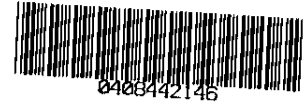


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THIS DOCUMENT PREPARED  
BY  
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Doc#: 0408442146  
Eugene "Gene" Moore Fee: \$44.00  
Cook County Recorder of Deeds  
Date: 03/24/2004 10:27 AM Pg: 1 of 11

Cohen, Salk & Huvard, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062  
Attn: Bruce A Salk, Esq.

*This space reserved for Recorder's use only*

## FOURTH MODIFICATION OF LOAN DOCUMENTS

THIS FOURTH MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 12<sup>th</sup> day of February, 2004, by and among 3350 N. KEDZIE, L.L.C., an Illinois limited liability company ("Borrower"), ALFRED G. McCONNELL (the "Guarantor") and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

### RECITALS:

A. Lender has heretofore made an amended and restated loan ("Loan") to Borrower in the principal amount of Three Million Three Hundred Ninety-Six Thousand One Hundred and 00/100 Dollars (\$3,396,100.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of October 6, 1999 between Borrower and Lender, (as amended, the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by an Amended and Restated Promissory Note dated February 12, 2001, in the principal amount of \$3,396,100.00, made by Borrower to the order of Lender (the "Note").

B. The Note is secured by, among other things, (i) that certain Mortgage and Security Agreement dated October 6, 1999 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on October 22, 1999, as Document No. 99997127, as modified by First Modification dated as of June 13, 2000 and recorded in the Recorder's Office on August 7, 2000 as Document No. 00598207, Second Modification dated as of December 13, 2000 and recorded in the Recorder's Office on January 19, 2001 as Document No. 0010048725, and Third Modification dated as of February 12, 2001 and recorded in the Recorder's Office on April 13, 2001 as Document No. 0010299724 (such mortgage, as so modified, the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and of Lessor's Interest in Leases dated October 6, 1999, from Borrower to Lender and recorded in the Recorder's Office on October 22, 1999, as

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Document No. 99997128 (such assignment as modified to date, the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated October 6, 1999 from Borrower and Guarantor to Lender (such agreement, as modified to date, the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the Loan Agreement, the Guaranty, and all other documents evidencing, securing and guarantying the Loan, in their original form and as modified to date, are sometimes collectively referred to herein as the "Loan Documents"). In addition to the Mortgage, the other Loan Documents were also modified by the aforesaid First Modification dated as of June 13, 2000 and recorded in the Recorder's Office on August 7, 2000 as Document No. 00598207, Second Modification dated as of December 13, 2000 and recorded in the Recorder's Office on January 19, 2001 as Document No. 0010048725, and Third Modification dated as of February 12, 2001 and recorded in the Recorder's Office on April 13, 2001 as Document No. 0010299724.

C. The Loan is further secured by a Guaranty of Payment dated as of February 12, 2001, as amended by First Amendment to Guaranty of Payment dated as of October 31, 2001, from Guarantor to Lender (as amended, the "Limited Guaranty"), and by a Guaranty of Completion dated as of October 6, 1999 from Guarantor to Lender (the "Completion Guaranty") (hereafter the Limited Guaranty and Completion Guaranty shall hereinafter collectively be called the "Guaranty").

D. The Note matures on February 12, 2004. Borrower desires to amend the Loan Documents in order to extend the maturity date of the Note to May 12, 2004.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Note and all Other Loan Documents.** The Note is hereby amended to amend the "Maturity Date" as defined therein to be "May 12, 2004", instead of "February 12, 2004". All of the other Loan Documents are hereby amended to change the maturity date of the Note and Loan, respectively, as described therein, to May 12, 2004.

2. **Amendment to Mortgage.** Section 18 of the Mortgage is hereby amended in its entirety to read as follows (Section 18A of the Mortgage remains unchanged by this Modification):

"18. **Security Agreement.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code (as hereinafter defined) with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other loan documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Uniform Commercial Code of the State of Illinois, 810 ILCS 5/1-101 et. seq., as in effect from time to time,

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including, without limitation, as amended by Revised Article 9 effectively July 1, 2001, and as further amended from time to time ("Code")) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness Hereby Secured. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 18 shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

1. Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral and has rights in the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

2. The Collateral is to be used by Mortgagor solely for business purposes.

3. The Collateral will be kept at the Premises and, except for Obsolete Collateral, will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Premises but will not be affixed to any other real estate.

4. The only persons having any interest in the Premises are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby.

5. No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable.

6. Upon an event of default under the Note or any of the loan documents securing the Note, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the

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Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefore, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Mortgagee so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness Hereby Secured in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

7. The terms and provisions contained in this Section 18, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

8. This Mortgage is intended to be a financing statement within the purview of Section 9-502(c) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located.

9. To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

10. Mortgagor represents and warrants that:

a. Mortgagor is the record owner of the Premises;

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- b. Mortgagor's chief executive office is located in the State of Illinois;
- c. Mortgagor's state of formation is the State of Illinois;
- d. Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage; and

11. Mortgagor agrees that:

a. Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;

b. Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

c. Until this Mortgage is released by Mortgagee, Mortgagor will not change the state where it is located or change its name without giving the Mortgagee at least 30 days prior written notice in each instance.

12. **Authorization to File Financing Statements.** The Mortgagor hereby irrevocably authorizes the Mortgagee at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral, (i) as all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code or the Uniform Commercial Code of such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Mortgagor is an organization, the type of organization and any organization identification number issued to the Mortgagor and, (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Collateral relates. The Mortgagor agrees to furnish any such information to the Mortgagee promptly upon request. To the extent applicable, the Mortgagor also ratifies its authorization to the Mortgagee to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof."

3. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

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(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

4. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 1401 007830325 D2 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement, insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

5. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty, as amended hereby, and agrees that the Guaranty, as amended hereby, is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty, as amended hereby, are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder. Guarantor shall remain fully liable under the Guaranty for repayment of the Note, as amended hereby, and all other indebtedness and obligations guaranteed under the Guaranty, subject to the limit of liability therein provided and the applicable exceptions to the limit of liability therein provided.

6. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay to Lender all out-of-pocket costs and expenses incurred by Lender in connection with this

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Agreement, including, without limitation, recording fees, title charges, and attorneys' fees and expenses.

7. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledge that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular

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or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

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

**LENDER:**

**LASALLE BANK NATIONAL  
ASSOCIATION**

By: Jane Bonnamy  
Name: JANE BONNAMY  
Title: 1st vice president

**BORROWER:**

**3350 N. KEDZIE, L.L.C., an Illinois limited liability  
company**

By: Alfred G. McConnell  
Alfred G. McConnell, as Trustee of the Alfred  
G. McConnell Trust dated August 5, 1993, its  
sole member

**GUARANTOR:**

Alfred G. McConnell  
**ALFRED G. McCONNELL, individually**

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STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I Gloria Arenivas, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jane Bonnamy, First V.P. of LaSalle Bank National Association, is 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 voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 8<sup>th</sup> day of March, 2004.



Gloria Arenivas  
Notary Public

My Commission Expires: \_\_\_\_\_

California  
STATE OF ~~ILLINOIS~~ )  
 ) .ss  
COUNTY OF ~~COOK~~ Santa Barbara

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that ALFRED G. McCONNELL, as Trustee of the Alfred G. McConnell Trust dated August 5, 1993, personally known to me as the sole member of 3350 N. KEDZIE, L.L.C., an Illinois limited liability company and 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, sealed and delivered the said instrument as such member of said limited liability company, pursuant to authority, given by the sole member of said limited liability company, as his own and free and voluntary act, as Trustee, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 2 day of March, 2004

Eileen Contreras  
Notary Public

My Commission Expires: Sept 23 2004



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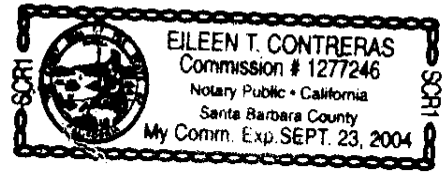
*California*  
STATE OF ~~ILLINOIS~~  
*Santa Barbara*  
COUNTY OF ~~COOK~~

I EILEEN T. CONTRERAS a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ALFRED G. McCONNELL is 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 voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 2 day of March, 2004.

*Eileen T. Contreras*  
Notary Public

My Commission Expires Sept 23 2004



Property of Cook County Clerk's Office

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## EXHIBIT A

### THE PROPERTY

P.I.N. 13-23-411-004

Address: 3350 N. Kedzie, Chicago, Illinois

THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF NORTH KEDZIE AVENUE WHICH POINT IS 150 FEET SOUTH MEASURED ALONG SAID WEST LINE OF NORTH KEDZIE AVENUE FROM THE POINT OF ITS INTERSECTION WITH THE NORTH LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23; THENCE SOUTH ALONG SAID WEST LINE OF NORTH KEDZIE AVENUE, A DISTANCE OF 320.40 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, A DISTANCE OF 246.01 FEET; THENCE NORTHWESTERLY ALONG A LINE FORMING AN ANGLE OF 38 DEGREES 13 MINUTES, TO THE RIGHT WITH AN EXTENSION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 196.42 FEET TO A POINT WHICH IS A DISTANCE OF 400 FEET WEST, MEASURED ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23 FROM SAID WEST LINE OF NORTH KEDZIE AVENUE; THENCE NORTH PARALLEL WITH THE WEST LINE OF NORTH KEDZIE AVENUE, 198.90 FEET TO A POINT WHICH IS 150 FEET SOUTH, MEASURED ON A LINE PARALLEL WITH SAID WEST LINE OF NORTH KEDZIE AVENUE FROM SAID NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23; THENCE EAST PARALLEL WITH SAID NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, A DISTANCE OF 400 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.