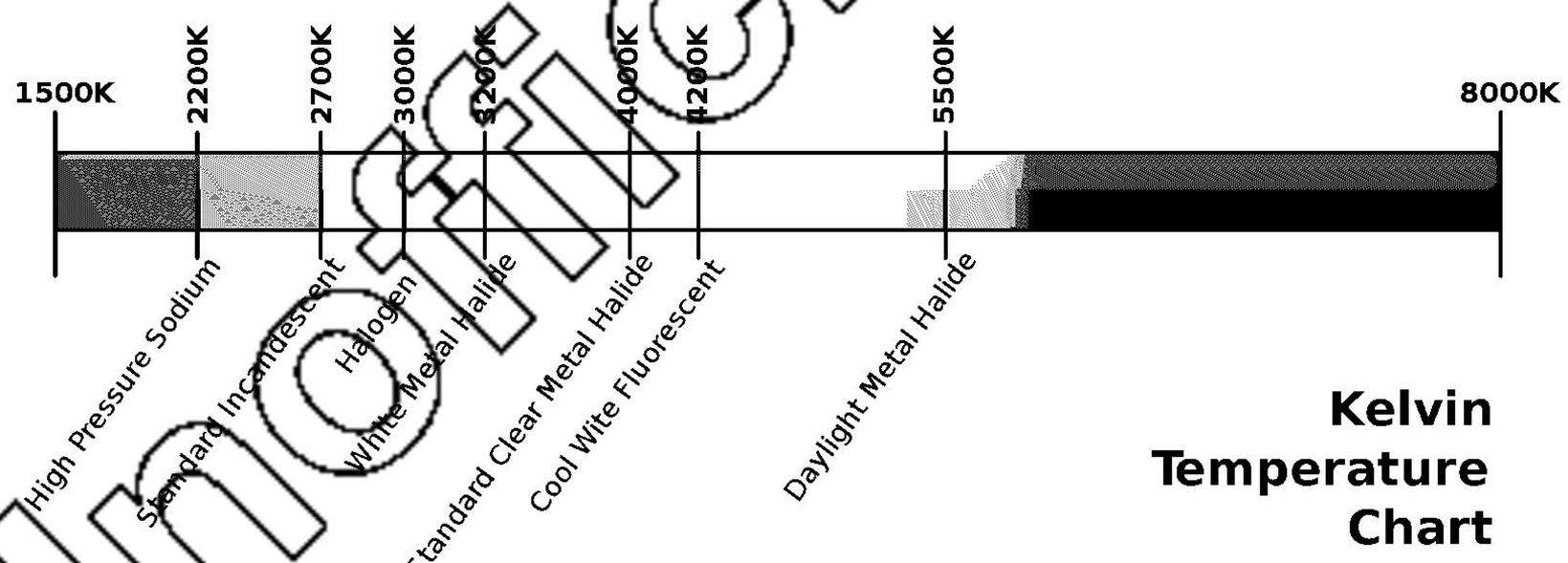
The improved energy efficiency of LEDs means that, coupled with modern luminaire design, these lights allow for lower illumination levels without compromising safety. LEDs help lower carbon emissions by reducing the demand for electricity, which is still largely generated by burning fossil fuels. Another LED benefit is better control over the color content of light. Manufacturers now produce LEDs with “warm” color qualities at high energy efficiency, rendering old arguments about the perceived inefficiency of warm white LEDs moot. These same LED options also provide accurate color rendition without emitting excessive amounts of potentially harmful blue light (see below).

Relative to other outdoor lamps, LEDs are thought to be extremely long-lived. When switched on, LEDs are instantly at full brightness, unlike HID lamps that have a significant time delay to begin emitting light. LEDs also have very low minimum electricity thresholds to produce light, meaning they can be dimmed to much lower illumination levels when less light is needed and resulting in further energy savings.

Blue Light Is Bad

New technical capabilities often come with unanticipated challenges. Most white LED lighting has significant levels of potentially harmful blue light. IDA published a report in 2010 detailing the known and suspected hazards of blue-rich white light sources.[1] In the years since, scientific evidence has coalesced around its conclusions. Blue-rich white light sources are known to increase glare and compromise human vision, especially in the aging eye.[2,3] These lights create potential road safety problems for motorists and pedestrians alike. In natural settings, blue light at night has been shown to adversely affect wildlife behavior and reproduction.[4,5] This particularly true in cities, which are often stopover points for migratory species such as birds.

Concerns about blue light reach far beyond biology. Outdoor lighting with strong blue content is likely to worsen skyglow because it has a significantly larger geographic reach than lighting consisting of less blue. According to the 2016 “New World Atlas of Artificial Night Sky Brightness” street lighting and outdoor lighting retrofits using 4000-kelvin white LED lamps could result in a factor of 2.5 increase in light pollution.[6] Given that the rate of increase of lighting as seen from Earth orbit is about 2 percent per year,[7] it is all the more important to address this problem.



The promise of cheaper outdoor lighting based on electricity and maintenance savings from LED conversion should be weighed against other factors, such as the blue light content of white LEDs. Blue-rich white LEDs are among the most efficient light sources in terms of the conversion of electricity to light, and therefore have the lowest electricity cost to produce a given amount of light compared to “warmer,” less efficient white LED lamps. At the same time, we should make every effort to diminish or eliminate blue light emission and exposure after dark.

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Product Selection Considerations

Choosing LED products for outdoor lighting applications involves a series of considerations and tradeoffs. These include:

- **Luminous Efficiency** (Watts-to-lumens): How much light is produced per input Watt of electricity? More importantly, how many lumens from the light source are meeting the task ("Fixture Lumens" vs. "Lamp Lumens")
- **Lumen Output**: How much light is produced relative to the amount required for a particular task? When replacing existing fixtures, it is important to use the only level of illumination needed, and not to adopt unneeded increases in brightness.
- **Correlated Color Temperature** (CCT): Does the light have a "warm" or "cool" quality?
- **Color Rendering Index** (CRI): How accurately does the light render colors to the human eye? A high CRI is not needed for all situations. The need for good color rendition should be considered relative to the lighting application in question.
- **Adaptive Control Integration:** Does the lighting make use of adaptive controls such as dimmers, timers, and/or motion sensors? These controls are the wave of the future in outdoor lighting and achieve additional energy savings, improve light source efficacy and increase visual task performance. It is important to build in the ability to make use of adaptive controls during the adoption of designs for new lighting installations, even if they will not immediately be implemented.
- **Heat Mitigation**: Is the lamp housing designed to adequately dissipate heat? Because LED efficiency decreases with rising operating temperature, controlling heat emitted by LED lamps is critical in warm climates.
- **Lumen Depreciation**: How robust is the lamp against efficacy loss over time? Manufacturers typically quote "L70," the expected use time until a bulb reaches 70% of its initial light output.

Closely related to all these factors is expense. How much will LED replacement solutions cost? The price of commercial LED lighting products continues to drop, and capital cost recovery times for new LED street light installations, once 10 years or more, are now typically less than two years and continue to decline. As barriers to implementation fall, LED is gaining momentum as the lighting technology of choice in both new outdoor installations and existing replace-on-failure installations. Already many white LED options are available on the outdoor lighting market and that number will only rise in the future.

IDA Recommends

IDA has developed a set of recommendations for those choosing lighting systems. These suggestions will aid in the selection of lighting that is energy and cost efficient, yet ensures safety and security, protects wildlife, and promotes the goal of dark night skies. These include:

- **Always choose fully shielded fixtures** that emit no light upward.
- **Use "warm-white" or filtered LEDs** (CCT ≤ 3000 K; S/P ratio ≤ 1.2) to minimize blue light emission.
- **Look for products that are capable of accepting 7-pin controls** that can enable to use of dimmers, timers, motion sensors, and networking.
- **Consider dimming or turning off lights during overnight hours.**

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- **Avoid the temptation to over-light** because of the higher luminous efficiency of LEDs.
- **Only light the exact space and in the amount required for particular tasks.**
- **Select fixtures that have aftermarket shields available** if light trespass is an issue in some lighting situations.
- **Give the community a chance to have a say** in what they will be living with for a generation, with test installations for soliciting public input and feedback.

Learn more about outdoor lighting, blue light at night, and dark skies on the IDA website at www.darksky.org.

[1] "Visibility, Environmental, and Astronomical Issues Associated with Blue-Rich White Outdoor Lighting" (PDF: http://bit.ly/2gKiEfN)
[2] Lin, Y., Liu, Y., Sun, Y., Zhu, X., Lai, J., & Heynderickx, I. (2014). Model predicting discomfort glare caused by LED road lights. *Optics Express*, 22(15), 18056. https://doi.org/10.1364/oe.22.018056
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[4] Bennie, J., Davies, T. W., Cruse, D., & Gaston, K. J. (2016). Ecological effects of artificial light at night on wild plants. *Journal of Ecology*, 104(3), 611–620. https://doi.org/10.1111/1365-2745.12551
[5] Hori, M., & Suzuki, A. (2017). Lethal effect of blue light on strawberry leaf beetle, *Galerucella grisescens* (Coleoptera: Chrysomelidae). *Scientific Reports*, 7(1). https://doi.org/10.1038/s41598-017-03017-z
[6] Falchi, F., Cinzano, P., Duriscoe, D., Kyba, C. C. M., Elvidge, C. D., Baugh, K., Portnov, B. A., Rybnikova, N. A., & Furgoni, R. (2016). The new world atlas of artificial night sky brightness. *Science Advances*, 2(6), e1600377. https://doi.org/10.1126/sciadv.1600377
[7] Kyba, C. C. M., Kuester, T., Sánchez de Miguel, A., Baugh, K., Jechow, A., Hölker, F., Bennie, J., Elvidge, C. D., Gaston, K. J., & Guanter, L. (2017). Artificially lit surface of Earth at night increasing in radiance and extent. *Science Advances*, 3(11), e1701528. https://doi.org/10.1126/sciadv.1701528

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