

**WATER AND SEWER SERVICE AGREEMENT**  
**[Thompson River Ranch Filing No. 12]**

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2021, by and between **CLAYTON PROPERTIES GROUP II, INC.**, a Colorado corporation d/b/a Oakwood Homes (“Developer”) and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties” and singularly as “Party.”

WITNESSETH:

WHEREAS, Developer owns an interest in approximately 57 acres of land in portions of the E1/2 of section 23, T05N, R68W, 6<sup>th</sup> P.M., Larimer County, Colorado, more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference (“Subject Property”); and

WHEREAS, the Subject Property was annexed to the Town as part of a larger annexation of 1109.18 acres of land, which was the subject of an Annexation Agreement between Thompson Ranch, LLLP, The Gerrard Family Limited Partnership, LLLP, Joel H. Wiens, and Rite-A-Way Industries, Inc., as Developer, and the Town dated December 18, 2000; and

WHEREAS, the Subject Property is being developed by the Developer as the Thompson River Ranch Filing No. 12 which will consist of 70 single-family homes (collectively, “Single-Family Lots”) with 2.56 acres of irrigated landscape plus 2.90 acres of other irrigated areas, and 94 carriage-house homes (collectively, “Carriage House Lots”) with 1.64 acres of irrigated landscape plus 1.28 acres of other irrigated areas. The irrigated landscape consists of landscaping for residences and will be supplied by the potable irrigation. The 4.18 acres of other irrigated areas consist of irrigated landscaping in outlots and other common areas and will be supplied by the non-potable irrigation system operated by the Thompson Crossing Metropolitan District No. 3; and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Subject Property.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**1. Water and Sewer Demand Studies.** In compliance with the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code (“Ordinance”), the Developer has submitted to the Town a preliminary Water and Sewer Demand Analysis for the Single-Family Lot portion of the Subject Property dated July 10, 2020 and a Water and Sewer Demand Analysis for the Carriage House Lots portion of the Subject Property dated August 31, 2020. Said analyses are on file with the Town and are hereby accepted by the Town, as modified by the Town’s Water Engineer by memorandum dated October 16, 2020. The analyses address all of the projected water demands for the Subject Property. Said analysis

indicates that the water dedication set forth in Paragraph 2 will meet the estimated water supply needs for the Subject Property as follows:

<b>Development Component Potable</b>	<b>Demand (AF/YR)</b>	<b>Consumption (AF/YR)</b>
Residential In-building	54.12	2.71
Residential Irrigation	10.49	8.92
<b>Total</b>	<b>64.61</b>	<b>11.63</b>

<b>Development Component Non-Potable</b>	<b>Demand (AF/YR)</b>	<b>Consumption (AF/YR)</b>
Non-Potable Irrigation	10.45	8.88
<b>Total</b>	<b>10.45</b>	<b>8.88</b>

## 2. Water Rights Dedication and Credits.

2.1. Home Supply. After dedication to satisfy the requirements of the water supply for the Thompson River Ranch Filing No. 8, Developer had a net surplus credit 40.90 acre-feet of raw water credit from shares of the Consolidated Home Supply Ditch & Reservoir Company (“Home Supply”), all of which will be dedicated to this Filing No. 12, leaving 0 acre-feet for future filings.

2.2. SFE Water Bank. Pursuant to an Assignment, Assumption and Bill of Sale from W.R. Investment, LLC (“WRI”) and Exit 223, LLC to Clayton Properties Group II, Inc. d/b/a Oakwood Homes, dated on or about September 19, 2018, Developer acquired a water bank containing 610 single family equivalent (“SFE”) from WRI, known as the Clayton Property Group SFE Water Credit Bank (“SFE Water Bank”). After dedication of 47.4 SFE from the SFE Water Bank to satisfy the remaining requirements of this Filing No. 12, the net remaining credit in the SFE Water Bank is 562.6 SFE. The Parties agree to this dedication of SFE credits from the SFE Water Bank.

2.3. Residential In-Building and Residential Irrigation. The Parties agree that the credits from the Home Supply dedications and the SFE Water Bank dedications will be applied to meet the residential in-building and residential irrigation water demands of the Subject Property.

2.3. Non-Potable Irrigation. The non-potable irrigation demand for the other irrigated areas in Filing No. 12 will be provided by a dedication from the Thompson Crossing Metropolitan District No. 3 Non-Potable Irrigation System of water sufficient to provide non-potable irrigation for the 4.18 acres of other irrigated areas in Filing No. 12. After this dedication, 64.85 total acres will be dedicated to be served from the Thompson Crossing Metropolitan District No. 3 Non-Potable Irrigation System. Evidence of the agreement to use the Thompson Crossing Metropolitan District No. 3 Non-Potable Irrigation System is attached as Exhibit “B.”

**3. Surplus Dedication Credit.**

3.1 Residential In-Building and Residential Irrigation. The use of the Home Supply credits will not leave the Developer with any water in excess of the demand for the Subject Property, and the Developer will not have a surplus credit with the Town, as calculated below:

<b>Existing Credit:</b>	<b>40.90 acre-feet</b>
<b>LESS: Dedication:</b>	<b><u>40.90 acre-feet</u></b>
<b>Net current surplus credit:</b>	<b>0 acre-feet</b>

3.2 SFE Water Bank. The use of the SFE Water Bank credits of 47.4 SFE will provide to the Developer SFE in excess of the demand for the Subject Property. Developer will have a surplus credit with the Town of 562.6 SFE. The surplus credit is calculated as follows:

<b>Existing Credit:</b>	<b>610 SFE</b>
<b>LESS: Additional estimated demand:</b>	<b><u>47.4 SFE</u></b>
<b>Net current surplus credit:</b>	<b>562.6 SFE</b>

Upon notice and written approval of the Town, authorization from Developer, and payment of the appropriate Water Court transfer fee, if necessary, said SFE Water Bank surplus credit may be utilized within the Subject Property to offset increased demands, if any, which are not currently projected.

3.3. Thompson Crossing Metropolitan District No. 3 Non-Potable Irrigation System. The dedication of acres from the Thompson Crossing Metropolitan District No. 3 Non-Potable Irrigation System will result in a new cumulative acre amount:

<b>Existing Dedications:</b>	<b>60.67 acres</b>
<b>New Dedication:</b>	<b><u>4.18 acres</u></b>
<b>Net current cumulative acres:</b>	<b>64.85 acres</b>

**4. Commitment to Serve Water and Sewer.** Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property up to 64.61 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service and for residential irrigation as described above. The Town, through the Thompson Crossing Metropolitan District No. 3 Non-

Potable Irrigation System, further agrees to provide up to 10.45 acre-feet of non-potable water for 4.18 acres of common area irrigation.

**5. Future review of water usage and dedication requirements.** In accordance with Section 13-68(h) of the Ordinance, the Town reserves the right to review actual water usage within the Subject Property at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments if necessary based on actual water usage.

**6. Payment of Water Court Transfer fees.** The Water Court transfer fee for the Home Supply dedications and the SFE Water Bank water supplies were previously paid to the Town. However, in accordance with the Ordinance, additional fees may be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the parties in accordance with the Town's Ordinance.

**7. Notices.** All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

**TO DEVELOPER:**

Clayton Properties Group II, Inc.  
Attn: Brett Price  
Vice President,  
Land Development  
4908 Tower Road  
Denver, CO 80249

**TO THE TOWN:**

Town of Johnstown  
c/o Town Clerk  
P.O. Box 609  
450 S Parish Ave.  
Johnstown, CO 80534  
Email: dseele@townofjohnstown.com

**WITH A COPY TO  
THE TOWN ATTORNEYS:**

Avi Rocklin, Esq.  
Johnstown Town Attorney  
1437 N. Denver Avenue, #330  
Loveland, CO 80538  
Email: avi@rocklinlaw.com

Peter J. Ampe  
Hill & Robbins, P.C.  
1160 Lincoln St., Suite 2720  
Denver, CO 80264  
Email: peterampe@hillandrobbsins.com

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

**8. Default.** In the event of default by either Party hereunder the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

**9. Successors and assigns.** The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This Agreement shall not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld.

**10. Amendment or modification.** No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

**11. Attorney's fees and costs.** If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the Town shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

**12. Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

**13. Headings for convenience only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

**14. Non severability.** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

**15. Choice of laws.** This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action shall be in Larimer or Weld County, State of Colorado.

**16. Entire agreement and Authorization.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement. Each of the undersigned represents to the others that he/she is authorized by his/her respective entity to execute this Agreement on behalf of that entity.

**17. No Presumption.** Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel

of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

**18. Recordation.** This Agreement will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado, shall run with the Subject property, will be binding upon the Parties hereto and the permitted successors and assigns of the Developer and will constitute notice of this Agreement to all persons or entities not parties hereto.

\*IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

*Signatures follow on separate pages*

Clayton Properties Group II, Inc.

By: [Signature]  
Name: Bruce Rau  
Assistant Secretary

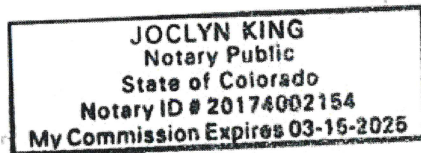
STATE OF COLORADO )  
 ) ss  
CITY AND COUNTY OF DENVER )

This instrument was acknowledged before me on this 9 day of September, 2021 by <sup>Bruce</sup>~~Brett~~  
~~Price~~ as ~~Vice President, Land Development~~ of Clayton Properties Group II, Inc.

Witness my hand and official seal.

[Signature]  
Notary Public

My Commission Expires: 3-15-2025



TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

By: \_\_\_\_\_  
Gary Lebsack, Mayor

ATTEST:

By: \_\_\_\_\_  
Town Clerk



N50°04'37"E WITH A CHORD DISTANCE OF 28.27 FEET TO THE SOUTH RIGHT OF WAY LINE OF RIVER RANCH PARKWAY;

THENCE ON SAID SOUTH RIGHT OF WAY LINE FOR THE FOLLOWING 9 COURSES;

- 1) THENCE S84°56'12"E, A DISTANCE OF 208.01 FEET;
- 2) THENCE S84°54'14"E, A DISTANCE OF 544.00 FEET;
- 3) THENCE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 31.42 FEET, A CHORD BEARING OF S39°54'14"E WITH A CHORD DISTANCE OF 28.28 FEET;
- 4) THENCE S84°54'14"E, A DISTANCE OF 60.00 FEET TO A NON-TANGENT CURVE;
- 5) THENCE ON SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 31.42 FEET, A CHORD BEARING OF N50°05'46"E WITH A CHORD DISTANCE OF 28.28 FEET;
- 6) THENCE S84°54'14"E, A DISTANCE OF 22.44 FEET;
- 7) THENCE ON A CURVE TO THE LEFT, HAVING A RADIUS OF 525.00 FEET, A CENTRAL ANGLE OF 29°05'39", A DISTANCE OF 266.59 FEET, A CHORD BEARING OF N80°32'57"E WITH A CHORD DISTANCE OF 263.73 FEET;
- 8) THENCE N66°00'07"E, A DISTANCE OF 22.03 FEET;
- 9) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 96°19'12", A DISTANCE OF 33.62 FEET, A CHORD BEARING OF S65°50'17"E WITH A CHORD DISTANCE OF 29.80 FEET TO THE WEST RIGHT OF WAY LINE OF HIGH PLAINS BOULEVARD;

THENCE ON SAID WEST RIGHT OF WAY LINE FOR THE FOLLOWING 8 COURSES;

- 1) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 883.00 FEET, A CENTRAL ANGLE OF 03°48'16", A DISTANCE OF 58.63 FEET, A CHORD BEARING OF S15°46'33"E WITH A CHORD DISTANCE OF 58.62 FEET;
- 2) THENCE S13°52'25"E, A DISTANCE OF 143.67 FEET;
- 3) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 29.00 FEET, A CENTRAL ANGLE OF 09°32'58", A DISTANCE OF 4.83 FEET, A CHORD BEARING OF S09°05'56"E WITH A CHORD DISTANCE OF 4.83 FEET;
- 4) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 895.00 FEET, A CENTRAL ANGLE OF 04°37'04", A DISTANCE OF 72.14 FEET, A CHORD BEARING OF S02°00'55"E WITH A CHORD DISTANCE OF 72.12 FEET;
- 5) THENCE S00°17'37"W, A DISTANCE OF 962.12 FEET;
- 6) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 2940.00 FEET, A CENTRAL ANGLE OF 00°18'38", A DISTANCE OF 15.93 FEET, A CHORD BEARING OF S00°26'56"W WITH A CHORD DISTANCE OF 15.93 FEET;
- 7) THENCE S05°14'36"W, A DISTANCE OF 100.27 FEET;
- 8) THENCE S00°15'52"W, A DISTANCE OF 701.74 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 2,485,623 SQUARE FEET OR 57.062 ACRES.

**EXHIBIT A**

**THOMPSON RIVER RANCH FILING NUMBER 12**

TRACT A, THOMPSON RIVER RANCH FILING NO. 8 RECORDED IN THE LARIMER COUNTY CLERK AND RECORDERS OFFICE AT RECEPTION NUMBER 20210038855 AND PART OF TRACT B, THOMPSON RIVER RANCH FILING NO. 5 RECORDED IN THE LARIMER COUNTY CLERK AND RECORDERS OFFICE AT RECEPTION NUMBER 20170045194 TOGETHER WITH PART OF THE RIVER RANCH PARKWAY, ALL LOCATED IN THE EAST HALF OF SECTION 23, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6<sup>TH</sup> PM, LARIMER COUNTY COLORADO, THE ENTIRE PARCEL DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT A;

THENCE ON SAID SOUTH AND WEST LINES FOR THE FOLLOWING 21 COURSES;

- 1) THENCE N46°37'38"W, A DISTANCE OF 227.23 FEET;
- 2) THENCE N67°55'21"W, A DISTANCE OF 153.22 FEET;
- 3) THENCE S88°54'12"W, A DISTANCE OF 106.15 FEET;
- 4) THENCE N74°07'33"W, A DISTANCE OF 111.43 FEET;
- 5) THENCE N52°07'08"W, A DISTANCE OF 127.74 FEET;
- 6) THENCE N44°50'40"W, A DISTANCE OF 144.73 FEET;
- 7) THENCE N61°47'45"W, A DISTANCE OF 146.76 FEET;
- 8) THENCE N64°18'48"W, A DISTANCE OF 11.37 FEET;
- 9) THENCE N65°13'43"W, A DISTANCE OF 109.68 FEET;
- 10) THENCE N63°45'44"W, A DISTANCE OF 366.30 FEET;
- 11) THENCE N58°02'11"W, A DISTANCE OF 100.01 FEET;
- 12) THENCE N63°00'36"W, A DISTANCE OF 157.71 FEET;
- 13) THENCE N60°40'08"W, A DISTANCE OF 187.11 FEET;
- 14) THENCE N49°52'25"W, A DISTANCE OF 154.76 FEET;
- 15) THENCE N48°46'36"W, A DISTANCE OF 17.16 FEET;
- 16) THENCE N12°28'42"E, A DISTANCE OF 22.66 FEET;
- 17) THENCE N12°33'00"E, A DISTANCE OF 210.68 FEET;
- 18) THENCE N50°20'00"W, A DISTANCE OF 84.66 FEET;
- 19) THENCE N00°17'37"E, A DISTANCE OF 136.59 FEET;
- 20) THENCE S89°42'23"E, A DISTANCE OF 432.80 FEET;
- 21) THENCE S84°54'14"E, A DISTANCE OF 71.92 FEET TO THE EAST RIGHT OF WAY LINE OF BARKWOOD DRIVE;

THENCE ON SAID EAST RIGHT OF WAY LINE FOR THE FOLLOWING 6 COURSES;

- 1) THENCE N05°05'46"E, A DISTANCE OF 460.11 FEET;
- 2) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 170.00 FEET, A CENTRAL ANGLE OF 12°43'58", A DISTANCE OF 37.78 FEET, A CHORD BEARING OF N11°27'46"E WITH A CHORD DISTANCE OF 37.70 FEET;
- 3) THENCE N17°49'45"E, A DISTANCE OF 80.48 FEET;
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- 5) THENCE N05°05'46"E, A DISTANCE OF 7.57 FEET;
- 6) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°57'42", A DISTANCE OF 31.40 FEET, A CHORD BEARING OF

N50°04'37"E WITH A CHORD DISTANCE OF 28.27 FEET TO THE SOUTH RIGHT OF WAY LINE OF RIVER RANCH PARKWAY;

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- 3) THENCE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 31.42 FEET, A CHORD BEARING OF S39°54'14"E WITH A CHORD DISTANCE OF 28.28 FEET;
- 4) THENCE S84°54'14"E, A DISTANCE OF 60.00 FEET TO A NON-TANGENT CURVE;
- 5) THENCE ON SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 31.42 FEET, A CHORD BEARING OF N50°05'46"E WITH A CHORD DISTANCE OF 28.28 FEET;
- 6) THENCE S84°54'14"E, A DISTANCE OF 22.44 FEET;
- 7) THENCE ON A CURVE TO THE LEFT, HAVING A RADIUS OF 525.00 FEET, A CENTRAL ANGLE OF 29°05'39", A DISTANCE OF 266.59 FEET, A CHORD BEARING OF N80°32'57"E WITH A CHORD DISTANCE OF 263.73 FEET;
- 8) THENCE N66°00'07"E, A DISTANCE OF 22.03 FEET;
- 9) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 96°19'12", A DISTANCE OF 33.62 FEET, A CHORD BEARING OF S65°50'17"E WITH A CHORD DISTANCE OF 29.80 FEET TO THE WEST RIGHT OF WAY LINE OF HIGH PLAINS BOULEVARD;

THENCE ON SAID WEST RIGHT OF WAY LINE FOR THE FOLLOWING 8 COURSES;

- 1) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 883.00 FEET, A CENTRAL ANGLE OF 03°48'16", A DISTANCE OF 58.63 FEET, A CHORD BEARING OF S15°46'33"E WITH A CHORD DISTANCE OF 58.62 FEET;
- 2) THENCE S13°52'25"E, A DISTANCE OF 143.67 FEET;
- 3) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 29.00 FEET, A CENTRAL ANGLE OF 09°32'58", A DISTANCE OF 4.83 FEET, A CHORD BEARING OF S09°05'56"E WITH A CHORD DISTANCE OF 4.83 FEET;
- 4) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 895.00 FEET, A CENTRAL ANGLE OF 04°37'04", A DISTANCE OF 72.14 FEET, A CHORD BEARING OF S02°00'55"E WITH A CHORD DISTANCE OF 72.12 FEET;
- 5) THENCE S00°17'37"W, A DISTANCE OF 962.12 FEET;
- 6) THENCE ON SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 2940.00 FEET, A CENTRAL ANGLE OF 00°18'38", A DISTANCE OF 15.93 FEET, A CHORD BEARING OF S00°26'56"W WITH A CHORD DISTANCE OF 15.93 FEET;
- 7) THENCE S05°14'36"W, A DISTANCE OF 100.27 FEET;
- 8) THENCE S00°15'52"W, A DISTANCE OF 701.74 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 2,485,623 SQUARE FEET OR 57.062 ACRES.