

### **PRE-ANNEXATION AGREEMENT**

THIS PRE-ANNEXATION AGREEMENT (this "Agreement") is entered into so as to be effective on the last date of signature by a party below, by and between the CITY OF GAHANNA, an Ohio chartered municipal corporation (hereinafter the "City"), and M/I Homes of Central Ohio, LLC, an Ohio limited liability company (hereinafter "M/I").

#### **PURPOSE:**

M/I controls by contract property that is contiguous with the boundaries of the City of Gahanna. The property controlled by M/I is shown on Exhibit A attached hereto and made a part hereof (hereinafter the "Real Property"). The Real Property would benefit from certain City services, including police, economic development assistance, and street maintenance. The City can offer such municipal services to the Real Property if the Real Property is annexed to the City. The mutual purposes of both the City and M/I can be accomplished through the annexation of the Real Property to the City. Therefore, in order to gain mutual benefits, the City and M/I agree to the following:

1. Annexation Petition. M/I will, at its sole cost and conditioned upon obtaining signatures of the current owners of the Real Property on the petition, prepare and file an annexation petition with the Board of Commissioners of Franklin County, Ohio (the "County") within thirty (30) days of the full execution of this Agreement which shall serve as its request to annex the Real Property to the City. An "Expedited Type II" annexation procedure, as provided in Ohio Revised Code ("R.C.") §709.023, shall be utilized and pursued with respect to the annexation of the Real Property to the City. Once this Agreement is signed and accepted by the City, M/I and the City both agree that the Parties will continue to support the annexation to the City through the entire annexation process, including any appeal or court action. The City agrees it will not take any action that would result in the Real Property becoming non-contiguous to the City or otherwise make the Real Property unqualified for annexation. Notwithstanding the foregoing, the City agrees that, in connection with the rezoning of the Real Property for the identified uses as set forth in Paragraph 4 below and as identified on the Preliminary Plan attached hereto as Exhibit B: (i) if the rezoning application, preliminary or final plan, or

preliminary or final plat is not approved by City Council with a density consistent with Paragraph 4 herein; or (ii) if a referendum defeats the rezoning; or (iii) if the annexation is not completed, there are appeals still pending and either party withdraws from the annexation; or (iv) if the City passes any ordinance which would prohibit or restrict the Real Property from being used as set forth in Paragraph 4 below (including, but not limited to, a building or zoning moratorium), the City will cooperate and agree by ordinance to consent to an R. C. §709.38 procedure or other similar statutory de-annexation or detachment procedure at the request of M/I. The City will then diligently and in a workmanlike manner pursue the procedure to completion in cooperation with M/I.

2. Service Resolution. The City agrees to enact a service resolution (the “City Service Resolution”) setting out the services that will be provided to the Real Property upon annexation pursuant to the requirements of R.C. §709.023(C). The Jefferson Water and Sewer District will provide water and sewer utility services to the Real Property. The City will not be responsible for providing water and sewer utility services to the Real Property. The City agrees to provide witnesses for any hearing before the County Commissioners and to provide affidavits in support of its Service Resolution. The developer will be responsible for all costs associated with off-site utility improvements necessary for servicing the Real Property. .
3. Roadway Access. The City agrees in concept to the Real Property having one curb cut/full turn movement access point on Reynoldsburg-New Albany Road and one emergency access point on Darling Road from the north generally as shown on the Preliminary Plan set forth in Exhibit B. The emergency access point and turnaround along Darling Road shall allow for a sufficient turn radius for emergency vehicles. Reynoldsburg-New Albany Road is, however, also within the jurisdiction of Franklin County, and all access locations will have to be approved and permitted through their office. Franklin County in conjunction with input from the City shall determine any road improvements that are necessary for the project. The costs of all such improvements, including traffic studies, design, engineering and construction, shall be the responsibility of M/I. M/I shall provide the City with sufficient right-of-way and/or easements for the

following purposes: (i) in order to allow for a future connection to Darling Road from the north and south, as generally depicted in Exhibit B; and (ii) in order to allow for future connectivity adjacent to Reynoldsburg-New Albany Road to the north, also as depicted in Exhibit B. M/I shall provide for pedestrian connectivity by ~~extending~~ constructing a multi-purpose path from the southern boundary of Darling Road within the Real Property proposed development to the existing path that is connected to Hannah Park, provided, however, that the City shall provide M/I with a right of entry or other relevant authority to enter upon property that is owned by the City in order to complete this connection. The location of this multi-purpose path will be determined through coordination between the Parks Department and M/I. Both the future right of way and multi-purpose paths are depicted on Exhibit B. In addition to the aforementioned items, M/I shall be responsible for providing all necessary studies, reports, design, and engineering plans for public street improvements and the extension of the multi-use paths directed by the Franklin County Engineer's Office or the City of Gahanna City Engineer. All proposed rights-of-way and roadway vacations planned as part of this project shall be pursued and approved by Franklin County prior to the City accepting the annexation. "Public Infrastructure Improvements" shall include but not be limited to public street improvements and the multi-use path extension referenced in this Section 3.

4. Use. The City, through its development and planning staff, has reviewed the Real Property and recommends that it should be zoned for single family residential use upon annexation to the City. The City therefore agrees to support the rezoning of the Real Property immediately following annexation to allow for the development of single family residential units with a maximum density of 1.5 units+/- per acre in compliance with the Preliminary Plan set forth in Exhibit B. Development of the project may occur in phases. All rezoning applications are subject to Planning Commission and City Council approval in accordance with the City's charter and applicable zoning regulations. Such review and consideration shall occur during the pendency of the annexation process, provided that City Council shall not vote to rezone the Real Property until after such time as it has acted to accept annexation of the Real Property to the City. The City's planning staff and administration agree that, if the rezoning application and accompanying Preliminary Plan

is generally consistent with Exhibit B attached hereto, the application will be supported by staff as responsive to the planning and zoning plans, principles and objectives of the City. At the request of M/I, the City agrees to delay acceptance of the annexation until legislative approval of the rezoning of the Real Property can be accomplished immediately following City Council's vote to accept the annexation and at the same meeting. If, for some reason, the rezoning ordinance cannot be approved in a form or substance acceptable to M/I, the City agrees, at the request of M/I, to permit M/I to withdraw its request to annex the Real Property to the City and/or to forbear from acceptance of the annexation by allowing the 120-day acceptance period to expire, thus effectively rejecting the annexation of the Real Property. If the annexation approval occurs prior to or other than concurrently with the legislative approval of the rezoning, and the rezoning is subsequently not approved substantially in accordance with Exhibit B (or as it may be modified acceptably to M/I and City staff) or does not become legally effective, or should a building moratorium be enacted which would limit M/I's use of the Real Property, City agrees, at M/I's request: (i) to reconsider the ordinance accepting the annexation, and to rescind, repeal and reject the annexation approval within fourteen (14) days of (a) the date of the disapproval of the rezoning, or referral to a vote of the electorate, (b) the filing of any legal challenge to the same, or (c) the enactment of the building moratorium, or (ii) to detach/de-annex the Real Property from the City or not oppose any owner's petition to detach/de-annex the Real Property from the City.

M/I and the City agree that the rezoning application which M/I will file with respect to the Property will request a zoning classification of SF-3 under the City of Gahanna Code. The application also shall request a limitation overlay with a limitation text providing that all homes within the Real Property shall be required to be constructed using primary exterior façade materials which are natural or natural in appearance, such as (but not necessarily limited to) cementitious siding (Hardie-plank or equivalent), wood, stone, stone veneer, brick, and brick veneer. Permitted trim materials shall include wood, vinyl, EIFS, and aluminum. In addition, the overlay text shall require each home to have a minimum of 2,000 square feet in order to ensure a consistent building type throughout the Real Property. The limitation text also shall include other provisions and limitations that

[are consistent with the terms of this Agreement.](#)

M/I shall establish a Homeowner's Association (HOA) for the Real Property. This HOA shall be formed with bylaws or other legally binding documentation that it shall allow for the following: if the HOA does not satisfy the required maintenance obligations for the non-publicly owned open space area within the Real Property, the City (after first delivering written notice of the failure to maintain to the HOA and allowing 20 days after the delivery of such notice to remedy the concern) shall have access to the non-publicly open space area within the Real Property and shall have the authority to assess the Real Property for any maintenance expenses incurred by the City. The required maintenance obligations for the non-publicly owned open space area within the Real Property shall be delineated within the limitation overlay text.

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5. Parkland. The City desires to accept the +/-5 acre site, labeled as Open Space on the Preliminary Plan, that is located adjacent to the existing territorial boundaries of the City of Gahanna as generally depicted in Exhibit B in order to expand Hannah Park. M/I agrees to install a four board farm fence with pressure treated posts, cedar boards and solid black state along the southern boundary of the aforementioned +/-5 acre site, adjacent to residential lots, as generally depicted in Exhibit B, in order to ensure the City has unobstructed use of the property as part of Hannah Park. The City may determine that it desires to accept certain remaining acreage noted as Open Space ~~or reserve areas~~ on the Preliminary Plan ~~for the expansion of Hannah Park which shall be used for passive open space purposes~~ and shall notify M/I as to whether or not the City desires to obtain ownership of any such acreage. ~~Prior to City Council taking action to approve a zoning of the Property as described in this Agreement, the City shall notify M/I as to whether or not the City desires to obtain ownership of such acreage.~~ M/I shall dedicate relevant real property to the City for this purpose by recording a final plat that provides for such dedication or by executing and delivering a deed to the City prior to the issuance of the first building permit for a home to be constructed on the Real Property.

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6. Tax Increment Financing. M/I consents to and, upon the request of the City, agrees to

reasonably cooperate with the City to create a tax increment financing area on the Real Property. The creation and terms of any such tax increment financing area shall be within the sole discretion of the City.

7. New Community Authority. M/I agrees that promptly following the annexation of the Real Property to the City, M/I shall submit a petition to establish a New Community Authority pursuant to Ohio Revised Code Chapter 349 (hereinafter the “Authority”), the boundaries of which shall include, but may not necessarily be limited be to, the Real Property. The form and contents of the petition shall be prepared by the City with the cooperation of M/I. The petition shall provide, among other things, that the City shall be entitled to appoint all members to the Authority’s board of trustees. The City and M/I shall each pay the costs of their own counsel in forming the Authority. The proceedings providing for the creation of the Authority shall authorize the Authority to levy and collect a community development charge in an amount not to exceed 7 mills, in accordance with Ohio Revised Code Chapter 349 for the purpose of paying the cost of “land acquisition”, “land development” and “community facilities”, each as determined by the City and defined in Ohio Revised Code Chapter 349 as amended from time to time. To provide for collection of the community development charge, M/I agrees to record a declaration of covenants against the property in the form provided by the City and reasonably acceptable to M/I. M/I further agrees that it will, upon the request of the City, execute or consent to any and all supplemental or amending petitions to add property to the Authority. The City and M/I agree that to the extent provided by Ohio Revised Code Chapter 349, the City and the City Council shall have discretion, authority and responsibility to consider and approve the creation of the Authority subject to the limitations of this paragraph.

City agrees that the Authority shall be formed with bylaws or other legally binding documentation that it shall require all future developers and/or builders within residential subdivisions within the Required Area which contain or are anticipated to contain ten (10) or more single family detached homes to legally commit themselves, as a condition of the annexation of their property to, or the rezoning of their property by, the City, to

submit such property to a New Community Authority upon substantially similar terms and with no less than the same community development charge millage as are applied to the Real Property. For purposes of this Agreement, the term “Required Area” shall mean the area of land bounded by the centerline of Clark State Road on the north, the centerline of Mann Road on the west, the centerline of Havens Corner Road on the south, and the Franklin County/Licking County boundary on the east. The City acknowledges that its commitment as described in this paragraph is important to allowing M/I to keep its development of the Real Property competitive in the local marketplace.

8. Construction of the Public Infrastructure Improvements: M/I shall take all reasonable actions such that the Public Infrastructure Improvements are substantially complete on the second anniversary of the date the City first approves the final plat for the first phase of development of the Property. The City and M/I agree that such completion date may be extended by mutual written agreement of the Authorized City Representative (who will be a City employee appointed by the Mayor from time-to-time) and M/I.

The completion date of the Work shall be specified to the City in a certificate signed by M/I, which certificate shall state that:

- (a) the construction, improvement and equipping of the Public Infrastructure Improvements has been completed substantially in accordance with the related construction documents, all costs then due and payable in connection therewith and all obligations, costs and expenses in connection with such Public Infrastructure Improvements have been fulfilled and paid;
- (b) all other facilities necessary in connection with the Public Infrastructure Improvements have been constructed, improved and equipped; and
- (c) the construction, improvement and equipping of the Public Infrastructure Improvements has been accomplished in a manner which conforms to all then applicable governmental laws, rules and regulations.

Acceptance by the City of the Public Infrastructure Improvements shall not relieve M/I of

its responsibility for defects in material or workmanship.

9. Green Infrastructure: “Green Infrastructure” is generally defined by the United States Environmental Protection Agency (USEPA) as a resilient approach to managing wet weather impacts by reducing and treating storm water at its source in order to minimize the need for conventional piped drainage and water treatment systems. Green Infrastructure Best Management Practices (GIBMP) include but are not limited to utilizing land conservation, urban tree canopies, permeable pavements, bioswales, downspout disconnection, rainwater harvesting, ~~and~~ rain gardens and other mechanisms as identified within Chapter 1195.05 (Post Construction Runoff Control) of the Gahanna Codified Ordinances.

M/I commits to incorporating GIBMP in the development of the Real Property in the following ways:

- a. Land Conservation: M/I commits to conserve over 3 times the amount of acreage required under the City of Gahanna’s Codified Ordinances for the Single Family-3 zoning classification.
- b. Urban Tree Canopies: M/I commits to a Landscape Plan that provides the following tree planning requirements:
  - i. A minimum of six (6) shade tree caliper inches per dwelling unit for lots one half (1/2) acre or less in size.
  - ii. A minimum of twelve (12) shade tree caliper inches per dwelling unit for lots larger than one half (1/2) acre in size.
  - iii. Shade Tree is defined as a tree grown with a main objective of generating shade and which produces approximately 1,000 square feet or more of shade at maturity.
  - iv. M/I commits to adhere to the tree planning requirements of a Landscape Plan under the City’s Tree Preservation and Planting Code if those requirements are more restrictive.
  - v. M/I commits to adhere to the existing tree planting requirements as outlined in Chapter 913.10 (Street Tree Planting Requirements).



~~iv~~.vi. M/I will make a good faith effort to preserve existing mature trees that are located within the areas designated as open space as generally depicted on Exhibit B.

- c. Stormwater Management Plan: M/I commits to provide a Stormwater Management Plan as part of their ~~Final Plat~~Zoning submission to City Council that will address approximately 50% of the water quality and storm water detention requirements in accordance to all applicable Federal, State and Local rules and regulations.

M/I shall make reasonable good faith efforts to increase the percentage of the water quality and detention requirements for the development which are served with “Green Infrastructure” by working collaboratively with the City Engineer and provided that such an increase will not unreasonably increase the development and construction costs to the extent that the economic viability of the development is jeopardized.

10. Contingencies. M/I’s obligations to develop the Property in accordance with the terms of this Agreement, as well as its obligations to install and construct the Public Infrastructure Improvements, shall be contingent upon the satisfaction (or waiver, in writing) of all of the following:

- A. The Annexation Petition shall have been approved by the County and the annexation of the Real Property shall have been accepted by the City and legally effective;

- B. Ordinance(s) approving the rezoning of the Real Property in accordance with Section 4 hereof and approving a final plat for the first phase of development of the Real Property shall have been duly approved by the City upon terms that are acceptable to M/I in its sole discretion and shall be legally effective. Each of the aforementioned ordinances shall be deemed to include terms that are acceptable to M/I if, with respect to a particular ordinance, M/I does not raise an objection to the approval of the same at the meeting when City Council votes on said ordinance, provided that M/I has been given prior notice of the meeting;

- C. A final development plan application and/or application for a certificate of

appropriateness (if applicable) shall have been approved by the City's Planning Commission so as to allow for the development of the Real Property in accordance with Section 4 of this Agreement; and

D. M/I shall have purchased the Real Property from the persons, entities, and/or trusts that own the Property on the Effective Date.

11. Miscellaneous.

(a) This Agreement and the rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof and inure to the benefit of and be binding on the respective successors and assigns.

(b) This Agreement supersedes any and all prior agreements, arrangements, negotiations or understandings and acknowledgments between the City and M/I or any related party, relative to matters contained herein whether oral or written. No amendment, modification or alteration of this Agreement shall be valid unless in writing and signed by the parties hereto.

(c) If for any reason any one or more articles, sections, sentences, clauses or parts of this Agreement are held invalid by any court of law or duly authorized public body, such determination shall not affect, impair or invalidate the remaining provisions of this Agreement but shall be confined in its operation to the specific articles, sections, sentences, clauses or parts of this Agreement held invalid and the invalidity of any article, section, sentence, clause or part of the Agreement in any one or more instance shall not prejudice in any way the validity of the Agreement in any other instance.

(e) The obligations of and agreements by the City contained herein shall be effective and enforceable upon the approval of all necessary legislation and/or motions by Council. It is acknowledged that the initial legislation approving this Agreement is merely the first in a series of legislative acts implementing this Agreement. All subsequent City Council actions implementing this Agreement shall be considered to be in furtherance of this original Council action. The development contemplated by this Agreement is necessary to preserve the orderly development, economic progress and prosperity for the City of Gahanna, its

residents, citizens, and taxpayers. Further, the availability of statutory provisions and processes may be limited or terminated by the Ohio Legislature. Therefore, City Council shall pass the legislation authorizing the execution of this Agreement, and all subsequent legislation necessitated by this Agreement, with an emergency clause which requires that such legislation take effect at the earliest period permitted by law.

Signed and Acknowledged

in the presence of

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*Witness —printed name*

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*Witness —printed name*

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*Witness —printed name*

**MI HOMES OF CENTRAL OHIO LLC**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF GAHANNA**

By: \_\_\_\_\_

\_\_\_\_\_

*(Printed Name/Title)*

Date: \_\_\_\_\_

Per authority granted in Ordinance

No. \_\_\_\_\_ passed \_\_\_\_\_, 2016



**LIST OF EXHIBITS TO PRE-ANNEXATION AGREEMENT**

Exhibit A – Description and/or map of property owned or controlled by M/I

Exhibit B – Preliminary Site Plan

NEEDS TO BE PROVIDED

Exhibit A

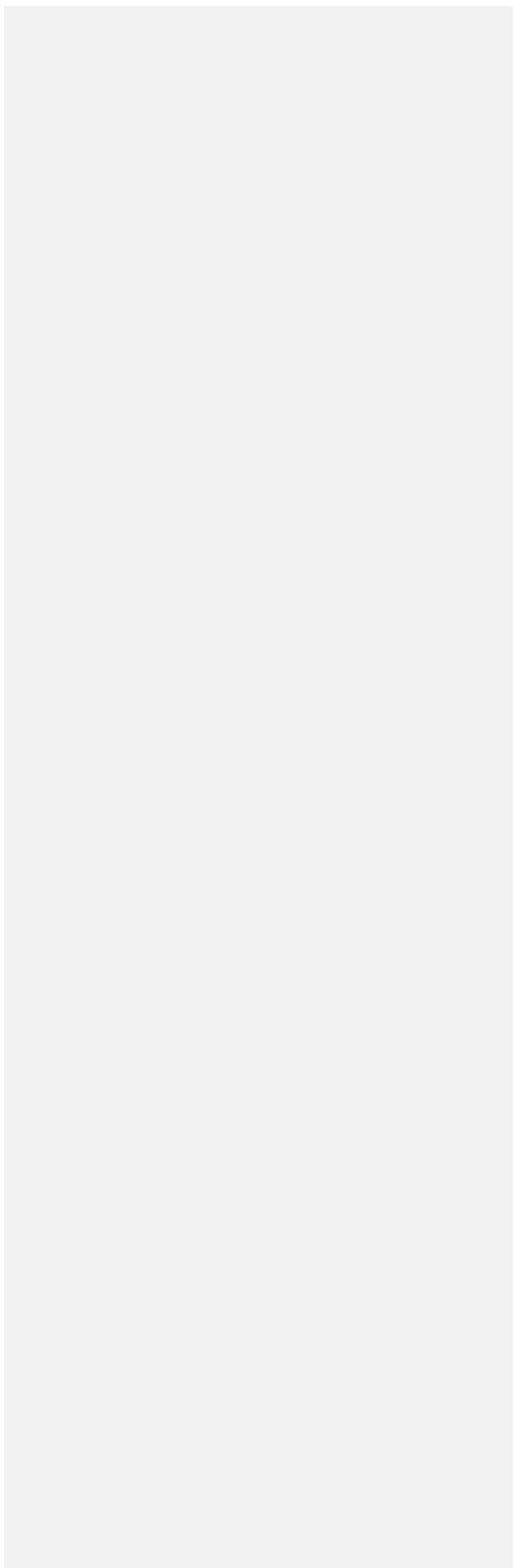
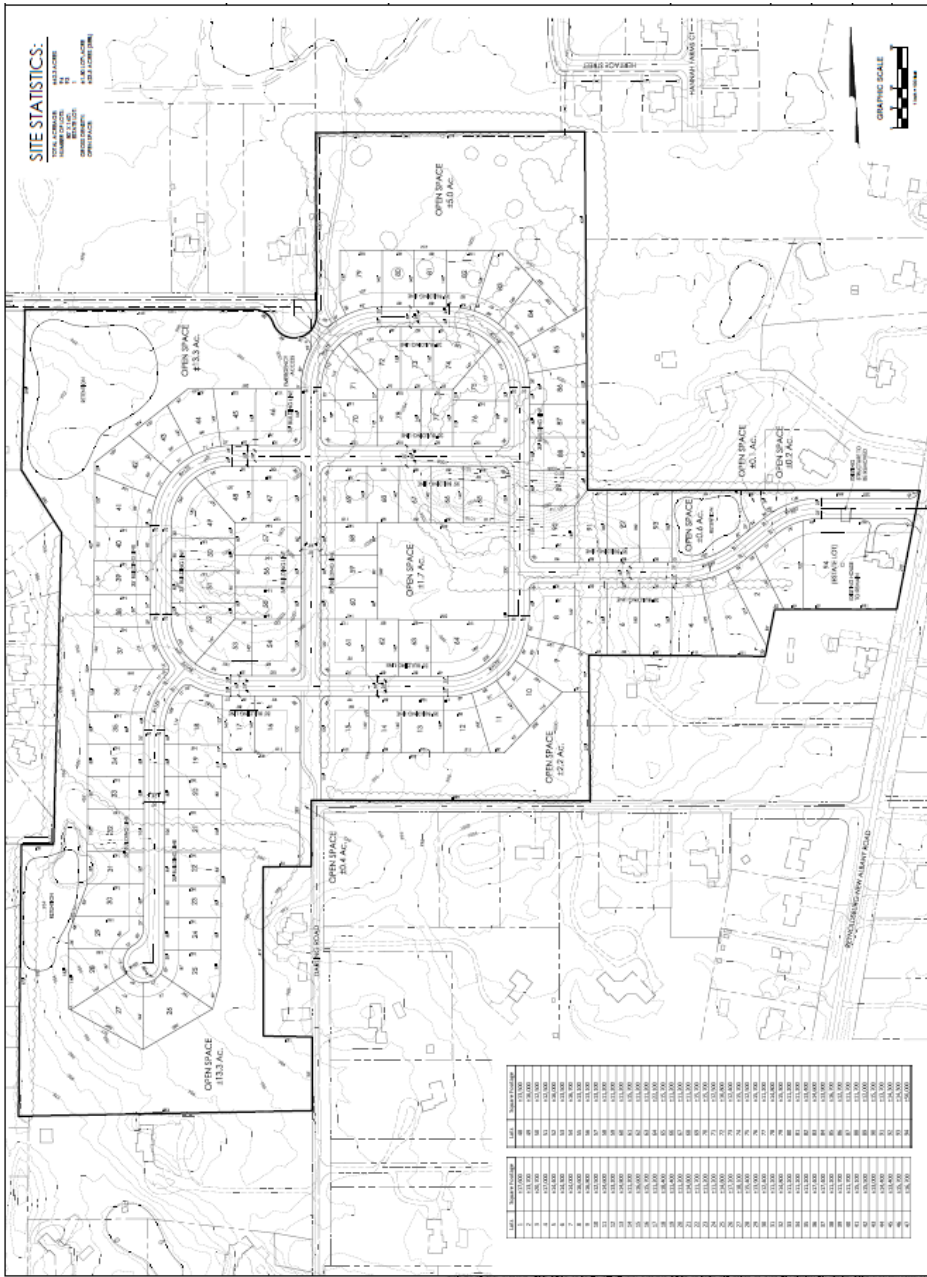


Exhibit B





**SITE STATISTICS:**  
 TOTAL OPEN SPACE: 1133.3 AC  
 TOTAL LOT AREA: 1133.3 AC  
 TOTAL LOT COUNT: 1133  
 TOTAL LOT AREA: 1133.3 AC  
 TOTAL LOT COUNT: 1133

LOT	AREA (AC)	AREA (SQ FT)
1	1133.30	77500000
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