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Doc#: 0736033015 Fee: \$74.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/26/2007 08:55 AM Pg: 1 of 28

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Property of Cook County Clerks Office

Easement Agreement

Dated as of 26th Day
of November 2007

Between

Berkshire - West 87th Street, LLC

&

Jewel Food Stores, Inc.

Prepared by & Mail to:

Box 400-CTCC

Robert P. Cunningham
Berkshire Development, LLC
41 Taylor St.
Springfield, Massachusetts 01103

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EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is entered into as of this 26th day of November, 2007, by and between Berkshire-West 87th Street, LLC, a Massachusetts limited liability company, having a principal place of business at 41 Taylor Street, 4th Floor, Springfield, MA 01103 ("Grantee"), and Jewel Food Stores, Inc., a New York corporation ("Grantor") (collectively, the "Parties").

RECITALS

WHEREAS, Grantee is the tenant under that certain Ground Lease ("**Berkshire Lease**") dated May 20, 2005, amended by that First Amendment to Ground Lease dated November 30, 2005 as evidenced by that Memorandum of Lease recorded in the Recorder's Office of Cook County, Illinois on August 11, 2006 as Document No. 0622334070, for certain property located at 161-233 West 87th Street in Chicago, Cook County, Illinois ("**Silver Property**") as more particularly described in Exhibit A incorporated herein by reference;

WHEREAS, Grantee has developed and constructed certain improvements upon the Silver Property;

WHEREAS, Grantor is owner of that certain property more particularly described in Exhibit B attached hereto and incorporated herein by reference ("**Jewel Property**");

WHEREAS, Grantor maintains an Access Way (defined below) and three (3) traffic islands located on the Jewel Property for the purpose of access to the Jewel Property; and

WHEREAS, Grantee desires to make certain improvements to the Access Way and traffic islands on the Jewel Property for the benefit of the Parties and for the purpose of providing access to, from and between the Silver Property and the Jewel Property, as depicted on Exhibit C attached hereto and incorporated herein by reference;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The above recitals are incorporated into this Agreement as part of and to facilitate the understanding of the provisions contained herein.

2. Definitions.

2.1 Access Way. That certain access way on the Jewel Property shown as the cross-hatched area on Exhibit C labeled "Access Way."

2.2 Easement Termination Event. Shall occur on the earlier of: 1) The termination of the Berkshire Lease for any reason, or; 2) the expiration of the "term" (25 year term commencing

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on the Commencement Date (defined in the Berkshire Lease) with 10, 5 year options) of the Berkshire Lease as said term is defined in the original Berkshire Lease dated May 20, 2005; provided, however, no amendment to the definition of "term", "Commencement Date" or extension of the "term" or any component thereunder ("Preliminary Term", "Base Term" or "extended term" as defined in the Berkshire Lease) shall extend the term of the Easement.

3. Access Way Improvement. Grantee intends to perform the "Access Way Improvements" set forth below and as to be more particularly described on **Exhibit F**. The Parties acknowledge that, at the time of the execution of this Agreement, Grantee has not finalized **Exhibit F** detailing the work to be performed as set forth in this Section 3. The Parties further acknowledge and agree that all Access Way Improvements set forth in this Section 3 shall not commence except upon written approval by Grantor, in its sole and absolute discretion, of the contemplated **Exhibit F** to be provided by Grantee setting forth in detail the scope of the work to be performed. Upon written approval by Grantor of **Exhibit F**, said **Exhibit F** shall be attached to this Agreement and be incorporated herein nunc pro tunc with the date of full execution of this Agreement.

3.1 Paving. Grantee intends to pave the entire Access Way in conformity with the specifications of and as shown on **Exhibit F** attached hereto and incorporated herein.

3.2 Traffic Islands. Grantee intends to remove, replace, reconfigure and reconstruct two (2) separate traffic islands located on the Access Way as shown on **Exhibit F** labeled "Remove Existing Island as Shown" (hereinafter, the "Smaller Traffic Island") and "Remove Existing Island" (hereinafter, the "Larger Traffic Island"). Grantee intends to remove the Larger Traffic Island, install curbing and gutter, install bollards for the fire hydrant, and relocate the fence and gate in conformity with the specifications of and as shown on said **Exhibit F**. Grantee intends to reconfigure and stripe additional traffic islands also within the Easement Area as shown on **Exhibit F** labeled "Yellow Diagonal Painted Island."

3.3 Signs and Striping. Grantee intends to install one (1) stop sign on the Smaller Traffic Island, in conformity with the specifications of, and as shown on **Exhibit F** as "Stop Sign." Grantee intends to install, construct and align one (1) curb on the Access Way, adjacent to the Smaller Traffic Island, in conformity with the specifications of, and as shown on **Exhibit F** labeled, "The Curb." Grantee intends to paint two (2) one (1) inch wide stop bars on the surface of the Access Way, in conformity with the specifications of, and as shown on **Exhibit F** labeled as "Stop Bars." Grantee intends to paint two (2) four (4) inch wide solid white lines on the Access Way in conformity with the specifications of, and as shown on **Exhibit F** labeled "4" Solid White Line." Grantee intends to paint one (1) traffic arrow on the Access Way in conformity with the specifications of, and as shown on **Exhibit F** labeled "Painted Traffic Arrow." All of the above shall be within the Easement Area (defined below) of the Easement (defined below).

4. Grant of Access Way Easement. Grantor so long as an Easement Termination Event has not occurred, hereby grants to and for benefit of the Silver Property a non-exclusive easement

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("Easement"), said easement being granted "as-is" and without any representations or warranties whatsoever, for the purposes of: (i) gaining two-way vehicular and pedestrian access through and across the Access Way as more particularly set forth on Exhibit C ("Easement Area"); and (ii) constructing the Access Way Improvements therein, all subject to and conditioned upon the following terms and conditions and all other terms and conditions set forth in this Agreement.

4.1 Construction of Access Way Improvements. The Access Way Improvements shall: (a) be constructed at Grantee's sole cost and expense; (b) be constructed in a manner which will not materially and adversely interfere with the Jewel Property or Grantor's business activities thereon; (c) be in compliance with all governmental authorities and requirements applicable thereto and Grantee shall be responsible, at its sole cost and expense, to obtain any required governmental approvals for the Access Way Improvements; (d) be performed and prosecuted to completion by Grantee using its best efforts; and (e) be completed in conformance with first-class standards befitting a first-class shopping center of comparable size in the trade area in which the Jewel Property is located. In connection with Grantee's construction of the Access Way Improvements, and at Grantee's sole cost and expense, Grantor agrees to reasonably cooperate with Grantee in attempting to obtain any required governmental approvals.

4.2 Mechanic's Liens. Grantee covenants and agrees not to suffer or permit any lien or encumbrance to be placed against the Jewel Property for any work performed or materials supplied, or claimed to be performed or supplied, by or at the direction of Grantee under or pursuant to this Agreement and/or the Easement herein granted. In the event any such lien or encumbrance attaching, or claim thereof being asserted, Grantee agrees to immediately cause any such lien or encumbrance to be released and removed of record. If Grantee has not immediately removed any such lien or encumbrance as provided herein, then Grantor may, but shall not be obligated to, pay the amount necessary to remove the lien or encumbrance, without being responsible for making any investigation as to the validity thereof, and the amount so paid, together with all costs and expenses, including reasonable attorneys' fees, incurred in connection therewith shall be deemed immediately due and payable forthwith by Grantee to Grantor ("Lien Satisfaction Amount"). In the event Grantee fails to reimburse Grantor the Lien Satisfaction Amount within ten (10) days of written demand by Grantor for the same, the Easement shall be terminable immediately upon written notice by Grantor.

4.3 Covenant Running with the Land. The easements granted herein shall at all times be construed to run with the land burdened thereby, shall be binding upon the Grantor and Grantee hereto and their successors and assigns, and are for the benefit of and appurtenant to, the lands upon which said easements have been granted.

4.4 Construction Reserve. Within five (5) days of the execution of this Agreement, Grantee shall deposit with Chicago Title Insurance Company, Amanda Quas, Escrow Officer ("Escrow Agent"), a copy of this Agreement and the sum of one-hundred thousand and no/100 Dollars (\$100,000.00) (the "Deposit") as security for the completion of the Access Way Improvements. In the event that the Access Way

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Improvements are completed to Grantor's commercially reasonable satisfaction, using the standard set forth in Section 4.1(e) above, within ninety (90) days of the full execution of this Agreement by the Parties ("**Construction Deadline**") and Grantor acknowledges the completion thereof to Escrow Agent in writing ("**Acknowledgement**"), Escrow Agent shall release the Deposit to Grantee, minus any escrow costs and fees, the later of, 1) last day any work is performed on or materials are supplied to the Jewel Property for any work performed by or on behalf of Grantee or, 2) within five (5) business days after the date that the Acknowledgement is delivered by Grantor to Escrow Agent. In the event the Access Way Improvements are not so completed by the Construction Deadline, Escrow Agent shall, if requested in writing by Grantor (at Grantor's sole option and discretion), release the Deposit to Grantor for completion of the Access Way Improvements as Grantor sees fit; provided, in no event shall Grantor have any obligation to complete any such Access Way Improvements. All escrow costs and fees shall be borne by Grantee.

4.5 Easement is "As-is" with No Representations or Warranties and Subordinate to the Master Lease. Notwithstanding anything to the contrary contained herein, the Easement is granted "as-is" and Grantor makes no representations or warranties whatsoever regarding said easement.

4.6 Consideration. Upon the full execution of this Agreement by the Parties, Grantee shall pay to Grantor: by federal wire transfer or Certified or Cashier's Check the non-refundable amount of Two Hundred Thousand Dollars and no/100's (\$200,000.00) in consideration for the granting of the Easement, at the address set forth in this Agreement as Grantor's notice address c/o Jared W. Sommer, Esq. The payment set forth in this Section 4.6 is absolutely non-refundable.

4.7 Maintenance/Security Fee. In consideration for Grantor's obligation to maintain the Access Way in good order and repair during the term of this Agreement, Grantee shall pay an annual maintenance and security fee of Fifteen Thousand Dollars and no/100's (\$15,000.00) ("**Maintenance Fee**") upon full execution of this Agreement and annually thereafter on the anniversary date of said execution. In the event Grantee fails to timely pay the Maintenance Fee, time being of the essence as to said payment, interest in the amount of Eighteen percent per annum (18%) shall immediately begin to accrue thereon. In the event of Grantee's failure to timely pay the Maintenance Fee, Grantor shall be entitled to recover all costs and attorney's fees incurred in collecting the Maintenance Fee. Grantor's rights set forth in this Section 4.7 are in addition to Grantor's rights in Section 9 of this Agreement and as otherwise available at law.

4.8 Security Gate. Grantee hereby acknowledges and agrees that, anything in this Agreement to the contrary notwithstanding, Grantor shall be entitled, at its sole discretion, to erect security gates at the two locations labeled "Security Gates" on the site plan attached hereto as **Exhibit F** and incorporated herein by reference. Grantee further agrees that Grantor shall have the right to keep such security gates closed and locked prohibiting access to the rear service drive behind Grantee's retail building between the hours of 7 P.M. and 7 A.M. local time.

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4.9 Walpole, New Hampshire Use and Access Restrictions. Grantee agrees on behalf of itself and on behalf of all parents, subsidiaries and affiliates thereof, and any other entities controlled, directly or indirectly, by any principal of Grantee (collectively, "Grantee Parties"), that as long as that certain Shopping Center Lease, dated January 9, 2001, between Robert L. Boyle, as Trustee of the North Meadows Trust dated May 25, 1989 recorded with the Cheshire County Registry of Deeds at Volume 1293, Page 667, as landlord and as a predecessor in interest to Berkshire-Walpole, LLC, and Butson's Enterprises, Inc., as tenant and as a predecessor in interest to Shaw's Supermarkets, Inc., as amended from time to time (the "Walpole Lease"), remains in effect, no portion of any property owned or controlled by any of the Grantee Parties that is located at or about the junction of Route 12 (Main Street) and Upper Walpole Road, in or about the Town of Walpole, Cheshire County, New Hampshire, shall be used, or allowed to be used, in any manner (1) as a supermarket, food store, convenience store, drug store and/or pharmacy (other than to the extent operated or controlled [e.g., owned or leased] by Shaw's Supermarkets, Inc. and/or any affiliates, transferees, successors or assigns thereof), or (2) to facilitate access from or across such property to any portion of the so-called "Ball Field Property" (located approximately to the south and southwest of the Shaw's Supermarket building that is situated at or about such junction as of the date of this Agreement), or any other property, on which a supermarket, food store, convenience store, drug store and/or pharmacy is at any time located (other than to the extent operated or controlled [e.g., owned or leased] by Shaw's Supermarkets, Inc. and/or any affiliates, transferees, successors or assigns thereof). Grantee further agrees that, within ten (10) days of the full execution of this Agreement, Grantee shall record a deed restriction or use restriction enforceable by Grantor or any affiliates thereof against all property owned or controlled by any of the Grantee Parties that is located at or about the junction of Route 12 (Main Street) and Upper Walpole Road, in the Town of Walpole, Cheshire County, New Hampshire, which property is generally depicted on Exhibit E attached hereto and incorporated herein by this reference, substantially as follows (with any changes requiring Grantor's consent):

"As long as that certain Shopping Center Lease, dated January 9, 2001, between Robert L. Boyle, as Trustee of the North Meadows Trust dated May 25, 1989 recorded with the Cheshire County Registry of Deeds at Volume 1293, Page 667, as landlord and as a predecessor in interest to Berkshire-Walpole, LLC, and Butson's Enterprises, Inc., as tenant and as a predecessor in interest to Shaw's Supermarkets, Inc., as amended from time to time, remains in effect, no portion of this property shall be used, or allowed to be used, in any manner (1) as a supermarket, food store, convenience store, drug store and/or pharmacy (other than to the extent operated or controlled [e.g., owned or leased] by Shaw's Supermarkets, Inc. and/or any affiliates, transferees, successors or assigns thereof), or (2) to facilitate access from or across this property to any portion of the so-called "Ball Field Property" (located to the south and southwest of the Shaw's Supermarket building), or any other property, on which a supermarket, food store, convenience store, drug store and/or pharmacy is at any time located (other than to the extent operated or controlled [e.g., owned or leased] by Shaw's Supermarkets, Inc. and/or any affiliates, transferees, successors or assigns thereof)."

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Such deed restriction or use restriction shall provide that the same may not be removed or amended without the prior written consent of Grantor, and the recording of such deed restriction or use restriction as and within the time provided herein shall be an express condition to the effectiveness of the Easement granted herein. Any violation of the terms of this Section 4.9 shall be deemed to be a default of "Landlord" under Article 19 of the Walpole Lease.

4.10 Restricted Access. The access point labeled "Restricted Access Drive" on Exhibit F shall be restricted to "right in/right out" only.

5. **Food, Drug and Pharmacy Restrictions.** During the term of this Agreement, no part of the Silver Property shall be used as: (i) a supermarket, which shall be defined as any store or department containing more than three thousand (3,000) square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption; (ii) a drug store (such as, without limitation, Walgreens or CVS/pharmacy); or (iii) a pharmacy, which shall include, without limitation, the sale or offer for sale of any pharmaceutical products requiring the services of a registered or licensed pharmacist. Grantee represents and warrants that it has the authority to restrict the Silver Property as set forth in this Section 5 and that the terms of any master lease or other agreement in relation to the Silver Property does not conflict with nor nullify any of the terms of this Section 5.

6. **Grantor's Right to Modify Access Way Improvements.** Grantor shall have the right to modify or relocate the service drive area on the Jewel Property in its sole and absolute discretion; provided, however, (a) no such changes shall block or unreasonably impede the use of the Access Way, or (b) Grantor shall provide Grantee with commercially reasonable alternative access.

7. **Indemnification.** Grantee hereby indemnifies, holds harmless and agrees to defend Grantor from and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring in the Easement Area and on the ways immediately adjoining the Easement Area, caused by the use, active or passive negligence, willful misconduct and/or breach of any covenant or obligation contained herein of and/or by Grantee, its customers, invitees, agents, servants or employees; unless any of the foregoing were caused by the active or passive negligence, willful misconduct and/or breach of any covenant or obligation contained herein of and/or by Grantor, its customers, invitees, agents, servants or employees. Grantee's obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or termination of this Agreement, as to actions and/or inactions that could give rise to a claim arising or accruing prior to the expiration or termination of this Agreement.

8. **Liability Insurance, Coverage and Limits.** Grantee agrees to maintain, and/or cause to be maintained, at no cost to Grantor, liability insurance insuring Grantor's interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Easement Area and the ways immediately adjoining the Easement Area, with a "Combined

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Single Limit" (covering personal injury liability, bodily injury liability and property damage liability) of not less than One Million Dollars (\$1,000,000.00) for total claims for any one occurrence and not less than Three Million Dollars (\$3,000,000.00) for total claims in the aggregate during any policy year. Grantee shall be named as an additional insured on all policies required under this Section. Upon execution of this Agreement and at least thirty (30) days prior to each renewal of a policy required to be maintained hereunder, Grantee shall provide a certificate of insurance to Grantor evidencing the maintenance of the insurance required in this Section and naming Grantor and, at the discretion of Grantor, the owner of the Jewel Property, as an additional insured. Such policy shall provide that it shall not be terminated, cancelled or materially modified except upon thirty (30) days notice to Grantor including, without limitation, termination or cancellation for nonpayment of premiums. The insurance limits in this Section shall be subject to increase every five (5) years from the full execution of this Agreement by the Parties to reflect adjustments in the cost of living as determined by the Consumer Price Index, All Urban Customers, United States City Average, All Items (1982-84=100) published by the Bureau of Labor Statistics, United States Department of Labor.

9. Default. In the event of any default of the terms of this Agreement by Grantee which is not cured within thirty (30) days of written notice by Grantor (or ten (10) days in the event of monetary default), Grantor may immediately terminate the Easement.

10. Costs and Attorneys Fees. In the event either party commences a legal proceeding which shall also include any appeals from a lower court judgment as well as proceedings in Federal Bankruptcy Court (whether or not they are adversary proceedings or contested matters) ("Bankruptcy Court"), to enforce any of the terms of this Agreement, the Prevailing Party (defined below) in such action shall have the right to recover reasonable attorneys' fees and costs from the other party, to be fixed by the court in the same action. The "Prevailing Party" (a) as used in the context of proceedings in the Bankruptcy Court means the prevailing party in an adversary proceeding or contested matter, or any other actions taken by the non-bankruptcy party which are reasonably necessary to protect its rights under this Agreement, and (b) as used in the context of proceedings in any court other than the Bankruptcy Court, shall mean the party that prevails in obtaining a remedy or relief which most nearly reflects the remedy or relief which the party sought; so that, for example, the Prevailing Party may be a party which is ordered to pay \$100.00 where the obligation to pay \$80.00 was undisputed and the claiming party alleged that it was entitled to \$1,000.00.

11. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be given by (a) established overnight express delivery service (i.e. Federal Express) which maintains delivery records, (b) certified or registered mail, postage prepaid, return receipt requested, or (c) by facsimile with a copy by either methods set forth in subparagraphs (a) and (b), to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

To Grantee:	Berkshire-West 87 th Street, LLC 41 Taylor Street, 4 th Floor Springfield, MA 01103 Attention: Robert P. Cunningham,
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EVP and General Counsel

Fax: 413-781-8888

With Copy to: Much Shelist
 191 North Wacker Drive, Suite 1800
 Chicago, Illinois 60606
 Attention: John Ward and Glenn Taxman
 Fax: 312-521-2100

To Grantor: Jewel Food Stores, Inc.
 c/o Supervalu, Inc.
 Attention: Legal Department Real Estate (#3345)
 250 Parkcenter Blvd. (83706)
 P.O. Box 20
 Boise, Idaho 83726
 Fax: (208) 395-6575

With Copy to: SUPERVALU INC.
 11840 Valley View
 Eden Prairie, MN 55344
 ATTN: Legal Dept. (Store # 3181)

Notices are effective upon receipt. Notices are also effective and deemed to be "received" upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

12. Effective Date of Agreement and Easement. This Agreement shall be effective upon the full execution and delivery of this Agreement by both Parties ("Effective Date") which Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all such counterparts shall constitute one instrument. Notwithstanding anything in this Agreement to the contrary, the Easement granted herein shall only become effective upon the satisfaction of the following conditions: (a) full execution and delivery of this Agreement by the Parties; (b) receipt of the Deposit by Escrow Agent as set forth in Section 4.4 of this Agreement; (c) receipt by Grantor of the consideration as set forth in Section 4.6 of this Agreement; (d) receipt of the Maintenance Fee as set forth in Section 4.7 of this Agreement; (e) Grantor's receipt of a fully executed and recorded copy of the deed restriction and/or use restrictions described in Section 4.9 of this Agreement; (f) Grantor's approval of Exhibits C and F; and (g) Grantor's receipt of a copy of the certificate of insurance Grantee is required to provide pursuant to Section 8 of this Agreement.

13. Modification. This Agreement may not be modified or amended except by written agreement executed by the Parties.

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14. Successors and Assigns. Wherever the term Grantor and Grantee are used in this Agreement, it is meant to refer in each instance to the named party or their respective successors and assigns, tenants, customers and occupants as the case may be.

15. Application of Law. This Agreement shall be governed by the laws of the State of Illinois.

16. Merger. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and no oral representations or statements shall be considered a part hereof.

17. Authority. Each of the individuals who have executed this Agreement represent and warrant that he or she is duly authorized to execute this Agreement on behalf of Grantor or Grantee, as the case may be; that all corporate, partnership, trust or other action necessary for such party to execute and perform the terms of this Agreement have been duly taken by such party; and that no other signature and/or authorization, including lender authorization or approval, is necessary for such party to enter into and perform the terms of this Agreement.



18. Counterparts. This Agreement may be signed in counterparts and such counterparts, when signed by both parties (excluding electronic signatures), shall constitute a binding agreement. A facsimile and/or email copy, signed (excluding electronic signatures) by both parties, of this Agreement and any signatures thereon will be considered for all purposes as originals.

19. Release of Claims. The Parties were parties in an action previously pending in the Circuit Court of Cook County, Illinois County Department Chancery Division (the "Court"), styled Berkshire-West 87th Street LLC v. Jewel Food Stores, Inc. et al, Case No. 06CH26128 which case was dismissed without prejudice by that certain Order of Dismissal Without Prejudice dated May 9, 2007 (the "Action"). The Action pertained to certain claims brought by Grantee in relation to a dispute over the boundary line between the Parties and the ownership of certain improvements running along said boundary line. In consideration of the covenants and promises set forth herein and other good and valuable consideration, the Parties, except as otherwise expressly set forth in this Agreement, hereby mutually release each other from any and all liability of any kind (whether sounding in tort, contract, or any other theory of recovery), known and unknown, which the parties now have or under any circumstances had or could have had, relating to the events at issue in the Action including, without limitation, any claim by Grantee that Grantor in anyway: damaged or harmed Grantee's business reputation or relationship with the public, Staples, Inc. or any affiliate of the same, or any other party or parties whatsoever; that Grantor committed any trespass on the property or Jewel Property of Grantee; and, that Grantor caused any loss of business, profits or income to Grantee, its affiliates, tenants, subtenants and assigns.

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FOLLOWS]


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IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have caused this Easement Agreement to be duly executed as of the date first above written.

<p>GRANTOR:</p> <p>JEWEL FOOD STORES, INC., a New York corporation</p> <p>By:  _____ John P. Breedlove Vice President</p>	<p>GRANTEE:</p> <p>BERKSHIRE-WEST 87TH STREET, LLC, a Massachusetts limited liability company</p> <p>By:  _____ Name: Robert P. Cunningham Title: Executive Vice President of Berkshire Development, LLC, Its Manager</p>
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THE UNDERSIGNED, Berkshire Walpole, LLC, a Massachusetts limited liability company, as the "Landlord" under the Walpole Lease, hereby joins this Agreement for the express purpose of agreeing to the provisions set forth in Section 4.9 hereof (Walpole, New Hampshire Use and Access Restrictions), as of the date first above written.

BERKSHIRE WALPOLE, LLC,
a Massachusetts limited liability company

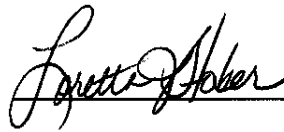
By: 

Name: Robert P. Cunningham
Its: Executive Vice President of
Berkshire Development, LLC,
Its Manager

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COMMONWEALTH OF MASSACHUSETTS)
) ss.
County of Hampden)

On this 26th day of November, 2007, before me, the undersigned notary public, personally appeared ROBERT P. CUNNINGHAM, Executive Vice President of BERKSHIRE DEVELOPMENT, LLC, Manager to BERKSHIRE-WEST 87TH STREET, LLC, personally known to me, or proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of BERKSHIRE DEVELOPMENT, LLC and BERKSHIRE-WEST 87TH STREET, LLC.



Notary Public

My Commission Expires:

LORETTA J. STOBER, Notary Public
Commonwealth of Massachusetts
My Commission Expires Dec. 18, 2009

COMMONWEALTH OF MASSACHUSETTS)
) ss.
County of Hampden)

On this 26th day of November, 2007, before me, the undersigned notary public, personally appeared ROBERT P. CUNNINGHAM, Executive Vice President of BERKSHIRE DEVELOPMENT, LLC, Manager to BERKSHIRE-WALPOLE, LLC, personally known to me, or proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of BERKSHIRE DEVELOPMENT, LLC and BERKSHIRE-WALPOLE, LLC.



Notary Public

My Commission Expires:

LORETTA J. STOBER, Notary Public
Commonwealth of Massachusetts
My Commission Expires Dec. 18, 2009

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EXHIBIT A

Description of the Demised Premises

Those certain parcels situate in Chicago, Illinois having the following street addresses and as shown outlined in red on the attached Exhibit A-1 and further described on the attached Exhibit A-2:

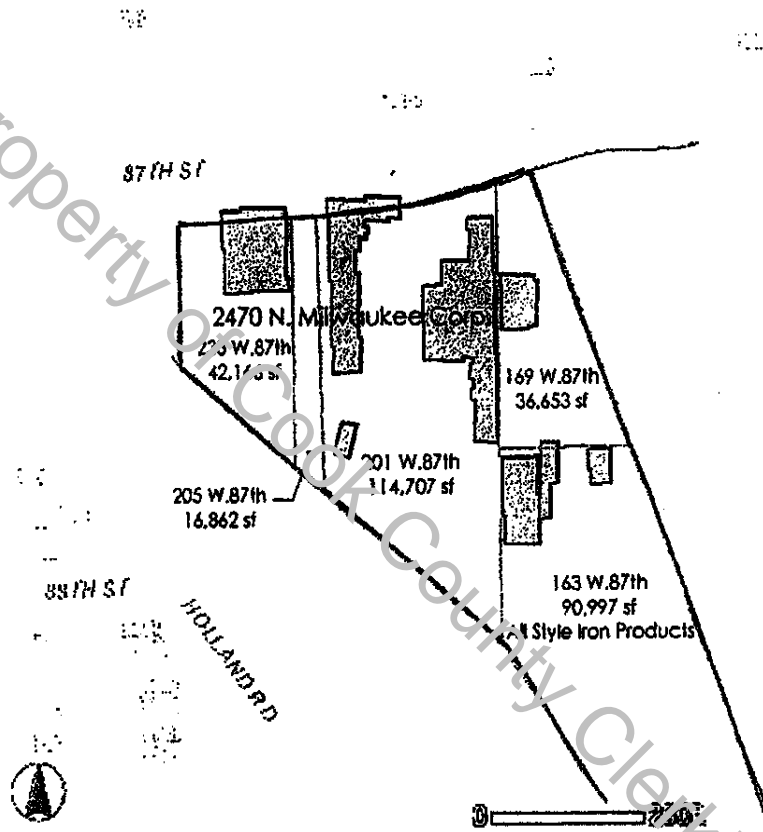
1. 161-163 West 87th Street
2. 169 West 87th Street
3. 201 West 87th Street
4. 205 West 87th Street
5. 233 West 87th Street

Property of Cook County Clerk's Office

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EXHIBIT A-1

Property of Cook County Clerk's Office



Street Addresses, Site Sizes and Ownership

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EXHIBIT A-2

Legal Descriptions

Property of Cook County Clerk's Office

The image contains several handwritten signatures and scribbles in black ink. One signature is at the top, followed by a large, sweeping scribble that covers the middle of the page. Below this, there are more scribbles and what appears to be another signature or set of initials. The text 'Property of Cook County Clerk's Office' is printed diagonally across the page, partially obscured by the handwriting.

UNOFFICIAL COPYEXHIBIT A-2 continued

Legal Description:

161-163 West 87th Street
169 West 87th Street*PINS - 25-04-200-003
25-04-200-008/009/015/018
25-04-200-016/023*

PARCEL 1:

BEGINNING AT A POINT ON THE SOUTH LINE OF 87TH STREET AS RELOCATED; THENCE SOUTHWESTERLY ALONG SAID SOUTH LINE A DISTANCE OF 25 FEET MORE OR LESS TO THE WEST LINE OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 4; THENCE SOUTH ALONG SAID WEST LINE TO A POINT 436.70 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 4; THENCE EAST 170.96 FEET; THENCE NORTHWESTERLY AT AN ANGLE OF 69 DEGREES 12 MINUTES 35 SECONDS TO THE POINT OF BEGINNING.

ALSO A STRIP OF LAND BEING THE EASTERLY 5 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 4, LYING BETWEEN THE SOUTH LINE OF 87TH STREET AND A LINE 436.70 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 4, ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE COUNTY OF COOK, STATE OF ILLINOIS.

THE ABOVE PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A TRACT OF LAND IN THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF 87TH STREET AS RELOCATED (AS DESCRIBED IN THE PLAT OF DEDICATION RECORDED MARCH 1, 1929 AS DOCUMENT 10297189) WITH A LINE DRAWN BETWEEN THE NORTHWEST CORNER OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 4 AND A POINT ON THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 4 WHICH IS 806.35 FEET WEST OF THE EAST LINE OF SAID SECTION 4; THENCE WESTERLY ALONG SAID SOUTHERLY LINE OF 87TH STREET 25 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 4; THENCE SOUTH ALONG SAID WEST LINE TO A POINT 436.70 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 4; THENCE EAST 170.96 FEET, MORE OR LESS, TO A POINT ON SAID LINE DRAWN BETWEEN THE NORTHWEST CORNER OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 4 AND A POINT ON THE SOUTH LINE OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 4 WHICH IS 806.35 FEET WEST OF THE EAST LINE OF SAID SECTION 4; THENCE NORTHWESTERLY ALONG SAID LAST DESCRIBED LINE A DISTANCE OF 403.24 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

ALSO

THAT PART OF THE EASTERLY 5 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 4 LYING BETWEEN THE SOUTHERLY LINE OF 87TH STREET AS RELOCATED (SAID SOUTHERLY LINE BEING THE NORTHERLY LINE OF THE PROPERTY CONVEYED BY THE DEED RECORDED MARCH 1, 1929 AS DOCUMENT 10297191) AND A LINE 436.70 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 4, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

TRACT A

AN IRREGULAR PARCEL OF LAND IN THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMMENCING AT A POINT 436.70 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST 1/4 AND 5 FEET WEST OF THE NORTH AND SOUTH CENTERLINE OF SAID NORTHEAST 1/4; THENCE EASTERLY AT RIGHT ANGLES TO SAID NORTH AND

UNOFFICIAL COPYEXHIBIT A-2 continued

SOUTH CENTERLINE A DISTANCE OF 175.96 FEET, MORE OR LESS, TO THE NORTHEASTERLY RIGHT OF WAY LINE OF THE BELT RAILWAY COMPANY OF CHICAGO; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 374.83 FEET; THENCE SOUTHERLY 79.05 FEET ON A LINE WHICH IS 307.60 FEET EAST OF AND PARALLEL WITH SAID NORTH AND SOUTH CENTERLINE; THENCE NORTHWESTERLY 385.02 FEET TO A POINT WHICH IS 5 FEET WEST OF SAID NORTH AND SOUTH CENTERLINE AND 640.03 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST 1/4; THENCE NORTHERLY 203.33 FEET TO THE POINT OF BEGINNING; AND

TRACT B

AN IRREGULAR PARCEL OF LAND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF TRACT A; THENCE SOUTHERLY ON AN EXTENSION SOUTH OF EASTERLY LINE OF TRACT A 58.2 FEET; THENCE SOUTHWESTERLY AT AN ANGLE OF 129 DEGREES 01 MINUTES 47 SECONDS WITH LAST DESCRIBED COURSE AS MEASURED FROM NORTH TO SOUTHWEST A DISTANCE OF 50.4 FEET; THENCE NORTHWEST AT RIGHT ANGLES 166.2 FEET TO INTERSECTION WITH A LINE WHICH MAKES A RIGHT ANGLE WITH THE SOUTHWESTERLY LINE OF TRACT A FROM A POINT 147.45 FEET NORTHWESTERLY OF THE SOUTHWEST CORNER OF SAID TRACT "A" WHICH POINT IS 44.52 FEET SOUTHWESTERLY FROM THE SOUTHWEST LINE OF SAID TRACT "A" AS MEASURED ALONG SAID RIGHT ANGLE LINE; THENCE SOUTHWESTERLY ON EXTENSION OF SAID RIGHT ANGLE LINE 16 FEET; THENCE NORTHWESTERLY 102.43 FEET TO A POINT WHICH IS 44.2 FEET SOUTHWESTERLY OF, AS MEASURED AT RIGHT ANGLES TO, A POINT ON THE SOUTHWESTERLY LINE OF TRACT "A" WHICH IS 137.57 FEET SOUTHEASTERLY FROM THE SOUTHWEST CORNER OF TRACT "A"; THENCE NORTHWESTERLY TO THE SOUTHWEST CORNER OF TRACT "A"; THENCE SOUTHEASTERLY TO THE POINT OF BEGINNING.

Cook County Clerk's Office

UNOFFICIAL COPYEXHIBIT A-2 continued

201 West 87th Street
 205 West 87th Street
 233 West 87th Street

PARCEL 1:

A TRACT OF LAND IN THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF WEST 87TH STREET SAID POINT BEING 100 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST 1/4 OF SECTION 4 AND 305 FEET WEST OF THE NORTH AND SOUTH CENTER LINE OF SAID SECTION AND RUNNING THENCE EAST ALONG SAID SOUTH LINE OF WEST 87TH STREET, A DISTANCE OF 30 FEET TO AN INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND 255 FEET WEST OF SAID NORTH AND SOUTH CENTER LINE; THENCE SOUTH ALONG SAID PARALLEL LINE, A DISTANCE OF 357.68 FEET TO A POINT 457.68 FEET SOUTH OF SAID NORTH LINE OF THE NORTHEAST 1/4 OF SECTION 4; THENCE NORTHWESTERLY ON A STRAIGHT LINE A DISTANCE OF 81.57 FEET TO A POINT 321.31 FEET SOUTH OF THE SAID NORTH LINE OF THE NORTHEAST 1/4 AND 305 FEET WEST OF SAID NORTH AND SOUTH CENTER LINE OF THE NORTHEAST 1/4 OF SECTION 4; THENCE NORTH PARALLEL WITH SAID NORTH AND SOUTH CENTER LINE A DISTANCE OF 321.31 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

PARCEL 2:

AN IRREGULAR PARCEL OF LAND IN THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT A POINT OF INTERSECTION OF THE SOUTHERLY LINE OF WEST 87TH STREET WITH A LINE 5 FEET WEST OF AND PARALLEL TO NORTH AND SOUTH CENTER LINE OF SAID NORTHEAST 1/4 WHICH POINT OF INTERSECTION IS 69.66 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST 1/4, THENCE SOUTHERLY ON SAID LOT 5 (SEE) WEST OF AND PARALLEL TO SAID NORTH AND SOUTH CENTER LINE, A DISTANCE OF 570.27 FEET, THENCE NORTHWESTERLY ON A STRAIGHT LINE 307.91 FEET MORE OR LESS TO A POINT WHICH IS 255 FEET WEST OF SAID NORTH AND SOUTH CENTER LINE MEASURED AT RIGHT ANGLES THERE TO AND 457.68 FEET SOUTH OF NORTH LINE OF SAID NORTHEAST 1/4, THENCE NORTHERLY FROM LAST DESCRIBED POINT ON A LINE WEST OF AND PARALLEL TO SAID NORTH AND SOUTH CENTER LINE, A DISTANCE OF 357.68 FEET TO THE POINT OF INTERSECTION OF SOUTHERLY LINE OF WEST 87TH STREET WITH THE LAST DESCRIBED COURSE; THENCE EASTERLY ON THE SOUTHERLY LINE OF WEST 87TH STREET, A DISTANCE OF 1.79 FEET TO A POINT, THENCE CONTINUING NORTHEASTERLY FROM THE LAST DESCRIBED POINT ON A CURVED LINE CONVEYED TO THE SOUTH EAST HAVING A RADIUS OF 1033 FEET A DISTANCE OF 231 FEET MORE OR LESS TO POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

PARCEL 3:

AN IRREGULAR PLOT OF LAND IN THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: TO WIT:

COMMENCING AT A POINT OF INTERSECTION OF THE SOUTHERLY LINE OF WEST 87TH STREET WITH A LINE 305 FEET WEST OF AND PARALLEL TO NORTH AND SOUTH CENTER LINE OF SAID NORTHEAST 1/4 WHICH POINT OF INTERSECTION IS 100 FEET SOUTH OF NORTH LINE OF SAID

UNOFFICIAL COPYEXHIBIT A-2 continued

NORTHEAST 1/4, THENCE SOUTHERLY ON SAID LINE 305 FEET WEST OF AND PARALLEL TO SAID NORTH AND SOUTH CENTER LINE, A DISTANCE OF 321.21 FEET THENCE NORTH WESTERLY ON A STRAIGHT LINE, 197.08 FEET MORE OR LESS TO A POINT 465 FEET WEST OF SAID NORTH AND SOUTH CENTER LINE MEASURED AT RIGHT ANGLES THERETO AND 304.51 FEET SOUTH OF NORTH LINE OF SAID NORTHEAST 1/4, THENCE NORTHERLY FROM LAST DESCRIBED POINT ON A LINE 465 FEET WEST OF AND PARALLEL TO SAID NORTH AND SOUTH CENTER LINE, A DISTANCE OF 264.21 FEET TO POINT OF INTERSECTION OF SOUTHERLY LINE OF WEST 87TH STREET WITH LAST DESCRIBED CORNER, THENCE EASTERLY ON SOUTHERLY LINE OF WEST 87TH STREET, A DISTANCE OF 160.01 FEET MORE OR LESS TO POINT OF BEGINNING IN COOK COUNTY, ILLINOIS

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EXHIBIT "B"

SAVE AND EXCEPT the Westerly 5.00 feet thereof.

ALSO SAVE AND EXCEPT the Northerly 30.00 feet thereof.

TRACT 8: Beginning at a point on the East line of U. S. Highway 99E (Commercial Street) which bears North 89° 45' West 936.27 feet and South 18° 10' 05" East 329.06 feet from the 1/4 corner between Sections 10 and 11 in Township 6 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; thence North 89° 55' East 156.90 feet to a point on the East line of Parcel 5 as described in Volume 657, Page 253, Deed Records for Marion County, Oregon; thence Northerly along the East line of said Parcel 5 and the Northerly extension thereof, 131.29 feet, more or less, to the Southwest corner of that tract of land described in Volume 351, Page 304, Deed Records; thence South 89° 45' East along the South line of said tract, 5.00 feet; thence Northerly parallel with the West line of said tract, 150.00 feet; thence North 89° 45' West 119.24 feet; thence Southwesterly along the arc of a 25.00 foot radius curve to the left (the chord of which bears South 36° 02' 30" West 40.56 feet) a distance of 47.31 feet to a point on the East line of said U. S. Highway 99E; thence South 18° 10' 00" East along said East line 262.77 feet to the point of beginning.

TRACT 9: Beginning at a point on the East line of that tract of land conveyed to Ross C. Miles and Laura B. Miles by deed recorded in Volume 351, Page 294, Deed Records for Marion County, Oregon, which point bears North 89° 45' West 375.54 feet and South 00° 05' East 100.00 feet from the 1/4 corner between Sections 10 and 11 in Township 8 South, Range 3 West of the Willamette Meridian in said County and State; thence South 00° 05' East along the East line of said Miles tract, 162.03 feet; thence South 89° 55' West 225.00 feet; thence North 00° 05' West 32.49 feet; thence South 89° 55' West 76.69 feet to a point on the East line of Parcel 5 as described in Volume 657, Page 253, Deed Records for Marion County, Oregon; thence Northerly along the East line of said Parcel 5 and the Northerly extension thereof, 131.29 feet, more or less, to the Northwest corner of Parcel 1 as described in Volume 657, Page 253, Deed Records; thence South 89° 45' East along the North line of said Parcel 1 and the Easterly extension thereof, 302 feet, more or less, to the point of beginning.

TRACT 15: Beginning at a point on the East line of that tract of land conveyed to Ross C. Miles and Laura B. Miles, by deed recorded in Volume 351, Page 294, Deed Records for Marion County, which point bears North 89° 45' West 375.54 feet and South 00° 05' East 342.03 feet from the quarter corner between Sections 10 and 11 in Township 8 South, Range 3 West of the Willamette Meridian in said County and State; thence South 89° 55' West 15.33 feet to the true point of beginning; thence South 00° 05' East, 4.91 feet; thence South 89° 55' West 15.33 feet; thence North 00° 05' West 4.91 feet; thence North 89°

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TRACT 3: Beginning at an iron rod which is North 89° 45' West 375.54 feet from the 1/4 section corner between Sections 10 and 11 in Township 8 South, Range 3 West of the Willamette Meridian, Marion County, Oregon; thence North 89° 45' West 50 feet; thence South 0° 13' 30" East 180 feet; thence South 89° 45' East 50 feet to an iron rod; thence North 0° 13' 30" West 180 feet to the place of beginning.

SAVE AND EXCEPT the Northerly 30 feet conveyed to The City of Salem, by deed recorded in Dec. 50, Page 276, Deed Records, Marion County, Oregon.

TRACT 4: Beginning at a point which is 425.54 feet North 89° 45' West from the 1/4 section corner between Sections 10 and 11 in Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; thence South 0° 13' 30" East 180.00 feet; thence North 89° 45' West 64.0 feet; thence North 0° 13' 30" West 180.00 feet; thence South 89° 45' East 64.0 feet to the place of beginning.

TRACT 5: Beginning at a point which is 489.54 feet North 89° 45' West from the 1/4 section corner between Sections 10 and 11 in Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; thence South 0° 13' 30" East 180.00 feet; thence North 89° 45' West 64.0 feet; thence North 0° 13' 30" West 180.00 feet; thence South 89° 45' East 64.00 feet to the place of beginning.

TRACT 6: Beginning at a point which is 553.54 feet North 89° 45' West from the 1/4 section corner between Sections 10 and 11 in Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; thence South 0° 13' 30" East 180.00 feet; thence North 89° 45' West 64.00 feet; thence North 0° 13' 30" West 180.00 feet; thence South 89° 45' East 64.00 feet to the place of beginning.

TRACT 7: Beginning at a point which is North 89° 45' West 375.54 feet and South 0° 13' 30" East 180.00 feet and North 89° 45' West 302.00 feet from the 1/4 section corner between Sections 10 and 11 in Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, said point being the Southwest corner of the tract of land conveyed to Clarence K. Thompson and Arlie H. Thompson, husband and wife, by deed recorded June 24, 1966, in Book 351, Page 306, Deed Records; thence North 0° 13' 30" West along the West line of said Thompson tract, 180.00 feet to the Northwest corner of said Thompson tract; thence South 89° 45' East along the North line of said Thompson tract, 60.00 feet; thence South 0° 13' 30" East parallel with the West line of said Thompson tract, 180.00 feet to the South line of said tract; thence North 89° 45' West along the South line of said Thompson tract, 60.00 feet to the place of beginning.

Address 201-233 West 87th Street, Chicago
PINS 25-04-200-008/009/010/015

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EXHIBIT C

S89° 23'56"W(M)
12.33 (R&M)

WEST 87th

RADIUS=967.00
ARC = 233.53 (R&M)
D = 232.98(M)
S2° 28'50"W (M)

N84° 17'02"W(R) N84° 16'3
399.03 (R&M)

FOUND CROSS IN WALK
POINT 53.0 FEET SOUTH OF THE
NORTH LINE OF SECTION 4-37-14

FOUND CROSS IN WALK
POINT 53.0 FEET SOUTH OF THE
NORTH LINE OF SECTION 4-37-14



EASEMENT AREA
= "ACCESS WAY"

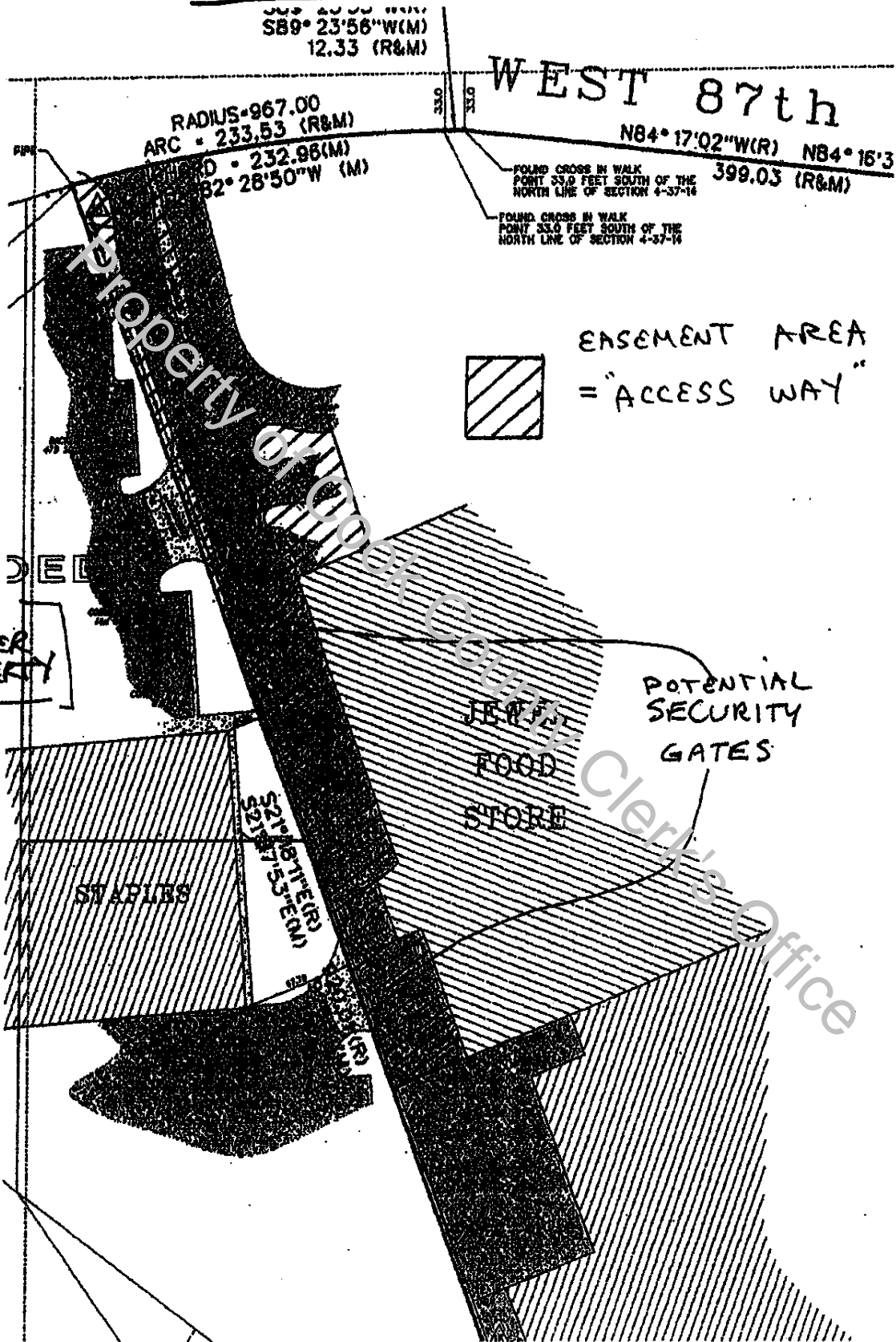
SILVER
PROPERTY

STAPLES

SECURITY
STAPLES

JEWEL
FOOD
STORE

POTENTIAL
SECURITY
GATES



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EXHIBIT D

Intentionally Omitted



A large, thick black scribble consisting of several overlapping loops and curves, positioned in the center of the page. Below it is a signature in black ink, which is also somewhat stylized and overlaps with the watermark. The watermark text 'Property of Cook County Clerk's Office' is written diagonally across the page in a light gray font.

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EXHIBIT E

