

**PRIVATE DETENTION BASIN /
STORMWATER QUALITY BEST MANAGEMENT PRACTICE
MAINTENANCE AGREEMENT AND EASEMENT**

This DETENTION BASIN / STORMWATER QUALITY BEST MANAGEMENT PRACTICE MAINTENANCE AGREEMENT AND EASEMENT (Agreement) is made by and between EL PASO COUNTY by and through THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO (Board or County) and TC&C, LLC (“Developer”) and ROLLIN RIDGE ESTATES OWNERS ASSOCIATION, INC. (“Association”), a Colorado non-profit corporation organized under the laws of the State of Colorado. The above may occasionally be referred to herein singularly as “Party” and collectively as “Parties.”

Recitals

A. WHEREAS, Developer is the owner of certain real estate in El Paso County, Colorado, which Property is legally described in Exhibit A attached hereto and incorporated herein by this reference; and

B. WHEREAS, Developer desires to plat and develop on the Property a subdivision to be known as Rollin Ridge Filing No. 1; and

C. WHEREAS, the development of this Property will substantially increase the volume of water runoff and will decrease the quality of the stormwater runoff from the Property, and, therefore, it is in the best interest of public health, safety and welfare for the County to condition approval of this subdivision on Developer’s promise to construct adequate drainage, water runoff control facilities, and stormwater quality structural Best Management Practices (“BMPs”) for the subdivision; and

D. WHEREAS, Chapter 8, Section 8.4.5 of the El Paso County Land Development Code, as periodically amended, promulgated pursuant to Section 30-28-133(1), Colorado Revised Statutes (C.R.S.), requires the County to condition approval of all subdivisions on a developer’s promise to so construct adequate drainage, water runoff control facilities, and BMPs in subdivisions; and

E. WHEREAS, the Drainage Criteria Manual, Volume 2, as amended by Appendix I of the El Paso County Engineering Criteria Manual (ECM), as each may be periodically amended, promulgated pursuant to the County’s Colorado Discharge Permit System General Permit (MS4 Permit) as required by Phase II of the National Pollutant Discharge Elimination System (NPDES), which MS4 Permit requires that the County take measures to protect the quality of stormwater from sediment and other contaminants, requires subdividers, developers, landowners, and owners of facilities located in the County’s rights-of-way or easements to provide adequate permanent stormwater quality BMPs with new development or significant redevelopment; and

F. WHEREAS, Section 2.9 of the El Paso County Drainage Criteria Manual provides for a developer’s promise to maintain a subdivision’s drainage facilities in the event the County does not assume such responsibility; and

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G. WHEREAS, developers in El Paso County have historically chosen water runoff detention basins as a means to provide adequate drainage and water runoff control in subdivisions, which basins, while effective, are less expensive for developers to construct than other methods of providing drainage and water runoff control; and

H. WHEREAS, Developer desires to construct for the subdivision detention basin/stormwater quality BMP(s) (“detention basins/BMP(s)”) as the means for providing adequate drainage and stormwater runoff control and to meet requirements of the County’s MS4 Permit, and to provide for operating, cleaning, maintaining and repairing such detention basins/BMP(s); and

I. WHEREAS, Developer desires to construct the detention basins/BMP(s) on property that will be platted as Tract A and Lot 3, as indicated on the final plat of Rolling Ridge Filing No. 1 as set forth on Exhibit B attached hereto; and

J. WHEREAS, Developer shall be charged with the duty of constructing the detention basins/BMP(s) and the Association shall be charged in the Subdivision’s Covenants with the duties of operating, maintaining and repairing all common areas and common structures within the Subdivision, including the detention basins/BMP(s) on the portions of the Property described in Exhibit B; and

K. WHEREAS, it is the County’s experience that subdivision developers and property owners historically have not properly cleaned and otherwise not properly maintained and repaired these detention basins/BMPs, and that these detention basins/BMPs, when not so properly cleaned, maintained, and repaired, threaten the public health, safety and welfare; and

L. WHEREAS, the County, in order to protect the public health, safety and welfare, has historically expended valuable and limited public resources to so properly clean, maintain, and repair these detention basins/BMPs when developers and homeowners’ associations have failed in their responsibilities, and therefore, the County desires the means to recover its costs incurred in the event the burden falls on the County to so clean, maintain and repair the detention basin/BMP(s) serving this Subdivision due to the Developer’s or the Association’s failure to meet its obligations to do the same; and

M. WHEREAS, the County conditions approval of this Subdivision on the Developer’s promise to so construct the detention basin/BMP(s), and further conditions approval on the Association’s promise to reimburse the County in the event the burden falls upon the County to so clean, maintain and/or repair the detention basins/BMP(s) serving this Subdivision; and

N. WHEREAS, the County could condition subdivision approval on the Developer’s promise to construct a different and more expensive drainage, water runoff control system and BMPs than those proposed herein, which more expensive system would not create the possibility of the burden of cleaning, maintenance and repair expenses falling on the County; however, the County is willing to forego such right upon the performance of Developer’s and the Association’s promises contained herein; and

O. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision upon the Developer’s grant herein of a perpetual Easement over a portion of the Property for the purpose of allowing the County to periodically access, inspect, and, when so necessary, to clean, maintain and/or repair the detention basins/BMP(s); and

P. WHEREAS, given that the Association could potentially avoid liability hereunder by dissolving and reforming as a different entity, and given the difficulties inherent in collecting an unsecured promise, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision upon the Developer's creation, by and through this Agreement, of a covenant running with the land upon each and every lot in the Subdivision.

Agreement

NOW, THEREFORE, in consideration of the mutual Promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The Parties incorporate the Recitals above into this Agreement.
2. Covenants Running with the Land and Pro Rata Liability Upon Individual Lot Owners: Developer and the Association agree that this entire Agreement and the performance thereof shall become a covenant running with the land, which land is legally described in Exhibit A attached hereto, and that this entire Agreement and the performance thereof shall be binding upon themselves, their respective successors and assigns, including individual lot owners within the Subdivision.

However, any liability imposed under this Agreement against an individual lot owner shall not be joint and several with the Developer and the Association, but shall be pro-rated on a per-lot basis as determined by the following formula and illustration: each individual lot owner(s) shall be liable for no more than the total monetary amount of liability multiplied by a fraction in which the numerator is the number of lots in the Subdivision owned by a particular lot owner, and the denominator is the total number of lots in the Subdivision. As to any lot(s) owned by more than one person or entity, the liability among co-owners shall be joint and several for the pro rata obligation of that lot. The application of this Paragraph is best illustrated by the following example. Assume the following parameters: total liability is \$10,000; total number of lots in the Subdivision is 100; Lot 1 is owned by persons A and B; person B also owns Lot 2. Liability is as follows: the Developer, \$10,000; the Association, \$10,000; Lot 1 is \$100.00, joint and several as to A and B, Lot 2 is \$100.00 owed solely by B. Thus person A's total liability is \$100.00 and person B's is \$200.00. Applying the principle that the County cannot collect more than it is owed, and assuming that the County cannot collect anything from the Developer and the Association, if the County collected the \$100.00 from A, then it could only collect \$100.00 from B.

3. Construction: Developer shall construct on that portion of the Property described in Exhibit B attached hereto and incorporated herein by this reference, two (2) detention basin/BMPs. Developer shall not commence construction of the detention basin/BMP until the El Paso County Planning and Community Development Department (PCD) has approved in writing the plans and specifications for the detention basin/BMP and this Agreement has been signed by all Parties and returned to the PCD. Developer shall complete construction of the detention basin/BMP(s) in substantial compliance with the County-approved plans and specifications for the detention basin/BMP. Failure to meet these requirements shall be a material breach of this Agreement, and shall entitle the County to pursue any remedies available to it at law or in equity to enforce the same. Construction of the detention basin/BMP shall be substantially completed within one (1) year (defined as 365 days), which one-year period will commence to run on the date the approved plat of this Subdivision is recorded in the records of the El Paso County Clerk and Recorder. Rough grading of the detention basin/BMP must be completed and inspected by PCD prior to commencing road construction.

In the event construction is not substantially completed within the one (1) year period, then the County may exercise its discretion to complete the project, and shall have the right to seek reimbursement from the Developer or the Association and their respective successors and assigns, for its actual costs and expenses incurred in the process of completing construction. The term actual costs and expenses shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tool and equipment costs, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the Provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same.

4. **Maintenance:** The Developer and the Association agree for themselves and their respective successors and assigns that they will regularly and routinely inspect, clean and maintain the detention basins/BMP, and otherwise keep the same in good repair, all at their own cost and expense. No trees or shrubs that will impair the structural integrity of the detention basins/BMP shall be planted or allowed to grow on the detention basins/BMP.

5. **Creation of Easement:** Developer and the Association hereby grant the County a non-exclusive perpetual easement upon and across that portion of the Property described in Exhibit B. The purpose of the easement is to allow the County to access, inspect, clean, repair and maintain the detention basins/BMP; however, the creation of the easement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basins/BMP.

6. **County's Rights and Obligations:** Any time the County determines, in the sole exercise of its discretion, that the detention basin/BMP is not properly cleaned, maintained and/or otherwise kept in good repair, the County shall give reasonable notice to the Developer, the Association and their respective successors and assigns, including the individual lot owners within the Subdivision, that the detention basin/BMP needs to be cleaned, maintained and/or otherwise repaired. The notice shall provide a reasonable time to correct the problem(s). Should the responsible parties fail to correct the specified problem(s), the County may enter upon the Property to so correct the specified problem(s). Notice shall be effective to the above by the County's deposit of the same into the regular United States mail, postage pre-paid. Notwithstanding the foregoing, this Agreement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basin/BMP.

7. **Reimbursement of County's Costs / Covenant Running With the Land:** The Developer and the Association agree and covenant, for themselves, their respective successors and assigns, including individual lot owners within the Subdivision, that they will reimburse the County for its costs and expenses incurred in the process of completing construction of, cleaning, maintaining, and/or repairing the detention basin/BMP pursuant to the provisions of this Agreement; however, the obligation and liability of the Developer hereunder shall only continue until such time as the Developer transfers the entire management and operation of the Association to the individual lot owners within the Subdivision. Notwithstanding the previous sentence, the Association and the individual lot owners within the Subdivision shall always remain obligated and liable hereunder, and as per the provisions of Paragraph Two (2) above.

The term "actual costs and expenses" shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies,

etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney's fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same. The scope of liability therefore of the Developer, the Association, and the individual lot owners shall be as set forth in Paragraph Two (2) above.

8. **Contingencies of Subdivision Approval:** Developer's and the Association's execution of this Agreement is a condition of subdivision approval. Additional conditions of this Agreement include, but are not limited to, the following:

- a. The County's receipt of a copy of the Articles of Incorporation for the Association, as filed with the Colorado Secretary of State; receipt of the Certificate of Incorporation or other comparable proof for the same from the Colorado Secretary of State; a copy of the Bylaws of the Association; a copy of the organizational minutes or other appropriate document of the Association, properly executed and attested, establishing that the Association has adopted this Agreement as an obligation of the Association; and
- b. A copy of the Covenants of the Subdivision establishing that the Association is obligated to inspect, clean, maintain, and repair the detention basin/BMP; that the Association has adopted this Agreement as an obligation of the Association; and that a funding mechanism is in place whereby individual lot owners within the Subdivision pay a regular fee to the Association for, among other matters, the inspection, cleaning, maintenance, and repair of the detention basin/BMP(s); and
- c. A copy of the Covenants of the Subdivision establishing that this Agreement is incorporated into the Covenants, and that such Agreement touches and concerns each and every lot within the Subdivision.

The County shall have the right, in the sole exercise of its discretion, to approve or disapprove any documentation submitted to it under the conditions of this Paragraph, including but not limited to, any separate agreement or amendment, if applicable, identifying any specific maintenance responsibilities not addressed herein. The County's rejection of any documentation submitted hereunder shall mean that the appropriate condition of this Agreement has not been fulfilled.

9. **Distribution to Lot Purchasers:** Upon the initial sale of any lot within the Subdivision, prior to closing on such sale, the Developer shall give a copy of this Agreement to the potential Buyer.

10. **Agreement Monitored by El Paso County Planning and Community Development Department and/or El Paso County Department of Public Works:** Any and all actions and decisions to be made hereunder by the County shall be made by the Director of the El Paso County Planning and Community Development Department and/or the Director of the El Paso County Department of Public Works. Accordingly, any and all documents, submissions, plan approvals, inspections, etc. shall be submitted to and shall be made by the Director of the Planning and Community Development Department and/or the Director of the El Paso County Department of Public Works.

11. **Indemnification and Hold Harmless:** To the extent authorized by law, Developer and the Association agree, for themselves, their respective successors and assigns, including the individual lot

owners in the Subdivision, that they will indemnify, defend, and hold the County harmless from any and all loss, costs, damage, injury, liability, claim, lien, demand, action and causes of action whatsoever, whether at law or in equity, arising from or related to their respective intentional or negligent acts, errors or omissions or that of their agents, officers, servants, employees, invitees and licensees in the construction, operation, inspection, cleaning (including analyzing and disposing of any solid or hazardous wastes as defined by State and/or Federal environmental laws and regulations), maintenance, and repair of the detention basin/BMP, and such obligation arising under this Paragraph shall be joint and several. Nothing in this Paragraph shall be deemed to waive or otherwise limit the defense available to the County pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.* C.R.S., or as otherwise provided by law. However, the obligation and liability of the Developer hereunder shall only continue until such time as the Developer transfers the entire management and operation of the Association to the individual lot owners within the Subdivision.

12. **Severability:** In the event any Court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.

13. **Third Parties:** This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceeding against either the County, the Developer, the Association, or their respective successors and assigns, including any individual lot owners in the Subdivision, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

14. **Solid Waste or Hazardous Materials:** Should any refuse from the detention basin/BMP be suspected or identified as solid waste or petroleum products, hazardous substances or hazardous materials (collectively referred to herein as “hazardous materials”), the Developer and the Association shall take all necessary and proper steps to characterize the solid waste or hazardous materials and properly dispose of it in accordance with applicable State and/or Federal environmental laws and regulations, including, but not limited to, the following: Solid Wastes Disposal Sites and Facilities Acts, §§ 30-20-100.5 – 30-20-119, C.R.S., Colorado Regulations Pertaining to Solid Waste Disposal Sites and Facilities, 6 C.C.R. 1007-2, *et seq.*, Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, and Federal Solid Waste Regulations 40 CFR Ch. I. The County shall not be responsible or liable for identifying, characterizing, cleaning up, or disposing of such solid waste or hazardous materials. Notwithstanding the previous sentence, should any refuse cleaned up and disposed of by the County be determined to be solid waste or hazardous materials, the Developer and the Association, but not the County, shall be responsible and liable as the owner, generator, and/or transporter of said solid waste or hazardous materials.

15. **Applicable Law and Venue:** The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement, except that Federal law may be applicable regarding solid waste or hazardous materials. Venue shall be in the El Paso County District Court.

16. **Assignment to Commercial Owners Association:** As previously approved by the County, the portion of the Property containing Tract A has been zoned commercially and is part of a planned commercial development. Because development of the commercial portion of the Property will substantially increase the volumes and quantities of water runoff and decrease the quality of the stormwater runoff to be detained in the detention basin/BMP located on said Tract A, it is the desire of the Developer to assign all duties and obligations, as set forth in this Agreement, of the Rollin Ridge

Estates Owners Association and the individual lot owners in the Rollin Ridge Estates Filing No. 1 Subdivision, to a yet to be organized commercial owners association and the lot owners therein. It is understood and agreed that any such assignment, which is contemplated to occur prior to or in conjunction with the first final plat of the commercial portion of the Property, shall require the prior approval of the County in a form acceptable to the County to assure compliance with the objectives and intent of this Agreement.

IN WITNESS WHEREOF, the Parties affix their signatures below.

Executed this 8th day of October, 2020, by:

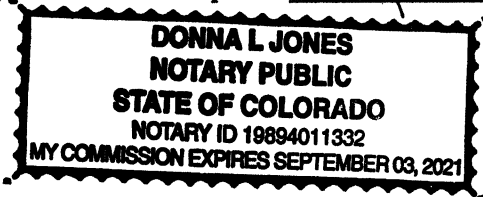
TC&C, LLC

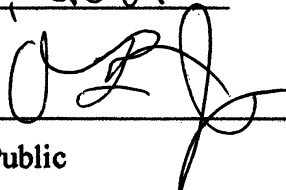
By: 
Carl N. Turse, Its Manager

The foregoing instrument was acknowledged before me this 8th day of October, 2020, by Carl N. Turse, Manager, TC&C, LLC.

Witness my hand and official seal.

My commission expires: September 3, 2021




Notary Public

Executed this 8th day of October, 2020, by:

ROLLIN RIDGE ESTATES HOMEOWNERS' ASSOCIATION

By: Carl N. Turse
Carl N. Turse, President

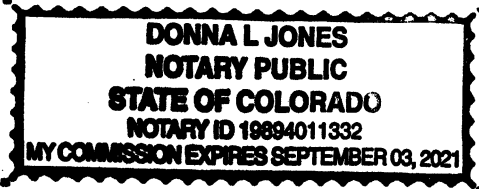
Attest:

By: Don D. June
Secretary

The foregoing instrument was acknowledged before me this 8th day of October, 2020, by Carl N. Turse, President of the Rollin Ridge Estates Homeowners' Association

Witness my hand and official seal.

My commission expires: September 3, 2021



[Signature]
Notary Public

Executed this _____ day of _____, 2020, by:

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

By: [Signature]
Craig Dossey, Executive Director
Planning and Community Development Department
Authorized signatory pursuant to LDC

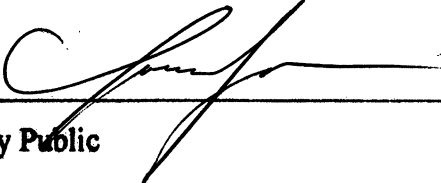
Attest:

County Clerk and Recorder

The foregoing instrument was acknowledged before me this 11 day of March, 2020, by Craig Dossey, Executive Director, El Paso County Planning and Community Development Department, as Attested to by Craig Dossey, County Clerk and Recorder.

Witness my hand and official seal.

My commission expires: October 11, 2022



Notary Public

Approved as to Content and Form:

Hori L. Slag

Assistant County Attorney

Tara Joy Younger
Notary Public
State of Colorado
Notary ID 20184040076
My Commission Expires October 11, 2022

EXHIBIT "A"

LEGAL DESCRIPTION – ROLLIN RIDGE SUBDIVISION FILING NO. 1

A TRACT OF LAND BEING ROLLIN RIDGE SUBDIVISION FILING NO. 1, AS RECORDED UNDER RECEPTION NO. _____ OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER, LOCATED IN THE NORTH ONE-HALF OF THE NORTH ONE-HALF (N1/2 N1/2) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO

SAID TRACT CONTAINS 57.01 ACRES OF LAND, MORE OR LESS.

EXHIBIT "B"

LEGAL DESCRIPTION – DRAINAGE AND DETENTION POND – TRACT "A":

A TRACT OF LAND FOR STORM DRAINAGE AND DETENTION PURPOSES, BEING TRACT A, ROLLIN RIDGE FILING NO. 1, AS RECORDED UNDER RECEPTION NO. _____ OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER, LOCATED IN THE NORTH ONE-HALF OF THE NORTH ONE-HALF (N1/2 N1/2) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO.

SAID EASEMENT CONTAINS 30,877 SQUARE FEET (0.71 ACRES) OF LAND, MORE OR LESS.

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LEGAL DESCRIPTION – DRAINAGE AND DETENTION AREA – LOT 3:

AN EASEMENT FOR STORM DRAINAGE AND DETENTION PURPOSES LYING OVER, UNDER AND ACROSS A PORTION OF LOT 3, ROLLIN RIDGE FILING NO. 1, AS RECORDED UNDER RECEPTION NO. _____ OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER, LOCATED IN THE NORTH ONE-HALF OF THE NORTH ONE-HALF (N1/2 N1/2) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS STATEMENT – ALL BEARINGS USED HEREIN ARE ASSUMED TO BEAR N00°06'39"W, A DISTANCE OF 1262.77 FEET BETWEEN THE SOUTHWEST CORNER OF THAT TRACT OF LAND AS DESCRIBED IN DEED RECORDED UNDER RECEPTION NO. 216022946, AS MONUMENTED BY A 5/8" REBAR (NO CAP), AND THE NORTHWEST CORNER OF SAID TRACT, AS MONUMENTED BY A 5/8" REBAR WITH ORANGE CAP STAMPED "PLS 32439".

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 3, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF THAT 40 FOOT ADDITIONAL RIGHT-OF-WAY AS SHOWN ON SAID PLAT OF ROLLIN RIDGE FILING NO. 1;

THENCE S88°54'09"E ALONG THE NORTHERLY LINE OF SAID LOT 3, SAID LINE ALSO BEING THE SOUTHERLY LINE OF SAID ADDITIONAL RIGHT-OF-WAY, A DISTANCE OF 100.02 FEET;

THENCE S00°06'39"E, A DISTANCE OF 141.52 FEET;

THENCE S16°57'44"W, A DISTANCE OF 32.90 FEET;

THENCE S40°15'19"W, A DISTANCE OF 43.18 FEET;

THENCE S89°53'21"W, A DISTANCE OF 62.38 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 3, SAID POINT ALSO BEING A POINT ON THE EASTERLY LINE OF THAT TRACT AS DESCRIBED UNDER SAID RECEPTION NO. 200156068.

THENCE N00°06'39"W ALONG THAT LINE COMMON TO SAID LOT 3 AND SAID TRACT, A DISTANCE OF 207.98 FEET TO THE POINT OF BEGINNING;

SAID EASEMENT CONTAINS 19,763 SQUARE FEET (0.45 ACRES) OF LAND, MORE OR LESS.

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