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HENNEPIN COUNTY, MINNESOTA

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*Michael Kelly* CO. REC.

BY *cb* \_\_\_\_\_ DEPUTY

JUL 23 2001

HENNEPIN COUNTY MINN.  
*Andrew Mc* DEPUTY

**PINEBROOK MEADOWS**

A Single-Family Residential Development  
In The

City of Brooklyn Park, County of Hennepin, State of Minnesota

**DECLARATION OF COVENANTS**

THIS DECLARATION is made and executed this 24<sup>th</sup> day of May, 2001 by Astra Genstar Partnership, L.L.P., a Minnesota Limited Liability Partnership ("Developer").

**WITNESSETH:**

WHEREAS, Developer is the owner of certain real property located in the City of Brooklyn Park, County of Hennepin, State of Minnesota, in the recorded plat of Pinebrook Meadows, Hennepin County, Minnesota, upon which Developer contemplates the future development of a single-family residential development in accordance with a Planned Unit Development approval (as from time to time amended or modified) from the City of Brooklyn Park, Hennepin County, Minnesota ("City"); and

WHEREAS, Developer desires to preserve the values and amenities of the single-family detached residential development in Pinebrook Meadows through this Declaration of Covenants, Conditions and Restrictions ("Declaration") by establishing (i) a mechanism for the maintenance, improvement or repair of common entrance monuments and associated landscaping or landscape plantings, common open space, storm water pond areas and wetlands defining and unifying the appearance of Pinebrook Meadows; and (ii) a system of architectural controls for present and future single-family detached residential developments in Pinebrook Meadows; and

WHEREAS, Developer desires by this Declaration, to create and declare certain covenants, conditions, easements, restrictions, charges and liens, hereinafter set forth ("Covenants"), for the benefit of those portions of Pinebrook Meadows now or hereafter subjected to this Declaration, and the present and future owners thereof; and

WHEREAS, Developer has incorporated the Pinebrook Meadows Owners Association, as a Minnesota non-profit corporation ("Association"), to which has been delegated the power and duty to administer the terms of this Declaration, including the enforcement of the terms hereof and the levy, collection and disbursement of certain assessments and charges provided for herein;

NOW, THEREFORE, the Developer hereby declares, imposes upon and makes the Subdivision subject to the following covenants, conditions, restrictions, reservations, and easements, the burden of which shall run with the Subdivision and bind all persons who now or hereafter have any right, title, or interest in the Subdivision, and the benefit of which shall run with the Subdivision and inure to the benefit of all persons who now or hereafter have any right, title, or interest in the Subdivision.

## **ARTICLE I** **DEFINITIONS**

**Section I.** The following terms, in addition to those defined in the foregoing Recitals, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

- a. **Association.** Pinebrook Meadows Owners' Association, a Minnesota non-profit corporation, or such other association which succeeds to the rights and obligations of Pinebrook Meadows Owners' Association.
- b. **City.** City of Brooklyn Park, a municipal corporation under the laws of the State of Minnesota.
- c. **Developer.** Astra Genstar Partnership, L.L.P., a Minnesota Limited Liability Partnership, and its successors or assigns.

- d. **Historical Farm Landscaping.** Landscaping that is placed in the rear and/or side yards of certain Lots which are contiguous to the City of Brooklyn Park Historical Farm.
- e. **Landscape Amenities.** Real property and improvements, or interests therein (including but not limited to, entrance monuments and associated landscaping and including without limitation, fee or easement interests), owned or held by the Association, for the benefit of the members thereof ("Members").
- f. **Landscaped Cul-de-sac Islands.** Landscape improvements made to an area of land located in the approximate center of a cul-de-sac that is maintained by the Association, for the benefit of the Members thereof.
- g. **Lots.** A legally platted lot within the Property, intended for, or improved with, a single family detached residence.
- h. **Open Space.** All real property or easement interests therein (including the improvements thereon) owned by the Association for the common use and/or enjoyment of the Owners and property, the maintenance of which is specifically assumed by the Association hereunder.
- i. **Owner.** The record Owner or contract vendee of the fee simple title to property in Pinebrook Meadows subject to this Declaration, but excluding contract vendors, mortgagees, or any others having such interest merely as security for the performance of an obligation.
- j. **Pinebrook Meadows.** The real property platted as Pinebrook Meadows, Hennepin County, Minnesota.
- k. **Residential Improvements.** All Lot improvements, including but not limited to, clearing of some or all of the trees from the Lot, the grading of the Lot, the landscaping of the Lot (including specifically the landscaping described in Article VI, Section 13 of this Declaration), the construction, erection or installation of any structure, including, (without limitation) the following: any house, garage, shed or other building; any porch or deck; any fence, any Antenna (as defined in Article VI); any retaining wall, terrace or other landscaping structure; any patio, driveway or parking area; any tennis court; any swimming pool (whether above ground or below ground) and any and all appliances, fixtures and interior and exterior finishes.
- l. **Storm Water Pond Areas.** Storm water pond improvements installed by the Developer within the Subdivision for the purpose of detaining and regulating storm water runoff and the easement interests therein owned by the Association.

- m. **Subdivision**. The real property platted as Pinebrook Meadows, Hennepin County, Minnesota.
- n. **Wetlands**. The natural areas protected by the Wetland Conservation Act.
- o. **Minimum Market Value**. The sale price for a Lot together with its Residential Improvements.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION**

**Section 1. Property Subject to this Declaration**. The real estate subject to this Declaration is located in the City of Brooklyn Park, Hennepin County, Minnesota, and is limited to the property described on Exhibit "A" attached hereto.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership and Voting Rights**. The Association shall have a single class of membership, which shall be comprised of the Owners of the Lots (including Developer) which are subject to this Declaration. Each Member shall be entitled to one (1) vote per Lot owned. The procedure for voting is as set forth in the By-Laws for the Association.

**ARTICLE IV**  
**MAINTENANCE; EXPENSE ALLOCATION**

**Section 1. Initial Maintenance By Developer**. The Developer shall furnish all maintenance, repair, and replacement, to all entrance monuments and associated berming and landscaping constituting Landscape Amenities, Open Space, Storm Water Pond Areas, Wetlands, and Landscaped Cul-de-sac Islands for a period of two (2) years or until all lots are sold by the Developer, whichever ever occurs first following the recording of this Declaration, and shall pay the cost thereof. Maintenance shall include, as necessary, appropriate hazard and liability insurance.

**Section 2. Assignment of Monument Easements**. Following the Initial Maintenance described in Section 1., all recorded easements in favor of the Developer relating to the erection, maintenance, repair, and replacement of Landscape Amenities, Open Space, Storm Water Pond Areas, Wetlands and Landscaped Cul-de-sac Islands shall be automatically assigned to the Association, which shall assume all of the Developer's obligations thereunder. The Developer and

the Association will execute a confirmatory agreement of such easements, but the failure to execute such a document shall not abrogate the effect of this Article IV, Section 2.

**Section 3. Maintenance By Association.** Following the Initial Maintenance described in Section 1, the Association shall provide all maintenance, repair and replacement of Landscape Amenities, Open Space, Storm Water Pond Areas, Wetlands and Landscaped Cul-de-sac Islands. The Association may, at such time, provide such further or additional maintenance and repair to Landscape Amenities and Open Space in Pinebrook Meadows, subject to the provisions set forth below. Each Lot Owner specifically grants to the Association a right of access over and across its Lot for the limited purpose of performing its maintenance obligations required under this Article IV.

**Section 4. Expense Allocation.** The expense of any maintenance, repair or replacement performed by the Association and assessed to Lots, pursuant to Article V, below, shall be allocated on the basis of one expense share to each Lot, from Association assessments other than for the cost of landscape maintenance.

## **ARTICLE V ASSESSMENTS**

**Section 1. Creation of Assessments.** The Developer, for each Lot owned by it, hereby covenants, and each Owner, by acceptance of a deed for a Lot, whether or not it shall be expressed in such deed or other conveyance instrument, is deemed to agree to pay to the Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge upon the Lots and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not be passed to successors in title unless expressly assumed by them.

**Section 2. Annual Assessments; Purpose of Annual Assessments; Certain Increases in Assessments.** There shall be an annual assessment levied for the purpose of paying the costs of the Association's performance of its obligations as defined in Article IV, together with the incidental costs of operating the Association. In any calendar year, the assessments payable by the Members as a whole, other than for insurance coverages, shall not be increased beyond 150% of the aggregate assessments for the prior year without a vote of the Membership, at a special meeting called for the purpose of considering such increase.

**Section 3. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of

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any construction, reconstruction, repair or replacement of the capital improvement upon the Landscape Amenities, Open Space, Storm Water Pond Areas, Wetlands and Landscaped Cul-de-sac Islands, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 4. Uniform Rate of Assessment.** Both the annual and special assessments must be fixed at a uniform rate for all Lots. Notwithstanding the foregoing, no assessment, annual or special, shall accrue against a Lot prior to the date a certificate of occupancy has been issued for improvements constructed upon the Lot. Assessments may be collected on a monthly, quarterly or annual basis, as determined by the Association.

**Section 5. Notices of Assessments.** The annual assessment or special assessment for each year shall be fixed, and written notice shall be provided to each Lot Owner at least thirty (30) days prior to the date which the assessment is due. Failure by a Lot Owner to receive such notice shall not render any assessment or special assessment invalid. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on the Lot is binding upon the Association as of the date of its issuance.

**Section 6. Effect of Non-Payment of Assessments; Remedies of the Association.** If any assessment is not paid when due, it shall become delinquent and shall, together with interest at a rate of eight percent (8%) per annum plus any cost of collection and any attorneys' fees, become a continuing lien on the Lot at the time the assessment is made. The lien may be enforced and foreclosed by action or advertisement in the same manner in which mortgages may be foreclosed in Minnesota. The lien created by this Declaration shall be subordinate to the lien of any first mortgage to provide financing (or refinancing) of any Lot or improvement thereon, and any first mortgagee, or its successor in interest, which obtains title to a Lot by foreclosure or deed in lieu of foreclosure of a first mortgage shall not be liable for unpaid assessments which have accrued prior to acquisition of title to such Lot by such first mortgagee, or its successors in interest (in the case of a deed in lieu of foreclosure) or prior to the expiration of the statutory period of redemption (in the case of a foreclosure of a first mortgage).

**ARTICLE VI  
GENERAL COVENANTS AFFECTING ALL LOTS**

**Section 1. Residential Purposes.** Each Lot shall be used only for residential purposes, except that Lots or portions of Lots may be used by the Developer and/or home builders for temporary marketing, temporary offices, model homes and/or for subdivision entrance monuments. Residential purposes include houses and other Residential Improvements.

**Section 2. Minimum Market Value.** The establishment of the Minimum Market Value for single-family detached residences developed within Pinebrook Meadows is essential to create and maintain the values and amenities of the Subdivision. Each Lot together with its Residential Improvements within Pinebrook Meadows must, at the time a Certificate of Occupancy is issued, meet the Minimum Market Value of \$160,000.

**Section 3. Building Specifications.**

- a. **Height.** No dwelling shall be erected, altered or placed on a Lot or permitted to remain there other than one detached single family house not to exceed two stories in height, as measured from grade. If the house includes a walkout basement, the basement shall not be counted as a story.
- b. **Roof Pitches and Roof Lines.** Roof pitches shall be at minimum of 6/12.
- c. **Garages.** Each house shall have two or more attached fully-enclosed garages so that the total house width (including the garages) is at least 45 feet, but no carports or detached garages shall be permitted. The minimum garage square footage shall be 480 square feet. There may be garage space for any number of cars, but from the street in front of the house it must appear that there is garage space for no more than three cars.
- d. **Exterior Materials.** Exterior materials may be a combination of brick, stone, wood, vinyl, aluminum, stucco or siding, but masonite is not permitted. Garage doors shall have raised panels.
- e. **House Colors.** Only earthtone or neutral house colors shall be permitted. Some flexibility will be allowed for doors, shutters, and trim.
- f. **Elevations.** Identical house elevations are not permitted on adjacent Lots or Lots which are directly across the street from one another.
- g. **Storage Structures.** Attached or detached structures for storage purposes are permitted, but any storage structure large enough to hold an automobile shall be considered a garage whether or not it is used as a garage. Each storage structure on a Lot shall be of the same color, design and quality of construction as the house on the Lot. The aggregate floor area of all storage structures on a lot shall not exceed 144 square feet.
- h. **Completion.** Each house or other structure constructed or placed on a Lot shall be completely finished on the exterior thereof within nine (9) months after commencement of construction.

i. **Floor Areas and House Widths.** The following minimum house sizes shall apply:

- |                          |  |
|--------------------------|--|
| 1. Rambler:              | 1,300 square feet at or above the front entry elevation. |
| 2. Two Story:            | 1,800 square feet at or above the front entry elevation. |
| 3. Modified Two Story:   | 1,600 square feet at or above the front entry elevation. |
| 4. Split Entry:          | 1,300 square feet at or above the front entry elevation. |
| 5. Modified Split Entry: | 1,300 square feet at or above the front entry elevation. |

The first floor areas described herein shall be exclusive of breezeways, open porches and garages.

"At or Above the Front Entry Elevation" shall include all floor area at or above a floor level no more than three steps below the front grade elevation.

j. **Hardsurface Coverage.** The maximum hardsurface coverage of any individual Lot shall be 40%. Hardsurface coverage shall be defined as the amount of a Lot covered by building, pavement, concrete or other impervious material.

**Section 4. Setbacks.** Building setbacks from all Lot lines shall comply with city ordinances, as modified by any applicable Planned Unit Development Agreement with the minimum front yard setback being 30 feet, the minimum side yard setback being 10 feet and the minimum rear yard setback being 30 feet.

**Section 5. Nuisance.** No noxious or offensive trade or activity shall be carried on or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to any other Lot or Lot Owner.

**Section 6. Prohibited Dwellings.** No structure of a temporary character, trailer, basement, shack, garage, barn, or other outbuilding shall be used on any Lot at any time (either temporarily or permanently) as a dwelling.

**Section 7. Antennas.** No exterior antenna, aerial, tower, dish or other device for transmitting or receiving radio, television, microwave, laser or other electromagnetic signals ("Antenna") shall be constructed, erected, installed, placed or used on any Lot except dishes used for



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receiving television with an outside diameter no greater than 18 inches. Approved dishes will be erected or placed on the house or garage so as to minimize visibility of the dish from the street.

**Section 8. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. The combined total number of dogs and cats kept on a Lot at one time shall not exceed three (3).

**Section 9. Driveways; Parking; Vehicles.** All driveways and parking areas constructed on any Lot shall be paved with an asphalt, brick, or concrete surface from the garage to the street pavement (including any area within the public right of way). Operable vehicles may be kept, stored, or parked only on paved driveways, on paved parking areas, or in enclosed garages. All other vehicles shall be kept, stored, or parked only in enclosed garages. "All other vehicles" means all motorized and all non-motorized vehicles except operable automobiles, including (without limitation) the following: automobiles that are inoperable, recreational vehicles, all-terrain vehicles, motorcycles, bicycles, snowmobiles, watercraft, aircraft, tractors, house trailers, camping trailers, and other trailers. Notwithstanding the foregoing prohibition, guests of the Owner of a Lot visiting for less than 15 days in any 30 day period may park their vehicles on unenclosed paved areas of the Lot.

**Section 10. Rubbish.** No Lot shall be used or maintained as a dumping ground for rubbish, except during construction of Subdivision improvements and houses. Trash, garbage, and other waste shall be kept in sanitary containers.

**Section 11. Signs.** No sign of any kind shall be displayed to the public view on any Lot except as follows:

- a. One sign no larger than 6 square feet in area may be placed on each Lot advertising the Lot for sale, unless the Lot is a corner Lot, in which case one such sign for each side of street frontage is permitted.
- b. During the initial construction and sales period of the Subdivision, one additional sign no larger than 36 square feet in area may be placed on any Lot containing a model home.

**Section 12. Utility and Drainage Easements.** Easements for installation and maintenance of utilities and drainage are reserved as shown on the recorded plat of the Subdivision.

**Section 13. Landscaping.** All front, side, and rear yard areas from the street pavement to the rear lot line (including any area within the public right of way) shall have top soil, sod and landscaping pursuant to the City Code of Ordinance, and as described below:

- a. Five (5) trees, two of which must be in the front yard and one of those two must be a deciduous tree within one (1) foot of the public right-of-way and two of which must

be deciduous trees in the rear yard within five (5) feet of the rear lot line. The size must comply with the following:

- 1) Deciduous - two (2) caliper inches, balled and burlapped.
- 2) Coniferous - six (6) feet, balled and burlapped.
- 3) Ornamental - one and one-half (1.5) caliper inches, balled and burlapped.

- b. Ten (10) front yard foundation shrubs a minimum of three (3) gallons potted or eighteen (18) inches.

**Section 14. Mailboxes.** The initial mailboxes and mailbox structures shall be provided by the Developer. Any repair, maintenance or replacement shall be paid by the Lot Owner(s) and shall be identical to the initial mailbox and mailbox structures.

**Section 15. Soil Removal.** No sod, soil, sand, or gravel shall be sold or removed from any Lot, except for the purpose of excavating for the construction or alteration of a house on the Lot or appurtenances thereto, or for the proper grading thereof, or for road improvement.

**Section 16. Rights of Developer and Home Builders.** Until the last Lot within the entire development of Pinebrook Meadows is sold and conveyed to an Owner other than the Developer or a professional home builder, the following actions by said persons will not be deemed violations of the foregoing restrictions:

- a. Use of a house for model and sales office purposes;
- b. The storage of equipment, materials, and earth during the construction of new houses; and
- c. The display of signs of any legal size advertising lots or houses in the subdivision.

## **ARTICLE VII**

### **COVENANTS AFFECTING CERTAIN LOTS**

**Section 1. Fencing.** Any fencing installed along 97th Avenue North and Noble Avenue North shall be approved by the Architectural Review Committee and shall be uniform throughout Pinebrook Meadows. The minimum specification for fencing shall be as specified in Exhibit B. Any fencing installed on a Lot adjacent to the City of Brooklyn Park Historical Farm shall be approved by the Architectural Review Committee and the City of Brooklyn Park and shall be uniform throughout Pinebrook Meadows. Approved fencing shall not be altered without the prior approval of the original approving body(s). Both sides of any fence installed on a Lot, as well as all yard and boulevard area contained within a Lot shall be maintained by the Lot Owner.

**Section 2. Berming and Landscaping.** Berming and Landscaping has been and/or will be placed in the rear and/or side yards of certain Lots (Exhibit C). The entire berm shall be sodded and the Berming and Landscaping shall be maintained by the respective Lot Owners. Further, the

respective Lot Owners shall not remove, alter or damage the Berming and Landscaping with out the approval of the Architectural Review Committee. Damage to berming and landscaping caused directly or indirectly by the Lot Owner shall be repaired or replaced by, or at the expense of, the respective Lot owner. Except as otherwise provided in this section, berming and landscaping shall be repaired or replaced by the Association.

**Section 3. Historical Farm Landscaping.** The Historical Farm Landscaping installed on the rear and/or side yards of the Lots identified on Exhibit D must be maintained and, as required, repaired and/or replaced by the respective Lot owners. The Historical Farm Landscaping shall not be altered without the approval of the Architectural Review Committee.

**Section 4. Storage Structures.** In addition to the minimum standards applicable to permitted storage structures, storage structures placed on Lots must be set back a minimum of 30 feet from 97<sup>th</sup> Avenue and Noble Avenue rights-of-way and a minimum of 30 feet from the City of Brooklyn Park Historical Farm property line.

## **ARTICLE VIII** **ARCHITECTURAL REVIEW COMMITTEE**

**Section 1. New Improvements.** No Residential Improvement shall be commenced upon any Lot by anyone except the Developer without the prior written approval by the Architectural Review Committee ("Committee") of the person who will actually perform the work and of the plans and specifications for the work.

**Section 2. Changed Improvements.** The exterior color, style, and materials of any structure on a Lot shall not be changed by anyone except the Developer without prior written approval by the Committee of the person who will actually perform the proposed work and of the plans and specifications for the work.

**Section 3. Committee Members.** The Committee shall consist of three individuals appointed by the Developer until the date the Developer no longer owns any Lot in Pinebrook Meadows. Thereafter the Committee shall consist of three individuals appointed by the Board of Directors of the Association.

**Section 4. Committee Chairperson.** The Committee shall appoint one of its members to be its chairperson. The chairperson shall call meetings of the Committee. A quorum of the Committee shall consist of two of its members. The committee may act upon the vote or written consent of any two of its members. The chairperson of the Committee is authorized to execute certificates of approval, notices of disapproval and similar instruments effectuating decisions of the Committee.

**Section 5. Submission of Plans and Specifications.** At least seven (7) days prior to work on a Lot is commenced, the Owner of the Lot shall submit to the Committee one complete set of

plans and specifications (including, without limitation, certificate of survey, grading and drainage plan, building elevations, building floor plans, exterior colors and materials, and landscaping plan).

**Section 6. Review of Plans and Specifications.** Within seven (7) days after receipt of plans and specifications, the Committee shall approve or disapprove them in writing. The Committee shall disapprove plans and specifications for one or more of the following reasons:

- a. **Non-compliance.** Non-compliance with this Declaration, municipal ordinances or other governmental regulations, or such standards or specifications, not inconsistent herewith, which the Committee may adopt and publish from time to time.
- b. **Incompatibility With the Lot.** Failure of the proposed Residential Improvement to be compatible with the Lot upon which it is to be built, in terms of topography, soils and existing vegetation.
- c. **Incompatibility With Pinebrook Meadows.** Failure of the proposed Residential Improvement to be compatible with the houses and other structures in Pinebrook Meadows, in terms of style, general size, height, and width, quality of construction, price range, obstruction of views and the orientation of improvements to the Lot.
- d. **Inadequate Information.** Failure of the plans and specifications to show all information necessary to evaluate the foregoing characteristics.
- e. **Failure to Meet Minimum Value.** Failure of the plans and specifications to demonstratively evidence to the Committee that the Lot and Residential Improvements on completion will meet the Minimum Market Value as required by this Declaration. "Demonstrable Evidence" shall include such information as the Committee may require, including, but not limited to bids, contracts, sworn construction statements and such other further information as the Committee may deem appropriate.

**Section 7. Committee Approval.** The Committee's approval of the builder and plans and specifications shall be stamped on all plans and specifications approved by the Committee. No application for a building permit for construction of residential improvements shall be made unless accompanied by plans and specifications approved and stamped as approved by the Committee.

**Section 8. Variances.** The Committee shall have authority to grant variances from the strict application of the requirements of this Article, or any standards or specifications adopted by the Committee pursuant to the authority contained herein, on the basis of hardship or similar grounds. Notwithstanding the Committee's right to grant variances, the Committee shall not be entitled to grant a variance to the Minimum Market Value requirement without written authorization from the City.

**Section 9. Remedies Against Owners.** If construction of or exterior changes to a Residential Improvement are commenced without the Committee's approval of the plans and specifications, or if construction of or exterior changes to a Residential Improvement are completed not in accordance with approved plans and specifications, any Owner of a Lot in Pinebrook Meadows may bring an action to enjoin further construction and to compel the Owner to conform the Residential Improvement with plans and specifications approved by the Committee. Any such action must be commenced and a notice of lis pendens must be filed within ninety (90) days after the date on which the certificate of occupancy is issued by the appropriate municipal authority, in the case of a house, or within ninety (90) days after the date of completion, in the case of any other Residential Improvement.

**Section 10. Remedies Against Committee.** In the event that the Committee and/or the members of the Committee shall fail to discharge their respective obligations under this Article VIII, then any Owner of a Lot in Pinebrook Meadows may bring an action to compel the discharge of said obligations. Any such action must be commenced within ninety (90) days after the date on which the certificate of occupancy is issued by the appropriate authority, in the case of a house, or within ninety (90) days after the date of completion, in the case of any other Residential Improvement. Such an action shall be the exclusive remedy of any Owner of a Lot for failure of the Committee and/or its members to discharge such obligations. Under no circumstances shall the Developer, the Committee or members of the Committee be liable to any person for damages (direct, consequential or otherwise).

## **ARTICLE IX**

### **RIGHTS GRANTED TO THE CITY OF BROOKLYN PARK**

**Section 1. Purpose.** The City has executed various agreements with and secured certain covenants from the Developer and has a continuing interest in the performance of those agreements and covenants. Further, the City is concerned that all conditions requested by the City are complied with and that the Property is developed and maintained in accordance with the plan contemplated by this Declaration.

**Section 2. Release of Liability.** The Developer, for itself, its successors and assigns and, by accepting a conveyance of a Lot, any Owner, for themselves, the Owner's family and invitees, release and shall hold harmless the City (including its elected and appointed officials, employees, servants and agents) from all liability for enforcement or for nonenforcement of this Declaration, and further expressly acknowledge that the City is not obligated to perform or to enforce performance by the Developer, the Association or others of any obligations contained in this Declaration.

**Section 3. Performance of Work by the City.** In the event the Developer or the Association, as the case may be, does not maintain or repair any Landscape Amenity, Open Space, Storm Water Pond Area, Wetland, or Landscaped Cul-de-Sac Islands within Pinebrook Meadows in a manner which is reasonably acceptable to the City, the City may, after thirty (30) days' advance

written notice to the Developer or Association, as the case may be, perform such maintenance or repair as the City Council of the City, by resolution, shall have deemed necessary to preserve the health, safety and welfare of the residents of Pinebrook Meadows, charge the cost against the Lots affected as a special assessment under Minnesota Statutes Chapter 429.

**Section 4. Specific Rights Enforceable by the City of Brooklyn Park.** The City, at its option and in its sole discretion, may enforce for the benefit of itself any of the specific provisions of this Declaration.

**Section 5. Exclusive Rights.** The rights granted by this section are exclusive to the City and may be exercised only by the City, in its sole discretion. No other person or entity, including the Association, the Developer or Owners, whether or not a resident of Brooklyn Park, shall be entitled to require the City to act pursuant to this Article IX. The rights of the City under this Article IX cannot be rescinded, cancelled or amended by the Developer, the Owners or the Association without the written consent of the City.

## **ARTICLE X ADMINISTRATIVE PROVISIONS**

**Section 1. Duration.** This Declaration and the Covenants contained herein shall run with and bind the land and shall inure to the benefit of and be enforceable by the Developer, the Association or any Owner subject to this Declaration, or their respective legal representatives, heirs, successors and assigns. The covenants herein set forth shall have a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically renewed for successive periods of ten (10) years. The easements contained herein shall be perpetual.

**Section 2. Severability.** Invalidation of any one or more of the provisions herein by judgement or court order shall not affect any of the other provisions, which shall remain in full force and effect until the date of expiration.

**Section 3. Mode of Enforcement.** The Association shall and any Owner may enforce the provisions of this instrument by proceedings at law to recover damages or by proceedings in equity to restrain any violation; provided that the remedies in Article VIII and not the remedies of this Article IX, Section 3 shall apply to violations of Article VI.

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**Section 4. Amendment; Termination.** Except as specifically otherwise provided herein, this Declaration may be amended or terminated only by an instrument signed by not less than seventy-five percent (75%) of Owners, and the Developer, so long as it owns any property in Pinebrook Meadows. Any amendment or termination must be properly recorded. Notwithstanding the foregoing, no amendment to Article VI, Section 2, shall be made without the written consent of the City.



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
 County of SAN DIEGO } ss.

On 17 May 2001, before me, LIZ GROMAN  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared LADONNA K. MONSEES  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Liz Groman  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

Description of Attached Document  
 Title or Type of Document: Declarations of Covenants

Document Date:                      Number of Pages:                     

Signer(s) Other Than Named Above:                     

**Capacity(ies) Claimed by Signer**

- Signer's Name: LADONNA K. MONSEES  
 Individual  
 Corporate Officer — Title(s): VICE CHAIRMAN & PRESIDENT  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other:



Signer Is Representing: Astra Genstar Partnership





# Section 02830 - Ornamental Fences and Gates

# Exhibit B

## Part 1 Scope

This specification covers Aluminum Ornamental Fence as manufactured Delgard Aluminum Ornamental Fence including sections, posts, gates accessories.

## Part 2 Products

### Manufacturer:

The fencing system shall be residential, X'tra or Commercial Delgard Aluminum Ornamental Fence manufactured by Delgard Aluminum Ornamental Fence, 8800 R Road, Delair, NJ 08110. The style shall be Delgard's style (C,D,E or F) in residential and (M,T,P,L,S or W) in commercial strength. The color of the fence system shall be (black, white, bronze or hunter green).

### Materials:

**Aluminum Extrusions:** The vertical rails of the fence system shall be extruded from 6061-T6 (or an equivalent performing alloy registered and recognized in the Aluminum Standards and Data book produced by the Aluminum Association) with a minimum ultimate strength of 30,000. Pickets and posts shall be extruded aluminum manufactured from 6063-T5 alloy (or an equivalent performing alloy registered and recognized in the Aluminum Standards and Data book produced by the Aluminum Association) with a minimum ultimate strength of 22,000 and a minimum yield strength of 10,000 psi.

**Fasteners:** All fasteners shall be stainless steel with zinc dichromate finish for enhanced corrosion resistance. Phillips head screws shall be used to attach the pickets to the

rails while self-drilling, self-tapping Phillips head screws shall be used to connect the rails to the posts. All screw heads shall be painted to match the finish of the fence.

**C. Accessories:** All castings used for post caps, finials, scrolls, and latches shall be made from either zinc or aluminum. Only stainless steel fasteners may be used with these accessories.

### 2.03 Finish:

**A. Pretreatment:** Before the finish is applied, a five-stage Pretreatment must be applied to assure maximum adhesion and corrosion resistance:

Stage 1: High alkaline cleaner to prepare the surface

Stage 2: Water rinse

Stage 3: Combination of chromic, phosphoric and hydrofluoric acids that produce the chrome-phosphate conversion coating for maximum adhesion and corrosion

Stage 4: Water rinse

Stage 5: Water rinse

**B. Coating:** After the Pretreatment, the metal is dried and the paint is then applied. The fence system shall have an electrostatically applied baked on flexible acrylic finish that meets or exceeds industry standard tests.

### C. Tests

1) AAMA 603 (covers test procedures for pigmented organic coatings on extruded aluminum)

2) AAMA 605 (covers high performance organic coatings on architectural extrusions and panels)

3) ASTM D2247 (Humidity resistance of 1,000 hours)

4) ASTM B117 (Salt spray resistance

of 1,000 hours)

5) Accelerated weathering for 500 hours under Method 6152 of Federal Test Method 141 shall show no adhesion loss, with only slight fading, chalking and water staining.

6) Outdoor weathering shall show no adhesion loss, checking or crazing, with only slight fade and chalk when exposed for one year in Florida facing south at a 45 degree angle.

7) Minimum hardness of 2H using ASTM D3363

### 2.04 Construction:

**A. Horizontal rails:** Rails shall be 1" square channel for residential and X'tra grades or 1-5/8" square channel for commercial grade. Pickets shall pass through holes punched in the top of the rail. The rail shall have a top wall thickness of .055" (residential and X'tra) or .070" (commercial) for added vertical load strength. The number of rails will vary according to grade, height and style.

**B. Pickets:** Pickets shall be fastened to the rails using stainless steel screws painted to match the color of the fence. Screws shall be used on only one side of the rail, leaving the other side with a clean appearance. Pickets shall be 5/8" square with a .050" wall thickness for residential, 5/8" x 1" with a .050" wall thickness for X'tra and 1" square with a .065" wall thickness for commercial. Welding the pickets to the rails will not allow the fence to rake and is unacceptable.

**C. Posts:** Posts shall be 2" square with a .100" wall thickness for residential and X'tra or 2-1/2" square with a .075" wall thickness for commercial. Gate posts for residential and X'tra shall be 2" square with a .125" wall thickness, while commercial gate posts shall be

4" square with a .125" wall thickness. A gate requires a gate post on both sides. A cast aluminum post cap comes standard with all posts.

**D. Gates:** Swing gates, Rolling gates and cantilever gates shall be fabricated according to the manufacturer's standard methods. Walk gates shall be self-closing and self-latching.

**E. Strength:** Assembled sections must be able to support a minimum of 300 pounds (residential and X'tra) of vertical load at the midpoint of any horizontal rail without permanent deformation, while commercial grade must be able to withstand a minimum of 1,000 pounds without permanent deformation. Residential strength is available in heights of (3, 3-1/2, 4, 5, 6) feet. X'tra strength is available in heights of (4, 5, 6) feet. Commercial strength is available in heights of (4, 5, 6, 7, 8) feet.

### 2.05 Warranty:

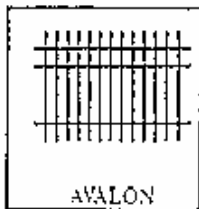
The entire fence system shall have a limited lifetime warranty against defects in workmanship and material while the finish must also carry a limited lifetime warranty against cracking, chipping or peeling.

## Part 3 Execution:

**3.01 Installation:** All material must be checked upon receipt at the job site prior to installation to check for any damage that may have occurred during transport. The fence system must be stored in a safe and dry environment so as to protect it from any potential damage. This aluminum Ornamental Fence system must be installed in accordance with manufacturer's standard procedures.

## STYLES

Residential\*:



AVALON



BARCELONA



CASTILE



DORIA



ELBA



FLORIDA



N/A

X'tra\*:

AVALON

BARCELONA

CASTILE

DORIA

ELBA

FLORIDA

GUARDIAN

Commercial\*:

MADRID

TAHOE

PRINCETON

LAUREL

STRATFORD

WINSLOW

N/A

\* NOTE: Number of horizontal rails varies according to height. Residential has 15 pickets per section while X'tra and Commercial have 13.

\* Guardian is available in X'tra only in black, white and hunter green.

## COLORS:



BLACK



WHITE



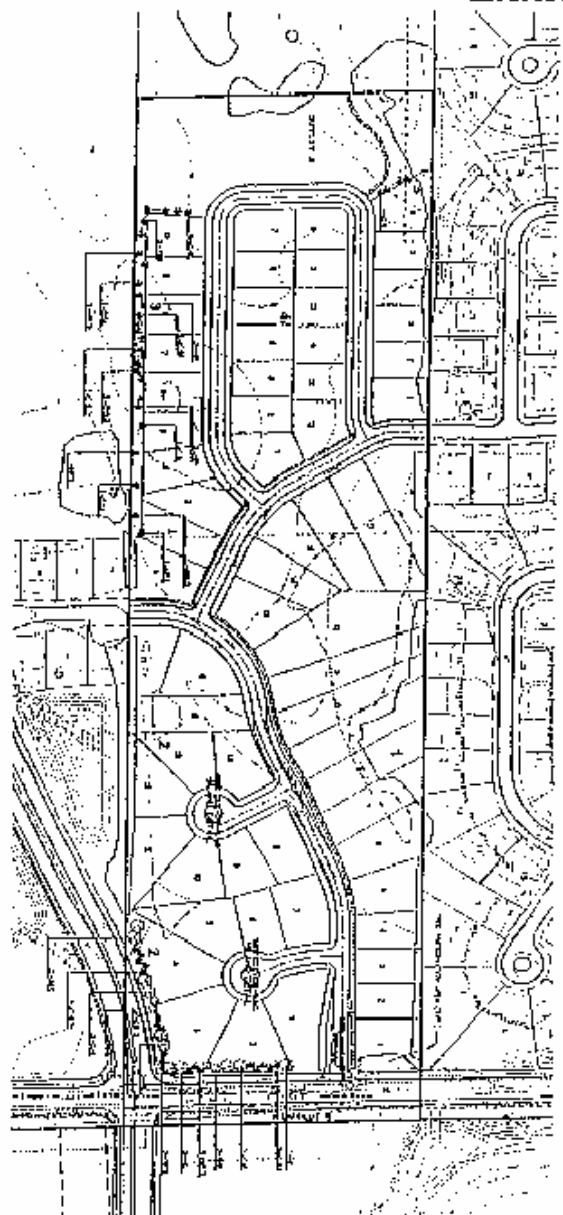
BRONZE



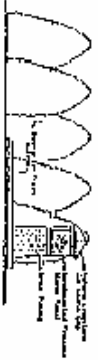
HUNTER GREEN

MADE IN  
USA

DELGARD  
ALUMINUM



**Mossy Brook**  
Site 10



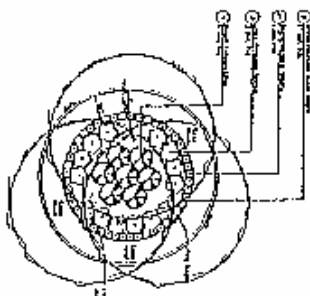
**Shrub Detail**



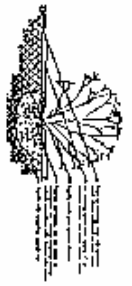
**Tree Detail**



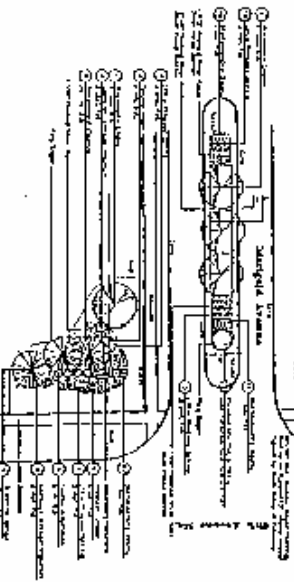
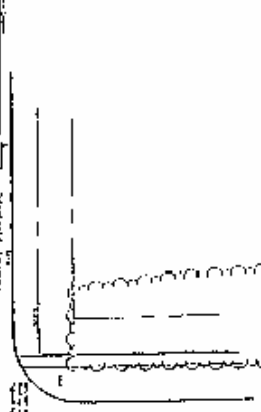
**Older's Walk**  
Site 11



**Edge Detail**



**Non-Residential**  
Site 12



Planting Schedule:  
 1. Planting in Spring  
 2. Planting in Summer  
 3. Planting in Fall  
 4. Planting in Winter

**Plant List**

Plant Name	Quantity	Notes
1. American Elm	10	Plant in Spring
2. Red Maple	15	Plant in Spring
3. White Birch	20	Plant in Spring
4. Norway Spruce	5	Plant in Winter
5. Eastern Red Cedar	10	Plant in Spring
6. Japanese Maple	5	Plant in Spring
7. Dogwood	10	Plant in Spring
8. Sweetgum	5	Plant in Spring
9. Live Oak	10	Plant in Spring
10. Magnolia	5	Plant in Spring
11. Camellia	10	Plant in Spring
12. Hydrangea	15	Plant in Spring
13. Lilac	5	Plant in Spring
14. Rose	10	Plant in Spring
15. Lavender	5	Plant in Spring
16. Salvia	10	Plant in Spring
17. Echinacea	15	Plant in Spring
18. Rudbeckia	10	Plant in Spring
19. Aster	15	Plant in Spring
20. Verbena	10	Plant in Spring
21. Penstemon	15	Plant in Spring
22. Salvia	10	Plant in Spring
23. Echinacea	15	Plant in Spring
24. Rudbeckia	10	Plant in Spring
25. Aster	15	Plant in Spring
26. Verbena	10	Plant in Spring
27. Penstemon	15	Plant in Spring
28. Salvia	10	Plant in Spring
29. Echinacea	15	Plant in Spring
30. Rudbeckia	10	Plant in Spring
31. Aster	15	Plant in Spring
32. Verbena	10	Plant in Spring
33. Penstemon	15	Plant in Spring
34. Salvia	10	Plant in Spring
35. Echinacea	15	Plant in Spring
36. Rudbeckia	10	Plant in Spring
37. Aster	15	Plant in Spring
38. Verbena	10	Plant in Spring
39. Penstemon	15	Plant in Spring
40. Salvia	10	Plant in Spring
41. Echinacea	15	Plant in Spring
42. Rudbeckia	10	Plant in Spring
43. Aster	15	Plant in Spring
44. Verbena	10	Plant in Spring
45. Penstemon	15	Plant in Spring
46. Salvia	10	Plant in Spring
47. Echinacea	15	Plant in Spring
48. Rudbeckia	10	Plant in Spring
49. Aster	15	Plant in Spring
50. Verbena	10	Plant in Spring

**Planting Notes**

1. All plants shall be delivered to the site in good health and ready for planting.  
 2. Plants shall be planted in accordance with the planting schedule and notes.  
 3. The contractor shall be responsible for the maintenance of the plants until they are established.  
 4. The contractor shall provide a watering schedule for the plants.  
 5. The contractor shall provide a record of the planting and maintenance of the plants.

**Soil Landscaping**

1. The contractor shall provide a soil landscaping plan for the site.  
 2. The contractor shall provide a record of the soil landscaping and maintenance of the site.

**NOT FOR CONSTRUCTION**

Plant List

NO	COMMON BOTANICAL NAME	SIZE
014	Green Mountain Sage <i>Hyptis suaveolens</i> Green Mountain	3' BB
014	Common Huckleberry <i>Calyx occidentalis</i>	3' BB
04	Virginia Blueberry <i>Vaccinium vitis-idaea</i> var. <i>pauciflorum</i>	3' BB
04	Swamp Blueberry <i>Vaccinium corymbosum</i> "Swamp Blue"	3' BB
05	Colorado Spruce/Fir <i>Abies balsamica</i>	6' BB
051	Colorado Spruce/Fir <i>Abies balsamica</i>	4' BB
052	Colorado Spruce/Fir <i>Abies balsamica</i>	10' BB
05	Black Hills Spruce/Fir <i>Abies balsamica</i>	6' BB
051	Black Hills Spruce/Fir <i>Abies balsamica</i>	4' BB
052	Black Hills Spruce/Fir <i>Abies balsamica</i>	10' BB
05	Norway Spruce/Fir <i>Abies balsamica</i>	6' BB
051	Norway Spruce/Fir <i>Abies balsamica</i>	4' BB
052	Norway Spruce/Fir <i>Abies balsamica</i>	10' BB

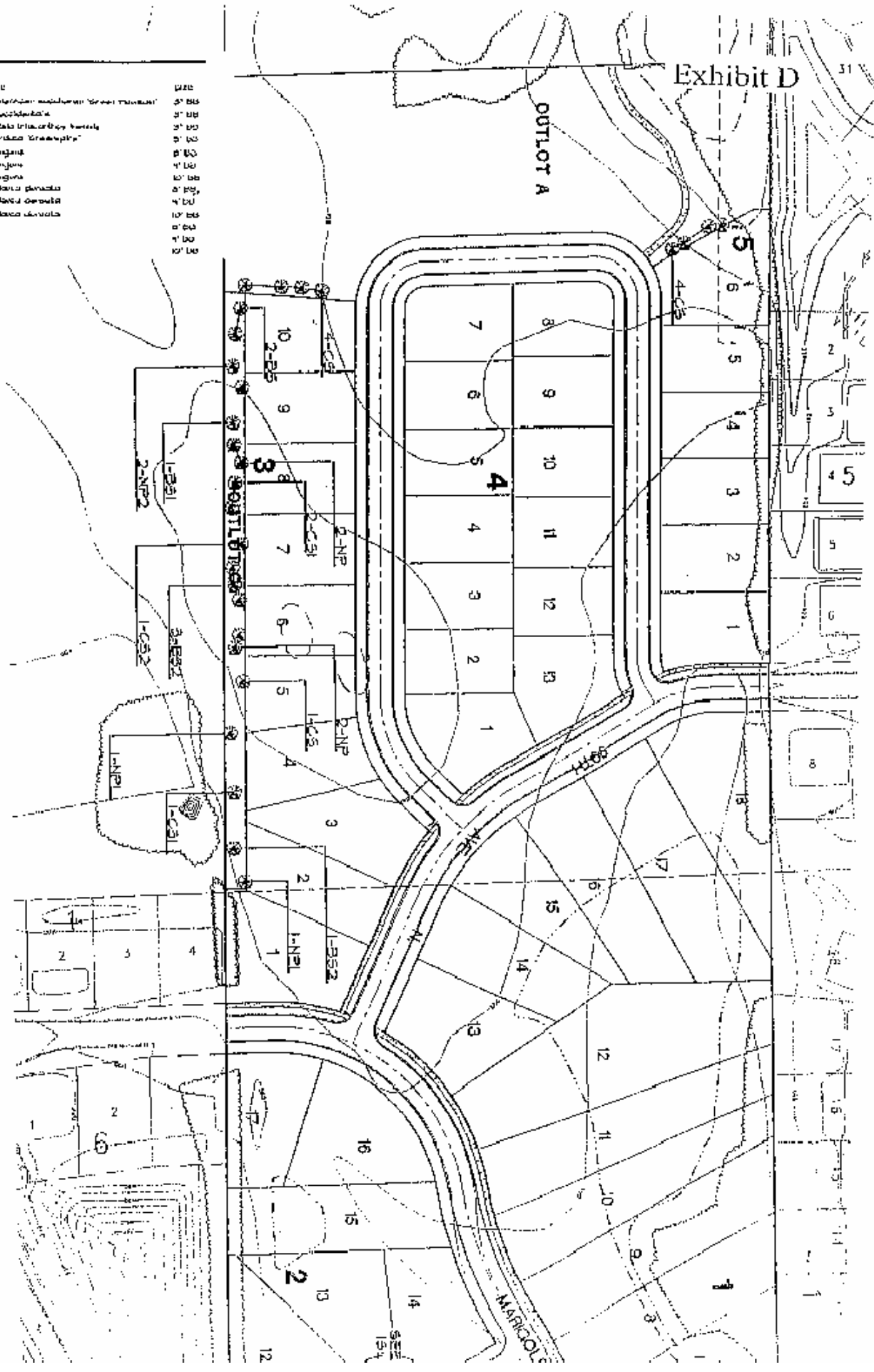


Exhibit D