



WHITE MOUNTAIN APACHE TRIBE

*A Sovereign Nation Exercising Self-Governance
Over the Fort Apache Indian Reservation*

Resolution No. 02-2013-47

(Authorizing the White Mountain Apache Housing Authority to Sublease Twenty-Three (23) Dwelling Units within Project AZ 16-38 to the Tax Credit Partnership)

WHEREAS, the Tribal Council of the White Mountain Apache Tribe ("Tribe") is entrusted by the Tribe's Constitution to act in all matters that concern the welfare of the Tribe, to manage all economic affairs and enterprises of the Tribe, and to regulate subordinate organizations for economic and other purposes; and

WHEREAS, the White Mountain Apache Housing Authority ("Housing Authority"), as the Tribally Designated Housing Entity of the Tribe, is responsible for carrying out the Housing Plans of the Tribe (collectively, "IHP"), and undertaking the development and operation of housing, pursuant to the Native American Housing Assistance and Self Determination Act of 1996 ("NAHASDA"); and

WHEREAS, the Housing Authority, in furtherance of its approved IHP, as adopted and amended to date under NAHASDA, has applied for an allocation of Tax Credits ("Tax Credits") from the Arizona Department of Housing ("ADOH"), which will permit the Housing Authority to rehabilitate twenty-three (23) dwelling units, comprising a portion of its previously developed housing project ("Project"); and

WHEREAS, the Housing Authority has selected and approved the twenty-three (23) dwelling units within the Project to be rehabilitated, which leasehold property is currently leased to the Housing Authority under Lease No. HFA-10-01638, located in the Chinatown Subdivision; and

WHEREAS, in connection with the Tax Credit program as administered to ADOH under the applicable provisions of Section 42 of the Internal Revenue Code of 1986, as amended, it is necessary for the Housing Authority to sublease the Project Leasehold Property to an Arizona limited partnership to be known and identified as WMAHA Limited Partnership #6 ("Tax Credit Partnership"), within which the Housing Authority will act as General Partner; and

WHEREAS, the Tribal Council, as the duly empowered and authorized governing body of the Tribe, believes it to be in the best interests of the Tribe to adopt this Resolution to permit and authorize the sublease of the Project leasehold Property from the Housing Authority to the Tax Credit Partnership; and

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Housing Authority to sublease twenty-three (23) dwelling sites within the Project Leasehold Property to the Tax Credit Partnership.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Housing Authority to encumber the property with leasehold mortgages as may be required and allowed by federal law and the lease agreement attached hereto.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, this Resolution shall be declared null and void and have no legal effect.

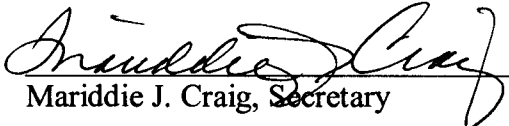
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Acting Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution. In the event that the Chairman fails to delegate signatory authority to an Acting Chairman, the Vice-Chairman may sign.

The foregoing resolution was on **FEBRUARY 21, 2013** duly adopted by a vote of **EIGHT** for and **ZERO** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (h), (i), (s), (t) and (u) of the Tribal Constitution, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Ronnie Lupe, Chairman

2/25/12
Date



Mariddie J. Craig, Secretary

02/25/2013
Date

Chinatown

SUBLEASE

THIS SUBLEASE is made as of the _____ day of _____, 201_, between **WMAHA Limited Partnership #6**, an Arizona limited partnership (the “Sublessee”), and **WHITE MOUNTAIN APACHE HOUSING AUTHORITY**, a tribally designated housing entity (the “Sublessor”).

RECITALS

- A. Sublessor is the tenant under that certain lease dated as of _____, 20__ (the “Master Lease”) by and between **WHITE MOUNTAIN APACHE HOUSING AUTHORITY** and the **WHITE MOUNTAIN APACHE TRIBE** (the “Landlord”) pursuant to which Sublessor leases the premises described therein consisting of land legally described on Exhibit A attached hereto (the “Leased Premises”).
- B. Sublessor and Sublessee desire to enter into a sublease arrangement, whereby Sublessor leases the Leased Premises to Sublessee.

NOW, THEREFORE, in consideration of the foregoing, the covenants of the parties hereinafter expressed, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

- 1. **Premises/Term.** Sublessor hereby leases to Sublessee and Sublessee hereby leases from Sublessor, the Leased Premises. This Sublease shall become effective, and the term hereof shall commence as of the effective date hereof provided that (a) all parties hereto have executed this Sublease, and (b) Landlord has consented, in writing, to this Sublease. The term of this Sublease shall end upon the expiration hereof or earlier termination of the lease term under the Master Lease.
- 2. **Rent.** As rent for the Leased Premises, Sublessee agrees to pay to Landlord all amounts due under the Master Lease.
- 3. **Quiet Enjoyment.** Sublessor covenants and agrees with Sublessee that, subject to the terms of the Master Lease, upon Sublessee’s paying rent and keeping, paying and performing all terms, covenants and conditions of this Sublease to be kept, paid and performed by Sublessee, Sublessee shall and may, except for reasons beyond the control of Sublessor, peaceably and quietly have and hold the Subleased Premises for the term hereof.

Notwithstanding the above, Landlord and Sublessor, and their respective agents and representatives, shall, upon reasonable notice to Sublessee, have the right to enter the Leased Premises, (excluding the interior of any housing unit), for the purpose of inspecting the Leased Premises.

- 4. **Incorporation of Master Lease.** This Sublease is subject and subordinate to the Master Lease and Sublessee agrees to observe and be bound by all of the

terms of the Master Lease as fully as if Sublessee were the tenant named therein. In case of any breach hereof by Sublessee, Sublessor shall have all the rights against Sublessee as would be available to the landlord against the tenant under the Master Lease if such breach were by the Lessee thereunder, and Sublessor shall also have any other rights or remedies available to lessors at law or in equity.

It is agreed that (i) Sublessor's obligations to Sublessee hereunder with respect to the Subleased Premises shall be no greater than the Landlord's obligation to Sublessor under the Master Lease with respect thereto; (ii) Sublessor shall be required to perform its obligations to Sublessee hereunder with respect to the Leased Premises only to the extent that the Landlord has performed its similar obligations to Sublessor under the Master Lease with respect thereto; (iii) Sublessee shall have no greater rights against Sublessor hereunder with respect to the Leased Premises than Sublessor has against the Landlord under the Master Lease with respect thereto; and (iv) in the event that Sublessee shall be entitled to recover damages for Sublessor's failure to perform Sublessor's obligations to Sublessee hereunder caused by Landlord's failure to perform Landlord's obligations under the Master Lease, Sublessee may so recover only to the extent that Sublessor has succeeded in recovering from the Landlord for Landlord's failure to perform its obligations to Sublessor under the Master Lease.

5. **No Mortgages.** Sublessee shall not have the right to mortgage, hypothecate or otherwise encumber any estate, interest or equity Sublessee may have in any building, substructures, or improvements constructed on the Subleased Premises, without prior written consent of Sublessor and, (to the extent required by the Master Lease), of Landlord. Sublessor hereby consents to a mortgage on the Leased Premises in favor of White Mountain Apache Housing Authority to secure a loan for the construction of LIHTC units.
6. **Assignment of Sublease.** Sublessee may not assign its interest in this Sublease or sublet the Subleased Premises or any part thereof or interest therein without prior, written consent of Sublessor.
7. **Default.** If (i) Sublessee fails to pay Sublessor the Rent or any other sum due under this Sublease when due, or (ii) any default under the Master Lease occurs, then Sublessee shall be in default under this Sublease. In such event, Sublessor shall have all rights and remedies against Sublessee as the Landlord has against Sublessor under the Master Lease. In addition to the remedies set forth in the Master Lease, Sublessor shall have the right, but not the obligation, to cure any default of Sublessee, and to charge the cost thereof to Sublessee, with interest accruing thereon at the rate of twelve percent (12%) per annum. If any default is not cured within thirty (30) days after notice from Sublessor, in the case of a monetary default, or within ninety (90) days after notice to Sublessee and the limited partner of Sublessee ("Limited Partner") from

Sublessor, in the case of a non-monetary default, in addition to all other rights and remedies Sublessor may have, Sublessor may terminate this Sublease and may take possession of the Subleased Premises. Sublessor agrees that Limited Partner shall have the right but not the obligation to cure any default hereunder.

8. **Notices.** All notices, demands or requests shall be in writing, and shall be effectively served when delivered personally to an officer of the relevant corporation or at the time of mailing by certified or registered mail, postage prepaid to the following addresses, or at such other address as either party may hereinafter designate by like notice. Any notice, demand or request to the Landlord shall be in accordance with the Master Lease. Sublessor agrees to provide to Limited Partner a copy of any notice given by any party pursuant to the Master Lease within five (5) calendar days of Sublessor's receipt thereof.

If to Sublessor: White Mountain Apache Housing Authority
50 W. Chinatown Street, P.O. Box 1270
Whiteriver, Arizona 85941
Attention: Executive Director

If to Sublessee: WMAHA Limited Partnership #6
c/o White Mountain Apache Housing Authority
50 W. Chinatown Street, P.O. Box 1270
Whiteriver, Arizona 85941
Attention: Gladys Bencomo

If to Limited Partner: David W. Bland
310 West 19th Terrace
Kansas City, MO 64108

9. **Severability.** If the application of any provision of this Sublease, or any paragraph, sentence, clause, phrase or word in any circumstance is held invalid, the validity of the remainder of this Sublease shall not be affected thereby, and the remainder shall be construed as if such invalid part were never included in the Sublease.
10. **Captions.** The captions in this Sublease are for convenience and reference only, and in no way define, limit or describe the scope or intent of this Sublease nor in any way affect this Sublease.
11. **Entire Agreement.** This Sublease contains the entire agreement of the parties, and may not be modified or amended except by a writing signed by all of the parties hereto.

12. **Successors and Assigns Bound.** This Sublease shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.
13. **Standstill.** Notwithstanding anything herein to the contrary, so long as Limited Partner, its affiliates, successors, and/or assigns, is a limited partner of Sublessee, Sublessor will not (i) exercise any rights or remedies it may have under this Sublease or the Master Lease or (ii) join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to Sublessee.

IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed as of the day and year first above written.

SUBLESSOR:

Dated: _____, 201__

WHITE MOUNTAIN APACHE HOUSING
AUTHORITY

By: _____

Name: Gladys Bencomo

Its: Executive Director

SUBLESSEE:

Dated: _____, 201__

WMAHA LIMITED PARTNERSHIP #6

By: WHITE MOUNTAIN APACHE
HOUSING AUTHORITY

Its: General Partner

By: _____

Name: Gladys Bencomo

Its: Executive Director

STATE OF ARIZONA)
) SS.
COUNTY OF NAVAJO)

The foregoing instrument was acknowledged before me this ___ day of _____, 201__ by Gladys Bencomo, the Executive Director of White Mountain Apache Housing Authority, a tribally designated housing entity, on behalf of the housing entity.

Notary Public

STATE OF ARIZONA)
) SS.
COUNTY OF NAVAJO)

The foregoing instrument was acknowledged before me this ___ day of _____, 201__ by Gladys Bencomo, the Executive Director of White Mountain Apache Housing Authority, a tribally designated housing entity, General Partner of WMAHA Limited Partnership #6, an Arizona limited partnership, on behalf of the limited partnership.

Notary Public

The within sublease is hereby approved:

SECRETARY OF THE INTERIOR

Title: _____

Agency: _____

Date: _____, 201__

CONSENT TO SUBLEASE

The undersigned, as Landlord under the aforementioned Master Lease, hereby consents to the subletting of the Leased Premises described herein on the terms and conditions contained in this Sublease.

This consent shall apply only to this Sublease and shall not be deemed to be a consent to any other sublease.

LANDLORD

WHITE MOUNTAIN APACHE TRIBE

By: _____

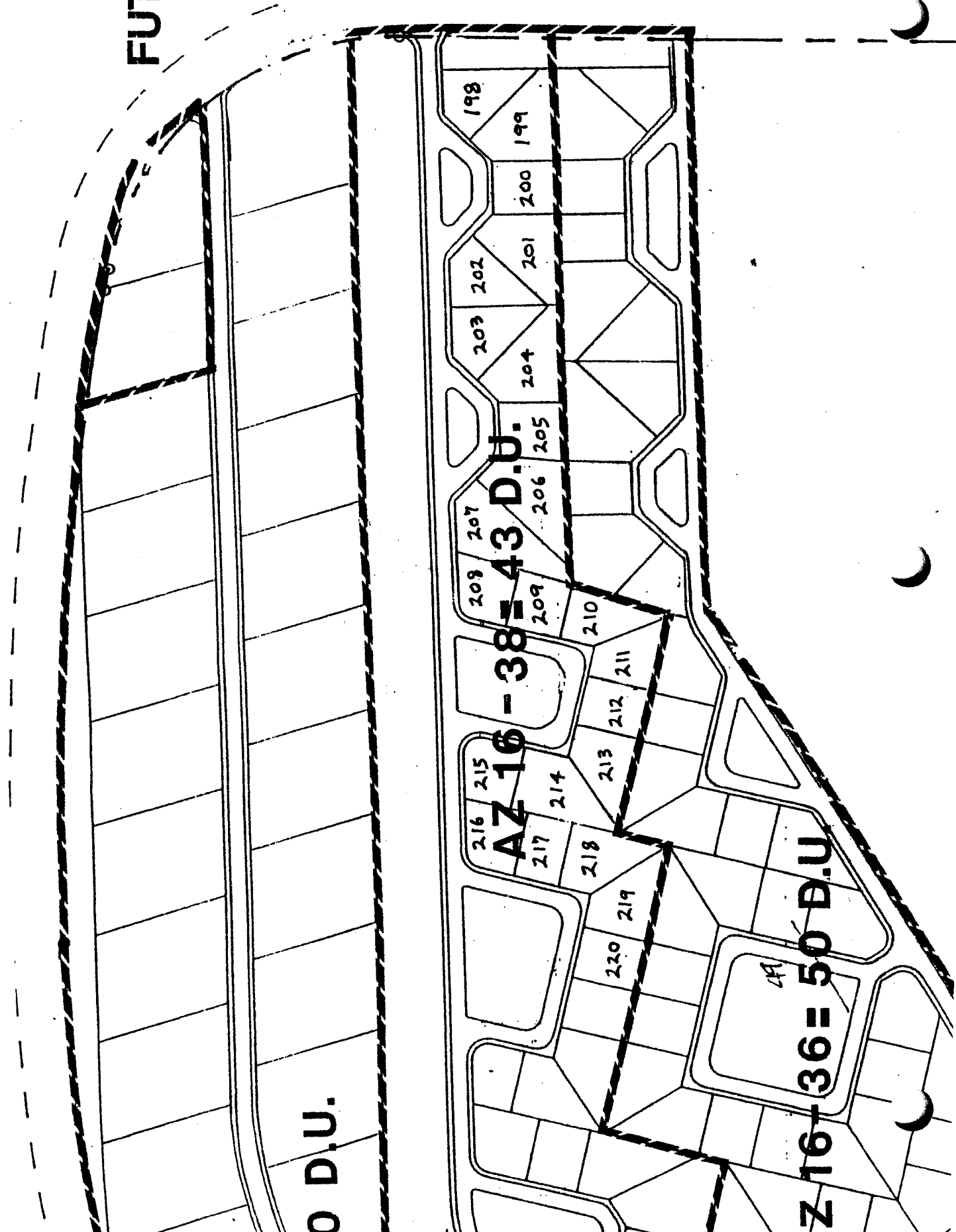
Name: _____

Its: _____

EXHIBIT A

Legal Description

FUTURE I



O D.U.

AZ 16 - 38 = 43 D.U.

AZ 16 - 36 = 50 D.U.

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LEGAL DESCRIPTION (Chinatown – Lots 198-220)

A parcel of land situated in the community of Whiteriver, within Section 23, Township 5 North, Range 22 East, of the Gila and Salt River Meridian, on the White Mountain Apache Tribe Fort Apache Reservation, Navajo County, Arizona, and more particularly described as follows:

Based on the line between a GLO capped pipe monumenting the north quarter corner of said section and a GLO capped pipe monumenting the east quarter corner of said section bearing South 44 degrees 59 minutes 58 seconds East a distance of 3738.78 feet, and all bearings contained herein relative thereto, thence

Lots 198-220

Commencing at said north quarter corner of Section 23;

Thence South 10 degrees 46 minutes 07 seconds West a distance of 1142.70 feet to the POINT OF BEGINNING;

Thence South 62 degrees 05 minutes 40 seconds East a distance of 170.00 feet;
Thence South 27 degrees 54 minutes 20 seconds West a distance of 806.82 feet;
Thence South 43 degrees 09 minutes 20 seconds East a distance of 157.61 feet;
Thence South 42 degrees 00 minutes 00 seconds West a distance of 351.38 feet;
Thence South 48 degrees 00 minutes 00 seconds East a distance of 78.96 feet;
Thence South 42 degrees 00 minutes 00 seconds West a distance of 230.00 feet;
Thence North 48 degrees 00 minutes 00 seconds West a distance of 100.00 feet;
Thence North 42 degrees 00 minutes 00 seconds East a distance of 130.00 feet;
Thence North 48 degrees 00 minutes 00 seconds West a distance of 175.23 feet to the beginning of a curve concave to the east having a radius of 25.00 feet;
Thence northerly and to the right along said curve through a central angle of 75 degrees 54 minutes 20 seconds an arc length of 33.12 feet (Chord bearing: North 10 degrees 02 minutes 50 seconds West; Chord distance: 30.75 feet);
Thence North 27 degrees 54 minutes 20 seconds East a distance of 154.66 feet to the beginning of a curve concave to the south having a radius of 25.00 feet;
Thence easterly and to the right along said curve through a central angle of 104 degrees 05 minutes 40 seconds an arc length of 45.42 feet (Chord bearing: North 79 degrees 57 minutes 10 seconds East; Chord distance: 39.43 feet);
Thence South 48 degrees 00 minutes 00 seconds East a distance of 133.94 feet;
Thence North 42 degrees 00 minutes 00 seconds East a distance of 180.00 feet;
Thence North 48 degrees 00 minutes 00 seconds West a distance of 191.56 feet to the beginning of a curve concave to the east having a radius of 25.00 feet;
Thence northerly and to the right along said curve through a central angle of 75 degrees 53 minutes 53 seconds an arc length of 33.12 feet (Chord bearing: North 10 degrees 02 minutes 50 seconds West; Chord distance: 30.75 feet);
Thence North 27 degrees 54 minutes 06 seconds East a distance of 163.47 feet;
Thence North 72 degrees 54 minutes 20 seconds East a distance of 100.00 feet;
Thence North 27 degrees 54 minutes 20 seconds East a distance of 80.00 feet;
Thence North 17 degrees 05 minutes 40 seconds West a distance of 100.00 feet;

Thence North 27 degrees 54 minutes 20 seconds East a distance of 150.64 feet;
Thence North 72 degrees 54 minutes 20 seconds East a distance of 100.00 feet;
Thence North 27 degrees 54 minutes 32 seconds East a distance of 80.00 feet;
Thence North 17 degrees 05 minutes 40 seconds West a distance of 100.00 feet;
Thence North 27 degrees 54 minutes 20 seconds East a distance of 75.00 feet to the POINT OF
BEGINNING.

The above described parcel of land contains 5.17 acres more or less.