

Recording requested by
and when recorded please return to:

Town of Castle Rock
100 N. Wilcox St.
Castle Rock, CO 80104
Attn: Jennifer King

**FIRST AMENDMENT
TO
SUBDIVISION IMPROVEMENTS AGREEMENT**

THIS FIRST AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT ("First Amendment") is made and entered into as of October ~~20~~²⁰, 2015 ("Effective Date"), by and among **TOWN OF CASTLE ROCK**, a Colorado municipal corporation ("Town"), and **PROMENADE CASTLE ROCK, LLC**, a Delaware limited liability company, **IMPERIAL LOCUST, LLC**, a Colorado limited liability company, **JAPANESE PAGODA TREE, LLC**, a Colorado limited liability company, **JAPANESE TREE LILAC, LLC**, a Colorado limited liability company, and **JUPITERS BEARD, LLC**, a Colorado limited liability company, (collectively "**Subdivider**").

RECITALS

A. Town and Subdivider entered into that certain Subdivision Improvements Agreement (the "**Agreement**") dated August 13, 2015, and recorded August 13, 2015 in the Records of Douglas County (the "**Records**") at Reception No. 2015057860, regarding the property described on *Exhibit A*, attached hereto.

B. Town and Subdivider desire to amend the Agreement as set forth herein.

C. Mortgagee is a party to this Agreement solely for the purpose of subordinating its lien and interest in the property to the terms and conditions of this First Amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Town and Subdivider agree as follows:

1. **Defined Terms**. Initially capitalized terms used in this First Amendment and not otherwise defined in this First Amendment shall have the meanings provided for such terms in the Agreement.

2. **Cash in Lieu and Right of Way**. Town and Subdivider hereby agree that in lieu of requiring the Subdivider to pay Town \$211,983 as cash-in-lieu of the SH85 Improvements, as provided in Section 11 of the Agreement, concurrently with and as a condition to recordation of this First Amendment, Subdivider shall convey to Town, at no cost to Town, the property described in the attached *Exhibit B* ("**ROW Parcels**"). The ROW Parcels are necessary for the construction of certain right-of-way improvements as part of the North Meadows Extension



FA 437215

project. Conveyance of the ROW Parcels shall be in the same manner as Public Lands are conveyed to Town pursuant to Article VIII of the Development Agreement. Provided, however, Town shall not require a policy of title insurance for the ROW Parcels. Upon conveyance of the ROW Parcels, Subdivider shall have no further financial obligation toward construction of the SH85 Improvements.

3. **Town's Acknowledgements.** Town hereby acknowledges that, pursuant to Section 8.02 of the Development Agreement, the ROW Parcels are free and clear of liens, or other title impediments created by Subdivider that would preclude Town from utilizing the property for its intended purpose. Additionally, Town hereby waives its right, pursuant to Section 8.02 of the Development Agreement, to require Subdivider to complete a Phase 1 environmental audit and any remedial environmental measures of hazard identified in the audit prior to the conveyance of the ROW Parcels. Further, Town hereby acknowledges that Subdivider has been released from its maintenance obligations pursuant to Section 8.04 of the Development Agreement as it pertains to the ROW Parcels.

4. **Additional Acknowledgements.**

(a) The undersigned Mortgagee is the beneficiary under that certain Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing granted by Promenade Castle Rock, LLC, a Delaware limited liability company ("PCR"), and recorded in the Records on October 22, 2014 at Reception No. 2014061102, as amended by that certain First Amendment to Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing between PCR and Mortgagee and recorded in the Records on August 26, 2015 at Reception No. 2015061155 (as amended, the "**Land Loan Deed of Trust**").

(b) The undersigned Mortgagee is also the administrative agent for the beneficiary under those certain Construction Deeds of Trust, Security Agreements, Assignment of Rents and Leases and Fixture Filings recorded in the Records on August 26, 2015 at Reception Nos. 2015061172, 2015061173, 2015061174 and 2015061175 (collectively, the "**Block 4B Deeds of Trust**").

(c) Subdivider and Town, and Mortgagee by its execution and delivery of the Mortgagee Joinder attached hereto, further acknowledge and agree that (a) the Agreement Regarding Promenade at Castle Rock Filing No. 1 Subdivision Improvements Agreement Relating to Mortgagee dated August 13, 2015, made by and among Town, Mortgagee and PCR in connection with the Land Loan Deed of Trust, (b) the Agreement and Consent to Assignment of Project Agreements dated as of August 18, 2015, made by and among Town, PCR, Mortgagee and Promenade at Castle Rock Metropolitan Districts Nos. 1, 2 and 3 (collectively, the "**Districts**") in connection with the Block 4B Deeds of Trust, and (c) the Agreement and Consent to Assignment of Project Agreements dated as of August 18, 2015, made by and among Town, PCR, Mortgagee and the Districts in connection with the Block 4B Deeds of Trust, shall also apply to the Mortgagee Joinder attached to this First Amendment.

5. **Legal Description.** The legal description attached to the original Agreement is replaced and superseded with the legal description set forth as Exhibit A attached hereto.

6. **Miscellaneous.** Except to the extent expressly modified by this First Amendment, the Agreement is in full force and effect. To the extent of any inconsistency between this First Amendment and the Agreement, the terms and conditions of this First Amendment shall control. This First Amendment may be executed in multiple counterparts, all of which, taken together, shall constitute one document. This First Amendment shall be deemed effective against a party upon receipt by the other party (or its counsel) of a PDF counterpart signature page to this First Amendment.

[SIGNATURE PAGES FOLLOW]

Unofficial Copy

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date and year hereinabove written.

[SIGNATURES CONTINUE ON NEXT PAGE]

Unofficial Copy

SUBDIVIDER:

PROMENADE CASTLE ROCK, LLC,
a Delaware limited liability company

By: Alberta Castle Rock Management, LLC,
a Colorado limited liability company,
its Manager

By: _____
Name: Donald G. Provost
Title: Manager

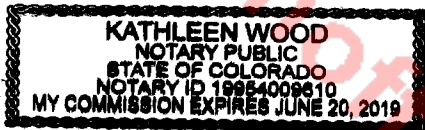
Unofficial Copy

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 19th day of October, 2015, by Donald G. Provost, as Manager of Alberta Castle Rock Management, LLC, a Colorado limited liability company, as Manager of Promenade Castle Rock, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: 6/20/2019



Kathleen Wood
Notary

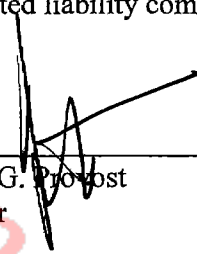
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IMPERIAL LOCUST, LLC,
a Colorado limited liability company

By: Promenade Castle Rock, LLC,
a Delaware limited liability company,
its Managing Member

By: Alberta Castle Rock Management, LLC,
a Colorado limited liability company,
its Manager

By: _____
Name: Donald G. Probst
Its: Manager



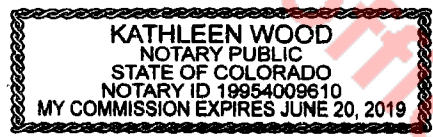
Unofficial Copy

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 19th day of October, 2015, by Donald G. Provost, as Manager of Alberta Castle Rock Management, LLC, a Colorado limited liability company, as Manager of Promenade Castle Rock, LLC, a Delaware limited liability company, as Managing Member of Imperial Locust, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 6/20/2019



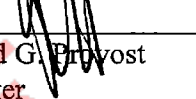
Kathleen Wood
Notary

Unofficial Copy

JAPANESE PAGODA TREE, LLC,
a Colorado limited liability company

By: Promenade Castle Rock, LLC,
a Delaware limited liability company,
its Managing Member

By: Alberta Castle Rock Management, LLC,
a Colorado limited liability company,
its Manager

By: 
Name: Donald G. Provost
Its: Manager

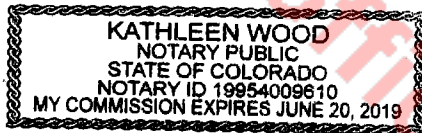
Unofficial Copy

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 19th day of October, 2015, by Donald G. Provost, as Manager of Alberta Castle Rock Management, LLC, a Colorado limited liability company, as Manager of Promenade Castle Rock, LLC, a Delaware limited liability company, as Managing Member of Japanese Pagoda Tree, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 6/20/2019



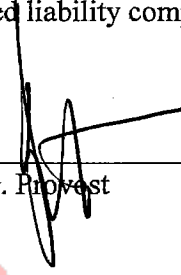
Kathleen Wood
Notary

Non-Official Copy

JAPANESE TREE LILAC, LLC,
a Colorado limited liability company

By: Promenade Castle Rock, LLC,
a Delaware limited liability company,
its Managing Member

By: Alberta Castle Rock Management, LLC,
a Colorado limited liability company,
its Manager

By: 
Name: Donald G. Provest
Its: Manager

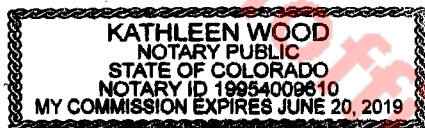
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STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 19th day of October, 2015, by Donald G. Provost, as Manager of Alberta Castle Rock Management, LLC, a Colorado limited liability company, as Manager of Promenade Castle Rock, LLC, a Delaware limited liability company, as Managing Member of Japanese Tree Lilac, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 4/20/2019



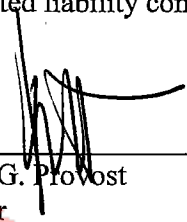
Kathleen Wood
Notary

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JUPITERS BEARD, LLC,
a Colorado limited liability company

By: Promenade Castle Rock, LLC,
a Delaware limited liability company,
its Managing Member

By: Alberta Castle Rock Management, LLC,
a Colorado limited liability company,
its Manager

By: 
Name: Donald G. Provost
Its: Manager

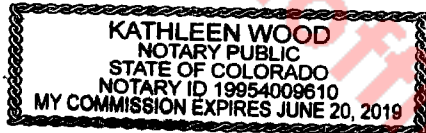
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STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 6th day of October, 2015, by Donald G. Provost, as Manager of Alberta Castle Rock Management, LLC, a Colorado limited liability company, as Manager of Promenade Castle Rock, LLC, a Delaware limited liability company, as Managing Member of Jupiters Beard, LLC, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 6/20/2019



Kathleen Wood
Notary

[SIGNATURES CONTINUE ON NEXT PAGE]

MORTGAGEE JOINDER

By execution of this First Amendment, (a) Mortgagee, as beneficiary under the Land Loan Deed of Trust, subordinates its lien and interest in those portions of the Property created by Land Loan Deed of Trust to the real covenants and restrictions of this First Amendment, and (b) Mortgagee, as administrative agent for the beneficiary under the Block 4B Deeds of Trust, subordinates its lien and interest in those portions of the Property created by the Block 4B Deeds of Trust to the real covenants and restrictions of this First Amendment. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this First Amendment from Mortgagee except in the event Mortgagee acquires legal title to a portion of the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this First Amendment, but only with respect to such portion of the Property.

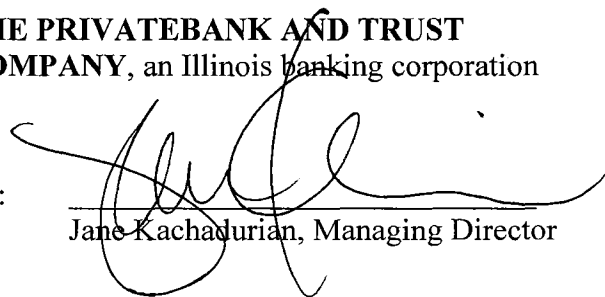
[remainder of page intentionally left blank; signature and acknowledgment page follows]

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MORTGAGEE:

**THE PRIVATEBANK AND TRUST
COMPANY**, an Illinois banking corporation

By:

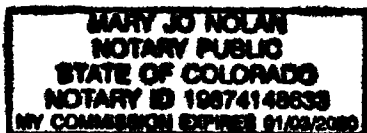

Jane Kachadurian, Managing Director

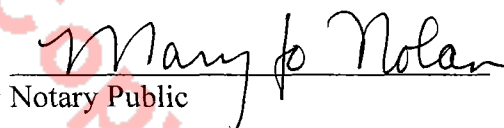
CORPORATE ACKNOWLEDGMENT

STATE OF COLORADO)
CITY AND) SS
COUNTY OF DENVER)

Be it remembered that on this 19th day of October, 2015, before me a notary public in and for the county and state aforesaid, came Jane Kachadurian, as Managing Director of THE PRIVATEBANK AND TRUST COMPANY, an Illinois banking corporation, who is personally known to me to be the person who executed the within instrument of writing on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.




Notary Public

(SEAL)

My commission expires: 1/3/20

EXHIBIT A

Legal Description

LOT 1, BLOCK 1,
LOT 1, BLOCK 2,
LOTS 1 AND 2, BLOCK 3,
LOTS 1 AND 2, BLOCK 4,
LOT 1, BLOCK 5,
LOTS 1, 2 AND 3, BLOCK 6, AND
TRACTS A, B, C, D,

PROMENADE AT CASTLE ROCK FILING NO. 1 PLAT AS RECORDED ON AUGUST 13,
2015 UNDER RECEPTION NUMBER 2015057859 OF THE RECORDS OF THE DOUGLAS
COUNTY CLERK AND RECORDER'S OFFICE.

Unofficial Copy

EXHIBIT B

Right of Way Parcels

RIGHT OF WAY PARCELS – BLOCK 1

A CERTAIN PORTION OF LOT 1, BLOCK 1, AS SHOWN ON THE PLAT OF PROMENADE AT CASTLE ROCK FILING NO. 1, AS RECORDED UNDER RECEPTION NO. 2015057859 OF THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE, SITUATED IN THE SOUTH HALF OF SECTION 22, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 22, WHENCE THE SOUTHWEST CORNER OF SAID SECTION 22 BEARS NORTH 89°10'24" WEST, A DISTANCE OF 2668.84 FEET WITH ALL BEARINGS HEREIN BEING REFERENCED TO THIS LINE;

THENCE NORTH 36°48'51" EAST, A DISTANCE OF 786.31 FEET TO THE EASTERLY BOUNDARY OF SAID LOT 1 AND THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID EASTERLY BOUNDARY, NORTH 31°14'56" WEST, A DISTANCE OF 25.73 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 4,219.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 58°55'33" EAST;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°23'35", AN ARC LENGTH OF 249.84 FEET;

THENCE NON-TANGENT TO SAID CURVE, NORTH 27°45'21" WEST, A DISTANCE OF 160.25 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 359.02 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 61°16'01" WEST;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 21°08'44", AN ARC LENGTH OF 132.50 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 374.50 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 35°52'38" WEST;

THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 44°06'44", AN ARC LENGTH OF 288.33 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 81°45'54" WEST, A DISTANCE OF 50.28 FEET;

THENCE SOUTH 76°42'11" WEST, A DISTANCE OF 20.02 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 130.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 52°58'09", AN ARC LENGTH OF 120.18 FEET TO THE WESTERLY BOUNDARY OF SAID LOT 1;

THENCE ALONG SAID WESTERLY BOUNDARY AND THE NORTHERLY AND EASTERLY BOUNDARY OF SAID LOT 1 THE FOLLOWING NINE (9) COURSES:

1. NON-TANGENT TO SAID CURVE, NORTH 23°44'02" EAST, A DISTANCE OF 44.47 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 100.00 FEET;
2. NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 52°58'10", AN ARC LENGTH OF 92.45 FEET;
3. TANGENT TO SAID CURVE, NORTH 76°42'11" EAST, A DISTANCE OF 87.82 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 248.50 FEET;
4. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°35'08", AN ARC LENGTH OF 110.97 FEET;
5. NON-TANGENT TO SAID CURVE, SOUTH 63°07'40" EAST, A DISTANCE OF 19.80 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 379.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 15°13'12" WEST;
6. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 46°06'02", AN ARC LENGTH OF 304.95 FEET;
7. NON-TANGENT TO SAID CURVE, SOUTH 27°45'21" EAST, A DISTANCE OF 160.26 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 4,199.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 62°19'08" EAST;
8. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°45'36", AN ARC LENGTH OF 275.56 FEET;
9. NON-TANGENT TO SAID CURVE, THENCE SOUTH 62°14'42" WEST, A DISTANCE OF 20.04 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 0.540 ACRES, (23,526 SQUARE FEET), MORE OR LESS.

RIGHT OF WAY PARCELS – BLOCK 2

A CERTAIN PORTION OF LOT 1, BLOCK 2, AS SHOWN ON THE PLAT OF PROMENADE AT CASTLE ROCK FILING NO. 1, AS RECORDED UNDER RECEPTION NO. 2015057859 OF THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE, AND SITUATED IN THE SOUTH HALF OF SECTION 22, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 22, WHENCE THE SOUTHWEST CORNER OF SAID SECTION 22 BEARS NORTH 89°10'24" WEST, A DISTANCE OF 2668.84 FEET WITH ALL BEARINGS HEREIN BEING REFERENCED TO THIS LINE;

THENCE NORTH 24°24'39" WEST, A DISTANCE OF 1028.87 FEET TO THE EASTERLY BOUNDARY OF SAID LOT 1 AND THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID EASTERLY BOUNDARY, NORTH 12°49'15" EAST, A DISTANCE OF 88.22 FEET;

THENCE NORTH 12°49'15" EAST, A DISTANCE OF 76.41 FEET;

THENCE NORTH 23°36'45" EAST, A DISTANCE OF 14.44 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 120.00 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 98°17'48", AN ARC LENGTH OF 205.87 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 279.50 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 09°03'47" WEST;

THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°33'55", AN ARC LENGTH OF 66.17 FEET;

THENCE NON-TANGENT TO SAID CURVE, SOUTH 85°29'58" WEST, A DISTANCE OF 36.25 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 540.00 FEET;

THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°08'24", AN ARC LENGTH OF 20.17 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 83°21'34" WEST, A DISTANCE OF 93.21 FEET TO THE NORTHERLY BOUNDARY OF SAID LOT 1 AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 548.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 16°26'12" EAST;

THENCE ALONG SAID NORTHERLY AND EASTERLY BOUNDARY OF LOT 1 THE FOLLOWING SEVEN (7) COURSES:

1. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $11^{\circ}55'58''$, AN ARC LENGTH OF 114.13 FEET;
2. NON-TANGENT TO SAID CURVE, NORTH $85^{\circ}57'55''$ EAST, A DISTANCE OF 134.12 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 107.50 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH $02^{\circ}03'28''$ EAST;
3. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $44^{\circ}34'38''$, AN ARC LENGTH OF 83.64 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE WESTERLY HAVING A RADIUS OF 73.00 FEET;
4. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $71^{\circ}05'34''$, AN ARC LENGTH OF 90.58 FEET;
5. TANGENT TO SAID CURVE, SOUTH $23^{\circ}36'45''$ WEST, A DISTANCE OF 98.53 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 561.50 FEET;
6. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $07^{\circ}13'24''$, AN ARC LENGTH OF 70.79 FEET;
7. TANGENT TO SAID CURVE, SOUTH $16^{\circ}23'21''$ WEST, A DISTANCE OF 90.42 FEET TO THE **POINT OF BEGINNING.**

CONTAINING AN AREA OF 0.268 ACRES, (11,656 SQUARE FEET), MORE OR LESS.