

ORDINANCE NO. F-1511

AN ORDINANCE AUTHORIZING THE SIGNING OF A FIRST AMENDMENT TO AN ANNEXATION AGREEMENT – 2001 WIESBROOK ROAD/ ARMBRUST

WHEREAS, the City of Wheaton, Illinois, ("City") and Steven M. Armbrust ("Owner") have previously entered into an Annexation Agreement dated March 16, 1998, ("Annexation Agreement") pertaining to the real estate described in the Annexation Agreement ("Subject Realty"); and

WHEREAS, the Owner has petitioned the City to amend the Annexation Agreement and approve two setback variations for the Subject Property in response to a determination made by the Illinois Department of Transportation (IDOT) that a small portion of the southwesterly corner of the property needs to be taken for additional public right-of-way to facilitate the reconstruction of the Wiesbrook and Butterfield Roads intersection; and

WHEREAS, the City is agreeable to amending the Annexation Agreement pursuant to the request of the Owner in accordance with the terms and provisions herein after set forth in this First Amendment to Annexation Agreement.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Mayor of the City is authorized and directed to sign, on behalf of the City, the First Amendment to an Annexation Agreement, and the City Clerk is authorized and directed to attest to the signature of the Mayor and affix the corporate seal of the City thereon. A copy of the First Amendment to an Annexation Agreement is on file in the Office of the City Clerk and is incorporated into this ordinance by this reference as though fully set forth herein.

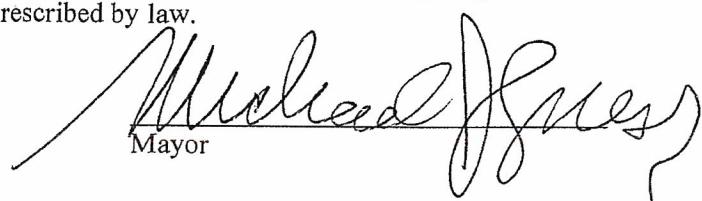
Section 2: The First Amendment to an Annexation Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois, at the expense of the Owners.

Section 3: All Ordinances or parts of Ordinances in conflict with these provisions are repealed.

Section 4: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

ATTEST:


Emily M. Ossolinski
City Clerk


Michael J. Jones
Mayor

Roll Call Vote:

Ayes: Councilman Suess
Councilwoman Corry
Councilman Mouhelis
Mayor Gresk
Councilman Prendiville
Councilman Scalzo

Nays: None

Absent: Councilman Levine

Motion Carried Unanimously

Passed: September 7, 2010
Published: September 8, 2010

PREPARED BY AND RETURN TO:

Henry S. Stillwell III
Rathje & Woodward, LLC
300 E. Roosevelt Road
P.O. Box 786
Wheaton, IL 60187

FIRST AMENDMENT TO ANNEXATION AGREEMENT

THIS FIRST AMENDMENT TO ANNEXATION AGREEMENT ("First Amendment"), is made and entered as of the 7th day of September 2010, by and between the CITY OF WHEATON, ILLINOIS, an Illinois municipal corporation, located in DuPage County, State of Illinois ("City") and 2001 WEISBROOK, L.P., an Illinois limited partnership ("Owner"). The City and Owner are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS:

A. The City has heretofore entered into that certain Annexation Agreement between the City and Steven M. Armbrust ("Armbrust"), dated March 16, 1998 and recorded with the DuPage County Recorder's office as Document No. R98-079890 ("Annexation Agreement") pertaining to the annexation and development of the real estate legally described in Exhibit "A" attached hereto ("Subject Property" or "Development").

B. 2001 Weisbrook, L.P. is the successor in interest to Armbrust in the Development and is currently the owner of legal title to the Subject Property.

C. The Subject Property has heretofore been developed in conformity with the entitlements granted by the City pursuant to the Annexation Agreement and is improved with a single story medical office building with associated parking and signage (collectively the "Improvements").

D. Owner has heretofore received written notice from the Illinois Department of Transportation ("IDOT") of its intention to take a portion of the southwest corner of the Subject Property for the purpose of reconstructing the intersection of Butterfield Road and Wiesbrook Road as a part of the planned Butterfield Road widening project ("IDOT Taking").

E. Owner and IDOT have agreed in principal with respect to the IDOT Taking and the size and configuration of the real estate to be taken by IDOT ("Taking Parcel"), as identified on the revised plans prepared by IDOT, copies of which are attached hereto as Exhibit "B" ("IDOT Plans").

F. As a result of the IDOT Taking the freestanding monument sign ("Monument Sign") and parking lot ("Parking Lot"), each being a part of the Improvements on the Subject Property, will be located in closer proximity to the adjacent boundary of the Subject Property after the IDOT Taking, thereby reducing the distance of the setback of said Improvements below the minimum setback requirements under the applicable ordinances of the City. In addition, the IDOT Taking will reduce the percentage of landscaped area within the Subject Property.

G. Owner is agreeable to cooperating with IDOT in facilitating the IDOT Taking subject to Owner obtaining from the City the necessary approvals and variations to the applicable ordinances of the City with respect to the resulting setbacks of the Monument Sign and Parking Lot and the percentage of landscaped area remaining. Accordingly, Owner has petitioned the City to amend the Annexation Agreement and to grant all necessary variations and approvals with respect to the minimum setback requirements and percentage of landscaped area, as hereinafter provided.

H. The City has reviewed the applicable plans and materials prepared by IDOT pertaining to the IDOT Taking and has concluded that the variations to the minimum setback requirements for the Monument Sign and Parking Lot and the reduction in the percentage of total landscaped area, as hereinafter provided, are reasonable and appropriate and will promote the best interests of the public in conjunction with, and subject to, the IDOT Taking.

I. Pursuant to the provisions of Section 6.1, *et.seq.*, of the Wheaton City Code and applicable provisions of the Illinois Compiled Statutes and Illinois Constitution, a proposed First Amendment to Annexation Agreement in substance and form of the same as this First Amendment was submitted to the Wheaton City Council and a public hearing was held thereon pursuant to notices provided by ordinance and statute.

J. All owners of record of real property located within 250 feet of the Subject Property, as reflected in the tax records of DuPage County, Illinois, have been duly notified in the manner provided by law.

K. Notice, if required, has been duly served in the manner provided by statute on the appropriate governmental entities; and an affidavit of service of said notice has been duly served and placed on record with the DuPage County Recorder's office.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. **LEGAL CONFORMANCE WITH LAW.** This First Amendment is made pursuant to and in accordance with the provisions of the Wheaton City Code and applicable provisions of the Illinois Compiled Statutes and Illinois Constitution.

2. **REDUCTION OF CERTAIN MINIMUM SETBACKS.** The provisions of Paragraph 5 of the Annexation Agreement to the contrary notwithstanding, the following minimum setback requirements shall be applicable along and adjacent to the westerly boundary of the Subject Property adjacent to Wiesbrook Road:

A. Minimum Parking Lot Landscape Setback: The minimum setback of the Parking Lot adjacent to the Wiesbrook Road Right-of-Way, as provided in Section 6.6.2 of Chapter 6 of the Wheaton Zoning Ordinance, shall be reduced from fifteen (15) feet down to five (5) feet.

B. Minimum Monument Sign Setback: The minimum setback of the Monument Sign adjacent to the Wiesbrook Road Right-of-Way shall be reduced from ten (10) feet down to zero (0) feet.

3. **REDUCTION OF TOTAL LANDSCAPE AREA.** The approximate percentage area of the Subject Property which is landscaped shall be permitted to be less than the approximately thirty-seven percent (37%) identified in the Findings of Facts in Section 1 of Wheaton Ordinance No. F-0224, and shall be reduced to that percentage existing on the Subject Property following the conveyance by Owner of the Taking Parcel to IDOT.

4. **LANDSCAPING IN RIGHT-OF-WAY.** Following the conveyance of the Taking Parcel to IDOT a portion of the landscaping for the Subject Property will be located within the public street right-of-way for Wiesbrook Road ("ROW Landscaping"). Owner shall, at its expense, be responsible for the care and maintenance of the ROW Landscaping, including, without limitation, the periodic pruning, fertilization, watering, pest and disease control. In the event a tree or shrub being a part of the ROW Landscaping dies, the replacement tree or shrub shall be planted within the amended Subject Property, as provided for in Paragraph 5. The ROW Landscaping is generally identified on Petitioner's Exhibit 1 as submitted at the public hearing before the City Council, a copy of which is attached hereto as Exhibit "C" ("Aerial Photograph").

5. **AMENDED DESCRIPTION OF SUBJECT PROPERTY.** Following the IDOT Taking, the legal description of the Subject Property shall be amended to exclude the Taking Parcel and Exhibit "D" attached hereto shall be substituted as the legal description of the Subject Property in place of Exhibit "A" attached to the Annexation Agreement.

6. **ADOPTION OF ORDINANCES.** The Corporate Authorities of the City shall take all necessary and appropriate actions and adopt and execute such ordinances as shall be necessary and appropriate to legally and duly approve and adopt this First Amendment and the

variations and reductions to the Development Standards for the Subject Property as set forth in this First Amendment.

7. NOTICES. Paragraph 30.A. of the Annexation Agreement is hereby amended to provide that notices to Owner shall be addressed as follows:

A. Owner:	2001 Weisbrook, L.P. c/o Dr. Steven M. Armbrust 125 Tennyson Wheaton, IL 60187
with a copy to:	Mr. Henry S. Stillwell III Rathje & Woodward, LLC 300 E. Roosevelt Road P.O. Box 786 Wheaton, IL 60187

8. DEFINED TERMS. The defined terms set forth in the Annexation Agreement shall have the same meaning when used in this First Amendment, unless otherwise expressly provided herein.

9. CONTINUITY OF AGREEMENTS. The Annexation Agreement shall remain and continue in full force and effect, subject to the amendments thereto as set forth in this First Amendment. All conflicts between the terms of the Annexation Agreement and this First Amendment shall be resolved in favor of this First Amendment. This First Amendment is hereby incorporated into and made a part of the Annexation Agreement and all terms and provisions of the Annexation Agreement not amended by this First Amendment shall be applicable to and govern this First Amendment.

(signature page follows)

S:\HSS\2001 WEISBROOK\FIRST AMENDMENT TO AA 8.30.10 CLEAN.WPD

IN WITNESS WHEREOF, the Corporate Authorities of the City and Owner have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials, as of the date first above written.

CITY:

CITY OF WHEATON, an Illinois municipal corporation

By: Michael J. Fries
Mayor

Attest: Emily M. Jusby
City Clerk

OWNER:

2001 WEISBROOK, L.P., an Illinois limited partnership

By: Janet D. Armbrust
Armbrust Corporation, an Illinois corporation, its general partner

By: Janet D. Armbrust
Janet D. Armbrust, President

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael J. Gesk, Mayor of the City of Wheaton, and Emily M. Consolazio, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____ 2010.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Janet D. Armbrust, President, of Armbrust Corporation, an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instruments as such President, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said President then and there acknowledged that she, as custodian of the records of the corporation, did affix the corporate seal of said corporation to said instrument as her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3rd day of September 2010.

Caren A. Modaff

Notary Public



SCHEDULE OF EXHIBITS

EXHIBIT "A": Legal Description of Subject Property

EXHIBIT "B": IDOT Plans

EXHIBIT "C": Aerial Photograph

EXHIBIT "D": Amended Legal Description of Subject Property

EXHIBIT "A"

LEGAL DESCRIPTION OF SUBJECT PROPERTY

LOTS 32, 33 AND 34 IN WIESBROCK'S SUBDIVISION, A SUBDIVISION OF PART OF THE WIESBROCK FARM IN THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 21, 1956 AS DOCUMENT 793559, IN DUPAGE COUNTY, ILLINOIS.

ALSO KNOWN AS:

LOT ONE OF ARMBRUST CONSOLIDATION OF LOTS 32, 33 AND 34 IN WIESBROCK'S SUBDIVISION OF PART OF THE WIESBROCK FARM IN THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 20, 1999 AS DOCUMENT NO. R1999-200983, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT "B"

IDOT PLANS

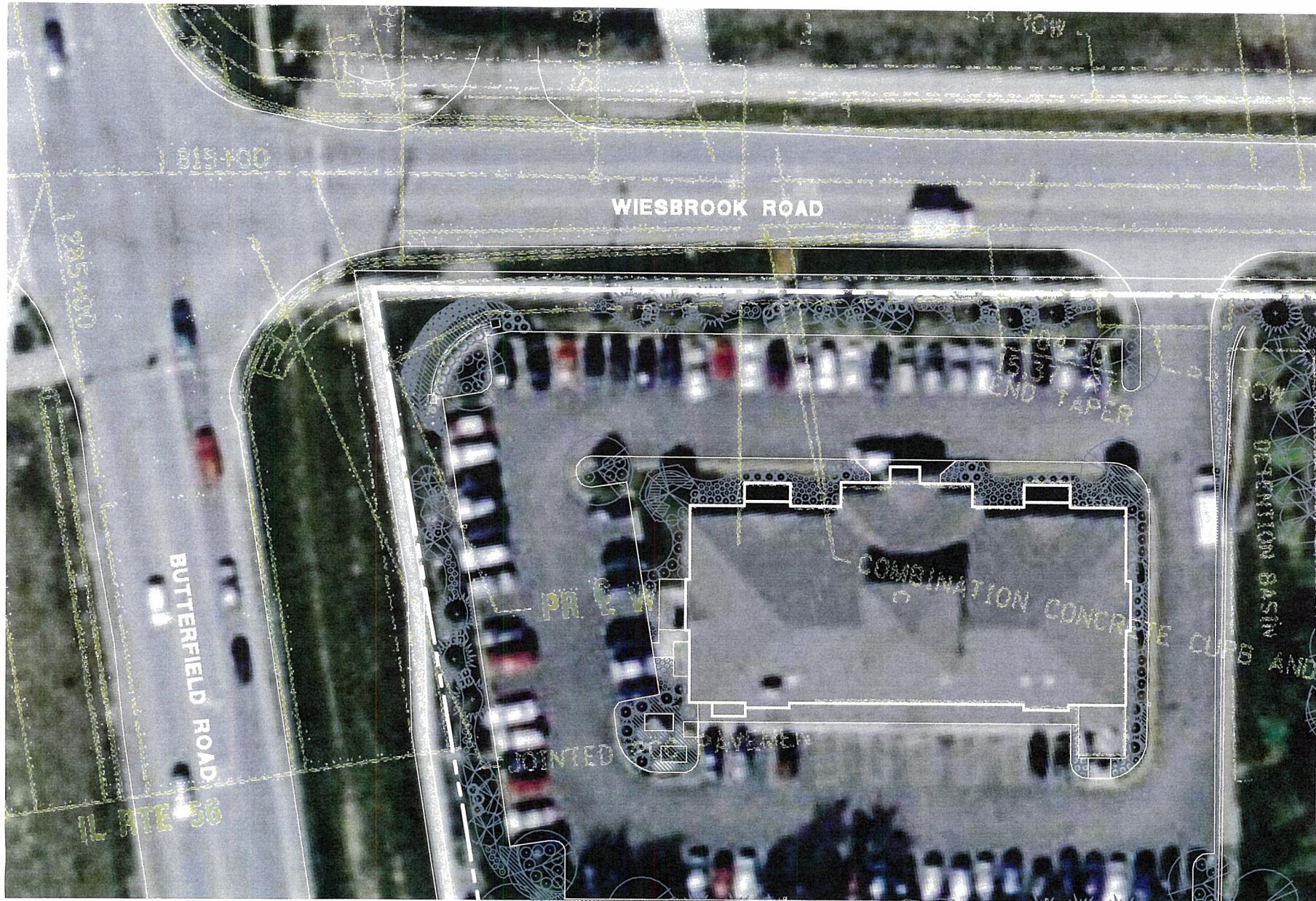
(See following 1 page)

S:\HSS\2001 WIESBROOK\FIRST AMENDMENT TO AA 8.30.10 CLEAN.WPD

EXHIBIT "C"

AERIAL PHOTOGRAPH

(See following 1 page)



2001 WIESBROOK ROAD
AERIAL EXHIBIT

GRWA
GARY R. WIEPER
ASSOCIATES, INC.
GLENDALE, COLORADO 80246
303-967-1000
FAX 303-967-1001
E-MAIL: GRWA@AOL.COM

Date: 8.22.01
Scale: 1" = 32'-0"
Surveyor: TBC
Standard: BCO
Sheet: 1

1 OF 1

EXHIBIT "D"AMENDED LEGAL DESCRIPTION OF SUBJECT PROPERTY

LOT ONE OF ARMBRUST CONSOLIDATION OF LOTS 32, 33 AND 34 IN WIESBROCK'S SUBDIVISION OF PART OF THE WIESBROCK FARM IN THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 20, 1999 AS DOCUMENT NO. R1999-200983, IN DUPAGE COUNTY, ILLINOIS.

EXCEPTING THEREFROM:

THAT PART OF LOT ONE OF ARMBRUST CONSOLIDATION OF LOTS 32, 33 AND 34 IN WIESBROCK'S SUBDIVISION OF PART OF THE WIESBROCK FARM IN THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 20, 1999 AS DOCUMENT NO. R1999-200983, IN DUPAGE COUNTY, ILLINOIS; DESCRIBED AS FOLLOWS:

BEGINNING IN THE SOUTHWEST CORNER OF SAID LOT ONE; THENCE NORTH 09 DEGREES 13 MINUTES 56 SECONDS EAST ALONG THE WESTERLY LINE OF LOT ONE, A DISTANCE OF 332.55 FEET, MEASURED (332.70 FEET, RECORDED) TO THE NORTHWEST CORNER OF LOT ONE; THENCE SOUTH 80 DEGREES 39 MINUTES 57 SECONDS EAST ALONG THE NORtherLY LINE OF SAID LOT ONE, A DISTANCE OF 0.83 FEET; THENCE SOUTH 08 DEGREES 30 MINUTES 01 SECONDS WEST 207.52 FEET; THENCE SOUTH 06 DEGREES 15 MINUTES 19 SECONDS WEST 86.90 FEET; THENCE SOUTH 20 DEGREES 17 MINUTES 01 SECONDS EAST 38.39 FEET TO THE SOUTH LINE OF SAID LOT ONE; THENCE SOUTHWESTERLY 27.34 FEET ALONG SAID SOUTH LINE OF LOT ONE AND A CURVE TO THE LEFT, HAVING A RADIUS OF 8484.80 FEET, THE CHORD OF SAID CURVE BEARS SOUTH 88 DEGREES 59 MINUTES 35 SECONDS WEST 27.34 FEET TO THE POINT OF BEGINNING.