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U.S. DISTRICT COURT

Attorneys for Jordan Bluffs, Inc., successor in interest to  
Defendant Sharon Steel Corporation

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHARON STEEL CORPORATION, UV  
INDUSTRIES, INC., UV INDUSTRIES  
LIQUIDATING TRUST, and ATLANTIC  
RICHFIELD CO.,

Defendants.

SHARON STEEL CORPORATION, a  
Pennsylvania Corporation,

Third-Party Plaintiff

vs.

THE STATE OF UTAH; NEWPARK  
RESOURCES, INC., a corporation; PARK  
CITY CONSOLIDATED MINING  
COMPANY, a corporation, et al.

Third-Party Defendants

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11/29/2004 04:03 PM \$65.00  
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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
SNELL & WILMER

Salt Lake City Ut 15 W SO TEMPLE STE 1200 84101  
ORDER CONFIRMING STIPULATION AND GRANTING JOINT MOTION FOR  
MODIFICATION AND TERMINATION OF PARTIAL CONSENT DECREE  
SALT LAKE CITY UT 84101  
BY: LUG DEPUTY - NOV 21 P. 11 21 04

Civil No. 86-C-924J

288449.13

858

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil No. 89-C-136

SHARON STEEL CORPORATION, UV  
INDUSTRIES, INC., UV INDUSTRIES  
LIQUIDATING TRUST, VALLEY  
MATERIALS CORPORATION,  
LITTLESON, INC., CENTURY  
TERMINALS, INC., BLACKHAWK SLAG  
PRODUCTS, INC.

Defendants

On October 19, 2004, the Court conducted a hearing on the *Stipulation and Joint Motion for Modification and Termination of Partial Consent Decree* (the "**Stipulation and Joint Motion**") of (i) Jordan Bluffs, Inc. ("**Jordan Bluffs**"), successor in interest to Sharon Steel Corporation ("**SSC**"), represented by Bradley R. Cahoon; (ii) Mining Remedial Recovery Company, successor in interest to SSC ("**MRRC**"), represented by A. John Davis III; (iii) the State of Utah (the "**State**"), by and through its Department of Environmental Quality ("**UDEQ**"), represented by Laura J. Lockhart; and (iv) the United States of America, by and through the United States Environmental Protection Agency ("**EPA**") and the United States Department of Justice ("**DOJ**") (collectively the "**United States**"), represented by Robert R. Homiak. Jordan Bluffs, MRRC, the State and the United States are sometimes referred to herein as the "**Parties**." Unless otherwise noted, all capitalized terms in this Order have the definitions set forth in the Partial Consent Decree entered by this Court.

Each of the Parties, through its counsel, recommended that the Court enter this Order. Upon inquiry from the Court, each of the Parties represented that the integrity of the capped remedy completed on the Tailings Site would be protected during redevelopment. Specifically, Jordan Bluffs represents that it will comply with Institutional Controls and other property restrictions in and adopted pursuant to the surviving portions of the Partial Consent Decree ("PCD") designed to protect the remedy completed on the Tailings Site and keep the cap substantially inviolate during redevelopment of the Tailings Site. The State and United States represent that they have determined that compliance with the Institutional Controls and other property restrictions in and adopted pursuant to the PCD will protect the capped remedy on the Tailings Site and keep it substantially inviolate, and that they each have adequate oversight and enforcement authorities (including authority under the PCD) to ensure compliance with Institutional Controls and other property restrictions. The Court is relying on each of these affirmative representations in entering this Order.

Based upon the representations and agreements set forth in the Stipulation and Joint Motion and affirmatively made during the hearing on this matter, the Court concludes that there is good cause appearing for modifying Section XVI (C) ENTRY, EFFECTIVE AND TERMINATION DATES of the PCD entered by this Court and to allow for the termination of the PCD because (a) SSC has satisfied all of its obligations under the PCD; (b) the Remedial Action is complete for the Tailings Site; (c) Jordan Bluffs has represented that it will comply with the Institutional Controls and other property restrictions in and adopted pursuant to the surviving portions of the PCD during development, and successor property owners will be required to comply with the Institutional Controls and other property restrictions post-

development; (d) the State and the United States have determined that compliance with Institutional Controls and other property restrictions in and adopted pursuant to the PCD will protect the remedy at the Tailings Site and keep the cap substantially inviolate; (e) the State and the United States have adequate oversight and enforcement authorities, including authorities in the surviving portions of the PCD, to ensure compliance with the Institutional Controls; (f) all other prerequisites required by the PCD have been completed; and (g) EPA and UDEQ are completing the cleanup of the Slag Site separate from and independent of the Tailings Site. The Court understands that administratively there is good cause to separate the Slag Site from the Tailings Site and that United States District Court Judge Ted B. Stewart has jurisdiction over the Slag Site in *Littleton, Inc. v. Metals Reserve, Co.; United States et al.*, Civ. No. 2:99cv757 TS.

#### **ORDER**

Based upon the foregoing, the representations and agreements set forth in the Stipulation and Joint Motion and made during the hearing on this matter, and good cause appearing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. The legal description of the Tailings Site and the Silver Refinery Area within the Slag Site is set forth at **Exhibit A** to this Order. The Tailings Site and the Slag Site are referred to herein collectively as the "**Sites**," unless the context dictates otherwise.

2. Section XVI (C) ENTRY, EFFECTIVE AND TERMINATION DATES of the PCD is modified and restated to read as follows:

C. After allowance of the United States' general unsecured claim (should the Trustee elect to provide for such a claim), and after Sharon Steel Corporation's payments to the United States have been made pursuant to Section V PAYMENT TO THE

UNITED STATES of this Decree, and after the United States has certified that all Remedial Action for the Tailings Site has been completed, Sharon Steel Corporation, or any subsequent owner of the Tailings Site that is the subject of this Decree, shall petition the United States for agreement to stipulate and jointly move for an order to be entered by the Court terminating this Decree ("**Termination Order**"). Termination shall not affect the provisions of Sections I DEFINITIONS, III JURISDICTION, IV PARTIES BOUND, VI THE STATE [RELEASE], VII EFFECT OF SETTLEMENT, VIII COVENANT NOT TO SUE, IX IMPLEMENTATION OF PLAN OF REMEDIATION, X PRESERVATION OF OTHER CLAIMS, XI NOTICES, XIV ACCESS AND INSTITUTIONAL CONTROLS (as modified), XV WITNESSES AND DOCUMENTS, XVII COSTS, and XVIII RETENTION OF JURISDICTION hereof.

3. Section XIV GRANT OF ACCESS TO THE SITES of the PCD is hereby modified and restated follows:

**XIV.**

**ACCESS AND INSTITUTIONAL CONTROLS**

A. The owners of the Tailings Site and Silver Refinery Area shall as of and commencing on the date of entry of the Termination Order, subject to the requirements and limits of Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), provide the United States, including EPA, the State, Midvale City (collectively "**Government**") and their representatives and contractors with access at all reasonable times to the real property comprising the Tailings Site and the Silver Refinery Area for the purpose of conducting

any activity related to this Decree including, but not limited to, the following activities:

1. Monitoring the Remedial Action selected in the Record of Decision, as amended, pursuant to the OM&M Manual, the Site Modification Plan and Explanation of Significant Differences as to the Tailings Site (collectively "Tailings SMP") and the records of decision, as amended, pertaining to the Silver Refinery Area ("Slag RODs");
  2. Verifying any data or information submitted to the Government as required by the Tailings SMP or Slag RODs pertaining to the Silver Refinery Area;
  3. Conducting investigations relating to a release of hazardous substances not covered by the Tailings SMP or the Slag RODs pertaining to the Silver Refinery Area;
  4. Obtaining samples from the Tailings Site pursuant to the OM&M Manual and Tailings SMP or from the Silver Refinery Area pursuant to the Slag RODs;
  5. Conducting operation and maintenance activities on the Tailings Site as provided in the OM&M Manual and Silver Refinery Area;
  6. Assessing the need for, planning, or implementing additional response actions at or near the Tailings Site or Silver Refinery Area;
  7. Assessing compliance with the Institutional Control Process Plans for Sharon Steel, Operable Unit #1, pertaining to the Tailings Site and Midvale Slag Operable Unit #2 pertaining to the Silver Refinery Area (collectively "ICPPs").
- B. The institutional controls applicable to the Tailings Site and Silver

Refinery Area shall be developed as set forth in the respective ICPPs. The owners of the Tailings Site and the Silver Refinery Area shall comply with and follow the ICPPs and the institutional controls promulgated thereunder, as well as all requirements of the Midvale City Municipal Code that would otherwise be applicable to each of the respective Tailings Site or Silver Refinery Area.

C. The ICPPs, any institutional control promulgated under the ICPPs, the Tailings SMP or OM&M Manual may be amended, modified or terminated from time to time, as circumstances require, without amending this Decree, after the mutual written agreement of the Government and any owner of any portion of the Tailings Site or Silver Refinery Area directly affected by the ICPPs, institutional control, Tailings SMP or OM&M Manual at that time.

D. At the time of Subdivision, as defined by Midvale City Municipal Code, the owners of any portion of the Tailings Site or Silver Refinery Area shall execute and record in the Recorder's Office of Salt Lake County, Utah, restrictive covenants, running with the land, that:

1. require future owners of any portion of the Tailings Site or Silver Refinery Area to comply with the applicable ICPPs and the Institutional Controls developed under the ICPPs, including, without limitation, maintenance and repair of covers and barriers; compliance with landscaping, excavation, irrigation, stormwater management and erosion controls; compliance with imported fill requirements; prohibitions against disturbance of existing groundwater wells or drilling new

groundwater wells; and allowing replacement of lost or damaged monitoring wells;

2. grant to the United States a right to enforce applicable Institutional Controls promulgated under the ICPPs, should the United States determine that Midvale City has failed to do so effectively;

3. grant to the State a right to enforce Institutional Controls in the form of restrictive covenants under the Utah Environmental Institutional Control Act, Utah Code Ann. § 19-10-101 *et seq.*, only if Midvale City fails to enforce applicable Institutional Controls promulgated under the ICPPs. Nothing in this Consent Decree is intended or shall be construed to alter or expand the role of the State with respect to matters of municipal governance, zoning and land use.

E. Notwithstanding any provision of this Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under applicable provisions of CERCLA, 42 U.S.C. § 9601 *et seq.*; RCRA, 42 U.S.C. 6901 *et seq.* and regulations promulgated thereunder, and as to the State only, the Utah Environmental Institutional Control Act, Utah Code Ann. § 19-10-101 *et seq.* (collectively "**Environmental Laws**").

F. To the extent a conflict arises over the application of this Section XIV ACCESS AND INSTITUTIONAL CONTROLS and *Environmental Laws*, the provisions of Environmental Laws will govern. The rights granted to the Government



hereunder are not to be construed or considered broader than the authority granted to the Government by the Environmental Laws.

4. The PCD is hereby terminated and no longer applies to the Sites or to past, present or future owners or operators of the Sites, subject to the survival clause contained in the last sentence of Section XVI (C) ENTRY EFFECTIVE AND TERMINATION DATES of the PCD as modified and restated by this Order providing that Sections I DEFINITIONS, III JURISDICTION, IV PARTIES BOUND, VI THE STATE [RELEASE], VII EFFECT OF SETTLEMENT, VIII COVENANT NOT TO SUE, IX IMPLEMENTATION OF PLAN OF REMEDIATION, X PRESERVATION OF OTHER CLAIMS, XI NOTICES, XIV GRANT OF ACCESS, XV WITNESSES AND DOCUMENTS, XVII COSTS, and XVIII RETENTION OF JURISDICTION of the PCD survive termination ("**Survival Clause**"). The Survival Clause will survive termination of the PCD by this Order.

5. The U.S., EPA, the State, UDEQ, MRRC (and its predecessors in interest SSC and Mueller), and Jordan Bluffs, and all future owners and operators of the Sites are hereby released from all obligations under the PCD as modified and restated by this Order, except for those obligations and covenants set forth in the Survival Clause.

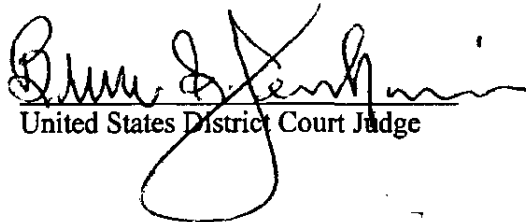
6. Jordan Bluffs as the present owner of the Tailings Site and MRRC as the past owner of the Tailings Site and present owner of the Silver Refinery Area, together with their successors and assigns, are entitled to all of the benefits and protections conferred by Section VI THE STATE [RELEASE] and Section VIII COVENANT NOT TO SUE of the PCD as modified and restated by this Order.

7. Jordan Bluffs must promptly record against the Tailings Site and MRRC must promptly record against the Silver Refinery Area a certified copy of this Order and the Stipulation and Joint Motion in the real property records of the Salt Lake County Recorder.

8. This Court will retain jurisdiction over those portions of the PCD that survive termination of the PCD pursuant to the Survival Clause.

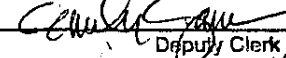
SO ORDERED, ADJUDGED AND DECREED this 18 day of November, 2004.

BY THE COURT:

  
United States District Court Judge

I hereby certify that the annexed document is a true and correct copy of the original on file in this office.

ATTEST: MARKUS B. ZIMMER  
Clerk, U.S. District Court  
District of Utah

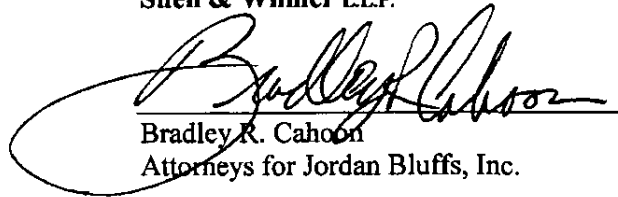
By:   
Deputy Clerk

Date: 11-22-04

Order approved as to form and content by:

DATED this 16<sup>th</sup> day of November, 2004.

Snell & Wilmer L.L.P.

  
Bradley R. Cahoon  
Attorneys for Jordan Bluffs, Inc.

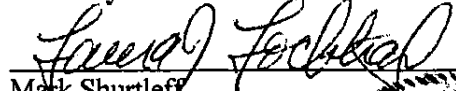
DATED this 16 day of November, 2004

Pruitt Gushee

  
A. John Davis  
Attorneys for Mining Remedial Recovery Company

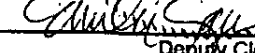
DATED this 16<sup>th</sup> day of November, 2004

Attorney General of the State of Utah

  
Mark Shurtleff  
Laura J. Lockhart  
Attorneys for State of Utah and Utah Department of  
Environmental Quality

I hereby certify that the annexed document is a true and correct copy of the original on file in this office.

ATTEST: MARKUS B. ZIMMER  
Clerk, U.S. District Court  
District of Utah

By:   
Deputy Clerk  
Date: 11-22-04

DATED this 14<sup>th</sup> day of November, 2004.

**United States Department of Justice**

Robert R. Homiak

Robert R. Homiak

Senior Attorney

Environment and Natural Resources Division

Attorneys for the United States and United States

Environmental Protection Agency

**CLERK'S CERTIFICATE OF SERVICE**

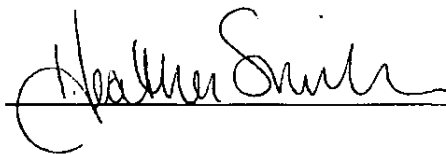
I hereby certify that I caused to be mailed a true and accurate copy of the  
foregoing **ORDER CONFIRMING STIPULATION AND GRANTING JOINT MOTION  
FOR MODIFICATION OF PARTIAL CONSENT DECREE**, postage prepaid, on the 7<sup>th</sup>  
day of November, 2004:

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Suite 945-NT  
Denver, CO 80202

  
\_\_\_\_\_

United States District Court  
for the  
District of Utah  
November 19, 2004

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:86-cv-00924

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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PITTSBURGH, PA 15219



EXHIBIT A

6200

5145549  
28 OCTOBER 91 02:20 PM  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
FRUITT, BOSHEE & BACHTELL  
1850 BENEFICIAL LIFE TOWER SLC, 84111  
REC BY: REBECCA GRAY, DEPUTY

5145549

AFFIDAVIT

STATE OF UTAH )  
 )  
 ) :SS  
County of Salt Lake )

Affiant, A. John Davis, being first duly sworn, states as follows:

1. Attached hereto as Exhibit "A" is a true and correct copy of the fully executed Partial Consent Decree by and between the United States of America on behalf of the United States Environmental Protection Agency, the State of Utah and Sharon Steel Corporation (now Mueller Industries, Inc., successor by merger) approved and entered by the United States District Court for the District of Utah on November 13, 1990, by Bruce S. Jenkins, Chief District Court Judge in following actions: United States of America v. Sharon Steel Corporation, et al., Civil No. 86-C-924J and United States of America v. Sharon Steel Corporation, et al., Civil No. 89-C-136J. Affiant was co-counsel of record for Sharon Steel Corporation in the foregoing actions.


2. Said Partial Consent Decree pertains to and affects certain real property described therein as the "Tailings Site" and the "Silver Refinery Area" located in Salt Lake County, State of Utah, and more particularly described on Exhibit "B" attached hereto.

3. Section XIV of the Partial Consent Decree creates specific restrictions and obligations that, pursuant to the Decree purport to run with the land and bind any and all

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persons acquiring any title to or any other interest in the Tailings Site or the Silver Refinery Area or any portion thereof.

DATED this 25<sup>th</sup> day of October, 1991.


  
A. John Davis

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of October, 1991, by A. John Davis.



My Commission Expires:

May 7, 1993

  
Notary Public  
Residing at: Salt Lake City, Utah

ci/ajdlaffidavit

EXHIBIT "B"

This Exhibit "B" is attached to and made a part of that certain Affidavit dated October \_\_\_\_, 1991 executed by A. John Davis and pertaining to the partial Consent Decree between the United States of America, the State of Utah and Sharon Steel Corporation, approved and entered by the United States District Court for the District of Utah on November 13, 1990 covering and concerning the following described parcels of land situated in the County of Salt Lake, State of Utah:

(a) A parcel of land situated in Sections 26 and 35, Township 2 South, Range 1 West, SIM, Salt Lake County, Utah:

Beginning at a point which is North 0°29'40" West along the Section line 335.21 feet from the Southeast Corner of Section 35, Township 2 South, Range 1 West, Salt Lake Base & Meridian; and running thence North 0°29'40" West along the Section line 1827.63 feet to the Northerly bank of the Galena Canal; thence along said Northerly bank North 57°02'40" West 225.02 feet and North 53°43'11" West 31.64 feet and North 25°22'17" West 32.10 feet and North 2°49'37" West 128.00 feet and North 10°20'11" West 68.51 feet and North 15°15'43" West 179.04 feet and North 4°42'56" East 149.86 feet and North 2°12'38" East 37.23 feet and North 10°21'25" West 41.22 feet and North 38°42'20" West 147.53 feet; thence North 79°25'50" East along the North line of the Midvale Packing Company property 383.63 feet to the Section line; thence North 0°12'40" East along the Section line 635.30 feet; thence North 89°39'38" West along an existing fence line 628.13 feet; thence North 44°57'24" West along an existing fence 294.72 feet; thence North 1°34'34" West along an existing fence 118.90 feet; thence North 87°09'51" East along an existing fence 61.15 feet to an existing fence line marking the West line of Holden Street; thence North 0°22'30" West along said fence 562.48 feet; thence South 89°40'06" West along an existing fence 214.25 feet; thence North 0°39'00" West along an existing fence 178.80 feet to the Centerline of Lennox Street; thence South 89°51'10" West along said Centerline 13.37 feet; thence North 0°22'30" West 145.00 feet; thence North 89°51'10" East 67.00 feet to an existing fence; thence North 0°22'38" West along said fence 153.75 feet; thence South 89°51'10" West 152.07 feet to an existing fence line; thence North 0°17'44" West along said fence 412.38 feet to the South right-of-way line of Center Street, as decided to the State Road Commission of Utah; thence following said South right-of-way line South 85°04'00" West 127.00 feet and South 77°28'00" West 151.33 feet and South 85°04'00" West 150.00 feet and North 81°30'00" West 102.66 feet and Westerly 494.91 feet along the arc of a 4861.15 foot radius curve to the Left (Note: Tangent to said curve at its point of beginning bears South 84°04'00" West) and South 52°40'00" West 103.72 feet and Westerly 195.97 feet along the arc of a 4829.15 foot radius curve to the Left (Note: Tangent

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to said curve at its point of beginning South 77°04'00" West) and South 74°44'00" West 146.50 feet and South 81°38'00" West 249.51 feet and South 74°44'00" West 64.19 feet; thence South 27°12'00" West 287.68 feet; thence South 22°06'00" East 16.24 feet; thence South 43°20'00" East 99.00 feet; thence South 4°58'00" West 192.00 feet; thence South 5°00'00" West 150.50 feet; thence South 68°58'00" West 63.70 feet; thence South 26°50'00" West 166.00 feet; thence South 89°19'00" East 318.50 feet; thence North 78°07'00" East 114.70 feet; thence South 47°59'09" East 30.66 feet; thence along the Jordan River SOUTH 124.58 feet and South 7°53'59" West 154.63 feet and South 07°17'20" West 282.82 feet and South 4°59'00" East 1111.50 feet and Southeasterly along a 4000.00 foot radius curve to the Left (Chord bears South 14°58'50" East) 1395.88 feet and South 24°58'40" East 838.81 feet and South 88°37'38" East 1286.49 feet to the North bank of the Jordan River; thence following said North bank South 80°30'01" East 105.53 feet and South 20°33'59" East 64.11 feet and South 18°07'28" East 98.62 feet and South 35°42'23" East 85.29 feet and South 75°55'41" East 171.53 feet and North 38°00'44" East 59.69 feet and North 23°47'27" East 47.77 feet and South 59°54'19" East 55.73 feet; thence North 24°04'44" East 75.08 feet to an existing fence line marking the North Boundary of Fur Breeders Agricultural Cooperative property; thence South 65°55'16" East along said fence 317.16 feet to the point of beginning, and containing 257.86 acres, more or less.

(b) A parcel of land situated in the SW¼SE¼ of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, County of Salt Lake, State of Utah, described as follows:

A strip of land lying 25 feet on each side of the center line of the main railroad track to the Midvale Mill and extending Northeasterly approximately 110 feet from the North end of the highway overpass to the first switch on said railroad track; the center line of the North end of said overpass being situated approximately 330 feet North and 1517 feet West from the Southeast corner of said Section 26, containing 0.13 acres, more or less.

(c) A parcel of land situated in the E¼SE¼, Section 26, Township 2 South, Range 1 West, SLB&M, County of Salt Lake, State of Utah, described as follows:

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Beginning at a Point on the NORTH Line of Center Street, said Point being NORTH 389.00 feet and WEST 865.00 feet from the Southeast Corner of said Section 26, and running thence SOUTHWESTERLY along the ARC of an 11,519.20 foot radius curve to the LEFT 231.80 feet, (Chord bears SOUTH 86°03'23" WEST 231.80 feet; thence SOUTH 83°31'20" WEST 70.62 feet; thence NORTH 89°41'20" WEST 61.91 feet; thence due NORTH 985.94 feet; thence due EAST 526.00 feet; thence SOUTH 1°15'00" WEST 30.40 feet; thence WEST 30.00 feet; thence SOUTH 0°22'00" WEST 300.00 feet; thence WEST 110.00 feet; thence SOUTH 0°22'00" WEST 125.00 feet; thence SOUTH 9°26'17" WEST 30.61 feet; thence SOUTH 0°22'00" WEST 71.60 feet; thence SOUTH 33°23'00" WEST 23.10 feet; thence SOUTH 0°22'00" WEST 24.70 feet; thence EAST 72.146 feet to a Point on a Curve of the WEST Line of Holden Street; thence SOUTHWESTERLY along the ARC of a 573.87 foot radius curve to the LEFT 210.599 feet, (Chord bears SOUTH 10°52'48" WEST 209.419 feet) to a Point of Tangency; thence SOUTH 0°22'00" WEST along said WEST Line 120.85 feet to a Point of Curve, thence SOUTHWESTERLY along the ARC of said Curve 52.534 feet (Chord bears SOUTH 43°22'00" WEST 47.74 feet) to the Point of Beginning, containing 9.583 acres, more or less.