

# UNOFFICIAL COPY

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-89-519501

ANB/HAWTHORN  
October 27, 1989 5:04pm

PREPARED BY:  
STEPHEN H. MALATO, ESQ.  
222 North LaSalle Street  
Suite 300  
Chicago, Illinois 60601

Address: See Exhibit "A" attached  
hereto and made a part  
hereof  
Tax No.: See Exhibit "A" attached  
and made a part hereof

## MODIFICATION AGREEMENT

THIS AGREEMENT made this 30th day of October, 1989 ("Date Hereof"), but effective as of the first day of November, 1989 ("Effective Date"), among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Lender") AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee pursuant to Trust Agreement dated July 27, 1989 and known as Trust Number 108-954-07 ("Trust") and HAWTHORN-CAMPBELL HOLDINGS LIMITED PARTNERHIP, an Illinois Limited Partnership, ("Beneficiary") the owner of one hundred per cent (100%) of the beneficial interest thereof (for convenience Trust and Beneficiary shall together be referred to herein as "Borrower").

## RECITALS:

A. Lender is the legal owner and holder of Note dated July 28, 1989 ("Note"), executed and delivered by Trust in favor of Lender, in the principal amount of ONE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,500,000.00) ("Loan"), which provides, among other things, for the payment of "Indebtedness" (as such term is defined in Note) as more fully provided therein.

B. Note is secured by Mortgage and Security Agreement of even date with Note, conveying the land and improvements legally described on Exhibit "A" attached hereto and made a part hereof ("Land and Improvements"), recorded in the office of the Recorder of Deeds of Cook County, Illinois ("Recorder's Office") as Document Number 89-350125 and in the office of the Registrar of Torrens Titles ("Torrens Office") as Document No. LR-3813709 ("Mortgage"), and "Other Loan Documents" (as such term is defined in Mortgage) (Mortgage and Other Loan Documents collectively "Security Documents").

C. Trust and Beneficiary have requested that Note and Security Documents be modified in certain respects and Lender has agreed to modify the same upon the terms and conditions hereafter set forth which includes an increase in Loan to a maximum amount of ELEVEN MILLION AND NO/100 DOLLARS (\$11,000,000.00) which additional Indebtedness shall be disbursed pursuant to the terms and conditions of a Loan agreement made as of November 1, 1989 between Lender and Borrower ("Loan Agreement").

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NOW, THEREFORE, in consideration of the payments made and to be made by Trust and Beneficiary, as hereinafter provided, and the performance of the terms, covenants, conditions and agreements hereafter set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED AS FOLLOWS:

1. WARRANTIES AND REPRESENTATIONS: Trust represents and Beneficiary warrants and represents as follows (collectively "Warranties and Representations"):

- (a) the execution and delivery of Note and Security Documents were duly authorized;
- (b) Note and Security Documents, and each of the covenants, conditions and agreements contained therein are in full force and effect, are the valid and legally binding obligations of Trust and Beneficiary, as the case may be, and are free from all legal and equitable defenses, offsets and counterclaims;
- (c) no person, firm or corporation has or claims any interest in Land and Improvements which does not appear in Loan policy Number 82-02-567164 dated July 31, 1985 issued by Lawyers Title Insurance Corporation ("Loan Policy") (other than tenants of Land and Improvements identified on rent roll attached hereto and made a part hereof as Exhibit "B", pursuant to their respective leases ["Leases"]), nor is there any unrecorded deed, deed of trust, mortgage or other conveyance or any undelivered bill of sale, assignment or instrument of transfer relating thereto;
- (d) no part of Land and Improvements is in receivership nor is any application for receivership pending and no petition in bankruptcy has been filed by or against Trust or Beneficiary;
- (e) the only parties entitled to possession of Land and Improvements, or any part thereof, are Trust, Beneficiary and tenants pursuant to Leases;
- (f) real estate taxes assessed against Land and Improvements has been paid in full through 1988; and
- (g) there are no agreements, state of facts or circumstances presently existing which, with or without the service of notice, passage of time, or both, would grant to Trust or Beneficiary the right

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to refuse to make or delay the payments or otherwise perform the terms, covenants, conditions and agreements required pursuant to Note and Security Documents.

2. ACKNOWLEDGMENT OF AMOUNTS DUE AS OF EFFECTIVE DATE AND DATE HEREOF. As of Effective Date, the amount of Principal Balance owed Lender is ONE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,500,000.00).

3. MODIFICATIONS: As of Effective Date, Note and Security Documents are modified to provide for:

a). a Maturity Date of July 1, 1991 in lieu of the present Maturity Date of October 31, 1989 and Indebtedness, if not sooner paid, shall be due and payable on July 1, 1991, and

b). an increase in Indebtedness to ELEVEN MILLION AND NO/100 DOLLARS (\$11,000,000.00). Indebtedness shall include the increased Principal Amount and all sums due and owing pursuant to Loan Agreement, in addition to the items enumerated in Mortgage.

4. LOAN AGREEMENT. Loan Agreement is incorporated by reference into Mortgage and Mortgage shall secure the full and faithful performance of each and every term, covenant, condition and agreement contained in Loan Agreement.

5. ENVIRONMENTAL INDEMNITY AND LOAN GUARANTY. Pursuant to a certain Environmental Indemnity Agreement ("Environmental Agreement") dated ~~November~~ <sup>Oct 30</sup>, 1989 executed by Joseph S. Beale ("Beale"), Borrower and Beale agreed to indemnify Lender against environmental risks. In addition, Beale has, pursuant to a certain Guaranty Agreement ("Guaranty") agreed to guaranty a part of Loan. Environmental Agreement and Guaranty are incorporated by reference into Mortgage and Mortgage shall secure the full and faithful performance of each and every term, covenant, condition and agreement contained in Environmental Agreement and Guaranty.

6. OTHER LOAN DOCUMENTS: Environmental Agreement, Guaranty and Loan Agreement shall be considered "Other Loan Documents" and, therefore, "Security Documents" as such term is defined in Mortgage, provided, however, that any grace period provided in Environmental Agreement, Guaranty or Loan Agreement shall run concurrently with that provided in Mortgage and any notice given pursuant to Mortgage, Environmental Agreement, Guaranty or Loan Agreement shall be considered a notice served pursuant to the other.

7. ADDITIONAL PROVISIONS: Concurrently with the execution hereof:

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- (a) Beneficiary shall deliver to Lender satisfactory endorsements to Loan Policy insuring the continued validity and priority of the lien of Mortgage, following the recording of this Agreement (subject only to the matters set forth on Schedule B of Loan Policy), confirming all endorsements thereto;
- (b) Trust and Beneficiary waive, to the extent permitted by law, any and all rights which they, or either of them, now or may hereafter have with respect to application for or the seeking of relief specified in any Federal, State or Municipal bankruptcy law, statute or ordinance ("Debtor Relief") and, to the extent that Trust and Beneficiary cannot waive such rights, Beneficiary hereby indemnifies and holds Lender harmless of, from and against any and all claims, losses or damages (including attorneys' fees) which Lender may incur by reason of the filing of a petition, for or on behalf of Trust, Beneficiary or any partner of Beneficiary, seeking Debtor Relief; and
- (c) Beneficiary shall pay all title and recording charges and other costs and expenses (including attorneys' fees) incurred by Lender by reason of the matters specified herein and the preparation of this Agreement and all other documents necessary and required to effectuate the provisions hereof.

8. JOINT AND SEVERAL OBLIGATIONS: All obligations of Trust and Beneficiary pursuant hereto shall be joint and several and may be fully enforced against either Trust or Beneficiary in legal proceedings without any requirement that the other party be joined as a party defendant in such proceedings.

9. FAILURE OR DELAY: No failure by Lender to exercise, or delay by Lender in exercising, any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement, Note and Security Documents are cumulative and not exclusive of each other or of any right or remedy provided by law or in equity. No notice to or demand upon Trust or Beneficiary, in any instance, shall, in itself, entitle Trust or Beneficiary to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of Lender to any other or further action in any circumstance without notice or demand.

10. EFFECTIVENESS: This Agreement shall become effective on

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Effective Date, concurrently with the execution and delivery hereof by Lender, Trust and Beneficiary.

11. CONSTRUCTION: This Agreement shall not be construed more strictly against Lender than against Trust and Beneficiary merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that both Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Trust, Beneficiary and Lender each acknowledges and waives any claims contesting the existence and the adequacy of the consideration given by the others in entering into this Agreement.

This Agreement shall be construed in conjunction with Note and Security Documents. All terms used herein shall have the meanings ascribed in Note and Security Documents unless otherwise defined herein.

12. ENTIRE AGREEMENT: Trust, Beneficiary and Lender each acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Agreement, Note, Security Documents, Loan Agreement, Environmental Agreement and Guaranty which, together, represent a complete integration of all prior and contemporaneous agreements and understandings of Trust, Beneficiary and Lender and, except to the extent modified herein, the provisions of Note and Security Documents are hereby ratified and confirmed.

This Loan Modification Agreement is executed by Trust, not personally but solely as trustee under the terms of the aforesaid Trust Agreements, solely in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Trust hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed that:

- (1) Nothing contained in Note or Security Documents shall be construed as establishing any personal liability upon Trust, personally, to pay Indebtedness or to perform any of the terms, covenants, conditions and agreements therein contained, all such personal liability being hereby expressly waived by Lender; Lender's only recourse against Trust being against Mortgaged Premises and other property given as security for the payment of Indebtedness ("Other Security"), in the manner herein, in Note and Security Documents and by law provided.
- (2) In the event of the occurrence of a Monetary Default or upon the maturity of Indebtedness, whether by acceleration, passage of time or otherwise, the recourse of Mortgagee shall be limited to judicial foreclosure of Mortgaged Premises or the exercise of the other remedies set forth herein and in Note and Security Documents.



(3) Except as in Note and Security Documents provided, Lender shall look solely to Mortgage Premises, Other Security and the foreclosure of the lien of Mortgage or the realization on the security of Security Documents and no deficiency judgment for Indebtedness (following the application of Mortgaged Premises, Other Security and the proceeds thereof) shall be instituted, sought, taken or obtained against Trust or any successor in title to Trust, PROVIDED THAT nothing contained herein shall be deemed to prejudice the rights of Lender to recover from Beneficiary and others, except Trust:

- a). all losses, damages, costs and expenses (including attorney fees) suffered by Lender as a result of fraud and material misrepresentation made by Beneficiary or a breach of Beneficiary's warranty and representation contained in any document delivered to Lender by or at the request of Borrower or as a result of the intentional or negligent waste of Mortgaged Premises;
- b). all rents, revenues, issues and profits from Mortgaged Premises received by Borrower during the period of any Monetary Default or Non-Monetary Default or after acceleration of Indebtedness and not applied to the payment of the indebtedness or the normal operating expenses of Mortgage Premises;
- c). all rents from Mortgaged Premises collected more than one (1) month in advance by Borrower which are not earned at the time of the occurrence of any Monetary Default or Non-Monetary Default and which are not applied to the payment of the indebtedness secured by Superior Mortgages, the Indebtedness or the normal operating expenses of Mortgages Premises;
- d). all "Proceeds" and "Awards" paid to Borrower (as such terms are defined in Mortgage) which are not applied in accordance with the provisions of Loan Papers or the terms and provisions of Superior Mortgages;
- e). any and all of Lender's costs, expenses, damages or liabilities, including, without limitation, all reasonable attorneys' fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about Mortgaged Premises of any "Hazardous Substances" (as

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such term is defined in Mortgage).

Nothing contained herein or in Note and Security Documents to the contrary notwithstanding shall be deemed to release, affect or impair Indebtedness or the rights of Lender to enforce its remedies pursuant hereto and to Note and Security Documents, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

IN WITNESS WHEREOF, Lender, Beneficiary and Trust have caused this Loan Modification Agreement to be signed by their respective duly authorized officers and General Partners have executed this Assignment on the day and year first above written.

Lender:

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO

ATTEST:

By: M. J. Brown

Title: Asst Secretary

By: [Signature]

Title: Second Vice President

Borrower:

American National Bank and Trust  
Company of Chicago, not  
personally but solely as trustee  
of Trust Agreement dated July  
27, 1989 and known as Trust No.  
108-954-07.

ATTEST:

By: [Signature]

Title: Asst Secy

By: [Signature]

Title: [Signature]

Hawthorn-Campbell Holdings  
Limited Partnership

By: HAWTHORN-CAMPBELL B.O.D.  
LIMITED PARTNERSHIP

By: [Signature]

Joseph S. Beale,  
General Partner

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STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) SS.

L. M. SOVIENSKI

I, \_\_\_\_\_ a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that W. MICHAEL WHEELAN VICE PRESIDENT of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Bank") and Claire Rosati Feley ASSISTANT SECRETARY of said Bank who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE PRESIDENT and ASSISTANT SECRETARY, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said ASSISTANT SECRETARY then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank as Trustee as aforesaid, for the uses and purposes therein set forth.

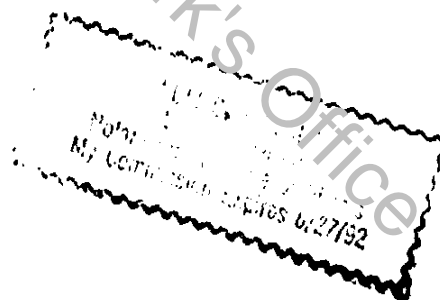
GIVEN under my hand and Notarial Seal this \_\_\_\_\_, 1999.

OCT 01 1999

L. M. Sovieniski

Notary Public

My Commission Expires: \_\_\_\_\_



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STATE OF ILLINOIS )

COUNTY OF COOK )

SS.

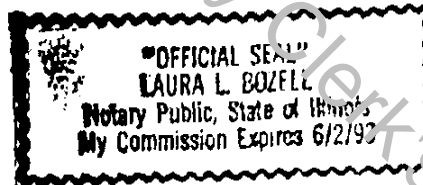
I, Laura L. Bozell a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael J. Kenedy, Second Vice President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Bank") and Mary W. Brown, Assistant Secretary of said Bank who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Second Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said Assistant Secy then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank as Trustee as aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 1st day of November, 1989.

Laura L. Bozell

Notary Public

My Commission Expires:



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STATE OF ILLINOIS )  
COUNTY OF COOK ) SS.

I, DONNA HEAD a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOSEPH S. BOSE General Partner Hawthorn (Campbell) of HAWTHORN-CAMPBELL HOLDINGS LIMITED PARTNERSHIP, of said partnership who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such general partner and and, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said partnership, uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 9<sup>th</sup> day of October, 1989.

Donna Head  
Notary Public

My Commission Expires:

My Commission Expires April 10, 1990

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## EXHIBIT A

PARCEL 1: PIN # 16-36-201-008  
" " 200-035

Lots 1, 2, 3, 4 and 5 in Campbell Soup Company's (Central Division) subdivision of part of the Northeast 1/4 of Section 36, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois recorded May 23, 1930 as Document Number 10667452.

PARCEL 2: PIN # 16-36-200-031  
" " " - 033

Lots two (2) and four (4) in Campbell Soup Company's subdivision of part of the North East Quarter (N.E. 1/4) of Section 36, Township 39 North, Range 13, East of the Third Principal Meridian in Cook County, Illinois recorded July 24, 1957 as Document Number 16966716.

PARCEL 3: PIN # 16-36-201-010  
" " " - 012

A tract of land in the N.E. 1/4 of Section 36, Township 39 N., Range 13, East of the Third Principal Meridian, bounded and described as follows: Commencing at the intersection of the North line of West 35th Street in the City of Chicago, Cook County, Illinois, 33 feet North of the South line of said N.E. 1/4 of Section 36, with the West line of South Campbell Avenue in said City, as dedicated September 1, 1904 (now vacated), produced North, thence West along the North line of said 35th Street, 908 feet for a point of beginning, continuing thence West along the North line of West 35th Street, 244.76 feet; thence North along a line at right angles to the North line of said West 35th Street, 125 feet; thence East at right angles to the last described line, 29.95 feet; thence North at right angles to the last described line 667.15 feet; thence Northeasterly along a line forming an angle of 34 degrees, 13 minutes, 30 seconds, deflecting to the right, with the last described line 165.37 feet to its intersection with the Southerly line of the Canal Reserve of the Illinois and Michigan Canal, said point of intersections being 100 feet Northeasterly (measured along the Southerly line of said Canal Reserve) of the aforementioned North and South line extended North; thence Northeasterly along the Southerly line of the Southerly Canal Reserve of the Illinois and Michigan Canal, 1,114.69 feet to its intersection with the West line of said South Campbell Avenue as dedicated September 1, 1904 (now vacated) produced North, thence South along said produced West line of said vacated Campbell Avenue, 121.50 feet to a point which is 1,217.66 feet North of the North line of said West 35th Street (measured along the said produced West line of said vacated Campbell Avenue); thence Southwesterly on a curved line convex to the Southeast and having a radius of 358.10 feet, a distance of 66.75 feet to a point of tangency which is 45.16 feet West on a line at right angles to the aforesaid West line of said vacated Campbell Avenue at a point 1168.56 feet North of the North line of said 35th Street, thence Southwest on a straight line tangent to the last described curve, a distance of 90.58 feet to a point which is 112.46 feet West of the West line of said vacated Campbell Avenue and 1107.93 feet North of the North line of said West 35th Street, thence Southwesterly on a curved line convex to the Southeast and having a radius of 327.65 feet, a distance of 146.72 feet, thence Southeasterly on a radial line of said curve, a distance of 2.35 feet to a point which is 1036.41 feet North and 238.78 feet West respectively, of the original property line of the property of the

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Albert Dickinson Company, (which property lines are the North line of said West 35th Street and the West line of said vacated South Campbell Avenue aforesaid); thence Southwesterly in, a straight line 161.65 feet to a point which is 996.60 feet North and 395.41 feet West of said property lines, respectively; thence Southwesterly in a straight line 201.73 feet to a point which is 921.75 feet North and 582.59 feet West of said property lines respectively; thence Southwesterly in a straight line 79.38 feet to a point which is 905.04 feet North and 660.17 feet West of said property lines respectively; thence Southwesterly in a straight line 49.10 feet to a point which is 890.77 feet North and 707.13 feet West of said property lines respectively; (thence Southwesterly on a curved line convex to the Northwest and having a radius of 324 feet, a distance of 387.64 feet to a point which is 590.90 feet North and 911.08 feet West of said property lines respectively; thence South in a straight line tangent to the last described curved line 590.90 feet to the point of beginning, excepting therefrom that part taken for Lots one (1) and three (3) in Campbell Soup Company's subdivision of Part of the North East Quarter (N.E. 1/4) of Section 36, Township 39 North, Range 13, East of the 3rd Principal Meridian, said subdivision being recorded July 24, 1957 by the Recorder of Deeds, Cook County, Illinois as document 16966716.

PARCEL 4: PIN # 16-36-401-016 through 018

ALL THAT PARCEL of land situate in the City of Chicago, County of Cook and State of Illinois being part of the Northeast Quarter of Section 36, Township 39 North, Range 13 East of the Third Principal Meridian bounded and described as follows, viz:

COMMENCING at the point of intersection of the center line of the Illinois and Michigan Canal and the Westerly line of South Campbell Avenue (as dedicated September 1, 1904, now vacated) produced Northwardly; thence Southwardly, along said produced Westerly line of vacated South Campbell Avenue, 18.85 feet to the Point of Beginning of the tract of land to be described thence Southeastardly, along a curved line, convexed Northeastwardly and having a radius of 246.78 feet (the tangent line of said curve forming an angle 20 degrees 05' 30" with said produced Westerly line of vacated South Campbell Avenue, measured from the South to the Southeast) the arc distance of 95.44 feet to an iron pipe; thence Southwardly, along a straight line which deflects to the right and forms an

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angle of 0 degrees 37' with the tangent line of the last described curved line produced Southwardly, the distance of 40.69 feet to a point of curvature thence Southwestwardly along a curved line convexed Southeastwardly, with a radius of 204.63 feet, the arc distance of 27.03 feet thence Southwestwardly, along a straight line, 17.59 feet to a point marked by an iron pipe in said produced Westerly line of vacated South Campbell Avenue, distant 175.64 feet South of said point of beginning; and thence Northwardly, along said produced Westerly line of vacated South Campbell Avenue, 175.64 feet to the point of beginning excepting therefrom the part lying North of the South line of the Illinois and Michigan Canal reserves (Stevenson Expressway) as disclosed by Deed recorded January 17, 1964 as Document Number 19024366.

## PARCEL 5:

PIN # 16-36-401-031

Lots 39, 40 and 41 in Block 1 in Corwith's Re-Subdivision of Lots 81 to 120, 124 to 140, 144 to 150 and 152 to 157, all inclusive in Town of Brighton, in the West Half of the Southeast Quarter of Section 36, Town 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

## PARCEL 6:

PIN # 16-36-401-001 thru 005

Lot 1 in Block 1 in Corwith's Re-Subdivision of Lots 81 to 120 inclusive, 124 to 140 inclusive, 144 to 150 inclusive, and 152 to 157 inclusive, all in the West half of the South East quarter of Section 36, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

## PARCEL 7:

PIN # 16-36-201-000

Lots One Hundred Thirty-one (131), One Hundred Thirty-two (132), One Hundred Thirty-three (133), One Hundred Thirty-four (134) and One Hundred Thirty-five (135) in Subdivision of Lots One (1) to Twenty (20) in Town of Brighton in the South East Quarter of Section Thirty Six (36), Township Thirty-nine (39) North, Range Thirteen (13), East of the Third Principal Meridian, in Cook County, Illinois.