

Albuquerque, New Mexico  
5914 Menaul Boulevard NE  
L/C: 030-0001  
File #00265

### REAL ESTATE CONTRACT

This Real Estate Contract (this "**Contract**") dated May 7, 2018, is between **ARTHUR JERRY DUNLAP and SUE DUNLAP STARK (brother and sister) ("Seller")**, and **McDONALD'S USA, LLC**, a Delaware limited liability company ("**Purchaser**"). For service of notices under this Contract, see Article 10.

### PRELIMINARY STATEMENTS

The following statements are a material part of this Contract:

A. WHEREAS, Seller currently leases the Premises, as such term is hereinafter defined, to an affiliate of Purchaser pursuant to that certain Lease dated June 26, 1959, as amended (collectively, the "**Existing McDonald's Lease**") between Noble Dunlap and Virginia Dunlap (need history of name change with Sellers name above), as lessor, and Franchise Realty Corporation, an Illinois corporation, as lessee; and

B. WHEREAS, the parties desire to enter into this Contract to facilitate the sale and transfer of Seller's fee interest in the Premises to Purchaser.

NOW THEREFORE, the parties agree as follows:

1. **Conveyance:** Seller agrees to sell and convey to Purchaser (or Purchaser's nominee), and Purchaser agrees to purchase from Seller, the real estate located in Albuquerque, County of Bernalillo, State of New Mexico, containing 22,500 square feet, more or less (not including roads or public rights-of-way), more particularly described on **Exhibit A**, together with all easement rights and appurtenances thereto, all buildings and improvements now located on the property, and all of Seller's rights, title and interest in all public ways, easements and appurtenances adjoining or benefitting the property (with the land, collectively called "**Premises**").

2. **Price:** [REDACTED]

3. **Deed and Other Documents:** Seller will convey marketable and insurable title to the Premises by special warranty deed, with a release of dower, curtesy, homestead and other spouse's rights, at Seller's sole cost, subject only to the Existing McDonald's Lease and conditions created by Purchaser or its subtenants, current real estate taxes, real estate taxes due and payable by Purchaser pursuant to the provisions of the Existing McDonald's Lease, and covenants, conditions, easements, encumbrances and restrictions approved by Purchaser in writing. Seller and Purchaser will cause to be delivered at Closing an agreement, in form and substance reasonably satisfactory to the parties, terminating the Existing McDonald's Lease. Seller agrees to execute and deliver to Purchaser any other affidavit, statement or other document normally required by the Title Company (hereafter defined) as a condition for the issuance of the title insurance policy or for the escrow closing provided for below.

4. **Earnest Money:** Purchaser will deposit with the Title Company, as escrowee, within 30 days after the date of final execution of this Contract, Five Thousand and 00/100 Dollars (\$5,000.00), as earnest money, to be credited against the purchase price at closing. Purchaser will deposit the balance of the purchase price into escrow within 10 days after title has been approved by Purchaser, all contingencies and/or conditions of this Contract have been satisfied or are satisfactory to and are waived by Purchaser and the deed has been delivered to the Title Company. If Purchaser defaults under this Contract and fails to cure the default within 10 days after receipt of notice from Seller, then, upon demand of Seller, the earnest money will be forfeited as liquidated damages, and not as a penalty; and this Contract will become null and void. If this Contract is terminated for any reason other than Purchaser's default, the earnest money will be returned to Purchaser.

5. **Title Insurance:** Purchaser, at its sole cost, will order a title commitment of the Premises for a 2006 ALTA owner's policy, with extended coverage, or a comparable form, from a title company selected by Purchaser (the "**Title Company**"), in the amount of the purchase price, covering the date of this Contract. Promptly after its receipt, but not later than 30 days after the date of final execution of this Contract, Purchaser will deliver a copy of such title commitment and all Schedule A and B documents to Seller. If by written notice Purchaser advises Seller that the report on title, binder or commitment discloses any defects in title (other than liens or encumbrances of a definite or ascertainable amount which may be paid at closing by Seller), Seller will have 30 days from the date of Purchaser's notice of such defects to make a good faith effort to cure such defects and to furnish a later report showing the defects cured or removed. If such defects are not cured or removed within 30 days, Purchaser may terminate this Contract or may, at Purchaser's election, take the title as it then is with the right to deduct from the purchase price liens or encumbrances of a definite or ascertainable amount by giving notice of such election to Seller and tendering performance on Purchaser's part.

6. **Conditions Precedent:**

A. **Contingency Period:** If the contingencies and/or conditions precedent of this Contract have not been satisfied within 210 days after the opening of the escrow ("**Contingency Period**"), or if the results of the Phase I ESA (hereafter defined) or Phase II ESA, if applicable, title, survey, or any other matters do not meet with Purchaser's approval or if they disclose matters that make the Premises unsuitable for the purposes stated in this Contract, Purchaser or Seller may, at any time after the expiration of the Contingency Period, terminate this Contract, the money and documents deposited in escrow will be returned to the party depositing them and this Contract will terminate and be of no further force and effect. Notwithstanding the foregoing, if Purchaser is diligently pursuing satisfaction of the contingencies and/or conditions precedent in good faith, the Contingency Period shall be extended for an additional 60 days if necessary, upon Purchaser's written notice to Seller.

If Seller elects to terminate this Contract after the expiration of the Contingency Period, Purchaser will have 10 days after receiving Seller's termination notice to waive, in writing, the contingencies and/or conditions precedent and agree to close this Contract. If Purchaser waives the contingencies and/or conditions precedent, the closing must then take place within 14 days from the date of such waiver. If Purchaser does not waive the contingencies and/or conditions precedent, this Contract will terminate and be of no further force or effect 10 days after Purchaser's receipt of Seller's notice.

Purchaser and Seller covenant to act in good faith and use due diligence to satisfy all contingencies and/or conditions for which they are responsible, and neither party will have the right to terminate this Contract unless they have so performed.

This Contract is subject to the following contingencies and/or conditions precedent:

1) **Permits:** Purchaser obtaining, after expiration of all applicable appeal periods, all permits, variances, special use permits, licenses, permissions, approvals or other authorizations (collectively called "**Permits**") necessary for demolition of the existing structures and the construction and operation of a McDonald's restaurant, including Purchaser's signs and special service windows, and playland or PlayPlace and Purchaser's ability to operate 24 hours a day / 7 days a week (all at Purchaser's option), built according to Purchaser's plans and specifications, including, without limitation, curb cuts in connection with the facility deemed necessary or desirable by Purchaser. Seller agrees to execute any necessary documents, make appearances and do other things as Purchaser may reasonably request.

2) **Zoning and Subdivision:** Seller will, if necessary, use best efforts to cooperate with Purchaser to obtain the approval of all public and governmental authorities as to all matters relating to zoning, subdivision, lot splits, lot ties, replats or similar requirements for use of the Premises as a McDonald's restaurant in accordance with Purchaser's plans and specifications as will permit Purchaser to obtain all necessary permits, licenses and approvals referred to above. Purchaser agrees, at Purchaser's sole cost, to pay the expense of application and engineering and any other incidental costs relating to such approval or the recordation of a final parcel map or plat. Seller further agrees to dedicate or grant any easements for public ways as a condition of approval and recordation of the final parcel map or subdivision plat.

3) **Survey:** Purchaser obtaining, at Purchaser's sole cost, a certified topographical survey, in accordance with Purchaser's standards, to be performed by a licensed surveyor, showing the area, dimensions and location of the Premises to the nearest monuments, streets, alleys on all sides, the topography, the location of all available utilities in adjoining streets, alleys or property, the location of all improvements and encroachments, the location of all recorded easements against or appurtenant to the Premises, and not disclosing any condition rendering the Premises unusable, in Purchaser's sole judgment, for the purposes stated in this Contract.

4) **Environmental Site Assessments:** Purchaser may, at Purchaser's expense, obtain a written Phase I Environmental Site Assessment ("**ESA**") of the Premises conducted in accordance and compliance with the ASTM E1527-13 and 40 C.F.R. Part 312, et seq., standards and regulations for conducting Phase I ESAs ("**ESA Standards and Regulations**"). The environmental professional qualified to conduct an ESA in accordance with the ESA Standards and Regulations ("**Environmental Professional**") chosen by and acceptable to Purchaser will conduct the ESA. Purchaser may update any environmental reports, at Purchaser's expense, every 180 days.

If the Phase I ESA or any other soil tests identify any recognized environmental conditions, indicate that any hazardous substances are located on the Premises or recommend further Phase II environmental testing, Purchaser may, at Purchaser's option: (a) terminate this Contract and declare this Contract of no further force and effect; or (b) order, at Purchaser's expense, a written Phase II ESA to be undertaken as recommended by the Phase I ESA. If the written Phase II ESA is unacceptable to Purchaser, in Purchaser's sole judgment, Purchaser may, at Purchaser's option: (a) terminate this Contract and declare this Contract of no further force and

effect; or (b) elect to purchase the Premises, and to undertake and complete any and all investigation, remediation or removal work as specified or recommended in the Phase II ESA and/or by the Environmental Professional.

5) **Extraordinary Costs:** Purchaser determining that Purchaser's extraordinary costs will not exceed Ten Thousand and 00/100 Dollars (\$10,000.00). "**Extraordinary costs**" will be defined as all costs and expenses other than construction costs for Purchaser's standard building and site improvements. Extraordinary costs include, but are not limited to: contaminated soil and ground water removal or remediation; costs to extend utility lines to the site; costs to construct off-site drainage or sewage treatment facilities; permit fees; impact fees; legal fees; expert and consulting fees for non-employees; costs and expenses for easements and additional property used in conjunction with the Premises; and costs or expenses related to roadways or the surrounding public rights-of-way. However, the parties' respective obligations to provide or pay for any of the above items may be stipulated elsewhere in this Contract.

6) **Third Party Easements:** Purchaser obtaining, at no cost to Purchaser, all easements reasonably required by Purchaser, if any, from third party record title holders. The title commitment issued to Purchaser must commit to affirmatively insure: (a) title to the easements, (b) that the easement agreement was validly executed and is in full force and effect, and (c) that Purchaser's easement interest is not subordinate to any other interest. If the requirements of this paragraph are not satisfied, Purchaser may, at Purchaser's option, terminate this Contract and declare this Contract null and void and of no further force and effect.

7. **Possession:** Seller covenants to deliver on the date title passes to Purchaser sole and actual possession of the Premises to Purchaser, free and clear of all tenancies and parties in possession, other than Purchaser and any subtenant, licensee, or other user of Purchaser under the Existing McDonald's Lease.

8. **Escrow:** This sale will be closed in escrow with the Title Company, under a deed and money escrow agreement conforming with this Contract, within 10 days after all contingencies and/or conditions and provisions of this Contract have been satisfied or waived by Purchaser and the Title Company is prepared to issue its final owner's policy, subject only to the approved title matters. Prior to closing, Seller will submit to Purchaser for approval a copy of the required deed described in Article 3. The submission and approval of these documents is a contingency of this Contract.

Rent under the Existing McDonald's Lease will be prorated on the date of Closing and Purchaser shall pay to Seller as consideration in addition to the purchase price set out in Paragraph 2 above, an amount equal to the rent Purchaser's affiliate would have paid to Seller from the date of Closing through November 2, 2019, at a rate of \$288.53 per diem. All current real estate taxes are to be prorated as of the date of closing, unless the taxes are currently being paid directly to the taxing authority by Tenant under the Existing Lease, and if the amount of the current taxes is not then ascertainable, the proration will be done on the basis of 110% of the most recent ascertainable taxes. If the taxes are due and payable within 6 months of closing, Seller and Purchaser will deposit in escrow with the Title Company their respective share, and the Title Company will pay the taxes.

If the Premises is part of a larger parcel and is not separately assessed as of the date of closing, Purchaser's prorata share will be calculated in the following manner: (A) in the case of the land, the numerator of the fraction will be the land area of the Premises, and the denominator

of the fraction will be the total land area of the property covered by the tax bill; (B) in the case of buildings, if there is no separate assessment for the building(s) on the Premises, the numerator of the fraction will be the area of the building(s) on the Premises, and the denominator of the fraction will be the total area of all buildings located on the property covered by the tax bill. Purchaser's prorata share will not include taxes attributable to improvements, unless there is a building on the Premises and Purchaser intends to use such building. For purposes of this Article 8, the term "**Premises**" will not be deemed to include any easement areas.

All transfer and conveyance taxes or documentary stamps and special real estate taxes and assessments will be paid by Seller. The cost of recording the documents called for in this Contract will be paid by Purchaser. The cost of the escrow will be divided equally between Seller and Purchaser. All costs related to the issuance of the title policy, including title examination fees and premiums, will be paid by Purchaser.

**9. Time of the Essence:** Time is of the essence of this Contract, but any defaulting party will have 10 days after receipt of notice of a default to cure before the other party may terminate and/or exercise other remedies available at law or in equity.

**10. Notices:** If at any time, it becomes necessary or convenient for one of the parties to serve notice, demand or communication upon the other party, such notice, demand or communication must be in writing, signed by the party serving notice, sent by nationally recognized overnight carrier or registered or certified United States mail, return receipt requested and postage or other charges prepaid. If intended for Seller, the notice must be addressed to Arthur Jerry Dunlap, P.O. Box 137 Encino, New Mexico 88321 and Sue Dunlap Stark, 16144 Chalfont Circle, Dallas, Texas 75248, and a copy to Moses, Dunn, Farmer & Tuthill, P.C., Attention: Mark A. Glenn, P.O. Box 27047, Albuquerque, NM 87125-7047, or if intended for Purchaser, the notice must be addressed to One McDonald's Plaza, Oak Brook, IL 60523, Attention: Director, U.S. Legal Department L/C 030-0001 and a copy to McDonald's USA, LLC, 511 East Carpenter Freeway, Suite 375, Irving, Texas 75062, Attention: Real Estate Manager, Greater Southwest Region (L/C: 030-0001), or such other address as either party furnishes to the other, in writing, as a place for the service of notice. Any notice so sent will be deemed given as of the time it is deposited with the overnight carrier or in the United States mail.

**11. Conflicts of Interest:** Seller and (if Seller is not an individual) the party(ies) executing this Contract for or on behalf of Seller, or as a representative of Seller, represent that, to the best of his/her/their knowledge, he/she/they, or any person connected directly or indirectly with Seller is/are not (an) agent(s), employee(s), servant(s), supplier(s), licensee(s) or officer(s) of Purchaser or any subsidiary, affiliate or parent corporation or related to any agent, employee, servant, supplier, licensee or officer of Purchaser or any subsidiary, affiliate or parent corporation. The parties executing this Contract acknowledge that Purchaser relies upon Seller's representations as inducement to enter into this Contract. Any misrepresentation will be grounds for Purchaser to terminate this Contract.

**12. Covenants:** All of the covenants, warranties, representations and agreements in this Contract will survive closing and will run with the land and extend to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties. It is understood that there are no oral or written agreements or representations between Seller and Purchaser affecting this Contract; and this Contract supersedes and cancels any and all previous negotiations, arrangements, representations and understandings, if any, between the parties. This Contract may be modified or altered only by an agreement in writing between the parties;

and no act or omission of any employee or agent of the parties or any broker, if any, will alter, change or modify any of the provisions of this Contract.

**13. No Waiver:** No waiver by either party of any term, covenant or condition ("**Provision**") under this Contract by the other party will be effective or binding upon such party unless given in the form of a written instrument signed by such party, and no such waiver will be implied from any omission by such party to take action with respect to such Provision. No express written waiver of any Provision will affect any other Provision or cover any period of time other than the Provision and/or period of time specified in such express waiver. One or more written waiver(s) of any Provision will not be deemed to be a waiver of any subsequent Provision.

**14. Authority to Sign:** No employee or agent of Purchaser (other than an authorized signatory) has authority to execute this Contract or make any other warranty, representation, agreement or undertaking. The parties' submission of this document for examination and negotiation does not constitute an offer to purchase or a reservation of or option for the Premises and this document will become effective and binding only upon final execution and delivery by Seller and an authorized signatory of Purchaser. The parties executing this Contract on behalf of Seller and Purchaser represent that they have authority and power to sign this Contract on behalf of Seller and Purchaser. No act or omission of any employee or agent of the parties or any broker will alter, change or modify any provisions of this Contract.

**15. Anti-Terrorism Representation and Warranty:** Seller and Purchaser each represent and warrant that neither they nor the officers and directors controlling Seller and Purchaser, respectively, are acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation. Each party agrees that in the event of a breach of this provision or any applicable law relating to the subject of this provision, the non-breaching party may take such action as may be necessary in order to comply with this provision and/or the applicable law, including, but not limited to, terminating this Contract.

**16. Brokers Commission:** Seller and Purchaser represent to each other that they have not dealt with any real estate agent, broker, finder or any other entity which is or may be entitled to a commission as a result of this transaction, except Brian Anderson, CCIM, President/COO, Roger Cox and Associates Property Management, LLC, which commission shall be paid by Seller under a separate agreement. Any party making a misrepresentation under this Article will hold the other party harmless from any losses, costs, or expense, including reasonable attorneys' fees and court costs, arising out of such breach. Notice of any claim under this Article must be given to the other party within 30 days from the date a request for a commission is made. The indemnifying party will have the right to defend and settle any claim.

**17. Prevailing Party:** If either party institutes any action at law or in equity against the other party to secure or protect its rights under or to enforce the terms of or for breach of this Contract, in addition to any judgment entered in its favor, the prevailing party will be entitled to recover its attorneys' fees together with court costs and expenses of litigation.

**18. Business Days:** If any date set forth in this Contract for the performance of any obligations of Seller or Purchaser, or for the delivery of any instrument or notice as provided in this Contract, should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used in this Contract, the term "legal holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the state in which the Premises is located.

**19. Good Faith and Due Diligence:** Seller and Purchaser covenant to act in good faith and use due diligence in the performance of their respective obligations under this Contract.

**20. Riders and Exhibits:** This Contract includes the following Riders and/or Exhibits, which govern over conflicting provisions (if any) of this Contract, and are made an integral part of this Contract and fully incorporated by reference:

Exhibit A – Legal Description of the Premises

19. **Good Faith and Due Diligence:** Seller and Purchaser covenant to act in good faith and use due diligence in the performance of their respective obligations under this Contract.

20. **Riders and Exhibits:** This Contract includes the following Riders and/or Exhibits, which govern over conflicting provisions (if any) of this Contract, and are made an integral part of this Contract and fully incorporated by reference:

Exhibit A – Legal Description of the Premises

SELLER AND PURCHASER, by their execution below, indicate their consent to the terms of this Contract.

**SELLER:**

Arthur Jerry Dunlap

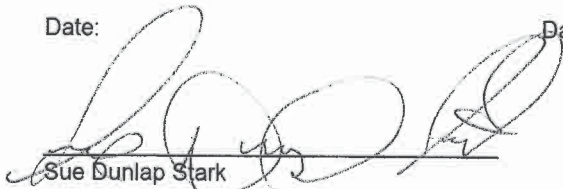
**PURCHASER:**

**McDONALD'S USA, LLC**, a Delaware limited liability company

By:

Its: SENIOR COUNSEL

Date:

  
Sue Dunlap Stark

Date:

5/7/2018

Date:

4-18-2018

Document #1758183.v1

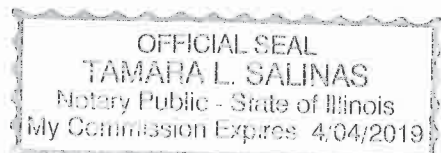
STATE OF ILLINOIS )

) SS:

COUNTY OF DUPAGE )

I, Tamara L. Salinas, a Notary Public in and for the county and state set forth above, CERTIFY that Wendy Newkirk, as Senior Counsel of **McDONALD'S USA, LLC**, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized party, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered this instrument as his/her free and voluntary act as such authorized party and as the free and voluntary act of the company for the uses and purposes described in this instrument.

Given under my hand and notarial seal, this 7<sup>th</sup> day of May, 2018.





My commission expires  
Notary Public

STATE OF Texas )

) SS:

COUNTY OF Collin )

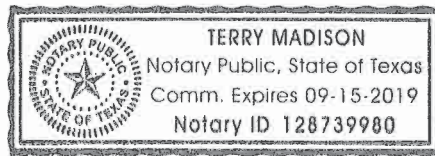
I, Terry Madison, a Notary Public in and for the county and state set forth above, CERTIFY that **Sue Dunlap Stark**, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such authorized party, appeared before me this day in person and acknowledged that she signed, sealed and delivered this instrument as her free and voluntary act as such authorized party for the uses and purposes described in this instrument.

Given under my hand and notarial seal, this 18<sup>th</sup> day of April, 2018.

My commission expires 9-15-19

Notary Public

*Terry Madison*



STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the county and state set forth above, CERTIFY that **Arthur Jerry Dunlap**, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such authorized party, appeared before me this day in person and acknowledged that he signed, sealed and delivered this instrument as his free and voluntary act as such authorized party for the uses and purposes described in this instrument.

Given under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

My commission expires

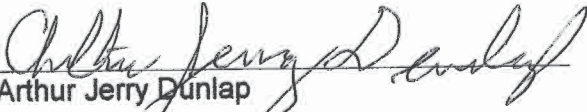
Notary Public

SELLER AND PURCHASER, by their execution below, indicate their consent to the terms of this Contract.

**SELLER:**

**PURCHASER:**

**McDONALD'S USA, LLC**, a Delaware limited liability company

  
Arthur Jerry Dunlap

By:   
Its: SECTOR COUNSEL

Date: 4-18-18

Date: 5/7/2018

\_\_\_\_\_  
Sue Dunlap Stark

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

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the county and state set forth above, CERTIFY that **Sue Dunlap Stark**, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such authorized party, appeared before me this day in person and acknowledged that she signed, sealed and delivered this instrument as her free and voluntary act as such authorized party for the uses and purposes described in this instrument.

Given under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

My commission expires \_\_\_\_\_.


STATE OF New Mexico )  
 ) SS:  
COUNTY OF Torrance )

I, Loretta Chavez, a Notary Public in and for the county and state set forth above, CERTIFY that **Arthur Jerry Dunlap**, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such authorized party, appeared before me this day in person and acknowledged that he signed, sealed and delivered this instrument as his free and voluntary act as such authorized party for the uses and purposes described in this instrument.

Given under my hand and notarial seal, this 18th day of April, 2018.

Loretta Chavez  
Notary Public

My commission expires 05-23-2020

 OFFICIAL SEAL  
**LORETTA CHAVEZ**  
NOTARY PUBLIC - State of New Mexico  
My Commission Expires 05-23-2020

**EXHIBIT A  
LEGAL DESCRIPTION**

A Tract of Land situate within Section 12, T10N, R3E, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, being Tract "A", Block 101, BEL-AIR, a Subdivision, Albuquerque, New Mexico, as the same is shown and designated on said plat filed in the office of the County Clerk of Bernalillo County, New Mexico on October 16, 1979 (Vol. C15, Folio 141), and being more particularly described as follows:

Beginning at the Northwest corner of the Tract herein described being a point on the South R/W line of Menaul Blvd., N.E.;  
Thence along said R/W line S 89° 30' 00" E, 150.00 feet to the Northeast corner, said point being the Northwest corner of Tract "B" of the aforementioned plat; thence leaving the aforementioned R/W line S 00° 30' 00" W, 150.00 feet to the Southeast corner; thence N 89° 30' 00" W, 150.00 feet to the Southwest corner, thence N 00° 30' 00" E, 150.00 feet to the Northwest and beginning corner.