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2003-03-27 09:49:48

Cook County Recorder 50.00



0030411372

When Recorded Mail To:
Daniel J. Favero, Esq.
Chapman and Cutler
111 West Monroe
Chicago, Illinois 60603

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RECORDER'S USE ONLY

8101490 DJF

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

Property of Cook County Clerk's Office

March 1, 2003

Among

LASALLE BANK NATIONAL ASSOCIATION

(the "Tenant")

and

30KEDZIE REALTY VENTURE, L.L.C.

(the "Landlord")

and

BRANCH BANKING AND TRUST COMPANY, AS TRUSTEE

(the "Lender")

LaSalle Bank Branch
SW Corner of 30th St. and S. Kedzie Ave.
Chicago, Cook
County, Illinois

BOX 333-CP

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("*Non-Disturbance Agreement*") made as of the 1st day of March, 2003, by and among BRANCH BANKING AND TRUST COMPANY, as trustee ("*Lender*"), LASALLE BANK NATIONAL ASSOCIATION, a national banking association, having an office at 135 South LaSalle Street, Chicago, Illinois 60603 ("*Tenant*") and 30KEDZIE REALTY VENTURE, L.L.C., an Illinois limited liability company ("*Landlord*").

WITNESSETH:

WHEREAS, Lender has agreed to make a loan (the "*Loan*") of up to \$3,110,000.00 to Landlord;

WHEREAS, the Loan will be evidenced by a mortgage note (the "*Note*") of even date herewith made by Landlord to order of Lender and will be secured by, among other things, a mortgage, assignment of leases and rents and security agreement (the "*Mortgage*") of even date herewith made by Landlord to or for the benefit of Lender covering, among other things, the land (the "*Land*") described on Schedule A hereto and all improvements (the "*Improvements*") now or hereafter located on the Land (the Land and the Improvements hereinafter collectively referred to as the "*Premises*");

WHEREAS, by a Ground Lease Agreement dated as of August 27, 2001 (such Ground Lease Agreement, as amended by that certain First Amendment to Ground Lease Agreement dated January 20, 2002, and as heretofore or hereafter otherwise amended, supplemented or modified, the "*Lease*"), Landlord leased to Tenant the Premises; and

WHEREAS, the parties hereto desire to make the Lease subject and subordinate to the Mortgage.

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. The Lease, as the same may hereafter be modified, amended or extended, and all of Tenant's right, title and interest in and to the Premises, are and shall be subject and subordinate to the Mortgage and the lien thereof, to all the terms, conditions and provisions of the Mortgage and to each and every advance made or hereafter made under the Mortgage, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Mortgage, so that at all times the Mortgage shall be and remain a lien on the Premises prior and superior to the Lease for all purposes; *provided, however*, and Lender agrees, that so long as no default by Tenant has occurred which has continued to exist for such period of time (after notice, if any, required by the Lease) as would entitle Landlord to terminate the Lease, then, and in such event (i) Lender shall not join Tenant as a party defendant in any foreclosure action or proceeding which may be instituted or taken by Lender under the Mortgage by reason of any default

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thereunder, unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease, (ii) Tenant's leasehold estate under the Lease shall not be terminated or disturbed and Lender will accept the attornment of Tenant or, if Mortgagee so elects, the New Lease, pursuant to paragraph 3 hereof, and (iii) other than as set forth herein, none of Tenant's rights under the Lease shall be affected in any way by reason of any default under the Mortgage. Notwithstanding the foregoing, Lender shall not in any event have any liability for any act or omission of Landlord, except to the extent such act or omission continues during the period of possession by Lender or during a period during which Lender is receiving rent from Tenant pursuant to paragraph 3.

2. Notwithstanding anything to the contrary contained in the Lease, Tenant hereby agrees that in the event of any act, omission or default by Landlord or Landlord's agents, employees, contractors, licensees or invitees which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, or to reduce the rent payable thereunder or credit or offset any amounts against future rents payable thereunder, Tenant will not exercise any such right until it has given written notice of such act, omission or default to Mortgagee by delivering notice of such act, omission or default, by certified or registered mail, addressed to Mortgagee at Mortgagee's address as given hereby or at the last address of Mortgagee furnished to Tenant in writing, and (i) in the case of any such act, omission or default that can be cured by the payment of money, until ten (10) days shall have elapsed following the giving of such notice or (ii) in the case of any other such act, omission or default, until a reasonable period for remedying such act, omission or default shall have elapsed following the giving of such notice but no more than 30 days thereafter, *provided* Mortgagee, with reasonable diligence, shall (a) pursue such remedies as are available to it under the Mortgage so as to be able to remedy the act, omission or default, and (b) thereafter shall have commenced and continued to remedy such act, omission or default or cause the same to be remedied. Tenant shall also give a copy of any such notice hereunder to any successor to Mortgagee's interest under the Mortgage, *provided* that Mortgagee or such successor notifies Tenant in writing of the name and address of the party Tenant is to notify. Mortgagee's cure of Landlord's default shall not be considered an assumption by Mortgagee of Landlord's other obligations under the Lease. If in curing any such act, omission or default, Mortgagee requires access to the Premises to effect such cure, Tenant shall provide access to the Premises to Mortgagee as required by Mortgagee to effect such cure at all reasonable times. Unless Mortgagee otherwise agrees in writing, Landlord shall remain solely liable to perform Landlord's obligations under the Lease (but only to the extent required by and subject to the limitation included with the Lease), both before and after Mortgagee's exercise of any right or remedy under this Non-Disturbance Agreement. If Mortgagee or any successor or assign becomes obligated to perform as Landlord under the Lease, such person or entity shall be released from those obligations when such person or entity assigns, sells or otherwise transfers its interest in the Premises and the assignee, purchaser or transferee expressly assumes such obligations.

3. Without limitation of any of the provisions of the Lease, in the event that, by reason of any default under the Mortgage on the part of Landlord, Mortgagee or its successors or assigns shall succeed to the interest of Landlord or any successor to Landlord, then, subject to the

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provisions of this Non-Disturbance Agreement, including, without limitation, paragraph 1 above, the Lease shall nevertheless continue in full force and effect and Tenant shall and does hereby agree to attorn to and accept Mortgagee or its successors or assigns and to recognize Mortgagee or its successors or assigns as its Landlord under the Lease for the then remaining balance of the term thereof, and upon request of Mortgagee or its successors or assigns, Tenant shall execute and deliver to Mortgagee or its successors or assigns an agreement of attornment satisfactory to Mortgagee or any such successor or assign.

4. If Mortgagee or its successors or assigns shall succeed to the interest of Landlord or any successor to Landlord, in no event shall Mortgagee or its successors or assigns have any liability under the Lease prior to the date Mortgagee or such successor or assign shall succeed to the rights of Landlord under the Lease or any act or omission of the Landlord, except to the extent such act or omission continues during the period of possession by Mortgagee or during a period during which Mortgagee is receiving rent from Tenant pursuant to paragraph 3, nor any liability for claims, offsets or defenses which Tenant might have had against Landlord, nor shall Mortgagee be bound by any asbestos, hazardous substance or environmental indemnifications given by Landlord, any act or omission by Landlord, except to the extent such act or omission continues during the period of possession by Mortgagee or during a period during which Mortgagee is receiving rent from Tenant pursuant to paragraph 3, and in any event Mortgagee and its successors or assigns shall have no personal liability as successor to Landlord and Tenant shall look only to the estate and property of Mortgagee or its successors or assigns in the Premises for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Mortgagee or its successors or assigns as Landlord under the Lease, and no other property or assets of Mortgagee or its successors or assigns shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease, the relationship of Landlord and Tenant thereunder or Tenant's use or occupancy of the Premises.

5. Tenant agrees that no prepayment of rent or additional rent due under the Lease of more than one month in advance, and no amendment, modification, surrender or cancellation of the Lease, and no waiver or consent by Landlord under the terms of the Lease shall be binding upon or as against Mortgagee, as holder of the Mortgage and as Landlord under the Lease if it succeeds to that position, unless consented to in writing by Mortgagee. In addition, and notwithstanding anything to the contrary set forth in this Non-Disturbance Agreement, Tenant agrees that Mortgagee, as holder of the Mortgage and as Landlord under the Lease if it succeeds to that position, shall in no event have any liability for the performance or completion of any initial work or installations or for any loan or contribution or rent concession towards initial work, which are required to be made by Landlord (A) under the Lease or under any related Lease documents or (B) for any space which may hereafter become part of the Premises, and any such requirement shall be inoperative in the event Mortgagee succeeds to the position of Landlord prior to the completion or performance thereof.

6. Landlord represents and warrants that the Lease was duly executed by Landlord and all consents, resolutions or other approvals required for Landlord to execute the Lease were

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obtained. Tenant covenants that the Lease was duly executed by Tenant and all consents, resolutions or other approvals required for Tenant to execute the Lease were obtained.

7. Tenant and Landlord shall provide a document similar to this to any lender making a loan secured by property including the Premises, the proceeds of which loan are used to repay the Loan in whole or part as may be agreed to by such lender and subject to such reasonable modifications as may be requested by such lender.

8. Tenant agrees that, if Landlord's consent is required under the Lease, no assignment of the Lease or subletting of all or any portion of the Premises by Tenant shall be effective unless Mortgagee's prior written consent shall have been obtained. Notwithstanding anything in the Lease to the contrary, in connection with any assignment of the Lease by Tenant, Tenant acknowledges that it shall remain primarily liable under the Lease as if such assignment did not occur.

9. Tenant, shall, from time to time, within ten (10) days after request by Lender, execute, acknowledge and deliver to Lender a statement by Tenant certifying (a) that the Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) the amounts of fixed rent, additional rent, percentage rent, or other sums, if any, which are payable in respect of the Lease and the commencement date and expiration date of the Lease, (c) the dates to which the fixed rent, additional rent, percentage rent, if any, and other sums which are payable in respect to the Lease have been paid, (d) whether or not Tenant is entitled to credits or offsets against such rent, and, if so, the reasons therefor and the amount thereof, (e) to the best of Tenant's knowledge, that Tenant is not in default in the performance of any of its obligations under the Lease and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute such a default, (f) whether or not, to the best knowledge of the person certifying on behalf of Tenant, Landlord is in default in the performance of any of its obligations under the Lease, and, if so, specifying the same, (g) whether or not, to the best knowledge of such person, any event has occurred which with the giving of such notice or passage of time, or both would constitute such a default, and, if so, specifying each such event, and (h) whether or not, to the best knowledge of such person, Tenant has any claims, defenses or counterclaims against Landlord under the Lease.

10. Any option, right of first refusal or other rights contained in the Lease, or otherwise existing, to acquire all or any portion of the Premises are hereby made subject, and subordinate to the rights of Lender under the Mortgage.

11. It is the express intention of Landlord and Tenant that the acquisition by either party of the right, title, interest and estate of the other party in and to the Premises shall not result in termination or cancellation of the Lease by operation of the principle of merger of estates or otherwise, notwithstanding any applicable law to the contrary; *provided, however*, that in the event Tenant acquires the right, title, interest and estate of Landlord in and to the Premises, whether pursuant to any purchase option or right of first refusal granted in the Lease or otherwise, if either (i) the indebtedness secured by the Mortgage is satisfied or (ii) Tenant

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assumes the indebtedness secured by the Mortgage (on a recourse basis), then in such event the estates of Landlord and Tenant in and to the Premises shall merge and the Lease will be extinguished.

In the event Tenant assumes the indebtedness secured by the Mortgage as envisaged by clause (ii) of the foregoing paragraph, Tenant acknowledges that Lender will impose customary requirements which will include, without limitation, (a) execution of an assumption agreement, (b) endorsement to the title insurance policy and (c) evidence that required property and liability insurance is in place.

12. This Non-Disturbance Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

13. All remedies which Lender may have against Landlord provided herein, if any, are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Landlord or others. If any party consists of multiple individuals or entities, each of same shall be jointly and severally liable for the obligations of such party hereunder.

14. The reasonable cost of attorney's fees and disbursements for any legal action or arbitration between or among the parties arising out of any dispute or litigation relating to enforcement of this Non-Disturbance Agreement shall be borne by the party or parties against whom a final decision is rendered.

15. The Tenant hereby waives the requirement in Section 4(c) of the Lease that the Landlord provide Tenant with a monthly invoice for rent.

16. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Non-Disturbance Agreement, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

To Lender:

Branch Banking and Trust Company, as Trustee
223 West Nash Street
P.O. Box 2887
Wilson, NC 27894-2887
Attention: Corporate Trust Administration

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Subordination, Non-Disturbance
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with a copy concurrently to:

Laureate Capital LLC
227 West Trade Street
Suite 400
Charlotte, North Carolina 28202
Attention: Mark Hill

To Tenant: ABN AMRO North America, Inc.
135 South LaSalle Street
Suite 3400
Chicago, Illinois 60603
Attention: Corporate Real Estate

With a copy to: ABN AMRO North America, Inc.
135 South LaSalle Street
Suite 925
Chicago, Illinois 60603
Attention: H. Jeffrey McCown

To Landlord: Kozie Realty Venture, L.L.C.
2421 Simpson Street
Evanston, Illinois 60201
Attention: R. Stephen Qualkinbush

With a copy to: Seyfarth Shaw
55 East Monroe Street
Chicago, IL 60603-5803
Attention: Jay A. Gitles, Esq.

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Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the day such material is sent, or (iii) if sent by certified mail, three (3) days after such notice has been sent by Lender, Landlord or Tenant.

17. This Non-Disturbance Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Illinois.

18. This Non-Disturbance Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns. As used herein "Lender" shall include any subsequent holder of the Mortgage.

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Subordination, Non-Disturbance
and Attornment Agreement

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

TENANT:

LASALLE BANK NATIONAL ASSOCIATION

MORTGAGEE:

BRANCH BANKING AND TRUST COMPANY,
as Trustee

By Kelly Stradinger

Name:

Title: KELLY STRADINGER
VICE PRESIDENT



By _____

Name:

Title:

LANDLORD:

30KEDZIE REALTY VENTURE, L.L.C.

By RSC

Name: R. Stephen Qualkinbush
Title: President

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

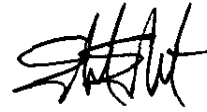
TENANT:

LASALLE BANK NATIONAL ASSOCIATION

MORTGAGEE:

BRANCH BANKING AND TRUST COMPANY,
as Trustee

By _____
Name:
Title:

By  _____
Name: EDWARD EDMISTON
Title: AVP

LANDLORD:

30KEDZIE REALTY VENTURE, L.L.C.

By _____
Name: R. Stephen Qualkinbush
Title: President

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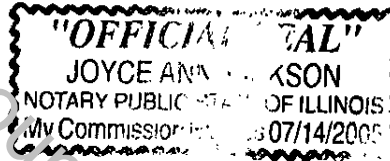
Subordination, Non-Disturbance
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STATE OF ILLINOIS)
COUNTY OF Cook) SS

On this 7th day of March, 2003, in the County and State aforesaid, before me, the subscriber, a Notary Public authorized to take acknowledgments and proofs in said County and State, personally appeared Kelly Stradinger, the Vice President of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, who, I am satisfied, is the person who, as such authorized representative, signed and delivered the within instrument on behalf of said corporation, the party named in the within instrument, and (s)he did acknowledge that (s)he is duly authorized to sign and deliver the within instrument on behalf of said corporation and that (s)he signed, and delivered the same as the free act and deed of said corporation.

Joyce Ann Jackson
Notary Public

[NOTARIAL SEAL]
My commission expires 7/14/2005



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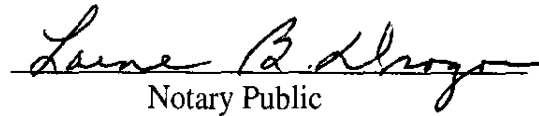
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STATE OF ILLINOIS)
COUNTY OF COOK) SS

I, LAINE B. DROGOS, a Notary Public in and for the County and State aforesaid, do hereby certify that R. STEPHEN QALKINBUSH, to me known, who declared and acknowledged that he is President of 30Kedzie Realty Venture, L.L.C., a limited liability company organized under the laws of the State of Illinois, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said limited liability company and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 7th day of March, 2003.


Notary Public



(SEAL)

Printed Name: LAINE B. DROGOS

Commission expires:

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Subordination, Non-Disturbance
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North Carolina
STATE OF ILLINOIS)
COUNTY OF Wilson) SS

I, Jeanette B. Ferrell, a Notary Public, do hereby certify that Ed Edmiston, personally known to me to be Assistant Vice President of BRANCH BANKING AND TRUST CO., 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 as such Ed Edmiston such person signed and delivered the said instrument as Assistant Vice President of said company, pursuant to authority, given by the Board of Directors of said company as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 11th day of March, 2003.

Jeanette B. Ferrell
Notary Public

My Commission Expires: 3/16/2003

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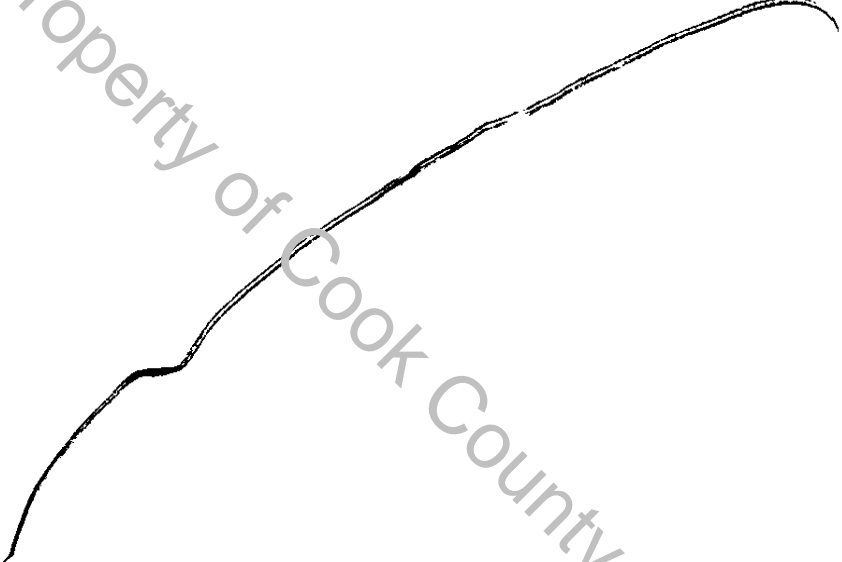
Notary of Cook County Clerk's Office

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SCHEDULE A DESCRIPTION OF REAL ESTATE

Legal Description:

Property of Cook County Clerk's Office



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THE NORTH 174.00 FEET, AS MEASURED PARALLEL WITH THE SOUTH LINE OF 30TH STREET, OF THAT PART OF BLOCK 24 IN STEELE AND OTHER'S SUBDIVISION OF THE SOUTHEAST 1/4 AND THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 26, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF WEST 30TH STREET AND THE WEST LINE OF KEDZIE AVENUE; THENCE SOUTH 00 DEGREE, 10 MINUTES, 49 SECONDS WEST, 599.13 FEET ALONG THE WEST LINE OF KEDZIE AVENUE; THENCE NORTH 90 DEGREES, 00 MINUTE, 00 SECONDS WEST, 265.75 FEET ALONG THE NORTH LINE OF WEST 31ST STREET; THENCE NORTH 00 DEGREE, 10 MINUTES, 49 SECONDS EAST, 465.88 FEET ALONG A LINE PARALLEL WITH THE WEST LINE OF KEDZIE AVENUE; THENCE NORTHEASTERLY ON A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2898.09 FEET, AN ARC DISTANCE OF 194.29 FEET AND CHORD BEARING NORTH 46 DEGREES, 36 MINUTES, 40 SECONDS EAST ALONG THE SOUTHEAST RIGHT OF WAY LINE OF THE ATCHINSON, TOPEKA AND SANTA FE RAILROAD; THENCE SOUTH 89 DEGREES, 54 MINUTES, 42 SECONDS EAST, 125.01 FEET ALONG THE SOUTH LINE OF WEST 30TH STREET TO POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

16-26-430-006-0000

16-26-430-007-0000

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