

HABERSHAM COUNTY BOARD OF COMMISSION
EXECUTIVE SUMMARY

SUBJECT: CI Indemnity Agreement

DATE:1/22/24

BUDGET IFORMATION:

ANNUAL-
CAPITAL-

RECOMMENDATION
 POLICY DISCUSSION
 STATUS REPORT
 OTHER

COMMISSION ACTION REQUESTED ON: 02/19/2024

PURPOSE: Communications International would like Habersham County to enter into an indemnity agreement for the OneMize tower location. Our surveyor found three different representations of the property boundaries as shown on the supporting documents. Habersham County along with our attorneys only recognizes the plat from PB 15, PG 77 that goes along with DB 166, PG 474.

BACKGROUND / HISTORY: The land where the OneMize tower will be located belongs to Larry Mize. The surrounding property belongs to Terry and Larry Mize. When a partial survey was to be completed it was found that Larry Mize had removed the corner pins on the property. Rochester and Associates were hired to complete a full survey and found three different representations of the parcel. Habersham County recognizes only legal ownership from Deed Book 166, Page 474 and Plat Book 15, Page 77. Communication International is concerned that Terry Mize might pursue legal action if he feels the tower location is built on joint property and not just on Larry Mizes property.

FACTS AND ISSUES:

- a. The tower site is required for the current system and the future P25 system.
 - b. The county has a land lease for the tower location with Larry Mize.
 - c. Larry Mize understands that the tower location must stay within the boundaries identified in DB 166, PG 474 and PB 15, PG77.
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OPTIONS:

- 1)Approve signing Indemnity Agreement with Communications International
 - 2)Deny signing Indemnity Agreement with Communication International
 - 3)Find an alternative site location for the tower and cancel the land lease with Mr. Mize.
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RECOMMENDED SAMPLE MOTION: I make a motion to approve signing the Indemnity Agreement with Communications International.

DEPARTMENT:

Prepared by: Tom Priddy

Director Lynn Smith _____

**ADMINISTRATIVE
COMMENTS:** _____

_____ **DATE:** _____

County Manager

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT made as of the 22nd day of January, 2024, by and between Habersham County, GA , whose address is 130 Jacob's Way , Clarkesville, GA 30523, ("County"), and Communications International, Inc., a Florida corporation, whose address is 2150 15th Avenue, Vero Beach, FL 32960, ("Ci").

RECITALS:

WHEREAS, County and Ci have entered into that certain agreement for P25 Compliant Radio System dated November 17, 2021 (the "Agreement"); and

WHEREAS, pursuant to the Agreement, the County has the responsibility to acquire by lease, purchase, easement, or otherwise all rights and access to selected Project Sites or additional real estate as may be required for the installation of the System; and

WHEREAS, County has entered into the Communications Tower Lease Agreement dated the 15th of May 2023, the "Lease Agreement"; and

WHEREAS, certain conflicting legal descriptions have arisen with respect to the legal description in the Lease Agreement of the Leased Premises (as that term is define in the Lease Agreement); and

WHEREAS, notwithstanding certain conflicting legal descriptions, the County has requested Ci to proceed with the construction of a communications tower pursuant to the Agreement based on the Lease Agreement; and

WHEREAS, Ci is prepared to proceed with the construction of a communications tower pursuant to the Agreement based on the Lease Agreement upon the condition that the County provide certain indemnities; and

WHEREAS, to induce Ci to proceed with the construction of a communications tower pursuant to the Agreement on the Leased Premises, County has agreed to enter into this Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County hereby agrees as follows:

1. Recitals. The above recitals are true and correct and any instruments referred to therein are incorporated herein.
2. Capitalized Terms. All capitalized terms not defined herein when they first appear shall be as defined in the agreement to which such term refers.
3. Indemnification. County covenants and agrees, at its sole cost and expense, to defend and indemnify, protect and save Ci and its subcontractors, agents, servants, employees, or independent contractors and their successors or assigns harmless against and from any and all damages, losses, liabilities, settlements, obligations, penalties, fines, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever, including, without limitation, attorneys' fees, (as described in Paragraph 9 hereof) experts' fees and disbursements, whether or not any lawsuit or administrative proceeding is commenced, which may at any time be imposed upon incurred by or asserted or awarded against Ci arising out of or from or in connection with the performance

of Ci, its subcontractors, agents, servants, employees, or independent contractors and their successors or assigns retained or hired by Ci of work under the Agreement pursuant to the Lease Agreement; provided however, the forgoing indemnity shall not extend to damages proximately caused by Ci's negligence.

4. Electronic Signatures, Execution in Counterparts and by Electronic Delivery. Each party agrees that this Indemnity Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Indemnity Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. This Indemnity Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument and shall be binding upon each of the undersigned individuals as fully and completely as if all had signed but one instrument so that the joint and several liability of each of the undersigned hereunder shall be unaffected by the failure of any of the undersigned to execute any or all of said counterparts. Documents scanned and transmitted electronically shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned having the same legal effect as original signatures.

5. Notices. Any notice required or permitted to be sent hereunder shall be sent certified mail, return receipt requested to the parties at the addresses listed below:

If to Ci:

Communications International, Inc.
2150 15th Avenue
Vero Beach, FL 32960

With a copy to:

Communications International, Inc.
2150 15th Avenue
Vero Beach, FL 32960
Attn: Chief Financial Officer

If to County

Habersham County, GA
130 Jacob's Way
Clarkesville, GA 30523

With a copy to:

Habersham County, Georgia
130 Jacob's Way
Clarkesville, GA, 30523
Attn: County Manager

County Attorney
Habersham County, Georgia
1001A Riverside Drive
Gainesville, GA 30501

6. Amendments in Writing. No provision of this Agreement, may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing manually signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

7. Parties Bound. Except as herein provided, this Agreement shall be binding upon and inure to the benefit of County and Ci and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, County, without the prior written consent of Ci in each instance, may not assign, transfer or set over to another, in whole or in part, all of any part of its or their benefits, rights, duties and obligations hereunder, including, but not limited to, performance of and compliance with conditions hereof.

8. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

9. Attorneys' Fees. In the event that Ci must enforce this Agreement to collect any indemnification from County or to enforce or interpret any provision of this Agreement, by law or through attorneys at law, or under advice therefrom, County agrees to pay all costs of collection, including reasonable attorneys' fees whether or not suit is brought, and whether incurred in connection with collection, trial, administrative, proceeding, appeal, bankruptcy or other creditors' proceedings or otherwise. Ci shall submit to the County any claims which may require Ci to incur costs to defend for the County to defend, adjust or settle prior to Ci incurring such costs.

10. Miscellaneous.

(a) Paragraph headings used herein are for convenience only and shall not be construed as controlling the scope of any provision hereof.

(b) As used herein, the neuter gender shall include the masculine and feminine genders, and vice versa, as the case may be, and the singular includes the plural, and the plural includes the singular, as the context demands.

(c) Time is of the essence of this Agreement.


(d) The liability of each person other than Ci who executes this Agreement (or any counterpart) shall be joint and several.


(e) Each paragraph, provision, sentence and part thereof of this Agreement shall be deemed separate from each other paragraph, provision, sentence or part thereof, and the invalidity or unenforceability for any reason or to any extent, of any such portion of this Agreement shall not affect the enforceability of the remaining portions of this Agreement, or of any other Loan Document, or the application of such paragraph provision, sentence or part thereof to other persons and circumstances.

11. Waiver of Right to Jury Trial. COUNTY WAIVES THEIR RIGHT TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR CI'S ENTERING INTO THIS INDEMNITY AGREEMENT WITH THE COUNTY AND NO WAIVER OR LIMITATION OF CI'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON CI'S BEHALF.

IN WITNESS WHEREOF, County and the Ci have caused this Agreement to be executed on the first above written.

Witnesses:


Signature
Print Name: Mike Reed



Signature
Print Name: Melinda Swetz

Attest:

County Clerk Habersham County
Board of County Commissioners

By: _____
Print Name: _____
Title: _____

Communications International, Inc.

By: 
Print Name: Michael Stark
Title: COO
Date: 1/22/24

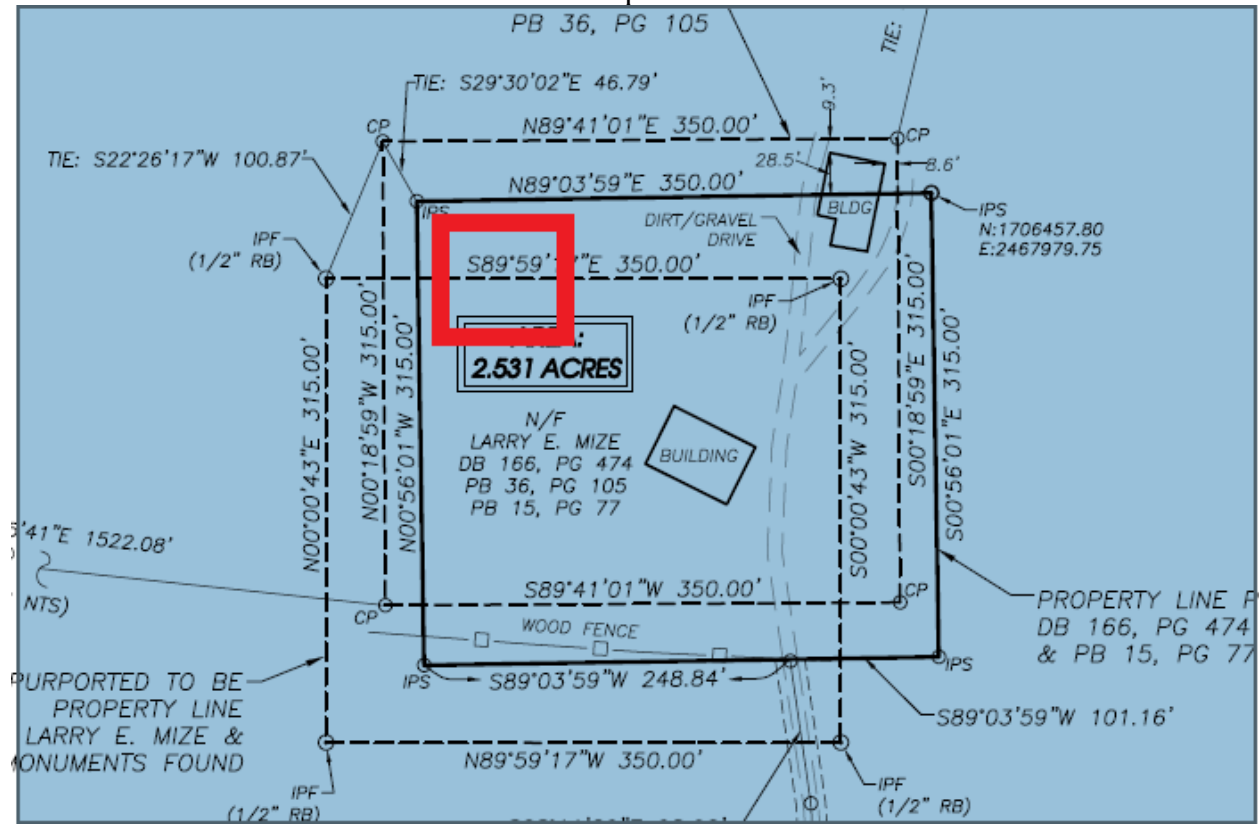
Board of County Commissioners of
Habersham County, Georgia

By: _____
Print Name: _____
Title: _____
Date: _____

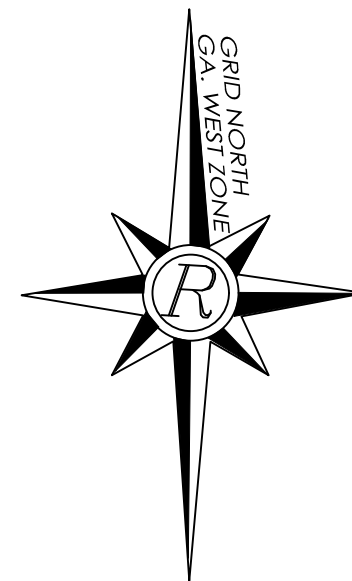
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
Print Name: _____
Title: _____

Tower location will reside inside both recorded plats.



THIS BLOCK RESERVED FOR THE CLERK OF THE SUPERIOR COURT



LEGEND

- BLDG - BUILDING
- C&G - CURB & GUTTER
- CHD - CHORD
- CL - CENTER LINE
- CMF - CONCRETE MONUMENT FOUND
- CONC - CONCRETE
- CP - CALCULATED POINT
- DB/PG - DEED BOOK, PAGE
- EP - EDGE OF PAVEMENT
- IPF - IRON PIN FOUND
- IPS - IRON PIN SET (1/2" REBAR)
- LL - LAND LOT
- LLL - LAND LOT LINE
- MON - MONUMENT
- N/F - NOW OR FORMERLY
- NTS - NOT TO SCALE
- P/L - PROPERTY LINE
- PB/PG - PLAT BOOK, PAGE
- POB - POINT OF BEGINNING
- RAD - RADIUS
- RB - REBAR
- R/W - RIGHT OF WAY

SURVEY NOTES

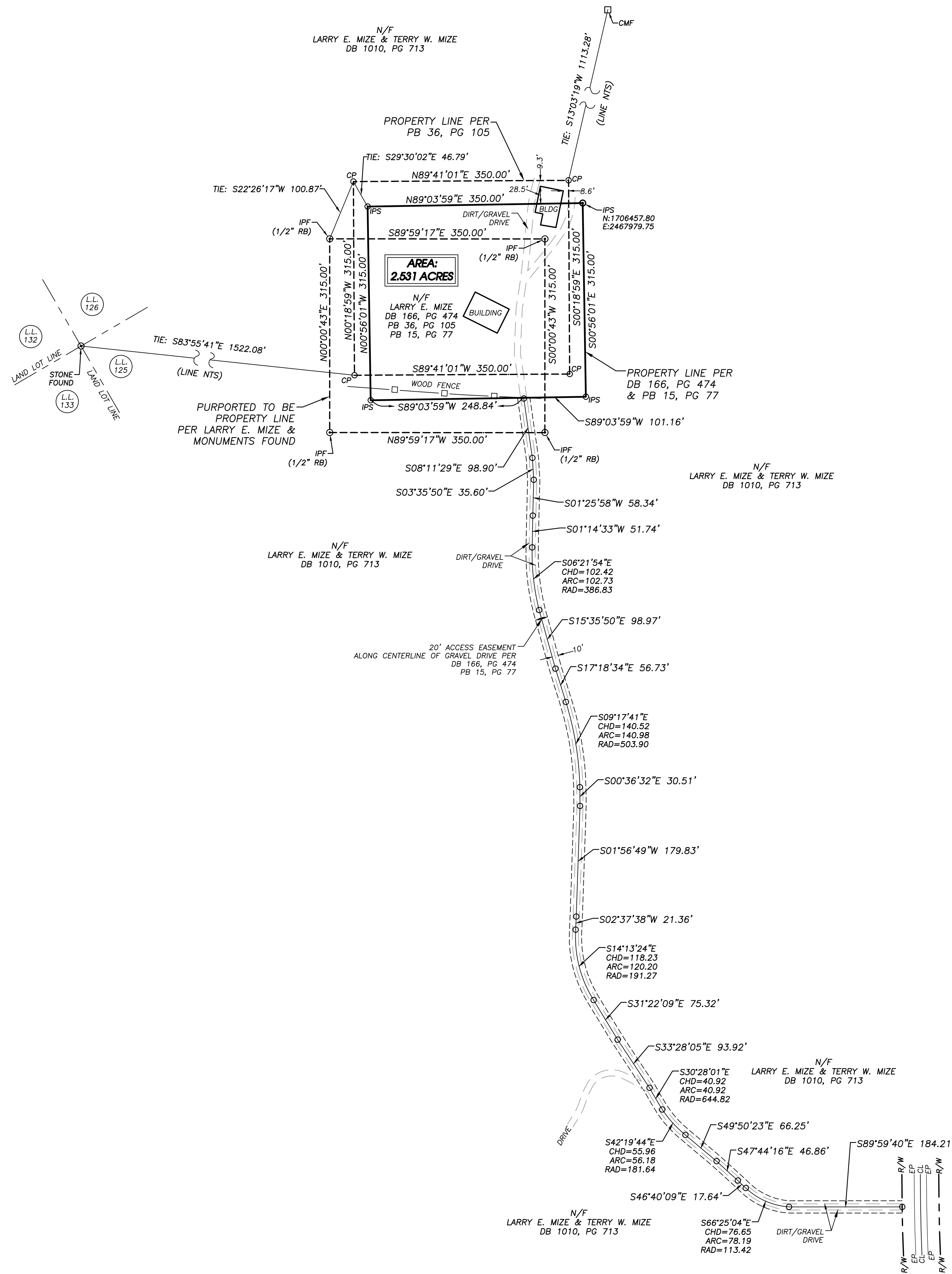
1. THE FIELD DATA DATED 09/07/2023 UPON WHICH THIS SURVEY IS BASED WAS ADJUSTED USING LEAST SQUARES. THE HORIZONTAL DATUM FOR THIS SURVEY IS THE NORTH AMERICAN DATUM OF 1983 (NAD 83 GEORGIA WEST ZONE) AS DETERMINED BY UTILIZING GPS. THE EQUIPMENT USED TO OBTAIN THIS DATA WAS A DUAL FREQUENCY TRIMBLE R12I GNSS GPS RECEIVER WITH A TRIMBLE TSC2 DATA COLLECTOR RECEIVING RTK CORRECTIONS VIA A WIRELESS NETWORK FROM BASE STATIONS OPERATED BY TRIMBLE NAVIGATION. THE AVERAGE RELATIVE POSITIONAL ACCURACY OBTAINED ON THE POSITION UTILIZED IN THIS SURVEY WAS 0.09 FT. HORIZONTAL. THIS VALUE WAS DERIVED FROM GPS PROCESSING SOFTWARE.
2. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN EXCESS OF ONE FOOT IN 200,000 + FEET.
4. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT; THEREFORE EXCEPTION IS MADE HEREIN TO ANY EASEMENTS, RESERVATIONS, RIGHTS OF WAY AND RESTRICTIONS OF RECORD, WHICH MAY EXIST. FURTHERMORE, THIS PROPERTY MAY BE SUBJECT TO EASEMENTS, RESERVATIONS, RIGHTS OF WAY, OR RESTRICTIONS, WHICH ARE NOT RECORDED OR NOT DISCLOSED BY THE TITLE COMMITMENT OR OTHERWISE UNKNOWN TO THE SURVEYOR; THEREFORE EXCEPTION IS TAKEN TO ANY SUCH ITEMS.
5. THIS PROPERTY MAY OR MAY NOT CONTAIN WETLAND AREAS. NO EFFORTS HAVE BEEN MADE BY THIS SURVEYOR TO IDENTIFY OR LOCATE ANY WETLAND AREAS ON THIS PROPERTY. A QUALIFIED WETLAND SPECIALIST OR BIOLOGIST, PRIOR TO ANY LAND DISTURBANCE, SHOULD PERFORM WETLAND IDENTIFICATION AND DELINEATION.
6. NO PORTIONS OF THIS PROPERTY ARE LOCATED IN A FLOOD HAZARD ZONE AS PER F.E.M.A. INSURANCE RATE MAPS OF HABERSHAM COUNTY, GEORGIA. COMMUNITY PANEL NOS. 13137C01050 & 13137C01150, EFFECTIVE DATE 1/5/2018.
7. ALL PROPERTY CORNERS REFERENCED AS "IPS" INDICATES A 1/2" REBAR PLACED WITH A YELLOW PLASTIC CAP STAMPED "ROCHESTER-LSF000484", UNLESS OTHERWISE NOTED.
8. THIS PLAT IS FOR THE EXCLUSIVE USE OF THE ENTITIES SHOWN HEREON; ANY USE BY THIRD PARTIES IS AT THEIR OWN RISK.
9. ALL DISTANCES AS SHOWN ARE HORIZONTAL GROUND DISTANCES IN U.S. SURVEY FEET (39.37 INCHES = 1 METER)

SURVEYORS CERTIFICATION

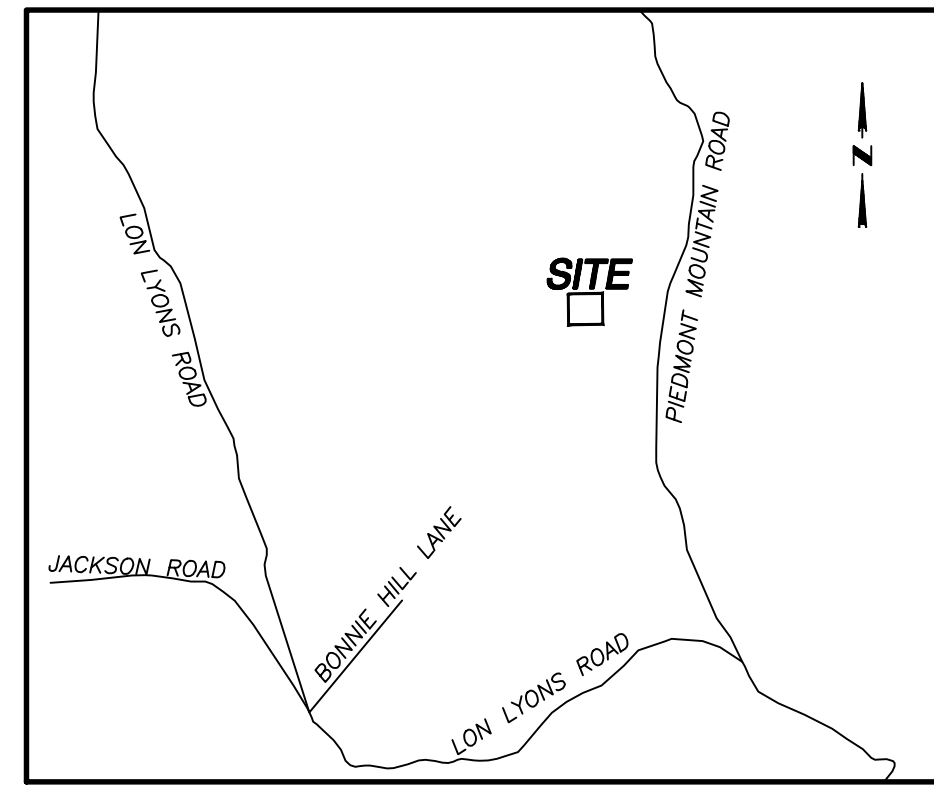
THIS PLAT IS A RETRACEMENT OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT SUBDIVIDE OR CREATE A NEW PARCEL OR MAKE ANY CHANGES TO ANY REAL PROPERTY BOUNDARIES. THE RECORDING INFORMATION OF THE DOCUMENTS, MAPS, PLATS, OR OTHER INSTRUMENTS WHICH CREATED THE PARCEL OR PARCELS ARE STATED HEREON. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. FURTHERMORE, THE UNDERSIGNED LAND SURVEYOR CERTIFIES THAT THIS PLAT COMPLIES WITH THE MINIMUM TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN THE RULES AND REGULATIONS OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN O.C.G.A. SECTION 15-6-87.

PLS NAME, PLS #
 @rochester-assoc.com
 Rochester and Associates, LLC.
 LSF-000484 EXPIRATION 6/30/2024
 www.rochester-assoc.com

Robert S. Cleveland 10/19/2023
 DATE



PIEDMONT MOUNTAIN ROAD
 (60' R/W)
 (PB 36, PG 105)



Rochester **BCCM**

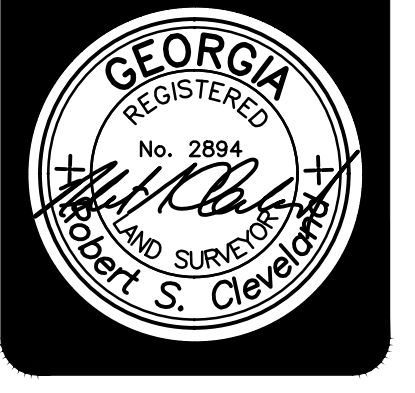
Rochester and Associates, LLC
 425 Oak St NW, Gainesville, GA 30501
 770.718.0600 | www.rochester-assoc.com

RETRACEMENT SURVEY

HABERSHAM COUNTY

LAND LOT 25, 1th DISTRICT
 HABERSHAM COUNTY, GEORGIA

NO.	DATE	DESCRIPTION	REVISIONS



SHEET
1
 OF
1

DATE: 09/13/2023
 SCALE: 1"=100'
 JOB NO.: 0223114.R40
 DRAWN BY: AJA
 DWG NO.: .SRV.MJ01