



**INSTR 20030301338**  
**OR BK 06934 PG 3899**  
MARTHA O. HAYNIE, COMPTROLLER  
ORANGE COUNTY, FL  
06/03/2003 07:25:32 AM  
REC FEE 64.50

This instrument was prepared  
by and should be returned to:

Lionel E. Rubio, Esquire  
Winderweedle, Haines, Ward & Woodman  
250 S. Park Avenue, 5<sup>th</sup> Floor  
Winter Park, Florida 32789

### MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT (the "Agreement") is entered into this 27<sup>th</sup> day of May, 2003, between the CITY OF WINTER GARDEN, a Florida municipality (the "City"), M/ISCHOT TENSTEIN HOMES, INC., an Ohio corporation, (the "Developer"), and the STONE CREST MASTER ASSOCIATION, a Florida non-profit corporation (the "Master Association").

#### WITNESSETH:

**WHEREAS**, Developer is the owner or contract purchaser of the fee simple title to that certain real property consisting of approximately two hundred eighty-four (284) acres, generally located south of Roper Road and east of County Road 535 in the vicinity of the Western Beltway, the legal description of which is more particularly described as set forth on Exhibit "A", attached hereto and incorporated herein by this reference. The foregoing real property is hereinafter referred to as the "Subject Property"; and

**WHEREAS**, Developer is in the process of developing the Subject Property as a residential project known as Stone Crest (the "Project"); and

**WHEREAS**, the development of the Project will consist of, inter alia, a single-family residential community consisting of eight Villages and a maximum of 635 residential units, supporting structures and facilities and other improvements to the Subject Property; and

**WHEREAS**, the Master Association is the master homeowners association for the Project; and

**WHEREAS**, the Developer desires to obtain for itself, its heirs, successors and assigns, a non-exclusive right to provide, install and maintain certain landscaping, irrigation, pavement, signage and other improvements (hereinafter collectively referred to as the "Landscaping and Improvements") along and within the rights-of-way of New Stone Crest Boulevard, and those portions of Daniels Road, existing East-West Daniels Road and Roper Road which are within or adjacent to the Project, which are more particularly identified on Exhibit "B", attached hereto and incorporated herein by this reference (hereafter collectively referred to as the "Roads"); and

**WHEREAS**, the Master Association desires to assume and accept all of the Developer's responsibilities, commitments, covenants, and maintenance obligations as provided for herein; and

**WHEREAS**, the Landscaping and Improvements to be provided, installed and maintained by the Developer shall be as set forth in this Agreement and that certain Landscaping Plan prepared by August G. Schwartz, dated August 26, 2002, and approved by the City (the "Landscape Plan"), a copy of which is retained by the City in the offices of the Public Works Director and incorporated herein by this reference; and

**WHEREAS**, said Landscaping and Improvements require substantially more extensive maintenance than is typical for the City within and along the public rights-of-way; and

**WHEREAS**, Developer and the Master Association acknowledge that the primary beneficiary of said Landscaping and Improvements will be the Developer in marketing the Project and the Master Association and the residents of the Project in increased property values; and

**WHEREAS**, in light of the above, the Developer and the Master Association are willing to provide, install and maintain the Landscaping and Improvements pursuant to this Agreement; and

**WHEREAS**, the City requires that the Developer and the Master Association undertake certain commitments and covenants to assure the perpetual and continuous maintenance of the Landscaping and Improvements within or along the Roads; and

**NOW, THEREFORE**, for and in consideration of the above premises, the promises and provisions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Developer, the Master Association, and the City agree as set forth herein.

1. **Recitals.** The above premises are true and correct and are incorporated herein as material provisions of this Agreement.
2. **Master Homeowners Association.** On or prior to the issuance of the three hundred fifteenth (315<sup>th</sup>) Certificate of Occupancy, the Master Association shall cause to be recorded in the Public records of Orange County, Florida, an Amendment to the Master Declaration of Covenants, Rules and Restrictions (the "Amendment to the Declaration") which shall apply to all villages within the Project. Said Amendment to the Declaration shall be subject to approval by the City and shall provide, inter alia, for the assumption and acceptance by the Master Association of all of the Developer's responsibilities, commitments, covenants and maintenance obligations as provided in this Agreement, or amendment thereto. Until such time as the Master Association has assumed and accepted all of the Developer's responsibilities, commitments, covenants, and maintenance

obligations as provided in this Agreement, the Developer shall remain responsible for the maintenance of said Landscaping and Improvements. Notwithstanding the foregoing, upon the issuance of the three hundred fifteenth (315<sup>th</sup>) Certificate of Occupancy by the City, regardless of whether or not the Amendment to the Declaration has been recorded, the Master Association shall be deemed to have assumed and accepted all the responsibilities, commitments, covenants, and maintenance obligations of the Developer as provided in this Agreement, however, until such time as the Amendment to the Declaration is recorded, as provided for herein, Developer shall continue to remain jointly and severally liable (with the Master Association) for the costs and responsible for the maintenance of the Landscaping and Improvements.

3. **Impact Fees.** The Developer shall not receive any compensation or impact fee credits for landscaping or improvements described herein.
4. **Effect of Acceptance and Assumption By The Master Association.** At such time as the Master Association has assumed and accepted all of the Developer's responsibilities, commitments, covenants, and maintenance obligations as evidenced by the recording of the Amendment to Declaration, Developer shall be released from its obligations and responsibilities as provided for in this Agreement, except that Developer shall remain liable for any repairs, replacement, maintenance, removal, relocation or other servicing of the Landscaping and Improvements by the City, as provided in Paragraphs 5 and 8, arising prior to said assumption and acceptance by the Master Association and Developer shall continue to indemnify and hold the City harmless as provided in Paragraph 9. Further, at such time as the Master Association has assumed and accepted all of the Developer's responsibilities, commitments, covenants, and maintenance obligations as evidenced by the recording of the Amendment to Declaration, all the provisions of this Agreement applicable to Developer shall be applicable to the Master Association. However, it is expressly agreed to by the parties that this Paragraph 4 shall not supercede or relieve the Developer from the provisions in this Agreement pertaining to the joint and several liability of the Developer for the costs and responsibility for the maintenance of the Landscaping and Improvements as provided in Paragraph 2 or the Developer's obligations to design, permit, construct, provide and install landscaping and improvements which may arise after the issuance of the 315<sup>th</sup> Certificate of Occupancy or the Master Associations' assumption of the Developer's responsibilities, commitments, covenants and maintenance obligations, as provided in Paragraph 7.
5. **Disclaimer of City Responsibility.** City shall have the right, but not the obligation, to repair, replace, maintain or otherwise service the Landscaping and Improvements or cause to be repaired, replaced, maintained or otherwise have serviced the Landscaping and Improvements. Upon receipt of written notice by City to Developer, Developer shall have thirty (30) days to repair, replace, maintain or otherwise service the Landscaping and Improvements as requested by

City. In the event the City repairs, replaces, maintains or otherwise services the Landscaping and Improvements or causes such to be done, Developer shall be responsible for payment of the cost of repairs, replacement, maintenance and care provided by the City or its agents plus administrative costs and attorney's fees. This right and the City's exercise of said right shall not impose any obligation on the City to maintain, repair, replace or otherwise care for the Landscaping and Improvements.

6. **Water Conservation.** Developer shall encourage water conservation in the design and development of the Landscaping and Improvements, including but not limited to, water conserving techniques, water efficient landscaping, proper soil preparation, irrigation systems and equipment and the use of reclaimed water, upon its availability.
7. **Landscaping.**
  - A. Unless otherwise provided for herein, the Developer shall comply with the City's regulations concerning planting within the right-of-way, landscaping and trees including, but not limited to, Chapter 62 and Chapter 114 of the City Code, as such may be amended from time to time, and any future ordinance pertaining to landscaping.
  - B. Developer agrees to the installation and maintenance, in an attractive manner, of landscaping as depicted in the approved Landscape Plan.
  - C. All trees planted within the right-of-way must comply with the following conditions:
    1. All trees must be planted in the center of the pervious area of the right-of-way, at least seven feet from any utility box and at least seven feet from the side lot lines of the adjacent lots.
    2. No tree or vegetation may be planted or allowed to grow in such manner as to interfere with the "triangle of visibility" as defined in FDOT Road Design Index #546.
    3. A permit must be issued by the City's Public Work Director before any tree is planted within the right-of-way.
    4. All trees must be planted a minimum of four (4) feet behind the back of the curb.
    5. The trees must not conflict with existing or proposed utilities.
    6. The trees must not pose a safety hazard.

- D. Variations from the Landscape Plan must be reviewed and approved by the City.
  - E. All irrigation shall be compatible for future connection to the City's reclaimed water system.
  - F. Prior to the issuance of the respective certificate of completion for Villages 3, 4, 5, 6, and 7, the Developer, at the Developer's sole cost and expense, shall design, permit, construct, provide and install the Landscaping and Improvements within, along and for the Roads within and adjacent to the respective Village for which a certificate of completion is sought. Thereafter, Developer shall continue to maintain such Landscaping and Improvements as provided in this Agreement.
  - G. Developer, or its agents, shall not, while installing or maintaining Landscaping and Improvements, damage or disturb any portion of the Roads without prior written approval by City and City's prior written approval of a plan to restore the Roads by the Developer, or its agents. The Developer, or its agents, shall take such safety measures, including the placing and display of caution signs and signals, when working in the Roads, and shall also prevent any obstructions which are or may become dangerous to the traveling public. In the event that the Developer, or its agents, damages any portion of the Roads while maintaining or installing the Landscaping, the Developer, at its sole expense, shall restore the Roads to the condition it was in prior to the damage.
  - H. Landscaping and Improvements shall be maintained in such a manner as will not interfere with the use of the Roads by the public nor create a safety hazard on said Roads.
  - I. Nothing herein shall give or grant the Developer any ownership rights to any portion of the Roads.
8. **Removal/Relocation.** If, in the sole discretion of the City, the Landscaping and Improvements, or maintenance thereof: (a) interferes with any construction, widening, reconstruction, alteration or improvement which the City desires to perform on, around, over, through or under the Roads; or (b) said Landscaping and Improvements, or maintenance thereof, unreasonably interfere in any way with the convenient, safe, or continuous use of the Roads; or (c) the removal of any or all Landscaping and Improvements are necessitated to serve the health, safety or general welfare of the citizens of Winter Garden, the Developer, upon receipt of written notice from the City, shall remove or relocate the Landscaping and Improvements as requested by the City within thirty (30) days of receipt of said notice. Any such relocation or removal of any or all Landscaping and Improvements shall be at the sole expense of the Developer and the Developer shall restore the Roads to the condition it was in save for the removal of the

Landscaping and Improvements. The failure of the Developer or its agents to remove or relocate such Landscaping and Improvements as may be identified after the required notice shall absolve the City from any liability for damages that may arise out of a result of or in connection with the City's removal of said Landscaping and Improvements and Developer shall remain liable for costs of such removal. Notwithstanding anything to the contrary, no Landscaping and Improvements may be removed without the written consent of the City.

9. **Indemnification.** To the fullest extent permitted by law, Developer, will at all times, assume all risks, defend, indemnify and hold harmless the City from and against any and all claims, disputes, lawsuits, injuries, damages, losses, costs, expenses, attorney's and expert's fees and costs, interest and all adverse matters in any way arising out of, relating to or resulting from, or on account of the performance or omission of Developer's operations, exercise or attempted exercise by said Developer of the rights, privileges and obligations under this Agreement or Developer's default under this Agreement or for any damages to the Landscaping and Improvements which may result from the use of the Roads by the City or other governmental body or authority due to maintenance, construction, widening, installation, or other proper use within the Roads or otherwise associated with the Landscaping and Improvements.
10. **Non-Approval.** Unless expressly authorized or granted herein, nothing in this Agreement shall constitute or be deemed to constitute any approval by the City of any rezoning, Comprehensive Plan amendment, variance, special exception, site plan, preliminary subdivision plan, final subdivision plan, or any other land use or development approval. Nor shall this Agreement be deemed to reduce, eliminate, derogate from or otherwise adversely affect or modify the approved Landscape Plans.
11. **Authority.** Each of the parties hereto represent and warrant to the other that it has all necessary power and authority to enter into and consummate the terms and conditions of this Agreement, that all acts, approvals, procedures, and similar matters required in order to authorize this Agreement have been taken, obtained, or followed, as the case may be, and that, upon the execution of this Agreement by all parties, this Agreement shall be valid and binding upon the parties hereto and their successors in interest and assigns.

Furthermore, Developer represents and warrants to City that Developer is the owner or contract purchaser of the Subject Property, in fee simple. Developer shall obtain all necessary joinder and consents from parties with an interest

12. **Breach.** In the event any of the parties violate any material provision of this Agreement, the violating party shall be given thirty (30) days to cure such violation upon receipt of written notice of the violation from a non-violating party. In the event such violation is not cured, the City, Developer or the Master Association, as the case may be, shall have the right to pursue any and all legal

and equitable remedies available provided by law, including the right to seek specific performance of this Agreement.

13. **Notice.** All notices required or permitted to be given under this Development Agreement must be in writing and must be delivered to the City, the Master Association or the Developer at its address set forth below (or such other address as may hereafter be designated by such party in writing). The parties' addresses for the delivery of all such notices are as follows:

City: Hollis Holden, City Manager  
City of Winter Garden  
251 West Plant Street  
Winter Garden, FL 34787

With a copy to: City Attorney  
City of Winter Garden  
251 West Plant Street  
Winter Garden, FL 34787

Developer: Mr. Dana A. Bennett, Orlando Division President  
M/I Schottenstein Homes, Inc.  
237 S. Westmonte Drive, Suite 111  
Altamonte Springs, Florida 32714

With copy to: Mr. Tom Mason, Esq.  
M/I Schottenstein Homes, Inc.  
3 Easton Oval, Suite 500  
Columbus, Ohio 43219

Master Association: Stone Crest Master Association  
c/o EPM Services, Inc.  
165 West State Road 434  
Winter Springs, Florida 32708

Notices shall be either: (1) personally delivered (including delivery by Federal Express or other courier service) to the addresses set forth above, in which case they shall be deemed delivered on the date of delivery; (2) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or intentionally delayed by the addressee, in which event they shall be deemed delivered on the date of deposit in the U.S. Mail; or (3) transmitted via telecopier using a telecopier number provided above, if any (or such other number as receiving party may have designated in writing), in which case the delivery shall be deemed to have occurred on the day of the transmission, provided that the day of transmission is a normal business day or the first normal business day after the transmission. In the event dispute arises concerning whether a telecopier transmission was made or on

what date, said telecopier transmission must be verified by a printout generated by the transmitting machine. Notices or communications to or from parties' attorneys will be deemed to be to or from that party.

14. **Amendment.** This Agreement may be amended, modified or cancelled by mutual consent of the parties hereto as represented by a written document executed by the City, the Master Association and the Developer.
15. **Severability.** In the event that any word, clause, phrase, sentence, paragraph or provision of this Agreement is found by a court of competent jurisdiction to be void, illegal, invalid or unenforceable, the deletion of which from this Agreement would not adversely affect the parties' enjoyment of any other material benefits intended by this Agreement and would not substantially increase the burden of either party under this Agreement, said word, clause, phrase, sentence, paragraph or provision will be severed from this Agreement and the remainder of this Agreement will continue to be binding, enforceable, and in full force and effect. On the other hand, if the deletion of such word, clause, phrase, sentence, paragraph or provision will adversely affect the parties' enjoyment of any material benefit intended under this Agreement, or substantially increase the burden of either party, then this Agreement shall be equitably modified by said court, to the maximum extent practicable, in order to fulfill the intent and purpose of this Agreement.
16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Exclusive venue in any action to construe or enforce the provisions of this Agreement shall be in the circuit court of and for Orange County, Florida.
17. **Effective Date.** The effective date of this Agreement, for purposes of the performance of obligations by the parties under this Agreement, shall be the date the last of the parties hereto executes the Agreement.
18. **This Paragraph Intentionally Left Blank.**
19. **Binding Effect and Successors.** The obligations under this Agreement shall benefit, burden, and bind the successors, heirs and assigns of all parties to this Agreement.
20. **Reimbursement.** On or before ten (10) days after the date of invoicing, Developer shall reimburse the City for the City's engineer and attorney fees for negotiations, inspections, conferences relating to or drafting of this Agreement for the City.
21. **Time is of the Essence.** Time is hereby declared to be of the essence in the performance of the duties and obligations of the respective parties to this Agreement.



22. **Captions.** The captions or paragraph headings of this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation, or meaning of this Agreement.
23. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same Agreement.
24. **This Paragraph Intentionally Left Blank.**
25. **Independent Parties.** City, the Master Association and Developer are not partners and this Agreement is not a joint venture and nothing in this Agreement shall be construed to authorize any of the parties hereto to represent or bind any other party to matters not expressly authorized or provided in this Agreement.
26. **Informed Execution.** This Agreement is entered into voluntarily by the Developer and the Master Association without duress and after full review, evaluation and consideration by the Developer and the Master Association. Developer and the Master Association are represented by counsel, or alternatively, have been afforded an opportunity to retain counsel for review of this Agreement.
27. **Recording.** Within fourteen (14) days after the City enters into this Agreement, the City shall record this Agreement with the cost thereof to be borne by the Developer.
28. **Interpretation.** None of the parties shall be considered the drafter of this Agreement for purposes of interpreting this Agreement, it being recognized that all parties have contributed substantially and materially to the preparation of this Agreement.
29. **Attorney's Fees.** In any lawsuit between the parties to this Agreement in connection with or arising from this Agreement, the non-prevailing party will pay the costs and attorneys fees, including the costs and attorneys' fees incurred before trial, in all appellate proceedings and in all post-judgment proceedings incurred by the prevailing party against the other party.
30. **Integration.** This Agreement embodies the entire understanding of the parties with respect to the matters specifically enumerated herein, and all prior negotiations, representations, warranties and agreements made by or between the parties are merged herein. The making, execution, delivery of this Agreement by all parties has been induced by no representations, statements, warranties or agreements that are not expressed herein. There are no further and other agreements or understandings, written or oral, in effect or among the parties related to the subject matter hereof.

ADOPTED by the City of Winter Garden this 27<sup>th</sup> day of May, 2003.

IN WITNESS WHEREOF, the Developer, the Master Association and the City have executed this Agreement as of the day and year approved and accepted by the City.

**"DEVELOPER"**

**M/I SCHOTTENSTEIN HOMES, INC.**  
an Ohio corporation

By: [Signature]  
Print: Dona A. Barrett  
Its: Division President

**WITNESSES:**

[Signature]  
Witness Signature  
Print: Colleen Macuire

MONICA P. WERLING  
Witness Signature  
Print: [Signature]

**"MASTER ASSOCIATION"**

**STONE CREST MASTER ASSOCIATION**  
a Florida non-profit corporation

By: [Signature]  
Print: Eric K. Wills  
Its: Vice President

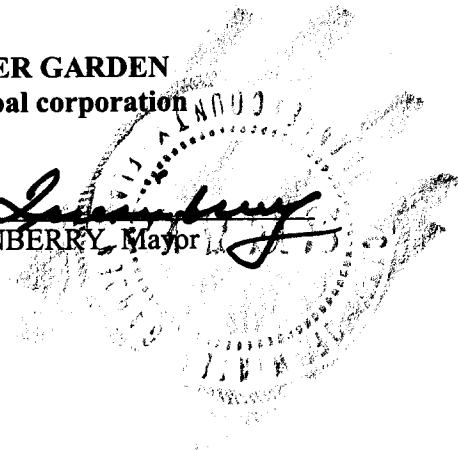
**WITNESSES:**

[Signature]  
Witness Signature  
Print: Patricia Harris  
[Signature]  
Witness Signature  
Print: Colleen Macuire

**CITY OF WINTER GARDEN**  
a Florida municipal corporation

By: [Signature]  
JACK QUESINBERRY, Mayor

K Montoya  
Witness Signature  
Print: K Montoya  
[Signature]  
Witness Signature  
Print: ANGELA J. GRIMMGE



Nancy Williams  
Witness Signature  
Print: Nancy Williams

By: Hollis Holden  
HOLLIS HOLDEN, City Manager

Peggy Trions  
Witness Signature  
Print: Peggy Trions

STATE OF Florida  
COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 8 day of May, 2003, by Dan Bennett as Dir. Pres. of M/I SCHOTTENSTEIN HOMES, INC., on behalf of the corporation. He is personally known to me ~~or has produced~~ as identification and did/did not take an oath.

Carrie Roberts  
NOTARY PUBLIC (Seal)  
State of Florida at Large  
My Commission Expires:



Carrie Roberts  
My Commission DD123978  
Expires August 18, 2003

STATE OF Florida  
COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 8 day of May, 2003, by Eric Wills as VP. of STONE CREST MASTER ASSOCIATION, a Florida non-profit corporation, on behalf of the corporation. He is personally known to me ~~or has produced~~ as identification and did/did not take an oath.

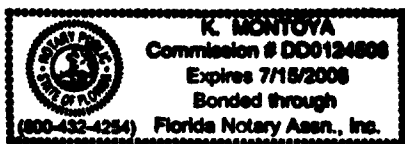
Carrie Roberts  
NOTARY PUBLIC (Seal)  
State of Florida at Large  
My Commission Expires:



Carrie Roberts  
My Commission DD123978  
Expires August 18, 2003

STATE OF FLORIDA  
COUNTY OF ORANGE

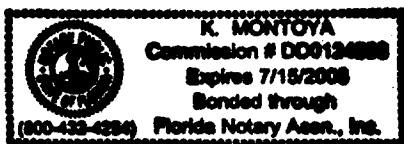
The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of May, 2003, by JACK QUESINBERRY, as Mayor of the CITY OF WINTER GARDEN, on behalf of the City. He is personally known to me ~~or has produced~~ as identification and did/did not take an oath.



K. Montoya  
NOTARY PUBLIC (Seal)  
State of Florida at Large  
My Commission Expires:

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of May, 2003, by HOLLIS HOLDEN, as City Manager of the CITY OF WINTER GARDEN, on behalf of the City. He is personally known to me ~~or has produced~~ as identification and did/did not take an oath.



K. Montoya  
NOTARY PUBLIC (Seal)  
State of Florida at Large  
My Commission Expires:

EXHIBIT "A"  
Legal Description

N 1/2 of SE 1/4 of NE 1/4 and the W 1/2 of the E 3/4 of SW 1/4 of the NE 1/4

NW 1/4 of the NE 1/4 of the SE 1/4

S 1/2 of NW 1/4 of SE 1/4 and the S 1/2 of N 1/2 of NW 1/4 of the SE 1/4

SW 1/4 of NE 1/4 of SE 1/4 and the S 1/2 of the following description: NE 1/4 of SW 1/4 less the South 537 ft. thereof

The South 537 ft. of the NE 1/4 of the SW 1/4

S 1/2 of the E 3/4 of the E 1/2 of the SW 1/4 of NE 1/4 and the S 1/2 of the SE 1/4 of NE 1/4  
(Less the E 500 ft. thereof)

N 1/2 of N 1/2 of NW 1/4 of SE 1/4

N 1/2 of NE 1/4 of SW 1/4, less the South 537 ft. thereof

NW 1/4 of NE 1/4

N 1/2 of the E 3/4 of E 1/2 of SW 1/4 of NE 1/4 and the East 500 ft. of S 1/2 of SE 1/4 of NE 1/4

S 1/2 of SE 1/4 of NW 1/4 and the E 1/2 of NE 1/4 of SE 1/4 of NW 1/4

N 3/4 of NW 1/4 of SW 1/4 East of State Rd. 535

E 1/2 of SE 1/4 of NE 1/4 of NW 1/4 and the W 1/4 of SW 1/4 of NE 1/4

All of the above being in Sec. 35, Twp. 22 South, Range 27 East, Orange County, Florida.

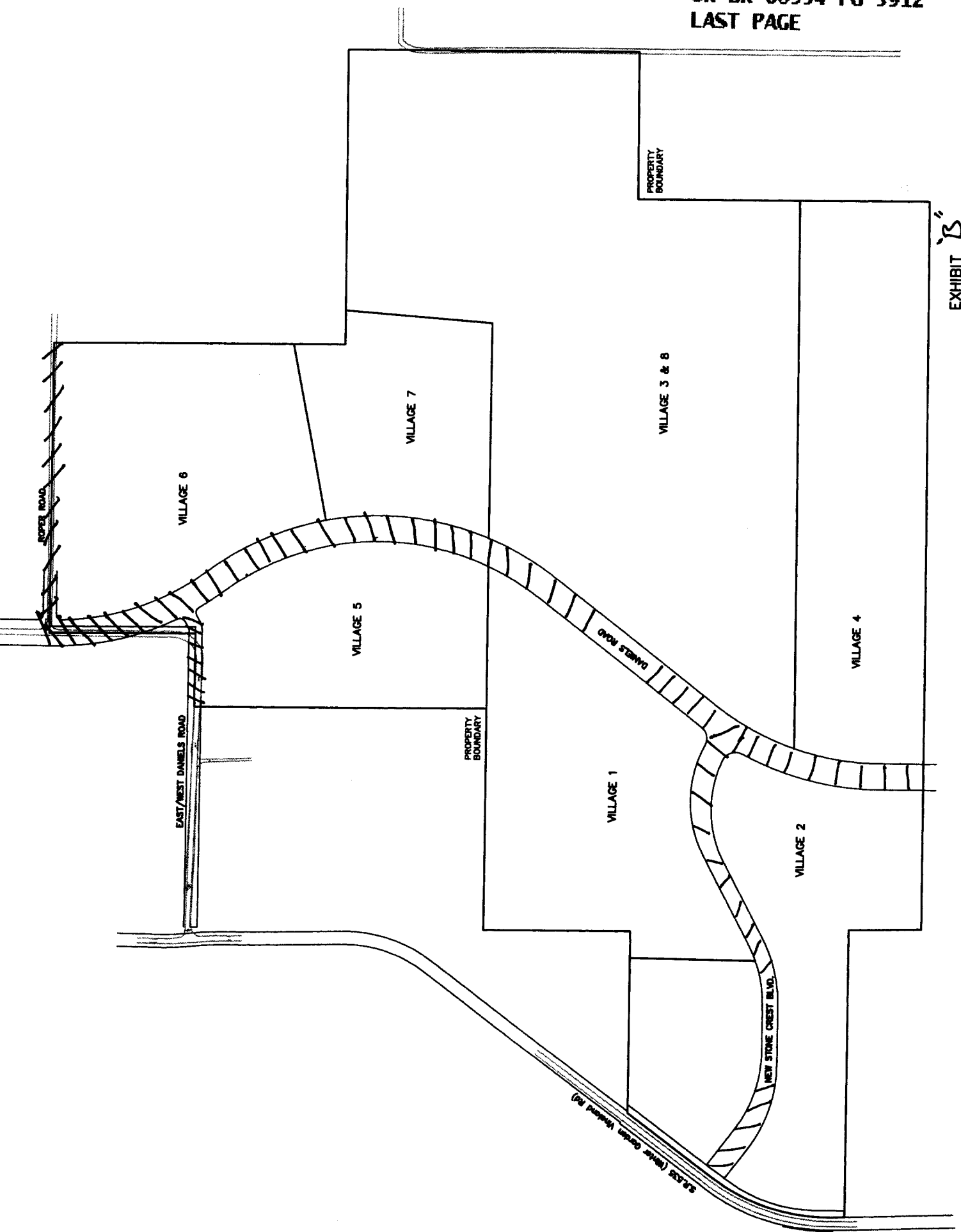


EXHIBIT B  
ROADS WITHIN AND ADJACENT TO PROPERTY