

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FUNDING AGREEMENT

This Funding Agreement (“Agreement”) entered into this the 8<sup>th</sup> day of July, 2024, by and between the County of Wake (“Wake County”) and the Wake Soil and Water Conservation District, a branch of North Carolina state government (“WSWCD”), collectively referred to herein as the “Parties”.

WITNESSETH:

WHEREAS, WSWCD has executed an Option to Purchase an Agricultural Conservation Easement (“Contract”) to acquire as grantee one deed of conservation easement (“Conservation Easement”) encumbering that certain approximately 35.99 acre parcel of land with Parcel Identification Number 1762427598 located in Wake County, North Carolina, as more particularly described on **Exhibit “A”** attached hereto and incorporated herein (the “Subject Property”); and

WHEREAS, WSWCD’s intention to acquire one Conservation Easement encumbering the Subject Property meets Wake County’s agricultural conservation easement criteria and qualifies for the use of funds from the Wake County Deferred Agricultural, Horticultural, and Forestlands Tax Program; and

WHEREAS, subject to the terms and conditions herein, WSWCD has requested, and the County agrees to the expenditure of funds from the Wake County Deferred Agricultural, Horticultural, and Forestlands Tax Program in order to acquire the Conservation Easement encumbering the Subject Property (the “Acquisition”) which shall ensure conservation of agricultural land, open space, the protection of water quality, wildlife habitats, and scenic areas.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, Wake County and WSWCD agree as follows:

**ARTICLE I**

**Purpose, Amount of Funding, and Ownership**

1.1 Purpose. The purpose of this Agreement is to establish a mutual understanding between the Parties as to the funding pre-requisites and the post-closing responsibilities of the Parties related to the Acquisition of the Conservation Easement and for the preservation of the Conservation Values as set forth in the Conservation Easement that is attached hereto as **Exhibit “B”**.

1.2 Purchase Price/Amount of Funding. The agreed upon purchase price of the Conservation Easement is Five Hundred Thousand and no/1.00s Dollars (\$500,000.00) (“Purchase Price”). The appraised value of the Conservation Easement is Seven Hundred Seven Thousand Seven

Hundred and Thirty-Nine no/1.00s Dollars (\$707,739). WSWCD intends to acquire the Conservation Easement with the following funding commitments which include due diligence costs and fees paid by Wake County and reimbursed after closing:

NCADFP	\$ 500,000.00
Wake County <i>(to be reimbursed after closing)</i>	\$ 30,000.00
Landowner Land Value Contribution	<u>\$ 207,739.00</u>
Total	\$737,739.00

Subject to the availability of funds, approval by the Board of Commissioners and meeting the terms and conditions of this Agreement prior to Closing, the County agrees to provide to WSWCD, the total amount up to Thirty Thousand and no/1.00s Dollars (\$30,000.00) (“Total Wake County Funding Commitment”) from funds dedicated to the Wake County Deferred Agricultural, Horticultural and Forestlands Tax Program (“Funds”) to apply to the Acquisition of the Conservation Easement.

1.3 Ownership. WSWCD shall purchase the Conservation Easement encumbering the Subject Property at Closing. The Conservation Easement shall be in a form substantially similar to that attached hereto as **Exhibit “B”** (“Conservation Easement”).

## **ARTICLE II**

### **Conditions of Funding**

2.1 WSWCD agrees that any funds received pursuant to this Agreement shall be used exclusively for the Due Diligence costs associated with Acquisition of the Conservation Easement, which shall be granted in perpetuity to protect the Conservation Values as set forth in the Conservation Easement. WSWCD will apply all Funds received from the County pursuant to this Agreement as set forth in **Exhibit “C”** attached. No funding from the County shall be required for any expenses except as set forth herein.

2.2 Should WSWCD fail to use the Funds to purchase the Conservation Easement in the form shown on **Exhibit “B”** within the deadline set forth in Section 3.2 or apply the Funds as provided herein, WSWCD will return to the County a sum equal to all monies paid under this Agreement within 30 days of WSWCD’s receipt of demand from the County.

## **ARTICLE III**

### **Conditions Precedent to Acquisition**

3.1 The County shall disburse funds for the Acquisition of the Conservation Easement only after all of the following items have been delivered to and approved by the County as satisfactory

in form and substance:

- a. Purchase Agreement. A copy of the fully executed Contract which sets forth the terms of the Acquisition. For purposes of this Agreement, the Parties recognize that the Contract is in the form of an Option to Purchase Agreement which expires on or about June 30, 2025.
- b. Proposed Conservation Easement. A copy of the Conservation Easement showing WSWCD as Grantee in form satisfactory to the County.
- c. Proposed Plat. A copy of the Plat that will be recorded prior to Closing, reflecting the Subject Property, in form satisfactory to the County.
- d. Legal Description. A legal description of the conservation easement area based on the Plat.
- e. Title Insurance Binder. A standard ALTA title insurance binder, with a policy to be delivered after closing (“Title Policy”) from The Title Company, insuring WSWCD as the holder of the Conservation Easement encumbering the Subject Property without exception as to matters of survey and providing coverage for the full principal amount of the funds used to purchase the Conservation Easement, subject to title exceptions approved the County.
- f. Title Exceptions. Copies of all recorded documents creating exceptions to the Title Policy. The closing and/or title attorney shall provide this documentation to WSWCD.
- g. Survey. A full-sized copy of a complete and accurate survey of the Subject Property certified within 30 days prior to the Closing of the Acquisition. The survey shall depict a metes and bounds description. The survey shall be in accordance with the latest version of NCAC Title 21 Chapter 56.1600 “Standards for Practice of Land Surveying in North Carolina”; in particular Paragraph 21-56.1602(g). The survey shall depict any and all Property Identification Number(s) (PIN). The survey shall specify the length of any boundaries that the Subject Property shares with surface waters.
- h. Appraisal. Appraisal(s) of the value of the Conservation Easement to be purchased, satisfactory to the County, performed by an independent certified appraiser acceptable to the County which reflects that the Purchase Price is not in excess of a current fair market value for the Conservation Easement.
- i. Environmental Transaction Screen. An Environmental Transaction Screen regarding the environmental condition of the Subject Property satisfactory to the County. The Environmental Transaction Screen shall be performed by a qualified consultant acceptable to the County and shall conform to the requirements of the latest version of ASTM Standard E-1528-14e1. Matters of concern identified in the report shall be addressed by WSWCD in a letter to the County, stating WSWCD’s method of and schedule for remedy for each matter of concern. The County reserves the right to require WSWCD to remedy any concerns prior to tendering the funds for Closing.
- j. Taxes. Evidence that the ad valorem taxes have been paid through the year prior to the year in which the Acquisition is to take place under this Agreement, and information as to tax parcel identification numbers, tax rates, estimated tax values and the identities of the taxing authorities; provided, however, that deferred taxes exist and are not required to be paid at the time of Closing. No taxes shall be paid with funds from the County.
- k. Seller’s Environmental Warranties. The Parties acknowledge that the Contract contains

representations and warranties of Seller as to the environmental condition of the Subject Property. Any modification to Seller's environmental warranties or any matters of concern identified by WSWCD as to the environmental condition of the property shall be immediately reported to the County prior to Closing. WSWCD shall provide confirmation prior to Closing that there are no known environmental concerns. The County reserves the right to require WSWCD to remedy any environmental concerns prior to tendering the funds for Closing.

- l. Authorization Documents. Authorization from WSWCD's governing board for WSWCD to: (1) enter the Contract, (2) enter this Agreement and perform the functions and obligations set out in this Agreement, (3) appropriate the funding necessary to perform the terms and conditions of the Contract, and (4) acquire the Conservation Easement. This condition will be satisfied upon delivery of WSWCD's governing board meeting minutes verifying the above.
- m. Balance of Funds. Proof of availability of the balance of funds required to fund the full Purchase Price of the Conservation Easement.
- n. Compliance with Laws. Evidence satisfactory to the County that the Subject Property is in compliance with all applicable laws, regulations and ordinances, including without limitation, land use, health and environmental protection laws.

3.2 Funding Commitment Expires after 1 year. The Conditions Precedent to Disbursement as set forth in Article III must be met within one year of the date of the last signature to this Funding Agreement.

## **ARTICLE IV**

### **Affirmative Covenants**

4.1 Right of Inspection. WSWCD shall permit representatives of the County to review the activities of WSWCD pursuant to this Agreement, including books and records in any way related to this Agreement or the use of the Funds to acquire the Conservation Easement, at all reasonable times and with seven (7) days advance notice.

4.2 Right to Receive Copies of Notices. WSWCD shall provide representatives of the County copies of any notices received from the Grantor (as defined in the Conservation Easement) pursuant to the terms of the Conservation Easement.

4.3 Acquisition. WSWCD agrees to carry out the Acquisition of the Conservation Easement as approved by the County. The Conservation Easement, its purpose, the budget, and the accompanying or related Plat submitted to the County by WSWCD are the foundation of this Agreement.

4.6 Publicity. To the extent possible, WSWCD will use reasonable efforts to appropriately publicize the Project's open space and water quality benefits to the general public, local government and state representatives, including the role of the County in the funding the project.

4.7 Conflicts of Interest. WSWCD, as a state government organization, shall at all times comply with its conflict-of-interest policy.

4.8 Additional Requirements. WSWCD shall comply with all laws, including legal requirements applicable to the use of the Funds as identified by the County.

4.9 Closing Documentation. WSWCD shall, within 30 days of the Closing, provide to the County copies of the recorded Conservation Easement, signed closing statement and all other material documents that the closing attorney prepared or received at Closing.

4.10 Project Audit. WSWCD agrees that the County shall have the right to audit the books and records of WSWCD pertaining to this Agreement or Amendments hereto both prior to the Closing and for thirty-six (36) months after the Closing or the completion or termination of the Contract or any amendments hereto. WSWCD shall retain complete accounting records including original invoices, contracts, or other documents clearly showing the nature of all costs incurred under this Agreement, for that same period of time.

4.11 Condemnation or Termination of Conservation Easement. WSWCD agrees to adhere to the distribution provisions set forth in the Conservation Easement and to administer or distribute any such proceeds in the event of an extinguishment of all or part of the Conservation Easement in accordance therewith.

## **ARTICLE V**

### **Representations and Warranties**

5.1 In order to induce the County to enter into this Agreement and to provide the funds as herein provided, WSWCD makes the following representations, warranties and covenants, which shall remain in effect after the execution and delivery of this Agreement and any other documents required hereunder, any inspection or examinations at any time made by or on behalf of the County, and the purchase of the Conservation Easement by WSWCD:

- a. No Actions. There are no actions, suits, or proceedings pending, or to the knowledge of WSWCD threatened against or affecting WSWCD before any court, arbitrator, or governmental or administrative body or agency, which might affect WSWCD's ability to observe and perform its obligations under this Agreement.
- b. Validity of Documents. Upon execution and delivery of items required hereunder, this Agreement and the other documents and items required hereunder will be valid and binding agreements, enforceable against WSWCD in accordance with the terms thereof.
- c. No Untrue Statements. To the best of WSWCD's knowledge, neither this Agreement nor any information, certificate, statement, or other document furnished by WSWCD in connection with this Agreement, contains any untrue statement of a material fact or omits disclosure of a material fact which affects the Subject Property, the Conservation

Easement or the ability of WSWCD to perform this Agreement.

- d. Environmental Condition of Subject Property. WSWCD warrants, represents and covenants to the County that to the best of its actual knowledge: (1) the Subject Property is in full compliance with all federal, state and local environmental laws and regulations, and (2) as of the date hereof, there are no hazardous materials, substances, wastes or other environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the Subject Property or used in connection therewith, and (3) that to the extent that WSWCD's consent is required and may be withheld in WSWCD's sole discretion pursuant to the terms of the Conservation Easement, WSWCD will not consent to such uses or conditions; all of the foregoing are subject to any matters that may be disclosed in the Environmental Assessment (if any).
- e. Access. WSWCD warrants that, as of the date of this Agreement, there is legal public access to the Subject Property from a public roadway.

## **ARTICLE VI**

### **Events of Default**

6.1 The happening of any of the following, after the expiration of any applicable cure period without the cure thereof, shall constitute an event of default by WSWCD of its obligations to the County and shall entitle the County to exercise all rights and remedies under this Agreement and as otherwise available at law or equity:

- a. Subject Property Unsuitable. A determination by the County, prior to the Closing of the Acquisition, that the Subject Property is unsuitable for the purpose(s) for which this Agreement is made.
- b. Material Breach of Conservation Easement. A material breach by WSWCD of its obligations under the terms of the Conservation Easement. The Parties stipulate that the Conservation Easement place certain stewardship obligations on WSWCD as more fully set forth in the Conservation Easement.
- c. Default in Performance. The default by WSWCD in the observance or performance of any of the terms, conditions or covenants of this Agreement; provided, however, that no such default shall occur until WSWCD has been given written notice of the default and the conditions constituting the default remain uncured at the expiration of the thirty (30) days period after the date of the notice.
- d. Misrepresentation. If any representation or warranty made by WSWCD in connection with this Agreement or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made.
- e. Eligibility of the WSWCD. If WSWCD ceases to be qualified to receive funding required for the Closing of the Acquisition or the obligations under this Agreement or is dissolved or otherwise ceases to exist.

## **ARTICLE VII**

### **Rights and Remedies of the County**

7.1 If an Event of Default shall occur, the County shall have the following rights and remedies, all of which are exercisable at the County's sole discretion, and are cumulative concurrent, and independent rights:

- a. Default Prior to Closing. If any Event of Default occurs prior to closing, the County may, at its discretion, suspend and/or terminate all obligations of the County hereunder.
- b. Default Subsequent to Closing. If an Event of Default occurs subsequent to Closing, the County may, at its discretion elect to suspend and/or terminate all obligations of the County hereunder, bring an action in law or equity, including but not limited to an action for specific performance.
- c. Non-waiver. No delay, forbearance, waiver, or omission of the County to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to the County may be exercised from time to time and as often as may be deemed expedient by the County.

## **ARTICLE VIII**

### **Miscellaneous**

8.1 Modification. This Agreement may be rescinded, modified or amended only by written agreement executed by all parties hereto.

8.2 No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the County and WSWCD, and their respective successors and assigns. There shall be no third-party beneficiaries to this Agreement.

8.3 Further Assurance. In connection with and after the disbursement of funds under this Agreement, upon the reasonable request of the other party, the parties hereto shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by the requesting party or otherwise appropriate to carry out and effectuate the funding contemplated by this Agreement.

8.4 ADA Compliance. The Americans with Disabilities Act 1990 as it may be amended from time to time, and the rules and regulations promulgated in connection therewith (the "ADA") makes it unlawful to discriminate in employment against a qualified individual with a disability and outlaws discrimination against individuals with disabilities in State and local government services and public accommodations. WSWCD agrees to make reasonable efforts to comply with and agrees to make reasonable efforts to cause its principals and subcontractors to comply with,

the ADA as it relates to its employment practices.

8.5 Assignment. The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; provided, however, that prior to Closing, WSWCD may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any funds or other moneys to be advanced hereunder in whole or in part without the prior written consent of the County, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without which said consent shall be void. After Closing, and in the event that WSWCD conveys its interest as may be permitted pursuant to the Agreement and the Conservation Easement, WSWCD shall assign its rights, interests, duties and obligations hereunder to the grantee of its interest.

8.6 No Partnership, Joint Venture, or Agency. This Agreement shall not in any way be interpreted or construed as making the County a partner or joint venture with WSWCD, nor making WSWCD an agent or representative of the County. WSWCD agrees that neither it nor its agents or employees are or shall be agents or employees of the County. In no event shall the County be liable for debts or claims accruing or arising against WSWCD.

8.7 Indemnity. WSWCD agrees, to the fullest extent permitted by law, to release, defend, protect, indemnify and hold harmless the County, employees and agents against claims, losses, liabilities, damages, and costs, including reasonable attorney fees, which result from or arise out of damages or injuries to persons or property caused by the negligent acts or omissions of WSWCD, its employees, or agents in the exercise of its rights under the Conservation Easement. The obligations under this Section are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Funds, as well as any termination of this Agreement.

8.8 Governing Law, Construction and Jurisdiction. This Agreement and the other Documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of North Carolina, notwithstanding the principles of conflicts of law. The headings and section numbers contained herein are for reference purposes only. The terms of this Agreement shall be construed according to their plain meaning, and not strictly construed for or against either party hereto. WSWCD hereby submits to the jurisdiction of the State and Federal courts located in North Carolina and agrees that the County may, at its option, enforce its rights under this Agreement in such courts. The parties hereto intend this document to be an instrument executed under seal. The County and any party that is an individual, partnership or limited liability company hereby adopts the word "SEAL" following his/her signature and the name of the County or partnership or limited liability company as his/her/its legal seal.

8.9 Notices. All notices, requests or other communications permitted or required to be made under this Agreement or the other documents contemplated by this Agreement shall be in writing, signed by the party giving such notice to the address set forth below, and shall be given three (3) business days following the date when deposited in the mail, postage prepaid, registered or certified mail, return receipt requested, to the other party hereto at the address indicated below



or such other addresses as such party may establish in writing to the other party in the manner provided hereunder for notices:

If to the County:

Wake County  
Soil and Water Conservation Director  
4001-D Cary Dr.  
Raleigh, NC 27610

If to WSWCD:

Wake County Soil and Water Conservation District Board  
4001-D Cary Dr.  
Raleigh, NC 27610

8.10 Additional Remedies. Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.

8.11 Survivorship. Where any representations, warranties, covenants, indemnities or other provisions contained in this Agreement by its context or otherwise, evidences the intent of the parties that such provisions should survive the closing or termination of this Agreement, the provisions shall survive the closing or any termination. Without limiting the generality of the foregoing, the parties specifically acknowledge and agree that the provisions of Articles V, VI, VII, and VIII shall survive the Closing, as well as any termination of this Agreement.

8.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

[This space left blank intentionally.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement under seal through their duly authorized representatives, to be effective the day and year first above written.

**COUNTY OF WAKE, NORTH CAROLINA**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Ellis, Wake County Manager

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Teresa Furr, Soil and Water Conservation Director

Approved as to form:

\_\_\_\_\_  
Scott W. Warren  
Wake County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Wake County Finance Director, or designee

**WAKE SOIL AND WATER CONSERVATION DISTRICT**

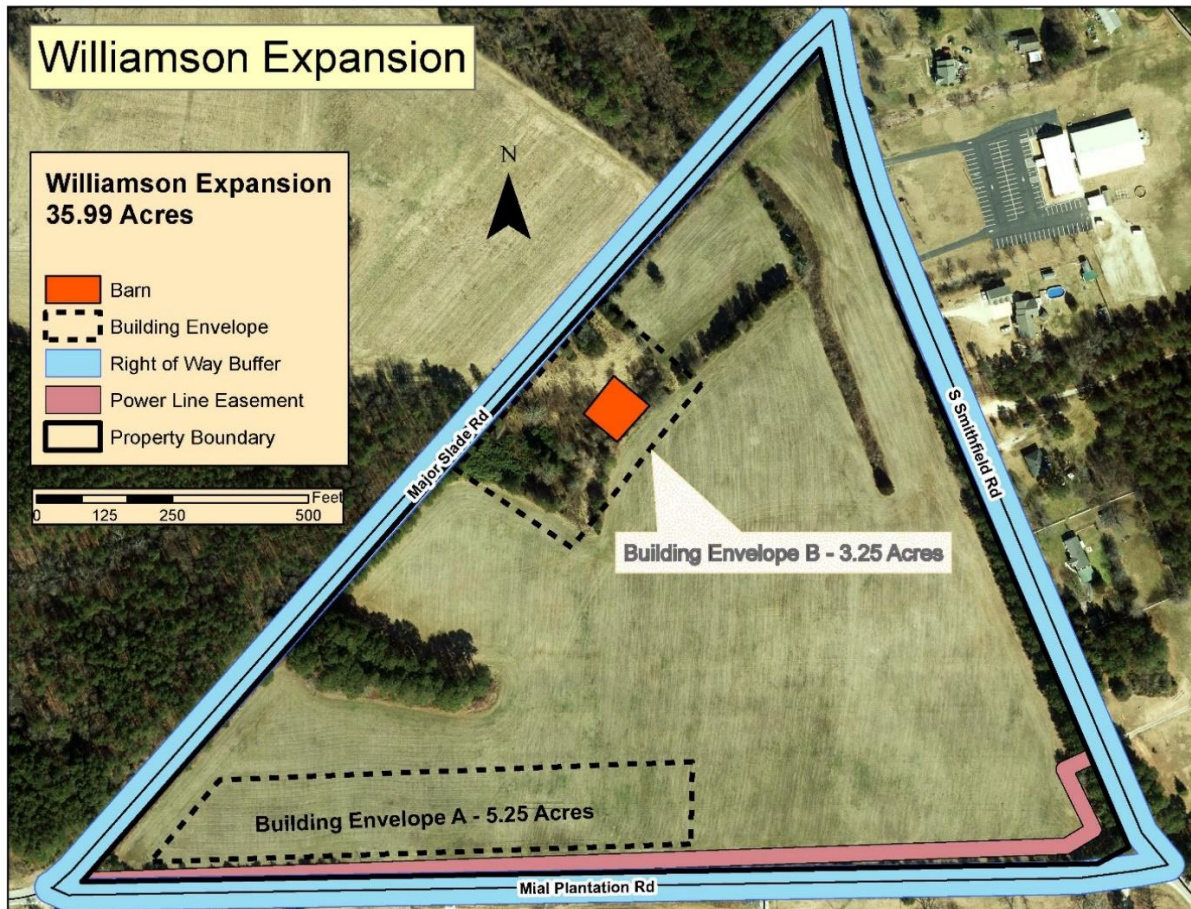
By: \_\_\_\_\_  
Thomas Dean  
Board Chair

Date: \_\_\_\_\_

## Exhibit A

Legal Description – Preliminary Survey

**The final Legal description will be based upon a new survey.**



**Exhibit B**  
Conservation Easement

**Exhibit C**  
Budget

Conservation Easement Budget – TLC Williamson Preserve

Line Item	ADFP Trust Fund	90 Percent Maximum	Projected USDA NRCS ALE/RCPP Match	Projected Landowner Donation	Projected County Match	Totals
Appraisal						\$ 0.00
Attorney Fees	\$ 4,400.00	\$ 3,960.00			\$10,000.00	\$ 14,400.00
Baseline Documentation Report		\$ -			\$5,000.00	\$ 5,000.00
Closing Costs (Recording Fee, Title Insurance)	\$ 1,300.00	\$ 1,170.00			\$5,000.00	\$ 6,300.00
Easement Purchase	\$ 478,000.00	\$ 430,200.00		\$ 193,439.00		\$ 671,439.00
Environmental Assessment / Audit		\$ -			\$5,000.00	\$ 5,000.00
Personnel / Administrative						\$ 0.00
Stewardship Endowment	\$ 14,300.00	\$ 12,870.00		\$ 14,300.00		\$ 28,600.00
Survey	\$ 2,000.00	\$ 1,800.00			\$5,000.00	\$ 7,000.00
Travel						\$ 0.00
<b>Totals</b>	<b>\$ 500,000.00</b>	<b>\$ 450,000.00</b>	<b>\$ -</b>	<b>\$ 207,739.00</b>	<b>\$30,000.00</b>	<b>\$ 737,739.00</b>
<b>Easement Size (Acres)</b>	35.99	<b>Easement Size (Acres) 5 Percent Variance +/-</b>		0.000		