

# UNOFFICIAL COPY



Doc#: 0530519080 Fee: \$50.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 11/01/2005 02:12 PM Pg: 1 of 14

This Instrument Prepared by and after recording return to:  
  
Jason L. LaBella, Esq.  
Much Shelist Freed Denenberg  
Ament & Rubenstein, P.C.  
191 North Wacker Drive  
Suite 1800  
Chicago, IL 60606-1615

## DECLARATION OF EASEMENT FOR WATER MAINS, SEWER LINES AND UTILITIES

THIS DECLARATION OF EASEMENT FOR WATER MAINS, SEWER LINES AND UTILITIES (the "**Declaration**") is made and entered into this 26<sup>th</sup> day of October, 2005, by **43<sup>rd</sup> & Oakley, LLC**, an Illinois limited liability company and **2221 W. 43<sup>rd</sup> Street, LLC**, an Illinois limited liability company (collectively, the "**43<sup>rd</sup> LLC's**"), **Altman Real Estate L.L.C.**, an Illinois limited liability company ("**Altman**") (Altman and the 43<sup>rd</sup> LLC's are sometimes collectively referred to as "**Grantors**", individually as a "**Grantor**") and **Juice Tyme, Inc.**, a Wisconsin corporation ("**Juice Tyme**" or "**Grantee**").

### RECITALS

- A. The 43<sup>rd</sup> LLC's are the owners of that certain parcel of real property (the "**43<sup>rd</sup> & Oakley Parcel**") legally described on attached Exhibit A;

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- B. Altman is the owner of that certain parcel of real property (the "**Altman Parcel**") legally described on attached Exhibit B (the 43<sup>rd</sup> and Oakley Parcel and Altman Parcel are sometimes collectively referred to as the "**Servient Parcels**");
- C. Juice Tyme is the owner of that certain parcel of real property (the "**Juice Tyme Parcel**") legally described on attached Exhibit C (the 43rd & Oakley Parcel, Altman Parcel and Juice Tyme Parcel are sometimes collectively referred to as the "**Parcels**", individually as a "**Parcel**"); and
- D. Juice Tyme wishes to receive, and Grantors wish to grant an easement for the installation, maintenance, and repair of water mains, sewer lines and utilities, all on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the above premises and of the covenants contained in this Declaration, the Grantors and Grantee declare that the Parcels and all present and future owners and occupants of the Parcels will be and are subject to the easements set forth in this Declaration, so that said Parcels will be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith, Grantors and Grantee covenant and agree as follows:

## AGREEMENTS

### 1. Definitions.

- (a) Owner. The term "**Owner**" or "**Owners**" means the Grantors, Grantee and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered by this Declaration, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.
- (b) Permittees. The term "**Permittees**" means the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).
- (c) Easement Parcel. The term "**Easement Parcel**" means that certain portion of the Servient Parcels as depicted and described on attached Exhibit D.

### 2. Easements.

- (a) Grant of Easement Over Servient Parcels. Subject to the terms, conditions and limitations contained in this Declaration, Grantors declare and grant to Grantee a nonexclusive and perpetual easement for the installation, maintenance, repair and operation of underground water main, sewer and other lines and utilities in and under the Easement Parcel, including the right of access over such other portions of the Servient Parcels from any abutting streets or rights of way to the Easement Parcel as is necessary from time to time to exercise these rights.
- (b) Indemnification. Except to the extent caused solely by the negligence or willful misconduct of any such Owner, or such Owner's Permittees, employee, agent, licensee or contractor, Grantee agrees to indemnify, defend and hold each Owner of the Servient

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Parcels, harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to (i) accidents, injuries, loss, or damage of or to any person or property arising from the negligent acts or omissions of Grantee, its contractors, employees, agents, or others acting on behalf of Grantee, and (ii) Grantee's use, maintenance and repair of the Easement Parcel or any utilities located on or in the Easement Parcel.

(c) Barriers. No Owner or its Permittees will allow any portion of the Easement Parcel or the access to the Easement Parcel from any abutting streets or rights of way furnishing access to the Easement Parcel to be blocked, closed, altered, changed or removed, or any improvements to be built on the Easement Parcel.

(d) Reasonable Use of Easement. The easement granted above will be used and enjoyed by Grantee and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Parcel.

3. Maintenance. Each Owner will keep, maintain, repair, replace and preserve access points to public utilities on that portion of the Easement Parcel located on the Parcel it owns in good, safe, and clean condition and repair. Provided, however, Grantee will keep, maintain, repair and replace all utilities in the Easement Parcel and serving the Juice Tyme Parcel in good working order at its own cost, and will repair any damage to any Servient Parcel caused by such maintenance, repairs or replacements.

4. Remedies and Enforcement.

(a) All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions of this Declaration, the other Owner(s) may seek immediate full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

(b) Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within 30 days following written notice by another Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and diligently prosecutes such cure to completion), any Owner may perform such obligation on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs incurred together with interest at the prime rate published from time to time by the Wall Street Journal (its successors or assigns), plus 2% (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency, and/or (ii) blockage or material impairment of the easement rights, an Owner may immediately cure the same and be reimbursed by the defaulting other Owner upon demand for the reasonable cost incurred together with interest at the prime rate, plus 2%, as above described.

(c) Remedies Cumulative. The remedies specified above will be cumulative and in addition to all other remedies permitted at law or in equity.

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(d) No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach under this Declaration will entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach under this Declaration will defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions of this Declaration will be binding upon and effective against any Owner of such Parcel title to which is acquired by foreclosure, trustee's sale, or otherwise.

(e) Irreparable Harm. In the event of a violation or threat of violation of any of the provisions of paragraph 2 of this Declaration, each Owner agrees that such violation or threat of violation will cause the nondefaulting Owner, Permittees or both to suffer irreparable harm and such nondefaulting Owner and its Permittees will have no adequate remedy at law. As a result, in the event of a violation or threat of violation of any of the provisions of paragraph 2 of this Declaration, the nondefaulting Owner, in addition to all remedies available at law or otherwise under this Declaration, will be entitled to injunctive or other equitable relief to enjoin a violation or threat of violation of paragraph 2 of this Declaration.

5. Term. The covenants, conditions and restrictions contained in this Declaration will be effective commencing on the date this Declaration is recorded in the office of the Cook County Recorder of Deeds and will remain in full force and effect in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of the Parcels in accordance with paragraph 6(b) below.

6. Miscellaneous.

(a) Attorneys' Fees. In the event any party institutes any legal action or proceeding for the enforcement of any right or obligation contained in this Declaration, the prevailing party after a final adjudication will be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding from the non-prevailing party.

(b) Amendment. Owners agree that the provisions of this Declaration may only be modified or amended, in whole or in part, or terminated, by the written consent of all record Owners of the Parcels, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Cook County Recorder of Deeds.

(c) Consents. Wherever in this Declaration the consent or approval of an Owner is required, such consent or approval may not be unreasonably withheld or delayed. Any request for consent or approval must: (a) be in writing; and (b) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing.

(d) No Waiver. No waiver of any default of any obligation by any party will be implied from any omission by the other party to take any action with respect to such default.

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- (e) No Agency. Nothing in this Declaration will be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.
- (f) Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth in this Declaration will run with the land and create equitable servitudes in favor of the real property benefited, will bind every person having any fee, leasehold or other interest such real property and will inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.
- (g) Grantee's Acceptance. The grantee of all or any portion of any Parcel, by acceptance of a deed conveying title to, or the execution of a contract for the purchase of such Parcel or portion of a Parcel, whether from an original party or from a subsequent owner of such Parcel, will accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained in this Declaration. By such acceptance, any such grantee will for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth in this Declaration with respect to the property so acquired by such grantee.
- (h) Severability. Each provision of this Declaration and its application to the Parcels are declared to be independent of and severable from the remainder of this Declaration. If any provision of this Declaration is held to be invalid, unenforceable or not to run with the land, such holding will not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all or any Parcels by the same person or entity will not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.
- (i) Time of Essence. Time is of the essence of this Declaration.
- (j) Entire Agreement. This Declaration contains the complete understanding and agreement of the parties with respect to all matters referred to in this Declaration, and all prior representations, negotiations, and understandings are superseded.
- (k) Notices. Notices or other communication under this Declaration must be in writing and sent via (i) certified or registered United States mail, return receipt requested, (ii) nationally recognized overnight courier company, (iii) facsimile, (iv) or personal delivery. Notice will be deemed effective (i) 3 days after deposit with certified or registered United States mail, return receipt requested, (ii) 1 business day after deposit with nationally recognized overnight courier company, (iii) on the day of transmission if by facsimile prior to 5:00 p.m. central time, otherwise on the next business day, or (iv) upon receipt or refusal to accept delivery if by personal delivery. Each party may change from time to time their respective address for notice by like notice to the other party. The notice addresses of Owners are as follows:

43rd LLC's and Altman: Altman Machinery

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4343 South Oakley  
Chicago, Illinois 60609  
Attn: Howard Altman

Prior to 1/1/06, with copy to: Bronson & Kahn, LLC  
150 North Wacker Drive, Ste. 1400  
Chicago, Illinois 60606  
Attn: Howard Friedman  
Fax: 312.553.1733

On and after 1/1/06, with  
copy to: Howard Friedman  
6745 North Kilpatrick  
Lincolnwood, Illinois 60712

Juice Tyme: Juice Tyme, Inc.  
4401 South Oakley  
Chicago, Illinois 60609

With a copy to: Much Shelist Freed Denenberg Ament & Rubinstein, P.C.  
191 North Wacker Drive, Ste. 1800  
Chicago, IL 60606-1615  
Attn: Jason L. LaBella  
Fax: 312.521.2852

(l) Governing Law. The laws of the State of Illinois will govern the interpretation, validity, performance, and enforcement of this Declaration.

(m) Deed. Owners agree that this Declaration in no way limits, terminates or otherwise restricts any of the easement rights granted under the Deed or any other document of record affecting any of the Parcels.

(n) Counterparts. This Declaration may be executed in any number of counterparts, all of which taken together will constitute one original Declaration.

***[Rest of page intentionally blank – signatures on following page.]***



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IN WITNESS WHEREOF, Grantors and Grantee have executed this Declaration as of the date first written above.

**43<sup>rd</sup> & OAKLEY, LLC.**, an Illinois limited liability company

By:  \_\_\_\_\_

Its: \_\_\_\_\_

**2221 W. 43<sup>rd</sup> STREET, LLC**, an Illinois limited liability company

By:  \_\_\_\_\_

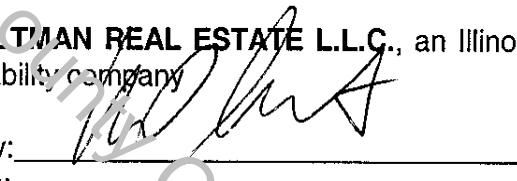
Its: \_\_\_\_\_

**JUICE TYME, INC.**, a Wisconsin corporation

By:  \_\_\_\_\_

Its: \_\_\_\_\_

**ALTMAN REAL ESTATE L.L.C.**, an Illinois limited liability company

By:  \_\_\_\_\_

Its: \_\_\_\_\_

Property of Cook County Clerk's Office

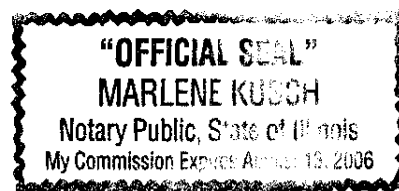
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STATE OF ILLINOIS )  
COUNTY OF COOK ) SS.

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that HARRY COHEN as the Manager of 43<sup>RD</sup> & OAKLEY, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager of the company, appeared before me this day in person and acknowledged he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 17<sup>th</sup> day of October, 2005.

Marlene Kusch  
Notary Public

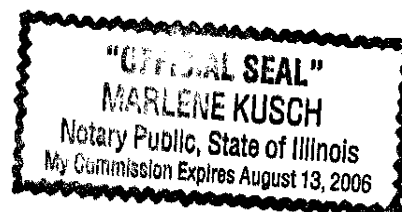


STATE OF ILLINOIS )  
COUNTY OF \_\_\_\_\_ ) SS.

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Harry Cohen, as the Manager of 2221 W. 43<sup>RD</sup> STREET, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager of the company, appeared before me this day in person and acknowledged he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 17<sup>th</sup> day of October, 2005.

Marlene Kusch  
Notary Public





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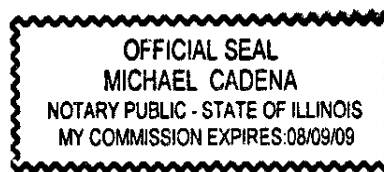
STATE OF ILLINOIS )  
                                  ) SS.  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Matthew Mackey as the v.p. of **JUICE TYME, INC.**, a Wisconsin corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such v.p. of the company, appeared before me this day in person and acknowledged he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 26 day of October, 2005.

Michael Cadena

Notary Public



Property of Cook County Clerk's Office



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## EXHIBIT A

### 43<sup>rd</sup> & Oakley Parcel Legal Description

THE NORTH 175.29 FEET OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART THEREOF WHICH LIES EASTERLY OF A STRAIGHT LINE DRAWN FROM A POINT WHICH IS 150 FEET WEST FROM THE EAST LINE AND 180 FEET SOUTH FROM THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST QUARTER WHICH IS 192 FEET WEST FROM THE EAST LINE OF SAID NORTHWEST QUARTER OF SOUTHWEST QUARTER OF SAID SECTION 6 AND FURTHER EXCEPTING THE NORTH 33 FEET TAKEN FOR STREET.

Common Address: 2221 W. 43<sup>rd</sup> Street  
Chicago, Illinois 60609

PIN: 31-12-402-024

Property of Cook County Clerk's Office

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## EXHIBIT B

### Altman Parcel Legal Description

#### PARCEL 1:

LOT 1 IN EPIC METALS CORPORATION SUBDIVISION, BEING A SUBDIVISION IN THE EAST ½ OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

#### PARCEL 2

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DEED RECORDED FEBRUARY 17, 1910 AS DOCUMENT 4512051 FOR INGRESS AND EGRESS OVER THE WEST 17 FEET OF THE FOLLOWING DESCRIBED LAND; THE NORTH 175.29 FEET OF THE EAST ½ OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN EXCEPTING THEREFROM THAT PART THEREOF WHICH LIES EASTERLY OF A STRAIGHT LINE DRAWN FROM A POINT WHICH IS 150 FEET WEST FROM THE EAST LINE AND 180 FEET SOUTH FROM THE NORTH LINE OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF SAID SECTION 6 TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST ¼ WHICH IS 192 FEET WEST FROM THE EAST LINE OF SAID NORTHWEST ¼ OF THE SOUTHWEST ¼ OF SAID SECTION 6 AND FURTHER EXCEPTING THE NORTH 33 FEET TAKEN FOR STREET), IN COOK COUNTY, ILLINOIS.

Common Address: 4343 South Oakley Avenue  
Chicago, Illinois 60609

PIN: 20-06-300-032

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## EXHIBIT C

### Juice Tyme Parcel Legal Description

#### PARCEL 1:

THE SOUTH 361.21 FEET OF THE NORTH 853.50 FEET (EXCEPT THE EAST 150 FEET THEREOF) OF THE EAST  $\frac{1}{2}$  OF THE NORTHWEST  $\frac{1}{4}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THEREFROM THAT PART THEREOF WHICH LIES SOUTH OF A LINE DRAWN PARALLEL WITH THE SOUTH LINE OF SAID EAST  $\frac{1}{2}$  OF THE NORTHWEST  $\frac{1}{4}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SAID SECTION 6, THROUGH A POINT ON THE WEST LINE OF SAID EAST  $\frac{1}{2}$  OF THE NORTHWEST  $\frac{1}{4}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SAID SECTION 6, WHICH POINT IS 323.53 FEET SOUTH FROM THE NORTH LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF SAID SECTION 6); AND ALSO EXCEPTING THEREFROM THE WEST 253.00 FEET OF THE SOUTH 156.00 FEET OF THE NORTH 678.29 FEET OF THE EAST  $\frac{1}{2}$  OF THE NORTHWEST  $\frac{1}{4}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SAID SECTION 6); AND

#### PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 OVER AND ACROSS THE WEST 17 FEET OF THE NORTH 492.29 FEET (EXCEPT THE NORTH 33 FEET THEREOF) OF THE EAST  $\frac{1}{2}$  OF THE NORTHWEST  $\frac{1}{4}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, FOR ROADWAY PURPOSES FOR INGRESS & EGRESS, AS RESERVED IN THE WARRANTY DEED FROM PENNOYER MERCHANTS TRANSFER COMPANY, A CORPORATION OF ILLINOIS, TO BERNARD S. MADORIN AND LUCILLE SIRK DATED NOVEMBER 2, 1964 AND RECORDED NOVEMBER 24, 1964 AS DOCUMENT NO. 19313050, ALL IN COOK COUNTY, ILLINOIS.

Common Address: 4401 South Oakley  
Chicago, Illinois 60609

PIN: 20-06-300-029-0000

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## EXHIBIT D

### Easement Parcel Legal Description

A STRIP OF LAND 8.0 FEET WIDE, BEING 4.0 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT ON THE SOUTH LINE OF WEST 43<sup>RD</sup> STREET, BEING 33 FEET SOUTH OF THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID POINT BEING 1,114.00 FEET EAST OF THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH, AT RIGHT ANGLES TO THE SOUTH LINE OF WEST 43<sup>RD</sup> STREET, 120.00 FEET; THENCE EAST, AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 7.00 FEET; THENCE SOUTH, AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 188.00 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 6.00 FEET; THENCE SOUTH, AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, 204.77 FEET TO THE NORTH FACE OF A CONCRETE BLOCK BUILDING, ALL IN COOK COUNTY, ILLINOIS.