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Cook County Recorder of Deeds
Date: 12/01/2006 02:52 PM Pg: 1 of 10

Alan Ehrenberg
Statman Harris & Eyrich, LLC
333 West Wacker Drive,
Suite 1710
Chicago, Illinois 60606
(312) 263-1070

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SECOND MODIFICATION OF CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT, AND ASSIGNMENT OF LEASES AND RENTS

This Second Modification of Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement, and Assignment of Leases and Rents, is made as of November 22 2006 by and among **CHICAGO TITLE LAND TRUST COMPANY**, as Trustee under trust agreement dated April 21, 1999, and known as Trust No. 7003921 ("**Chicago Title**"), with a mailing address of 181 West Madison Street, 17th Floor, Chicago, Illinois 60602, **MELROSE LAKE, L.L.C.**, an Illinois limited liability company ("**Melrose**"), with a mailing address of 518 Broadway Street, Libertyville, Illinois 60048 ("**Beneficiary**"), (Chicago Title and Beneficiary are hereinafter collectively referred to as "**Borrower**") and **FIFTH THIRD BANK**, a Michigan banking corporation, with an office at 101 W. Stephenson Street, Freeport Illinois 61032, successor to Old Kent Bank, a national banking association, as successor to Grand National Bank ("**Lender**") as follows.

RECITALS:

A. Borrower executed that certain Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement ("**Mortgage**"), and that certain Assignment of Leases and Rents ("**Assignment**"), each dated April 30, 1999, and recorded on June 10, 1999 in the Cook County Recorder's office as Documents Nos. 99450967 and 99450968, respectively, which encumber the real property described in Exhibit A attached hereto and incorporated herein;

B. The Mortgage and Assignment secure the Mortgage Note dated May 26, 2000 made by Borrower payable to the order of Lender in the principal amount of Five Million Eight Hundred Sixty Thousand and no/100 Dollars (\$5,860,000.00) made pursuant to the Letter Loan Agreement dated May 26, 2000 between the Borrower and the Lender.

NOW THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties do hereby agree as follows:

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1. **Incorporation.** The RECITALS to this Agreement are fully incorporated herein by this reference and shall have the same force and effect as though restated herein.

2. **Modification of the Mortgage.** The Mortgage is hereby modified as follows:

(a) All references to "Old Kent Bank, as successor to Grand National Bank" are hereby deleted and replaced with "Fifth Third Bank, as successor to Old Kent Bank."

(b) All references to the notice address of the Lender shall be deleted and replaced with:

Fifth Third Bank
Commercial Loan Department
101 W. Stephenson Street
P.O. Box 297
MD GFPT2D
Freeport, Illinois 61032
Attention: Jim Barker

(c) The first "WHEREAS" contained in the RECITALS is deleted in its entirety and replaced with the following:

WHEREAS, Borrower has executed and delivered to Lender that certain Amended and Restated Mortgage Note dated November 22, 2006 wherein Borrower promises to pay to the order of Lender the principal amount of Four Million Forty Four Thousand Nine Hundred Eight and 78/100 Dollars (\$4,044,908.78) (the "Note"), together with interest thereon at the rate and as otherwise set forth in the Note, which Note is due and payable on or before December 1, 2011; and

(d) All references to the "Loan Agreement" are hereby deleted.

(e) Paragraph 5.04 of the Mortgage is amended to provide that all actions or proceedings arising in connection with the Mortgage shall be tried and determined only in the State or Federal Courts located in Cook County, Illinois.

3. **Modification of the Assignment.** The Assignment is hereby modified as follows:

(a) All references to "Old Kent Bank, as successor to Grand National Bank" are hereby deleted and replaced with Fifth Third Bank, as successor to Old Kent Bank."

(b) All references to the notice address of the Lender shall be deleted and replaced with:

Fifth Third Bank
Commercial Loan Department
101 W. Stephenson Street
P.O. Box 297
MD GFPT2D
Freeport, Illinois 61032
Attention: Jim Barker

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- (c) The first "WHEREAS" contained in the WITNESSETH is deleted in its entirety and replaced with the following:

WHEREAS, Borrower has executed and delivered to Lender that certain Amended and Restated Mortgage Note dated November 22, 2006 wherein Borrower promises to pay to the order of Lender the principal amount of Four Million Forty Four Thousand Nine Hundred Eight and 78/100 Dollars (\$4,044,908.78) (the "Note"), together with interest thereon at the rate and as otherwise set forth in the Note, which Note is due and payable on or before December 1, 2011; and

4. **Ratification.** Borrower hereby ratifies, confirms and adopts its liabilities and obligations under the Note, Mortgage, Assignment and any other loan documents relative thereto, all as amended by this Agreement, and the liens and security interests created thereby and acknowledges that it has no defenses, claims or set-off to the enforcement by Lender of the obligations and liabilities of Borrower thereunder.

5. **Further Assurances.** Borrower will, on request of Lender, from time to time, execute and deliver such documents as may be necessary to perfect and maintain perfected as a valid first lien on the Mortgaged Premises, the lien granted to Lender pursuant to the Mortgage and Assignment, and to fully consummate the transactions and to effect the purposes contemplated by this Agreement.

6. **Construction.** This Agreement shall not be construed more strictly against Lender merely by virtue of the Fact that the same has been prepared by Lender or its counsel, it being recognized that the Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and the Borrower and Lender each acknowledge and waive any claim contesting the existence and adequacy given by any of the parties hereto in entering into this Agreement.

7. **Entire Agreement.** This Agreement, the Amended Note, the Settlement and Release Agreement of even date herewith, (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

8. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Borrower and Lender and their respective successor and assigns.

9. **Conflict between Agreements.** All provisions of the Mortgage and Assignment not inconsistent with this Agreement shall remain unchanged and in full force and effect. In the event of the conflict between and among the various provisions in the Mortgage and Assignment and this Agreement, the provisions of this Agreement shall control.

10. **Trustee's Exculpation.** This Agreement is executed by Chicago Title, not personally but as Trustee under the aforesaid Trust in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Chicago Title hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein shall be construed as creating any liability on Chicago Title personally to pay the Note or any interest that may accrue thereon or any other indebtedness accruing hereunder, or to perform any other covenant contained herein, whether express or implied. Lender and every person now or hereafter claiming any right or security hereunder shall look solely to the rights and property conveyed in the Mortgage and Assignment for the payment of said indebtedness by the enforcement of the lien thereby created, or by action against any other security

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given to secure the payment of the Note or by action to enforce the personal liability of Beneficiary or the Guarantors. (as defined in the Note).

11. Governing Law; Consent to Jurisdiction. THE VALIDITY OF THIS AGREEMENT, THE MORTGAGE AND THE ASSIGNMENT, AND THEIR CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT AND THE RIGHTS OF BORROWER AND LENDER SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT, THE MORTGAGE AND THE ASSIGNMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

12. Jury Waiver. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER AND LENDER EACH HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, THE ASSIGNMENT AND THE MORTGAGE OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF BORROWER AND LENDER WITH RESPECT THERETO, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER AND LENDER EACH HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT BORROWER OR LENDER MAY FILE A COPY OF THIS EXECUTED AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.

BORROWER:

CHICAGO TITLE LAND TRUST COMPANY,
as Trustee under Trust Agreement dated April 21, 1999
and known as Trust No. 7003921 & not personally

By: Nancy A. Carlin
Print Name: Nancy A. Carlin
Title: Trust Officer

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LENDER:

FIFTH THIRD BANK

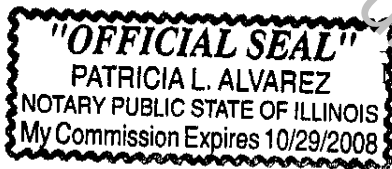
By: *James Barker*
Print Name: James BARKER
Title: A. V. P.

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Nancy A. Carlin, personally known to me to be a Trust Officer for **CHICAGO TITLE LAND TRUST COMPANY**, as Trustee under Trust Agreement dated April 21, 1999 and known as Trust No. 7003921, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed the foregoing instrument with full authority and on behalf of the Trustee as his and its voluntary act.

Given under my hand and official seal this 1st day December, 2006.

Commission expires:



Patricia L. Alvarez
Notary Public, State of Illinois

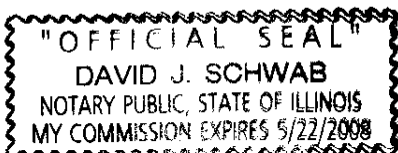
STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Martin G. Tuohy, personally known to me to be a Member of Melrose Lake, L.L.C., an Illinois limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed the foregoing instrument with full authority and on behalf of the limited liability company as his and its voluntary act.

Given under my hand and official seal this 21 day November, 2006.

Commission expires:

David J. Schwab
Notary Public, State of Illinois

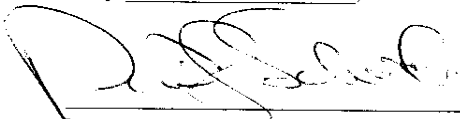


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STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Lyle Petersen, personally known to me to be a Member of Melrose Lake, L.L.C., an Illinois limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed the foregoing instrument with full authority and on behalf of the limited liability company as his and its voluntary act.

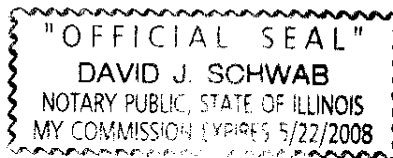
Given under my hand and official seal this 21 day November, 2006.



Notary Public, State of Illinois

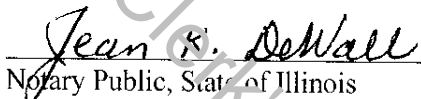
Commission expires:

STATE OF ILLINOIS)
) SS.
COUNTY OF Stephenson)



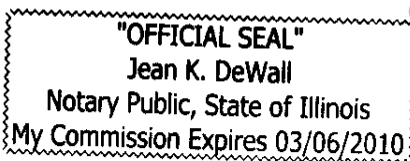
I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that James Barker, personally known to me to be a A.V.P. of Fifth Third Bank, a Michigan banking corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed the foregoing instrument with full authority and on behalf of the corporation as his and its voluntary act.

Given under my hand and official seal this 29th day November, 2006.



Notary Public, State of Illinois

Commission expires: 3-6-10



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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

THAT PART LYING NORTH OF LAKE STREET OF THE WEST $\frac{1}{2}$ OF THE EAST $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE CHICAGO HAMMOND AND WESTERN RAILWAY RIGHT OF WAY) DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST LINE OF SAID WEST $\frac{1}{2}$ OF THE EAST $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ AND THE NORTHERLY LINE OF LAKE STREET (BEING 33.0 FEET NORTHERLY OF AND AT RIGHT ANGLES TO THE CENTER LINE THEREOF) THENCE NORTH ALONG THE SAID EAST LINE A DISTANCE OF 402.96 FEET THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE 259.0 FEET THENCE SOUTH PARALLEL TO SAID EAST LINE A DISTANCE OF 268.0 FEET, THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE A DISTANCE OF 6.0 FEET, THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 44.92 FEET TO THE NORTH LINE OF LAKE STREET AFORESAID, THENCE SOUTHEASTERLY ALONG THE NORTHERLY LINE OF LAKE STREET AFORESAID 279.88 FEET TO THE PLACE OF BEGINNING. ALSO,

PARCEL 2A:

THAT PART OF EMILIE WIEGLEBS ADDITION TO MELROSE, BEING A SUBDIVISION OF THAT PART OF THE EAST $\frac{1}{2}$ OF THE EAST $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF LAKE STREET, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 201 IN SAID SUBDIVISION, SAID POINT BEING IDENTICAL WITH THE NORTHEAST CORNER OF 27TH AVENUE AND SECONDARY LAKE STREET (SO CALLED), AS SHOWN ON SAID PLAT OF SUBDIVISION AND RUNNING THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE OF LOTS 192 TO 201, BOTH INCLUSIVE, AND SAID LINE EXTENDED SOUTHEASTERLY FOR A DISTANCE OF 300 FEET TO A POINT, THENCE NORTH ON A LINE WHICH IS PARALLEL WITH THE WEST LINE OF SAID LOT 201, AND SAID LINE EXTENDED NORTH FOR A DISTANCE OF 200 FEET TO A POINT AND THENCE NORTHWESTERLY ON A LINE WHICH IS PARALLEL WITH SAID SOUTHERLY LINE OF LOTS 192 TO 201, AND SAID LINE EXTENDED AND SAID LINE EXTENDED SOUTHEASTERLY FOR A DISTANCE OF 300 FEET TO A POINT IN THE EAST LINE OF 27TH AVENUE, THENCE SOUTH ON THE EAST LINE OF 27TH AVENUE, A DISTANCE OF 200 FEET TO THE PLACE OF BEGINNING:

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ALSO,

PARCEL 2B:

THAT PART OF EMILIE WIEGLEBS ADDITION TO MELROSE, BEING A SUBDIVISION OF THAT PART OF THE EAST ½ OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF LAKE STREET AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 201 IN SAID SUBDIVISION, SAID POINT BEING IDENTICAL WITH THE NORTHEAST CORNER OF 27TH AVENUE AND SECONDARY LAKE STREET (SO CALLED), AS SHOWN ON SAID PLAT OF SUBDIVISION AND RUNNING THENCE NORTHWESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 201 EXTENDED NORTHWESTERLY A DISTANCE OF 33.93 FEET TO THE POINT OF INTERSECTION OF SAID LINE WITH THE WEST LINE OF SAID EAST ½ OF THE EAST ½ OF THE SOUTHEAST ¼ OF SAID SECTION 4, THENCE NORTH ALONG SAID WEST LINE A DISTANCE OF 200 FEET TO A POINT, THENCE SOUTHEASTERLY ALONG A LINE WHICH IS PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 201 AND SAID LINE EXTENDED FOR A DISTANCE OF 33.93 FEET TO A POINT IN THE EAST LINE OF 27TH AVENUE WHICH IS 200 FEET NORTH OF THE SOUTHWEST CORNER OF SAID LOT 201, THENCE SOUTH ALONG THE EAST LINE OF 27TH AVENUE, A DISTANCE OF 200 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2C (CONVEYED TO VILLAGE OF MELROSE PARK):

THAT PART OF EMILIE WIEGLEBS ADDITION TO MELROSE, BEING A SUBDIVISION.

THAT PART LYING NORTH OF LAKE STREET OF THE WEST ½ OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE CHICAGO HAMMOND AND WESTERN RAILWAY RIGHT OF WAY), DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF SAID WEST ½ OF THE EAST ½ OF THE SOUTHEAST ¼ AND THE NORTHERLY LINE OF LAKE STREET (BEING 33.0 FEET NORTHERLY OF AND AT RIGHT ANGLES TO THE CENTERLINE THEREOF); THENCE ON AN ASSUMED BEARING OF NORTH 02 DEGREES 06 MINUTES 28 SECONDS EAST ALONG SAID EAST LINE A DISTANCE OF 278.91 FEET TO THE POINT OF BEGINNING; THENCE NORTH 87 DEGREES 45 MINUTES 57 SECONDS WEST A DISTANCE OF 165.70 FEET; THENCE NORTH 02 DEGREES 06 MINUTES 28 SECONDS EAST A DISTANCE OF 124.05 FEET; THENCE SOUTH 87 DEGREES 45 MINUTES 57 SECONDS EAST A DISTANCE OF 165.70 FEET TO A POINT ON SAID EAST LINE; THENCE

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SOUTH 02 DEGREES 06 MINUTES 28 SECONDS WEST A DISTANCE OF 124.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

EXCEPT THE FOLLOWING PARCEL RESERVED AS AN EASEMENT PARCEL AND DESCRIBED AS FOLLOWS:

THAT PART LYING NORTH OF LAKE STREET OF THE WEST ½ OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE CHICAGO HAMMOND AND WESTERN RAILWAY RIGHT OF WAY) DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST LINE OF SAID WEST ½ OF THE EAST ½ OF THE SOUTHEAST ¼ OF THE NORTHERLY LINE OF LAKE STREET (BEING 33.0 FEET NORTHERLY OF AND AT RIGHT ANGLES TO THE CENTER LINE THEREOF); THENCE NORTH 72 DEGREES 44 MINUTES 21 SECONDS WEST ALONG THE NORTH LINE OF LAKE STREET, A DISTANCE OF 173.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 72 DEGREES 44 MINUTES 21 SECONDS WEST ALONG THE NORTH LINE OF LAKE STREET, A DISTANCE OF 37.00 FEET TO A POINT; THENCE NORTH 17 DEGREES 15 MINUTES 39 SECONDS EAST, A DISTANCE OF 15.00 FEET TO A POINT; THENCE SOUTH 72 DEGREES 44 MINUTES 21 SECONDS EAST, PARALLEL TO THE NORTH LINE OF LAKE STREET, A DISTANCE OF 37.00 FEET TO A POINT; THENCE SOUTH 17 DEGREES 15 MINUTES 39 SECONDS WEST, A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.