



# Staff Report

## CLARKDALE TOWN COUNCIL

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Agenda Item:           **FIRST AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF CLARKDALE AND FREEPORT-MCMORAN CORPORATION** – Discussion and consideration of amending the Freeport McMoRan Restated Development Agreement to remove approximately five acres of property known as the Clark House Property.

Staff Contact:           Sherry Bailey, Community Development Director

Meeting Date:           April 13, 2010

Background:

The previous agenda item that rezoned the Clark House and five acres requires removing that property from the development agreement between the town and Freeport-McMoRan that covers the Verde Valley Ranch property. This first amendment to the restated development agreement does just that. The five acres as described on the agreement exhibit and the house will be transferred to Verde Exploration thus requiring removing it from the stated development agreement.

On July 28, 2009, the Town Council waived any potential conflict of interest in the Town Attorney, and the law firm of Boyle, Pecharich, Cline, Whittington & Stallings, representing Verde Exploration in the possible acquisition of the Clark Mansion by Verde Exploration from Phelps Dodge, and in the Town Attorney's representation of the Town in negotiating any necessary amendments to the Restated Development Agreement, necessary rezoning, or other legal matters arising due to Freeport McMoRan's desire to convey the Clark Mansion and surrounding property to a third party.

Recommendation: Staff recommends council approve the First Amendment to the Restated Development Agreement which removes the Clark House and five acres from the development agreement for the Verde Valley Ranch.

When recorded, return to:  
Gallagher & Kennedy, P.A.  
2575 E. Camelback Road  
Phoenix, Arizona 85016  
Attn: Dana Stagg Belknap

## FIRST AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT

### BETWEEN THE TOWN OF CLARKDALE AND FREEPORT-MCMORAN CORPORATION

THIS FIRST AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT ("Amendment") is entered into on this \_\_\_ day of \_\_\_\_\_, 2010 by and between the TOWN OF CLARKDALE, an Arizona municipal corporation (the "Town") and FREEPORT-MCMORAN CORPORATION, a New York corporation (formerly known as Phelps Dodge Corporation) (the "Developer").

#### Recitals

- A. The Town and Phelps Dodge Corporation are parties to that certain Restated Development Agreement recorded in the Official Records of the Yavapai County Recorder as Document Number 3687686 (the "Agreement"). The property that is the subject of the Agreement is legally described in the attached **Exhibit 1** (the "Property").
- B. The parties desire to amend the Agreement to remove approximately five acres of the Property, known as the Clark House Property, from the Agreement. The Clark House Property is legally described and depicted in the attached **Exhibit 2**.
- C. The Developer has requested that the Town consider abandoning a portion of the easement previously granted to Yavapai County for Verde Valley Country Club Road, which easement was subsequently annexed by the Town, as depicted in the attached **Exhibit 3** (the "Verde Valley Country Club Road Easement"). The Town is willing to abandon the Verde Valley Country Club Road Easement because the Developer subsequently dedicated an easement for Sycamore Canyon Road, which is used in place of the Verde Valley Country Club Road Easement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties hereby agree as follows:

## Agreement

1. Effect of Amendment. Except as amended by this Amendment, the Agreement shall remain in full force and effect. Any capitalized terms not defined in this Amendment shall have the meaning set forth in the Agreement.

2. Recitals and Exhibits Incorporated. The Recitals set forth at the beginning of this Amendment and all Exhibits to this Amendment are incorporated into this Amendment as though fully restated.

3. Deletion of the Clark House Property. The Clark House Property is hereby deleted from the Agreement, and references in the Agreement and this Amendment to "Property" shall not include the Clark House Property. Upon the Town's approval of a rezoning case for the Clark House Property, the Clark House Property also shall be deemed deleted from the Zoning (as such term is defined in the Agreement), which the Agreement implements.

4. Abandonment of Verde Valley Country Club Road Easement. Concurrently with the execution of this Agreement, the Town will execute the Release of Easement for the Verde Valley Country Club Road Easement in the form set forth in the attached **Exhibit 4** and shall take such other acts as reasonably necessary to accomplish the abandonment of the Verde Valley Country Club Road Easement.

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective on the date written above, and hereby swear and affirm that they are duly authorized in accordance with law to execute this Amendment.

TOWN OF CLARKDALE, an Arizona  
municipal corporation

FREEPORT MCMORAN ORPORATION,  
a New York Corporation

BY: \_\_\_\_\_

BY: \_\_\_\_\_

It's \_\_\_\_\_

It's \_\_\_\_\_

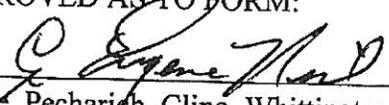
Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Kathy Bainbridge, Town Clerk

  
\_\_\_\_\_  
Boyle, Pecharich, Cline, Whittington &  
Stallings, P.L.L.C., Town Attorney by  
G. Eugene Neil

STATE OF ARIZONA

County of Maricopa

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
by \_\_\_\_\_ the \_\_\_\_\_ of Freeport  
McMoRan Corporation, a New York Corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ARIZONA

County of Yavapai

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of April, 2010, by Doug Von  
Gausig the Mayor of the Town of Clarkdale, Arizona, a municipal corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## **List of Exhibits**

- |           |   |
|-----------|---|
| Exhibit 1 | Legal Description of the Property                     |
| Exhibit 2 | Legal Description and Map of the Clark House Property |
| Exhibit 3 | Verde Valley Country Club Road Easement               |
| Exhibit 4 | Release of Easement                                   |

**Exhibit 1**

**The Property**

**Legal Description**

**EXHIBIT 1-A  
LEGAL DESCRIPTION**

That part of Sections 16, 17, 20 & 21, Township 16 North, Range 3 East, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Beginning at the Northeast Corner of said Section 21;

Thence, South 03°32'58" East, along the East line of said Section 21, a distance of 1547.08 feet to a point on the Northwesterly line of the "Tuzigoot National Monument" as recorded in Book 173 of Deeds, page 207, Yavapai County Records;

Thence, South 24°32'04" West, along said Northwesterly line, 560.57 feet to the most Westerly Corner of said "Tuzigoot Monument";

Thence, South 16°14'44" East, along the Southwesterly line of said Tract, 1200.84 feet to a point on the East line of the Southeast Quarter of said Section 21;

Thence, South 03°33'07" East, along said line, 330.91 feet to the Southeast corner of this property, also being the Northeast corner of the State of Arizona Parks property as described in Book 1888 Page 877, Yavapai County Records;

Thence, along and contiguous with said Park Boundary, which is also described in Book 179, Page 144, Yavapai County Records as the annexation limits for the Town of Clarkdale the following courses and distances:

South 83°15'06" West, 1599.13 feet (Recorded - South 82°22'06" West, 1600.81 feet);

North 79°59'21" West, 735.11 feet (Recorded - North 76°50'59" West, 735.37 feet);

North 70°04'54" West, 405.08 feet (Recorded - North 66°57'39" West, 404.97 feet);

South 80°35'49" West, 669.98 feet (Recorded - South 83°43'45" West, 670.03 feet);

North 57°33'26" West, 555.44 feet (Recorded - North 54°25'21" West, 555.56 feet);

Thence, departing from said Park Boundary, North 56°42'57" West, 297.91 feet;

Thence, North 33°26'22" West, 1196.00 feet to "Corner Number 3", as recorded in said "Annexation Petition" said Corner also being recorded in an "Annexation Petition" for the "Town of Clarkdale" in Book 102, Page 109, Yavapai County Records;

Thence, along said line and contiguous with said recorded "Annexation line", the following courses,

North 33°26'22" West, 1100.00 feet;

Thence, North 30°23'22" West, 197.80 feet;

Thence, North 46°33'23" West, 1494.98 feet to Corner Number 4, of said "Annexation Petition", said Corner also being the Southeasterly Corner of the "Verde Valley Industries, Inc." recorded in Book 61, Page 455, Yavapai County Records;

Thence, along and contiguous with, the Easterly Boundary line of said "Verde Valley Industries, Inc.", the following courses and distances;

North 59°53'48" West, 241.10 feet;  
North 42°03'48" West, 557.60 feet;  
North 20°44'48" West, 525.90 feet;  
North 85°35'48" West, 227.30 feet;  
North 19°09'06" West, 569.60 feet;  
North 34°34'48" West, 247.90 feet;  
North 49°20'48" West, 275.00 feet;  
North 35°02'12" East, 460.00 feet;  
North 04°03'12" East, 318.20 feet;  
North 13°52'48" West, 391.10 feet;

Thence, leaving said Easterly line, North 81°46'35" East, 657.76 feet;

Thence, North 75°10'46" East, 2337.89 feet;  
Thence, South 68°11'26" East, 1610.27 feet;  
Thence, North 31°53'43" East, 317.14 feet;  
Thence, North 89°05'30" East, 370.86 feet;  
Thence, South 40°20'01" East, 415.81 feet;  
Thence, South 70°47'31" East, 563.75 feet;  
Thence, North 11°59'51" East, 489.21 feet;  
Thence, North 00°37'33" East, 550.44 feet;  
Thence, South 45°50'25" East, 283.50 feet;  
Thence, North 61°11'14" East, 682.62 feet;  
Thence, South 85°39'57" East, 473.86 feet;

Thence, South 61°08'38" East, 434.78 feet to a point on the East line of the Northeast Quarter of said Section 16;

Thence, South 02°21'20" East, along said East line, 1167.71 feet to the East Quarter Corner of said Section 16;

Thence, South 01°49'36" East, along the East line of the Southeast Quarter of said Section 16, a distance of 2662.36 feet to the True Point of Beginning.

Containing 977.431 Acres, more or less.

## Exhibit 2

### Clark House Property

### Legal Description and Map

#### LEGAL DESCRIPTION

##### **PARCEL "A" THE CLARK HOUSE**

A parcel of land situated in portions of Sections 20 and 21, Township 16 North, Range 3 East of the Gila and Salt River Meridian, Town of Clarkdale, Yavapai County, Arizona, more particularly described as follows:

**COMMENCING** at the North Quarter corner of said Section 21, being monumented with a found General Land Office (G.L.O.) brass capped iron post;

**THENCE** North 88°29'37" West, a measured geodetic bearing and Basis of Bearings for this description (record North 88°30' West per G.L.O. plat number 00659 herein referenced as record source "RG") along the North line of said Section 21, a distance of 2,603.43 feet measured (record 2,603.04 feet per "RG") to the Witness corner to the Northwest corner of said Section 21, being monumented with a found General Land Office (G.L.O.) brass capped iron post;

**THENCE** North 88°29'37" West measured, (record North 88°30' West per "RG") continuing along said North line of said Section 21, a distance of 33.00 feet measured (record 33.00 feet per "RG") to the Northwest corner of said Section 21, being also the Northeast corner of said Section 20, said corner being monumented with a found 1" iron bar (affixed plastic cap stamped "FOUND PT RLS 37401");

**THENCE** South 00°54'18" East measured, (record South 00°04' East per "RG"), along the line common to said Sections 20 and 21, a distance of 120.38 feet measured to a set plastic capped iron bar stamped "GEOMETRIX RLS 37401" monumenting **THE POINT OF BEGINNING**.

**THENCE** North 68°22'04" East measured, departing from said line common to Sections 20 and 21, a distance of 194.48 feet measured to a set plastic capped iron bar stamped "GEOMETRIX RLS 37401";

**THENCE** South 31°45'12" East measured, a distance of 167.78 feet measured to a set plastic capped iron bar stamped "GEOMETRIX RLS 37401";

**THENCE** South 16°30'44" East measured, a distance of 108.96 feet measured to a set plastic capped iron bar stamped "GEOMETRIX RLS 37401";

**THENCE** South 29°41'58" West measured, a distance of 518.06 feet measured to a set plastic capped iron bar stamped "GEOMETRIX RLS 37401" monumenting a point on the Northeasterly line of the temporary 60.00 feet wide Easement for Sycamore Canyon Roadway, as described in Book 4645 of Official Records, Page 171, records of said Yavapai County (herein referenced as record source "RS");

**THENCE** North 38°21'15" West measured, (record North 38°42'15" West per "RS"), along said Northeasterly line of said Easement for said Sycamore Canyon Roadway, a distance of 55.08 feet measured to a set plastic capped iron bar stamped "GEOMETRIX RLS 37401" monumenting a point on said line common to said Sections 20 and 21;

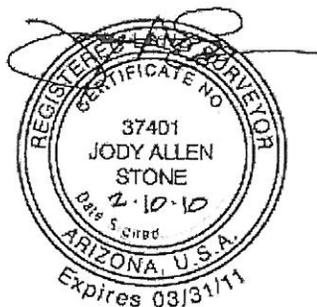
**THENCE** North 38°21'15" West measured, (record North 38°42'15" West per "RS") departing from said line common to said Sections 20 and 21 and continuing along said Northeasterly line of said Easement for said Sycamore Canyon Roadway, a distance of 153.56 feet measured to a set plastic capped iron bar stamped "GEOMETRIX RLS 37401" monumenting the point of curvature of a circular tangent curve to the right, concave Northeasterly, the radius point of which bears North 51°38'45" East measured, a distance of 820.00 feet calculated (record 820.00 feet per "RS");

**THENCE** Northwesterly measured, along the arc of said curve and along said Northeasterly line of said Easement for said Sycamore Canyon Roadway, an arc length of 189.71 feet calculated, through a central angle of 13°15'20" calculated, said curve being subtended by a chord bearing of North 31°43'35" West measured and a chord length of 189.29 feet measured to a set plastic capped iron bar stamped "GEOMETRIX RLS 37401" monumenting the end of said curve;

**THENCE** North 25°05'55" West measured, (record North 25°26'55" West per "RS"), continuing along said Northeasterly line of said Easement for said Sycamore Canyon Roadway, a distance of 211.59 feet measured to a set plastic capped iron bar stamped "GEOMETRIX RLS 37401";

**THENCE** North 68°22'04" East measured, departing from said Northeasterly line of said Easement for said Sycamore Canyon Roadway, a distance of 296.25 feet measured to **THE POINT OF BEGINNING**.

Containing 5.00 acres, more or less.

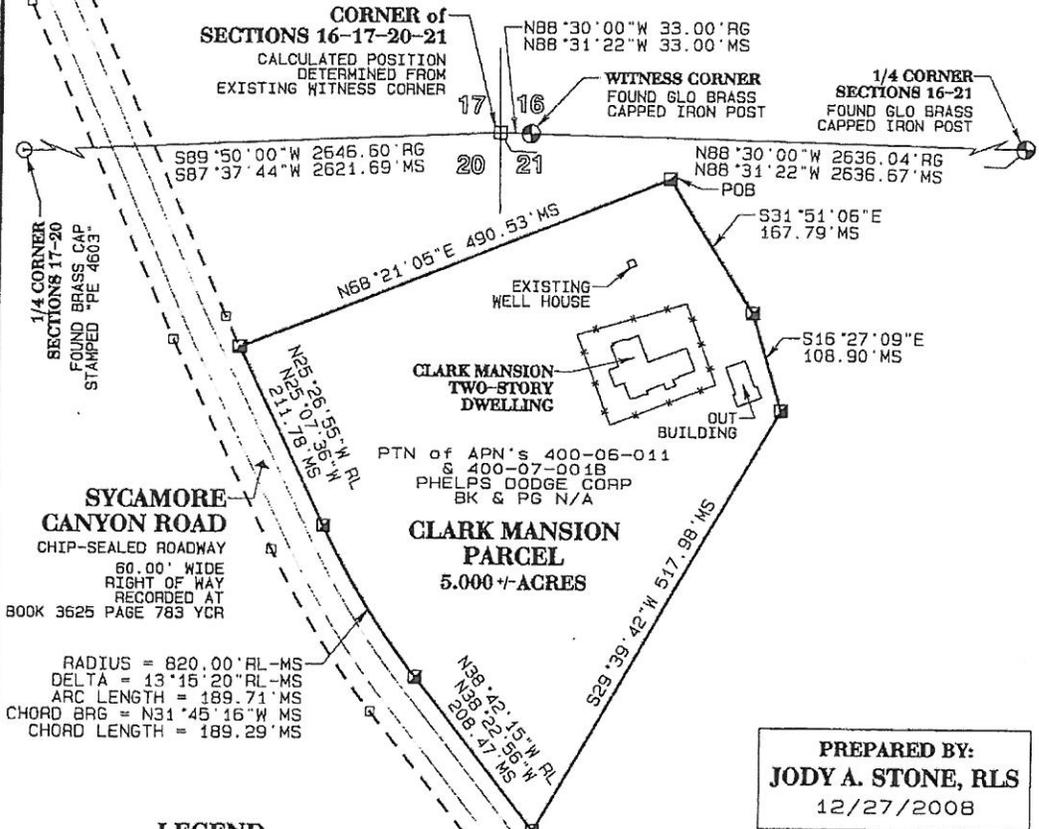
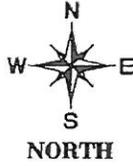
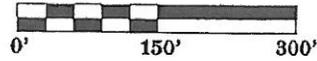


# EXHIBIT 3

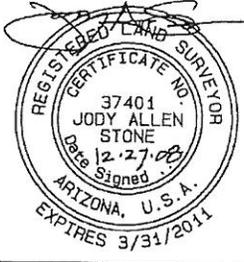
SHOWING THE LOCATION &  
GENERAL OUTLINE  
OF THE  
CLARK MANSION PARCEL

SITUATED IN PORTIONS OF  
SECTIONS 20 & 21 T16N-R3E  
G&SRB&M YAVAPAI COUNTY AZ

GRAPHIC SCALE:  
1 inch = 150 feet



PREPARED BY:  
**JODY A. STONE, RLS**  
12/27/2008



## EXHIBIT 4

When Recorded Return To:

**FOLDER:**

Robert S. Pecharich, Esq.  
Boyle, Pecharich, Cline,  
Whittington & Stallings, P.L.L.C.  
125 North Granite Street  
Prescott, Arizona 86301

### RELEASE OF EASEMENT

Release given this \_\_\_ day of \_\_\_\_\_, 2010, by the Town of Clarkdale, Arizona, an Arizona municipality, to Freeport-McMoRan Copper & Gold, Inc., a Delaware corporation duly authorized to do business in the State of Arizona and successor in interest to Phelps Dodge Corporation.

On March 29, 1967, in Book 438, Page 322, official records of Yavapai County, Arizona, Phelps Dodge Corporation granted to the County of Yavapai, Arizona, a perpetual easement for right of way over and across the real property described in Exhibit A attached hereto. Thereafter, the Town of Clarkdale annexed the subject Yavapai County property into the municipal town limits of the Town of Clarkdale, pursuant to that certain Ordinance #129, recorded on January 17, 1991 in Book 2323, Page 801, official records of Yavapai County, Arizona.

Pursuant to the powers enumerated in Arizona Revised Statutes, §9-402(E), the Town of Clarkdale does, by this instrument, release to Freeport-McMoRan Copper &

Gold, Inc., successor in interest to Phelps Dodge Corporation, the easement described above, it being the intention of the parties to terminate such easement.

IN WITNESS WHEREOF, I have caused this Release to be executed at \_\_\_\_\_, Arizona, on the date indicated below.

Dated this \_\_\_ day of \_\_\_\_\_, 2010.

THE TOWN OF CLARKDALE,  
an Arizona municipality

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

SUBSCRIBED AND SWORN to before me, a Notary Public, this \_\_\_ day \_\_\_\_\_, 2010, by \_\_\_\_\_, on behalf of the Town of Clarkdale, Arizona.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## EXHIBIT A

### Legal Description

All that portion of Yavapai County Assessor's Parcel No. 800-19-001Q, more particularly described as:

In the West 1/2 of Section 21, Township 16 North, Range 3 East, the center line of which parcel, being the same as the center line of the Verde Valley Country Club Road, commences at a point on the northerly right-of-way line of the Clarkdale-Tuzigoot Highway described as follows; beginning at the witness corner to Section 16, 17, 20 and 21, Township 16 North, Range 3 East; thence S. 32°02'50" E. for 3464.54 feet to the P.I. of a curve on the Clarkdale-Tuzigoot Highway; thence S. 52°50' W. for 506.21 feet to the P.O. of said curve at Station 16+32.71; thence northeasterly along said curve for 420.19 feet to Station 20+52.90, this being the intersection of the center line of the Clarkdale-Tuzigoot Highway and the Verde Valley Country Club Road; thence N. 17°34' W. for 50.0 feet to the true point of beginning of this center line description; thence N. 17°34' W. for 99.33 feet to the P.O. of a curve to the left at Station 1+49.33. Center line curve data is as follows --  $\Delta = 28^\circ 20'$ ,  $D = 28^\circ$ ; thence along said curve to the left for 101.19 feet to the P.T. of said curve at Station 2+50.52; thence N. 45°54' W. for 327.81 feet to the P.C. of a curve to the right at Station 5+78.33. Center line curve data is as follows --  $\Delta = 7^\circ 31'$ ,  $D = 2^\circ$ ; thence along said curve to the right for 375.83 feet to the P.T. of said curve at Station 9+54.16; thence N. 38°23' W. for 1942.96 feet to the P.C. of a curve to the right at Station 28+97.12. Center line curve data is as follows --  $\Delta = 39^\circ 44'$ ,  $D = 25^\circ$ ; thence along said curve to the right for 158.93 feet to the P.T. of said curve Station 30+56.05; thence N. 1°21' E. for 137.85 feet to the end of this description and the end of this easement.

Gila and Salt River Base and Meridian, in Yavapai County, Arizona, and said parcel of land being 50 feet wide, 25 feet on the Rt. side of, and 25 feet on the Lt. side of, parallel and adjacent to the center line of the Verde Valley Country Club Road

County Highway as said center line runs with all curves and angles on, over, through, and across the land of the Grantor, as shown on the map of said highway of record in the office of the County Recorder of said county, or attached hereto

Lying within the following described parcel:

A parcel of land situated in a portion of Sections 20 and 21, Township 16 North, Range East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Commencing at a found Government Land Office (G.L.O.) brass capped iron post monumenting the North quarter corner of said Section 21, from which a found Government Land Office (G.L.O.) brass capped iron post monumenting the Witness corner to the Northwest corner of said Section 21 bears North 88 degrees 31 minutes 22 seconds West (of record North 88 degrees 30 minutes 00 seconds West), a measured geodetic bearing and basis of bearings for this description, a distance of 2,603.67 feet (of record 2,603.04 feet);

Thence North 89 degrees 33 minutes 02 seconds West, a distance of 2,453.17 feet to a set aluminum capped iron bar stamped "RLS 37401" being the Point of Beginning;

Thence South 31 degrees 51 minutes 06 seconds East, a distance of 167.79 feet to a set aluminum capped iron bar stamped "RLS 37401";

Thence South 16 degrees 27 minutes 09 seconds East, a distance of 108.90 feet to a set aluminum capped iron bar stamped "RLS 37401";

Thence South 29 degrees 39 minutes 42 seconds West, a distance of 517.98 feet to a set aluminum capped iron bar stamped "RLS 37401" monumenting a point on the Northeasterly Right of Way line of Sycamore Canyon Road, as described in Book 3625 of Official Records, page 783, records of said Yavapai County;

Thence North 38 degrees 22 minutes 56 seconds West (of record North 38 degrees 42 minutes 15 seconds West), along said Northeasterly Right of Way line, a distance of 208.47 feet to the point of curvature of a circular tangent curve to the right, concave Northeasterly, the radius point of which bears North 51 degrees 37 minutes 04 seconds East, a distance of 820.00 feet (of record 820.00 feet);

Thence Northwesterly, along the arc of said curve and along said Northeasterly Right of Way line, an arc length of 189.71 feet, through a central angle of 12 degrees 15 minutes 20 seconds, said curve being subtended by a chord bearing of North 31 degrees 45 minutes 16 seconds West and a chord length of 189.29 feet, to a set aluminum capped iron bar stamped "RLS 37401" monumenting the end of said curve;

Thence North 25 degrees 07 minutes 36 seconds West (of record North 25 degrees 26 minutes 55 seconds West), continuing along said Northeasterly Right of Way line a distance of 211.78 feet to a set aluminum capped iron bar stamped "RLS 37401";

Thence North 68 degrees 21 minutes 05 seconds departing from said Northeasterly Right of Way line, a distance of 490.53 feet to the Point of Beginning.