

This Instrument Prepared By:
Adam C. Cobb
EMMANUEL, SHEPPARD & CONDON
30 South Spring Street
Pensacola, Florida 32502

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
KIRKSEY COURT

This Declaration of Covenants, Conditions and Restrictions of Kirksey Court (“**Declaration**”) is made this 11th day of April, 2022, by Tunnel Road, LLC, a Florida limited liability company, hereinafter referred to as “**Declarant**.”

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Escambia County, Florida, which is more particularly described as follows, to-wit:

See, attached Exhibit A, which property shall hereinafter be referred to as, collectively, the “**Subject Property**”.

WHEREAS, the Subject Property is concurrently being developed into 14 parcels (each a “**Parcel**” and collectively, the “**Parcels**”), as more particularly depicted and described in Exhibit B attached hereto; and

WHEREAS, it is intended that the Parcels will be developed and a single family home constructed upon each of the same.

NOW THEREFORE, Declarant hereby declares that all of the Subject Property shall be held, sold and conveyed subject to the following covenants, conditions, and restrictions which are for the purpose of protecting the value and desirability of all said Subject Property and which shall run with the Subject Property and be binding on all parties having any right, title or interest in the Subject Property or any part thereof, or their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I – DEFINITIONS

Section 1 – Association. “Association” shall mean and refer to Kirksey Court Homeowners’ Association, Inc., a Florida not for profit corporation, and its successors and assigns. This is the Declaration of Covenants, Conditions and Restrictions to which the Articles of Incorporation and Bylaws of the Association make reference.

Section 2 – Easement Area. The “Easement Area” is more particularly depicted and described in Exhibit B attached hereto.

Section 3 – Common Area. “Common Area” shall mean and refer to the Easement Area and any other real property within the Subject Property which the Association owns or leases or that is dedicated for use or maintenance by the Association or the Owners (including any improvements, fixtures or tangible personal property relating thereto), whether now owned or hereafter acquired.

Section 4 – Owner. “Owner” shall mean and refer to all present and future record owners, whether one or more persons or entities, of fee simple title to any Parcel. Owner shall not include those persons or entities having a record interest in a Parcel merely as security for the performance of an obligation. Whenever herein a use or enjoyment restriction provides that an Owner can or cannot do, or fails to do, certain acts or things, the Owner shall also be deemed to include the Owner’s family, guests, tenants and contract purchasers, provided, however, that only an Owner, and not a member of the Owner’s family, the Owner’s guests, the Owner’s tenants or the Owner’s contract purchasers, shall be held financially responsible for any such act or failure to act.

ARTICLE II – MEMBERSHIP AND VOTING RIGHTS

Section 1 – Membership. Every Owner of a Parcel shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Parcel.

Section 2 – Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all Owners, with the exception of the Declarant (who shall be a Class B member as provided hereafter), and shall be entitled to one (1) vote for each Parcel owned. When more than one person holds an interest in any Parcel, all such persons shall be members. The vote for such Parcel shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Parcel.

Class B. Class B member shall mean the Declarant, and it shall be entitled to three (3) votes for each Parcel owned. The Class B membership shall cease and be converted to Class A membership on the date when Declarant ceases to own at least fifty percent (50%) of the total Parcels in the Subject Property or at such earlier time as the Declarant chooses to become a Class A member as evidenced by an instrument to such effect executed by Declarant and recorded in the Official Records of Escambia County.

The Declarant shall not exercise its voting rights granted to it under this Article in an unreasonable manner nor in such a way as to cause undue hardship upon any Owner. Likewise, Class A members shall not exercise their voting rights granted to them in a manner so as to hinder the Declarant, in any manner, in selling the Parcels it has remaining, nor to affect any reservation or right of the Declarant contained herein, or elsewhere, so long as Declarant holds at least one (1) Parcel for resale purposes.

ARTICLE III – GENERAL PROVISIONS

Section 1 – Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding by law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any Owner to enforce any such restrictions, conditions, covenants, reservations, liens or charges shall in no event be deemed a waiver of the rights to do so thereafter. If any court proceedings are required for the successful enforcement of any restrictions, conditions, covenants or reservations herein contained, or any liens or charges against any Owner or against any other person or entity, said Owner, person or entity expressly agrees to pay all costs, including a reasonable attorneys fee, of the Owner or the Association who initiates such successful judicial proceedings for the enforcement of said restrictions, conditions, covenants, reservations, liens or charges.

Section 2 – Severability. Invalidation of any one of the restrictions, conditions, covenants, reservations, liens or charges, by judgment or court order, shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect thereafter.

Section 3 – Duration and Amendment. The restrictions, conditions and covenants of this Declaration shall run with and bind the land, shall be deemed a part of all deeds and contracts for conveyance of any and all Parcels, and shall be binding on all Owners for a period of 30 years from the date this Declaration is recorded, unless amended by an instrument signed by three-fourths (3/4) of the then existing Owners. After the initial 30-year term, this Declaration shall be automatically extended for successive periods of 10 years, unless amended by an instrument signed by a majority of the then existing Owners. Notwithstanding anything herein to the contrary and for so long as it remains a Class B member, Declarant reserves unto itself the right, authority and power to amend this Declaration in any manner Declarant deems necessary or appropriate.

Section 4 – Nonliability of Association. The Association shall not in any way or manner be held liable to any Owner or any other person or entity for failure to enforce, or for any violation of, the restrictions, conditions, covenants, reservation, lines or charges herein contained by any Owner, other than itself.

Section 5 – Notice. Unless otherwise expressly provided herein, the requirements of the Association to give any type of notice provided herein may be satisfied by mailing said notice, postage prepaid, to the last mailing address of the Owner as reflected on the records of the Association.

Section 6 – Violations. Any single violation of any provision of this Declaration by an Owner shall constitute a continuing violation which shall allow the Association or any other Owner to seek permanent injunctive relief. In no event shall a violation of the restrictions, conditions or covenants ever be interpreted to operate as a reverter or a forfeiture of title.

Section 7 – Declarant's Rights. Nothing in this Declaration shall be interpreted, construed or applied to prevent Declarant, or its contractors, sub-contractors, agents, employees and invitees from doing or performing on all or any part of the Subject Property owned or controlled by Declarant whatever it deems to be necessary or desirable in connection with completing the construction and development of the Subject Property and the sale of Parcels, including without

limitation, maintaining at Declarant's cost, such signs as may be necessary for Declarant's sales activities.

Section 8 – Nuisance. No noxious or offensive activity shall be carried on or upon any Parcel, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the Owners of other Parcels.

Section 9 – Compliance with Law. All laws of the United States, the State of Florida and the County of Escambia, and all rules and regulations of their administrative agencies now and hereafter in effect, pertaining to sewage disposal, water supply, sanitation, zoning, building permits, land use planning and the like shall be observed by all Owners, unless an appropriate permit or variance to do otherwise is properly granted, and any governmental official having a lawful and administrative duty to inspect any of the Subject Property with respect to any such matters shall have a license to enter upon any of the Subject Property at all reasonable times to make such inspections and recommendations.

Section 10 – Fines. Failure by an Owner to comply with the terms of this Declaration shall result in a fine payable to the Association by the Owner of said Parcel in the amount of \$100 per day for as long as the violation continues. The aggregate amount of fines imposed under this provision is unlimited. The Owner shall be given written notice and an opportunity to cure any such violations at least twenty (20) days prior to the imposition of any such fine. The Owner shall be given the opportunity for a hearing before a committee of at least three members of the Association appointed by the Board, who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee does not approve the proposed fine by majority vote, it may not be imposed. In any action to recover a fine, the Association is entitled to collect its attorney's fees and costs from the offending Owner. This Section shall not apply to a violation which consists only of failure to pay assessments when due.

ARTICLE IV – COMMON AREAS

Section 1 – Owners' Easements for Access. Every Owner shall have a non-exclusive, perpetual access easement over and across the Easement Area for the purpose of permitting the Owners, and the Owners' family members, guests, tenants, invitees, agents, and assigns, to use the Easement Area for vehicular and pedestrian ingress and egress to and from the Parcels. This easement for access is perpetual, runs with the land, is intended to confer restrictions and benefits on and to the Owners and the Association, constitutes an equitable servitude, and may be modified and/or terminated only as set forth in this Declaration. It is the intention of the Declarant, the Association, and the Owners that the holders of all existing and future mortgages and other interests with respect to all or any portion of the Subject Property or any improvements thereon shall acquire and/or hold their respective mortgages and other interests subject and subordinate to this Declaration, and that the foreclosure or other exercise of rights by any such holder shall not terminate or cancel this access easement or this Declaration in any respect.

Section 2 – Association's Easements for Maintenance. The Association shall have a non-exclusive, perpetual easement over and across and through the Easement Area for the purpose

of enabling it and its agents, contractors, and employees to clean, maintain, improve, repair, replace the Easement Area and the improvements thereon and in fulfillment of its obligations under Article V, Section 2, below. This easement is perpetual, runs with the land, is intended to confer restrictions and benefits on and to the Owners and the Association, constitutes an equitable servitude, and may be modified and/or terminated only as set forth in this Declaration. It is the intention of the Declarant, the Association, and the Owners that the holders of all existing and future mortgages and other interests with respect to all or any portion of the Subject Property or any improvements thereon shall acquire and/or hold their respective mortgages and other interests subject and subordinate to this Declaration, and that the foreclosure or other exercise of rights by any such holder shall not terminate or cancel this access easement or this Declaration in any respect.

Section 3 – No Obstruction of Easements. Owners are prohibited from obstructing the Easement Area in any manner which impedes the access of other Owners over and across the Easement Area. Owners shall not dump debris, trash, waste, or the like on the Easement Area, nor shall Owners store anything in the Easement Area that obstructs the Easement Area in any manner. Further, Owners shall not engage in conduct that results, whether willfully or negligently, in damage or destruction to any portion of the Easement Area.

Section 4 – Reservation of Easement. Declarant does hereby reserve a nonexclusive perpetual right of access easement, over, across, under, in and to all Common Area for construction of improvements on the Subject Property, activities in connection with the sale of the Parcels, and such other purposes and uses as Declarant deems appropriate or necessary in connection with the sale and development of the Subject Property, as well as the right to assign and transfer such reserved easements to others. Declarant further reserves unto itself the right to grant in the future additional easements across such Common Area for utilities or for other purposes as determined necessary in the sole opinion of Declarant.

Section 5 – Common Area Regulations. The Board of Directors is hereby granted the authority to adopt reasonable policies, procedures, rules and regulations for the Common Area for general use by the Owners.

ARTICLE V – ASSESSMENTS

Section 1 – Creation of the Lien and Personal Obligation of Assessments. Each Owner of each Parcel by acceptance of a deed (or in the situation of a contract purchaser pursuant to a recorded contract, by acceptance of such contract), whether or not it shall be so expressed in such deed or such contract, is deemed to covenant and agree to pay to the Association: (a) an annual assessment and (b) any special assessments, both of such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees incurred in connection with the collection of any assessment, fine and/or any other charge set forth herein, together with enforcement of any of the terms and provisions of this Declaration, shall be a charge and a continuing lien upon the Parcel against which such assessment is made from the time such assessment becomes due. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal

obligation of the person who is the Owner of such Parcel at the time when the assessment becomes due.

Section 2 – Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health and welfare of the residents of the Parcels and for the improvement, repairs and maintenance of the Common Area. The Association shall have the obligation to maintain the Easement Area in a good and safe manner so as to permit use of the Easement Area for vehicular and pedestrian ingress and egress purposes.

Section 3 – Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment per Parcel applicable to that year only for the purpose of defraying, in whole or in part, the cost of any acquisition, construction, reconstruction, repair, improvement or maintenance upon any Common Area or any real property owned by the Association, including fixtures and personal property related thereto, and any special signage and street lights; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4 – Notice and Quorum for any Action Authorized under Section 3. Written notice of any meeting of Owners called for the purpose of taking any actions authorized under Section 3 of this Article shall be sent by United States mail, postage prepaid, or electronically transmitted in the manner authorized by the Bylaws of the Association, to all affected Owners of record (thirty (30) days prior to the date of any meeting called for this purpose) as required by the Bylaws. At the first such meeting called, the presence of affected Owners or of proxies entitled to cast 51% of all the votes of the affected membership shall constitute a quorum. If the required quorum is not present, the required quorum of a subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date of the preceding meeting.

Section 5 – Rate of Assessment. The annual and special assessments pertaining to all matters shall be fixed at a uniform rate for all Parcels.

Section 6 – Assessment Periods and Due Dates. The annual assessment shall be assessed on a calendar year basis and is due and payable on such date(s) and payment schedule (e.g. monthly, quarterly, semi-annually or annually) as set forth by a Resolution of the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of the annual assessment for each Parcel in advance of each annual assessment period. Written notice of the annual assessment shall be mailed to every affected Owner. The Association is not required to prorate the first year's annual assessment. The Association shall, upon written request and for a reasonable charge, furnish a sealed certificate signed by an officer of the Association stating what assessments are outstanding against any Parcel and the due date for such assessments. A properly executed and sealed certificate of the Association as to the status of assessments on a Parcel is binding upon the Association as of the date of its issuance.

Section 7 – Effect of Nonpayment of Assessment and Remedies of the Association. Any annual or special assessment not paid within thirty (30) days after the due date shall bear a late

charge of ten percent (10%) of the assessment amount, plus interest from such date at the highest legal rate per annum. The Association may bring an action at law against the Owner personally obligated to pay same, and/or foreclose the lien against the Parcel to collect all amounts due and owing, including attorney's fees and costs. No Owner may waive or otherwise avoid personal liability for the assessments provided for herein by nonuse of any Common Area or abandonment of the Owner's Parcel.

Section 8 – Subordination of the Lien to Mortgages of Record. Any lien of the Association for assessments under this Article V recorded after the date of recordation of any mortgage shall be subordinate to the mortgage on the Parcel. When the mortgagee of a mortgage of record, or other purchaser, of a Parcel obtains title to the Parcel as a result of foreclosure of the mortgage, or, as a result of a deed given in lieu of foreclosure, such acquirer of title and his or her successors and assigns shall not be liable for the assessments by the Association pertaining to such Parcel or chargeable to the former Owner of such Parcel which became due prior to the acquisition of title as a result of the foreclosure, or deed in lieu of foreclosure, unless such assessment is secured by a claim of lien for assessments that is recorded in the public records of Escambia County, Florida, prior to the recording of the foreclosed mortgage or for which a deed in lieu of foreclosure is given, and such subordinate lien shall be extinguished automatically upon the recording of the certificate of title or the deed in lieu of foreclosure. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Parcel from liability for, nor the Parcel so sold or transferred from the lien of any assessments thereafter becoming due. All such assessments, together with interest, costs, and attorney's fees, shall, however, continue to be the personal obligation of the person who was the Owner of the Parcel at the time the assessment fell due. Except as hereinabove provided, the sale or transfer of an interest in any Parcel shall not affect the assessment lien. Any liens extinguished by the provisions of this article shall be reallocated and assessed against all Parcels as a common expense.

[A separate signature page follows.]

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Covenants, Conditions and Restrictions of Kirksey Court this 11th day of April, 2021.

Signed, sealed and delivered
in the presence of:

Tunnel Road, LLC, a
Florida limited liability company

Rebecca J. Wood
Printed Name: Rebecca J. Wood

By: J. Collier Merrill
J. Collier Merrill, Manager

Audrey Victoria S. Young
Printed Name: Audrey Victoria S. Young

STATE OF FLORIDA)
COUNTY OF ESCAMBIA)

The foregoing instrument was subscribed before me and acknowledged by (X) physical presence or () online notarization by J. Collier Merrill, who is a Manager of Tunnel Road, LLC, a Florida limited liability company, and is personally known to me or produced _____ as identification.

Gail Alexandria Tully
Notary Public
Printed Name: Gail Alexandria Tully
My Commission Expires: 01/24/2023

(Notary Seal)

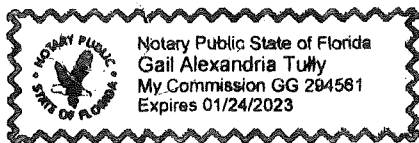


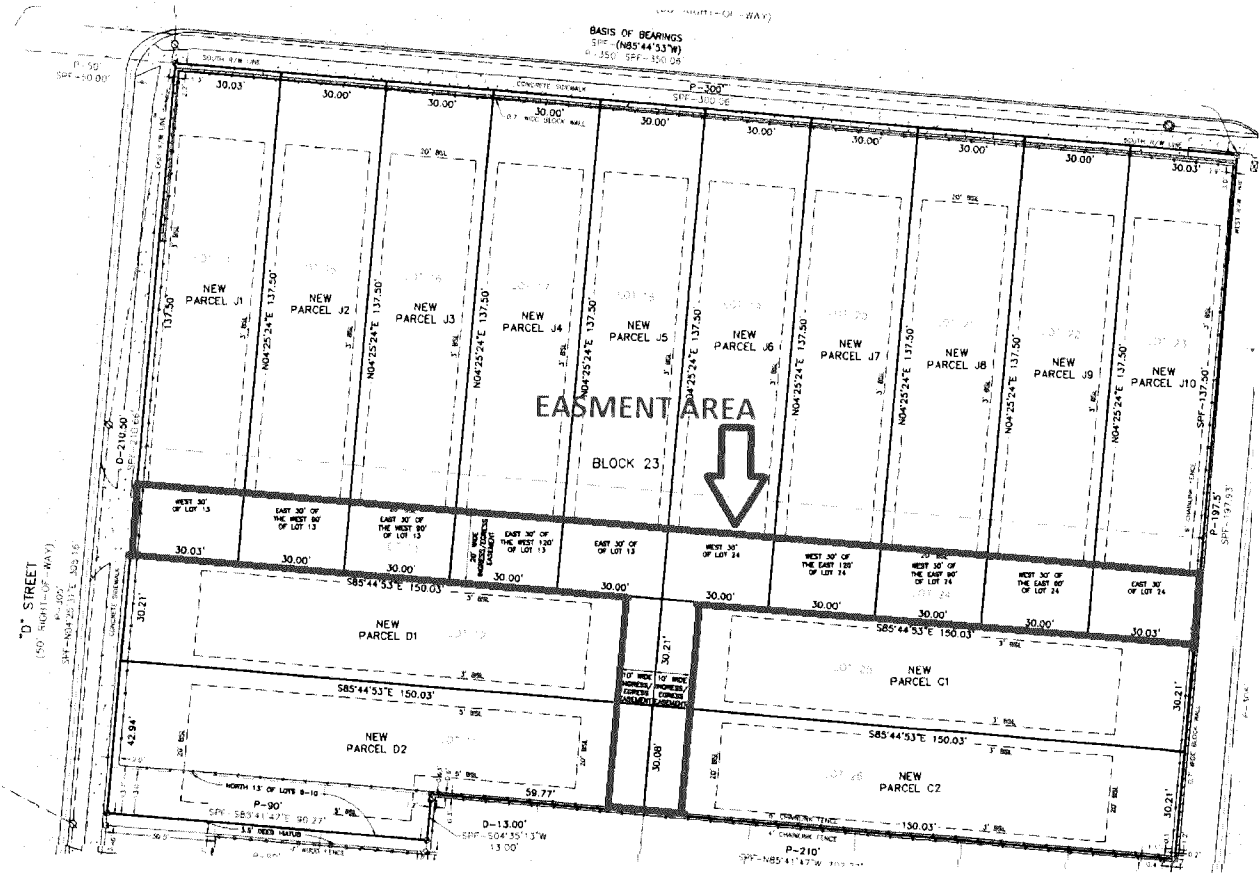
EXHIBIT A

Subject Property



THE NORTH 13 FEET OF LOTS 8, 9, 10 AND ALL OF LOTS 11 THROUGH 26 OF THE PEBLEYS SUBDIVISION, BLOCK 23, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

EXHIBIT B



LEGAL DESCRIPTIONS FOR PARCELS:

Parcel J1

LOT 14 AND THE WEST 30 FEET OF LOT 13, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel J2

LOT 15 AND THE EAST 30 FEET OF THE WEST 60 FEET OF LOT 13, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel J3

LOT 16 AND THE EAST 30 FEET OF THE WEST 90 FEET OF LOT 13, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel J4

LOT 17 AND THE EAST 30 FEET OF THE WEST 120 FEET OF LOT 13, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel J5

LOT 18 AND THE EAST 30 FEET OF LOT 13, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel J6

LOT 19 AND THE WEST 30 FEET OF LOT 24, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY. COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel J7

LOT 20 AND THE WEST 30 FEET OF THE EAST 120 FEET OF LOT 24, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel J8

LOT 21 AND THE WEST 30 FEET OF THE EAST 90 FEET OF LOT 24, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel J9

LOT 22 AND THE WEST 30 FEET OF THE EAST 60 FEET OF LOT 24, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel J10

LOT 23 AND THE EAST 30 FEET OF LOT 24, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel C1

LOT 25, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel C2

LOT 26, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel D1

LOT 12, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY, COPYRIGHTED BY THOMAS C. WATSON IN 1906.

Parcel D2

LOT 11 AND THE NORTH 13 FEET OF LOTS 8, 9, 10, BLOCK 23 OF THE PEBLEYS SUBDIVISION, WEST KING TRACT, IN THE CITY OF PENSACOLA, FLORIDA, ACCORDING TO THE MAP OF SAID CITY. COPYRIGHTED BY THOMAS C. WATSON IN 1906.

LEGAL DESCRIPTION FOR EASEMENT AREA:

The southern 20 feet of Parcels J1-J10, the eastern 10 feet of Parcels D1 and D2, and the western 10 feet of Parcels C1 and C2, as said Parcels are all described above.