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2002-02-11 09:04:07  
Cook County Recorder 57.00

This Document Prepared by and  
After Recording Return to:



0020168722

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Piper Marbury Rudnick & Wolfe  
203 North LaSalle Street  
Suite 1800  
Chicago, Illinois 60601-1293

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**THIRD MODIFICATION TO CONSTRUCTION LOAN AGREEMENT,  
NOTE, MORTGAGE, GUARANTY AND LOAN DOCUMENTS**

19

THIS THIRD MODIFICATION TO CONSTRUCTION LOAN AGREEMENT, NOTE, MORTGAGE, GUARANTY AND LOAN DOCUMENTS ("Modification"), is dated as of December 31, 2001, by and among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("ANB"), CORUS BANK ("Corus") (ANB and Corus are hereinafter referred to collectively as "Lender"), LASALLE BANK NATIONAL ASSOCIATION, Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated November 19, 1996, and known as Trust No. 122332-01 (the "Trust"), VAN KAMPEN ASSET MANAGEMENT COMPANY L.L.C. ("Van Kampen"), MICHAEL A. MOYER ("Moyer"), RERC/PALMET, L.L.C. ("RERC"), VKAM/PALMET, L.L.C. ("VKAM") (Van Kampen, Moyer, RERC and VKAM are hereinafter referred to individually as a "Guarantor" and collectively as "Guarantors"), and PALMET VENTURE, L.L.C. ("Beneficiary") (the Trust and Beneficiary are hereinafter referred to collectively as "Borrower").

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**RECITALS:**

A. Borrower previously executed in favor of Lender that certain Mortgage Note dated as of December 29, 1997, as same may be amended, restated or replaced from time to time (the "Note") in the original principal amount of Forty-Four Million Dollars (\$44,000,000) (the "Loan") which was made pursuant to that certain Construction Loan Agreement dated as of December 29, 1997 between Lender and Borrower, as same may be amended, restated or replaced from time to time (the "Loan Agreement"). The Loan is secured by, among other things, that certain (i) Construction Mortgage dated as of December 29, 1997 executed by Borrower in favor of Lender, and subsequently recorded as Document Number 98001840 on February 1, 1998 (the "Original Mortgage"), as subsequently modified by that certain Mortgage Modification Agreement dated as of December 11, 1998, and recorded as Document Number 99027465 on January 11, 1999 (the "First Modification"). Borrower previously executed in favor of Lender that certain Modification to Construction Loan Agreement, Note, Mortgage, Guaranty and Loan Documents dated as of December 29, 2000 and subsequently

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recorded as Document Number 0010114453 on February 13, 2001 (the "Second Modification") (the Original Mortgage, as amended by the First Modification and the Second Modification is hereinafter referred to as the "Mortgage"), which Mortgage encumbers that certain real property (the "Premises") legally described on Exhibit A attached hereto; and (ii) Assignment of Leases and Rents dated as of December 29, 1997 executed by Borrower in favor of Lender (the "Assignment of Rents"), as subsequently recorded as Document Number 98001841 on February 1, 1998.

B. Van Kampen and Moyer previously executed in favor of Lender that certain Guaranty of Performance dated as of December 29, 1997, as same may be amended, restated or replaced from time to time (the "Performance Guaranty"). Moyer previously executed in favor of Lender that certain Guaranty of Payment dated as of December 29, 1997, as same may be amended, restated or replaced from time to time (the "Payment Guaranty"). RERC, VKAM and Moyer previously executed in favor of Lender that certain Guaranty of Payment In Connection With Recourse Events dated as of December 29, 1997, as same may be amended, restated or replaced from time to time (the "Recourse Events Guaranty"). The Performance Guaranty, the Payment Guaranty and the Recourse Events Guaranty are hereinafter collectively referred to as the "Guaranty". Borrower, RERC and Moyer previously executed in favor of Lender that certain Environmental Indemnity Agreement dated as of December 29, 1997, as same may be amended, restated or replaced from time to time (the "Environmental Indemnity").

The Loan Agreement, the Note, the Mortgage, the Assignment of Rents, the Guaranty, the Environmental Indemnity, together with any and all other documents and instruments securing the Note or delivered in connection with the Note or to induce Lender to disburse the proceeds of the Loan, are hereinafter collectively referred to as the "Loan Documents." Reference is hereby made to the Loan Documents (which are incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a statement of the covenants and agreements contained therein, a statement of the rights, remedies, and security afforded thereby, and all matters therein contained.

C. Borrower previously notified Lender of certain violations of the Municipal Code of the City of Chicago relating to the Premises as set forth in that certain proceeding pending in the Circuit Court of Cook County filed by the City of Chicago (the "City") against Borrower as Case No. 00M1-404032 on August 22, 2000 (the "Proceedings"). On June 15, 2001, Borrower and the City entered into an agreement (such agreement, as it may hereafter be extended, supplemented or modified and in effect from time to time, is herein called the "Settlement Agreement") to settle certain matters relating to the Proceedings pursuant to which Borrower agreed to, among other things, execute in a timely manner the removal, repair and compliance relating to the exterior walls of the Premises as provided in the Settlement Agreement.

D. Borrower has advised Lender that Borrower has elected to exercise the final option to extend the Maturity Date for one (1) year pursuant to Section 3.4 of the Loan Agreement and Section 15 of the Note and has paid to Lender an extension fee in the amount of \$110,000.

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E. Borrower has requested that Lender amend the Loan Agreement, the Note, the Mortgage, the Guaranty and the other Loan Documents as hereinafter provided on the conditions set forth herein.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the parties hereto agree as follows:

1. **DEFINITIONS.** All capitalized terms used herein and not otherwise defined shall have the meanings provided for in the Loan Agreement.

2. **AMENDMENT.**

A. The Loan Agreement is hereby amended as follows:

2.1 The term "Maturity Date" is hereby deleted in its entirety and replaced with the following:

**Maturity Date:** December 31, 2002.

B. The Note is hereby amended as follows:

2.2 The term "Maturity Date" is hereby deleted in its entirety and replaced with the following:

**Maturity Date.** December 31, 2002.

C. The Mortgage is hereby amended as follows:

2.3 The legal description of the Land attached to the Mortgage is hereby amended by replacing the legal description attached thereto as Exhibit A with the legal description attached hereto as Exhibit A. From and after the date hereof, any reference in the Mortgage or the other Loan Documents to the "Land," or any similar term shall be deemed to refer to the "Land" as described in Exhibit A attached hereto.

2.4 The term "Note," as used in the Mortgage and any of the other Loan Documents, shall be deemed to refer to the Note in favor of Lender, dated as of December 29, 1997, in the original principal amount of \$44,000,000, with a maturity date of December 31, 2002, as such note may be amended, extended, restated or replaced from time to time. Interest shall be due and payable at the rates of interest and on the dates set forth in the Note.

D. Each Guaranty is hereby amended as follows:

2.5 The terms "Note" and "Loan Agreement" as used in each Guaranty shall be deemed to refer to the Note and Loan Agreement, as amended hereby.

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3. **CONDITIONS PRECEDENT.** This Modification shall become effective upon receipt of the following items by Lender, each of which shall be satisfactory to Lender in its sole and absolute discretion:

- (i) five (5) counterparts of this Modification executed by Borrower and Guarantors;
- (ii) satisfaction of the conditions precedent to extension of the Maturity Date as set forth in Section 3.4 of the Loan Agreement and Section 15 of the Note;
- (iii) receipt of a title endorsement to that certain Lender's Title Policy Number 1401 007700113 issued by Chicago Title Insurance Company reflecting that title has been brought down to the date of recording of this Modification and is subject only to title exceptions approved by Lender in writing; and
- (iv) payment to Lender of any fees and expenses including, without limitation, Lender's attorneys' fees required or incurred in connection with the extension of the Maturity Date and this Modification.

4. **REAFFIRMATION OF GRANT OF SECURITY INTEREST.** Borrower and Guarantors, as the case may be under the Loan Documents, expressly acknowledge and agree that all previously granted collateral, security interests, liens, pledges and mortgages heretofore, under this Modification or hereafter granted to Lender including, without limitation, such collateral, security interests, liens, pledges and mortgages granted under the Loan Agreement, the Note, the Mortgage, and other Loan Documents and all supplements thereto, extend to and cover all of the obligations of Borrower to Lender, now existing or hereafter arising including, without limitation, those arising in connection with the Loan Agreement, the Note and the Mortgage, as amended by this Modification, upon the terms set forth in such agreements, all of which security interests, liens, pledges and mortgages are hereby ratified, reaffirmed, confirmed and approved.

5. **REAFFIRMATION OF GUARANTY.** Each Guarantor hereby reaffirms its or his prior execution and delivery of each Guaranty to which it or he is a party and hereby acknowledges and agrees that any such Guaranty, as amended hereby, continues to constitute the valid and binding obligation of each Guarantor, enforceable against each Guarantor in accordance with their terms, and that this Modification does not in any way release or waive each Guarantor's respective obligations thereunder. Each Guarantor hereby reaffirms all waivers set forth in its or his respective Guaranty.

6. **COVENANT REGARDING THE PROCEEDINGS AND THE SETTLEMENT AGREEMENT.** Borrower hereby covenants and agrees to (i) assume all responsibility for compliance with the terms of the Settlement Agreement and, at Borrower's own cost and expense, complete all repairs (the "Required Repairs") required in accordance with the Schedule for Repair of Masonry Facade dated as of May 15, 2001 (the "Repair Schedule")

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attached to the Settlement Agreement; (ii) promptly notify Lender in writing of any default by Borrower under the Settlement Agreement including, without limitation, Borrower's failure to complete any Required Repair on or before the due date set forth in the Repair Schedule; (iii) promptly provide Lender with copies of all written communications, correspondence, reports and notices regarding the Settlement Agreement including, without limitation, any reports required to be delivered to the City pursuant to the terms thereof; and (iv) keep Lender informed as to the status of completion of the Required Repairs and all other matters relating to the Settlement Agreement and the Required Repairs as Lender may, from time to time, request. Nothing contained herein shall be deemed or construed as waiving, limiting or otherwise affecting any rights or remedies Lender may now or hereafter have against Borrower under the Loan Documents, at law or in equity.

## 7. MISCELLANEOUS.

- 7.1 **Limited Nature of Modification.** The parties hereto acknowledge and agree that the terms and provisions of this Modification amend, add to and constitute a part of the Loan Agreement, the Note, the Mortgage, the Guaranty and other Loan Documents as provided herein. Except as expressly waived or modified and amended by the terms of this Modification, all of the other terms and conditions of the Loan Agreement, the Note, the Mortgage, the Guaranty and other Loan Documents, and all documents executed in connection therewith or referred to or incorporated therein remain in full force and effect and are hereby ratified, reaffirmed, confirmed and approved.
- 7.2 **Conflict.** If there is an express conflict between the terms of this Modification and the terms of the Loan Agreement, the Note, the Mortgage, the Guaranty and other Loan Documents, as the case may be, or any of the other agreements or documents executed in connection therewith or referred to or incorporated therein, the terms of this Modification shall govern and control.
- 7.3 **Counterparts.** This Modification may be executed in one or more counterparts, each of which shall be deemed to be an original.
- 7.4 **Representations and Warranties.** Borrower and each Guarantor severally represents and warrants to Lender as follows: (A) Borrower and each Guarantor, as applicable, has all necessary corporate and other organizational power and authority to execute and deliver this Modification and perform their respective obligations hereunder; (B) this Modification, the Loan Agreement, the Note, the Mortgage and the Guaranty, as amended hereby, hereby constitute the legal, valid and binding obligations of Borrower and each Guarantor, as the case may be, and is enforceable against Borrower and each Guarantor, as the case may be, in accordance with their terms; and (C) all representations and warranties of Borrower and each Guarantor, as the case may be, contained

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in the Loan Agreement, the Mortgage, the Note and the Guaranty, as amended hereby, and all other agreements, instruments and other writings relating thereto, as amended, are true and complete as of the date hereof.

7.5 **Governing Law.** This Modification shall be governed by and construed in accordance with the internal laws (as opposed to conflicts of law provisions) of the State of Illinois.

7.6 **Trustee's Exculpatory Provision.** This Modification is executed by the Trustee, not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred on and vested in it as such Trustee, and is payable only out of the assets of the trust estate held under the Trust Agreement creating the trust, including property specifically described in the Mortgage. No personal liability shall be asserted or be enforceable against Trustee because or in respect of this Modification or the making, issue or transfer hereof, all such liability, if any, being expressly waived by each taker and holder hereof; provided, however, that nothing contained herein shall limit, modify or reduce any liability of Trustee or any other party under any document or instrument other than the Note to pay any amounts due thereunder. The sole remedies of the holder hereof shall be as provided in the Mortgage, the Loan Agreement, the other Loan Documents and any other documents given to secure the indebtedness evidenced by the Note, in accordance with the terms and provisions contained therein, and/or by action to enforce the personal liability of the guarantors, if any, for the payment hereof or for the performance of any other agreements or undertakings made in connection with the indebtedness evidenced by the Note.

[SIGNATURES FOLLOW]

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IN WITNESS WHEREOF, this Modification is dated as of the day and year first written above.

**BORROWER:**

LASALLE BANK NATIONAL ASSOCIATION,  
Successor Trustee to American National Bank and  
Trust Company of Chicago, as Trustee under Trust  
Agreement dated November 19, 1996 and known as  
Trust No. 122332-01  
*and not personally*

By: *Spring Alexander*  
Name: SPRING ALEXANDER  
Title: TRUST OFFICER

PALMET VENTURE, L.L.C., an Illinois limited  
liability company

By: RERC/PALMET, L.L.C., an Illinois limited  
liability company, its Managing Member

By: *Michael Mauer*  
Name: MICHAEL MAUER  
Title: MANAGING MEMBER

**GUARANTORS:**

RERC/PALMET, L.L.C., an Illinois limited  
liability company

By: *Michael Mauer*  
Name: MICHAEL MAUER  
Title: MANAGING MEMBER

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VKAM/PALMET, L.L.C., an Illinois limited liability company

By: VKAM Real Estate, L.L.C., an Illinois limited liability company  
Its: Manager

By: David J. Allen  
Name: David J. Allen  
Title: Vice President

VAN KAMPEN ASSET MANAGEMENT COMPANY, L.L.C., an Illinois limited liability company

By: David J. Allen  
Name: David J. Allen  
Title: sr. Vice President

Michael A. Moyer  
MICHAEL A. MOYER

## LENDERS:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CORUS BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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2017-01-15

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VKAM/PALMET, L.L.C., an Illinois limited liability company

By: VKAM Real Estate, L.L.C., an Illinois limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

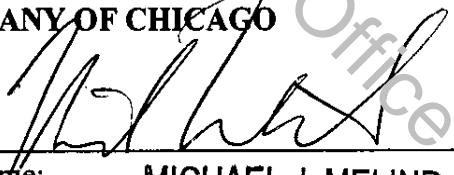
VAN KAMPEN ASSET MANAGEMENT COMPANY, L.L.C., an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MICHAEL A. MOYER

**LENDERS:**

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO

By:  \_\_\_\_\_  
Name: MICHAEL J. MELIND  
Title: FIRST VICE PRESIDENT

CORUS BANK N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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VKAM/PALMET, L.L.C., an Illinois limited liability company

By: VKAM Real Estate, L.L.C., an Illinois limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

VAN KAMPEN ASSET MANAGEMENT COMPANY, L.L.C., an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


MICHAEL A. MOYER

**LENDERS:**

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CORUS BANK N.A.

By:  \_\_\_\_\_  
Name: Timothy J. Stooler  
Title: First Vice President



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10/10/08

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10/10/08

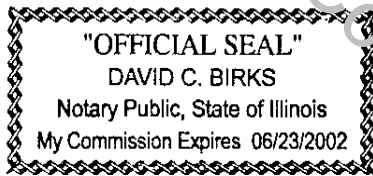
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STATE OF Illinois )  
 ) SS  
COUNTY OF Cook )

I, DAVID C. BIRKS, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT MICHAEL A. MOYER, the MANAGING MEMBER of RERC / PALMET, L.L.C., the managing member of PalMet Venture, L.L.C., personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 16<sup>th</sup> day of JANUARY 2007.



David C. Birks  
NOTARY PUBLIC

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§ 5/21/15

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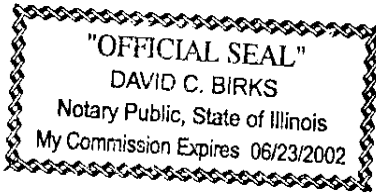
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STATE OF Illinois )  
 ) SS  
COUNTY OF Cook )

I, DAVID C. BIRKS, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Michael A. MOYER, the MANAGING MEMBER of RERC/PalMet, L.L.C., personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 16<sup>th</sup> day of JANUARY 2002

David C. Birks  
NOTARY PUBLIC



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01/15/18

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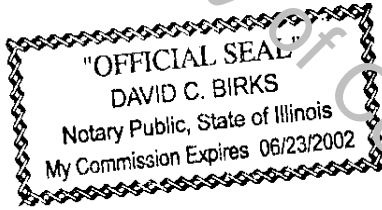
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STATE OF Illinois )  
 ) SS  
COUNTY OF Cook )

I, DAVID C. BIRKS, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Michael A. Moyer, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 16<sup>th</sup> day of JANUARY 2002.



David C. Birks  
NOTARY PUBLIC

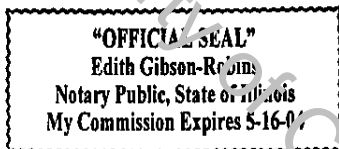
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STATE OF Illinois )  
COUNTY OF Cook ) SS

20168722

I, Edith Gibson-Robins, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Michael T. Melind, the First Vice President of American National Bank and Trust Company of Chicago, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 17<sup>th</sup> day of January 2002.



Edith Gibson-Robins  
NOTARY PUBLIC

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EXHIBIT A  
TO MODIFICATION TO  
CONSTRUCTION LOAN AGREEMENT, NOTE,  
MORTGAGE AND LOAN DOCUMENTS

## LEGAL DESCRIPTION

### PARCEL 1:

#### HOTEL PARCEL:

LOTS 2\*, 2B, 2, 2A\*, 2C, 2D, 2E\*, 2F\* AND 2C\* IN PALACE BLOCK SUBDIVISION, BEING A SUBDIVISION OF PART OF BLOCK 40 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

#### OFFICE PARCEL:

LOTS 1\*, 1 AND 1A\* IN PALACE BLOCK SUBDIVISION, BEING A SUBDIVISION OF PART OF BLOCK 40 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 3:

#### THEATER PARCEL:

LOTS 3, 3A, 3D AND 3\* IN PALACE BLOCK SUBDIVISION, BEING A SUBDIVISION OF PART OF BLOCK 40 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Tax Numbers: 17-09-445-001-0000  
17-09-445-002-0000  
17-09-445-003-0000  
17-09-445-004-0000  
17-09-445-005-0000  
17-09-445-006-0000

Common Address: 134 North LaSalle Street, Chicago, Illinois  
171 West Randolph Street, Chicago, Illinois

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