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STACY R. DRISCOLL
REGISTER OF DEEDS
LEAVENWORTH COUNTY, KANSAS
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1.	Title of Document:	Conservation Easement
2.	Date of Document:	June 20, 2017
3.	Grantor:	Swallow Tail LLC 24820 Miller Road Harrisonville MO 64701
4.	Grantees:	Midwest Mitigation Oversight Association, Inc., a Missouri non-profit corporation and its successors in interest
5.	Statutory Mailing Address:	Midwest Mitigation Oversight Association Mr. James Drake PO Box 480271 Kansas City, MO 64148
6.	Property Descriptions:	Page 9 - Exhibit A-1 Pages 10-11 – Exhibit A-2
7.	Reference Books and Pages:	None

Swallow Tail LLC 172

CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this 20 day of June, 20 17, by Swallow Tail LLC, having an address of 24820 Miller Road Harrisonville MO 64701 ("Grantor") to Midwest Mitigation Oversight Association Incorporated, having an address of PO Box 480271 Kansas City MO 64148 ("Grantee"). As used herein, the term "Grantor" shall include any and all heirs, successors, or assigns of the Grantor, and all subsequent owners of the Property (as hereinafter defined), and the term "Grantee" shall include any successor or assignee of Grantee.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple title of certain lands situated in Leavenworth County, Kansas, more particularly described in Exhibit A, attached hereto and incorporated herein ("Property"); and

WHEREAS, Department of the Army (DA) Regulatory Action No. NWK-2016-00287 of the U.S. Army Corps of Engineers ("Corps") (hereinafter referred to as the "Regulatory Action") authorizes certain activities which affect waters of the United States; and

WHEREAS, this Regulatory Action requires that Grantor preserve, enhance, restore, or mitigate wetlands or uplands located on the Property; and

WHEREAS, Grantor, in consideration of the authorization of this Regulatory Action to construct and operate the permitted activity, and as an inducement to the authorization of the Regulatory Action, is willing to grant a perpetual Conservation Easement over the Property; and

NOW THEREFORE, in consideration of the above and mutual covenants, terms conditions, and restrictions contained herein, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby voluntarily grants and conveys a perpetual Conservation Easement for and in favor of Grantee upon the property, which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. **Purpose:** The purpose of this Conservation Easement is to retain and maintain land or water areas on the Property in their natural, vegetative, hydrologic, scenic, open, or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife. Those wetland or upland areas that are to be restored, enhanced, created, or preserved on the Property shall be retained and maintained in the restored, enhanced, created, or preserved condition as described in the Regulatory Action and/or in the associated compensatory mitigation plan for the Property.

2. **Rights of Grantee:** The following rights are conveyed to the Grantee and to the Corps by this easement:

a. The right to take action to preserve and protect the environmental value of the Property; and

b. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;

c. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor is complying with the covenants and prohibitions contained in this Conservation Easement; and

d. The right to proceed at law or in equity to enforce the provisions of this Conservation Easement, and to prevent the occurrence of any of the prohibited activities hereinafter set forth.

3. **Prohibited Uses:** Except for restoration, creation, enhancement, preservation, maintenance, and monitoring activities, or surface water management improvements, required by the Regulatory Action, or required by the compensatory mitigation plan, or are otherwise approved by the Corps, the following activities are prohibited on the Property:

a. Construction of any structure or object (i.e., buildings, roads, above or below ground utilities, signs, billboards etc.) without written approval from the Corps of Engineers prior to construction;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by Corps;

d. Planting of nuisance, exotic, or non-native plants as listed by the State of Kansas;

e. Exploration for, or extraction of, oil or gas in such a manner as to affect the surface, or excavation, dredging, or removal of coal, loam, peat, gravel, soil, rock, or other material substance;

f. Use of motorized and non-motorized vehicles, the keeping or riding of horses, grazing, livestock confinement, or other surface use that may affect the natural condition of the Property, except for vehicle use for purposes of maintenance and upkeep;

g. Tilling, plowing, planting of crops, digging, mining, or other activities that are or may be detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or fish and wildlife habitat preservation, including but not limited to ditching, diking, and fencing;

h. The extraction of water from the Property or the impoundment of water on the Property so as to affect the hydrology of the Property;

i. Acts or uses detrimental to the aforementioned retention and maintenance of land or water areas;

j. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

4. **Reserved Rights:** Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein, and that are not inconsistent with the intent and purposes of this Conservation Easement.

5. **Taxes:** Grantor shall pay any and all applicable real property taxes and assessments levied by competent taxing authority on the Property.

6. **Maintenance:** Grantor shall, at Grantor's sole expense, operate, maintain and keep up the Property consistent with the purpose of this Conservation Easement. Grantor shall remove from the Property any nuisance, exotic, or non-native plants as listed by the State of Kansas and shall maintain the hydrology of the Property as it currently exists or as otherwise required by the Regulatory Action or as required by the compensatory mitigation plan or as required by the Corps approved final mitigation banking instrument.

7. **Hazardous Waste:** Grantor covenants that if any hazardous substances or toxic waste exist or has been generated, treated, stored, used, disposed of, or deposited in or on the Property, or there are or have been any underground storage tanks on the Property, Grantor shall be responsible for any and all necessary costs of remediation.

8. **Public Access:** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement, and Grantor further covenants not to hold any portion of the Property open to general use by the public except with the written permission of the Corps and Grantee.

9. **Liability:** Grantor shall continue to retain all liability for any injury or damage to the person or property of third parties that may occur on the Property arising from ownership of the Property. Neither Grantor, nor any person claiming by or through Grantor, shall hold Grantee liable for any damage or injury that may occur on the Property.

10. **Recording Requirements:** Grantor must record this Conservation Easement in the official records of Leavenworth County, Kansas, and shall re-record it at any time Grantee or

the Corps may require to preserve their rights. Grantor shall pay all recording costs, fees and taxes necessary at any time to record this Conservation Easement in the public records. Grantor shall thereafter insert the terms and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which Grantor divests himself/herself/itself of any interest in the Property, and shall provide a photocopy of the recorded Conservation Easement to the new owner(s).

11. **Enforcement:** The terms and conditions of this Conservation Easement may be enforced in an action at law or equity by the Grantee or the Corps against the Grantor violating or attempting to violate these Restrictions. Venue for any such action shall be in Leavenworth County, Kansas. Enforcement of this Conservation Easement shall be at the reasonable discretion of the Grantee or the Corps, and any forbearance on behalf of Grantee or the Corps to exercise its or their rights hereunder in the event of any breach by Grantor shall not be deemed or construed to be a waiver of rights. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions, and restrictions of this Conservation Easement, including without limitation, the costs of suit, and attorney's fees, shall be borne by and recoverable against the non-prevailing party in such proceedings, except that such costs shall not be recoverable against the Corps. In addition, if the Grantee or the Corps shall prevail in an enforcement action, such party shall also be entitled to recover that party's cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of these Restrictions or to the vegetative and hydrologic condition required by the Regulatory Action and/or as required by the associated compensatory mitigation plan.

12. **Assignment of Rights:** Grantee shall hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement, except to another legal entity qualified to hold such interests under applicable state and federal laws and committed to holding this Conservation Easement exclusively for the purposes stated herein. Grantee shall notify the Corps in writing of any intention to reassign this Conservation Easement to a new grantee at least sixty (60) days in advance thereof, and the Corps must accept the assignment in writing. The new grantee shall then deliver a written acceptance to the Corps. The assignment instrument must then be recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the assignment instrument shall be furnished to the Corps. Failure to comply with the assignment procedure herein stated shall result in invalidity of the assignment. In the event of dissolution of the Grantee or any successor, or failure for 60 days or more to execute the obligations of this Conservation Easement, the Grantee shall transfer this Conservation Easement to a qualified and willing grantee. Upon failure of the Grantee or any successor to so transfer the Conservation Easement, the Corps shall have the right to sue to force such an assignment to a grantee to be identified by the Court.

13. **Successors:** The covenants, terms, conditions, and restrictions of this Conservation Easement 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.

14. **Notices:** All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

15. **Severability:** If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

16. **Alteration or Revocation:** This Conservation Easement, granted in perpetuity, may be amended, altered, released, canceled, or revoked only by written agreement between the parties hereto or their heirs, assigns, or successors in interest, which shall be filed in the public records of_County, Kansas. No action shall be taken, however, without advance written approval thereof by the Corps. Corps approval shall be by letter attached as an exhibit to the document amending, altering, canceling, or revoking the Conservation Easement, and said letter shall be informal and shall not require notarization. It is understood and agreed that Corps approval requires a minimum of sixty (60) days written notice, and that the Corps may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment, alteration, release, cancellation, or revocation together with written Corps approval thereof shall then be filed in the public records of Leavenworth County, Kansas, within 30 days thereafter.

17. **Controlling Law:** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Kansas.

GRANTOR FURTHER COVENANTS that Grantor is lawfully seised of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement and that no mortgages or other liens exist; that Grantor has good right and lawful authority to convey this Conservation Easement, and that it hereby fully warrants and defends the title to the Conservation Easement hereby conveyed against the lawful claims of all persons whomsoever.

If the grantee named herein is, for any reason, determined not to be authorized or entitled to hold the interest granted herein, the Grantor shall within 60 days after notification thereof execute a substitute conservation easement to a new grantee containing terms and conditions similar to this conservation easement. The determination of lack of authority or entitlement may be made by either (a) a court of competent jurisdiction, (b) the precedential authority of a ruling by a court of competent jurisdiction, (c) a title insurance company's written refusal to insure the real property interest of the grantee named herein, or (d) a title opinion issued by an attorney at law licensed in the State of Kansas. Notification of lack of authority or entitlement of the grantee named herein may be made to the grantor by any person, including persons not privy to this easement. The substitute grantee shall be properly qualified as a "holder" under the Kansas conservation easement law, Kansas St. 58-3810 et seq. or successor statute.

TO HAVE AND TO HOLD, the Grantor covenants that he, she, or they are vested with good title to the easement area and will warrant and defend the same on behalf of the Grantee against all claims and demands. The Grantor covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed. The covenants, terms, conditions, restrictions, and purpose imposed with this Conservation Easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Dated this 20 day of June, 2017

Grantor(s): Swallow Tail LLC by David L. Flick
Print Name

David L Flick
Signature

ACKNOWLEDGEMENT

STATE OF MISSOURI

COUNTY OF Jackson

On this 20 day of June in the year 2017, before me, the undersigned notary public, personally appeared James D Drake, known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

Notary Public Signature Kathy Reynolds

Notary Public Printed Name Kathy Reynolds

Residing at 1136 SW Pacific Drive
Lees Summit MO 64081

My Commission Expires June 15, 2018

KATHY REYNOLDS
Notary Public-Notary Seal
State of Missouri
Commissioned for Jackson County
My Commission Expires; June 15, 2018
Commission Number; 14985331

ACCEPTANCE BY GRANTEE:

I James D. Drake (print name), PRESIDENT (title), being the duly authorized representative of the Grantee, do hereby accept this Conservation Easement Deed with respect to the rights and duties of the, Grantee.

Dated this 20 day of June, 2017.

Grantee Signature _____

Grantee Printed Name James D. Drake

Grantee Title President

EXHIBIT A-1

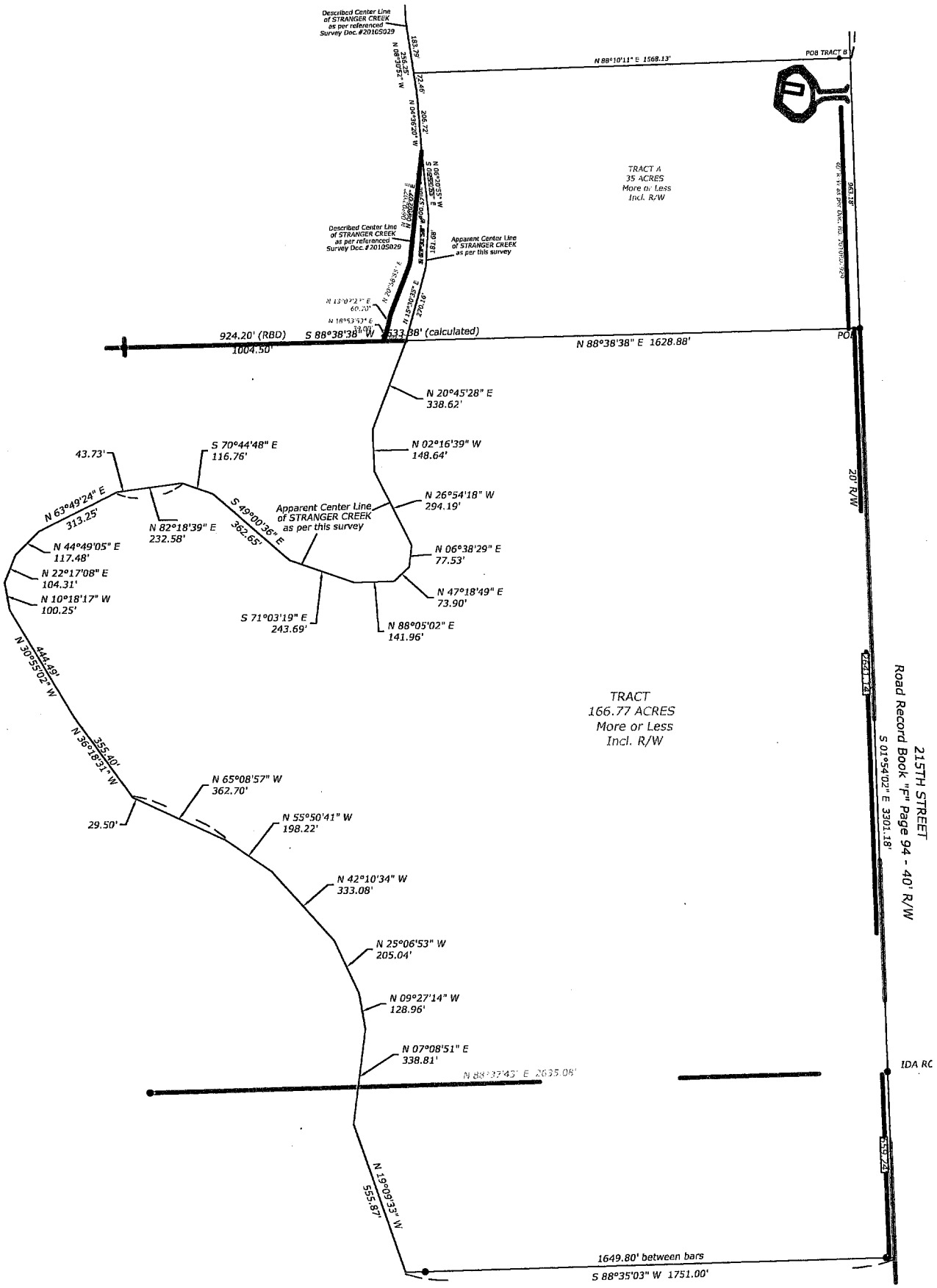
Described Center Line of STRANGER CREEK as per referenced Survey Doc. #20105029
N 88°10'11" E 1568.13'
POB TRACT B
TRACT A
35 ACRES
More or Less
Incl. R/W
Described Center Line of STRANGER CREEK as per referenced Survey Doc. #20105029
Apparent Center Line of STRANGER CREEK as per this survey
924.20' (RBD)
1004.50'
S 88°38'38" W 533.88' (calculated)
N 88°38'38" E 1628.88'
POB
N 20°45'28" E
338.62'
N 02°16'39" W
148.64'
N 26°54'18" W
294.19'
N 06°38'29" E
77.53'
N 47°18'49" E
73.90'
N 88°05'02" E
141.96'
S 71°03'19" E
243.69'
S 49°00'36" E
362.65'
Apparent Center Line of STRANGER CREEK as per this survey
N 82°18'39" E
232.58'
N 44°49'05" E
117.48'
N 22°17'08" E
104.31'
N 10°18'17" W
100.25'
N 63°49'24" E
313.25'
43.73'
S 70°44'48" E
116.76'
N 30°55'02" W
444.49'
N 36°18'31" W
355.40'
29.50'
N 65°08'57" W
362.70'
N 55°50'41" W
198.22'
N 42°10'34" W
333.08'
N 25°06'53" W
205.04'
N 09°27'14" W
128.96'
N 07°08'51" E
338.81'
N 88°37'43" E 2625.06'
N 19°09'33" W
555.87'
1649.80' between bars
S 88°35'03" W 1751.00'
TRACT
166.77 ACRES
More or Less
Incl. R/W
20' R/W
215TH STREET
Road Record Book "F" Page 94 - 40' R/W
S 01°54'02" E 3301.18'
IDA RD

EXHIBIT A-2

TRACT A: FROM SPLIT in Section 16-9-21

A tract of land in the Southwest Quarter of Section 16, Township 09 South, Range 21 East of the 6th P.M. Leavenworth County, Kansas more fully described as follows:

Beginning at the Southeast corner of said Southwest Quarter; thence South 88 degrees 38 minutes 38 seconds West along the south fine of Southwest Quarter for a distance of 1709.18 feet to the center line of Big Stranger Creek; thence North 18 degrees 53 minutes 53 seconds East along said center line for a distance of 39.00 feet; thence North 13 degrees 07 minutes 27 seconds East continuing along said center line for a distance of 60.70 feet; thence North 20 degrees 58 minutes 55 seconds East continuing along said center line for a distance of 193.82 feet; thence North 06 degrees 02 minutes 07 seconds East continuing along said center line for a distance of 400.57 feet; thence North 04 degrees 36 minutes 20 seconds West continuing along said center line a for a distance of 206.72 feet; thence North 08 degrees 30 minutes 52 seconds West continuing along said center line for a distance of 72.46 feet; thence North 88 degrees 10 minutes 11 seconds East for a distance of 1568.13 feet to the East line of said Southwest Quarter; thence South 01 degrees 49 minutes 49 seconds East for a distance of 963.18 feet along said East line to the point of beginning. Together with and subject to covenants, easements, and restrictions of record. Said property contains 35 acres, more or less, including road right of ways.

TRACT in Section 20 & 21 – 9- 21

A tract of land in the Northeast Quarter of Section 20 and the West Half of Section 21, Township 9 South, Range 21 East of the 6th P.M., Leavenworth County, Kansas, more fully described as follows: Beginning at the North Quarter Corner of said Section 21; thence South 01 degrees 54'02" East for a distance of 3301.18 feet along the center section line of said Section 21; thence South 88 degrees 35'03" West for a distance of 1751.00 feet to the apparent centerline of Big Stranger Creek; thence North 19 degrees 09'33' West for a distance of 555.87 feet along said centerline; thence North 07 degrees 08'51" East for a distance of 338.81 feet along said centerline; thence North 09 degrees 27'14" West for a distance of 128.96 feet along said centerline; thence North 25 degrees 06'53" West for a distance of 205.04 feet along said centerline; thence North 42 degrees 10'34" West for a distance of 333.08 feet along said centerline; thence North 55 degrees 50'41" West for a distance of 198.22 feet along said centerline; thence North 65 degrees 08'57" West for a distance of 362.70 feet along said centerline; thence North 36 degrees 18'31" West for a distance of 355.40 feet along said centerline; thence North 30 degrees 55'02" West for a distance of 444.49 feet along said centerline; thence North 10 degrees 18'17" West for a distance of 100.25 feet along said centerline; thence North 22 degrees 17'08" East for a distance of 104.31 feet along said centerline; thence North 44 degrees 49'05" East for a distance of 117.48 feet along said centerline; thence North 63 degrees 49'24" East for a distance of 313.25 feet along said centerline; thence North 82 degrees 18'39" East for a distance of 232.58 feet along said centerline; thence South 70 degrees 44'48" East for a distance of 116.76 feet along said centerline; thence South 49 degrees 00'36" East for a distance of 362.65 feet along said centerline; thence South 71 degrees 03'19" East for a distance of 243.69 feet along said centerline; thence North 88 degrees 05'02" East for a distance of

141.96 feet along said centerline; thence North 47 degrees 18'49" East for a distance of 73.90 feet along said centerline; thence North 06 degrees 38'29" East for a distance of 77.53 feet along said centerline; thence North 26 degrees 54'18" West for a distance of 294.19 feet along said centerline; thence North 02 degrees 16'39" West for a distance of 148.64 feet along said centerline; thence North 20 degrees 45'28" East for a distance of 338.62 feet along said centerline to the North line of said Section 21; thence North 88 degrees 38'38" East for a distance of 1628.88 feet along said North line to the Point of Beginning. Together with and subject to covenants, easements, and restrictions, of record. Said property contains 166.77 acres more or less, including road right of ways.