

UNOFFICIAL COPY

0010834651

7497 0133 18 001 Page 1 of 13

2001-09-07 15:37:36

Cook County Recorder

45.50

RETURN RECORDED DOCUMENT TO:

WALGREEN CO.

200 Wilmot Road, Dept. #2252
Deerfield, Illinois 60015
Attn: Lola Allen-Muhammad

This Instrument Prepared by:
Kristen T. Saam
200 Wilmot Road, Deerfield, Illinois 60015



MEMORANDUM OF LEASE

By this Memorandum of Lease, made the 15th day of February, 2001, between STANDARD BANK AND TRUST COMPANY, not personally but as trustee under that certain Trust Agreement dated September 12, 1985 and known as Trust No. 9852, hereinafter called "Landlord," and, WALGREEN CO., an Illinois corporation, hereinafter called "Tenant";

Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, for a term commencing November 1, 2001 and continuing to and including October 31, 2061, as such dates shall be adjusted and subject to prior termination pursuant to Article 3 herein the premises located in the City of Hometown, State of Illinois to include not less than 97 feet of frontage facing 87th Street and not less than 155 feet of depth, being a rectangular area containing 14,855 square feet on the first floor, in the one-story building (the "Building") to be erected and completed by Landlord, and together with all improvements, appurtenances, easements and privileges belonging thereto (the "Leased Premises"), all as shown on the plan attached hereto and made a part hereof as Exhibit "A," as part of the Shopping Center at the southeast corner of 87th Street and Cicero Avenue, and all as legally described in Exhibit "B" hereto attached and made a part hereof and hereinafter referred to as the "Shopping Center."

UNOFFICIAL COPY

10834651

The Lease, among other things, contains the following provision(s).

CONSTRUCTION BY LANDLORD

5. (f) Notwithstanding anything contained herein to the contrary, Landlord shall use best efforts, prior to the commencement of construction of the Leased Premises to enter into an easement (the "Easement Agreement") with the State of Illinois under which Tenant, its customers, employees, agents, invitees, successors and assigns shall be granted the non-exclusive easement for parking over that certain real property identified on the Site Plan attached hereto as Exhibit "A" as the "Parking Within the Paved Area IDOT R.O.W." and hereinafter referred to as the "State Property." The Easement Agreement shall be in the form acceptable to Tenant in its sole discretion and shall have a term of not less than the Term of this Lease. In the event that Landlord has not executed and recorded the Easement Agreement against the State Property in the time frame set forth herein, then the Site Plan set forth in Exhibit "A" hereof shall be replaced with the "Alternate Site Plan 'A'" attached hereto and made a part hereof as Exhibit "A-1"; and all references herein to the "Site Plan" or Exhibit "A" shall mean and shall refer to the Site Plan as depicted on Exhibit "A-1."

EXCLUSIVES

9. (a) Landlord covenants and agrees that, during the Term and any extensions or renewals thereof, no other portion of the Shopping Center nor any additional property which Landlord directly or indirectly, may now or hereafter own or control and which is contiguous to, or which is within five hundred (500) feet of any boundary of, the Shopping Center, will be used for any one or combination of the following: (i) the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; (ii) the operation of a medical diagnostic lab and/or the provision of treatment services; (iii) the sale of so-called health and/or beauty aids and/or drug sundries; (iv) the operation of a business in which photofinishing services and/or photographic film are offered for sale; (v) the operation of a business in which greeting cards and/or gift wrap are offered for sale; and/or (vi) the operation of a business in which food items for off premises consumption are offered for sale (provided, however, that the use restriction contained in this subparagraph (vi) shall not apply to a carry-out pizzeria, carry-out Chinese restaurant, carry-out sandwich shop, carry-out hamburger restaurant or other carry out restaurant provided that the number of seats contained therein shall not exceed ten (10); or the sale of prepared food items for off-premises consumption by a so-called "accommodation" food user, i.e., a use that does not offer full meals, but rather offers a limited product line such as coffee, cookies, bagels, cinnamon rolls, donuts, pastries

UNOFFICIAL COPY

10834651

(i.e. a bakery), candy, ice cream, frozen yogurt, juice drinks or the like; and, provided further, a so-called "accommodation" food user shall in no event include a so-called "food mart" that sells convenience foods, a service station that includes a food mart or the operation of a so-called "convenience store"). In the event that Tenant files suit against any party to enforce the foregoing restrictions, Landlord agrees to cooperate fully with Tenant in the prosecution of any such suit, and reimburse Tenant for all of attorneys' fees and court costs incurred by Tenant in connection with such suit, notwithstanding its resolution. For purposes hereof "contiguous" shall mean property that is either adjoining the Shopping Center or separated from the Shopping Center only by a public or private street, alley or right-of-way.

Notwithstanding the foregoing, the above restrictions shall not apply to the operation of a business in the Shopping Center operating under a lease in existence prior to the date of execution of this Lease provided, however, (i) Landlord shall not amend any such existing lease so as to allow the operation of a business in violation of the foregoing exclusive use restriction, such as by way of example and without limitation, amending any existing use and/or assignment or subletting provisions contained in such leases and, provided further, (ii) that if Landlord has the right to withhold consent to any assignment or sublet under any such existing lease, Landlord will not consent to any assignment or sublet under any such lease to a use in violation of the foregoing exclusive use restrictions. Landlord shall enforce any use provisions contained in any such existing lease which prohibit or restrict such tenant from operating a business in violation of the foregoing exclusive use restrictions; in the event Landlord shall fail or refuse to so enforce any such use provision, Tenant shall be deemed to have been assigned Landlord's right to enforce such use provision and all costs incurred by Tenant in the event of such enforcement (including without limitation attorneys' fees and costs) shall be reimbursed to Tenant from Landlord.

(b) Landlord shall not permit or suffer any other occupant of the Shopping Center to use any premises or any portion thereof for purposes of a cocktail lounge, bar, disco, theater, bowling alley, pool hall, billiard parlor, automobile sales or leasing facility, skating rink, roller rink, amusement arcade, children's play or party facility, adult book store, adult theatre, adult amusement facility, or any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store, auction house, flea market, office (except incidental to a retail business or the following office uses: banks or similar financial institutions, brokerage offices, real estate offices, travel and/or insurance agencies, doctor, dental, surgical, chiropractic or other medical or treatment offices), educational or training facility, restaurant (except for a carry-out pizzeria, carry-out Chinese restaurant, carry-out sandwich shop, carry-out hamburger restaurant or other carryout restaurant provided that the number of seats contained therein shall not exceed ten (10)), exercise or health club, gym or any use which creates a nuisance.

UNOFFICIAL COPY

10834651

(c) Landlord and Tenant covenant and agree that in the event of a violation or threat thereof of any of the use provisions of Sections (a) and/or (b) above, Tenant shall suffer irreparable harm and Tenant shall have no adequate remedy at law. As a result, Landlord and Tenant further covenant and agree that in the event of a violation or threat thereof of any of the use provisions of Sections (a) and/or (b) above, Tenant, in addition to all remedies available to Tenant at law and/or under this Lease, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of Sections (a) and/or (b) above.

(d) Landlord covenants and agrees that all other leases, subleases or other instruments enabling occupancy or operations in the Shopping Center expressly provide that any exclusive use restrictions that may be contained in such leases, subleases or other instruments shall not apply to the Leased Premises. In the event that any action, claim or suit is brought by any party (including without limitation any other tenant of the Shopping Center) against Tenant alleging that Tenant's operations in the Leased Premises are in violation of any use restriction contained in any instrument, Landlord shall defend (by counsel reasonably satisfactory to Tenant), indemnify and hold Tenant harmless from any damages, loss, or cost (including, without limitation, attorneys' fees and costs) suffered by Tenant thereby, or from the enforcement of said restriction against Tenant. In addition, in the event that a court of competent jurisdiction shall hold that Tenant's operations in the Leased Premises are in violation of any such use restriction (including without limitation any other tenant's exclusive use restriction), Tenant, at Tenant's option shall have the right to terminate this Lease upon thirty (30) days written notice thereof to Landlord.

RIGHT OF FIRST REFUSAL

32. (a) In the event that Landlord shall receive a Bona Fide Offer to purchase the Leased Premises at any time and from time to time on or after the date hereof and during the Initial Term and Term of this Lease or any extensions thereof from any person or entity, Landlord shall so notify Tenant (Attn: Law Department) together with a true and correct copy of said Bona Fide Offer. For purposes hereof, a "Bona Fide Offer" shall be deemed to be one made in writing by a person or entity that is not related or affiliated with Landlord which Landlord intends to accept (subject to this Article). In submitting the Bona Fide Offer to Tenant, Landlord shall segregate the price and the terms of the offer for the Leased Premises from the price and other terms connected with any additional property or properties that such person or entity is offering to purchase from Landlord. Tenant may, at Tenant's option and within forty-five (45) days after receipt of Landlord's notice of said Bona Fide Offer and receipt of a copy thereof, offer to purchase the Leased Premises at the price and upon the terms and

conditions as are contained in said Bona Fide Offer, in which event, Landlord shall sell the Leased Premises to Tenant upon said terms and conditions and said price; furthermore, in such event, Landlord shall convey the Leased Premises to Tenant by warranty deed. Notwithstanding the foregoing, the price that Tenant shall pay for the Leased Premises shall be reduced by (i) an amount equal to broker's fees or commissions that would have been payable by either the purchaser or Landlord if the Leased Premises were sold pursuant to a Bona Fide Offer; and (ii) the amount of any payment(s) to be made by the proposed purchaser to any entity owned or controlled by, or affiliated with, the proposed purchaser. Landlord shall provide Tenant evidence of the amount of broker's fees or commissions payable in connection with any such Bona Fide Offer. Landlord covenants that it shall accept no such Bona Fide Offer or convey the premises until it has complied with the terms of this Article. Any conveyance of the Leased Premises made in the absence of full satisfaction of this Article shall be void. Tenant may enforce this Article, without limitation, by injunction, specific performance or other equitable relief.

(b) Tenant's election not to exercise its Right of First Refusal shall not prejudice Tenant's rights hereunder as to any further Bona Fide Offer. The terms and conditions contained in this Article shall be binding upon the heirs, successors and assigns of Landlord.

ACQUISITION CONTINGENCY

33. Landlord shall use its best efforts to acquire legal title to the Leased Premises. If Landlord is unable to acquire legal title to the Leased Premises within three (3) months after execution of this Lease, Landlord may terminate this Lease, and neither party shall have any liability or further obligation under this Lease. However, if within two (2) years from the date of this Lease, Landlord and/or any affiliated entity acquires legal title to the Leased Premises as an owner, shareholder, partner, principal, beneficiary, or otherwise directly or indirectly owns, acquires, leases or controls both the Leased Premises and the Adjacent Property, then this Lease, at Tenant's option shall be deemed reinstated and such party acquiring title shall ratify and adopt this Lease. Both parties recognize that a breach of this paragraph will leave Tenant with no adequate remedy at law and accordingly, Tenant may seek appropriate equitable relief against such party acquiring title.

Provisions for rent and the other terms, covenants and conditions of said letting, including the options on the part of Tenant for prior termination, are set forth at length in the Lease and all of said provisions, terms, covenants and conditions are, by reference thereto, hereby incorporated in and made a part of this Memorandum of Lease.

This instrument shall also bind and benefit, as the case may require, the heirs, legal representatives, assigns and successors of the respective parties, and all covenants, conditions and agreements herein contained shall be construed as covenants running with the land. This instrument shall not become binding upon the parties until it shall have been executed and delivered by both Landlord and Tenant.

This Memorandum of Lease is made and executed by the parties hereto for the purpose of recording the same in the office of the public records of Cook County, Illinois and is subject in each and every respect, to the rents and other terms, covenants and conditions of the Lease, bearing even date herein, between the parties hereto and this Memorandum of Lease is executed and delivered with the understanding and agreement that the same shall not in any manner or form whatsoever, alter, modify or vary the rents and other terms, covenants and conditions of the Lease.

[THIS REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Property of Cook County Clerk's Office

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease, under seal, as of the day and year first above written.

EXCULPATORY CLAUSE ATTACHED HERETO AND MADE A PART HEREOF.

WALGREEN CO.

STANDARD BANK AND TRUST COMPANY, not personally but as trustee under that certain Trust Agreement dated September 12, 1985 and known as Trust No. 9852

KTS
MF

By William A. Smith
Vice President

By Patricia Ralphson
Patricia Ralphson, T. O.

Attest:

Dann S. Godfrey
Assistant Secretary

Attest:

Sandra A. Kelly
Sandra Kelly, L. O.

Witnesses:

Donna Lynne Smith
Julia McGehee

Witnesses:

Property of Cook County Clerk's Office

This DOCUMENT is executed by STANDARD BANK & TRUST COMPANY, not personally but as Trustee under Trust No. 9852 as aforesaid, in the exercise of power and authority conferred upon and vested in said Trustee as such, and it is expressly understood and agreed that nothing in said document contained shall be construed as creating any liability on said Trustee personally to pay any indebtedness accruing thereunder, or to perform any covenants, either expressed or implied, including but not limited to warranties, indemnifications, and hold harmless representations in said Document (all such liability if any, being expressly waived by the parties hereto and their respective successors and assigns) and that so far as said Trustee is concerned, the owner of any indebtedness or right accruing under said Document shall look solely to the premises described therein for the payment or enforcement thereof, it being understood that said Trustee merely hold legal title to the premises described therein and has no control over the management thereof or the income therefrom, and has no knowledge respecting any factual matter with respect to said premises, except as represented to it by the beneficiary or beneficiaries of said trust. Inevent of conflict between the terms of this rider and of the agreement to which it is attached, on any questions of apparent liability or obligation resting upon said Trustee, the provisions of this rider shall be controlling.

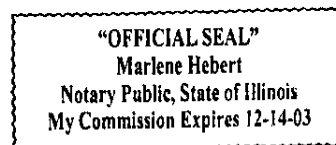
STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY, THAT Patricia Ralphson, T. O. of STANDARD BANK & TRUST COMPANY and Sandra Kelly, L. O. of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such T. O. and L. O. respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and the said L. O. did also then and there acknowledge that he/she, as custodian of the corporate seal of said Bank, did affix the said corporate seal of said Bank to said instrument as his/her own free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposed therein set forth.

Given under my hand and Notarial Seal this 27th day of June, 20 01.

Marlene Hebert

Notary Public



UNOFFICIAL COPY

10834651

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

I, the undersigned, a Notary Public, do hereby certify that William A. Shiel personally known to me to be the Vice President of WALGREEN CO., an Illinois corporation, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as such Vice President of said corporation, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the purposes therein set forth.

Given under my hand and notarial seal this 15th day of February, 2001.

W A Montgomery
Notary Public

My commission expires:

STATE OF _____)
) SS
COUNTY OF _____)



I, a Notary Public, do hereby certify that _____, personally known to me to be the _____ of _____, a(n) _____ corporation, and personally known to me to be the persons whose names are subscribed in the foregoing instrument, appeared before me this day in person and severally acknowledged that he/she signed and delivered the said instrument as such _____ of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation, for the purposes therein set forth.

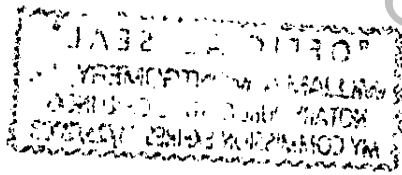
Given under my hand and notarial seal this _____ day of February, 2001.

Notary Public

My commission expires:

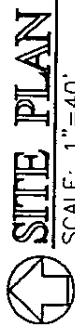
UNOFFICIAL COPY

Property of Cook County Clerk's Office



10834651

UNOFFICIAL COPY



SITE PLAN

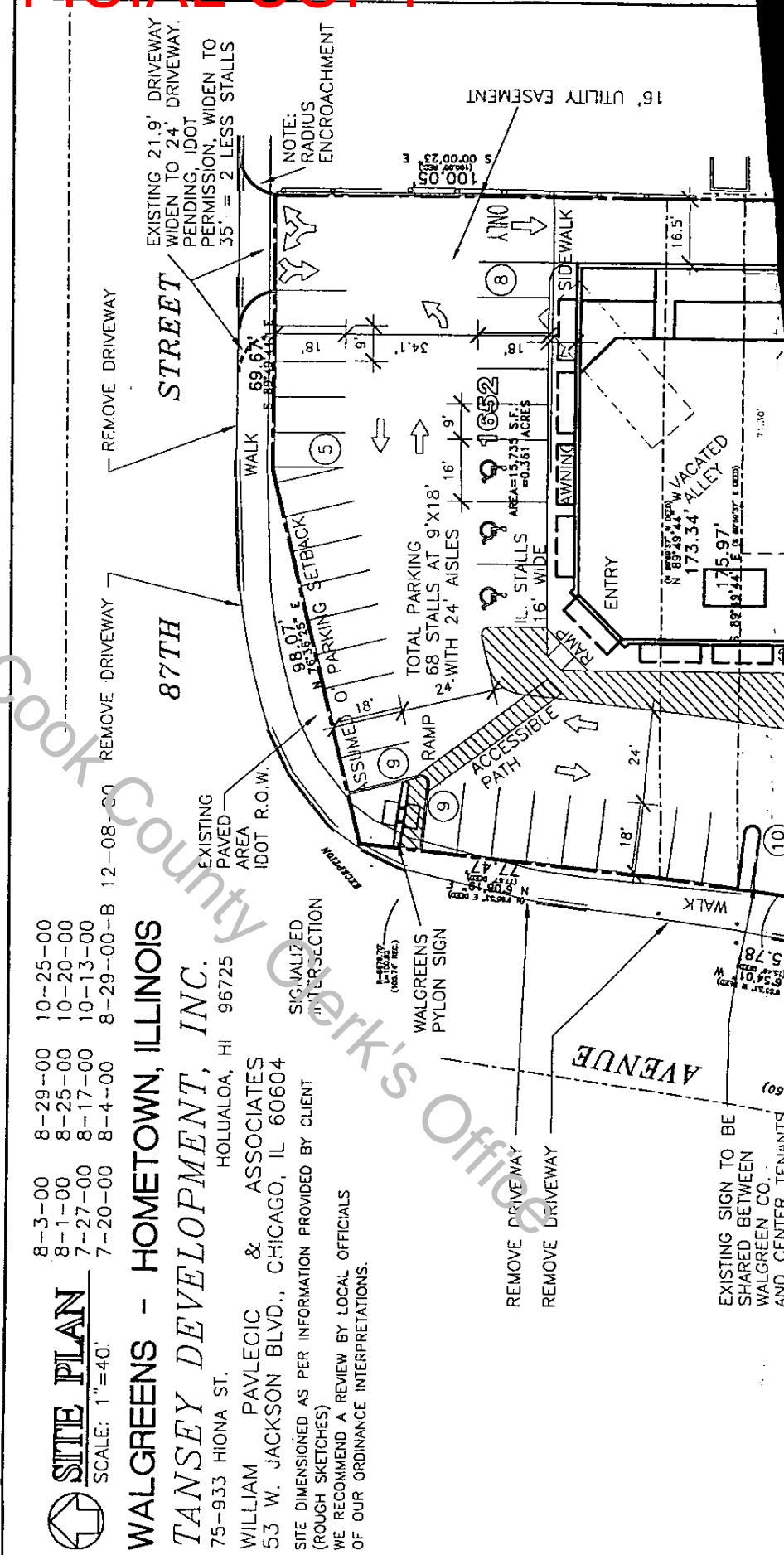
SCALE: 1"=40'

**WALGREENS - HOMETOWN, ILLINOIS
TANSEY DEVELOPMENT, INC.**

75-933 HIONA ST.
HOLUALOA, HI 96725
WILLIAM PAVLECIC & ASSOCIATES
53 W. JACKSON BLVD., CHICAGO, IL 60604

SITE DIMENSIONED AS PER INFORMATION PROVIDED BY CLIENT
(ROUGH SKETCHES)
WE RECOMMEND A REVIEW BY LOCAL OFFICIALS
OF OUR ORDINANCE INTERPRETATIONS.

- 8-3-00 8-29-00 10-25-00
- 8-1-00 8-25-00 10-20-00
- 7-27-00 8-17-00 10-13-00
- 7-20-00 8-4-00 8-29-00-B
- 12-08-00 REMOVE DRIVEWAY



Property of Cook County Clerk's Office

EXISTING SIGN TO BE SHARED BETWEEN WALGREEN CO. AND CENTER TENANTS

EXHIBIT "B"

LEGAL DESCRIPTION OF SHOPPING CENTER

Parcel 1:

THAT PART OF LOT 1652, LYING EASTERLY OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF LOT 1652 AFORESAID 69.67 FEET WEST OF THE NORTHEAST CORNER THEREOF; THENCE SOUTHWESTERLY TO A POINT 165 FEET WEST OF AND 23 FEET SOUTH OF SAID NORTHEAST CORNER (AS MEASURED ON SAID NORTH LINE AND ON A LINE AT RIGHT ANGLES THERETO); THENCE SOUTHWESTERLY TO A POINT ON THE SOUTH LINE OF LOT 1652 AFORESAID 5.1 FEET EAST OF THE SOUTHWEST CORNER THEREOF AND EXCEPTING THEREFROM THAT PART ACQUIRED BY CONDEMNATION IN CIRCUIT COURT OF COOK COUNTY PROCEEDING NUMBER 85L50169, NAMELY THAT PART OF LOT 1652 DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTH LINE OF SAID LOT 5.1 FEET EAST OF THE SOUTHWEST CORNER THEREOF; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 59 MINUTES 37 SECONDS EAST ALONG THE SOUTH LINE 9.06 FEET; THENCE NORTH 6 DEGREES 55 MINUTES 53 SECONDS EAST 77.57 FEET TO A POINT 165.0 FEET WEST AND 23.0 FEET SOUTH OF THE NORTHEAST CORNER (AS MEASURED ON SAID NORTH LINE AND ON A LINE AT RIGHT ANGLES THERETO); THENCE SOUTH 13 DEGREES 27 MINUTES 13 SECONDS WEST 79.14 FEET TO THE POINT OF BEGINNING IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 10, BEING A SUBDIVISION OF LOT "H" (EXCEPT THE EAST 590.47 FEET THEREOF) IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 7, A SUBDIVISION OF LOT "F" IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 5, A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON JUNE 11, 1954, AS DOCUMENT NUMBER 1528599, IN COOK COUNTY, ILLINOIS.

Parcel 2:

LOT 1651 (EXCEPT THAT PART THEREOF LYING WESTERLY OF THE FOLLOWING DESCRIBED CURVED LINE: BEGINNING AT A POINT IN THE NORTH LINE OF SAID LOT 1651, A DISTANT 5.10 FEET EAST OF THE NORTHWEST CORNER THEREOF; THENCE SOUTHERLY ALONG A CURVED LINE CONCAVE

TO THE SOUTHEAST, HAVING A RADIUS OF 5674.70 FEET AND PARALLEL WITH THE WESTERLY LINE OF SAID LOT 1651, A DISTANCE OF 251.00 FEET TO A POINT IN THE SOUTH LINE OF SAID LOT 1651 DISTANT 5.10 FEET EAST OF THE SOUTHWEST CORNER THEREOF) (ALSO EXCEPTING THAT PART OF LOT 1651 DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 5.10 FEET EAST OF THE NORTHWEST CORNER; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 59 MINUTES 37 SECONDS EAST