

COUNCIL ACTION FORM

SUBJECT: **AMENDED FINAL PLAT FOR SCRIVNERS ERROR**

BACKGROUND:

City Council approved a Final Plat and related easements and platting documents for Auburn Trail, First Addition at its February 8, 2022, meeting. Subsequently, at the time the applicant recorded the approved Final Plat, the County noted that the label of Parcel A within the subdivision was incorrect; It should be labeled "Lot 1." Parcel A is the land that contains an existing house that was split off from the remainder of the subdivision area. Under state law it is required to be a numbered lot since it is for development purposes, and it does not meet the criteria for a parcel label.

Attached to this report (Attachment B) is an affidavit and amended plat exhibit that will be recorded to explain the error and its correction. The change has no effect on the delineation of lots within the subdivisions or of uses of lots within the subdivision. The City's easements and related improvements agreements will be unaffected upon recording of the affidavit and amended plat.

ALTERNATIVES:

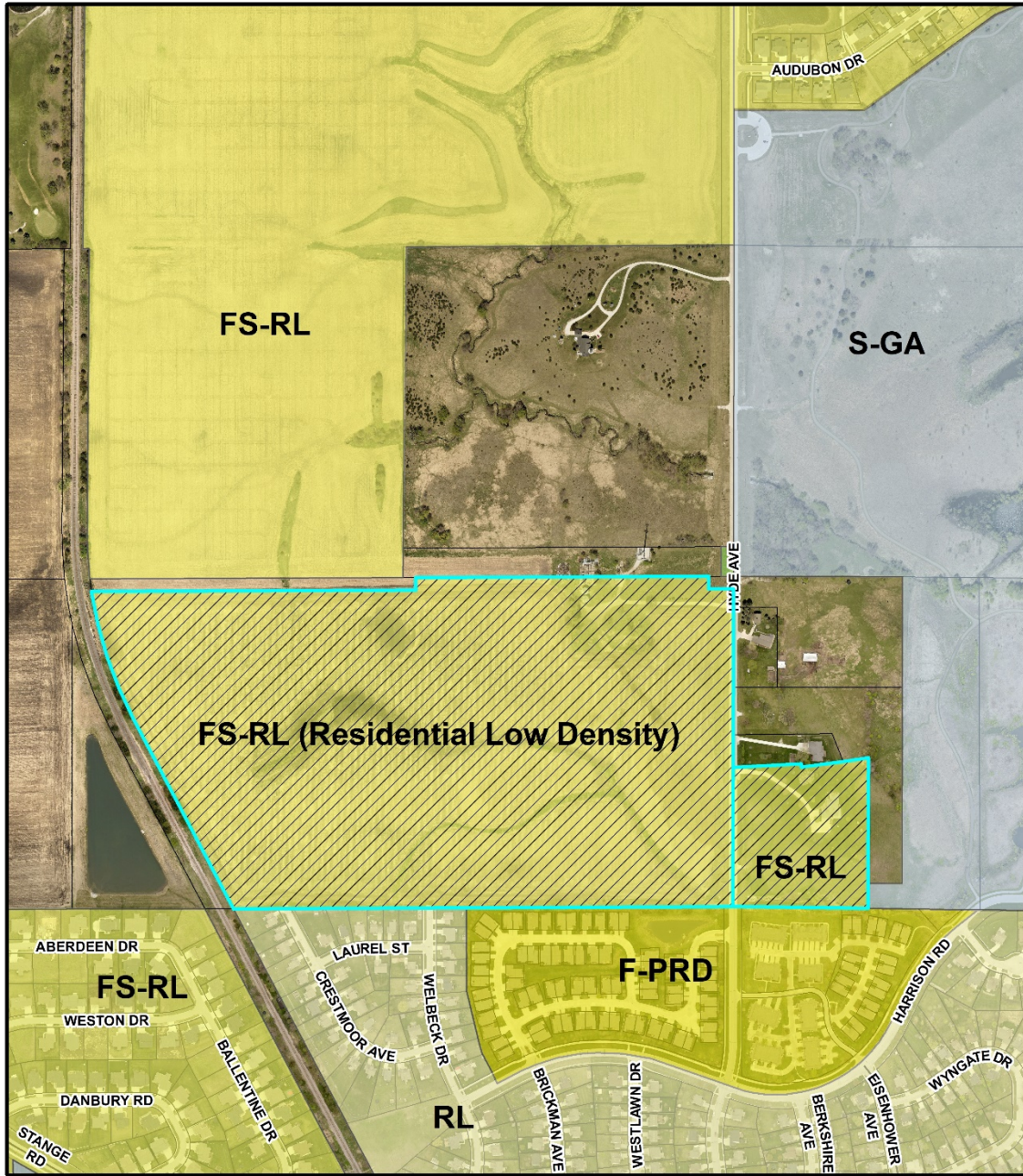
1. Accept the amended plat as a scrivener's error for the labeling of Parcel A to Lot 1.
2. Decline to accept the amended plat and direct the applicant to prepare a new Final Plat.

CITY MANAGER'S RECOMMENDATION:

The amended plat and affidavit correct a minor labeling error.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1, as noted above.

Attachment A Zoning & Location Map



Auburn Trail Subdivision - 4514 & 4605 Hyde Ave LOCATION & ZONING MAP

Prepared by City of Ames, Planning Division, November 2021



Attachment B

INSTRUMENT PREPARED BY:	Brian D. Torresi, 2605 Northridge Pkwy., Ames, IA 50010 (515) 288-2500
RETURN TO:	Brian D. Torresi, 2605 Northridge Pkwy., Ames, IA 50010

EXPLANATORY AFFIDAVIT

Re: Parcel A, Auburn Trail Subdivision First Addition, Ames, Story County, Iowa

STATE OF IOWA, COUNTY OF STORY, SS:

I, Justin R. Dodge, a Manager of Hunziker Development Group, LLC, an Iowa limited liability company (the "Company"), being first duly sworn on oath, state as follows:

1. That I make this Explanatory Affidavit (this "Affidavit") from my own personal knowledge for the purpose of establishing of record certain facts known to me and affecting the chain of title to the above-referenced real property situated in Ames, Story County, Iowa (the "Property").

2. That the Company is the current titleholder of the Property and that the Company is now in complete, actual, and sole possession of the Property.

3. That the instruments and documents related to the platting proceedings for Auburn Trail Subdivision First Addition, Ames, Story County, Iowa (the "Subdivision") were accepted and approved by the City of Ames, Iowa (the "City") on February 8, 2022, as evidenced by Resolution No. 22-050 of the City Council of the City (the "Resolution").

4. That said instruments and documents related to the platting proceedings for the Subdivision (collectively, the "Platting Documents") are as follows:

- a. the Final Plat of the Subdivision (the "Original Plat"), as filed, with other related platting instruments and documents, including, but not limited to, the Resolution, in the office of the Recorder of Story County, Iowa, on February 10, 2022, collectively as Instrument No. 2022-01300;
- b. the Restrictive Covenants and Regulations for Auburn Trail Subdivision First Addition, Ames, Story County, Iowa (the "Covenants"), as filed in the office of the Recorder of Story County, Iowa, on February 10, 2022, as Instrument No. 2022-01301;

- c. the Easements (the “Easement Document”), as filed in the office of the Recorder of Story County, Iowa, on February 10, 2022, as Instrument No. 2022-01302; and
- d. the Agreement for Sidewalk and Street Trees (the “Sidewalk Agreement”), as filed in the office of the Recorder of Story County, Iowa, on February 10, 2022, as Instrument No. 2022-01303.

5. That the Original Plat, as accepted and approved by the City, identifies and legally describes the Property as “Parcel A” of the Subdivision; however, said description is not consistent with the terms and provisions of Iowa Code § 354.6(2) because the Property should have been identified and legally described by assigning a lot number to the Property instead of a letter.

6. That the Company and the City desire to amend the Platting Documents to replace any and every reference therein to “Parcel A” with “Lot 1” as shown on the Amended Final Plat for the Subdivision (the “Amended Plat”) attached hereto as Exhibit A and incorporated herein by this reference as if fully set forth.

7. That the desired amendments to the Platting Documents shall be effectuated as follows:

- a. the Original Plat shall, in any and every respect, upon the recording of this Affidavit, be replaced by the Amended Plat and not utilized and/or referenced in any manner, and the Amended Plat shall, in all respects, be considered the Final Plat of the Subdivision;
- b. the Covenants shall be amended upon the recording of the First Amendment to Restrictive Covenants and Regulations for Auburn Trail Subdivision First Addition, Ames, Story County, Iowa (the “Amendment to Covenants”) in substantially the same form as Exhibit B attached hereto; and
- c. the Easement Document shall, upon the recording of this Affidavit, be amended by replacing any and every reference therein to “Parcel A” with “Lot 1” with respect to the ingress and egress easement granted upon, under, over, or across the Property.

8. That, except as provided in Paragraph 7 of this Affidavit, no further amendments are required to any of the Platting Documents.

9. That no further action is required from, and no further approval is required by, the City to effectuate the amendments to the Platting Documents as provided in this Affidavit.

10. That this Affidavit is being given for the sole purpose of amending and clarifying the legal description of the Property to be in accordance with Chapter 354 of the Iowa Code.

(SIGNATURE PAGE FOLLOWS)

SIGNATURE PAGE OF
EXPLANATORY AFFIDAVIT




JUSTIN R. DODGE

STATE OF IOWA, COUNTY OF STORY, SS:

Sworn to and subscribed before me by Justin R. Dodge on this 17th day of February, 2022.





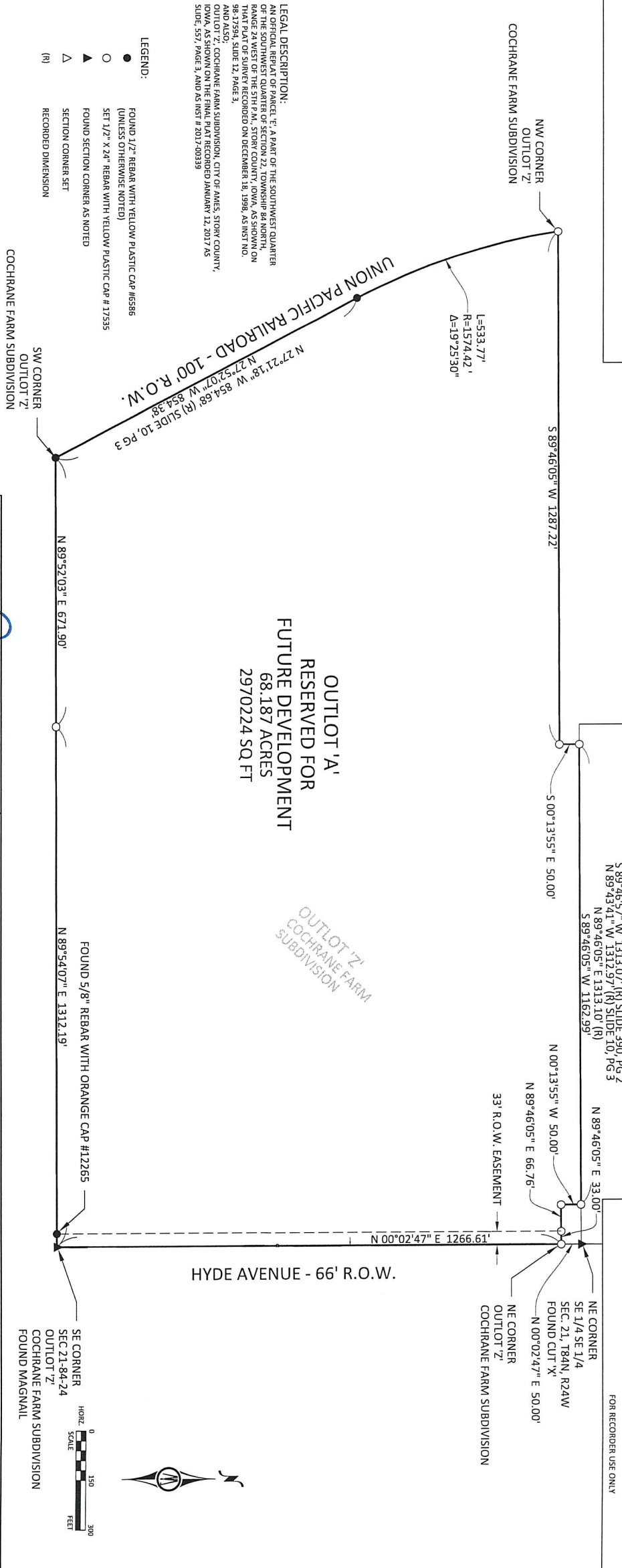
Notary Public, State of Iowa
My commission expires 9-27-24

EXHIBIT A
AMENDED PLAT

AMENDED FINAL PLAT - AUBURN TRAIL SUBDIVISION, FIRST ADDITION

AN OFFICIAL REPLAT OF OUTLOT 'Z', COCHRANE FARM AND ALSO PARCEL 'E' IN SW 1/4 - SW 1/4 SEC. 22-84-24

INDEX LEGEND	
LOCATION	OUTLOT 'Z', COCHRANE FARMS SUBDIVISION, SECTION 21, T-84 N, R-24 W, STORY COUNTY, IOWA
REQUESTOR:	HUNZIKER DEVELOPMENT GROUP, LLC
PROPRIETOR:	ERBEN & MARGARET HUNZIKER APARTMENTS, LLC; HUNZIKER DEVELOPMENT GROUP, LLC
SURVEYOR:	EUGENE R. DREYER, P.L.S. # 17535
SURVEYOR COMPANY:	BOLTON & MENK, INC.
RETURN TO:	EUGENE R. DREYER, BOLTON & MENK, INC. 1519 BALTIMORE DR., AMES, IA 50010 (515) 233-6100



LEGAL DESCRIPTION:
AN OFFICIAL REPLAT OF PARCEL 'E', A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 84 NORTH, RANGE 24 WEST OF THE 5TH P.M., STORY COUNTY, IOWA, AS SHOWN ON THAT PLAT OF SURVEY RECORDED ON DECEMBER 18, 1998, AS INST. NO. 98-17594, SLIDE 12, PAGE 3.
AND ALSO, COCHRANE FARM SUBDIVISION, CITY OF AMES, STORY COUNTY, IOWA, AS SHOWN ON THE FINAL PLAT RECORDED JANUARY 12, 2017 AS SLIDE 557, PAGE 3, AND AS INST # 2017-00339

- LEGEND:**
- FOUND 1/2" REBAR WITH YELLOW PLASTIC CAP #6586 (UNLESS OTHERWISE NOTED)
 - SET 1/2" X 24" REBAR WITH YELLOW PLASTIC CAP # 17535
 - ▲ FOUND SECTION CORNER AS NOTED
 - △ SECTION CORNER SET
 - (R) RECORDED DIMENSION

- NOTES:**
1. THIS PLAT MEETS OR EXCEEDS IOWA CODE 555.
 2. BASIS OF BEARING IS IOWA STATE PLANE, ZONE NORTH.
 3. THIS PLAT IS SUBJECT TO EASEMENTS APPEARING ON RECORD.
 4. SOME PORTIONS OF THE AMES TRAIL PLAT WHICH HAVE BEEN DENIED BY THE CITY OF AMES AS HAVING SOLID TRAIL MARK CONSTRUCTION OF BUILDINGS DIFFICULT.
 5. LOT 'A', CONTAINING 18,291 SQ.FT TO BE DEDICATED TO THE CITY OF AMES FOR ROADWAY PURPOSES.
 6. TOTAL AREA OF ADDITION: 75.176 AC.

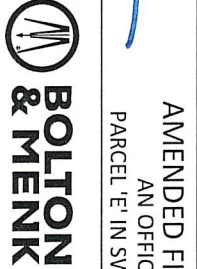
OUTLOT 'A'
RESERVED FOR
FUTURE DEVELOPMENT
68.187 ACRES
2970224 SQ. FT

OUTLOT 'Z'
COCHRANE FARM
SUBDIVISION



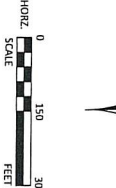
I hereby certify that this final amended document was prepared by me and my registered field work was performed by me or under my direct professional supervision and that I am a duly licensed land surveyor under the laws of the State of Iowa.

EUGENE R. DREYER, P.L.S.
REG. NO. 17535 DATE: 12/21/2022



AMENDED FINAL PLAT AUBURN TRAIL SUBDIVISION, FIRST ADDITION
AN OFFICIAL REPLAT OF OUTLOT 'Z', COCHRANE FARM SUBDIVISION & ALSO PARCEL 'E' IN SW 1/4 - SW 1/4 SEC. 22-84-24 TO THE CITY OF AMES, STORY COUNTY, IOWA

1519 BALTIMORE DRIVE
AMES, IOWA 50010
(515) 233-6100



FOR RECORDER USE ONLY

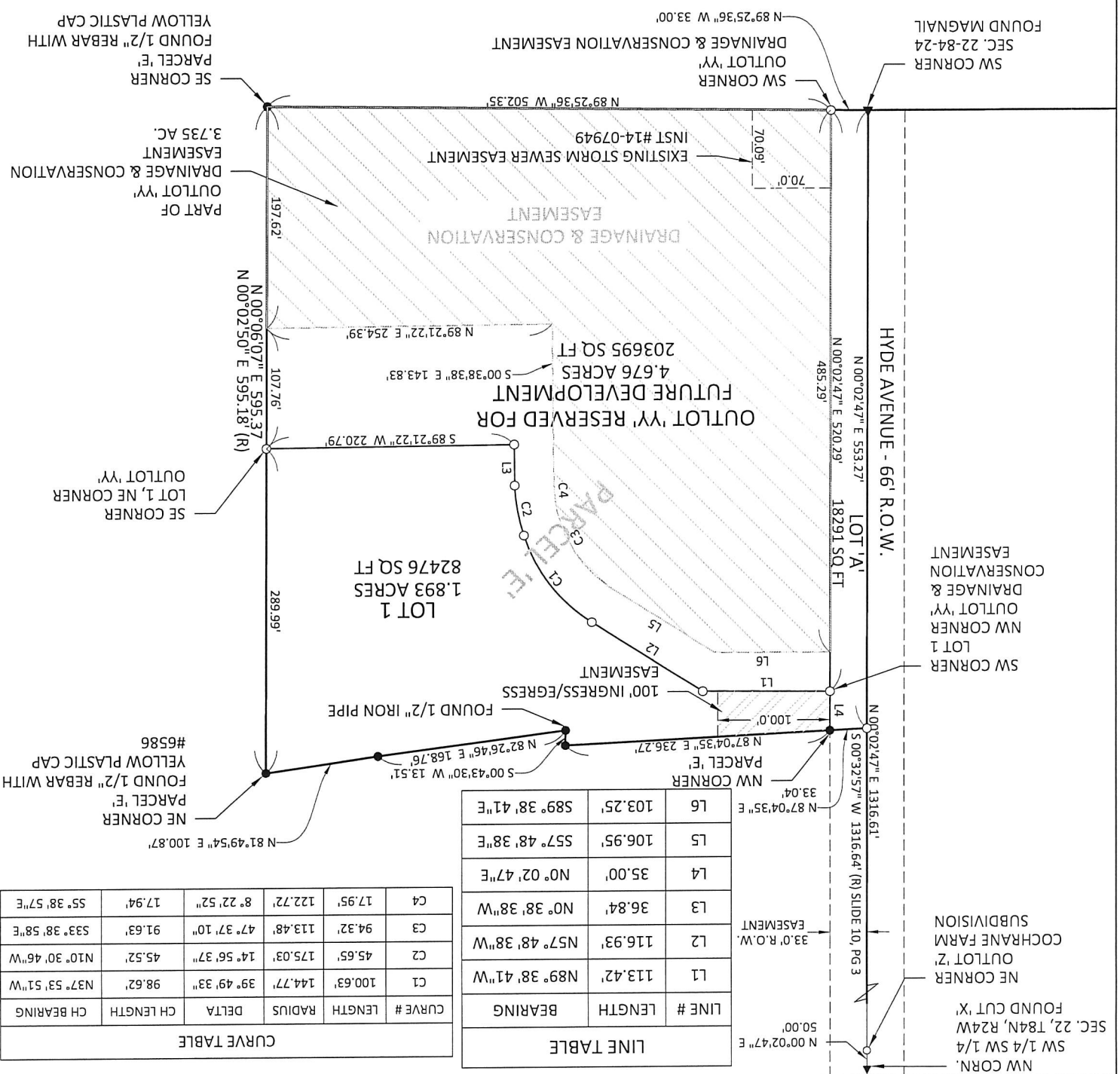
1519 BALTIMORE DRIVE
 AMES, IOWA 50010
 (515) 233-6100



SHEET 2 OF 2



- LEGEND:
- FOUND 1/2" REBAR (UNLESS OTHERWISE NOTED)
 - SET 1/2"x24" REBAR WITH YELLOW PLASTIC CAP #17535
 - SET 5/8"x24" REBAR WITH YELLOW PLASTIC CAP #17535
 - △ SECTION CORNER SET AS NOTED
 - (R) RECORDED DIMENSION
 - ▭ DRAINAGE & CONSERVATION EASEMENT (UNLESS OTHERWISE NOTED)



LINE #	LENGTH	BEARING
L1	113.42'	N89° 38' 41"W
L2	116.93'	N57° 48' 38"W
L3	36.84'	N0° 02' 47"E
L4	35.00'	N0° 02' 47"E
L5	106.95'	S57° 48' 38"E
L6	103.25'	S89° 38' 41"E

CURVE #	LENGTH	RADIUS	DELTA	CH BEARING	CH LENGTH
C1	100.63'	144.77'	39° 49' 33"	N37° 53' 51"W	98.62'
C2	45.65'	175.03'	14° 56' 37"	N10° 30' 46"W	45.52'
C3	94.32'	113.48'	47° 37' 10"	S33° 38' 58"E	91.63'
C4	17.95'	122.72'	8° 22' 52"	S5° 38' 57"E	17.94'

LOCATION	IOWA PARCEL 'E', SECTION 22, T-84-N, R-24-W STORY COUNTY,
REQUESTOR:	HUNZIKER DEVELOPMENT GROUP, LLC
PROPRIETOR:	ERBEN & MARGARET HUNZIKER APARTMENTS, LLC, HUNZIKER DEVELOPMENT GROUP, LLC
SURVEYOR:	EUGENE R. DREYER, P.L.S. # 17535
SURVEYOR COMPANY:	BOLTON & MENK, INC.
RETURN TO:	EUGENE R. DREYER, BOLTON & MENK, INC. 1519 BALTIMORE DR., AMES, IA 50010 (515)-233-6100

FOR RECORDER USE ONLY

EXHIBIT B
AMENDMENT TO COVENANTS

INSTRUMENT PREPARED BY AND RETURN TO:	Brian D. Torresi, 2605 Northridge Pkwy., Ames, IA 50010 (515) 288-2500
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**FIRST AMENDMENT TO
RESTRICTIVE COVENANTS AND REGULATIONS FOR
AUBURN TRAIL SUBDIVISION FIRST ADDITION,
AMES, STORY COUNTY, IOWA**

THIS FIRST AMENDMENT TO RESTRICTIVE COVENANTS AND REGULATIONS FOR AUBURN TRAIL SUBDIVISION FIRST ADDITION, AMES, STORY COUNTY, IOWA (this “First Amendment”) is made and entered into by Hunziker Development Group, LLC, an Iowa limited liability company (“HDG”), and Erben Hunziker and Margaret Hunziker Apartments, L.L.C., an Iowa limited liability company (“E&M”) (HDG and E&M are hereinafter collectively referred to as the “Developers”), as of the date set forth under the signatures hereto.

RECITALS:

WHEREAS, the Restrictive Covenants and Regulations for Auburn Trail Subdivision First Addition, Ames, Story County, Iowa (the “Original Covenants”) were filed in the office of the Recorder of Story County, Iowa, on February 10, 2022, as Instrument No. 2022-01301; and

WHEREAS, the Original Covenants provide, in Paragraph 10 thereof, that, among other things, they may be amended upon the recording of an instrument executed by the owners of at least seventy-five percent (75%) of the land areas within Auburn Trail Subdivision First Addition, Ames, Story County, Iowa (the “Subdivision”); and

WHEREAS, the Developers collectively own one hundred percent (100%) of the land areas within the Subdivision; and

WHEREAS, HDG has, contemporaneous with the recording of this First Amendment, recorded an Explanatory Affidavit (the “Affidavit”) identifying certain errors on the Final Plat of the Subdivision (the “Plat”) and within the platting documents related to the Subdivision, and further, identifying the amendments required to said platting documents; and

WHEREAS, as a result of the errors on the Plat and within the platting documents related to the Subdivision, and in furtherance of the amendments to the platting documents as referenced in the

Affidavit, it is necessary for the Developers to execute and record this First Amendment to set forth the proper legal description of the real property subject to the Original Covenants and/or to amend the definition of the term "Lot" within the Subdivision.

NOW, THEREFORE, in consideration of the above Recitals, and reliance on the same, and for other good and valuable consideration, the Developers agrees as follows:

1. INCORPORATION OF RECITALS. The foregoing Recitals are incorporated herein and made a part of this First Amendment as if fully set forth verbatim. The Recitals and exhibits attached hereto, if any, are a substantive, contractual part of this First Amendment.

2. DEFINITION AMENDMENT. The Original Covenants are hereby amended and modified by completely replacing the first introductory paragraph therein with the following paragraph:

"**WHEREAS**, the undersigned are the owners of Lot One (1) (the "Lot") contained in Auburn Trail Subdivision First Addition, Ames, Story County, Iowa (the "Subdivision"); and"

3. REMAINING PROVISIONS UNAFFECTED. All other provisions of the Original Covenants not amended by this First Amendment shall remain in full force and effect and are in no way affected or limited by the execution of this First Amendment or the amendments provided for herein.

IN WITNESS WHEREOF, the undersigned has executed this First Amendment on this 17th day of February, 2022.

(SIGNATURE PAGE FOLLOWS)

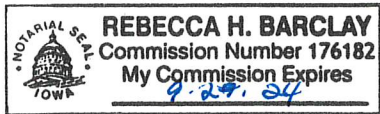
**SIGNATURE PAGE OF
FIRST AMENDMENT TO RESTRICTIVE COVENANTS AND REGULATIONS FOR
AUBURN TRAIL SUBDIVISION FIRST ADDITION, AMES, STORY COUNTY, IOWA**

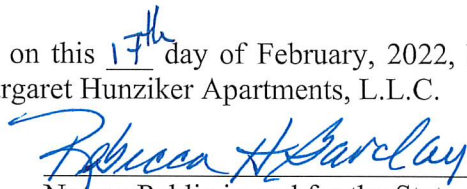
**ERBEN HUNZIKER AND MARGARET
HUNZIKER APARTMENTS, L.L.C.**

By: 
Dean E. Hunziker, Manager


STATE OF IOWA, STORY COUNTY, SS:

This record was acknowledged before me on this 17th day of February, 2022, by Dean E., Hunziker, as a Manager of Erben Hunziker and Margaret Hunziker Apartments, L.L.C.



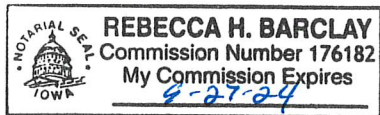

Notary Public in and for the State of Iowa
My commission expires 9-27-24

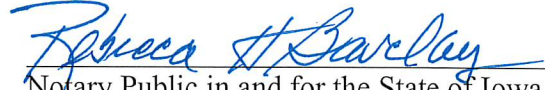
HUNZIKER DEVELOPMENT GROUP, LLC

By: 
Justin R. Dodge, Manager

STATE OF IOWA, STORY COUNTY, SS:

This record was acknowledged before me on this 17th day of February, 2022, by Justin R. Dodge, as a Manager of Hunziker Development Group, LLC.




Notary Public in and for the State of Iowa
My commission expires 9-27-24