

STATE OF MICHIGAN
COUNTY OF KENT
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REG. OF DEEDS

**DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS
FOR MISTY RIDGE ESTATES NO. 2
BYRON TOWNSHIP, KENT COUNTY, MICHIGAN**

THIS DECLARATION is made this 24th day of June, 1999 by JARR PROPERTIES, INC., a Michigan corporation, of 5721 South Division, Grand Rapids, Michigan 49548 ("Owner).

RECITALS

A. Owner is the owner of certain real property situated in Byron Township, Kent County, Michigan legally described as follows: Lots 37 through 65, inclusive, Misty Ridge Park No. 2, Misty Ridge Estates No. 2, part of the SE 1/4, Section 15, T5N, R12W, Byron Township, Kent County, Michigan, according to the recorded plat thereof (the "Property"), and is developing the Property into Misty Ridge Estates No. 2, a residential subdivision (hereinafter "Misty Ridge Estates No. 2").

B. Owner desires to impose certain protective covenants, restrictions and conditions on the Property for the purposes of ensuring that the Property will be used for those purposes to which is best suited and of preserving and improving the attractive features of the Property.

C. Owner desires to provide record notice of the existence of the Misty Ridge Estates Association (the "Association"), a Michigan non-profit corporation composed of the owners of lots within the Property, the owners of lots 1 through 36 of Misty Ridge Estates, and the owners of lots within any future phases of Misty Ridge Estates, and to provide record notice of the Association's powers over certain portions of the Property.

PROVISIONS

In consideration of the foregoing, Owner imposes the following protective covenants, restrictions and conditions upon the Property, which protective covenants, restrictions and conditions shall run with, and benefit and burden the Property and shall be recorded as blanket encumbrances against the Property and shall be binding against the Owner, its successors and assigns, and all persons claiming under the Owner, their grantees, successors, heirs, personal representatives, administrators and assigns.

I. ARCHITECTURAL CONTROL.

A. Architectural Control Committee. Owner establishes an Architectural Control Committee ("Committee") to consist of two (2) or more people to be appointed from time to time by the Owner. The Owner shall retain the right to appoint the Committee for ten (10) years or until the Owner delegates this power of appointment to the Association, or until the Owner no longer has any interest in the Property.

B. Architectural Restrictions. In order to assure harmonious and aesthetic development of building sites on the lots in the Property, no land may be graded and no building, driveway, fence, structure, antenna, above-ground electrical or other utility service, wall, or other structure or improvement may be made, modified, added to, altered or changed until the plans and specifications showing the nature, kind, color, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Committee.

C. Committee's Absolute Discretion. All construction of all buildings, structures and other improvements will be made only by residential home builders licensed by the State of

Michigan and approved in writing by the Committee and shall be done in accordance with the plans approved by the Committee pursuant to this Declaration.

The Committee may, upon a showing of practical difficulty, grant variances to the restrictions from time-to-time, but only to the extent and in such manner as not to violate the spirit and intent of the restrictions. The Committee shall have twenty-one (21) days from the date of receipt of all documents requested in order to evaluate and decide upon a proposal, proposed variance or other matter, but if the Committee fails to grant written approval within the twenty-one (21) day period, it shall be deemed to have rejected the request.

The Committee shall have the right to refuse to approve any plan, specification, proposal, requested variance or other matter submitted to it which is not suitable or desirable in its opinion for aesthetic or other reasons in the Committee's absolute discretion. In passing upon such plans, specifications, proposals, requested variances and other matters, the Committee shall have the right to take into consideration the suitability of the proposed structure, improvement or modification, the lot upon which it is proposed to be constructed, the proposed building location within the lot, the locations of structures and improvements on the other lots, the degree of compatibility of the proposed improvement with those already existing in and planned for the Property and such other matters as the Committee, in its sole discretion, may deem significant.

If the committee rejects an owner's request for approval of a plan, specification, proposal, variance or other matter, promptly after such rejection the Committee shall serve on the owner a written explanation of the reasons for the rejection. The owner shall be entitled to revise and resubmit the request to the Committee one or more times.

II. BUILDING AND USE RESTRICTIONS.

A. Except as specifically provided to the contrary, no lot shall be used for other than residential purposes. No building shall be erected, altered, placed, modified or permitted to remain on any other than one (1) single-family residential dwelling with at least a two stall garage. No outbuilding shall be constructed on any lot without the prior written approval of the Committee. No house shall be designed, constructed or remodeled for the purpose of housing more than one (1) family and no lot shall be used to house more than one (1) family.

B. A garage containing at least two (2), but not more than three (3), stalls will be attached to each house constructed on a lot in the Property.

C. Each house shall be built on a full basement foundation. No mobile or modular homes are permitted.

D. The total finished floor area of any house to be constructed on any lot, exclusive of garage, basement, deck, attic, open porch, breezeway and any other area not used for living quarters shall be as follows:

1. Not less than One Thousand Four Hundred Seventy Five (1,475) square feet in the case of a one (1) story structure; and
2. Not less than One Thousand Eight Hundred (1,800) square feet in the case of structures containing one and one-half (1-1/2) or more stories.

E. Each owner of a lot shall be responsible for making certain that the construction of all improvements on his or her lot will comply with all Byron Township and other governmental requirements and restrictions including, without limitation, front, side and rear set-back requirements. Approval of construction by the Committee shall not be construed to mean that the Committee has determined that the proposed structure complies with all township and other governmental requirements. The Committee shall have no obligation to review plans and proposals for compliance with township and other governmental requirements.

F. All soil to be removed from a lot, either in grading or excavating, shall, if desired by Owner, become the property of Owner and when removed shall be dumped by any person so removing the soil at that person's expense at such place or places upon the Property or elsewhere as Owner shall designate.

G. No tree four (4) inches or larger in diameter at the base (measured one (1) foot above natural ground level) shall be moved from a lot, except for the construction of a residence or driveway, without the prior written consent of the Committee.

H. Each house and garage built on a lot shall be constructed of new material only. Approved materials include brick, brick veneer, steel, stone, aluminum siding, vinyl siding, stucco or frame or any combination thereof. Each building must have a finished exterior. The color of each surface of each material used on the exterior of a building and visible after installation shall be a "natural" color. All exterior foundation walls shall be of brick, brick veneer, stone, concrete or stucco. Concrete block or tile construction above grade level is prohibited unless the exterior surface is covered with an approved material. The Committee has the right to approve or disapprove of proposed building materials based on colors, aesthetics, compatibility with other structures existing or proposed on the Property and any other factors deemed material by the Committee. Approval by the Committee in one or more cases will not obligate the Committee to grant approval in any other cases. The Committee may approve the use of materials and/or colors other than those listed or described above.

I. No later than six (6) months after the date construction of a residence on a lot is completed, the owner shall cause concrete to cover all driveways on his or her lot.

J. No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be used as a temporary or permanent residence on any lot.

K. Construction, once commenced, shall be completed and ready for occupancy within twelve (12) months after the date of the commencement of construction. Within six (6) months after completion of construction of the house on the lot, the lot will be graded, landscaped, and will be covered with four (4) inches of fertile topsoil and supplied with sufficient perennial grass seed to seed the lot. Further, within such six (6) month period, the owner of the lot shall construct, at such owner's cost, a sidewalk along the public road along which their lot fronts, which sidewalk shall conform in all respects with Byron Township's specifications.

L. Soil erosion protection and stabilization techniques and procedures shall be required continuously during all phases of construction. Such techniques may include silt, fences, soil erosion, blankets and other measures sufficient to stabilize soils during construction activities.

M. No lot may be used or maintained as a dumping ground for rubbish. No refuse pile or unsightly or objectionable object or materials shall be maintained on any lot, except for trash, garbage and other waste which shall be kept in sanitary containers. All such containers shall be kept in a clean, neat and sanitary condition and stored within the garage.

N. No noxious or offensive activity shall be carried on upon any lot or park area, nor shall anything be done on any lot or park area which may be or may become an annoyance or nuisance to any other person occupying the Property.

O. No trailer, boat, motor home, recreational vehicle, or inoperable vehicle shall be stored on any lot except within the garage with the door closed. No boat, trailer, motor home or similar vehicle shall be parked on any lot for more than seven (7) consecutive days without the prior written permission of the Committee, which approval may be given or withheld in the Committee's sole discretion and may be contingent upon the Committee's designation of the area or areas where the vehicles may be parked.

P. No animals, except household pets, may be kept on any lot. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary conditions. No savage or dangerous animal shall be kept on any lot. No more than two (2) household pets may be kept without written permission of the Committee.

Q. Except as may be installed by Owner, no spotlight, floodlight or similar type high intensity lighting shall be placed on or utilized on any lot which in any way will allow light to be reflected on any other lot or the improvements thereon without the prior written authorization of

the Committee. Low intensity lighting which does not disturb the other occupants of the Property shall be allowed.

R. No off-road vehicle including, but not limited to, motorcycle, motorbike, snowmobile and all-terrain vehicle, may be driven or operated within the areas of the Property which the Association is responsible for maintaining.

S. No hunting is permitted within the Property.

T. No sign shall be displayed to the public view on any lot except one (1) sign of not more than four (4) square feet advertising the lot for sale; provided, however, that Owner may post "for sale" signs on Owner's lots.

U. The areas depicted as park areas in the development's recorded subdivision plat shall be "no-disturb" areas, and shall remain private parks for the benefit of the Association, and shall not be used for residential purposes, except as otherwise permitted in the Subdivision Control Act, being Act 288 of Public Acts of 1967. No construction shall take place in the park areas, which areas shall remain and be maintained in their natural state, provided, however, the Association may, in its discretion, provide exceptions to this section for the benefit of the Association.

V. All utilities servicing the lots shall be placed underground.

W. In addition to the restrictions herein, the use of any lot and any structure constructed on any lot must satisfy the requirements of the zoning ordinance of Byron Township, Kent County, Michigan, which is in effect at the time of the contemplated use or construction of any structure unless a variance for such use or structure is obtained from the Zoning Board of Appeals ("ZBA") of Byron Township and further there is obtained a written consent thereto from the Owner so long as the Owner owns a lot in Misty Ridge Estates No. 2, and thereafter from the Committee. To the extent that the restrictions contained herein are more restrictive than the Byron Township Zoning Ordinance, the restrictions contained herein shall apply.

III. MISTY RIDGE ESTATES ASSOCIATION.

A. Owner has formed the Association as a Michigan non-profit corporation composed of the owners of the lots within the Property, the owners of lots 1 through 36 of Misty Ridge Estates, and the owners of lots within any future phases of Misty Ridge Estates. Every owner of a lot in the Property, by acceptance of a deed or land contract therefor, shall automatically become a member of the Association. The Owner has dedicated the park areas and natural paths or walkways, as identified on the recorded Misty Ridge Estates subdivision plat, recorded at Liber 108, Pages 18-20, Kent County Records, and as identified on the recorded Misty Ridge Estates No. 2 subdivision plat, recorded at Liber 110, Pages 33-34, Kent County Records, to the Association. The Association shall own fee simple title to the park areas and natural paths or walkways within all phases of Misty Ridge Estates. The Association will be responsible for managing, maintaining, administering, repairing and/or replacing such park, path or walkway areas, for assessing and collecting dues from the lot owners to pay the Association's expenses, including, but not limited to, payment of real property taxes assessed against the park, path or walkway areas, and for such other matters as may be delegated to it by Owner, by this Declaration, or by any other documents pertaining to the Association.

B. The Association has the right, among other things, to assess and collect assessments from all owners to pay the Association's expenses, and to obtain and maintain insurance for the park and walkway areas as depicted on the recorded subdivision plats for all phases of Misty Ridge Estates.

C. When the provisions of this Declaration or the Association's By-Laws call for the vote of the owners of lots in the Property, each owner shall be entitled to cast one vote for each lot owned. Each lot within all phases of Misty Ridge Estates shall be assigned an equal value of the private park and walkway areas within the development.

D. Owner anticipates developing additional phases of Misty Ridge Estates which may contain park and walkway areas which may be dedicated to the Association. The owners of lots within future phases shall be members of the Association.

E. The Owner although a member of the Association, will not be responsible at any time for payment of Association assessments for lots which it owns in Misty Ridge Estates No. 2, provided, however, Owner shall be responsible for such assessments owned by it on which a residence is located and a certificate of occupancy has been issued by Byron Township.

IV. KENT COUNTY DRAIN COMMISSIONER REQUIREMENTS.

A. In accordance with Section 280.433 of the Michigan Drain Code (Act 40 of the Public Acts 1956, as amended) a special assessment drainage district has been created to provide for the maintenance of the Misty Ridge County Drain. The Drain District consists of all lots within the plat, the boundary of which is shown on the attached **Exhibit "A"**. At some time in the future, the lots within the Drainage District will be subject to a special assessment for the improvement or maintenance of the Misty Ridge County Drain. The route of which is shown on **Exhibit "B"** attached hereto.

B. Private Easements for the Misty Ridge County Drain have been granted to the Misty Ridge Drainage District. The rights and obligations of said easements are recorded with the Kent County Register of Deeds office.

C. Some of the lots in the subdivision are subject to the aforesaid private easements for drainage. No development, grading, or construction is permitted within these private easements for drainage. This includes swimming pools, sheds, garages, patios, decks or any other permanent structure or landscaping feature that may interfere with the drainage system. Each lot owner will be responsible for maintaining the surface drainage system across his property.

D. The direction of flow for the surface drainage for all lots is shown on the block grading plan, **Exhibit "C"** attached hereto. It is the lot owner's responsibility to ensure that the final grading of the lot is in accordance with the block grading plan. During the final lot grading and landscaping, the owner shall take care to ensure that the installation of fences, plantings, trees and shrubs do not interfere with the surface drainage from one lot onto the next lot.

E. To eliminate the potential of structural damage due to flooding from rear yard drainage, the lot owners shall keep the lowest door or windowsill above the minimum opening elevations listed below. The elevations listed below are shown on the block grading plan, attached **Exhibit "C"**. For more information on the location of current "bench mark" elevations, call Exxel Engineering at (616) 531-3660.

F. Minimum building opening elevations for the following lots are:

<u>LOT NUMBER</u>	<u>MINIMUM OPENING ELEVATION</u>
37, 38	730.0
50	744.5
51	744.0
52	742.0
53	740.0
54	739.0
55-57	738.0
58-61	738.5
62, 63	738.0
64	737.0
65	733.5

G. Because of a potential of seasonal high ground water or clay soil conditions lots 37 and 38, and 50 through 65, inclusive, have been provided with footing drain connections to

the storm sewer. The connection is to be made from the sump pump through a check valve system to the footing drain provided. Under no circumstance shall a gravity connection to the footing drain be allowed. The footing drain location for each lot is indicated on the Block Grading Plan on attached **Exhibit "C"**.

H. Each lot owner waives his claim against the Misty Ridge Drain District, Kent County Drain Commissioner, his employees and agents, Byron Township, the Engineer, and the Owner from any and all claims, damage and obligation arising from the existence or operation of the drainage system.

I. The restrictions contained in Article IV are to be perpetual and shall run with the land. Restrictions contained in Article IV may not be amended or modified without prior written approval of the Kent County Drain Commissioner and properly recorded at the Kent County Register of Deeds.

V. GENERAL PROVISIONS.

A. The provisions of this Declaration shall run with the Property and shall be binding on and inure to the benefit of all persons owning any interest in the Property and perpetuity from the date this Declaration is recorded at the Kent County Register of Deeds.

B. Except as provided in Article IV, this Declaration may be amended by written agreement of the owners of not fewer than seventy-five percent (75%) of the lots in the Property and Owner; provided, however, that Owner's agreement shall not be required at such time as Owner no longer has any interest in any lot in the Property. No amendment to this Declaration shall be effective until the amendment is recorded with the Kent County Register of Deeds.

C. The provisions of this Declaration shall be enforceable only by Owner, by any owner of any lot and/or by the Association on behalf of the owners. Enforcement shall be by proceedings at law or in equity against any person or persons violating, attempting to violate or threatening to violate any provision. All costs and expenses authorized by the Association shall be assessed and levied against the owners of the lots in the Property and shall be paid by the lot owners. All such costs and expenses shall be the responsibility of the lot owners in equal shares. The payment of an assessment will be in default if such assessment, or any part thereof, is not paid in full on or before the due date for such payment. Unpaid assessments and any other amounts due the Association shall constitute a lien upon the lot prior to all other liens except tax liens and sums unpaid on a first mortgage of record. Assessments will be enforceable against lot owners by way of, including, but not limited to, a legal action to recover such assessments, such injunctive relief as shall be reasonable and necessary, recording and foreclosure of a lien upon the lot of the defaulting owner, and any combination of the aforesaid remedies. Any lien may be foreclosed in the same manner as a foreclosure of a real estate mortgage by advertisement or judicial action.

D. If one (1) or more of the provisions of this Declaration is or are declared by any Court of competent jurisdiction to be invalid or unenforceable, then the provision(s) shall be deemed severable from this Declaration or enforceable to the maximum extent permitted by law, as the case may be, and the remaining provisions of this Declaration shall remain in full force and effect.

E. No failure, delay or waiver of enforcement of any provision in this Declaration by the Association or any lot owner will constitute a waiver of or otherwise affect future enforcement of the provisions of this Declaration.

F. It is each lot owner's responsibility to determine which laws, regulations, ordinances and requirements (including, without limitation, public health requirements, zoning ordinances and building restrictions) apply to the lot from time to time and to comply with all such laws, rules, regulations, requirements and ordinances. Owner, the Association and the Committee shall have no responsibility for determining such compliance.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

WITNESSES:

JARR PROPERTIES, INC., a Michigan corporation

Holly L. Villerius
(Holly L. Villerius)

[Signature]
(Todd A. Hendricks)

By: Almer L. Dieterman
Almer L. Dieterman
Its: Vice President

STATE OF MICHIGAN)
)ss.
COUNTY OF KENT)

The foregoing instrument was acknowledged before me this 24th day of June, 1999, by Almer L. Dieterman, the Vice President of Jarr Properties, Inc., a Michigan corporation, on its behalf.

Kimberly A. Bickford
Kent County Kimberley A. Bickford
Notary Public
Kent County, Michigan
My commission expires: 1-26-03

Prepared by and Return to After Recording:

TODD A. HENDRICKS
Rhoades, McKee, Boer, Goodrich & Titta
161 Ottawa Avenue, N.W., Suite 600
Grand Rapids, MI 49503-2793

DRAIN DISTRICT MAP

MISTY RIDGE ESTATES NO. 2

IN: PART OF SEC. 15, T5N, R12W
BYRON TWP., KENT COUNTY, MICHIGAN.

REVISIONS



excel engineering inc.
3522 LYDE PARK S.W. • GRAND RAPIDS, MI 49508
PHONE (616) 531-5500

DESIGNED BY:	MS	FILE NO.:	58712E
APPROVED BY:	MS	SHEET:	1 OF 1
DATE:	2/23/89		

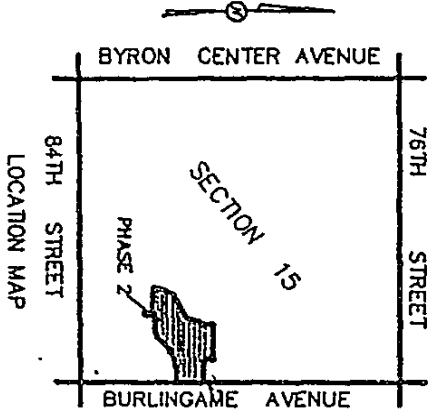
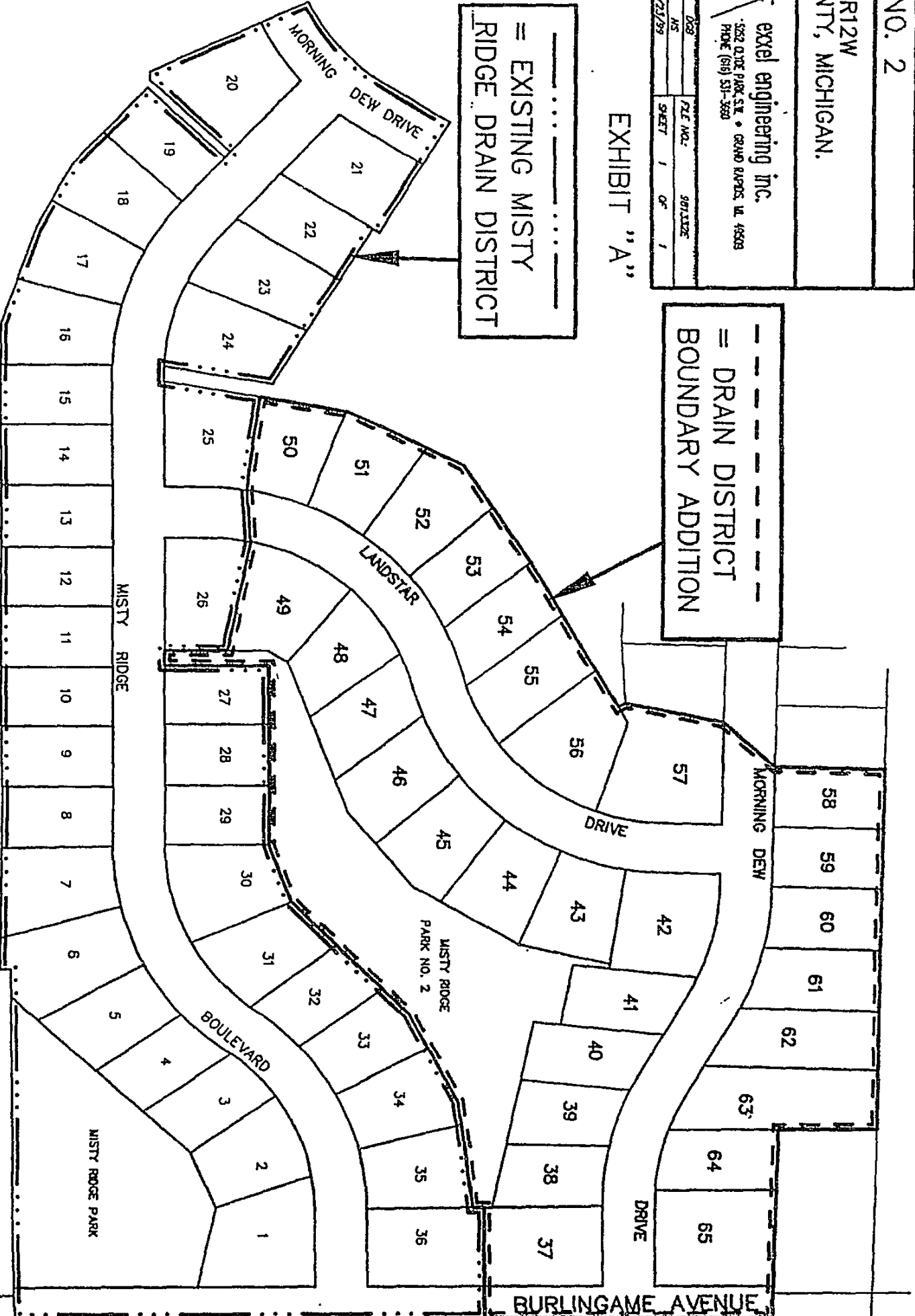
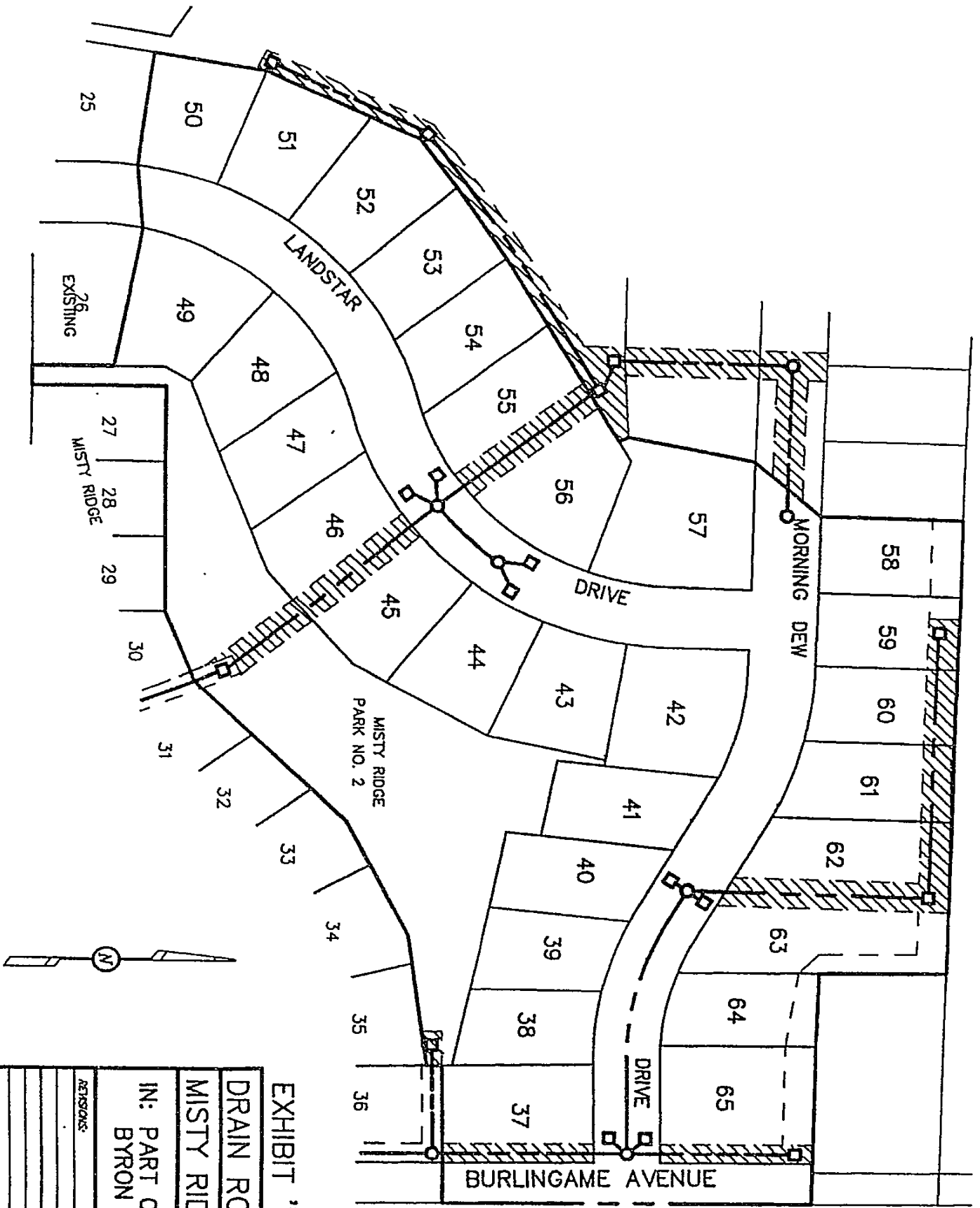





EXHIBIT "A"

— · · · · — · · · · —
= EXISTING MISTY
RIDGE DRAIN DISTRICT

- - - - -
= DRAIN DISTRICT
BOUNDARY ADDITION





 = PRIVATE EASEMENT FOR DRAINAGE TO THE MISTY RIDGE DRAIN DISTRICT.
 = PRIVATE EASEMENT FOR DRAINAGE
 = STORM SEWER ROUTE

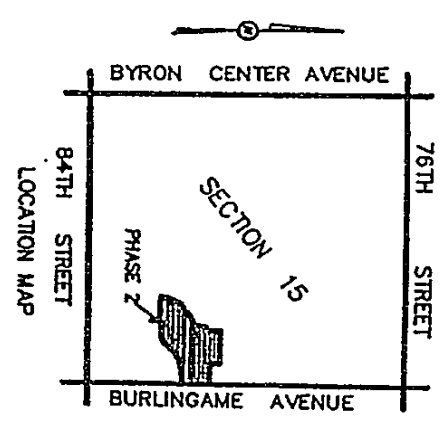


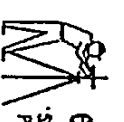
EXHIBIT "B"

DRAIN ROUTE MAP

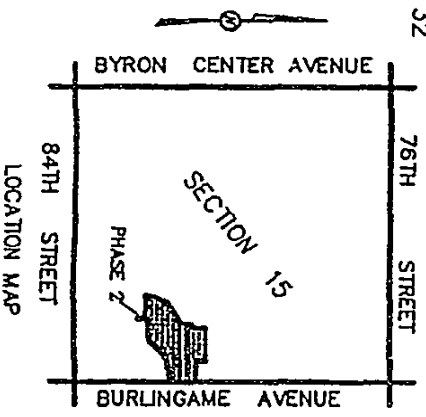
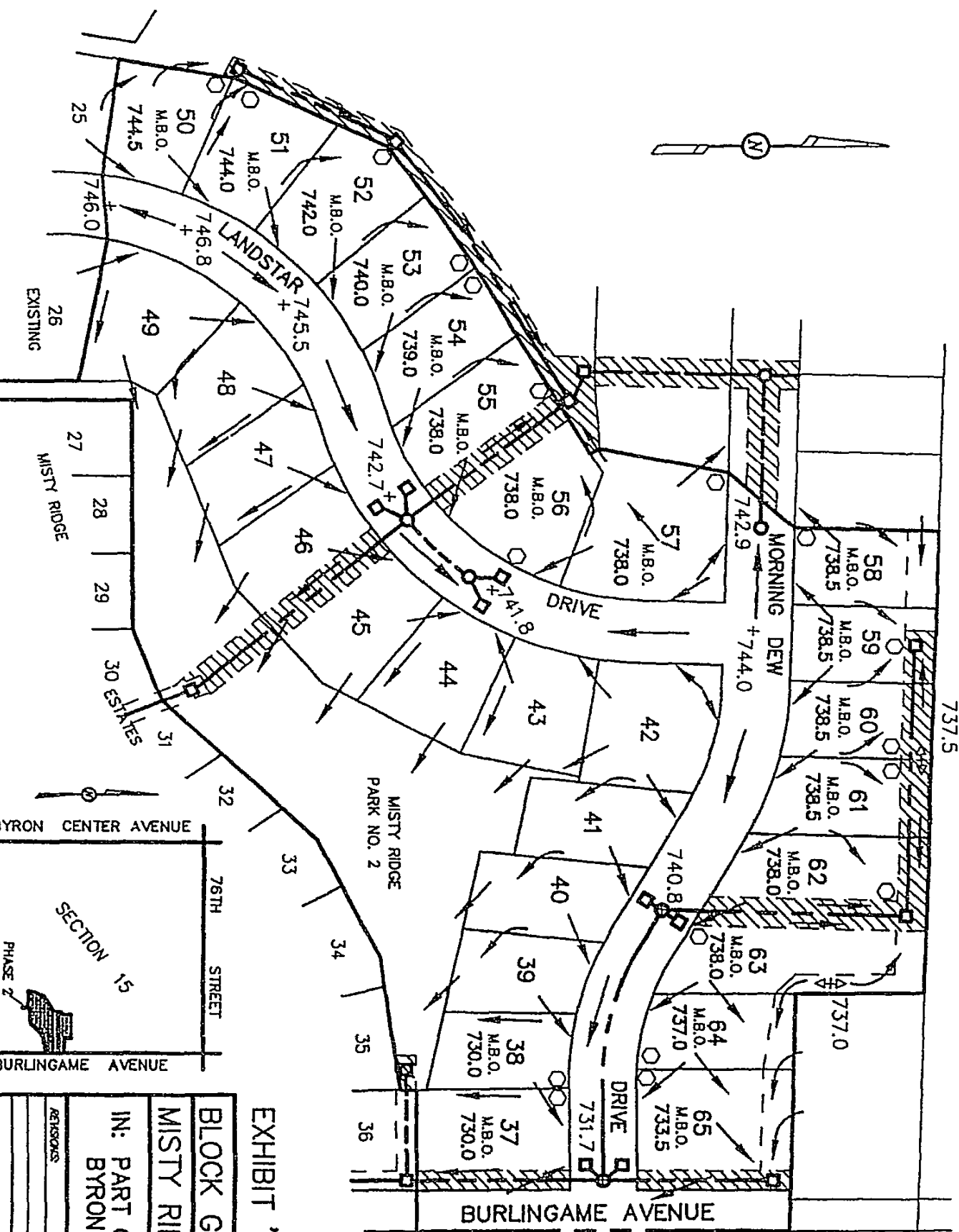
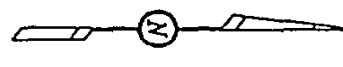
MISTY RIDGE ESTATES NO. 2

IN: PART OF SEC. 15, T5N, R12W
 BYRON TWP., KENT COUNTY, MICHIGAN.

PERSONS:


excel engineering inc.
 5525 OLIVE PARK DR. • GRAND RAPIDS, MI 49509
 PHONE (616) 531-3500

DRAWN BY:	DES:	FILE NO.:	991333E
APPROVED BY:	NS	SHEET:	1 OF 1
DATE:	7/27/99		



= PRIVATE EASEMENT FOR DRAINAGE TO THE MISTY RIDGE DRAIN DISTRICT.
 = PRIVATE EASEMENT FOR DRAINAGE

= MINIMUM BUILDING OPENING ELEV.
 = STORM SEWER ROUTE
 = FOOTING DRAIN LEAD
 = DRAINAGE DIRECTION
 740.8⁺ = SPOT ELEVATIONS
 737.5[>] = CRITICAL DRAINAGE ELEV.

FOR BENCH MARK INFORMATION
 CONTACT EXCEL ENG. (531-3660)

EXHIBIT "C"

BLOCK GRADING PLAN
 MISTY RIDGE ESTATES NO. 2

IN: PART OF SEC. 15, T5N, R12W
 BYRON TWP., KENT COUNTY, MICHIGAN.

<p>Excel Engineering Inc. 5200 CLURE PARK, S.W. • GRAND RAPIDS, MI 49509 PHONE (616) 531-3660</p>				
DESIGNED BY	DOB	DATE	CHECKED BY	DATE
APPROVED BY	NS	3/22/89	DATE	
SHEET 1 OF 1				