



## REQUEST FOR CITY COUNCIL ACTION

Meeting Date: December 15, 2020

<b>ORIGINATING DEPARTMENT:</b> Administration		<b>PRESENTED BY:</b> Drew Nelson
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### **ITEM:**

Resolution 2020-44 – Approving a Public Access Agreement with Kitson Holdings, LLC

### **BACKGROUND:**

With the approval of Resolution 2008-15, the City of Salida was granted a public access easement on the south side of the Boathouse Cantina by Kitson Holdings, LLC, owners of the property. The area in question has been used by the public to access between the Coors boat ramp, the FiBArk building, and Riverside Park/F Street. The existing easement agreement required the City to maintain and police the access. With the construction of the new Manhattan Hotel, along with two retail storefronts adjacent to the access easement, additional user groups are now occupying the space in a different manner than previously.

City staff was approached by Ray Kitson, owner of Kitson Holdings, LLC over the summer to discuss how the new space's use has changed. Staff monitored the area over the course of the summer, and it was evident that patrons of the retail store and ice cream shop were lingering for longer periods of time, along with outdoor seating being occupied consistently (especially with the ongoing Covid-19 pandemic). Concerns were also expressed by the owner that the City was unable to keep up with maintenance and policing of the area, which during certain times of the night was occupied with transients and that chairs and other items had been stolen. Unfortunately, the City does not have the capacity to monitor and clean the space in a manner that meets the demands of this higher level of usage.

In addition, with the changes in use and more patrons staying in the access easement longer, it became clear that there are conflicts between pedestrians, diners, and bicyclists in this now-narrower area. Ownership requested the ability to require bicyclists to dismount when in the access easement to prevent these conflicts, which seems appropriate. The City has received some messages of concern about this change from members of the bicycle community; however, being required to dismount bicycles in this area does not appear to create a hardship. In addition, other agreements with the owner requires bicycle parking/racks in this area, so bicycle usage is clearly still encouraged, and alternate routes for biking along the river trail still remain close by.

In acknowledgment of the physical changes in this location, changes in use by the public, and due to the request of the owner to be allowed to monitor and maintain the access more proactively, City staff – especially the City Attorney – worked with the owner to craft the attached Public Access Agreement. The Agreement still allows for pedestrian access through the area and maintains the flow of people between areas of interest. It also removes the responsibility of the City to maintain the area, placing that responsibility back on the property owner. Last, the Public Access Agreement would nullify the existing public easement.



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**FISCAL NOTE:**

None.

**STAFF RECOMMENDATION:**

Due to the changes of usage and new development in the area, staff recommends that the City Council approve Resolution 2020-44, approving a Public Access Agreement with Kitson Holdings, LLC.

**SUGGESTED MOTIONS:**

A City Councilperson should make a motion to approve Resolution 2020-44, followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO**  
**RESOLUTION NO. 44**  
**(Series of 2020)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,  
APPROVING A PUBLIC ACCESS AGREEMENT WITH KITSON HOLDINGS, LLC**

**WHEREAS**, the City of Salida, Colorado (“City”) is a statutory city, duly organized and existing under the laws of the State of Colorado; and

**WHEREAS**, pursuant to C.R.S. § 31-15-401, the City by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

**WHEREAS**, on March 17, 2008, City Council adopted Resolution No. 2008-15, approving an easement agreement with Raymond G. Kitson, of Kitson Holdings, LLC, for an area located southeast of 228 N. F Street, owned by Kitson Holdings, LLC (“Owner”), with the intention of making the area available for public pedestrian and recreational purposes without charge; and

**WHEREAS**, the City and Owner now wish to amend that agreement between the parties to clarify maintenance responsibility, additional uses and specific conditions, by approving and entering into a “Public Access Agreement” with Owner, attached hereto as **Exhibit A**.

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, THAT:

**Section 1.** The Salida City Council incorporates the foregoing recitals as its conclusions, facts, determinations and findings.

**Section 2.** City of Salida Resolution 2008-15 is hereby repealed and replaced by this Resolution 2020-44.

**Section 3.** The City hereby approves and authorizes the Mayor to sign the Public Access Agreement between the City of Salida and Kitson Holdings, LLC, attached hereto as **Exhibit A**.

**RESOLVED, APPROVED, AND ADOPTED this 15th day of December, 2020.**

CITY OF SALIDA

By: \_\_\_\_\_

P.T. Wood, Mayor

[SEAL]

ATTEST: \_\_\_\_\_

City Clerk/Deputy City Clerk

**Exhibit A**

**Public Access Agreement between City of Salida and Kitson Holdings, LLC**

## **PUBLIC ACCESS AGREEMENT**

THIS PUBLIC ACCESS AGREEMENT (the "Agreement") is made this \_\_\_\_ day of December, 2020, by and between **THE CITY OF SALIDA**, a Colorado statutory municipality (the "City"), and **KITSON HOLDINGS, LLC**, a Colorado Limited Liability Corporation (the "Owner"), (collectively the "Parties.")

### **RECITALS**

A. The Owner is the record title owner of 228 N. F Street, City of Salida, Chaffee Colorado (the "Property").

B. On March 17, 2008 the City adopted Resolution 2008-15 thereby entering into a trail easement agreement with Raymond G. Kitson, of Kitson Holdings, LLC, for an area located at the Property, southeast of 228 N. F Street, more particularly described as Exhibit A of the Agreement recorded at reception number 373385 of the Chaffee County Recorder's Office, noted as "the Public Access Area" within this Agreement.

C. The City and the Owner mutually agree to amend that agreement and to allow additional uses and clarify maintenance responsibility within the real property depicted in the area shown on **Exhibit A**, attached hereto (the "Public Access Area"), as set forth within this Public Access Agreement. **Exhibit A** is hereby incorporated into and made a part of this Agreement.

D. The Public Access Area depicted and described on **Exhibit A** is a part of the Property.

E. The City currently maintains the current Public Access Area, and it is open for accessible use by the general public.

F. The City desires to continue to have an accessible public pedestrian right of way upon the Public Access Area depicted in **Exhibit A**.

G. The Owner desires to continue to grant public access to the City for the continued use Public Access Area, for an accessible public pedestrian right of way upon the Public Access Area; the Owner now desires to be responsible for maintenance of the Public Access Area; and the City desires to accept such easement, subject to the terms and conditions of this Agreement.

### **AGREEMENT**

#### **NOW THEREFORE, THE CITY AND THE OWNER AGREE AS FOLLOWS:**

1. Consideration and Conveyance of Public Access. In consideration of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners have this day bargained and sold and by these presents does bargain, sell, convey, transfer and deliver unto the City, the right of public access for the purposes described in paragraph 3 below, over, under, upon and across all of that portion of the Property (as defined in aforementioned Recital "A" hereof) that is depicted and described on the attached **Exhibit A**.

2. Previous Trail Easement Agreement. This Agreement replaces, repeals and nullifies the previous trail easement agreement between the Parties, recorded at reception number

3. The City's Use of the Public Access Area. The Public Access Area shall be used as an accessible public pedestrian right of way, in a manner as the City shall determine to be reasonably required in connection with the City's use of the Public Access Area for such purposes, and as provided for within this Agreement.

5. Conditions. The Parties further agree that Owner shall utilize the Public Access Area for moveable tables, seating, displays and bike racks, as long as six (6) feet of unobstructed access is maintained through the Public Access Area. Balconies and roof overhangs may encroach into the Public Access Area, at least nine (9) feet above grade. The Parties agree that Owner may request, through signage or otherwise that people are walking their bicycles through the Public Access Area, and not smoking within the Public Access Area.

6. Benefits and Burdens to Run with the Land. The provisions of this Agreement, including all benefits and burdens, are intended to be real covenants running with the land to which they pertain, and each of the benefits and burdens of this Agreement shall inure to and be binding upon the parties, their heirs, executors, administrators, personal representatives, successors and assigns to the land to which they pertain. The parties to this Agreement agree that each of the provisions of this Agreement shall be subject to specific enforcement.

OWNER:

STATE OF COLORADO )  
 ) ss.  
COUNTY OF CHAFFEE )

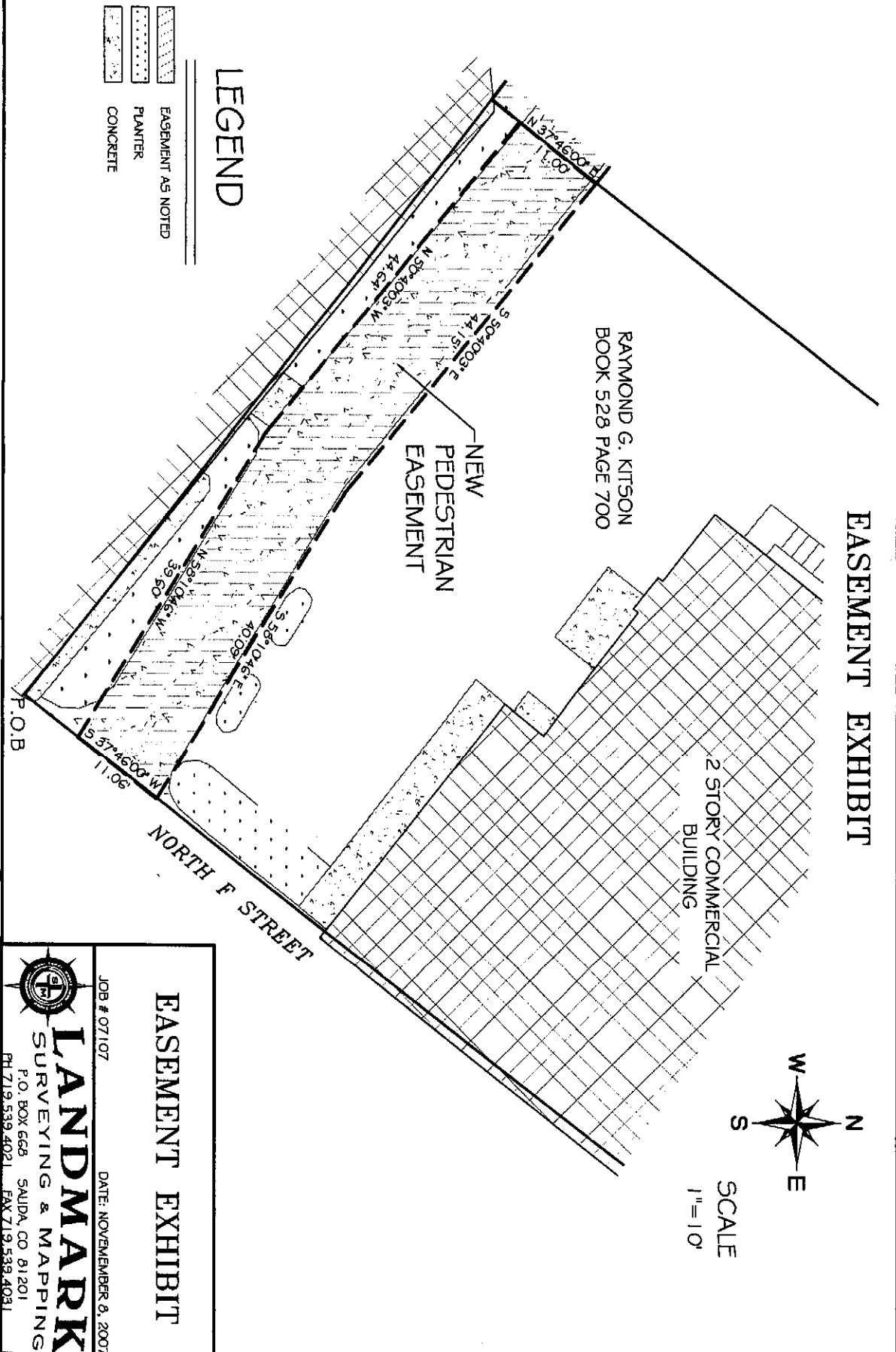
Notary Public  
My Commission Expires:

P.T. Wood, Mayor

**Exhibit A**  
**Public Access Area**

**[attached]**





**RESOLUTION NO. 15**  
**(Series 2008)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY  
OF SALIDA, COLORADO, AUTHORIZING THE MAYOR TO  
SIGN A TRAIL EASEMENT AGREEMENT WITH RAYMOND  
G. KITSON**

**WHEREAS,** The City of Salida seeks a permanent easement for the installation, construction, operation, use inspection, repair, maintenance, and removal of improvements for a bicycle and pedestrian trail on the property described in the enclosed Exhibits, and

**WHEREAS,** It is the intention of the parties to make the easement available to the public for recreational purpose without charge and to limit the parties' liability toward persons entering thereon for such purposes as allowed under Colorado Owners of Public Areas Act C.R.S. 33-41-101

**WHEREAS,** The enclosed Easement outlines the terms agreed to between the parties.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY  
OF SALIDA, COLORADO THAT AUTHORIZES THE MAYOR TO SIGN A TRAIL  
EASEMENT AGREEMENT WITH RAYMOND G. KITSON FOR THE PORTION OF  
PROPERTY DESCRIBED THEREIN.**

**RESOLVED, APPROVED AND ADOPTED** this 17<sup>th</sup> day of March, 2008.



ATTEST:

*Janella Martinez*  
Janella Martinez, City Clerk

CITY OF SALIDA

By: *Thomas Effenkey*  
Acting Mayor Pro Tem

## EASEMENT AGREEMENT

### KNOW ALL MEN BY THESE PRESENTS:

That RAYMOND G. KITSON, ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, subject to all of the terms and conditions hereof, to the CITY OF SALIDA, a Colorado municipal corporation, its successors and assigns, ("Grantee"), a permanent easement for the installation, construction, operation, use, inspection, repair, maintenance and removal of improvements, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, upon, over, under and across the following described property which the Grantor owns, which easement is more particularly described in Exhibit A, which is attached hereto and incorporated herein by this reference. The main trail measures eleven (11) feet in width. Said easement area or premises contains approximately 926.7 square feet. In addition, a maintenance easement shall be granted for twelve additional inches on either side of the trail. This will allow for access for forms or equipment to maintain, repair, or replace the surface.

PURPOSE: This shall be a recreational trail easement for pedestrian and human powered vehicle use. The use of the recreational trail by emergency vehicles, maintenance equipment and vehicles specifically designed for handicap mobility is also permitted.

THE PARTIES, for themselves and their successors and assigns, do hereby additionally covenant and agree that:

1. Grantee shall maintain and repair the entire easement area, and litter removal to the same standard of care as other trails within the City to include power washing after events if necessary, snow removal and leaf removal.
2. Grantee may make other improvements incidental to the use and enjoyment of the walkway upon mutual agreement with the Grantor, so long as these improvements do not interfere with the Grantor's use of its property and do not unreasonably interfere with Grantor's reasonable concurrent use of the easement incidental to its use of its property.
3. Grantee may place and maintain modest, neat and appropriate directional and/or regulatory signage in and about the easement premises as deemed reasonably necessary to regulate the public use and enjoyment of the walkway to be installed and/or developed by Grantee under this Agreement. No new signs, except regulatory signs, will be placed without Grantor permission. Such signage shall be promptly removed by Grantee in the event this Agreement terminates or expires, or in the event Grantee abandons the use of the easement premises.
4. Grantee shall not use the easement for any other purpose except as contemplated herein and shall restore the surrounding area of the above-described property following any construction, repair or maintenance to a condition substantially equivalent to its condition

immediately preceding entry by the Grantee, and that Grantee shall repair or replace all improvements of Grantor that are disturbed or damaged in the exercise of the rights and privileges herein granted.

5. As between Grantor and Grantee, Grantee shall bear full responsibility for the use and enjoyment of the above-described easement and, to the extent permitted by law, shall hold harmless and indemnify Grantor from any claim, damage, liability or loss to person or property resulting from the use, possession or occupancy of the easement premises by Grantee and/or its employees, agents, invitees or easement users; except that nothing herein shall require Grantee to hold harmless or indemnify Grantor for claims, injuries, damages or losses arising from Grantor's own negligent acts, omissions or errors, and such indemnification shall extend only to the extent that proceeds of a policy of insurance or self-insurance are available for such purpose. Moreover, nothing herein is intended or shall be construed to abrogate or diminish the protections and limitations provided to Grantor under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or any other law.

6. That the covenants and agreements herein contained are for the benefit of the Grantor and Grantee only, and do not create any obligations or duties to persons not parties hereto.

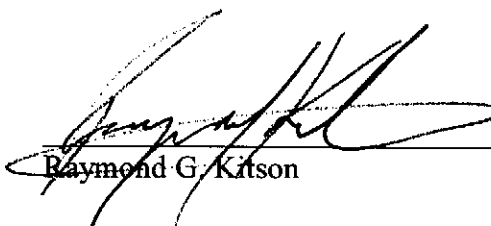
7. That Grantor herein reserves to itself, its successors and assigns, the right to enter upon, occupy, utilize the easement for vehicular access, and use said property any and all purposes not inconsistent with the rights and privileges herein granted.

8. That if the easement is no longer used by the Grantee for the purposes stated herein for a period of one (1) year, the easement shall be considered permanently abandoned, and all right, privilege and interest shall revert to the Grantor.

9. That it is the intention of the parties to make the land of the easement available to the public for recreational purposes without charge and to limit the parties' liability toward persons entering thereon for such purposes as allowed under the Colorado Owners of Recreational Areas Act, C.R.S. § 33-41-101, *et seq.*, should either or both of the parties become subject to a claim for loss, damage or injury to persons or property arising from the public's use of the easement premises.

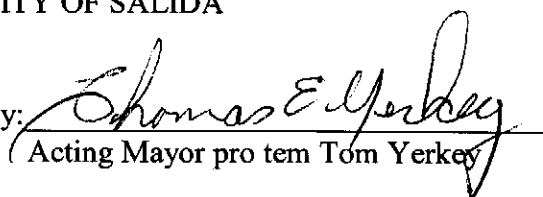
IN WITNESS WHEREOF, the parties hereto hereby execute this Easement Agreement on the day and year first above written.

GRANTOR:

  
Raymond G. Kitson

GRANTEE:

CITY OF SALIDA

By:   
(Acting Mayor pro tem Tom Yerkey)



ATTEST:

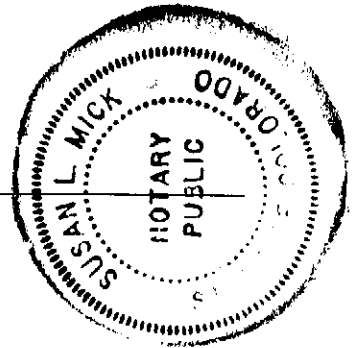
Janelle A Martinez  
Janelle Martinez, City Clerk

STATE OF COLORADO :  
: ss.  
COUNTY OF CHAFFEE :

Subscribed and sworn to before me this 20<sup>th</sup> day of March, 2008,  
by Raymond G. Kitson, Grantor.

My Commission expires: 01-27-2012

Susan L. Mick  
Notary Public

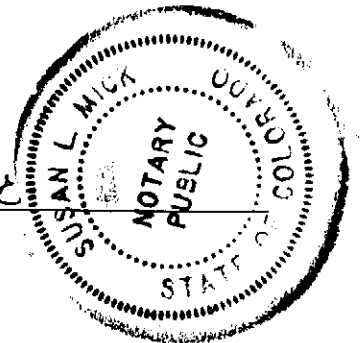


STATE OF COLORADO :  
: ss.  
COUNTY OF CHAFFEE :

Subscribed and sworn to before me this 19<sup>th</sup> day of March, 2008 by  
Tom Yerkey, Acting Mayor pro tem, City of Salida, Grantee.

My Commission expires: 01-27-2012

Susan L. Mick  
Notary Public





**LEGAL DESCRIPTION  
OF A  
PEDESTRIAN EASEMENT**

A PEDESTRIAN EASEMENT LOCATED WITHIN THE PARCEL DESCRIBED AT RECEPTION NUMBER 331214 IN THE OFFICE OF THE CHAFFEE COUNTY CLERK AND RECORDER, CITY OF SALIDA, CHAFFEE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY OF SACKETT AVENUE AND THE WEST RIGHT-OF-WAY OF 'F' STREET;

THENCE NORTH 37°46'00" EAST ALONG THE WEST RIGHT OF WAY OF 'F' STREET, A DISTANCE OF 123.00 FEET TO THE SOUTHEASTERLY CORNER OF SAID PARCEL DESCRIBED AT RECEPTION NUMBER 331214;

THENCE CONTINUING NORTH 37°46'00" EAST ALONG THE WEST RIGHT OF WAY OF 'F' STREET, A DISTANCE OF 7.43 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 58°10'46" WEST, A DISTANCE OF 39.60 FEET;

THENCE NORTH 50°40'03" WEST, A DISTANCE OF 44.64 FEET TO THE NORTHWESTERLY BOUNDARY OF SAID PARCEL DESCRIBED AT RECEPTION NUMBER 331214;

THENCE NORTH 37°46'00" EAST ALONG SAID NORTHWESTERLY BOUNDARY, A DISTANCE OF 11.00';

THENCE SOUTH 50°40'03" EAST, A DISTANCE OF 44.15 FEET;

THENCE SOUTH 58°10'46" EAST, A DISTANCE OF 40.09 FEET TO THE SOUTHEASTERLY BOUNDARY OF SAID PARCEL DESCRIBED AT RECEPTION NUMBER 331214;

THENCE SOUTH 37°46'00" WEST ALONG SAID SOUTHEASTERLY BOUNDARY, A DISTANCE OF 11.06 FEET TO THE POINT OF BEGINNING.

