

CAUSE NO. _____

JUDICIAL DISTRICT

CLARK ANDERSON SMITH; BRADLEY	§
HEFFERN; LAUREN HEFFERN; RUSSELL	§
MARTIN; LAURA MARTIN; NATHAN G.	§
SMITH; MEGAN J. JONES-SMITH; JOSHUA	§
VILLAREAL; GABRIELLE BRITTANY	§
SALDIVAR-VELA; DANIEL PAUL RAY;	§
KELLY HEIRONIMUS; TOM G. COLLIER;	§
DEBBIE S. COLLIER F/K/A DEBBIE LYNN	§
SHACKELFORD; TREEMAN BOWEN	§
BAKER; DALE W. GRAY; RACHEL GRAY;	§
4806 SHOALWOOD LLC; DANIEL C.	§
CATHERWOOD; SOPHIA GILL; PAUL	§
SINCLAIR, TRUSTEE OF THE LAZY BEND	§
TRUST, DATED MAY 30, 2012; MONA JANE	§
SINCLAIR, TRUSTEE OF THE LAZY BEND	§
TRUST, DATED MAY 30, 2012; MARK A.	§
CANADA; JOSEPH JOHN NEUGART; LUCY	§
CLAIRE NEUGART; JEFFREY M. RYAN;	§
CLAIRE FERGUSON RYAN; JAMES	§
DELAYNE MARTIN; LAVANNA S. WARD;	§
DANIEL DESMOND HOLDEN; ROGER	§
LOWELL MCROBERTS, III; MINDY	§
WEBER; JAMES SCOTT WILLIS;	§
KATHLEEN ANN WILLIS; LINDSEY	§
JAROS; JORDAN SUYDAM; JOEL M.	§
PEARSON, JR.; JULIA H. PEARSON; JOHN	§
W. WALSH; SUSAN L. WALSH; WALKUP	§
STEPHEN; JUSTIN THOMAS FREES;	§
KATHRYN LEIGH FORRER; MAX BROWN,	§
CO-TRUSTEE OF THE MAX & COURTNEY	§
BROWN REVOCABLE TRUST; COURTNEY	§
BROWN, CO-TRUSTEE OF THE MAX &	§
COURTNEY BROWN REVOCABLE TRUST;	§
ALEXANDER J. BIBIGHAUS, IV; DOUGLAS	§
J. FINLEY; MARISA E. FINLEY; JOHN E.	§
SZRAMIAK, TRUSTEE OF THE CAMILLE C.	§
ARNEBERG 2020 TRUST DATED	§
DECEMBER 31, 2020; CHRISTOPHER	§
COLVIN; BEHICE KUTAY; BENJAMIN	§
DAVID COHEN; MARY ELLEN WEST;	§
TERESA LYNN HUBBARD; ALEXANDER	§
BIRCHLER; JASON AMBROSE; MEGAN	§
AMBROSE; JOAN COLE; DANIEL NOLAN	§
CAIN; JOAN LYONS CAIN; JEFFREY TODD	§
GOODMAN; DOUGLAS GOWER, TRUSTEE	§
OF THE GOWER REVOCABLE FAMILY	§

TRUST DATED SEPTEMBER 12, 2005;	§
MARGARET GOWER, TRUSTEE OF THE	§
GOWER REVOCABLE FAMILY TRUST	§
DATED SEPTEMBER 12, 2005; KACEY L.	§
HOWELL; HELEN E. HOLCOMB; JIMMY	§
FERGUSON; CINDI FERGUSON; GREG B.	§
WALLACE; JENNIFER E. KIDD; JODIE	§
PACY SATTERFIELD, TRUSTEE OF THE	§
JPS MANAGEMENT TRUST; THOMAS	§
GOODRUM, JR.; SHELBY GOODRUM;	§
JOHN C. CARSEY; AMANDA J. CARSEY;	§
WILLIAM C. JOHNSON; BRENT L.	§
BERNELL; KAITLIN R. BERNELL,	§
Defendants.	§

PLAINTIFF’S ORIGINAL PETITION FOR DECLARATORY JUDGMENT

Austin Independent School District (“AISD” or “Plaintiff”) files this Petition for Declaratory Judgment against Defendants Sunflower Sinclair LLC; Ellen Marie Fenwick; Robert S. George; Eliazar I. Osio; Maria C. Osio; Cameron S. Vann; Charles Vann; Cullen Scott; Brandee Scott; Brian P. Cash; Elzie Mae Cole a/k/a Elzie Maynor Cole; Betty Jane Gilleland Durbin; Peggy Joyce Parker; Pamela Gale Hill; Stephen Jack Gilleland; Bobbie Jean Kruciak; Carl James Gilleland Jr.; Matthew Anthony Infante; Ramsey House 4706 LLC; Anton N. Sole; Tracy A. Sole; Carol Walker Wagner; John David Bunda; Beth Ann Condon; John R. Knaggs; Helen S. Knaggs; Ryan C. Murdock; Sara Scott; Matthew Hantzmon; Christina L. Hantzmon; Nancy Fitzpatrick Weller; Harvill E. Weller; Randall Barr; Carson J. Barr; Molly Fowler; Tyler Cookson; Laura Faith Alley, Trustee of the Laura Faith Alley Revocable Trust dated February 19, 2016; Michael David Alley, Trustee of the Michael David Alley Revocable Trust, as amended and restated on February 19, 2016; Camille C. Arneberg; Michael B. Collins; Karen Sikes Collins; Wilder Properties LTD; JROB Properties LLC; Hunt House Investments LLC; Andrew N. Dick and Elisabeth L. Dick, Trustees of the Dick Family Revocable Trust, Dated January 31, 2001; Cheri Martz; Letitia Liamero; Emily Schank Smith, Clark Anderson Smith; Bradley Heffern; Lauren

Heffern; Russell Martin; Laura Martin; Nathan G. Smith; Megan J. Jones-Smith; Joshua Villareal; Gabrielle Brittany Saldivar-Vela; Daniel Paul Ray; Kelly Heironimus; Tom G. Collier; Debbie S. Collier f/k/a Debbie Lynn Shackelford; Treeman Bowen Baker; Dale W. Gray; Rachel Gray; 4806 Shoalwood LLC; Daniel C. Catherwood; Sophia Gill; Paul Sinclair, Trustee of the Lazy Bend Trust, dated May 30, 2012; Mona Jane Sinclair, Trustee of the Lazy Bend Trust, dated May 30, 2012; Mark A. Canada; Joseph John Neugart; Lucy Claire Neugart; Jeffrey M. Ryan; Claire Ferguson Ryan; James Delayne Martin; Lavanna S. Ward; Daniel Desmond Holden; Roger Lowell McRoberts, III; Mindy Weber; James Scott Willis; Kathleen Ann Willis; Lindsey Jaros; Jordan Suydam; Joel M. Pearson, Jr.; Julia H. Pearson; John W. Walsh; Susan L. Walsh; Walkup Stephen; Justin Thomas Frees; Kathryn Leigh Forrer; Max Brown, Co-Trustee of the Max & Courtney Brown Revocable Trust; Courtney Brown, Co-Trustee of the Max & Courtney Brown Revocable Trust; Alexander J. Bibighaus, IV; Douglas J. Finley; Marisa E. Finley; John E. Szramiak, Trustee of the Camille C. Arneberg 2020 Trust dated December 31, 2020; Christopher Colvin; Behice Kutay; Benjamin David Cohen; Mary Ellen West; Teresa Lynn Hubbard; Alexander Birchler; Jason Ambrose; Megan Ambrose; Joan Cole; Daniel Nolan Cain; Joan Lyons Cain; Jeffrey Todd Goodman; Douglas Gower, Trustee of The Gower Revocable Family Trust dated September 12, 2005; Margaret Gower, Trustee of The Gower Revocable Family Trust dated September 12, 2005; Kacey L. Howell; Helen E. Holcomb; Jimmy Ferguson; Cindi Ferguson; Greg B. Wallace; Jennifer E. Kidd; Jodie Pacy Satterfield, Trustee of The JPS Management Trust; Thomas Goodrum, Jr.; Shelby Goodrum; John C. Carsey; Amanda J. Carsey; William C. Johnson; Brent L. Bernell; Kaitlin R. Bernell, (collectively, “Defendants”) and alleges as follows:

I. INTRODUCTION

This action arises from AISD’s proposed sale of its surplus property. When the property was originally subdivided, the previous owners implemented certain restrictive covenants,

including restrictions related to use. To effectuate the proposed sale, AISD commences this purely declaratory action to confirm the future multifamily residential use is consistent with any restriction so that AISD may proceed with a fiscally responsible and sound decision to liquidate this asset to ensure continuity of its operations for the benefit of its students, teachers, and staff.

The tract at issue is home to the former Rosedale School, which has been relocated to a new, state-of-the-art facility that serves students with severe special needs from all over Central Texas. This significant development for special needs students rendered the former Rosedale School site surplus, prompting AISD to take the budget-conscious step of negotiating its sale.

At a March 27, 2025 board meeting, during which the Board of Trustees voted to approve negotiations for the sale of the former Rosedale School site, AISD Trustees emphasized support for the sale because the decision puts students first, which is “what the Rosedale neighborhood does.” In that spirit, AISD seeks the cooperation of the Rosedale community in its endeavor to confirm that the proposed multifamily use of the former Rosedale School site is consistent with any restrictive covenant.

II. DISCOVERY-CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

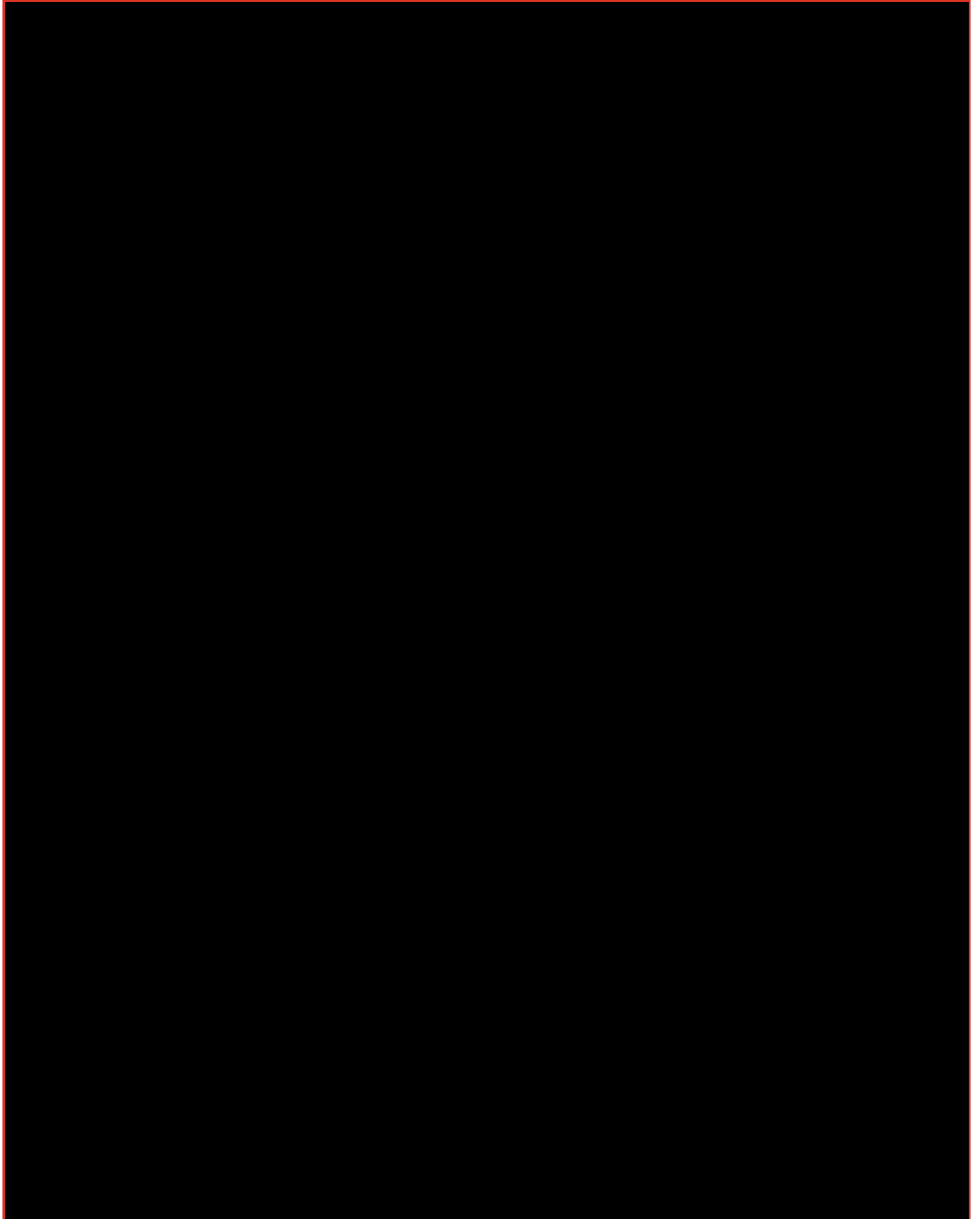
III. RULE 47 DISCLOSURE

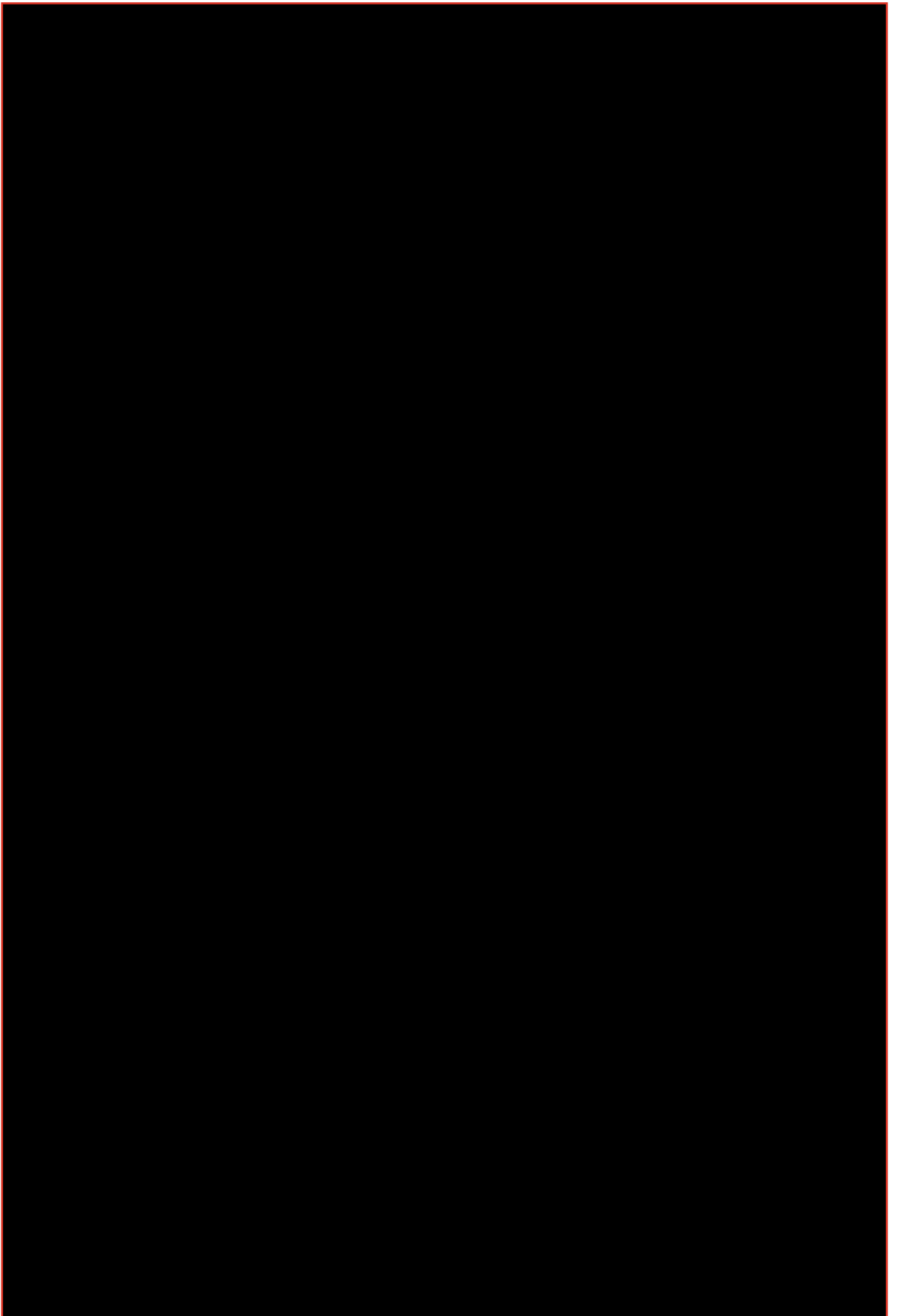
2. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff seeks only non-monetary relief.

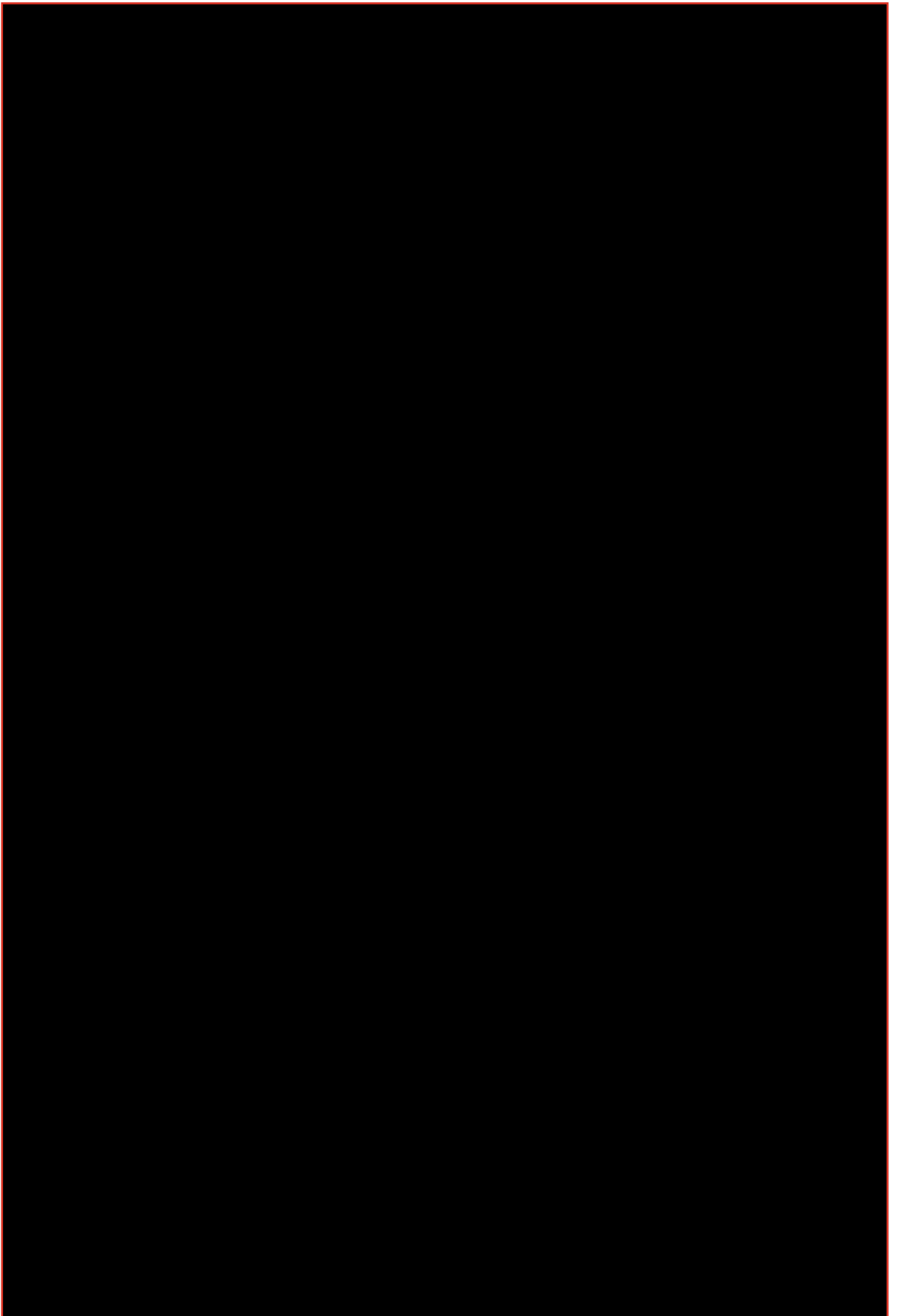
IV. PARTIES

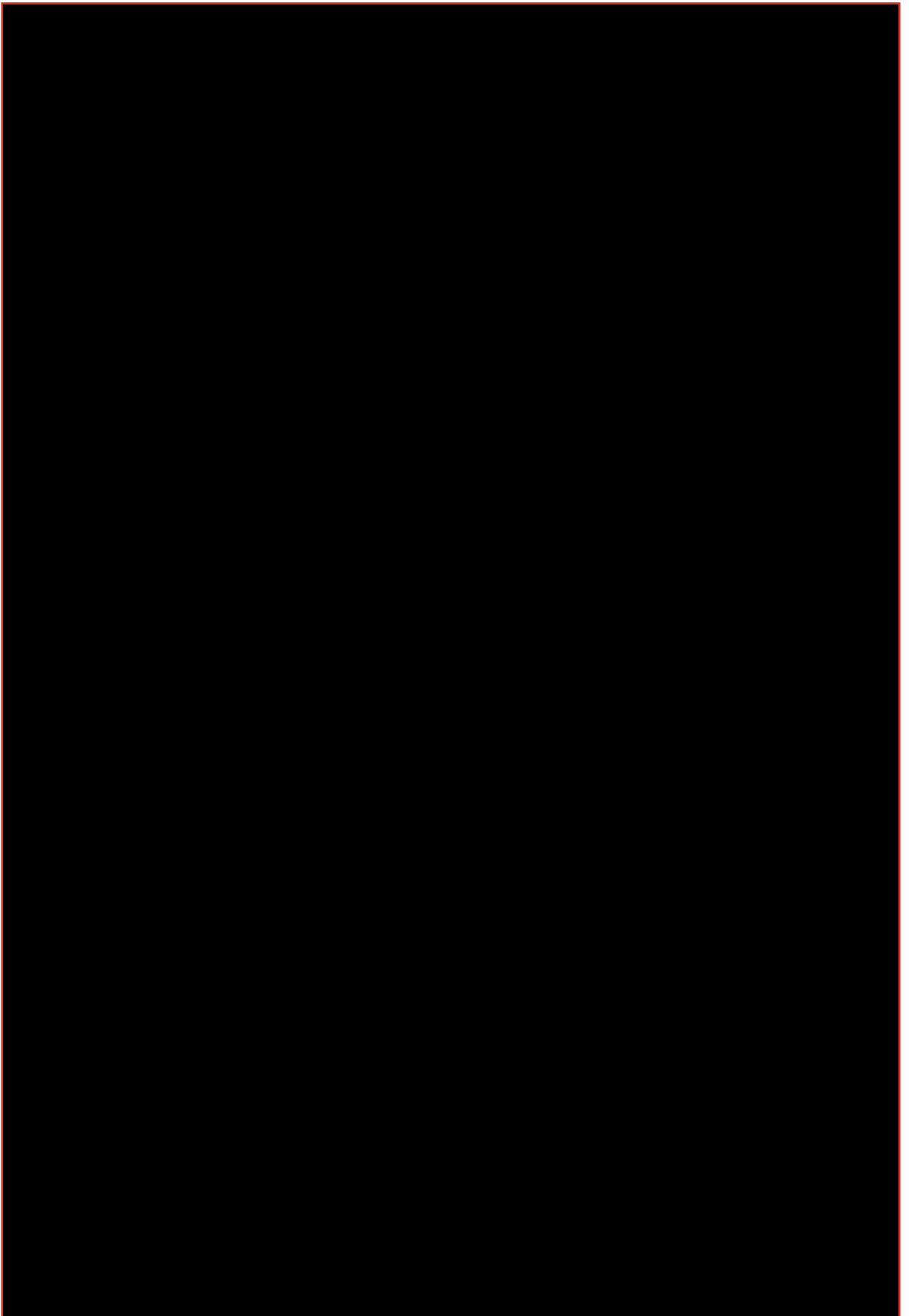
3. AISD is an independent school district pursuant to Chapter 11 of the Texas Education Code, operating under the laws of the State of Texas, with its principal office and place of business located in Austin, Travis County, Texas.

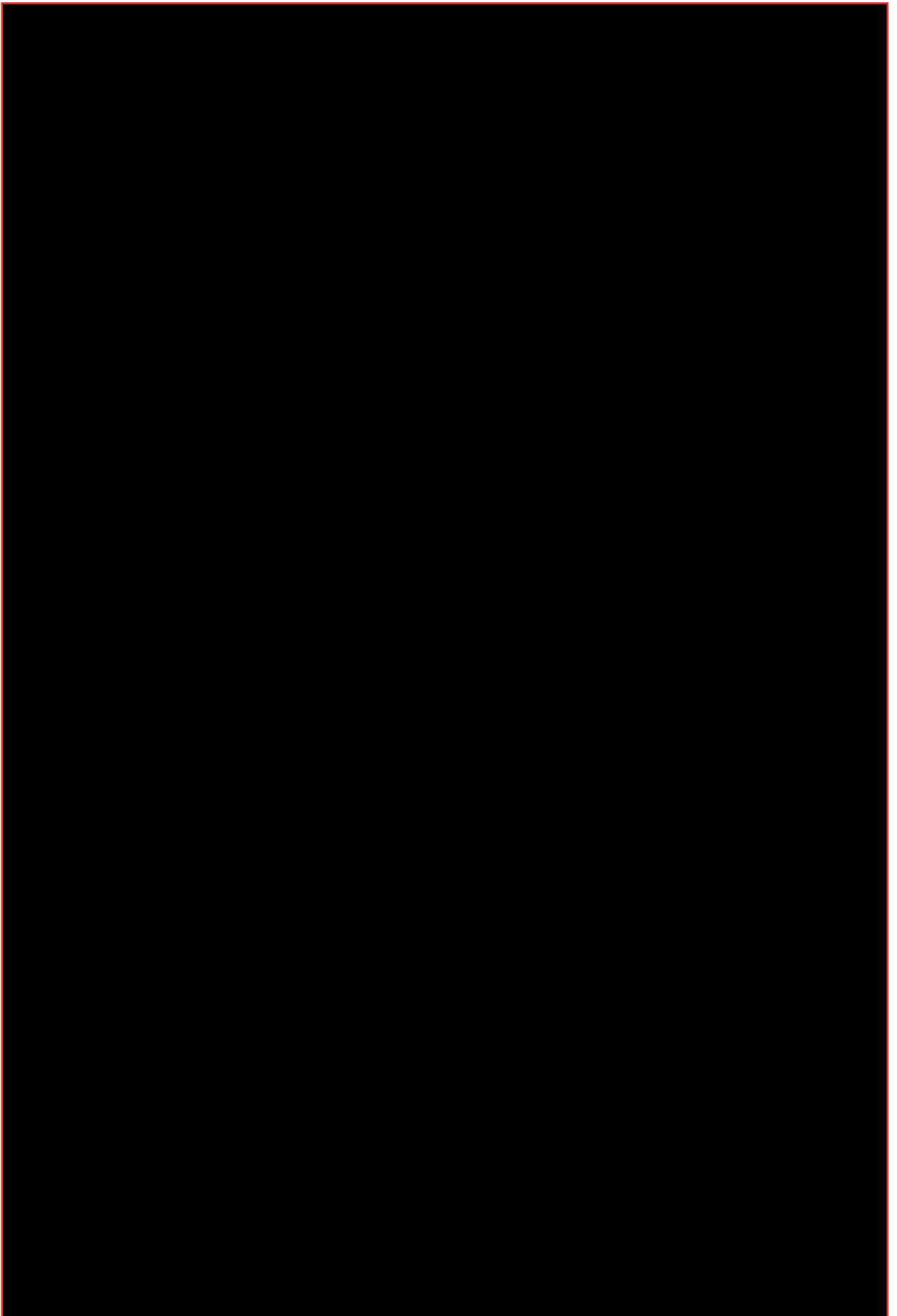
4. Defendants own or claim legal or equitable title to property subject to the relevant restrictive covenants and are therefore interested parties in this declaratory action to interpret such restrictive covenants:

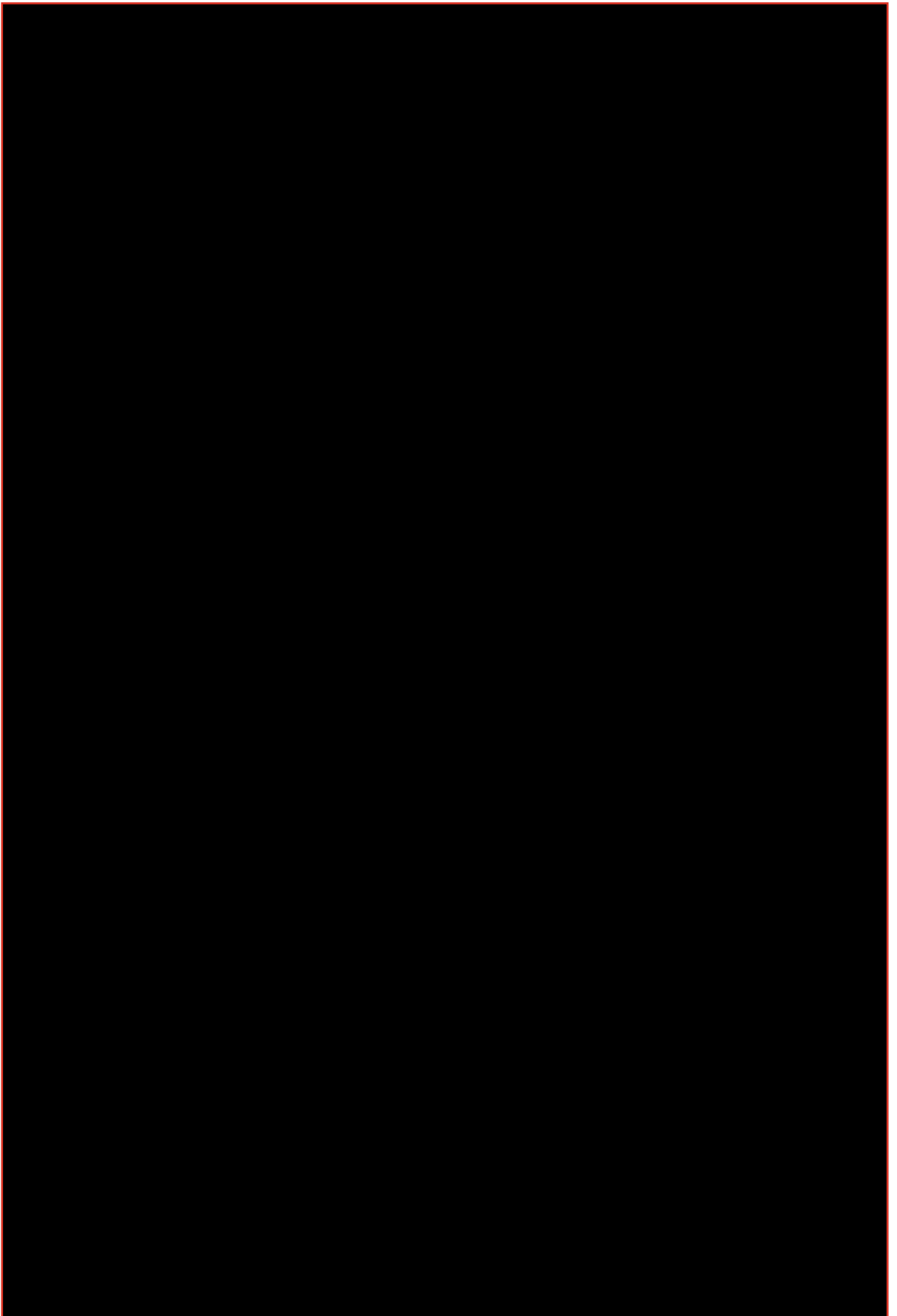


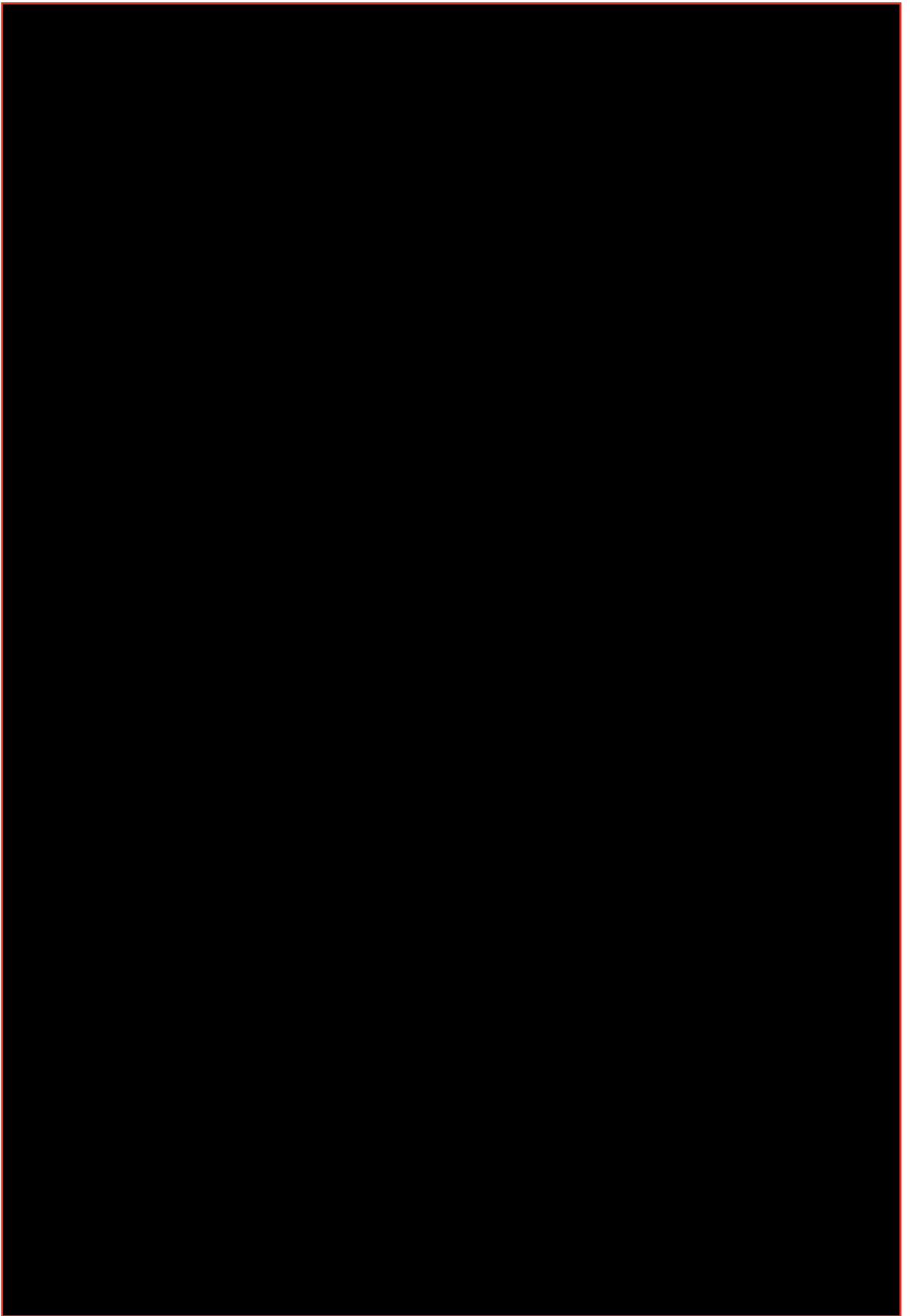


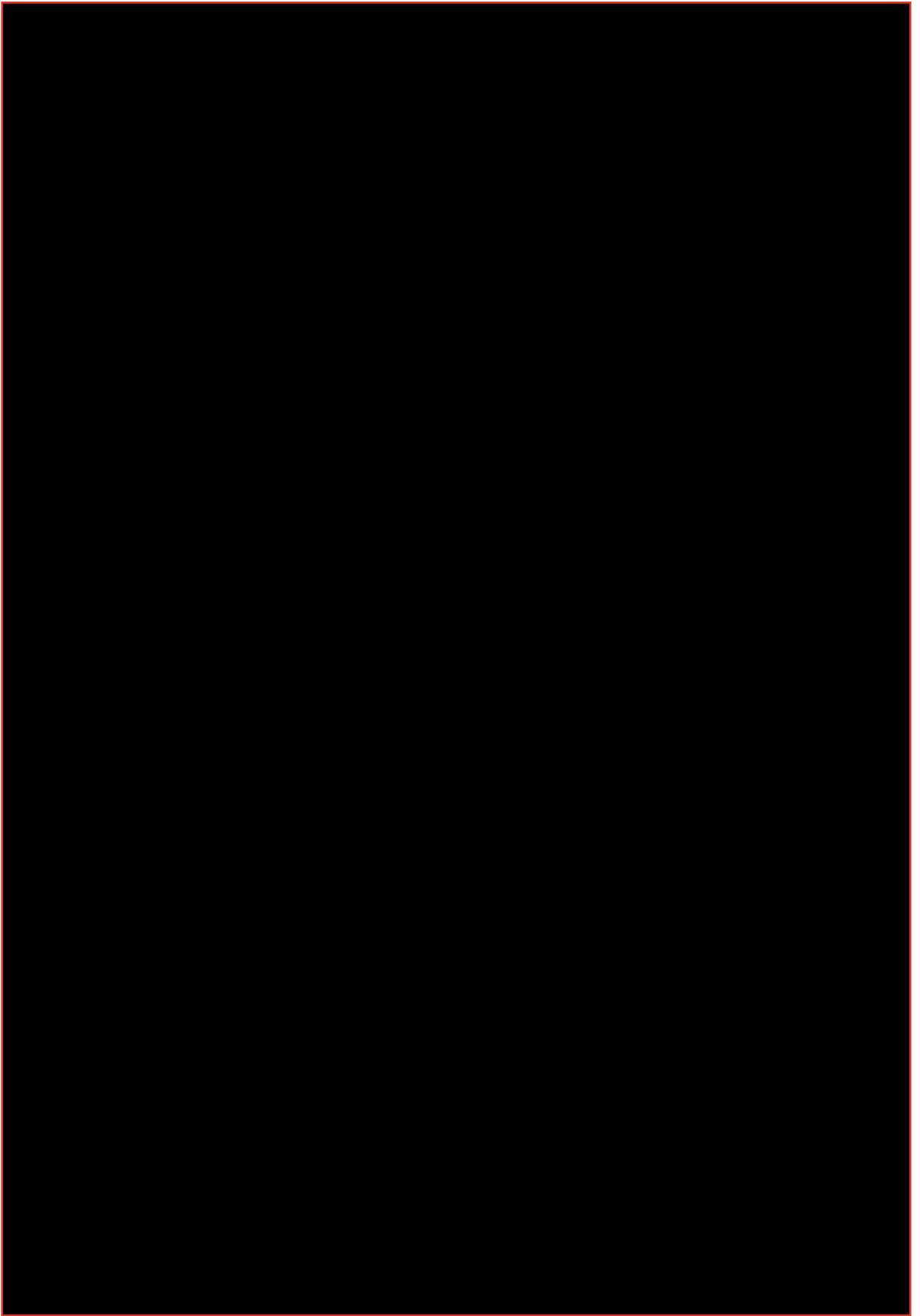


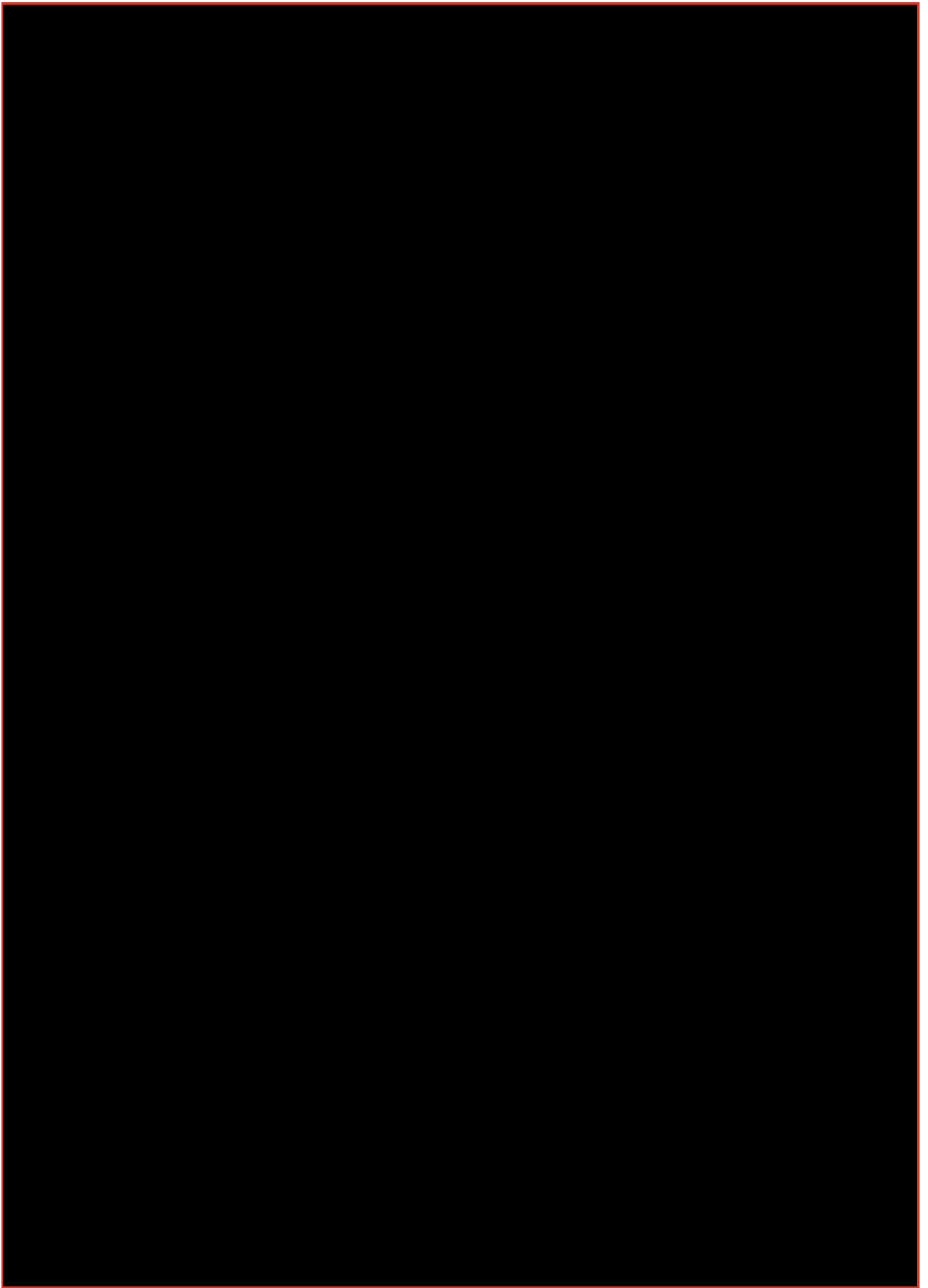


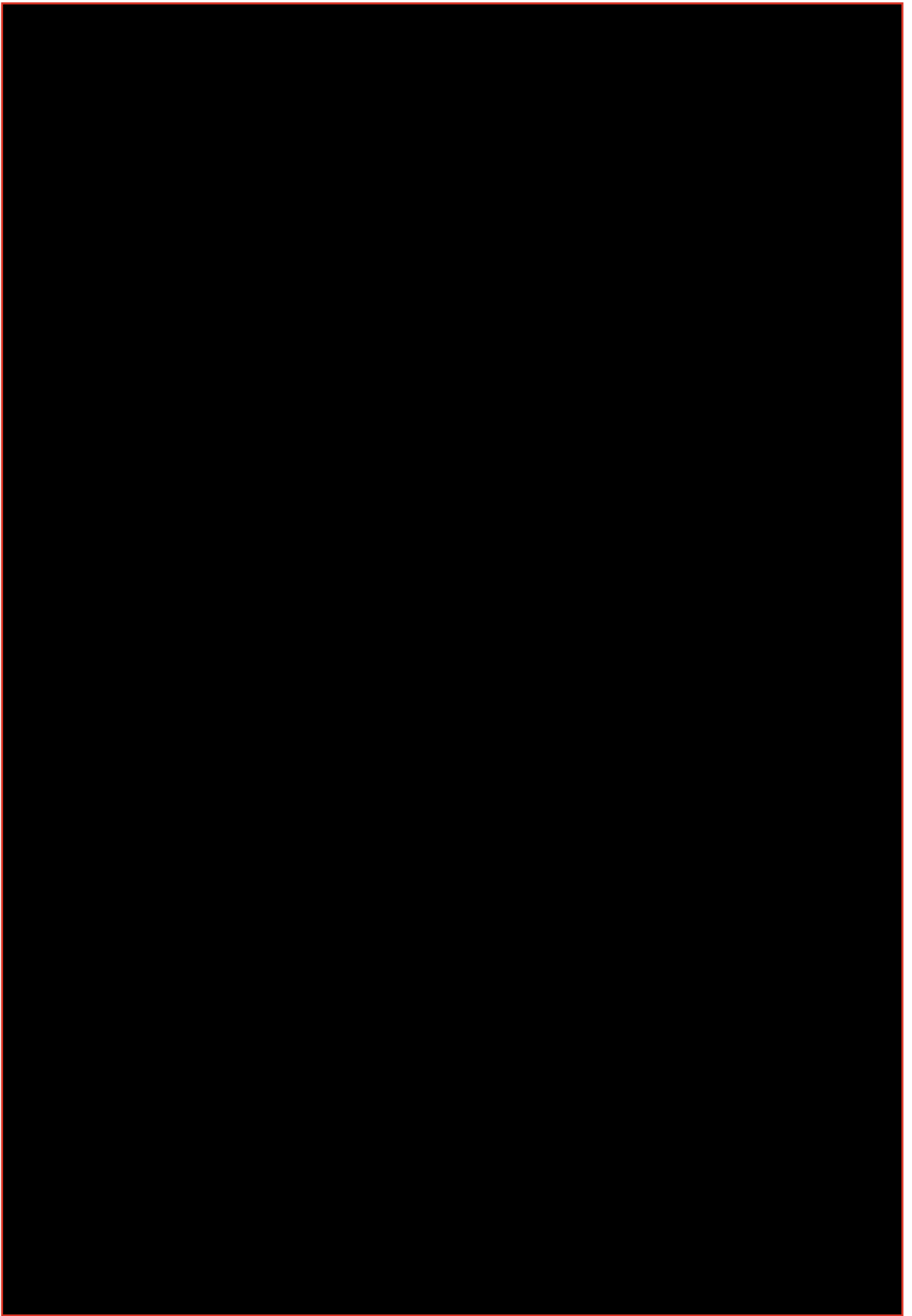


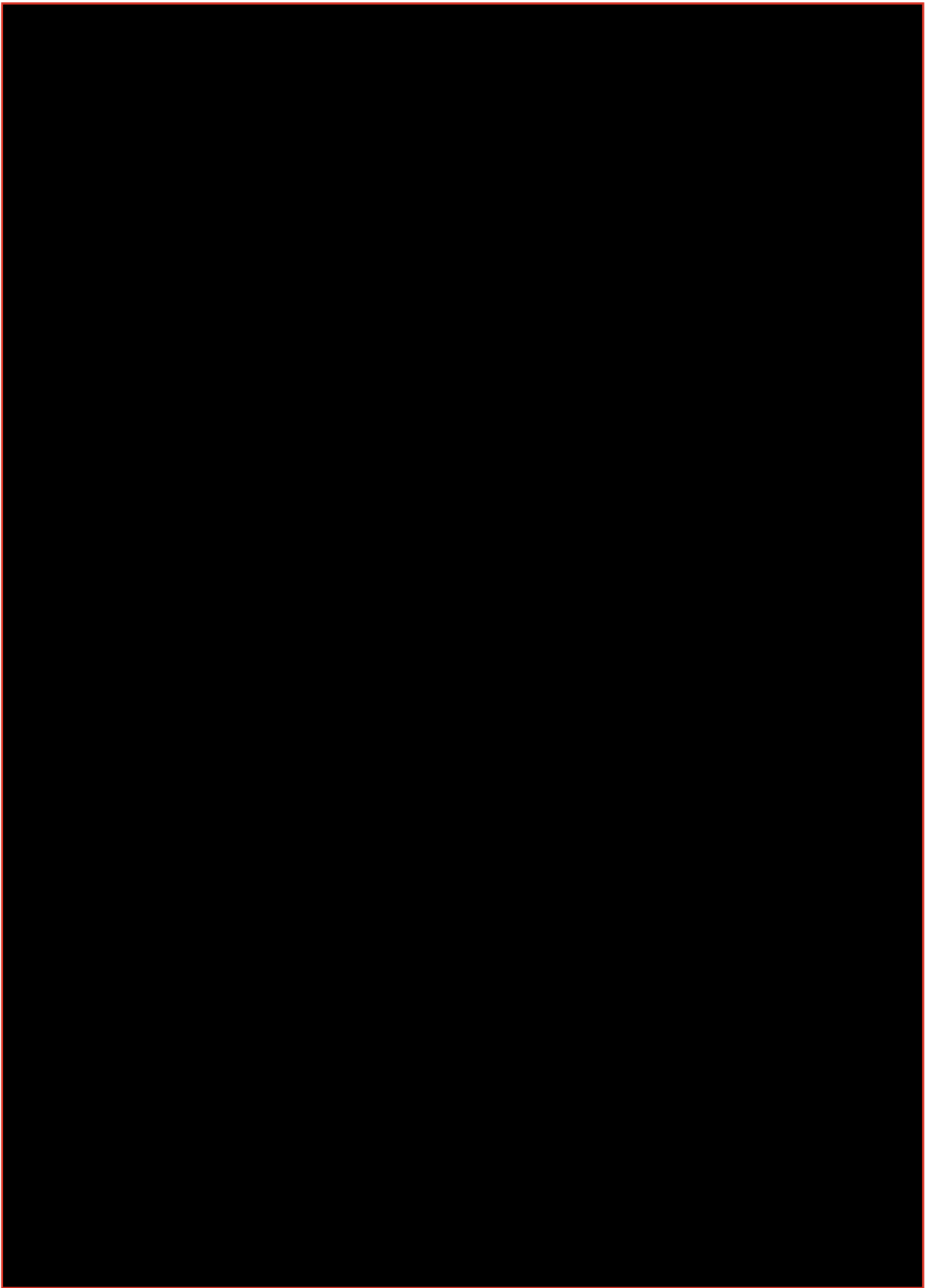














V. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this lawsuit under the Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code §§ 37.001 et seq.

6. This Court has personal jurisdiction over the parties to this lawsuit because they are residents of the State of Texas and/or have consented to the jurisdiction of this Court.

7. Venue is proper in Travis County, Texas under Sections 15.002 and 15.011 of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to Plaintiff's claims have occurred in Travis County, Texas and because the real property that is the subject of the lawsuit is located in Travis County, Texas.

VI. FACTUAL SUMMARY

A. Overview of the Property

8. Austin Public Free Schools (now known as AISD) acquired the land at issue in this action by 1948 and constructed Rosedale Elementary School on the property shortly thereafter. After serving the neighborhood with a public elementary school for 40 years, AISD opened the facility as the Rosedale School in 1988 to provide a public school for students between ages three and twenty-two with severe special needs.

9. As part of the 2017 Bond Program, the District delivered a new, modernized school for students with special needs a few miles north of the original campus. This new Rosedale School

facility was custom-built to meet the needs of special needs students, including access to a pediatric care center that allows them to learn while receiving needed medical care. After the new Rosedale School facility opened in February 2022, the former Rosedale School campus was shuttered and has not reopened as a school. The AISD Board of Trustees adopted a resolution in October 2024 declaring the land tract surplus, with the intention of marketing it for disposition.

10. In March 2025, the Board of Trustees authorized the Superintendent to negotiate and execute a contract to sell the former Rosedale School site to OHT Partners, a local builder and developer of multifamily residential projects. In August 2025, the District and OHT Partners executed the sale contract. OHT Partners intends to develop the site with a residential project.

B. The Restrictive Covenant

11. When the 21.5-acres that now encompass and surround the former Rosedale School were initially platted and subdivided in 1938, its owners executed several restrictions and covenants binding the subdivided lots. A true and correct copy of the document containing these restrictions (“Restrictive Covenants”) is attached as **Exhibit A**. One restriction states that “[n]o lot of this subdivision shall ever be used for any other purpose than that of a residence,” except certain lots which were used and continue to be used for commercial purposes. However, the Restrictive Covenants provide that “[a]ny of the above restrictions or covenants may be changed at any time for any lot of the subdivision upon the consent in writing of all the owners of the lots within a radius of two hundred feet thereof”

12. Later that year, the subdivision owners conveyed Lots 5 through 24 of Block 33 to the Board of Trustees of the Austin Public Free Schools. Pursuant to the Restrictive Covenants, the lot owners within two hundred feet of the conveyed property then consented to change the restrictions so that the lots could be used “for public school purposes.” Almost a decade later, the school board purchased nine more adjoining lots in Block 34 and built Rosedale Elementary

School, which later became the Rosedale School. The former school campus still sits on the property, and AISD files this action for the Court to interpret and declare its legal rights regarding the property and its disposition.

VII. CAUSE OF ACTION

A. Declaratory Judgment

13. AISD re-alleges the paragraphs above as if fully set forth herein.

14. On information and belief, a live controversy exists as to whether the development and use of 2117 West 49th Street for multifamily residential purposes would be consistent with the applicable Restrictive Covenants.

15. Thus, AISD seeks a declaration under the Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code §§ 37.001 et seq., of the rights, status, and other legal relations arising under the Restrictive Covenants.

16. Specifically, AISD requests the Court to declare multifamily residential use as consistent with any governing restrictions.

17. All necessary parties are a part of this action, and this Court has the power to declare the parties' respective rights regarding the application and interpretation of the Restrictive Covenants with respect to the subject tract.

PRAYER FOR RELIEF

WHEREFORE, AISD respectfully requests that Defendants be cited to appear and answer the claim asserted herein, and that the Court enter judgment for Plaintiff against Defendants for the following relief:

- i. Declaring that multifamily residential development of the property, including the proposed use, is consistent with any governing restrictions;

- ii. Declaring that development and use of the property for multifamily residential purposes is not prohibited by the governing restrictive covenants; and
- iii. Any other and further relief, at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

JACKSON WALKER LLP

/s/Christopher Mugica

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**ATTORNEYS FOR PLAINTIFF
AUSTIN INDEPENDENT SCHOOL
DISTRICT**

Exhibit A

HILLIARE F. NITSCHKE, ET UX
TO
THE PUBLIC

RESTRICTIONS 149
DATED APRIL 26, 1938
FILED APRIL 30, 1938
RECORDED VOL. 586, PAGES
365-6
TRAVIS COUNTY DEED RECORDS

THE STATE OF TEXAS
COUNTY OF TRAVIS

WHEREAS, by plat filed the 30th day of April, A.D. 1938, and recorded in Plat Book 4, page 26, of the Plat Records of Travis County, Texas, Hilliare F. Nitschke and wife, Winnie R. Nitschke, subdivided 21.5 acres out of a 28.38 acre tract in the Geo. W. Spear League in said County, and named the same Rosedale 'H' and,

WHEREAS, it is the intention of the subdividers that the same shall have uniform restrictions and covenants, which shall apply alike to all the lots of the subdivision.

THEREFORE, Know all men by these presents: That we, Hilliare F. Nitschke and wife, Winnie R. Nitschke, the owners of Rosedale 'H' do

hereby declare that all the lots of said subdivision, as shown on the plat thereof, shall be subject to the following restrictions and/or covenants forever, except as hereinafter provided:

1. No lot of this subdivision shall ever be used for any other purpose than that of a residence, except Lots Nos. One (1) to twelve (12), inclusive, of Block thirty-four (34), which are designated as business lots and may be used for commercial purposes.

2. No building, residence or commercial, shall be built or placed upon any lot of this subdivision which does not reasonably cost, at the time of construction, at least \$2,500.00, exclusive, of the cost of garage or outbuildings but no garage, garage apartment, tent, trailer or other building shall be built or placed on any lot and used as a residence, or for any other purpose, until after or at the same time the principal residence or commercial building is built or placed thereon.

3. No building or any part thereof exclusive of the steps used as a residence shall be built or placed nearer than twenty five (25) feet to the front property line.

4. No person of African descent shall ever be allowed to buy or hold in anyway title or control of any lot of this subdivision.

5. Any of the above restrictions or covenants may be changed at any time for any lot of the subdivision upon the consent in writing of all the owners of the lots within a radius of two hundred feet thereof, but in no event, however, shall intoxicating liquors ever be manufactured or sold upon the premises of any lot of this subdivision.

A violation of any of the above restrictions or covenants shall cause the property conveyed to revert ipso facto to the grantors, their heirs or assigns, and anyone owning a lot in the subdivision shall have the right to sue in case of violation of any of the above restrictions or covenants and cause the property to be forfeited to

the grantors, their heirs or assigns, but in either case, any reversion shall be subject to all bona fide liens. And these restrictions or covenants shall be in full force and effect whether written in subsequent deeds or not and shall be deemed to be covenants running with the land and shall be obeyed by all subsequent owners.

The failure at any time to enforce these restrictions or covenants by the grantors, their heirs or assigns, whether such violation is of knowledge or not, shall not constitute a waiver or estoppel of their right to do so at any time.

In testimony whereof, we have placed our signatures, this the 26th day of April, A. D. 1938.

Hilliare F. Nitschke
Winnie R. Nitschke

THE STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Lauren Hawthorne on behalf of Chris Mugica

Bar No. 24027554

lhawthorne@jw.com

Envelope ID: 107552867

Filing Code Description: Petition

Filing Description: PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT

Status as of 11/4/2025 10:34 AM CST

Case Contacts

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Annie Irvine		airvine@jw.com	10/31/2025 5:07:47 PM	SENT