

ORDINANCE NUMBER 2021-24

**GRANTING SPECIAL USE PERMITS FOR THE SALE OF AGRICULTURAL PRODUCTS,
POTTERY, ART, AND HOME DÉCOR NOT PRODUCED ON THE PREMISES AND
VARIANCE TO SECTION 7:01.D.48 ALLOWING SUCH USE ON LAND DESIGNATED AS
AGRICULTURAL ON THE KENDALL COUNTY LAND RESOURCE MANAGEMENT PLAN
AT 5681 WHITEWILLOW ROAD AND IDENTIFIED BY PARCEL IDENTIFICATION
NUMBER 09-31-100-005 IN SEWARD TOWNSHIP**

WHEREAS, Section 13:08 of the Kendall County Zoning Ordinance permits the Kendall County Board to issue special use permits and place conditions on special use permits and provides the procedure through which special use permits are granted; and

WHEREAS, Section 7:01.D.47 of the Kendall County Zoning Ordinance permits the sale of agricultural products not grown on the premises as a special use in the A-1 Agricultural Zoning District; and

WHEREAS, Section 7:01.D.48 of the Kendall County Zoning Ordinance permits the sale of pottery, art, and home décor as a special use with certain conditions in the A-1 Agricultural Zoning District; and

WHEREAS, Section 7:01.D.48 of the Kendall County Zoning Ordinance requires the sales of pottery, art, and home décor to occur on land not designated as Agricultural on the Kendall County Land Resource Management Plan; and

WHEREAS, the property which is the subject of this Ordinance has been, at all relevant times, and remains currently located within the A-1 Agricultural Zoning District and consists of approximately 50.00 +/- acres located at 5681 Whitewillow Road (PIN: 09-31-100-005), in Seward Township. The legal description for the subject property is set forth in Exhibit A attached hereto and incorporated by reference, and this property shall hereinafter be referred to as “the subject property”; and

WHEREAS, on June 21, 2015, the Kendall County Board approved Ordinance 2005-37 granting a special use permit for a landscaping business and nursery at the subject property; and

WHEREAS, the subject property is owned by Doragon Properties, LLC as represented by Elizabeth Bowyer and shall hereinafter be referred to as “Petitioner”; and

WHEREAS, on or about August 24, 2021, Petitioner’s representative filed a petition for special use permits for the sale of agricultural products, pottery, art, and home décor not produced at the subject property and a variance to Section 7:01.D.48 of the Kendall County Zoning Ordinance allowing such use on land designated as Agricultural in the Kendall County Land Resource Management Plan in order to operate a craft fair; and

WHEREAS, following due and proper notice by publication in the Kendall County Record on September 2, 2021, the Kendall County Zoning Board of Appeals held a public hearing on September 27, 2021, at 7:00 p.m., in the County Board Room of the Kendall County Office Building at 111 W. Fox Street in Yorkville at which the Petitioner’s representative presented evidence, testimony, and exhibits in support of the requested special use permits and variance and zero members of the public asked questions or testified in favor or in opposition to the request; and

WHEREAS, based on the evidence, testimony, and exhibits, the Kendall County Zoning Board of Appeals has made their findings of fact and recommended approval of the special use permits and variance as set forth in

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the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, dated September 27, 2021, a true and correct copy of which is attached hereto as Exhibit B; and

WHEREAS, the Kendall County Planning, Building and Zoning Committee of the Kendall County Board has reviewed the testimony presented at the aforementioned public hearing and has considered the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has forwarded to the Kendall County Board a recommendation of approval of the requested special use permits and variance; and

WHEREAS, the Kendall County Board has considered the recommendation of the Planning, Building and Zoning Committee and the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has determined that said petition is in conformance with the provisions and intent of the Kendall County Zoning Ordinance; and

WHEREAS, these special use permits and variance shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property; and

NOW, THEREFORE, BE IT ORDAINED, BY THE COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, as follows:

1. The Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals attached hereto as Exhibit B is hereby accepted and the Findings of Fact set forth therein are hereby adopted as the Findings of Fact and Conclusions of this Kendall County Board.
2. The Kendall County Board hereby grants approval of Petitioner's petition for special use permits for the sale of agricultural products, pottery, art, and home décor not produced on the premises and variance to Section 7:01.D.48 allowing such use on land designated as Agricultural in the Kendall County Land Resource Management Plan subject to the following conditions:
 - A. The site shall be developed substantially in accordance with the site aerial attached hereto as Exhibit C. Other than parking and signage, the craft fair shall be limited to area designated as "Vendor Area" on the aerial. Any new structures related to the uses allowed by this special use permit shall require a major amendment to the special use permit and any new structures must reflect the current architecture of the existing structures.
 - B. A variance to Section 7:01.D.48 shall be granted to allow the sale of pottery, art, and home décor not produce on the premises to occur on property designated as Agricultural on the Future Land Use Map.
 - C. The subject parcel must remain at least three (3) acres in size.
 - D. The uses allowed by this special use permit must occur in a manner that will preserve the existing pastoral setting.
 - E. Retail and wholesale sales may occur outside existing buildings.
 - F. The uses allowed by this special use permit cannot generate noise, vibrations, glare, fumes, odors, or electrical interference beyond which normally occurs on A-1 zoned property.
 - G. A maximum of thirty-five (35) vendors may be on the subject property.
 - H. The uses allowed by this special use permit may operate a maximum of one (1) Saturday per



month. The uses may be open for sale between the hours of 8:00 a.m. and 4:00 p.m. The property owner may reduce these hours of operation. Vendors may setup no earlier than two (2) hours prior to opening and must be offsite within two (2) hours of closing. The uses allowed by this special use permit may be operational between April 1st and November 1st with one (1) additional Saturday allowed for a Christmas craft fair.

- I. A maximum of five (5) people, including the property owner and their family members, shall be employees of the business allowed by this special use permit.
- J. The owners of the business allowed by this special use permit may install one (1) sign on the subject property at the southeast corner of Whitewillow and Brisbin Roads in substantially the size and appearance of the sign shown in the picture attached hereto as Exhibit D. The sign shall not be illuminated. The sign may be in place May 1st until December 1st. The owners of the business allowed by this special use permit may install additional directional signage for patrons inside the property.
- K. The owner(s) or operator(s) of the business allowed by this special use permit shall ensure that garbage and trash shall be removed from the property at least one (1) time per week or as necessary to maintain the property clear of garbage and trash.
- L. The noise regulations are as follows:

Day Hours: No person shall cause or allow the emission of sound during daytime hours (7:00 A.M. to 10:00 P.M.) from any noise source to any receiving residential land which exceeds sixty-five (65) dBA when measured at any point within such receiving residential land, provided; however, that point of measurement shall be on the property line of the complainant.

Night Hours: No person shall cause or allow the emission of sound during nighttime hours (10:00 P.M. to 7:00 A.M.) from any noise source to any receiving residential land which exceeds fifty-five (55) dBA when measured at any point within such receiving residential land provided; however, that point of measurement shall be on the property line of the complainant.


EXEMPTION: Powered Equipment: Powered equipment, such as lawn mowers, small lawn and garden tools, riding tractors, and snow removal equipment which is necessary for the maintenance of property is exempted from the noise regulations between the hours of seven o'clock (7:00) A.M. and ten o'clock (10:00) P.M.
- M. Two (2) strategically placed operating fire extinguishers and first aid kits shall be placed on the subject property along with applicable signage for the fire extinguishers and first aid kits.
- N. The operator(s) of the uses allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.
- O. The operator(s) of the uses allowed by this special use permit shall follow all applicable Federal, State, and Local laws related to the operation of these types of uses.
- P. The conditions and restrictions contained in this special use permit shall be separate from the conditions and restrictions contained in Ordinance 2005-37.
- Q. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.



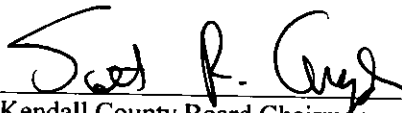
- R. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
3. These special use permits and variance shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property.
4. The Zoning Administrator and other appropriate County Officials are hereby authorized and directed to amend the Official Zoning Map of Kendall County to reflect these special use permits.

IN WITNESS OF, this ordinance has been enacted by a majority vote of the Kendall County Board and is effective this 19th day of October, 2021.

Attest:



Kendall County Clerk
Debbie Gillette



Kendall County Board Chairman
Scott R. Gryder

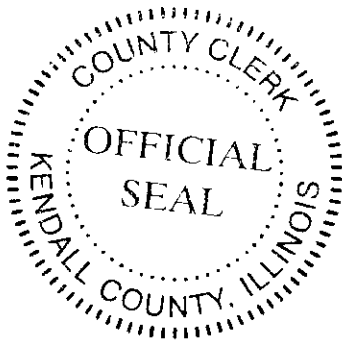


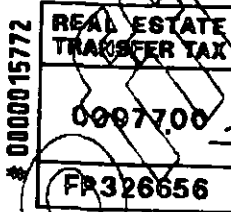
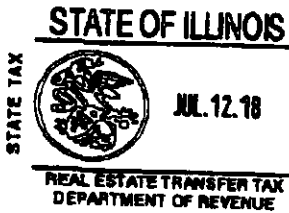


Exhibit A

LEGAL DESCRIPTION

That part of the North half of the Northwest quarter of Section 31, Township 35 North, Range 8 East of the Third Principal Meridian, described as follows:

Commencing at the Northwest corner of said Northwest quarter, said point being the point of beginning; thence along the North line of said Northwest quarter North 89 degrees 28 minutes 50 seconds East for a distance of 1789.78 feet to a point on the East line of said Northwest quarter; thence along said East line South 00 degrees 35 minutes 51 seconds East for a distance of 1294.24 feet; thence South 88 degrees 58 minutes 23 seconds West for a distance of 1803.50 feet to a point on the West line of said Northwest quarter; thence along said West line North 00 degrees 00 minutes 00 seconds East for a distance of 415.62 feet; thence North 90 degrees 00 minutes 00 seconds East for a distance of 590.52 feet; thence North 00 degrees 00 minutes 00 seconds East for a distance of 295.06 feet; thence South 90 degrees 00 minutes 00 seconds West for a distance of 590.52 feet to a point on said West line; thence along said West line North 00 degrees 00 minutes 00 seconds East for a distance of 599.60 feet to the point of beginning, in the County of Kendall, State of Illinois.



COUNTY OF KENDALL
REAL ESTATE TRANSFER TAX
488.50 JM

Unofficial



Exhibit B

The Kendall County Zoning Board of Appeals approved the following Findings of Fact and Recommendation at their meeting on September 27, 2021, by a vote of five (5) in favor and zero (0) in opposition. Members Clementi and Whitfield were absent.

FINDINGS OF FACT-SPECIAL USE PERMIT

That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. True. The subject property already has an established landscaping and nursery business. The proposed use will complement the existing special use and will minimally impact the area.

That the special use will not be substantially injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. The Zoning classification of property within the general area of the property in question shall be considered in determining consistency with this standard. The proposed use shall make adequate provisions for appropriate buffers, landscaping, fencing, lighting, building materials, open space and other improvements necessary to insure that the proposed use does not adversely impact adjacent uses and is compatible with the surrounding area and/or the County as a whole. True. Conditions are proposed that will regulate hours of operation, site layout, and noise. No new buildings or other significant alterations away from the current appearance of the property or general area are planned.

That adequate utilities, access roads and points of ingress and egress, drainage, and/or other necessary facilities have been or are being provided. Utilities are already available at the property. Parking areas are already established. The property previously secured a stormwater management permit.

That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Zoning Board of Appeals. This is true provided the variance to allowing the use on property designated as Agricultural on the Land Resource Management Plan is approved.

That the special use is consistent with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. True, the proposed use is consistent with an objective found on Page 9-21 of the Kendall County Land Resource Management Plan which calls for "a strong base of agricultural, commercial and industrial uses that provide a broad range of job opportunities, a healthy tax base, and improved quality of services to County residents."

FINDINGS OF FACT-VARIANCE

That the particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship or practical difficulty upon the owner if the strict letter of the regulations were carried out. There is no topographical hardship.

That the conditions upon which the requested variation is based would not be applicable, generally, to other property within the same zoning classification. Very few A-1 zoned properties have an existing commercial use as intense as the use located on the subject property. Most properties zoned A-1 and classified as Agricultural on the Land Resource Management Plan do not have the existing facilities to support this type of use.



That the alleged difficulty or hardship has not been created by any person presently having an interest in the property. The owners did not create or request the land designation contained in the Land Resource Management Plan.

That the granting of the variation will not materially be detrimental to the public welfare or substantially injurious to other property or improvements in the neighborhood in which the property is located. The subject property already has a special use permit. The proposed use would only operate for a very brief time of the year. No improvements to the property are planned as part of the proposal. Therefore, no injury to the public welfare or other properties is foreseen.

That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the neighborhood. Because of the limited operations proposed and because no new structures are planned, the proposal will not impair the supply of light or air to adjacent properties, cause increased congestion on local streets, endanger public safety, or impair property values.

RECOMMENDATION

Approval subject to the following conditions and restrictions:

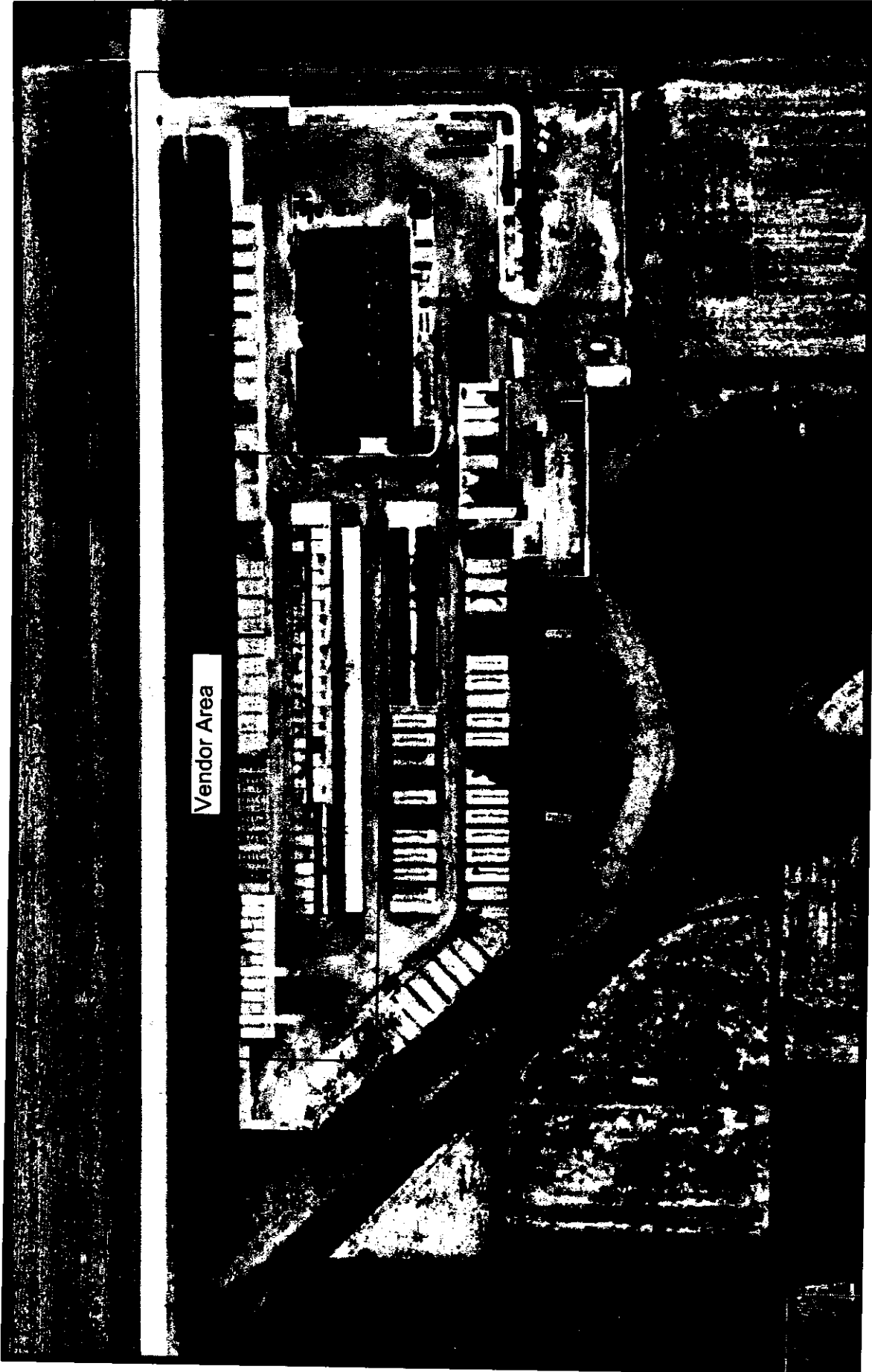
1. The site shall be developed substantially in accordance with the submitted aerial. Other than parking and signage, the craft fair shall be limited to area designated as "Vendor Area" on the aerial. Any new structures related to the uses allowed by this special use permit shall require a major amendment to the special use permit and any new structures must reflect the current architecture of the existing structures.
2. A variance to Section 7:01.D.48 shall be granted to allow the sale of pottery, art, and home décor not produce on the premises to occur on property designated as Agricultural on the Future Land Use Map.
3. The subject parcel must remain at least three (3) acres in size.
4. The uses allowed by this special use permit must occur in a manner that will preserve the existing pastoral setting. To that end, no vendor stall located in the northern row of the vending area shall be open toward the north.
5. Retail and wholesale sales may occur outside existing buildings.
6. The uses allowed by this special use permit cannot generate noise, vibrations, glare, fumes, odors, or electrical interference beyond which normally occurs on A-1 zoned property.
7. A maximum of thirty-five (35) vendors may be on the subject property.
8. The uses allowed by this special use permit may operate a maximum of one (1) Saturday per month. The uses may be open for sale between the hours of 8:00 a.m. and 4:00 p.m. The property owner may reduce these hours of operation. Vendors may setup no earlier than two (2) hours prior to opening and must be offsite within two (2) hours of closing. The uses allowed by this special use permit may be operational between April 1st and November 1st.
9. A maximum of five (5) people, including the property owner and their family members, shall be employees of the business allowed by this special use permit.
10. The owners of the business allowed by this special use permit may install one (1) sign on the subject property at the southeast corner of Whitewillow and Brisbin Roads in substantially the size and appearance of the sign shown in the submitted picture. The sign shall not be illuminated. The sign may be in place May 1st until December 1st. The owners of the business allowed by this special use permit may install additional directional signage for patrons inside the property.



11. The owner(s) or operator(s) of the business allowed by this special use permit shall ensure that garbage and trash shall be removed from the property at least one (1) time per week or as necessary to maintain the property clear of garbage and trash.
12. No music shall be generated by the uses allowed this special use permit.
13. Two (2) strategically placed operating fire extinguishers and first aid kits shall be placed on the subject property along with applicable signage for the fire extinguishers and first aid kits.
14. The operator(s) of the uses allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.
15. The operator(s) of the uses allowed by this special use permit shall follow all applicable Federal, State, and Local laws related to the operation of these types of uses.
16. The conditions and restrictions contained in this special use permit shall be separate from the conditions and restrictions contained in Ordinance 2005-37.
17. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
18. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
19. This special use permit shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property.



Exhibit C



July 15, 2021

🏠 Kendall County Address Points Parcels

Ownership Parcel

1:2,160
0 0.01 0.03 0.05 mi
0 0.02 0.04 0.08 km

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Kendall County Web GIS
View GIS Disclaimer at <https://www.co.kendall.il.us/departments/geographic-information-systems/gis-disclaimer-page/>.

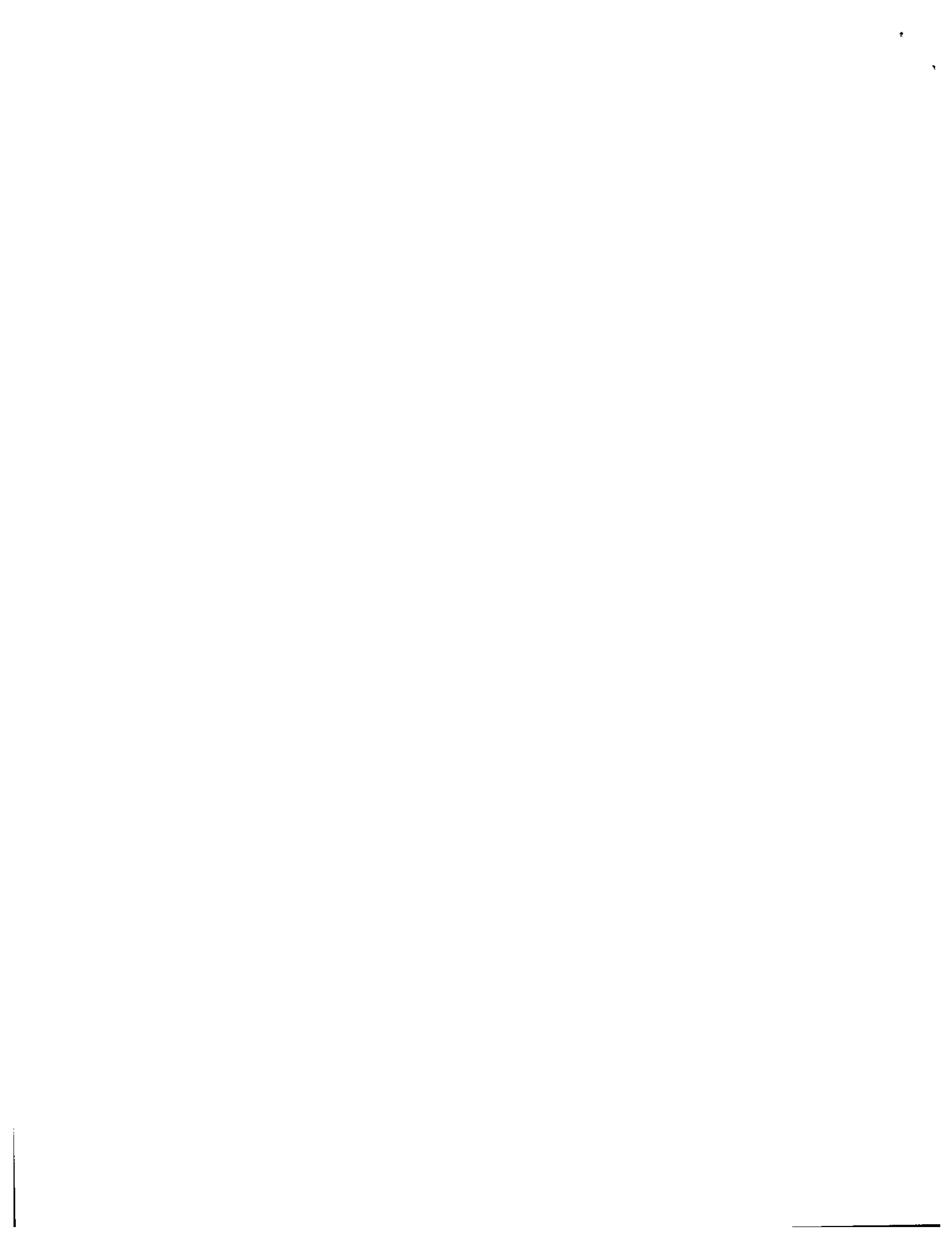


Exhibit D



