

When recorded, return to:

Chicago Title
Attn: Rebecca Stack-Sandidge
2415 E. Camelback Rd., Ste. 100
Phoenix, Arizona 85016

2120102-13-3-3--
GonzalesJ

2/20/02-46/RA 2/2

**EASEMENT IN GROSS AND FIBER OPTIC LINE
RELOCATION AGREEMENT**

This Easement In Gross and Fiber Optic Line Relocation Agreement (the "*Easement*") is made and entered into as of the Effective Date by and between Denali National Trust, Inc., an Arizona corporation ("*Grantor*") and AdvancePCS, Inc., a Delaware corporation ("*AdvancePCS*") as more particularly described hereinbelow:

RECITALS:

- A. Grantor is the owner of the real property located in Scottsdale, Maricopa County, Arizona more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "*Denali Property*").
- B. AdvancePCS currently leases a commercial building located at 9501 E. Shea Boulevard, Scottsdale, Maricopa County, Arizona for its corporate operations more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "*AdvancePCS Property*").
- C. There are currently located underground conduit and fiber optic communication lines (the "*Fiber Optic Facilities*") under a portion of the Denali Property in the approximate location indicated on the diagram attached hereto as Exhibit C and incorporated herein by this reference.
- D. There is no easement or written agreement relating to the use or maintenance of the Fiber Optic Facilities. AdvancePCS desires to enter into an agreement with Grantor to ensure access to and use of the Fiber Optic Facilities by AdvancePCS as long as it leases the AdvancePCS Property. Grantor is willing to enter into such an agreement as long as Grantor's rights to freely develop the Denali Property are fully protected and preserved and Grantor hereby gives notice that it would not enter into this Easement without such protections for Grantor as are contained in this Easement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and AdvancePCS hereby agree as follows:

1. Grant of Easement. Expressly subject to the construction, removal and relocation rights and obligations of Grantor and AdvancePCS under Paragraphs 3 and 4 below of this Easement, Grantor hereby grants to AdvancePCS an exclusive easement in gross for access to,

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use and maintenance of the Fiber Optic Facilities over that certain real property described on Exhibit D attached hereto and incorporated herein by this reference (the "**Fiber Optic Facilities Easement Area**").

2. Maintenance of Easement. AdvancePCS shall have a limited right of access and easement of ingress and egress over the Fiber Optic Facilities Easement Area to maintain, repair and replace the Fiber Optic Facilities from time to time as AdvancePCS shall determine is necessary in the exercise of its reasonable discretion. AdvancePCS shall restore and revegetate any landscaping disturbed by AdvancePCS's maintenance activities hereunder and shall restore and repair any roadway or comparable improvements installed or erected by Grantor over the Fiber Optic Facilities Easement Area disturbed or damaged by Grantee maintenance of the Fiber Optic Facilities. In the exercise of its rights under this Paragraph 2, AdvancePCS shall use all diligent efforts to avoid disturbing improvements on the Denali Property and/or the rights of any persons lawfully occupying or using the Denali Property with the consent of Grantor.

3. Grantor Construction Rights Over Fiber Optic Facilities Easement Area. Nothing contained in this exclusive Easement shall be construed to mean or preclude Grantor, its successors or assigns, from constructing permanent improvements in the nature of a roadway, driveway, parking facility, or landscaping over the Fiber Optic Facilities Easement Area. Should Grantor desire to construct permanent improvements in the nature of a building that would preclude Grantee from maintaining or repairing the Fiber Optic Facilities or render it economically unfeasible to do so, then the provisions of Paragraph 4 shall apply.

4. Relocation of Fiber Optic Facilities. Upon the giving of fifteen (15) days' written notice (the "**Relocation Notice Period**"), as part of its development of the Denali Property, Grantor, or such other successor owner of any portion of the Denali Property that includes the Fiber Optic Facilities Easement Area, may require AdvancePCS to relocate and re-route the Fiber Optic Facilities (the "**Relocation Work**") at AdvancePCS's sole cost and expense to a new easement area to be directed by Grantor over any portion of the Denali Property that it owns or has reserved the right to grant an easement for the Fiber Optic Facilities (the "**New Easement Area**"). As part of the Relocation Work, AdvancePCS shall be solely responsible for all costs and expenses incurred in surveying and establishing the exact legal description and boundaries of the New Easement Area designated by Grantor and for obtaining any utility permits or approvals for the Relocation to the New Easement Area. Not later than the expiration of the Relocation Completion Period (as defined below), Grantor and AdvancePCS shall record an amendment to this Easement evidencing the New Easement Area and releasing the Fiber Optic Facilities Easement Area from the burden of this Easement.

In the event Grantor gives a Relocation Notice, AdvancePCS, at its sole cost and expense, shall elect either: (i) to terminate this Easement and remove the Fiber Optic Facilities (unless Grantor otherwise agrees in writing to allow the same to be abandoned in place) or (ii) to cause the Relocation Work to be fully completed within sixty (60) days after expiration of the Relocation Notice Period (the "**Relocation Completion Period**"). AdvancePCS is hereby granted a temporary construction easement over the Denali Property for purposes of completing the Relocation Work; provided, further, that nothing contained in this Easement shall prevent or limit Grantor from reasonably establishing a specific temporary construction easement area over

which AdvancePCS and its employees, licensees, contractors and agents may operate or prevent Grantor from limiting access to other areas of the Denali Property that are not necessary for the Relocation Work. Not later than the expiration of the Relocation Notice Period, AdvancePCS shall have prepared a landscape or other restoration plan reasonably approved by Grantor of both the original Fiber Optic Facilities Easement Area and the New Easement Area. Such restorative work shall also be completed during the Relocation Completion Period as part of the Relocation Work. All construction and maintenance work under this Easement, when undertaken, shall be promptly completed in a good and workmanlike manner using reputable, licensed, bonded and insured contractors.

AdvancePCS understands that the timely development of the Denali Property is critical to Grantor and that Grantor would not grant this Easement but for AdvancePCS's agreement to timely perform the Relocation Work by the end of the Relocation Completion Period. Grantor will be irreparably harmed if AdvancePCS does not timely complete the Relocation Work as provided herein and therefore Grantor hereby reserves the right to terminate this Easement and abandon the Fiber Optic Facilities in place or remove the same as Grantor may elect in its sole and absolute discretion as provided in this Paragraph 4. If AdvancePCS does not complete the Relocation Work as required under this Paragraph 4, at any time thereafter, Grantor may give AdvancePCS a ten (10) day written notice of pending termination of this Easement (the "**Pending Termination Notice**"). For each day after the Pending Termination Notice is given and the Relocation Work is not complete, AdvancePCS shall incur liquidated damages in the amount of \$500.00 per diem as a reasonable estimate of damages and not as a penalty. At any time following the tenth (10th) day after the Pending Termination Notice is given, this Easement may be unilaterally terminated by Grantor sending a final notice of termination (the "**Final Notice of Termination**") and recording a termination of the Easement with the Office of the Maricopa County, Arizona Recorder. The Final Notice of Termination shall be effective immediately upon the giving of the Notice to AdvancePCS and Grantor may thereupon either declare the Fiber Optic Facilities abandoned in place or may remove the Fiber Optic Facilities at the expense of AdvancePCS as if part of the Relocation Work. AdvancePCS shall reimburse Grantor for the per diem expenses set forth in this Paragraph 4 after the Pending Notice of Termination is given and for any other Relocation Work costs incurred by Grantor without regard to whether this Easement is terminated and/or the Fiber Optic Facilities removed or abandoned by Grantor.

5. Insurance, Taxes and Permits. AdvancePCS shall maintain, at its sole cost and expense, liability insurance in an amount not less than Two Million Dollars per occurrence covering its interest in the Fiber Optic Facilities and the Fiber Optic Facilities Easement Area as the same may be relocated from time to time pursuant to Paragraph 4 above. Said liability insurance may be part of a blanket policy covering the AdvancePCS Property and shall name Grantor as an additional insured on such policy, and shall promptly provide evidence of such insurance to Grantor from time to time upon written request. Such insurance shall be maintained with reputable companies licensed to do business in Arizona. Grantor shall pay all real property taxes and special assessments assessed against the Fiber Optic Facilities Easement Area or New Easement Area, as applicable, and AdvancePCS shall pay any personal property taxes or other taxes, if any, assessed against or on account of the Fiber Optic Facilities. AdvancePCS shall be solely responsible to obtain and maintain, at its sole cost and expense, any governmental licenses

or permits necessary to maintain and operate the Fiber Optic Facilities (as they may be relocated to the New Easement Area) and any permits or approvals of any utility companies or municipal service providers.

6. **No Public Dedication.** The provisions of this Easement shall not be deemed to constitute a dedication for public use or create any rights in the general public.

7. **Protection for Mortgagees.** Breach of any of the covenants or agreements in this Easement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value with respect to the Denali Property, but all of the foregoing covenants and agreements shall be binding upon and effective against any person acquiring any interest in the Denali Property by foreclosure, trustee's sale, or otherwise as further provided in this Easement.

8. **Indemnity and Release.**

(a) AdvancePCS shall, and does hereby agree, to indemnify, pay, defend, protect and hold harmless Grantor, its officers, directors, shareholders, members, managers, partners, licensees, business invitees, employees, agents, contractors, tenants, successors and assigns (the "**Indemnified Parties**"), from and against any cost, claim, damage, liability, obligation, causes of action, assertions, complaints, liens, judgments, or other matters, known or unknown, liquidated or not, contingent or non-contingent, which the Indemnified Parties may suffer or to which Indemnified Party may be exposed arising out of, or in any way whatsoever related to the use and maintenance of the Fiber Optic Facilities Easement Area and/or the New Easement Area, as applicable, by AdvancePCS, and its officers, directors, shareholders, licensees, business invitees, employees, agents, contractors, tenants, and any permitted successors and assigns.

(b) AdvancePCS hereby releases the Indemnified Parties from and any claim, liability, obligation, causes of action, assertions, complaints, liens, judgments, or other matters, known or unknown, liquidated or not, contingent or non-contingent that could otherwise be brought in the future, arising out of, or in any way whatsoever related to the acts or omissions of the Indemnified Parties in undertaking the development of any part of the Denali Property, including without limitation, any claim for lost profit, lost opportunity, the value of lost business data and information, and any other consequential or punitive damages of any sort or nature. ***AdvancePCS hereby acknowledges that this Paragraph 8(b) is a complete release of the Indemnified Parties, including acts or omissions constituting negligence of the Indemnified Parties, it being understood that Grantor would not be willing to enter into this Easement, and has no obligation to enter into this Easement, without such full and final complete release.***

___ AdvancePCS Initials

9. **Estoppel Certificates.** Each party to this Easement shall, reasonably promptly, upon request of the other, deliver an estoppel certificate in the form reasonably requested by either party attesting to the status of this Easement and the default or non-default of any party hereunder and such other matters as may be reasonably requested from time to time.

10. Severability. Invalidation of any of the provisions contained herein by judgment or court order shall in no way affect any other covenant or agreement or provision hereof and the same shall remain in full force and effect. This Easement, including all exhibits attached hereto, constitutes the entire agreement of the parties hereto, with regard to the subject matter hereof.

11. Headings. The captions heading the various paragraphs of this Easement are for convenience and identification only and shall not be deemed to limit or to define the content of any section of this Easement.

12. Duration, Binding Effect, Amendment and Termination. Upon the Effective Date, the covenants, conditions, restrictions, and easements contained herein shall run with the land and shall be binding upon the Denali Property and inure to the benefit of AdvancePCS only for as long as AdvancePCS is the tenant under a valid commercial lease of the AdvancePCS Property or until this Easement is otherwise terminated as provided herein. This Easement may only be amended with the consent of any party having any interest in the Denali Property (to the extent that property includes the Fiber Optic Facilities Easement Area or New Easement Area, as applicable) and AdvancePCS. At any time AdvancePCS either: (i) discontinues use of the Fiber Optic Facilities for any period of time or removes or abandons the same (other than for temporary construction and repairs) or (ii) terminates its lease or otherwise ceases to occupy the AdvancePCS Property for any reason (other than for temporary remodeling), AdvancePCS shall notify Grantor of such abandonment, disuse, removal or relocation within fifteen (15) days after such event and the parties shall promptly thereafter execute and record a termination of this Easement with the Maricopa County, Arizona Recorder's Office and, if so requested by Grantor in writing, AdvancePCS shall remove the Fiber Optic Facilities within thirty (30) days thereafter and restore the Fiber Optic Facilities Easement Area in a manner commensurate with the surrounding improvements. Grantor may also unilaterally record a termination of this Easement upon AdvancePCS's abandonment, disuse, or removal of the Fiber Optic Facilities or upon AdvancePCS's removal or relocation from the AdvancePCS Property upon Grantor giving a ten (10) day Pending Notice of Termination of Grantor's intent to record a termination instrument pursuant to this Paragraph 12. Upon the lapse of the ten (10) days and the recording of the termination instrument, Grantor may either abandon the Fiber Optic Facilities in place or cause the same to be removed and the Fiber Optic Facilities Easement Area restored at AdvancePCS's sole cost and expense.

13. Enforcement/Notices. In addition to any other specific rights or remedies provided for in this Easement, in the event of any breach of any term, covenant, condition or obligation hereof, any party (the "**Nondefaulting Party**"), including any Indemnified Party, shall have all rights and remedies available at law or in equity to enforce the same, including the right to injunctive relief. If any action or proceeding (including arbitration or an action for an injunctive relief) is brought by a Nondefaulting Party and/or Indemnified Party hereunder, the prevailing party as determined by the court or arbitrator shall be entitled to recover attorneys' fees and costs in such action or proceeding in such amounts as the court or arbitrator may adjudge reasonable. Notices may be given to the other party at their Property addresses on record with the Maricopa County Assessor unless a party gives the other party notice in writing of a different address for future notices. Notices shall be effective forty-eight (48) hours after deposit in the United States mail, postage prepaid, return receipt requested.

Without limiting Grantor's rights and remedies under this Paragraph 13 or elsewhere in this Easement, if AdvancePCS fails to satisfy any obligations under this Easement, including without limitation, AdvancePCS's maintenance obligations under Paragraph 2 above, completion of the Relocation Work under Paragraph 4, or its insurance obligations pursuant to Paragraph 5, Grantor shall have the absolute right, in its sole discretion, to either: (i) undertake such obligations at the expense of AdvancePCS within five (5) days after written notice to AdvancePCS or (ii) forward a Pending Notice of Termination in the manner set forth in Paragraph 4 of this Easement (with the right to send the Final Notice of Termination and to terminate this Easement if the default specified in the Pending Notice is not timely cured). If Grantor elects to incur expenses on behalf of AdvancePCS under option (i) above, such reimbursable expenses shall be paid within thirty (30) days after a detailed statement is sent to AdvancePCS for the obligations satisfied by Grantor on behalf of AdvancePCS. Any expenses reimbursable to Grantor as provided in this Easement, which are not reimbursed by AdvancePCS promptly when due, as hereinabove provided, shall bear interest at the rate of eighteen percent (18%) per annum from the date such expenses were incurred until such expenses, and all interest amounts thereon, are reimbursed in full.

14. Governing Law/Effective Date. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. This Easement shall take effect as of the "Effective Date," being the date of recordation of this Easement in the Official Records of the Maricopa County, Arizona Recorder's Office.

15. Terminology/No Assignment by AdvancePCS. Whenever the context of this Easement shall require, the masculine shall include the neuter and feminine, the neuter, the masculine and feminine, the singular, the plural and the plural, the singular. The term "**Grantor**" shall be construed to mean and include any person acquiring title to the Denali Property and the successors and assigns of the original Grantor; provided, however, that because this Easement is granted as an easement in gross running only for the benefit of AdvancePCS, this Easement shall terminate and shall not be for the benefit of any successors and assigns of AdvancePCS as further provided in Paragraph 12 above.

16. No Relationship of Principal and Agent. Nothing in this Easement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent, of limited or general partnership or of a joint venture or any other association between either of the parties hereto.

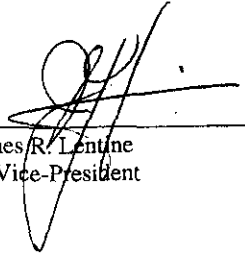
IN WITNESS WHEREOF, Grantor and AdvancePCS have executed this Easement to be effective as of the Effective Date.

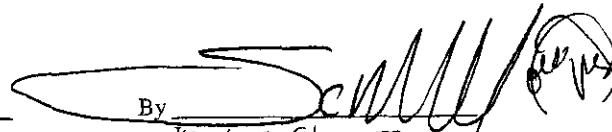
GRANTOR:

Denali National Trust, Inc.,
an Arizona corporation

ADVANCEPCS:

AdvancePCS, Inc.,
a Delaware corporation

By 
James R. Lentine
Its Vice-President

By 
Its Vice-Chairman
~~Jim Hatboer~~
SVP's chief HR officer
Steve Mizell

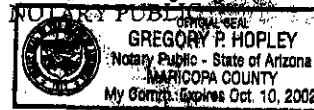
STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me, the undersigned notary public in and for said county and state, on this 5th day of ^{December} ~~November~~, 2001, by JAMES R. LENTINE, the Vice-President of Denali National Trust, Inc., an Arizona corporation, and that he as such officer, being authorized so to do, executed the foregoing instrument on behalf of the corporation for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires:

October 10, 2002



STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

On this 5th day of ^{December} ~~November~~, 2001, before me, the undersigned notary public in and for said county and state, personally appeared Teddy, who acknowledged himself to be the notary of AdvancePCS, Inc., a Delaware corporation, and that he as such officer, being authorized so to do, executed the foregoing instrument on behalf of the corporation for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires:

October 10, 2002

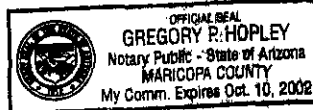


EXHIBIT A***Legal Description of Denali Property***

That portion of the Northeast quarter of Section 30, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 30;

Thence South 00 degrees 02 minutes 50 seconds East, along the East line of said Section 30, being the monument line of 96th Street, 65.00 feet;

Thence South 89 degrees 56 minutes 30 seconds West, along a line that is 65.00 feet South of and parallel with the North line of said Section 30, 55.00 feet;

Thence South 00 degrees 02 minutes 50 seconds East, along a line that is 55.00 feet West of the East line of said Section 30 and being the West right-of-way line of 96th Street, 1311.22 feet to the point of beginning;

Thence continuing South 00 degrees 02 minutes 50 East, along said West right-of-way line, 1237.22 feet to a point that is 30.00 feet North of, and 55.00 feet West of, the East quarter corner of said Section 30;

Thence North 89 degrees 57 minutes 27 seconds West, along a line that is 30.00 feet North of, and parallel with, the East-West mid-section line of said Section 30, being the North right-of-way line of Mountain View Road, 1264.03 feet to a point on the West line of the East half of the Northeast quarter of said Section 30;

Thence North 00 degrees 05 minutes 37 seconds West, along said West line, 770.76 feet;

Thence North 81 degrees 24 minutes 28 seconds West, 590.20 feet to a point on the Easterly right-of-way line of said 92nd Street as shown on the right-of-way dedication plat recorded in Book 219 of Maps, page 10, records of Maricopa County, Arizona, said point being on a curve to the Northwest, the central point of which bears South 78 degrees 10 minutes 43 seconds West, 878.50 feet distant therefrom;

Thence Northwesterly, along the arc of said curve, through a central angle of 16 degrees 06 minutes 51 seconds, an arc distance of 247.08 feet to a point of tangency;

Thence continuing along the Easterly right-of-way of 92nd Street, North 27 degrees 56 minutes 09 seconds West, 204.97 feet;

Thence leaving said right-of-way line North 62 degrees 03 minutes 51 seconds East, 297.39 feet to a point that is 500.00 feet West of the West line of the East half of the Northeast quarter of said Section 30;

Thence North 00 degrees 05 minutes 37 seconds West, along a line that is 500.00 feet West of, and parallel with, the West line of said East half of the Northeast quarter, 1134.79 feet to a point that is 65.00 feet South of the North line of said Section 30;

Thence North 89 degrees 56 minutes 30 seconds East, along a line that is 65.00 feet South of, and parallel with, the North line of said Section 30, 499.54 feet to a point on the West line of the East half of the Northeast quarter of said Section 30;

Thence South 00 degrees 05 minutes 37 seconds East, along said West line, 1311.22 feet;

Thence North 89 degrees 56 minutes 30 seconds East, 1265.03 feet to the point of beginning.

EXHIBIT B***Legal Description of AdvancePCS Property***

Being a portion of the Northeast quarter of Section 30, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 30;
Thence South 00 degrees 02 minutes 50 seconds East along the East line of said Section 30, being the monument line of 96th Street, a distance of 65.00 feet;
Thence South 89 degrees 56 minutes 30 seconds West along a line that is 65.00 feet South of and parallel with the North line of said Section 30 a distance of 55.00 feet to the POINT OF BEGINNING;
Thence South 00 degrees 02 minutes 50 seconds East along a line that is 55.00 feet West of the East line of said Section 30 and being the West right-of-way line of 96th Street 1311.22 feet;
Thence South 89 degrees 56 minutes 30 seconds West 1265.00 feet to a point on the West line of the East half of the Northeast quarter of said Section 30;
Thence North 00 degrees 05 minutes 37 seconds West along said West line 1131.22 feet to a point that is 65.00 feet South of the North line of said Section 30;
Thence North 89 degrees 56 minutes 30 seconds East along a line that is 65.00 feet South of and parallel with the North line of said Section 30, a distance of 1266.09 feet to the POINT OF BEGINNING.

EXHIBIT C

Diagram of Location of Fiber Optic Facilities

Exhibit D

**Superior
Surveying
Services, Inc.**

21415 North 23rd Avenue
Phoenix, Arizona 85027
(623) 869-0223 Fax (623) 869-0726

PROFESSIONAL LAND SURVEYING - ARIZONA, CALIFORNIA, NEVADA Member A.C.S.M., A.P.L.S., G.L.I.S.
Randy S. Delbridge, President R.L.S. Arizona #18214/California #L6060/Nevada #7680

Job Number: 211101

December 3, 2001

DESCRIPTION FOR UNDERGROUND UTILITY LINE
AT THE SOUTHWEST CORNER OF
96TH STREET & SHEA BOULEVARD, SCOTTSDALE, ARIZONA

A portion of the Northeast quarter of Section 30, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

An Easement 10.00 feet in width, the centerline of which is described as follows:

COMMENCING at the East quarter corner of said Section 30 from which the Northeast corner of said Section bears North 00 degrees 02 minutes 50 seconds West 2641.63 feet;
THENCE North 89 degrees 57 minutes 03 seconds West along the East-West mid-section line of said Section 30, also being the monument line Mountain View Road, 1319.15 feet to the Southwest corner of the East half of the Northeast quarter of said Section 30;
THENCE North 00 degrees 05 minutes 25 seconds West along the West line of said East half 800.88 feet;
THENCE North 81 degrees 24 minutes 16 seconds West 233.14 feet to the POINT OF BEGINNING of said centerline;
THENCE North 00 degrees 11 minutes 10 seconds West 131.49;
THENCE North 01 degree 10 minutes 47 seconds East 58.86;
THENCE North 01 degree 35 minutes 45 seconds East 163.60;
THENCE North 01 degree 04 minutes 33 seconds East 46.06;
THENCE North 05 degrees 05 minutes 46 seconds East 110.03;
THENCE North 01 degree 56 minutes 35 seconds East 118.98;
THENCE North 02 degrees 26 minutes 17 seconds East 118.57;
THENCE North 02 degrees 00 minutes 00 seconds West 27.42 to POINT "A";
THENCE North 87 degrees 44 minutes 13 seconds East 169.36;
THENCE North 79 degrees 12 minutes 11 seconds East 36.55 to a point of terminus of said centerline; and
COMMENCING at said POINT "A"
THENCE South 89 degrees 56 minutes 54 seconds West 57.59 feet;
THENCE South 89 degrees 12 minutes 07 seconds West 168.92 feet;
THENCE South 41 degrees 22 minutes 49 seconds West 82.02 feet;
THENCE North 87 degrees 57 minutes 34 seconds West 14.05 to a point of terminus of said centerline.

