

**CORINTH ECONOMIC DEVELOPMENT CORPORATION PERFORMANCE  
AGREEMENT WITH DATCU**

This Corinth Economic Development Corporation Performance Agreement (this "Agreement") by and between DATCU, a Credit Union incorporated under the laws of Texas, (the "Developer"), and the Corinth Economic Development Corporation, a Texas non-profit corporation (the "CED Corporation"), is made and executed based on the following recitals, terms, and conditions to be effective April 19, 2014 (the "Effective Date"). The Developer and the CED Corporation are each referred to as a "Party" and collectively as the "Parties."

**Recitals**

**WHEREAS**, pursuant to the applicable procedures described in Chapters 501 through 505 of the Texas Local Government Code, as amended (the "Act"), at an election conducted on January 17, 1998, the voters within the City authorized the City to levy and collect on behalf of the CED Corporation a one-half of one percent (0.5 %) sales and use tax on taxable sales and services within the City for its corporate purposes, and said tax has been levied and is being collected; and

**WHEREAS**, the CED Corporation is a Type B economic development corporation operating pursuant to the Act and the Texas Non-Profit Corporation Act as codified in the Texas Business Organizations Code, as amended; and

**WHEREAS**, the Act authorizes the CED Corporation to participate in economic development programs for the benefit of the City and its present and future citizens, and to enter into agreements to participate financially in economic development activities within and for the City and its citizens; and

**WHEREAS**, the Act prohibits the provision of a direct incentive, unless the CED Corporation enters into a performance agreement providing, at a minimum: (a) a schedule of additional payroll or jobs to be created or retained by the CED Corporation's investment, a schedule of capital investments to be made as consideration for any direct incentives provided by the CED Corporation, and a provision specifying the terms and conditions upon which repayment must be made if the performance standards are not met; or (b) for a CED Corporation authorized to be created by a municipality of 20,000 or less, an agreement to provide expenditures, targeted infrastructure and improvements found by the Board of Directors to promote new or expanded business development; and

**WHEREAS**, prior to the approval of this Agreement, the Developer completed the City's economic development incentives application; and

**WHEREAS**, the Developer has applied to the CED Corporation for financial incentives necessary for the Project to be located within the Property; and

**WHEREAS**, the Board has determined that the financial incentives provided to the Developer for the Project is consistent with and meet the definitions of “project” and “costs” contained in Section 505.158 of the Act; and

**WHEREAS**, financial incentives are intended as contributions to capital to attract businesses to locate to and operate their businesses within the City and to obtain from the Developer a commitment to undertake operations in the City; and

**WHEREAS**, the City expects the financial incentives to result in an indirect benefit to the community in the form of increased jobs, sales tax revenues, and ad valorem tax revenues; and

**WHEREAS**, the Board finds that the Project and the funding of the Project Costs by the CED Corporation are necessary to promote or develop new or expanded business enterprises; and

**WHEREAS**, to secure the financial incentives, the Developer will satisfy performance standards described in this Agreement, and as a result, the incentives will serve a legitimate public purpose and provide clear public benefit in return; and

**WHEREAS**, the predominant purpose of this Agreement is to accomplish a public purpose, namely the promotion and development of new and expanded business enterprises to provide and encourage employment and the public welfare and not to benefit private parties; and

**WHEREAS**, the provisions of this Agreement, including the performance standards and associated penalties ensure that a public purpose is satisfied and the City receives a benefit in return for the financing of the Project Costs by the CED Corporation; and

**WHEREAS**, on February 17, 2014, a notice describing the Project was published in Denton Record Chronicle, a newspaper of general circulation in the City; and

**WHEREAS**, following the 60<sup>th</sup> day after publication of such notice, the CED Corporation intends to undertake the Project; and

**WHEREAS**, on March 3, 2014, the Board authorized the President to execute this Agreement; and

**WHEREAS**, the Developer understands that Section 505.158 of the Act requires the City Council to adopt a resolution authorizing this Project after giving the resolution at least two separate readings to approve all programs and expenditures of the CED Corporation; and

**WHEREAS**, on April 3, 2014, the City Council held a meeting and adopted Resolution 14-\_\_--\_\_ approving this Agreement with two readings; **NOW THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the CED Corporation and the Developer agree as follows:

## **SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration, and promises that bind the Parties.

## **SECTION 2. TERM.**

Unless a petition is filed with the Corporation before April 19, 2014, this Agreement shall be effective as of the Effective Date of this Agreement, and shall terminate at midnight five years from the date of issuance of a certificate of occupancy for the Improvements (the "Expiration Date.")

## **SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement. Words or phrases used in this Agreement that have their initial letters capitalized shall have the meanings given to them in Section 3 unless the context in which the words or phrases are used clearly requires a different meaning.

“Act”: Chapters 501 through 505, Texas Local Government Code, as amended.

“Agreement”: this CED Corporation Performance Agreement, together with all exhibits and schedules attached hereto from time to time.

“Board”: the Board of Directors of the CED Corporation.

“City”: the City of Corinth, Texas.

“Default” is defined by Section 7.

“Event of Bankruptcy”: the dissolution or termination of Developer’s existence as a going business, insolvency, appointment of receiver for any significant part of Developer’s property and such appointment is not terminated within ninety days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer and such proceeding is not dismissed within ninety days after the filing thereof.

“Executive Director”: the executive director of the CED Corporation.

“Facility”: the DATCU Headquarters Building to be constructed on the Property.

“Financial Incentives”: CED Corporation Sales Tax Revenues that are deposited into the CED Corporation and used in accordance with the Act.

“Grant”: an economic development grant in the amount of \$150,000 for Improvements, to be paid by the CED Corporation to Developer as reimbursement for a portion of the costs of the Improvements.

“Improvements”: buildings, structures, fixed machinery and equipment, site improvements, and related fixed improvements necessary to the operation and administration of the Facility, and that is developed, constructed, or installed in the Zone by or on behalf of the Owner subsequent to the Agreement Effective Date.

“Project”: one or more projects authorized by the Act to be undertaken and financed by the CED Corporation, including for a Type B Corporation authorized to be created by a municipality with a population of 20,000 or less, the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the Board to promote new or expanded business development.

“Project Costs”: all costs of Projects authorized by the Act to be paid from Type B Sales Tax Revenue including, but not limited to, the “costs” defined by Section 501.152 of the Act.

“Property”: the property described on Exhibit A.

“State Comptroller”: the Office of the Texas Comptroller of Public Accounts, or any successor agency.

“Taxable Value”: the appraised value of Improvements as certified by the Denton County Appraisal District as of January 1 of a given year.

“Type B Sales Tax”: the one-half of one percent (0.5%) sales and use tax on taxable sales and services within the City that, pursuant to the procedures prescribed in the Act, the voters within the City authorized for levy and collection on behalf of the CED Corporation for its corporate purposes at an election conducted on November 5, 2002.

“Type B Sales Tax Revenues”: the proceeds of the Type B Sales Tax that are actually received by the CED Corporation, or by the City on behalf of the CED Corporation from the State Comptroller, from the levy and collection of the Type B Sales Tax from and after the Effective Date.

#### **SECTION 4. REVENUES; REPORTING; AND RECORDS.**

- (a) This Agreement entitles the CED Corporation or the City to request sales and use tax information from the State Comptroller pursuant to Section 321.3022 of the Texas Tax Code, as amended. This designation allows the CED Corporation or the City to obtain an “Area Report” from the State Comptroller that identifies sales and use tax information from the State Comptroller. The Developer agrees upon request to assist the CED Corporation and the City in obtaining sufficient taxpayer information to request such reports. The CED Corporation hereby agrees to keep this information “confidential” consistent with Section 321.3022(f) of the Texas Tax Code.

- (b) The City and the CED Corporation reserve the right to conduct audits of the sales and use tax records of businesses located in the Property. The City and the CED Corporation shall keep, or cause to be kept: (1) copies of the State Comptroller's monthly reports on sales and use tax; (2) proper and current books and accounts in which complete and accurate entries shall be made of the amount of taxes received by the City and the CED Corporation from the State of Texas attributed to the Property; and (3) records of all other calculations, allocations, and payments that are required by this Agreement. Upon the request of the Developer, the City and the CED Corporation shall provide copies of the above described records to the Developer.

#### **SECTION 5. GRANT FOR PROJECT COSTS.**

- (a) Subject to the obligation of the Developer to repay the Grant pursuant to Section 7(b) hereof and the continued satisfaction of all the terms and conditions of this Agreement by the Developer, the CEDC agrees to provide the Developer with the Grant described in subsection (b) hereof.
- (b) The CED Corporation shall issue the Grant for Project Costs (as submitted by Developer and approved by the Executive Director) within 30 days after the issuance of a certificate of occupancy for the Improvements to the Facility; provided that the Executive Director may request documentation to verify DATCU's payment for the cost of the Improvements.

#### **SECTION 6. OBLIGATIONS OF DEVELOPER.**

- (a) Developer shall commence vertical construction of the Facility not later than October 1, 2014, and obtain a certificate of occupancy on or before December 31, 2015, subject to any delays approved by the CED Corporation.
- (b) During the term of this Agreement following the issuance of a certificate of occupancy for the Facility and Improvements and continuing thereafter for a period of five years, the Developer shall continuously operate the Improvements as the corporate headquarters of DATCU.
- (c) Developer shall expend at least \$12,000,000 to construct Improvements on the Property and open the Facility on or before December 31, 2015.
- (d) The Developer agrees to hire 75 full time employees to work at the Facility not later than 24 months after the issuance of the certificate of occupancy and maintain the payroll for at least 75 employees for the remainder of the term of this Agreement.
- (e) The Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Developer and the CED Corporation, and any related agreements between the Developer and the CED Corporation.

- (e) Commencing January 1, 2016, the Developer shall maintain a Minimum Taxable Value of \$12,000,000.00 for Improvements to the Property. In the event that Denton County Appraisal District fails to assess the Minimum Taxable Value, Developer shall be in default of this Agreement.
- (f) The Developer shall, on or before January 1 of each year, submit a report to Director which summarizes and certifies Developer's compliance with the terms of this Agreement.

#### **SECTION 7. DEFAULT; REMEDIES.**

- (a) This Agreement shall terminate upon the occurrence of any one of the following:
  - (1) by mutual written agreement of the parties; or
  - (2) the Expiration Date;
- (b) If either party fails to perform any of the terms or conditions of this Agreement, the other Party may give written notice of such failure to the non-performing Party, which notice shall describe the nature of the failed performance. If the non-performing Party does not cure or remedy the failed performance within 30 days after notice, then the non-performing Party shall be in "Default" under this Agreement. In addition, the CED Corporation may give DATCU notice in the event of one or more of the following occurrences:
  - (1) if Company fails to create and maintain 75 jobs during the period described in subsection 6(d) of this Agreement;
  - (2) if Company suffers an Event of Bankruptcy or Insolvency;
  - (3) if any taxes and/or permit fees owed to the City or the State of Texas by Company shall become delinquent (provided, however the Company retains the right to timely and properly protest and contest any such taxes and or permit fees);
  - (4) if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; or
  - (5) if Denton County Appraisal District fails to assess the Minimum Assessed Value for 2016 or any subsequent year of the term of this Agreement.
- (c) If the Company is in Default under this Section 7, the EDC Corporation may terminate the Agreement upon notice to DATCU and pursue any remedies available at law or in equity, including, but not limited to, exercise of the right of offset against any amounts to which the Company is entitled under this Agreement.

- (d) In the event the CED Corporation terminates the Agreement pursuant to Section 7 (b), the Company shall immediately pay to the CED Corporation an amount equal to the Grant paid by the CED Corporation to the Company under this Agreement prior to the date of such termination, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, of the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the SEDC) as its prime or base commercial lending rate, from the Effective Date until paid. In the event that Company fails to pay such amount, Company agrees to pay CED Corporation's reasonable attorney's fees and costs to collect such amount.

#### **SECTION 8. REPRESENTATIONS OF THE DEVELOPER.**

- (a) Developer is a Texas credit union duly authorized, created, and existing in good standing under the laws of the State of Texas.
- (b) The Developer has the power, authority, and legal right to enter into and perform its obligations under this Agreement, and the execution, delivery, and performance of those obligations: have been duly authorized; will not, to the best knowledge of the Developer, violate any judgment, order, law or regulation applicable to the Developer: and do not constitute a default under, or result in the creation of, any lien, charge, encumbrance, or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party, or by which the Developer or its assets may be bound or affected.
- (c) This Agreement has been duly authorized, executed, and delivered by the Developer and constitutes a legal, valid, and binding obligation of the Developer enforceable in accordance with its terms.

#### **SECTION 9. ADDITIONAL PROVISIONS; LIEN**

- (a) This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party sought to be charged or bound by the alteration or amendment. No course of dealing on the part of any Party, or failure or delay by any Party with respect to the exercise of any right, power, or privilege under this Agreement, shall operate as a waiver thereof.
- (b) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto or to any assignment hereof.

- (d) Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.
- (e) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (f) Any notice or other communication required or permitted by this Agreement is effective when in writing (i) and personally delivered by any nationally recognized delivery service such as FedEx or UPS, or (ii) three days after the notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows or, in the case of a change of address, as provided in a notice notifying the other Party of such address change:

To the Developer:  
Glen McKenzie, President  
DATCU  
Post Office Box 827  
Denton, Texas 76202

To the CED Corporation:  
Guy Brown  
CEDC Director  
3300 Corinth Parkway  
Corinth, Texas 76208

With a copy to:  
Debra Drayovitch, Esquire  
620 W. Hickory Street  
Denton, Texas 76201

- (g) If a court finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render the provision invalid or unenforceable as to any other persons or circumstances. To the extent feasible, any provision found to be invalid or unenforceable shall be deemed to be modified to be valid and enforceable; however, if the provisions of this Agreement shall remain valid and enforceable and unaffected by the stricken provision.
- (h) Where the context permits, words used in this Agreement in the singular also include the plural and vice versa, and the definitions of such words in the singular also apply to such words when used in the plural and vice versa.
- (i) Time is of the essence in the performance of this Agreement.
- (j) The CED Corporation is not required by State law to comply with the competitive bidding requirements applicable to the City.
- (k) The Developer certifies (and shall cause assignee to certify) that it does not and will not knowingly employ an undocumented worker (in accordance with Chapter 2264 of the Texas Government Code, as amended) in connection with the performance of any of their respective obligations under this Agreement. If during the Term of this Agreement, the Developer is convicted of a violation under 8 U.S.C. §1324 a(f), the Developer shall



repay the amount of the public subsidy provided under this Agreement as required by law. Pursuant to Section 2264.101, Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

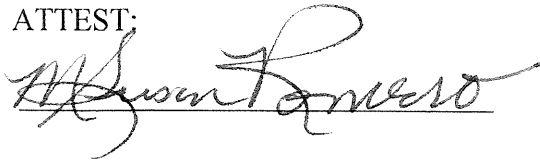
- (l) DEVELOPER COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE CED CORPORATION, ITS OFFICERS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, AND LIABILITY OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER'S ACTIVITIES UNDER THIS AGREEMENT, WHETHER OR NOT ARISING FROM ANY ACTS OR OMISSIONS OF DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR OF DEVELOPER, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES, WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CED CORPORATION UNDER TEXAS LAW.
- (m) The provisions of this indemnification are solely for the benefit of the CED Corporation and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Developer shall promptly advise the CED Corporation in writing of any claim or demand against the CED Corporation or Developer known to developer related to or arising out of Developer's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Developer's cost. The CED Corporation shall have the right, at its option and at its own expense, to participate in such defense without relieving Developer of any of its obligations under this paragraph. Developer further agrees to defend, at its own expense and on behalf of the CED Corporation and in the name of the CED Corporation, any claim or litigation brought against the CED Corporation and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death or damage for which this indemnity shall apply, as set forth above. Developer's obligations under this subsection and subsection (l) shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.


DEVELOPER: DATCU, a Texas Credit Union

  
\_\_\_\_\_  
GLEN MCKENZIE, PRESIDENT

ATTEST:

  
\_\_\_\_\_  
SUSAN ROMERO

CORINTH ECONOMIC DEVELOPMENT  
CORPORATION

  
\_\_\_\_\_  
BILL HEIDEMANN, PRESIDENT

ATTEST:

  
\_\_\_\_\_  
GUY BROWN, EXECUTIVE DIRECTOR

### EXHIBIT A - THE PROPERTY

ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE J.B. THETFORD SURVEY, ABSTRACT NUMBER 1308, CITY OF CORINTH, DENTON COUNTY, TEXAS, AND BEING A PART OF A CALLED 11.536 ACRE TRACT, DESCRIBED IN A DEED TO JOHN M. BUSHMAN, RECORDED IN VOLUME 1955, PAGE 672, REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS, AND BEING ALL OF LOT 1, BLOCK FOUR, CORINTH SHORES ESTATES, AN ADDITION TO THE CITY OF CORINTH, ACCORDING TO THE PLAT THEREOF, RECORDED IN CABINET A, PAGE 47, PLAT RECORDS, DENTON COUNTY, TEXAS;

BEGINNING AT 1/2 INCH IRON ROD FOUND FOR THE EASTERN MOST CORNER OF LOT 1, BLOCK 1, HARLEY-DAVIDSON CORINTH, AN ADDITION TO THE CITY OF CORINTH, ACCORDING TO THE PLAT THEREOF, RECORDED IN CABINET Y, PAGE 212, PLAT RECORDS AND BEING ON THE EAST LINE OF SAID BUSHMAN TRACT AND THE WEST RIGHT OF WAY LINE OF INTERSTATE HIGHWAY 35E;

THENCE SOUTH 38 DEGREES 19 MINUTES 00 SECONDS EAST WITH THE EAST LINE OF SAID BUSHMAN TRACT AND THE WEST RIGHT OF WAY LINE, A DISTANCE OF 299.20 FEET TO A 1/2 INCH IRON ROD FOUND FOR ANGLE POINT;

THENCE SOUTH 00 DEGREES 36 MINUTES 34 SECONDS EAST WITH THE EAST LINE OF SAID BUSHMAN TRACT AND THE WEST RIGHT OF WAY LINE, A DISTANCE OF 415.69 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID BUSHMAN TRACT;

THENCE NORTH 88 DEGREES 40 MINUTES 27 SECONDS WEST WITH THE SOUTH LINE OF SAID BUSHMAN TRACT, A DISTANCE OF 37.95 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE NORTHEAST CORNER OF SAID LOT 1, BLOCK FOUR;

THENCE SOUTH 01 DEGREES 03 MINUTES 19 SECONDS EAST WITH THE EAST LINE OF SAID LOT 1, BLOCK FOUR, A DISTANCE OF 122.88 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID LOT 1, BLOCK FOUR, AND BEING ON THE NORTH RIGHT OF WAY OF WILDWOOD DRIVE;

THENCE NORTH 88 DEGREES 02 MINUTES 56 SECONDS WEST WITH THE SOUTH LINE OF SAID LOT 1, BLOCK FOUR, AND THE NORTH RIGHT OF WAY LINE OF WILDWOOD DRIVE, A DISTANCE OF 122.24 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID LOT 1, BLOCK FOUR;

THENCE NORTH 00 DEGREES 51 MINUTES 55 SECONDS WEST WITH THE WEST LINE OF SAID LOT 1, BLOCK FOUR, A DISTANCE OF 123.05 FEET TO A 5/8 INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF SAID LOT 1, AND BEING ON THE SOUTH LINE OF SAID BUSHMAN TRACT;

THENCE NORTH 88 DEGREES 01 MINUTES 55 SECONDS WEST WITH THE SOUTH LINE OF SAID BUSHMAN TRACT, A DISTANCE OF 239.59 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHERN MOST SOUTH EAST CORNER OF SAID LOT 1, BLOCK 1;

THENCE NORTH 00 DEGREES 45 MINUTES 18 SECONDS WEST WITH THE EAST LINE OF SAID LOT 1, BLOCK 1, A DISTANCE OF 318.21 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

THENCE NORTH 38 DEGREES 22 MINUTES 20 SECONDS WEST WITH THE EAST LINE OF SAID LOT 1, BLOCK 1, A DISTANCE OF 154.01 FEET TO A 1/2 INCH IRON ROD FOUND FOR AN INNER ELL CORNER OF SAID LOT 1, BLOCK 1;

THENCE NORTH 57 DEGREES 20 MINUTES 45 SECONDS EAST WITH A SOUTH LINE OF SAID LOT 1, BLOCK 1, A DISTANCE OF 367.04 FEET TO THE POINT OF BEGINNING AND CONTAINING IN ALL 5.610 ACRES OF LAND.