

TRANSFER
NOT NECESSARY

MAR 07 2019

CLARENCE E. MINGO II
AUDITOR
FRANKLIN COUNTY, OHIO



Instrument #
201903070026193

COPY

PROPERTY DEVELOPMENT DECLARATION AND COVENANT

THIS PROPERTY DEVELOPMENT DECLARATION AND COVENANT (“Declaration”) is entered into effective as of this 5th day of March, 2019 by Jason L. Stevens and Kristin M. Stevens, husband and wife (collectively, “Declarant”), under the following circumstances (hereinafter referred to as “Recitals”):

- A. Declarant is the owner of that real property described on Exhibit A attached hereto and forming a part hereof (“Declarant Property”).
- B. Declarant filed an application with the City of Gahanna, Ohio (“Gahanna”) to rezone the Declarant Property under the Gahanna Zoning Code from its current Gahanna zoning classification of SF-2 Residential District to a Gahanna zoning classification of MR-1 Residential District (“Rezoning”).
- C. Declarant was successful in obtaining the Rezoning and consequently intends to develop the Declarant Property into a single family home subdivision in accordance with the Concept Plan attached hereto as Exhibit B and forming a part hereof (“Concept Plan”).
- D. Certain adjacent property owners (“Adjacent Owners”) owning the real properties described on Exhibit C attached hereto and forming a part hereof (“Adjacent Properties”) objected to and filed certain appeals with Gahanna concerning the Rezoning and related matters.
- E. In order to address certain objections of the Adjacent Owners and in consideration of such Adjacent Owners withdrawing all current appeals and agreeing not to file any further appeals at any level with respect to the development of the Declarant Property consistent with the Concept Plan and this Declaration, Declarant is entering into this Declaration and recording it as an encumbrance against the Declarant Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant for itself and its heirs, successors and assigns, hereby enters into this Declaration and records it as an encumbrance against the Declarant Property:

1. Incorporation of Recitals. The Recitals set forth above are incorporated herein to the full extent as if restated.
2. Limitations of Declaration Based on Zoning Classification. This Declaration shall apply to and encumber the Declarant Property only during such time and for so long as the Declarant Property is zoned in Gahanna zoning classification MR-1 Residential District. If at any time the Declarant Property is not zoned in Gahanna zoning classification MR-1 Residential District, this Declaration shall be null and void, of no further effect and shall no longer encumber the Declarant Property.
3. Development Requirements and Limitations Under MR-1 Residential District Zoning. For so long as the Declarant Property is zoned in the MR-1 Residential Zoning District, the Declarant Property shall only be developed subject to the following requirements and limitations:
 - (a) Concept Plan. The Declarant Property shall only be developed generally consistent with the Concept Plan; provided that if Declarant desires to deviate in any material way from the Concept Plan, it shall be permitted to do so only if all then fee simple owners of the Adjacent Properties agree to such changes and an amendment to this Declaration is filed of record in the Franklin County, Ohio Records containing the signatures of Declarant and all then fee simple owners of the Adjacent Properties and setting forth all agreed upon modifications to this Declaration including a revised Concept Plan.
 - (b) Development Limitations and Requirements Along Southern Boundary. In connection with the development of the Property under the MR-1 Residential District zoning and in accordance with the Concept Plan, Declarant agrees that the following development limitations and requirements shall apply to those proposed Lot Numbers 10 through 13 inclusive on the Concept Plan or any such lots that replace such above numbered lots and are adjacent and contiguous to the Adjacent Properties (the "Restricted Lots"):
 - (i) Southern Facing Windows. No dwelling units or other structures constructed on the Restricted Lots shall have windows above the first floor living area.
 - (ii) Restricted Lot Buffering. At such time as dwelling units are constructed on the Restricted Lots, each such dwelling unit as constructed and at all times thereafter shall install and maintain a landscape buffer in accordance with the Buffering Plans and Specifications attached hereto as Exhibit D and made a part hereof; provided that the named landscape firm and its economic bid contained as a part of the Buffering Plans and Specifications shall not be required to be used so long as all specifications contained therein are complied with concerning installation of required buffering, including soil, plant material and amenities listed therein.

- (iii) Rear Yard Setbacks. All dwelling units constructed on the Restricted Lots shall have a required setback of not less than twenty-five feet (25') from the property line of the Adjacent Properties in which no vertical building improvements may be constructed; provided that patios with surrounding walls not to exceed 3' in height and related fireplace amenities shall not be considered vertical building improvements.
 - (iv) Building Height Limitation. No dwelling unit or other structure constructed on the Restricted Lots shall have a building height in excess of twenty-eight feet (28').
 - (v) Roadway Limitation. No roadway constructed on the Declarant Property shall be within twenty-five feet (25') of the Adjacent Properties.
4. Covenant Running with the Land. This Declaration shall constitute a covenant running with the land and shall be binding and enforceable against the Declarant Property, Declarant and Declarant's heirs, successors and assigns, subject to the provisions of Section 2 hereof; provided, however that this Declaration is only enforceable against the fee simple owner(s) of the Declarant Property at the time enforcement is sought.
 5. Third Party Beneficiaries. All fee simple owners of the Adjacent Lots from time to time are each individually as well as collectively third party beneficiaries of this Declaration entitled to enforce same.
 6. Enforcement. Declarant and the then fee simple owners of all Adjacent Properties agree that in the event of the breach of this Declaration, monetary damages would likely be inadequate to compensate the non-breaching party, and that the non-breaching party shall be entitled to injunctive relief to enforce the terms of this Declaration.
 7. Estoppels. If Declarant desires to confirm compliance with this Declaration, Declarant shall request an estoppel from the then fee simple owners of the Adjacent Properties stating that Declarant is in full compliance with this Declaration and is not in default hereunder. Declarant shall provide a form of estoppel to each then fee simple owner of the Adjacent Properties addressed to the mailing address of each Adjacent Property and to the tax mailing address for each such Adjacent Property as contained on the tax rolls of the Franklin County, Ohio Auditor, and sent by either certified mail, return receipt requested and postage prepaid or by overnight courier service such as UPS or Federal Express. Each then fee simple owner of the Adjacent Properties shall have ten (10) business days (i.e. days other than Saturday, Sunday and Federal Holidays) to respond to such request by executing such estoppel in the form presented stating that there are no defaults, or enumerating any defaults in detail on such estoppel. From and after such ten (10) business day period, Declarant shall be permitted to file an Affidavit of Facts in the Franklin County, Ohio Records stating that it has provided such notice and request for estoppel, attaching copies of each notice and a corresponding certified mail receipt and/or courier receipt evidencing transmittal and delivery or failure to accept delivery and attaching copies of all estoppels timely received. Upon the filing of such Affidavit of Facts with all required attachments demonstrating that all fee simple owners of Adjacent Properties that timely responded provided an estoppel stating no defaults by Declarant, Declarant shall be conclusively deemed in full compliance with

EXHIBIT A

**ZONING DESCRIPTION
4.5 +/- ACRES**

Situated in the State of Ohio, County of Franklin, City of Columbus, being a part of Quarter Township 1, Township 1, Range 17 of the United States Military District, and being all of that 4.503 acre tract as conveyed to Jason L. and Kristen M. Stevens in Instrument Number 2005001001206558, all records being at the Recorder's Office, Franklin County, Ohio and being more particularly bounded and described as follows:

BEGINNING at the southwest corner of said 4.503 acre tract, also being the northeast corner of a 0.516 acre tract conveyed to Peter A. Sr. and Terri S. Toebe in Instrument Number 200407020154200, and being in the southerly right of way line of East Johnstown Road (EJR);

Thence along the northerly line of said 4.503 acre tract and the southerly right of way line of said East Johnstown Road, North 80° 15' 35" East, 126.84 feet to a point in the northeast corner of said 4.503 acre tract, also being the northwest corner of a 0.747 acre tract as conveyed to Joshua M. Call and Stephanie A. Miner in Instrument Number 201601026000166;

Thence along an easterly line of said 4.503 acre tract and the westerly line of said 0.747 acre tract, South 03° 40' 14" West, 273.35 feet to a point on the southwest corner of said 0.747 acre tract;

Thence along a northerly line of said 4.503 acre tract and the southerly line of said 0.747 acre tract, South 86° 10' 03" East, 127.76 feet to a point on the southeast corner of said 0.747 acre tract, also being on the westerly property line of a 0.245 acre tract as conveyed to Joseph C. Plesser in Instrument Number 20131020167126;

Thence along an easterly line of said 4.503 acre tract, the westerly line of said 0.245 acre tract, and the westerly line of Lot 1 of Valeria Heights No. 3 subdivision, delineated in Plat Book 30 Page 114, South 04° 45' 29" West, 64.43 feet to a point;

Thence along an easterly line of said 4.503 acre tract, the westerly line of said Lot 1, and the westerly line of Lot 2 of said Valeria Heights No. 3 subdivision, South 51° 26' 32" West, 145.45 feet to a point;

Thence along an easterly line of said 4.503 acre tract, the westerly line of said Lot 2, and the westerly line of Lot 3 of said Valeria Heights No. 3 subdivision, South 03° 34' 36" West, 155.98 feet to a point on the southwest corner of said Lot 3;

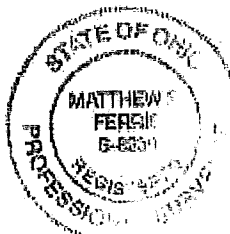
Thence along the property line of said 4.503 acre tract and the southerly line of Lot 4 of said Valeria Heights No. 3 subdivision, South 85° 45' 43" East, 133.35 feet to a point on the southwest corner of Lot 14 of The Colony subdivision, delineated in Plat Book 40 Page 73;

Thence along an easterly line of said 4.503 acre tract and a westerly line of said Lot 14, South 04° 03' 37" West, 178.84 feet to a point on the southeast corner of said 4.503 acre tract;

Thence along the southerly line of said 4.503 acre tract and a northerly line of Lots 14-19 of said The Colony subdivision, North 86° 04' 09" West, 342.81 feet to a point on the southwest corner of said 4.503 acre tract, also being on the northwest corner of said Lot 19, also being the northeast corner of Lot 19 of said The Colony subdivision;

Thence along the westerly line of said 4.503 acre tract, the easterly line of Lots 38-41 of The Colony No. 2 subdivision delineated in Plat Book 45 Page 60, and the easterly line of said 0.516 acre tract, North 02° 41' 30" East, 761.01 feet to the POINT OF BEGINNING, containing 4.5 acres, more or less.

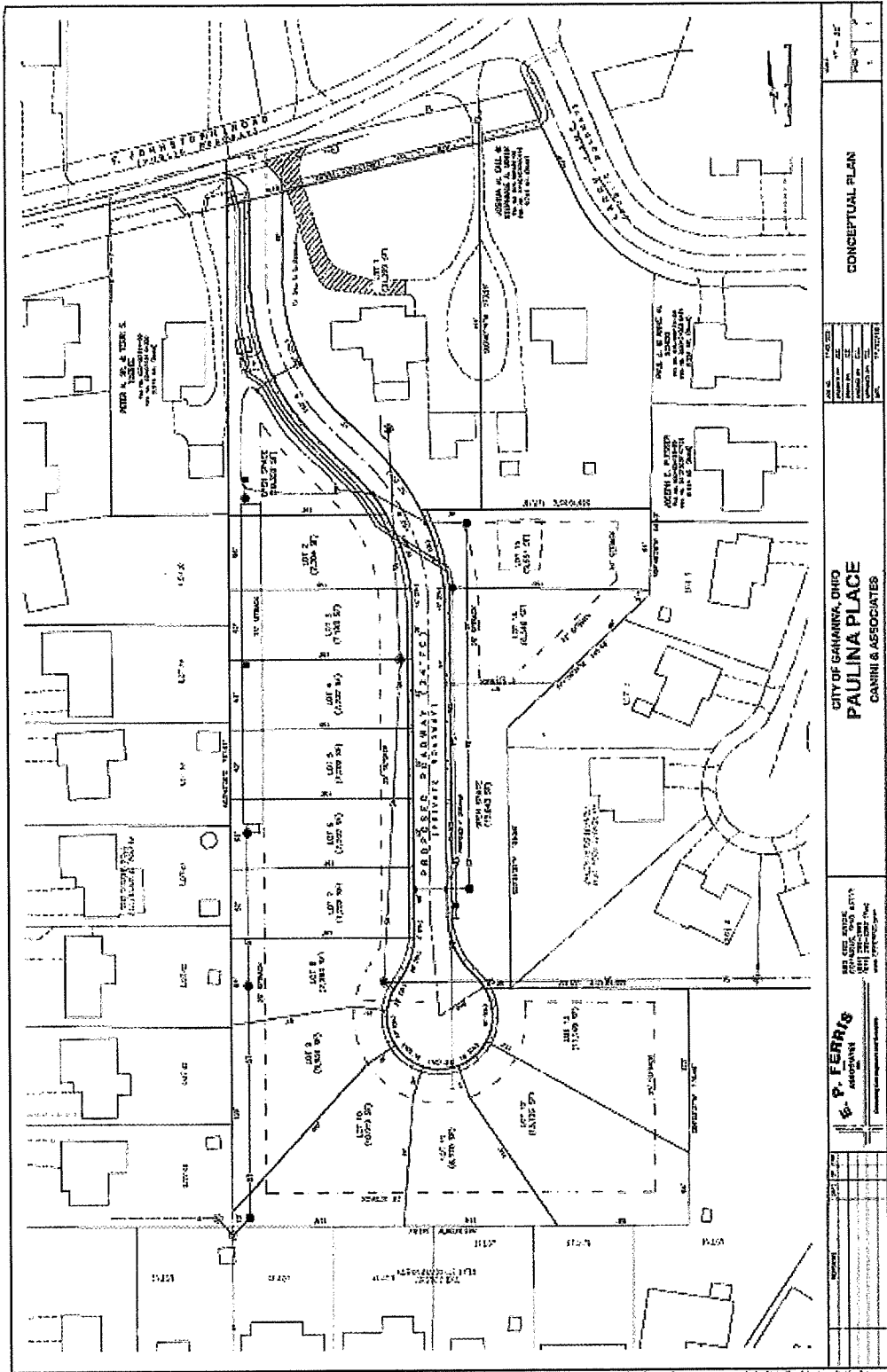
This description is based on records obtained by E.P. Ferris and Associates in 2018 and is intended to be used for zoning purposes only.



Matthew E. Ferris
Matthew E. Ferris, P.E., P.S.
Registered Surveyor No. 8230

08-28-18
Date

EXHIBIT B



| | |
|---|----------------------------------|
| CONCEPTUAL PLAN CITY OF GAITHERSBURG, MARYLAND PAULINA PLACE CANINI & ASSOCIATES | |
| SHEET NO. 1 TOTAL SHEETS 1 | SCALE: 1" = 20' DATE: 10/1/01 |
| PREPARED BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name] | DATE: 10/1/01 |

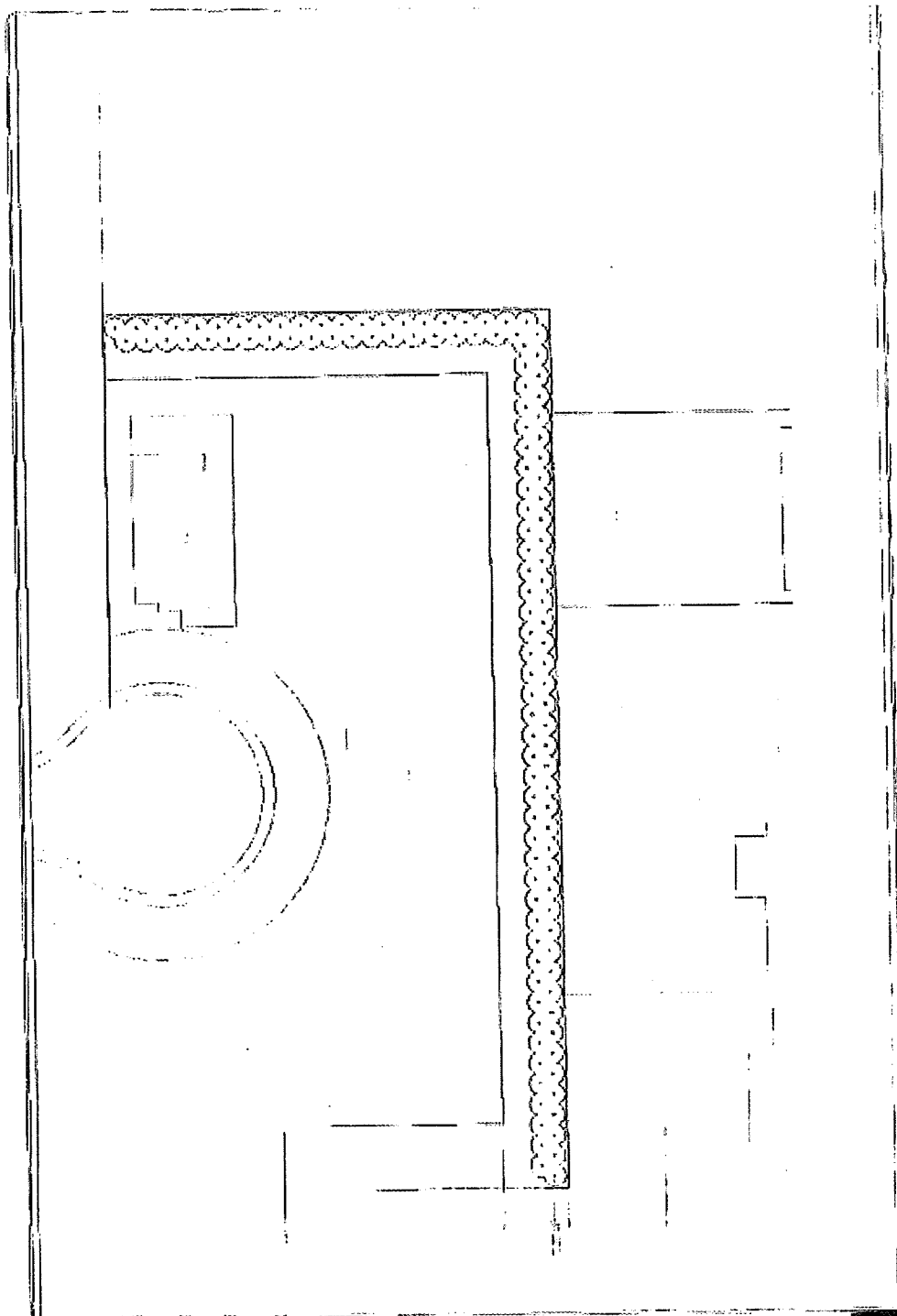
EXHIBIT C

ADJACENT PROPERTIES

Situated in the City of Gahanna, County of Franklin and State of Ohio and bounded and described as follows:

Being Lot Numbers Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), and Eighteen (18) of THE COLONY, as the same are numbered and delineated upon the recorded plat thereof, of record in Plat Book 40, Page 73, Recorder's Office, Franklin County, Ohio.

EXHIBIT D
Buffering Plans and Specifications



Professional Engineer
State of Ohio
No. 100000000

DATE: 10/1/2010
SCALE: AS SHOWN

PROPOSED TREE SCREENING
GAHANNA, OH. 43230





Oakland Design Associates

1156 Oakland Park Avenue
Columbus, OH 43224
Office: 614-268-3834
Fax: 614-268-3003

INVOICE #
DATE

BILL TO:

REALTY OPTIONS

ATTN: JEFF MCINTURF
10650 NEBARGER LANE
NEWARK, OH 43065
PHONE: 614-378-7567

NOTES:

ALL WORKS TO BE COMPLETED BY 10/1/09

Customer #

Designer: ALLISON MILLER Call: 614.496.6603 AMILLER@oaklandnursery.com

| QUANTITY | DESCRIPTION | SIZE | EXTEND |
|----------|--|---------------------------|-------------|
| 1 | TREE SCREENING FOR NEW BUILD SUBDIVISION "GOL PLUS" INSTALLED (soil plus is amended with sand and compost) TREE BINGS ONLY | CUBIC YARDS | \$1,045.00 |
| 120 | SLATE MATERIAL INSTALLED (slate is not listed in price) GREEN GIANT AMBROSIA INSTALLED ARIZONIS II INSTALLED (stone LASER selected at price) | 8-6" | \$21,205.80 |
| 9 | HARDWOOD MULCH INSTALLED IF BLACK CEDAR HARDWOOD MULCH IS PREFERRED ADD AMOUNT TO EXTENDED COLUMN | CUBIC YARDS - \$108.00 | 9855.00 |

DISCOUNTS AND SPECIALS ARE SUBJECT TO CHANGE. ALL PRICES ARE QUOTE ONLY AND NOT TO BE USED FOR THE PURPOSE OF THE BIDDING PROCESS. WE RESERVE THE RIGHT TO CHANGE ANY QUANTITY OR PRICE WITHOUT NOTICE. SEE INSTRUCTIONS SECTION.

This estimate expires 30 days from the above date. Plant sizes and prices are subject to availability and may be substituted if necessary. The home owner is responsible for all permits and fees associated with the permit process.

Plants and trees are guaranteed for ONE YEAR from the date of installation.
NO GUARANTEE ON TRANSPLANTS, PERENNIALS, GROUNDCOVER, GRASSES, ROSES, ANNUALS, SEED OR SOIL.
REPLACEMENTS WILL BE MADE ONLY ONCE. THERE IS NO SECOND REPLACEMENT.

Owner must maintain plant material suitable of watering, spraying, fertilizing and pruning of the quantity of work by being before. Please read and understand.

1. The property owner is responsible to mark all underground utilities not marked by G.U.P.S. (Gas Utility Protection Service) including all gas, electric, communications, lighting, drain lines, outside air lines, cable TV or irrigation lines or basins. If located in an open area, Oakland is not responsible for damage.

2. Oakland is not responsible for any damaged items or the cost to repair underground obstructions.

3. A 40% deposit is required with signed contract prior to construction. Payment due in full 30 days from revised date or warranty is void.
A service charge of 1.5% corresponding to 10% per year will be added to all accounts unpaid after 90 days.

OAKLAND NURSERY'S CREDIT SAVINGS CONTRACTS ARE NOT VALID FOR USE ON LANDSCAPE CONTRACTS

| | | | | | | | |
|------|--|------------------------|--|-----------|--|-------------|--|
| Date | | Customer Authorization | | SUBTOTAL | | \$23,105.80 | |
| | | | | STATE TAX | | \$1,787.91 | |
| | | | | TOTAL | | \$24,893.71 | |

PLEASE REFER TO AGREEMENT FORM FOR DETAILS

AMOUNT TO BE PAID IN FULL WITHIN 30 DAYS OF THE COMPLETION OF WORK. OTHERWISE, SERVICE CHARGES WILL APPLY.

Please sign contract and return it with a 40% deposit to reserve a position on our schedule. Thank You!

Please make deposit checks payable to: Oakland Nursery.

| | | |
|-------------|----|----------|
| 40% DEPOSIT | \$ | 9,957.48 |
|-------------|----|----------|