

# UNOFFICIAL COPY

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## MORTGAGE

THIS MORTGAGE, is made this 30th day of June, 1989, between Darrel Peters Productions, Inc., an Illinois corporation (the "Mortgagor"), and NBD Elk Grove Bank, an Illinois banking corporation having an office at 100 E. Higgins Road, Elk Grove Village, IL 60007 (herein referred to as "Mortgagee").

### WITNESSETH:

THAT WHEREAS, Mortgagor is just indebted to Mortgagee in the principal sum of Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00), as evidenced by a certain Note of even date herewith executed by Mortgagor and made payable to the order of and delivered to said Mortgagee (hereinafter referred to as the "Note"), whereby Mortgagor promises to pay the said principal sum, together with interest thereon, from the date thereof, as set forth therein, at the office of Mortgagee, or at such other place as may be designated in writing by the legal holders thereof, until the entire principal and accrued interest have been paid, provided however, that if not sooner paid the principal sum secured hereby and all accrued interest thereon shall become due and payable in full on June 30, 1990; and

WHEREAS, Mortgagor intends to use the proceeds of the Note to enable it to purchase the real estate mortgaged hereby (sometimes referred to as the "real estate");

NOW, THEREFORE, Mortgagor, in consideration of said debt and to secure the payment of both principal and interest thereof, in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this mortgage, and to secure the performance of the covenants and agreements herein and in the Note contained, to be performed by Mortgagor, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN and CONVEY unto Mortgagee, its successors and assigns, the real estate and all of its estate, right, title and interest therein, situate, lying and being in the Village of Palatine, County of Cook, and State of Illinois legally described as:

See Exhibit "A" attached

DEPT-91

\$25.00

TW1111 FROM 0356 07/12/89 10:41:00

#1316 # A # -89-316236

COOK COUNTY RECORDER

PERMANENT INDEX NO's.: 02-02-203-034, 02-02-203-029, 02-02-203-017, 02-02-203-028,  
and 02-02-203-026.

COMMONLY KNOWN AS: 2000 Old Hicks Road, (10.5 Acres Vacant Land) Palatine, IL.

which real estate, together with the following described property, is collectively referred to as the "Premises",

-89-316236

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MAIL TO: PAGE 16

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RE ATTORNEY SERVICES #

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## TOGETHER WITH:

A. All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, and alleys adjoining the Premises.

B. All singular the tenements, hereditaments, easements, appurtenances, passages, liberties, and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license, and the reversion and reversions and remainder and remainders thereof;

C. All rents, issues, proceeds, and profits accruing and to accrue from the Premises;

D. All buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Premises, and all fixtures, equipment, materials and other types of personal property (other than that belonging to tenants) used in the ownership and operation of the improvement situated thereon with parking and other related facilities, in possession of Mortgagor and now or hereafter located in, on, or upon, or installed in or affixed to, the Real Estate legally described herein, or any improvements or structures thereon, together with all accessories and parts now attached to or used in connection with any such equipment, materials and personal property or which may hereafter, at any time, be placed in or added thereto, and also any and all replacements and proceeds of any such equipment, material and personal property, together with the proceeds of any of the foregoing; it being mutually agreed, intended and declared, that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the Real Estate and for the purpose of this Mortgage to be Real Estate, and covered by this Mortgage; and as to any of the property aforesaid which does not so form a part and parcel of the Real Estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code as in effect from time to time in the State of Illinois), this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as the Secured Party (as such term is defined in the Uniform Commercial Code).

TO HAVE AND TO HOLD, the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

Provided, however, that if the Mortgagor shall pay the principal and all interest as provided by the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

**MORTGAGOR'S COVENANTS.** To protect the security of this Mortgage, Mortgagor agrees and covenants with the Mortgagee that Mortgagor shall:

1. **Payment of Principal and Interest.** Pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner herein and in the Note provided.

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2. First Mortgage. This Mortgage is a First Mortgage and is not subject to any liens, encumbrances or mortgages of any kind or to any other party.

3. Taxes and Deposits Therefor.

Mortgagor shall Pay immediately when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and other charges which may be levied against the Premises, and to furnish to Mortgagee upon request therefor, duplicate receipts therefor within thirty (30) days after payment thereof. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments provided: (i) that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of said Premises or any part thereof, or any interest therein, to satisfy the same; (ii) that Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same, before any tax or assessment has been increased by any interest, penalties, or costs; and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, a sum of money, bond, Letter of Credit or other security reasonably acceptable to Mortgagee which shall be sufficient in the judgment of the Mortgagee to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall keep said money on deposit or keep in effect said bond or Letter of Credit in an amount sufficient, in the reasonable judgment of the Mortgagee, to pay in full such contested tax and assessment; and all penalties and interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional penalties and interest whenever, in the reasonable judgment of the Mortgagee, such increase is advisable. In case the Mortgagor, after demand is made upon it by Mortgagee, shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds on deposit as hereinabove provided, the Mortgagee may, at its option upon notice to Mortgagor, apply the monies and/or liquidate the securities deposited with Mortgagee, in payment of, or on account of, such taxes and assessments, or any portion thereof then unpaid, including the payment of all penalties and interest thereon. If the amount of the money and/or security so deposited shall be insufficient as aforesaid for the payment in full of such taxes and assessments, together with all penalties and interest thereon, the Mortgagor shall forthwith upon demand, either (a) deposit with the Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full, or, (b) in case the Mortgagee shall have applied funds on deposit on account of such taxes and assessments, restore said deposit to an amount reasonably satisfactory to Mortgagee. Provided Mortgagor is not then in default hereunder, the Mortgagee shall, upon the final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such taxes, apply the money so deposited in full payment of such taxes and assessments to that part thereof then unpaid, together with all penalties and interest due thereon and return on demand the balance of said deposit, if any, to Mortgagor.

Should the Mortgagee so require, the Mortgagor shall deposit each month, on the date when the principal and/or interest payment under the Note is due, with the Mortgagee into an account earning interest at the Mortgagee's passbook savings rate, an amount equal to 1/12th of the annual general real estate taxes for the Real Estate, as reasonably estimated by Mortgagee, on a "January to January" basis and not on a "when issued and payable" basis so that there shall be on deposit with the Mortgagee (i) the

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estimated amount of unpaid general taxes for the Real Estate for year(s) previous to the year of the month in which the deposit is being made (even though such previous year(s) real estate taxes may not then be in collection); and (ii) an amount for the year in which the deposit is being made equal to the monthly deposit amount multiplied by the calendar number (January being number 1), of the month in which the deposit is required to be made.

Mortgagor shall pledge the passbook savings account specified herein to Mortgagee as collateral security for the loan evidenced by the Note and shall use the deposited funds and the accrued interest earnings in such account exclusively for the payment of real estate taxes on the Real Estate.

#### 4. Insurance.

(A) Mortgagor will keep the improvements now existing or hereafter erected on the Premises insured under a replacement cost form of insurance policy against loss or damage resulting from fire, windstorm, and other hazards, including but not limited to Flood insurance in an amount satisfactory to Mortgagee if the premises should ever be included in a special flood hazard area as designated by the Federal Insurance Administration and Environment impairment liability insurance, as may be required by Mortgagee, and to pay promptly, when due, any premiums on such insurance, provided however, Mortgagee may make such payments on behalf of Mortgagor. All insurance shall be in form and content as reasonably approved by the Mortgagee (which shall be carried in companies reasonably acceptable to Mortgagee), and the policies and renewals marked "PAID", shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the old policies and shall have attached thereto standard noncontributing mortgage clause(s) in favor of and entitling Mortgagee to collect any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation endorsement, if available. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of any casualty loss, Mortgagor will give immediate notice by mail to the Mortgagee.

(B) Mortgagor will carry and maintain comprehensive public liability and business interruption (or loss of rentals) insurance as may be required from time to time by the Mortgagee in forms, amounts, and with companies reasonably satisfactory to the Mortgagee. Such liability policy and business interruption insurance shall name Mortgagee as an additional insured party thereunder. Certificates of such insurances, premiums prepaid, shall be deposited with the Mortgagee and shall contain provision for thirty (30) days' notice to the Mortgagee prior to any cancellation thereof.

#### 5. Preservation and Restoration of Premises and Compliance with Governmental Regulations.

Mortgagor will not permit any building or other improvement on the Premises to be materially altered, removed, or demolished, nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold, or mortgaged, without the prior written consent of Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. Subject to the provisions of Paragraph 24. hereof, Mortgagor shall promptly repair, restore, or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction.

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Mortgagor further agrees to permit, commit, or suffer no waste, impairment, or deterioration of the Premises or any part or improvement thereof; to keep and maintain the Premises and every part thereof in good repair and condition, subject to ordinary wear and tear, to effect such repairs as the Mortgagee may reasonably require, and, from time to time, to make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery, and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed; to comply with all statutes, orders, requirements or decrees relating to said Premises as provided in any notice given by any federal, state, or municipal authority; and to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions, and nonconforming uses), privileges, franchises, and concessions which are applicable to the Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the said Premises.

## 6. Creation of Liens and Transfer of Ownership.

(A) Mortgagor will not create, suffer, or permit to be created or filed against the Premises, any mortgage lien or other lien whether superior or inferior to the lien of this Mortgage, except the First Mortgage referred to in Paragraph 2. hereof or for mortgage liens or other liens which the Mortgagee may agree to permit the existence of, in writing. The Mortgagor may either (i) cause title insurance to be issued insuring that any such liens will not affect the priority of the lien of this Mortgage, or (ii) contest any lien claim arising from any work performed, material furnished, or obligations incurred by Mortgagor upon furnishing Mortgagee security and indemnification reasonably satisfactory to Mortgagee for the final payment and discharge thereof; or

(B) Mortgagor will (except as may have been created by or arising from or in connection with the First Mortgage), neither permit the Premises, or the beneficial interest in Mortgagor, in whole or in part, to be alienated, transferred, conveyed or assigned to any person or entity, nor permit any leases executed and delivered by Mortgagor to Mortgagee in connection herewith, to be assigned by the Lessor or the Lessee therein identified except with the express written consent of the Mortgagee.

Any waiver by Mortgagee of the provisions of this Paragraph shall not be deemed to be a waiver of the right of the Mortgagee to insist upon strict compliance with the provisions of this Paragraph in the future.

7. Mortgagee's Performance of Defaulted Acts. In case of default herein, Mortgagee may, but need not, at any time after the giving of any notice and the lapse of any time thereafter which may be required by Paragraph 16. hereof, and subject to the provisions of this Mortgage make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor



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to Mortgagee without notice and with interest thereon at the Default Interest Rate as defined herein. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the Mortgagor.

8. Eminent Domain. So long as any portion of the principal balance evidenced by the Note remains unpaid, any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, of the whole or any part of the Premises or any improvement located therein or appurtenant thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, to the extent of the Loan Amount, which award Mortgagee is hereby authorized to give appropriate receipts and acquittances therefore, and, subject to the terms of Paragraph 24. hereof, Mortgagee shall, at its option, apply the proceeds of such award as a credit upon any portion of the indebtedness secured hereby or permit the same to be used to repair or restore the improvements in the same manner as set forth in Paragraph 24. hereof with regard to insurance proceeds received subsequent to a fire or other casualty to the Premises. Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the said Premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee, at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards in accordance with and subject to the provisions hereof, and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. Notwithstanding anything aforesaid to the contrary, Mortgagor shall have the sole authority to conduct the defense of any condemnation or eminent domain proceeding and (so long as the amount of any condemnation or eminent domain award exceeds the unpaid principal balance evidenced by the Note), the sole authority to agree to and/or accept the amounts, terms, and conditions of any and all condemnation or eminent domain awards.

9. Acknowledgment of Debt. Mortgagor shall furnish, from time to time, within thirty (30) days after Mortgagee's request, a written statement of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

10. Inspection of Books and Records. Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises, and within ten (10) days after demand therefore to permit Mortgagee, at normal business hours to examine such books and records and all supporting vouchers and data, at any time and from time to time, on request at Mortgagor's offices, hereinbefore identified or at such other location as may be mutually agreed upon.

11. Illegality of Terms Hereof. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (a) to require Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the

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extent of the lawful rate; or (b) to require Mortgagor to make any payment or do any act contrary to law, and if any clause and provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such clause or clauses and provisions only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall be given reasonable time to correct any such error.

12. Subrogation. In the event the proceeds of the loan made by the Mortgagee to the Mortgagor, or any part thereof, or any amount paid out or advanced by the Mortgagee, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then the Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

13. Execution of Security Agreement and Financing Statement. That Mortgagor, within five (5) days after request by mail, shall execute, acknowledge, and deliver to Mortgagee a Security Agreement, Financing Statement, or other similar security instrument, in form satisfactory to Mortgagee, and conforming to the terms hereof covering all property of any kind whatsoever owned by the Mortgagor, which, in the sole opinion of Mortgagee, is essential to the operation of the Premises and concerning which there may be any doubt as to whether the title to same has been conveyed by or a security interest therein perfected by this Mortgage under the laws of the State of Illinois and will further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement or certificate, or other documents as Mortgagee may request in order to perfect, preserve, maintain, continue, and extend the security instrument. Mortgagor further agrees to pay Mortgagee, on demand, all costs and expenses incurred by Mortgagee in connection with the recording, filing, and refiling of any such document.

14. Mortgagee's Payment of Governmental, Municipal, or Other Charges or Liens.

Upon the occurrence of an Event of Default hereunder, Mortgagee is hereby authorized subject to the terms and provisions of this Mortgage, to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement, or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof, and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge; or payment otherwise relating to any other purpose herein and hereby authorized but not enumerated in the Paragraph, and may do so whenever, in its reasonable judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and, provided further, that in connection with any such advance, Mortgagee, in its option, may, and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing.

All such advances and indebtedness authorized by this Paragraph shall be repayable by Mortgagor upon demand with interest at the Default Interest Rate.

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15. Business Loan. The Mortgagor represents and agrees that the proceeds of the Note will be used for business purposes, and the indebtedness evidenced by the Note constitutes a business loan.

## 16. Default and Foreclosure.

(A) Events of Default and Remedies. The following shall constitute an Event of Default under this Mortgage:

(i) any default in the monthly principal and/or interest payments under the Note secured hereby or any failure to provide Mortgagee with the insurance specified in Paragraph 4.(A) and 4.(B) hereunder, which default or failure remains uncured for a period of fifteen (15) days; OR

(ii) any default in the performance or observance of any other term, covenant, or condition in this Mortgage, or in any other instrument now or hereafter evidencing or securing said indebtedness which default continues for thirty (30) days after Mortgagee has notified Mortgagor of such default and Mortgagor has not cured such default; OR

(iii) if the Mortgagor shall file a petition in voluntary bankruptcy or under Chapter VII or Chapter XI of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, which action is not dismissed within thirty (30) days; OR

(iv) if the Mortgagor shall file an answer admitting insolvency or inability to pay their debts or fail to obtain a vacation or stay or involuntary proceedings within thirty (30) days after the filing thereof; OR

(v) if the Mortgagor shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for the Mortgagor or its beneficiary which appointment is not relinquished within thirty (30) days for all or any portion of the Premises or its or their property in any involuntary proceeding; OR

(vi) any Court shall have taken jurisdiction of all or any portion of the Premises or the property of the Mortgagor in any involuntary proceeding for the reorganization, dissolution, liquidation, or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days after appointment; OR

(vii) the Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its or their insolvency or shall consent to the appointment of a receiver or trustee or liquidator of all or any portion of the Premises; OR

(viii) the untruth or falsity of any of the warranties contained herein.

Upon the occurrence of an Event of Default, the entire indebtedness secured hereby, including, but not limited to, principal and accrued interest shall, at the option of the Mortgagee and without demand or notice to Mortgagor, become immediately due and payable with interest accruing thereafter on the unpaid principal balance of the Note at the Default Interest Rate, (as hereinafter defined) and, thereupon, or at



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any time after the occurrence of any such Event of Default, the Mortgagee may proceed to foreclose this Mortgage by judicial proceedings according to the statutes in such case provided, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time.

(B) Expense of Litigation. In any suit to foreclose the lien of this Mortgage or enforce any other remedy of the Mortgagee under this Mortgage, the Note, or any other document given to secure the indebtedness represented by the Note, there shall be allowed and included as additional indebtedness in the judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, survey costs, and cost (which may be estimated as to items to be expended after entry of the decree), of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree, the true condition of the title to or value of the Premises. All expenditures and expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney affecting this Mortgage, the Note or the Premises, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate.

(C) Mortgagee's Right of Possession in Case of Event of Default. In any case in which, under the provisions of this Mortgage, the Mortgagee has a right to institute foreclosure proceedings whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof, or before or after sale thereunder, forthwith upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof, personally or by its agent or attorneys, as for condition broken and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers, and accounts of the Mortgagor or the then owner of the Premises relating thereto, and may exclude the Mortgagor, its agents or servants, wholly therefrom, and may, in its own name as Mortgagee and under the powers herein granted:

(i) hold, operate, manage and control the Premises and conduct the business, if any thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises including actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to the Mortgagor;

(ii) cancel or terminate any lease or sublease or management agreement for any cause or on any ground which would entitle Mortgagor to cancel the same;

(iii) extend or modify any then existing lease(s) or management agreement(s) and make new lease(s) or management agreement(s), which extensions, modifications, and new lease(s) or management agreement(s) may provide for terms to expire, or for options to extend or renew terms to expire, beyond the maturity

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date of the indebtedness hereunder and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such lease(s) and management agreement(s) and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and shall also be binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfactory of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser;

(iv) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements to the Premises as to Mortgagee may seem judicious, to insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all avails, rents, issues and profits.

(D) Mortgagee's Determination of Priority of Payments. Any avails, rents, issues, and profits of the Premises received by the Mortgagee after having taken possession of the Premises, or pursuant to any assignment thereof to the Mortgagee under the provisions of this Mortgage or of any separate security documents or instruments shall be applied in payment of or on account of the following, in such order as the Mortgagee (or in case of a receivership) as the Court may determine:

(i) to the payment of the operation expenses of the Premises, which shall include reasonable compensation to the Mortgagee or the receiver and its agent or agents, if management of the Premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases, established claims for damages, if any, and premiums on insurance hereinabove authorized;

(ii) to the payment of taxes, special assessments, and water taxes now due or which may hereafter become due on the Premises, or which may become a lien prior to the lien of this Mortgage;

(iii) to the payment of all repairs and replacements, of said Premises and of placing said property in such condition as will, in the judgment of Mortgage or receiver, make it readily rentable;

(iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale;

(v) any overplus or remainign funds to the Mortgagor, their successors or assigns, as their rights may appear.

(K) Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose this Mortgage, the Court may, upon application, appoint a receiver of the Premises. Such appointment may be made either before or after sale upon appropriate notice as provided by law and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the Premises, and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the Premises and to collect the rents, issues, and profits of the Premises during the pendency of such foreclosure suit, and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by the Mortgagor), as well as during any further times when the Mortgagor,

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its heirs, administrators, executors, successors, or the assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the Premises during the whole of said period, to extend or modify any then new lease(s) or management agreement(s), and to make new lease(s) or management agreement(s), which extensions, modifications, and new lease(s) or management agreement(s) may provide for terms to expire, or for options to lease(s) to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder, it being understood and agreed that any such lease(s) and management agreement(s) and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

(F) Application of Proceeds of Foreclosure Suit. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: FIRST, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph (b) hereof; SECOND, all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Notes, with interest thereon at the Default Interest Rate; THIRD, all principal and interest (calculated at the Default Interest Rate), remaining unpaid on the Note; and FOURTH, ANYOVERPLUS TO Mortgagor, its successors or assigns, as their rights may appear.

(G) Rescission of or Failure to Exercise. The failure of the Mortgagee to exercise the option for acceleration of maturity and/or foreclosure following any Event of Default as aforesaid, or to exercise any other option granted to the Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments hereunder, shall not constitute a waiver of any such Event of Default nor extend or affect any cure period, if any, but such option shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgement to that effect by the Mortgagee, and shall not affect the Mortgagee's right to accelerate the maturity for any future Event of Default.

(H) Sale of Separate Parcels. Right of Mortgagee to Purchase. In the event of any foreclosure sale of said Premises, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

(I) Waiver of Statutory Rights. Mortgagor, for itself and all who may claim through or under them, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any Court having jurisdiction to foreclose such lien may order the Premises sold as any entirety. Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor and on behalf of each and every person, except decree or judgment creditors of Mortgagor acquiring any interest in or title to the Premises described herein subsequent to the date of this Mortgage.

(J) Default Interest Rate. The term "Default Interest Rate" shall be Three (3%) per cent per annum plus the Interest Rate specified in the Note.

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17. Rights and Remedies are Cumulative. All rights and remedies herein provided are cumulative and the holder of the Notes secured hereby and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right afforded by this Mortgage.

18. Giving of Notice. Any notice or demands which either party hereto may desire or be required to give to the other party, shall be in writing and shall be hand delivered or mailed by certified mail, return receipt requested, addressed to such other party and to their respective attorneys, at the address, hereinbefore or hereinafter set forth, or at such other address as either party hereto may, from time to time, by notice in writing, designate to the other party, as a place for service of notice. All such notices and demands which are mailed shall be effectively given two (2) business days after the date of post marking. All such notices and demands which are hand delivered, shall be effectively given on the date of such delivery. In case no other address has been so specified, notices and demands hereunder shall be sent to the following address.

Mortgagee: NBD Elk Grove Bank  
100 E. Higgins Road  
Elk Grove Village, IL 60007

Mortgagor: Darrel Peters Productions, Inc.  
135 East County Line Road  
Barrington, Illinois 60010

19. Time is of the Essence. It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagee herein, or in the Note secured hereby is not required to be given.

20. Incorporation by Reference. All terms and conditions of the Note secured hereby are incorporated herein by reference as if fully set forth.

21. Covenants to run with the Land. All the covenants hereof shall run with the land.

22. Captions. The captions and headings of various paragraphs are for convenience only, and are not to be construed as definign or limiting in any way the scope or intent of the provisions hereof.

23. Construction. Mortgagor does hereby acknowledge that all negotiations relative to the loan evidenced by the Note, this Mortgage, and all other documents and instruments securing the Note, took place in the State of Illinois. Mortgagor and Mortgagee (by making the loan evidenced by the Note) do hereby agree that the Note, this Mortgage and all other documents securing the Note shall be construed and enforced according to the laws of the State of Illinois.

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## 24. Application of Insurance Proceeds and Eminent Domain Awards.

(A) In the event of any such loss or damage to the Premises, as described in Paragraph 4.(A) hereof, Mortgagee may use or apply the proceeds of insurance, at its option, as follows: (i) as a credit upon any portion of the indebtedness secured hereby; or (ii) to reimbursement to Mortgagor for repairing and restoring the improvements in which event the Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the indebtedness secured hereby; or (iii) to deliver same to the Mortgagor.

(B) Notwithstanding the provisions of Paragraph 24.(A) hereof, at the request of Mortgagor, Mortgagee shall make the proceeds of insurance available for the restoration of the improvements so damaged subject to the following conditions:

(i) that no Event of Default then exists under any of the terms, covenants and conditions of the Note, this Mortgage, or any other documents or instruments evidencing or securing the Note;

(ii) that Mortgagee shall first be given satisfactory proof that such improvements have been fully restored or that by the expenditure of such money, and any sums deposited by Mortgagee pursuant to the terms of subparagraph (iii) hereof, will be fully restored, free and clear of all mechanic's and materialmen's liens, except for liens for which adequate provision is made pursuant to Paragraph 5(a) hereof, within six (6) months from the date of such loss or damage.

(iii) that in the event such proceeds shall be insufficient to restore the improvements, Mortgagor shall deposit promptly with Mortgagee funds which, together with the insurance proceeds, would be sufficient to restore the improvements;

(iv) that the excess of the insurance proceeds above the amount necessary to complete any necessary restoration shall, after completion of the repair and restoration, be delivered to Mortgagor, provided there then exists no Event of Default; otherwise such excess shall be applied as a credit upon any portion, as selected by Mortgagee, of the indebtedness secured hereby, but the funds released by Mortgagee for restoration shall in no event, be deemed a payment of the indebtedness secured hereby;

(v) in the event that any of the foregoing conditions are not, or cannot be satisfied, then the alternative disposition of such insurance proceeds, as provided in Paragraph 24.(A) above, shall again become applicable.

(C) In the event Mortgagee shall be obligated pursuant to the terms hereof to permit Mortgagor to use such proceeds for the restoring of the improvements or in the event Mortgagee shall elect to permit Mortgagor to use such proceeds for the restoring of the improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with architect's certificates, partial or final waivers of lien, as the case may be, contractors' sworn statements, and if the estimated cost of the work exceeds ten (10%) percent of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve. No payment made prior to the final

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completion of the work shall exceed ninety (90%) percent of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. In the event of foreclosure of this Mortgage, or other transfer of title to the Premises in extinguishment of the indebtedness secured hereby, all right, title, and interest of the Mortgagor, in and to any insurance policies then in force, and any claims or proceeds thereunder shall to the extent of the indebtedness, pass to the Mortgagee or any purchaser or grantee.

(D) Notwithstanding any of the provisions in this Mortgage including, but not limited to, Paragraph 8. hereof, Mortgagee shall make available to the Mortgagor such amount of the proceeds of any award for eminent domain as are required to restore any improvements on the Premises to a complete architectural unit subject to the following conditions:

(i) that no Event of Default then exists under any of the terms, covenants, and conditions of the Note, this Mortgage, or any documents or instruments evidencing or securing the Notes;

(ii) that Mortgagee shall first be given satisfactory proof that such improvements have been fully restored or that by the expenditure of such award and any sums deposited with Mortgagee pursuant to the terms of subparagraph (iii) hereof, will be fully restored to a complete architectural unit, free and clear of all mechanic's and materialmen's liens, except for liens for which adequate provision is made pursuant to Paragraph 6.(A) hereof, within six (6) months from the date of such taking;

(iii) that in the event such award shall be insufficient to restore the improvements, Mortgagor shall deposit promptly with Mortgagee funds which, together with the award proceeds, would be sufficient to restore the improvements;

(iv) that the rental income to be derived from the improvements, subsequent to such taking by eminent domain, shall not adversely affect the Mortgagor's ability to pay the indebtedness evidenced by the Note;

(v) that the disbursement of the award will be made according to those provisions of Paragraph 24.(B) which relate to the disbursement of insurance proceeds for repair and restoration of the improvements and the conditions precedent to be satisfied by the Mortgagor with regard thereto;

(vi) that the excess of the proceeds to the award, above the amount necessary to complete such restoration, shall be delivered to Mortgagor provided there then exists no Event of Default; otherwise such excess shall be applied as a credit upon any portion, as selected by Mortgagee, of the indebtedness secured hereby, but the proceeds of the award released by Mortgagee for restoration shall, in no event, be deemed a payment of the indebtedness secured hereby;

(vii) in the event that any of the foregoing conditions are not, or cannot be satisfied, then the alternate disposition of such award as provided in Paragraph 8. above, shall again become applicable.

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25. Binding on Successor and Assigns. Without expanding the liability of any warrantor contained in any instrument of Guaranty executed in connection herewith, this Mortgage and all provisions hereof shall extend and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word Mortgagor, when used herein, shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Notes or this Mortgage. The word "Mortgagee", when used herein, shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

26. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, or recording of this mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or the recording of this Mortgage.

27. Hazardous Materials

(A) Mortgagor represents and warrants that (i) Mortgagor has not used Hazardous Materials (as defined hereinafter) on, from or affecting the premises in any manner which violates federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of Mortgagor's knowledge, no prior owner of the premises or any tenant, subtenant, occupant, prior tenant, prior subtenant or prior occupant has used Hazardous Materials on, from or affecting the premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials; (ii) Mortgagor has never received any notice of any violations of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to the best of Mortgagor's knowledge, there have been no actions commenced or threatened by any party for noncompliance. For purposes of this Mortgage, "Hazardous Materials" included, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule, or regulation.

(B) Mortgagor shall keep or cause the premises to be kept free of Hazardous Materials, and without limiting the foregoing, Mortgagor shall not cause or permit the premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or occupant, a release of Hazardous Materials onto the premises or onto any other property.

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(C) Mortgagor shall (i) conduct and complete <sup>9 9 3 1 2 3 6</sup> all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, under, from or affecting the premises in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations and policies, to the reasonable satisfaction of Mortgagee, and in accordance with the orders and directives of all federal, state, and local governmental authorities, and (ii) defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the premises or the soil, water, vegetation, buildings, personal property, persons or animals thereon; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials, and/or (d) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of Mortgagee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses.

IN WITNESS WHEREOF, the undersigned have executed this Mortgage the day and year first above written.

Darrel Peters Productions, Inc.

By: *Darrel Peters*  
Darrel L. Peters  
Its: President

Attest:

By: *Alaine C. Peters*  
Alaine C. Peters, Secretary

This instrument was prepared by  
Edward J. Musolff  
NBD Elk Grove Bank  
100 E. Higgins Road  
Elk Grove Village, IL 60007

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STATE OF ILLINOIS )  
                          ) SS.  
COUNTY OF COOK    )

I, KENNETH M. ZAK, a Notary Public, in said County, in the State aforesaid, do hereby certify that DARREL L. PETERS, who is personally known to me to be the PRESIDENT of Darrel Peters Productions, Inc., and ALAINE C. PETERS, who is personally known to me to be the SECRETARY of Darrel Peters Productions, Inc., each of whom are personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument in their respective capacities as PRESIDENT and SECRETARY of Darrel Peters Productions, Inc., as their own free and voluntary act and as the free and voluntary act of Darrel Peters Productions, Inc., for the uses and purposes therein set forth.

Given under my hand and Seal of Office this 30<sup>th</sup> day of June, 1989.

Kenneth M. Zak  
Notary Public

My commission expires:

MARCH 12, 1990

"OFFICIAL SEAL"  
Kenneth M. Zak  
Notary Public State of Illinois  
My Commission Expires 3/12/90

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EXHIBIT A

Parcel I: The South 100 feet of the North 700 feet of the East 871.20 feet of the South 1/2 of the NorthEast 1/4 of Section 2, Township 42 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel II: The South 100 feet of the North 1000 feet of the East 871.20 feet of the South 1/2 of the NorthEast 1/4 of Section 2, Township 42 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel III: That part of Section 2, Township 42 North, Range 10 East of the Third Principal Meridian, described as follows: Beginning at the intersection of the East and West 1/4 line of said Section with the center line of Rand Road, said intersection being 1514.39 feet West of the East line of said Section measured on said East and West 1/4 line; thence SouthEast along the center line of said Rand Road, said center line forming an angle of 47 degrees 00 minutes 30 seconds with the East and West 1/4 line of said Section, a distance of 38.40 feet to an angle in the center line of said Rand Road; thence SouthEast along the center line of Rand Road, said center line forming an angle of 04 degrees 24 minutes 30 seconds to the right with a prolongation of the last described course, for a distance of 16.57 feet; thence NorthEastly on a line that forms an angle of 94 degrees 24 minutes 30 seconds to the left with a prolongation of the last described course, a distance of 778.86 feet to a point; thence NorthWesterly on a line that forms an angle of 127 degrees 23 minutes 30 seconds to the left with a prolongation of the last described course, for a distance of 125.89 feet; thence SouthWesterly to a point in the center line of Rand Road that is 45.08 feet NorthWest of the point of beginning; thence SouthEast 45.08 feet to the place of beginning, in Cook County, Illinois.

Parcel IV: The South 200 feet of the North 900 feet of the East 871.20 feet of the South 1/2 of the NorthEast 1/4 of Section 2, Township 42 North, Range 10 East of the Third Principal Meridian, situated in the Township of Palatine, Cook County, Illinois, (said premises also described as follows): Beginning at a point on the East line of the South 1/2 of the NorthEast 1/4 of Section 2, Township 42 North, Range 10 East of the Third Principal Meridian, 700 feet South of the NorthEast corner thereof; thence South along said East line 200 feet; thence West parallel with the North line of said South 1/2 of the NorthEast 1/4, 871.2 feet; thence North parallel with the East line thereof 200 feet; thence East parallel with the North line thereof, 871.2 feet to the point of beginning, in Cook County, Illinois.

Parcel V: That part of Section 2, Township 42 North, Range 10 East of the Third Principal Meridian, described as follows: Beginning on the North line of the South 1/2 of the NorthEast 1/4 of Section 2 aforesaid, 871.20 feet West of the NorthEast corner of the South 1/2 of the NorthEast 1/4 of said Section; thence South parallel with the East line of said Section 416 feet to a point of beginning; thence South parallel with the East line of said Section 419.88 feet; thence NorthWesterly on a line that forms an angle of 100 degrees 04 1/2 minutes to the right with a prolongation of the last described course, a distance of 159.41 feet; thence North parallel to the East line of said Section 393.15 feet; thence East parallel to the North line of the South 1/2 of the NorthEast 1/4 of said Section 157.03 feet to the point of beginning in Cook County, Illinois.

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A.T.G.F.  
BOX 370