

**AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WELLSPRING ESTATES  
CITY OF CELINA  
COLLIN COUNTY, TEXAS**

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## EXHIBITS

- Exhibit A Legal Description of the Property
- Exhibit B Amenity Area Property
- Exhibit C Wellspring Grading and Retaining Wall Criteria

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**Section 1.2. Definitions.** The terms set forth below shall have the indicated meanings when used in this Declaration; other terms are defined elsewhere herein and shall have the meaning given to them in this Declaration.

"**ACC**" shall mean the Architectural Control Committee.

"**Accessory Building**" means a permanent Structure located on a Lot that serves a use incidental to any Residence (i.e. a pool house), but which in no event serves as a residence of any Person.

"**Amenity Area Property**" means that portion of the Common Area so designated on **Exhibit B** attached hereto and incorporated herein by reference.

"**Assessments**" means the Maintenance Assessments and Special Assessments provided for in Article 6.

"**Association**" means Wellspring Estates Homeowners Association, Inc., a Texas non-profit corporation, or such other homeowners' association name selected and available at the time of formation and established as provided in this Declaration.

"**Board**" means the Board of Directors of the Association.

"**Builder**" means any homebuilder constructing the initial Residence upon a Lot in the normal course of conducting its business for profit.

"**City**" means the City of Celina, Texas.

"**Common Area**" means those portions of the Property described as Open Space ("**Open Space**") in the PDD (defined below) that do not constitute Lots or Public Streets (defined below). Accordingly, the Common Area means those portions of the Property designated as such on a Plat, including the Amenity Area Property (unless and until a tract of the Amenity Area Property shall be deemed a "Lot" pursuant to the terms of this Declaration at which time such tract shall no longer constitute a portion of the Common Area), Recreational Facilities (defined below), any recreational centers or other recreational areas. The Common Area also includes: (i) any areas within the Property owned by the City, the Association, or any other governmental entity, but which are required to be maintained by the Association; (ii) any landscape, wall maintenance, pedestrian access or maintenance easements reflected on any Plat, required by the City or recorded by separate instrument; (iii) those areas, if any, which are owned by an Owner, but on which are located monuments, signs, fences, landscaping, berms, sidewalks, irrigation systems or other improvements that may be maintained by the City or the Association. The Common Area shall also include all improvements on or to any portion of any of the areas to be included as Common Areas described in the preceding clauses (i) – (iii) above. The Declarant shall at all times have and retain the right, but without obligation whatsoever, to effect minor redesigns or reconfigurations of the Common Area located on such Declarant's portion of the Property and to execute any open space declarations applicable to such Common Area which may be permitted in order to reduce property taxes, and to take whatever steps as may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes.

**"Declarant"** means SUNSHINE DEVELOPMENT GROUP, LTD., a Texas limited partnership, and/or its successors or assigns.

**"Design Guidelines"** shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to all aspects of construction, placement, location, alteration, maintenance and design of any improvements within the Property or any portion thereof, and all amendments, modifications, supplements and interpretations thereof, as such Design Guidelines may be approved and recorded by Declarant (for as long as Class B Membership exists) and thereafter, the Board and/or ACC, as additional restrictions affecting the Property, or any portion thereof subsequent to the recording of this Declaration.

**"Lot"** means any of the individual platted building lots reflected, or to be reflected, on a Plat or concept plan for the Property or any portion thereof that is to be used for construction of a Residence (defined below) thereon as herein described. In the event that the Association dissolves and the Amenity Area Property and/or other Common Area is conveyed to a Declarant or another third party, such conveyed property shall then be included in the definition of a "Lot".

**"Managing Agent"** means any Person who has been engaged and designated by the Board to manage the daily affairs and operations of the Association.

**"Owner"** means any Person owning fee title to any Lot, but excluding any mortgagee or beneficiary under a deed of trust until such time as it acquires legal title to a Lot.

**"PDD"** means the Planned Development District established by the City and affecting the Property, as documentation in Ordinance No. 2015-19, passed and approved by the City Council on March 17, 2015, and effective as of March 17, 2015.

**"PDD Development Standards"** means the development standards, use restrictions and other requirements set forth in the PDD.

**"Person"** means any individual, corporation, limited liability company, partnership or other entity of any kind or type whatsoever.

**"Phase"** means a particular area of the Property designated by a Declarant for development. A Declarant may impose, as provided in Section 3.3(d), additional and/or different restrictions on each Phase within such Declarant's portion of the Property. If a Declarant shall annex additional property into the Property as provided in Section 8.1, it may designate the area annexed as a particular Phase, and the applicable Declarant may impose, as provided in Section 3.3(d), additional and/or different restrictions on such area.

**"Plat"** means (i) the final plat for Phase I of the Property, being WELLSRING ESTATES PHASE I, an Addition to the City of Celina, Texas, Collin County, Texas, as shown according to the Plat thereof recorded under Document ID No. 20190916010003940, Plat Records, Collin County, Texas; (ii) the final plat for Phase II of the Property, being WELLSRING ESTATES PHASE II, an Addition to the City of Celina, Texas, Collin County, Texas, as shown according to the Plat thereof recorded in Volume 2022, Page 430, Plat Records, Collin County, Texas; (iii) thereafter the final plat for any future Phase of the Property submitted to and approved by the City, or any other applicable governmental entity; (iv) after recordation thereof, the final Plat for any future Phase of the Property

as recorded in the Official Public Records of Collin County, Texas; and (v) any replat of, or amendment to, the foregoing made by a Declarant in accordance with this Declaration. The term "Plat" shall also include the final recorded plat of any additional property annexed into the Property pursuant to Section 8.1.

**"Public Street"** means any paved road that is located within a right-of-way and serves any Lot upon which a Residence is constructed, and which is dedicated to the City for public use pursuant to a Plat.

**"Residence"** means a single-family detached residence constructed upon a Lot in conformance with this Declaration.

**"Recreational Facilities"** means the improvements, furniture, equipment and landscaping that a Declarant or the Association may install or construct on the Amenity Area Property or any portion thereof.

**"Street"** means any Public Street or any other paved road which is located within a right-of-way and serves any Lot upon which a Residence is constructed.

**"Structure"** means any structure (other than a Residence), fence, driveway, sidewalk, planting, landscaping, irrigation system, wall, tennis court, swimming pool, outbuilding, playground equipment, basketball court, or other improvement of any kind or type.

**"Vehicle"** means any vehicle of any kind or type whatsoever, including any automobile, truck, van, motorcycle, boat, mobile home, motor home, boat trailer, or other kind of trailer.

## **ARTICLE 2** **USE PROVISIONS**

### **Section 2.1. Permitted Uses.**

(a) Lots Limited to Residential Use. Except as otherwise provided in this Declaration, Lots shall be used only for single-family, private residential purposes and activities reasonably related thereto. Additional uses for purposes such as schools, churches, or similar activities may be permitted within the Property, provided such use has received the prior written approval from the Association and the Declarant.

(b) Common Area Uses. The Common Area designated as the Amenity Area Property or Open Space on a Plat shall be used only for recreational and other similar purposes as approved by the Declarant or the Association. The Common Area consisting of landscaping, maintenance, wall maintenance easements, or similar areas shall be used for such purposes or similar purposes as approved by the applicable Declarant or the Association.

(c) Sales Offices and Similar Uses. The Declarant may maintain on its Property one or more signs, sales offices, or trailers on Lots for the purpose of facilitating sales of Residences on the Property. The Declarant or the ACC may by written designation grant to other Persons constructing Residences on such Declarant's portion of the Property the right to maintain

construction or sales trailers on the Lots located on such portion of the Property, and to use such Lots for signage, sales offices, and similar purposes.

**Section 2.2. Prohibited Uses and Activities.**

(a) No Further Subdivision. No Lot may be further subdivided without the written consent of the Declarant or the ACC; provided, however, this restriction shall not be applicable to a tract comprising the Amenity Area Property in the event that such tract ceases to be owned by the Association. Lots may be combined for the purpose of constructing a single residence on more than one (1) Lot only upon written approval of the Declarant or the ACC. Without regard to any such permitted subdivision or combination, the combined Lots involved shall continue to be treated as separate Lots hereunder for all other purposes, including voting in the Association and assessing and collecting Assessments. Notwithstanding anything to the contrary contained herein, Declarant reserves the right to subdivide, change the boundary line of and replat any Lot(s) owned by the Declarant. No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of a program on a fixed or floating time schedule over a period of years.

(b) Parking and Vehicle Restrictions. All Vehicles shall be parked, stored or placed so as not to be visible from any Street or from ground level view from an adjoining Lot, except for temporary parking in the driveway constructed on a Lot. All garages must comply with PDD and City requirements. On-Street parking shall be limited to temporary parking of guests or invitees of Owners during parties, delivery of services, and similar limited (no more than twelve (12) hours) time periods. No Vehicle shall be parked so as to obstruct ingress or egress by Owners of Lots, their families, guests and invitees to such Lots, except for emergency purposes. Trucks with tonnage in excess of one ton shall not be permitted to park overnight on the Streets, driveways, or other areas within the Property. No inoperative or unlicensed Vehicles may be parked or stored, other than in an enclosed garage, within the Property. For purposes of this Section, a Vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days. All work on Vehicles (other than routine maintenance) shall be performed only in an enclosed garage. The foregoing provisions shall not restrict the parking of trucks and other Vehicles as necessary in connection with the construction of Residences or other permitted Structures on Lots. Each Owner shall use its best efforts to comply and cause such Owner's invitees, guests and/or other Persons performing services and/or work on behalf of such Owner to comply with the terms and provisions of this Section 2.2(b). Any Vehicle parked in violation of this Section 2.2(b), the parking rules promulgated by the Board or any applicable laws, statutes, ordinances and/or rules of any applicable governmental authority may be towed in accordance with Texas law at the Vehicle owner's sole cost and expense. Notwithstanding the foregoing or anything to the contrary contained herein, the Board shall have no obligation to enforce any applicable laws, statutes, ordinances and/or rules of any applicable governmental authority.

(c) Specific Use Restrictions.

(i) Except as otherwise provided in Section 2.1 above or in Subsections (ii) or (iii) below, no Lot or improvement shall be used for business, trade, professional, commercial or manufacturing purposes of any kind and no activity, whether for profit or not, shall be conducted on the Property which is not related to single-family residential purposes. No noxious or offensive activity (as determined by the Board) shall be undertaken on the Property, and nothing shall be done which is or may become an annoyance or nuisance to the neighborhood. No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of any building without prior written approval of the Board and/or ACC.

(ii) Garage sales, moving sales, rummage sales or similar activities on any Lot shall not be permitted except upon such dates as the Board may establish from time to time. Any such sales shall be subject to such other restrictions as may be imposed by the Board from time to time.

(iii) Nothing in this Section 2.2(c) shall prohibit a Builder's temporary use of a Residence as a sales office (whether such Residence used as a sales office is owned by Builder or an entity with which Builder is engaged in a Model Home Lease program) until such Builder (or entity with which Builder is engaged in a Model Home Lease program) no longer owns a Lot in the Property. Nothing in this Section 2.2(c) shall prohibit an Owner's use of a Residence for quiet, inoffensive activities such as tutoring or giving art or music lessons so long as (1) the existence or operation of such business activity is not apparent or detectable by sight, sound or smell from outside the Lot, (2) the business activity conforms to all zoning requirements of the Property, (3) such activities do not materially increase the number of cars parked on the Street or noticeably increase the level of vehicular or pedestrian traffic in the Property, (4) the business activity does not involve door-to-door solicitation of residences or Owners residing within the Property, and/or (5) such activity is consistent with the residential character of the Property and does not (A) constitute a nuisance or hazardous or offensive use, (B) threaten the security or safety of the other Owner and/or residents of the Property, or (C) interfere with adjoining homeowners' use and enjoyment of their Residences and yards, as determined by the Board or such committee as appointed by the Board, in the Board's or applicable committee's sole discretion.

(iv) The term "business" or "trade" as used in this Section 2.2 shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involved the provision of goods or services to Persons other than the provider's family living within a Residence and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (1) such activity is engaged in full or part-time, (2) such activity is intended or does generate a profit, or (3) a license is required. Notwithstanding the above, the leasing of a Residence shall not be considered a business trade within the meaning of this Section 2.2.

(d) Pet and Animal Restrictions. Only generally recognized household pets such as cats and dogs shall be permitted on the Property and then only for personal use and not for any other use such as breeding, boarding or kennel operations and the like. No other animals shall be permitted to be maintained upon the Property, including without limitation, the following: cows, horses, bees, hogs, sheep, goats, poultry, or skunks. No more than four (4) domesticated

household pets are permitted in any Residence. All pets shall be kept within the fenced-in area of an Owner's Lot and shall not be permitted to run free through the Property. All persons bringing an animal off their Lot shall be responsible for immediately removing any solid waste of said animal.

(e) Outdoor Burning Restrictions. Outdoor burning of trash, leaves, and other items is prohibited. This restriction shall not be construed as prohibiting outdoor cooking on barbecue grills in connection with use of a Residence.

(f) Trash/Garbage Disposal. Trash, garbage and other waste shall at all times be kept in clean, well maintained, sanitary containers required by (and meeting the specifications of) the City for regular scheduled pickup for removal of such items. Trash, garbage or other waste shall not be dumped on the ground of any Lot or in any Common Area. All sanitary containers must be kept in the garage and not visible from any adjoining Lot, Common Area or Street, except when placed outside as required by the City on the day of scheduled waste removal. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any Builder.

(g) Occupancy. Each Lot shall be improved with a single-family detached Residence. No Person shall occupy any garage, Accessory Building or other outbuilding as a dwelling unit at any time. No Structure of a temporary character, such as a trailer, basement, tent, shack, barn or other outbuilding, shall be used on any of the Property at any time as a dwelling; provided, however, that any Builder may maintain and occupy model houses, sales offices and construction trailers during construction periods.

(h) Projections from Structures. Window air conditioning units attached to a Residence and other similar projections visible from a Street are prohibited. Cornice, eave and architectural details may project up to two feet six inches (2'6"). Except as permitted in the previous sentence and/or Section 3.4(g)(i) hereof, any projection through the roof of any outbuilding or Accessory Building on the Property shall require the prior written approval of the applicable Declarant or the ACC.

(i) Private Water/Sewer Systems. Each Residence shall be connected to the City water and sanitary sewer system, and no private water well or water, sanitary or storm sewer system is permitted within the Property unless constructed or caused to be constructed by the Declarant on the Declarant's Property. In this regard, nothing contained herein shall prevent or hinder Declarant (for as long as Declarant has Class B Membership rights, and thereafter, the Association) from constructing, installing, maintaining, repairing or establishing water wells as determined to be necessary in the Declarant's and/or the Association's sole discretion, as applicable, for the irrigation of Common Areas. If a Declarant uses private drainage easements in areas that necessitate or contain a private sub-surface storm sewer drainage system, then such sewer lines are to be kept freely running and unobstructed at all times. If the lines become obstructed, all parties that benefit from their function shall be required to equally and promptly share in the cost of repair or replacement of the lines. Septic tanks and drain fields, other than those installed by or with the consent of Declarant and any other applicable governmental authority, are prohibited within the Property or any Lot.

(j) Changes in Grade and Drainage. Except for such changes as are reasonably necessary to facilitate construction of a Residence on a Lot, no Owner shall change the grade or slope of, or drainage plan applicable to, any Lot through landscaping, adding a pool, or otherwise, except in compliance with all applicable laws and the requirements of the grading or drainage plan applicable to such Lot. The general grading and slope of a Lot may not be altered, and no dams, berms, channels or swales may be constructed or excavated without the prior written approval of the Declarant (or the ACC), the City (if applicable) and other appropriate agencies having authority to grant such approval. Notwithstanding anything to the contrary contained herein, the grading plan and/or drainage plan of a Lot shall not be altered in a manner that is inconsistent with the Lot Grading Plan attached hereto as **Exhibit C** and incorporated herein by reference, unless such alteration is first approved by the City in writing. Furthermore, the Owners (including the Builders) of adjacent Lots shall coordinate the placement of and grades adjacent to any retaining walls described in Section 3.4(f)(x) below or as otherwise required so as to eliminate Lot to Lot drainage.

(k) Visible Activities - Outdoors. Outdoor drying of clothes and/or permanent clotheslines and clothesline supports are prohibited. When not in use, lawn mowers, rakes, carts, and other yard equipment shall be stored away from view of adjoining Lots, Common Areas and/or Streets. When not in use, portable sports equipment such as basketball hoops, hockey nets, etc., shall be stored away from view of adjoining Lots, Common Areas and/or Streets. In no event shall any lawn mowers, rakes, carts, and other yard equipment, or portable sports equipment such as basketball hoops, hockey nets, etc. be left outdoors overnight in view of adjoining Lots, Common Areas and/or Streets; provided, however, each Owner may keep and maintain no more than one (1) permanently installed, professional basketball hoop on any Lot for the benefit of the Residence located thereon. Notwithstanding the foregoing, any such basketball hoop shall be (i) located behind the rear edge of the Residence and (ii) limited to (1) basketball hoop Residence. Under no circumstances shall any permanent basketball hoop be located in the front of any Residence. Basketball goals and any other recreation equipment may not be located, even temporarily, on any portion of a Street. No repairs of any detached machinery, equipment or fixtures, including, without limitation, Vehicles, shall be made upon any portion of any Lot within view of adjoining Lots, Common Areas and/or Streets without the prior written approval of the Board and/or the ACC.

(l) Structures and Storage.

(i) Temporary. No temporary dwelling, shop, trailer, mobile home or above-ground swimming pools of any kind or any improvement of a temporary character (except children's wading pools and playhouses, treehouses, dog houses, greenhouses, gazebos, arbors, trellises and buildings for storage of lawn maintenance equipment which may be placed on a Lot only in places which are not visible from any adjoining Lot, Common Area or Street, unless otherwise approved in writing by the ACC) shall be permitted on any Lot, except that a Builder may have temporary improvements (such as a sales office, signs, parking lot and/or a construction trailer, provided all are permitted by applicable City code and ordinances) on a Lot during construction of Residences in the Subdivision. No building material of any kind or character shall be placed or stored upon a Lot until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed only within the property

lines of the Lot upon which the improvements are to be erected during construction so long as construction progresses without undue delay.

(ii) Permanent. One (1) Accessory Building that is permanent in nature may be allowed on each Lot. All Accessory Buildings must be approved by the ACC in writing prior to commencement of construction. Accessory Buildings must be located on the same Lot as the Residence and use of an Accessory Building must be incidental to that of the Residence on such Lot. Any Accessory Building shall be screened from all sides such that the Accessory Building does not extend above the height of any fence and may not be visible from any adjoining Common Area, Lot or Street, unless otherwise approved in writing by the ACC. All Accessory Buildings must match or complement the materials and color of the Residence which such Accessory Building serves (including, without limitation siding, brick and shingles).

(m) Recreational Vehicles. No boat, trailer, marine craft, hovercraft, aircraft, recreational vehicle, travel trailer, motor home, camper body or similar Vehicle or equipment may be stored, parked or kept on any driveway, in the front yard or in the Street in front of a Lot for more than 48 hours nor more frequently than two times per month, nor shall any such Vehicle or equipment be parked for storage in the side or rear yard of any Residence. No such Vehicle or equipment shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any Vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a Residence in the immediate vicinity as long as such Vehicle, machinery or equipment is not stored, parked or kept on any driveway, in the front yard or in the Street in front of a Lot for more than ninety (90) consecutive days, or such longer period as may be necessary upon approval by the Board.

(n) Transportation of Hazardous Materials. No Vehicle of any size that transports inflammatory or explosive cargo may be kept on the Property at any time.

(o) Drilling or Mining. No drilling, oil, gas or mineral development operation, refining, quarrying or mining operations of any kind shall be permitted on the surface of the Property. No oil wells, tanks, tunnels, mineral excavations or shafts shall be permitted upon or in any part of the surface of the Property. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the surface of the Property. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

(p) Prefabricated Structures. Except for children's playhouses, treehouses, dog houses, greenhouses, gazebos, arbors, trellises and buildings for storage of lawn maintenance equipment placed at locations on a Lot as approved by Section 2.2(1)(i), that are not visible from any adjoining Lot, Common Area or Street, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon, except that a Builder or contractor may have temporary improvements (such as a sales office or construction trailer) on a Lot during construction of the Residence on that Lot. Any playground or other play areas or equipment furnished by the Association or erected within the Property shall be used at the risk of the user and the Association shall not be held liable to any Person for any claim, damage or injury occurring thereon or related to the use thereof.

(q) Wetlands, Lakes and Other Water Bodies. All wetlands, lakes, ponds and streams within the Property, if any, shall be aesthetic amenities only and no other use thereof, including, without limitation, fishing, skiing, swimming, boating, playing or use of personal flotation devices, shall be permitted without the prior approval of the Board. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within the Property. No docks, piers, bridges or other structures shall be constructed on or over any body of water within the Property, except such as may be constructed by the Declarant or the Association.

(r) Leasing of Lots. "**Leasing**", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any Person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. Lots may be leased only in their entirety. No fraction or portion may be leased. There shall be no subleasing of Lots or assignment of leases unless prior written approval is obtained from the Board. No transient tenants may be accommodated in a Lot. All leases shall be in writing and shall be for an initial term of no less than twelve (12) months, except with the prior written consent of the Board. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of this Declaration, any Design Guidelines, the Bylaws and other governing documents of the Association. The Board may adopt any additional rules regulating leasing and subleasing of Lots or Residences and/or Structures thereon.

(s) Lot Maintenance. The Owners or occupants of all Lots shall at all times, at Owner's sole expense, remove or kill all weeds and maintain the Yard thereon in a sanitary, healthful and attractive manner with an appearance that is commensurate with the neighborhood. "Yard" means all parts of the Lot other than the Residence and includes the fenced and unfenced portions of the Lot, landscape beds, and grass or turf areas. The following requirements apply to all Lots but may be modified or waived by the Board in the face of changing environmental conditions, public policies, or community expectations:

(i) Mowing and Edging. Grass and turf areas on a Lot must be cut or mowed as needed to maintain a groomed appearance that is commensurate with the neighborhood. Sidewalks, driveways, and street curbs of each Lot must be edged as needed to maintain a groomed appearance.

(ii) Grooming and Dressing. All trees, shrubs, and vegetation on a Lot must be trimmed and maintained in an attractive and orderly manner as needed to maintain a groomed appearance. Any portion of a Yard that is visible from a Street or Common Area, including grass or turf areas and landscape beds, must be maintained so as to appear (from a Street or Common Area) to be well groomed and substantially free of weeds, disease, litter, trash, and debris. Adding mulch to plant beds once a year is recommended.

(iii) Irrigation. Owner must keep the Lot irrigation system in good repair – repairing or replacing sprinkler heads, irrigation lines, and other irrigation equipment as needed for optimum landscape maintenance. No part of a landscape irrigation system may be located above ground in unfenced portions of a Yard, except for: (1) typical garden hoses having a

diameter of one inch or less, (2) customary portable sprinklers, and (3) an above-ground drip irrigation pipe that is concealed by plant material.

### **ARTICLE 3**

#### **CONSTRUCTION PROVISIONS**

**Section 3.1. Plan Approval Required.** No Residence or Structure shall be constructed within the Property until the plans have been approved in writing by the ACC or the Declarant as provided in this Article 3.

**Section 3.2. Establishment of the ACC.**

(a) Initial Appointment. The ACC shall initially consist of the Declarant, or its designee, during the "Development Period" (defined herein as that period of time from the date hereof until there are completed Residences on all Lots in the Subdivision; provided, however, that the Development Period may be terminated by Declarant upon thirty (30) days written notice from Declarant to the Association of Declarant's intention to terminate the Development Period. Prior to termination of the Development Period, the Association, the Board, and any committee appointed by the Association or Board may not involve itself with the approval of any Structure. The ACC may delegate certain duties and may hire or retain professionals for assistance in the performance of its obligations herein.

(b) Term and Subsequent Appointments. Upon the expiration or voluntary termination of the Development Period; appointments to and removals from the ACC shall be made by the Board. Members of the ACC may, but shall not necessarily, be members of the Board. The ACC shall consist of at least three (3), but no more than six (6), members. The ACC and Declarant, individually or jointly, may engage the services of a third party to review plans and specifications pursuant to this Article.

(c) Compensation; Fee for Review. No member of the ACC shall be entitled to compensation for its services.

**Section 3.3. Approval Process.**

(a) Submission of Plans. Any party wishing to construct a Residence or any Structure on the Property shall submit two (2) copies of complete plans and specifications to the applicable ACC for its approval prior to commencing construction. Such plans and specifications shall include engineering information, landscaping description, and construction plans showing the location and elevations of the proposed Residence or Structure and the materials to be used in constructing the same, all in sufficient detail to enable the ACC to evaluate the proposed Structure or Residence. The ACC may request additional information, including samples of proposed materials to aid it in its decision process. After receipt of a complete set of plans and specifications, the ACC shall promptly review the same and notify the Person submitting whether it approves the plans or whether it requires changes thereto. Alternately, the ACC may disapprove a set of plans by so noting thereon and returning it to the Person submitting, accompanied by a statement of the reasons for disapproval. No construction shall be commenced on any portion of the Property unless and until the plans for the Residence or Structure in question have been approved in writing by the ACC or the Declarant.

(b) Time for Review/Approval. The ACC shall approve or disapprove all plans properly submitted to it for construction within twenty-five (25) days after the date it receives a complete application with required signatures and a complete set of plans and specifications. If the ACC fails to specifically approve or disapprove any plans within such twenty-five (25) day period, then the ACC shall be deemed to have approved the plans submitted.

(c) Review Standards. The ACC, in reviewing and approving plans for construction of Structures or Residences, shall use commercially reasonable efforts to promote and ensure a high level of taste, design quality, aesthetic harmony, and conformity throughout the Property, consistent with the standards established by this Declaration, the Design Guidelines, and the PDD Development Standards. The ACC will act by simple majority vote.

(d) Design Guidelines/Building Standards. The Declarant or the ACC may, but is not required to, from time to time, establish specific Design Guidelines to assist Persons in determining the type of Structures and Residences, which may be constructed on the Property, which Design Guidelines shall be in addition to the PDD Development Standards and may be recorded in the records of Collin County, Texas. Pursuant to Section 8.1, the Declarant may annex additional property to become a part of the Property, and a Declarant may develop its portion of the Property in various Phases. The Declarant may establish differing Design Guidelines for each such Phase of the Property, which may impose more restrictive or less onerous building standards with respect to a particular Phase; however, each Phase of the Property shall comply with the PDD Development Standards. The ACC or the Declarant may amend or modify such Design Guidelines from time to time in its sole discretion but with prior Builder agreement. Such Design Guidelines and the PDD Development Standards shall supplement this Declaration and be general guides to permitted construction within the Declarant's Property, but shall not diminish the authority of the ACC and the Declarant to approve plans as otherwise herein provided.

(e) Failure to Obtain Approval. The construction, repair, replacement, installation, or placement of any Structure or improvement of any type on a Lot without the prior written approval from the ACC shall constitute grounds for the imposition by the ACC or the Association to issue a fine against the Owner of said Lot upon fifteen (15) days prior written notice to the applicable Owner which fine shall be initially in the amount of Five Hundred and No/100 Dollars (\$500.00) charged, due and owing upon expiration of the fifteen (15) day notice period, plus an additional Five Hundred and No/100 Dollars (\$500.00) for each thirty (30) day period thereafter and during which such construction, repair, replacement, installation, or placement of any Structure or improvement of any type on a Lot without the prior written approval from the ACC continues, provided that such fine shall be prorated on a daily basis for any periods less than thirty (30) days. A fine levied under this Section shall be charged to the Owner's assessment account, payable upon demand and secured by the lien created in Article 6.

(f) Limitation of Liability. Neither the Declarant, its officers, directors, partners, agents, employees, representatives, parent or subsidiaries, nor the Association, the Board, the ACC, or the Managing Agent, including any of its respective members, shall be liable to any Person for any official act of the ACC in connection with submitted plans and specifications. Notwithstanding any approval by the Declarant or the ACC, neither the Declarant nor the ACC

shall be responsible or liable to any Person with respect to any loss, liability, claim or expense which may arise by reason of such approval or the construction of a Residence or Structure related thereto. Neither the Declarant, the Association, the Board, the ACC nor the Managing Agent shall be responsible in any way for any defects in any plans or specifications submitted, reviewed or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans or specifications. No approval of any plans by either the ACC or the Declarant shall be construed to mean that the plans comply with any applicable law, building code, or governmental regulation, it being the responsibility of the Person submitting any plans to assure compliance with all applicable laws. Conversely, the issuance of a building permit or any approval from any governmental authority shall not, under any circumstance, constitute any evidence that construction of a Residence or a Structure complies with the terms and conditions contained in this Declaration or the Design Guidelines. No Declarant nor members of the ACC shall have liability for decisions made by them regarding the approval or disapproval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious.

#### **Section 3.4. Specific Construction Provisions.**

(a) Single Family Lot Type 1: Single family lot Type 1 is a form of single family, detached housing. Building and area requirements are as follows:

(i) Minimum Residence Size: The minimum area of the main building shall be two thousand (2,000) square feet, exclusive of garages, breezeways and porticos.

(ii) Lot Area: The minimum area of lot shall be 7,500 square feet.

(iii) Lot Coverage: In no case shall be more than fifty-five percent (55%) of the total lot area covered by the combined area of the main buildings and accessory buildings. Swimming pools, spas, decks, patios, driveways, walks, and other paved areas shall not be included in determining maximum lot coverage.

(iv) Lot Width: The typical minimum width of lot shall be sixty feet (60') at the front building line, except that a lot at the terminus of a cul-de-sac or along street elbows/eyebrows may have a minimum width of fifty five feet (55') at the building line; provided all other requirements of this section are fulfilled.

(v) Lot Depth: The typical minimum lot depth shall be one hundred twenty feet (120'), except that a lot at the terminus of a cul-de-sac or along street elbows/eyebrows may have a minimum depth, measured at mid points on front and rear lot lines, of eighty five feet (85') at the building line; provided all other requirements of this section are fulfilled.

(vi) Front Yard: The minimum depth of the front yard shall be twenty five feet (25'). Key lots shall have two (2) front yards.

(vii) Side Yard: The minimum side yard on each side of the lot shall be five feet (5'). A side yard adjacent to a street shall be a minimum of fifteen feet (15').

(viii) Rear Yard: The minimum depth of the rear yard shall be ten feet (10').

(ix) Maximum Building Height: Buildings shall be a maximum of two and one-half (2 ½) stories. The maximum building height shall be forty feet (40'). Accessory structure twenty-five (25) feet.

(b) Single Family Lot Type 2: Single family lot Type 2 is a form of single family, detached housing. Building and area requirements are as follows:

(i) Minimum Residence Size: The minimum area of the main building shall be two thousand five hundred (2,500) square feet, exclusive of garages, breezeways and porticos.

(ii) Lot Area: The minimum area of lot shall be nine thousand (9,000) square feet.

(iii) Lot coverage: In no case shall be more than fifty five percent (55%) of the total lot area covered by the combined area of the main buildings and accessory buildings. Swimming pools, spas, decks, patios, driveways, walks, and other paved areas shall not be included in determining maximum lot coverage.

(iv) Lot Width: The typical minimum width of lot shall be seventy feet (70') at the front building line, except that a lot at the terminus of a cul-de-sac or along street elbows/eyebrows may have a minimum width of sixty-five feet (65') at the building line; provided all other requirements of this section are fulfilled.

(v) Lot Depth: The typical minimum lot depth shall be one hundred twenty feet (120'), except that a lot at the terminus of a cul-de-sac or along street elbows/eyebrows may have a minimum depth, measured at mid points on front and rear lot lines, of one hundred feet (100') at the building line; provided all other requirements of this section are fulfilled.

(vi) Front Yard: The minimum depth of the front yard shall be twenty five feet (25'). Key lots shall have two (2) front yards.

(vii) Side Yard: The minimum side yard on each side of the lot shall be five feet (5'). A side yard adjacent to a street shall be a minimum of fifteen feet (15').

(viii) Rear Yard: The minimum depth of the rear yard shall be ten feet (10').

(ix) Maximum Building Height: Buildings shall be a maximum of two and one-half (2 ½) stories. The maximum building height shall be forty feet (40'). Accessory structure twenty-five (25) feet.

(c) Single Family Lot Type 3 (East): Single family lot Type 3E is a form of single family, detached housing. Building and area requirements are as follows:

(i) Minimum Residence Size: The minimum area of the main building shall be two thousand five hundred (2,500) square feet, exclusive of garages, breezeways and porticos.

(ii) Lot Area: The minimum area of lot shall be fifteen thousand (15,000) square feet.

(iii) Lot Coverage: In no case shall be more than fifty percent (50%) of the total lot area covered by the combined area of the main buildings and accessory buildings. Swimming pools, spas, decks, patios, driveways, walks, and other paved areas shall not be included in determining maximum lot coverage.

(iv) Lot Width: The typical minimum width of lot shall be one hundred feet (100') at the front building line, except that a lot at the terminus of a cul-de-sac or along street elbows/eyebrows may have a minimum width of eighty feet (80') at the building line; provided all other requirements of this section are fulfilled.

(v) Lot Depth: The typical minimum lot depth shall be no less than one hundred forty feet (140'), except that a lot at the terminus of a cul-de-sac or along street elbows/eyebrows may have a minimum depth, measured at mid points on front and rear lot lines, of one hundred thirty (130') at the building line; provided all other requirements of this section are fulfilled.

(vi) Front Yard: The minimum depth of the front yard shall be thirty feet (30'). Key lots shall have two (2) front yards.

(vii) Side Yard: The minimum side yard on each side of the lot shall be ten feet (10'). A side yard adjacent to a street shall be a minimum of fifteen feet (15').

(viii) Rear Yard: The minimum depth of the rear yard shall be twenty five feet (25').

(ix) Maximum Building Height: Buildings shall be a maximum of two and one-half (2 ½) stories. The maximum building height shall be forty feet (40'). Accessory structure twenty-five (25) feet.

(d) Single Family Lot Type 3 (West): Single family lot Type 3W is a form of single family, detached housing. Building and area requirements are as follows:

(i) Minimum Residence Size: The minimum area of the main building shall be three thousand four hundred (3,400) square feet, exclusive of garages, breezeways and porticos.

(ii) Lot Area: The minimum area of lot shall be twenty five thousand (25,000) square feet.

(iii) Lot Coverage: In no case shall be more than fifty percent (50%) of the total lot area covered by the combined area of the main buildings and accessory buildings. Swimming pools, spas, decks, patios, driveways, walks, and other paved areas shall not be included in determining maximum lot coverage.

(iv) Lot Width: The typical minimum width of lot shall be one hundredtwenty- five feet (125') at the front building line, except that a lot at the terminus of a cul-de-sac or along street elbows/eyebrows may have a minimum width of eighty feet (80') at the building line; provided all other requirements of this section are fulfilled.

(v) Lot Depth: The typical minimum lot depth shall be no less than two hundred feet (200'), except that a lot at the terminus of a cul-de-sac or along street elbows/eyebrows may have

a minimum depth, measured at mid points on front and rear lot lines, of one hundred thirty (130') at the building line; provided all other requirements of this section are fulfilled.

(vi) Front Yard: The minimum depth of the front yard shall be thirty feet (30'). Key lots shall have two (2) front yards.

(vii) Side Yard: The minimum side yard on each side of the lot shall be ten feet (10'). A side yard adjacent to a street shall be a minimum of fifteen feet (15').

(viii) Rear Yard: The minimum depth of the rear yard shall be fifty feet (50'). Accessory structures are not permitted within the Rear Yard setback.

(ix) Maximum Building Height: Buildings shall be a maximum of two and one-half (2 ½) stories. The maximum building height shall be forty feet (40'). Accessory structure twenty-five (25) feet.

(e) Structure Size and Type. Each Residence shall be of new construction on a Lot and no mobile homes or manufactured housing shall be permitted on the Property except as authorized by the Declarant on a temporary basis in connection with construction or sales activities on the Declarant's Property. All Residences shall conform to French Country or European architectural style and character; provided, however, the ACC established pursuant to the Declaration, will consider and may approve other reasonable architectural styles, which support and complement French Eclectic, Tudor, Hill Country, French Country or Texas Traditional architectural style, which approval shall not be unreasonably withheld by the Board and/or the ACC. Notwithstanding the foregoing, in no event shall the terms herein be interpreted to require the ACC to approve or permit construction of Residences in the "contemporary" architectural style as such term is generally defined by the professional architectural community on the date hereof. All Street front exteriors are subject to aesthetic determination by the ACC pursuant to the Declarations. The Board and/or ACC, as applicable, encourages architectural continuity through traditional architectural style and the use of complimentary materials. The Board and/or ACC, as applicable, also encourages architectural diversity through variances of hips and gable roofs, roof pitch, building offsets, garage entrances, garage sizes, etc. While each home should complement adjacent structures, every home should have a unique identity through the use of detailing like: wrought iron, window treatments, dormers, turrets, flat work, tree placement, brick details, natural stone, combining brick and natural stone, landscape, etc. The Board and/or ACC, as applicable, encourages the use of French Eclectic, Tudor, Hill Country, French Country or Texas Traditional style architectural structures style architectural details that individualize each residence. In no case shall more than fifty-five percent (55%) of the total Lot area be covered by a the combined area of the Residence, Accessory Buildings and Structures (under roof only) located on each Lot; provided, however, swimming pools, spas, decks, patios, porches, driveways, walks and other paved areas shall not be included in determining maximum Lot coverage.

(f) Restrictions on Stone, Floorplan and Front Elevations. Use of identical or substantially similar brick for the front exterior of a Residence may not be repeated more frequently than every third Lot on the same side of a street, or used on a Lot directly across the street or a Lot adjacent to the Lot directly across the street from a Residence that utilizes such material and/or

elevation. Additionally, no floor plan or elevation of any Builder may be repeated more frequently than every third Lot on the same side of a street, or directly across the street or a Lot adjacent to the Lot directly across the street from a Residence with the same floor plan or elevation. An elevation that varies only due to the type of windows used is considered the same elevation.

(i) Garage Requirements. Each Residence shall have at least a two (2) car attached garage constructed as a part thereof. Garages may face the street if they are in line with the main structure or set back from the main structure and shall be a minimum of twenty one feet (21') from the street right of way and shall be inline or behind the front/side of the façade as set forth in the PDD. The ACC and/or Board shall approve all garage placement, door design and door materials. Natural or earth tone stained wood doors are required on all garages.

(ii) Drive/Walkway Requirements. All driveways fronting on a Street, sidewalks and steps from the public sidewalk or front of driveway to the front entry of any residence on a Lot shall be constructed of brick, brick pavers, stone, interlocking pavers, stamped concrete, exposed aggregate, slate, flagstone or concrete with brick borders. All brick and stone used in the construction and installation of driveways, sidewalks and/or steps shall be approved in writing by the ACC and/or Board, prior to such use, in accordance with the terms of this Declaration. All driveways and sidewalks shall conform to applicable PDD, City and other governmental specifications and regulations.

(iii) Exterior Lighting. All Lots shall include "Required Exterior Lighting" (herein so called) which shall include one (1) wall-mounted bracket light on garage and at least one (1) bracket light beside the front entrance of each Residence. Except as permitted above, no exterior lighting shall be installed or maintained on any Lot which light is found objectionable by the Association. Upon being given notice by the Association that any exterior light is objectionable (provided that any exterior lighting required pursuant to this Declaration shall in no event be objectionable), the Owner of the Lot on which same is located shall immediately remove such exterior light or have it shielded in such a way that is no longer objectionable. If the Owner fails to honor the request, the Association may remove the light at the Owner's sole cost and expense without liability for trespass and any cost or expense incurred by the Association as a result of such removal shall be secured by a lien against the applicable Owner's Lot as provided for in Article 6.

(1) Exterior Holiday Decorations and Lighting. Lighting and/or decorations on a Lot may not be used or placed in a manner that, in the Board's sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a Residence that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six weeks in advance of that specific holiday and must be removed within 30 days after the holiday has ended.

(iv) Ancillary Structure Provisions. All ancillary Structures (as described below) shall conform to the requirements of this Section:

(1) Antenna/Satellite Dishes. The erection, construction, placement or installation of any television, radio, or other electronic tower, serial, antenna, satellite dish or device of any type for the reception or transmission of radio or television broadcasts or for any means of communication upon a Lot or upon any improvement thereon is prohibited except as provided for herein. This prohibition shall not apply to (1) those antenna specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated pursuant to the Telecommunications Act of 1996, as amended from time to time, (2) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one (1) meter or less in diameter or diagonal measurement, (3) antennas or satellite dishes designed to receive direct broadcast satellite service which are one (1) meter or less in diameter, or (4) antennas or satellite dishes designed to receive television broadcast signals ((1) through (4) are collectively referred to as "Permitted Devices"), provided that such Permitted Devices are placed in the least conspicuous location on a Lot at which an acceptable quality signal can be received and is not visible from adjoining Lots, Common Areas or Streets or is screened from view of any adjoining Lots, Common Areas or Streets in a manner consistent with this Declaration and any applicable Design Guidelines. In all cases except as may be approved by the ACC, no Permitted Device of any style shall be (a) erected as a free-standing structure, (b) permitted to extend outside the roof of the Residence or (c) maintained on any portion of the Lot forward of the front building line. The ACC or the Declarant shall be empowered to adopt rules governing the types of antenna that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antenna. All television antennas and other antennas and aerials shall be located inside the attic of the residence constructed on the Lot. Amateur radio towers and antennas (whether for reception or transmission) are specifically prohibited. No exterior television, radio or other antenna of any type shall be placed, allowed or maintained upon any Lot, Residence, or Structure without prior written approval and authorization of the ACC.

(2) Utilities. No gas, electric, power, telephone, water, sanitary sewer, storm sewer, cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above ground, except and to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above-ground switch cabinets and transformers where required, provided that such service pedestals and above ground switch cabinets are screened by landscaping or fencing consistent with the PDD Development standards and any additional standards and/or guidelines established by the Association and/or ACC so as not to be visible from any Lot, Common Areas or Street.

(3) Lawn Decorations and Sculptures. The Owner must have the approval of the ACC to place any decorations, sculptures, fountains, flags and similar items on any portion of such Owner's Lot except the interior of the Residence, unless (i) such item is placed within a backyard completely enclosed by a solid fence which blocks the view of the item at ground level; and (ii) such item is no taller than the fence.

(4) Flags, Flagpoles. To maintain the overall aesthetic character of the community, the following restrictions shall govern the display of flags within the community. Each Owner is authorized to mount two temporary or permanent flagstaffs on the front, rear or side of their residence by wall bracket. Owners may not locate a flag or flagpole on the Common Area or any portion of the Property owned by Declarant. Additionally:

(A) With respect to the flag of the United States of America, the flag of the State of Texas and flags of any branch of the United States armed forces: Flagpoles must not exceed twenty (20) feet in height, and only one (1) such flagpole may be erected on each Owner's Lot. Such flags may contain no more than twenty-four (24) square feet of material. Flags and flagpoles must be maintained in good condition, and the ACC may require any deteriorated flag or flagpole to be repaired, replaced or removed.

(B) With respect to all other flags: Permanent in-ground flagpoles are not permitted. Flagstaffs should not exceed six (6) feet in length. The suggested location for bracket mounting is on the garage doorframe or near the garage door. No roof-mounted flagstaff is allowed. Multiple flag configurations and any flagstaff in excess of six (6) feet must be approved by the ACC prior to installation or display. Such flags may contain no more than twenty-four (24) square feet of material and must be of good taste and presentation.

Notwithstanding anything in this section to the contrary, an Owner may display religious objects on the front door or doorframe of the Owner's Residence, unless such objects contain patently offensive language or symbols or the object is more than twenty-five (25) square inches in size.

(v) Fences and Walls. Prior written approval from the ACC is required for any construction, placement or repair of fences or walls on any Lot. All fences and walls throughout the Subdivision shall be all development within PD District shall comply with the following:

(1) Building Lot Fences are required to be built by the Builder per the following:

(A) Lot Type 1- a minimum 6' board on board cedar fence with top cap, pressure treated rails and iron posts on the side and rear property

line. The fencing will be stained Golden Brown. The 6' wood fencing will transition to a 5' gated side yard iron return fence.

(B) Lot Type 2 - a minimum 6' board-on-board cedar fence with top cap, pressure treated rails and iron posts on the side and rear property line. The fencing will be stained Golden Brown. The 6' wood fencing will transition to a 5' gated side yard iron return fence.

(C) Lot Type 3 - On lots backing to the West property line of the community shall have a 6' masonry wall completed within 90 days of the lots substantial completion or City Acceptance of the lots.

(D) Lot Type 3 - On lots backing to the East property line of the community, excluding Lot F18, as depicted on the final plat for Phase II of the Property, a minimum 6' board-on-board cedar fence with top cap, pressure treated rails and iron posts on the side, and per City requirements, a 5' wrought iron fence on the rear property line. The wood fencing will be stained Golden Brown. The 6' wood fencing will transition to a 6' gated side yard iron return fence. Lot F18 shall have a minimum 6' board-on-board cedar fence with top cap, pressure treated rails and iron posts on the side and a minimum 8' board cedar fence with top cap, pressure treated rails and iron posts on the rear property line. The Lot F18 fencing will be stained Golden Brown and the 6' wood fencing will transition to a 6' gated side yard iron return fence.

(2) Lot Fences adjacent to roads opening to or siding an Open Space or Linear Open Space (as defined in the PDD) shall comply with the following:

(A) All Lot Types will require a 5' iron fence siding or facing the Open Space or Linear Open Space.

(3) Lot screening to be installed and maintained by the Declarant and maintained by the Association are as follows:

(A) Lot Screening backing to West property line of the community shall be 6' masonry walls with stone columns at the rear and side yard intersection of property lines. Screening and columns will be installed by the Declarant. The screening and columns shall be Association owned and Association maintained. No private fencing will be allowed to conflict with the Association screening or columns whatsoever.

(B) Lot Screening backing to FM 1461 and siding the entry road (first tier of lots only) to the community shall be 6' masonry walls with stone columns. Screening and columns will be installed by the Declarant. The screening and columns shall be Association owned and Association maintained. No private fencing will be allowed to conflict with the Association screening or columns whatsoever.

(vi) Accessory Buildings. Only one (1) Accessory Building shall be allowed on each Lot and shall be located in an area approved in writing by the ACC. Accessory Buildings shall only be built on a Lot in accordance with the provisions of Section 2.2(1)(ii).

(vii) Trash Containers. All trash containers shall be screened from view from Streets and in accordance with Section 2.2(f) hereof.

(viii) Hedges, Trees and Landscaping. The installation of all initial landscaping improvements required with respect to any Lot shall be completed prior to issuance of a Certificate of Occupancy for such Lot and/or Residence thereon from the City in accordance with the Landscape Plan approved by the ACC in accordance with Section 3.7(a) hereof. All development within PD District shall comply with the following:

(1) Building Lot Tree Requirements: Trees are required to be planted by the Builder in the front yard of all lots per the following:

(A) Lot Type 1- two, 4" caliper trees, measured at 12 inches above ground, both in the front of the home on the lot.

(B) Lot Type 2 - two, 4" caliper trees, measured at 12 inches above ground, both in the front of the home on the lot.

(C) Lot Type 3 East - two, 4" caliper trees, measured at 12 inches above ground, both in the front of the home on the lot. Additionally, two (2) additional 4" caliper trees, measured at 12" above ground, will be required within the rear yard twenty five (25) foot setback and evenly spaced.

(D) Lot Type 3 West - two, 4" caliper trees, measured at 12 inches above ground, both in the front of the home on the lot. Additionally, two (2) additional 5" caliper trees, measured at 12" above ground, will be required within the rear yard fifty (50') foot setback and evenly spaced.

(E) All trees species shall be Live Oak trees.

(2) Building Lot Ornamental trees and Shrub Requirements: Ornamental trees and shrubs are required to be planted by the Builder in the front yard of all lots per the following:

(A) All Lot Types:

(B) Two, 8-10' Ornamental Trees in the front of the home on the lot.

(C) Two 6-8' Ornamental Trees in the front of the home on the lot.

(D) Two 7 gallon Ornamental trees or shrubs in the front of the home on the lot.

(E) Minimum 4 one gallon shrubs are required in the front of the home on the lot. All shrubs shall be enclosed in a planting bed area.

(F) Any portion of the Lot that is not covered by foundation, drive, patio or planting bed shall be solid sod.

(G) All landscaped areas shall be irrigated by an underground automatic irrigation system

(ix) Windows. All windows visible from a Street or Common Area, whether on the front, side or rear, shall be metal, aluminum or vinyl frame windows.

(x) Retaining Walls. Retaining walls other than those constructed by the Declarant on its portion of the Property require prior written approval by the ACC to ensure conformity with the requirements contained in the PDD Development Standards and Design Guidelines with respect to location, construction, and materials, and shall in any event be constructed in accordance with any applicable governmental requirements. Except for those built by the Declarant or its affiliates on the Declarant's Property, any retaining walls which generally face an alley or are either between Residences or along or adjacent to the side or rear property lines of Lots shall be constructed of stone materials. Except for those built by Declarant or its affiliates, any retaining walls which generally face a Street or are along or adjacent to the front property lines of Lots shall be constructed of stone materials which are consistent with or complementary in appearance to the stone materials used in the construction of the Screening Walls or retaining walls and which are additionally approved in writing by the Declarant and/or the ACC prior to construction thereof. From and after the completion of the installation of (i) any retaining walls, and (ii) the six inch (6") drainage swales adjacent thereto and flowing along the side yard to the Street to accommodate drainage of the Lot(s) (collectively, the "**Retaining and Drainage Improvements**"), the Owners of the Lots located on the side of the retaining wall with a higher elevation (the "**Responsible Owner(s)**") shall be liable and responsible for the maintenance and repair of such Retaining and Drainage Improvements serving and/or located on such Responsible Owner's(s) Lot. In the event that any Responsible Owner fails to perform his/her obligation to maintain or repair the applicable Retaining and Drainage Improvements serving or located on such Responsible Owner's Lot, the Owner of the Lot adjoining such Retaining and Drainage Improvements or portion thereof (the "**Benefited Owner**") and the Association are hereby granted an easement (each being a "**Retaining and Drainage Improvements Easement**") over a five foot (5') wide area (the "**Retaining and Drainage Improvements Easement Area(s)**") of the Responsible Owner's Lot and Benefited Owner's Lot located immediately adjacent to the retaining wall and along any of the rear and/or side boundary line of the Benefited Owner's Lot where the Retaining and Drainage Improvements may be located, which depictions of such typical Retaining and Drainage Improvements Easements may be reflected on the final Plat of the Subdivision or any Phase thereof, and are generally depicted on Exhibit C attached hereto and incorporated herein by reference. Upon ten (10) days written notice to the Responsible Owner of its failure to maintain and/or repair the applicable Retaining and Drainage Improvements, either the Benefited Owner or the Association may maintain and/or repair the Retaining and Drainage Improvements as reasonable and necessary at the Responsible Owner's sole cost and expense. In this regard, any costs or expenses incurred by the Association in maintaining or repairing the Retaining and

Drainage Improvements on behalf of the Responsible Owner shall be secured by the lien against the Benefited Owner's Lot as provided for in Article 6.

(xi) Screening Walls. Declarant shall construct or cause to be constructed residential screening walls (the "**Residential Screening Wall(s)**") along FM 1461 and siding the entry road to the Subdivision pursuant to Section 1.15.3 of the PDD (hereinafter collectively referred to as "**Screening Walls**"). At no time shall anything be attached to, hung from, drilled into or otherwise connected to any Screening Wall. Any fence that terminates into a Screening Wall should only terminate at a post and should not attach to the Screening Wall itself. The maintenance cost of the Screening Walls shall be borne by the Association.

Notwithstanding the foregoing, in all circumstances, the height of a fence adjoining with any Screening Wall should be the same at the point where the two join. In situations where any fence and/or wall transitions from a height of six feet (6') or more, such transition materials and method must be in accordance with fence transition elevation design approved by the ACC.

(xi) Recreational Facilities. No jungle gyms, swing sets, basketball hoops and backboards, similar playground equipment, tennis courts or such other recreational equipment shall be erected or installed on any Lot without prior written approval of the ACC unless (i) such item is placed within a backyard that has a solid fence that completely encloses the backyard and the location and the item does not exceed ten feet in height, or (ii) such item is a temporary and movable facility that is stored each night in the garage, the Residence or other fully screened area. Any mobile basketball hoops or backboards must be stored so as not to be visible from the Street when not in use. A swimming pool may be constructed within any Lot provided the plans are approved by the ACC prior to commencement of construction to ensure compliance with the requirements contained in the Design Guidelines with respect to location and screening. Above ground pools are prohibited. Pool plans must comply with City ordinance and residents must provide the ACC with proof of City of Celina approval upon request. Any playground, swimming pool or other play areas or equipment erected within any Lot shall be used at the risk of the user. The Association, the ACC and/or the Board shall not be held liable to any Person for any claim, damage or injury occurring thereon or related to use thereof.

(xi) Energy Conservation Equipment. No solar collector panels or similar devices ("**Solar Devices**") may be placed on or around any Dwelling except with the written permission of the ACC. The ACC may deny permission to place Solar Devices on or around any Residence if (1) the Solar Device does not comply with applicable laws; (2) the Solar Device threatens the public health or safety; (3) the Solar Device is to be placed on any Common Area or any portion of the Property owned by the Declarant; (4) the Solar Device is to be placed anywhere other than an Owner's roof, patio or within such Owner's fenced yard; (5) the Solar Device does not conform to the slope of the roof and has a top edge that is not parallel to the roofline of the Residence; (6) the Solar Device is to extend beyond the roofline of any Residence; or (7) the Solar Device is to be taller than the Owner's fence. No windmills, wind generators or other apparatus for generating power from the wind shall be installed or erected on any Lot.

(xiii) Signs, Advertisements and Billboards. Declarant may erect and maintain a sign and/or signs deemed reasonable and/or necessary, in Declarant's sole discretion, for the construction, development, operation, promotion and/or sale of any Lots and/or the subdivision. Except as provided in the preceding sentence, no sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any residential unit, fence or other improvement upon such Lot so as to be visible from public view except the following:

- (1) For Sale Signs. An Owner may erect (1) sign not to exceed 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the property for sale.
- (2) Declarant's Signs. Signs or billboards may be erected by the Declarant or Builders advertising their homes for sale during the period of original construction and home sales.
- (3) Spirit Signs. Spirit signs (announcing the involvement of students in athletics or school programs) shall be no more than two feet (2') high by three feet (3') wide and displayed only during the applicable sport season, but in any event, no longer than six (6) consecutive months.

No more than two (2) political signs advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal may be erected on any Lot provided that such signs shall not be erected more than a reasonable period of time (in no event to exceed ninety (90) days) in advance of the election to which they pertain and are removed within ten (10) days after the election.

Contractors' signs used for advertising work performed on a Lot may be erected on such Lot provided that such signs shall not be erected more than ten (10) days prior to commencement of the work and are removed no later than ten (10) days following completion of the work.

In addition to the foregoing, to protect the safety and harmony of the community, no person shall engage in picketing on any Lot, easement, right-of-way or Common Area within or adjacent to the Property, nor shall any Vehicle parked, stored or driven in or adjacent to the Property bear or display any signs, slogans, words or decorations intended to create controversy, invite ridicule or disparagement, or interfere in any way with the exercise of the property rights, occupancy or permitted business activities of any Owner or Declarant. All such signs placed upon a Lot shall be kept clean and maintained in good repair.

Notwithstanding the foregoing or anything to the contrary contained herein, the Board or its agents shall, without notice, have the right, but not the obligation, to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal. The Board shall have the right to erect signs as it deems appropriate. All signs are to be in compliance with the sign ordinance of the City.

(g) Construction Materials. All construction materials shall conform to the following provisions:

(i) Exterior Materials. All exterior construction materials shall be subject to prior approval by the ACC. Notwithstanding the foregoing or anything to the contrary contained herein, the exterior construction materials shall conform to any and all City ordinances, including, without limitation, the PDD Development Standards. Unless otherwise approved by the ACC, Building Materials:

(1) Masonry: 100% masonry is required on facades facing, siding and backing a public street.

(2) A minimum of ninety percent (90%) of the total exterior wall surfaces of all main structures shall have an exterior finish of glass, natural and/or cultured stone, stucco, brick or any combination thereof. The use of wood as an accent exterior material shall be limited to a maximum of five percent (5%) of the total exterior wall surfaces.

(3) Any wood trim and other applicable exterior portions of the Residences, Accessory Buildings and/or Structures shall be painted using paint that is earth tone in color and approved by the Board and/or ACC, as applicable, for use in the Subdivision. Use of exterior insulation and finish system ("EIFS") is strictly prohibited. Front and visible side elevation materials must be congruently detailed. The materials must wrap exterior corners and must extend to a non-visible point before transitioning. Notwithstanding anything else contained herein to the contrary, the term "masonry" as used herein means brick, cast stone and stone but shall not mean hardi-board or any synthetic stone.

(ii) Roof, Chimney and Gutter Materials. Roof material shall be Roofing Materials: Wood roofing materials shall not be permitted within the development. The Board and/or ACC shall approve all colors and mix of colors of roof surfaces. All roofing materials must be fireproof and conform to City requirements, and are subject to approval of the ACC. The ACC may restrict the installation of roofing shingles that are primarily designed to be wind and hail resistant, provide heating and cooling efficiencies or provide solar generation capabilities ("Specialized Shingles") on any Residence if such Specialized Shingles do not resemble shingles used on other Residences, are less durable than shingles used on other Residences or do not match the aesthetics of the property surrounding the Lot on which such Residence is located. Roof form shall be limited to hip, Dutch hip or Dutch gable or gable. Roof forms should be randomly distributed throughout each Street scene. The Board and/or ACC, as applicable, will require variation of roof pitch, dormer details, etc. for adjacent Residences and/or Structures. No EIFS is allowed on any exterior elevation or chimney. The entire Residence shall be guttered with downspouts. All gutters and downspouts on the front of a Residence and any side that faces a Street or Common Area shall be paint grip metal material. All downspouts except those emptying directly into Streets, driveways or alleys shall be tied into underground drains if positive drainage does not exist. Gutters shall not drain across property lines.

(1) Address Markers. Address markers shall (A) be made of cast stone, (B) be of a rectangular shape, (C) be a minimum of nine inches (9") high by fifteen inches (15") wide, (D) be a maximum of eleven inches (11") high by eighteen

inches (18") wide, (E) be mounted recessed into the façade of the Residence so as to be visible from the Street adjacent to the front boundary of the Lot, and (F) have the house number.

(2) Plate Height. The plate height shall be a minimum of eight feet (8') on the first floor and on garages.

**Section 3.5. Height Restrictions.** All Residences and Structures shall be no more than the lesser of (i) two and one-half (2-1/2) stories, (ii) forty feet (40') in height, or (iii) the minimum height permitted by the PDD and/or City.

**Section 3.6. Roof Restrictions.**

(a) All Residences located on a corner Lot, visible from a Street or a side Street, shall have a minimum slope 8:12 roof pitch, and the front and side pitch must match.

(b) All Residences located on interior Lots, visible from a Street, shall have a minimum slope 8:12 roof pitch, and the front and side pitch must match.

(c) Notwithstanding the foregoing, all Residences located on Lots where the rear and sides are not visible from a Street may have a minimum slope 8:12 roof pitch on such rear and/or sides. Notwithstanding the foregoing, the minimum slope for rear extensions and patios to the Residence on the applicable Lot may be a 4:12 roof pitch or as otherwise approved, on a case-by-case basis, by the ACC and/or the Board prior to commencement of construction.

(d) Vent stacks and other roof penetrations shall be placed on roof planes other than those visible from Streets or common areas, unless specifically approved by the Board and/or ACC, as applicable.

**Section 3.7. Construction Period and Process.** Construction of any Residence shall be pursued with all due diligence and, in any event, shall be completed within twelve (12) months after commencement. Construction of any other Structure shall be completed within the time periods specified in the plan approval process by the ACC. All areas under construction shall be maintained in a clean, safe condition, and debris, trash, and rubble shall be stored in appropriate containers and removed from the Property on a regular basis to keep the Residence reasonably clean, but in no event less than once every two (2) weeks.

(a) Landscaping.

(i) Each Builder shall make a one (1) time submission to the ACC or Declarant (if the ACC has not yet been established hereunder) for approval of a typical landscape plan for landscaping to be installed on such Builder's Lots for approval. Thereafter, such Builder shall only have to make additional submissions for approval by the ACC or Declarant (if the ACC has not yet been established hereunder) if the landscaping for any applicable Lot will materially vary from the prior approved plan. Notwithstanding the foregoing, the landscape plan for additional requirements for corner Lots must always be submitted for approval by the ACC (or Declarant if the ACC has not yet been established hereunder). Notwithstanding the foregoing, custom Builders shall submit a separate landscape plan for each Lot. All plans submitted by any

Builder and/or Owner shall include two (2) copies of the plans for landscaping to be installed on any Lot (or the additional requirements for corner Lots) and such submission shall be prior to installation of any landscaping or related improvements on any Lot. The ACC or Declarant, as applicable, shall approve or disapprove all landscaping plans properly submitted to it for construction within thirty (30) days after the date it receives a complete application with required signatures and a complete set of plans and specifications. If the ACC or Declarant, as applicable, fails to specifically approve or disapprove any landscaping plans within such thirty (30) day period, then the ACC or Declarant, as applicable, shall be deemed to have approved the landscaping plans submitted (such approved landscaping plans are herein referred to as the "**Approved Landscaping Plans**"). Alternately, the ACC or Declarant, as applicable, may disapprove a set of landscaping plans by so noting thereon and returning it to the Person submitting, accompanied by a statement of the reasons for disapproval. No landscaping installation or related work shall be commenced on any Lot unless and until the landscaping plans for the Lot in question have been approved in writing by the ACC or Declarant, as applicable. The construction, repair, replacement, installation, or placement of any landscaping improvement of any type on a Lot without the prior written approval from the ACC or Declarant, as applicable, shall constitute grounds for the imposition by the ACC or the Association of an automatic fine against the Owner of said Lot initially in the amount of Five Hundred and No/100 Dollars (\$500.00), plus an additional Five and No/100 dollars (\$500.00) for each thirty (30) day period during which such construction, repair, replacement, installation, or placement of any landscaping improvement of any type on a Lot without the prior written approval from the ACC or Declarant, as applicable, continues, provided that such fine shall be prorated on a daily basis for any periods less than thirty (30) days. A fine levied under this Section shall be charged to the Owner's assessment account, payable upon demand and secured by the lien created in Article 6.

(ii) In addition to the requirements contained in this Declaration, the Builder for each Lot shall install landscaping improvements (the "**Initial Landscaping Improvements**") on each interior Lot and/or corner Lot in accordance with the applicable Minimum Landscape Requirements and the Approved Landscaping Plans applicable to such Lot. Furthermore, each Builder shall establish fully sodded grass on all yards. Any Owner other than a Builder wishing to modify the Initial Landscaping Improvements on any Lot or the Approved Landscaping Plans obtained by a Builder for any Lot must prepare and submit landscaping plans to the ACC or Declarant, as applicable, in accordance with Section 3.7(a)(i) above.

(iii) Unless otherwise approved in writing by the ACC or Declarant, as applicable, or unless more restrictive requirements are contained in the Minimum Landscaping Requirements or any Design Guidelines, no more than 50% of the area of any yard that faces a Street may be covered by shrubs or flowers and no vegetables may be grown in any yard that faces a Street. Each Owner shall maintain its yard in a sanitary and attractive manner and shall edge the Street curbs that run along the Lot line. All flowerbeds must be maintained and weeded. Grass, weeds and vegetation on each Lot must be kept mowed at regular intervals so as to maintain the Lot in a neat and attractive manner. No Owner shall permit weeds or grass on a Lot to grow to a height of greater than four inches (4"). Upon failure of any Owner to maintain its Lot, the Declarant or the Association may, at its option, have the grass, weeds and vegetation cut as often as necessary in its judgment, and such Owner shall be obligated, when presented with an itemized statement, to reimburse the Declarant or the Association for the

cost of such work. The amount to be reimbursed, if not paid within ten (10) days after the date of such invoice, shall bear interest from the date of the invoice at the rate of eighteen percent (18%) per annum (but not to exceed the maximum non-usurious rate of interest that can be contracted for under the laws of the State of Texas) and shall be secured by the lien provided for in Article 6. The Association is a third-party beneficiary of this Section.

**(b) Right to Waive or Modify Specific Construction Provisions.** The ACC shall have the right, in its discretion, to grant reasonable waivers of the construction provisions set forth in this Declaration, and any such waiver shall not entitle any other Person to a similar waiver and shall only be granted with respect to portions of the Property for which the ACC is responsible in accordance with the terms of this Declaration.

**Section 3.8. Declarant Rights.** So long as the Declarant owns any Lot, such Declarant may exercise any of the rights of the ACC appointed by such Declarant under this Article 3 and supersede any decision or action of the ACC.

#### **ARTICLE 4** **MAINTENANCE PROVISIONS**

**Section 4.1. Owner's Obligation to Maintain.** Each Owner shall maintain its Lot and the Residence, Accessory Building and other Structures thereon in a clean, first class condition. Each Owner shall be solely liable and responsible for maintenance of the Lot(s) owned by Owner, which maintenance obligation includes, without limitation, the following:

- (a)** such Owner's Lot(s) and all landscaping, Residence, Accessory Building, Structures, parking areas, sidewalks and other improvements within the boundaries of such Lot(s) in a well-maintained, safe, clean and attractive condition at all times. Such maintenance shall include, without limitation:
- (i)** proper seeding, and regular and consistent mowing of grass;
  - (ii)** maintenance of the landscaping on its Lot(s) in good condition at all times, including, without limitation pruning of all trees and shrubbery;
  - (iii)** prompt removal of all litter, trash, refuse and waste from the Lot(s);
  - (iv)** watering of all landscaping, including, without limitation grass, trees and shrubbery;
  - (v)** keeping exterior lighting and mechanical facilities in working order;
  - (vi)** keeping landscaping alive and free of weeds and overgrowth;
  - (vii)** keeping driveways in good repair and condition;
  - (viii)** maintaining the exterior of its Residences and Structures in good condition;

(ix) repairing and replacing Residences, Accessory Buildings and Structures as necessary to maintain good order and the aesthetic harmony of the Property and Lot(s)

(x) complying with all governmental health and political requirements;

(xi) keeping any drainage easement(s) free of items which would impede the flow of storm water within such drainage easement(s);

(xii) painting and repainting of improvements as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such Lot or improvements as determined by the ACC and/or Board. The approval of the ACC and/or Board, as applicable, shall not be required for such painting and repainting as long as neither the color scheme nor the arrangement of the colors of any improvements, nor the color of paint thereon is substantially altered from such scheme, arrangement and color(s) for such improvement(s) previously approved by the ACC and/or Board, as applicable; and

(xiii) preventing soil, dirt or debris from flowing, eroding or otherwise being deposited onto, or removed from any adjacent Lot, Common Area or Street. Each Owner shall be responsible for cleaning up any soil, dirt or debris that is deposited onto any adjacent Lot, Common Area or Street.

(b) all landscaping on that portion of the Common Area(s) or public right(s)-of-way, if any, between the boundary of the applicable Owner's Lot and the nearest curb or pavement edge of the public right(s)-of-way or the nearest fence, wall or berm constructed on the adjacent Common Area(s), as applicable.

(c) all landscaping on that portion of the Common Area(s) or public right(s)-of-way between the boundary of the applicable Owner's Lot and (i) any abutting bank or water's edge of any lake, pond, stream or wetlands area within the Subdivision; or (ii) any Common Area(s) abutting the bank or water's edge of any lake, pond, stream or wetlands area within the Subdivision; provided, there shall be no right to remove trees, shrubs or similar vegetation from the areas described in this Section 4.1(c) without the prior written approval of the Association.

**Section 4.2. Damaged Improvements.**

(a) If any Residence, Accessory Building or Structure is damaged in any way, the Owner shall immediately repair such damage and complete such repairs within thirty (30) days after the event causing such damage (or if such repairs cannot be reasonably completed within such thirty (30) day period, the Owner shall commence repair within such thirty (30) day period and thereafter diligently pursue completion of such repairs), and in the case of substantial damage when the Owner does not wish to rebuild, raze the damaged Structure or Residence and remove the same within thirty (30) days after the event causing such damage and thereafter leave and maintain the surface of the Lot in good order. Notwithstanding anything to the contrary contained herein, no Retaining and Drainage Improvement shall ever be permitted to be razed or removed and, to the extent damaged, shall be repaired and/or maintained by the party(ies) entitled to and/or responsible for such repair and maintenance pursuant to the terms of this Declaration.

(b) If the Association, Declarant or Owner, or any of their agents, employees or contractors causes any damage to the common Areas or to any Lot, or to any of the improvements located thereon, or (ii) causes injury to any person utilizing the Common Areas or any Lot, or any of the improvements located thereon, which damage or injury arises in whole or in part out of the exercise of any of the easements granted pursuant to a Plat, under this Article 4 and/or under Sections 3.4(g)(iii), 3.4(g)(viii), 3.4(g)(ix)(D), 8.5 and/or 9.3 or otherwise granted pursuant to this Declaration, the party responsible for such damage will (A) restore the Common Area and/or Lot(s) to substantially the same condition immediately preceding such entry, (B) repair any damage to any improvements located on the Common Areas or any Lot, and replace any such improvements located thereon which are not capable of repair, and (C) indemnify, defend and hold harmless the Association, the Declarant or any Owner not responsible for such damage or injury from any and all damages, liability and expenses incurred by such innocent party as a result of the exercise of rights granted by such easement; provided, however, the terms and provisions of Section 9.8 shall not be amended or modified by the obligations stated under this Section 4.2 (b).

**Section 4.3. Declarant/Association Right to Perform.** If any Owner fails to maintain the condition of its Lot, the landscaping thereon, including the prompt removal of rotting or deceased trees and shrubs, or the Residence or other Structures thereon as contemplated by this Article 4 and fails to take action to correct such defect within ten (10) days after the Declarant or the Association has furnished written notice thereof to such Owner, then the Owner of such Lot hereby grants permission to Declarant or the Association (or its duly authorized agents) to enter upon such Lot and perform those duties which the Owner failed to perform without liability whatsoever to such Owner or any Person for trespass, conversion, or any claim for damages (subject to any notice and hearing requirements under applicable law). The cost of performing such duties shall be added to the Owner's assessment account and shall bear interest at the rate of eighteen percent (18%) per annum (but not to exceed the non-usurious maximum rate of interest that can be contracted for under the laws of the State of Texas), be payable upon demand, and shall be secured by the lien provided for in Article 6.

**Section 4.4. Easement Maintenance.** Each Owner grants to the Association, the Board, and the Declarant the right to access, repair, and maintain all facilities and improvements within any wall, entry, fence, landscape, or other similar easement as recorded on any Plat.

By acquisition of a Lot, each Owner hereby grants, creates and conveys unto the Association, the other adjacent Owners and the Declarant a perpetual "**Drainage Easement**" (herein so called) over, through, under and across the Owner's Lot as reasonably necessary for the purpose of permitting runoff and/or storm water to drain from other adjacent Lots over, through, under and across the Owner's Lot(s); provided, however, drainage that may adversely affect a Residence shall not be permitted. Notwithstanding any of the foregoing rights of the Association or the Declarant, each Owner hereby agrees to maintain the Drainage Easement area at such Owner's sole cost and expense. If any structures or other obstructions are constructed, created or placed by any Owner within the Drainage Easement area without the prior written consent of the Association and the Declarant, the Declarant or the Association shall have the right to remove such structure or obstruction at the sole cost of such Owner.

## **ARTICLE 5**

### **OWNERS' ASSOCIATION**

**Section 5.1. Establishment.** The Association has heretofore been or will hereafter be created as a Texas non-profit corporation. Each Owner of a Lot shall be a member of the Association and such membership is appurtenant to and shall not be separated from ownership of a Lot. Upon the transfer of a Lot, the new Owner shall automatically become a member of the Association. The term of existence of the Association and other matters pertaining to its operation are set forth in its Certificate of Formation and its Bylaws. The Association is established to enforce this Declaration and the Covenants, to promote the interests of the Owners as residents of the Property, and to enhance the value of the Lots as part of a harmonious, high quality, residential subdivision.

**Section 5.2. Voting Power.** The Association shall have two classes of voting membership as follows:

(a) **Class A.** The Class A Member shall be all Owners other than the Declarant and shall be entitled to one vote for each Lot owned. If more than one person owns an interest in a Lot, they shall combine their vote in such way as they see fit, but there shall be no fractional votes, and no more than one vote with respect to any Lot. Additionally, any Owner combining two (2) or more Lots for construction of one (1) Residence thereon pursuant to Section 2.2(a), such Owner shall be entitled to one vote for each Lot owned and comprising the combined Lots.

(b) **Class B.** The Class B Member shall be the Declarant who shall be entitled to ten (10) votes for each Lot owned by such Declarant. Subject to the conditions set forth in the remainder of this Section 5.2(b), the Class B membership applicable to the Declarant's Property shall be converted to Class A membership upon the earlier of (i) the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, (ii) ten (10) years from this filing, or (iii) the recording in the Records of Collin County, Texas of a notice signed by the Declarant terminating its Class B membership. In determining the number of Lots owned by the Declarant for the purpose of Class B membership status hereunder, the total number of Lots covered by this Declaration, including all Lots annexed thereto in accordance with Section 8.1 herein, shall be considered. In the event the Class B membership has previously lapsed as provided in (i) above, but annexation of additional property restores the ratio of Lots owned by a Declarant to the number required for Class B membership status, such Class B membership shall be reinstated until it expires pursuant to the terms hereof.

(c) **Board of Directors Election.** The Board shall be elected as provided in the Certificate of Formation and Bylaws of the Association. The Board shall act by a two-thirds (2/3) majority vote as provided in the Bylaws.

(d) **Specific Powers of Board.** Without limiting the authority granted to a board of directors under the Texas Business Organizations Code, the Board shall have the following specific powers on behalf of the Association to:

(i) enforce the provisions of this Declaration;

(ii) enter into contracts;

(iii) retain third parties, as necessary, to assist the Board in carrying on the Association's activities, including engineers, accountants, lawyers, architects, land planners, professional management, and other consultants;

- (iv) take such action as necessary to maintain the Common Area in good order and condition;
- (v) acquire property, services and materials to carry out its duties;
- (vi) purchase insurance covering potential liability for use of the Common Area and for other risks;
- (vii) borrow money for Association purposes;
- (viii) initiate and defend litigation, arbitration and other similar proceedings;
- (ix) promulgate reasonable rules and regulations for access to and use of Common Area as well as a policy establishing a schedule and procedures by which the Board may assess fines against Owners for violations of the Covenants or the Design Guidelines;
- (x) establish and collect reasonable fees for the use of any recreational facilities on the Common Area; and
- (xi) establish and collect a reasonable fee for copying and furnishing copies of the Association's governing documents and furnishing a Resale Certificate as required by law. This function and the authority to collect and receive such fees may be delegated or assigned by the Board to the Association's Managing Agent.

**Section 5.3. Officers.** The Association will have such officers as are set forth in the Bylaws.

**Section 5.4. Dissolution.** So long as a Declarant owns record title to any portion of the Property, the Association shall not be dissolved. Once the Declarant is divested of all ownership interest in the Property, the Association may be dissolved upon the written consent of Owners owning at least eighty-five percent (85%) of the Lots. Upon such dissolution, the assets of the Association shall be donated to a nonprofit organization selected by a majority of the Board and with purposes similar to the Association.

## **ARTICLE 6** **ASSESSMENTS**

**Section 6.1. Power to Establish Assessments.** The Association is empowered to establish and collect Assessments as provided in this Article 6 for the purpose of obtaining funds to maintain the Common Area, perform its other duties, and otherwise preserve and further the operation of the Property as a first-class, quality residential subdivision. The purposes for which Assessments may be used include, without limitation, maintaining, operating, managing, repairing, replacing or improving the Common Area or any improvements thereon; mowing grass and maintaining grades and signs; paying legal fees and expenses incurred in enforcing this Declaration; paying expenses incurred in collecting and administering assessments; paying insurance premiums for liability and fidelity coverage for the ACC, the Board and the Association; and satisfying any indemnity obligation under the articles or bylaws. The Board may reject partial payments and demand payment in full of all amounts due and owing the Association. The Board is specifically authorized to establish a policy governing how payments are to be applied.

## **Section 6.2. Commencement of Assessments.**

(a) Owner Other Than a Declarant. Unless otherwise provided by separate agreement by and between the Declarant and any Person, the Assessments shall commence, as to each Lot located in the Declarant's Property, upon the conveyance of the Lot by the Declarant to any Person that is not an affiliate of the Declarant. Each Owner shall be liable and pay Assessments on a per Lot basis, regardless whether any Owner owns multiple Lots or combined Lots within the Subdivision, subject to any cap on Assessments approved by Declarant and otherwise payable by a Builder on the acquisition of a Lot not containing a Residence.

(b) Declarant. A Declarant shall not be liable for Assessments for any Lots that it owns. A Declarant may, but shall have no obligation to, subsidize the Association from time to time. In the event a Declarant decides to subsidize the Association and any shortfall in the operating budget of the Association is due in part to the failure of the Association to collect delinquent Assessments, then the Association shall immediately and vigorously pursue collection of such delinquent Assessments through foreclosure, if necessary, and shall reimburse the Declarant the amounts, if any, so collected. In addition, the Declarant is not individually responsible for funding a reserve.

## **Section 6.3. Regular Annual Maintenance Assessments.**

(a) Annual Budget. For each calendar year or a part thereof during the term of this Declaration, the Board shall establish an estimated budget of the expenses to be incurred by the Association for the forthcoming year in performing its duties. Based upon such budget, the Association shall then assess each Lot an annual fee (the "**Maintenance Assessment**") which shall be paid by each Owner in advance either annually, bi-annually or quarterly as determined by the Board. The Association shall notify each Owner of the Maintenance Assessment for the ensuing year by December 15 of the preceding year, but failure to give such notice shall not relieve any Owner from its obligation to pay Maintenance Assessments. Any Maintenance Assessment not paid within thirty (30) days of the date due shall be delinquent and shall thereafter bear interest as provided in Section 6.5(f). As to any partial year, Maintenance Assessments on any Lot shall be appropriately prorated. Notwithstanding the foregoing or anything to the contrary herein, the annual Maintenance Assessment applicable to each Lot for the initial year shall be Four Hundred Fifty and No/100 Dollars (\$450.00) per Lot. The initial annual Maintenance Assessment due from each Owner shall be prorated as of the conveyance of the Lot by Declarant to any Person who is not an affiliate of Declarant, and paid to the Declarant and/or Association, as applicable, upon conveyance of a Lot by Declarant to Owner. All other assessments other than the initial Maintenance Assessment shall be paid to Declarant and/or the Association, as applicable, as set forth in this Declaration.

(b) Limits on Maintenance Assessments. The Board may increase the Maintenance Assessment annually to meet the anticipated needs of the appropriate budget, but the Maintenance Assessment may not be increased in any year by an amount in excess of twenty-five percent (25%) above the previous year's Maintenance Assessment, unless such increase is approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, where a quorum exists. The notice and quorum requirements for such

meeting are the same as those set forth in Section 6.4 for Special Assessments (as such term is defined therein).

(c) Uniform Assessments. Maintenance Assessments for all Lots shall be uniform.

**Section 6.4. Special Assessments.** The Association may impose special assessments ("**Special Assessments**") to make capital improvements to the Common Area, to satisfy its indemnity obligations under the Certificate of Formation or Bylaws, or for other similar purposes. Any Special Assessment proposed by the Association must be approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, at which a quorum exists. At least fifteen (15) days prior to any meeting of the Association called to consider any Special Assessment, the Board shall notify each Owner thereof by written notice specifying the total amount of the Special Assessment required, the amount thereof imposed on each Lot (which shall be uniform), the purpose for such Special Assessment, and the time and method of payment thereof. The time for paying any Special Assessment (which may be in installments) shall be as specified in the approved proposal thereof. At the first such meeting called by the Association, the presence of members, in person or by proxy, entitled to cast thirty percent (30%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, provided that the required quorum at the subsequent meeting shall be one-half (1/2) of the minimum required quorum at the preceding meeting. No rescheduled meeting shall be held more than fifty (50) days following the preceding scheduled meeting.

**Section 6.5. Liability for and Enforcement of Assessments.**

(a) Personal Liability. Each Owner shall be personally liable for all Assessments imposed against the Owner's Lot during the time it owns a Lot.

(b) Reservation, Subordination, and Enforcement of Assessment Lien. The Declarant hereby reserves for the benefit of itself and the Association, a lien (the "**Assessment Lien**") against each Lot located on Declarant's Property to secure payment of (1) the Assessments imposed hereunder, (2) payment of any amounts expended by such Declarant or the Association in performing a defaulting Owner's obligations as provided for in Section 3.4(f), Section 3.4(g)(iii), Section 3.4(g)(vi), Section 3.4(g)(viii), Section 3.7(a), Section 4.3, and (3) any fine levied or assessed against any Owner and/or Lot in accordance with Section 3.3(e) or Section 9.2 hereof. Each Owner, by accepting conveyance of a Lot, shall be deemed to have agreed to pay the Assessments herein provided for and to the reservation of the Assessment Lien. The Assessment Lien shall be subordinate to the liens of any valid first lien mortgage or deed of trust encumbering a particular Lot. Sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to a first mortgage or deed of trust foreclosure (whether by exercise of power of sale or otherwise) or any proceeding in lieu thereof, shall only extinguish the Assessment Lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability and the Assessment Lien for any Assessments thereafter becoming due. The Assessment Lien may be non-judicially foreclosed by power of sale in accordance with the provisions of Section 51.002 of the Texas Property Code (or any successor provision) or may be enforced judicially. Each Owner, by accepting conveyance of a Lot, expressly grants the Association a power of sale in connection with the foreclosure of the Assessment Lien. The Board is empowered to appoint

a trustee, who may be a member of the Board, to exercise the powers of the Association to non-judicially foreclose the Assessments Lien in the manner provided for in Section 51.002 of the Texas Property Code (or any successor statute). The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(c) Notices of Delinquency or Payment. The Association, the Association's attorney or the Declarant may file notice of any delinquency in payment of any Assessment in the Records of Collin County, Texas. Upon the timely curing of any default for which a notice was recorded by the Association, the Association through its attorney is hereby authorized to file of record a release of such notice upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed the actual cost of preparing and filing a release. Upon request of any Owner, any title company on behalf of such Owner or any Owner's mortgagee, the Board through its agents may also issue certificates evidencing the status of payments of Assessments as to any particular Lot (i.e., whether they are current or delinquent and if delinquent, the amount thereof). The Association or its Managing Agent may impose a reasonable fee for furnishing such certificates or statements.

(d) Suit to Recover. The Association may file suit to recover any unpaid Assessment and, in addition to collecting such Assessment and interest thereon, may also recover all expenses reasonably expended in enforcing such obligation, including reasonable attorneys' fees and court costs.

(e) Late Charges and Collection Fees. If any Assessment or any part thereof remains unpaid after thirty (30) calendar days from and after the due date established by the Board, a late charge shall be assessed against the non-paying Owner for each month or any part thereof, that any portion of any Assessment remains unpaid. Should any Assessment be payable in installments, the Association is authorized to accelerate the entire Assessment and demand immediate payment thereof. The late charge shall be in the amount of Twenty-five and No/100 Dollars (\$25.00) per month. The Association's Managing Agent shall be entitled to charge an Owner a monthly collection fee to compensate Managing Agent for its administrative costs and efforts to collect and process the late payment of Assessments. A service charge in the amount of Twenty and No/100 Dollars (\$20.00) shall be charged for each check that is returned because of insufficient funds or any other reason. The amount of late charges and service charges may be adjusted, from time to time, by the Board consistent with any changes in the administrative costs to collect unpaid Assessments or the Association's bank charges. All late charges, collection fees, service charges and attorneys' fees assessed or incurred due to late payment of Assessments shall be charged to an Owner's Assessment account, which shall be part of the delinquent Assessment and shall be payable and secured in the same manner as herein provided with regard to Assessments.

(f) Interest on Past Due Amounts. All Assessments past due more than thirty (30) days, unpaid fines and other amounts owed to the Association by any Owner which are not paid when due shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum, but not in excess of the maximum rate allowed by applicable law.

(g) Suspension of Right to Use Common Area. In addition to the other powers herein granted, the Board may suspend the right of an Owner to use any of the Common Area during the time that such Owner is delinquent in paying any Assessment.

(h) Working Capital Contribution. Upon acquisition of record title to a Lot by an Owner other than a Declarant or a Builder, a contribution ("**Working Capital Contribution**") shall be made by or on behalf of such Owner to the working capital of the Association. This amount is not refundable, shall be in addition to, not in lieu of, the Maintenance Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into escrow and disbursed therefrom to the Association or to the Declarant if the Association is not yet established and shall be used for covering capital improvement, operating and other expenses pursuant to the terms of this Declaration and the Bylaws of the Association. Such amount shall be reviewed annually and may be increased, however any such increase is limited to an amount not to exceed ten percent (10%) over the previous year. Such Working Capital Contribution shall be initially set at Two Hundred and No/100 Dollars (\$200.00) per Lot.

(i) Transfer Fees and Fees for Issuance of Resale Certificates. The Board may, at its sole discretion, enter into contracts with third parties to oversee the daily operation and management of the Association. These third parties may, and probably will, have fees, which will be charged to an Owner for the transfer of a significant estate or fee simple title to a Lot and the issuance of a Resale Certificate. The Association or its agent shall not be required to issue a Resale Certificate until payment for the cost thereof has been received by the Association or its agent. Transfer fees and fees for the issuance of a Resale Certificate are not refundable and may not be regarded as a prepayment of or credit against Maintenance or Special Assessments, and are in addition to the Working Capital Contribution in Section 6.5(h) above. This Section does not obligate the Board or any third party to levy such fees.

**Section 6.6. PISD Transfer Fee Disclosure.** Pursuant to that certain Declaration of Restrictive Covenants, dated July 29, 2015, by the Prosper Independent School District, and recorded in the Real Property Records of Collin County, Texas under Clerk's File No. 20150729000944390 ("**PISD Declaration**"), each transfer of a Lot containing a Residence between Owners shall be subject to an educational assessment of 333% of the sales price in accordance with the terms of the PISD Declaration ("**Educational Assessment**"). In accordance with the PISD Declaration, the Association shall cooperate with a 501(c)(3) organization acceptable to the Prosper Independent School District ("**Foundation**"), which Foundation shall be responsible to (a) collect the Educational Assessment and (b) use the Educational Assessments in a manner consistent with the terms of the PISD Declaration. The Educational Assessment owed for the first sale by a Builder to an Owner of a Lot containing a Residence located within the Property shall be paid by the Association, with Declarant providing the Association all funds necessary to pay such Educational Assessment. For the sake of clarity, neither the Association nor the Declarant shall be responsible for any Educational Assessment owed as a result of any subsequent transfers of a Lot containing a Residence.

## **ARTICLE 7**

### **COMMON AREA**

**Section 7.1. Right to Use Common Area.** Each Owner, the members of such Owner's immediate family, and the Owner's guests (provided guests are accompanied by an Owner) shall have the right to use the Common Area for its intended purposes as herein provided. The Declarant and the Association shall have the right to enter on and use the Common Area at all times to exercise their rights or (in the case of the Association) to perform its duties hereunder.

**Section 7.2. Specific Facilities and the Pond.** Specific facilities, if any, and the pond to be located in the Amenity Area Property ("**Pond**") shall be determined by the Declarant. The Declarant and/or the Board may promulgate reasonable rules and regulations for use of these facilities and/or the Pond.

**Section 7.3. Maintenance of Common Area.** The Association shall be solely responsible for all maintenance, repair, replacement, and improvement of the Common Area, utilizing the Assessments for such purposes as herein provided. The Declarant shall have no responsibility for maintenance, repair, replacement, or improvement of the Common Area after initial construction.

**Section 7.4. Risk of Loss - Use of Common Area.** Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, the Board and its committees, Declarant, and any Builder are not insurers of personal safety and that each person using the Common Area assumes all risks of personal injury and loss of or damage to property, resulting from the use and enjoyment of any recreational facility or other portion of the Common Area. Each Owner agrees that neither the Association, the Board and any of its committees, any Builder, nor Declarant shall be liable to such Owner or any person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from or otherwise relating to the use of any recreational facility or other portions of the Common Area, including, without limitation, any claim arising in whole or in part from the negligence of the Association, Declarant or any Builder. THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.

**Section 7.5. Conveyance of Common Area to Association.** The Declarant shall convey to the Association the Common Area located in a particular Plat, free and clear of any liens, claims or encumbrances, not later than sixty (60) days after the Declarant owns less than sixty (60) Lots in such Plat.

## **ARTICLE 8**

### **SPECIFIC DECLARANT RIGHTS**

**Section 8.1. Rights to Annex.** The Declarant may annex additional property to become a portion of the Property and thereafter be subject to the terms, provisions and conditions of these Covenants. The Declarant may exercise such right by recording a supplement to this Declaration in the Records of the County, subjecting such additional property to the terms and conditions hereof. No further action or approval shall be required or necessary for the Declarant to annex additional properties into the Property for the purpose of subjecting it to the Covenants. Any document subjecting additional property to the Declaration may also impose additional restrictions not found in this Declaration upon such additional property. Upon the annexation and platting of any additional property as herein provided, each lot described therein shall become a "Lot" for all purposes hereunder.

**Section 8.2. No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of a Declarant or any member to annex any property to this Declaration and no owner of the property excluded from this Declaration shall have any right to have such property annexed thereto.

**Section 8.3. Effect of Annexation on Class B Membership.** In determining the number of Lots owned by a Declarant for the purpose of Class B membership status according to Section 5.2 hereof, the total number of Lots covered by this Declaration and located in such Declarant's portion of the Property, including all Lots acquired by a Declarant and annexed thereto, shall be considered. If Class B membership has previously lapsed but annexation of additional property restores the ratio of Lots owned by a Declarant to the number required by Class B membership, such Class B membership shall be reinstated until it expires pursuant to the terms of Section 5.2.

**Section 8.4. Specific Declarant Rights to Amend Declaration.** As long as Declarant owns a Lot, Declarant, without joinder of the Board, the Association, or the other Owners, may amend or restate this Declaration for any reason deemed necessary or appropriate by Declarant with the condition that the restrictions will not be revised to the detriment of any builder who owns a lot without their consent.

**Section 8.5. Easement/Access Right.** The Declarant reserves a general easement over all Streets, roads, rights of way, alleys and utility, maintenance, landscaping, wall and other easements in the Property and over the balance of the Common Area as reasonably necessary for access for the purpose of finishing development of the Property as a subdivision and as otherwise reasonably necessary to effect each Declarant's rights hereunder. Such easements and rights shall expire at such time as the Declarant no longer owns a Lot.

**Section 8.6. Assignment of Declarant Rights.** A Declarant may assign its rights to a successor Declarant hereunder by execution of a written document, recorded in the Records of Collin County, Texas, specifically stating that such Declarant has assigned its rights as such to a designated assignee and declaring such assignee to be a new "Declarant" hereunder.

**Section 8.7. Declarant's Right to Install Improvements in Setback and Other Areas.** A Declarant, in connection with development of the Property and construction of homes thereon, reserves the right but shall have no obligation to install or construct walls, fences, irrigation systems and other improvements in the setback areas (being the area on, along and/or between the boundary line of a Lot and the building or setback lines applicable to such Lot). If a Declarant exercises such right in a setback area, then such wall, fence, irrigation system, or other improvement shall be the property of the Owner(s) of the Lot(s) adjacent to such improvements or upon which such improvements are located, and such Owner(s) shall maintain and repair any such improvement unless the Declarant or the Association, by and through the Board, shall advise the Owner(s) in writing of its intent to assume such maintenance and repair obligations. If the Declarant exercises such right in the above-described non-setback areas, then such wall, fence, irrigation system, or other improvement shall be the property of the Association. So long as it owns any Lot, the Declarant shall have the right, but not the obligation, to maintain and repair any such non-setback area improvements located on the Declarant's portion of the Property; otherwise, the Association shall assume the maintenance and repair or it may abandon such improvements at its discretion. If the City requires the maintenance, repair, or removal of any such non-setback area improvements, the Association shall assume such responsibility at its expense.

If the Association so abandons such non-setback area improvements or is properly dissolved, then the Owner(s) of the Lot(s) adjacent to such improvements or on which such improvements are located shall assume maintenance and repair at its expense.

**Section 8.8. Replating or Modification of Plat.** From time to time, the Declarant reserves the right to replat its Property or to amend or modify any Plat in order to assure a harmonious and orderly development of the Property as herein provided. The Declarant may exercise such rights so long as it owns any Lot and no joinder of any other Owner shall be required to give effect to such rights, each Owner consenting to the Declarant's execution of any replat on such Owner's behalf. However, any such replating or amendment of the Plat shall be with the purpose of efficiently and economically developing the Property for the purposes herein provided or for compliance with any applicable governmental regulation. A Declarant's rights under this Section 8.8 shall expire at such time as the Declarant no longer owns a Lot.

**Section 8.9. Limitation of Declarant's Liability.** The Declarant shall not be responsible or liable for any deficit in the Association's funds. The Declarant may, but is under no obligation to, subsidize any liabilities incurred by the Association and the Declarant may, but is not obligated to, lend funds to the Association to enable it to defray its expenses, provided the terms of such loans are on reasonable market conditions at the time.

**Section 8.10. Termination of Declarant's Responsibilities.** In consideration of a Declarant's deficit funding of the Association, if any, upon the occurrence of any of the following events: (i) conversion of a Declarant's Class B membership status to Class A membership status, (ii) completion of any facilities in the Common Area by the Declarant, or (iii) assignment of the Declarant's rights hereunder pursuant to Section 8.6, then and in such event the Declarant shall be fully released, relieved and forever discharged from any further duty or obligation to the Association or any of its members as a Declarant by reason of the terms and conditions of this Declaration including any amendments thereof or supplements thereto, save and except the duties and obligations, if any, of the Declarant as a Class A member by reason of the Declarant's continued ownership of one or more Lots, but not otherwise. Further, and without regard to whether or not a Declarant has been released from obligations and duties to the Association, so long as a Declarant holds record title to at least one (1) Lot and holds same for sale in the ordinary course of business, neither the Association nor its Board, nor any member of the Association shall take any action that will impair or adversely affect the rights of the Declarant or cause the Declarant to suffer any financial, legal or other detriment, including but not limited to, any direct or indirect interference with the sale of Lots. In the event there is a breach of this Section, it is acknowledged that any monetary award which may be available would be an insufficient remedy and therefore, in addition to all other remedies, the Declarant shall be entitled to injunctive relief restraining the Association, its Board or any member of the Association from further breach of this Section.

## **ARTICLE 9**

### **MISCELLANEOUS PROVISIONS**

**Section 9.1. Term and Renewal.** These Covenants shall commence on the date hereof and shall continue in effect for a period of thirty (30) years. Thereafter these Covenants shall automatically renew for subsequent periods of ten (10) years each unless Owners owning at least eighty-five percent

(85%) of the Lots elect to terminate these Covenants by written instrument recorded in the Records of Collin County, Texas.

**Section 9.2. Enforcement.** The terms, provisions and conditions of this Declaration and the Design Guidelines shall be enforceable by the Declarant, the ACC, the Association, and each Owner. The Board shall have the power and authority to impose reasonable fines (which shall not exceed Five Hundred and No/100 Dollars (\$500.00) for each separate violation) for violation of this Declaration, the Design Guidelines or any rule or regulation of the Association, which shall constitute a lien upon the Lot of the violating Owner as provided in the Declaration, and to any Person's right to use of the Common Area. Each day the violation continues to exist shall constitute a separate violation. If any occupant, guest, or invitee of a Lot violates the Declaration, the Design Guidelines or a rule or regulation of the Association and a fine is imposed, the fine shall first be assessed against such occupant, guest, or invitee; provided, however, if such occupant, guest, or invitee does not pay the fine within thirty (30) days after written demand for payment from the Association, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, the Design Guidelines or any rule or regulation of the Association shall not operate as a waiver of the right of the Board to do so thereafter.

**Section 9.3. General Easement for Encroachments, Access, Maintenance and Utilities.** Each Owner grants to the Association, the Board, the Declarant and the other Owners a general easement as reasonably necessary (but not to exceed twelve inches (12") in width) for the maintenance of any minor encroachments of Common Area facilities and/or Residences, Structures and/or Accessory Buildings on any Common Area and/or Lot over adjoining Lots due to engineering errors, errors in original construction, surveying, settlement or shifting of any fence or retaining wall; provided, however, in no event shall an easement for encroachment or protrusion be created in favor of any Owner or Owners if said encroachment or protrusion occurred due to willful misconduct of said Owner or Owners. Each Owner grants to the Association, the Board, the Declarant and the other Owners a general easement as reasonably necessary for access to and from each Owner's Lot through driveways, rights of way and easements as reflected on a Plat for the purpose of giving effect to the provisions of these Covenants. The easements referred to in the Section 9.3 and otherwise provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to each affected Lot and shall pass with each conveyance of said Lot.

**Section 9.4. Amendment of Declaration.** These Covenants may be amended by the Declarant as provided in Section 8.4. In addition, the Declaration may be amended at any time and in any respect with the approval of Owners owning at least two-thirds (2/3) of the Lots; provided, however, that no such amendment shall be effective unless joined in by the Declarant until such time as Declarant no longer owns any Lot.

**Section 9.5. City Provisions.**

(a) All construction within the Property shall also comply with all applicable City ordinances and regulations. If any ordinance or regulation imposed by the City imposes more demanding, extensive or restrictive requirements than those set forth in this Declaration, such requirements shall govern. No ordinance or regulations adopted by the City shall lessen the requirements set forth in these Covenants.

(b) In the event that the Declarant, Owner, or Association or its assigns shall fail or refuse to adequately maintain the appearance and condition of the Common Areas which it is obligated to maintain hereunder, the City shall have the right and may assume the duty of performing all such maintenance obligations of the Declarant, Owner or Association or its assigns at any time upon giving written notice or at any time after the expiration of ten (10) days after receipt by the Declarant, Owner, Association or its assigns, of written notice specifying in detail the nature and extent of the failure to maintain without such failure being remedied, whichever notice shall be deemed appropriate by the City. Upon assuming such maintenance obligations, the City may levy an assessment upon each Lot on a pro rata basis for the cost of such maintenance, notwithstanding any other provisions contained in this Declaration, which assessment shall constitute a lien upon the Lot against which each assessment is made. During the period the City has a right and assumes the obligation to maintain and care for the Common Areas, the Declarant, Owner, Association or its assigns shall have no obligation or authority with respect to such maintenance. The right and authority of the City to maintain the Common Areas shall cease and terminate when the Declarant, Owner, Association or its assigns, shall present to the City reasonable evidence of its willingness and ability to resume maintenance of the Common Areas. In the event the City assumes the duty of performing the maintenance obligations as provided herein, then the City, its agents, representatives and employees shall have right of access to and over the Common Areas for the purpose of maintaining, improving and preserving the same; and in no event, and under no circumstances, shall the City be liable to the Declarant, Owner, Association, residents of the Subdivision or any other person or their respective heirs, executors, administrators, devisees, personal representatives, successors and assigns for negligent acts or construction relating in any manner to maintaining, improving and preserving the Common Areas, or for failure to perform such maintenance.

**Section 9.6. Notices.** Any notice required to be given to any Owner under the terms of this Declaration shall be deemed to have been properly delivered when deposited with the United States Postal Service, postage prepaid, properly addressed to the addressee. Each Owner's address for purposes of notice hereunder shall be deemed to be the Residence located on its Lot.

**Section 9.7. Indemnification.** Neither the Declarant, including any of the Declarant's officers, directors, employees or agents, nor any officer, director or agent of the Association, nor any member of the ACC shall be liable to any Person, Owner or any Person claiming by or through any Owner or otherwise for any act or omission in the performance of the duties of the Declarant or officer, director or agent of the Association, or member of the ACC except only if such act or omission should be judicially declared to constitute fraud or intentional willful misconduct. The Association shall and does hereby agree to indemnify the Declarant, including any of the Declarant's officers, directors, agents or employees, the officers, directors and agents of the Association, and the members of the ACC against all claims, demands, actions and proceedings and all expenses in connection therewith arising from the good faith exercise of their duties pursuant to this Declaration.

**Section 9.8. Severability.** If any of the terms hereof shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of these Covenants, which shall be in full force and effect.

**Section 9.9. Acceptance by Owners of Rights and Obligations.** By the recording of a deed or other conveyance transferring all or part of an interest in a Lot subject to this Declaration, the person or entity to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all the provisions of the Declaration, the Design Guidelines, the articles and bylaws of the Association, including any rules or regulations adopted or promulgated by the Association, whether or not mention thereof is made in said deed.

**Section 9.10. Arbitration of Disputes Involving a Declarant.**

(a) ANY AND ALL DISPUTES ARISING HEREUNDER BETWEEN AN OWNER AND DECLARANT SHALL BE SUBMITTED TO BINDING ARBITRATION AND NOT TO A COURT FOR DETERMINATION. ARBITRATION SHALL COMMENCE AFTER WRITTEN NOTICE IS GIVEN FROM EITHER PARTY TO THE OTHER, SUCH ARBITRATION SHALL BE ACCOMPLISHED EXPEDITIOUSLY IN COLLIN COUNTY AND SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). THE ARBITRATION SHALL BE CONDUCTED BY THREE (3) ARBITRATORS, ONE OF WHOM SHALL BE APPOINTED BY THE OWNER AND ONE OF WHOM SHALL BE APPOINTED BY THE DECLARANT. THE THIRD ARBITRATOR SHALL BE APPOINTED BY THE FIRST TWO ARBITRATORS. THE ARBITRATORS SHALL BE SELECTED FROM A LIST OF ARBITRATORS SUBMITTED BY THE AAA. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. ARBITRATION SHALL NOT COMMENCE UNTIL THE PARTY REQUESTING IT HAS DEPOSITED ONE THOUSAND FIVE HUNDRED AND NO/100 U. S. DOLLARS (\$1,500.00) WITH THE ARBITRATORS AS A RETAINER FOR THE ARBITRATORS' FEES AND COSTS. THE PARTY REQUESTING ARBITRATION SHALL ADVANCE SUCH SUMS AS ARE REQUIRED FROM TIME TO TIME BY THE ARBITRATORS TO PAY THE ARBITRATORS' FEES AND COSTS, UNTIL THE PREVAILING PARTY IS DETERMINED OR THE PARTIES HAVE AGREED IN WRITING TO AN ALTERNATIVE ALLOCATION OF FEES AND COSTS. EACH PARTY SHALL PAY ITS OWN LEGAL FEES AND COSTS AND ANY OTHER FEES INCURRED IN CONNECTION WITH AN ARBITRATION PROCEEDING WHICH ARISES OUT OF OR RELATES IN ANY WAY TO THIS DECLARATION PROVIDED, HOWEVER, THAT THE ARBITRATION PANEL SHALL AWARD THE ARBITRATORS' FEES AND COSTS TO THE PREVAILING PARTY IN ITS ARBITRATION JUDGMENT.

(b) Other Dispute Resolutions. Notwithstanding the Declarant's and Owner's intent to submit any controversy or claim arising out of or relating to this Declaration to arbitration, in the event that a court of competent jurisdiction shall determine or a relevant law shall provide that a particular dispute is not subject to the arbitration provisions in this Section, then the parties agree to the following provisions:

**Section 9.11. Waiver of Trial by Jury.** EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS DECLARATION ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. EACH OWNER AGREES THAT ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH RESPECT TO ANY ACTION,

PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

**Section 9.12. Not a Condominium.** This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, et seq.

**Section 9.13. Notice to Association of Sale or Transfer.** Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board written notice of the name and address of the purchaser or transferee within 30 days after the date of such transfer of title and such other information as the Board may reasonably require. The Association may charge a transfer fee upon the conveyance of title to a Lot for purposes of covering the reasonable administrative costs to change the records.

**Section 9.14. Limitation on Interest.** All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected or received on account of such agreement shall never exceed the maximum amount permitted by applicable law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to the Owner.

**Section 9.15. Disclaimer Regarding Security.** Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees and licensees that the Association, its Board and committees and Declarant are not insurers and that each person using any portion of the Property assumes all risks for loss or damage to persons, to Lots and to the contents of Lots resulting from acts of third parties.

**Section 9.16. Street Lights.** Street lights within the Property are anticipated to be maintained by the electric utility provider. The operational costs for the street lights are anticipated to be paid by the City. If, at any time in the future, the City adopts an ordinance, regulation, or other mechanism whereby the costs for maintaining and/or operating the street lights within the community are allocated to the Declarant, the Declarant shall have the right to assign all such obligations to the Association,

and the Association hereby consents to accept the assignment of all obligations related to maintaining and/or operating said street lights, and the Association shall assume these additional costs and shall assess the Owners under Article 6. If, at any time in the future, the City adopts an ordinance, regulation, or other mechanism whereby the costs for maintaining and/or operating the street lights within the community are allocated to the Association, the Association shall assume these additional costs and shall assess the Owners under Article 6.

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Unofficial

Executed by the Declarant as of the date set forth above.

**DECLARANT:**

**SUNSHINE DEVELOPMENT GROUP, LTD.,**  
a Texas limited partnership

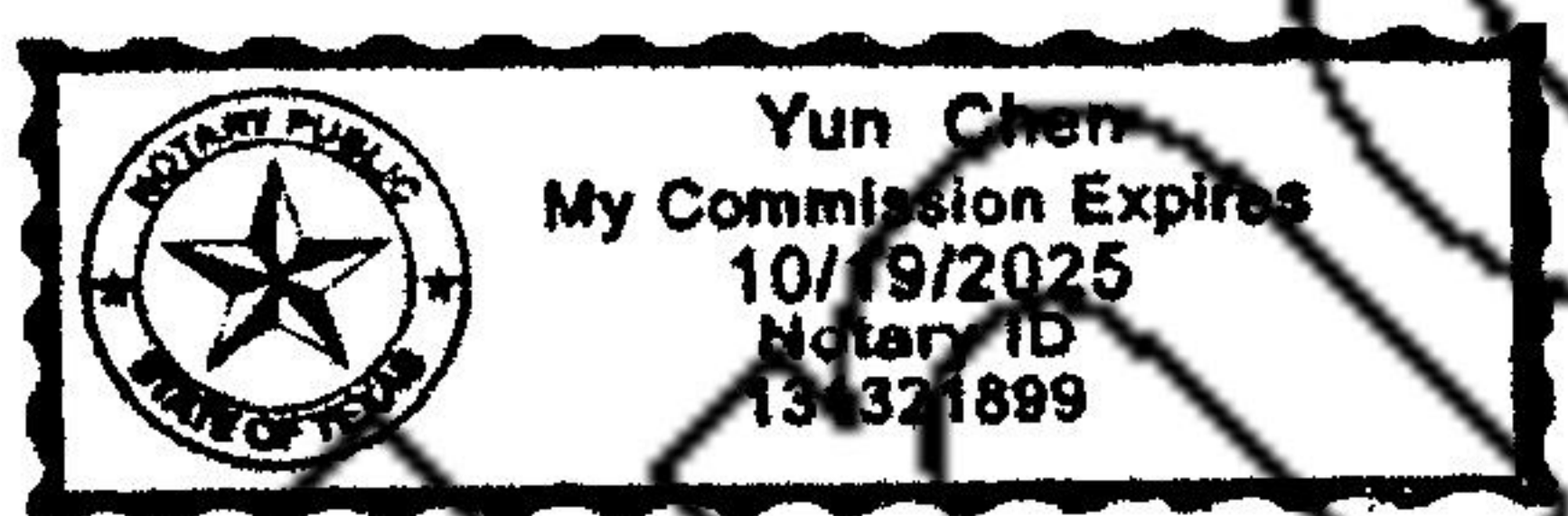
By: Sunshine Development, LLC,  
a Texas limited liability company,  
its General Partner

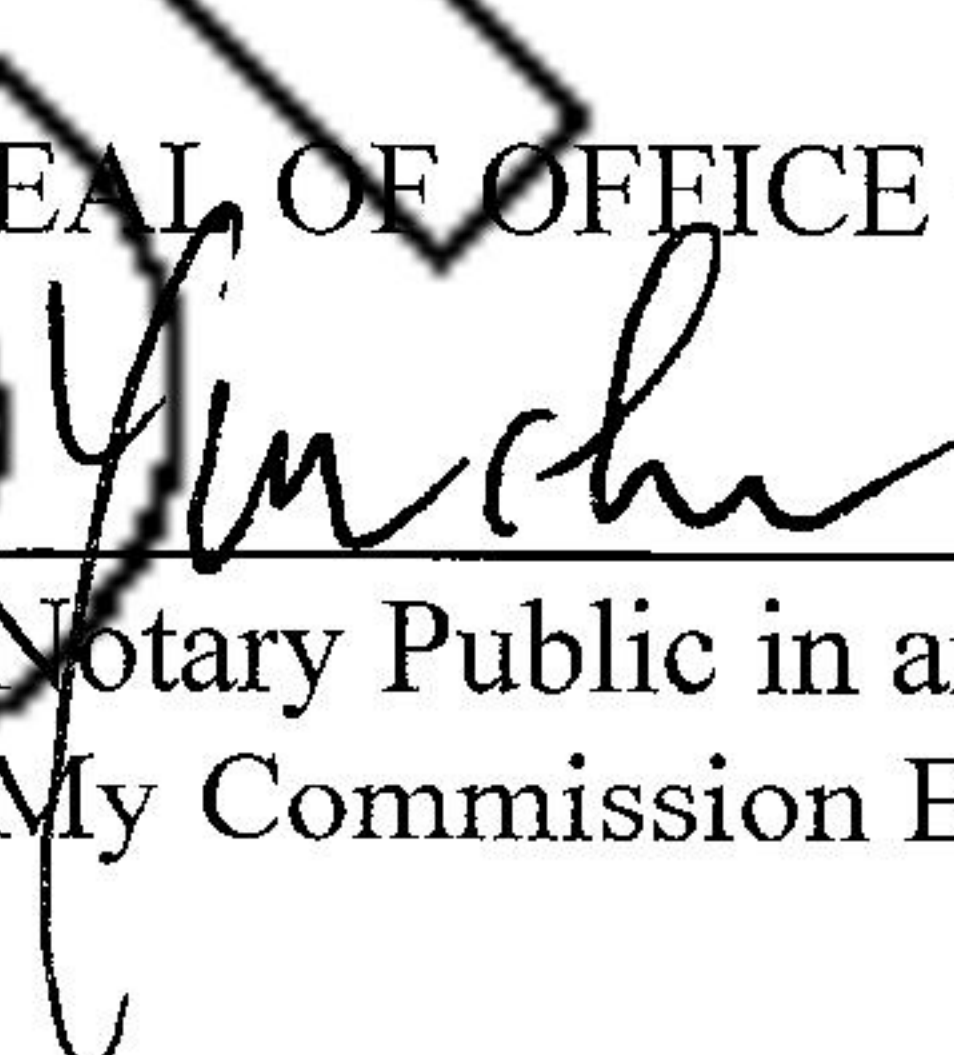
By:   
Name: Hong Wang  
Title: Manager

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

BEFORE ME, the undersigned authority, on this day personally appeared Hong Wang, Manager of Sunshine Development, LLC, a Texas limited liability company, as general partner of Sunshine Development Group, Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, as the act and deed of such entity, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 3rd day of November, 2022.



  
Notary Public in and for the State of Texas  
My Commission Expires: 10-19-2025

Builder executes and consents to this Declaration as of the date set forth above.

**BUILDER:**

**GRAND HOMES 2014, L.P.,**  
a Texas limited partnership

By: Grand Texas Homes GP, LLC  
Its general partner

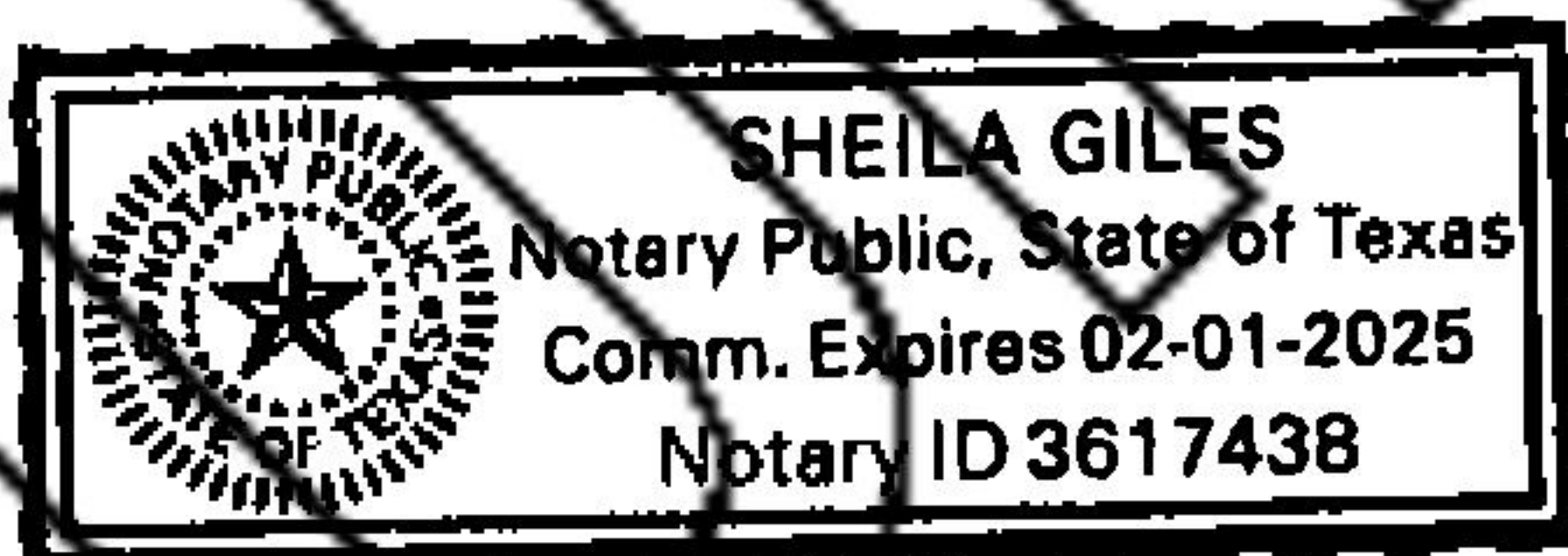
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: By: Robert Garcia, VP.

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

BEFORE ME, the undersigned authority, on this day personally appeared Robert Garcia  
Vice President of Grand Texas Homes GP, LLC, a Texas limited liability company, as general  
partner of Grand Homes 2014, L.P., a Texas limited partnership, known to me to be the person whose  
name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for  
the purposes and consideration therein expressed, as the act and deed of such entity, and in the capacity  
therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 3 day of November, 2022.

Sheila Giles  
\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: 2-1-25



Builder executes and consents to this Declaration as of the date set forth above.

**BUILDER:**

**FIRST TEXAS HOMES, INC.**

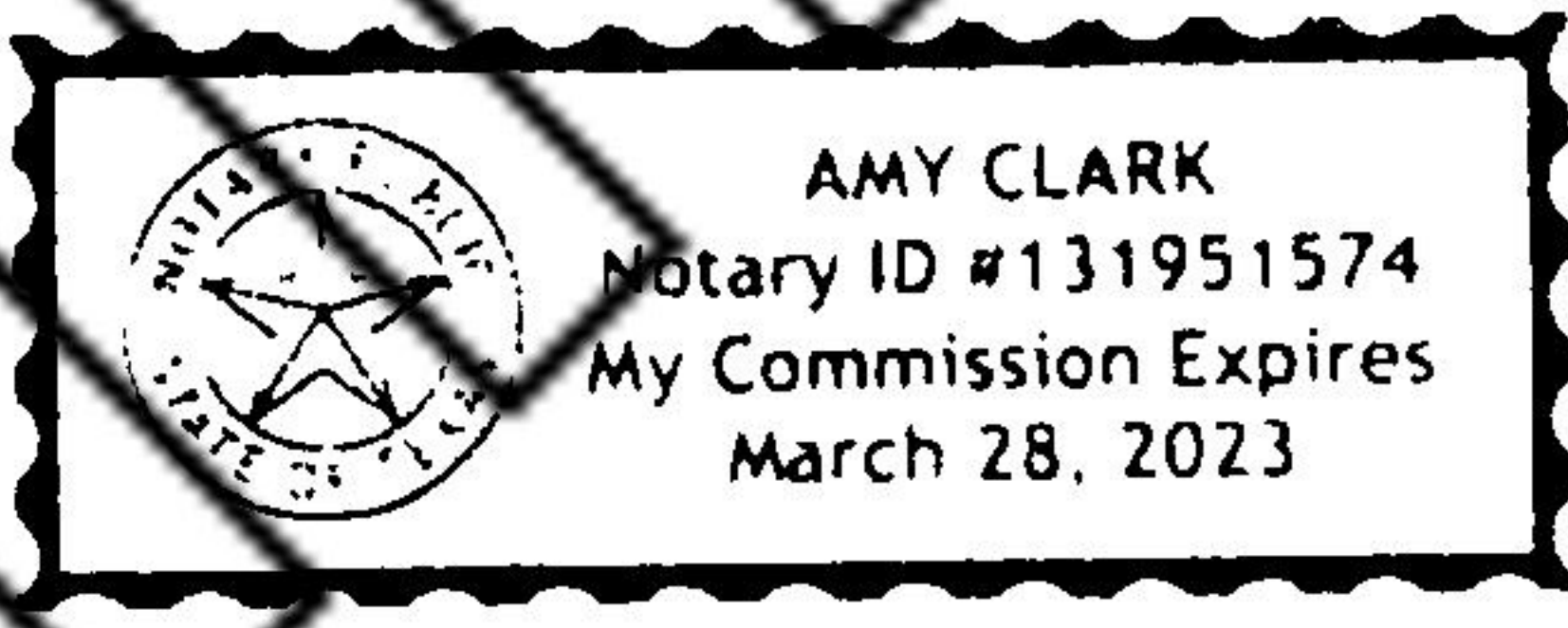
By: [Signature]  
Name: Keith Handberg  
Title: Division President

STATE OF TEXAS §  
  §  
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared Keith Handberg Division President of First Texas Homes, Inc., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of such entity, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 3<sup>rd</sup> day of November, 2022.

[Signature]  
Notary Public in and for the State of Texas  
My Commission Expires: 3/28/23



**AFTER RECORDING, RETURN TO:**

Viking W. Tao  
Polsinelli PC  
2950 N. Harwood Street Suite 2100  
Dallas, TX 75201

86572679.6

Signature Page

**EXHIBIT A****LEGAL DESCRIPTION OF THE PROPERTY**

SITUATED in the State of Texas and County of Collin, being part of the Coleman Watson Survey, Abstract No. 945, and being all of a called 19.930 acre tract as recorded under Document No. 20081223001448040 of the Collin County Land Records and all of a called 92.349 acre tract as recorded under Document No. 20081233001448050 of the Collin County Land Records with said premises being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod found in the north right-of-way line of F.M. No. 1461 (Called 90' Right-of-Way) marking the southeast corner of said 92.349 acre tract, the southeast corner of said premises, and the southwest corner of a called 11.22 acre tract as recorded in Volume 5358, Page 1583 of the Collin County Land Records;

THENCE with the north right-of-way line of F.M. No. 1461, partway with the south line of said 92.349 acre tract, and partway with the south line of said 19.930 acre tract as follows: North 88°48'21" West, 29.56 feet to a concrete monument found; North 89°20'52" West, 1,836.76 feet to a 5/8-inch iron rod found marking the southwest corner of said 19.930 acre tract, the southwest corner of said premises, and the most southerly southeast corner of a called 669.313 acre tract as recorded under Document No. 20060419000517060 of the Collin County Land Records;

THENCE with the west line of said 19.930 acre tract, the west line of said premises, and an east line of said 669.313 acre tract, North 02°54'32" East, 139.88 feet to a point for corner marking the most westerly southwest corner of said 92.349 acre tract;

THENCE with the west line of said 92.349 acre tract, the west line of said premises, and an east line of said 669.313 acre tract as follows: North 32°24'58" West, 288.40 feet; North 18°12'48" West, 436.57 feet; North 13°45'52" East, 449.55 feet to a 1/2-inch iron rod found; North 01°52'52" East, 320.00 feet to a 1/2-inch iron rod found; North 13°31'18" West, 241.26 feet; North 01°52'52" East, 419.81 feet to a DAA capped iron rod found marking the most westerly northwest corner of said 92.349 acre tract, the most westerly northwest corner of said premises, and an interior ell-corner of said 669.313 acre tract;

THENCE with a north line of said 92.349 acre tract, a north line of said premises, and a south line of said 669.313 acre tract as follows: South 89°38'01" East, 281.93 feet to a square bar found; South 89°35'35" East, 1,159.92 feet to a DAA capped iron rod found marking an interior ell-corner of said 92.349 acre tract, an interior ell-corner of said premises, and a southeast corner of said 669.313 acre tract,

THENCE with the north line of said 92.349 acre tract, the north line of said premises, and a south line of said 669.313 acre tract, South 89°22'09" East, 699.83 feet to a 1-inch iron rod found marking the northeast corner of said 92.349 acre tract, the northeast corner of said premises, and the northwest corner of Rolling Meadows Estates, an addition to Collin County as recorded in Volume N, Page 302 of the Collin County Map Records;

THENCE with the east line of said 92.349 acre tract, the east line of said premises, and the west line of said addition as follows: South 01°49'57" West, passing a 1/2-inch iron rod found at 792.25

feet and continuing for a total distance of 879.51 feet to a 5/8-inch iron rod found; South 01°41'01" West, 359.73 feet to a Geer capped iron rod found marking the southwest corner of said addition and the northwest corner of the aforementioned 11.22 acre tract;

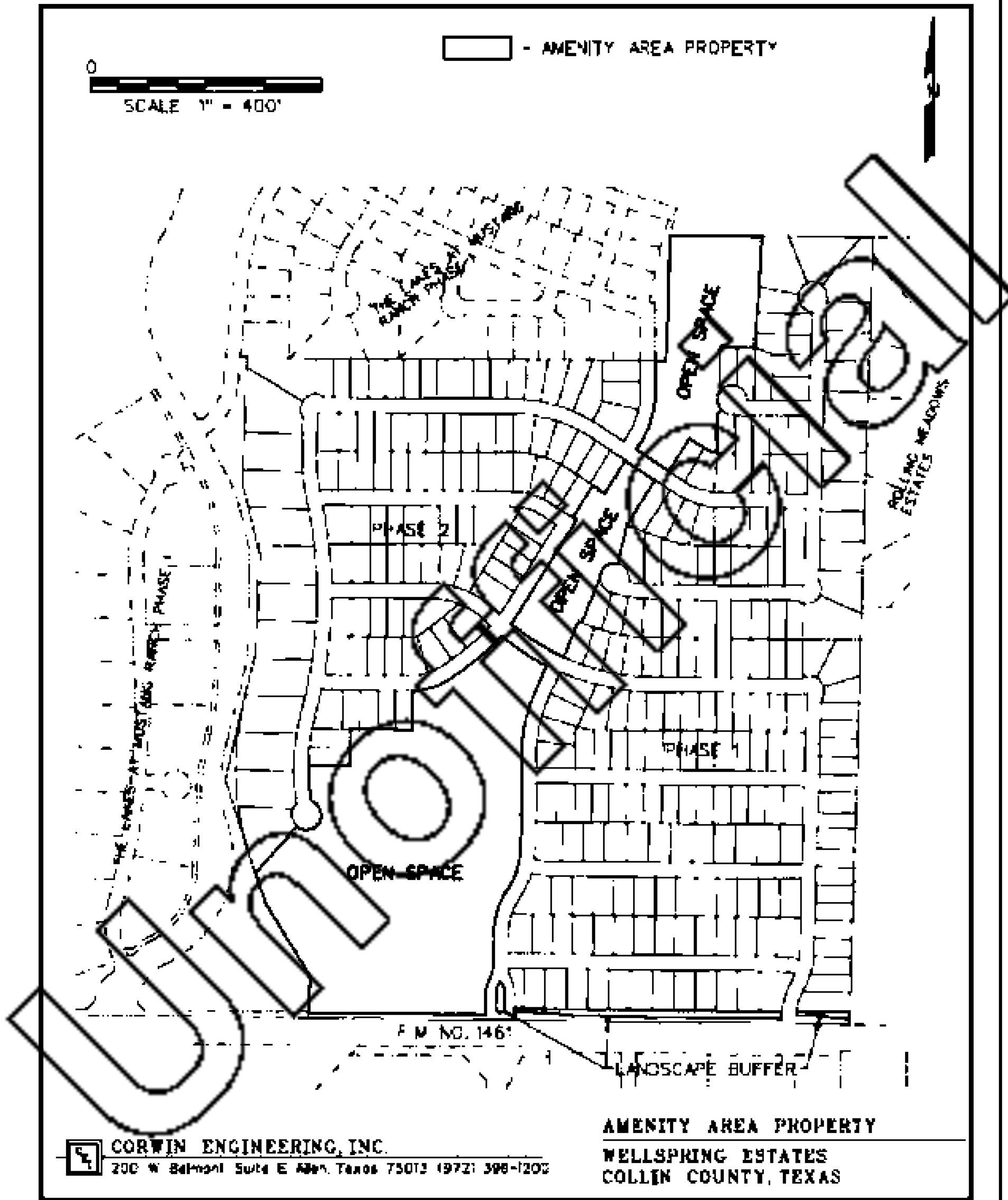
THENCE with the east line of said 92.349 acre tract, the east line of said premises, and the west line of said 11.22 acre tract, South 01°40'24" West, 1,395.22 feet to the point of beginning and containing 112.274 acres of land.

Unofficial

**EXHIBIT B**

**AMENITY AREA PROPERTY**

Unofficial

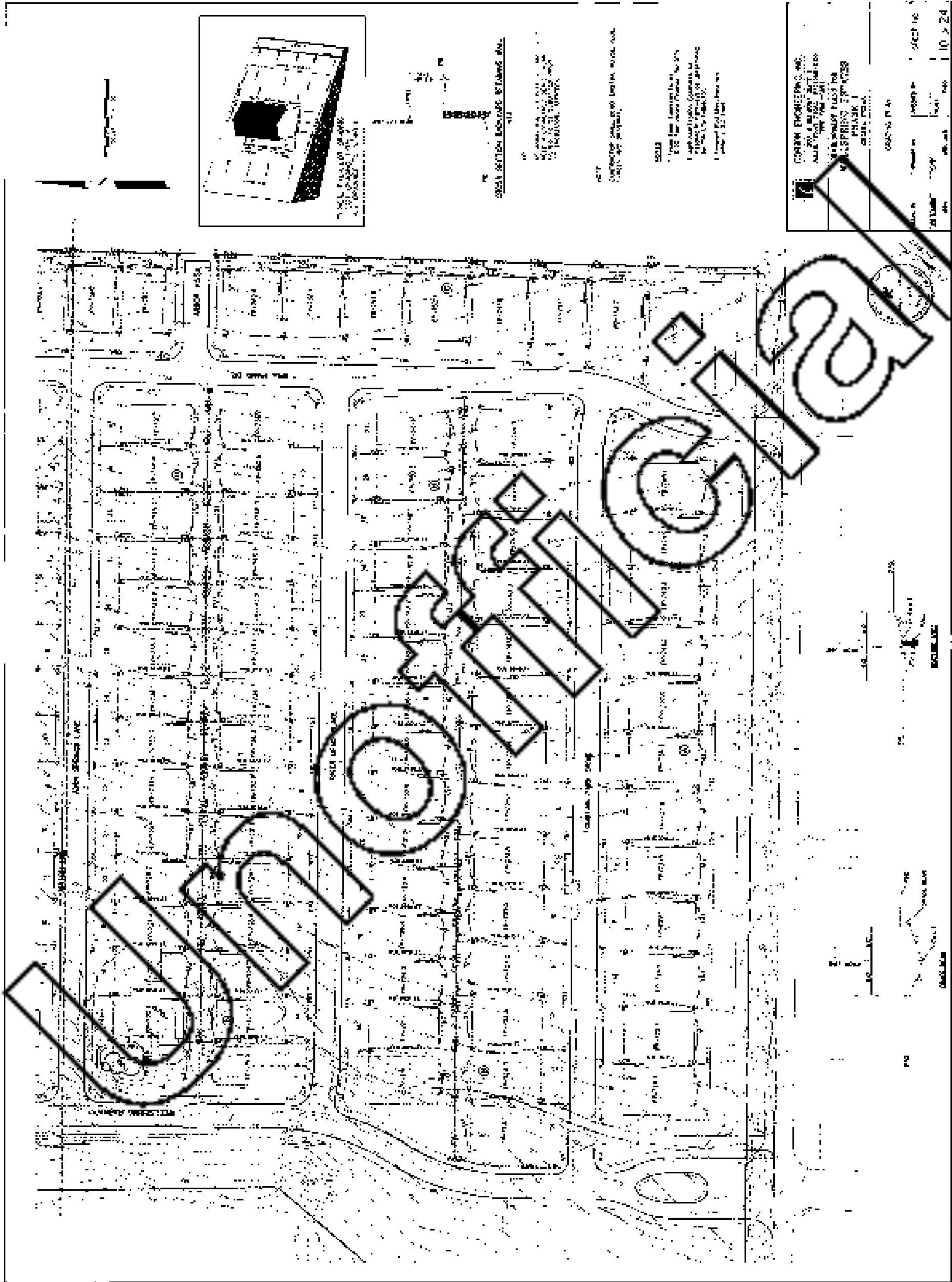


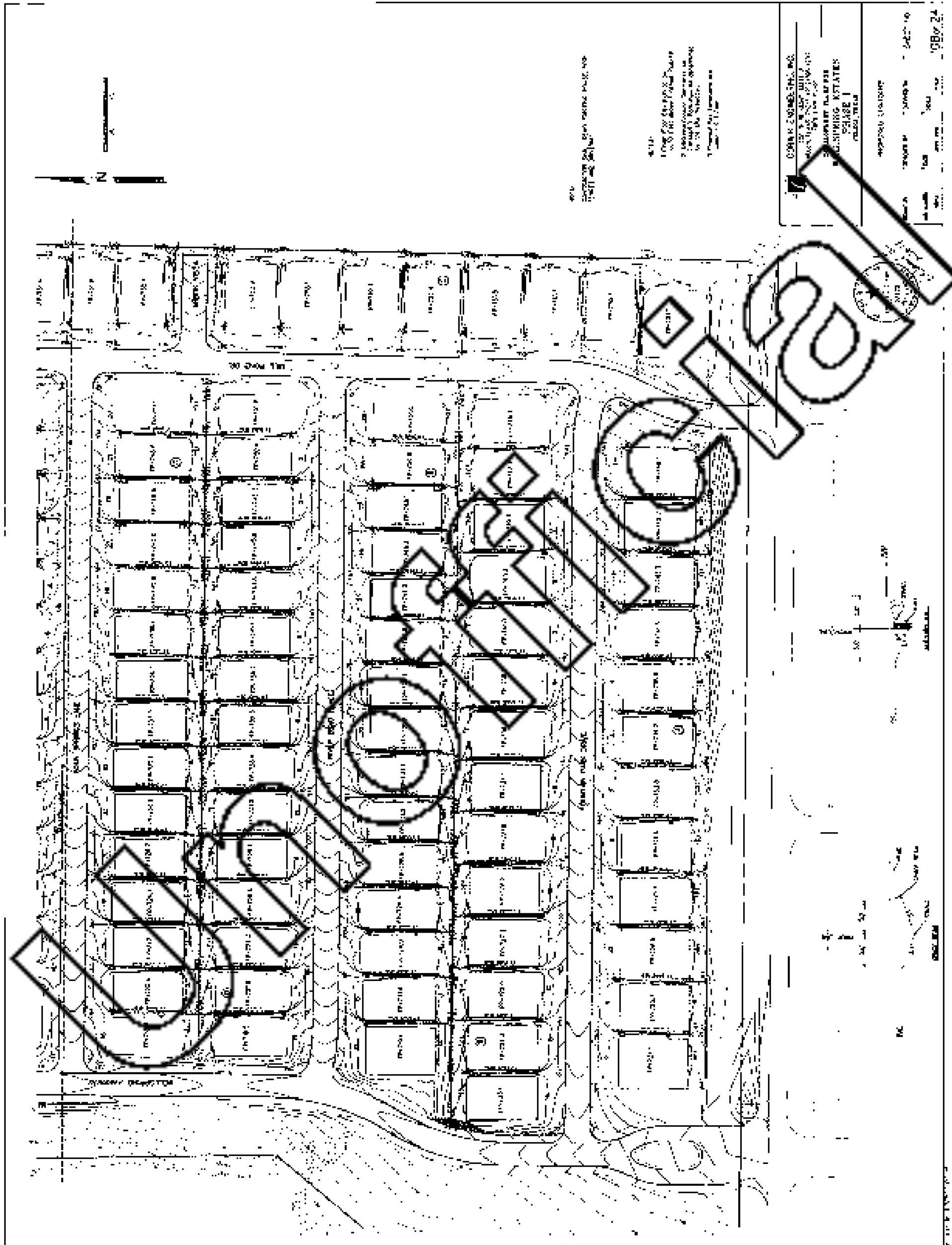
**EXHIBIT C**

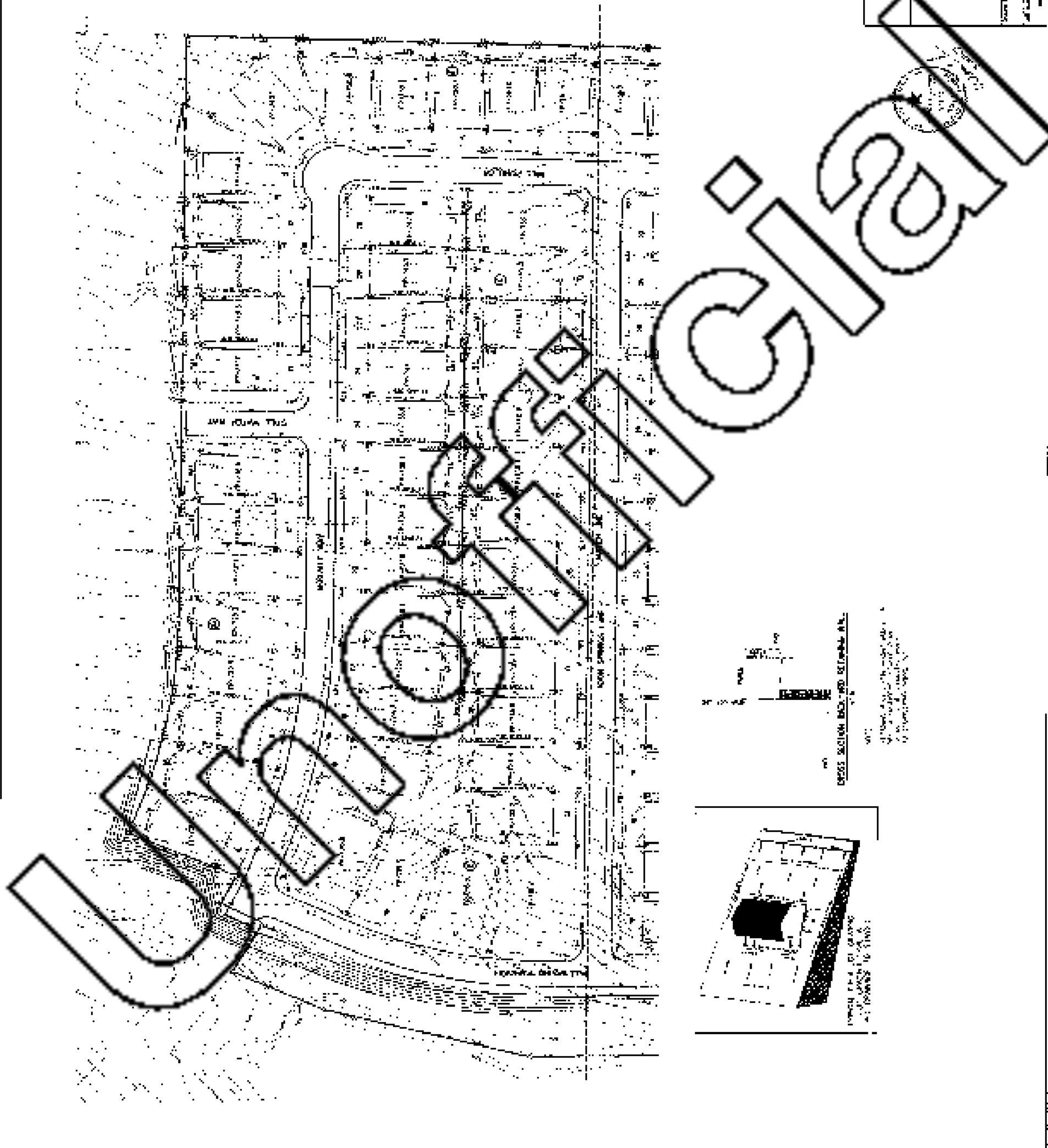
**WELLSPRING GRADING AND  
RETAINING WALL CRITERIA**

**(SEE NEXT PAGE)**

Unofficial

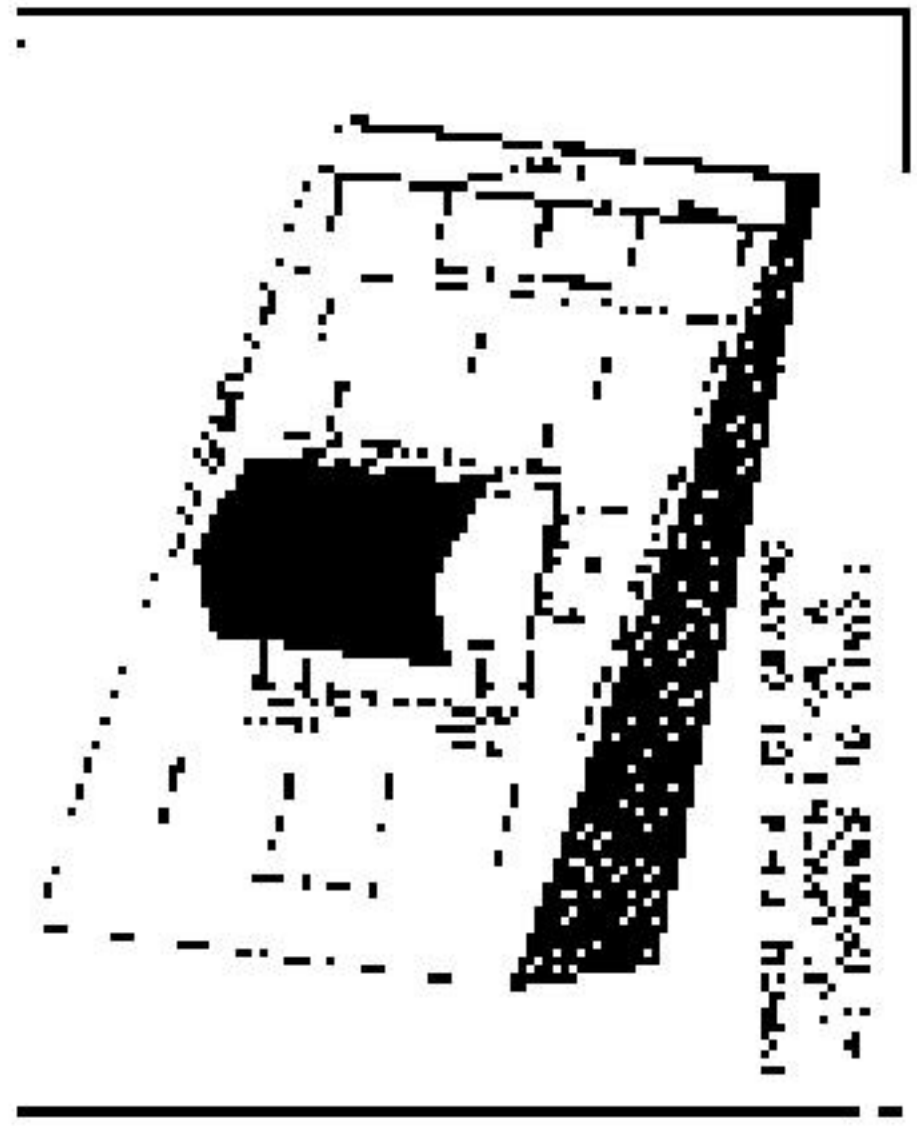


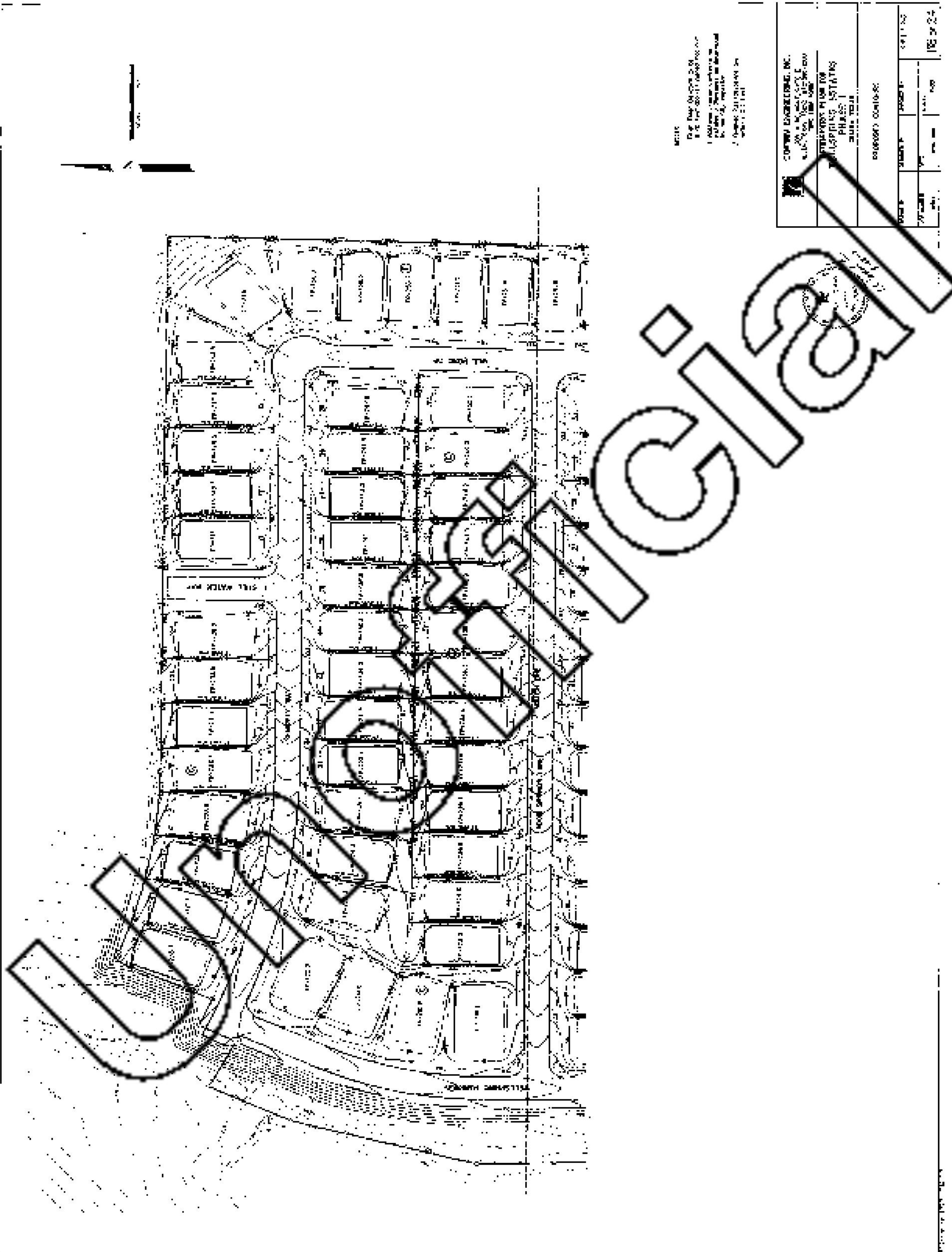




1. Open Field Located to the  
 2. 1/2 Acre (180,000 sq ft)  
 3. Located to the North of the  
 4. 1/2 Acre (180,000 sq ft)  
 5. Located to the South of the  
 6. 1/2 Acre (180,000 sq ft)

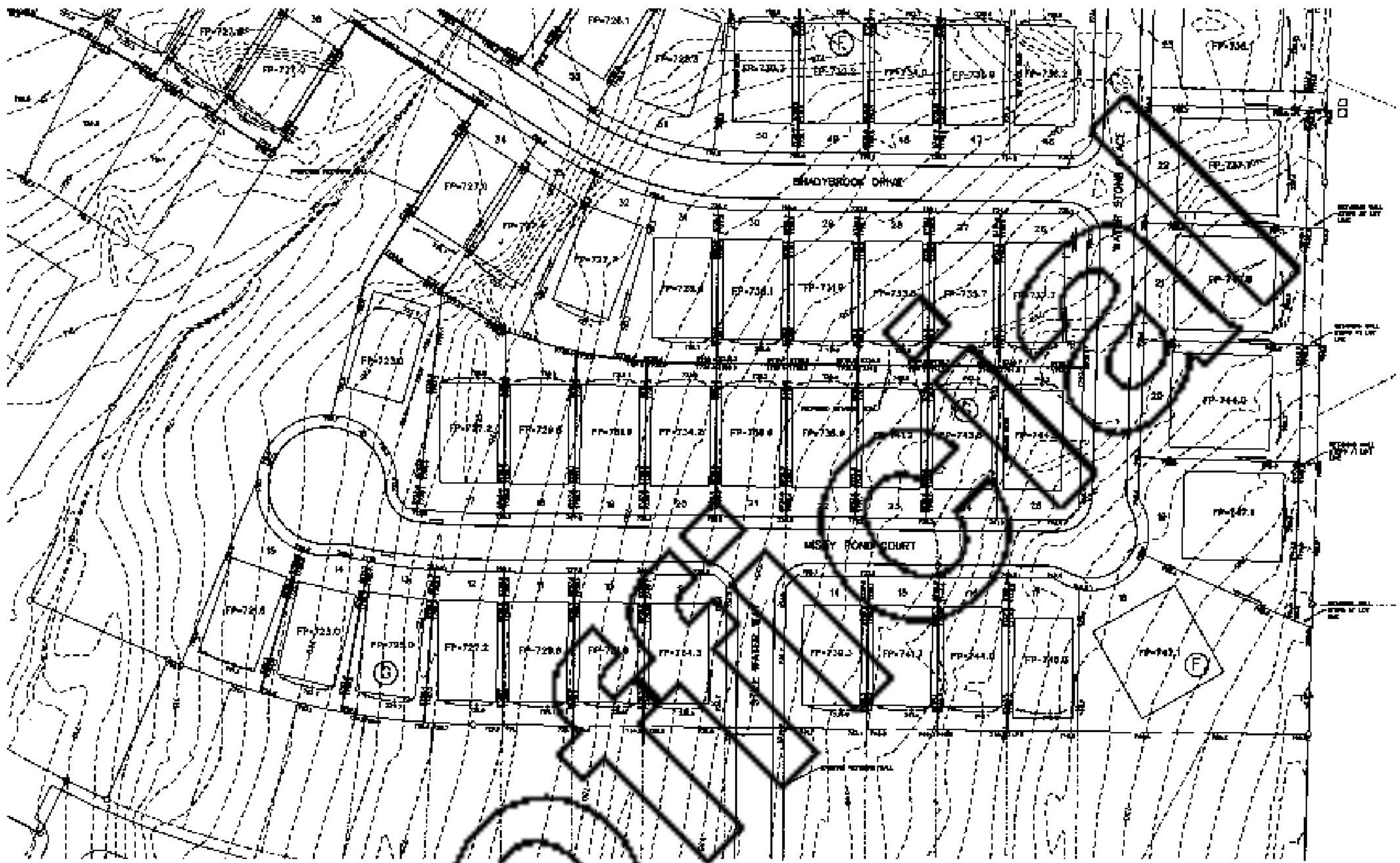
**4**  
 CURRY ENGINEERING, INC.  
 201 N. WALTON AVENUE  
 SUITE 1000  
 TAMPA, FL 33602  
 TEL: 813.288.1111  
 FAX: 813.288.1112  
 WWW.CURRYENGINEERING.COM  
 DATE: 11/03/22







SCALE 1" = 30'



**LEGEND**  
 SPOT ELEVATION      100'  
 EXIST. CONTOUR      100'  
 RETAINING WALL      100'  
 TOP OF WALL GRADE      100'  
 BOTTOM OF WALL GRADE      100'

**NOTES**  
 1. Finish Floor Elevation to be 0.30 Feet above Finished Bas(FPB)  
 2. Additional Erosion Control to be installed in the basins as determined by the City Inspector.  
 3. Finished Pool Elevations are shown ± 0.3 Feet.

AS-BUILT JUNE 2022  
 INFORMATION PROVIDED  
 BY CONTRACTOR  
 ONLY FIELD VERIFY



<b>CORWIN ENGINEERING, INC.</b> 200 W. BELMONT, SUITE E ALLEN, TEXAS 75009 (972) 946-1200 TXPE 0084 00251			
DEVELOPMENT PLANS FOR <b>WELLSPRING                  PHASE II</b> CIRCLE 2, DICKENS			
GRADING PLAN			
DESIGNED BY	DRAWN BY	CHECKED BY	SHEET NO.
28048	28048	28048	9

**Collin County  
Honorable Stacey Kemp  
Collin County Clerk**

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**Instrument Number:** 2022000161909

eRecording - Real Property

HOMEOWNERS ASSOC DOCS

Recorded On: November 04, 2022 01:18 PM

Number of Pages: 63

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**" Examined and Charged as Follows: "**

Total Recording: \$270.00

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**\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\***

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 2022000161909  
Receipt Number: 20221104000264  
Recorded Date/Time: November 04, 2022 01:18 PM  
User: Matthew M  
Station: Station 10

**Record and Return To:**

CSC



**STATE OF TEXAS  
COUNTY OF COLLIN**

**I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Public Records of Collin County, Texas.**

Honorable Stacey Kemp  
Collin County Clerk  
Collin County, TX