

FILED SARPY CO. NE.
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Jerry M. Slusky

REGISTER OF DEEDS



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SUBMITTED SMITH GARDNER SLUSKY LAW

After Recording Return to:

Jerry M. Slusky, Esq.

8712 West Dodge Road, Suite 400

Omaha, Nebraska 68114

MASTER DEED OF TRUST

THIS DEED OF TRUST, made this 2 day of February 2011, by and among the following:

TRUSTOR: JMF, LLC and McCune Development, LLC

TRUSTEE: Jerry M. Slusky, Esq.
8712 West Dodge Road, Suite 400
Omaha, Nebraska 68114

BENEFICIARY: Rod Rhoden

Trustor, in consideration of a Revolving Credit Promissory Note ("Note") payable to Beneficiary in the maximum principal sum of ONE MILLION, FIVE HUNDRED, SIXTY ONE THOUSAND, THREE HUNDRED FIFTY DOLLARS AND NO/100'S (\$1,561,350.00), the receipt and adequacy of which is hereby acknowledged, hereby **convey to Trustee, in Trust, with power of sale**, the following parcels of real property known as 1.) 180th Street Lots, 2.) Highway 370 Lots, 3.) Covington II Lots, and 4.) Kindbieter Farm, as legally described on the attached Exhibit "A", individually known as "Parcel 1, Parcel 2, Parcel 3 or Parcel 4", and collectively known as the "Premises" together with all buildings, fixtures and improvements upon the Premises, whether now or hereafter existing, all rights-of-way, easements, rents, issues, profits,

income, tenements, hereditaments, privileges and appurtenances belonging, used or enjoyed in connection with the Premises, or any part thereof (subject, however, to the right, power and authority of Trustor to collect and apply such rents, issues, profits and income as they become due and payable, so long as no default exists hereunder) and all proceeds of conversion, voluntary or involuntary, or any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards, all of which collectively is hereinafter referred to as the "Trust Property."

Trustor and Beneficiary covenant and agree as follows:

1. Payment of Note. Trustor shall promptly pay when due the principal of and interest on the Note on the dates and at the place and in the manner provided therein and shall punctually perform all agreements, conditions and provisions of any other security instrument given in connection with this transaction.

2. Priority of Lien. Trustor, at his expense, will maintain and preserve the lien of this Deed of Trust as a lien upon the Trust Property. This Deed of Trust shall be subordinate only to the following pre-existing Deeds of Trust:

1) Deed of Trust executed by McCune Development LLC to Pinnacle Bank as Trustee and as Beneficiary in the sum of \$215,000.00 dated February 15, 2005, filed February 16, 2005, in Instrument 2005-04781;

2) Deed of Trust executed by McCune Development LLC to Pinnacle Bank as Trustee and as Beneficiary in the sum of \$2,450,000.00 dated March 2, 2006, filed March 8, 2006, in Instrument 2006-08004;

3) Deed of Trust executed by McCune Development LLC to Pinnacle Bank as Trustee and as Beneficiary in the sum of \$4,630,000.00 dated May 7, 2007, filed May 7, 2007, in Instrument 2007-13088; and

4) Deed of Trust executed by McCune Development LLC to Pinnacle Bank as Trustee and as Beneficiary in the sum of \$355,000.00 dated March 3, 2008, filed March 6, 2008, in Instrument 2008-06174;

currently existing on, and secured by Parcel 1, Parcel 2, Parcel 3 and Parcel 4, and shall not be subordinate to any other liens. Trustee may cause this Deed of Trust, and each amendment or supplement thereto, to be filed and recorded as a lien on the Trust Property in such manner and in such place, and will take such other action as in the opinion of Trustee may be required by any present or future law in order to perfect, maintain and protect the lien of this Deed of Trust, as the same may be from time to time amended or supplemented. Trustor shall pay the costs for all such recording and filing.

3. Assignment of Damages and Proceeds. If title to any part of Trust Property shall be taken in condemnation proceedings, by right of eminent domain or similar action, or shall be sold under threat of condemnation, all awards, damages and proceeds allocable to Beneficiary's secured interest are hereby assigned and shall be paid to Beneficiary who shall apply such amount to the repayment of the Principal Balance (as defined in the Note) remaining on the amounts owed by Trustor to Beneficiary. Trustor will promptly, and with due diligence, repair, alter and restore the remaining part of the Trust Property to its former condition to the extent that the same may be feasible and so as to constitute a complete and usable unit.

4. Insurance. Trustor, at his expense, shall maintain liability insurance with respect to the improvements and personal property constituting the Premises. All insurance policies maintained pursuant to this Deed of Trust shall name Trustor and Trustee as joint insureds, as their respective interests may appear, and provide there shall be no cancellation or modification without ten (10) days prior written notification to Trustee and Beneficiary. In the event any policy hereunder is not renewed on or before ten (10) days prior to its expiration date, Trustee or Beneficiary may procure such insurance, pay the premiums therefore, and such sums shall immediately become due and payable with interest at the rate of 15% per annum until paid and shall be secured by this Deed of Trust. A certificate of insurance for each policy of insurance required by this Deed of Trust shall be delivered to and retained by Trustee. Failure of Trustor to furnish such insurance, or renewals as are required hereunder, or failure to pay any sums advanced hereunder shall, at the option of Beneficiary, constitute a default. All unearned premiums are hereby assigned to Trustee as additional security and a sale and conveyance of the Trust Property by the Trustee shall operate to convey to the purchaser the Trustor's interests in and to all policies of insurance upon the Trust Property.

5. Waste. Trustor shall not commit any waste upon the Trust Property and shall, at all times, maintain the same in good operating order and condition and shall make, from time to time, all repairs, renewals, replacements, additions and improvements which Trustor deems are reasonably needful or desirable to such end.

6. Adverse Claims and Actions. If during the existence of this Trust there shall be threatened, commenced or pending any suit or action affecting any of the Trust Property, the title thereto or the priority of the lien of this Deed of Trust thereon; or any adverse claim for or against the Trust Property, the title thereto or the priority of the lien of this Deed of Trust thereon, or any part thereof, Trustee or Beneficiary may pay and expend such sums of money as Trustee or Beneficiary may reasonably deem advisable, which sums shall be deemed to have been advanced hereunder, added to the principal balance of the Note and secured by this Deed of Trust as part of the principal balance of the Note.

7. Taxes. Trustor will pay all taxes, assessments and other public charges upon the Trust Property before the same by law become delinquent and when such taxes, assessments or public charges shall be levied upon the Note secured by this Deed of Trust, or upon the Trustee or Beneficiary, or upon their successors or assigns, on account of said debt the lien of this Deed of

Trust (except income taxes) Trustor will pay such taxes, assessments or public charges prior to the time the same shall, by law, become delinquent.

8. Execution of Other Instruments. Trustor will execute and deliver to the Trustee, promptly upon demand, such security instruments as may be required by Trustee, in form and substance satisfactory to Trustee, covering any of the Trust Property conveyed by this Deed of Trust, which security instruments shall be additional security for Trustor's faithful performance of all the terms, covenants and conditions of this Deed of Trust, the amounts secured hereby, and any other security instrument instruments executed in connection with this transaction. Such instruments shall be recorded or filed, or rerecorded or refiled, at Trustee's expense.

9. Interest. All payments made under the provisions of this Deed of Trust, for the amounts secured hereby, which may be construed as interest, shall not, in the aggregate over the term hereof, exceed the rate that may be lawfully contracted in writing in the State of Nebraska. Any payments exceeding the lawful rate of interest shall be disbursed in accordance with the provisions of the Note.

10. Duties and Obligations of Trustee. Trustor agrees that: (a) the duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee; (b) no provision of this Deed of Trust shall require Trustee to expend or risk its own funds, or otherwise incur any financial obligation in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; (c) Trustee may consult with counsel of its own choosing and the advice of such counsel shall be full and complete authorization and protection in the respect of any action taken or suffered by Trustee hereunder in good faith and in reliance thereon; (d) Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within the discretion of rights of powers conferred upon it by this Deed of Trust.

11. Breach of Covenant or Agreement by Trustor. Upon material breach of any covenant or agreement of Trustor in this Deed of Trust to pay the amounts owed and secured by this Deed of Trust, or upon any change in ownership of all or any portion of the Trust Property by sale or otherwise, Beneficiary, at Beneficiary's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand or notice and may instruct Trustee to invoke the power of sale conferred herein upon the Trustee and pursue any other remedies permitted at law or in equity to recover all such sums with interest thereon. Trustee shall be entitled to collect in any such proceeding, in addition to the foregoing sums, all fines and all expenses and costs incurred in pursuing such remedies, including, but not limited to, costs of documentary evidence, abstracts, title reports, Trustee's fees and attorney's fees.

Trustee shall be entitled, at its option, and without regard to the value of the security or the solvency or insolvency of Trustor, to enter upon and take possession of the Trust Property, or any part thereof, and to do and perform such acts as may be necessary or proper to repair, protect and to conserve the value thereof, and to rent or lease the same, or any part thereof, upon such rental terms and conditions as its reasonable judgment may dictate, and to collect and receive the rents, issues and profits thereof, which said rents, issues and profits present and future, are hereby assigned to the Trustee as further security, which assignment Trustee agrees not to enforce so long as no default has occurred.

Notwithstanding the foregoing, or any other provisions to the contrary, Trustee's right to pursue foreclosure of this Deed of Trust or any other action or remedy, whether at law or in equity, shall not become enforceable until each Trustor receives proper notice of Trustor's default if notice is required and such default remains uncured by Trustor upon the expiration of the applicable cure period. Notice shall be deemed proper if in writing, addressed to Trustor and sent by certified U.S. mail, postage prepaid, return receipt requested; and shall be deemed received upon the date evidenced on the return receipt.

12. Payment of Fees and Expenses. Trustor expressly covenants and agrees to pay and discharge all reasonable costs, fees and expenses of this Trust, including, in the event of sale by the Trustee of the Trust Property, the Trustee's costs, expenses and fees.

13. Amounts Paid or Expensed in Curing Default. Trustor will pay to Trustee or to the Beneficiary, upon demand, the amounts of all sums of money which either shall have paid or expensed in curing any default of Trustor under this Deed of Trust, together with interest upon each of said amounts, until paid, from the time of expenditures thereof, at the rate of 15% per annum. All of said sums shall be due and payable, together with interest aforesaid, immediately upon the advancement thereof. Neither Trustee nor Beneficiary shall be under any obligation, however, to cure any default of Trustor.

14. Reconveyance of Trust Property. In case Trustor shall well and truly perform his obligations under this Deed of Trust, and pay or cause to be paid in full the amounts owed, and also the reasonable expenses of the Trustee herein provided, then the Trustee, its successors or assigns, shall reconvey to Trustor all of the Trust Property conveyed to Trustee by the Trustor. Any part of the Trust Property may be reconveyed at any time to the Trustor at the request of the Beneficiary without affecting the validity and priority of the lien of this Deed of Trust upon the remainder of the Trust Property.

15. Severability. In the event that any one or more of the provisions contained in this Deed of Trust, or any other security instrument given in connection with this transaction shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Beneficiary, not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein or therein.

16. Meaning. Whenever used herein, the singular shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders, and the term, "Beneficiary" shall include any payee of the indebtedness hereby secured or any transferee thereof, whether by operation of law or otherwise.

17. Foreclosure By Power of Sale. Should Beneficiary elect to foreclose by exercise of the Power of Sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustors such Notice of Default and Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustors, after such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Property at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels as Trustee shall deem expedient, and in such order as Trustee may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustors, Trustee and Beneficiary, may purchase at such sale and Trustors hereby covenant to warrant and defend the title of such purchaser or purchasers.

(b) As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at 15% per annum, (ii) all other sums then secured hereby, and (iii) the remainder, if any to the person or persons legally entitled thereto.

(c) Trustee may in the manner provided by law, postpone sale of all or any portion of the Trust Property.

18. Recourse. In any suit for damages or any money judgment against Trustors for principal, interest and other sums due on this Deed of Trust or the Note, the Beneficiary's rights shall not be limited to (a) the Trust Property as described in this Deed of Trust and the income including, among other things, rental income due or becoming due on and after the date Trustors' payment is due (in the case of a monetary default) or on and after the date of performance of the act prohibited or of failure of performance of the act required by this Deed of Trust (in the case of

a non-monetary default), (b) any funds held by Beneficiary pursuant to this Deed of Trust, (c) insurance and condemnation awards, rights and proceeds, and (d) escrow and security deposits. Trustors expressly understand and agree that nothing contained in this paragraph shall in any manner constitute or be deemed to be a release or impairment of the indebtedness owed to Beneficiary or an impairment of the lien of this Deed of Trust instrument or any other liens, assignments, rights or security interests securing the amounts owed or shall otherwise affect or impair the enforceability of this Deed of Trust or the amounts owed. Furthermore, nothing in this paragraph shall preclude Trustee from foreclosing under this Deed of Trust, from proceeding against any and all security held by Trustors, or from enforcing any and all of Beneficiary's rights and remedies at law or in equity, including, without limitation, the right to have a receiver appointed in case of a default under this Deed of Trust, or from pursuing an action at law and obtaining judgment against Trustors to the extent authorized in this Deed of Trust or for enforcement of the Note. In the case of default, Trustors shall be liable to Beneficiary for (i) all accounts receivable from the Trust Property, including such rents, issues and profits that accrue from and after the date of the occurrence of any default as provided in (a) above, notwithstanding any delay on the part of Trustee in obtaining possession or title, by foreclosure, receivership or otherwise, to the Trust Property and (ii) all damages, advances, losses or payments (including without limitation, reasonable attorneys' fees) incurred, made, or suffered by Trustee and for all funds received, retained or obtained by or for the benefit of Trustors as a result of or in connection with the conversion, assignment, misapplication or disposal of any insurance rights or proceeds or any rights, awards or other sums resulting from condemnation or eminent domain or threat of exercise of the power of condemnation or eminent domain with respect to the real or personal property encumbered by this Deed of Trust.

IN WITNESS WHEREOF, Trustor executes this Deed of Trust effective as of this 2 day of February 2011.

JMF, LLC, owner of Parcel 1 and Parcel 2

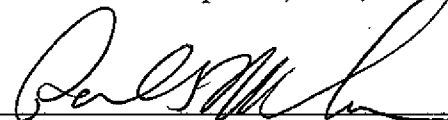


Paul McCune, Managing Member



Rod Rhoden, Member

McCune Development, LLC, owner of Parcel 3 and Parcel 4



Paul McCune, Managing Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 2 day of February, 2011, before me, a notary public in and for said County and State aforesaid, personally came Paul McCune and acknowledged the execution of said instrument in his authorized capacity as a Managing Member of JMF, LLC, and as its voluntary act and deed.

WITNESS my hand and Notarial Seal this day and year last above written.



Kandi Jenkins

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 2 day of February, 2011, before me, a notary public in and for said County and State aforesaid, personally came Rod Rhoden and acknowledged the execution of said instrument in his authorized capacity as a Member of JMF, LLC, and as its voluntary act and deed.

WITNESS my hand and Notarial Seal this day and year last above written.



Kandi Jenkins

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 2 day of February, 2011, before me, a notary public in and for said County and State aforesaid, personally came Paul McCune and acknowledged the execution of said instrument in his authorized capacity as a Managing Member of McCune Development, LLC, and as its voluntary act and deed.

WITNESS my hand and Notarial Seal this day and year last above written.



Kandi Jenkins

Notary Public

EXHIBIT A

Parcel 1:

Taxlot 15A in the W ½ of the SW ¼ of Section 28, Township 14 North, Range 11 East of the 6th P.M., in Sarpy County, Nebraska, **EXCEPT** those portions thereof which have been platted and are now known as Lucky J No. 1 and Lucky J No. 2, both Subdivisions, as surveyed, platted and recorded, in Sarpy County, Nebraska, and **EXCEPT** that part thereof included within the following described tract which was conveyed to the State of Nebraska for Highway 370 right-of-way described as follows: Beginning at the Southwest corner of said Section 28; thence Northerly, a distance of 73.22 feet, to a point on the West line of said Section 28; thence Southeasterly, a distance of 459.49 feet, to a point, 66.73 feet North of the South line of said Section 28; thence Northeasterly, a distance of 302.25 feet, to a point 103.55 feet North of the South line of said Section 28; thence Easterly, a distance of 213.83 feet, to a point 100 feet North of the South line of said Section 28; thence Southeasterly, a distance of 388.27 feet, to a point 60.00 feet North of the South line of said Section 28; thence Easterly, a distance of 1,051.00 feet to a point 60.00 feet North of the South line of Section 28; thence Easterly, a distance of 200.00 feet to a point on the North and South Quarter line of said Section 28; thence Southerly, a distance of 61.80 feet to the South line of said Section 28; thence Westerly, along the South line of said Section 28; a distance of 2,646.45 feet, to the point of beginning, subject to public road and/or highways **AND** Taxlot 16B in the E ½ of the SW ¼ of Section 28, Township 14 North, Range 11 East of the 6th P.M., in Sarpy County, Nebraska, more particularly described as follows: Commencing at the Southeast corner of the SW ¼ of said Section 28; thence N 00°06'15" W (assumed bearing) for 61.80 feet, along the East line of the SW ¼ of said Section 28; to the North right-of-way line of Highway 370 and the true point of beginning; thence S 89°31'28" W, for 199.85 feet, along said North right-of-way line of Highway 370; thence N 89°57'35" W, for 1,051.00 feet, along the said North right-of-way line of Highway 370, which is parallel with and 60.00 feet North of the South line of the said SW ¼ of Section 28; thence N 84°02'47" W, for 71.99 feet along the said North right-of-way line, to the West line of the E ½ of the SW ¼ of Section 28; thence N 00°08'04" W, for 2,581.94 feet to the Northwest corner of the E ½ of the SW ¼ of said Section 28; thence S 89°59'10" E, for 331.88 feet, along the North line of the SW ¼ of said Section 28; thence S 66°33'47" E, for 571.75 feet; thence S 81°30'00" E, for 473.08 feet to the East line of the SW ¼, at a point that is 297.09 feet South of the Northeast corner of the SW ¼ of said Section 28; thence S 00°06'15" E, for 2,291.07 feet, along said Ease line, to the true point of beginning.

Parcel 2:

Lot 1, Ballena, except the West 20 feet of the North 50 feet, A Subdivision, as Surveyed, Platted and Recorded in Sarpy County, Nebraska, except the South 155.81 feet of Lot 1, Ballena, more particularly described as follows: Commencing at the Southwest corner of the SE ¼ of Section 28, Township 14 North, Range 11 East; thence N 00°08'51" E (assumed bearing) along with West line of said SE 1/4, a distance of 106.11 feet to the South corner of Lot 1, Ballena and the point of beginning; thence continuing N 00°08'51" E along the West line of Lot 1, a distance of 155.81 feet; thence S 89°52'00" E to a point on the Northerly R.O.W. line of 173rd Street, a distance of 45.59 feet; thence in a Southwesterly direction, on a curve to the left, along said R.O.W. line of 173rd Street, an arc distance of 164.51 feet to the point of beginning.,

Parcel 3:

Taxlot 6, described as: A tract of land located in the SW ¼ of Section 31, Township 14 North, Range, 11, East of the 6th P.M., Sarpy County, Nebraska, and more particularly described as follows: Beginning at the Northwest corner of the SW ¼ of Section 31, Township 14 North, Range 11, East of the 6th P.M.; thence N 87°24'24" E, 2,427.77 feet; thence S 2°46'23" E, 1,321.75 feet; thence S 87°27'20" W, 2,480.38 feet; thence N 2°26'34" W, 1,319.87 feet to the

point of beginning, except Lots 1 through 69, Devonshire Estates, a Subdivision and **EXCEPT** Taxlot 3; and **EXCEPT** a tract of land described as follows: That part of the SW $\frac{1}{4}$ of Section 31, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, described as follows: Beginning at the Southeast corner of Lot 51, Devonshire Estates, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska; thence N 02°35'16" W (assumed bearing), 131.39 feet on the East line of said Lot 51 to the Northeast corner of said Lot 51; thence N 87°24'44" E, 62.95 feet on the Easterly extension of the North line of said Lot 51; thence S 19°27'17" E, 137.38 feet to a point on the Easterly extension of the South line of said Lot 51; thence S 87°27'20" W, 102.81 feet on the Easterly extension of the South line of said Lot 51 to the point of beginning; and **EXCEPT** that part of the SW $\frac{1}{4}$ of Section 31, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska which has been platted into Lots 70 through 77, Devonshire Estates.

Parcel 4:

Taxlot 9, in the NE $\frac{1}{4}$ of Section 1, Township 13 North, Range 10 East of the 6th P.M., Sarpy County, Nebraska, **EXCEPT** the East 50 feet now taken for right of way, the remaining tract described by metes and bounds as follows: Commencing at the survey spike at the Southeast corner of the said NE $\frac{1}{4}$ of Section 1; thence S 87°20'31" W (bearings referenced to the Nebraska State Plane System NAD83 with the 95 adjustment) for 50.00 feet along the South line of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 1 to the West right of way line of 204th Street and the true point of beginning; thence S 87°20'31" W for 1,269.05 feet along the South line of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 1 to a $\frac{3}{4}$ " open top pipe at the Southwest corner thereof; thence S 87°20'41" W for a 1,318.94 feet to a 1" open top pipe at the Southwest corner of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 1; thence N 02°30'56" W for 1,320.04 feet to a $\frac{3}{4}$ " open top pipe at the Southwest corner of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 1; thence N 02°33'27" W for 391.00 feet along the West line of the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 1; thence S 62°20'45" E for 477.24 feet; thence S 76°00'1" E for 59.15 feet; thence N 88°31'21" E for 289.24 feet; thence N 82°11'14" E for 264.42 feet; thence North 67°16'41" E for 466.01 feet; thence N 60°48'30" E for 199.43 feet; thence N 84°49'40" E for 954.51 feet to the West right of way line of 204th Street; thence S 02°25'59" E for 1,761.93 feet along the West right of way line parallel with and 50 foot West of the East line of the NE $\frac{1}{4}$ of Section 1, to the point of beginning.