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Doc#: 1030210049 Fee: \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/29/2010 11:55 AM Pg: 1 of 11

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is entered this 21st day of October 2010, by and between **MEIJER STORES LIMITED PARTNERSHIP**, a Michigan limited partnership, of 2929 Walker Avenue, N.W., Grand Rapids, Michigan 49544, hereinafter referred to as "Tenant," and **MELROSE PARKEQUITY, LLC**, a Delaware Limited Liability Company, as to an undivided 25.21% interest; **MELROSE PARK INVESTMENTS, L.P.**, a California limited partnership, as to an undivided 19.97% interest; **MELROSE PARK ASSOCIATES, LLC**, a Delaware limited liability company, as to an undivided 5.59% interest; **NMC MELROSE PARK, LLC**, a California limited liability company, as to an undivided 18.67% interest; and **NMC GROVE MELROSE, LLC**, a Delaware limited liability company, as to an undivided 30.56% interest, together hereinafter referred to as "Landlord" to give record notice of a Lease dated as of August 10, 2010, as amended by a First Amendment to Lease dated as of August 30, 2010, Second Amendment to Lease dated as of September 20, 2010, Third Amendment to Lease dated as of October 4, 2010, and Fourth Amendment to Lease dated as of October 12, 2010 (together the "Lease") wherein Landlord, as owner of a parcel containing approximately 36 acres located south and west of the intersection of West North Avenue and North Ninth Avenue in the Village of Melrose Park, Cook County, Illinois legally described on **EXHIBIT A** (the "Shopping Center Parcel") leased to Tenant a certain portion of the Shopping Center Parcel (the "Leased Premises") consisting of (a) the existing building containing approximately 68,000 square feet of floor area (the "Existing Building") and the building expansion containing approximately 22,000 square feet of floor area to be constructed as part of the Initial Work contemplated in Section 4.01 (the "Building Expansion") (the Existing Building and Building Expansion are together hereinafter referred to as the "Building") approximately depicted on **EXHIBIT B** attached hereto and granted certain rights to Tenant over the Shopping Center Parcel. Landlord took title to the Shopping Center Parcel by trustee deed dated August 8, 2007, recorded as Document No. 0722122043 of Cook County Records. All capitalized terms used and not defined herein shall have the meaning ascribed to such terms in the Lease.

NOW, THEREFORE, in consideration of the foregoing recitals and the rents and covenants provided for in the Lease Agreement, Landlord and Tenant give notice of the following:

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1. The Shopping Center Parcel is legally described on **Exhibit A** attached hereto.
2. The Leased Premises, Tenant's Service Area, Tenant's Pharmacy Drive-Thru, Tenant's Sidewalk and Meijer Parking Area are approximately depicted on **Exhibit B** attached hereto.
3. Landlord has granted Tenant certain nonexclusive rights over the Common Area portion of the Shopping Center Parcel.
4. The initial term of the Lease shall expire on September 30, 2026.
5. Tenant has the right to extend the term of the Lease for five (5) successive periods of five (5) years each.
6. Tenant shall have a one-time right of first offer to lease the space west of and adjacent to the Leased Premises containing approximately 43,000 square feet if and when it becomes available for leasing and after the current tenant vacates.
7. Landlord agrees that all buildings hereafter constructed or modified in the Shopping Center Parcel will be constructed only within the Permissible Building Areas depicted on **Exhibit C** and covenants that the maximum Floor Area of said buildings permitted to be constructed as designated on said **Exhibit C** will not be increased by more than 5% without Tenant's written consent.
8. Landlord covenants and agrees that any buildings, pylon or monument signs constructed on the Outparcels depicted as Pads 1-7 on **Exhibit C** (the "Outparcels") shall be subject to the following restrictions: (i) no more than one building shall be constructed on any Outparcel; and (ii) no building structure shall exceed twenty-five (25) feet in height, except that up to ten percent (10%) of the area of the buildings in the Shopping Center may have architectural features that are no higher than 32 feet without Tenant's consent. Landlord further covenants that no construction shall take place on "Pad 5" shown on **Exhibit C** until Landlord completes certain building façade renovations and constructs certain signs in the Shopping Center as specified in the Lease.
9. If at any time during the Term, Landlord, or any entity in which Landlord owns a legal or beneficial interest or any entity which owns a legal or beneficial interest in Landlord, acquires real property adjoining or adjacent to the Shopping Center Parcel, Landlord covenants and agrees that: (i) such adjoining or adjacent property shall be subject to the provisions of Sections 10 and 11 of this Memorandum below; (ii) any buildings or other improvements (including pylon or monument signs) constructed on such adjacent property shall not materially interfere with or alter the visibility of and public access to the Leased Premises or the visibility of the Shopping Center Pylon Sign or Tenant's signage contemplated in the Lease; (iii) Landlord shall not place, or allow the placement of, any telecommunications towers thereon, except along the west boundary of the Shopping Center; and (iv) Landlord shall neither confer upon such adjoining or adjacent property any parking rights, nor permit the parking by occupants, employees, agents, or invitees of such occupants of such adjoining or adjacent property, to park upon the Shopping Center Parcel; provided however, such restriction on parking rights shall not apply to the property depicted on **Exhibit D** provided that the parking rights granted do not result in a breach of the parking covenant in the Lease.

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10. Subject to certain existing permitted uses on the Shopping Center Parcel, Landlord has covenanted and agreed that so long as (a) Tenant is not in material default of this Lease (after the expiration of any applicable notice and cure period) and (b) Tenant is and has not had a Failure to Operate a business that devotes no less than twenty percent (20%) of its Floor Area to the sale of groceries in the Leased Premises during the Term, no portion of the Shopping Center Parcel, other than the Leased Premises, shall be used or operated as (i) a "supercenter" or "hypermarket" store; (ii) a store engaged in the retail sale of groceries and other products typically offered for sale in a grocery supermarket; (iii) a supermarket or grocery store, including so-called specialty food, ethnic food and health food stores; (iv) a drug store of any kind or prescription pharmacy (provided that this exclusive right provided in this clause (iv) shall terminate and be of no further force or effect if Tenant has a Failure to Operate a pharmacy within the Leased Premises during the Term and after the store opening); or (v) a store selling liquor or spirits in package form and/or selling beer, wine and ale for off premises consumption. The term "hypermarket" or "supercenter" shall mean a retail store combining the sale of groceries and foodstuffs with the sale of general merchandise in which the sale of groceries and foodstuffs (including meat, produce, deli, bakery and the like, if offered) constitutes more than the smaller of (a) fifteen percent of Floor Area within such store or 15,000 square feet of Floor Area. The parties agree that this exclusive right shall be interpreted to mean that it prohibits leasing to a convenience store such as "7-11", but does not prohibit leasing to a "dollar store" or similar store which sells groceries along with general merchandise, nor to any store other than a convenience store which sells groceries as an incidental use occupying no more than 3,000 square feet of Floor Area, nor a restaurant of any kind, nor a bakery. Landlord covenants that no future agreements with occupants of the Shopping Center (including extensions of existing leases) shall for the first time allow for any such occupant to use or operate their premises in violation of the exclusive uses stated herein. Landlord further agrees that the leases for the Shopping Center existing as of the date of this Lease shall not be amended to expand the permitted uses thereunder in violation of the exclusive use rights of Tenant set forth in this Section 10 without the prior written consent of Tenant. Landlord also agrees to withhold its consent to any change in use under an existing lease and to any transfer of an existing lease that will result in a change in use that would be in conflict with Tenant's exclusive rights hereunder, but only if Landlord has the right to withhold such consent.

11. Except for certain existing permitted uses on the Shopping Center Parcel, Landlord will not permit the use of any portion of the Shopping Center for any purpose other than retail, office, restaurant and service establishments common to comparable shopping centers of comparable size located in the metropolitan area. Notwithstanding the foregoing, office use shall not exceed fifteen percent (15%) of the total Floor Area of Shopping Center buildings. Service establishments shall include, but not be limited to, the business of financial institutions, investment, real estate, and insurance offices, and travel agencies. Landlord will not permit any of the following prohibited uses: any use which violates laws or requirements of governmental authorities having jurisdiction over the Shopping Center; any operation primarily used as a warehouse operation; any "second hand" store or "surplus" store (other than (i) upscale consignment shops typically found in other reputable commercial retail projects and (ii) no more than one nationally recognized thrift type store such as salvation army or goodwill); any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located behind or on the side of any building); any pawn shop (provided, however, this prohibition shall not be applicable to no more than one currency exchange);

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any central laundry, dry cleaning plant, or laundromat (provided, however, this prohibition shall not be applicable to (a) on-site service oriented to pickup and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located, and (b) no more than one "green" dry cleaning plant); any outdoor automobile, truck, trailer or recreational vehicles sales, leasing, display or repair; bowling alley, skating rink, soccer facility, or other sporting facility (provided, however, such restrictions shall not apply to the basement space under the current Best Buy store); any kennel or veterinary clinic where animals are kept overnight (provided, however, such restrictions shall not apply to the basement space under the current Best Buy store); any telecommunications tower which is not located in the area behind the Shopping Center buildings and at least 250 feet from the Leased Premises; any mortuary or funeral home; any establishment selling or exhibiting pornographic materials (however, nothing herein shall prevent a mainstream book, game or video seller, such as Barnes and Noble, Blockbuster or GameStop, from selling items typically sold in such stores from time to time); any bingo parlor (provided bingo events will be allowed for up to 30 days per year outside of Tenant's Business Area) (provided, however, such restrictions shall not apply to the basement space under the current Best Buy store); or gaming, gambling, betting or game of chance business (exclusive of the sale of lottery tickets); any flea market; any video or similar amusement arcade, pool or billiard hall (provided, however, such restrictions shall not apply to the basement space under the current Best Buy store so long as such pool or billiard hall does not serve alcohol), (however, nothing shall prevent permissible restaurants from having video machines or pool tables as incidental to the restaurant, and provided further, that no more than one business providing physical play activities for children as its primary use including, but not limited to, Chuck E. Cheese, Dave and Buster's, Gatti Land, Gatti Town, Pump It Up, Shakey's, John's Incredible Pizza, Incredible Pizza Company, Discovery Zone, Peter Piper, Pistol Pete's, Jeeper's, Club Disney or similar concepts shall be permitted in the Shopping Center which business must be more than 150 feet from the Leased Premises) – the foregoing restriction is not intended to prohibit a daycare center or playland that is incidental to a restaurant (current examples of which are a McDonalds and Burger King restaurant with a playland) so long as such uses are at least 150 feet from the Leased Premises; or dance hall (provided, however, such restriction shall not prohibit a dance hall that does not serve alcohol, dance studio or banquet hall in the basement space under the current Best Buy store); any tattoo parlor; any so called "head shop"; any massage parlor (other than a day spa or salon, such as "Massage Envy" or "Red Door" or a spa in conjunction with a gym or health club), adult book store, adult entertainment facility, adult video store or establishment featuring a male or female adult revue or any other similar or related uses; a cocktail lounge, tavern, or bar which has revenue from the sale of alcoholic beverages in excess of fifty percent (50%) of the gross revenue of such establishment.

12. This Memorandum contains only selected provisions of the Lease, and reference is made to the full text of the Lease for the full terms and conditions. This Memorandum shall not, in any way, amend or supersede the terms and conditions of the Lease.

[Acknowledgements to follow]

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TENANT:

MEIJER STORES LIMITED PARTNERSHIP

By: Meijer Group, Inc.

Its: General Partner

By: 

Michael L. Kinsla
Vice President-Real Estate

Its: _____

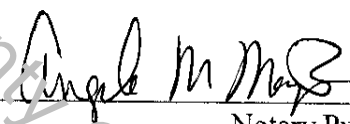
LEGAL 
BUS _____

STATE OF MICHIGAN)

) ss.

COUNTY OF KENT

The foregoing instrument was acknowledged before me this 21st day of October, 2010, by Michael L. Kinsla, the Vice President-Real Estate of Meijer Group, Inc., the General Partner of Meijer Stores Limited Partnership, a Michigan limited partnership, on behalf of said limited partnership.


Notary Public
State of Michigan, County of _____
My commission expires: _____
Acting in the County of _____

ANGELA M. MAZUREK
Notary Public, Ottawa Co., MI
Acting In Kent Co., MI.
My Commission Expires March 2, 2015

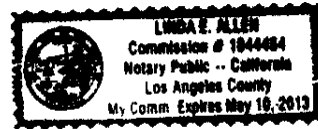
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State of California)
) ss.
County of Los Angeles)

On October 25, 2010, before me, Linda E. Allen, a Notary Public, personally appeared Sanford D. Sigal, 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 he/she/they executed the same in his/her/their authorized capacity(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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Linda E. Allen (Seal)
Notary Public in and for said County and State
Commission #1844454
My Commission expires: May 10, 2013

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UNOFFICIAL COPY**EXHIBIT A
TO
MEMORANDUM OF LEASE****DESCRIPTION OF SHOPPING CENTER PARCEL**

A PARCEL OF LAND IN THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 94.82 FEET SOUTH OF THE NORTH LINE OF AFORESAID SECTION 3 AND 33.0 FEET WEST OF THE EAST LINE OF AFORESAID SECTION 3, BEING THE INTERSECTION OF THE WEST LINE OF 9TH AVENUE AND THE SOUTH LINE OF NORTH AVENUE; THENCE NORTH 89 DEGREES 42 MINUTES 10 SECONDS WEST IN THE SOUTH LINE OF AFORESAID NORTH AVENUE, TO A POINT 95.68 FEET SOUTH OF AFORESAID NORTH LINE OF SECTION 3, A DISTANCE OF 1628.12 FEET, TO A POINT IN THE EAST LINE OF 14TH AVENUE AS SHOWN IN THE PLAT OF SUBDIVISION OF WINSTON PARK UNIT NUMBER 1 RECORDED JULY 6, 1955 AS DOCUMENT 16291419 IN PLAT BOOK 448 ON PAGES 22 AND 23; THENCE SOUTH 0 DEGREES 30 MINUTES WEST IN THE EAST LINE OF AFORESAID 14TH AVENUE A DISTANCE OF 855.28 FEET TO THE NORTHWEST CORNER OF LOT 1 IN AFORESAID WINSTON PARK UNIT NUMBER 1; THENCE SOUTHEASTERLY IN A NORTHERLY LINE OF AFORESAID WINSTON PARK UNIT NUMBER 1, BEING A CURVED LINE, CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 1130.0 FEET, AN ARC DISTANCE OF 528.87 FEET TO A POINT OF TANGENCY WITH A LINE PARALLEL TO AND 1643.0 FEET NORTH OF THE SOUTH LINE OF THE AFORESAID NORTHEAST 1/4, AND BEING THE NORTH LINE OF AFORESAID WINSTON PARK UNIT NUMBER 1; THENCE EAST IN AFORESAID NORTH LINE OF UNIT NUMBER 1 A DISTANCE OF 700.01 FEET TO A POINT OF CURVE; THENCE SOUTHEASTERLY IN A NORTHEASTERLY CURVED LINE OF AFORESAID UNIT NUMBER 1, CONVEX NORTHEASTERLY HAVING A RADIUS OF 520.0 FEET AN ARC DISTANCE OF 493.51 FEET, TO THE NORTHEASTERLY CORNER OF LOT 26 IN AFORESAID WINSTON PARK UNIT NUMBER 1; THENCE NORTH 0 DEGREES 09 MINUTES EAST IN THE WEST LINE OF AFORESAID 9TH AVENUE A DISTANCE OF 1185.44 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

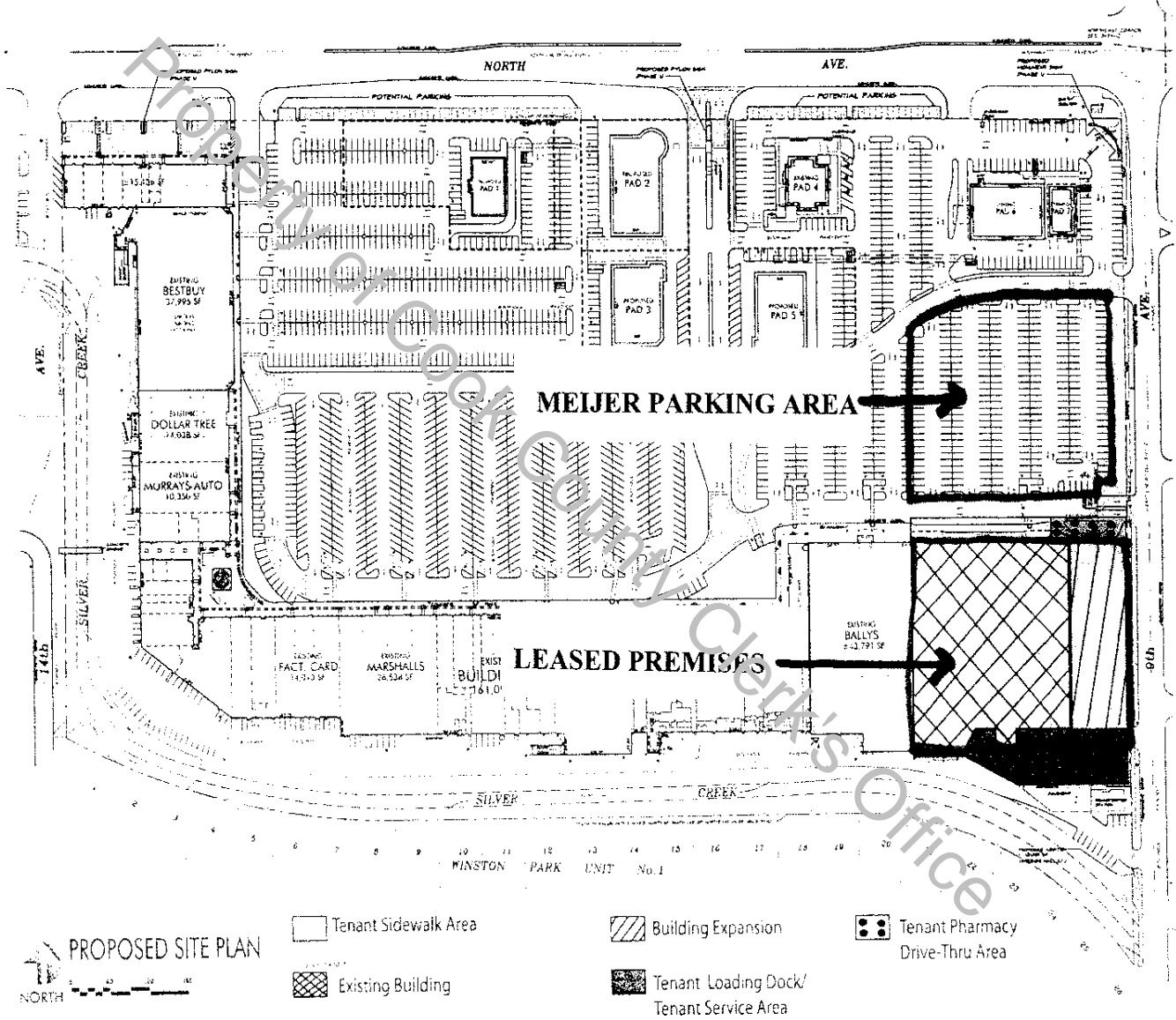
Tax Parcel Nos:

15-03-211-008-0000
 15-03-211-004-0000
 15-03-211-006-0000
 15-03-211-007-0000
 15-03-211-009-0000

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EXHIBIT B TO MEMORANDUM OF LEASE

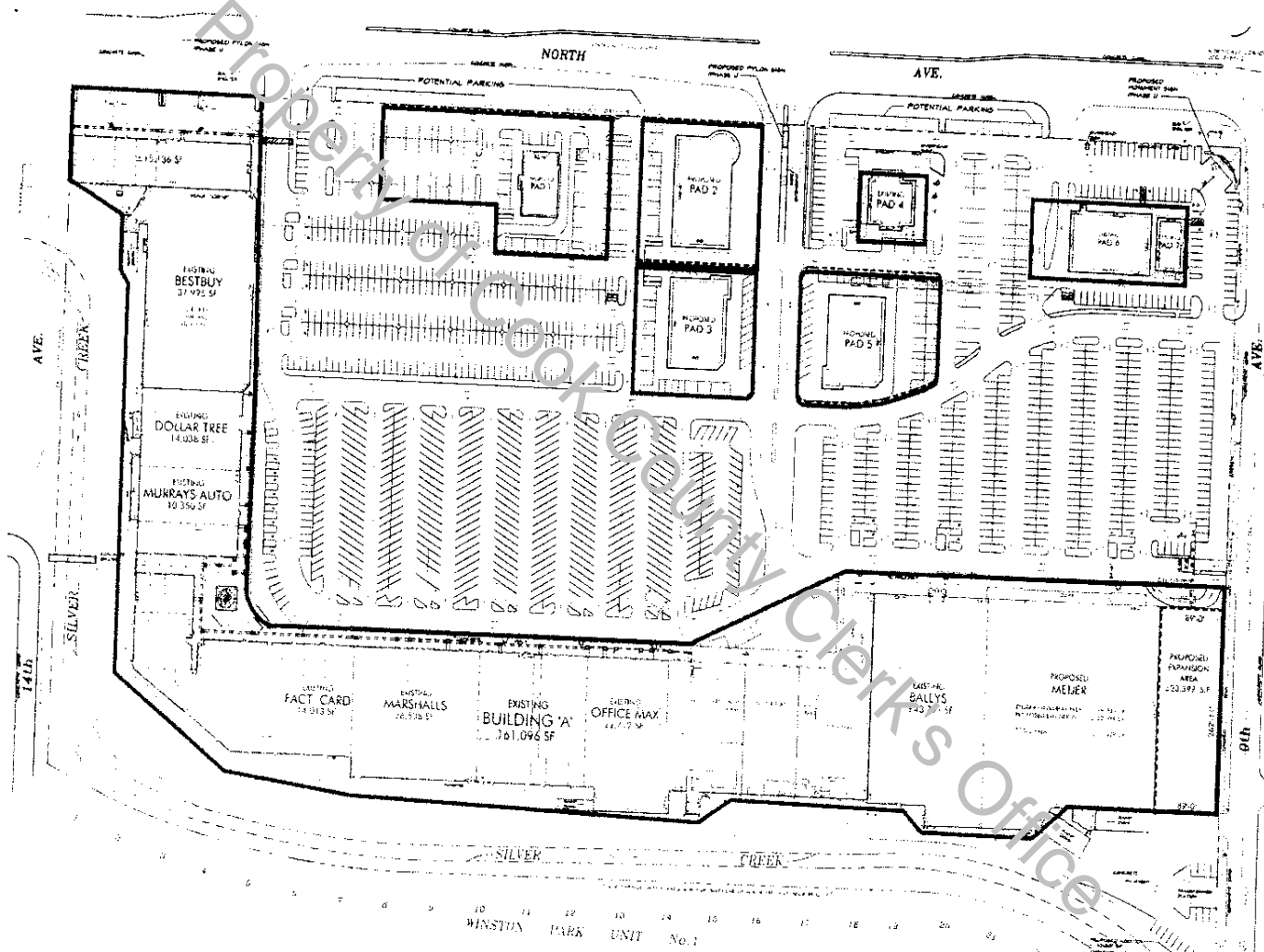
DEPICTION OF LEASED PREMISES, TENANT'S SERVICE AREA, TENANT'S PHARMACY DRIVE-THRU, TENANT'S SIDEWALK AND MEIJER PARKING AREA



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EXHIBIT C TO MEMORANDUM OF LEASE

DEPICTION OF PERMISSIBLE BUILDING AREAS AND THE OUTPARCELS



PROPOSED SITE PLAN



- Maximum Building Area
- Pad 4 - 5,000 SF
- Pad 6 - 10,000 SF
- Pad 7 - 3,500 SF
- Pad 1 - 4,500 SF
- Pad 2 - 12,000 SF
- Pad 3 - 9,500 SF
- Pad 5 - 23,399 SF

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EXHIBIT D TO MEMORANDUM OF LEASE

DEPICTION OF EXCEPTION PROPERTY - REGARDING THIRD PARTY COMMON AREA RIGHTS

