

WHEN RECORDED RETURN TO:

D.R. Horton, Inc.  
12351 South Gateway Park Place, Suite D-100  
Draper, UT 84020  
Attention: Boyd Martin, Division President

09-050-0096

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DEED OF TRUST

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THIS DEED OF TRUST (this "**Deed of Trust**") is made this 26 day of February, 2020, by and between SEC 076, LLC, a Utah limited liability company ("**Trustor**"), whose mailing address is 1565 West Hillfield Road, Suite 104, Layton, Utah 84041, COTTONWOOD TITLE INSURANCE AGENCY, INC., a Utah corporation ("**Trustee**"), whose mailing address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121, and D.R. HORTON, INC., a Delaware corporation ("**Beneficiary**"), whose mailing address is 12351 South Gateway Park Place, Suite D-100, Draper, Utah 84020.

W I T N E S E T H:

TRUSTOR DOES HEREBY IRREVOCABLY GRANT, BARGAIN, SELL, CONVEY AND WARRANT TO TRUSTEE IN TRUST WITH FULL POWER OF SALE, the following described property situated in Davis County, State of Utah, the record owner of which is Trustor, more particularly described on **Exhibit A**, attached hereto and by this reference made a part hereof (the "**Trust Property**"), together with all buildings, fixtures, improvements, and personal property thereon, and all rights of way, easements, rents, general intangibles, issues, profits, income, tenements, hereditaments, privileges, and appurtenances thereunto belonging, now or hereafter acquired, used or enjoyed with the Trust Property, or any part thereof.

FOR THE PURPOSE OF SECURING all of Trustor's obligations set forth in that certain Real Estate Purchase Contract for Land and the Addendum No. 1 thereto dated February 6, 2019, by and between Trustor and Beneficiary (the "**Contract**"), including without limitation the obligation of Trustor to refund and pay to Beneficiary the earnest money deposited by Beneficiary pursuant to the Contract in the amount of \$500,000.00.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES AS FOLLOWS:

**1. Title.** Trustor covenants, warrants, and agrees with Beneficiary, and its successors and assigns, that Trustor owns the Trust Property in fee free from any prior lien or encumbrance, that this Deed of Trust is and will remain a valid and enforceable lien on the Trust Property, that Trustor, at its expense, will preserve such title and will maintain this Deed of Trust as a lien upon the Trust Property and will forever warrant and defend the validity and of the lien hereof against the claims of all persons and parties whomsoever. Trustor, at its expense, will cause this Deed of Trust, and each amendment or supplement hereto, to be filed and recorded in such manner and in such place and will take such action as in the opinion of Trustee may be required by any present or future law in order to perfect, maintain, and protect the lien of this Deed of Trust, as the same may be amended or supplemented from time to time. Trustor will make such further assurance or assurances to perfect its title to the Trust Property as may be required by Beneficiary.

**2. Charges; Liens.** Trustor will keep the Trust Property free from all charges, liens and encumbrances, whether statutory, voluntary, or involuntary (other than the lien created by this Deed of Trust), and whether superior or inferior to this Deed of Trust, excluding however non-delinquent real estate tax liens, and special assessment liens.

**3. Insurance.** Trustor shall maintain all insurance coverages in amounts to be determined by the mutual agreement of the Trustor and Beneficiary. The cost for any additional insurance coverages beyond those currently maintained by Trustor including any premiums or deductibles shall be paid by Beneficiary. The policy or policies for such insurance coverages shall be in form and content acceptable to Beneficiary, provided that the same may not be modified without thirty (30) days prior written notice to Beneficiary, provide that any loss shall be payable notwithstanding any negligent or intentional act or omission of Beneficiary or anyone else which might otherwise result in the forfeiture of such insurance, and shall have noncontributing loss payable provisions in favor of and in form acceptable to Beneficiary, entitling Beneficiary to collect any and all proceeds payable under such insurance policies. All premiums on insurance policies shall be paid on or before the date or dates such payments are due. Beneficiary shall have the right to hold the policies and renewals thereof, and Trustor shall promptly furnish to Beneficiary all renewal notices and all paid premiums receipts received by Trustor. In no event shall Beneficiary or Trustee be held responsible for failure to pay insurance premiums or for any loss or damage arising out of a defect in any policy or arising out of any failure of any insurance company to pay for any loss or damage insured against or for failure by Trustor to effect the insurance required hereunder. In the event of loss, Trustor shall give prompt notice by mail to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly or in proper form by Trustor. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to Beneficiary as additional security. In the event of Beneficiary's exercise of the power of sale contained herein, or in the event of foreclosure, all right, title and interest of Trustor in and to any insurance policy then in force shall pass to the purchaser at the trustee's sale or foreclosure sale. In the event of loss or damage by fire or other casualty, Beneficiary, at its sole option, may require Trustor to use any insurance proceeds to either immediately rebuild any portion or all of the improvements. Any disbursement of the insurance proceeds for rebuilding shall be upon such conditions as Beneficiary shall reasonably determine.

**4. Preservation and Maintenance of Trust Property.** Trustor will keep the Trust Property at all times in good repair and condition, and Trustor shall not commit, suffer, or permit any waste or deterioration of the Trust Property, ordinary wear and tear excepted. Trustor will not alter the design or structural character of any improvements constituting the Trust Property. No further improvements or alterations to the Trust Property (including, without limitation, transmission towers and cellular towers) shall be made without the prior written consent of Beneficiary. Trustor will not do any act or thing which would unduly impair or materially depreciate the value of the Trust Property and will not abandon the Trust Property. Trustor will not remove any personalty or fixtures constituting the Trust Property unless the same are immediately replaced with like property subject to the lien and security interest of this Deed of Trust and of at least equal value and utility. Trustor will comply with all present and future ordinances, requirements and regulations of any governmental body which are applicable to the Trust Property and to the occupancy and use thereof. In all events, Trustor shall complete in good and workmanlike manner any repairs which may be hereafter commenced upon or with respect to the Trust Property. Trustor further agrees to pay when due all costs and expenses incurred therefor, and not to permit any construction, mechanics, materialmen or other liens against the Trust Property to remain in place for more than thirty (30) days.

Notwithstanding any provisions in this Deed of Trust to the contrary, Trustor shall have the right, without seeking any further consent from Beneficiary, to construct, install, and complete on and within the

Trust Property, all roads and all underground wet and dry utility improvements pertaining to the Trust Property, as described in the utility plans and the engineering drawings that have been approved by the City of Layton in connection with the granting by the City of Layton of the final plat approval for Meacham Towns Subdivision, which underground utility improvements include, without limitation, sewer lines, culinary water lines, secondary water lines, storm drain improvements, electrical power lines, natural gas lines, and lines for the delivery of communication and cable television service (the “**Subdivision Improvements**”). Provided that Trustor does not default in the performance by Trustor of its payment obligations to the providers of services and materials in connection with the construction of the Subdivision Improvements, Trustor shall not be deemed to be in default under this Deed of Trust as a result of the existence of potential mechanic’s liens affecting the Property during the course of the construction of the Subdivision Improvements.

In addition, Trustor agrees that during the existence of the lien of this Deed of Trust, Trustor will maintain the Trust Property in compliance with all governmental laws and regulations, including, but not limited to all laws and regulations relating to environmental protection or Hazardous Material, and will indemnify and hold Beneficiary harmless from any failure to so comply. Trustor shall enforce all construction contract terms with respect to Hazardous Material and shall not enter into any contracts that will result in the creation or use of Hazardous Material on the Trust Property without the prior written consent of Beneficiary. If Beneficiary consents, Beneficiary will require at least the following: (1) adequate protection of the Trust Property and Beneficiary from liability related to such Hazardous Material; and (2) full compliance with all laws and regulations related thereto.

“**Hazardous Material**” is used herein in its broadest sense and shall mean any petroleum base products, pesticides, paints and solvents, polychlorinated biphenyl, lead, cyanide, DDT, acids, ammonium compounds, and other chemical products and any substances or materials defined or designated as a hazardous or toxic substance, or other similar term, by any federal, state, or local environmental statute, regulation, or ordinance affecting the Trust Property presently in effect or that may be promulgated in the future, as such statutes, regulations, and ordinances may be amended from time to time, including, but not limited to the following statutes: (i) Resources Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, et seq.; (ii) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 40 U.S.C. Section 1801, et seq.; (iii) Clean Air Act, 42 U.S.C. Sections 7401-7626; and (iv) Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. Section 1251, et seq.

Trustor will provide to Beneficiary copies of all notices it gives to or receives from governmental agencies with respect to Hazardous Material. Beneficiary may, at any time, at its expense conduct an environmental audit of the Trust Property.

**5. Inspection.** Beneficiary or its agents may, at all reasonable times, enter upon the Trust Property for the purpose of inspection at Beneficiary’s sole cost and expense. Beneficiary shall have no duty to make such inspection and shall not be liable to Trustor or to any person in possession if it makes or fails to make any such inspection. Notwithstanding the foregoing, Beneficiary shall have the duty to immediately repair any damage to the Trust Property resulting from such entry upon or inspection of the Trust Property. Beneficiary shall indemnify, defend, save, and hold Trustor harmless from any losses, costs, expenses, damages, injuries, deaths, causes of action, liens, penalties, fines and liabilities of any and all kinds whatsoever, including without limitation, reasonable attorneys’ fees and costs caused by, or in any way related to, the acts or omissions of Beneficiary and its employees, contractors and agents during and in connection with any such inspection of the Trust Property.

**6. Protection of Security.** If Trustor fails to perform any of the covenants and agreements contained in this Deed of Trust and such failure continues for a period of thirty (30) days after written notice from Beneficiary to Trustor (except in the event of emergency in which case no notice need be given to Trustor), or if any action or proceeding is commenced which does or may adversely affect the Trust Property or the interest of Trustor or Beneficiary therein or the title of Trustor thereto, then Beneficiary, at its option, may perform such covenants and agreements, make such appearances, defend against and investigate such action or proceeding and take such other action as Beneficiary deems reasonably necessary to protect its interest including, but not limited to, disbursement of reasonable attorney fees and entry upon the Trust Property to make repairs. Any amounts disbursed by Beneficiary pursuant to this Section 6, with interest thereon, shall constitute indebtedness of Trustor secured by this Deed of Trust (together with all other amounts due to Beneficiary under the Contract and this Deed of Trust, collectively, the "**Indebtedness**"). Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon written demand from Beneficiary to Trustor and shall bear interest at a rate of six percent (6.0%) per annum (the "**Default Rate**") commencing twenty (20) days after the date Beneficiary demands payment therefor by written notice to Trustor. Nothing contained in this paragraph shall require Beneficiary to incur any expense or take any action hereunder. Trustor irrevocably authorizes and empowers Beneficiary to enter upon the Trust Property as Trustor's agent and, in Trustor's name or otherwise, to perform any and all covenants and agreements to be performed by Trustor as herein provided. Beneficiary shall, at its option, be subrogated to any encumbrance, lien, claim, or demand and to all rights and securities for the payment thereof paid or discharged by Beneficiary under the provisions hereof and any such subrogation rights shall be additional and cumulative security for this Deed of Trust.

**7. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Trust Property, or any part thereof, or for conveyance in lieu of or in anticipation of condemnation, are hereby assigned to and shall be paid to Beneficiary. Trustor irrevocably authorizes and empowers Beneficiary, in the name of Trustor or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for, and retain the proceeds. The proceeds of any award or claim may, after deducting all reasonable costs and expenses, including attorney fees, which may have been incurred by Beneficiary in the collection thereof, at the sole discretion of Beneficiary, be released to Trustor and applied to the restoration of the Trust Property.

**8. Trustor Not Released.** Extension of the time or any modification granted by Beneficiary to Trustor or any successor in interest of Trustor shall not operate to release, in any manner, the liability of Trustor or Trustor's successors in interest.

**9. Assignment of Rents.** Trustor hereby assigns to Beneficiary all rents, issues and profits now due or which may hereafter become due under or by virtue of any lease, whether written or verbal, or letting of, or of any agreement for the use or occupancy of the Trust Property, or any part thereof (the "**Rents**") and Trustor hereby confirms upon Beneficiary the right, power and authority to collect all Rents hereby irrevocably appointing Beneficiary its true and lawful attorney-in-fact to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue in the name of Trustor for all Rents. Without limiting the foregoing, Beneficiary shall have the right to notify all tenants and occupants of the Trust Property to pay Beneficiary all Rents due or to become due. Prior to the occurrence of an Event of Default (defined below), Trustor shall hold a revocable license to collect the Rents; immediately upon the occurrence of an Event of Default, such license shall be revoked and all Rents shall be paid to Beneficiary.

**10. Sale, Transfer or Encumbrance.** Any sale, transfer, or encumbrance of the Trust Property (or any portion thereof) shall be strictly prohibited unless and until the obligations of Trustor under the Note have been satisfied and paid in full.

**11. Ownership Change.** Trustor will not change or dissolve its current entity structure or status prior to the satisfaction and payment in full of its obligations under Note without the prior written approval of Beneficiary. Any change in ownership of the interests in Trustor shall be prohibited.

**12. Time is of the Essence; Waiver of Statute of Limitations.** Time is of the essence in all of Trustor's obligations and duties hereunder; and to the extent permitted by law, Trustor waives all present or future statutes of limitations with respect to any debt, demand, or obligation secured hereby and any action or proceeding for the purpose of enforcing this Deed of Trust or any rights or remedies contained herein.

**13. Forbearance by Beneficiary Not a Waiver.** Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or payment of taxes or the discharge of liens or charges by Beneficiary shall not be a waiver of Beneficiary's rights under this Deed of Trust.

**14. Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and, to the extent permitted under applicable law, may be exercised concurrently, independently or successively.

**15. Successors and Assigns Bound; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary, Trustee and Trustor. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

**16. Notice.** Except for any notice required under applicable law to be given in another manner, all notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Trustor at its mailing address set forth above or at such other address as Trustor may designate by notice to Beneficiary as provided herein, and addressed to Beneficiary at its mailing address set forth above or at such other address as Beneficiary may designate by notice to Trustor as provided herein. Any such communication shall be deemed to have been given when delivered if delivered personally, on the business day after dispatch if sent by overnight air courier, or on the third business day after posting if sent by mail.

**17. Governing Law; Severability.** This Deed of Trust shall be governed by the laws of the State of Utah. In the event any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provisions, and to this end the provisions of this Deed of Trust are declared to be severable.

**18. Events of Default.** Each of the following occurrences shall constitute an event of default hereunder (each an "Event of Default"):

- a. The failure by Trustor to pay when due the Indebtedness evidenced by the Contract;

- b. Any failure by Trustor to adequately protect the Trust Property as set forth in this Deed of Trust;
- c. Any representation or warranty made by Trustor to Beneficiary in this Deed of Trust shall prove false or misleading in any material respect;
- d. A trustee, receiver or liquidator of the Trust Property or of Trustor shall be appointed, or any of the creditors of Trustor shall file a petition in bankruptcy against Trustor, or for the reorganization of Trustor pursuant to the United States Bankruptcy Code, or any similar law, whether federal or state, and if such order or petition shall not be discharged or dismissed within sixty (60) days after the date on which such order or petition was filed; or
- e. Trustor shall file a petition pursuant to the United States Bankruptcy Code or any similar law, federal or state, or if Trustor shall be adjudged bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall consent to the appointment of a receiver of all or any part of the Trust Property.

**19. Foreclosure.** Upon the occurrence of any Event of Default, or any time thereafter, Beneficiary may, at its option and in its sole discretion, without any further notice or demand to or upon Trustor, do one or more of the following:

- a. Beneficiary may enter upon, take possession of, manage, and operate the Trust Property or any part thereof; make repairs and alterations and do any acts which Beneficiary deems proper to protect the security thereof, and either with or without taking possession, in its own name, sue for or otherwise collect and receive rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees and Beneficiary's costs, upon the Indebtedness secured hereby and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and shall make available to Beneficiary any of the Trust Property which has been removed. The entering upon and taking possession of the Trust Property, the collection of any rents, issues and profits, and the application thereof as aforesaid, shall not cure or waive any default theretofore or thereafter occurring, or affect any notice of default or notice of sale hereunder or invalidate any act done pursuant to any such notice. Notwithstanding Beneficiary's continuance in possession or receipt and application of rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of an Event of Default, including the right to exercise the power of sale. Any actions referred to in this paragraph may be taken by Beneficiary at such time as Beneficiary may determine without regard to the adequacy of any security for the Indebtedness.
- b. Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of, protect and manage the Trust Property and operate the same and collect the rents, issues and profits therefrom.

- c. Beneficiary may bring any action in any court of competent jurisdiction to foreclose this Deed of Trust or enforce any of the covenants hereof.
- d. Beneficiary may elect to cause the Trust Property or any part thereof to be sold under the power of sale, and in such event, Beneficiary or Trustee shall give such notice of default and notice of sale as may be then required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Trust Property, or any part thereof specified by Beneficiary (subject to applicable law), at public auction to the highest bidder for cash in lawful money of the United States of America. Upon receipt of payment of the price bid, Trustee shall apply the proceeds in the following order: (i) to the costs and expenses of exercising the power of sale and of the sale, including the payment of trustee's fees actually incurred; (ii) to the Indebtedness; and (iii) the excess, if any, to the person or persons legally entitled thereto.

All costs and expenses incurred by Beneficiary in enforcing any right under this Deed of Trust, including without limitation, abstract or title fees, appraisal fees, premiums for title insurance, attorney fees and court costs, shall, to the extent permitted by law, be and constitute Indebtedness.

Notwithstanding the foregoing, in the event that at the time of foreclosure no additional encumbrances have been recorded against the title to the Trust Property which were not encumbering the Trust Property on the date this Deed of Trust was recorded, then Trustor shall have the right to grant Trustee and/or Beneficiary a deed in lieu of foreclosure.

**20. Duties of Trustee and Beneficiary.** Trustor agrees that:

- a. The duties and obligations of Trustee and Beneficiary shall be determined solely by the express provisions of this Deed of Trust, and the Trustee and/or Beneficiary shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee;
- b. No provision of this Deed of Trust shall require Trustee or Beneficiary to expend or risk its own funds, or otherwise incur any financial obligation in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers;
- c. Trustee and/or Beneficiary may consult with counsel of its own choosing, and the advice of such counsel shall be full and complete authorization and protection in the respect of any action taken or suffered by it hereunder in good faith and reliance thereon; and
- d. Neither Trustee nor Beneficiary shall be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within its discretion or rights or powers conferred upon it by this Deed of Trust.

**21. Security Agreement and Fixture Filing.** This Deed of Trust shall constitute a security agreement and, after recording, shall be effective as a financing statement filed as a fixture filing under the Utah Uniform Commercial Code with respect to all goods constituting a part of the Trust Property including, without limitation, those which are or are to become fixtures related to the real estate described herein, together

with all substitutions and replacements therefor and all other property of Trustor, either similar or dissimilar to the same, together with all proceeds thereof. For this purpose, the following information is provided:

Name & Address of Trustor (Debtor):	SEC 076, LLC 1565 West Hillfield Road, Suite 104 Layton, UT 84041 Attention: T.J. Wall
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And a copy to	Evergreen Holding, LLC P.O. Box 2000 Layton, UT 84041 Attention: T.J. Wall
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Name & Address of Beneficiary (Secured Party):	D.R. Horton, Inc. 12351 South Gateway Park Place, Suite D-100 Draper, UT 84020 Attention: Boyd Martin, Division President
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**22. Substitute Trustee.** Beneficiary, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Trust Property, the successor trustee shall succeed to all title, power and duties conferred upon Trustee herein and by applicable law.

**23. Miscellaneous Rights of Beneficiary.** Any personal property remaining upon the Trust Property after the Trust Property has been possessed or occupied by Beneficiary, its agent, or any purchaser following trustee's sale, foreclosure, or under deed in lieu of trustee's sale or foreclosure, shall be conclusively presumed to have been abandoned by Trustor.

**24. Request for Notice.** Each party to this Deed of Trust hereby requests that copies of any notice of default and notice of sale be sent to them at their respective mailing addresses set forth above.

[SIGNATURE TO FOLLOW]



IN WITNESS WHEREOF, this Deed of Trust has been executed by Trustor as of the day and year set forth above.

**SEC 076, LLC,**  
a Utah limited liability company

By: Evergreen Holding, LLC  
a Utah limited liability company  
Title: Manager of SEC 076, LLC

By [Signature]  
Name: Tyrell J. Wall  
Title: Manager  
Date of Execution: 2/26/2020, 2020

STATE OF UTAH )  
 ) : ss.  
COUNTY OF Davis )

The foregoing instrument was acknowledged before me this 26 day of February, 2020 by TYRELL J. WALL, who executed the foregoing instrument in his capacity as the Manager of EVERGREEN HOLDING, LLC, a Utah limited liability company, the Manager of SEC 076, LLC, a Utah limited company.

[Signature]  
NOTARY PUBLIC  
Residing at: Davis County, UT

My commission expires:  
03-08-2022



**EXHIBIT A**

**Legal Description of the Trust Property**

REAL PROPERTY LOCATED IN DAVIS COUNTY, STATE OF UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A Portion of Parcel 09-050-0096

BEGINNING AT A POINT LOCATED SOUTH 00°22'00" WEST 746.67 FEET AND EAST 438.96 FEET FROM THE NORTHWEST CORNER OF SECTION 10, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE SOUTH 79°58'00" EAST PARALLEL WITH AND OFFSET 180 FEET SOUTHERLY FROM THE SOUTH LINE OF THE STATE ROAD 445.32 FEET; THENCE SOUTH 00°22'00" WEST 511.31 FEET; THENCE NORTH 89°38'00" WEST 429.00 FEET; THENCE NORTH 00°22'00" EAST 586.38 FEET TO THE POINT OF BEGINNING. CONTAINING: 5.5 ACRES