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2000-01-07 15:48:01
Cook County Recorder 43.50



RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

HOLLYWOOD ENTERTAINMENT CORPORATION
an Oregon corporation
9275 SW Peyton Lane
Wilsonville, Oregon 97070
Attn: Donald J. Ekman, Esquire

[SPACE ABOVE LINE FOR RECORDER'S USE]

SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT

NOTICE: THIS AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE BECOMING
SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER
SECURITY INSTRUMENT.

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT
AGREEMENT ("Agreement") is dated as of October 26, 1999, and is made
between GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation ("Lender"),
M & J WILKOW, LTD., as agent for the beneficiary of American National Bank and Trust Company
of Chicago, not personally, but solely as Trustee under trust agreement date July 20, 1994, and
known as trust no. 118561-01 and as agent for Arlington, L.L.C., an Illinois limited liability
company ("Borrower"), and HOLLYWOOD ENTERTAINMENT CORPORATION ("Tenant").

RECITALS

A. Borrower and Tenant have entered into that certain lease agreement dated July
16, 1999 (as amended, the "Lease") for premises located on the Property described below (the
"Premises"). The Premises are located on a portion of that certain real property located in the City

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of Arlington Heights, Illinois, and described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

B. Lender has made a loan (the "**Loan**") to Borrower secured by a lien on the Property pursuant to a deed of trust executed by Borrower, as trustor, in favor of Lender, as beneficiary, recorded on _____, 19__ in Cook County, Illinois as Instrument No. _____ * See Below _____ (the "**Deed of Trust**").

C. Lender and Tenant both desire to enter into this Agreement to clarify the priorities of their respective interests in and to the Premises and to set forth the respective rights and obligations concerning the Lease.

NOW THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Subject to the terms and conditions hereinafter set forth in this Agreement (including but not limited to Tenant's nondisturbance in Sections 3 and 4 below), the Lease, together with all rights granted therein (including without limitation any purchase options or rights of first refusal), is and shall be subject and subordinate to the lien granted pursuant to the Deed of Trust, and the interest granted Lender in that certain Assignment of Rents and Leases executed by Borrower in favor of Lender, and to all renewals, modifications, consolidations, substitutions, replacements and extensions thereof, to the full extent of amounts secured by the Deed of Trust and all interests thereon.

2. As used herein, "**Successors Landlord**" means any person or entity (including without limitation Lender or any third party) who succeeds to the interest of Borrower in and to the Premises and the Lease by foreclosure, conveyance in lieu of foreclosure, or otherwise, and the successors and assigns of any such person or entity.

3. Provided that Tenant is not in default under any of the terms, covenants, or conditions of the Lease (after the expiration of all applicable grace or cure periods with respect to such default), any Successor Landlord shall be bound to Tenant under all the terms and provisions of the Lease and shall not disturb Tenant's use or possession of the Premises, nor join (except to the extent required by law) Tenant as a party defendant in summary or foreclosure proceedings.

4. If a Successor Landlord succeeds to the interest of the landlord under the Lease.

(a) The Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant for the balance of the term of the Lease, or any extensions or renewals thereof contemplated by the Lease, and Tenant, for itself and all other parties

* Mortgage dated 9/14/94 recorded 9/20/94 as Doc. No. 94821006
Modification dated 4/1/97 recorded 4/16/97 as Doc. No. 97262638
Assignment of Rents dated 9/14/94 recorded 9/20/94 as Doc. No. 94821007
Mortgage dated 8/11/98 recorded 8/21/98 as Doc. No. 98742831
Mortgage dated 9/4/98 recorded 9/21/98 as Doc. No. 98840058

bound or affected by the Lease, agrees that it will attorn to, be liable to and recognize any Successor Landlord as the owner and lessor of the Premises upon the same terms and conditions as are contained in the Lease, and pay rent and all other amounts due under the Lease directly to the Successor Landlord; provided, however, that Tenant shall be under no obligation to pay rent to any Successor Landlord until Tenant receives written notice from Successor Landlord that it has succeeded to the interest of Borrower under the Lease; and

(b) From and after such Successor Landlord's acquisition of title, the Successor Landlord shall be deemed to have assumed the landlord's obligations under the Lease and shall be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that Tenant would have had under the Lease against Borrower, provided, however, that the Successor Landlord shall not be:

(i) liable for any act or omission of any prior landlord (including without limitation Borrower) except to the extent Successor Landlord continues such act or omission, provided, however, that nothing herein shall limit Borrower's or Successor Landlord's responsibility during the time they hold title to, or have possession of, the Premises for Borrower's maintenance and repair responsibilities or for breach of the covenant of quiet enjoyment under the Lease or for any offsets or defenses that arise therefrom;

(ii) liable for the return of any security deposit unless actually delivered to the Successor Landlord by Borrower;

(iii) subject to any offsets or defenses which Tenant might have against any prior landlord (including without limitation Borrower), for acts or omissions of such prior landlord which occurred prior to the Successor Landlord's acquisition of title to the Premises; provided, however, nothing herein shall limit Tenant's offsets or defenses for Successor Landlord's responsibilities under the Lease during the time Successor Landlord holds title to, or has possession of, the Premises, for breach of the maintenance and repair responsibilities or for breach of the covenant of quiet enjoyment under the Lease, or for any offsets or defenses which arise therefrom;

(iv) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including without limitation Borrower) except as otherwise expressly required by the terms of the Lease; or

(v) bound by any amendment, modification, surrender or consensual termination of the Lease made except as expressly provided for in the Lease without Lender's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. In the event Lender fails to respond within thirty (30) days after receipt of a request for consent, Lender will be deemed to have consent to the requested modification or amendment.

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5. Tenant agrees to give Lender, by any permitted method for delivery of notices under Section 9 below, a copy of any notice of default served upon Borrower. Tenant agrees that Lender shall have the right to cure such default on behalf of Borrower within (30) days after the receipt of such notice. Tenant further agrees not to invoke any of its remedies under the Lease until said thirty (30) days have lapsed, or during any period that Lender is proceeding to cure such default with due diligence, or is diligently taking steps to obtain the right to enter the Premises and cure the the default. Notwithstanding the foregoing, nothing herein shall preclude Tenant from maintaining or repairing the Premises pursuant to Sections 6.1(d) and 7.2 of the Lease.

6. Tenant acknowledges that interest of Borrower in the Property has been assigned to the Lender as security for the Loan and that until the Lender acquires title to the Premises, Lender assumes no duty, liability, or obligation under the Lease either by virtue of said assignment or by any subsequent receipt or collection of rents relating to the Property. If Lender or any affiliate of Lender, by succeeding to the interest of Borrower in the Property or under the Lease, should at any time become obligated to perform the covenants of the landlord under the Lease, then, upon any further transfer of the Property or the Lease by Lender or any such affiliate, all of such obligations accruing from and after the effective date of such transfer shall terminate as to Lender or such affiliate (as the case may be). Without limiting anything contained elsewhere in this Agreement or in the Lease, all provisions contained in the Lease which limit the Borrower's liability thereunder shall inure to the benefit of any Successor Landlord (including Lender).

7. Lender, in making disbursements of the Loan proceeds pursuant to the loan documents executed in connection therewith, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such loan documents shall not defeat the agreements of Tenant contained herein in whole or in part.

8. Borrower and Tenant agree that on receipt by Tenant of written notice from Lender or any of its successors or assignees to do so, it will thereafter pay all rent and other sums payable under the Lease to Lender or such successors or assignees, until further notice from Lender or such successors or assignees. Borrower hereby releases and discharges Tenant of and from any liability to Borrower resulting from Tenant's payment to Lender in accordance with this Agreement:

9. All notices given under this Agreement shall be in writing and shall be given by personal delivery, overnight receipted courier, or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below. Notices shall be effective upon receipt or when proper delivery is refused. Addresses for notices may be changed by any party by notice to all other parties in accordance with this Section.

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To Lender: General Electric Capital Corporation
209 West Jackson Boulevard
Chicago, Illinois 60606

To Borrower: M & J Wilkow, Ltd.
180 North Michigan Avenue, Suite 200
Chicago, Illinois 60601
Attention: Marc Wilkow

To Tenant: Hollywood Entertainment Corporation
9275 S.W. Peyton Lane
Wilsonville, Oregon 97070
Attn: Donald J. Ekman, Senior Vice President
and General Counsel

10. This Agreement shall be governed by and construed under the internal laws of the State of Illinois without regard to its conflict of law principles. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, or heirs and personal representatives, as applicable. Time is of the essence hereunder. This Agreement may be executed in any number of counterparts, all which shall be deemed on in the same instrument. The original, executed signature pages of exact copies of this Agreement may be attached to one of such copies to form one document.

11. Effective Date. This Agreement shall become effective upon the execution and delivery by and to each party hereto.

[Signature page(s) follow(s)]

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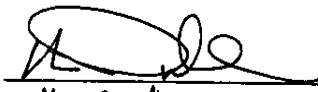
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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date and year first above written.

NOTICE: THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE LANDLORD OBLIGATED ON YOUR LEASE TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.

LENDER

GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation

By: 
Title: Authorized Representative

BORROWER

M & J WILKOW, LTD., as agent for the beneficiary of American National Bank and Trust Company of Chicago, not personally, but solely as Trustee under trust agreement date July 20, 1994, and known as trust no. 118561-01 and as agent for Arlington, L.L.C., an Illinois limited liability company

By: 
Title: President

TENANT

HOLLYWOOD ENTERTAINMENT CORPORATION, an Oregon corporation

By: 
Title: Senior Vice President

[Acknowledgment Pages Follows]

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[Acknowledgment of Lender]

STATE OF Illinois)
)
COUNTY OF Cook) ss.

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I, Nancy G. Tramutola, a Notary Public in and for and residing in said County and State,
DO HEREBY CERTIFY THAT Marc Swedlin
of General Electric Capital Corporation, a New York Corporation
personally known to me to be the same person whose name is subscribed to the foregoing
instrument, appeared before me this day in person and acknowledged that he signed and delivered
said instrument as his own free and voluntarily act and as the free and voluntary act of said
Corporation, for the uses and purposes therein set forth.

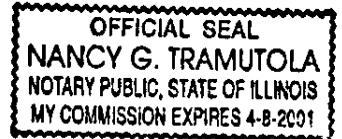
GIVEN under my hand and notarial seal this 26th day of October, 1999.

Notary Public

My Commission Expires: 4/8/2001

Nancy G. Tramutola

[Acknowledgment of Borrower]



STATE OF IL)
)
COUNTY OF Cook) ss.

I, Jennifer L. Harshbarger, a Notary Public in and for and residing in said County and State,
DO HEREBY CERTIFY THAT Marc R. Wilkow
of M & J Wilkow, Ltd., a Illinois Corporation
personally known to me to be the same person whose name is subscribed to the foregoing
instrument, appeared before me this day in person and acknowledged that he signed and delivered
said instrument as his own free and voluntarily 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 19th day of October, 1999.



Notary Public

My Commission Expires: 11/18/02

Jennifer L. Harshbarger

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[Acknowledgment of Tenant]

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STATE OF OREGON)
)
COUNTY OF CLACKAMAS) ss.

I, Lynn Matteson, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT J. Patrick O'Malley of Hollywood Entertainment Corporation, an Oregon corporation personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntarily 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 12 day of August, 1999.

Notary Public

My Commission Expires:



Lynn Matteson

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EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

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Re: Hollywood Video Store #013-787
Arlington Heights, IL

Dear Ms. LaBarr:

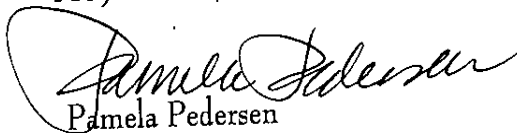
Pursuant to your request, the following are the Permanent Index Numbers for the above referenced location:

Annex Land Parcel 7	03-17-302-054-0000
Annex Land Parcel 4	03-17-302-018-0000
Annex Land Parcel 5	03-17-302-019-0000
Annex Land Parcel 3	03-17-302-020-0000
Annex Land Parcel 1	03-17-302-055-0000
Annex Land Parcel 2	03-17-302-056-0000
Annex Land Parcel 6	03-17-302-042-0000

Please be advised that we will eventually incorporate all of the above parcels into one. Once this has transpired, we will advise you of same.

Should you have any questions, please feel free to give me a call.

Sincerely,
M&J Wilkow, Ltd.


Pamela Pedersen
Property Manager

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EXHIBIT "A"

ANNEX I
LEGAL DESCRIPTION

THAT PART OF LOT 2 IN HARDEE'S RAND ROAD SUBDIVISION, BEING A SUBDIVISION OF PARTS OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17 AND THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 18, LYING SOUTHWESTERLY OF THE CENTERLINE OF RAND ROAD, ALL IN TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 16, 1986 AS DOCUMENT NO. 86297345, AND A 0.019 ACRE PARCEL SOUTH OF SAID LOT 2, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY MOST CORNER OF SAID LOT 2; THENCE SOUTH 42°02'44" WEST 568.13 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE NORTH 89°47'42" WEST 28.95 FEET ALONG THE SOUTH LINE OF SAID LOT 2; TO A POINT 96.40 FEET, AS MEASURED ALONG SAID SOUTH LINE, EAST OF A CORNER OF SAID LOT 2; THENCE NORTH 47°49'39" WEST 186.71 FEET TO A SOUTH LINE OF SAID LOT 2; THENCE NORTH 89°47'42" WEST 27.62 FEET ALONG THE LAST DESCRIBED SOUTH LINE TO A POINT 373.47 FEET, AS MEASURED ON SAID SOUTH LINE, EAST OF THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 17, AFORESAID; THENCE NORTH 47°57'53" WEST 194.53 FEET; THENCE NORTH 31°32'09" WEST 157.43 FEET TO A WESTERLY LINE OF SAID LOT 2; THENCE NORTH 42°00'35" EAST 10.81 FEET TO A SOUTHWESTERLY LINE OF SAID LOT 2; THENCE NORTH 47°59'25" WEST, ALONG SAID SOUTHWESTERLY LINE, 325 FEET TO A NORTHWEST LINE OF LOT 2; THENCE NORTH 42°00'35" EAST, ALONG SAID NORTHWEST LINE, 550.00 FEET TO THE SOUTH LINE OF RAND ROAD (SAID SOUTH LINE ALSO BEING THE NORTHEASTERLY LINE OF SAID LOT 2); THENCE SOUTH 47°59'25" EAST ALONG SAID SOUTH LINE, 246.30 FEET; THENCE SOUTH 42°00'35" WEST, 230 FEET; THENCE SOUTH 47°59'25" EAST 175 FEET; THENCE NORTH 42°00'35" EAST 230 FEET TO THE SOUTH LINE OF RAND ROAD; THENCE SOUTH 47°59'25" EAST, 478.67 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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EXHIBIT "A"

ANNEX II
LEGAL DESCRIPTION

ALL THAT PART OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 17, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING SOUTH OF THE CENTER LINE OF RAND ROAD, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE CENTER LINE OF RAND ROAD THAT IS 450.00 FEET NORTHWESTERLY OF THE INTERSECTION OF THE CENTER LINE OF SAID RAND ROAD WITH THE EAST LINE OF THE SAID WEST ½ OF THE SOUTHWEST ¼ OF SECTION 17, SAID INTERSECTION BEING 936.53 FEET NORTH OF THE SOUTH LINE OF SAID SECTION; THENCE SOUTH 42 DEGREES 03 MINUTES 40 SECONDS WEST 50.00 FEET TO A POINT OF BEGINNING AT THE SOUTHWESTERLY LINE OF SAID RAND ROAD (SAID LINE BEARING SOUTH 42 DEGREES 03 MINUTES 40 SECONDS WEST BEING A STRAIGHT LINE); DRAWN FROM SAID POINT OF COMMENCEMENT IN THE CENTER LINE OF RAND ROAD TO A POINT THAT IS 775 FEET NORTH OF THE SOUTH LINE AND 748.33 FEET WEST OF THE EAST LINE OF SAID WEST ½ OF THE SOUTHWEST ¼ OF SECTION 17); THENCE CONTINUING SOUTH 42 DEGREES 03 MINUTES 40 SECONDS WEST ALONG SAID LAST DESCRIBED LINE, 567.94 FEET TO A POINT THAT IS 775 FEET NORTH OF THE SOUTH LINE AND 748.33 FEET WEST OF THE EAST LINE OF SAID WEST ½ OF THE SOUTHWEST ¼ OF SECTION 17; THENCE SOUTH 89 DEGREES 45 MINUTES 45 SECONDS EAST PARALLEL WITH THE SOUTH LINE OF SAID SECTION, 373.33 FEET TO A LINE 375.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID WEST ½ OF THE SOUTHWEST ¼ OF SECTION 17; THENCE SOUTH 00 DEGREES 01 MINUTES 28 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 124.47 FEET TO A LINE 650.53 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION; THENCE SOUTH 89 DEGREES 45 MINUTES 45 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 220.00 FEET TO A LINE 155.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID WEST ½ OF THE SOUTHWEST ¼ OF SECTION 17; THENCE NORTH 00 DEGREES 01 MINUTES 28 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 88.00 FEET TO A LINE 738.53 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION; THENCE SOUTH 89 DEGREES 45 MINUTES 45 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 105.00 FEET TO THE WEST LINE OF ARLINGTON HEIGHTS ROAD, BEING A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, WEST OF AND PARALLEL WITH EAST LINE OF THE WEST ½ OF THE SOUTHWEST ¼ OF SAID SECTION; THENCE NORTH 00 DEGREES 01 MINUTES 28 SECONDS EAST ALONG SAID WEST LINE OF ARLINGTON HEIGHTS ROAD, 174.41 FEET TO THE SOUTHWESTERLY LINE OF RAND ROAD, BEING A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, SOUTHWESTERLY OF AND PARALLEL WITH THE CENTER LINE OF SAID ROAD; THENCE NORTH 47 DEGREES 57 MINUTES 52 SECONDS WEST ALONG SAID SOUTHWESTERLY LINE OF RAND ROAD, 428.04 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

EXCEPTING FROM THE FOREGOING THE FOLLOWING TRACT:

THAT PART OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 17, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTER LINE OF RAND ROAD, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE CENTER LINE OF RAND ROAD THAT IS 450.00 FEET NORTHWESTERLY OF THE INTERSECTION OF THE CENTER LINE OF SAID RAND ROAD WITH THE EAST LINE OF SAID WEST ½ OF THE SOUTHWEST ¼ OF SECTION 17 (SAID INTERSECTION BEING 936.53 FEET

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EXHIBIT "A" (Cont'd)

ANNEX II
LEGAL DESCRIPTION

NORTH OF THE SOUTH LINE OF SAID SECTION); THENCE SOUTH 42 DEGREES 03 MINUTES 40 SECONDS WEST, 418.46 FEET (SAID LINE BEARING SOUTH 42 DEGREES 03 MINUTES 40 SECONDS WEST, BEING A STRAIGHT LINE DRAWN FROM SAID POINT OF COMMENCEMENT TO THE CENTER LINE OF RAND ROAD TO A POINT THAT IS 775 FEET NORTH OF THE SOUTH LINE AND 748.33 FEET WEST OF THE EAST LINE OF SAID WEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17); THENCE SOUTH 47 DEGREES 56 MINUTES 20 SECONDS EAST, 11.16 FEET TO A POINT OF BEGINNING; THENCE CONTINUING SOUTH 47 DEGREES 56 MINUTES 20 SECONDS EAST, 77.28 FEET; THENCE SOUTH 42 DEGREES 03 MINUTES 40 SECONDS WEST, 21.74 FEET; THENCE NORTH 83 DEGREES 32 MINUTES 34 SECONDS WEST, 63.69 FEET; THENCE NORTH 47 DEGREES 56 MINUTES 20 SECONDS WEST, 25.49 FEET; THENCE NORTH 42 DEGREES 03 MINUTES 40 SECONDS EAST, 58.12 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS. (AREA OF EXCEPTED TRACT: 3,531 SQUARE FEET OR 0.0081 ACRES.)