Doc#: 0914929004 Fee: \$78.00 Eugene "Gene" Moore RHSP Fee: \$10.00

Cook County Recorder of Deeds

Date: 05/29/2009 10:03 AM Pg: 1 of 22

### RETURN RECORDED DOCUMENT TO:

#### WALGREEN CO.

104 Wilmot Road, Dept. #1420 Deerfield, Illinois 60015 Attn: Kristina Delanev

This Instrument Prepared by: Richard N. Steiner 104 Valmot Road, Deerfield, Illinois 60015

### MEMORANDUM OF AMENDED AND RESTATED LEASE

By this Memorandum of Amended and Restated Lease, made effective as of the  $\int_{-\infty}^{\infty} x^{3/2} dx$  of August, 2007, CERMAK PLAZA ASSOCIATES, LLC, a Delaware limited liability contrary ("Landlord"), and WALGREEN CO., an Illinois corporation ("Tenant"), Landlord and Tenant hereby memorialize the execution of an Amended and Restated Lease (the "Lease") as follows:

WHEREAS, by lease dated March 22, 1954, as modified and supplemented by agreements dated March 22, 1955, October 25, 1955, May 8, 1957, February 15, 1965, May 31, 1966, January 5, 1967 September 13, 1974 June 8, 1988 October 26, 1994, March 8, 1995, and March 20, 1997(collectively, the "Existing Lease"), CERMAK PLAZA, INC., an !llinois corporation (to all right, title and interest of which Landlord has heretofore succeeded) leased to WALGREEN CERMAK-HARLEM DRUG CO., an Illinois corporation (to all right, title and interest of which Tenant has heretofore succeeded), those certain premises as described in the Existing Lease, commonly known as 7175 Cermak in the City of Berwyn, County of Cook, State of Illinois (the "Existing Premises") in the shopping center known as Cermak Plaza (the "Shopping Center"), which shopping center is legally described on Exhibit "A" and shown on Exhibit A-1 attached hereto and made a part hereof; and

WHEREAS, Tenant intends to relocate within the Shopping Center from the Existing Premises into a new freestanding, one story building containing 16,510 square feet of first floor area (130 feet x 127 feet) (the "Building") to be constructed by Tenant within that portion of the Shopping Center comprised of 25,760 square feet (160 feet x 161 feet) and legally described on Exhibit "B" attached hereto and made a part hereof (the "Leased Premises"), and as indicated by crosshatching on the site plan attached hereto as Exhibit "B-1" and made a part hereof (the "Site Plan"); and



# SEC Cermak & Harten Celmak Flaza FIC AL COPY Berwyn, Illinois (#06628)

WHEREAS, the parties do hereby desire without termination of the Existing Lease to amend, modify, extend and restate certain of the terms, covenants and conditions of the Existing Lease, as hereinafter set forth in this Amended and Restated Lease, so that effective as of the Commencement Date of this Amended and Restated Lease, Tenant's occupancy within the Shopping Center shall be governed by only the provisions hereinafter set forth and Article 22 of the Existing Lease as modified herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby covenant and agree that the Existing Lease shall be and hereby is amended, modified, extended and restated all as hereinafter provided:

#### AMENDED LEASE, NEW LEASED PREMISES; DEFINITIONS

- Except for Article 22 of the Existing Lease, as amended and 1. restated in Article 8 herein, effective on the "Commencement Date" (as defined in Article 6 hereof), all Articles of the Existing Lease shall be and hereby are deleted in their entirety and the provisions set forth in this Agreement shall be substituted in lieu thereof; provided, however, that Landlord and Tenant hereby acknowledge and agree that the exclusive use restrictions contained in Article 22 of the Existing Lease and as restated and amended in Article 8 hereof, shall be deemed to continue without interruption and relate back to the original granting thereof pursuant to the Existing Lease. In furtherance thereof, any person or entity acquiring any interest in the Leased Premises after the date of the Existing Lease (e.g., March 22, 1954) shall be in all respects bound by the exclusive use restrictions contained in Article 22 of the Existing Lease and as restated and amended in Article 8 herein. Rent under the Existing Lease shall continue until the later to occur of: (i) the Commencement Date; and (ii) the date that Tenant has vacated and surrendered possession of the Existing Premises in the condition required by the Existing Lease.
- (b) Except as may be expressly stated in this Agreement to the contrary, the term "Lease" as hereinafter used, shall mean the terms and conditions of this Agreement.
- (c) The term "Leased Premises" as hereinafter used, shall mean the real estate legally described on Exhibit "B" attached hereto, together with all improvements, appurtenances, easements and privileges belonging thereto.
- (d) The terms "Building" and "Site Improvements" as used herein, shall mean the building(s) and those improvements (other than the Building) respectively that Tenant may construct from time to time on the Leased Premises, all as hereinafter provided.

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For purposes of this Memorandum of Amended and Restated Lease, Tenant shall pay a rent of One Dollar (\$1.00) per year.

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

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

#### **PARKING**

Landlord covenants that at all times during the continuance of this Lease, Landlord shall keep available the parking areas, driveways and accessways at the Shopping Center including within the "No-Build Area" of the Shopping Center, (but excluding the Leased Premises and the Rear Portion, as defined in Section 8(a)(ii) herein) as slown on the Site Plan attached hereto as Exhibit "C" (the "No-Build Area"). The parking areas at the Shopping Center shall provide for at least as many parking spaces as are required by applicable governmental parking ratios, and also adequate service and receiving areas, sidewalks, curbs, roadways and other facilities appurtenant thereto. Said No-Build Area shall be for the free and exclusive use of customers, invitees and employees of Tenant and other occupants of said Shopping Center. Tenant agrees to install and maintain lighting illuminating the Building and the drive-through and such lighting specifications shall be contained within the Plans.

There shall be no changes in the grade elevations in the No-Build Area which exceed five percent (5%), and such No-Build Area shall be suitably paved and drained. No buildings or other structures (including artwork) shall be erected within the No-Build Area of the Shopping Center as shown on the Site Plan attached hereto as Exhibit C except: (a) Landlord may maintain existing improvements within the No-Build Area and make alterations to improvements located within the No-Build Area provided that such alterations do not materially increase the size or height of any such improvements; and (b) the sculptures commonly known as "Spindle" and "Albatross" shall be either removed, or relocated as depicted on Exhibit C attached hereto, at the sole discretion of Landlord. No alterations or additions shall be made to the parking areas in the No-Build Area which would reduce the number of parking spaces or materially and adversely impact access and parking immediately adjacent to the Leased Premises without obtaining Tenant's express written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary contained herein, Landlord shall have the right to relocate the existing

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curb cuts to Harlem Avenue, so long as access to Harlem Avenue is not unreasonably impaired.

#### **EXCLUSIVES**

- (i) Landlord covenants and agrees that, during the Term and any extensions or renewals thereof, no additional property which Landlord, directly or indirectly, may now or hereafter own or control, and which is contiguous to, or which is within five hundred (500) feet of any boundary of, the Leased Premises, will be used for the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist or other person authorized by law to disperso medicinal drugs, directly or indirectly, for a fee or remuneration of any kind. Notwithstanding anything to the contrary contained in the immediately preceding sentence, the exclusive covenants shall not be applicable to such use by any future tenants operating a "retail food store" comprising more than 35,000 square feet which operates a drug store or pharmacy. A "retail food store", as used herein, shall include (by way of illustration and not by way of limitation) a supermarket or greecery store. For purposes hereof "contiguous" shall mean property that is either adjoining the Leased Premises or separated from the Leased Premises only by a public or private street, alley or right-of-way.
- In addition, Landlord shall not permit or suffer any other occupant of (ii) Landlord's Property to use any premises or any portion thereof for purposes of a cocktail lounge, bar, disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, adult book store, arkuit theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays, auction house, flea market, educational or training facility, blood bank, sleeping quarters or lodging, the outdoor housing or raisin, of animals, the sale, leasing or storage of automobiles, boats or other vehicles, any industrial use, an assembly hall, off track betting establishment, bingo parlor, any use involving the use, storage, disposal or handling of hazardous materials or underground storage tanks, or any use which creates a nuisance. Notwithstanding anything to the contrary contained herein, such restrictions, other than those prohibiting an adult book store, adult theater, adult amusement facility, or a facility selling or displaying pornographic materials or having such displays shall not apply to that portion of the Shopping Center cross-hatched on Exhibit D attached hereto and labeled "Rear Portion". Also, within that portion of the Shopping Center shaded on Exhibit E attached hereto, Landlord shall not permit or suffer any other occupant of Landlord's property to use any Premises or any portion thereof for purposes of a restaurant. Nothing contained herein shall be construed as limiting in any way, Landlord's right to permit any other tenant to occupy any other portion of Landlord's property, including but not limited to, all in-line space within the Shopping Center as a restaurant.

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#### RIGHT OF FIRST REFUSAL

- In the event that the Leased Premises is a lot of record, separate and apart from the balance of the Shopping Center and, Landlord shall receive a Bona Fide Offer to purchase the Leased Premises at any time and from time to time on or after the date hereof and during the Initial Term and Term of this Lease or any extensions thereof from any person or entity, Landlord shall so notify Tenant (Attn: Law Department with a duplicate notice to the Real Estate Department) together with a true and correct copy of said Bona Fide Offer. For purposes hereof, a "Bona Fide Offer" shall be deemed to be one made in writing by a person or entity that is not related or affiliated with Landlord which Landlord intends to accept (subject to this Article). In submitting the Bona Fide Offer to Tenant, Landlord shall segregate the price and the terms of the offer for the Leased Premises from the price and other terms connected with any additional property or properties that such person or entity is offering to purchase from Landlord. Tenant may, at Tenant's option and within fourteen (14) days after receipt of Landlord's notice of said Bona Fide Offer and receipt of a copy thereof, offer to purchase the Leased Pramises at the price and upon the terms and conditions as are contained in said Bona Fide Offer, in which event, Landlord shall sell the Leased Premises to Tenant upon said terms and conditions and said price; furthermore, in such event, Landlord shall convey the Leased Premises to Tenant by warranty deed. Notwithstanding the foregoing, the price that Tenant shall pay for the Leased Premises shall be reduced by (i) an amount equal to broker's fees or commissions that would have been payable by Landlord if the Leased Premises were sold pursuant to a Bona Fide Offer. Landlord shall provide Tenant evidence of the amount of broker's fees or commissions payable in connection with any such Bona Fide Offer. In the event that Tenant elects not to exercise its right of first refusal or otherwise fails to respond to Landlord's notice of said Bona Fide Offer within fourteen (14) days of receipt of a copy thereof, Landlord shall be entitled to sell the Leased Premises upon the terms and conditions contained in such Bona Fide Offer. Landlord coverants that it shall accept no such Bona Fide Offer or convey the premises until ichas complied with the terms of this Article. Any conveyance of the Leased Framises made in the absence of full satisfaction of this Article shall be void. Tenant may enforce this Article, without limitation, by injunction, specific performance or other equitable relief.
- (b) Tenant's election not to exercise its Right of First Refusal shall not prejudice Tenant's rights hereunder as to any further Bona Fide Offer. The terms and conditions contained in this Article shall be binding upon the heirs, successors and assigns of Landlord.

This instrument shall also bind and benefit, as the case may require, the heirs, legal representatives, assigns and successors of the respective parties,

# SEC Cermak & Jamen (Telmak Flaze) CAL COPY Berwyn, Illinois (#06628)

and all covenants, conditions and agreements herein contained shall be construed as covenants running with the land. This instrument shall not become binding upon the parties until it shall have been executed and delivered by both Landlord and Tenant.

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

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

Landlord:

WALGERING

By:

Witnesses:

Witnesses:

Witnesses:

Witnesses:

Amum Batas

Amum Batas

Amum Batas

STATE OF ILLINOIS ) ) SS	
COUNTY OF LAKE )	
personally known to me to be the Divis Illinois corporation, and personally known subscribed in the foregoing instrument, acknowledged that he signed and delive President of said corporation, pursuant said corporation, as his free and volunt deed of said corporation, for the purpose	
Given under my nand and notar	ial seal this day of August, 2007.
· C	Bestree Malliem
	Notary Public
My commission expires: /////2010	BEATRICE MAHLUM
STATE OF) ) SS	NOTARY PUBLIC, STATE OF ILLINOIS VY COMMISSION EXPIRES 11/16/2010
COUNTY OF	
	C/
I, the undersigned, a Notary Pub	olic, do hereby certify fact, personally
known to me to be the	and, respectively, of laware limited liability company, and personally names are subscribed in the foregoing ay in person and severally acknowledged that
by the Members of said limited liability	company, as their free and voluntary act, and as said limited liability company, for the purposes
Given under my hand and notari	ial seal this day of August, 2007.
	Notary Public
	Notally Fublic
My commission expires:	

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## **UNOFFICIAL COPY**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT	
State of California  County of Santa Barbara  On April 21, 2002 persons Flain	e M. Georges, Notary Public, Here Insert Nephe and Title of the Officer
personally appeared Andrew S. A	Here insert Name and Title of the Officer  Semant  Name(s) of Signer(s)
ELAINE M. GEORGE ir	who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are-subscribed to the within instrument and acknowledged to me that be/she/they executed the same in his/her/their authorized apacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
INV CONTIN. BEDIES JON 14, 2012	certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is rue and correct.  WITNESS my hand and official seal.
Place Notary Seal Above  OPTIC  Though the information below is not required by law, it m and could prevent fraudulent removal and reat	DNAL ————————————————————————————————————
Description of Attached Document  Title or Type of Document:	Opp.
Document Date:	Number of Page 3:
	0.
Signer(s) Other Than Named Above:  Capacity(ies) Claimed by Signer(s)	Number of Pages:
Signer's Name:   Individual   Corporate Officer — Title(s):   Partner — Limited  General   Attorney in Fact	Signer's Name:  Individual  Corporate Officer — Title(s):  Partner — Limited General  Attorney in Fact  Trustee  Guardian or Conservator  Other:  Signer is Representing:
Signer Is Representing:	Signer Is Representing:

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# EXHIBIT "A" LEGAL DESCRIPTION OF SHOPPING CENTER

See attached.



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### **UNOFFICIAL COPY**

THAT PART OF LOT 1 (EXCEPT THOSE PARTS FALLING IN STREET) OF THE CIRCUIT COURT PARTITION OF THE WEST PART OF THE NORTHWEST 1/4 AND THE WEST PART OF THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF A STRAIGHT LINE, RUNNING FROM A POINT IN THE EAST LINE OF SOUTH HARLEM AVENUE 1590.99 FEET NORTH OF ITS INTERSECTION, WITH THE NORTH LINE OF WEST 26TH STREET TO A POINT IN THE WEST LINE OF SOUTH HOME AVENUE 971.94 FEET SOUTH OF ITS INTERSECTION WITH THE SOUTH LINE OF WEST CERMAK ROAD.

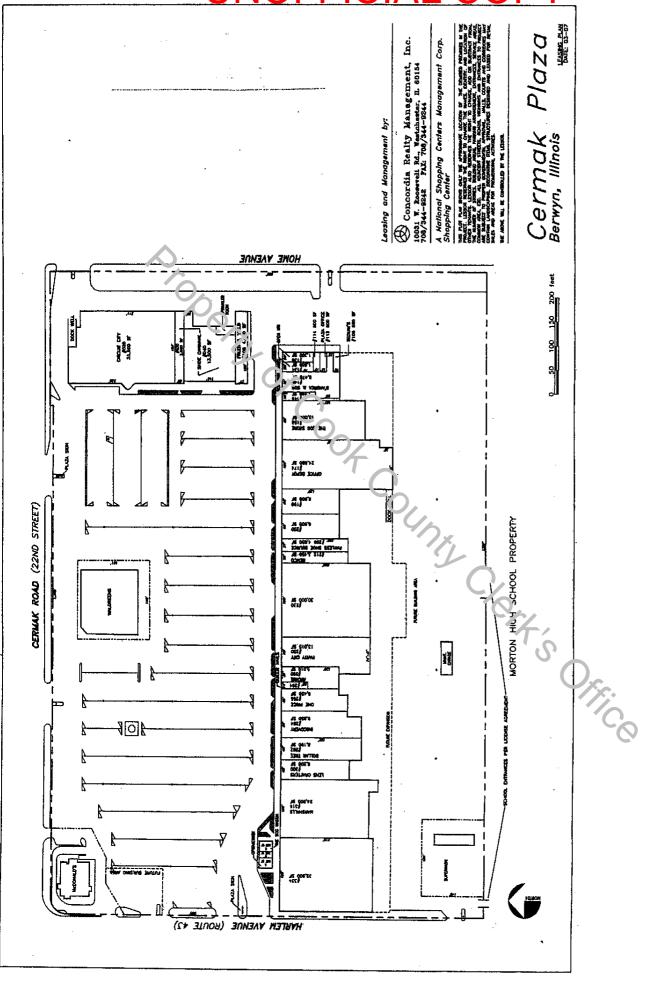
(AND ALSO EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF I LF (CIS BY WARRANTY DEED RECORDED JULY 28, 1964 AS DOCUMENT NUMBER 19198042, BO(T) DED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST 1/4 CORNER OF SAID SECTION 30, THENCE EAST ALONG THE NORTI LJ IE OF SAID SECTION 30 A DISTANCE OF 1374.29 FEET TO THE EXTENDED WEST LINE OF HOME AVENUE, AS THE SAME IS NOW LOCATED AND ESTABLISHED, THENCE SOUTH ALONG TP. "YEST LINE OF HOME AVENUE, AND THE SAME EXTENDED A DISTANCE OF 60 FEET TO A POINT: THENCE WEST IN A STRAIGHT LINE PARALLEL TO AND DISTANT 60 FEET SOUTH FEET SOUTH, MEASURED AT RIGHT ANGLES FROM SAID NORTH LINE OF SECTION 30, A DISTANCE OF 286.0 FEET TO A POINT: THENCE SOUTH IN A STRAIGHT LINE MEASURED AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 5.0 FEET TO A POINT; THENCE WEST IN A STRAIGHT LINE PARALLEL TO AND DISTANT 65.0 FEET SOUTH, MEASURED AT RIGHT ANGLE? FROM SAID NORTH LINE OF SECTION 30, A DISTANCE OF 972.86 FEET TO A POINT OF CUT VA TURE; THENCE SOUTHWESTERLY ALONG A CURVED LINE CONCAVE TO THE SOUTHEAS:, HAVING A RADIUS OF 65.0 FEET AND A CONTRAL ANGLE OF 90 DEGREES, 22 MINUTES, 30 SE'. ON S, A DISTANCE OF 102.51 FEET TO A POINT OF TANGENCY IN THE EAST LINE OF HARLLM AVENUE AS THE SAME IS NOW LOCATED AND ESTABLISHED, DISTANT 50.0 FEET EAST MEASURED AT RIGHT ANGLES FROM THE WEST LINE OF SAID SECTION 30; THENCE WEST IN A 3TH A GHT LINE, A DISTANCE OF 50.0 FEET TO A POINT IN THE WEST LINE OF SAID SECTION 30; TENCE NORTH ALONG THE WEST LINE OF SAID SECTION 30; A DISTANCE OF 130.43 FEET TO THE POINT OF BEGINNING (EXCEPTING THAT PART OF THE ABOVE DESCRIBED PREMISES PREVIOUSLY DEDICATED OR NOW USED FOR HARLEM AVENUE AND CERMAK ROAD), ALL IN COOK COUNTY, ILLINOIS.

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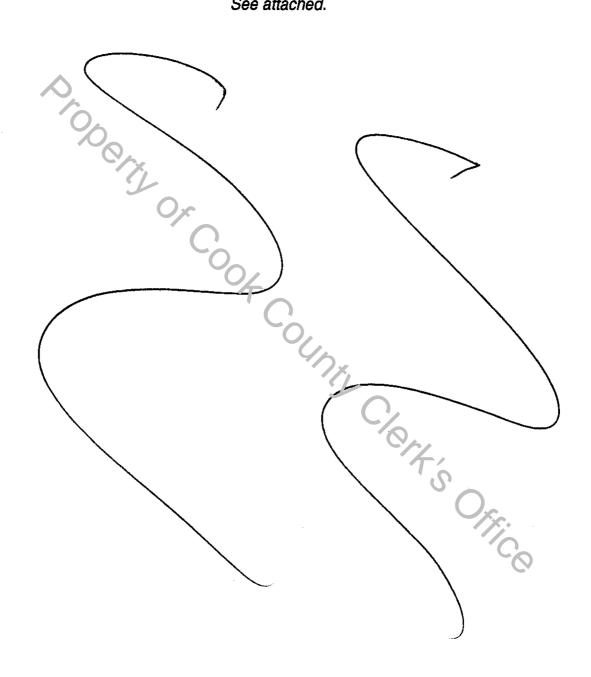


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### **EXHIBIT "B"** LEGAL DESCRIPTION OF LEASED PREMISES

See attached.



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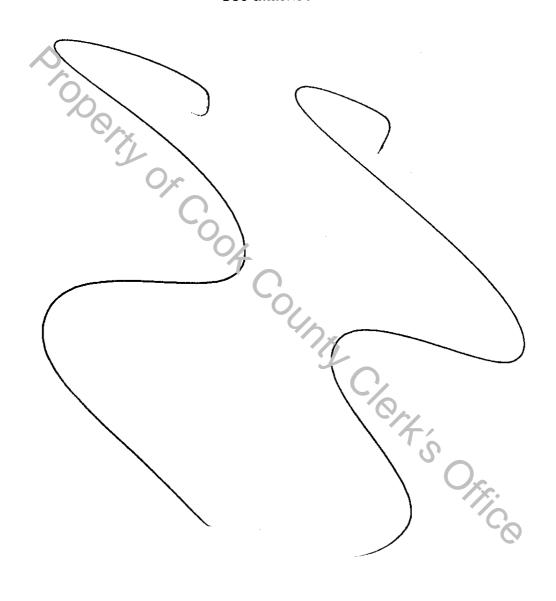
That part of Lot 1 in Circuit Court Partition of the west part of the northwest quarter and the west part of the southwest quarter of Section 30, Township 39 North, Range 13 East of the Third Principal Meridian, bounded and described as follows: described as follows:
Commencing at the intersection of the south right of way line of Carmak Road with the west right of way line of thome Avenue; then run N 83'37'40" W on an assumed bearing along the south right of way line of Carmak Road 20'00 feet; then run S 00'22'20" W a distance of 5.00 feet to a point also on the south right of way line of Carmak Road; then run N 83'37'40" W along sold south right of way line a distance of 321.70 feet; then run S 00'22'20" W a distance of 61.50 feet to the Point of Beginning; then continue S 00'22'20" W a distance of 181.00 feet, then run N 83'37'40" W a distance of 180.00 feet; then run N 00'22'20" E a distance of 181.00 feet; then run S 00'32'30" E a distance of 181.00 feet; then run N 00'22'20" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet; then run N 00'32'30" E a distance of 181.00 feet to the Point of Beginning. Coot County Clert's Office

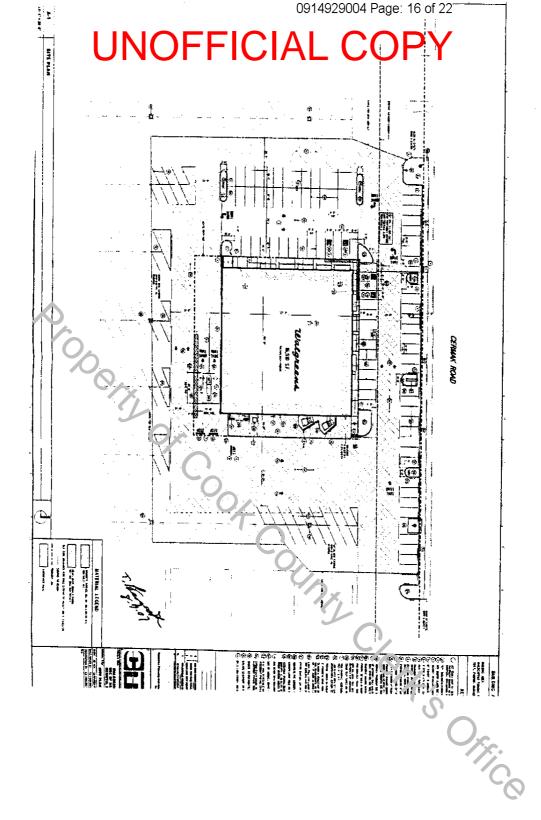
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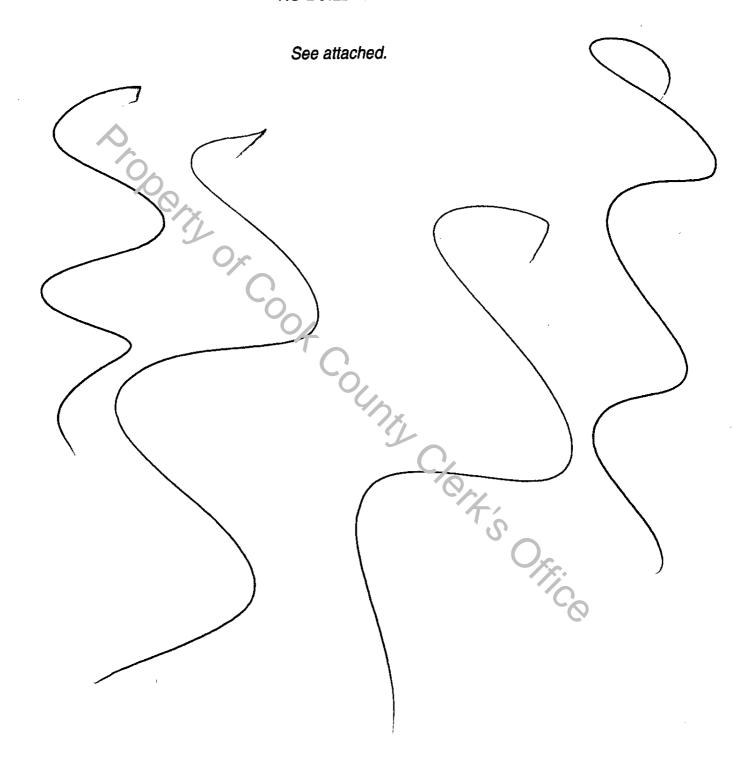
# EXHIBIT "B-1" SITE PLAN APPROVED BY WALGREEN CO. ARCHITECT DEPICTION OF LEASED PREMISES

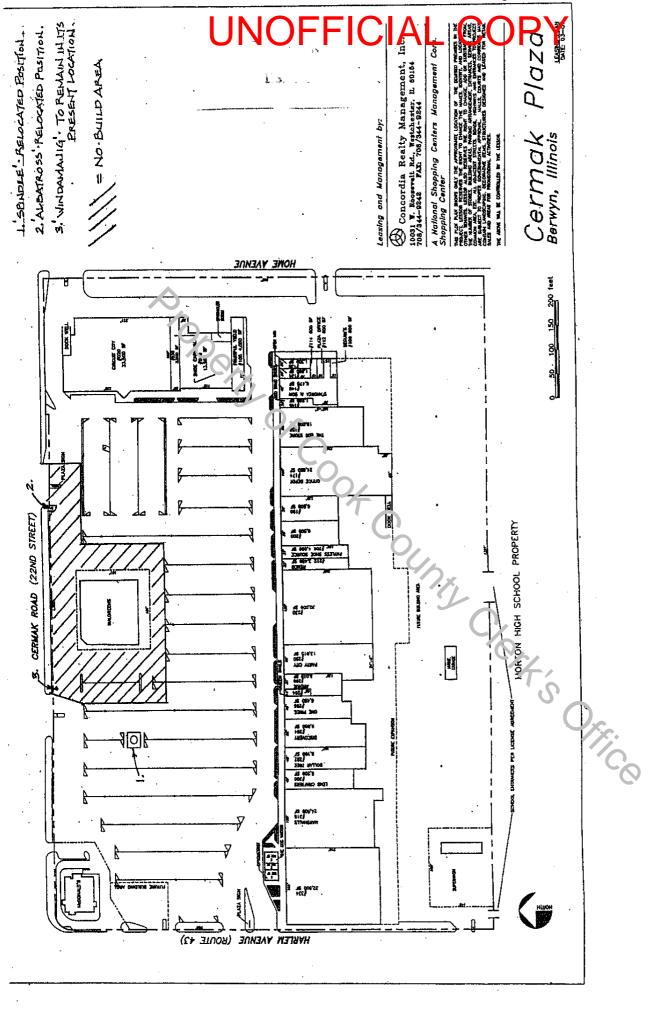
See attached.



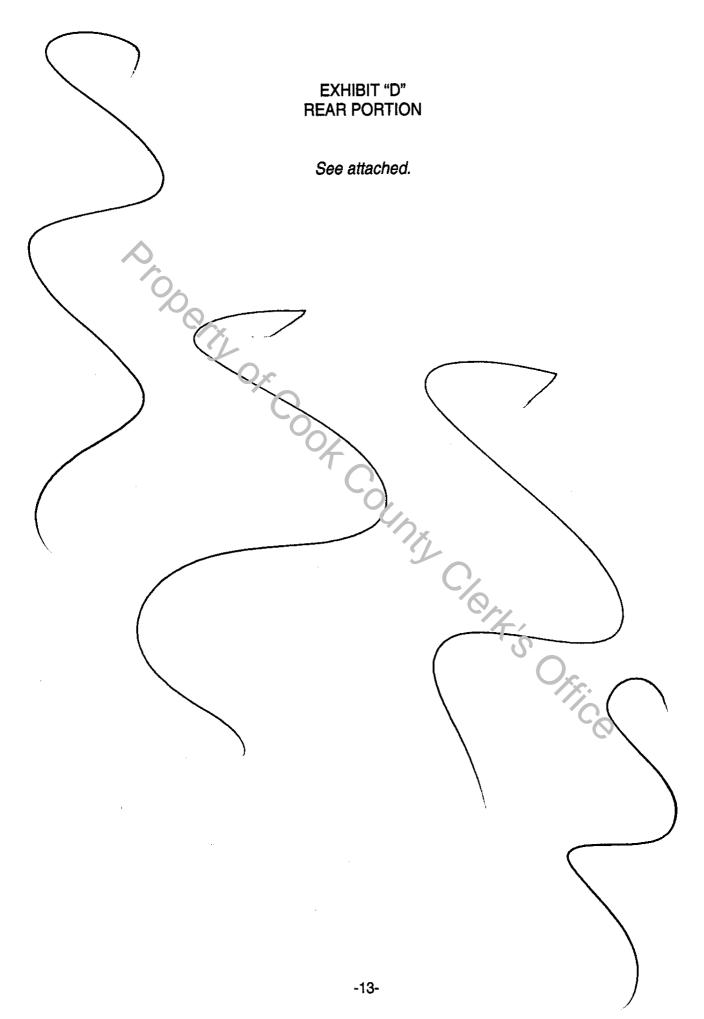


### EXHIBIT "C" NO-BUILD AREA

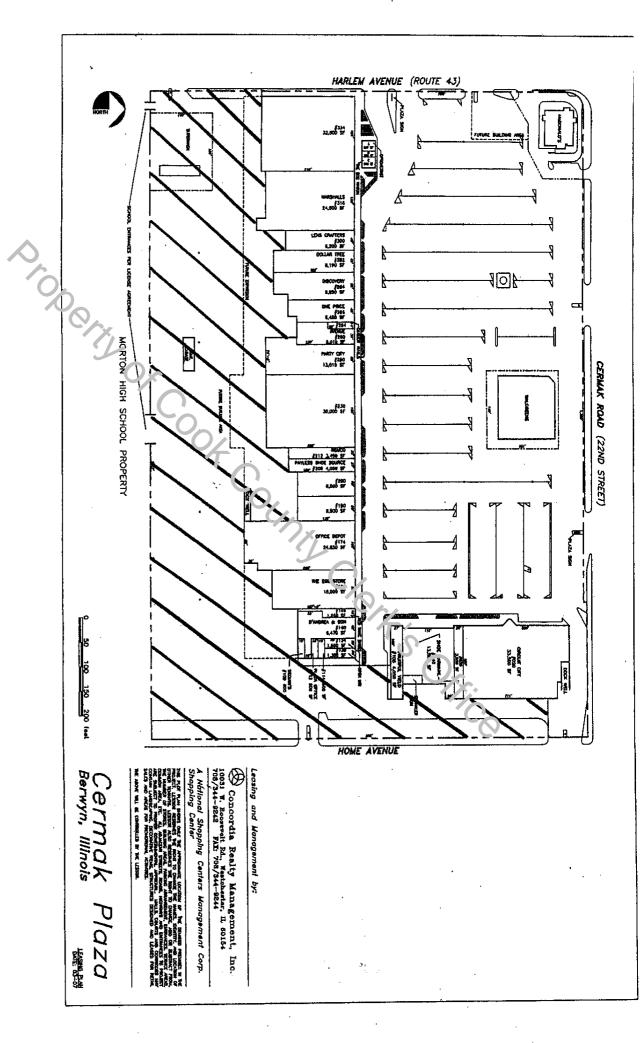




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### EXHIBIT "E" RESTAURANT RESTRICTION AREA

