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Doc#: 1007433189 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/15/2010 01:26 PM Pg: 1 of 13

8198493 - Da-Tms (2 of 2)

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 10th day of March, 2010, by and among **UNIVERSITY CLUB OF CHICAGO**, an Illinois not-for-profit corporation ("Borrower"), **UNIVERSITY CLUB PROFESSIONAL BUILDING LLC**, an Illinois limited liability company ("Guarantor") and **BANK OF AMERICA, N.A.**, a national banking association, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made to Borrower (i) a loan (the "Construction Loan") in the original principal amount of Six Million and 00/100 Dollars (\$6,000,000.00) pursuant to the terms and conditions of that certain Construction Loan Agreement dated as of July 23, 2004 between Borrower and Lender, as amended by the First Amendment to Construction Loan Agreement (as defined below) (as amended, and as it may be further restated, modified or supplemented and in effect from time to time, the "Construction Loan Agreement"), as evidenced by that certain Promissory Note dated July 23, 2004 executed by Borrower and made payable to the order of Lender in the original principal amount of \$6,000,000.00 (the "Original Construction Note") and (ii) a term loan (the "Term Loan") in the original principal amount of Seven Million and 00/100 Dollars (\$7,000,000.00) pursuant to the terms and conditions of that certain Term Loan Agreement dated as of July 23, 2004 between Borrower and Lender, as amended by that certain First Amendment to Term Loan Agreement (as defined below) (as amended, and as it may be further amended, restated, modified or supplemented and in effect from time to time, the "Term Loan Agreement"), as evidenced by that certain Promissory Note

This document prepared by and after recording return to:

Diana Y. Tsai, Esq.
Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, Illinois 60606

Permanent Index Numbers:

17-15-101-013-0000

Address of Property:

30 S. Michigan Ave.
Chicago, Illinois

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dated July 23, 2004 executed by Borrower and made payable to the order of Lender in the original principal amount of \$7,000,000.00 (the "Term Note"). The Construction Loan, the Term Loan and the Revolving Loan (as defined below) are collectively referred to herein as the "Loans".

B. The Loans are secured by, among other things, (i) a Future Advance Mortgage, Assignment, Security Agreement and Fixture Filing (Fee) dated as of July 23, 2004 from Guarantor to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on July 23, 2004, as Document No. 0420534090 (as amended, restated, modified or supplemented and in effect from time to time, the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Future Advance Mortgage, Assignment, Security Agreement and Fixture Filing (Leasehold) dated as of July 23, 2004 from Borrower to Lender recorded with the Recorder's Office on July 23, 2004, as Document No. 0420534093 (as amended, restated, modified or supplemented and in effect from time to time, the "Leasehold Mortgage"), which Leasehold Mortgage encumbers the leasehold estate in the real property and all improvements thereon legally described on Exhibit A attached thereto, (iii) that certain Environmental Indemnification and Release Agreement dated as of July 23, 2004 from Borrower and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Construction Loan Agreement, the Term Loan Agreement, the First Amendment to Construction Loan Agreement, the First Amendment to Term Loan Agreement, the Notes (as defined below), the Mortgage, the Leasehold Mortgage, the Indemnity Agreement, the Guaranty (as defined below), the First Amendment (as defined below), the First Amendment to Leasehold Mortgage (as defined below), the Second Amendment (as defined below), the Second Amendment to Leasehold Mortgage (as defined below), the Revolving Note Amendments (as defined below), and the other documents evidencing, securing and guarantying the Loans, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loans are further secured by a Guaranty Agreement dated as of July 23, 2004 from Guarantor to Lender (as amended, restated, modified or supplemented and in effect from time to time, the "Guaranty").

D. Borrower and Lender entered into that certain First Amendment to Term Loan Agreement dated as of May 1, 2007 (the "First Amendment to Term Loan Agreement"), whereby the parties amended the Loan Documents in order to, among other things, extend the maturity date of the Term Note to July 23, 2014.

E. In connection with the First Amendment to Term Loan Agreement, (i) Borrower and Lender entered into that certain First Amendment to Future Advance Mortgage, Assignment, Security Agreement and Fixture Filing (Leasehold) dated as of May 1, 2007, and recorded with the Recorder's Office on May 11, 2007, as Document No. 0713126113 (the "First Amendment to Leasehold Mortgage"), whereby the definition of "Note" (as defined in the Leasehold Mortgage) was amended, and (ii) Guarantor and Lender entered into that certain First Amendment to Future Advance Mortgage, Assignment, Security Agreement and Fixture Filing (Fee) dated as of May 1, 2007, and recorded with the Recorder's Office on May 11, 2007, as Document No. 0713126112 (the "First Amendment"), whereby the definition of "Note" (as defined in the Mortgage) was amended.

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F. Lender has heretofore made an additional loan (the "Revolving Loan") to Borrower, pursuant to the terms of the Construction Loan Agreement, and as evidenced by that certain Promissory Note dated as of June 1, 2007 executed by Borrower and made payable to the order of Lender in the original amount of \$2,000,000.00, and later reduced to \$1,000,000.00 at the term out of the Construction Loan Agreement (the "Original Revolving Note"). The Revolving Loan and the Original Revolving Note have been modified by (i) that certain Amendment No. 1 to Loan Documents dated as of July 16, 2008 by and between Borrower and Lender and (ii) that certain Amendment No. 2 to Loan Documents dated as of June 17, 2009 by and between Borrower and Lender (together, the "Revolving Note Amendments"). The Original Revolving Note, as amended by the Revolving Note Amendments and as it may be further amended, restated, modified or supplemented and in effect from time to time is hereinafter referred to as the "Revolving Note".

G. Borrower and Lender entered into that certain First Amendment to Construction Loan Agreement dated as of July 23, 2007 (the "First Amendment to Construction Loan Agreement"), whereby the parties amended the Loan Documents in order to, among other things, amend, restate and replace the Original Construction Note with that certain Replacement Promissory Note dated as of July 23, 2007 executed by Borrower and made payable to the order of Lender in the principal amount of \$7,000,000.00 (as amended, restated, modified or supplemented and in effect from time to time, the "Construction Note", and together with the Term Note and the Revolving Note, collectively, the "Notes").

H. In connection with the First Amendment to Construction Loan Agreement, (i) Borrower and Lender entered into that certain Second Amendment to Future Advance Mortgage, Assignment, Security Agreement and Fixture Filing (Leasehold) dated as of July 23, 2007, and recorded with the Recorder's Office on July 30, 2007, as Document No. 0721139259 (the "Second Amendment to Leasehold Mortgage"), whereby the definition of "Note" (as defined in the Leasehold Mortgage) was amended, and (ii) Guarantor and Lender entered into that certain Second Amendment to Future Advance Mortgage, Assignment, Security Agreement and Fixture Filing (Fee) dated as of July 23, 2007, and recorded with the Recorder's Office on July 30, 2007, as Document No. 0721139260 (the "Second Amendment"), whereby the definition of "Note" (as defined in the Mortgage) was amended.

I. Borrower and Guarantor entered into various agreements ("Development Agreements") with Monroe/Wabash Development, LLC, a Delaware limited liability company ("Monroe/Wabash"), with respect to the development and conveyance of certain space for squash courts, other athletic facilities and related facilities on the 13th floor (the "13th Floor Space") of a building located at 21-29 South Wabash Avenue, Chicago, Illinois. As a condition to Lender consenting to Borrower and Guarantor entering into the Development Agreements, Borrower was required to, among other things, upon the conveyance to Borrower of the 13th Floor Space and an above grade pedestrian bridge (the "Skybridge"), grant Lender a mortgage lien encumbering the 13th Floor Space and the Skybridge to secure Borrower's obligations under the Loan Documents.

J. Lender and Borrower desire to amend the Loan Documents in order to (i) grant to Lender a mortgage lien in, to and upon, and to pledge to Lender, the 13th Floor Space and the

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Skybridge as additional collateral to secure the Loans and (ii) correct certain errors made in the First Amendment and the Second Amendment.

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. **Definitions.** Any terms not defined herein shall have the meanings ascribed to such terms in the Loan Agreement. To the extent that there is any conflict or inconsistency between the terms and conditions of the Construction Loan Agreement and the terms and conditions of the Term Loan Agreement, the terms and conditions of the Construction Loan Agreement shall govern.

2. **Mortgage.** Each of the First Amendment and the Second Amendment are hereby modified to replace references to the document number of the recorded Mortgage to "document number 0420534093" with "Document No. 0420534090". All references to the document number of the recorded Mortgage shall mean "Document No. 0420534090."

3. **Note.** The definition of "Note" as set forth in Article 1 of the Mortgage is hereby deleted in its entirety and replaced with the following:

"**Note**" means, collectively, (a) that certain Promissory Note dated as of June 1, 2007, in the original principal amount of Two Million and No/100 Dollars (\$2,000,000) made by Mortgagor to the order of Lender, as later reduced to One Million and No/100 Dollars (\$1,000,000.00) and maturing on May 31, 2010 (as amended, and as it may be further amended, restated, modified or supplemented and in effect from time to time, the "Revolving Note"); (b) that certain Promissory Note dated as of July 23, 2004, executed by Mortgagor and made payable to the order of Lender in the principal amount of \$7,000,000.00 and maturing on July 23, 2014 (as amended, and as it may be further amended, restated, modified or supplemented and in effect from time to time, the "Term Note"); and (c) that certain Replacement Promissory Note dated as of July 23, 2007, executed by Mortgagor and made payable to the order of Lender in the principal amount of \$7,000,000.00 and maturing on July 23, 2012 (which Replacement Promissory Note amended and restated that certain Promissory Note dated as of July 23, 2004, executed by Mortgagor and made payable to the order of Lender in the original principal amount of \$6,000,000.00), as amended from time to time (as amended, and as it may be further amended, restated, modified or supplemented and in effect from time to time, the "Construction Note")."

4. **Additional Collateral.**

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(a) Concurrently herewith, Borrower shall execute and deliver to Lender that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of even date herewith (as amended, restated, modified or supplemented and in effect from time to time, the "13th Floor and Skybridge Mortgage"), which 13th Floor and Skybridge Mortgage encumbers the real property and all improvements thereon legally described therein. Lender hereby accepts the grant from Borrower of the 13th Floor and Skybridge Mortgage as and for additional collateral to secure the Loans. Any Default or Event of Default pursuant to the terms of the 13th Floor and Skybridge Mortgage shall be deemed a Default or Event of Default under the Loan Documents. From and after the date hereof, any reference to "Loan Documents" contained in any of the Loan Documents shall be deemed to include the 13th Floor and Skybridge Mortgage.

(b) Concurrently herewith, Borrower and Guarantor shall execute and deliver to Lender that certain Environmental Indemnification and Release Agreement dated as of even date herewith (as amended, restated, modified or supplemented and in effect from time to time, the "13th Floor and Skybridge Environmental Indemnity"). Any default pursuant to the terms of the 13th Floor and Skybridge Environmental Indemnity shall be deemed a Default or Event of Default under the Loan Documents. From and after the date hereof, any reference to "Loan Documents" contained in any of the Loan Documents shall be deemed to include the 13th Floor and Skybridge Environmental Indemnity.

5. **Conditions.** This Agreement will be effective when Lender receives the following items, in form and content acceptable to Lender:

(a) Evidence that the execution, delivery and performance by Borrower and Guarantor of this Agreement and any instrument or agreement required under this Agreement have been duly authorized.

(b) Payment by Borrower of all costs, expenses and attorneys' fees incurred by Lender in connection with this Agreement.

(c) An original of this Agreement, the 13th Floor and Skybridge Mortgage and the 13th Floor and Skybridge Environmental Indemnity duly executed by Borrower and Guarantor, as applicable.

(d) A current-form ALTA lender's title insurance policy insuring the 13th Floor and Skybridge Mortgage in the amount of \$1,000,000 subject only to exceptions thereon as permitted by paragraph 3D in that certain Agreement dated April 30, 2006, by and between Borrower and Monroe/Wabash ("General Agreement") and containing such endorsements as specified in said paragraph 3D and as may be reasonably required by Lender.

(e) An as-built ALTA survey of the 13th Floor Space as described in paragraph 3D of the General Agreement, certified by the surveyor to Lender.

(f) Such other documents, in instruments or agreements as Lender may reasonably request in order to effectuate fully the transactions contemplated herein, each duly executed.

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6. **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.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Notes, 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 Notes, 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 Loans 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 Loans 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.

7. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty 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, except as provided in the Guaranty.

8. **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

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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 acknowledges 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 Notes, 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 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.

9. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act

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(Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lender to identify Borrower in accordance with the Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loans to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

LENDER:

BANK OF AMERICA, N.A., a national banking association

By: George Kalas
Name: George Kalas
Title: Senior Vice President

BORROWER:

UNIVERSITY CLUB OF CHICAGO, an Illinois not-for-profit corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

GUARANTOR:

UNIVERSITY CLUB PROFESSIONAL BUILDING LLC, an Illinois limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

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

LENDER:

BANK OF AMERICA, N.A., a national banking association

By: _____
Name: _____
Title: _____

BORROWER:

UNIVERSITY CLUB OF CHICAGO, an Illinois not-for-profit corporation

By: *W. J. McKenna*
Name: WILLIAM J. MCKENNA, JR.
Title: SECRETARY

By: *Joseph J. Sifferlen*
Name: JOSEPH J. SIFFERLEN
Title: TREASURER

GUARANTOR:

UNIVERSITY CLUB PROFESSIONAL BUILDING LLC, an Illinois limited liability company

By: *W. J. McKenna*
Name: WILLIAM J. MCKENNA, JR.
Title: SECRETARY

By: *Joseph J. Sifferlen*
Name: JOSEPH J. SIFFERLEN
Title: TREASURER

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STATE OF ILLINOIS)
) .ss
COUNTY OF)

The undersigned, a Notary Public in and for said County, in said State, hereby certifies that William J. McKenna, Jr., whose name as SECRETARY of University Club of Chicago, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, as such SECRETARY and with full authority, he/she executed the same voluntarily for and as the act of said not-for-profit corporation.

Given under my hand and official seal this 10TH day of MARCH, 2010.

[SEAL]



Sylvia O. Ramos
Notary Public

My Commission Expires: 9/24/13

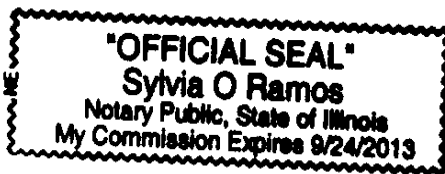
Notary Public in and for the State of Illinois

STATE OF ILLINOIS)
) .ss
COUNTY OF)

The undersigned, a Notary Public in and for said County, in said State, hereby certifies that Joseph J. Sifferlen, whose name as TREASURER of University Club of Chicago, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, as such TREASURER and with full authority, he/she executed the same voluntarily for and as the act of said not-for-profit corporation.

Given under my hand and official seal this 10TH day of MARCH, 2010.

[SEAL]



Sylvia O. Ramos
Notary Public

My Commission Expires: 9/24/13

Notary Public in and for the State of Illinois

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EXHIBIT A

THE PROPERTY

LEGAL DESCRIPTION:

PARCEL 1:

THE SOUTH 1/2 OF LOT 8 (EXCEPT THE NORTH 4.00 FEET THEREOF) AND THE NORTH 8.00 FEET OF LOT 9 IN BLOCK 1 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT TO MAINTAIN PARTY WALL AS CREATED BY AGREEMENT MADE BY NETTIE F. MC CORMICK AND OTHERS AS TRUSTEES, DATED NOVEMBER 18, 1898 AND RECORDED SEPTEMBER 19, 1899 AS DOCUMENT 2870146 OVER THE FOLLOWING DESCRIBED LAND:

BETWEEN THE NORTH LINE OF THE SOUTH 1/2 OF LOT 8 (EXCEPT THE NORTH 4.00 FEET OF SAID SOUTH 1/2) AND THE SOUTH LINE OF THE NORTH 4.00 FEET OF THE SOUTH 1/2 OF LOT 8.

AND EASEMENT TO MAINTAIN PARTY WALL AS CREATED BY AGREEMENT MADE BY NETTIE F. MC CORMICK AND OTHERS AS TRUSTEES WITH MC CORMICK HARVESTING MACHINE COMPANY, A CORPORATION OF ILLINOIS DATED NOVEMBER 18, 1898 AND RECORDED SEPTEMBER 19, 1899 AS DOCUMENT 2870145 OVER THE FOLLOWING DESCRIBED LAND:

THE SOUTH LINE OF THE NORTH 8.00 FEET OF LOT 9 IN BLOCK 1.