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After Recording Return to:
Town Manager
Town of Prosper
P. O. Box 307
Prosper, Texas 75078

ESCROW/REIMBURSEMENT/FACILITIES MAINTENANCE AGREEMENT
(Whitley Place)

THIS ESCROW/REIMBURSEMENT/FACILITIES MAINTENANCE AGREEMENT ("Agreement") is entered into by and between the **TOWN OF PROSPER, TEXAS**, a municipal corporation ("Town"), and **WHITLEY PLACE HOMEOWNERS' ASSOCIATION, INC.**, a Texas nonprofit corporation ("HOA") on the terms and conditions hereinafter set forth.

WHEREAS, Town and Developer of that certain property comprising approximately 320 acres zoned Planned Development pursuant to Ordinance No. 06-127 adopted on November 28, 2006 known as Whitley Place ("Development") entered into that certain Developer's Agreement, dated March 25, 2008 filed for record under Clerk's File No. 20080410000431270, Collin County Land Records ("Park Development Agreement") whereby Developer, among other things dedicated certain tracts of land, and/or easements thereon, to Town and HOA (hereinafter defined as "Property"); and

WHEREAS, HOA and Town agree that use of the Property benefits residents of the Whitley Place Development, specifically, and residents of the Town, as a whole; and

WHEREAS, Town maintains, whether through public or private funds, park land located in Town; and

WHEREAS, HOA has requested that Town maintain the Property at a level that is above and beyond the level at which Town normally and/or routinely maintains park land in Town; and

WHEREAS, in consideration of HOA agreeing to share in the maintenance costs of the Property as set forth herein, Town agrees to maintain the Property as set forth below.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Town and HOA agree as follows:

1. **Land Subject to Agreement.** The tracts of land that are the subject of this Agreement are situated in the Larkin McCarty Survey, Abstract No. 600, in the Town of Prosper, Collin County, Texas, and more particularly described as:

- (a) 2.5± acres of land ("Area A"); and
- (b) a hike and bike trail easement containing 2.0± acres of land ("Area B"); and
- (c) 10.3± acres of land ("Area C"); and
- (d) 12.0± acres of land ("Area E"); and

- (e) unless and until fee simple title is conveyed to Town and Town has assumed all maintenance obligations thereof, 7.0± acres of land ("Area F"); and
- (f) 3.0± acres of land ("Area G-1").

Areas A, B, C, E, F and G-1 are more particularly described in and/or depicted on Exhibit "A", attached hereto and incorporated herein for all purposes (collectively referred to herein as the "Property"). The word "Property" as used herein shall refer to the land and any and all improvements located thereon. The parties represent that ownership of each Area shall be as set forth in the Park Development Agreement.

2. **Term of Agreement.** The term of this Agreement will commence on the 25th day of March 2008 ("Effective Date") and shall continue to remain in effect unless and until earlier terminated by written Agreement of the parties.

3. **Maintenance of Property.** (a) **Maintenance Obligations.** Maintenance of the Property shall be in accordance the specifications and schedule attached hereto as Exhibit "B" and incorporated herein for all purposes ("Maintenance Obligations").

(b) **Town Maintenance Obligations.** Subject to Paragraph 3(c), Town agrees to maintain the Property in accordance with the Maintenance Obligations, utilizing Town employees if jointly agreed to by the HOA and the Town, and/or third party contractors. In the event Town determines that it is in the best interest of Town and its citizens to hire third party contractors to perform all or a portion of the Maintenance Obligations, Town shall comply with any and all procurement laws.

(c) **HOA Maintenance Obligations/Escrow Funds.** (1) HOA shall be responsible for any and all costs associated with the Maintenance Obligations until seventy percent (70%) of the lots, as determined by the Whitley Place Zoning Exhibit, dated November 2006 a copy of which is attached hereto as Exhibit "C" and incorporated herein for all purposes, located within the Whitley Place Development in its entirety have received a Certificate of Occupancy ("CO") from Town ("Event"). After the Event, the HOA shall be responsible for 50% of the costs associated with the Maintenance Obligations. Should Developer, its successors and/or assigns as authorized herein, subsequent to the date of this Agreement, sale a portion of the Development to a third party, HOA and Town shall enter into an amendment to this Agreement, the form of which shall be reasonably agreed upon, so that the Maintenance Obligations reflect the intent of the parties regarding the Event.

(2) The Town will be responsible for all maintenance obligation costs for "Area F" once the Event has occurred or upon Town's acceptance of conveyance prior to the Event.

(3) HOA shall, within thirty (30) days of receiving notice from Town, pay into an escrow account, at the location solely determined by Town, funds equal to twenty-five percent (25%) of the estimated total annual cost for Town's performance of

the Maintenance Obligations, said amount to be reasonably agreed upon by the parties hereto ("Escrow Funds"). In lieu of the first annual deposit of the Escrow Funds, HOA shall provide the Maintenance Obligations at no cost to Town and in accordance with all independent contractor requirements promulgated by Town. In March 2009, the Town will begin performance of the Maintenance Obligations at which time the Escrow Funds will be due from the HOA. At no time shall the Escrow Funds exceed the estimated total cost for the Maintenance Obligations for the subject year as determined by the parties and as provided herein. The Escrow Funds will be available to Town to pay for the costs of performing the Maintenance Obligations each year this Agreement is in effect if HOA fails to perform any obligation set forth herein after receiving thirty (30) days written notice from Town at which time Town shall, in its sole discretion, be entitled to use, at any time, all or a portion of the Escrow Funds in connection with its performance of the Maintenance Obligations. In addition, if any amount of the Escrow Funds remains in the account after the termination of this Agreement and payment of all financial obligations set forth herein, as reasonably determined by Town, ("Remaining Escrow Funds") HOA shall be entitled to, as its sole property, the Remaining Escrow Funds. Interest in the fund will accrue and any amount in excess of the required twenty-five percent (25%) of the estimated total annual cost for Town's performance of the Maintenance Obligations may be credited to the HOA's portion of reimbursement or refunded to the HOA, such decision to be made by the HOA. Notwithstanding anything to the contrary herein, Town and HOA agree that Town shall, under no circumstance, be responsible for any part or portion of the costs associated, directly or indirectly, with the Maintenance Obligations until the occurrence of the Event.

(4) On or before the fifth (5th) day of each month, HOA shall tender to Town one-twelfth (1/12th) of the amount of the agreed upon annual cost of performing the Maintenance Obligations; provided, however, HOA shall, within thirty (30) days of receipt of Town's invoice, tender to Town those amounts incurred by Town hereunder that were not included in the initially agreed upon annual cost of performing the Maintenance Obligations but is included in the scope of work itemized in **Exhibit "B"**.

(5) Notwithstanding anything to the contrary herein, Town and HOA agree that Town shall, under no circumstance, be responsible for any part or portion of the costs associated, directly or indirectly, with the Maintenance Obligations until the occurrence of the Event.

4. **Default**. In the event HOA fails to comply with any of the provisions of this Agreement, Town shall have the following remedies in addition to Town's other rights and remedies, at law or in equity:

- a. to refuse to perform the Maintenance Obligations; and/or
- b. to seek specific performance of this Agreement.

In the event of Town's default under this Agreement, HOA will be entitled to seek specific performance of this Agreement as its sole and exclusive remedy.

5. **Continuity.** This Agreement shall be a covenant running with the land and shall be binding upon HOA, its officers, directors, successors, assigns (as authorized herein) and/or grantees. In addition, the parties shall cause this Agreement to be filed in the Land Records of Collin County.

6. **Miscellaneous.**

(a) **Notice.** Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Town, addressed to it at:

Town of Prosper
ATTN: Town Manager
121 West Broadway
P. O. Box 307
Prosper, Texas 75078
Telephone: (972) 346-2640
Facsimile: (972) 346-2111

If to HOA, addressed to it at:

Whitley Place Homeowners' Association
ATTN: Dale Clark, President
16250 Dallas N. Parkway
Dallas, Texas 75248
Telephone: (972) 931-8971 ext. 6
Facsimile: (972) 931-8975

(b) **Assignment.** This Agreement is not assignable without the prior written consent of Town.

(c) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

(d) **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

(e) **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

(f) **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(h) **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(k) **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(l) **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

(m) **Sovereign Immunity.** The parties agree that Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(n) **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to

create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(o) **Attorneys' Fees.** In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

(p) **Incorporation of Recitals.** The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of Town and the HOA and/or its authorized representatives.

(q) **Force Majeure.** Notwithstanding anything herein to the contrary, no party shall be liable for the failure to perform its duties described herein if such failure is caused by a catastrophe, riot, war, governmental order or regulation, fire, accident, Act of God, or other similar or different contingency beyond the reasonable control of the subject party(ies).

(r) **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

(s) **HOA's Warranties/Representations.** All warranties, representations and covenants made by HOA in this Agreement or in any certificate or other instrument delivered by HOA to Town under this Agreement shall be considered to have been relied upon by Town and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by Town or on Town's behalf.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

TOWN:

TOWN OF PROSPER, TEXAS

By: _____

Mike Land, Town Manager

Date: _____

3/27/08

HOA:

WHITLEY PLACE
HOMEOWNERS' ASSOCIATION, INC.,
a Texas nonprofit corporation

By: _____

Dale Clark, President

Date: _____

3-27-08

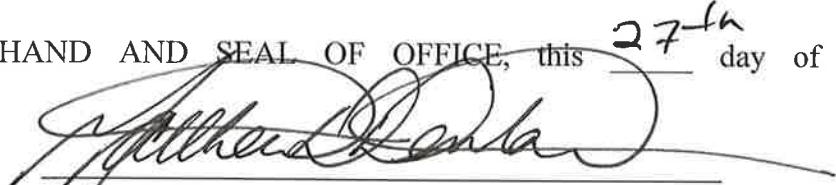
STATE OF TEXAS

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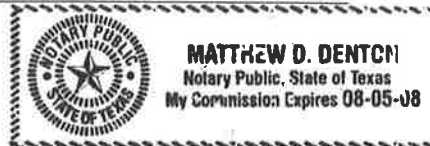
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this day personally appeared Mike Land known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **TOWN OF PROSPER, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of March, 2008.


Notary Public in and for the State of Texas

My Commission Expires:



STATE OF TEXAS

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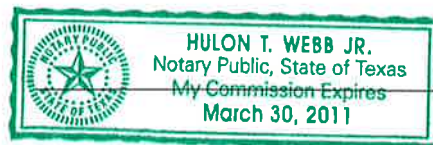
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this day personally appeared Dale Clark, President of **WHITLEY PLACE HOMEOWNERS' ASSOCIATION, INC.**, a Texas nonprofit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of March, 2008.


Notary Public in and for the State of Texas

My Commission Expires:



*LEGAL DESCRIPTION AND/OR DEPICTION OF
THE PROPERTY (AREAS A, B, C, E, F AND G-1)*

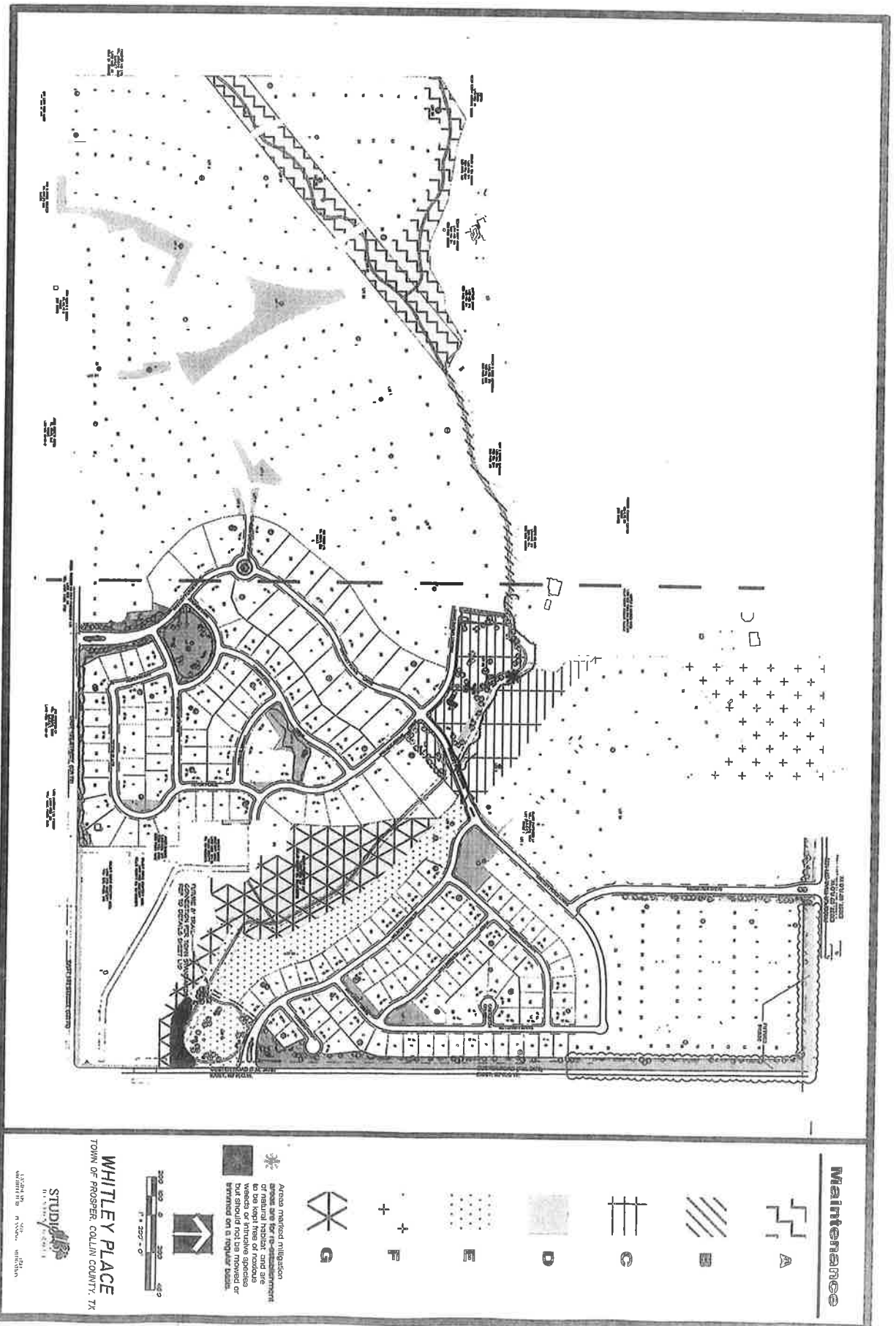


EXHIBIT B

WHITLEY PLACE HOMEOWNERS ASSOCIATION and TOWN OF PROSPER SHARED MAINTENANCE

Utilities

- 5100 Water - C -
- 5110 Electric - C -
- 5100 Water - E -
- 5110 Electric - E -

Landscape Maintenance

- 5210 Landscape Maintenance Precision Mowing - C - 36 mows
- 5210 Landscape Maintenance Precision Mowing - E - 36 mows
- 5215 Fertilize - C - 4 times
- 5215 Fertilize - E - 4 times
- 5220 Natural Area Mowing - A - 6 mows
- 5220 Hike and Bike Trail Mowing - A - 8 mows
- 5220 Line Trim Natural Area Edge - A - 6 mows
- 5220 Hike and Bike Trail Mowing - B - 8 mows
- 5220 Line Trim Natural Area Edge - B - 6 mows
- 5220 Natural Area Mowing - C - 6 mows
- 5220 Hike and Bike Trail Mowing - C - 8 mows
- 5220 Line Trim Natural Area Edge - C - 6 mows
- 5220 Natural Area Mowing - E - 6 mows
- 5220 Hike and Bike Trail Mowing - E - 8 mows
- 5220 Line Trim Natural Area Edge - E - 6 mows
- 5220 Mow as needed F
- 5220 Hike and Bike Trail Mowing - G (City owned portion) - 8 mows
- 5220 Line Trim Natural Area Edge - G (City owned portion) - 6 mows
- 5220 Natural Area Mowing - G (City owned portion) - 6 mows
- 5245 Landscape Maintenance and Repair - C & E - as needed
- 5260 Irrigation Repairs - C & E - as needed

Grounds Maintenance

- 5510 Trail Maintenance - A - as needed
- 5530 Grounds Porter - A - 12 times
- 5599 Remove Limb Debris - A - as needed
- 5510 Trail Maintenance - B - as needed
- 5530 Grounds Porter - B - 12 times
- 5599 Remove Limb Debris - B - as needed
- 5510 Structure Maintenance - C - as needed
- 5510 Trail Maintenance - C - as needed
- 5520 Lake Maintenance - C - as needed
- 5525 Aeration Systems Maintenance - C - as needed
- 5530 Grounds Porter - C - 40 times
- 5540 Lights Maintenance - C - as needed
- 5598 Trim Trees/Shrubs planted according to approved landscape plan - C - 2 times
- 5599 Remove Limb Debris - C - as needed
- 5510 Trail Maintenance - E - as needed
- 5520 Lake Maintenance - E - as needed
- 5520 Structure Maintenance - E - as needed
- 5525 Aeration Systems Maintenance - E - as needed
- 5530 Grounds Porter - E - 20 times
- 5598 Trim Trees/Shrubs planted according to approved landscape plan - E - 2 times
- 5599 Remove Limb Debris - E - as needed
- 5510 Trail Maintenance - G (City owned portion) - as needed
- 5530 Grounds Porter - G (City owned portion) - 12 times
- 5599 Remove Limb Debris - G (City owned portion) - as needed

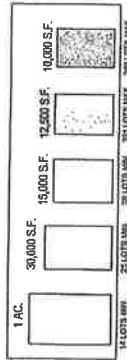
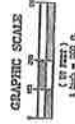
Note: Frequencies and scopes listed above are approximate and will vary depending on maturity of landscape, weather, intensity of public use, etc. Projects initiated by HOA such as flower beds and planting of annuals, holiday lighting, or decorations will not be considered cost sharing by the Town of Prosper.

EXHIBIT C

WHITLEY PLACE ZONING EXHIBIT



VICINITY MAP
NTD



THE THOROUGHFARE ALIGNMENTS SHOWN ON THIS EXHIBIT ARE FOR ILLUSTRATION PURPOSES AND DO NOT SET THE ALIGNMENT. THE ALIGNMENT IS DETERMINED AT THE TIME OF FINAL PLAT.

AREA SUMMARY

PROPERTY GROSS ACREAGE	339.77 ACRES
MAX NO. RESIDENTIAL LOTS	652
GROSS RESIDENTIAL DENSITY	1.91 DU/AC
OPEN SPACE/PARKLAND	34 ACRES
SCHOOL	12.1 ACRES
NET ACREAGE	293.5 ACRES
NET DENSITY (MAX)	2.22 DU/AC

OPEN SPACE SUMMARY*

AREA A	OPEN SPACE/GREENBELT 0.5 AC.
AREA B	HNE & BIKE TRAIL (WIDTH VARIES) 20AC.
AREA C	OPEN SPACE/GREENBELT 10.3 AC.
AREA D	PRIVATE OPEN SPACE NOT TO EXCEED 2.0 AC
AREA E	OPEN SPACE/GREENBELT 15.0 AC.
AREA F	OPEN SPACE/GREENBELT 7.0 AC.
AREA G	PRIVATE OPEN SPACE 5.0 AC.
	PUBLIC OPEN SPACE/GREENBELT 3.0 AC.

* AREA CALCULATIONS ARE APPROXIMATE UNTIL FINAL PLATTING.
THE TOTAL OPEN SPACE (TOTAL OF AREAS A, B, C, D, E, F & G) PER WHITLEY PLACE TRACT SHALL BE A MINIMUM OF 34 ACRES FOR THIS SITE.

ZONING EXHIBIT

FOR
WHITLEY PLACE
A PLANNED DEVELOPMENT ON 339.77 ACRES
IN THE LARKIN MCCARTY SURVEY, ABSTRACT NO. 800
COLLIN COUNTY, TEXAS

OWNER:
CC JOINT VENTURES, LTD.
10000 West Loop Parkway
Suite 210
Dallas, Texas 75246
Phone: (972) 931-0271

PREPARED BY:
HUNT-ZOLLARS
10000 West Loop Parkway
Suite 210
Dallas, Texas 75246
Phone: (972) 931-0271

NOV/02/02/2005