

6.

WHEN RECORDED, RETURN TO:

First National Bank of Layton  
1601 North Hillfield Road  
Layton, UT 84041

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
09/15/2005 02:25 PM  
FEE \$33.00 Pgs: 6  
DEP RT REC'D FOR FOUNDERS TITLE CO  
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3A to 9A Layton Market Center  
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301 to 305 Layton Market Center III  
10-200-0003 to 0005, 0007 thru 0011  
10-206-0301 to 0305

**ASSIGNMENT OF LEASE FOR SECURITY**

This Assignment of Lease for Security (the "Assignment") is made and executed this 22<sup>nd</sup> day of July 2005 (the "Closing Date"), by TDM 43-635, LLC ("Borrower") and FIRST NATIONAL BANK OF LAYTON, a national banking association ("Lender")

**RECITALS**

A Pursuant to the Promissory Note dated The Closing Date in which Borrower appears as "Borrower" and Lender appears as "Lender" and which is in the original principal amount of ONE HUNDRED SIXTY EIGHT THOUSAND DOLLARS (\$168,000 00) (the "Note"), and pursuant to the Business Loan Agreement dated The Closing Date wherein Borrower appears as "Borrower" and Lender appears as "Lender" (the "Loan Agreement"), Lender has loaned the proceeds of the Note to Borrower Unless otherwise defined in this Assignment, capitalized terms used in this Assignment shall have the meanings set forth in the Loan Agreement

B. Pursuant to the Commercial Security Agreement dated the Closing Date (the "Agreement") which encumbers the equipment and fixtures together with the improvements thereon located at 765 West Antelope Drive, Layton, Utah, Davis County, State of Utah (the "Collateral"), Borrower has granted Lender a lien on the Collateral to secure the Note

C The Collateral is affected by a Lease Agreement (the "Lease") dated January 31, 2005, as amended by an Assignment of Lease and First Amendment of Lease dated June 27, 2005 (collectively the "Amendment"), and entered into between IG, L C , as "Landlord" (collectively "Landlord"), and Borrower, as "Tenant "

D Lender desires and Borrower agrees to further secure the Note and the Loan Agreement with an assignment of the Lease

**AGREEMENT**

In exchange for good and valuable consideration the sufficiency and receipt of which are hereby acknowledged, Borrower and Lender agree as follows

1 Assignment. Borrower hereby absolutely and unconditionally assigns and transfers unto Lender for security all the right, title, and interest of Borrower in and to the Lease, together with all extensions, renewals, modifications or replacements thereof, as well as all guaranties of Borrowers obligations under any provisions thereof and under any and all extensions and renewals thereof (collectively the "Lease") This Assignment shall inure to the benefit of Lender, its successors and assigns as security for the payment of the principal and interest provided to be paid in or by the Note, the performance of the agreements of Borrower contained in the Loan Agreement, and the performance of the agreements of Borrower contained in the Loan Documents and any other document evidencing, securing, or relating to the disbursement or administration of the proceeds of the Note (all of which agreements and obligations are collectively referred to as the "Obligation")

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2 Default Remedies of Lender If Borrower defaults on the Obligation, or this Assignment or if an Event of Default occurs, Lender shall be authorized at its option to enter and take possession of all or part of the Collateral, to perform all acts necessary for the operation and maintenance of the Collateral, and to perform the obligations of Borrower under the Lease in the same manner and to the same extent that Borrower might reasonably so act. Lender shall further be authorized to replace Borrower as lessee under the Lease.

3 Termination of Assignment. Once Borrower pays Lender the full amount of the Obligation and such payment is evidenced by a recorded satisfaction or release of the Collateral, this Assignment shall no longer be in effect and shall be void. Lender shall execute such instruments as may be reasonably required to evidence the termination of this Assignment.

4 Notice to Landlord of Borrower's Default Borrower shall irrevocably authorize Landlord upon demand and notice from Lender of Borrower's default under the Loan Documents, to accept from Lender performance of Borrower's obligations under the Lease. In such situation, Lender shall not be liable to Landlord for the determination of the actual existence of any default claimed by Lender. Landlord shall have the right to rely upon any such notices from Lender, without any obligation or right to inquire as to the actual existence of the default, notwithstanding any claim of Borrower to the contrary. Upon the curing of all defaults caused by Borrower under the Loan Documents, Lender shall give Landlord written notice of such cure.

5 Assignment of Borrower's Interest in Lease Lender shall have the right to assign Borrower's right, title, and interest in the Lease to any subsequent holder of the Note and to any person acquiring title to the Collateral through foreclosure or otherwise.

6 Indemnification of Lender Borrower shall indemnify and hold Lender harmless of and from any and all liability, loss, or damage that Lender may incur under the Lease or by reason of this Assignment other than such liability, loss, or damage as may be occasioned by Lender's gross negligence or willful misconduct. Such indemnification shall also cover any and all claims that may be asserted against Lender by reason of any alleged obligation to be performed by Lender under the Lease or Assignment. Nothing in this paragraph shall be construed to bind Lender to the performance of any Lease provisions, or to otherwise impose any liability upon Lender. This Assignment shall not impose liability upon Lender for the operation and maintenance of the premises or for carrying out the Lease terms before Lender has entered and taken possession of the premises. Any loss or liability incurred by Lender by reason of actual entry and taking possession under the Lease or in the defense of any claims shall, at Lender's request, be reimbursed by Borrower.

7 Quality of Borrower's Title to Lease Borrower represents itself to be the absolute owner of the leasehold interest in the Lease, with absolute right and title to assign it, that the Lease is valid, in full force and effect, and has not been modified or amended except as stated herein; that there is no outstanding assignment or pledge thereof, that there are no existing defaults under the provisions thereof on the part of any party, and that Borrower is in possession and paying rent and other charges under the Lease as provided therein. Borrower covenants not to cancel, abridge, surrender, or terminate the Lease or change, alter, or modify it without the prior written consent of Lender. Any attempt at cancellation, surrender, termination, change, alteration, modification, assignment, or subordination of the Lease without the written consent of Lender shall be null and void.

8 Delivery of Necessary Instruments to Lender Borrower shall execute and deliver to Lender and hereby irrevocably appoints Lender, its successors, and assigns as its attorney in fact to execute and deliver during the term of this Assignment, all further instruments as Lender may deem

necessary to make this Assignment and any further assignment effective. The power hereby granted is coupled with an interest in the Collateral and is irrevocable

9 Lease Guaranties, Assignment of Lease; Alterations of Premises Borrower shall not alter, modify, cancel or terminate any guaranties of the Lease without the written consent of Lender. Borrower shall not consent to any Lease assignment or subletting, nor agree to a subordination of the Lease to any mortgage or other encumbrance, other than that of Lender, now or hereafter affecting the Collateral without Lender's prior written consent. Borrower shall not permit a material alteration of or addition to the Collateral without Lender's prior written consent.

10. Borrower to Ensure Continued Performance under Lease. Borrower shall perform all of its covenants as lessee under the Lease, including the obligation to pay rent to Landlord. Lender shall promptly deliver to Borrower copies of all notices of default Borrower has received or may hereafter receive from Landlord

11 Changes in Obligation Terms Notwithstanding any variation of the terms of the Loan Documents, including increase or decrease in the principal amount thereof or in the rate of interest payable thereunder or any extension of time for payment thereunder or any release of part or parts of the Collateral, the Lease and the benefits hereby assigned shall continue as additional security in accordance with the terms of this Assignment

12 Additions to and Replacement of Obligation Lender may take security in addition to the security already given Lender for the payment of the principal and interest provided to be paid in or by the Loan Documents or release such other security, and may release any party primarily or secondarily liable on the Loan Documents, may grant or make extensions, renewals, modifications, or indulgences with respect to the Loan Documents and replacements thereof, which replacement of the Loan Documents may be on the same or on terms different from the present terms of the Loan Documents, and may apply any other security thereof held by it to the satisfaction of the Obligation, without prejudice to any of its rights hereunder

13 Exercise of Lender's Rights Lender's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Lender's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Lender has under the Obligation and Collateral. Lender's rights and remedies hereunder may be exercised as often as Lender deems expedient

14 Amendment, Modification, or Cancellation of Assignment No amendment, modification, cancellation, or discharge hereof, or of any part hereof, shall be enforceable without Lender's prior written consent

15 Notices All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered or when deposited in the United States mail, by registered or certified mail, addressed as follows

Lender: FIRST NATIONAL BANK OF LAYTON  
P O Box 248  
1601 North Hillfield Road  
Layton, UT 84041

Borrower: TDM 43-635, LLC  
765 West Antelope Drive  
Layton, UT 84041

Such addresses may be changed by notice to the other party given in the same manner provided in this Section

16. Binding Effect All agreements herein shall inure to the benefit of, and bind the respective heirs, executors, administrators, successors, and assigns of Borrower and Lender

17. Governing Law This Assignment shall be governed by and construed in accordance with the laws of the State of Utah.

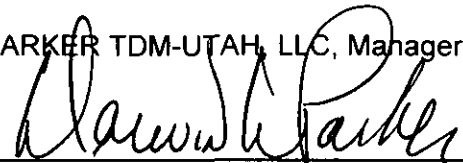
18. Attorneys' Fees In the event Lender institutes legal action against Borrower with respect to this Assignment, Lender shall be entitled to an award of reasonable attorneys' fees from Borrower. Lender shall also be entitled to collect all reasonable attorneys' fees and costs incurred with respect to any insolvency or bankruptcy action or proceeding involving Borrower

DATED this 25<sup>th</sup> day of July 2005

BORROWER

TDM 43-635, LLC

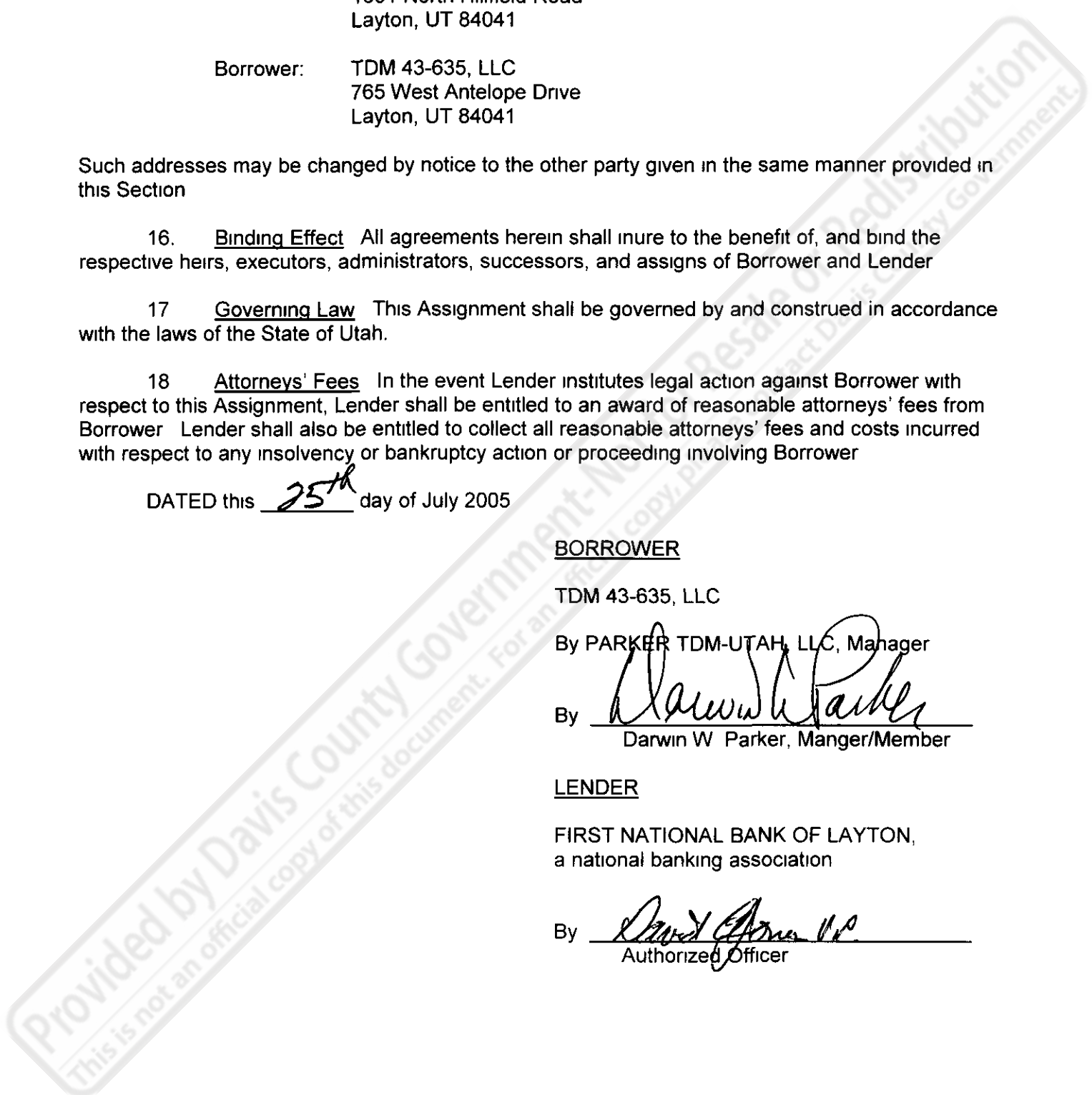
By PARKER TDM-UTAH, LLC, Manager

By   
Darwin W Parker, Manger/Member

LENDER

FIRST NATIONAL BANK OF LAYTON,  
a national banking association

By   
Authorized Officer





## LEGAL DESCRIPTION

A PART OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 4 NORTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN, BEING ALL OF LOTS 3, 4, 5, 6, 7, 8, AND 9 OF LAYTON MARKET CENTER SUBDIVISION, COUNTY OF DAVIS, STATE OF UTAH, FURTHER DESCRIBED AS FOLLOWS:

BEGIN AT THE POINT ON THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF ANTELOPE DRIVE AND THE EAST RIGHT-OF-WAY LINE OF 1000 WEST STREET. SAID POINT BEING NORTH 89 DEGREES 55 MINUTES 10 SECONDS EAST 1029.98 FEET ALONG THE SECTION LINE AND SOUTH 00 DEGREES 22 MINUTES 10 SECONDS WEST 57.00 FEET FROM THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 17; THENCE NORTH 89 DEGREES 55 MINUTES 10 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE OF ANTELOPE DRIVE, A DISTANCE OF 543.92 FEET; THENCE SOUTH 00 DEGREES 10 MINUTES 04 SECONDS WEST, A DISTANCE OF 183.30 FEET; THENCE NORTH 89 DEGREES 49 MINUTES 56 SECONDS WEST, A DISTANCE OF 216.17 FEET; THENCE SOUTH 00 DEGREES 10 MINUTES 04 SECONDS WEST, A DISTANCE OF 246.27 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 19 DEGREES 56 MINUTES 54 SECONDS AN ARC DISTANCE OF 34.82 FEET, A RADIUS OF 100.00 FEET AND A CHORD BEARING OF SOUTH 09 DEGREES 48 MINUTES 23 SECONDS EAST WITH A DISTANCE OF 34.64 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 19 DEGREES 56 MINUTES 54 SECONDS AN ARC DISTANCE OF 34.82 FEET, A RADIUS OF 100.00 FEET AND A CHORD BEARING OF SOUTH 09 DEGREES 48 MINUTES 23 SECONDS EAST WITH A DISTANCE OF 34.64 FEET; THENCE SOUTH 00 DEGREES 10 MINUTES 04 SECONDS WEST, A DISTANCE OF 185.75 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 52 DEGREES 28 MINUTES 00 SECONDS AN ARC DISTANCE OF 22.89 FEET, A RADIUS OF 25.00 FEET AND A CHORD BEARING OF SOUTH 26 DEGREES 24 MINUTES 05 SECONDS WEST WITH A DISTANCE OF 22.10 FEET; THENCE SOUTH 52 DEGREES 38 MINUTES 05 SECONDS WEST, A DISTANCE OF 47.47 FEET; THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 02 DEGREES 08 MINUTES 36 SECONDS AN ARC DISTANCE OF 868 FEET, A RADIUS OF 232.00 FEET AND A CHORD BEARING OF SOUTH 36 DEGREES 37 MINUTES 31 SECONDS EAST WITH A DISTANCE OF 8.68 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 54 DEGREES 16 MINUTES 42 SECONDS AN ARC DISTANCE OF 189.47 FEET, A RADIUS OF 200.00 FEET AND A CHORD BEARING OF SOUTH 62 DEGREES 41 MINUTES 34 SECONDS EAST WITH A DISTANCE OF 182.46 FEET; THENCE SOUTH 89 DEGREES 49 MINUTES 56 SECONDS EAST, A DISTANCE OF 38.75 FEET; THENCE SOUTH 00 DEGREES 10 MINUTES 04 SECONDS WEST, A DISTANCE OF 440.72 FEET; THENCE SOUTH 89 DEGREES 55 MINUTES 10 SECONDS WEST, A DISTANCE OF 503.11 FEET; THENCE NORTH 00 DEGREES 22 MINUTES 10 SECONDS EAST, A DISTANCE OF 1263.03 FEET TO THE POINT OF BEGINNING. CONTAINING 535,309 SQUARE FEET OR 12.29 ACRES, MORE OR LESS.

## PHASE 3A

A PART OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 4 NORTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN, COUNTY OF DAVIS, STATE OF UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF ANTELOPE DRIVE AS SHOWN ON THE FINAL PLAT OF LAYTON MARKET CENTER SUBDIVISION, SAID POINT BEING SOUTH 89 DEGREES 55 MINUTES 10 SECONDS WEST 125.00 FEET ALONG THE SECTION LINE AND SOUTH 00 DEGREES 10 MINUTES 04 SECONDS WEST 57.00 FEET FROM THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 17; THENCE SOUTH 89 DEGREES 55 MINUTES 10 SECONDS WEST, ALONG THE SOUTH LINE OF SAID ANTELOPE DRIVE A DISTANCE OF 200.00 FEET, TO THE EAST LINE OF 700 WEST STREET AS SHOWN ON SAID PLAT; THENCE SOUTH 00 DEGREES 10 MINUTES 04 SECONDS WEST, ALONG SAID EAST LINE, A DISTANCE OF 825.67 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 10 MINUTES 04 SECONDS WEST, A DISTANCE OF 437.33 FEET TO THE SOUTH WEST CORNER OF LOT 10 OF SAID LAYTON MARKET CENTER SUBDIVISION, THENCE SOUTH 89 DEGREES 55 MINUTES 10 SECONDS WEST, A DISTANCE OF 781.43 FEET TO THE SOUTHEAST CORNER OF LOT 9 OF SAID SUBDIVISION; THENCE NORTH 00 DEGREES 10 MINUTES 04 SECONDS EAST, ALONG THE EAST LINE OF SAID LOT 9, A DISTANCE OF 440.72 FEET TO THE SOUTH LINE OF LOT 2 OF SAID SUBDIVISION; THENCE SOUTH 89 DEGREES 49 MINUTES 56 SECONDS EAST, ALONG THE SOUTH LINE OF SAID LAYTON MARKET CENTER SUBDIVISION, A DISTANCE OF 781.42 FEET TO THE POINT OF BEGINNING, CONTAINING 343,064 SQUARE FEET OR 7.88 ACRES, MORE OR LESS.

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