

AFTER RECORDATION, RETURN TO:

DHIR – BLVD 120, LLC  
Attn: Jonathan S. Thornley  
12351 South Gateway Park Place, Suite D-100  
Draper, UT 84020

ENT 54112:2023 PG 1 of 14  
ANDREA ALLEN  
UTAH COUNTY RECORDER  
2023 Aug 17 04:47 PM FEE 40.00 BY AR  
RECORDED FOR DHI Title - Utah  
ELECTRONICALLY RECORDED

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(Space above for Recorder's use only)

### **AMENDED AND RESTATED STORM DRAIN EASEMENT AGREEMENT**

THIS AMENDED AND RESTATED STORM DRAIN EASEMENT AGREEMENT (this “**Agreement**”) is made this 17<sup>th</sup> day of August, 2023 (the “**Effective Date**”), by and between **THE BOULEVARD DEVELOPMENT, LLC**, a Utah limited liability company (“**Grantor**”), and **DHIR – BLVD 120, LLC**, a Delaware limited liability company (“**DHIR**”), and **BLVD 120 CONDOMINIUM ASSOCIATION**, a Utah nonprofit corporation (the “**Association**”). **DHIR** and the **Association** are collectively referred to herein as “**Grantee**.” **Grantor** and **Grantee** may be referred to collectively as the “**Parties**” or individually as a “**Party**.”

### **RECITALS**

A. Grantor and D.R. Horton, Inc., a Delaware corporation (“**Horton**”) previously executed and acknowledged that certain document entitled Storm Drain Easement Agreement dated May 24, 2021, which was recorded in the Office of the Recorder of Utah County, Utah on May 24, 2021 as Entry No. 96905:2021 (the “**Prior Agreement**”). The **Prior Agreement** pertains to and affects those certain parcels of real property located in Utah County, Utah, which are described and defined in this Agreement as the **Grantor Property**, the **Grantee Property**, and the **Easement Area**.

B. **DHIR** and the **Association**, as the **Grantee**, are the successors in interest to **Horton** as owners of the **Grantee Property** defined below.

C. Grantor and **Grantee** desire to execute, acknowledge and cause to be recorded in the Office of the Recorder of Utah County, Utah this Agreement in order to amend, restate, supersede and replace in its entirety the **Prior Agreement**, as hereinafter set forth.

D. Grantor owns those certain parcels of real property located in Utah County, Utah, as more particularly described on **Exhibit A** attached hereto (collectively referred to herein as the “**Grantor Property**”).

E. Grantor owns that certain parcel of real property within the **Grantor Property** located in Utah County, Utah, as more particularly described on **Exhibit B** attached hereto (the “**Easement Area**”).

F. **Grantee** owns that certain real property located in Utah County, Utah, as more particularly described on **Exhibit C** attached hereto (the “**Grantee Property**”).

G. The Grantee Property is contiguous to the Easement Area.

H. Grantee desires to obtain a perpetual easement within, over and across the Easement Area for the purposes more fully set forth in this Agreement.

I. Grantee also desires to obtain a perpetual easement within, over and across the Grantor Property for the flow of surface water from certain specified portions of the Grantee Property onto, over and across the Grantor Property, as more fully set forth in this Agreement.

J. Grantor is willing to convey such easements to Grantee, subject to the terms and conditions set forth in this Agreement.

### **TERMS AND CONDITIONS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the terms and conditions set forth below, the Parties agree as follows:

1. Grant of Easement. Grantor hereby grants and conveys to Grantee (a) a perpetual non-exclusive easement on, over, through, under and across the Easement Area for the purposes of constructing, installing, operating, maintaining, inspecting, and repairing an underground storm water system with associated underground piping and storm drain equipment for a detention and retention basin (collectively, the “**Storm Drain System**”) within the Easement Area; and (b) a perpetual exclusive easement to use the Storm Drain System to channel storm water from the Grantee Property onto the Easement Area and to store the same thereon in accordance with all municipal and any Stormwater Pollution Prevention Plan requirements and plans (collectively items (a) and (b) the “**Easement**”). The approximate locations of the Storm Drain System improvements to be constructed and installed by Grantee within the Easement Area are depicted in **Exhibit D** attached hereto. Grantee shall have the perpetual right to utilize the Easement Area for storm drain purposes.

2. Access. Grantee and its agents, employees, contractors, guests, invitees, and successors-in-interest shall have the right to enter on, over, across, and otherwise make use of the Easement for the purposes set forth in this Agreement. Grantee and its successors and assigns, hereby release Grantor from any and all claims relating to the condition of the Easement Area and the entry upon the Easement Area by Grantee and its agents, employees, contractors, guests, invitees, and successors-in-interest. Grantor agrees not to obstruct or alter Grantee’s use of the Easement Area as granted herein.

3. Easement for Flow of Surface Water. Located upon and comprising a portion of the Grantee Property are those certain condominium units described as Units 32 through 42, inclusive, of the BLVD 120 Condominium Plat A and also Units 43 through 57, inclusive, of BLVD 120 Condominium Plat B (collectively referred to herein as the “**Units**”). Adjacent to the Units and located along the southern boundaries of the Units are certain sidewalks (the “**Sidewalks**”) which constitute a portion of the condominium common areas, which are appurtenant to and which are for the benefit and use of the Units. The southern boundaries of the Sidewalks are contiguous to portions of the Grantor Property. Grantor hereby grants and conveys to Grantee a perpetual non-exclusive easement on, over, through and across the Grantor Property

for the flow of stormwater and surface water that may drain from the exterior portions of the Units, including without limitations any downspouts attached to or forming a part of the Units, which stormwater and surface water then flows over and across the surface of the Sidewalks and then enters upon and flows across the surface of the Grantor Property (the “**Surface Water Flow Easement**”). Commencing at the time when any such stormwater and/or surface water enters upon the Grantor Property from the Sidewalks, Grantor shall be responsible to manage, control and contain, as necessary, all such stormwater and surface water.

4. Maintenance/Repair. Following the installation and completion by Grantee of the Storm Drain System within the Easement Area, Grantee shall thereafter have the duty and obligation to maintain, repair and replace the Storm Drain System and the Easement Area to a good workman like standard at all times, which shall be in compliance with the standards and specifications for the Storm Drain System required by Pleasant Grove City.

5. Liens. Grantee shall neither allow nor permit any construction or contractor liens or encumbrances (the “**Liens**”) to be placed upon the Easement Area as a result of, or in connection with the construction and installation of the Storm Drain System by Grantee as authorized pursuant to Section 1 of this Agreement. Grantor, with respect to Grantor’s conduct and activities, and Grantee, with respect to Grantee’s conduct and activities, shall keep the Easement Area free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for, or under either Grantor or Grantee, as the case may be, and shall indemnify, hold harmless and agree to defend the other from any liens that may be placed on the Easement Area pertaining to any work performed, materials furnished, or obligations incurred by, through, for, or under Grantor, with respect to Grantor’s conduct and activities, or Grantee, with respect to Grantee’s conduct and activities. Grantor, with respect to Grantor’s conduct and activities, and Grantee, with respect to Grantee’s conduct and activities, shall cause any such Liens placed on the Easement Area as the result of such Party’s conduct and activities to be released of record within thirty (30) days following the recording of any such Liens.

6. Indemnification by Grantee. Grantee hereby agrees to indemnify, save, defend (with counsel reasonably acceptable to Grantor) and hold harmless Grantor, and any entity controlling, controlled by, or under control with Grantor (“**Affiliates**”), and its and their Affiliates’ officers, directors, employees, managers, members, agents and servants from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage that may be incurred by Grantor or its agents, employees, contractors, guests, invitees, as a result of any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of, either directly or indirectly, (i) the use of the Easement Area by Grantee and/or Grantee’s agents, employees, contractors, guests, invitees; (ii) any entry onto the Easement Area by Grantee and/or Grantee’s agents, employees, contractors, guests, invitees; (iii) any work performed on the Easement Area by Grantee and/or Grantee’s agents, employees, contractors, guests, invitees, except to the extent caused directly by Grantor and/or its Affiliates; and (iv) any unsafe or hazardous conditions that may exist or occur from time to time on the Sidewalks or on any portion of the Grantee Property or the Grantor Property as the result of the flow of stormwater and surface water over and across the surface of the Sidewalks or any other portion of the Grantee Property as such stormwater and surface water enter upon the Grantor Property pursuant to the Surface Water Flow Easement.

7. Insurance.

(a) Prior to entering onto the Easement Area, Grantee shall maintain, or shall cause to be maintained, policies which, at a minimum, provide Grantor the protections set forth below. Additionally, Grantee will ensure that prior to entering onto the Easement Area or the Grantor Property, all such parties who assist with the Storm Drain System or use of the Easement Area are either covered under the terms of Grantee's insurance policies, or that each obtain similar policies and which, at a minimum, provide Grantor the same protections. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of Grantee, and may be subject to such self-insured retentions as Grantee may desire. Prior to any entry onto, or construction within, the Easement Area by Grantee, Grantor shall have the right to approve Grantee's insurance, and Grantee shall (i) provide certificates to Grantor evidencing such insurance in a form acceptable to Grantor, and (ii) cause itself and its consultants, contractors, and subcontractors to add Grantor as an additional insured.

(b) During the term of this Agreement, Grantee shall maintain a commercial general liability insurance policy insuring Grantee's interests against claims for personal injury, bodily injury, death, property damage occurring on, in or about the Easement Area and the ways immediately adjoining the Easement Area, with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability of not less than Two Million Dollars (\$2,000,000.00). The coverage set forth above shall be primary coverage and shall apply specifically to the Easement Area, activities on the Grantor Property, and adjacent areas.

8. Event of Default.

(a) Events of Default. The occurrence of any one or more of the following events ("**Event of Default**") shall constitute a material default and breach of this Agreement by the non-performing party (the "**Defaulting Party**"):

(i) The failure to make any payment required to be made hereunder within ten (10) days after the due date; and/or

(ii) The failure to observe or perform any of the covenants, conditions or obligations of this Agreement, other than as described in 8(a)(i) above, within thirty (30) days after the giving of a notice by another party, as the case may be (the "**Non-Defaulting Party**") specifying the nature of the default claimed; provided however, if such default cannot reasonably be cured within said 30-day period, then, provided the Defaulting Party notifies the Non-Defaulting Party of such claimed inability to cure and the Defaulting Party begins to cure the default within said 30-day period and is diligently pursuing such cure, the Defaulting Party shall be entitled to additional time, not to exceed thirty (30) additional days, to cure such default.

(b) Non-Defaulting Party's Right to Cure. With respect to any Event of Default, any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, if any, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably

possible under the circumstances. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the property of the Defaulting Party to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made. Grantor and its successors in interest as the owner of the Easement Area shall deliver to Grantee and its successors in interest as the owner of the Grantee Property notice of any intent, action, proceeding or other effort of any purported holder of a lien, encumbrance, mortgage or deed of trust affecting the Easement Area to enforce or foreclose any liens or encumbrances pertaining to or affecting all or any portion of the Easement Area, and Grantor and its successors in interest shall deliver to Grantee and its successors in interest written notice of any of the foregoing within five (5) days after the receipt by Grantor or its successors in interest of any such notice, occurrence or asserted lien.

(c) Additional Remedies. Notwithstanding anything to the contrary herein, each Non-Defaulting Party shall have the right to seek any remedy at law or in equity against any Defaulting Party hereto, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, and to recover damages for any such violation or default. All of the remedies at law or in equity permitted or available to a Party under this Agreement shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. Notwithstanding any provision to the contrary contained in this Section 8(c) or in any other portion of this Agreement, Grantor and its successors in interest shall not have the right to pursue any remedy that would result in the termination of this Agreement nor to pursue any injunctive relief seeking to block, prevent or limit the use and access of the Easement Area for the purposes set forth in this Agreement. Neither Grantor nor Grantee, nor any of their successors in interest shall have the right to seek to recover from the other any punitive, consequential or special damages under this Agreement.

9. Run with the Land. Subject to the terms and conditions contained herein, this Agreement shall be considered a covenant that runs with the land herein described as the Easement Area and shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and assigns.

10. Recordation. This Agreement shall be recorded in the Office of the Utah County Recorder.

11. Notices. Any notice required or desired to be given under this Agreement shall be considered given either: (a) when delivered in person to the intended Party, or (b) three (3) days after deposit in the United States mail, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the intended Party. All notices shall be given at the following addresses:

Grantor: The Boulevard Development, LLC  
Attn: Todd Amberry  
11275 Normandy Way  
Highland, UT 84003

Grantee: DHIR – BLVD 120, LLC  
Attn: Jonathan S. Thornley  
12351 South Gateway Park Place, Suite D-100  
Draper, UT 84020

BLVD 120 Condominium Association  
Attn: Jonathan S. Thornley  
12351 South Gateway Park Place, Suite D-100  
Draper, UT 84020

Either Party may designate a different individual or address for notices, by giving written notice thereof in the manner described above.

12. Miscellaneous.

(a) Entire Agreement. This Agreement and Exhibits attached hereto and made a part hereof contains the entire agreement of the Parties with respect to the matters covered hereby.

(b) No Dedication. In executing this Agreement and performing their respective obligations under this Agreement, Grantor and Grantee are acting as independent parties, and neither shall be considered as a joint venture, partner, agent, or employee of the other. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of Grantor and Grantee that this Agreement shall be strictly limited to and for the purposes herein expressed.

(c) Severability. If any term, covenant or condition of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the maximum extent permitted by law.

(d) Captions. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

(e) Exhibits. The Exhibits referred to in this Agreement are attached hereto and incorporated herein by this reference.

(f) Amendment. This Agreement may be modified or amended in whole or in part only by the written and recorded agreement of the Parties.

(g) Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

(h) Prior Agreement Amended, Restated, Superseded and Replaced. Upon the execution, acknowledgement and recording of this Agreement by Grantor and Grantee in the Office of the Recorder of Utah County, Utah, the Prior Agreement shall be deemed to be amended, restated, superseded and replaced in its entirety by this Agreement.

*[signatures and acknowledgements to follow]*





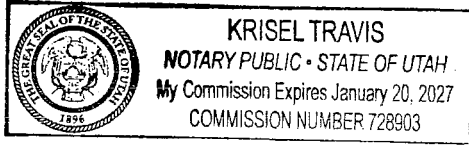


**BLVD 120 CONDOMINIUM ASSOCIATION,**  
a Utah nonprofit corporation

By: [Signature]  
Name: David Andrus  
Title: Director

STATE OF UTAH )  
 )  
COUNTY OF Salt Lake : SS

The foregoing instrument was acknowledged before me this 17 day of August, 2023 by David Andrus, in such person's capacity as the Director of BLVD 120 CONDOMINIUM ASSOCIATION, a Utah nonprofit corporation.



[Signature]  
NOTARY PUBLIC

**EXHIBIT A****(Legal Description of the Grantor Property)**

Beginning at a point on the northwesterly right of way line of Pleasant Grove Blvd in Pleasant Grove, Utah which point is South 89°44'08" West along the Section line 350.45 feet and South 96.84 feet from the Northeast corner of Section 30, Township 5 South, Range 2 East, Salt Lake Base and Meridian; thence along said northwesterly right of way the following two (2) courses: (1) along the arc of a 1,261.98 foot radius curve to the right 106.45 feet through a central angle of 04°49'59", the chord bears South 55°57'32" West 106.42 feet; (2) South 58°22'32" West 249.25 feet; thence leaving said right of way North 31°21'36" West 5.27 feet; thence North 76°29'32" West 37.25 feet; thence South 57°55'33" West 70.01 feet; thence South 13°30'28" West 36.64 feet; thence South 31°21'36" East 5.28 feet to said northwesterly right of way line; thence along said right of way the following three (3) courses: (1) South 58°22'32" West 689.65 feet; (2) along the arc of a 605.82 foot radius curve to the right 231.29 feet through a central angle of 21°52'29", the chord bears South 69°18'44" West 229.89 feet; (3) South 80°14'56" West 96.52 feet; thence North 49°59'22" West 36.76 feet; thence North 00°13'44" West 121.42 feet; thence North 89°22'40" East 14.55 feet; thence North 147.49 feet to the south line of the Karma Holdings Subdivision, Plat "A" on file with the Utah County Recorder's Office; thence North 89°42'00" East along said south line 152.03 feet.

LESS AND EXCEPTING THEREFROM the following two (2) tracts of land more particularly described as:

Beginning at a point which is South 89°44'08" West 900.34 feet and South 100.97 feet from the Northeast corner of Section 30, Township 5 South, Range 2 East, Salt Lake Base and meridian; thence South 29°18'11" West 114.33 feet; thence North 76°00'11" West 261.72 feet; thence North 00°21'48" East 43.01 feet; thence South 89°40'54" West 452.57 feet; thence North 67.63 feet; to a point of curvature; thence along an arc 38.84 feet to the right, having a radius of 25.00 feet, the chord bears North 44°53'38" East 35.05 feet; thence North 89°23'52" East 311.43 feet to a point of curvature; thence along an arc 108.16 feet to the right, having a radius of 472.00 feet, the chord bears South 84°02'14" East 107.93 feet; thence South 77°28'21" East 244.11 feet to a point of curvature; thence along an arc 88.34 feet to the right, having a radius of 272.00 feet, the chord bears South 66°04'29" East 87.96 feet to the point of beginning.

ALSO:

Beginning at a point which is South 89°44'08" West 382.38 feet and South 51.59 feet from the Northeast corner of Section 30, Township 5 South, Range 2 East, Salt Lake Base and Meridian; thence South 56°26'13" West 128.27 feet; thence North 89°44'13" West 305.40 feet to a point of curvature; thence along an arc 207.92 feet to the left, having a radius of 330.00 feet, the chord bears North 57°31'20" West 204.50 feet; thence North 77°28'21" West 60.15 feet; thence South 89°59'47" East 233.53 feet; thence North 00°06'33" East 4.15 feet; thence South 89°44'15" East 370.50 feet; thence South 35°17'38" East 68.34 feet to the point of beginning.

**EXHIBIT B**

**(Legal Description of the Easement Area)**

**DRAINAGE / UTILITY EASEMENT IN FAVOR BLVD 120 PLAT "A"**

BEGINNING AT A POINT WHICH IS SOUTH 89°44'08" WEST 943.42 FEET AND SOUTH 201.42 FEET FROM THE NORTHEAST CORNER OF SECTION 30, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S 85°44'57" E 20.00 FEET; THENCE S 4°49'40" W 5.58 FEET; THENCE S 31°21'36" E 189.06 FEET; THENCE S 55°35'31" W 277.38 FEET; THENCE N 31°20'54" W 39.70 FEET; THENCE N 57°59'36" E 249.00 FEET; THENCE N 31°21'36" W 156.90 FEET; THENCE N 4°49'40" E 25.47 FEET TO THE POINT OF BEGINNING.

**To and including:**

BEGINNING AT A POINT WHICH IS SOUTH 89°44'08" WEST 900.34 FEET AND SOUTH 100.97 FEET FROM THE NORTHEAST CORNER OF SECTION 30, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; TO A POINT OF CURVATURE; THENCE ALONG AN ARC 61.84 FEET TO THE RIGHT, HAVING A RADIUS OF 272.00 FEET, THE CHORD BEARS S 50°15'24" E 61.71 FEET; THENCE S 54°40'39" W 75.30 FEET; THENCE S 18°53'08" W 20.43 FEET; THENCE N 85°44'57" W 35.45 FEET; THENCE N 29°18'11" E 114.33 FEET TO THE POINT OF BEGINNING.

**Together with:**

**DRAINAGE / UTILITY EASEMENT IN FAVOR BLVD 120 PLAT "B"**

BEGINNING AT A POINT WHICH IS SOUTH 89°44'08" WEST 382.38 FEET AND SOUTH 51.59 FEET FROM THE NORTHEAST CORNER OF SECTION 30, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S 35°17'38" E 49.47 FEET TO A POINT OF CURVATURE; THENCE ALONG THE RIGHT OF WAY LINE OF PLEASANT GROVE BLVD AND ALONG AN ARC 106.34 FEET TO THE RIGHT, HAVING A RADIUS OF 1250.00 FEET, THE CHORD BEARS S 55°41'17" W 106.30 FEET; THENCE N 34°19'25" W 50.85 FEET; THENCE N 56°26'13" E 105.48 FEET TO THE POINT OF BEGINNING.

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**EXHIBIT C**

**(Legal Description of the Grantee Property)**

That certain real property located in Pleasant Grove, Utah, being a portion of Parcel No. 14-056-0187, as more particularly described as follows:

Beginning at a point which is South 89°44'08" West 900.34 feet and South 100.97 feet from the Northeast corner of Section 30, Township 5 South, Range 2 East, Salt Lake Base and meridian; thence South 29°18'11" West 114.33 feet; thence North 76°00'11" West 261.72 feet; thence North 00°21'48" East 43.01 feet; thence South 89°40'54" West 452.57 feet; thence North 67.63 feet; to a point of curvature; thence along an arc 38.84 feet to the right, having a radius of 25.00 feet, the chord bears North 44°53'38" East 35.05 feet; thence North 89°23'52" East 311.43 feet to a point of curvature; thence along an arc 108.16 feet to the right, having a radius of 472.00 feet, the chord bears South 84°02'14" East 107.93 feet; thence South 77°28'21" East 244.11 feet to a point of curvature; thence along an arc 88.34 feet to the right, having a radius of 272.00 feet, the chord bears South 66°04'29" East 87.96 feet to the point of beginning.

ALSO:

Beginning at a point which is South 89°44'08" West 382.38 feet and South 51.59 feet from the Northeast corner of Section 30, Township 5 South, Range 2 East, Salt Lake Base and Meridian; thence South 56°26'13" West 128.27 feet; thence North 89°44'13" West 305.40 feet to a point of curvature; thence along an arc 207.92 feet to the left, having a radius of 330.00 feet, the chord bears North 57°31'20" West 204.50 feet; thence North 77°28'21" West 60.15 feet; thence South 89°59'47" East 233.53 feet; thence North 00°06'33" East 4.15 feet; thence South 89°44'15" East 370.50 feet; thence South 35°17'38" East 68.34 feet to the point of beginning.

