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Cook County Recorder

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THIS DOCUMENT PREPARED BY AND AFTER RECORDING RETURN TO:

0021138115

Bell, Boyd & Lloyd LLC 70 W. Madison Suite 3100 Chicago, Illinois 60602 Attn: Sandra L. Waldier, Esq.

This space reserved for Recorder's use only

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 1st day of December, 2601, by and among ROB ROY COMMERCIAL JOINT VENTURE LIMITED PARTNERSHIP, an Illinois limited partnership ("Borrower"), SHEILA TRUST, RONALD BENACH and WAYNE MORETTI (individually and collectively, "Guarantor") and LASALLE BANK NATIONAL ASSOCIATION, formerly known as LaSalle National Bank, a national banking association, its successors and assigns ("Lender").

<u>RECITALS:</u>

- A. Lender has heretofore made a loan ("Loar") to Borrower in the principal amount of Two Million Eight Hundred Fifty Thousand Dollars (\$2,850,000) as evidenced by a Promissory Note dated November 12, 1997, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").
- B. The Note is secured by, among other things, (i) that certain Mortgage, dated November 12, 1997 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on November 25, 1997, as Document No. 97882167 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated November 12, 1997, from Borrower to Lender and recorded in the Recorder's Office on November 25, 1997, as Document No. 97882168 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated November 12, 1997 from Borrower and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").
- C. The Loan is further secured by a Payment Guaranty dated November 12, 1997 from Guarantor to Lender, as assumed and amended by that certain Confirmation, Reaffirmation

BOX 333-CTT

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and Amendment of Payment Guaranty from Sheila Trust to Lender of even date herewith (as amended, the "Guaranty").

D. Borrower desires to amend the Loan Documents in order to extend the Maturity Date, decrease the Loan Amount, change the interest rate applicable to the Loan and otherwise amend the Loan Documents in accordance with the terms set forth below.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- 1. <u>Maturity Date</u> The Maturity Date of the Note is extended to June 30, 2002. Any reference in the Note, the Mortgage or any other Loan Document to the Maturity Date shall mean June 30, 2002.
- 2. <u>Decrease in Loan Amount</u> The Loan Amount is decreased in order to reflect the amount currently outstanding, so that the Loan Amount shall be TWO MILLION SIX HUNDRED EIGHTY SEVEN THOUSAND SEVEN HUNDRED THIRTY SIX AND 55/100 DOLLARS (\$2,687,736.55).
- 3. Amendment to Note. The Note is hereby amended as follows:
 - (a) by decreasing the principal amount thereof to TWO MILLION SIX HUNDRED EIGHTY SEVEN THOUSAND SEVEN AUNDRED THIRTY SIX AND 55/100 DOLLARS (\$2,687,736.55).
 - (b) by deleting Section 1 and inserting the following in its slace:
- "1. Payment of Principal and Interest. Maker shall pay the principal sum of the Loan Amount, and interest on the balance of Loan Amount from time to time outstanding and unpaid hereon from the date hereof until the maturity hereof (whether by lapse of time, acceleration or otherwise) at a rate (the "Interest Rate") equal to either (i) the Loan Rate (as hereinafter defined) or (ii) the LIBOR-Based Rate (as hereinafter defined), as determined in accordance with this Paragraph 1.
- (a) Unless an optional interest rate is in effect, as described below, interest shall accrue on the outstanding principal balance of the Loan Amount from the date hereof through June 30, 2002 ("Maturity Date"), at an annual rate ("Loan Rate") equal to one-half percent (1/2%) plus the Prime Rate in effect from time to time. Changes in the rate of interest to be charged hereunder based on the Prime Rate shall take effect immediately upon the occurrence of any change in the Prime Rate.

"Prime Rate" means the rate of interest most recently announced by Bank at Chicago, Illinois as its prime or base rate. A certificate made by an officer of Bank

stating the Prime Rate in effect on any given day, for the purposes hereof, shall be conclusive evidence of the Prime Rate in effect on such day. The "Prime Rate" is a base reference rate of interest adopted by Bank as a general benchmark from which the Bank determines the floating interest rates chargeable on various loans to borrowers with varying degrees of creditworthiness and Maker acknowledges and agrees that Bank has made no representations whatsoever that the "Prime Rate" is the interest rate actually offered by Bank to borrowers of any particular creditworthiness.

- (b) Maker may elect the optional interest rate(s) described in Paragraph 2(c) below for all or a portion of the Loan Amount during the interest periods described below. Any principal amount bearing interest at an optional rate under this Note is referred to as a "Portion".
- (c) Subject to the terms hereinafter set forth, Maker may elect to have all or part of the outstanding principal balance of the Loan Amount bear interest at an annual rate (the "LIBOR-Based Ka'e") equal to the LIBOR Rate (as hereinafter defined) plus two hundred twenty five basis points (2.25%) (the "Applicable Margin"). Designation of a LIBOR-Based Rate Portion is subject to the following requirements:
- (1) The interest period during which the LIBOR-Based Rate will be in effect will be one, two or three months, or such other period as may be agreed to by Bank and Maker in each case commencing on the first Business Day (as hereinafter defined) of a month; provided, however, that if the election for a LIEOR-Based Rate Portion is made such that the interest period shall commence on any day our r than the first Business Day of a month, then the initial interest period shall end on the last day of the month in which such election is made and the Portion for such partial month shall bear interest at the one month LIBOR Rate, plus the Applicable Margin. In any event the first day of the interest period must be a day on which Bank is open for business in Chicago, Illinois (a "Pusiness Day") and banks are open in London, England and dealing in offshore United States addars. The last day of the interest period and the actual number of days during the interest period will be determined by Bank using the practices of the London inter-bank market.
- (2) Each LIBOR-Based Rate Portion will be for an a not not less than \$500,000 and in increments in excess thereof of \$100,000. No more than five (5) separate LIBOR-Based Rate Portions may be outstanding at any time.
- (3) "LIBOR Rate" means the interest rate determined by the following formula, rounded upward to the nearest 1/100 of one percent (all amounts in the calculation will be determined by Bank as of the first day of the interest period:

LIBOR = London Inter-Bank Offered Rate (1.00 - Reserve Percentage)

Where, (i) "London Inter-Bank Offered Rate" means the rate per annum equal to the offered rate for deposits in U.S. dollars for the applicable interest period and for amounts comparable to the LIBOR-Based Rate Portion published by Bloomberg's Financial

Markets Commodities News at approximately 8:00 a.m. Chicago time two (2) Business Days before the commencement of the interest period (or if not so published, Bank, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to determine such rate); provided, however, that after the first election of an interest period with respect to any Portion, the London Inter-Bank Offered Rate shall be determined at approximately 8:00 a.m. Chicago time on the first Business Day of the month for each interest period thereafter with respect to such Portion.

- (ii) "Reserve Percentage" means the total of the maximum reserve percentages for determining the reserves to be maintained by member banks of the Federal Reserve System for Eurocurrency Liabilities, as defined in Federal Reserve Board Regulation D, rounded upward to the nearest 1/100 of one percent. The percentage will be expressed as a decimal, and will include, but not be limited to, marginal, emergency, supplemental, special and other reserve percentages.
- (4) Maker shall irrevocably request, in writing, a LIBOR-Based Rate Portion no later than 2:00 p.m. Chicago time on the day on which the London Inter-Bank Offered Rate will be set, as specified above. Bank is not obligated to accept a deposit in the inter-bank market in order to charg? interest on a LIBOR-Based Rate Portion at the LIBOR-Based Rate, once Maker elects such rute.
- renew for the same interest period at the then current LIBOR Rate plus the Applicable Margin unless Maker shall otherwise irrevocably request, in writing, a different interest period or conversion of all or a portion of the LIBOR-Base! Rate Portion to the Loan Rate, no later than 2:00 p.m. Chicago time on the second (2nd) Brisiness Day before the expiration of the existing interest period. Maker may not elect a LIBOR-Based Rate and an interest period for a LIBOR-Based Rate Portion shall not automatically renew with respect to any principal amount which is scheduled to be repaid before the last day of the applicable interest period, and any such amounts shall bear interest at the Loan Rate, unit repaid.
- (6) Each prepayment of a LIBOR-Based Rate Portion, whether voluntary, involuntary, by reason of acceleration or otherwise, will be accompanied by the amount of accrued interest on the amount prepaid and a Prepayment Premium, as described below. A "prepayment" is a payment of an amount on a date earlier than the scheduled payment date for such amount as required by this Note. The "Prepayment Premium" shall be equal to all costs, expenses, penalties and charges incurred by Bank as a result of the early termination or breakage of a LIBOR-Based Rate Portion plus any Additional Costs (hereinafter defined) and the amount (if any) by which:
- (i) the additional interest which would have been payable during the interest period on the amount prepaid had it not been prepaid, exceeds
- (ii) the interest which would have been recoverable by Bank by placing the amount prepaid on deposit in the domestic certificate of deposit market, the eurodollar deposit market, or other appropriate money market selected by Bank, for a period

starting on the date on which it was prepaid and ending on the last day of the interest period for such Portion (or the scheduled payment date for the amount prepaid, if earlier).

- (7) Bank will have no obligation to accept an election for a LIBOR-Based Rate Portion if any of the following described events has occurred and is continuing:
- (i) Dollar deposits in the principal amount, and for periods equal to the interest period, of a LIBOR-Based Rate Portion are not available in the London inter-bank market; or
- (ii) maintenance of a LIBOR-Based Rate Portion would violate any applicable ian, rule, regulation or directive, whether or not having the force of law; or
- (iii) the LIBOR-Based Rate does not accurately reflect the cost of a LIBOR-Based Rate Portion; or
- (iv) an Event of Default, or an event which with the passing of time or the giving of notice would constitute an Event of Default, has occurred and is continuing.
- (8) In addition, Maker shall be responsible for paying any costs (the "Additional Costs") actually incurved by Bank as a direct result of any change in Bank's cost of complying with any law, rule, regulation or other requirement imposed, interpreted or enforced by any federal, state or other governmental or monetary authority which is applicable to assets held by or deposits or accounts with or credits extended by Bank and which causes Bank to incur costs or increases the effective cost to Bank of lending to Maker at the LIBOR Rate or decreases the effective spread or yield of two rundred twenty-five basis points (2.25%) per annum above the LIBOR Rate which would be tagde by Bank on a LIBOR-Based Rate Portion.
- (9) Interest shall be computed on the basis of a 360-day sear be or become illegal, then the basis for computing interest hereunder shall be a 365-day sear. Commencing on March 1, 2002 and on the first Business Day of each month thereafter through and including the month in which the Maturity Date occurs, interest accred on the partients of this Note bearing interest at the Loan Rate shall be due and payable. Interest on each LIBOR-Based Rate Portion shall be paid in arrears on the first Business Day of each month, commencing March 1, 2002 and on the last day of the interest period for each LIBOR-Based kate Portion. Interest accrued on any LIBOR-Based Rate Portion as of the date of termination, breakage or other disposition shall be due and payable in full on the date of such termination, breakage or disposition.
- (d) Subject to the provision of Section 6 hereof, commencing March 1, 2002, and on the first day of each month thereafter, through June 1, 2002, Borrower shall pay Lender an installment payment of principal in the amount of \$3,167, with a final payment of the outstanding principal balance of the Loan Amount and unpaid accrued interest thereon due and payable on the Maturity Date."
 - (c) by deleting Section 8 and inserting the following in its place:

- "8. <u>Prepayment</u>. Provided that no Event of Default then exists under this Note or any other Loan Document, Borrower may voluntarily prepay the outstanding principal balance of the Loan Amount in whole or in part, at any time without premium or penalty except the Prepayment Premium, subject to the following conditions:
- (a) Borrower shall pay to Lender all accrued and unpaid interest through the date of such prepayment;
- (b) Borrower shall pay to Lender any other obligations of Borrower to Lender remaining unpaid as of the date of such prepayment; and
- (c) Borrower shall pay Lender the Prepayment Premium, as set forth in Section 1(c)(6) hereof."
- 4. Amendmer to Mortgage. The Mortgage is hereby amended as follows:
 - (a) by decreasing the principal amount of the Loan secured thereby to TWO MILLION SIX HUNDRED EIGHTY SEVEN THOUSAND SEVEN HUNDRED THIRTY SIX AND 55/100 DOLLARS (\$2,687,736.55).
 - (b) by deleting the first sentence of Recital C and inserting the following in its place:

"As evidence of the Loan, Morigagor has executed and delivered to Mortgagee a certain Mortgage Note of even date herewith (the "Note"), made payable to the order of and delivered to Mortgagee, in and by which Note Mortgagor promises to pay the said principal sum of the Loan and interest at the variable rate and in installments as provided in the Note, with a final payment of the balance due on June 30, 2002, or such earlier date as may be provided in such Note."

- 5. <u>Amendment to Payment Guaranty</u>. The Payment Guaranty is hereby amended by deleting the amount "\$2,850,000" from Recital A thereof and inserting the amount "\$2,687,736.55 in its place.
- 6. Amendment to Assignment of Leases and all other Loan Documents. The Assignment of Leases and all other Loan Documents are hereby amended by decreasing the principal amount of the Loan secured thereby to TWO MILLION SIX HUNDRED EIGHTY SEVEN THOUSAND SEVEN HUNDRED THIRTY SIX AND 55/100 DOLLARS (\$2,687,736.55).
- 7. Representations and Warranties of Borrower. Borrower hereby represents, covenants and warrants to Lender as follows:
 - (a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of the date hereof.
 - (b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or

both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

- (c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.
- (d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.
- (e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.
- (f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.
- 8. <u>Title Policy</u>. As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 1401 007643435 (the "<u>Title Policy</u>"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.
- 9. Reaffirmation of Guaranty. Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the fate hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.
- 10. <u>Expenses</u>. As a condition precedent to the agreements contained herein, Borrower shall pay to Lender an extension fee in the amount of \$3,355 and all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

11. Miscellaneous.

- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
- (b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.
- Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.
- (d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.
- (e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.
- (f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

- This Agreement may be executed in one or more counterparts, all of which, when (g) taken together, shall constitute one original Agreement.
- Time is of the essence of each of Borrower's obligations under this Agreement. (h)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

LENDER:

LASALLE BANK NATIONAL ASSOCIATION, a national banking

association

By: Name:

Title:

FOR INTERNAL BANK USE ONLY **OFFICER**

BORROWER:

ROB ROY COMMERCIAL JOINT VENTURE LIMITED PARTNERSHIP.

an Illinois limited partnership

By: FAI II, Inc., an Illinois corporation, its general partner

By: Name:

Title:

GUARANTOR:

Sheila Trust

By: Sheila Eisenberg, Trustee

This Agreement may be executed in one or more counterparts, all of which, when (g) taken together, shall constitute one original Agreement.

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Time is of the essence of each of Borrower's obligations under this Agreement. (h)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

LASALLE PANK NATIONAL ASSOCIATION, a national banking association

By:		g
By: Name:		
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BORROWER:

ROB ROY COMMERCIAL JOINT VENTURE LIMITED PARTNERSHIP, an Illinois limited partnership

By: FAI II, Inc., an Illinois corporation, its general partner

By:	 	 	
Name:	 	 · · · · · · · · · · · · · · · · · · ·	
Title:	 		

GUARANTOR:

Ronald Benach

Wayne Moret.

ila Trusi

Sheila Eisenberg, Trustee

3115

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STATE OF ILLINOIS) an			
COUNTY OF COOK) ss.)			
ī	a	Notary Public	e in and for said	County, in the State
Iaforesaid, DO HEREBY CE LaSalle Bank National Asso	, a	i Notary i dom	o m ana ioi saia	of
LaSalle Bank National Asso	ociation, is person	onally known	to me to be the	same person whose
name is subscribed to the t	foregoing instru	ment, appeare	d before me this	day in person and
acknowledged that he signed	l and delivered s	aid instrument	as his own free a	and voluntary act for
the uses and purposes thereir	ı set forth.			
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FAI II, Inc., the General Par	ethor of Pob Po	Commercial	Joint Venture Lii	mited Partnership, is
personally known to me to	tuter of Nov No	erson whose	name is subscrib	ed to the foregoing
instrument, appeared befor	e me this day	in person and	d acknownedged	that he signed and
delivered said instrument as	his own free an	d voluntary ac	t for the uses and	purposes therein set
forth.				
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		*	Notary Public, State	6
		8	My Commission Expires	

STATE OF ILLINOIS)
COUNTY OF Cook) ss.
I Manuage Manage A Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Ronald Benach and Wayne Moretti are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act for the uses and purposes therein set forth. GIVEN under my hand and Notarial Seal this 7th day of 1 day of
Notary Public
My Commission Expires: 4-13-03
"OFFICIAL SEAL" MARILYN MAGAFAS Notary Public, State of Illinois My Commission Expires 04/13/03 STATE OF ILLINOIS) ss. COUNTY OF)
John John John John John John John John
GIVEN under my hand and Notarial Seal this day of, 20
Notary Public
My Commission Expires:

STATE OF ILLINOIS)		
COUNTY OF) ss.)		
aforesaid, DO HEREBY CF known to me to be the same	ERTIFY that Ronald persons whose name	l Benach and Wayne es are subscribed to t	the foregoing instrument
GIVEN under my han	d and Notarial Seal t	his day of	, 20
appeared before me this day instrument 2. their own free a GIVEN under my han My Commission Expires:	· · · · · · · · · · · · · · · · · · ·	Notary Publ	ic
STATE OF ILLINOIS)	40	
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I JGRADIO 5. I aforesaid, DO HEREBY CE personally known to me to instrument, appeared before	ROFF, a Nota ERTIFY that Sheila be the same person me this day in per	ry Public in and for Eisenberg, Trustee whose name is substant and acknowledge	said County, in the State of the Sheila Trust, is scribed to the foregoing ted that she signed and

delivered said instrument as her own free and voluntary act for the uses and purposes therein set forth.

GRECIALE SEA and and Notarial Seal this 28 day of FEBRARY, 2002.

NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPERSE ON/07/06

Notary Public

My Commission Expires: 8-7-05

EXHIBIT A

THE PROPERTY

Lots 1 and 15 in Siebert Spondly Resubdivision of Lots 1 to 5 inclusive in Block 11 in Wrightwood, a Subdivision of the South West 1/4 of Section 28, Township 40 North, Range 14, East of the Third Principal Meridian, according to the Plat recorded July 29, 1912 as Document Number 5014225, in Book 122 of Plats, in Cook County, Illinois.

14-28-301-017-0000 PIN:

2744-2754 North Clark Street and Address:

-645
reago, Illi.

Or Cook Collings Clerk's Office 635-645 West Diversey Parkway

Ccicago, Illinois