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Weld County CO Clerk & Recorder 45.00

IS THIS REALLY THE HOA?

DITCH CROSSING AND EASEMENT AGREEMENT

AR2420167

This agreement is made to be effective the 23rd day of November, 1994, between Thomas S. Morton and James G. Norton, (hereinafter termed Owner), the NORTHRIDGE DEV, LLC, a Colorado limited liability company, (hereinafter termed Owner), and The Erie Coal Creek Ditch and Reservoir Company, Inc., (hereinafter termed Ditch Company).

WITNESSETH:

The Owner is in the process of developing the premises known as Northridge Filing Numbers 1 through 4 ("Northridge Subdivision"), as described in more detail in the legal description attached as Exhibit A and incorporated by reference. The Owner also wishes to construct four bridges over the Erie Coal Creek Ditch ("Ditch"). Three of the bridges shall be at the locations referenced as I, II, and III on the map attached as Exhibit B and incorporated by reference. Additionally, the Owner wishes to install a number of utilities and pipelines across the Erie Coal Creek Ditch at the locations shown on Exhibit B.

NOW THEREFORE, it is mutually agreed as follows:

1. DITCH EASEMENT. The Owner hereby affirms, grants and conveys to the Ditch Company a right-of-way and easement for its ditch and for its maintenance and reconstruction, the width of said easement being described as follows: 50 feet on the southwest side of the centerline of the Erie Coal Creek Ditch and 25 feet on the northeast side of the Erie Coal Creek Ditch. The Owner warrants the title to said easement against any person claiming under it. If other easements or land uses are superimposed over the ditch or ditch easement, they shall be subordinate to the rights herein affirmed. The Ditch Company agrees not to utilize its right-of-way and easement unless the Owner fails to comply with its primary maintenance obligations as set forth in paragraph 2 hereof.

2. PRIMARY MAINTENANCE OBLIGATIONS. The Owner shall be responsible for maintenance of that portion of the ditch and ditch easement which runs through Northridge Subdivision, in a good, safe and workmanlike manner, so that 25 cubic feet of water per second of time will pass through the ditch unimpeded. The Owner's primary maintenance obligations shall include a thorough cleaning prior to commencement of construction in the Northridge Subdivision. The Owner shall also be responsible for cutting trees within the ditch and ditch easement and for preventing pollutants, including trash and debris, from entering the ditch and ditch easement from its premises. In the event the Owner shall fail to maintain the ditch in a good, safe and workmanlike manner, the Ditch Company shall have the right to utilize its right-of-way and easement for ditch

NWALLACE@BLGLAW.COM

325 8.26 mm

maintenance and reconstruction; provided, however, the Owner shall remain liable for the costs of maintenance, engineering expenses, attorneys' fees and other expenses incurred by the Ditch Company to enforce the Owner's primary obligations within the ditch and ditch easement. In the event the Owner fails to maintain the ditch and ditch easement area in accordance with the terms of this Agreement and the Ditch Company utilizes its right of way and easement, the Ditch Company shall not be liable for destruction of any trees, landscaping, fencing, or other similar improvements resulting from the Ditch Company's use of its right of way and easement. The Owner shall be liable for any damages to the Ditch Company, its shareholders, or others, caused by or related to Owner's failure to properly maintain the ditch and ditch easement in accordance with the terms of this Agreement, and agrees to indemnify and hold the Ditch Company harmless from any and all loss or damage arising from or related to Owner's failure to properly maintain the ditch and ditch easement, including attorneys' fees and costs.

3. DITCH CROSSINGS. Detention ponds shall be constructed by the Owner in such a manner as to restrain accelerated runoff, so that runoff into the ditch from Northridge Subdivision shall not exceed the rate that has been historically accommodated. Since unauthorized nonhistoric storm drainage has entered the ditch at other points, the Ditch Company shall not be liable for flooding in the area of this development. In this regard, the Owner agrees to hold the Ditch Company harmless from any claims which shall be brought against it. Any detention ponds, bridges, culverts, or other structures that cross or affect the ditch and ditch easement shall not be constructed prior to the approval in writing of the plans and specifications therefor by the Ditch Company's engineers. Further, all structures which cross or affect the ditch or ditch easement shall be constructed only from September 15 through March 15, when irrigation water is not being run. The Owner shall be responsible for the construction, operation, maintenance and use of these structures and facilities in a good, safe, and workmanlike manner, and shall indemnify and hold the Ditch Company harmless from any and all loss or damage arising out of the construction, operation, maintenance and use of these facilities and structures, including reasonable attorneys' fees and costs.

4. LIABILITY. The Ditch Company shall not be liable for injuries or damage to persons or property, incurred by any person as a result of usage of, coming onto, or trespassing onto the area covered by the ditch or ditch easement. The Owner shall indemnify and hold the Ditch Company harmless from any and all loss or damage to any persons or property that occurs, either in whole or in part, in the ditch or ditch easement. The Owner agrees that it shall maintain public comprehensive, general liability insurance for not less than $1,500,000.00 plus court costs and attorneys' fees per occurrence, to be increased by 15% each 5 years thereafter, to protect against any claims which arise, either in whole or in part,

with relation to the ditch and ditch easement running through Owner's property. The Ditch Company shall be named as an insured party on said liability insurance policy. On an annual basis, Owner shall furnish proof of insurance and proof of its compliance with the terms of this paragraph 4 to the Ditch Company.

5. FENCING AND SIGNS. The Owner shall take any and all precautions necessary to prevent persons from entering onto the ditch and ditch banks. The determination of what precautions are necessary in the Northridge Subdivision shall be within the Owner's sole discretion.

6. WATER CLAIMS. If there are any wells or augmentation plans to be constructed or utilized, they must be implemented in accordance with State Engineer and Water Court requirements. The Ditch Company bylaws require that water appurtenant to ownership of shares is to be diverted at existing headgates only. No pumps may be installed in the ditch.

7. DITCH COMPANY APPROVAL. Upon request, the Ditch Company shall sign an approval of the subdivision for any governmental bodies having jurisdiction thereof, subject to the terms hereof.

8. REMEDIES. This Agreement may be enforced by specific performance, including mandatory injunctive relief and damages, together with reasonable attorneys' fees to the prevailing party.

9. RESTORATION OF THE DITCH. All portions of the ditch, bottom, sides and banks which are disturbed by the process of the Owner's construction, operation, maintenance and use of the Northridge Subdivision and the ponds, bridges, crossings, trail, and other structures associated therewith, shall be immediately restored to their original condition.

10. RESTRICTIVE COVENANTS. This Agreement shall constitute restrictive covenants which run with the land and which shall be binding upon the parties hereto, their heirs, grantees, successors and assigns.

11. PROFESSIONAL FEES. The Owner shall reimburse the Ditch Company for its attorneys' and engineering fees incurred in reviewing the Subdivision, preparing and negotiating this Agreement, and reviewing the plans and specifications associated with the Northridge Subdivision and the crossings, structures and facilities associated therewith. Owner's obligation to reimburse the Ditch Company's attorneys' fees incurred in reviewing the subdivision and negotiating and preparing this Agreement shall not exceed $1,750.00. The Ditch Company estimates that its engineering fees will not exceed $2,500.00. Attorneys' fees shall be reimbursed upon Owners' execution of this Agreement, and engineering fees shall be reimbursed within 30 days of billing. The estimates of professional fees set forth herein shall not apply

to professional fees incurred in the future review of crossings, structures, and facilities not described in Exhibit B to this Agreement.

12. DITCH CROSSING FEE. As Owner has agreed to pay the Ditch Company's professional fees and assume maintenance of that portion of the ditch running through the Northridge Subdivision, the Ditch Company hereby waives crossing fees for the Northridge Subdivision.

13. ASSUMPTION. Nothing in this Agreement shall preclude or prohibit the Town of Erie from assuming the burdens under this Agreement; provided, however, in no event shall the Town of Erie assert the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq. as a defense to any action under this Agreement for breach of contract.

14. REJECTION OF SUBDIVISION. In the event the Northridge Subdivision is not approved by the Town of Erie, the terms and conditions of this Agreement shall not be binding upon the parties hereto, except that Owner shall comply with its obligations set forth in paragraph 11 of this Agreement.

Dated the day and year first above written.

DITCH COMPANY
ERIE COAL CREEK DITCH AND RESERVOIR COMPANY, INC.

BY: Larry Bearly
Larry Bearly, President

BY: Gary Anderson
Gary Anderson, Vice President

BY: E. F. Atkinson
E. F. Atkinson, Secretary and Treasurer

ATTEST:

E. F. Atkinson
E.F. Atkinson, Secretary

E. F. Atkinson
E. F. Atkinson, Secretary

DITCH EASEMENT AGREEMENT
OWNER

Thomas S. Morton, Individually

OWNER

James G. Norton, Individually

OWNER
NORTHRIDGE DEV, LLC
a Colorado limited liability company

BY: _____
Thomas S. Morton, Manager

BY: _____
James G. Norton, Manager

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The Ditch Crossing and Easement Agreement was acknowledged before me this 22nd day of November, 1994, by Larry Bearly, as President of The Erie Coal Creek Ditch and Reservoir Company.

Witness my hand and official seal.
My commission expires: July 28, 1996

Dina Fitzpatrick
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The Ditch Crossing and Easement Agreement was acknowledged before me this 23rd day of November, 1994, by Gary Anderson, Vice President of The Erie Coal Creek Ditch and Reservoir Company.

Witness my hand and official seal.
My commission expires: July 28, 1996

Dina Fitzpatrick
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The Ditch Crossing and Easement Agreement was acknowledged before me this 23rd day of November, 1994, by E.F. Atkinson Secretary/Treasurer of The Erie Coal Creek Ditch and Reservoir Company, Inc.

Witness my hand and official seal.
My commission expires: July 28, 1996

Dina Fitzpatrick
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 23rd day of November, 1994, by Thomas S. Morton, Individually and as Manager of NORTHRIDGE DEV, LLC.

Witness my hand and official seal.
My commission expires: July 28, 1996

Dina Fitzpatrick
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 23rd day of November, 1994, by James G. Norton, Individually and as Manager of NORTHRIDGE DEV, LLC.

Witness my hand and official seal.
My commission expires: July 28, 1996

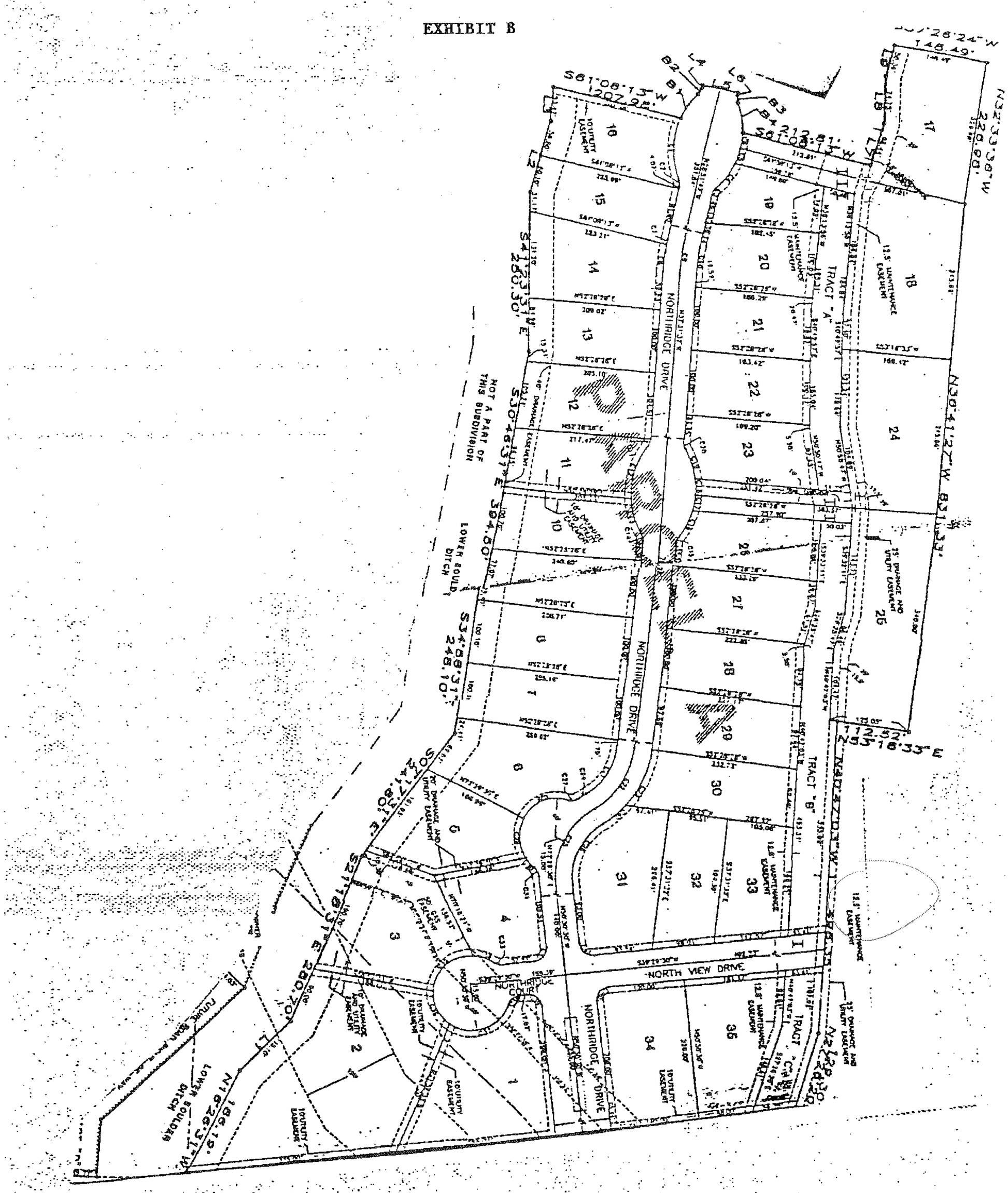
Dina Fitzpatrick
Notary Public

EXHIBIT A

The East Half of the Southwest Quarter (E1/2SW1/4) and the West Half of the Southeast Quarter (W1/2SE1/4) of Section Seven (7), Township One (1) North, Range Sixty-eight (68) West of the Sixth (6th) Principal Meridian, Weld County, Colorado, except that portion conveyed by Deed dated October 19, 1894, recorded February 13, 1909, in Book 289, Page 530, that portion conveyed by Quitclaim Deed dated February 2, 1955, recorded December 7, 1955, in Book 1436, Page 529, and that portion conveyed by Special Warranty Deed dated July 14, 1976, recorded July 19, 1976, in Book 772 under Reception No. 1693923.

The Northeast Quarter of the Northwest Quarter (NE1/4NW1/4) situated north and west of the northwesterly right-of-way line of Weld County Road, and east and north of the centerline of Coal Creek, and the Northwest Quarter of the Northeast Quarter (NW1/4NE1/4) situated north and west of the northwesterly right-of-way line of Weld County Road, of Section Eighteen (18), Township One (1) North, Range Sixty-eight (68) West of the Sixth (6th) Principal Meridian, Weld County, Colorado, except those portions conveyed by Quitclaim Deed dated February 2, 1955, recorded December 7, 1955, in Book 1436, Page 529, that portion conveyed by Deed dated July 3, 1956, recorded July 28, 1956, in Book 1456, Page 427, that portion conveyed by Quitclaim Deed dated June 11, 1963, recorded in Book 1651, Page 509, that portion conveyed by Deed dated March 3, 1942, recorded May 23, 1968, in Book 595, under Reception No. 1516751, that portion conveyed by Special Warranty Deed dated October 14, 1975, recorded December 11, 1975, in Book 754, under Reception No. 1676471, that portion conveyed by Special Warranty Deed dated July 14, 1976, recorded in Book 772, under Reception No. 1693923, and that portion conveyed by Special Warranty Deed dated August 1, 1977, recorded October 25, 1977, in Book 812, under Reception No. 1734083.

EXHIBIT B


NORTHRIDGE DRIVE
NORTH VIEW DRIVE
TRACT "A"
TRACT "B"
TRACT "C"
LOWER BOULDER DITCH
NOT A PART OF THIS SUBDIVISION
S61°08'13"W 1207.92'
S41°23'13"W 280.30'
S30°48'37"E 364.80'
S34°08'31" 248.10'
S21°19'31"E 280.70'
N16°26'31"W 166.19'
N32°33'38"W 220.80'
N30°41'27"W 83.33'
N25°18'33"E
N61°08'13"W 1212.81'
N30°28'24"W 148.49'
10' UTILITY EASEMENT
15' MAINTENANCE EASEMENT
25' DRAINAGE AND UTILITY EASEMENT
40' DRAINAGE EASEMENT