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WHEN RECORDED MAIL TO:

36936960

American Stores Properties, Inc.  
Attn: Legal Department  
P. O. Box 27447  
Salt Lake City, Utah 84127-0447

DEPT-01 RECORDING \$41.00  
T#0012 TRAN 3344 12/11/96 14:45:00  
47148 CG \*-96-936960  
COOK COUNTY RECORDER

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Jewel Store No. 01-7201  
7201 W. 24th Street  
North Riverside, IL

4/1/00

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made as of June 19, 1996, by and among Jewel Food Stores, Inc., a New York corporation ("Tenant"), La Salle National Trust, N.A., as Trustee under Trust Agreement dated June 1, 1987 and known as Trust No. 112352 ("Landlord"), and The Mid-City National Bank of Chicago, a national association ("Lender"), collectively, the "Parties" and individually, a "Party".

### RECITALS

- A. Lender has agreed to make a loan ("Loan") to Landlord, repayment of which is to be secured by that certain Mortgage entered into by Landlord, as Mortgagor, and Lender as Mortgagee ("Mortgage"), which pertains to that certain real property located in North Riverside, Illinois, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference ("Property") and certain other written agreements between Lender and Landlord relating to the Loan (collectively, "Loan Documents").
- B. Tenant is the current lessee of all or a portion of the Property ("Premises") under a lease entered into with Landlord dated December 19, 1966, as amended from time to time (collectively, "Lease").
- C. As a condition precedent to Lender's making the Loan, Lender has required that Tenant execute this Agreement and in return for Tenant's execution of this Agreement, Lender is willing to agree to not disturb Tenant's quiet possession of the Premises as long as Tenant is not in default under the Lease.
- D. Lender is making the Loan in reliance upon the agreements and certifications herein made by Tenant and Tenant is entering into this Agreement in reliance upon the agreements and certifications herein made by Lender.

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**NOW, THEREFORE,** in consideration of the foregoing, Lender, Landlord, and Tenant agree as follows:

1. **SUBORDINATION.** All rights of Tenant under the Lease are hereby subjected and subordinated and shall remain subject, subordinate, and junior to the lien of the Mortgage, and to the rights and interest of the from time-to-time holder of the Mortgage; provided, however, if the Non-Disturbance and Attornment Section of this Agreement should for any reason, including, but not limited to the effect of the FIRREA or the D'Oench Dume Doctrine, defined below, be found unenforceable, illegal, or invalid, then the priority of the Lease and the Mortgage shall reverse, and the Lease shall be in all respects and for all purposes superior to the lien of the Mortgage and to the rights and interest of the from time-to-time holder of the Mortgage. Additionally, Tenant shall not be bound by any of the terms, conditions, or covenants of the Mortgage, Loan Documents, or any other document executed by Landlord in connection with its loan from Lender. Lender acknowledges that the subordination of the Lease is solely for the purpose of establishing the priority of the Mortgage in the real property records and that Lender has not supplied Tenant with copies of the Mortgage or any of the Loan Documents and does not intend Tenant to be bound by the terms of those documents.

2. **NON-DISTURBANCE AND ATTORNMENT.** Provided Tenant is not in default under the Lease (as defined in the Lease and beyond any period given Tenant to cure the default), then Tenant's right of possession to the Premises and Tenant's other rights pursuant to the Lease or otherwise shall not be affected or disturbed by Lender or any successor or assign in the exercise of any of its rights under the Mortgage. Further, Tenant shall not be named as a party defendant in any foreclosure on the lien of the Mortgage nor in any other way be deprived of its rights under the Lease. In the event Lender or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in the Mortgage or by any conveyance in lieu of foreclosure, the Lease shall not be terminated or affected by the foreclosure, conveyance, or other proceeding. Lender also covenants that any sale by it of the Premises as a result of the exercise of any rights and remedies under the Mortgage, or otherwise, shall be subject to the Lease and the rights of Tenant under the Lease, and Tenant covenants and agrees to attorn to Lender or any person or persons, corporation, or association acquiring the rights and interest of Landlord under the Lease, in any manner whatsoever ("**Successor**"), as its new landlord, and the Lease shall continue in full force and effect as a direct lease between Tenant and Successor, upon all of the terms, covenants, conditions, and agreements set forth in the Lease; provided, except as set forth in Section 3 hereof, Tenant shall be under no obligation to pay rent to Successor until Tenant receives a photostatic copy of the recorded deed or other instrument by which such interest passed evidencing that Successor has succeeded to Landlord's interest under the Lease. Successor shall be liable to Tenant, effective as of the date of such acquisition, for the performance of all obligations of Landlord arising under the Lease from and after the date of such acquisition. Provided Successor has received notice pursuant to Section 5 hereof, Successor shall also be liable as landlord for every obligation of Landlord arising or accruing under the Lease prior to the date of such acquisition which has not yet been performed or satisfied ("**Existing Obligation**"). Tenant's remedies for an Existing Obligation shall be limited to the right of offset and any other remedies provided under the Lease; provided, however, that Successor's liability for Existing Obligations under the Lease shall be limited to its interest in the

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Property. No foreclosure or conveyance or other act or omission by a Successor, shall, in any event, relieve Landlord of any of the covenants, liabilities, or obligations of Landlord under the Lease. Successor shall not be bound by any payment of rent or additional rent or other charges made by Tenant to Landlord more than one month in advance, except if such payment is made pursuant to the terms of the Lease.

3. **PAYMENT OF RENT.** Upon the occurrence of an event of default under the Mortgage, and at any time thereafter during the continuance thereof, Lender may, at its option, send a notice to Tenant, which notice shall: (i) reference the name of the ASPI operating company and store number set forth at the top of this Agreement; (ii) indicate that an event of default has occurred and that Lender has revoked Landlord's right or license to collect rent under the Lease; (iii) indicate that Lender has elected to exercise its rights under this section of this Agreement; (iv) direct Tenant thereafter to make all payments of rent and to perform all obligations under the Lease to or for the benefit of Lender or as Lender shall direct; and (v) contain the Lender's employer identification number. Within fifteen (15) business days of receipt of any such notice from Lender, Tenant shall comply with the provisions of such notice, to make all payments of rent, and to perform all obligations under the Lease to and for the benefit of Lender or as Lender shall direct. Such notice and direction shall remain effective until the first to occur of: (i) the receipt by Tenant of a subsequent notice from Lender to the effect that such event of default has been cured or that Lender has appointed Landlord to act as agent for Lender; (ii) the appointment of a receiver, in which event Tenant shall thereafter make payments of rent and perform all obligations under the Lease as may be directed by such receiver; or (iii) the issuance of a court order directing Tenant to pay rent and perform obligations in a manner not consistent with the notice. Tenant shall be entitled to rely upon any notice from Lender and shall be protected with respect to any payment made pursuant to such notice, irrespective of whether a dispute exists between Landlord and Lender with respect to the existence of an event of default or the rights of Lender hereunder. If Tenant receives a notice from Lender pursuant to this section, Tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this Agreement. Landlord hereby agrees to indemnify, defend, and hold Tenant harmless from and against any and all loss, claims, damage, or liability arising from or related to any payment of rent or performance of obligations under the Lease by Tenant made in good faith in reliance on and pursuant to such notice.

4. **LENDER AUTHORIZATION.** As an express condition of, and as consideration for, Tenant's entering into this Agreement, Lender represents and warrants to Tenant that it has obtained all authorizations necessary to execute and deliver this Agreement and that this Agreement is valid, legal, and enforceable against Lender, notwithstanding the effect of 12 United States Code Sections 1823(e) and 1821(d)(9) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") or the principles contained in the decision in D'Oench Dume v. Federal Deposit Insurance Corporation (1941) 315 U.S. 447, and all cases interpreting those principles (collectively, "D'Oench Dume Doctrine").

5. **NOTICES OF DEFAULT.** Before any termination due to a breach under the Lease shall be declared by Tenant, or Tenant shall exercise any other remedy as a result of the occurrence of an event of default under the Lease, Tenant shall give notice in writing to Lender

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of the specific breach(es) of the Lease. Notice to Lender shall be given at least thirty (30) days (or such longer period as provided in the Lease for Landlord to cure the default) before Tenant shall terminate the Lease or tenant shall exercise any other remedy as a result of the occurrence of an event of default. If Tenant has given notice to Lender pursuant to the preceding sentence, Lender may, in addition to any other remedies provided in the Mortgage, elect to make such payments and cure such defaults on behalf of Landlord and in connection therewith, do all work, and make all payments deemed necessary or appropriate by Tenant to cure such default. Landlord hereby agrees to indemnify, defend, and hold Tenant harmless from and against any and all loss, claims, damage, or liability arising from or related to any payment or performance of obligations under any Lease by Lender.

If Lender elects to pursue foreclosure upon the occurrence of an event of default under the Mortgage, Lender shall give notice in writing to Tenant of the specific reason by virtue of which such default or event of default is claimed. Notice of the occurrence of a default or an event of default may be combined with the notice required under Section 3 of this Agreement but is required regardless of whether Lender exercises its option under Section 3. The failure of Lender to give such notice under this Agreement shall not invalidate Lender's foreclosure action, provided that Lender has complied with all applicable statutory procedures, including giving all statutorily required notices to Tenant.

6. **ADDRESSES FOR NOTICES.** All notices and other communications hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

To Lender at: The Mid-City National Bank of Chicago  
7222 West Cermak Rd.  
North Riverside, IL 60546  
Attn: Real Estate Division

To Tenant at: Jewel Food Stores, Inc.  
2100 Swift Drive  
Oak Brook, IL 60521  
Attn: Property Manager

With a copy to: American Stores Properties, Inc.  
Attn: Legal Department (Store No. 01-7201)  
P. O. Box 27447  
Salt Lake City, UT 84127-0447

To Landlord at: La Salle National Trust, N.A.  
c/o Federal Construction Ltd. - North Riverside  
1550 DeMaisonneuve West, Suite 810  
Montreal, Quebec, Canada H3G 1N2

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Communications may also be given by fax, provided the communication is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

7. **INSURANCE PROCEEDS.** Lender agrees that, notwithstanding any provision contained in the Mortgage or any other agreement or instrument affecting Lender's interest in the Property, in the event of damage or destruction to the Property, any insurance proceeds relating thereto shall be made available by Lender without diminution, or offset, to pay the cost of repair or rebuilding of the Property pursuant to the Lease, without condition other than that Tenant not be in default beyond any applicable cure period under the Lease at the time of such payment, it being the intention of the Parties that all of such proceeds shall be utilized to effect the repair or rebuilding of the Property. Lender hereby waives, to the extent permitted by law, any equitable claims it may have on such insurance proceeds.

8. **CONDEMNATION.** Lender agrees that, notwithstanding any provision contained in the Mortgage or any other agreement or instrument affecting Lender's interest in the Property, in the event of a taking or other transfer in lieu of condemnation, all proceeds relating thereto shall be made available by Lender without diminution or offset, to pay the condemnation award due to Tenant under the Lease and the law of the state in which the Property is located (including, if applicable, compensation for the cost of removal and decrease in value as a result of such taking of Tenant's fixtures, equipment, and stock-in-trade located in the Premises, the value of the leasehold of which Tenant is deprived for the remainder of the term of the Lease, including options, if any, and the value of any compensable goodwill associated with Tenant's business) and to repair or restore the Property, if required by the Lease.

9. **FIXTURES.** The Loan Documents shall not cover or encumber, and shall not be construed as subjecting in any manner to the lien thereof, any of Tenant's trade fixtures, furniture, furnishings, equipment, or other personal property at any time placed or installed in the Premises.

10. **COSTS AND ATTORNEYS' FEES.** In the event a Party brings or commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the losing Party, to be fixed by the court in the same action. The term "legal proceedings" shall include appeals from a lower court judgment as well as proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. The "prevailing Party" involved in proceedings in the Federal Bankruptcy Court shall mean the prevailing Party in an adversary proceeding or contested matter, or any other actions taken by the non-bankrupt Party which are reasonably necessary to protect its rights under the terms of this Agreement.

11. **UNENFORCEABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this

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Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

12. **AMENDMENT OF LEASE.** Lender and Tenant agree that notice to or consent of Lender shall not be required for any amendment to Lease; provided Lender's consent shall be required for any amendment to the Lease which purports to terminate the Lease (other than pursuant to the terms of the Lease), reduce the term of the Lease, reduce the fixed or minimum rental due under the Lease, or modify the allocation between Landlord and Tenant of the cost of providing insurance or the responsibility for the payment of taxes. If the Lender's consent is required for an amendment to the Lease and such consent has not been obtained, any provisions of such an amendment for which such consent is required shall not be binding against Lender or any Successor (but shall be enforceable against Landlord), and any other terms of such an amendment shall be binding against Lender or a Successor. Except with respect to the foregoing restriction on modification, no provision contained herein shall be deemed an amendment or modification of any provision contained in the Lease, including, without limiting the generality of the foregoing, any rights thereunder given to Tenant to terminate the Lease.

13. **SUCCESSORS AND ASSIGNS.** All of the rights and obligations of the Parties under this Agreement shall bind, and the benefits shall inure to their respective heirs, legal representatives, successors, and assigns.

14. **LANDLORD'S TITLE.** Landlord warrants and covenants that it has good and marketable fee simple title to the Premises with full right and authority to grant the interest conveyed by the Mortgage. Landlord covenants that as of the date the Mortgage is recorded, there are no other monetary encumbrances, other than taxes not yet delinquent, recorded against Landlord's interest in the Premises.

15. **NO OTHER AGREEMENTS.** The terms set forth in this Agreement are intended by the Parties as a final expression of their agreement with respect to such terms and may not be contradicted or supplemented by evidence of any prior agreement or of any contemporaneous oral agreement. This Agreement is intended to be a complete and exclusive statement of the terms of the agreement between the Parties, and the terms of this Agreement may not be explained or supplemented by evidence of consistent additional terms. This Agreement may not be amended or modified by any act or conduct of the Parties or by oral agreement, unless reduced to a writing signed by all Parties.

16. **DELIVERY OF EXECUTED DOCUMENTS.** THE SUBMISSION OF THIS DOCUMENT FOR EXAMINATION OR ITS NEGOTIATION OR THE NEGOTIATION OF THE TRANSACTION DESCRIBED HEREIN DOES NOT CONSTITUTE AN OFFER TO SUBORDINATE OR AMEND THE LEASE, AND THE EXECUTION OF THIS DOCUMENT BY LANDLORD AND LENDER DOES NOT CONSTITUTE A BINDING CONTRACT UNTIL SUCH TIME AS THIS DOCUMENT HAS BEEN APPROVED BY THE GOVERNING REAL ESTATE COMMITTEE OF TENANT, EXECUTED BY AUTHORIZED OFFICERS OF TENANT, AND DELIVERED TO LANDLORD.

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IF THIS DOCUMENT IS NOT RETURNED TO THE ASPI LEGAL DEPARTMENT AT THE ADDRESS SHOWN ABOVE, HAVING BEEN EXECUTED BY LANDLORD AND LENDER, ON OR BEFORE JULY 24, 1996, TENANT WILL CONSIDER THE REQUEST FOR THIS AGREEMENT WITHDRAWN.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

The Mid-City National Bank of Chicago,  
a national banking association

By: [Signature]  
Its: Vice President

ATTEST

By: [Signature]  
Its: Assistant Secretary

"LENDER"

La Salle National Trust, N.A., as Trustee

under Trust Agreement dated June 1, 1987,  
and known as Trust No. 112352

By: [Signature]  
Its: [Signature]

ATTEST

By: [Signature]  
Its: [Signature]

"LANDLORD"

Jewel Food Stores, Inc.,  
a New York corporation

By: [Signature]  
Its: Vice President

ATTEST

By: [Signature]  
Its: Assistant Secretary

"TENANT"

APPROVED AS TO FORM  
ASPI LEGAL

[Signature] 5/24/96

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STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF C O O K     )

I, Anna Maria Bernardi, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Phyllis Oldenberg, Vice President of The Mid-City National Bank of Chicago, a national banking association, and Teresa Blancarte, Assistant Supervisor of said national banking association, whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President and Assistant Supervisor, respectively, they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act and deed of said national banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19th day of June, 1996.



Anna Maria Bernardi  
Notary Public

My Commission Expires: 5/7/97

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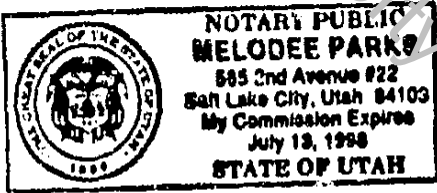
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STATE OF UTAH                    )  
  : S.S.  
COUNTY OF SALT LAKE    )

On June 25, 1996, before me, Melodee Parks, a notary public in and for such County and State, personally appeared Julie A. Webb and Wende W. Guastamachio, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons or entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.



*Melodee Parks*  
\_\_\_\_\_  
Notary Public

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STREET ADDRESS: 2200 N. HARLEM

CITY: NORTH RIVERSIDE

COUNTY: COOK

TAX NUMBER: 15-25-201-002-0000

## LEGAL DESCRIPTION:

THE NORTH 1228.90 FEET OF THE EAST 1173.75 FEET OF THE NORTH EAST 1/4 OF SECTION 25, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTH 726 FEET OF THE NORTH 776 FEET OF THE WEST 300 FEET OF SAID EAST 1173.75 FEET OF SAID NORTH EAST 1/4) AND (EXCEPT THE LAND FALLING WITHIN THE EAST 50 FEET OF SAID EAST 1173.75 FEET DEDICATED FOR SOUTH HARLEM AVENUE) AND (EXCEPT THE LAND FALLING WITHIN THE NORTH 33 FEET OF SAID EAST 1173.75 FEET TAKEN AND USED FOR CERMAK ROAD) AND (EXCEPT THAT PART OF SAID EAST 1173.75 FEET FALLING WITHIN THE PREMISES CONDEMNED FOR THE WIDENING OF HARLEM AVENUE AND CERMAK ROAD IN CASE NUMBER 63-C-1247 DESCRIBED AS FOLLOWS:

THAT PART OF THE NORTH EAST 1/4 OF SECTION 25, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT THE NORTH EAST CORNER OF SAID SECTION 25; THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 25, A DISTANCE OF 837.0 FEET TO A POINT; THENCE WEST IN A STRAIGHT LINE MEASURED AT RIGHT ANGLES FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 54.0 FEET TO A POINT; THENCE NORTHWESTERLY IN A STRAIGHT LINE, A DISTANCE OF 337.15 FEET TO A POINT DISTANT 64.0 FEET WEST MEASURED AT RIGHT ANGLES FROM SAID EAST LINE OF SECTION 25; THENCE NORTH PARALLEL WITH SAID EAST LINE OF SECTION 25, A DISTANCE OF 364.13 FEET TO A POINT OF CURVATURE, DISTANT 64 FEET WEST, MEASURED AT RIGHT ANGLES FROM SAID EAST LINE OF SECTION 25; THENCE NORTHWESTERLY ALONG A CURVED LINE CONCAVE TO THE SOUTH WEST HAVING A RADIUS OF 66.0 FEET AND A CENTRAL ANGLE OF 89 DEGREES 53 MINUTES 15 SECONDS. A DISTANCE OF 103.55 FEET TO A POINT OF TANGENCY, DISTANT 70.0 FEET SOUTH MEASURED AT RIGHT ANGLES FROM THE NORTH LINE OF SAID SECTION 25; THENCE WEST PARALLEL TO SAID NORTH LINE OF SECTION 25, A DISTANCE OF 70.0 FEET TO A POINT; THENCE NORTHWESTERLY IN A STRAIGHT LINE A DISTANCE OF 500.53 FEET TO A POINT, DISTANT 50.0 FEET SOUTH, MEASURED AT RIGHT ANGLES FROM SAID NORTH LINE OF SECTION 25; THENCE WEST PARALLEL WITH SAID NORTH LINE OF SECTION 25, A DISTANCE OF 474.50 FEET TO A POINT IN THE EAST LINE OF THE ILLINOIS CENTRAL RAILROAD RIGHT OF WAY; THENCE NORTH ALONG SAID EAST LINE OF THE ILLINOIS CENTRAL RAILROAD RIGHT OF WAY, A DISTANCE OF 50.0 FEET TO A POINT IN SAID NORTH LINE OF SECTION 25; THENCE EAST ALONG SAID NORTH LINE OF SECTION 25, A DISTANCE OF 1174.5 FEET TO THE POINT OF BEGINNING, EXCEPTING FROM SAID CONDEMNED PREMISES THE EAST 50 FEET THEREOF PREVIOUSLY DEDICATED FOR HARLEM AVENUE AND THE NORTH 33 FEET TAKEN OR USED FOR CERMAK ROAD), ALL IN COOK COUNTY, ILLINOIS.

ALSO, EXCEPTING:

THAT PART OF THE EAST 1173.75 FEET OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 25 AFORESAID; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 48 MINUTES 51 SECONDS WEST 873.75 FEET TO THE EAST LINE OF THE WEST 300.00 FEET OF THE EAST 1173.75 FEET OF THE AFORESAID NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 04 MINUTES 25 SECONDS WEST 50.00 FEET TO THE POINT OF BEGINNING OF THIS PARCEL DESCRIPTION; THENCE SOUTH 89 DEGREES 48 MINUTES 51 SECONDS EAST 173.79 FEET; THENCE SOUTH 87 DEGREES 31 MINUTES 26 SECONDS EAST 283.97 FEET; THENCE NORTH 89 DEGREES 49 MINUTES 27 SECONDS WEST 457.51 FEET TO THE EAST LINE OF THE WEST 300.00 FEET OF THE EAST 1173.75 FEET OF AFORESAID NORTHEAST QUARTER; THENCE NORTH 00 DEGREES 04 MINUTES 25 SECONDS EAST ALONG SAID EAST LINE 11.43 FEET; TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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