

Doc# 1732539132 Fee \$66.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A.YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 11/21/2017 02:41 PM PG: 1 OF 15

# 000000 SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Wells Fargo Bank, National Association, as trustee for the holders of J.P. Morgan Chase Commercial Mortgage Securities Trust 2015-SGP, Commercial Mortgage Pass-Througo Certificates, Series 2015-SGP and

as collateral agent for the Co-Lenders pursuant to the Co-Lender Agreement

- and -

American Multi-Cinema, Inc., a Missouri corporation

(Tenant)

#### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Dated: as of September 26, 2017

Location:

Orland Square, Orland Park,

Illinois

{LR: 00303493.1 }

#### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the Lem day of September, 2017 by and between Wells Fargo Bank, National Association (i) as trustee for the holders of J.P. Morgan Chase Commercial Mortgage Securities Trust 2015-SGP, Commercial Mortgage Pass-Through Certificates, Series 2015-SGP (as successor-in-interest to JPMorgan Chase Bank, National Association, a national banking association ("JPM")) and (ii) as collateral agent for JPM and H/2 SO III Funding I LLC, a Delaware limited liability company ("H/2 SO III"), as co-lenders (together with their respective successors and assigns, the "Co-Lenders") pursuant to the Co-Lender Agreement dated as of July 7, 2015 (as amended from time to time, the "Co-Lender Agreement") (Eigether with its successors and assigns, including any party that acquires the Property by forecosure, conveyance in lieu of foreclosure or similar transaction and any subsequent owner of the Property, "Lender") and American Multi-Cinema, Inc., a Missouri corporation ("Tenant")

#### **RECITALS:**

- A. Lender made a loan to Landlord (defined below) pursuant to the terms and conditions of a Loan Agreement between Lender and Landlord (the "Loan Agreement") and evidenced by certain promissory notes given by Landlord to Lender (collectively, the "Note") and secured by a certain mortgage, deed of trust or similar security instrument given by Landlord to Lender (the "Mortgage"), encumbering the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "Property") (the Loan Agreement, Note, Mortgage and other documents securing the loan, the "Loan Documents");
- B. Tenant occupies a portion of the Property under and pursuant to the provisions of a certain lease dated September 28, 2017 between Seritage SRC Finance, LLC, a Delaware limited liability company, as landlord ("Landlord"), and Tenant, as tenant (the "Lease"); and
- C. Subject to the terms of this Agreement, Tenant has agreed to subordinate the Lease to the Mortgage and to the lien thereof and Lender has agreed to grant non disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

#### **AGREEMENT:**

For good and valuable consideration, Tenant and Lender agree as follows:

1. <u>Subordination</u>. Subject to the terms of this Agreement, Tenant agrees that the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the lien of the Mortgage and all terms, covenants and conditions set forth in the Mortgage and the other Loan Documents including without limitation all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums

secured thereby with the same force and effect as if the Mortgage and the other Loan Documents had been executed, delivered and (in the case of the Mortgage) recorded prior to the execution and delivery of the Lease, provided, however, (i) nothing in this Agreement is intended to subject or subordinate "Tenant's Property" (as defined in the Lease) to the lien of the Mortgage and other Loan Documents, and (ii) all insurance and condemnation proceeds shall be applied in the manner described in the Lease, not the Mortgage.

2. <u>Non-Disturbance</u>. Lender agrees that if any action or proceeding is commenced by Lender for the foreclosure of the Mortgage or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law; provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or voc of the premises demised thereunder, and the sale of the Property in any such action or proceeding shall be made subject to all rights of Tenant under the Lease except as set forth in Section 2 except, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the Lease shall be in full force and effect and (b) Tenant shall not be in default under any of the material terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed beyond the expiration of any applicable notice or grace periods (the matters described in clauses [a] and [b] being referred to as the "Recognition Conditions").

#### 3. Attornment.

Lender and Tenant agree that so long as the Recognition Conditions have (A) been satisfied, then upon the conveyance of the Property by reason of the foreclosure of the Mortgage or the acceptance of a deed or assignment in hou of foreclosure or otherwise, the Lease shall not be terminated or affected thereby, but it shall continue in full force and effect as a direct lease between the transferee of the Property (the "Transferee") and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Fenant agrees to attorn to the Transferee and the Transferee shall accept such attornment and recognize Tenant; provided, however, the Transferee shall not be (a) obligated to complete any construction work required to be done by Landlord pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant, (b) liable to Tenant (i) for Landlord's failure to perform any of its obligations under the Lease which have accrued prior to the date on which the Transferee shall become the owner of the Property or (ii) for any act or omission of Landlord occurring prior to such foreclosure or sale, (c) required to make any repairs to the Property or to the premises demised under the Lease required as a result of fire, or other casualty or by reason of condemnation unless the Transferee shall be obligated under the Lease to make such repairs and shall have received sufficient casualty insurance proceeds or condemnation awards to finance the completion of such repairs, (d) subject to any offsets, defenses, abatements or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which the Transferee shall become the owner of the Property, unless such offset or abatement is specifically available to Tenant in accordance with the terms of the Lease, (e) liable for the return of rental security deposits, if any, paid by Tenant to Landlord in accordance with the Lease unless such sums are actually received by the Transferee, (f) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any prior Landlord unless (i) such sums are actually received by the Transferee or (ii) such prepayment shall have

been expressly approved of by the Transferee, (g) bound to make any payment to Tenant which was required under the Lease, or otherwise, to be made prior to the time the Transferee succeeded to Landlord's interest, (h) bound by any agreement amending, modifying or terminating the Lease made without the Lender's prior written consent prior to the time the Transferee succeeded to Landlord's interest (but the Transferee shall be subject to a termination of the Lease unilaterally made by Tenant pursuant to the express terms of the Lease and this Agreement), or (i) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time the Transferee succeeded to Landlord's interest, other than if pursuant to the provisions of the Lease or approved by Lender.

- (B) Notwithstanding the provisions of Paragraph (A): the parties agree that nothing set forth in this Section 3 shall limit (a) Tenant's right to exercise against Lender or Transferee any rent abatement or offset rights otherwise specifically available to Tenant in accordance with the terms of the Lease because of events occurring before or after the date of attornment, or (b) Tenant's right in accordance with the terms of the Lease to exercise self-help to cure a Landlord default and to offset the costs incurred by Tenant in exercising such self-help against rent. Further, (i) Transferee shall be obligated to cure any default pertaining to maintenance or repair obligations which exists as of the date Transferee acquires title to the Property, and (ii) if Transferee is unwilling to complete any construction work required to be done by Landlord pursuant to the provisions of the Lease of to reimburse Tenant for any construction work done by Tenant if required under the Lease, or fails of make any repairs to the Property or to the premises demised under the Lease required under the Lease as a result of fire, or other casualty or by reason of condemnation, then in any such case, Tenant shall have the right to terminate the Lease by notice to Lender. Lender agrees that it shall not accessonably withhold or delay its consent to amendments of the Lease.
- 4. <u>Notice to Tenant</u>. After notice is given to Tenant by Lender that the Landlord is in default under the Loan Documents and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases an irrents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become the to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.
- 5. Lender to Receive Notices. Tenant shall provide Lender with a copy of any default notice sent to Landlord pursuant to the Lease setting forth such default and Tenant shall not exercise such right of termination or offset of rents unless Lender shall have failed within forty-five (45) days after Lender's receipt of such notice to cure such default, or if such default cannot be cured within forty-five (45) days, shall have failed within thirty (30) days after Lender's receipt of such notice to commence and thereafter diligently cure such default within ninety (90) days thereafter.
- 6. <u>Notices</u>. All notices or other written communications hereunder shall be deemed to have been properly given (i) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (ii) three

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(3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

> If to Tenant: American Multi-Cinema

> > One AMC Way, 11500 Ash Street

Leawood, Kansas 66211

Attention: Lease Administrator

If to Lender: Wells Fargo Bank, N.A.

> 9062 Old Annapolis Road Columbia, Maryland 21045

Attention: Corporate Trust Services – JPMorgan Chase,

2015-SGP

Facsimile: 410-715-2380

Email: trustadministrationgroup@wellsfargo.com and

cts.cmbs.bond.admin@wellsfargo.com

Opony Ox Per tadia Commercial Mortgage LLC and

> 323 Norristown Road, Suite 300 Ambler, Pennsylvania 19002

Attention: Executive Vice President – Servicing Operations

Facsimile: (215) 328-3478

Strategic Asset Services LLC and:

375 Park Avenue, 20th Floor New York, New York 10152

Attention: Primary Servicing Operations – JPM 2015-SGP

Telephone: (212) 671-6300 Facsimile: (212) 671-6368

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

- 7. Joint and Several Liability. If Tenant consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Lender and Tenant and their respective successors and assigns.
- The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner {LR: 00303493.1 }

of the Property by reason of a foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Mortgage.

- 9. <u>No Oral Modifications</u>. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.
- 10. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located
- 11. <u>Incordicable Provisions</u>. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.
- Duplicate Originals; Counterparts; Recording. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party herete to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Lender shall cause this Agreement to be recorded in the real estate records within 60 days after the date of full execution hereof, and shall promptly provide a copy of the recorded document to Tenant.
- 13. <u>Number and Gender</u>. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.
- 14. <u>Transfer of Loan</u>. Lender may sell, transfer and deliver the Note and assign the Mortgage, this Agreement and the other documents executed in connection therewith to one or more investors in the secondary mortgage market ("<u>Investors</u>"). In connection with such sale, Lender may retain or assign responsibility for servicing the loan, including the Note, the Mortgage, this Agreement and the other documents executed in connection therewith, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer, on behalf of the Investors. All references to Lender herein shall refer to and include any such servicer to the extent applicable.
- 15. Further Acts. Tenant will, at the cost of Lender and at no cost to Tenant, do, execute, acknowledge and deliver such further acts and assurances as are reasonably approved by Tenant and which Lender shall, from time to time, reasonably require, for the better assuring and confirming unto Lender the property and rights hereby intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of this

Agreement or for filing, registering or recording this Agreement, or for complying with all applicable laws.

16. Limitations on Lender's Liability. Tenant acknowledges that Lender is obligated only to Landlord to make the Loan upon the terms and subject to the conditions set forth in the Loan Documents. In no event shall Lender or any purchaser of the Property at foreclosure sale or any grantee of the Property named in a deed-in-lieu of foreclosure, nor any -heir, legal representative, successor, or assignee of Lender or any such purchaser or grantee (collectively the Lender, such purchaser, grantee, heir, legal representative, successor or assignee, the "Subsequent Landlord") have any personal liability for the obligations of Landlord under the Lease and should the Subsequent Landlord succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Subsequent Landlord in the Property for the satisfaction of Tenant's remedies for the collection of a judgment (c. etcer judicial process) requiring the payment of money in the event of any default by any Subsequent Landlord as landlord under the Lease, and no other property or assets of any Subsequent Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Subsequent Landlord to perform any such material obligation.

17. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and Landlord and its successors and assigns.

IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

#### LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION, (i) AS TRUSTEE FOR THE HOLDERS OF J.P. MORGAN CHASE COMMERCIAL MORTGAGE **SECURITIES TRUST 2015-SGP, COMMERCIAL** Ox By: MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2015- SGP and (ii) AS COLLATERAL AGENT FOR THE CO-LENDERS UNDER THE CO-LENDER AGREEMENT

Strategic Asset Services LLC, as Primary Servicer Sy: <u>Vi</u> Name: Title:

Michael Carp

Authorized Signatory

By:

Name:

Grace E. Boue ruller-Holst

Authorized Signatory

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# **UNOFFICIAL COPY**

**TENANT:** 

AMERICAN MULTI-CINEMA, INC.

a Missouri corporation

Title: Senior Vice-President

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COOK COUNTY LECORDER OF DEEDS

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The undersigned accepts and agrees to the provisions of Section 4 hereof:

LANDLORD:

SERITAGE SRC FINANCE, LLC, a Delaware limited liability company

Name:

Matthew Fernand

Title: Vice President

COOK COUNTY RECORDER OF DEEDS

COOK COUNTY RECORDER OF DEEDS

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NOTARY PUBLIC - State of Kansas SARAH L. BOLLINGER

My Appt. Expires 41-18-2

Diff Clert's Office

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#### **ACKNOWLEDGMENTS**

STATE OF KANSAS	)	
	)	SS
COUNTY OF JOHNSON	)	

· On this 28th day of September, 2017, before me, a Notary Public in and for such County and State, personally appeared Daniel E. Ellis, to me personally known, who, being by me duly sworn, did say that he is the Senior Vice-President of AMERICAN MULTI-CINEMA, INC., a Missouri corperation, and that such instrument was signed in behalf of such corporation by authority of its board of directors, and such person acknowledged such instrument to be the free act and deed of such corporation.

WITNESS my hand and official seal.

FOR NOTARY STAMP

My Commission Expires: April 18, 3021

{LR: 00303493.1 }

STATE OF TOXAS )
$\begin{array}{c} (\mathcal{A}(\mathcal{A})) & \text{SS.} \\ (\mathcal{A}) & (\mathcal{A}) & (\mathcal{A}) \end{array}$
Λ Ιου. 191-
On September 2, 2017, before me, Gill Kesher, personally
appeared MI Mall (av) personally known to me (or 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 eraty upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and chicial seal.
Or A Lotto all
<u>DNIVUY</u>
Notary Public
FOR NOTARY STAMP
FOR NOTARY STAMP
Gilly Ann Kestner
My Commission Expires:  Notary Public, State of Texas
Expires: 02/09/2019 }
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#### EXHIBIT A LEGAL DESCRIPTION

All that certain plot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the Village of Orland Park, County of Cook and State of Illinois, more particularly bounded and described as follows:

A TRACT OF LAND IN THE SOUTH HALF OF SECTION 10, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 10; THENCE DUE WEST 43 50 FEET ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 10; THENCE DUE NORTH 130.35 FEET TO A POINT OF CURVE: THENCE NORTHERLY ON A CURVE CONVEX TO THE EAST HAVING A RADIUS OF 407.57 FEET, AN AKC DISTANCE OF 177.84 FEET AND A CHORD BEARING OF NORTH 12 DEGREES 20 MINUTES WEST TO A POINT OF TANGENT; THENCE NORTH 25 DEGREES 00 MINUTES 02 SECONDS WEST 7.13 FEET TO A POINT OF CURVE: THENCE WESTERLY ON A CURVE CONVEX TO THE NORTH HAVING A RADIUS OF 40 FEET AN ARC DISTANCE OF 72.73 FEET AND CHORD BEARING OF NORTH 77 DEGREES 05 DEGREES 30 SECONDS WEST TO A POINT; THENCE NORTH 39 DEGREES 10 MINUTES 54 SECONDS WEST TO A POINT ON A CURVE; THENCE WESTERLY ON A CURVE CONVEX TO THE SOUTH HAVING A RADIUS OF 492.67 FEET, AN ARC DISTANCE OF 196.86 FEET AND A CHORD BEARING OF SOUTH 62 DEGREES 15 MINUTES 53 SECONDS WEST TO A POINT OF COMPOUND CURVE; THENCE CONTINUING WESTERLY ON A CURVE CONVEX TO THE SOUTH HAVING A RADIUS OF 1,012.50 FEET; AN ARC DISTANCE OF 438.04 FEET AND A CHORD BEARING OF SOUTH 86 DEGREES 06 MINUTES 21 SECONDS WEST TO A POINT OF TANGENT; THENCE NORTH 81 DEGREES 30 MINUTES WEST 218.55 FEET; THENCE DUE NORTH 316.97 FEET; THENCE SOUTH 60 DEGREES WF3T 20.78 FEET; THENCE DUE NORTH 257.52 FEET: THENCE NORTH 45 DEGREES WIST 114.23 FEET: THENCE NORTH 45 DEGREES EAST 384 FEET; THENCE SOUTH 45 DEGREES EAST 160 FEET TO A POINT OF CURVE; THENCE EASTERLY ON A CURVE CONVEX TO THE SOUTH HAVING A RADIUS OF 100 FEET, AN ARC DISTANCE OF 157.08 FEET AND A CHORD BEARING OF DUE EAST TO A POINT OF REVERSE CURVE; THENCE EASTERLY ON A CURVE CONVEX TO THE NORTH HAVING A RADIUS OF 52 FEET, AN ARC DISTANCE OF 81.68 FEET AND A CHORD BEARING OF DUE EAST TO A POINT OF TANGENT: THENCE SOUTH 45 DEGREES EAST 124 FEET; THENCE SOUTH 27 DEGREES 28 MINUTES 26 SECONDS EAST 39.85 FEET; THENCE SOUTH 45 DEGREES EAST 347.52. FEET TO A POINT OF CURVE: THENCE SOUTH EASTERLY ON A CURVE CONVEX TO THE SOUTHWEST, HAVING A RADIUS OF 111.04 FEET, AN ARC DISTANCE OF 76.79 FEET AND A CHORD BEARING OF SOUTH 64 DEGREES 48 MINUTES 38 SECONDS EAST TO A POINT OF TANGENT: THENCE SOUTH 84 DEGREES 37 MINUTES 14 SECONDS EAST 10.65 FEET TO A POINT OF CURVE; THENCE EASTERLY ON A CURVE CONVEX TO THE NORTH HAVING A RADIUS OF 20 FEET, AN ARC DISTANCE OF 13.83 FEET AND A CHORD BEARING OF SOUTH 64 DEGREES 48 MINUTES 40 SECONDS EAST TO A POINT OF TANGENT; THENCE SOUTH 45 DEGREES EAST 64.71 FEET TO A POINT OF CURVE; THENCE SOUTHERLY

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ON A CURVE CONVEX TO THE EAST HAVING A RADIUS OF 492.67 FEET, AN ARC DISTANCE OF 154.74 FEET AND A CHORD BEARING OF SOUTH 23 DEGREES 07 MINUTES 04 SECONDS WEST: THENCE SOUTH 57 DEGREES 53 MINUTES 05 SECONDS EAST 12.50 FEET TO A POINT OF CURVE; THENCE SOUTHERLY ON A CURVE CONVEX TO THE WEST HAVING A RADIUS OF 30 FEET, AN ARC DISTANCE OF 29.91 FEET AND A CHORD BEARING OF SOUTH 3 DEGREES 33 MINUTES 28 SECONDS WEST TO A POINT OF TANGENT; THENCE SOUTH 25 DEGREES EAST · 86.27 FEET TO A POINT OF CURVE; THENCE SOUTHERLY ON A CURVE CONVEX TO THE EAST HAVING A RADIUS OF 494.57 FEET, AN ARC DISTANCE OF 215.80 FEET AND A CHORD BEARING OF SOUTH 12 DEGREES 30 MINUTES EAST TO A POINT OF TANGENT: THENCE SOUTH 28.37 FEET; THENCE SOUTH 14 DEGREES 00 MINUTES 40 SECONDS EAST 41,23 FEET; THENCE DUE SOUTH 62 FEET TO THE SOUTH LINE OF THE SOUT JEAST QUARTER OF SAID SECTION 10; THENCE NORTH 89 DEGREES J. W. DK CO. COOK COUNTY CLOTH'S OFFICE 58 MINUTES 30 SECONDS WEST 53.48 FEET ON LAST SAID LINE TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.