

DECLARATION OF RESTRICTIONS
CUMBERLAND HILLS SUBDIVISION NO. 1

3-11
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WHEREAS, the undersigned, ELRO CORPORATION, a Michigan corporation, 177 West Big Beaver Road, Troy, Michigan 48084, hereinafter referred to as "Declarant", being owner of all the lands hereinafter described, and hereinafter referred to as "The Subdivision", desires to create a planned community with permanent open space area, called "Common Area", for the benefit of all residents of The Subdivision, which is located in the Township of Avon, Oakland County, Michigan, and more particularly described as:

RECORDED
OAKLAND COUNTY RECORDS

APR 5 1968

Lots 1 through 235 inclusive of CUMBERLAND HILLS SUBDIVISION NO. 1, of part of the N. 1/2 of Section 27, T.3 N., R.11E., Avon Township, Oakland County, Michigan, according to the plat thereof as recorded in Liber 160 of Plats, Pages 14-18, Oakland County Records; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values and amenities in The Subdivision and for the maintenance of the Common Area, and to this end desires to subject The Subdivision and the Common Area to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of The Subdivision and each owner of a lot therein; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in The Subdivision, to create a legal entity to which should be assigned the powers of owning, maintaining and administering the Common Area and facilities that may be constructed thereon, as well as collecting and disbursing the assessments and charges hereinafter created, and in connection therewith, promoting the recreation, health, safety and welfare of the residents.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the undersigned, its successors and assigns, and all intending purchasers, and future owners of the various lots

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comprising The Subdivision, the undersigned Declarant for itself, its successors and assigns does hereby publish and declare and make known to all intending purchasers and future owners of the various lots comprising The Subdivision, that the same will and shall be used, held, and/or sold expressly subject to the following building and use conditions, restrictions, covenants and agreements which comprise the general improvement plan as well as an Agreement for Subdivision Open Space Plan executed by the Declarant and the Township of Avon, which Agreement was recorded in Liber 7239, Pages 249 thru 257, Oakland County Records, both of which shall be incorporated by reference in all deeds of conveyance and contracts for the sale of said lots and shall run with the land and be binding upon all grantees of individual lots in The Subdivision, and on their respective heirs, personal representatives, successors and assigns.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to the Cumberland Hills Subdivision Association, a Michigan Non-Profit Corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of The Subdivision, including land contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the residential lots within The Subdivision hereinbefore described.

Section 4. "Common Area" shall mean those areas of land shown on the recorded plat of The Subdivision (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot within The Subdivision is described as follows:

LIBER 7453 PAGE 596
"Cumberland Park", Cumberland Hills Subdivision
No. 1 of part of the N. 1/2 of Section 27,
T.3N., R.11E., Avon Township, Oakland County,
Michigan, according to the plat thereof as
recorded in Liber 160, Pages 14, 15, 16, 17 + 18
of plats, Oakland County Records.

Section 5. "Lot" shall mean and refer to any numbered lot shown on any recorded plat of The Subdivision.

Section 6. "Declarant" shall mean and refer to Elro Corporation, a Michigan corporation, its successors and assigns.

Section 7. "Declaration" shall mean and refer to this Declaration of Restrictions, as recorded in the office of the Oakland County Register of Deeds, State of Michigan.

Section 8. "Member" shall mean and refer to those persons entitled to membership in the Association, as provided in this Declaration.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment.

Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- a. the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- b. the right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- c. the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such

dedication or transfer signed by two-thirds of each class of members has been recorded, and provided further, that no such dedication or transfer or determination as to the conditions thereof shall be effective unless the prior consent thereto of the Township of Avon by and through its Township Board of Trustees shall have first been obtained.

Section 2. Delegation of Use.

Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a lot in The Subdivision shall be a mandatory member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The Association members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. When more than one (1) person holds any such interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one (1) lot. Provided, however, until such time as the fee simple title to more than seventy-five (75%) percent of the lots subject to these restrictions shall have vested in parties other than Declarant or a builder purchasing from Declarant for resale, or January 1, 1984, whichever occurs earliest, the Directors of the Association shall be the only parties entitled to a vote in the affairs of the Association. Further, provided, however, said Directors may elect to grant to said members their full voting rights prior to the happening of either of the aforesaid events.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Each Owner of a lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual general assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual general and special assessments, together with interest thereon, collection costs, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon, costs of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property, at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. For the purpose of assessment, the term "Owner" shall exclude Declarant and any builder or developer who purchases a lot for the purpose of constructing improvements thereon for resale to an Owner.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in The Subdivision and in particular for the improvement and maintenance of the Common Area and facilities in The Subdivision, and, the storm water retention basin as more fully provided for in GENERAL PROVISIONS, Section 6 below.

Section 3. Maximum Annual Assessment

Until January 1 of the year immediately following the conveyance of the first lot in The Subdivision to an Owner, the maximum annual assessment shall be Twenty-Five (\$25.00) Dollars per lot.

a. From and after January 1 of the year immediately following the conveyance of the first lot in The Subdivision to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of the first lot in The Subdivision to an Owner, the maximum annual assessment may be increased above five (5%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for that purpose.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any improvement upon the Common Area including fixtures and personal property, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Actions Authorized Under Section 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 15 days nor more than 30 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes

of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment.

Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly or an annual basis.

Section 7. Date of Commencement of Annual Assessments:

Due Dates.

The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the first lot in The Subdivision to an Owner who is not the Declarant, a builder or a developer under the provisions of Section 1, of this Article. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year and shall be collected at the time of permanent loan closing. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date

shall bear interest from the due date at the rate of six (6%) percent per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Exempt Property.

All Common Area and all other property exempt from taxation by state or local governments and dedicated for public use shall be exempt from the assessments, charge and lien created herein.

Section 10. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

BUILDING AND USE RESTRICTIONS FOR THE SUBDIVISION

Section 1. Use of Property.

All lots within The Subdivision shall be used for single residence purposes only, and no building of any kind whatsoever shall be erected, re-erected, moved, or maintained on any lot in The Subdivision except one detached single family dwelling with attached garage. Such dwelling shall be designed and erected for occupation by a single private family.

Section 2. Size of Buildings.

No dwelling shall be permitted on any lot in The Subdivision, unless the living area thereof shall be not less than 1400 square feet; in the case of any multi-level dwelling, the first floor

living area shall not be less than 650 square feet; in any dwelling constructed without a basement an additional one hundred (100) square feet shall be added to the minimum required first floor area requirement. All computations of square footage for determination of the permissibility of erection of a residence shall be exclusive of garages, porches or terraces. No garage shall provide space for less than two (2) automobiles. Carports are specifically prohibited.

Section 3. Minimum Yard Requirements.

No building on any lot in The Subdivision shall be erected nearer than:

- a. Twenty-Two (22') feet from the front lot line; nor
- b. Six (6') feet from each side lot line; nor
- c. Thirty (30") feet from the rear lot line except that twenty-five (25') feet shall apply where said lot shall back to a park or open space; nor
- d. Twenty (20') feet from the side lot line abutting a street or corner lots.

Approval of a variance by the Avon Township Zoning Board of Appeals permitting rear or side yards smaller than the above minimums shall be deemed a valid waiver of this restriction.

Section 4. Animals.

No farm animals or wild animals shall be kept, bred or harbored on any of the said lots. No animals shall be kept, bred or maintained on any lot excepting household pets for the use by the owner and members of his family. No animals shall be kept on the premises for any commercial purpose. Household pets shall have such care so as not to be objectionable or offensive due to noise, odor or unsanitary conditions.

Section 5. Wells.

No well shall be dug, installed or constructed on any of the lots in The Subdivision.

Section 6. Sight Distance at Intersections.

No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines

and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 7. Easements.

a. Easements for the installation and maintenance of utilities, underground television master antenna line, and underground sewage, water and drainage lines, and surface drainage swales, are reserved to Declarant, its successors and assigns, as shown on the recorded plat, and also in, on, under and over a strip of land six (6) feet in width on each side of, and along all rear and side lot lines. The use of all or a part of such easements may at any time or times hereafter be granted or assigned by Declarant, its successors or assigns, to any person, firm, corporation, governmental unit or agency which furnishes such services or utilities. No building may be constructed or maintained over or on any easements; however, after the aforementioned utilities have been installed, planting, fencing, or other lot line improvements shall be allowed, unless otherwise herein provided, so long as they do not interfere with, obstruct, hinder, or impair the drainage plan of The Subdivision and so long as access be granted, without charge or liability for damages, for the maintenance of the utilities or the underground drainage lines so installed, and/or for the installation of additional facilities.

b. Private easements for public utilities have been granted and reserved on the plat of The Subdivision.

Section 8. Temporary Structures.

Trailers, tents, shacks, barns, or any temporary building of any description whatsoever, are expressly prohibited within The Subdivision, and no temporary residence shall be permitted in

unfinished residential buildings. However, the erection of a temporary storage building for materials and supplies to be used in the construction of a dwelling, and which shall be removed from the premises upon completion of the building is permitted.

Section 9. General Conditions.

a. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and the same shall not be kept except in sanitary containers properly concealed from public view. Garbage containers shall not be left at the road for more than twenty-four (24) hours in any one week.

b. No housetrailers, commercial vehicles, boat trailers, boats, camping vehicles or camping trailers may be parked on or stored on any lot in The Subdivision, unless stored fully enclosed within an attached garage. Commercial vehicles and trucks shall not be parked in The Subdivision, or on any lot therein, except while making normal deliveries or pickups in the normal course of business.

c. The yard drainage and grade of all lots in The Subdivision shall be maintained in accordance with the grading plan on file with the Township.

d. No "through the wall" air conditioners may be installed on the front wall of any building in The Subdivision.

e. No outside compressors for central air conditioning units may be located other than in the rear yard and must be installed and maintained in such a manner so as to create no nuisance to the residents of adjacent dwellings.

Section 10. Sales Agency and/or Business Office.

Notwithstanding anything to the contrary elsewhere herein contained, Declarant and/or any builder or builders which it may

designate, may construct and maintain a sales agency and a business office on any lot or lots in The Subdivision which it or they may select, or may use a model house for such purposes, and Declarant and such designated builder or builders may continue to do so until such time as all of the lots in The Subdivision in which Declarant or such other designated builder or builders have an interest are sold.

Section 11. Lease Restrictions.

No owners of any of the lots in The Subdivision shall lease and/or sublet less than the whole of any dwelling.

Section 12. Exterior Surface of Dwellings.

The exterior walls of all dwelling structures in The Subdivision shall be constructed of wood, aluminum or vinyl siding and/or ledge rock, brick, brick veneer and/or stone in any combination. The use of cement block, slag, imitation brick, stucco, cinder block and/or asphalt siding is expressly prohibited.

Section 13. Fences.

a. No fence, wall or solid hedge may be erected, grown or maintained in front of or along the front building line of any lots; provided, however, that low ornamental fencing along the front lot line in architectural harmony with the design of the house, may be erected. The side lot line of each corner lot in The Subdivision which faces a street shall be deemed to be a second front building lot line and shall be subject to the same restrictions as to the erection, growth or maintenance of fences, walls or hedges as is hereinbefore provided for front building lines.

b. No fence or wall may be erected or maintained on or along the side lines of any lot, and/or on or along the rear line of any lot, except fences which are required by local ordinance to enclose swimming pools, or are otherwise required or permitted by the Township of Avon, provided, however, no fence or

or wall may be erected on any portion of the rear twenty (20') feet of Lots 1 through 24, both inclusive.

d. All portions of the lots lying in front of the residential building as hereinbefore set forth, shall be used for ornamental purposes only.

Section 14. Signs.

No sign or billboard shall be placed, erected, or maintained on any lot in The Subdivision, except:

a. One sign advertising the lot, or the house and lot for sale or lease, which said sign shall have a surface of not more than five (5) square feet, and the top of which shall be not more than three (3) feet above the ground; provided, however, that such sign shall have been constructed and installed in a professional manner; and

b. Political signs erected in compliance with the applicable Avon Township Ordinance.

The provisions of this paragraph shall not apply to such signs as may be installed or erected on any lot by Declarant, or any builder which it may designate during the construction period, or during such periods as any residence may be used as a model or for display purposes.

Section 15. Destruction of Building by Fire, etc.

Any debris resulting from the destruction in whole or in part of any dwelling or building on any lot in The Subdivision shall be removed with all reasonable dispatch from such lot and property in order to preserve the sightly condition of The Subdivision.

Section 16. Landscaping.

Upon the completion of a residence on any of the lots in The Subdivision the owner thereof, (and the word "owner", as used in this connection, means the party who purchases a residence from the builder thereof and each subsequent purchaser), shall cause the lot owned by him to be finish-graded and seeded or sodded and

suitably landscaped as soon after the completion of construction as weather permits. The lot and the drainage ditch, if any, contiguous to each lot shall be kept free of weeds by the owner thereof. All landscaping and lawns shall be well-maintained at all times.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement.

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or thereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment.

The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the lot Owners and the Township of Avon and thereafter by an instrument signed by not less than seventy-five percent (75%) of the lot Owners and the Township of Avon. Any amendment must be recorded.

Section 4. Annexation of Additional Lots and Common Area.

In the event that Declarant develops or subdivides additional lands within the area described on Exhibit "A" attached hereto and by this reference incorporated herein, and desires to subject such new development(s) or subdivision(s) to restrictions substantially in the form to those imposed upon Cumberland Hills Subdivision No. 1, including requirements for the payment of maintenance charges and the requirement for mandatory membership in the Cumberland Hills Subdivision Association, said land may be incorporated within said Association with Cumberland Hills Subdivision No. 1 for the purpose of the interpretation and enforcement of the restrictions, and this Subdivision Open Space Plan Agreement, at the option of the Declarant. The exercise of this option by Declarant shall be by the amending of this Declaration of Restrictions to provide for such incorporation in this Declaration of Restrictions applicable to Cumberland Hills Subdivision No. 1, as well as the Declaration of Restriction for said new development or subdivision. In such event, these restrictions and those applicable to the new development or subdivision shall be considered to be reciprocal negative easements thus making the restrictions applicable herein enforceable by property owners in the new land and restrictions applicable to said new land enforceable by property owners of Cumberland Hills Subdivision No. 1.

Section 5. Assignment or Transfer of Rights and Powers.

Any or all of the rights and powers, titles, easements and estates hereby reserved or given to Declarant, may be assigned by it to the Association composed of the Owners of the properties in The Subdivision. Any such assignment or transfer shall be made by appropriate instrument, in writing, in which the assignee shall join for the purpose of evidencing its consent to the acceptance of such powers and rights, and such assignee shall thereupon have the same rights and powers, and be subject to the same obligations and duties as herein given and reserved to and assumed by Declarant in connection with the rights, powers, and easements so assigned,

and such instrument, when executed by such assignee shall without further act, release said Declarant from the obligations and duties in connection therewith.

Section 6. The Association shall be responsible for the maintenance of the storm water retention basin and the cost thereof as more fully set forth hereinafter:

The storm water retention basin shall be used for no purpose other than retention of surface water until such time as the Township may determine and signify by written notice to the Association or its successors that there is no further need for the facility. Notwithstanding this requirement, the Association may use water from the basin for purposes of irrigation.

Maintenance of the retention basin shall include keeping the bottom of the retention basin free from silt and debris, removing harmful algae, maintaining a steel grating across the pond's inlets, the control of erosion, and such other maintenance as is reasonable and necessary to the intended functioning of the basin.

IN WITNESS WHEREOF, the undersigned, being all of the parties with an ownership interest in the lands hereinabove described, have caused these presents to be executed on this 9th day of September, 1978.

In the presence of:

Michael C. Hechtman
Michael C. Hechtman

Harry F. Terbrueggen
Harry F. Terbrueggen

ELRO CORPORATION,
a Michigan corporation
By: Graham A. Orley
Graham A. Orley, President

STATE OF MICHIGAN }
COUNTY OF OAKLAND } ss

On this 9th day of September, 1978, before me personally appeared Graham A. Orley who, being by me duly sworn did say that he is the President of Elro Corporation, a Michigan corporation, and that the said instrument was signed on behalf of said corporation and the said instrument to be the free act and deed of said corporation.

This instrument drafted by and after recording return to:
Michael C. Hechtman
177 West Big Beaver Road
Troy, Michigan 48084

Susan J. Dunlop
Susan J. Dunlop, Notary Public
Oakland County
My Commission Expires: 8-10-80

EXHIBIT "A"

Part of the North 1/2 of Section 27, T.3N., R.11E., Avon Township, Oakland County, Michigan, being more particularly described as follows: Beginning at the North 1/4 Corner of Section 27, T.3N., R.11E., thence along the North line of Section 27, S 89°54'00" E 1269.18 ft.; thence along the boundary of "Juengel's Orchards" (Liber 72, Pages 32, O.C.R.), S 01°05'40" W 2423.75 ft. and N 89°53'00" E 60.00 ft. and S 01°05'40" W 298.09 ft.; thence along the East and West 1/4 line of Section 27, S 85°04'55" W 1378.21 ft. to the center post of Section 27; thence along East and West 1/4 line of Section 27, S 85°22'57" W 1918.79 ft.; thence N 00°27'31" E 1442.11 ft.; thence along the boundary of "Starr Estates" (Liber 64, Page 35, O.C.R.), N 89°34'41" E 135.00 ft. and N 00°29'06" W 211.99 ft.; thence along the boundary of "Hamlin Estates Subdivision" (Liber 74, Page 16, O.C.R.), N 88°51'40" E 477.10 ft. and N 00°46'05" W 972.89 ft.; thence S 89°33'17" E 491.82 ft.; thence S 03°11'43" W 36.04 ft.; thence S 89°35'35" E 168.74 ft.; thence N 00°29'39" E 394.28 ft.; thence along the North line of Section 27, N 89°34'29" E 737.89 ft. to the point of beginning.
(8,220,674 Square Feet --- 188.721 Acres)