

RESOLUTION NO. 2013-95

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JERSEY VILLAGE, TEXAS, AUTHORIZING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF JERSEY VILLAGE, TEXAS (THE "CITY"), WCB LAND, LLC., (THE "OWNER) AND WEEKLEY HOMES, LLC., (THE "DEVELOPER") FOR THE ENCLAVE AT CASTLEBRIDGE, WHICH IS COMPRISED OF A 22.34 ACRE TRACT OF LAND LOCATED WITHIN THE CITY LIMITS.

WHEREAS, the Owner and Developer are in the process of developing land located within the City, known as The Enclave at Castlebridge; and

WHEREAS, the parties wish to see The Enclave at Castlebridge developed in the manner agreed to by the Developer and the City; and

WHEREAS, the parties seeks to memorialize their mutual agreement for the development of The Enclave at Castlebridge, in a Development Agreement, outlining the promises, obligations, covenants, and benefits to each party involved; and


WHEREAS, The City and the Owner have determined that they are authorized by the Constitution and laws of the State of Texas to enter into the Development Agreement and have further determined that the terms, provisions, and conditions contained therein are mutually fair and advantageous to each; **NOW THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JERSEY VILLAGE, TEXAS THAT:

Section 1. The Development Agreement, in substantially the form as attached "Exhibit A", between The City of Jersey Village, and WCB Land, LLC., for the Enclave at Castlebridge is hereby authorized and accepted.

PASSED AND APPROVED this 16th day of December 2013.

ATTEST:


Lorri Coody, City Secretary


Rod Erskine, Mayor



STATE OF TEXAS §
COUNTY OF HARRIS §

DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (the "Agreement"), is made and entered into as of December 16, 2013, (the "Effective Date"), by and between the **CITY OF JERSEY VILLAGE, TEXAS**, a home rule municipality of the State of Texas (the "City"), and **WCB Land, LLC** a Texas limited liability company (the "Owner"). It is the intention of the parties to this Agreement that, except as may be otherwise specifically set forth herein, all rights, the benefits and obligations of Owner pursuant to this Agreement shall ultimately be assigned to Weekley Homes, LLC or, its development affiliate, Classic Neighborhood – FC Holdings, LLC, a Texas limited liability company, ("Developer").

RECITALS

WHEREAS, the Owner and Developer are in the process of developing land located within the City currently owned by the Owner depicted on **Exhibit A** attached hereto (the "Land"), to be called "The Enclave at Castlebridge" ("Development"); and

WHEREAS, the Land was previously platted by a former developer and certain infrastructure was put in place; and

WHEREAS, the previous developer at some point abandoned the development; and

WHEREAS, the infrastructure put in place by the previous developer was never accepted by the City; and

WHEREAS, the parties wish to see the Land developed in the manner agreed to by the Developer and the City in their meeting of November 13, 2013; and

WHEREAS, the parties seek to memorialize their mutual agreement for the development of the Land in this Development Agreement; and

WHEREAS, the City and the Owner have determined that they are authorized by the Constitution and laws of the State of Texas to enter into this Agreement and have further determined that the terms, provisions, and conditions hereof are mutually fair and advantageous to each.

AGREEMENT

For and in consideration of these premises and of the mutual promises, obligations, covenants, and benefits herein contained, the City and the Owner agree as follows:

ARTICLE 1 GENERAL STATEMENT

1.01 Subject to the specific terms and conditions stated in this Agreement, the City and the Owner will cooperate to accomplish the development of the Land and the provision of utilities as stated herein.

1.02 It is intended that the Agreement will be assigned to the Developer. As consideration for entering into this Agreement, the City expects that the Developer will develop the Land in substantially the same form and manner as shown in the master plan presented the City, unless otherwise modified by agreement of the parties. The willingness of the City to enter into this Agreement, in particular the obligation of the City to accept the water and sanitary sewer systems, is based on the representations of the Developer and the development plan for single family homes shown on the recorded plat and attached as Exhibit B.

1.03 This Agreement shall not be assignable by Owner to any other party other than to Developer or Developer's affiliate, Classic Neighborhood - FC Holdings. This Section shall not be construed to prevent the Developer from selling lots, parcels or other portions of the Land in the normal course of business.

ARTICLE 2 OBLIGATIONS OF THE OWNER

2.01. Development. The Owner agrees to develop the Land, or cause the Land to be developed by Developer, in substantial compliance with the master plan attached as Exhibit B. All obligations of Owner as stated herein shall become the responsibility of Developer, once assigned to the Developer. No further approval by the City is needed to assign this Agreement to Developer. Owner and Developer shall notify City in writing once the assignment has been consummated. All further references in this Agreement to "Owner" shall mean "Developer" once the Agreement has been assigned.

2.02. City regulations applicable. The Owner agrees that, subject to the terms of this Agreement, it will abide by all City regulations and ordinances applicable to land within the City, including but not limited to, the City's zoning ordinance. The City acknowledges and agrees that (i) the City is holding the original surety bond for the development work, (ii) the bond is sufficient for completion of the contemplated additional improvements, and (iii) the City shall release the existing surety bond upon the completion of the Improvements (as defined hereinbelow).

2.03. Utilities and Improvements. The Owner agrees to accept ownership and maintenance for the following utilities and improvements in the Development:

(a) Streets. The streets, including gutter and stormwater conveyance facilities, shall be private.

(b) **Drainage.** Developer shall be responsible for maintaining all detention pond and drainage facilities and ensuring that they comply at all times with city, state and county requirements.

(c) **Streetlights.** The Owner shall be responsible for the installation, electric costs, and maintenance of streetlights within the Development.

2.04 **Incomplete Improvements.** The Owner agrees to complete the utilities for the Development in accordance with the Sanitary, Storm & Detention Facility Modifications plans dated November, 2013 prepared by Jones & Carter, Inc. (the "Utility Plans"). The Utility Plans contain modifications to the water and sanitary sewer systems, and to the drainage and grading plans (the "Improvements"). Both Parties acknowledge that the Utility Plans have been reviewed and approved by the City and the Owner may commence construction. Upon completion of the Improvements, the Owner will coordinate the inspection by the City, and complete punch list items (if any). The City agrees to issue a letter of acceptance for the water and sanitary sewer system upon the completion of the Improvements.

2.05 **Homeowners' Association.** The Owner shall create or cause to be created a Homeowners' Association (HOA) for the Development. After successful completion of all improvements, utilities and facilities, the Owner may assign and transfer its obligations and responsibility for those items, including maintenance, to a properly funded HOA. To be properly funded, as determined by the Developer and the Board of Directors of the HOA, the HOA must have mechanisms in place to assess, receive and maintain sufficient funds to meet the maintenance and re-construction and other responsibilities associated with the non-City utilities, improvements and facilities, including the requirement that a restricted reserve fund be established for that purpose. The Developer shall contribute \$25,000 to establish the restricted reserve fund controlled by the HOA.

ARTICLE 3 CITY OBLIGATIONS

3.01. **Acceptance of facilities.** Upon the issuance of certificates of occupancy for approximately thirty-three percent (33%) of the residences (i.e. 31 homes) to be developed as per Developer's Master Plan, the City agrees to accept ownership and maintenance for the following utilities and improvements in the Development, which are currently in place:

- (a) Water system
- (b) Sanitary Sewer system

3.02 **Contingent Acceptance.** The City's agreement to accept ownership and maintenance for the above-named utilities and improvements is wholly conditioned on the Land being developed according to the Master Plan submitted by Developer for single family residences and is triggered by the start and completion of actual home construction as indicated by the issuance of the pertinent number of certificates of occupancy stated above. If Owner and

Developer do not develop the Land as such, the City's obligation to accept of the above-named utilities and improvements is wholly null and void.

ARTICLE 4 TERM AND DEFAULT

4.01. Term. This Agreement shall be in effect as of the date set forth on the first page hereof, and shall terminate upon the earlier of the following:

- (a) completion of the Development and issuance of certificates of occupancy for all platted lots;
- (b) abandonment of the development, which shall be defined as the project becoming "dormant" as provided by Texas Local Government Code Chapter 245 (vested rights); and
- (c) a breach that remains uncured as provided by section 4.02.

4.02. Default.

(a) A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(b) Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within 30 days of the receipt of such notice, subject, however, to the terms and provisions of **Section 5.01**, below.

(c) Upon a breach of this Agreement, the non-defaulting Party shall be entitled as its sole and exclusive remedy, to terminate this Agreement. Regardless of any other provision, neither Party shall be entitled to recover money damages for breach of this Agreement or a tort related to this Agreement.

(d) Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Section pursuant to the provisions of any other section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity.

(e) Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

(f) If Owner defaults, and fails to cure such default, resulting in the City electing to terminate the Agreement, the City's obligation to be responsible for the water and sewer system shall terminate, and the Owner shall be responsible for these systems.

4.03 Survival. Upon successful completion of the Development, the obligations of Owner and City under sections 2 and 3 to own and maintain the respective utilities, improvements and facilities, shall survive termination of this Agreement.

ARTICLE 5 MISCELLANEOUS PROVISIONS

5.01. *Force majeure*. In the event either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply resulting in an inability to provide water necessary for operation of the water and wastewater systems hereunder, and any other incapacities of any party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care.

5.02. Approvals and consents. Approvals or consents required or permitted to be given under this Agreement shall be evidenced by an ordinance, resolution or order adopted by the city council of the City or by a certificate executed by a person, firm or entity previously authorized to give such approval or consent on behalf of the Owner. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

5.03. Address and notice. Any notice to be given under this Agreement shall be given in writing, addressed to the party to be notified as set forth below, and may be given either by depositing the notice in the United States mail postage prepaid, registered or certified mail, with return receipt requested; by messenger delivery; or by telecopy. Notice deposited by mail shall be effective three days after posting. Notice given in any other manner shall be effective upon receipt by the party to be notified. For purposes of notice, the addresses of the parties shall be as follows:

If to the City, to:

City Manager
City of Jersey Village
16327 Lakeview Drive
Jersey Village, Texas 77040

With copy to:

Olson & Olson, LLP
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, TX 77019

If to the Owner, to:

WCB Land, LLC
111 E. Jericho Turnpike, 2nd floor
Mineola, NY 11501
Attn: Eshagh Malekan

With a copies to:

Weekley Homes, LLC
1111 North Post Oak Blvd.
Houston, Texas 77055
Attn: John Johnson

Weekley Homes, LLC
1111 North Post Oak Blvd.
Houston, Texas 77055
Attn: John Burchfield

and

Weekley Homes, LLC
14444 Northwest Freeway
Houston, Texas 77040
Attn: Mark Welch

The parties shall have the right from time to time to change their respective addressees by giving written notice of such change to the other party at least 15 days prior to the effective date of the change.

5.04. No additional waiver implied. The failure of either party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other party.

5.05. Reservation of rights. All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.

5.06. Parties in interest. Except as expressly stated herein, this Agreement shall be for the sole and exclusive benefit of the parties hereto, and Owner's successors and assigns, and shall not be construed to confer any rights upon any third parties.

5.07. Merger. This Agreement embodies the entire understanding between the parties and there are no representations, warranties, or agreements between the parties covering the subject matter of this Agreement.

5.08. Exhibits. The exhibits attached to this Agreement are incorporated by this reference for all purposes.

5.09. Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

5.10. Interpretations. This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

5.11. Severability. If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

5.12. Recordation; covenant running with the land; plat note. Either party may record this Agreement and/or a memorandum hereof in the Official Records of Harris County, Texas. All obligations of the Owner herein shall be covenants running with the land and shall bind all future owners of any interest in the Land. No provision of this Agreement may be amended without the advance, written consent of the City, specifically stating that such document is an amendment of this Agreement. Additionally, this Development Agreement shall be noted as a plat note on all pertinent plats and replats of the Development.

5.13. Authority within City limits. Regardless of any other provision, nothing herein shall impair or restrict any authority, powers or rights of the City within the incorporated limits of the City.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date first given above.

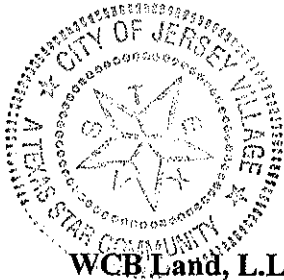
CITY OF JERSEY VILLAGE

By: [Signature]
Rod Erskine, Mayor

ATTEST:

[Signature]
Lorri Coody, City Secretary

(SEAL)



By: [Signature]
JAVAD AZIMPOOR
Its: Managing Member

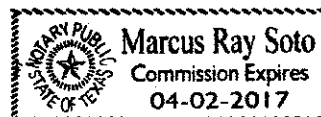
THE STATE OF TEXAS

COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared Javad Azimpoor, designated representative known to me to be the person whose name is subscribed to the Development Agreement, and is authorized to execute the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of December, A.D., 2013.

[Signature]
Notary of Public In and for
The State of Texas



AFTER RECORDING RETURN TO:

**LORRI COODY
CITY SECRETARY
CITY OF JERSEY VILLAGE, TEXAS
16327 LAKEVIEW DRIVE
JERSEY VILLAGE, TEXAS 77040**

Exhibit A

The Land

Exhibit "A"

RE-PLAT FOR THE PURPOSE
OF REVISING BLOCK NUMBERS

FINAL PLAT OF
THE ENCLAVE AT CASTLEBRIDGE

A SUBDIVISION OF 28.232 ACRES (0.12268 SQ. MI.)
OF LAND OUT OF THE CHARLES CLARKSON SURVEY,
ABSTRACT NO. 190,
CITY OF IRVING, TARRANT COUNTY, TEXAS.

134 RESIDENTIAL LOTS 1 COMMERCIAL LOT

3 BLOCKS

OTHER

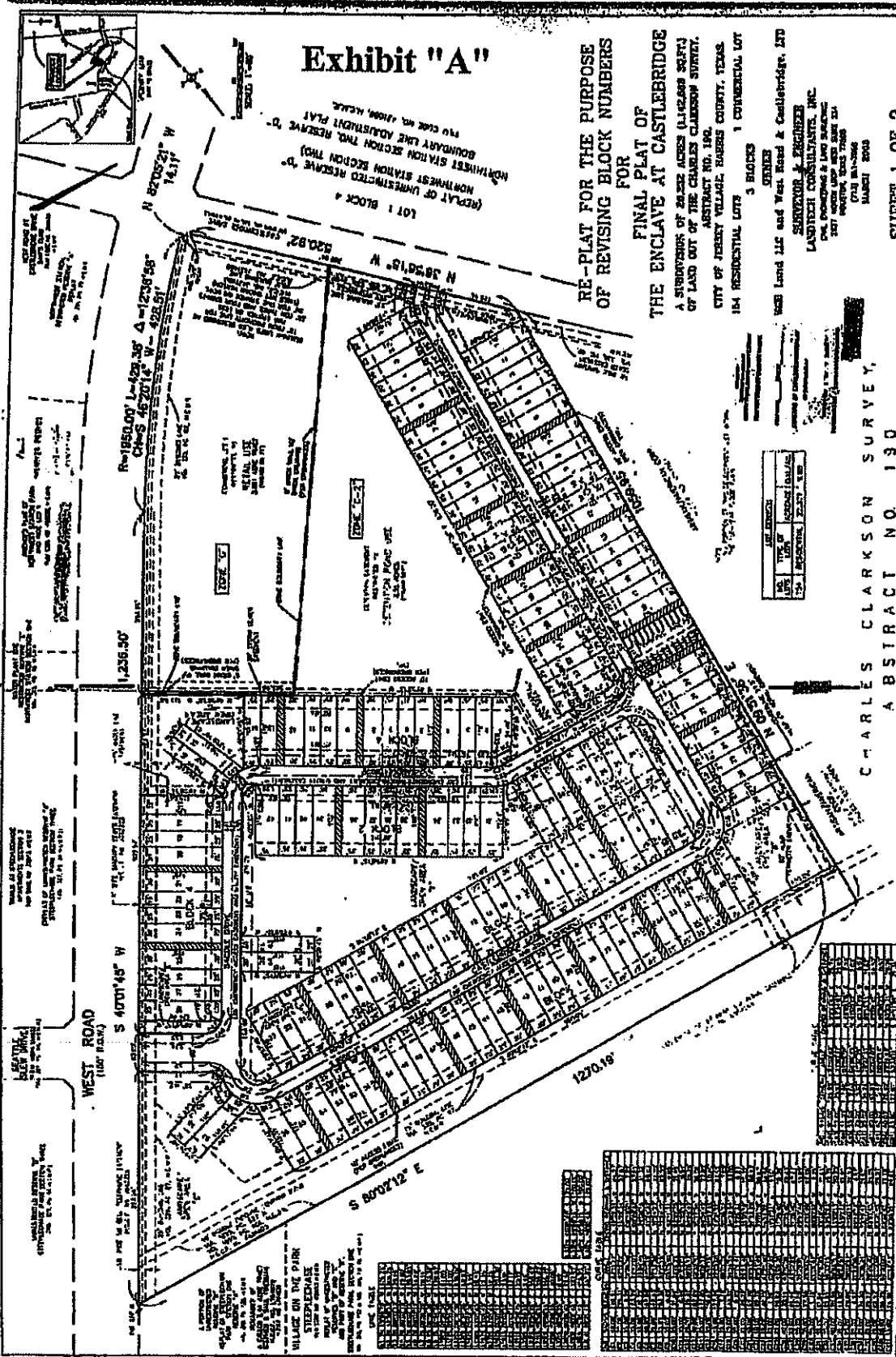
NEE Land LLC and West Bend & Castlebridge, LTD

SURVEYOR & ENGINEER
LANDTECH CONSULTANTS, INC.

204 DOWNSIDE & LAND MARKING
1307 NORTH LANE, SUITE 200
IRVING, TEXAS 75039
CITY OF IRVING
MARCH 2003

SHEET 1 OF 2

CHARLES CLARKSON SURVEY,
ABSTRACT NO. 190





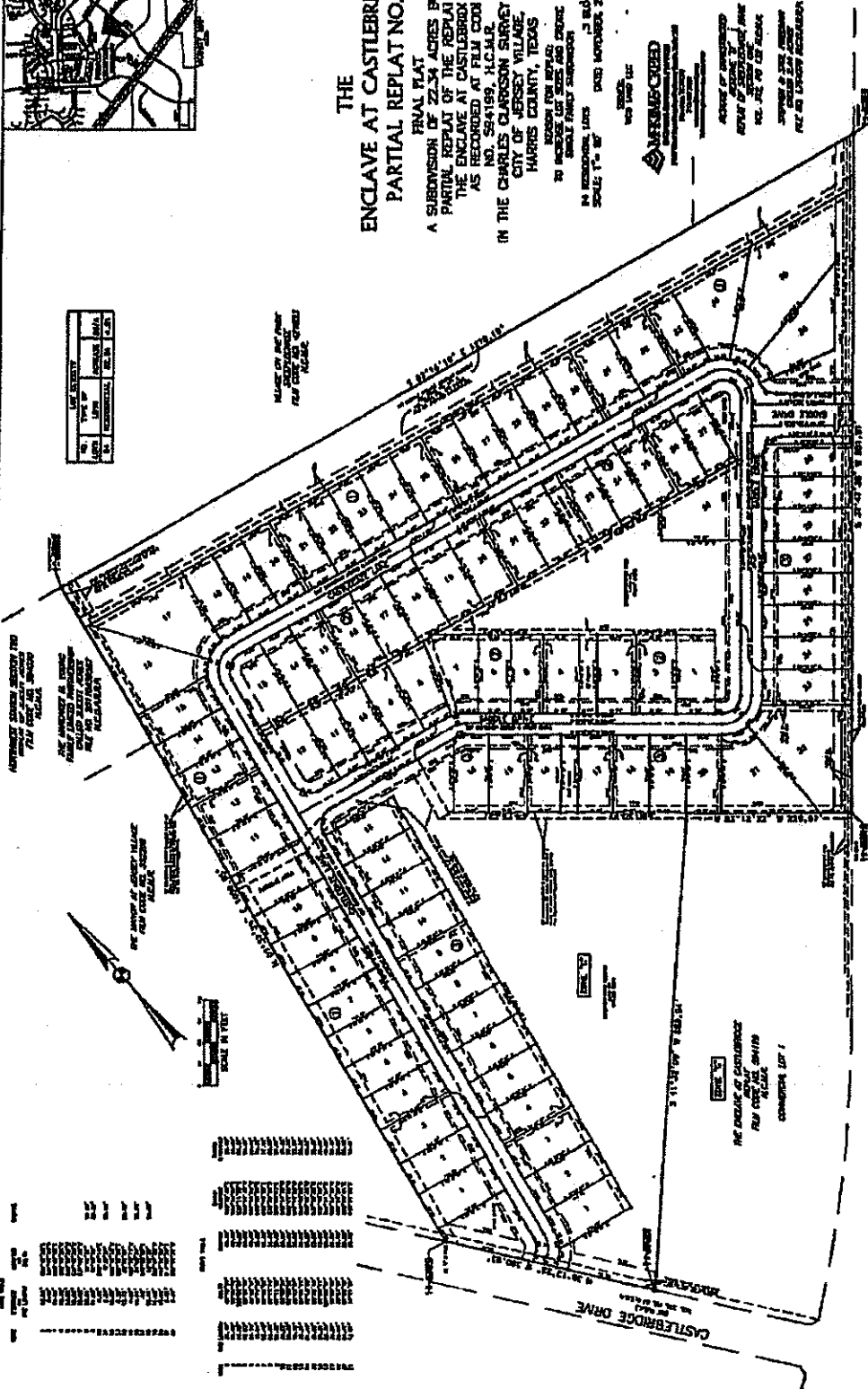
THE
ENCLAVE AT CASTLEBRIDGE
PARTIAL REPLAT NO. 1

A SUBDIVISION OF 22.34 ACRES BEING: A
PARTIAL REPLAT OF THE REPLAT
THE ENCLAVE AT CASTLEBRIDGE
AS RECORDED AT FILM COOR
NO. 554199, H.C. 142,
IN THE CHARLES CLARKSON SURVEY
CITY OF JERSEY VILLAGE,
HARRIS COUNTY, TEXAS
FOR REPLAT
TO BE MADE BY THE
SINGLE FAMILY SUBDIVISION
IN REVISION, LOTS 1-3
SCALE 1" = 80'

Exhibit "B"



REGISTERED
PROFESSIONAL LAND SURVEYOR
NO. 12345
STATE OF TEXAS
JAMES H. HARRIS & SONS, INC.
12345 GULF DRIVE
HOUSTON, TEXAS 77055
PHONE 123-4567
FAX 123-4568
E-MAIL JHH@JHHSURV.COM
WWW.JHHSURV.COM



SHEET 2 OF 2

[illegible]