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Doc#: 0331842232

Eugene "Gene" Moore Fee; \$86.00 Cook County Recorder of Deeds Date: 11/14/2003 11:42 AM Pg: 1 of 12

ASSIGNMENT OF LEASES AND RENTS

This ASSIGNMENT OF LEASES AND RENTS dated as of October 17, 2003, by 4635-41 N. BROADWAY LLC, a Illinois limited liability company, with an office at 4635-4641 N. Broadway, Chicago, Illinois (referred to herein as "Assignor"), to BROADWAY BANK, a Illinois banking corporation having an address at 5960 N. Broadway, Chicago, Illinois 60660 ("Assignee").

WITNESSETH:

ASSIGNOR, for good and valuable consideration, receipt which is hereby acknowledged, he eby grants, transfers, assigns and sets over to Assignee the entire Assignor's interest as lessor in and to all leases and other agreements affecting the possession, use, enjoyment and occupancy of all or any part of that certain lot or piece of land more particularly described in Exhibit A arm exed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter secated thereon (collectively, the "Deeded Property");

TOGETHER WITH all other leases and other agreements affecting the possession, use, enjoyment or occupancy of the Deeded Property now or hereafter made affecting the Deeded Property or any portion thereof (including, without limitation, subleases, licenses, concessions, tenancies and other occupancy agreements covering or encumbering all or any portion of the Deeded Property, together wur any guaranties, supplements, amendments, modifications, extensions and renewals of any there of and all additional remainders, reversions and other rights and estates appurtenant thereto);

TOGETHER WITH any extension or renewal of any and all of the foregoing, this assignment of other present and future leases and present and future agreements being effective without any need for further or supplemental assignment or instrument in evidence thereof (all such leases and other agreements described above, together with all other present and future leases and present and future agreements, and any extension or renewal threof, collectively, the "Leases");

TOGETHER WITH all income, rents, issues, profits, revenues (including all oil and gas or other mineral royalties and bonuses), deposits (subject to the rights of lessess under the Leases and the obligation of Assignor to maintain the same in accordance with applicable laws and the terms of applicable Leases) and other benefits from the Deeded Property including, without limitation, all revenues collected from apartments and retail establishments and otherwise; all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Deeded Property or personalty located thereon, or the rendering of services by Assignor or an operator or manager of the apartments or the commercial space which may be part of the Deeded Property or acquired from others including, without limitation, from the rental of any apartment space, retail space, commercial space or other space, stores, or offices, including any deposits securing apartments or sales space of every kind (subject to the rights of lessees under the Leases and the obligation of Assignor to maintain the same in accordance with applicable laws and



applicable Leases), license, lease, sublease and concession fees and rentals, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Deeded Property (collectively, the "Rents");

TOGETHER WITH all of Assignor's claims and rights to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code, 11 U.S.C. S 101 et seq., as amended from time to time (the "Bankruptcy Code"; such rights and claims to payment, the "Bankruptcy Claims");

TOGETHER WITH all of Assignor's right, title and interest in and claims under any and all least guaranties, letters of credit and any other credit support given by any guarantor in connection with any Lease (individually, a "Lease Guarantor", collectively, the "Lease Guarantors") to Assignor (any such guaranties, letters of credit or other credit support, individually, a "Lease Guaranty", collectively, the "Lease Guaranties");

TOGETHER WITH all proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guarantics and the Bankruptcy Claims;

Assignor as lessor under the Leases and oe reficiary under the Lease Guaranties, including, without limitation, the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable und r the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply such sums to the payment of the "Debt" (as such term is hereinafter defined) or otherwise), and to do all other things which Assignor or any lessor is or may become entitled to do under the Leases or the Lease Guaranties;

TOGETHER WITH the right, at Assignee's option upon revocation of the license granted herein, to enter upon the Deeded Property in person, by agent or by court-appointed receiver, to collect the Rents; and

TOGETHER WITH Assignor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Section 3 of this Assignment and any or all other actions designated by Assignee for the proper management and preservation of the Deeded Property.

THIS ASSIGNMENT is made in consideration of that certain loan made by Assignee to Assignor evidenced by a certain Purchase Agreement and Lease, dated the date hereof, in an aggregate principal amount of \$1,140,000.00 (collectively the "Purchase Agreement") and a certain Loan Agreement between Assignor and Assignee, dated as of the date hereof (collectively the "Loan Agreement"), and secured by a certain Mortgage dated as of the date hereof given by Assignor to Assignee, in the original principal amount of the Purchase Agreement, encumbering the Deeded Property and intended to be duly recorded (collectively the "Mortgage"; principal, interest and all other sums due and payable under the Purchase Agreement, the Loan Agreement and the Mortgage collectively, the "Debt"; the documents other than this Assignment, the Purchase Agreement, the Loan Agreement or the Mortgage now or hereafter executed by Assignor or others and by or in favor of Assignee which include other loans made by Assignee to Assignor which wholly or partially secure or guarantee payment of

the Debt. collectively, the "Other Security Documents").

Assignor's Representations and Warranties.

Assignor represents and warrants that:

- Assignor is the sole owner of the entire lessor's interest in the Leases; (a)
- the Leases are valid and enforceable in accordance with their terms and have not been altered, modified or amended in any manner whatsoever;
- none of the Rents have been assigned or otherwise pledged or hypothecated;
- Chone of the Rents under any of the Leases have been collected for more than one month in advance (except for a prepayment in the nature of security deposits for the performance by the lessess thereunder of their obligations under such Leases);
- Assignor has rul power and authority to execute and deliver this (e) Assignment;
- The execution and delivery of this Assignment have been duly authorized and do not conflict with or constitute a default and or any law, judicial order or other agreement affecting Assignor or the Deeded Property; and
- there exist no offsets or defenses to the payment of any portion of the (g) C/6/4's Rents.

Assignor's Covenants. 2.

Assignor covenants with Assignee that:

- Assignor shall observe and perform all the obligations imposed on the (a) lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt;
- Assignor shall promptly send Assignee copies of all default notices which Assignor shall send or receive under or pursuant to any Lease;
- Assignor shall diligently enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessees thereunder to be observed or performed, short of termination thereof (which shall not be effected without prior notice to Assignee and otherwise in accordance with the terms hereof or of the Loan Agreement);
- Assignor shall not collect any of the Rents more than one month in (d) advance (except for a prepayment in the nature of security deposits for the performance by the lessee thereunder of its obligations under such Lease);

- (e) Assignor shall not execute any other assignment or pledge of all or any portion of lessor's interest in the Leases or the Rents; and
- (f) Subject to the terms of Sections 3(b) and 3(c) below, Assignor shall not alter, modify or change the terms of the Leases of commercial or retail space without the prior written consent of Assignee, or cancel or terminate the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance of the Rents, and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under the Purchase Agreement, the Loan Agreement, the Mortgage, the Leases, this Assignment or the Other Security Documents.

Absolute Assignment.

- (a) This Assignment is a present, absolute and unconditional assignment to Assignee of all of Assignor's right, title and interest in all current and future Leases and Rents, and not an assignment for additional security only. Assignor shall execute and deliver to Assignee such additional instruments, in form and substance satisfactory to Assignee, as may hereafter be requested by Assignee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section, Assignee has granted to Assignor a revocable license to operate and manage the Decided Property and to collect the Rents. Assignor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Assignee for use in the payment of such sums. Upon the occurrence of an Event of Default (as such term is defined in the Loan Agreement), the license granted to Assignor shall automatically be revoked, and Assign ee shall immediately be entitled to possession of all Rents, whether or not Assignee enters upon or takes control of the Deeded Property. Assignee is hereby granted and assigned by Assignor the right, at its option, upon revocation of the license granted herein, to enter upon the Deeded Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after revocation of the license may be applied toward payment of the Debt in such priority and proportions as Assignee in its discretion shall deem appropriate.
- In addition, if an Event of Default has occurred and it continuing hereunder, Assignee may, at its option, without waiving any Event of Defaul', without notice and without regard to the adequacy of the security for the Debt, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Assignor and its agents and servants from the Deeded Property, without liability for trespass, damages or otherwise, and exclude Assignor and its agents or servants wholly therefrom, and take possession of the Deeded Property and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Deeded Property on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of the Deeded Property in its own name, demand, sue for or otherwise collect and receive all Rents and sums due under all Lease Guaranties, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee and may apply the Rents and sums received pursuant to any Lease Guaranties to the payment of the following in such order and proportion as Assignee in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (i) all expenses of managing and securing the Deeded Property including, without limitation, the salaries, fees and wages of a managing agent and such other employees or

agents as Assignee may deem necessary or desirable and all expenses for operating and maintaining the Deeded Property, including, without limitation, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Deeded Property; and (ii) the Debt, together with all costs and reasonable attorneys' fees. In addition, upon the occurrence of any Event of Default, Assignee may, at its option: (A) complete any construction on the Deeded Property in such manner and form as Assignee deems advisable; (B) exercise all rights and powers of Assignor, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Deeded Property and all sums due under any Lease Guaranties; and (C) either (1) require Assignor to pay monthly in advance to Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of suc! purt of the Deeded Property as may be in possession of Assignor, or (2) require Assignor to vacate and surrender possession of the Deeded Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise.

- renewals of Leases and all proposed I cases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions. All proposed Leases shall be subject to the prior approval of Assignee except that p oposed Leases which: (i) are the result of an arms-length transaction; (ii) provide for rental rates comparable to existing market rates; and (iii) do not contain any terms which would materially affect Assignee's rights under the Purchase Agreement, the Mortgage, the Loan Agreement or the Other Security Documents, shall not be subject to the prior approval of Assignee. All Leases entered into from and after the date hereof shall provide that they are subordinate to the Mortgage and that the lessee agrees to attorn to Assignee.
- All security deposits of lessees, whether hear ir cash or any other form, shall not be commingled with any other funds of Assignor and, if cash, shall be deposited by Assignor at such commercial or savings bank or banks as may be reasonably satisfactory to Assignee. Any bond or other instrument which Assignor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Assignee, shall, if permitted pursuant to any legal requirements, name Assignee as payee or mortgagee thereunder (or at Assignee's option, be fully assignable to Assignee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Assignee. Assignor shall, upon request, provide Assignee with evidence reasonably satisfactory to Assignee of Assignor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Assignor shall, upon Assignee's request, if permitted by any applicable legal requirements, turn over to Assignee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Deeded Property, to be held by Assignee subject to the terms of the Leases (subject to the rights of lessees under the Leases and the obligation of Assignor to maintain the same in accordance with applicable laws and the terms of the applicable Leases).

4. No Liability of Assignee.

- (a) Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Deeded Property after an Event of Default or from any other act or omission by Assignee in managing the Deeded Property after an Event of Default.
- (b) Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment and Assignor shall, and hereby agrees to, indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and by the Mortgage and the Other Security Documents and Assignor shall reimburse Assignee therefor immediately upon demand. Upon Assignor's failure so to do, Assignee may, at its option, declare all sums secured hereby and by the Mortgage and the Other Security Documents immediately due and payable.
- the control, care, management or repair of the Deeded Property upon Assignee, or for the carrying out of any of the terms and conditions of the Leases. Furthermore, this Assignment shall not operate to make Assignee responsible or liable for any waste committed on the Deeded Property by the tenants or any other parties, or for any dangerous or defective condition of the Deeded Property including, without limitation, the presence of any Hazardous Materials (as such term is defined in the Environmental Indemnification Agreement), or for any negligence in the management, maintenance, repair or control of the Deeded Property resulting in loss or injury or death to any tenant, licensee, invitee, employee or otherwise.
- named in the Leases or any other or future lessees or occupants of the Leeded Property upon receipt from Assignee of written notice to the effect that Assignee is then the holder of the Deeded and that a default exists thereunder or under this Assignment, the Purchase Agreement, the Loan Agreement or the Other Security Documents to pay over to Assignee and require Assignor, at Assignor's sole cost and expense, to notify such lessees of Assignee's rights hereunder.

6. Security Agreement.

(a) This Assignment shall also constitute a security agreement as that term is used in the California Uniform Commercial Code (the "UCC"), and for such purposes Assignor shall and hereby does grant Assignee a security interest in and to the Deeded Property, the Leases, the Rents, Bankruptcy Claims and Lease Guaranties. Assignee shall have, in addition to all other rights and remedies provided herein, in the Purchase Agreement, the Loan Agreement, the Mortgage or in any Other Security Document, in law, at equity or otherwise, all rights and remedies of a secured party under the UCC. Assignee shall give Assignor ten (10) days' written notice of the time and place of any public sale of any Lease or the time after which any private

sale or any other intended disposition is to be made. After deducting all expenses incurred in connection with the enforcement of its rights hereunder, Assignee shall cause the proceeds of the Leases to be applied to the payment of the Debt in such order as Assignee may determine or otherwise as may be provided under the Purchase Agreement, the Loan Agreement, the Mortgage or the Other Security Documents, and Assignor, subject to the terms of such documents, shall remain liable for any deficiency.

- (b) Prior to or concurrently with the execution and delivery of this Assignment, Assignor shall file such financing statements and other documents in such offices as Assignee may request to perfect the security interests granted by this Assignment.
- Other Security. Assignee may take or release other security for the payment of the Debt in accordance with the Loan Agreement and other Loan Documents, may release any party primarily or secondarily liable therefor and may apply any other security held by it in reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.
- 8. Other Percedies. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Purchase Agreement, the Loan Agreement, the Mortgage, or the Coner Security Documents and this Assignment is made and accepted without prejudice to any of the rights or remedies possessed by Assignee under the terms thereof. Assignee's right to collect the Γebt and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.
- 9. <u>No Mortgagee in Possession</u>. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Deeded Property by Assignee. In the chercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.
- 10. <u>Conflict of Terms</u>. In case of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.
- 11. No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

12. Certain Definitions.

(a) Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and: (i) the word "Assignor" shall mean each Assignor and any subsequent owner or owners of the Deeded Property or any part thereof or interest therein; (ii)

the word "Assignee" shall mean Assignee and any subsequent holder of the Purchase Agreement; (iii) the word "Purchase Agreement" shall mean the Purchase Agreement and any other evidence of indebtedness secured by the Mortgage; (iv) the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity; (v) the words "Deeded Property" shall include any portion of the Deeded Property and any interest therein; and (vi) the word "Debt" shall mean the principal balance of the Purchase Agreement with interest thereon as provided in the Purchase Agreement, the Loan Agreement, the Mortgage and all other sums due pursuant to the Purchase Agreement, the Loan Agreement, the Mortgage, this Assignment or the Other Security Documents.

(b) Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

13. Nea-Waiver.

- (a) Assignce's failure to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment.
- (b) Assignor shall not be relieved of Assignor's obligations hereunder by reason of: (i) the failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provision; he eof or of the Mortgage, the Loan Agreement, the Purchase Agreement or the Other Security Documents; (ii) the release, regardless of consideration, of the whole or any part of the Deeder Property; or (iii) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Purchase Agreement, the Loan Agreement, the Mortgage or the Other Security Documents.
- by Assignee in such order and manner as Assignee, in its discretion, may elect. Assignee may take any action to recover the Debt, or any portion thereof, or to enforce my covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.
- 14. <u>Inapplicable Provisions</u>. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.
- 15. <u>Duplicate Originals</u>. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.
- 16. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois in which the Deeded Property is located.
 - 17. Termination of Assignment. Upon payment in full of the Debt and the

delivery and recording of a satisfaction or discharge of the Mortgage duly executed by Assignee, this Assignment shall become and be void and of no further force or effect. Assignee agrees to terminate and unconditionally release and discharge this Assignment by proper instrument in recordable form upon payment in full of this Debt.

- Transfer by Assignee. Assignee may, at any time, sell, transfer or assign 18. the Purchase Agreement, the Loan Agreement, the Mortgage, this Assignment and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement. Assignee may forward to each purchaser, transferee, assignee, servicer, participant, investor in such securities or any credit rating agency 12ting such securities (collectively, the "Investor"), and each prospective Investor, all documents and information which Assignee now has or may hereafter acquire relating to the Debt and to Assignor, any guarantor and the Deeded Property, whether furnished by Assignor, any guarantor or otherwise, as Assignee determines necessary or desirable. Assignor shall furnish and Assignor corsents to Assignee furnishing to such Investors or prospective Investors any and all information concerning the Deeded Property, the Leases, the financial condition of Assignor and any guarantor as rosy be requested by Assignee, any Investor or prospective Investor in connection with any sale, transfer or participation interest. All references to "Assignee" hereunder shall be deemed to include the Assignee's assigns.
- Binding Effect. This Assignment, together with the covenants and 19. warranties herein contained, shall inure to the lene fit of Assignee and any subsequent holder of the Mortgage and shall be binding upon Assignor its successors and assigns and any subsequent owner of the Deeded Property.
- Section Headings. The section headings used in this Assignment are for 20. Ass. convenience of reference only and do not constitute a part of this Assignment for any purpose.

CONTINUED ON NEXT PAGE

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IN WITNESS WHEREOF, Assignor has executed this instrument as of the day and year first above written.

ASSIGNOR:

4635-41 N. BROADWAY), a Illinois limited liability company

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On this October 17, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared MOHAMMAD SIDDIGI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the entity upon behalf of which the individual(s) acted, executed the instrument. Shan.

TODORNA OF COOK COUNTY CLERK'S OFFICE

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EXHIBIT A LEGAL DESCRIPTION

PARCEL 1:

LOTS 196, 197 AND 198 IN WILLIAM DEERING SURRENDEN SUBDIVISION IN THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE VACATED ALLEY BETWEEN LOTS 196 THROUGH 198 OF PARCEL 1 AFORESAID AND LOTS 4, 5 AND 6 IN THE SUBDIVISION OF LOTS 172 TO 180 IN WILLIAM DEERING SURRENDEN SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

adauss: 4635-41 N. Braadw. 14-17-209-006, 021, 022 (023)