

RECORDING REQUESTED BY AND MAIL TO:  
Fidelity National Title  
2365 Northside Drive, Suite 600  
San Diego, CA 92108  
ATTN: Theresa Robertson  
WHEN RECORDED RETURN TO:  
City of Fontana  
8353 Sierra Avenue  
Fontana, CA 92335  
Attn: Gia Kim, City Engineer

APN: 0228-151-17, 18 & 19

**PRIVATE STREET MAINTENANCE COVENANT AND AGREEMENT**

This PRIVATE STREET MAINTENANCE COVENANT AND AGREEMENT (“Agreement”) is made and entered into as of \_\_\_\_\_ (“Effective Date”) by and between Glen at Fontana Borrower, LLC, a Delaware limited liability company (“Developer”) and the City of Fontana, a municipal corporation of the State of California (“City”). The Developer and City may be referred to herein as the “Party” or collectively as the “Parties.”

**RECITALS**

- A. Developer is the owner of certain real property located in the City of Fontana, County of San Bernardino, State of California as more particularly described in Exhibit A1 and depicted in Exhibit A2, attached hereto and incorporated herein by this reference (“Subject Property”).
- B. Developer will construct, or will cause to be constructed, an extension of Cascade Drive across the Subject Property as more particularly described in Exhibit B1 and depicted in Exhibit B2, attached hereto and incorporated herein by this reference (“Cascade Extension”).
- C. City has consented, through its approval of planning applications TTM 22-008 and DPR 22-059 (“Planning Applications”), that the Cascade Extension will remain a private street.
- D. City has further required, through the Conditions of Approval (“Conditions”) for the Planning Applications, that Developer enter into this Agreement to provide for on-going maintenance of the Cascade Extension. Owner shall be solely responsible for costs of said maintenance.
- E. The parties desire to set forth the standards for which the Cascade Extension shall be maintained.

**AGREEMENT**

- 1. Recitals. The Recitals are true, correct and incorporated by this reference as though fully set forth herein.
- 2. Term. The Term of this Agreement shall commence on the Effective Date and shall remain in effect in perpetuity unless otherwise terminated by City in writing.
- 3. Cascade Extension. The Cascade Extension shall remain open and available to public vehicular and pedestrian traffic at all times.
- 4. Private Improvements. Owner covenants and agrees to maintain in place the Cascade Extension improvements as permitted by the City under GRADE-24-00002 in perpetuity, except as revisions to the improvements may be approved by the City as evidenced by an issued building permit. Any future private improvements must comply with the City’s then current design and construction standards and practices.
- 5. Maintenance Obligations of Developer. Developer hereby covenants and agrees to maintain the Cascade Extension in good and operable condition at all times and in a manner equivalent to that of other similar public streets maintained by City and as further set forth in this Agreement. Maintenance standards shall include, but not limited to, the following:

- a. **Street Sweeping.** Developer shall contract with City's street sweeping contractor. Street sweeping shall occur every other week on a day selected by the City's street sweeping contractor. Seasonal and special adjustments shall be made at the discretion of the City's street sweeping contractor, on a case-by-case basis.
  - b. **Asphalt Concrete Pavement:** Developer shall cause potholes and any other damage to the asphalt, concrete and pavement of the Cascade Extension, and areas affected by such damage, to be repaired within forty eight (48) hours of an occurrence. Repairs shall be completed by a licensed professional and in full compliance with the standards set forth by the City. The affected area shall be restored to its original condition including any surroundings affected by the repair or initial damage.
  - c. **Re-slurry of Street:** Developer shall cause the Cascade Extension to be re-slurred by or before every fifth (5) year anniversary of the Effective Date of this Agreement. The slurry shall be completed by a licensed professional and in full compliance with the standards set forth by City. Developer shall coordinate with the City of Fontana Engineering Department seven (7) business days prior to initiating the improvement.
  - d. **Re-surface of Street:** Developer shall cause the street to be resurfaced by or before every twentieth (20) year anniversary of the Effective Date of this Agreement or as deemed necessary by the City. The resurfacing shall be completed by a licensed professional and in full compliance with the standards set forth by City. Developer shall coordinate with the City of Fontana Engineering Department seven (7) business day prior to initiating the improvement.
  - e. **Repair of Curb & Gutter:** Developer shall cause the curbs and gutters to be repaired within one (1) week of occurrence by a licensed professional and in full compliance with the standards set forth by City. The affected area shall be restored to its original condition including any surroundings affected by the repair or initial damage.
  - f. **Driveway Approaches:** Developer shall cause any driveway approaches to be repaired within two (2) weeks of damage. Repairs shall be made in accordance with the City's then-current design and construction standards.
  - g. **Concrete Sidewalk:** Developer shall cause all concrete sidewalks to be repaired within two (2) weeks of damage. Repairs shall be made in accordance with the City's then-current design and construction standards.
  - h. **Drainage Inlets:** Developer shall conduct annual inspections of all drainage inlets. Additional subsequent inspections are required after extreme weather events. If the inlet or surrounding materials are damaged repairs and replacements shall be made per approved plans by a licensed professional to bring the area back to its original condition and in accordance with the standards of the City. In the case of extreme weather conditions all drainage inlets will be inspected and cleared of debris collected.
  - i. **Access to Manholes:** Developer shall inspect all manholes on a bi-annual basis, any deficiencies limiting access to manholes shall require the replacement of the respective materials per approved plans as provided by Developer in Building Permits. Any pavement disturbed in the process shall be restored to original condition.
6. Costs. All costs associated with Developer's Maintenance Obligations herein shall be borne solely by Developer.
  7. City Approval. All maintenance and improvements performed under this Agreement shall be subject to City approval.
  8. Right of City to Remedy Failure of Maintenance Obligation. If Developer fails to comply with the provisions of this Agreement, the City may deliver written notice to Developer identifying the specific defects regarding the Developer Maintenance Obligations outlined herein. Developer shall have such time as provided in Section 5 herein to remedy the specified defects, and if no timeframe is provided the Developer shall have thirty (30) calendar days from the date of the City's notice, to correct the City's concerns. If Developer cannot correct such defect within the timeframe provided under Section 5 or otherwise by this Section 8, then Developer shall be afforded a reasonable amount of additional time to correct such defects provided Developer commences corrective action within the timeframe specified under Section 5 or otherwise by this Section 8 and diligently pursues such correction.

9. If Developer disagrees in good faith with City's concerns, Developer shall notify City of such disagreement within five (5) calendar days of receipt of such notice and the parties shall discuss in good faith the City's concerns and Developer's disagreement with such concerns. Notwithstanding the foregoing, if City determines an emergency situation exists which must be remedied immediately, then City will provide written notice to Developer specifying the emergency situation and requiring that the emergency situation remedied within twenty-four (24) hours or City may remedy such emergency situation on its own and submit an invoice to Developer for immediate payment.

If Developer fails to correct the specific defects identified by the City within the time period set forth above, the City shall have the right to remedy those defects. The City may retain, at its election, its own contractors, Developer's contractors or any other appropriate third party to remedy the defects identified by the City. Any costs incurred by the City shall be solely borne by the Developer. The City shall provide an invoice for the cost incurred and Developer shall remit payment to the City within thirty (30) days from receipt of the invoice. The Parties agree that any maintenance undertaken by the City under this Section 8 shall not terminate the maintenance obligation of Developer. Notwithstanding the foregoing, the City retains the right to any collection remedies it may have according to law.

10. City's Costs of Maintenance a Lien. If the City incurs costs in remedying Developer's failure to maintain the Subject Property in accordance with Section 5, the City shall make a demand on the Developer for payment in accordance with Section 8. If Developer fails to pay the City within thirty (30) days of the date the demand was made, the City may make the costs a lien upon the real property as described in Exhibit A1 and depicted in Exhibit A2 by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of San Bernardino. The notice shall state that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with a statement that such cost are unpaid, and that such costs draws simple interest at the rate of seven (7) percent a year until paid.
11. Grant of License. Developer grants the City a non-exclusive irrevocable license in, on, across and over the Subject Property for all purposes under this Agreement, including the City's right to maintain the Cascade Extension pursuant to the terms and covenants set forth herein. The City shall have the right to enter upon the Subject Property for all such purposes under this Agreement. Nothing herein shall be deemed or construed to be a limitation upon the Developer's right to use its property in any manner it deems acceptable, provided that those uses do not unreasonably interfere with the City's rights as outlined herein.
12. Indemnity. The Developer agrees to indemnify, defend, protect and hold the City free and harmless from any and all loss, liability, claims, damages and expenses (including, but not limited to, attorneys' fees and costs) ("Liabilities") arising from the exercise of the City's rights herein or from Developer's failure to comply with the terms and covenants herein. As used herein and where applicable in this Agreement, the term "Developer" shall also include the Developer's officers, officials, employees and agents.
13. Insurance of Developer. Before beginning any work under this Agreement, the Developer shall procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work consisting of the ongoing maintenance and any future improvements by the Developer and its agents, representatives, employees, and subcontractors. The Developer shall provide proof satisfactory to the City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Developer shall maintain the insurance policies required by this Section throughout the term of this Agreement and shall produce copies of said policies to the City upon demand. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.
14. Notices. Unless otherwise provided in this Agreement, all notices, demands, or other communications given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been given upon personal delivery or as of the second business day after mailing in the United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address or to such other person as either party may designate:

**City:**  
City of Fontana  
8353 Sierra Avenue  
Fontana, California 92335  
Attention: Gia Kim

**Developer:**

Glen at Fontana Borrower, LLC

Address: 550 N Larchmont Blvd. Suite 201, Los Angeles CA 90004

15. Recording. The Developer shall record this Agreement in the Office of the San Bernardino County Recorder.
16. Validity. If any one or more of the terms, provisions, covenants, or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, covenants, and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
17. Headings. The titles or headings of the sections of this Agreement are not a part of the Agreement and shall have no effect upon the construction of or interpretation of this Agreement.
18. Binding Effect. This Agreement, and the terms, provisions, covenants, and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
19. Exhibits. All Exhibits attached and referred to in this Agreement are hereby incorporated herein as though fully set forth herein (and shall be deemed to be a part of this Agreement).
20. Waiver. The waiver by one Party of any breach by any other Party of any of the terms, provisions, covenants, and conditions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.
21. Entire Agreement. This Agreement, including all exhibits attached hereto, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the Parties to this Agreement.
22. Compliance with Laws. The Developer shall each comply with all applicable laws, ordinances, codes, and regulations (collectively "**laws**") of the federal, state, and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.
23. Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of California.
24. Venue. In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of San Bernardino.
25. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. A copy, original or facsimile with all signatures appended together shall be deemed a fully executed Agreement.
26. Successor and Assigns. The Developer makes this Agreement on behalf of itself and its successors and assigns. This Agreement shall run with the Subject Property and shall inure to the benefit of the City and be binding upon the Developer, future owners, and their heirs, successors and assignees, and shall continue in effect until the release of this Agreement by the City, in its sole discretion.
27. Authority to Execute. The individuals executing this Agreement and the instruments referenced herein each represent and warrant that they have the legal power, right and actual authority to bind their respective Parties to the terms and conditions hereof and thereof.

[SIGNATURES ON THE FOLLOWING PAGE]

**SIGNATURE PAGE TO  
PRIVATE STREET MAINTENANCE COVENANT AND AGREEMENT**

In witness thereof, the City has caused this Agreement to be executed as of the day and year first written above.

**City of Fontana**

By: \_\_\_\_\_  
Matthew Ballantyne  
City Manager

**Glen at Fontana Borrower, LLC**

By: \_\_\_\_\_  
Matthew Livingston  
Vice President

**ATTEST:**

By: \_\_\_\_\_  
Germaine Key  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Ruben Duran  
City Attorney

By : \_\_\_\_\_  
Phillip Burum, Deputy City Manager

By: \_\_\_\_\_  
Gia Kim  
Director of Public Works/City Engineer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

**EXHIBIT A1**  
**LEGAL DESCRIPTION FOR PROJECT BOUNDARY**

THE FOLLOWING DESCRIBED PROPERTY SITUATED IN THE CITY OF FONTANA,  
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

BEGINNING AT THE SOUTHWEST CORNER OF TRACT NO. 16724 AS FILED IN BOOK 316, PAGES 7 THROUGH 9 RECORDS OF SAID COUNTY, ALSO KNOWN AS THE **TRUE POINT OF BEGINNING**; THENCE SOUTH 00°05'11" EAST, 660.16 FEET ALONG THE EAST LINE OF TRACT 12314 AS FILED IN BOOK 240, PAGES 3 THROUGH 10 RECORD OF SAID COUNTY; THENCE NORTH 89°51'30" EAST, 451.52 FEET ALONG THE NORTH LINE OF TRACT 18244 AS FILED IN BOOK 341, PAGES 10 THROUGH 15 RECORD OF SAID COUNTY; THENCE NORTH 00°07'42" WEST, 660.11 FEET ALONG THE WEST LINE OF TRACT 17389 AS FILED IN BOOK 335, PAGES 70 THROUGH 72 RECORD OF SAID COUNTY; THENCE SOUTH 89°51'55" WEST, 451.04 FEET ALONG THE SOUTH LINE OF TRACT 16724 AS FILED IN BOOK 316, PAGES 7 THROUGH 9 RECORDS OF SAID COUNTY TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 297,910 SQUARE FEET OR 6.839 ACRES, MORE OR LESS.

SEE EXHIBIT "A2" ATTACHED HERETO AND MADE A PART HEREOF.



# EXHIBIT A2

## BOUNDARY

SHEET 1 OF 1  
Sheet 9 of 11  
City Index No. 6288

TRACT NO. 16724  
M.B. 316/7-9  
S89°51'55"W 451.04'

T.P.O.B.

SALTPOINT WAY  
32'

14    15    16    17    18    19    20    21    22    23    24

**CASCADE DRIVE**

CASCADE DRIVE

**CASCADE DRIVE**

LOT C

64'  
32'  
32'

13

12

11

10

9

8

7

6

5

4

3

LOT B

LOT H

10

26

39

40

LOT I

41

42

43

44

45

46

47

48

"A" DRIVE LOT D

27

38

28

37

29

36

30

35

LOT J

31

32

33

34

LOT K

"C" DRIVE LOT F

2

1

"D" DRIVE LOT G

LOT A

**CHASE ROAD**

N89°51'30"E 451.52'

TRACT NO. 18244  
M.B. 341/10-15

**LEGEND**

T.P.O.B. TRUE POINT OF BEGINNING

TRACT NO. 12314  
M.B. 240/3-10

660.16'

S00°05'11"E

660.11'

TRACT NO. 17389  
M.B. 335/70-72

N00°07'42"W



SCALE: 1" = 80'

**EXHIBIT B1**  
**LEGAL DESCRIPTION FOR CASCADE DRIVE**

BEING A STRIP OF LAND 64 FEET WIDE LOCATED IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, SAID STRIP OF LAND CENTERLINE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

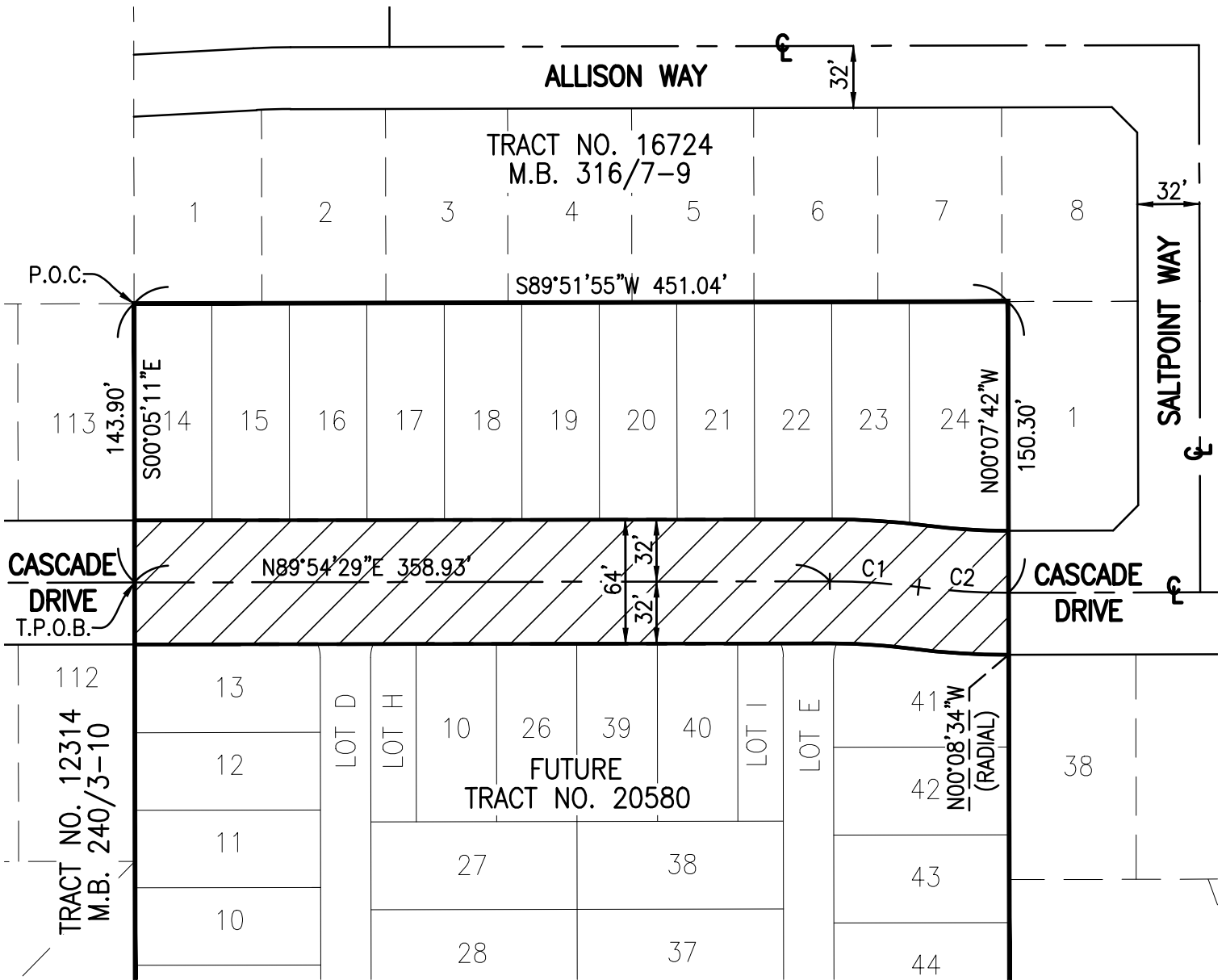
**COMMENCING** AT THE SOUTHWEST CORNER OF TRACT NO. 16724 AS FILED IN BOOK 316, PAGES 7 THROUGH 9 RECORDS OF SAID COUNTY; THENCE SOUTH  $00^{\circ}05'11''$  EAST, 143.90 FEET ALONG THE EAST LINE OF TRACT 12314 AS FILED IN BOOK 240, PAGES 3 THROUGH 10 RECORD OF SAID COUNTY TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH  $89^{\circ}54'29''$  EAST, 358.93 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVING SOUTH; THENCE ALONG SAID CURVE HAVING A RADIUS OF 350.00 FEET, 46.09 FEET THROUGH A CENTRAL ANGLE OF  $07^{\circ}32'41''$  TO A POINT OF REVERSE CURVE HAVING RADIUS OF 350.00 FEET, 46.40 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $07^{\circ}35'44''$  TO THE WEST LINE OF TRACT 17389, MORE OR LESS, AS FILED IN BOOK 335, PAGES 70 THROUGH 72 RECORDS OF SAID COUNTY.

CONTAINING 28,890 SQUARE FEET OR 0.663 ACRES, MORE OR LESS.

SEE EXHIBIT "B2" ATTACHED HERETO AND MADE A PART HEREOF.

# EXHIBIT B2

## CASCADE DRIVE



SCALE: 1" = 80'

### LEGEND

- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- CASCADE DRIVE

CURVE DATA			
NO.	DELTA	RADIUS	LENGTH
C1	7°32'41"	350.00'	46.09'
C2	7°35'44"	350.00'	46.40'