

PRESCOTT CITY COUNCIL JOINT SPECIAL MEETING/ WORKSHOP AGENDA

**PRESCOTT CITY COUNCIL
JOINT SPECIAL MEETING/WORKSHOP
TUESDAY, OCTOBER 4, 2011
3:00 PM**

**Prescott Council Chambers
201 South Cortez
Prescott, Arizona
(928) 777-1100**

The following Agenda will be considered by the Prescott City Council at its **Joint Special Meeting/Workshop** pursuant to the Prescott City Charter, Article II, Section 13. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

- ◆ **CALL TO ORDER**
- ◆ **INVOCATION** Church of Nazarene
- ◆ **PLEDGE OF ALLEGIANCE** Councilman Blair
- ◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL:

Mayor Kuykendall	
Councilman Blair	Councilwoman Lopas
Councilman Hanna	Councilman Scamardo
Councilman Lamerson	Councilwoman Suttles

SPECIAL MEETING

- I. [Approval of three revocable license agreements for parking and access to the Constellation Trail.](#)
- II. Adjournment.

WORKSHOP

I. PUBLIC COMMENTS

- A. Introduction of new businesses.
- B. Recognition by the Eagles Board of Directors of City staff for work performed at Arizona BestFest.
- C. Report by Kate Hawkes and Elisabeth Ruffner on the play *Fred & Mary* produced by the Elks Opera House Foundation.
- D. Report by Elisabeth Ruffner re Open Space Alliance.

II. PROCLAMATIONS

- A. Week of October 3, 2011, as *90th Anniversary of Soroptimists International Week*.
- B. October 22, 2011, as *Big Brothers Big Sisters Day*
- C. October 29, 2011, as *Toastmasters Day*

III. PRESENTATIONS

- A. Presentation re FEMA (Federal Emergency Management Administration) floodplain maps update.
- B. Budget/Finance Kick-Off.

IV. ADJOURNMENT

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on _____ at _
_____.m. in accordance with the statement filed by the Prescott City Council with the City Clerk.

Elizabeh A. Burke, City Clerk

COUNCIL AGENDA MEMO – October 4, 2011

DEPARTMENT: Parks & Recreation

AGENDA ITEM: Approval of three revocable license agreements for parking and access to the Constellation Trail

Approved By:

Date:

Department Head: Debbie Horton

Finance Director: Mark Woodfill

City Manager: Craig McConnell



9-29-11

Background:

In 2010 the Parks and Recreation Department began construction of additional recreation trails in the northern Granite Dells region with open space purchased by the City just southwest of the Phippen Museum. This three-mile trail grouping, known as the Constellation Trail, is part of the City's Mile-High Trail System. Construction took many hours of time donated by various groups to complete, including 2,000 hours by the City trail volunteers (aka the Over-the-Hill Gang), 150 hours by Prescott Mountain Bike Alliance, and much assistance from the Prescott Police Department's Community Service Program and Yavapai County's Juvenile Probation Program.

The site also features a recently completed Eagle Scout project by Cody Walker of Troop #10 that is a memorial to the airmen who perished in a plane crash at this location in 1959. Dedication of the memorial and trail system is planned at the site on October 8, 2011. Surviving relatives of the airmen are planning to attend, some coming from as far away as Florida.

The trail system has already been receiving much use, however, parking within the SR89 right-of-way is not desirable from a safety standpoint. Three private property owners, James Revocable Trust, James 110 Investment LLC, and the George Phippen Memorial Foundation, are generously granting revocable license agreements to provide parking and access to the City trail. These will enable parking on the east side of SR89 near the Phippen Museum, with safe passage under SR89 utilizing a large concrete box culvert.

The roundabout project on SR89 at the Phippen Museum for which design will soon be commenced, will include a permanent parking area on the west side of the highway, enhancing the trailhead visibility and safety.

Attachments - License agreements (3)

Recommended Action: **MOVE** to approve license agreements with the James Revocable Trust, James 110 Investment LLC, and the George Phippen Memorial Foundation.

REVOCABLE LICENSE AGREEMENT

Agreement made this ____ day of _____, 2011, by and between the James Revocable Trust dated 11/8/2001, hereinafter referred to as "Licensor" and the City of Prescott, a municipal corporation of the State of Arizona, hereinafter referred to as "Licensee."

In consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, the parties agree as follows:

1. GRANT OF LICENSE. Licensor hereby grants to Licensee a license to occupy and use a portion of the property owned by Licensor generally located in the Granite Dells area, Prescott, Arizona, and more particularly identified in the attached Exhibits "A", "B," "C," "D" and "E," for the sole purpose of constructing and using a trail through Licensor's property and for related recreational activities such as hiking, biking, and equestrian trail use activities, on the trail. hiking and trail access and for recreational parking pertaining thereto, and shall include the right of licensee to maintain the following described areas, together with the ingress and egress over and through same, more particularly described in the attached Exhibits "A", "B," "C," "D" and "E," subject to the following conditions:

A. Such activities are to occur solely in those areas within the described licensed areas legally described in Exhibit "A" and "B" and "C," and "E," as such described areas are depicted in the map attached hereto as Exhibit "D." These exhibits are attached hereto and made a part of this License Agreement. Licensee shall take reasonable steps to post signage and trail delineation markings to reasonably ensure that use of the licensed property is confined to the designated licensed areas.

B. Further, during all periods of this License Agreement, the areas described and depicted in Exhibits "A", "B," "C," "D" and "E" shall be licensed properties which shall also be and are hereby designated, upon approval by the City Council of the City of Prescott as City Parks for recreational use and are intended to be and shall be subject to the protection from liability/ statutory immunities afforded under State statutes pertaining to recreational areas and parks.

C. All trail construction, installation and any repair and/or maintenance of the recreational trail shall be at the Licensee's expense and at no cost to the Licensor, and shall be subject to the prior approval by the Licensor.

2. LIMITATION TO DESCRIBED PREMISES. This License shall be specifically limited to that certain property as more particularly described in the attached and incorporated Exhibits "A", "B," "C," "D" and "E" hereto, and no other, and specifically limited to those purposes identified in Paragraph 1 above.

3. RESPONSIBILITY OF LICENSEE. Licensee shall maintain the area which is hereby licensed in good condition and repair. Licensee shall at all times keep and maintain said area in a safe and good condition and repair.

4. INDEMNIFICATION. To the fullest extent allowed by law, the Licensee hereby agrees to indemnify, save and hold harmless the Licensor, its agents and employees from all cost, damages, liability and claims of any kind whatsoever which is caused by any activity, condition or event arising out of the use of the licensed area by Licensee. Licensee's employees, officers, agents, assigns, guests and invitees.

5. LICENSE. This Agreement shall be construed as a mere license by Licensor to Licensee. It shall not be construed as an easement, lease, rental agreement, or as a grant of any interest in the real property other than a mere license. This Agreement shall be renewed annually on or before the date of execution above.

6. SIGNS. Licensee shall post signage, mutually agreed upon by the parties, on the property to delineate the boundaries of the adjacent property owners.

7. TERMINATION. This Agreement may be terminated with or without cause by either party by providing ninety (90) days written notice to the other party. Notice shall be given as follows:

To the City
City Manager, City of Prescott
201 S. Cortez Street
Prescott, AZ 86303

With copy to:
City Attorney, City of Prescott
221 S. Cortez
Prescott, AZ 86303
(928) 777-1274

James Revocable Trust

With copy to:
Selmer Lutey, Esq.
148 N. Summit Avenue
Prescott, AZ 86303
(928) 445-5055

Or to such other addresses as either party hereto may from time to time designate in writing and

deliver in a like manner.

Licensee shall have no claim or cause of action whatsoever against the Licensor by reason of any termination of this License and hereby waives the same.

8. REMOVAL OF IMPROVEMENTS UPON TERMINATION. Licensee agrees to remove any and all improvements, including but not limited to any structures which are allowed pursuant to this Agreement, at its sole cost, immediately upon the termination of the License. If Licensee shall fail to remove said improvements within the time specified herein, then in that event, Licensor may remove same, the costs of which shall become a charge against Licensee which Licensee hereby agrees to pay.

9. LICENSE NOT APPROVAL. The grant of this License shall not be construed as the grant of approval or permit as to the construction, location or marking of any improvements. Prior to undertaking any construction, markings, or other improvements within the licensed area, Licensee must first obtain the permission of the Licensor(s). It is the understanding of the parties that any use of the subject right-of-way, or structures located thereon, are subject to all applicable Federal, State, County and City laws, rules, regulations, and ordinances, including but not limited to the City Land Development Code.

10. INSURANCE. Licensee agrees and shall maintain in full force and effect during the entire term of this License Agreement, general errors and omissions, public liability insurance in the minimum amount of \$1,000,000 covering the activities of the Licensee, with Licensor(s) as named additional insured(s). Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the Licensor(s). Certificates of such policy shall be delivered to Licensor before the term hereof commences. Notwithstanding the minimum coverages specified above, Licensee's coverage hereunder for any indemnity shall be in the full amounts, including any excess coverages, of licensee's annual insurance coverages, and all such coverage amounts shall apply to the indemnity provisions of this license agreement. All insurance must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. Section 20-217, a copy of which certificate is to be attached to the applicable Certificate of Insurance.

11. WAIVER OF JURY TRIAL. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court.

12. WAIVER OF ATTORNEY'S FEES. The parties hereby expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney's fees, either pursuant to the License, pursuant to A.R.S. Section 12-341.01 (A) and (B), or pursuant to any other state or federal statute.

13. CONFLICT OF INTEREST. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person

significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the day and year first above written.

LICENSOR:

JAMES REVOCABLE TRUST

By: _____

APPROVED AS TO FORM:

SELMER LUTEY
Attorney for James Revocable Trust

LICENSEE:

CITY OF PRESCOTT, a
Municipal corporation

By: _____
MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE
City Clerk

GARY D. KIDD
City Attorney

Exhibit A-Paved Road through Parcel No. 106-01-0034

Parcel no. 1

All that portion of Section 1, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

Commencing at the Southeast corner of Section 1, monumented with a 3" U. S. General Land Office brass cap;

Thence North $50^{\circ}57'04''$ West, 4825.94 feet (North $51^{\circ}13'41''$ West, 4825.87 feet, record) to a found $\frac{1}{2}$ " re-bar marking the Southeast corner of that parcel of land described in book 3787 of deeds, page 173, Yavapai County records;

Thence South $83^{\circ}03'22''$ West, 235.04 feet (South $83^{\circ}02'43''$ West, record), to a point on the Northerly line of Assessor's Parcel number 106-01-003Y and the TRUE POINT OF BEGINNING;

Thence continuing South $83^{\circ}03'22''$ West, 44.49 feet (South $83^{\circ}02'43''$ West, record);

Thence along a non-tangent curve, concave to the Northwest, having a chord bearing of South $62^{\circ}33'16''$ West, a chord length of 46.0 feet, a radius of 174.52 feet, a central angle of $15^{\circ}08'41''$ and an arc length of 46.13 feet;

Thence South $77^{\circ}30'00''$ West, 75.69 feet, to a point on the Easterly right-of-way of State Highway 89;

Thence South $21^{\circ}22'30''$ East, 21.04 feet, along the Easterly right-of-way of State Highway 89;

Thence North $77^{\circ}21'10''$ East, 50.56 feet;

Thence North $74^{\circ}20'40''$ East, 46.00 feet;

Thence along a non-tangent curve, concave to the Northwest, having a chord bearing of North $55^{\circ}50'30''$ East, a chord length of 69.59 feet, a radius of 190.11 feet, a central angle of $21^{\circ}05'35''$ and an arc length of 69.99 feet, to a point on the Northerly line of Assessor's Parcel number 106-01-003Y and the TRUE POINT OF BEGINNING

EXHIBIT B- EIGHT FOOT WIDE TRAIL WITHIN PARCEL NO. 106-01-0034

All that portion of Section 1, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

Beginning at the Southeast corner of that parcel of land described in book 3787, page 173, recorded at the Yavapai County Recorder's office; said corner is monumented by a ½" re-bar;

Thence South 83°03'22" West, 224.67 feet, to a point on the North line of Assessor's Parcel number 106-01-003Y, said point also being the center of an 8 foot wide easement, being 4 feet each side of the following described centerline;

Thence South 30°05'23" West, 99.30 feet along the centerline of said easement, to a point on the South line of said Assessor's Parcel number 106-01-003Y and the end of this 8 foot wide easement, from which point the Southeast corner of that parcel of land described in book 3787, page 173, recorded at the Yavapai County Recorder's office, said corner is monumented by a ½" re-bar, bears North 67°29'05" East 295.31 feet.

**Exhibit C-Legal Description for Trail located on
Parcel No. 106-01-003Z**

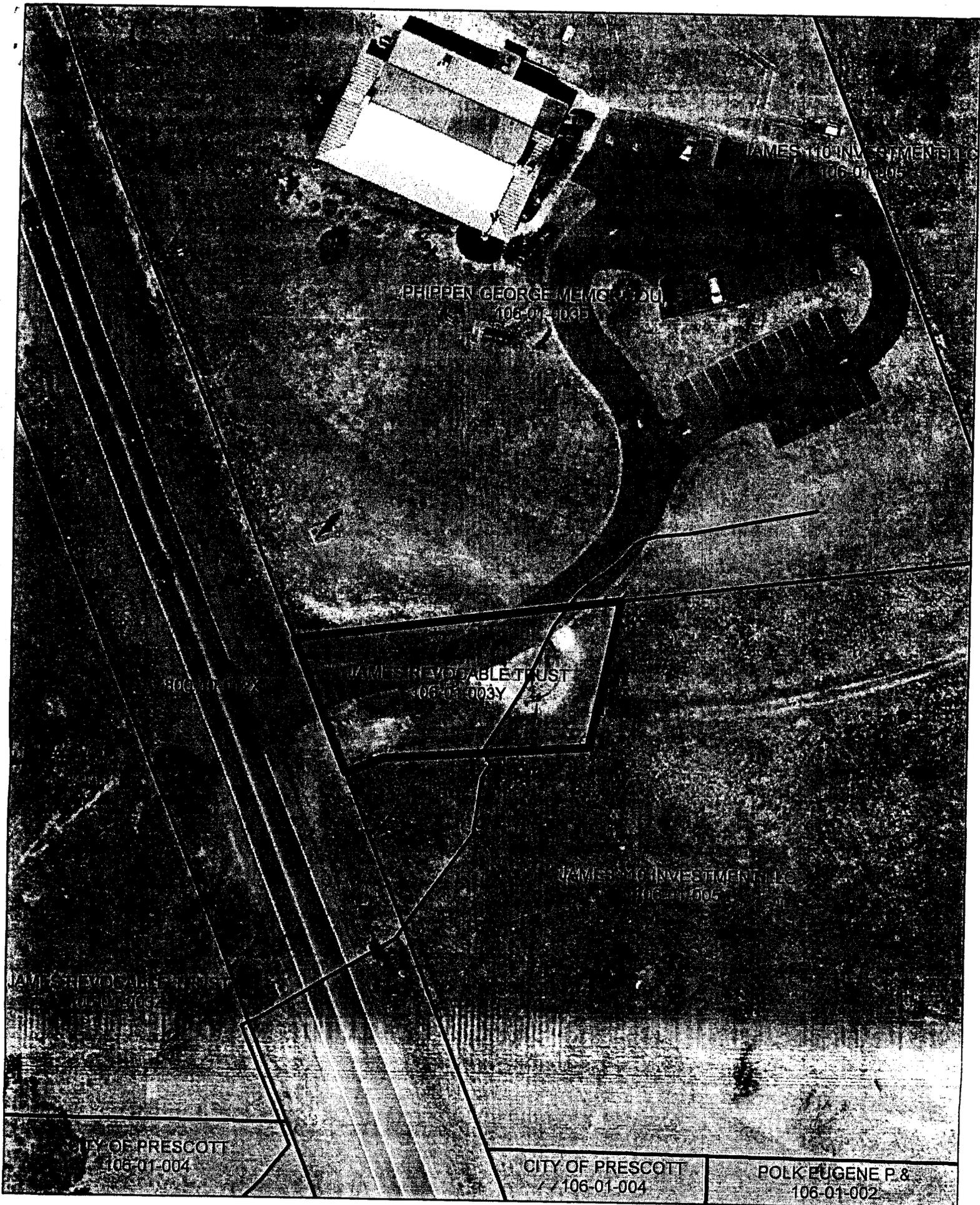
All that portion of Section 1, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

Commencing at the Southeast corner of Section 1, monumented with a 3" U. S. General Land Office brass cap;

Thence North $56^{\circ}26'01''$ West, 5001.94 feet, to a point on the Westerly right-of-way of State Highway 89, and the TRUE POINT OF BEGINNING, also being the center of an 8 foot wide easement, being 4 feet each side of the following described centerline;

Thence South $26^{\circ}44'00''$ West, 5.37 feet;

Thence South $21^{\circ}22'19''$ East, 68.30 feet to a point on the North boundary line of that parcel of land described in book 4628, page 547, recorded at the Yavapai County Recorder's office and the end of this 8 foot wide easement, from which point the Northeast corner of said parcel of land bears South $89^{\circ}14'33''$ East, 214.40 feet, said corner is monumented by a re-bar with plastic cap stamped RLS 16921.



JAMES MC INVESTMENT LLC
106-01-005

PHIPPEN GEORGE MEMORIAL
106-01-003

800-01-022

JAMES MC INVESTMENT TRUST
106-01-003Y

JAMES MC INVESTMENT LLC
106-01-005

JAMES MC INVESTMENT TRUST
106-01-003

CITY OF PRESCOTT
106-01-004

CITY OF PRESCOTT
106-01-004

POLK EUGENE P.&
106-01-002

Exhibit D

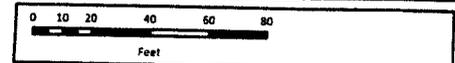


EXHIBIT E
Legal Description for Entire Parcel #106-01-003Y

All that portion of Section 1, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

Commencing at the Southeast corner of Section 1, monumented with a 3" U. S. General Land Office brass cap;

Thence North 50°57'04" West, 4825.94 feet (North 51°13'41" West, 4825.87 feet, record) to a found ½" re-bar marking the Southeast corner of that parcel of land described in book 3787 of deeds, page 173, Yavapai County records;

Thence South 83°03'22" West, 219.65 feet (South 83°02'43" West, 219.67 feet record) along the southerly boundary line of that parcel of land described in book 3787, page 173, Yavapai County records, to the TRUE POINT OF BEGINNING;

Thence continuing South 83°03'22" West, 184.33 feet, to a point on the Easterly Right-of-way line of State Highway 89;

Thence along the Easterly Right-of-way of State Highway 89, South 21°22'30" East, 81.60 feet;

Thence North 74°38'44" East, 23.63 feet, (North 74°38'44" East, 23.44 feet, record per book 4445, page 601 of deeds, Yavapai County records);

Thence North 85°51'08" East, 114.90 feet;

Thence North 10°43'37" East, 85.20 feet (North 10°43'37" East, 85.12 feet, record per book 4445, page 601 of deeds, Yavapai County records), to the TRUE POINT OF BEGINNING.

LICENSE AGREEMENT

This License Agreement ("License") made this 3rd day of October, 2011, by and between James 110 Investment, L.L.C., an Arizona limited liability company, hereinafter referred to as "Licensor" and the City of Prescott, a municipal corporation of the State of Arizona, hereinafter referred to as "Licensee." Collectively Licensor and Licensee are referred to as the "Parties".

RECITALS

- A. Licensor owns real property located in the City of Prescott (the "Property").

- B. Licensee desires to access and use a portion of the Property through a temporary trail to be constructed by Licensee through the Property.

NOW, THEREFORE, in consideration of the foregoing and the promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

AGREEMENTS

1. GRANT OF LICENSE. Subject to the conditions set forth in this License, Licensor hereby grants to Licensee a license to use a portion of the property owned by Licensee located in Prescott, Arizona, and more particularly described in the attached Exhibit "A" and depicted in Exhibit "B", for the sole purpose of constructing and using a trail through Licensor's property and for related recreational activities such as hiking, biking, and equestrian trail use. (the "Trail") The License shall include the obligation of Licensee to maintain the Trail, together with the ingress and egress over and through same, subject to the following conditions:

- A. Such activities are to occur solely within the Trail within the designated area described in Exhibit "A" and depicted in Exhibit "B", which are attached hereto and made a part of this License Agreement. Licensee shall take reasonable steps to post signage and trail delineation markings to reasonably ensure that use of the licensed property is confined to the Trail.

B. Further, during all periods of this License Agreement, the areas described in Exhibit "A" and depicted in Exhibit "B" shall be designated, upon approval by the City Council of the City of Prescott as City Parks for recreational use and are intended to be and shall be afforded the protection from liability and such statutory immunities that arise under State statutes pertaining to recreational areas and parks.

C. All trail construction, installation, repair and/or maintenance of the recreational trail shall be at the Licensee's sole expense and at no cost to the Licensor, and shall be subject to the prior approval by the Licensor.

2. LIMITATION TO DESCRIBED PREMISES. This License shall be specifically limited to that certain property as more particularly described in the attached and incorporated hereto in Exhibit "A" and depicted in Exhibit "B", and no other, and specifically limited to those purposes identified in Paragraph 1 above.

3. RESPONSIBILITY OF LICENSEE. Licensee shall maintain the area which is hereby licensed in a safe and good condition and repair.

4. INDEMNIFICATION. To the fullest extent allowed by law, the Licensee hereby agrees to defend, indemnify, save and hold harmless the Licensor, its agents and employees from all costs including attorneys' fees, damages, liability and claims of any kind whatsoever which is caused by any activity, condition or event arising directly or indirectly out of the use of the licensed area by Licensee.

5. LICENSE. This Agreement shall be construed as a mere license by Licensor to Licensee. It shall not be construed as an easement, lease, rental agreement, or as a grant of any interest in the real property other than a license. This Agreement shall be renewed annually on or before the date of execution above.

6. SIGNS. Licensee shall post signage, mutually agreed upon by the parties, on the property to delineate the boundaries of the adjacent property owners.

7. TERMINATION. This Agreement may be terminated with or without cause by either party by providing ninety (90) days written notice to the other party. Notice shall be given as follows:

To the City
City Manager, City of Prescott
201 S. Cortez Street
Prescott, AZ 86303

With copy to:
City Attorney, City of Prescott
221 S. Cortez
Prescott, AZ 86303
(928) 777-1274

To James 110 Investment, L.L.C.
Tanya Swayze
James 110 Investment, L.L.C.
1050 W. Washington St.
Suite 214
Tempe, AZ 85281

With copy to:
Mark T. Guerra, Esq.
James 110 Investment, L.L.C.
1050 W. Washington St.
Suite 214
Tempe, AZ 85281

Or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner.

Licensee shall have no claim or cause of action whatsoever against the Licensor by reason of any termination of this License and hereby waives the same.

8. REMOVAL OF IMPROVEMENTS UPON TERMINATION. Licensee agrees to remove any and all improvements, including but not limited to any structures or signs which are allowed pursuant to this Agreement, at its sole cost, immediately upon the termination of the License. If Licensee shall fail to remove said improvements within the time specified herein,

then in that event, Licensor may remove same, the costs of which shall become a charge against Licensee which Licensee hereby agrees to pay.

9. LICENSE NOT APPROVAL. The grant of this License shall not be construed as the grant of approval or permit as to the construction, location or marking of any improvements. Prior to undertaking any construction, markings, or other improvements within the licensed area, Licensee must first obtain the permission of the Licensor. It is the understanding of the parties that any use of the subject right-of-way, or structures located thereon, are subject to all applicable Federal, State, County and City laws, rules, regulations, and ordinances, including but not limited to the City Land Development Code.

10. INSURANCE. Licensee agrees and shall maintain in full force and effect during the entire term of this License Agreement, general errors and omissions, public liability insurance in the amount of \$1,000,000 covering the activities of the Licensee, with Licensor to be a named additional insured. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the Licensor(s). Prior to any access being made to the Trail, certificates of such policy shall be delivered to Licensor before the term hereof commences. All insurance must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. Section 20-217, a copy of which certificate is to be attached to the applicable Certificate of Insurance.

11. WAIVER OF JURY TRIAL. The parties hereto expressly covenant and agree that in the event of a dispute between Licensee and Licensor arising solely from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court.

12. WAIVER OF ATTORNEY'S FEES. The parties hereby expressly covenant and agree that in the event of a dispute between Licensee and Licensor arising solely from this Agreement, neither party shall be entitled to an award of attorney's fees from the other, either

pursuant to the License, pursuant to A.R.S. Section 12-341.01 (A) and (B), or pursuant to any other state or federal statute.

13. CONFLICT OF INTEREST. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this License Agreement on the day and year first above written.

LICENSOR:

JAMES 110 INVESTMENT, L.L.C.,
An Arizona limited liability company

By: _____
James M. Chamberlain

Carl J. Greenwood
Its: Manager

LICENSEE:

CITY OF PRESCOTT, a
Municipal corporation

By: _____
MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE
City Clerk

GARY D. KIDD
City Attorney

106-01-005

All that portion of Section 1, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

Commencing at the Southeast corner of Section 1, monumented with a 3" U. S. General Land Office brass cap;

Thence North $50^{\circ}57'04''$ West, 4825.94 feet (North $51^{\circ}13'41''$ West, 4825.87 feet, record) to a found $\frac{1}{2}$ " re-bar marking the Southeast corner of that parcel of land described in book 3787 of deeds, page 173, Yavapai County records;

Thence South $67^{\circ}29'05''$ East, 295.31 feet to a point on the North-Easterly most line of land described in book 4445, page 601, Yavapai County records, and the TRUE POINT OF BEGINNING, also being the center of an 8 foot wide easement, being 4 feet each side of the following described centerline;

Thence South $30^{\circ}05'23''$ West, 122.71 feet, to a point on the Easterly right-of-way of State Highway 89, and the end of this 8 foot wide easement, from which point the Southeast corner of that parcel of land described in book 3787 of deeds, page 173, Yavapai County records bears North $56^{\circ}44'33''$ East, 399.81 feet.

E 21.04

S77°30'00"W 75.69

N77°21'10"E 50.56

APN 106-01-003Y

N74°20'40"E 46.00

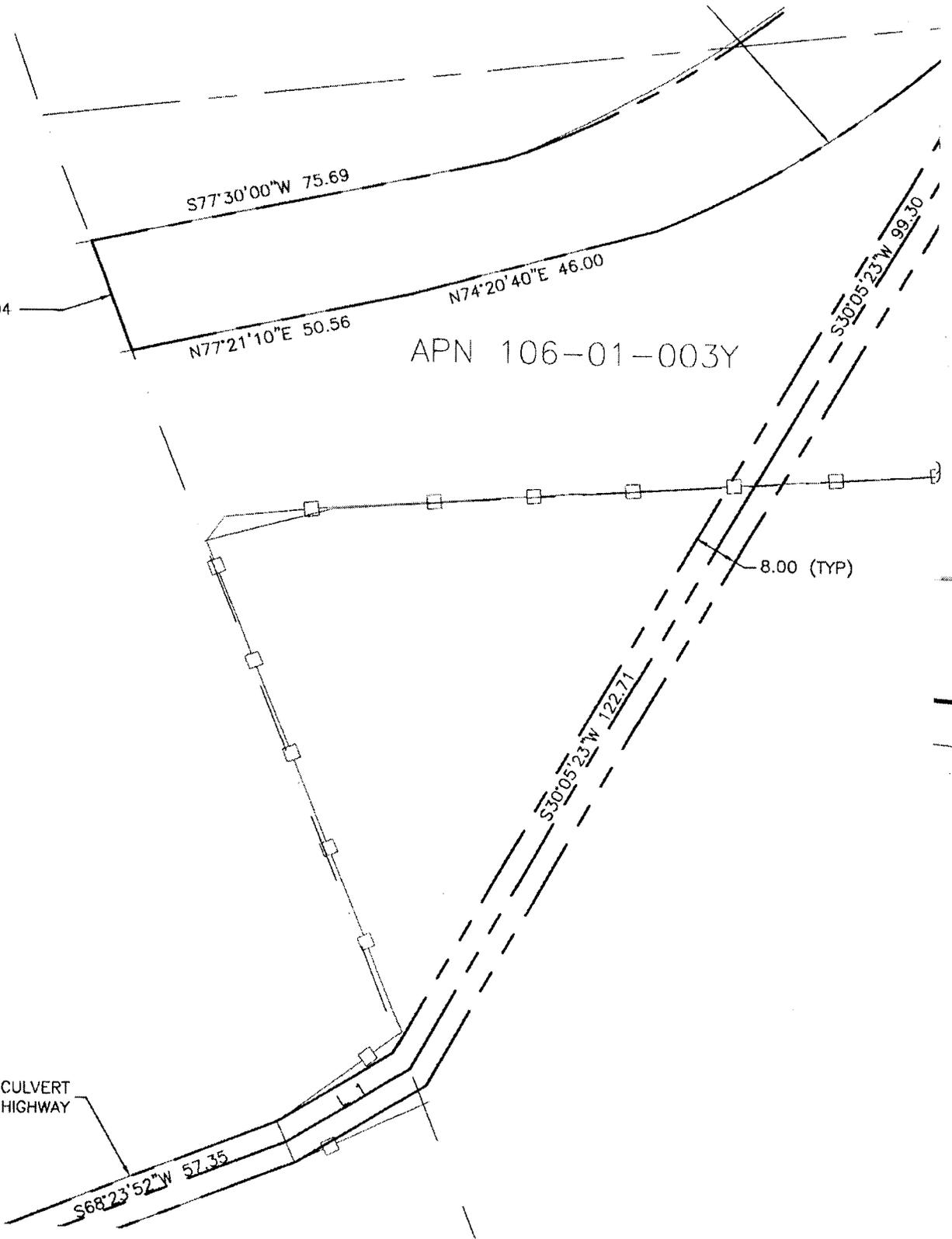
S30°05'23"W 99.30

8.00 (TYP)

S30°05'23"W 122.71

BOX CULVERT
UNDER HIGHWAY

S68°23'52"W 57.35



LICENSE AGREEMENT

Agreement made this ____ day of _____, 2011, by and between the George Phippen Memorial Foundation, an Arizona nonprofit corporation, dba The Phippen Museum, hereinafter referred to as "Licensor" and the City of Prescott, a municipal corporation of the State of Arizona, hereinafter referred to as "Licensee."

In consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, the parties agree as follows:

1. GRANT OF LICENSE. Licensee hereby grants to Licensor a license to occupy and use a portion of the property owned by Licensee generally located in the _____ area, Prescott, Arizona, and more particularly identified in the attached Exhibit "A", for the sole purpose of constructing and using a trail through Licensor's property and for related recreational activities such as hiking, biking, and equestrian trail use activities, and trail access, and shall include the right of licensee to maintain the following described trail, together with the ingress and egress over and through same, more particularly described in the attached Exhibit "A", subject to the following conditions:

A. Such activities are to occur solely in those areas within the described licensed area described in Exhibits "A" and "B", which are attached hereto and made a part of this License Agreement. Licensee shall take reasonable steps to post signage and trail delineation markings to reasonably ensure that use of the licensed property is confined to the designated licensed areas.

B. Further, during all periods of this License Agreement, the areas described in Exhibits A and B shall be licensed properties which shall also be and are hereby designated, upon approval by the City Council of the City of Prescott as City Parks for recreational use and are intended to be and shall be subject to the protection from liability/statutory immunities afforded under State statutes pertaining to recreational areas and parks.

C. All trail construction, installation and any repair and/or maintenance of the recreational trail shall be at the Licensee's expense and at no cost to the Licensor, and shall be subject to the prior approval by the Licensor.

2. LIMITATION TO DESCRIBED PREMISES. This License shall be specifically limited to that certain property as more particularly described in the attached and incorporated

Exhibit "A" hereto, and no other, and specifically limited to those purposes identified in Paragraph 1 above.

3. RESPONSIBILITY OF LICENSEE. Licensee shall maintain the area which is hereby licensed in good condition and repair. Licensee shall at all times keep and maintain said area in a safe and good condition and repair.

4. INDEMNIFICATION. To the fullest extent allowed by law, the Licensee hereby agrees to indemnify, save and hold harmless the Licensor, its agents and employees from all cost, damages, liability and claims of any kind whatsoever which is caused by any activity, condition or event arising out of the use of the licensed area by Licensee.

5. LICENSE. This Agreement shall be construed as a mere license by Licensor to Licensee. It shall not be construed as an easement, lease, rental agreement, or as a grant of any interest in the real property other than a mere license. This Agreement shall be renewed annually on or before the date of execution above.

6. SIGNS. Licensee shall post signage, mutually agreed upon by the parties, on the property to delineate the boundaries of the adjacent property owners.

7. TERMINATION. This Agreement may be terminated with or without cause by either party by providing ninety (90) days written notice to the other party. Notice shall be given as follows:

To the City
City Manager, City of Prescott
201 S. Cortez Street
Prescott, AZ 86303

With copy to:
City Attorney, City of Prescott
221 S. Cortez
Prescott, AZ 86303
(928) 777-1274

Phippen Museum

With copy to:
André Carman, Esq.
Warnock, MacKinlay & Carman, PLLC
246 S. Cortez Street
Prescott, AZ 86303
(928) 445-8056

Or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner.

Licensee shall have no claim or cause of action whatsoever against the Licensor by reason of any termination of this License and hereby waives the same.

8. REMOVAL OF IMPROVEMENTS UPON TERMINATION. Licensee agrees to remove any and all improvements, including but not limited to any structures which are allowed pursuant to this Agreement, at its sole cost, immediately upon the termination of the License. If Licensee shall fail to remove said improvements within the time specified herein, then in that event, Licensor may remove same, the costs of which shall become a charge against Licensee which Licensee hereby agrees to pay.

9. LICENSE NOT APPROVAL. The grant of this License shall not be construed as the grant of approval or permit as to the construction, location or marking of any improvements. Prior to undertaking any construction, markings, or other improvements within the licensed area, Licensee must first obtain the permission of the Licensor(s). It is the understanding of the parties that any use of the subject right-of-way, or structures located thereon, are subject to all applicable Federal, State, County and City laws, rules, regulations, and ordinances, including but not limited to the City Land Development Code.

10. INSURANCE. Licensee agrees and shall maintain in full force and effect during the entire term of this License Agreement, general errors and omissions, public liability insurance in the amount of \$1,000,000 covering the activities of the Licensee, with Licensor(s) as named additional insured(s). Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the Licensor(s). Certificates of such policy shall be delivered to Licensor before the term hereof commences. All insurance must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. Section 20-217, a copy of which certificate is to be attached to the applicable Certificate of Insurance.

11. WAIVER OF JURY TRIAL. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court.

12. WAIVER OF ATTORNEY'S FEES. The parties hereby expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney's fees, either pursuant to the License, pursuant to A.R.S. Section 12-341.01 (A) and (B), or pursuant to any other state or federal statute.

13. CONFLICT OF INTEREST. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating

this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the day and year first above written.

LICENSOR:

GEORGE PHIPPEN MEMORIAL
FOUNDATION

By: _____
Kim Villalpando
Executive Director

APPROVED AS TO FORM:

Warnock, MacKinlay & Carman, PLLC

By: _____
ANDRE CARMAN
Attorney for Phippen Museum

LICENSEE:

CITY OF PRESCOTT, a
Municipal corporation

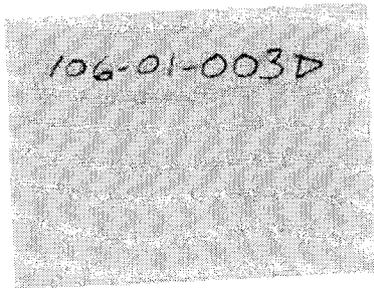
By: _____
MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE
City Clerk

GARY D. KIDD
City Attorney



All that portion of Section 1, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona.

Commencing at the Southeast corner of Section 1, monumented with a 3" U. S. General Land Office brass cap;

Thence North $50^{\circ}57'04''$ West, 4825.94 feet (North $51^{\circ}13'41''$ West, 4825.87 feet, record) to a found $\frac{1}{2}$ " re-bar marking the Southeast corner of that parcel of land described in book 3787 of deeds, page 173, Yavapai County records;

Thence South $83^{\circ}03'22''$ West, 118.19 feet (South $83^{\circ}02'43''$ West, record) along the southerly boundary line of that parcel of land described in book 3787, page 173, Yavapai County records, to the TRUE POINT OF BEGINNING;

Thence North $6^{\circ}56'38''$ West, 67.01 feet;

Thence South $78^{\circ}17'30''$ West, 97.46 feet;

Thence along a non-tangent curve, concave to the Northwest, having a chord bearing of South $40^{\circ}31'23''$ West, a chord length of 87.15 feet, a radius of 174.52 feet, a central angle of $28^{\circ}55'04''$ and an arc length of 88.08 feet;

Thence North $83^{\circ}03'22''$ East (North $83^{\circ}02'43''$ East, record), 161.34 feet to the TRUE POINT OF BEGINNING.