

HABERSHAM COUNTY BOARD OF COMMISSION
EXECUTIVE SUMMARY

SUBJECT: CI Indemnity Agreement

DATE:7/9/2024

BUDGET IFORMATION:
ANNUAL-
CAPITAL-

RECOMMENDATION
 POLICY DISCUSSION
 STATUS REPORT
 OTHER

COMMISSION ACTION REQUESTED ON: 07/15/2024

PURPOSE: Image and verbiage change to indemnity agreement from 02/19/2024. 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: Commission approved previous agreement from 02/19/2024. Communications International won't proceed at location until verbiage and image is changed to reflect new tower compound location. 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 _____ day of _____, 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 4450 US Highway 1, Vero Beach, FL 32967, ("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 defined 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 extent to damages resulting from Ci's sole 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.
4450 US Highway 1
Vero Beach, FL 32967

With a copy to:

Communications International, Inc.
4450 US Highway 1
Vero Beach, FL 32967
Attn: Chief Financial Officer

If to County: Habersham County, GA
130 Jacob's Way
Clarkesville, GA 30523

With a copy to:

Habersham County, Georgia	and	County Attorney
130 Jacob's Way		Habersham County, Georgia
Clarkesville, GA, 30523		1001A Riverside Drive
Attn: County Manager		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:

Communications International, Inc.

Signature
Print Name: _____

By: _____
Print Name: _____
Title: _____

Signature
Print Name: _____

Date: _____

**Board of County Commissioners of
Habersham County, Georgia**

Attest:

County Clerk Habersham County
Board of County Commissioners

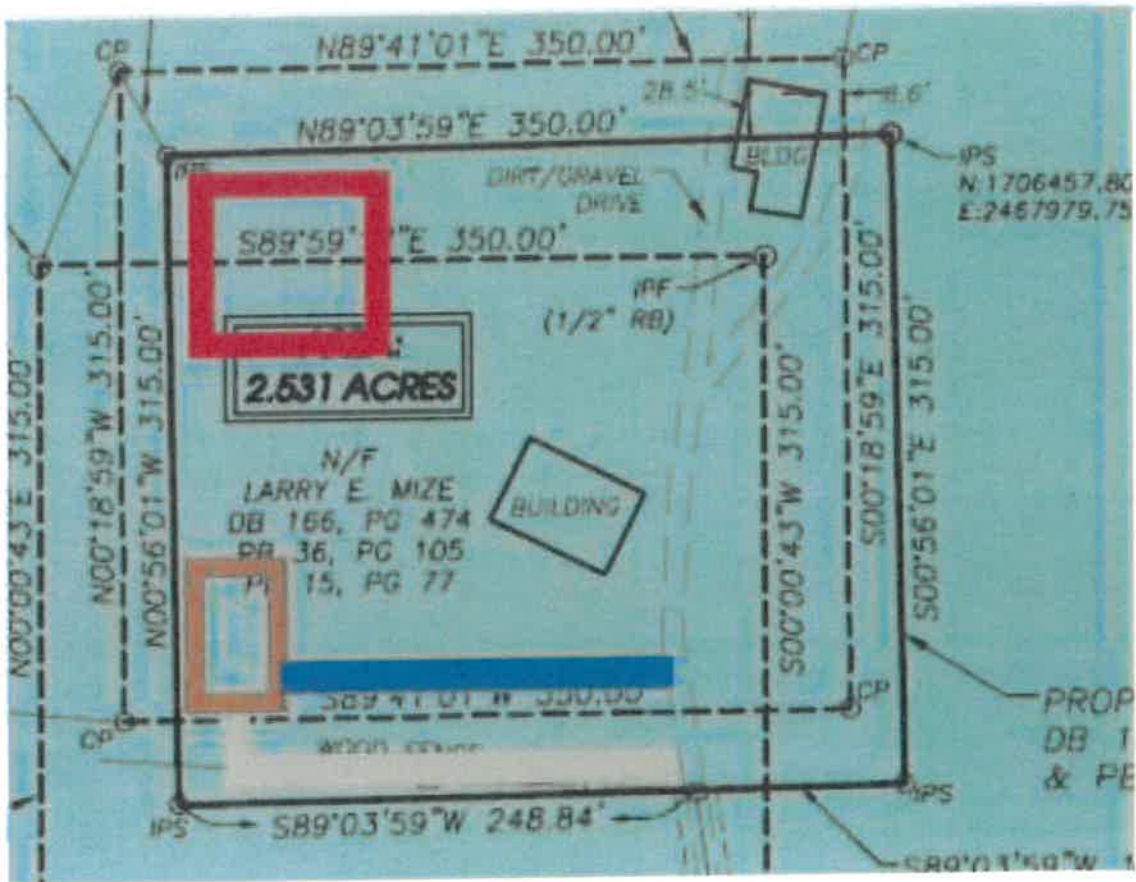
By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

Date: _____

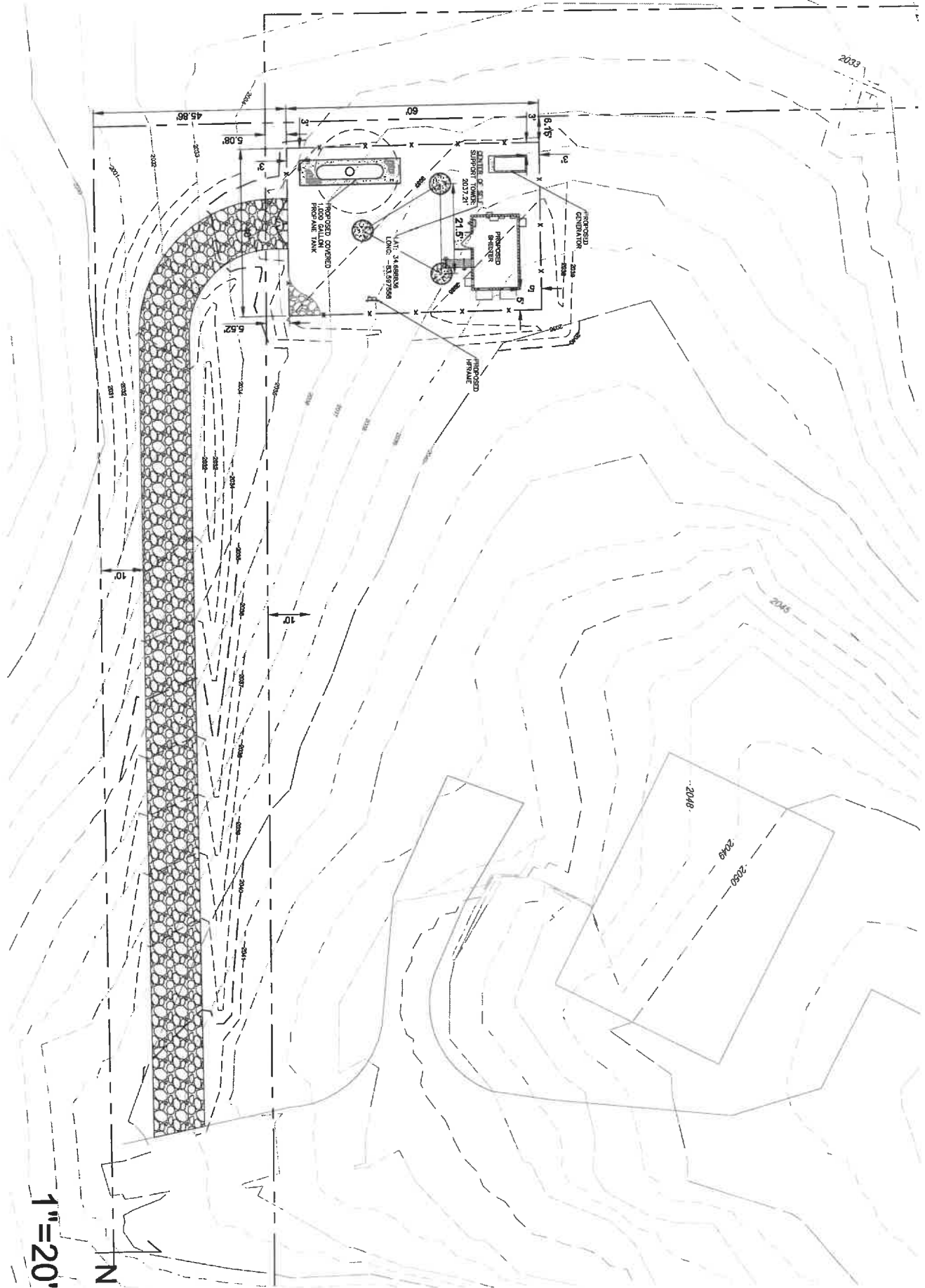
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: Donald T Hunt
Print Name: DONALD T. HUNT
Title: COUNTY ATTORNEY



The brown box is the new tower compound and the gray easement is the new access easement. The red is the former tower compound and the blue is the alternate access easement proposed by Ci.

Tower compound and access road reside within recorded Plat from Plat Book 15 at Page 77 and as described in Deed Book 166 at Page 474.



THIS MAP IS A REPRODUCED COPY OF THE ORIGINAL RECORD DRAWING.



LEGEND

(Symbol)	Lot
(Symbol)	Survey
(Symbol)	Control Line
(Symbol)	Boundary Line
(Symbol)	Subdivision
(Symbol)	Right of Way
(Symbol)	Water
(Symbol)	Proprietary
(Symbol)	Public
(Symbol)	State
(Symbol)	Other

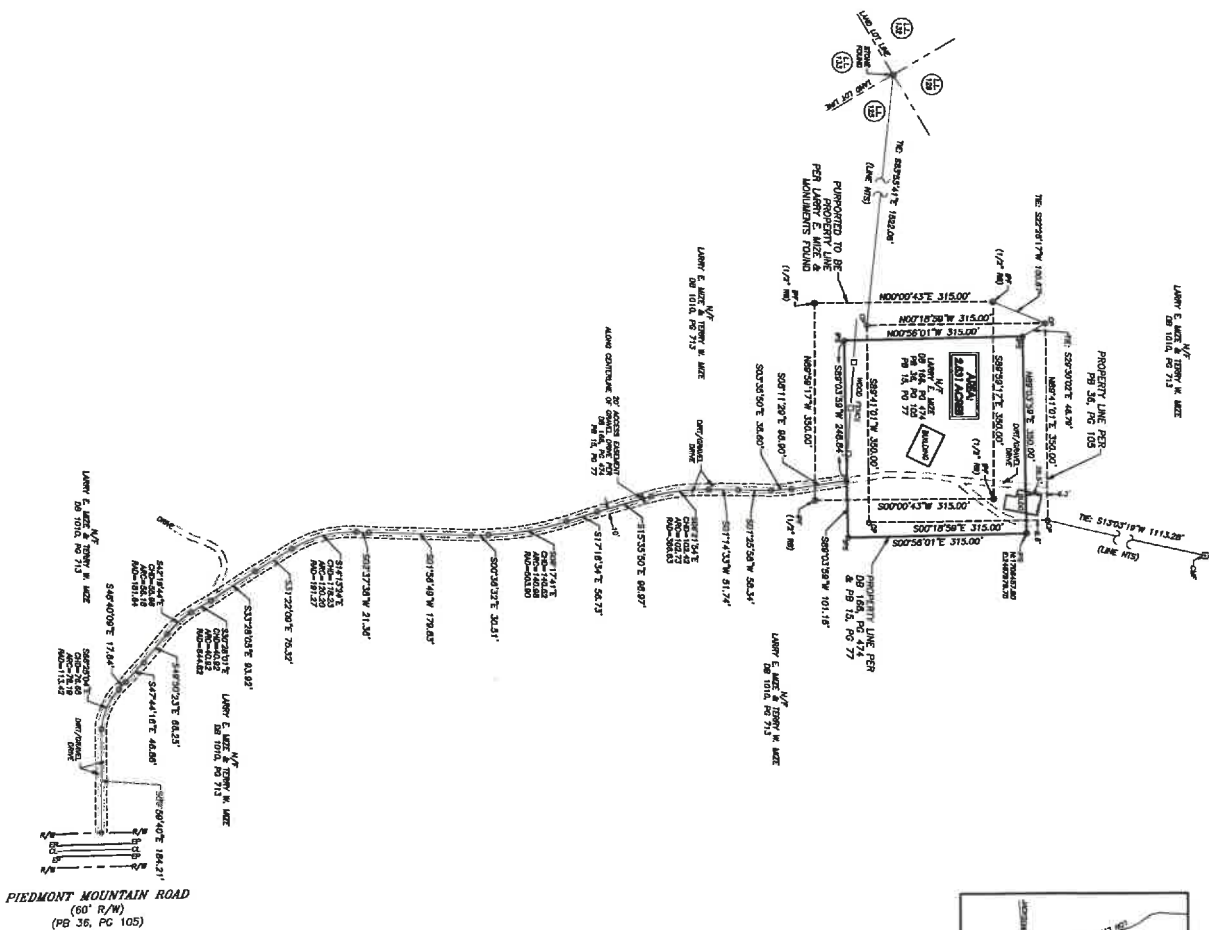
SURVEY NOTES

- THE FIELD DATA DATED 06/07/2023 SHOWS THAT THE SURVEY OF THE SUBJECT PROPERTY WAS ACCURATE TO THE 1/2" PER 100' STANDARD AND THE POINTS WERE PLACED IN ACCORDANCE WITH THE STANDARD. THE POINTS WERE PLACED IN ACCORDANCE WITH THE STANDARD AND THE POINTS WERE PLACED IN ACCORDANCE WITH THE STANDARD.
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BOUNDARY CERTIFICATION

I, the undersigned, being a duly licensed Professional Engineer in the State of Georgia, do hereby certify that the foregoing is a true and correct copy of the original record drawing and that the same conforms to the requirements of the Georgia Surveying Code, O.C.G.A. § 47-2-1, and the Georgia Surveying Board, O.C.G.A. § 47-2-10.

DATE: 09/12/2023
 SIGNATURE: _____
 PROFESSIONAL ENGINEER IN SURVEYING
 LICENSE NO. 37632



DATE: 09/12/2023
 SCALE: 1"=100'
 JOB NO.: 2023-1460
 DRAWN BY: AK
 DWG NO.: 2842



NO.	DATE	DESCRIPTION

RETICULOUS SURVEY
HABERSHAM COUNTY
 LAND LOT 125, 118 DISTRICT
 HABERSHAM COUNTY, GEORGIA

Rochester DCCM
 Rochester and Associates, LLC
 428 Oak St SW, Gainesville, GA 30601
 770.718.0020 p | www.rochester-assoc.com