

Ordinance No. _____

An ordinance accepting a greenway conservation easement, on certain property located at 2841 Lebanon Pike (Parcel No. 09602001700) owned by AT3 Markham East, LLC (Proposal No. 2020M-059ES-001).

WHEREAS, AT3 Markham East, LLC ("Grantor") is the sole owner in fee simple of certain real property located at 2841 Lebanon Pike (Parcel No. 09602001700); and,

WHEREAS, pursuant to the terms of the easement agreement attached to this ordinance and incorporated herein, Grantor proposes to grant the Metropolitan Government a greenway conservation easement; and,

WHEREAS, Grantor intends that the conservation values of the property be preserved and made more accessible for public enjoyment by the anticipated incorporation and maintenance of the property as part of the Metro greenways system.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE:

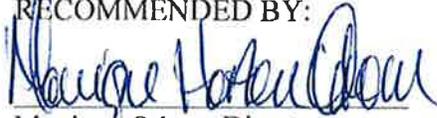
Section 1. The greenway conservation easement agreement attached hereto and incorporated herein, is hereby approved.

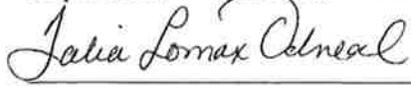
Section 2. The Director of Public Property, or designee, is authorized to accept and record the greenway conservation easement and to take such other reasonable actions as may be necessary to carry out the intent of this ordinance.

Section 3. Further amendments to this easement agreement may be approved by resolution of the Metropolitan Council.

Section 4. This ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

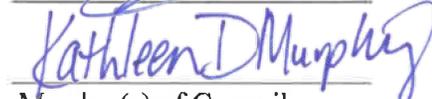
RECOMMENDED BY:

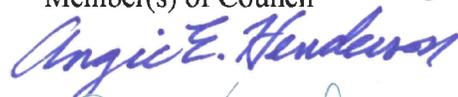

Monique Odom, Director
Department of Parks and Recreation


Director
Public Property Administration

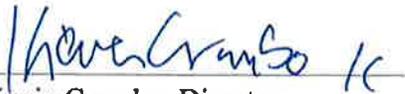
INTRODUCED BY:





Member(s) of Council




APPROVED AS TO AVAILABILITY
OF FUNDS:


Kevin Crumbo, Director
Department of Finance

APPROVED AS TO FORM AND
LEGALITY:


Assistant Metropolitan Attorney



**METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY**

Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201

July 8, 2020

To: Ronald Colter, Metro Finance

Re: 2841 Lebanon Pike Greenway Easement
Planning Commission Mandatory Referral #2020M-059ES-001
Council District # 15, Jeff Syracuse, Council Member

On behalf of the Metropolitan Planning Commission, the following item, referred to the Commission as required by the Metro Charter, has been recommended for *approval* to the Metropolitan Council:

A request for an ordinance accepting a greenway conservation easement, on certain located at 2841 Lebanon Pike (Parcel No. 09602001700) owned by AT3 Markham East, LLC (Proposal No. 2020M-059ES-001).

The relevant Metro agencies (Metro Parks, Metro Public Works, Metro Water Services, Metro Emergency Communications, the Nashville Electric Service, Metro Finance – Public Property and the Metro Historical Commission) have reviewed the proposal and concur in the recommendation for approval. This request must be approved by the Metro Council to become effective. A sketch showing the location of the request is attached to this letter.

Conditions that apply to this approval: None.

This recommendation for approval is given as set forth in the Metropolitan Planning Commission Rules and Procedures. If you have any questions about this matter, please contact Sharon O'Conner at Sharon.oconner@nashville.gov or [615-862-7208](tel:615-862-7208).

Sincerely,

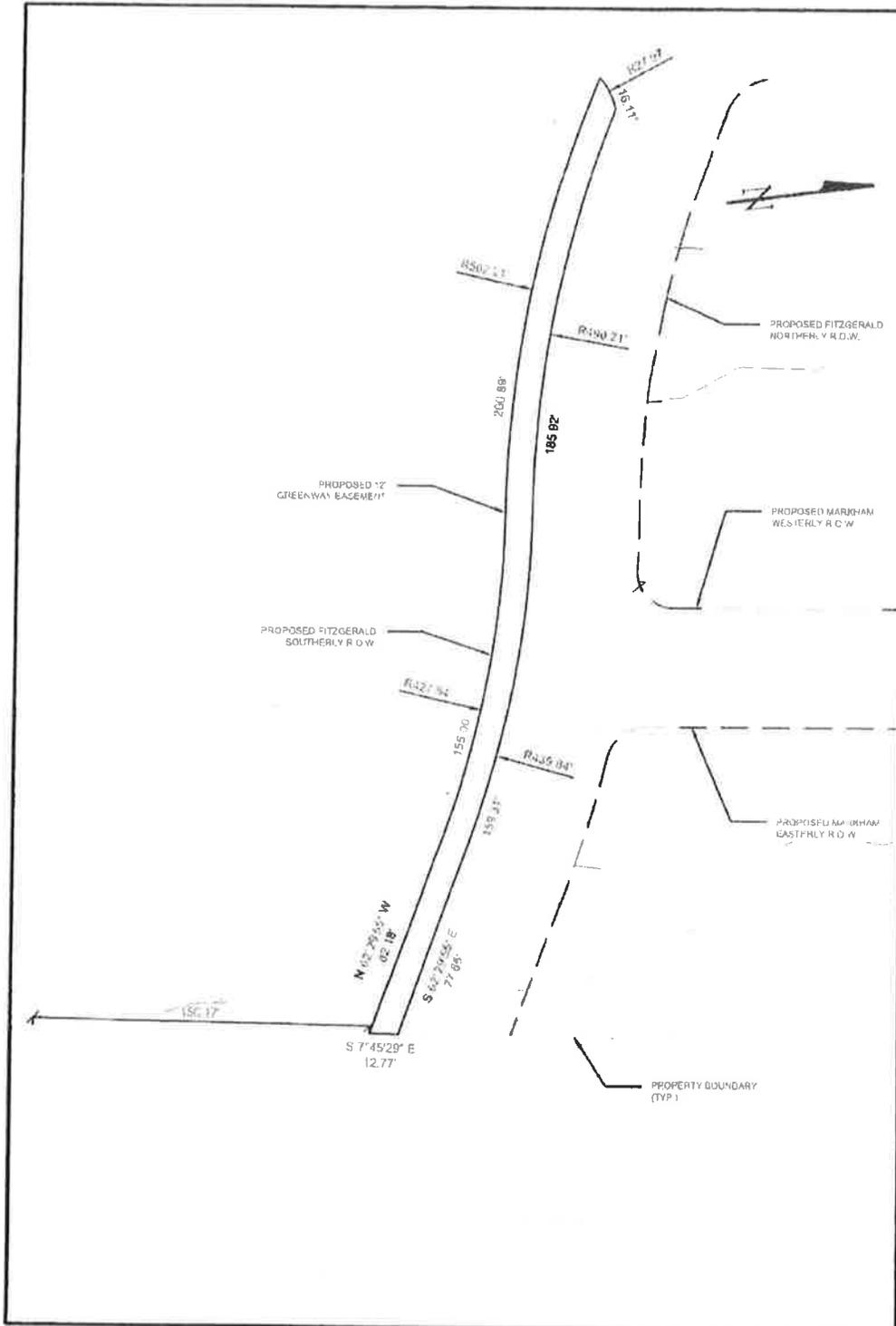
A handwritten signature in blue ink that reads "Robert Leeman".

Robert Leeman, AICP
Deputy Director
Metro Planning Department

cc: Metro Clerk, Elizabeth Waites

Re: 2841 Lebanon Pike Greenway Easement
Planning Commission Mandatory Referral #2020M-059ES-001
Council District # 15, Jeff Syracuse, Council Member

A request for an ordinance accepting a greenway conservation easement, on certain located at 2841 Lebanon Pike (Parcel No. 09602001700) owned by AT3 Markham East, LLC (Proposal No.2020M-059ES-001).



AGREEMENT FOR GRANT OF EASEMENT

for

CONSERVATION GREENWAY

THIS AGREEMENT, made and entered into this the 5th day of May, ~~2019~~²⁰²⁰, by and between **The Metropolitan Government of Nashville and Davidson County**, acting by and through its Board of Parks and Recreation (herein referred to as "Metro"), and AT3 Markham, LLC^{East}, property owner (herein referred to as Grantor).

WHEREAS, Metro recognizes the increasing benefit of protecting open spaces within the Metropolitan Government area; and

WHEREAS, greenways provide the general public with recreational opportunities in natural areas, preserve, and protect native plant and animal species and their habitat, and provide low-impact transportation routes for pedestrian and bicycle traffic; and

WHEREAS, Metro, by Ordinance No. 091-13, created a Greenways Commission to assist Metro in the development of a system of open space greenways; and

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Davidson County, Tennessee, more particularly described in Exhibit A and Exhibit B attached hereto and incorporated by this reference (herein referred to as "the Property"); and

WHEREAS, the Property possesses natural, open space, and recreational values (collectively, "conservation values") of great importance to Grantor and the people of Nashville and Davidson County; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and made more accessible for public enjoyment by the anticipated

incorporation and maintenance of the property as part of the Metro greenways system; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Metro the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Metro has the authority to accept this grant pursuant to Tennessee Code Annotated, Section 66-9-305(d), and Section 11.1002 of the Metropolitan Charter; and

WHEREAS, Metro agrees by accepting this grant to honor the intentions of Grantor stated herein, and to preserve and protect, in perpetuity, the conservation values of the Property for the benefit of the people of Tennessee and the public-at-large.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby voluntarily grants and conveys to Metro, its successors and assigns, an easement in perpetuity over the Property of the Grantor (herein referred to as "the Easement") to be located as more particularly shown on Exhibit A attached hereto and incorporated by this reference, and being more particularly described as follows:

Beginning at a point on the proposed southern Right-of-Way of Fitzgerald Drive, said point being at a distance of 150.17' along the eastern property line from the southeastern property corner of the subject property;

THENCE N 62°29'55" W at a distance of 82.18' to a point on the proposed southerly Right-of-Way of Fitzgerald Drive;

THENCE continuing along said Right-of-Way in a westerly direction 155.00' at a radius of 427.84' to a point;

THENCE continuing along said Right-of-Way in a westerly direction 200.89' at a radius of 502.21' to a point;

THENCE leaving said Right-of-Way in a northeasterly direction 16.11' at a radius of 27.97' to a point;

THENCE continuing in an easterly direction 185.92' at a radius of 490.21' to a point;

THENCE continuing in a southeasterly direction 159.31' at a radius of 439.84' to a point;

THENCE S 62°29'55" E at a distance of 77.65' to a point on the eastern property line of subject property;

THENCE continuing along eastern property line S 7°45'29" W at a distance of 12.77' to a point on the proposed southerly Right-of-Way of Fitzgerald Drive, said point being the point of beginning, containing a total area of approximately 5,178 square feet, or 0.12 acres more or less.

1. Purpose. It is the purpose of this grant to allow Metro to utilize the Easement area for one or more of the following: a pathway for pedestrian or bicycle travel, nature trail, and/or natural area. Metro, at its discretion, shall design, construct, and maintain any pathway or physical structure in a manner that best preserves the open and natural condition of the Property. It is the intention of the parties hereby expressed that the granting of the Easement will not significantly interfere with the conservation values of the Property. Grantor intends that the Easement will confine the use of the Property to such activities as are consistent with the purpose of the Easement.

2. Rights of Metro. To accomplish the purpose of the Easement, the following rights are conveyed to Metro by this grant:

a. To preserve and protect the conservation values of the Property; and

b. To construct and maintain a pathway to be located on the Easement, including, at the discretion of Metro, necessary trailheads, signage,

benches, and other improvements consistent with the recreational and educational uses of the pathway and other conservation values; and

c. To prevent any activity on or use of the Property that is inconsistent with the purpose of the Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

3. Metro Covenants. Metro, by accepting this grant, covenants and agrees, on behalf of itself, its successors and assigns, that the following shall constitute real covenants that shall attach to and run with the easement hereby granted and shall be binding upon anyone who may hereafter come into ownership of such Easement, whether by purchase, devise, descent, or succession, or to be authorized to use said Easement area:

- a. It will make the Easement area available for use by all members of the general public without distinction or illegal discrimination on the grounds of race, color, national origin, handicap, or age.
- b. It will adopt rules and regulations governing the use of the Easement area so as not to permit or suffer any use of the Easement by Grantor or others in violation of such rules and regulations. At a minimum, the rules and regulations will provide as follows:
 - i. That the hours of public access of the Easement shall be from sunrise to sunset.
 - ii. That all persons utilizing the Easement area must remain on the pathway.
 - iii. That all pets of persons utilizing the pathway must be on a leash at all times.
 - iv. That the following activities shall be strictly prohibited:
 1. consumption or possession of alcoholic beverages;
 2. horseback riding;

3. unauthorized motor vehicles;
4. collecting or distributing plants, animals or other natural features;
5. littering or dumping;
6. possession of firearms, weapons or projected objects;
7. playing of radios, musical instruments or other devices in a manner that might disturb others;
8. vending or other concessions with out proper permits;
9. advertising or posting of bills;
10. trespassing on adjacent property of Grantor.

4. Other Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of the Easement is prohibited. The aforementioned express prohibitions shall not limit the generality of this paragraph.

5. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of the Easement. Further, Grantor reserves the right to maintain the subject property consistent with the purposes herein set forth and will maintain it in accordance with all local laws until improvements are made by Metro.

6. Metro's Remedies. If Metro determines that Grantor is in violation of the terms of this Agreement or that a violation is threatened, Metro shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of the Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Metro or, under circumstances where the violation cannot reasonably be cured within a thirty (30)

day period, fails to continue diligently to cure such violation until finally cured, Metro may bring an action in a court of competent jurisdiction to enforce the terms of this Agreement to enjoin the violation by temporary or permanent injunction, and to recover any damages to which it may be entitled for violation of the terms of this Agreement or for injury to any conservation values protected by the Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. If Metro, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Metro may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the expiration of the period provided for cure. Metro's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Agreement. Metro's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

7. Metro's Discretion. Enforcement of the terms of this Agreement shall be at the discretion of Metro, and any forbearance by Metro to exercise its rights under this Agreement in the event of any breach of any terms of this Agreement by Grantor shall not be deemed or construed to be a waiver by Metro of such term, or of any subsequent breach of the same, or any other term of this Agreement, or of any of Metro's rights under this Agreement. No delay or omission by Metro in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

8. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

9. Acts Beyond Grantor's Control. Nothing contained in this Agreement shall be construed to entitle Metro to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's

control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

10. Amendment. If circumstances arise under which an amendment to or modification of this Agreement is appropriate, the Grantor, or the then current owner of the Property, and Metro are free to jointly amend this Agreement without prior notice to any other party; provided that any amendment shall be in writing; shall be consistent with the purpose of the Easement; shall not affect its perpetual duration; and shall have the unanimous consent of the Metro Greenways Commission.

11. Extinguishment. If circumstances arise in the future that render the purpose of the Easement impossible to accomplish, the Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

12. Assignment. The Easement is transferable, but Metro may assign its rights and obligations under this Agreement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended, and the applicable regulations promulgated thereunder and authorized to acquire and hold conservation easements. As a condition of such transfer, Metro shall require that the conservation purposes which this grant is intended to advance continue to be carried out.

13. Subsequent Transfers. Grantor agrees to incorporate the terms of this Agreement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Metro of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of the Easement or limit its enforceability in any way.

14. General Provisions.

a. Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of Tennessee.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to effect the purpose of the Easement and the policy and purpose of Tenn. Code Ann. §§ 66-9-301 to 309. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of the Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph ten (10).

e. Successors. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

TO HAVE AND TO HOLD said Easement unto Metro, its successors, and assigns, forever.

IN WITNESS WHEREOF, we have caused this instrument to be executed as of this 5th day of May, 2020.

GRANTOR:

ACCEPTED:

THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

Frank E Neally

Monique Horton Odom
DIRECTOR, PARKS AND RECREATION

STATE OF TN)
)
COUNTY OF Davidson)

On this the 5th day of May, 2020, before me personally appeared Frank E Neally who appeared to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes herein contained.

In witness whereof, I hereunto set my hand and official seal.



MY COMMISSION EXPIRES:
MARCH 7, 2023

Jacquelyn Michelle Spivey
NOTARY PUBLIC

My Commission Expires: _____

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

On this the 4 day of August, 2020, before me personally appeared Monique Horton Odom who acknowledged herself to be the Director of the Metropolitan Government Department of Parks and Recreation, and that she, as such Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

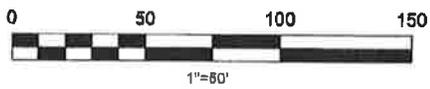
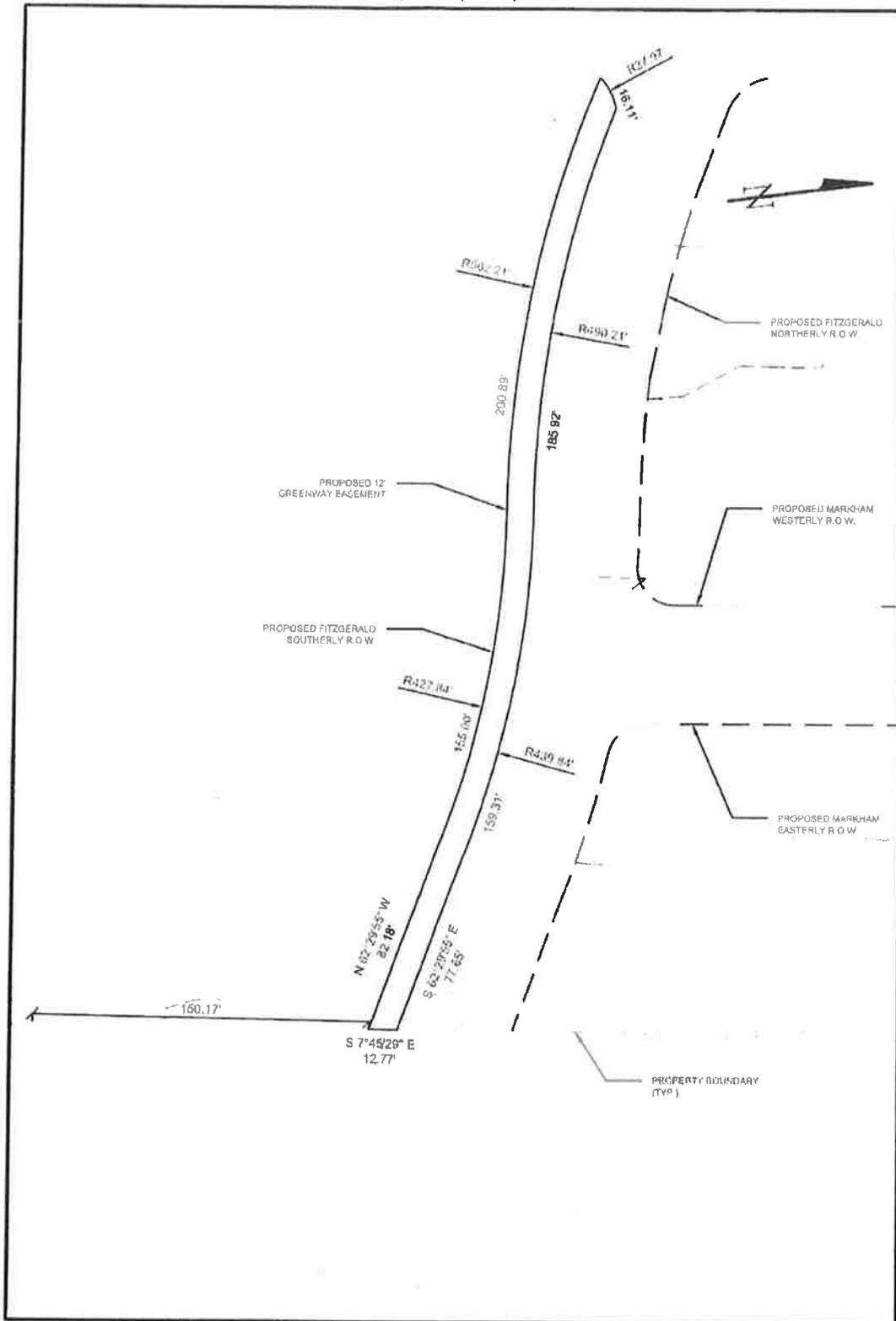
Janet Bowden Frazier
NOTARY PUBLIC



My Commission Expires: March 8, 2022

SQUARE FOOTAGE

5,178 SF (PERM.)



EX-A