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May 15, 2007

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COMMISSION

GOVERNMENTAL CONSULTANTS
JONATHAN M. COSTELLO
MARGARET A. MENDUNI

Ann Cole, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Complaint of Barrington Estates Property Holdings, LLC to Enforce Water Utility Agreement with Lake Utility Services, Inc. and Request for Expedited Relief

070317-1WU

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket on behalf of Barrington Estates Property Holdings, LLC ("BEPH") are the original and fifteen copies of Complaint of Barrington Estates Property Holdings, LLC to Enforce Water Utility Agreement with Lake Utility Services, Inc. and Request for Expedited Relief.

Please acknowledge receipt of these documents by stamping the extra copy of this letter filed and returning the copy to me. Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

KAH/vp
Enclosures

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

04029 MAY 15 08

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Barrington Estates Property Holdings, LLC to Enforce Water Utility Agreement with Lake Utility Services, Inc. and Request for Expedited Relief

COMPLAINT

Barrington Estates Property Holdings, LLC ("BEPH"), by and through its undersigned counsel and pursuant to Sections 120.569, 120.57, and 367.121, Florida Statutes, and Rule 25-30.560 and Chapters 25-22 and 28-106, Florida Administrative Code, hereby files this Complaint against Lake Utility Services, Inc. ("LUSI") for enforcement of the Water Utility Agreement ("Agreement") entered into between BEPH and LUSI for water service in Lake County, Florida. In light of the facts and circumstances as alleged below, BEPH further requests that the Commission grant emergency relief as requested herein on an expedited basis. As grounds for this Complaint, Barrington Estates asserts:

INTRODUCTION

1. The name and address of the Complainant is:

Barrington Estates Property Holdings, LLC
232 Mohawk Road
Clermont, Florida 34711

2. The name, address, telephone number and facsimile numbers of the attorneys

representing BEPH in this proceeding are:

Kenneth A. Hoffman, Esquire
Martin P. McDonnell, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
215 South Monroe Street, Suite 420
Tallahassee, Florida, 32301
Telephone number (850) 681 - 6788
Facsimile number (850) 681 - 6515

DOCUMENT NUMBER-DATE

04029 MAY 15 8

FPSC-COMMISSION CLERK

3. This Complaint requests the Commission to enforce the Agreement that has been executed by both BEPH and LUSI. A copy of the Agreement is attached hereto as Exhibit A. Specifically, BEPH respectfully requests that the Commission order LUSI to provide water to BEPH's property and development on or before June 30, 2007 as required under the Agreement.

BACKGROUND

4. BEPH is a Florida limited liability corporation authorized to and conducting business in the State of Florida. BEPH is the owner of certain real property in Lake County, Florida. BEPH intends to plan, design and construct a residential development on said property that will be known as Barrington Estates (the "development"). BEPH's plan for the development anticipates the subdivision and construction of single-family residential homes on up to a total of 406 lots.

5. LUSI is a certificated water utility company regulated by the Florida Public Service Commission. A portion of the development is located within the certificated water (but not wastewater) territory of LUSI in Lake County, Florida. Approximately one-third of the property anticipated for the development, up to approximately 148 lots, is located inside LUSI's certificated water territory.

6. Pursuant to the Agreement, BEPH paid LUSI a cash contribution in aid of construction which, pursuant to the Agreement, reflects "the total and final amount due for all facilities provided by utility that are necessary to provide water service to the property." (Agreement, at 2) The cash contribution in aid of construction was paid in full to LUSI on or about February 13, 2007. Pursuant to the Agreement, the cash contribution in aid of construction is to be used by LUSI to pay for the costs to provide service to the property, including but not limited to, the costs to

design, engineer, construct and permit facilities used to provide service to the property. BEPH has performed all of its obligations and satisfied all conditions precedent under the Agreement. In return for the cash contribution in aid of construction, the Agreement requires LUSI to provide water to Barrington Estates by June 30, 2007. (Agreement, at 1, 2). Barrington Estates has fully relied on LUSI's agreement to provide water service to the development by June 30, 2007, and has executed contract with a national builder for the sale of the lots in the development that is conditioned upon LUSI's provision of water services to the development by June 30, 2007.

COUNT I

ANTICIPATORY BREACH OF CONTRACT OF AGREEMENT

7. BEPH realleges and incorporates by reference the allegations in paragraph 1-6 as though fully set forth herein, and further alleges:

8. On May 11, 2007, BEPH received notice from LUSI that LUSI does not plan to provide water service to the development by June 30, 2007. BEPH is currently in the process of executing a contract with a national builder that requires the provision of water service to the property. If LUSI fails to perform its obligation under the Agreement by not provisioning water service by June 30, 2007, BEPH will be unable to perform its obligations under the contract with the builder and will lose a contract valued at over \$9 million.

9. In addition to LUSI's contractual obligation to provide water service on or before June 30, 2007 under the Agreement, the Commission has the statutory authority under Section 367.121, Florida Statutes (2006), to require LUSI to construct, improve and/or extend its facility to provide adequate and proper service to Barrington Estates on or before June 30, 2007.

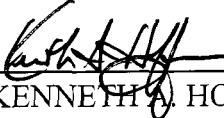
10. In light of BEPH's need for, and LUSI's agreement to provide, water services to the

development by June 30, 2007, Barrington Estates requests that the Commission act on this Complaint on an expedited basis. Specifically, Barrington Estates asks that the Commission enter an emergency order requiring LUSI to comply with the terms of the Water Utility Agreement.

WHEREFORE, Barrington Estates respectfully requests that the Commission:

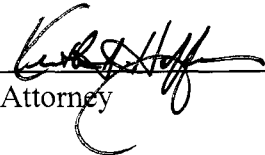
- a. Issue an emergency order requiring LUSI to provide water service to the development by June 30, 2007, pursuant to the terms of the Agreement; and
- b. Grant such other relief as the Commission deems just, reasonable and proper.

RESPECTFULLY SUBMITTED this 15th day of May, 2007.


KENNETH A. HOFFMAN, ESQUIRE
FLA. BAR No.
MARTIN P. MCDONNELL, ESQUIRE
FLA BAR No.: 301728
Rutledge, Ecenia, Purnell & Hoffman, P.A.
215 South Monroe Street, Suite 420
P.O. Box 551
Tallahassee, FL 32302
850-681-6788 (telephone)
850-681-6515 (telecopier)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail and Facsimile Transmission this 15th day of May, 2007 to Martin S. Friedman, Esquire, Rose, Sundstrom & Bentley, LLP, 2180 West State Road 434, Suite 2118, Longwood, Florida 32779.



Attorney

**WATER UTILITY AGREEMENT
BARRINGTON ESTATES, PHASES 1 AND 2
LAKE COUNTY, FLORIDA**

THIS UTILITY AGREEMENT dated this 19th day of February, 2007 is entered into by and between Lake Utility Services, Inc., a Florida corporation (hereinafter referred to as "Utility"), and Barrington Estates Property Holdings, LLC, a Florida limited liability corporation (hereinafter referred to as the "Owner"), at times referred to herein collectively as the "Parties."

WITNESSETH

WHEREAS, Owner is the owner of approximately 49.6 acres of real property situated in Lake County, Florida, described with particularity in "Exhibit A" attached hereto and made a part hereof, which property, also known as Barrington Estates, Phases 1 and 2, is hereinafter referred to as the "Property"; and

WHEREAS, the Property may hereafter be developed and improved into a development consisting of approximately 148 single family homes requiring water service (hereinafter referred to as the "Development"); and

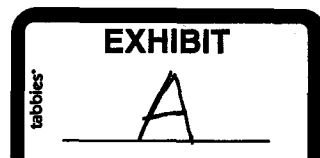
WHEREAS, Utility is the owner and operator of water production and distribution facilities within its certificated service area which encompasses the Property; and

WHEREAS, this Utility Agreement is the result of extensive negotiations between the Parties, including a mediation conducted by the Florida Public Service Commission ("FPSC") Staff; and

WHEREAS, the Parties have agreed that the terms and conditions of their Settlement Agreement resulting from said mediation are to be reflected in this Utility Agreement; and

WHEREAS, Utility has agreed to make its water service available to the Development on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises hereof and the work to be done



by Utility and the sums to be paid to Utility by Owner as described hereafter, Owner and Utility agree as follows:

1. EXCLUSIVE SERVICE TO THE PROPERTY. Owner hereby agrees and covenants that all improvements hereafter constructed on the Property shall be served exclusively by Utility's water facilities, and Owner further agrees that this grant and agreement shall be a covenant binding upon and running with title to the Property. Utility represents and warrants that it has sufficient capacity available to serve the Property and has reserved such capacity for the provision of service to the Property. Utility hereby agrees to make water available to the Development hereafter constructed on the Property for and in consideration of the "Contribution Connection" as defined in Paragraph 2 below and under the other terms and conditions referred to in this Agreement. Utility agrees that such services shall be made available through Utility's facilities, which Utility has or intends to construct, and through the facilities to be constructed by Owner; provided, however, that if Utility is prevented by law or governmental regulation from constructing or expanding plants and facilities, or from providing such water service to the Property, Utility shall have no liability to Owner whatsoever except that Utility shall be obligated to return any and all monies and funds paid by Owner to Utility hereunder, and this Agreement shall thereupon be terminated. Utility represents and warrants that as of the date of this Agreement, there is no law or governmental regulation prohibiting Utility from providing water service to the Property. If this Agreement is terminated because Utility is not able to provide service to the Property for the reasons stated above in this Paragraph 1, Utility shall not formally or informally oppose the relief sought by Presco Associates, LLC ("Presco") in Presco's Petition for Declaratory Statement filed in FPSC Docket No. 060285-SU. Utility further agrees that the water service to be provided hereunder shall meet the current standards or requirements, as the case may be, of all state, local, and federal governmental agencies having jurisdiction over Utility; and Owner shall not be responsible for any failure of facilities constructed by Owner to meet or comply with such standards if such facilities are constructed in accordance with the plans

and specifications of the Utility as provided in Paragraph 4 of this Agreement and are operated by the Utility as part of the Utility's agreement to provide water service to Phases 1 and 2 of the Property. The acceptance of any such Owner-constructed facilities by Utility shall not be deemed to be an admission by Utility that Utility is responsible for any failure of such facilities to meet or comply with the above described governmental standards or requirements. Utility hereby agrees to provide water service to the Development by June 30, 2007.

2. CONTRIBUTION-IN-AID-OF-CONSTRUCTION. Owner hereby agrees to pay Utility a cash contribution in aid of construction in the total amount of \$115,860.00 which sum reflects the total and final amount due for all facilities provided by Utility that are necessary to provide water service to the Property. Said contribution shall hereinafter be referred to as the "Connection Contribution." The Connection Contribution in the amount of \$115,860 shall be paid by Owner to Utility with the execution of this Agreement. The payment of the Connection Contribution shall be paid in cash or cashier's check, or other funds acceptable to Utility. The Connection Contribution shall be the sole and final amount paid by Owner to Utility under this Agreement, and shall not be subject to change, modification or true-up. The Owner shall not be responsible for payment of meter installation charges as set forth in Paragraph 7 of this Agreement. The Connection Contribution shall be used by Utility to pay for the costs to provide service to the Property, including but not limited to, the costs to design, engineer, construct and permit facilities (and all costs related thereto) used to provide service to the Property. Utility shall cooperate with Owner and shall execute and furnish any and all applications, permit applications, information or other documentation to governmental agencies or authorities as requested by Owner, including but not limited to an affirmation by Utility that it will furnish water service to the Development or Property, to accomplish the provision of service to the Property by June 30, 2007. Under no circumstances shall Owner be entitled to any return of all, or any part of, the amount paid as the Connection Contribution as described in this Paragraph 2, unless Utility shall be unable to render services as described in Paragraph 1 hereof, in which case Utility shall refund to Owner the full Contribution Connection amount paid by Owner hereunder. Owner shall pay

Utility its FPLSC- approved rates for water service in the event Owner requests retail water service from the Utility.

3. OFF-SITE IMPROVEMENTS. The interconnection point for the water service provided by Utility to the Property will be at the front entrance of the Property on the west side of County Road 561 and such interconnection with the On-Site Facilities shall be consistent with standard engineering and utility practices. To the extent any off-site improvements are determined by the Utility to be necessary to establish such interconnection point and provide water service to the Property ("Off-Site Improvements"), Utility shall be responsible for constructing, at Utility's sole cost and expense, such Off-Site Improvements and interconnecting the Off-Site Improvements with the On-Site Facilities constructed by Owner at the property line at the front entrance of the Development on the west side of County Road 561. The Off-Site Improvements shall be constructed in accordance with all requirements of Utility's standard engineering practices, and all applicable governmental and regulatory authorities.

4. ON-SITE FACILITIES. When the Property is developed, Owner shall construct and install therein, at its own cost and expense, all necessary on-site water facilities (the "On-Site Facilities"), including generally all the water facilities of whatever nature or kind needed to connect the Development to be constructed on the Property to the Off-Site Improvements or the lines of Utility at the above described point of interconnection at the front entrance of the Development on the west side of County Road 561, and including specifically, all lines, mains, hydrants and service connections to serve the Development to be constructed on the Property. Owner and Utility agree that time is of the essence in performing and completing the tasks and functions described in this Paragraph 4 of the Agreement. Owner agrees that the construction and installation of such On-Site Facilities shall be subject to the following:

A. The On-Site Facilities shall be constructed and installed by Owner only after the approval of the plans and specifications therefor by FDEP. Utility and Owner will work cooperatively in filing all necessary applications with the Florida Department of Environmental Protection ("FDEP") to first secure a dry line permit, if needed, and then a final permit. The plans

and specifications shall be in accordance with the requirements of Utility's standard engineering practices and all applicable regulatory authorities, and Owner shall obtain approval thereof from such agencies prior to commencement of construction.

B. The On-Site Facilities shall be constructed in substantial accordance with such plans and specifications approved by Lake County and the FDEP, and, as such shall be accepted by Utility. Utility shall be advised as to the progress of such construction and afforded the right to make inspection of said construction; provided, however, Utility shall have no duty to make such inspections, and by making such inspections shall incur no responsibility for the correct installation or construction thereof.

5. USE OF ON-SITE FACILITIES. At the time Owner desires to connect the On-Site Facilities constructed by it to Utility's water system with respect to any lot or project in the Development, and as a condition precedent for the right to make such connection, Owner shall convey to Utility, at no cost to Utility, the On-Site Facilities as Utility shall require. Utility shall provide Owner with a written list of any such requirements within 30 days after the date of this Agreement. Such conveyance shall be by bill of sale, warranty deed or other appropriate instrument as determined by Utility, in its sole discretion, and shall be free and clear of all liens and encumbrances whatsoever. In the event that On-Site Facilities have been connected to Utility's systems without said conveyance, the requirement to convey said facilities to Utility shall not be waived and Utility may thereafter, at any time, require the conveyance of such facilities. In the event that Owner is unable or unwilling to convey to Utility such facilities for any reason whatsoever, Utility shall have the option, under the terms, conditions and procedures provided in Paragraph 5 (A), to terminate this Agreement. Notwithstanding the foregoing, Utility shall not be required to accept such conveyance, or undertake the maintenance of any portion of the On-Site Facilities which are not in a public right-of-way and do not have adequate access easements, as such public rights-of-way and easements are ultimately reflected in the plat once recorded in the public records of Lake County, Florida. In addition, Utility shall not be obligated to provide service to the Property until Utility has received the Engineer's certification that all

construction has been performed in substantial conformance with the engineering plans and that all tests required by the Engineer and by Utility have been satisfactorily performed, and necessary approvals for use have been received from the Florida Department of Environmental Protection or other governmental bodies responsible for the issuance of such approvals. A written list and description of all such tests to be performed by the Engineer and Utility shall be provided to Owner within 30 days after the date of this Agreement. The cost of all materials, construction tests and testing and installation for On-Site Facilities and line extensions shall be paid in full by Owner prior to the transfer to Utility. Upon conveyance of the On-Site Facilities to Utility, any obligation of Owner to maintain such On-Site Facilities shall terminate. By conveyance of the On Site Facilities, Owner shall be deemed to have represented and warranted to Utility that said On-Site Facilities have been constructed in a good and professional manner, free from all defects, and that Owner will correct any defect occurring or discovered in said facilities that does not arise out of or is caused by Utility's operation of such facilities within a period of one (1) year from the date of such conveyance.

A. In the event that Owner is unable or unwilling to convey the On-Site Facilities to Utility, for any reason whatsoever, and the Parties are unable to reach an agreement addressing the potential termination of this Agreement, Utility shall have the option, after providing 30 days written Notice of Termination to Owner, to terminate this Agreement. If Owner files an action with the FPSC protesting and challenging Utility's Notice of Termination within 30 days of receipt of such Notice of Termination, then this Agreement shall not be terminated unless so ordered by the FPSC.

6. RATES. The rates to be charged by Utility for water service to the Development hereafter built on the Property shall be those rates and charges made by Utility to its customers which are from time to time approved by the Florida Public Service Commission, or by any other governmental regulatory body from time to time having jurisdiction over such matters. This Paragraph 6 shall not be construed to permit or authorize Utility to increase the final Connection Contribution of \$115,860, which represents the sole and exclusive amount to be paid by the

Owner to the Utility, as stated in Paragraph 2 of this Agreement. Service to the Development shall be subject to all regulations that from time to time are lawfully imposed on Utility with respect to the operations of its water system, and except as limited by such regulations, the amounts of utility deposits, billing practices and times, liability for damage to Utility's Property and rate changes shall be exclusively within the discretion and control of Utility subject to approval by the FPSC.

7. WATER METERS. It is hereby agreed by the parties hereto that Utility shall install a water meter or water meters as Utility should deem to be necessary to serve the Development and the Property. Utility shall have the right to designate the number, type, quality and size of said meter or meters so long as said meters are of the type, quality and size that would typically be installed, utilizing standard utility practices, considering the approved plans, sizes of lines, and the needs of the anticipated end users. The Utility's current approved meter installation charges shall be billed directly by Utility to the builder or owner (any individual or entity that purchases a lot in Phases 1 or 2 of the Development from Owner or a developer) and Owner shall not be responsible for payment to Utility of any such meter installation charges. All water meters so installed shall remain the property of Utility.

8. PLATS. All plats of the Property, or portions thereof, filed among the Public Records of Lake County, Florida, or any other governmental unit, shall provide for such dedicated utility easements as may be reasonable and necessarily required for the purpose of serving the Property, or portions thereof, with the water service to be provided hereunder.

9. SALE TO GOVERNMENTAL ENTITY. In the event Utility shall hereafter sell the utility system, or any part thereof serving the Property, to the State of Florida, Lake County, or a duly constituted municipality, or any agency or entity under such State's, County's or municipality's control, supervision or direction, Owner agrees that with respect to water service to the Property, the rules and regulations of such purchaser, and not the provisions of this contract, shall control, and that, upon assignment of this Agreement to the Purchaser, Utility shall be relieved of all further obligations hereunder.

10. NOTICES. Payments required to be made under the terms hereof and notices permitted, or required to be made under the terms hereof, shall be delivered to the parties at the respective addresses:

Utility: Lake Utility Services, Inc.
2335 Sanders Road
Northbrook, IL 60062
Attn: Lisa Crossett, COO

Owner: Barrington Estates Property Holdings, LLC
230 Mohawk Road
Clermont, FL 34711
Attn: Robert Shakar, President

Any notices required or permitted hereunder shall be considered properly made if in writing and mailed by United States Mail, postage prepaid, to the addresses set forth herein.

11. TERM. The term of this Agreement shall be for a period of thirty (30) years from the date hereof, and from year to year thereafter.

12. WITHDRAWAL OF PETITION. Upon full execution of this Agreement, the Owner will withdraw its petition previously submitted to the FPSC regarding the provision of water service to the Property.

13. MISCELLANEOUS.

A. This Agreement constitutes the entire agreement of the parties and expressly supersedes all negotiations, previous agreements or representations whether verbal or written, and may not be amended in any way whatsoever except by a writing executed by both parties hereto in a manner equal in dignity to the execution of this Agreement.

B. This Agreement shall inure to the benefit of and be binding upon the heirs, successors, personal representatives and assigns of the parties hereto and shall constitute a covenant running with the Property.

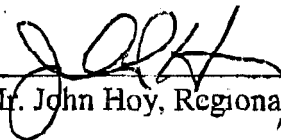
C. This Agreement shall be governed by the laws of the State of Florida.

D. This Agreement shall be effective upon proper execution by both parties hereto.

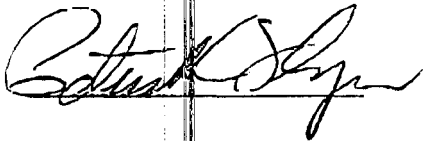
E. This Agreement shall be executed in several counterparts each of which if properly executed by both parties shall be considered an original.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names and their seals to be hereunto affixed, by their proper officer's thereunto duly authorized, on the day and year first above written.

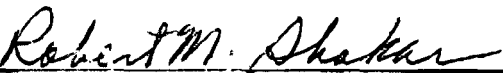
Lake Utility Services, Inc.

By: 
Mr. John Hoy, Regional Vice President

ATTEST:



Barrington Estates Property Holdings , LLC

By: 
Mr. Robert Shakar, President

ATTEST:



EXHIBIT A**LEGAL DESCRIPTION - PHASE 1 & PHASE 2**

A PARCEL OF LAND LOCATED IN SECTIONS 11 AND 14, T23S, R25E, LAKE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SW 1/4 OF SAID SECTION 11; THENCE N00°48'18"E, ALONG THE WEST LINE OF THE SW 1/4 OF SAID SECTION 11, A DISTANCE OF 1311.35 FEET TO THE NORTHWEST CORNER OF THE SW 1/4 OF SAID SECTION 11; THENCE S89°43'28"E, ALONG THE NORTH LINE OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 11, A DISTANCE OF 860.94 FEET TO A POINT; THENCE S00°47'02"W, ALONG THE EAST LINE OF THE W 1/2 OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 11, A DISTANCE OF 656.57 FEET TO A POINT; THENCE S89°38'46"E, ALONG THE NORTH LINE OF THE SE 1/4 OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 11, A DISTANCE OF 628.18 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 561 (66-FOOT RIGHT OF WAY); THENCE S00°45'46"W, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID COUNTY ROAD 561, A DISTANCE OF 657.43 FEET TO A POINT; THENCE LEAVING THE WESTERLY RIGHT-OF-WAY LINE OF SAID COUNTY ROAD 561, N89°34'05"W, ALONG THE SOUTH LINE OF THE SE 1/4 OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 11, A DISTANCE OF 628.41 FEET TO THE NORTHEAST CORNER OF THE NW 1/4 OF THE NW 1/4 OF THE NW 1/4 OF SAID SECTION 14; THENCE S00°55'45"W, ALONG THE EAST LINE OF THE W 1/2 OF THE NW 1/4 OF THE NW 1/4 OF SAID SECTION 14, A DISTANCE OF 1322.68 FEET TO A POINT; THENCE N89°35'33"W, ALONG THE SOUTH LINE OF THE SW 1/4 OF THE NW 1/4 OF THE NW 1/4 OF SAID SECTION 14, A DISTANCE OF 661.02 FEET TO THE SOUTHWEST CORNER OF THE SW 1/4 OF THE NW 1/4 OF THE NW 1/4 OF SAID SECTION 14; THENCE N00°54'43"E, ALONG THE WEST LINE OF THE W 1/2 OF THE NW 1/4 OF THE NW 1/4 OF SAID SECTION 14, A DISTANCE OF 1322.95 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 49.4725 ACRES OF LAND, MORE OR LESS: