

Cross Reference:

Book 67159 Page 492

Book 64917 Page 638

After recording, please return to:

Fulton County
c/o Fulton County Department of Real Estate and Asset Management
Land Division
141 Pryor Street, SW, Ste. 8021
Atlanta, Georgia 30303

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**SANITARY SEWER SYSTEM OWNERSHIP, OPERATION, MAINTENANCE
AND REPAIR AGREEMENT**

This SANITARY SEWER SYSTEM OWNERSHIP, OPERATION, MAINTENANCE AND REPAIR AGREEMENT ("Agreement") is made and entered into this 21 day of June, 2023, by and between 1858 Alpharetta Partners (hereinafter referred to as the "Owner") and **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia (hereinafter referred to as the "County") (the words "Owner" and "County" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH:

WHEREAS, Owner is the owner of certain real property located on Land Lot 1253, of the 2-2 District of Fulton County, Georgia being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (hereinafter referred to as the "Development"); and

WHEREAS, Owner wishes to make improvements to the Development so as to provide for public and private use of the Development; and

WHEREAS, a portion of said improvements includes the installation of a sanitary sewer system to provide potable sanitary sewer to serve the users of and visitors to the Development; and

WHEREAS, County is the owner and operator of the Fulton County Sanitary Sewer System (herein after "System") which is permitted by the Georgia Environmental Protection Division (hereinafter "EPD") as a Public Sanitary Sewer System allowed to provide sanitary sewer service to the public through a distribution system of sanitary sewer pipe lines and appurtenances; and

WHEREAS, EPD regulations require that where a permitted public sanitary sewer system is available, development and property requiring potable sanitary sewer shall receive sanitary sewer service through an extension of the public service system; and

WHEREAS, Owner, for its own convenience and interests, intends to install, or has installed, a sanitary sewer system that does not conform to County standards with respect to accessibility for maintenance and repair and/or other standards not believed to affect the quality of the sewer system; and

WHEREAS, Owner intends to install, or has installed, a sanitary sewer system primarily on private property as opposed to within the public right-of-way where public sanitary sewer systems are more commonly installed with adequate access for operation, maintenance and repair; and

WHEREAS, the foregoing conditions require more explicit definitions of the responsibilities of both County and Owner, as well as future property owners within the Development that will be served by the Sanitary Sewer System.

NOW, THEREFORE, for and in consideration of the benefits to the Development and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and County do hereby agree, covenant and declare the following terms and conditions to apply to the Development. These terms and conditions shall be binding on all persons claiming under and through Owner.

1. Grant of System Ownership: Owner does hereby grant, bargain, convey, sell, assign and transfer, free and clear of all claims and encumbrances, representation or recourse, to the County all of Owner's right, title and interest in and to the sanitary sewer system as an extension of County's sanitary sewer system, including without limitation all mains, taps and connections, and related appurtenances. The foregoing transfer also includes all of Owner's right, title and interest in and to all manufacturers' warranties express or implied for the sanitary sewer system.
2. Extent of System: Owner agrees that for purposes of this Agreement, the sanitary sewer system begins at the publicly owned road right-of-way on which the Development fronts and in existence prior to initiation of the Development, or at the County installed sanitary sewer outfall servicing the Development. The system extends along and to, but not beyond, the end of each sanitary sewer main (normally 8 inches or larger), to each and to any County furnished sanitary sewer service. Where service laterals are furnished by the Owner, the system shall end at the system connection to the residential cleanout.
3. Warranty: Owner agrees that they or their contractor(s) shall maintain the installed sanitary sewer mains and appurtenances for a period of fifteen (15) months from the date of FINAL approval or until the END OF MAINTENANCE INSPECTION shows no defects or deficiencies in the system by correcting all defects or deficiencies in materials and workmanship. Owner assumes all liability associated with any defects in either construction practices or materials used during the warranty period, including cost-recovery for any repairs facilitated by Fulton County made necessary by defects that resulted in loss of customer

service. Owner further agrees that the warranty period shall be extended an additional four (4) years when the defects are a direct result of the installation of non-conforming materials or the application of non-specified construction practices or methods. Owner shall release, indemnify, defend and hold harmless Fulton County, its officers, employees, assigns and agents, from and against any losses, claims, damages, liabilities, costs and expenses arising from said installation due to the negligence of Owner, its contractor(s), their agents, or employees.

4. Access: Owner agrees to provide the County with unrestricted access to the sanitary sewer system for any purpose related to the operation and/or maintenance of the system. Owner does hereby grant, bargain, sell, and convey to County and to County's successors and assigns a perpetual non-exclusive easement to access, use, maintain, repair, upgrade, replace, relocate and remove underground sanitary sewer lines and associated facilities in the private roads located on any recorded plat(s) (hereinafter the "Plats") of said Development as described on **Exhibit "A"**. County's right to access the Easement shall include methods for gaining entry through any locked gates or fencing for the purpose of handling emergency repairs 24 hours a day, 7 days a week as well as for any other action related to the Sanitary Sewer System. The County's access rights shall be formalized in a permanent easement agreement that is recorded and dedicated to Fulton County in **Deed Book 67159, Page(s) 492**, Fulton County, Georgia Real Estate Records. If applicable, sanitary sewer system easements shall be depicted on the final plat.
5. Sanitary Sewer Quality, Monitoring, and Reports: The County shall provide and maintain sanitary sewer service of a quality that, at a minimum, meets State and Federal regulations and shall monitor and report the quality of the sanitary sewer system as required by such regulations. With respect to commercial and/or mixed-use developments, the County reserves the right to take samples internal to the system and require improvements including, but not limited to, sampling stations and flushing units as needed to maintain sanitary sewer quality.
6. Reservation of Rights: Owner reserves the right to use the Easement as described in **Deed Book 67159 Page 492** for any and all lawful purposes, except that such use may not unreasonably interfere with the exercise by County of its rights in the Easement granted hereby. Without limiting the generality of the foregoing: (i) Owner may grant and establish other easements in all or any part of the Easement, so long as the grant is lawful and does not materially interfere with the rights hereby granted to County, and (ii) Owner may construct within the Easement, streets, roads, parking lots, sidewalks, fences, landscaping, signage, lighting and other architectural or entry features that may be used in conjunction with the development or use of the Association's land, of which the Easement forms a part, however, such improvements may not cause damage to the sanitary sewer lines and associated facilities within the Easement. County shall use its best efforts not to interfere with or negatively impact the quiet enjoyment of Owner's members in the exercise by County of its rights pursuant to this Agreement. During periods of maintenance and repair, County shall endeavor to provide reasonable access for Owner and Owner's members and invitees across the Easement.

7. Responsibility for Maintenance and Repair:

(a) Residential-only Developments:

(i) Multi-family: Multi-family residential developments are those developments which do not meet the minimum requirements set forth in the Fulton County Subdivision Regulations in regard to street design. Owner shall promptly notify County of any identified system failures or needed maintenance or repairs. The County shall perform or cause to be performed through a contractor, maintenance, repairs and improvements to the sanitary sewer system as needed or as may be required to meet the requirements of State and Federal regulations. Owner shall bear sole responsibility for the cost of all such maintenance, repairs and improvements. The cost shall be added to the fee for providing sanitary sewer service and billed to the account(s) servicing the Development; singularly for any single account serving the development or divided equally among all active accounts should a singular account not exist. Costs shall be established as accrued in the County's work order system for County performed work or as charged by a contractor using fees established through the County's procurement system. Such costs shall include the cost to restore the Easement to as near to its original condition as is feasible, in accordance with Fulton County Standard details. Notwithstanding any other remedies available to the County pursuant to applicable state and/or local law, Owner's failure to pay the cost of such maintenance or repair may result in the interruption of sanitary sewer service. Notwithstanding the foregoing, sanitary sewer meters installed by the County shall be the County's responsibility to maintain and repair. Any work performed by County pursuant to this Agreement shall be done in a good workmanlike manner.

(ii) Single-family: Single-family residential developments are those developments built in accordance with the Fulton County Subdivision Regulations in regard to street design. Owner shall promptly notify County of any identified system failures or needed maintenance or repairs. The County, at County's cost and expense, shall perform or cause to be performed through a Contractor; maintenance, repairs and improvements to the sanitary sewer system as needed or as may be required to meet the requirements of State and Federal regulations. County hereby covenants and agrees that it shall be responsible for and carry out any and all maintenance or repair to the Easement necessitated or caused by the use of the Easement by County, its agents, contractors and employees for the specific purpose defined in this Agreement. After any exercise of County's rights under this Agreement, County shall, at its expense, promptly restore the Easement to as near to its original condition as is feasible, in accordance with Fulton County Standard details. Maintenance responsibly by County for individual sanitary sewer service lines shall extend only to the end of the sanitary sewer mains (normally 8-inches or larger). Responsibility for any maintenance beyond the clean-out will be borne by the individuals being served.

Any work performed by County pursuant to this Agreement shall be done in a good workmanlike manner.

- (b) **Commercial/Mixed-Use Developments:** Commercial/Mixed-Use developments are those developments which are not solely residential in nature. Owner shall promptly notify County of any identified system failures or needed maintenance or repairs. Owner shall be responsible for the performance and cost of all maintenance, repairs and improvements to the sanitary sewer system, including emergency repairs, as directed by the County or as may be required to meet the requirements of State and Federal regulations. All such effort shall be performed in compliance with applicable Fulton County Standards and building codes with respect to materials and methods and be performed by a licensed utility contractor or plumber where applicable. Owner shall provide timely notice to County and provide opportunity for County to observe and inspect Owner provided maintenance, repairs or improvements so County may determine that such maintenance, repairs or improvements to the system are in compliance with County Standards and applicable codes or regulations. Owner shall provide a report to County of all maintenance, repairs, or modifications to the system, to include materials and methods of construction and description of the work performed within 72 hours of performance. Notwithstanding the foregoing, the sanitary sewer system facilities installed by the County shall be the County's responsibility to maintain and repair.
- (c) **Street Maintenance.** The Owner shall be responsible for the adjustment to all sanitary sewer and sewer appurtenances (manhole covers, etc.) affected by street maintenance including repaving, seal coating, patching, crack sealing, topping, and etc. The Owner shall adjust sanitary sewer and sewer appurtenances to fit flush with the street surface. All sewer appurtenances shall be cleaned of asphalt at the time of paving. Adjustments to take place a minimum of 24-hours to a maximum of 120-hours after maintenance. Any curbing that is replaced shall be remarked with the appropriate symbol showing the location of sewer laterals (S) in the shoulder or pavement of the road. Sewer symbols shall be painted orange. Any adjustment to the shoulder grade will also require adjustments of all sewer appurtenances affected by the adjustment to the shoulder grade. The Owner will be responsible for the adjustment of the appurtenances to the new grade.

The Owner shall be responsible to promptly notify Fulton County Department of Public Works, Sanitary sewer Resources Unit at 404-612-3421 of any proposed maintenance. Fulton County personnel shall inspect and approve all work performed by the Owner that affects sanitary sewer and sewer appurtenances. All work shall be done in accordance with Fulton County Standards and Specifications to the satisfaction of Fulton County personnel.

8. Notification to Future Owners: Owner shall make known to future owners of Development or any portions thereof of the requirements of this Agreement. Owner shall cause the following language to be included in all sales contracts for first owner occupants of developed property and on all plats and deeds associated with Development or subdivided parcels: “The owner and developer of this property has entered into a SANITARY SEWER SYSTEM OWNERSHIP, OPERATION, MAINTENANCE AND REPAIR AGREEMENT with Fulton County which describes certain obligations associated with the sanitary sewer system that are responsibilities of property owners within this development. The sanitary sewer system servicing this property and any subdivided parcels shall be owned by Fulton County for the purposes of providing sanitary sewer service of a quality meeting State and Federal Regulations. The owners of property served by the sanitary sewer system may be responsible for the cost of any and all maintenance and/or repair of the sanitary sewer system. The provision of an easement allowing Fulton County access to the sanitary sewer system for any reason shall not relieve property owners of their possible responsibility for the cost of maintenance and/or repair of the sanitary sewer system.”
9. Billing: Where a master meter is provided by County, Owner shall meter individual services on the sanitary sewer system using County standard meters and shall bill and collect fees for sanitary sewer usage by individual services. Individual services shall be billed based on County standard sanitary sewer service rates. Owner may incorporate a reasonable administrative fee for reading meters, calculating and transmitting bills, and collecting the fees for usage. Owner shall be responsible for any differential between master meter registered sanitary sewer usage and the sum of individual service sanitary sewer usage. Such usage shall be reconciled and billed on an annual basis or as otherwise deemed appropriate by County.
10. Indemnification: Owner, its successors and assigns, hereby agree to release, indemnify, defend and hold harmless the County, its Commissioners, officers, agents, employees, successors, assigns, elected officials, and any other person acting on its behalf, from and against any and all losses (including death), claims, demands, debts, damages, accounts, settlements, obligations, liabilities, costs, judgments and claims for attorney’s fees and/or expenses of litigation, and causes of action of any kind or nature, at law or in equity, arising out of the existence, installation, maintenance, repair, alteration, modification, deterioration or failure of any sanitary sewer systems or pipes located within Development. Said Owner hereby waives for itself, its successors and assigns all rights to any further compensation or claim to damages on account of the construction, access, upgrade or maintenance of said sanitary sewer line for the use of the property as herein agreed.
11. Notices. All notices and communications required or permitted hereunder shall be in writing. Any notices or demands shall be deemed to have been duly and sufficiently given if a copy thereof has been personally served, forwarded by expedited messenger or recognized overnight courier service with evidence of delivery or mailed by United States registered or certified mail in an envelope properly stamped and addressed to the applicable party at the addresses identified below or at such other address as such party may theretofore have furnished to the other party by written notice. The effective date

of such notice shall be the date of actual delivery, except that if delivery is refused, the effective date of notice shall be the date delivery is refused. Notices shall be addressed as follows:

Owner:

1858 Alpharetta Partners
Steve Smith
6160 Peachtree Dunwoody Rd.
Suite B-500
Atlanta, GA 30328

County:

David Clark, P.E.
Director, Department of Public Works
141 Pryor Street, S.W.
Suite 6001
Atlanta, GA 30303

12. Covenants Running with the Land: The provisions of this Agreement shall be deemed covenants running with the land for the benefit of the County and its assigns and shall pass to and be binding on Owner's heirs, assigns and successors in title to the Development or any subdivided portion thereof. Owner shall further include the provisions of this Agreement in the establishment of any other entity which may obtain ownership rights to any portion of the Development or the land thereof such as a Homeowners Association which shall own common area, or purchaser of any individual residential lot, or any tract of land for any purpose.
13. Joint and Several Liability: Owner and its successors and assigns, hereby agree that to the extent permitted by law, they shall be jointly and severally liable for all obligations defined in this Agreement, and the taking of any actions required under this Agreement.
14. Modification: This Agreement may not be modified except by written agreement between the County and all parties subject to this agreement or an entity such as a Homeowners Association representing all affected parties.
15. Governing Law: This Agreement, and the rights and obligations of the parties hereunder, shall be governed by, and construed and interpreted in accordance with the laws of the State of Georgia.
16. Severability: If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
17. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be changed, waived, discharged, modified or terminated orally, except by a written instrument signed by the party against whom enforcement is sought.

18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.
 19. Interpretation: No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision. For all purposes of interpretation or construction of this Agreement, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders.
 20. Third Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties.
 21. Waiver. Nothing in this Agreement shall be construed as a waiver of sovereign immunity.
 22. Miscellaneous. This Agreement may not be modified orally or in any manner other than by a written agreement signed by the parties hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns. Time is of the essence in this Agreement. This Agreement shall be governed by the laws of the State of Georgia without regard to the conflict of law's provisions thereof.
 23. Effective Date. This Agreement will become effective upon approval by the Fulton County Board of Commissioners of their interest in the Easement and will be recorded by County as soon as practicable after such approval and execution by County.
 24. Recitals: All recitals contained herein are hereby incorporated by reference into this Agreement and made a part hereof
 25. Recording: County shall record this document with the Clerk of the Fulton County Superior Court in the Land Records with a copy of the recorded documents provided to the Department of Public Works, Water Resources Division, and Owner.
-

IN WITNESS WHEREOF, Owner has caused this instrument to be executed under seal as of the day and year first above written.

“OWNER”

1858 Alpharetta Partners

Signed, sealed and delivered

By: Steven C. Smith

As to Owner:

Printed Name: Steven C. Smith

Title: Managing Member

Unofficial Witness:

[Signature]

(COMPANY SEAL)

Sworn to and subscribed before me this the 21 day of June, 2023

[Signature]
Notary Public

My Commission Expires: July 19, 2024



FULTON COUNTY, GEORGIA

[Signature]
David Clark, Director
Department of Public Works

APPROVED AS TO FORM:

Office of the County Attorney

FULTON COUNTY, GEORGIA

Attest:

By: _____
Chairman, Board of Commissioners

Clerk of Commission

APPROVED AS TO CONTENT:

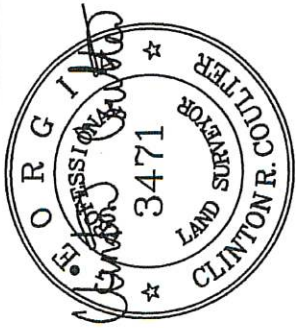
APPROVED AS TO FORM:

David E. Clark, Director
Department of Public Works

Y. Soo Jo, County Attorney

EXHIBIT "A"

(attach legal description and/or plat of the easement area)



06/16/2023

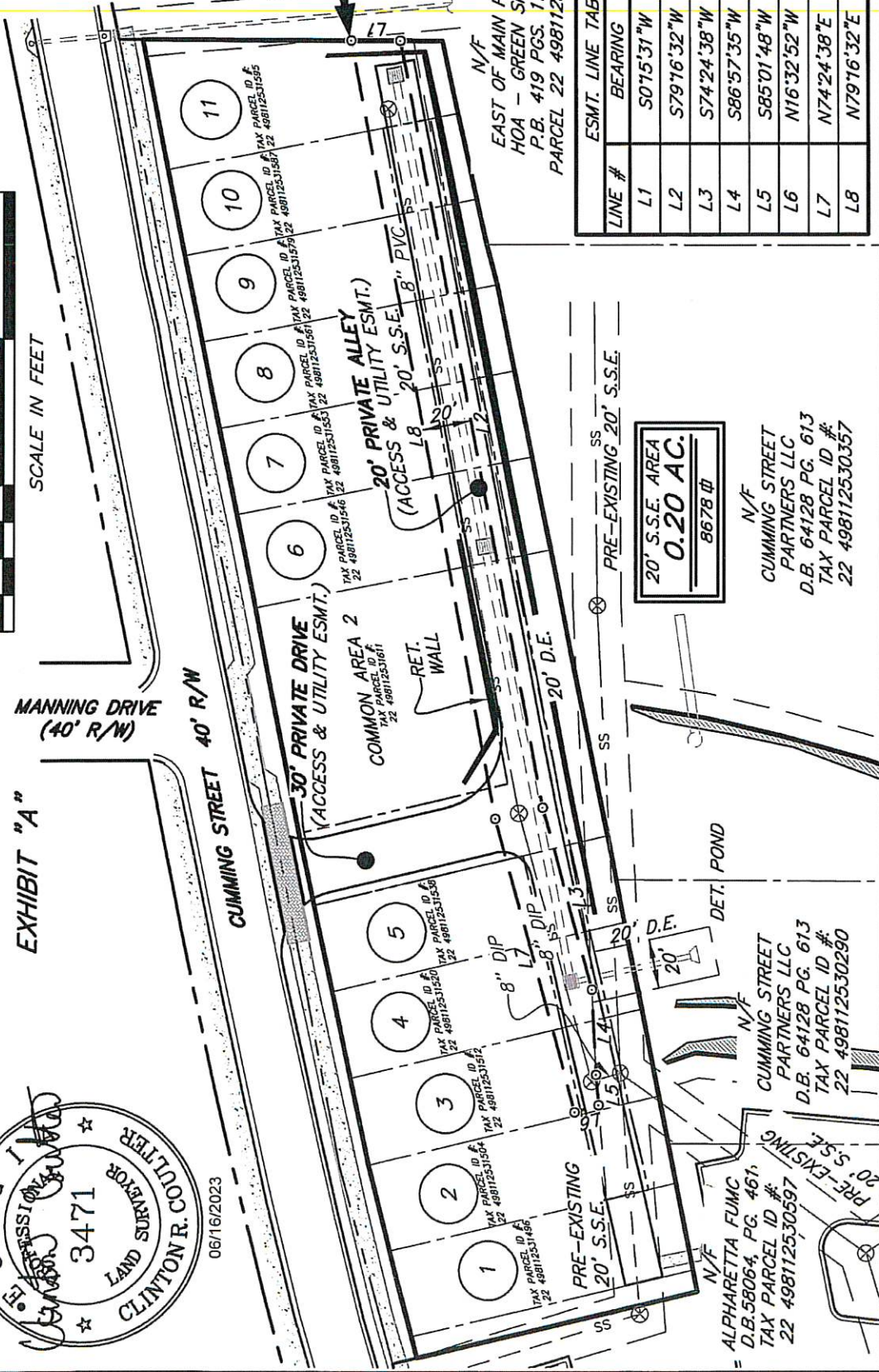


EXHIBIT "A"
CUMMING STREET 40' R/W
MANNING DRIVE (40' R/W)

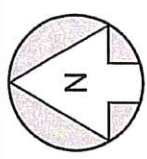
N/F
 PERCY F. LIDBACK &
 SOPHIA A. LIDBACK
 D.B. 64221, PG. 73
 P.B. 419 PGS. 11-16
 PARCEL 22 498112530829

N.P.O.B.
 (GRID NORTH;
 GA WEST ZONE;
 NAD 83)
 N=1483752.237
 E=2258890.179

N/F
 EAST OF MAIN PH II
 HOA - GREEN SPACE
 P.B. 419 PGS. 11-16
 PARCEL 22 498112530839



LINE #	BEARING	DISTANCE
L1	S07°5'31"W	20.37'
L2	S79°16'32"W	319.73'
L3	S74°24'38"W	77.02'
L4	S86°57'35"W	34.57'
L5	S85°01'48"W	12.40'
L6	N16°32'52"W	10.20'
L7	N74°24'38"E	123.98'
L8	N79°16'32"E	324.45'



NORTH ARROW
 (GRID NORTH, GA WEST ZONE)

SHEET TITLE
1 OF 2

SEWER ESMT. EXHIBIT FOR:
THE 1858
109 CUMMING STREET
 TAX PARCELS 22 498112530357 & 22 498112530316
 LAND LOT 1253, 2nd DISTRICT, 2nd SECTION
 CITY OF ALPHARETTA, FULTON COUNTY, GEORGIA

Know what's below.
 Call before you dig.

DRAWN BY: JJC
 JOB #: O/VISION DEVELOPMENT
 DATE: 06/16/2023

PREPARED IN THE OFFICE OF:

GASKINS + LECRAW
 © 2023 GASKINS + LECRAW, INC
 147 REINHARDT COLLEGE PKWY
 SUITE 3
 CANTON, GA 30114
 PHONE - 770.479.9698
 FAX - 770.479.7943
 www.gaskinslecrow.com
 PEP-008127

EXHIBIT "A"

20' SEWER EASEMENT DESCRIPTION

ALL OF THAT 20' SANITARY SEWER EASEMENT BEING IN LAND LOT 1253 OF THE 2ND DISTRICT, 2ND SECTION, CITY OF ALPHARETTA, FULTON COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY PROPERTY LINE OF LOT 11 OF THE 1858 DEVELOPMENT HAVING STATE PLANE COORDINATES NORTH: 1483752.237, EAST: 2258990.179 (GRID NORTH, GA WEST ZONE NAD 83), SAID POINT BEING THE POINT OF BEGINNING;

THENCE PROCEEDING ALONG SAID PROPERTY LINE SOUTH 00 DEGREES 15 MINUTES 31 SECONDS WEST A DISTANCE OF 20.37' TO A POINT;

THENCE DEPARTING SAID PROPERTY LINE SOUTH 79 DEGREES 16 MINUTES 32 SECONDS WEST A DISTANCE OF 319.73 FEET TO A POINT;

THENCE SOUTH 74 DEGREES 24 MINUTES 38 SECONDS WEST A DISTANCE OF 77.02 FEET TO A POINT ABUTTING A PRE-EXISTING 20' SANITARY SEWER EASEMENT;

THENCE PROCEEDING ALONG THE NORTHERLY SIDE OF SAID PRE-EXISTING 20' SANITARY SEWER EASEMENT SOUTH 86 DEGREES 57 MINUTES 35 SECONDS WEST A DISTANCE OF 34.57 FEET TO A POINT;

THENCE CONTINUING ALONG THE NORTHERLY SIDE OF SAID PRE-EXISTING 20' SANITARY SEWER EASEMENT SOUTH 85 DEGREES 01 MINUTES 48 SECONDS WEST A DISTANCE OF 12.40 FEET TO A POINT;

THENCE DEPARTING SAID PRE-EXISTING 20' SANITARY SEWER EASEMENT NORTH 16 DEGREES 32 MINUTES 52 SECONDS WEST A DISTANCE OF 10.20 FEET TO POINT;



THENCE NORTH 74 DEGREES 24 MINUTES 38 SECONDS EAST A DISTANCE OF 123.98 FEET TO A POINT;

THENCE NORTH 79 DEGREES 16 MINUTES 32 SECONDS EAST A DISTANCE OF 324.45 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING.

SAID 20' SEWER EASEMENT BEING 0.20 ACRES (8,678 SQUARE FEET) MORE OR LESS.



06/16/2023

<p>PREPARED IN THE OFFICE OF</p>  <p>GASKINS + LECRAW 2023 GASKINS + LECRAW, INC. 147 REINHARDT COLLEGE PARKWAY SUITE J CANTON, GA 30114 PHONE: 770 479 0559 FAX: 770 479 7093 www.gaskinslecrow.com PEFO09127</p>	 <p>Know what's below. Call before you dig.</p> <table border="1"> <tr> <td>DRAWN BY:</td> <td>JIC</td> </tr> <tr> <td>JOB #:</td> <td>DIVISION DEVELOPMENT</td> </tr> <tr> <td>DATE:</td> <td>06/16/2023</td> </tr> </table>	DRAWN BY:	JIC	JOB #:	DIVISION DEVELOPMENT	DATE:	06/16/2023	<p align="center">SEWER ESMT. DESCRIPTION FOR:</p> <p align="center">THE 1858 109 CUMMING STREET</p> <p align="center">TAX PARCELS 22 498112530357 & 22 498112530316 LAND LOT 1253, 2nd DISTRICT, 2nd SECTION CITY OF ALPHARETTA, FULTON COUNTY, GEORGIA</p>	<p align="center">SHEET TITLE</p> <p align="center">2 OF 2</p>
DRAWN BY:	JIC								
JOB #:	DIVISION DEVELOPMENT								
DATE:	06/16/2023								