

**SITE SPECIFIC AGREEMENT – RE: UNITS 5 & 6, PHASE 3 OF ASH TREE**

This Site Specific Agreement (the "Agreement") is made and entered into February 15, 2022 by and among LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, hereinafter "LFUCG"; JESSAMINE-SOUTH ELKHORN WATER DISTRICT, hereinafter "JSEWD"; and BALL HOMES, LLC, hereinafter "BALL".

**WITNESSETH:**

**WHEREAS**, BALL currently owns real estate located in Jessamine County, Kentucky, identified as Ash Tree Unit 5 and 6, Phase 3 (30.97 Acres – 114 Lots) as more particularly described on Sheet 1 of Exhibit "A", attached hereto (the "Property" ); and

**WHEREAS**, the parties acknowledge that there is limited sanitary sewer capacity available; and

**WHEREAS**, the parties further acknowledge the importance of and the interrelationship of storm water as it may impact sanitary sewer collection and conveyance; and

**WHEREAS**, conditioned upon the agreement of BALL to comply with and subject to the terms and conditions of this Agreement, JSEWD and LFUCG are willing to provide sanitary sewer service to the Property.

**NOW, THEREFORE**, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, BALL, JSEWD and LFUCG hereby covenant and agree as follows:

1. **Sewer Capacity.** The parties agree that the sanitary sewer capacity needed to provide service to the Property shall not exceed **22,272** gallons per day (average daily flow) for sewage collection and conveyance.

2. **Agreement to Serve.** Conditioned upon BALL's full compliance with the LFUCG'S Code of Ordinances, including but not limited to Chapter 16, all administrative regulations, rules, practices and procedures of the LFUCG Department of Environmental Quality and Public Works (i.e. Procedures Manuals for Infrastructure Development, Sanitary Sewers and Pump Stations), and the rates, rules and regulations of JSEWD and Jessamine County relating to operation and use of the sanitary sewer system, as may be amended from time to time, (all entities' regulations hereinafter referred to as the "Code") and subject to the terms and conditions of this Agreement, upon the completion of the construction of the sanitary sewer facilities by BALL, JSEWD and LFUCG agree to permit connection of the sanitary sewer facilities installed by BALL to the existing facilities of LFUCG and JSEWD, if any, and to provide sanitary sewer utility service to the Property. BALL expressly agrees that the constructed sanitary sewer facilities shall be conveyed to JSEWD upon completion of construction and approval for acceptance. Although it

is expressly acknowledged by BALL that JSEWD may require that there be connections to the Property sanitary sewer system provided to adjoining properties, BALL expressly agrees that it shall not make any agreements with (relative to capacity reservation or otherwise) or permit any adjoining property owner access to or use of the sanitary sewer or storm water facilities to be constructed without the prior written authorization from JSEWD and LFUCG.

It is understood and agreed by the parties that this Agreement shall in no way constitute, nor shall be construed to be, a reservation of sanitary sewer treatment capacity for BALL by JSEWD or LFUCG, or an agreement by JSEWD and LFUCG to collect, convey, treat or in any way manage storm water. In order to secure a reservation of sanitary sewer capacity for the improvements shown in Exhibit "A", BALL must meet all terms and conditions of the Code, more specifically LFUCG Code of Ordinances Chapter 16, Article XIII, Sanitary Sewer Capacity Assurance Program (CAP). Furthermore, the parties hereto agree that in the event BALL fails to complete all requirements under this Agreement within **180** days from the date of same, this agreement shall automatically expire and become a nullity, but only as to facilities not constructed and connections not made.

3. **Connection Fees.** BALL agrees to pay the sum approved by the Kentucky Public Service Commission and, in addition, the amount of LFUCG sewer connection fees provided in the Code to JSEWD ("Connection Fees"). Said Fees are in consideration for the sewage collection, conveyance and treatment by JSEWD and LFUCG. The Connection Fees shall be paid as building permits are issued for each of the lots on the Property. In the event BALL does not construct the homes on all of the lots, then any successor in title to said lots shall be responsible for the Connection Fee at the time the building permit is issued.

4. **Additional Fees.** In addition to the Connection Fees heretofore referenced, BALL agrees to pay the full cost of sewer service to the Property, including, but not limited to the following additional charges and fees (the "Additional Fees"):

- (a) BALL shall have paid all reasonable charges assessed by JSEWD and LFUCG for plan review, construction inspection, testing, and other services of JSEWD and/or LFUCG in any way related to the sanitary sewer system.
- (b) BALL shall pay all sanitary sewer use fees ("Sewer User Fee") as provided in the Code, as may be amended from time to time. The Sewer User Fee is generally based on water consumption and BALL agrees to have the local water company which provides water to the Property, or any part thereof, provide duplicate billings to JSEWD, P.O. Box 731, Nicholasville, Kentucky 40340-0731. JSEWD will calculate and bill BALL or the appropriate user for such Sewer User Fees, which shall be due and payable as set forth in the Code. All unpaid Sewer User Fees shall be subject to a late penalty and interest as set forth in the Code. Further, JSEWD shall be entitled to recover all its costs of collection of same,

including reasonable attorney fees.

- (c) If required, BALL shall pay a surcharge for odor control chemicals on a monthly or less frequent basis as determined by JSEWD. LFUCG retains, in perpetuity, the right to approve or disapprove the use of any odor control chemical for the Property. .
- (d) Pre-treatment permit fees/ Extra strength fees (when applicable) shall be paid to LFUCG in accordance with the Code, Section 16-46 and Schedule B of Section 16-59.

**5. Lien To Secure Payment of Connection Fees and Additional Fees.** JSEWD shall have a lien against the Property to secure the payment of all Connection Fees and Additional Fees, interest, penalties and the costs of collection, including reasonable attorney fees. The lien shall attach to the Property, or applicable part thereof, as the Connection Fees and/or Additional Fees become past due without necessity of filing any lien statement by JSEWD.

**6. Sanitary Sewer and Storm Water Management Installations.** To induce JSEWD and LFUCG to provide sanitary sewer service to the Property, BALL agrees to construct, according to the plans and specifications approved by JSEWD and LFUCG as reflected in Exhibit "A", all on-site and off-site installations and facilities required by LFUCG to connect to the existing facilities of LFUCG and JSEWD, if any, to provide sanitary sewer service to the Property, including but not limited to all equipment, fixtures, pumps, lines, mains, manholes, lift stations, pumping stations, laterals, service connections, and to obtain appurtenances thereto together with all real property, easements and rights of way as necessary. To also induce JSEWD and LFUCG to provide sanitary sewer service to the Property, BALL shall size and construct, at its sole cost and expense, the proposed sanitary sewer facilities in a manner that provides the sanitary sewer capacity necessary to service all 1) developed/un-served upstream properties; 2) undeveloped upstream properties in accordance with JSEWD'S Sanitary Sewer Master Plan, LFUCG Watershed, North Jessamine County, Kentucky, Jessamine-South Elkhorn Water District, March 2006. The construction of infrastructure to serve developed/unserved and undeveloped upstream properties is in no way an approval or endorsement by LFUCG to provide future sanitary sewer service to those properties. Future developers of properties upstream of the Property may be required to improve downstream LFUCG infrastructure in order to secure a Site Specific Agreement for those properties. To further induce JSEWD and LFUCG to provide sanitary sewer service to the Property, BALL agrees to construct, according to the plans and specifications approved by the City of Nicholasville, JSEWD, LFUCG and the Kentucky Division of Water as reflected in Exhibit "A", all on-site storm water facilities. The procedures for the design and construction of the storm water system shall comply with the same procedures outlined in numerical paragraph seven (7) herein for sanitary sewer systems, except that the applicable regulations for storm water management installations shall be substituted for those applicable to sanitary sewers and the appropriate authority exercising control over storm water management (City of Nicholasville) shall inspect and accept the storm water management installations. The foregoing improvements, both sanitary and storm water systems, may be referred to as the "Improvements" and Exhibit "A" may be referred to as the "Plans".

If the Improvements will require a pump station, the peak discharge into the JSEWD and/or LFUCG gravity system shall be specified by JSEWD and LFUCG. Design of the pump station shall include a meter capable of recording all flow discharging from the pump station and telemetry equipment as specified by JSEWD. Odor control facilities shall be constructed as directed by JSEWD and LFUCG. LFUCG retains, in perpetuity, the right to approve or disapprove the use of any odor control chemical for the Property. If any pump stations are classified as "temporary" on the Plans, BALL will, at its own cost and secured by a bond or a letter of credit, connect to the gravity line as same becomes available and shall remove such "temporary" stations.

7. Procedures for the Property Sewer System. BALL agrees that the design and construction of the Improvements shall be subject to and in accordance with the Code and all administrative regulations, rules, practices and procedures of the LFUCG Department of Environmental Quality and Public Works, Jessamine County and JSEWD relating to the Improvements, and the following requirements, whether or not these requirements are contained in the foregoing ordinances, regulations, administrative rules, practices and procedures:

- (a) During construction of the Improvements, Jessamine County, JSEWD and LFUCG shall have the right to inspect such installations, including but not limited to the materials, equipment, piping, and connections to determine compliance with the approved Plans and JSEWD shall also have the right to halt construction, if necessary, in the event of non-compliance by BALL. JSEWD agrees to issue a written stop work order to the BALL if requested to do so, in writing, by LFUCG. BALL shall also provide JSEWD and LFUCG with periodic written certifications by BALL's engineer that all construction is in full compliance with the approved Plans and any applicable permits or other requirements.
- (b) Upon substantial completion of construction of the Improvements (as defined in the SSA) or any part thereof, BALL's engineer may deliver a signed certificate of substantial completion to JSEWD certifying to JSEWD and LFUCG that the construction is substantially completed, that the construction has been done thus far in accordance with all permits, approved Plans (as defined in the SSA) and any applicable legal requirements, and as constructed it will function for the purpose for which it was designed. Upon receipt of the above, payment of all fees due at the time and the posting of the Warranty Work and Punch List Sureties (as defined in attached exhibits), BALL may apply for tap-on permits from JSEWD at the time when building permits are issued for that portion of the project substantially completed, but there shall be no physical tap-on to the sewer main until and unless the entire project is completed, accepted by JSEWD and conveyed by BALL to JSEWD. Upon substantial completion and BALL's provision of the Punch List Surety and the Warranty Work Sureties (as described in Paragraph 9e below), and BALL's compliance with the other terms and conditions of this SSA,

JSEWD will sign-off on and approve BALL's final record plat for the Property.

- (c) At least seven (7) days prior to final inspection by JSEWD and LFUCG, BALL shall provide JSEWD and LFUCG with three sets of digital (AutoCAD) of the "as-built" plans, prepared by BALL's engineer, showing the location of all installations related to the Improvements as constructed. BALL shall provide JSEWD five (5) sets of as-built paving and storm water drainage plans, two (2) copies of the recorded subdivision plat of the Property and three (3) copies (DVD and inspection log) of a TV inspection of the sanitary sewer system. BALL shall also deliver to JSEWD, seven (7) days prior to final inspection, its engineer's certification and test results of the Improvements.
- (d) Upon completion of construction of the Improvements or any part thereof, BALL's engineer shall deliver a signed certificate of completion to JSEWD certifying to JSEWD and LFUCG that the construction is completed, that the construction has been completed in accordance with all permits, approved Plans, and any applicable legal requirements, and as constructed it will function for the purpose for which it was designed. BALL shall provide proof satisfactory to JSEWD that all contractors, sub-contractors, materialmen and laborers have been paid in full. Upon receipt of all of the above, payment of all fees, a deed of conveyance of the sanitary sewer system, and final inspection by JSEWD and LFUCG of the Property sanitary sewer and stormwater conveyance system, a letter of acceptance of the Property sanitary sewer system shall be delivered to BALL by JSEWD.

**8. Use of Property Sanitary Sewer System.** The use of the Property sanitary sewer system shall be subject to full compliance with the Code. All connections of any building constructed on the Property, or any part thereof, to the Property sanitary sewer system shall require a tap-on permit and approval by the JSEWD and LFUCG. Any connection of a building to the Property sanitary sewer system without a tap-on permit, inspection and approval may result in immediate disconnection by JSEWD.

**9. Representation and Warranties of BALL.** In order to induce JSEWD and LFUCG to enter into this Agreement, BALL hereby represents and warrants to JSEWD and LFUCG as follows:

- (a) BALL is duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky. BALL has all requisite power and authority to enter into and perform the obligations contemplated by this Agreement. The execution and delivery of this Agreement and the performance of the obligations contemplated hereby have been duly authorized by all necessary action on the part of BALL. This Agreement

has been duly executed and delivered by BALL and constitutes the legal, valid and binding obligation of BALL enforceable against it in accordance with its terms.

- (b) The execution and delivery of this Agreement does not, and the performance of the obligations contemplated herein will not conflict with or result in any violation of, or default under any provision of, BALL's organizational documents, or any other agreement to which BALL is a party.
- (c) BALL covenants to obtain any consent, approval or authorization of any third party required in connection with BALL's execution and delivery of this Agreement or the performance by BALL of the obligations contemplated herein has been obtained.
- (d) BALL has good, valid and marketable title to the Property, free and clear of all liens, encumbrances, leases, restrictions, or other agreements except as referenced on the permitted exceptions attached hereto and incorporated herein as Exhibit "B".
- (e) BALL hereby represents and warrants to JSEWD and LFUCG that the Improvements will be repaired, constructed and installed in accordance with the Plans (Exhibit A) and that all materials, supplies and equipment incorporated into the work will be new and free from any and all defects, whether latent or patent, in workmanship. BALL agrees to repair and replace, at its own expense, all of the work which may prove to be defective, for a period of three (3) years after the date of acceptance by JSEWD, relative to the sanitary sewer system, and for a period of one (1) year after the date of BALL's engineer's certification of completion relative to the storm sewer system. The sanitary sewer and storm sewer warranty and punch list obligations above shall be secured by separate warranty bonds or letters of credits, acceptable to JSEWD, posted for the time periods above made in favor of JSEWD by BALL - one bond or letter of credit for the sanitary sewer system warranty work and punch list items and another bond or letter of credit for the storm sewer warranty work and punch list items. Each of the above bonds or letters of credits shall not be released in part or whole without prior written approval of JSEWD and LFUCG, which approval shall not be unreasonably withheld.
- (f) There are no: (i) Hazardous Materials (as defined below) located on the Property or which have been released into the environment, or discharged, placed or disposed of at on or under the Property in violation of any. Environmental Laws (defined below); (ii) underground storage tanks which have been located on or under the Property.

The term "Hazardous Materials" means and includes, without limitation:

(i) Those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances" or "solid waste" in any of the Environmental Laws (defined below);

(ii) Those substances listed in the U. S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto);

(iii) Those other substances, materials and wastes which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and

(iv) Any material, waste or substance which is any of the following: (A) asbestos-containing material; (B) polychlorinated biphenyls; (C) radon gas; (D) urea formaldehyde foam insulation; (E) petroleum, petroleum product or derivation thereof; (F) designated or listed as a "hazardous substance" pursuant to section 311 or section 307 of the Clean Water Act (U.S.C. section 1251 at set seq.); (G) explosive; or (H) radioactive.

(v) The term "Environmental Laws" means all federal laws, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes related to the protection of the environment and government and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials in the rules, regulation, policies, guidelines, interpretations, permits, decisions, orders and directives or federal, state, and local governmental agencies and authorities with respect thereto.

- (g) BALL is designated as the party that is responsible for compliance with all erosion/sediment control measures (Best Management Practices) during construction.
- (h) That neither JSEWD, nor LFUCG have made any representation or guarantee that any sanitary sewer capacity has been reserved for the undeveloped portion of BALL's property or otherwise and that the capacity approved is for the area to be served as described on Sheet 1 of Exhibit "A".

10. Easement. BALL hereby grants to JSEWD, subject to the terms of this Agreement, the right to maintain and operate the sanitary sewer system. BALL agrees to provide a note on any subdivision plat related to the Property referencing dedication of the sanitary sewer system to JSEWD which reads that it is specifically subject to the terms and conditions of this Agreement. Upon request, BALL further agrees to execute and deliver a separate deed of easement or encroachment permit in a form reasonably acceptable to JSEWD, in its sole discretion, for all facilities, on-site and off-site, related to the portions of the sanitary sewer system, for which JSEWD will accept dedication and conveyance except for pump stations and access routes thereto, which, upon request, BALL agrees to convey in fee simple absolute to JSEWD by deed in a form acceptable to JSEWD, in its sole discretion. BALL hereby further agrees that the foregoing grant includes the right of ingress and egress to any part of the Property for the purpose of maintenance and operation of the sanitary sewer system. BALL and JSEWD agree to assign to LFUCG a right of access and ingress and egress to the sanitary sewer system and to the Property.

11. Mortgage Liens. Mortgagees, if any, holding prior liens on the Property, or any part thereof, shall be required to subordinate their rights to the rights of JSEWD under this Agreement and the easement dedication herein contemplated.

12. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to either party shall be deemed to have been properly given or served by personal delivery or by depositing same in the United States mail, addressed to such party, postage paid and registered or certified with return receipt requested at the following address:

LFUCG  
Department of Environmental  
Quality and Public Works  
200 East Main Street  
Lexington, Kentucky 40507

With copy to:

LFUCG  
Department of Law  
200 East Main Street  
Lexington, Kentucky 40507

Jessamine-South Elkhorn Water District  
P.O. Box 731  
Nicholasville, KY 40340-0731



With copy to: Bruce E. Smith, Esq.  
201 South Main Street  
Nicholasville, KY 40356

“BALL”

Ball Homes , LLC  
3609 Walden Drive  
Lexington, KY 40517

**13. Indemnification.** BALL shall indemnify and reimburse JSEWD and LFUCG for any and all claims, losses, liabilities, damages (including without limitation, fines, penalties, criminal or civil judgments and settlements), costs (including without limitation, court costs); and expenses (including without limitation, attorneys, engineers and accountants fees), (hereinafter "Loss" or "Losses") suffered or incurred by JSEWD and LFUCG, as a result of, or with respect to or arising from (a) any breach or inaccuracy of any representation or warranty of BALL herein; (b) any breach of or noncompliance by BALL with any covenant or agreement of BALL contained in this Agreement; (c) any negligent or wrongful act of BALL, its agents, employees, affiliates; and (d) Hazardous Materials or underground storage tanks that are located on or under the Property.

**14. Compliance with Law.** BALL agrees to comply with all federal, state and local laws, statutes, ordinances, regulations, and requirements. BALL agrees that the Property is subject to the Code and all regulations, administrative rules, practices and procedures of the LFUCG Department of Environmental Quality and Public Works, the JSEWD, and Jessamine County relating to sanitary and storm water management systems as set forth herein and agrees to fully comply with same.

**15. Exhibit Incorporation by Reference.** Exhibits “A” and “B” attached hereto are hereby incorporated by reference as if set out fully herein.

**16. Binding Effect, Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, transferees, tenants, heirs, and personal representatives. BALL's rights hereunder shall not be assignable to any other person, except by a deed of conveyance whereby the Property, or a part thereof, is conveyed to such person.

**17. Costs and Attorney's Fees.** JSEWD and LFUCG shall be entitled to recover all costs and reasonable attorney fees incurred connected with the collection of Connection Fees or Additional Fees.

**18. Amendment/Waiver.** No modification, termination, assignment or amendment of this Agreement may be made, except by written agreement. Failure by any party to insist upon strict performance of any covenant, duty, agreement or condition in this Agreement or to exercise any right or remedy or a breach thereof shall not constitute a waiver of any breach or

any such covenant, agreement, term or condition. Any party hereto, by notice and only by notice as provided in this Agreement, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

19. **Covenants Running with Land.** BALL, and its successors in title agree that all portions of the Property, whether designated as separate lots or otherwise, shall be required to comply with the terms of this Agreement and shall use the Improvements in accordance with the terms of this Agreement, which covenant shall be deemed a “Covenant Running with the Land”, and reference shall be made to this Agreement, on any plat of the Property or any part thereof.

20. **Undertakings.** The parties will act reasonably when undertaking any submittal, review, approval, acceptance, or inspection required under this Agreement, provided, however, with respect to any review, approval, acceptance, or inspection of JSEWD or the LFUCG which would be required under the law had the Property been located entirely in Fayette County, the standard practice of the LFUCG shall be deemed reasonable. Further by review, approval, acceptance or inspection, the JSEWD, City of Nicholasville, and LFUCG shall not assume responsibility for design, construction or installation of the Improvements and shall in no way be deemed to waive any rights available to JSEWD, City of Nicholasville, and LFUCG related to defects, omissions or failures in design, construction or installation.

21. **Governing Law.** This Agreement has been entered into and shall be interpreted under and governed by the laws of the Commonwealth of Kentucky. Further, the parties agree that any litigation related to the terms of this Agreement shall be brought in the Jessamine Circuit Court, Nicholasville, Kentucky and the parties acknowledge that venue shall be proper in such court.

If any court of proper jurisdiction finds or construes any provision contained herein to be unenforceable or invalid, then, and in that event, such finding or construction shall not invalidate the entire Agreement.

22. **Captions.** The captions of each section herein are for convenience only and shall not affect the construction hereof.

23. **Multiple Copies.** This Agreement may be signed in multiple copies, each of which shall be considered an original and entire document.

24. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the parties hereto and incorporates and supersedes all oral agreements and understandings and it shall not be changed or supplemented unless done in a writing signed by all parties hereto.

IN WITNESS WHEREOF the parties have caused this document to be executed on the date and year first written.

**LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT**

BY: Linda Gorton  
ITS: MAYOR

**BALL HOMES, LLC**

BY: B. Stephens  
NAME: Brian D. STEPHENS  
ITS: Authorized Rep

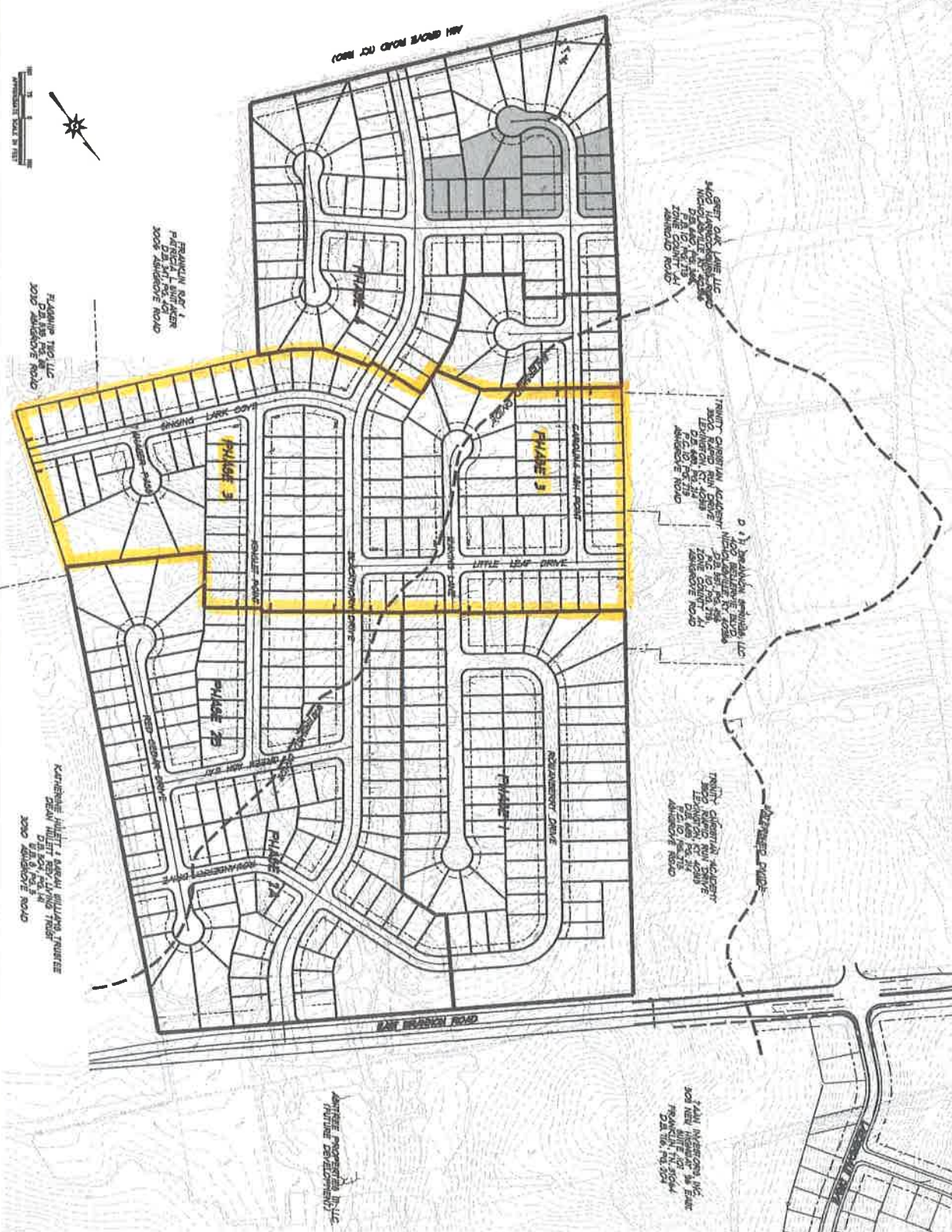
**JESSAMINE-SOUTH ELKHORN WATER DISTRICT**

BY: J. Z. H. C.  
ITS: CHAIRMAN

\\...JSEWD\Sanitary\Site Specific Agreement\BALL Homes\Ash Tree Units 5 and 6, Phase 3







**1C**

DATE: \_\_\_\_\_  
 CHECKED: \_\_\_\_\_  
 DESIGNED: \_\_\_\_\_  
 DRAWN: \_\_\_\_\_

PHASING PLAN  
**ASH TREE PROPERTY**  
 UNIT 5-6, PHASE 3  
 NICHOLASVILLE, JESSAMINE COUNTY, KENTUCKY

**EA Partners, PLLC**

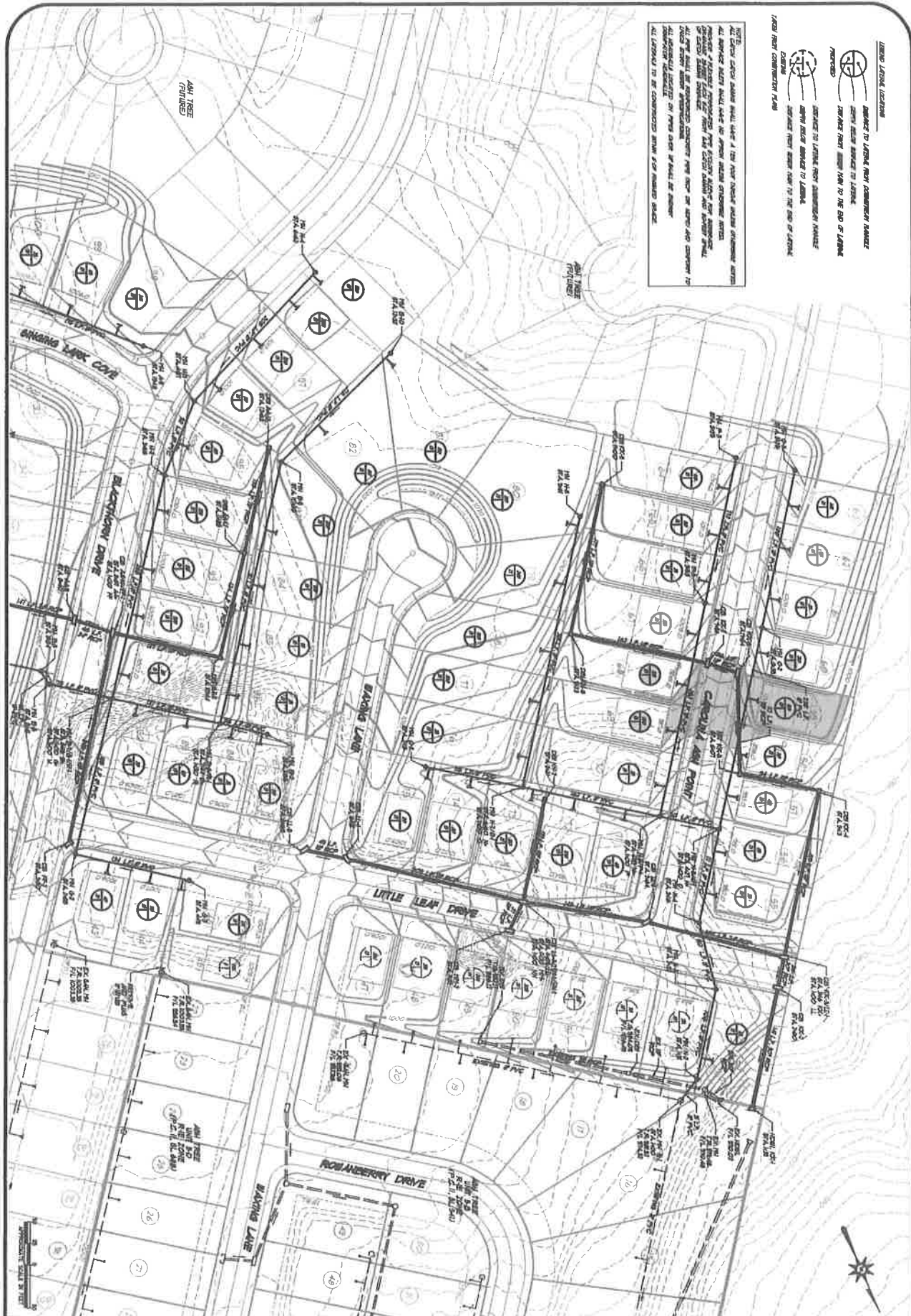
CIVIL ENGINEERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS

3111 HILL STREET  
 LEADERSHIP KENTUCKY 40111  
 PHONE 606.258.1100  
 FACSIMILE 606.258.1007

Blank rectangular boxes for additional information or notes.

- LEGEND**
- MANHOLE LOCATION
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**5A**

DATE: 04/20/21

SCALE: AS SHOWN

TITLE: STORM AND SANITARY SEWER PLAN

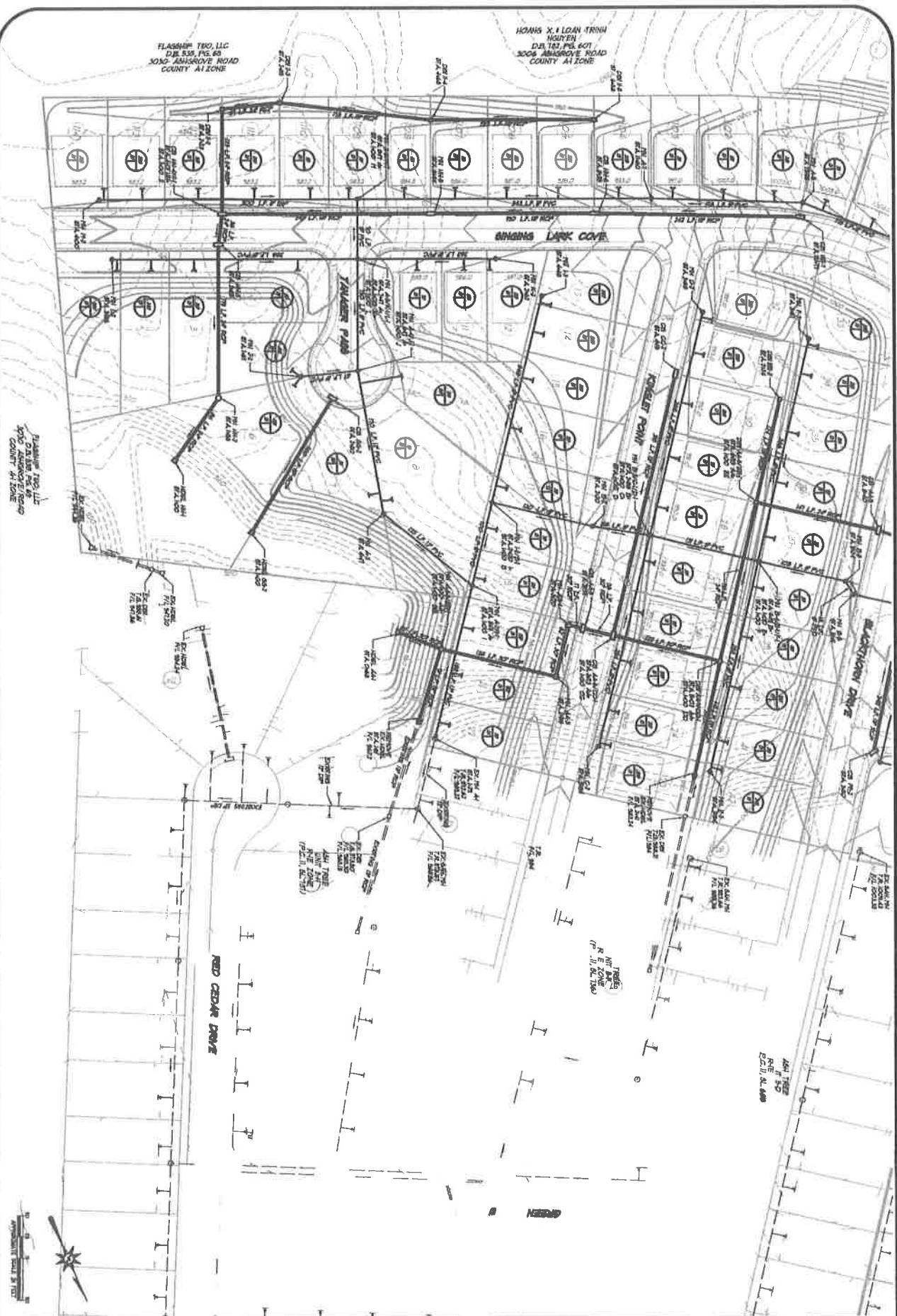
**STORM AND SANITARY SEWER PLAN**  
**ASH TREE PROPERTY**  
**PHASE 3**  
 NICHOLASVILLE, JESSAMINE COUNTY, KENTUCKY

**EA Partners, PLLC**

CIVIL ENGINEERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS

1011 HALL STREET  
 LEICESTER, KENTUCKY 40137  
 PHONE: 606.338.4444  
 FACSIMILE: 606.338.4444

Empty rectangular boxes for additional information or stamps.



FLASHAR TRIO, LLC  
 DJR 539, PLS 89  
 3030 AMBROSE ROAD  
 COUNTY ALABAMA

HOANG X. LOAN TRINH  
 NGUYEN  
 D.JR 181, PLS 601  
 3008 AMBROSE ROAD  
 COUNTY ALABAMA

FLASHAR TRIO, LLC  
 DJR 539, PLS 89  
 3030 AMBROSE ROAD  
 COUNTY ALABAMA



**5B**

DATE: 04/30/21  
 CHECKED:  
 TMR

STORM AND SANITARY SEWER PLAN  
**ASH TREE PROPERTY**  
 UNIT 5-6, PHASE 3  
 NICHOLASVILLE, JESSAMINE COUNTY, KENTUCKY

**EA Partners, PLLC**  
 CIVIL ENGINEERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS  
 3111 WALL STREET  
 LOUISVILLE, KENTUCKY 40203  
 PHONE: 502.261.4400  
 FAX: 502.261.2800

ASHTREE  
 PLS 150  
 E.C. 11, 12, 13A

ASHTREE  
 PLS 150  
 E.C. 11, 12, 13A



# OWNER'S POLICY OF TITLE INSURANCE

Policy Issuer:  
STOLL KEENON OGDEN, PLLC  
300 W. VINE ST., SUITE 2100  
LEXINGTON, KY 40507  
PHONE: (859) 231-3000



Policy Number **OX-11866376** File Number: 4675719

Issued by Old Republic National Title Insurance Company

**Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.**

## COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

Countersigned:

STOLL KEENON OGDEN PLLC  
300 WEST VINE STREET, SUITE 2100  
LEXINGTON, KY 40507-1801

Authorized Officer or Licensed Agent

## OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

A Stock Company  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

By

President

Attest

Secretary

EXHIBIT

"B"

tabbles

Issued through the office of: *Stoll Keenon Ogden PLLC*

Name and Address of Title Insurance Company:  
**Old Republic National Title Insurance Company**  
400 Second Avenue South  
Minneapolis, Minnesota 55401-2499

## SCHEDULE A

**AMOUNT OF INSURANCE: \$2,375,100.00**  
**PREMIUM: \$6,325.00**  
**PREMIUM TAX: \$569.25 (NICHOLASVILLE 9%)**  
**TOTAL PREMIUM: \$6,894.25**

**POLICY NUMBER: OX-11866376**  
**SKO FILE NUMBER: 4675719**

**ADDRESS REFERENCE: RML Construction, LLP, a Kentucky limited liability partnership**  
**37.70 acres, Ash Tree, Units 5 & 6, Phase 3**  
**Nicholasville, Jessamine County, Kentucky 40356**

Date of Policy: June 16, 2017, at 3:55 p.m.

1. Name of Insured:
2. The estate or interest in the Land that is insured by this policy is: **FEE SIMPLE**
3. Title is vested in:  
  
RML Construction, LLP, a Kentucky limited liability partnership, by Deed dated June 16, 2017, and lodged for record in Deed Book 758, Page 417, in the office of the Jessamine County Clerk.
4. The Land referred to in this policy is situated in Jessamine County, Kentucky, and is described as follows:  
  
See legal description on Exhibit "A", attached hereto and incorporated herein.

## SCHEDULE B EXCEPTIONS FROM COVERAGE

**POLICY NUMBER: OX-11866376**  
**SKO FILE NUMBER: 4675719**

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by the reason of:

1. Any facts, rights, interests, or claims which are not shown in the public records but that could be ascertained by an inspection of the land or by making inquiry of persons in possession of the land.
2. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Policy.
3. Any encroachment, encumbrance, violation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortages in area, or any other facts that would be disclosed by an accurate and complete survey of the land, and that are not shown in the public records.
4. Rights of parties in actual possession of all or any part of the premises, including, but not limited to easements, claims of easements or encumbrances that are not shown in the public records.
5. The lien of real estate taxes or assessments imposed on the title by a governmental authority that are not shown as existing liens in the records of any taxing authority that levies taxes or assessments on the real property or in the public records.
6. The Company does not insure the acreage of the land set forth in Exhibit "A".
7. Any mineral or mineral rights leased or retained by current or prior owners.
8. A lien for the 2017, and all subsequent years, Jessamine County ad valorem taxes, which are not yet due and payable. (Map # 078-00-00-007.03)
9. A lien for the 2017, and all subsequent years, City of Nicholasville ad valorem taxes, which are not yet due and payable. (Map # 078-00-00-007.03)
10. Conditions, covenants, notes, easements and restrictions as shown on Minor Non-Building Plat for Ash Tree Properties, III, LLC, 1616 Tates Creek Road, Lexington, Kentucky, of Ash Tree, Units 5 & 6, Phase 3, East Brannon Road, Nicholasville, Jessamine County, Kentucky, June 2017, record June 13, 2017 in Plat Cabinet 11, Slide 546, in the office of the Jessamine County Clerk.

11. Temporary Drainage and Access Easement as reflected on Minor Non-Building Plat for Ash Tree Properties III, LLC, 1616 Bates Creek Road, Lexington, Kentucky of Ash Tree, Units 5 & 6, Phase 2 East Brannon Road, Nicholasville, Jessamine County, Kentucky, December 2016, of record in Plat Cabinet 11, Slide 510, in the office of the Jessamine County Clerk.
12. Conditions, covenants, notes, easements and restrictions as reflected on Final Record Plat of Ash Tree, "Brannon Oaks", Unit 5-B, Nicholasville, Jessamine County, Kentucky, April 2017, of record in Plat Cabinet 11, Slide 541, in the office of the Jessamine County Clerk.
13. Certificate of Land Use Restriction filed on October 27, 2005 in Deed Book 550, Page 80 in the office of the Jessamine County Clerk.
14. Certificate of Land Use Restriction filed on July 25, 2008 in Deed Book 606, Page 238 in the office of the Jessamine County Clerk.
15. Certificate of Land Use Restriction filed July 25, 2008 in Deed Book 606, Page 239 in the office of the Jessamine County Clerk.
16. Certificate of Land Use Restriction filed on March 2, 2015 in Deed Book 721, Page 385, in the office of the Jessamine County Clerk.
17. Certificate of Land Use Restriction recorded August 26, 2015 in Deed Book 728, Page 514, in the office of the Jessamine County Clerk.
18. Easement dated January 6, 1973, granted to Ashland Pipeline Company, of record in Deed Book 120, Page 469, in the office of the Jessamine County Clerk.
19. Memorandum and Agreement dated July 19, 2005, by and between TCF 2, LLC, Local Enterprises, Inc. and the City of Nicholasville, of record in Deed Book 551, Page 279, as Amended by that Amended Memorandum of Agreement dated September 12, 2007, of record in Deed Book 594, Page 303, as amended by that Second Amended Memorandum and Agreement and Release and Replacement of Covenants Running With Land Relative to the Payment of Incentive Fees dated July 24, 2008, of record in Deed Book 607, Page 104, and as amended by that Second Amended Memorandum of Agreement dated June 25, 2012, of record in Deed Book 673, Page 573, as amended by that Amended Memorandum of Agreement dated April 17, 2013, of record in Deed Book 692, Page 528, as amended by that Amended Memorandum of Agreement dated August 25, 2014, of record in Deed Book 715, Page 200, as amended by Amended Memorandum of Agreement dated October 7, 2014, of record in Deed Book 716, Page 740, and as amended by Memorandum of Agreement Amendment dated May 8, 2017, of record in Deed Book 758, Page 362, all in the office of the Jessamine County Clerk.
20. Covenant Running With the Land Relative to Payment of Incentive Fees to the City of Nicholasville, Kentucky, dated July 19, 2005, of record in Deed Book 551, Page 298, and as amended by that Second Amended Memorandum and Agreement and Release and Replacement of Covenants Running With Land Relative to the Payment of Incentive Fees dated July 24, 2008, of record in Deed Book 607, Page 104, both of record in the office of the Jessamine County Clerk.
21. Easement and Release dated July 6, 1970, given to Kentucky Utilities Company, of record in Deed Book 106, Page 387, in the office of the Jessamine County Clerk.

22. Right of Way and Easement Grant dated November 28, 1990, given to Kentucky-American Water Company, of record in Deed Book 267, Page 256, in the office of the Jessamine County Clerk.
23. Memorandum of Option Agreement dated December 28, 2015, by and between Ash Tree Properties, III, LLC, a Kentucky limited liability company, and Ball Homes, LLC, a Kentucky limited liability company, of record in Deed Book 733, Page 366, in the office of the Jessamine County Clerk.
24. Memorandum of Agreement Amendment dated July 19, 2005, by and among City of Nicholasville, Ash Tree Properties III, LLC and Ball Homes, LLC, and of record in Deed Book 758, Page 362, in the office of the Jessamine County Clerk.

## EXHIBIT A

Being a tract or parcel of land lying in Jessamine County situated adjacent to and south of Future East Brannon Road approximately 0.1 miles east of the intersection of Lauderdale Drive and East Brannon Road, and more particularly described as follows:

Beginning at a point, said point being the western corner of Lot 16 of Ashtree Unit 5B, and corner to the Trinity Christian Academy, as recorded in P.C.11, Slide 541 in the Jessamine County Clerk's office; thence leaving the line of Trinity Christian Academy with the southeastern line of the Unit 5B for eleven (11) Calls; thence South 54 degrees 38 minutes 18 seconds East, 530.48 feet to a point; thence South 35 degrees 21 minutes 42 seconds West, 5.84 feet to a point; thence South 54 degrees 38 minutes 18 seconds East, 318.66 feet to a point; thence South 36 degrees 25 minutes 55 seconds West, 5.40 feet to a point; thence South 53 degrees 34 minutes 05 seconds East, 324.13 feet to a point; thence South 36 degrees 59 minutes 02 seconds East, 11.11 feet to a point; thence South 53 degrees 00 minutes 58 seconds East, 184.85 feet to a point; thence North 36 degrees 59 minutes 02 seconds East, 75.46 feet to a point; thence South 64 degrees 30 minutes 28 seconds East, 156.98 feet to a point; thence along a curve to the left 0.55 feet, having a radius of 50.00 feet and chord which bears South 35 degrees 24 minutes 36 seconds West, 0.55 feet to a point; thence South 64 degrees 30 minutes 28 seconds East, 235.03' to a point in the line of Hulett; thence with said line South 25 degrees 17 minutes 08 seconds West, 242.63 feet to a point; thence with Hulett and Flagship Two, LLC Properties South 18 degrees 39 minutes 41 seconds West, 255.92 feet to a point; thence leaving the line of Flagship Two LLC and through the land of Ash Tree Properties III, LLC for four (4) calls; North 68 degrees 13 minutes 42 seconds West, 381.77 feet to a point; thence along a curve to the left 27.14 feet, having a radius of 50.00' and a chord which bears South 02 degrees 02 minutes 31 seconds West, 26.81' to a point; thence along a curve to the right 49.15 feet, having a radius of 75.00 Feet, and a chord which bears South 05 degrees 15 minutes 51 seconds West, 48.27 feet to a point; thence South 23 degrees 41 minutes 57 seconds West, 239.15 feet to a point along the line of Whitaker property; thence with said line North 66 degrees 38 minutes 18 seconds West, 418.61 feet to a point, said point being a corner to said Whitaker and Ash Tree Properties III, LLC; thence leaving Whitaker and through the land of Ash Tree Properties III, LLC for 14 calls; North 63 degrees 18 minutes 47 seconds West, 111.18 feet to a point; thence North 54 degrees 31 minutes 27 seconds West, 100.85 feet to a point; thence North 33 degrees 14 minutes 10 seconds West, 28.32 feet to a point; thence South 70 degrees 34 minutes 52 seconds West, 137.22 feet to a point; thence South 58 degrees 55 minutes 10 seconds West, 44.31 feet to a point; thence South 47 degrees 40 minutes 58 seconds

West, 44.65 feet to a point; thence South 42 degrees 26 minutes 42 seconds West, 59.30 feet to a point; thence North 49 degrees 26 minutes 12 seconds West, 128.52 feet to a point; thence North 52 degrees 31 minutes 08 seconds West, 60.00 feet to a point; thence North 54 degrees 38 minutes 18 seconds West, 322.62 feet to a point; thence North 35 degrees 21 minutes 42 seconds East, 21.00 feet to a point; thence North 54 degrees 38 minutes 18 seconds West, 130.00 feet to a point; thence South 35 degrees 21 minutes 42 seconds West, 9.00 feet to a point; thence North 54 degrees 38 minutes 18 seconds West, 173.65 feet to a point in the line of Grey Oak Lane, LLC; then with the line of Grey Oak Land, LLC North 33 degrees 49 minutes 33 seconds East, 98.03 feet to

a point; thence with the line of Grey Oak Lane, LLC and Trinity Christian Academy North 34 degrees 44 minutes 12 seconds East, 527.58 feet to a point on the line of Trinity Christian Academy; thence with the line of Trinity Christian Academy and D & H Brannon Springs, LLC North 35 degrees 57 minutes 13 seconds East, 460.72 feet to the POINT OF BEGINNING and containing 37.7 acres.

And being the same property as shown on Minor Non-Buildable Plat for Ash Tree Properties, III, LLC, 1616 Tates Creek Road, Lexington, Kentucky of Ash Tree, Units 5 & 6, Phase 3, East Brannon Road, Nicholasville, Jessamine County, Kentucky, June 2017, recorded June 13, 2017 in Plat Cabinet 11, Slide 546, in the office of the Jessamine County Clerk.

**Endorsement**  
DELETION OF ARBITRATION



**OX-11866376**

This endorsement is to be attached to and become a part of Policy No.

of OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY.

**DELETION OF ARBITRATION**

The paragraph titled "ARBITRATION" in the Conditions of this policy is hereby deleted.

This endorsement, when countersigned by an authorized officer or agent, is made part of said policy as of the policy date thereof and is subject to the Schedules, Conditions and Exclusions from Coverage therein contained, except as modified by the provisions hereof.

STOLL KEENON OGDEN PLLC  
300 WEST VINE STREET, SUITE 2100  
LEXINGTON, KY 40507-1801

Authorized Officer or Agent

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

A Stock Company

400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

By

President

Attest

Secretary



FACTS

WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>• Social Security number and employment information</li> <li>• Mortgage rates and payments and account balances</li> <li>• Checking account information and wire transfer instructions</li> </ul> <p>When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p>
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
<b>For our everyday business purposes</b> — such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations; or report to credit bureaus	<b>Yes</b>	<b>No</b>
<b>For our marketing purposes</b> — to offer our products and services to you	<b>No</b>	<b>We don't share</b>
<b>For joint marketing with other financial companies</b>	<b>No</b>	<b>We don't share</b>
<b>For our affiliates' everyday business purposes</b> — information about your transactions and experiences	<b>Yes</b>	<b>No</b>
<b>For our affiliates' everyday business purposes</b> — information about your creditworthiness	<b>No</b>	<b>We don't share</b>
<b>For our affiliates to market to you</b>	<b>No</b>	<b>We don't share</b>
<b>For non-affiliates to market to you</b>	<b>No</b>	<b>We don't share</b>

Questions

Go to [www.oldrepublictitle.com](http://www.oldrepublictitle.com) (Contact Us)

Who we are	
Who is providing this notice?	Companies with an Old Republic Title name and other affiliates. Please see below for a list of affiliates.

What we do	
How does Old Republic Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit <a href="http://www.OldRepublicTitle.com/newnational/Contact/privacy">http://www.OldRepublicTitle.com/newnational/Contact/privacy</a> .
How does Old Republic Title collect my personal information?	<p>We collect your personal information, for example, when you:</p> <ul style="list-style-type: none"> <li>• Give us your contact information or show your driver's license</li> <li>• Show your government-issued ID or provide your mortgage information</li> <li>• Make a wire transfer</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit only:</p> <ul style="list-style-type: none"> <li>• Sharing for affiliates' everyday business purposes - information about your creditworthiness</li> <li>• Affiliates from using your information to market to you</li> <li>• Sharing for non-affiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing. See the "Other important information" section below for your rights under state law.</p>

Definitions	
Affiliates	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., Mississippi Valley Title Services Company, and The Title Company of North Carolina.</i></li> </ul>
Non-affiliates	<p>Companies not related by common ownership or control. They can be financial and non-financial companies.</p> <ul style="list-style-type: none"> <li>• <i>Old Republic Title does not share with non-affiliates so they can market to you</i></li> </ul>
Joint marketing	<p>A formal agreement between non-affiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>• <i>Old Republic Title doesn't jointly market.</i></li> </ul>

## Other Important Information

Oregon residents only: We are providing you this notice under state law. We may share your personal information (described on page one) obtained from you or others with non-affiliate service providers with whom we contract, such as notaries and delivery services, in order to process your transactions. You may see what personal information we have collected about you in connection with your transaction (other than personal information related to a claim or legal proceeding). To see your information, please click on "Contact Us" at [www.oldrepublictitle.com](http://www.oldrepublictitle.com) and submit your written request to the Legal Department. You may see and copy the information at our office or ask us to mail you a copy for a reasonable fee. If you think any information is wrong, you may submit a written request online to correct or delete it. We will let you know what actions we take. If you do not agree with our actions, you may send us a statement.

## Affiliates Who May be Delivering This Notice

American First Abstract, LLC	American First Title & Trust Company	American Guaranty Title Insurance Company	Attorneys' Title Fund Services, LLC	Compass Abstract, Inc.
eRecording Partners Network, LLC	Genesis Abstract, LLC	Kansas City Management Group, LLC	L.T. Service Corp.	Lenders Inspection Company
Lex Terrae National Title Services, Inc.	Lex Terrae, Ltd.	Mara Escrow Company	Mississippi Valley Title Services Company	National Title Agent's Services Company
Old Republic Branch Information Services, Inc.	Old Republic Diversified Services, Inc.	Old Republic Exchange Company	Old Republic National Title Insurance Company	Old Republic Title and Escrow of Hawaii, Ltd.
Old Republic Title Co.	Old Republic Title Company of Colorado	Old Republic Title Company of Indiana	Old Republic Title Company of Nevada	Old Republic Title Company of Oklahoma
Old Republic Title Company of Oregon	Old Republic Title Company of St. Louis	Old Republic Title Company of Tennessee	Old Republic Title Information Concepts	Old Republic Title Insurance Agency, Inc.
Old Republic Title, Ltd.	Republic Abstract & Settlement, LLC	Sentry Abstract Company	The Title Company of North Carolina	Title Services, LLC
Trident Land Transfer Company, LLC				

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

9. Title being vested other than as stated in Schedule A or being defective

(a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or

(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

- (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land;
- (iii) the subdivision of land; or
- (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

(a) a fraudulent conveyance or fraudulent transfer; or

(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions. (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to

purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

### 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

### 5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

## CONDITIONS AND STIPULATIONS (con't)

### 6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

### 7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this

policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

### 8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these

Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

### 9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

### 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

## CONDITIONS AND STIPULATIONS (con't)

### 11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

### 12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

### 13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

### 14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

### 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this

policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

### 16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

### 17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

### 18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499.