

**LEASE AGREEMENT**

This LEASE AGREEMENT, entered into this 17<sup>th</sup> day of November, 2017, between COUNTY of COCHISE, State of Arizona (hereinafter, "the COUNTY") and the ARIZONA DEPARTMENT OF CORRECTIONS (hereinafter, "the DEPARTMENT").

**RECITALS**

**WHEREAS**, the COUNTY owns and controls certain real property known as the Bisbee-Douglas International Airport (hereinafter, "BDI"); and

**WHEREAS**, the parties previously entered a 25-year Lease dated November 28, 1983 ("Old Lease") of a portion of BDI described on Exhibits A (legal description) and B (map) (the "Subject Premises"), during which time the Department constructed and operated a minimum and medium security prison at BDI, and continues; and

**WHEREAS**, the Old Lease has been amended and extended from time to time, with the Old Lease, as extended, set to expire on December 31, 2017; and

**WHEREAS**, it is the desire of the DEPARTMENT to continue to operate a minimum and medium security prison on the Subject Premises; and

**WHEREAS**, the DEPARTMENT and the COUNTY's Board of Supervisors are empowered, pursuant to A.R.S. § 41-1604 and A.R.S. § 11-256.01, respectively, to enter into agreements for the lease of property without need for public auction; and

**WHEREAS**, the COUNTY, pursuant to A.R.S. § 11-256.01, is authorized to specify uses to which the property must be devoted and any terms or conditions for use which the COUNTY determines are in its best interests,

**NOW, THEREFORE**, the parties agree as follows:

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**I**

**LEASE OF PREMISES**

The COUNTY hereby leases to the DEPARTMENT, and the DEPARTMENT hereby leases from the COUNTY, the Subject Premises.

**II**

**TERMS OF AGREEMENT**

The effective date of this AGREEMENT shall be January 1, 2018, and shall remain in effect through December 31, 2043. The parties may, prior to the expiration of this AGREEMENT, enter into a new lease agreement upon such terms and conditions as may be mutually acceptable. Notwithstanding the provisions of this Section, this AGREEMENT may be terminated prior to expiration of the term under the conditions and in the manner set forth below.

**III**

**PURPOSE OF AGREEMENT**

The DEPARTMENT understands and agrees that the Subject Premises are leased for the sole purpose of allowing the DEPARTMENT to maintain and operate minimum and medium security correctional facilities and conduct such other activities as may be reasonably incidental thereto. Use of the Subject Premises by the DEPARTMENT for any purpose not within the scope of this section, or by any assignee or successor in interest to the DEPARTMENT, without the express written consent of the COUNTY, shall void the AGREEMENT as of the date of the COUNTY's discovery of such unpermitted uses.

**IV**

**CONSIDERATION**

In consideration of the COUNTY's lease of the subject premises, the DEPARTMENT agrees to pay, as rent the sum of ONE DOLLAR (\$1.00) in lawful U.S. currency, payable on the effective date of this AGREEMENT and upon each anniversary date thereof, and further agrees to comply with such other terms and conditions as may be specified in this AGREEMENT.

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**V**

**CONDITION AND SUITABILITY OF SUBJECT PREMISES**

The COUNTY makes no representations or warranties, except as specifically set forth in this AGREEMENT, as to the condition of the Subject Premises as of the effective date of this AGREEMENT or at any other time, and further makes no representations or warranties, except as expressly set forth herein, as to the suitability of the Subject Premises for use of the DEPARTMENT.

**VI**

**SCOPE OF LEASE**

Property interests conveyed pursuant to this AGREEMENT consists solely of a leasehold interest in the real property comprising the Subject Premises as described herein.

**VII**

**REPAIRS, MAINTENANCE AND IMPROVEMENTS**

The DEPARTMENT shall be fully responsible for all repairs, maintenance and improvements within the boundaries of the Subject Premises except as expressly provided herein.

**VIII**

**UTILITIES**

The DEPARTMENT shall be solely responsible for obtaining and maintaining all utility services to the subject premises except for water service, as described herein.

The COUNTY agrees to provide water to the DEPARTMENT subject to the following understandings, terms and conditions:

a) With the agreement of the Department, the County implemented and completed Water System Improvement Project Phase II. The total cost of Phase II was \$1,649,506.67, paid by the County. The Department's share was 95% of the total cost, which is \$1,567,034.19. The Department has already reimbursed the County in the amount of \$242,000, which was its share of the supplemental water supply required during construction of Phase II. Accordingly, the remaining balance owed by the Department to the County is \$1,325,034.19.

b) The current water rate paid by the Department to the County is \$2.30/1000 gallons.

c) Effective January 1, 2018, the rate will be \$4.08/1000 gallons. This consists of the following:

- a. \$1.08 – Operations and Maintenance (routine O&M, including light repairs).
- b. \$2.16 – Financing of improvements.
- c. \$0.84 – Recapitalization

d) The \$4.08/1000 gallon rate shall remain in effect until the balance of \$1,325,034.19 is paid in full, which is expected to approximately five years. Provided, however, that the minimum payment from DOC to the County for any given calendar year, regardless of actual usage, shall be \$265,000 until the balance of \$1,325,034.19 is repaid in full; if, in any calendar year, the actual usage results in payments less than \$265,000, the difference between \$265,000 and payments based on actual usage shall be paid within 30 days after the end of the calendar year.

e) When the balance of \$1,325,034.19 is paid in full, the \$2.16/1000 gallons shall be eliminated from the rate. The recapitalization rate will become \$1.22/1000 gallons. The parties will review the \$1.08/1000 gallon rate for routine O&M and revise it based on the actual average costs that the County has experienced and anticipates. Thereafter, the parties will review the recapitalization and O&M rates every five years, beginning in 2028, and adjust them accordingly to ensure that the rates adequately cover the costs of major repairs, improvements and maintenance.

f) The obligation of the Department to reimburse the County in full for the \$1,325,034.19 shall survive any termination of this Agreement.

g) The amounts paid by the Department for recapitalization of the water system shall be retained by the County in a separate fund line and used only for improvements or major repairs (not routine O&M). If such improvements or major repairs are necessary, and the amount then in the recapitalization fund are insufficient for such improvements or major repairs, the parties shall make up the difference according to a formula of 95% responsibility for the Department and 5% for the County. Likewise, the amounts paid for O&M shall be retained in a separate fund line and used only to cover costs for O&M. If the amount in the O&M fund line is insufficient to cover routine maintenance, the parties shall adjust the rate (at the five year intervals as stated above) to make up the difference according to a formula of 95% for the Department and 5% for the County.

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## **IX**

### **ALTERATIONS AND IMPROVEMENTS**

The DEPARTMENT may make such alterations and improvements as it deems necessary for full use and enjoyment of the leased premises. The DEPARTMENT understands and agrees, however, that no such alteration or improvements will violate any rules, regulations, or requirements as may be established by the Federal Aviation Administration or federal or state agencies, with respect to the operation of airport facilities situated at BDI. The DEPARTMENT further agrees to be solely responsible for consulting with the Federal Aviation Administration or other regulatory bodies and for obtaining regulatory approval for such alterations or improvements. The COUNTY agrees to execute any documents or take any other actions as may be reasonably necessary to assist the DEPARTMENT in obtaining such approval.

## **X**

### **INTERESTS AFFECTING USE AND ENJOYMENT**

COUNTY is unaware of any liens, encumbrances or other interests that would interfere with the Department's use and enjoyment of the Subject Premises.

## **XI**

### **TERMINATION FOR NON-APPROPRIATION**

The parties understand and agree that the DEPARTMENT's obligation to perform under this AGREEMENT is contingent upon legislative appropriation or approval for that purpose. In the event of such nonappropriation, the DEPARTMENT may terminate this AGREEMENT by giving the COUNTY written notice no later than thirty (30) days following final legislative action on such nonappropriation. In the event of termination pursuant to this section, all obligations of the DEPARTMENT to the COUNTY shall cease except that the obligations to reimburse the County for the DEPARTMENT'S share in the construction of the Water System Improvement Project as set forth in Section VIII shall survive such termination. Upon such termination, the DEPARTMENT shall remove any personal property, and all buildings, improvements, or fixtures constructed or placed by the DEPARTMENT upon the subject premises, within ninety (90) days following expiration of this AGREEMENT, unless otherwise agreed by the parties. If the DEPARTMENT fails to do so, the COUNTY, at its option, may remove any and all such property and the DEPARTMENT shall be liable to the COUNTY for the cost of doing so.

The DEPARTMENT will use its best efforts to obtain the necessary funds to avoid such termination by taking all appropriate action including, but not limited to, the

inclusion in the DEPARTMENT's budget request for each fiscal period during the effective term of this AGREEMENT, a request for adequate funds to continue operation of the facilities situated within the subject premises.

## **XII**

### **TERMINATION BY COUNTY**

Notwithstanding any other provision of this AGREEMENT, if the DEPARTMENT fails to pay the amounts owed under Section VIII the COUNTY may notify the DEPARTMENT in writing of its intent to terminate this AGREEMENT. If the DEPARTMENT fails to pay the amounts owed within fifteen (15) days of such written notice, this AGREEMENT shall terminate and the DEPARTMENT shall immediately vacate the subject premises. The DEPARTMENT's obligation to pay the COUNTY the amounts owed under Section VIII shall survive any such termination.

## **XIII**

### **SURRENDER OF PROPERTY UPON EXPIRATION OF AGREEMENT**

Upon expiration of this AGREEMENT, in the event that a new lease agreement is not entered into by the parties pursuant to terms of Section II, above, the DEPARTMENT shall surrender the subject premises to the COUNTY. Upon such surrender, the DEPARTMENT shall remove any personal property, and all buildings, improvements, or fixtures constructed or placed by the DEPARTMENT upon the subject premises, within ninety (90) days following expiration of this AGREEMENT, unless otherwise agreed by the parties. If the DEPARTMENT fails to do so, the COUNTY, at its option, may remove any and all such property and the DEPARTMENT shall be liable to the COUNTY for the cost of doing so.

## **XIV**

### **COSTS OF PROSECUTION**

DEPARTMENT agrees that it shall reimburse COUNTY in full for all costs of prosecuting, defending and trying persons alleged to have committed criminal acts within the boundaries of the subject premises or while otherwise in the custody of the DEPARTMENT in Cochise County, and such persons who have escaped from subject premises or otherwise from the custody of the DEPARTMENT within Cochise County, and are alleged to have committed acts for which they are subject to prosecution in Cochise County. The hourly rate of reimbursement for both defense counsel and prosecutors shall be \$100/hour for attorneys and \$50/hour for paralegals and legal

assistants. The DEPARTMENT shall also reimburse the COUNTY for mileage at the rate allowed by the United States Internal Revenue Service, meals, lodging, fees and costs of expert witnesses and other witnesses, and the costs to the court of trying the case.

## **XV**

### **INDEMNIFICATION AND INSURANCE**

COUNTY understands and agrees that DEPARTMENT is self-insured with respect to some or all areas of potential loss.

Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. The State of Arizona, (State Agency) is self-insured per A.R.S. 41-621.

As of the effective date of this AGREEMENT, the DEPARTMENT shall provide a schedule of coverage which indicates those risks for which the DEPARTMENT is self-insured and those which are covered by policies of insurance. The schedule shall be attached hereto as Exhibit C and incorporated reference herein, and the DEPARTMENT shall supply the COUNTY with an updated schedule by the first day of March of each year that this AGREEMENT remains in effect, reflecting any changes in insurance coverage that have occurred during the previous calendar year.

## **XVI**

### **ASSIGNMENTS OR TRANSFERS**

The DEPARTMENT shall not assign any rights or duties under this AGREEMENT and shall not, in any manner, transfer or convey any right, title or interest in the subject premises without the express written consent of the COUNTY. Any action which purports to affect any such assignment or transfer shall immediately void this AGREEMENT and cause all rights, title or interest in the subject premises and any building or improvements to pass the COUNTY.

## **XVII**

### **WAIVER**

Waiver or the failure of either party at any time to require performance by the other of any provision hereof, shall in no way affect the party's subsequent rights and obligations under that provision. Waiver by either party of any breach or any provision hereof shall not be taken or held to be a waiver of any succeeding breach of such provisions or waiver of such provisions itself.

## **XVII**

### **FACILITATION OF AIRCRAFT OPERATIONS**

There is hereby reserved to the COUNTY, as Lessor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the subject premises herein conveyed. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft, used for navigation or flight through the said airspace or landing at, taking off from, or operation on the BDI property.

The DEPARTMENT, as Lessee, by accepting this lease, expressly agrees for itself, its successors and assigns, that it will not make use of said property in any manner which might interfere with air navigation and communication, and the landing and taking off of aircraft from said BDI, or otherwise constitute an airport hazard; and further, that it will not erect or permit the erection of any structure, building, or object of natural growth and other obstructions on the land conveyed hereunder above height of 4208 feet mean sea level (MSL) elevation. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter on the subject premises, leased to the DEPARTMENT hereunder, and remove the offending structure or object and to cut the offending natural growth, all of which shall be at the expense of the DEPARTMENT.

## **XIX**

### **STANDARD CLAUSES**

If the funds furnished to the DEPARTMENT for use in this AGREEMENT are terminated or exhausted, then the DEPARTMENT shall have the right to terminate this AGREEMENT by giving written notification to the other party.

Nothing in this AGREEMENT shall be construed as consent to any suit or a waiver of any defense in a suit brought against the State of Arizona in any State or Federal court.

This AGREEMENT is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are incorporated herewith by reference.

The parties shall comply with all applicable state and federal laws that prohibit discrimination against any person based on race, religion, disability, color, age, sex, sexual orientation, or national origin.

In accordance with ARS § 35-393.01, the parties certify that they are currently not engaged in, and for the duration of this Agreement agree not to engage in, a boycott of Israel.

The parties agree that any dispute arising under this Contract involving the sum of \$50,000 or less in money damages only shall be resolved by arbitration pursuant to A.R.S. § 12-1501 et. seq. The decision of the arbitrator(s) shall be final. In any action brought in Superior Court venue shall be in the Cochise County Superior Court.

Both parties to this AGREEMENT shall retain for inspection and audit by the State all books, accounts, reports, files, and other records relating to the performance of this AGREEMENT for a period of five (5) years after its completion. Upon request of either party to this AGREEMENT, a legible copy of all such records shall be produced at the administrative office of the requesting party or at the office of the State Auditor General. The original of all such records shall be available and produced for inspection of and audit when requested by either party or the Auditor General to verify the authenticity of the copy.

## **XX**

### **NOTIFICATION**

Any notification due to either party under this AGREEMENT shall be as follows:

COUNTY:  
Facilities Director  
1415 Melody Lane, Building C  
Bisbee, AZ 85603

DEPARTMENT  
Chief Procurement Officer  
1645 W. Jefferson St.  
Phoenix, Arizona 85007

## **XXI**

### **ENTIRE AGREEMENT**

This written AGREEMENT, and attachments hereto, constitute the entire Agreement between the parties with respect to the subject matter hereof, and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing, agreements, and all other communications between the parties. It may not be released, discharged, changed or modified except by an instrument in writing, signed by a duly authorized representative of each of the parties, except as specifically provided otherwise in this AGREEMENT.

**XXII**

**APPROVAL BY THE PARTIES**

Before this AGREEMENT shall become effective and binding upon the parties, it must be approved by the COUNTY's Board of Supervisors and by the DEPARTMENT's Director or his designee. In the event that either party fails or refuses to approve this AGREEMENT, it shall be null and void and of no effect whatsoever.

**XXIII**

**RECORDATION**

This AGREEMENT shall be recorded with the Cochise County Recorder.

**IN WITNESS WHEREOF**, the COUNTY has caused this instrument to be executed by the Chairman of its Governing Board and attested to by the Clerk of said Board; and the DEPARTMENT has caused this AGREEMENT to be executed by its Director, on the day and year first above written.

**APPROVED:**

COCHISE COUNTY BOARD OF SUPERVISORS

By: \_\_\_\_\_  
Ann English, Chair

**ATTEST:**

\_\_\_\_\_  
Arlethe Rios, Clerk of the Board

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Britt W. Hanson, Chief Civil Deputy  
County Attorney

**APPROVED:**

ARIZONA DEPARTMENT OF CORRECTIONS

By:

  
\_\_\_\_\_  
Kenneth P. Sanchez, Chief Procurement  
Officer

## **EXHIBITS**

A – Legal description of Subject Premises

B – Map of Subject Premises  
See Exhibit A

**Exhibit A**  
**Arizona State Prison Complex - Douglas**

A LEGAL DESCRIPTION FOR THAT PORTION OF LAND THAT IS CURRENTLY LEASED BY THE ARIZONA DEPARTMENT OF CORRECTION FROM COCHISE COUNTY, ARIZONA, SAID LAND IS LOCATED IN THAT PORTION OF THE WEST 1/2 OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 27 EAST, AND A PORTION OF THE SOUTH 1/2 OF SECTION 34, TOWNSHIP 23 SOUTH, RANGE 27 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the Northeast corner of said section 3; Thence North 89 degrees 49 minutes 00 seconds West along the north section line of said section 3 a distance of 2654.37 feet (of record) to the North quarter corner of said section 3; Thence continuing North 89 degrees 49 minutes 00 seconds West a distance of 51.50 feet to the point of beginning; Thence South 00 degrees 11 minutes 59 seconds East a distance of 4,928.70 feet; Thence South 88 degrees 44 minutes 51 seconds West a distance of 350.00 feet; Thence North 00 degrees 11 minutes 59 seconds West a distance of 650.00 feet; Thence South 88 degrees 44 minutes 51 seconds West a distance of 2,148.71 feet; Thence North 00 degrees 16 minutes 55 seconds West a distance of 501.29 feet; Thence North 88 degrees 48 minutes 40 seconds East a distance of 696.70 feet; Thence North 00 degrees 24 minutes 17 seconds East a distance of 325.85 feet; Thence North 45 degrees 18 minutes 40 seconds West a distance of 577.90 feet; Thence North 00 degrees 00 minutes 46 seconds East a distance of 3,092.33 feet to the north section line of said section 3; Thence continuing North 00 degrees 00 minutes 46 seconds East a distance of 527.53 feet; Thence North 89 degrees 43 minutes 41 seconds East a distance of 1,699.37 feet; Thence North 00 degrees 15 minutes 41 seconds East a distance of 300.00 feet; Thence North 89 degrees 43 minutes 41 seconds East a distance of 500.00 feet; Thence South 00 degrees 15 minutes 41 seconds West a distance of 845.00 feet to the point of beginning.

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# Exhibit B



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r your map.

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**ORDINANCE NO. 773**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA, ANNEXING A CERTAIN AREA KNOWN AS THE ARIZONA STATE PRISON COMPLEX-DOUGLAS, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Arizona Legislature, in Laws 1999, Chapter 234, Section 11 and 13, authorized any town or city within 15 miles of a state owned prison facility to annex the property on which said prison is located, notwithstanding any of the requirements of Arizona Revised Statutes, A.R.S. § 9-471, providing that the director of the Department of Corrections provides prior written permission for the municipality to annex; and

**WHEREAS**, the Arizona State Prison Complex-Douglas is owned by the State of Arizona, and is within 15 miles of the city limits of Douglas, Cochise County, Arizona; and

**WHEREAS**, Terry Stewart, Director of the Arizona Department of Corrections, gave written permission to annex this prison complex to the City of Douglas on the 4th day of February, 2000; and

**WHEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, ARIZONA, AS FOLLOWS:**

**Section 1.** The City of Douglas does hereby annex that property on which the Arizona State Prison Complex-Douglas stands, more particularly described in Exhibit "A", attached hereto and incorporated herein by reference. A map of said

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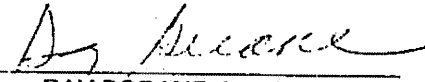
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3 site is attached as Exhibit "B", and Director Stewart's letter as Exhibit "C".

4 **Section 2.** The City Clerk is hereby directed to immediately record a  
5 certified copy of this Ordinance with the Cochise County Recorder's Office.

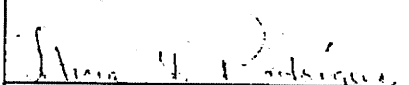
6 **Section 3.** Should any portion of this Ordinance be declared invalid by any  
7 court of competent jurisdiction, it is the intention of this Council that the balance of  
8 the Ordinance be given full force and effect.

9  
10 **Section 4.** The immediate operation of this Ordinance is necessary for  
11 the preservation of the public peace, health, and safety and the well being of City  
12 residents and visitors and an emergency is hereby declared to exist and this  
13 Ordinance shall come into full force and effect by its terms from and after its  
14 passage by six-sevenths of the Council and approval by the Mayor.

15  
16 **PASSED BY SIX-SEVENTHS OF THE CITY COUNCIL AND ADOPTED BY**  
17 **THE MAYOR OF THE CITY OF DOUGLAS, ARIZONA, this 11 day of**  
18 February, 2000.

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22 **RAY BORANE, Mayor**

23 **ATTEST:**

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26 **LETICIA G RODRIGUEZ, City Clerk**



FEE # 000203724  
OFFICIAL RECORDS  
COCHISE COUNTY  
DATE HOUR  
00/02/10 12

REQUEST OF  
CITY OF COUGLAS  
CHRISTINE RHODES-RECORDER  
FEE : 7.50 PAGES : 6

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**Exhibit A**  
**Arizona State Prison Complex - Douglas**

A LEGAL DESCRIPTION FOR THAT PORTION OF LAND THAT IS CURRENTLY LEASED BY THE ARIZONA DEPARTMENT OF CORRECTION FROM COCHISE COUNTY, ARIZONA, SAID LAND IS LOCATED IN THAT PORTION OF THE WEST 1/2 OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 27 EAST, AND A PORTION OF THE SOUTH 1/2 OF SECTION 34, TOWNSHIP 23 SOUTH, RANGE 27 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the Northeast corner of said section 3; Thence North 89 degrees 49 minutes 00 seconds West along the north section line of said section 3 a distance of 2654.37 feet (of record) to the North quarter corner of said section 3; Thence continuing North 89 degrees 49 minutes 00 seconds West a distance of 51.50 feet to the point of beginning; Thence South 00 degrees 11 minutes 59 seconds East a distance of 4,928.70 feet; Thence South 88 degrees 44 minutes 51 seconds West a distance of 350.00 feet; Thence North 00 degrees 11 minutes 59 seconds West a distance of 650.00 feet; Thence South 88 degrees 44 minutes 51 seconds West a distance of 2,148.71 feet; Thence North 00 degrees 16 minutes 55 seconds West a distance of 501.29 feet; Thence North 88 degrees 48 minutes 40 seconds East a distance of 696.70 feet; Thence North 00 degrees 24 minutes 17 seconds East a distance of 325.85 feet; Thence North 45 degrees 18 minutes 40 seconds West a distance of 577.90 feet; Thence North 00 degrees 00 minutes 46 seconds East a distance of 3,092.33 feet to the north section line of said section 3; Thence continuing North 00 degrees 00 minutes 46 seconds East a distance of 527.53 feet; Thence North 89 degrees 43 minutes 41 seconds East a distance of 1,699.37 feet; Thence North 00 degrees 15 minutes 41 seconds East a distance of 300.00 feet; Thence North 89 degrees 43 minutes 41 seconds East a distance of 500.00 feet; Thence South 00 degrees 15 minutes 41 seconds West a distance of 845.00 feet to the point of beginning.

