

# UNOFFICIAL COPY

## RECORDATION REQUESTED BY:

### CIB Bank

900 East Higgins Road  
Elk Grove Village, Illinois 60007  
Attention: Chester J. Riske



Doc#: 0404231037  
Eugene "Gene" Moore Fee: \$46.50  
Cook County Recorder of Deeds  
Date: 02/11/2004 10:28 AM Pg: 1 of 12

## WHEN RECORDED MAIL TO:

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: Scott D.H. Redman

## This Instrument prepared by:

Crowley Barrett & Karaba, Ltd.  
20 S. Clark Street, Suite 2310  
Chicago, IL 60603  
Attention: Scott D.H. Redman

## 2003 MODIFICATION AGREEMENT

This 2003 Modification Agreement ("Modification Agreement") is made as of the 12<sup>th</sup> day of January, 2003, by and between CIB BANK, an Illinois state bank ("Lender"), O'HARE HOSPITALITY, LLC, an Illinois limited liability company ("Borrower"), ANIL B. THAKKAR ("A. Thakkar"), BIRESH A. THAKKAR ("B. Thakkar") and PRADYUMAN C. SHAH, a/k/a PETER C. SHAH ("P. Shah") (A. Thakkar, B. Thakkar and P. Shah are individually and collectively known as the "Guarantors").

## WITNESSETH

**WHEREAS**, Borrower and Lender entered into a Business Loan Agreement, dated April 12, 2000 (as amended from time to time, the "Loan Agreement");

**WHEREAS**, Borrower executed a Promissory Note in favor of Lender, in the principal amount of Four Million Four Hundred Eighty Thousand and no/100 Dollars (\$4,480,000.00), dated April 12, 2000, as amended by that certain Change in Terms Agreement executed by Borrower, dated May 17, 2001 (as amended from time to time, the "\$4,480,000 Note");

**WHEREAS**, Borrower executed a Mortgage, in favor of Lender, dated April 12, 2000 and recorded on April 18, 2000 in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 00270512, as amended by that certain Modification of Mortgage, executed by Borrower in favor of Lender, dated February 13, 2002 and recorded on April 3, 2002 in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 20378612, (as amended from time to time, the "Mortgage") for the real property described on the attached

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Exhibit A, commonly known as 2550 Landmeier Road, Elk Grove Village, Cook County, Illinois, 60007 (“Property”);

**WHEREAS**, Borrower executed an Assignments of Rents in favor of Lender, dated April 12 2000 and recorded on April 18, 2000 in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 00270513, (as amended from time to time, the “Assignment”) for the Property;

**WHEREAS**, each Guarantor executed a Commercial Guaranty, dated April 12, 2000 (as amended from time to time, the “Guaranty” or the “Guaranties”), in favor of Lender;

**WHEREAS**, Borrower executed a Promissory Note in favor of Lender, in the principal amount of One Hundred Thousand and no/100 Dollars (\$100,000.00), dated February 13, 2002 (“\$100,000 Note”), which shall, effective as of the date of this Modification Agreement, be cancelled and replaced with that certain Promissory Note, executed by Borrower in favor of Lender, dated February 13, 2003, in the original principal amount of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) (as amended from time to time, the “\$250,000 Note”);

**WHEREAS**, Borrower and Guarantors have requested Lender to amend certain provisions of the Loan Agreement, the \$4,480,000 Note, the Mortgage, the Assignment, the Guaranties; the \$100,000 Note and the \$250,000 Note (collectively, the “Loan Documents”) in order to, among other things, with respect to the \$4,480,000 Note (i) change the maturity date from April 12, 2005 to January 12, 2004; (ii) decrease the interest rate from eight and 50/100 percent (8.50%) per annum to five and 50/100 percent (5.50%) per annum; and (iii) amend the monthly payments from payments of principal and interest to payments of interest only until the final payment of all outstanding principal and accrued and unpaid interest; and to cancel the \$100,000 Note and replace it with the \$250,000 Note;

**WHEREAS**, Lender is willing to grant Borrower’s and Guarantor’s requests on the terms and condition hereinafter set forth.

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein, and of any amendments or modifications heretofore, now or hereafter made by Lender to Borrower and the Guarantors, the parties hereto hereby agree as follows:

All capitalized terms used herein without definition shall have the meaning as set forth in the Loan Documents.

1. **Cancellation of \$100,000 Note and replacement by the \$250,000 Note.** The parties agree that, effective as of the date hereof, the \$100,000 Note has been cancelled and replaced with the \$250,000 Note.

2. **Amendment to \$4,480,000 Note.** The \$4,480,000 Note is amended by deleting the “Payment” paragraph and replacing it with the following:

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**PAYMENT.** Borrower will pay this loan in 13 regular monthly payments of principal and interest of \$42,165.63 each (starting on May 12, 2000 and continuing on the same day every month until May 12, 2001), 20 regular monthly payments of principal and interest of \$39,280.64 each (starting on June 12, 2001 and continuing on the same day every month until January 12, 2003), 11 regular monthly payments of interest only (starting on February 12, 2003 and continuing on the same day every month until December 12, 2003), and one final payment of all outstanding principal and accrued and unpaid interest and other charges due on January 12, 2004. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address above or at such other place as Lender may designate in writing. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued unpaid interest, then to principal, and any remaining amount to any unpaid collection costs and late charges. All monthly payments shall also be accompanied by tax and insurance escrow payments.

3. **Amendment to \$4,480,000 Note.** The \$4,480,000 Note is amended by changing the interest rate as of the date hereof from a fixed rate of eight and 50/100 (8.50%) per annum to a fixed rate of five and 50/100 percent (5.50%) per annum.

4. **Amendment to Loan Agreement.** The Loan Agreement is amended by deleting the definition of "Note" and replacing it with the following:

**Note.** The word "Note" means and includes without limitation Borrower's promissory note or notes, if any, evidencing Borrower's Loan obligations in favor of Lender, as well as any substitute, replacement or refinancing note or notes therefor, including (a) that certain Promissory Note executed by Borrower in favor of Lender, in the principal amount of Four Million Four Hundred Eighty Thousand and no/100 Dollars (\$4,480,000.00), dated April 12, 2000, as amended by that certain Change in Terms Agreement executed by Borrower, dated May 17, 2001, as further amended by that certain 2003 Modification Agreement, executed by Borrower, Lender and ANIL B. THAKKAR, BIRESH A. THAKKAR and PRADYUMAN C. SHAH, a/k/a PETER C. SHAH, dated January 12, 2003 ("Modification Agreement"); and (b) that certain Promissory Note executed by Borrower in favor of Lender, in the principal amount of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00), dated February 13, 2003.

5. **Amendment to Mortgage.** The Mortgage is amended by deleting the definition of "Mortgage" and "Note" and replacing them with the following:

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender, as amended by that certain 2003 Modification Agreement, executed by Grantor, Lender and ANIL B. THAKKAR, BIRESH A. THAKKAR and PRADYUMAN C. SHAH, a/k/a PETER C. SHAH, dated January 12, 2003 ("Modification Agreement"), and includes

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without limitation all assignments and security interest provisions relating to Personal Property and Rents.

**Note.** The word "Note" means and includes without limitation Grantor's promissory note or notes, if any, evidencing Grantor's loan obligations in favor of Lender, as well as any substitute, replacement or refinancing note or notes therefor, including (a) that certain Promissory Note executed by Grantor in favor of Lender, in the principal amount of Four Million Four Hundred Eighty Thousand and no/100 Dollars (\$4,480,000.00), dated April 12, 2000, as amended by that certain Change in Terms Agreement executed by Grantor, dated May 17, 2001, as further amended by the Modification Agreement; and (b) that certain Promissory Note executed by Borrower in favor of Lender, in the principal amount of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00), dated February 13, 2003.

6. **Amendment to Mortgage.** The Mortgage is amended by deleting the last sentence in the definition of "Indebtedness" and replacing it with the following:

**At no time shall the principal amount of Indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed Nine Million Four Hundred Sixty Thousand and no/100 Dollars (\$9,460,000.00).**

7. **Amendment to Mortgage.** The Mortgage is amended by deleting the definition of "Personal Property" and replacing it with the following:

**Personal Property.** The words "Personal Property" mean all of the following properties, assets and rights of the Grantor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof:

All personal and fixture property of every kind and nature including, without limitation, all furniture, fixtures, equipment, raw materials, inventory, other goods, Accounts, contract rights, rights to the payment of money, insurance refund claims and all other insurance claims and proceeds, tort claims, chattel paper, electronic chattel paper, documents, instruments, securities and other investment property, deposit accounts, rights to proceeds of letters of credit, letter-of-credit rights, supporting obligations of every nature, and general intangibles including, without limitation, all tax refund claims, license fees, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, rights to sue and recover for past infringement of patents, trademarks and copyrights, computer programs, computer software, engineering drawings, service marks, customer lists, goodwill, and all licenses, permits, agreements of any kind or nature pursuant to which (i) the Grantor operates or has authority to operate, (ii) the Grantor possesses, uses or has authority to possess or use property (whether tangible or intangible) of others, or (iii) others possess, use or have authority to possess or use property (whether tangible or intangible) of the Grantor, and all recorded data of any kind or nature,

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regardless of the medium of recording, including, without limitation, all software, writings, plans, specifications and schematics.

Grantor acknowledges and agrees that, with respect to any term used in this definition that is defined in either (a) Article 9 of the Uniform Commercial Code as in force in Illinois at the time that this Mortgage was signed, (b) Article 9 as in force at any relevant time in the jurisdictions in which a financing statement is filed, or (c) in this Mortgage the meaning to be ascribed thereto with respect to any particular item of property shall be that under the more encompassing of the three definitions.

In addition, the words "Personal Property" include all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (a) All accessions, increases, and additions to and all replacements of and substitutions for any property described above.
- (b) All accounts, contract rights, general intangibles, instruments, monies, payments, and all other rights relating and incident thereto, or arising out of a sale, lease, or other disposition of any of the property described in this definition.
- (c) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this definition.
- (d) All records and data relating to any of the property described in this definition, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

8. **Amendment to Mortgage.** The Mortgage is amended by adding the definitions of "Account Debtor," "Accounts" and "Person" as follows:

**Account Debtor.** The words "Account Debtor" means the Person who is obligated on or under an Account or, if appropriate, chattel paper or general intangible, as applicable.

**Accounts.** The word "Accounts" means "accounts" as such term is defined in the UCC, including without limitation, all rights to payment for goods sold or leased or services rendered, whether or not earned by performance and all rights in respect of the Account Debtor, including, without limitation, all such rights in which Grantor has any right, title or interest by reason of the purchase thereof by Grantor, and including, without limitation, all such rights constituting or evidenced by any Account, chattel paper, general intangible, instrument, contract, invoice, purchase order, draft, acceptance, intercompany account, note, security agreement, or other evidence of indebtedness or security, together with (i) any collateral assigned, hypothecated or held to secure any of the foregoing and the rights under any security agreement granting a security interest in such collateral, (ii) all goods, the sale of which gave rise to any of the foregoing, and (iii)



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all powers of attorney for the execution of any evidence of indebtedness or security or other writing in connection therewith.

**Person.** The word "Person" means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, limited liability company, government (or any agency or political subdivision thereof) or other entity of any kind.

9. **Amendment to Assignment.** The Assignment is amended by deleting the definition of "Assignment" and "Note" and replacing them with the following:

**Assignment.** The word "Assignment" means this Assignment of Rents between Grantor and Lender, as amended by that certain 2003 Modification Agreement, executed by Grantor, Lender and ANIL B. THAKKAR, BIRESH A. THAKKAR and PRADYUMAN C. SHAH, a/k/a PETER C. SHAH, dated January 12, 2003 ("Modification Agreement"), and includes without limitation all assignments and security interest provisions relating to and Rents.

**Note.** The word "Note" means and includes without limitation Grantor's promissory note or notes, if any, evidencing Grantor's loan obligations in favor of Lender, as well as any substitute, replacement or refinancing note or notes therefor, including (a) that certain Promissory Note executed by Grantor in favor of Lender, in the principal amount of Four Million Four Hundred Eighty Thousand and no/100 Dollars (\$4,480,000.00), dated April 12, 2000, as amended by that certain Change in Terms Agreement executed by Grantor, dated May 17, 2001, as further amended by the Modification Agreement; and (b) that certain Promissory Note executed by Borrower in favor of Lender, in the principal amount of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00), dated February 13, 2003.

10. **Amendment to Assignment.** The Assignment is amended by adding to the definition of "Indebtedness" the following:

**At no time shall the principal amount of Indebtedness secured by the Assignment, not including sums advanced to protect the security of the Mortgage, exceed Nine Million Four Hundred Sixty Thousand and no/100 Dollars (\$9,460,000.00).**

11. **Interest Rate Reduction Fee.** Borrower acknowledges that, as partial consideration for Lender modifying the terms of the Loan, including the reduction of the interest rate of the Notes, as set forth herein, Borrower shall, at the earlier of January 12, 2004 or the prepayment in full of all amounts owing under the \$4,480,000 Note, pay a fee to Lender in the amount of One Hundred Five Thousand and no/100 Dollars (\$105,000.00), which fee has been fully earned by Lender on the date hereof, is secured by all collateral pledged by Borrower and guaranteed under the Guaranties, is nonrefundable and is due and payable to Lender as of the date of this Modification Agreement.

12. **Guarantor.** Each Guarantor expressly agrees to the terms, provisions and

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conditions of this Modification Agreement, and acknowledges and ratifies all other terms of their Guaranties. Each Guarantor hereby reaffirms each and every obligation for payment and performance as set forth in their Guaranties. Each Guarantor acknowledges that they will remain unconditionally and absolutely liable for the due and punctual payment of all amounts owed by Borrower to Lender, as set forth in their Guaranty.

13. **Related Documents.** Effective as of the date hereof, and without further notice, revision, modification or amendment, the Related Documents are hereby amended as appropriate to be consistent with the terms hereof.

14. **Continuation.** Except as otherwise specifically modified or amended by the terms of this Modification Agreement or other amendments, which have been mutually agreed in writing by and between Borrower, Guarantors and Lender, the Loan Documents and all provisions contained therein, respectively, shall continue in full force and effect.

15. **Reaffirmation.** Borrower or Guarantors, as applicable, by execution of this Modification Agreement, hereby reaffirm, ratify, and remake the covenants, warranties and representations contained in the Loan Documents.

16. **Counterparts.** This Modification Agreement may be executed simultaneously in any number of counterparts, which shall, collectively and separately, constitute one agreement.

17. **No Defenses.** Borrower or Guarantors, as applicable, represent to the Lender that they have no defenses, setoffs, claims or counterclaims of any kind or nature whatsoever against Lender in connection with the Loan Documents or any amendments to said documents or any action taken or not taken by the Lender with respect thereto or with respect to the collateral. Without limiting the generality of the foregoing, Borrower or Guarantors, as applicable, hereby release and forever discharge Lender, its affiliates, and each of its officers, agents, employees, attorneys, insurers, successors and assigns, from any and all liabilities, or causes of action, known or unknown, arising out of any action or inaction with respect to the Loan Documents.

18. **Disclaimer.** Borrower and Guarantor, as applicable, expressly disclaim any reliance on any oral representation made by Lender with respect to the subject matter of this Modification Agreement. Borrower and Guarantors acknowledge and agree that Lender is specifically relying upon the representations, warranties, releases and agreements contained herein, and that this Modification Agreement is executed by Borrower and Guarantors and delivered to Lender as an inducement to extend further funds to the Borrower.

19. **Costs.** Borrower agrees to pay upon demand all of Lender's out-of-pocket expenses, including attorneys' fees, incurred in connection with this Modification Agreement. Lender may pay someone else to help collect the loans secured by the Loan Documents and to enforce the Loan Documents, and the Borrower will pay that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and legal expenses, whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also will pay any court costs, in addition to all other sums provided by law.

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20. **Jurisdiction, Jury Waiver.** This Modification Agreement has been delivered to Lender and accepted by Lender in the State of Illinois. If there is a lawsuit on this Modification Agreement or any of the Loan Documents, Borrower or Guarantors, as applicable, agree upon Lender's request to submit to the jurisdiction of the courts of Cook County, the State of Illinois. **LENDER, BORROWER, AND GUARANTORS, AS APPLICABLE, HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER LENDER, BORROWER OR GUARANTORS, AS APPLICABLE, AGAINST THE OTHERS.** This Modification Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

21. **Successors and Assigns.** All covenants and agreements contained by or on behalf of Borrower or Guarantors, as applicable, shall bind their respective successors and assigns and shall inure to the benefit of Lender, its successors and assigns. Borrower and Guarantors, as applicable, shall not, however, have the right to assign their rights under this Modification Agreement or the Loan Documents or any interest therein, without the prior written consent of Lender.

(signatures to follow)



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IN WITNESS WHEREOF, the parties named below have caused this 2003 Modification Agreement to be executed and delivered personally or by their respective duly authorized officers as of the day and year specified at the beginning hereof.

**BORROWER:**


O'HARE HOSPITALITY, LLC,  
an Illinois limited liability company

By:   
Anil B. Thakkar

Its: Member

By:   
Biresh A. Thakkar


Its: Member

By:   
Pradyuman C. Shah  
a/k/a Peter C. Shah

Its: Member

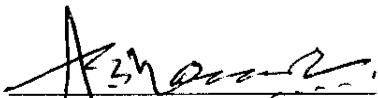
**LENDER:**

CIB BANK,  
an Illinois state bank

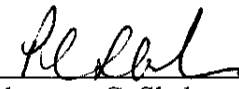
By:   
Chester J. Riske

Its: Vice President

**GUARANTORS:**

  
Anil B. Thakkar

  
Biresh A. Thakkar

  
Pradyuman C. Shah  
a/k/a Peter C. Shah

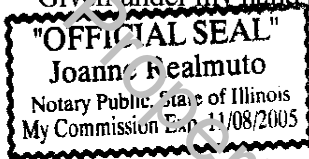
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## BORROWER AND GUARANTOR ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that ANIL B. THAKKAR, personally known to me to be the same person whose name is subscribed to the foregoing instrument individually and as a member of O'HARE HOSPITALITY, LLC, an Illinois limited liability company, appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, and as the free and voluntary act of O'HARE HOSPITALITY, LLC for the uses and purposes therein set forth.

Given under my hand and notarial seal this as of the 12<sup>th</sup> day of January, 2003.

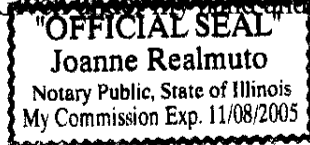


Joanne Realmuto  
Notary Public

## BORROWER AND GUARANTOR ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that BIRESH A. THAKKAR, personally known to me to be the same person whose name is subscribed to the foregoing instrument individually and as a member of O'HARE HOSPITALITY, LLC, an Illinois limited liability company, appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, and as the free and voluntary act of O'HARE HOSPITALITY, LLC for the uses and purposes therein set forth.

Given under my hand and notarial seal this as of the 12<sup>th</sup> day of January, 2003.

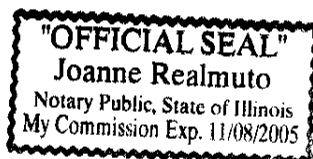


Joanne Realmuto  
Notary Public

## BORROWER AND GUARANTOR ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that PRADYUMAN C. SHAH a/k/a PETER C. SHAH, personally known to me to be the same person whose name is subscribed to the foregoing instrument individually and as a member of O'HARE HOSPITALITY, LLC, an Illinois limited liability company, appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, and as the free and voluntary act of O'HARE HOSPITALITY, LLC for the uses and purposes therein set forth.

Given under my hand and notarial seal this as of the 12<sup>th</sup> day of January, 2003.



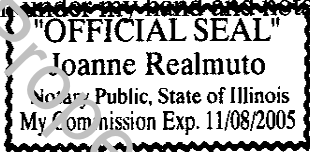
Joanne Realmuto  
Notary Public

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## LENDER ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that CHESTER J. RISKE, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer of the CIB BANK, an Illinois state bank, appeared before me this day in person and acknowledged that he signed and delivered this instrument as his free and voluntary act, and as the free and voluntary act of CIB BANK for the uses and purposes therein set forth.

Given ~~under my hand and notarial seal~~ this as of the 12th day of January, 2003.



*Joanne Realmuto*  
Notary Public

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## Exhibit A

**LOT 2 IN WEBB HOTELS OF ILLINOIS RESUBDIVISION, BEING A RESUBDIVISION OF PART OF THE SOUTHEAST ¼ OF SECTION 26, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION RECORDED NOVEMBER 8, 1989 AS DOCUMENT NUMBER 89533849 IN COOK COUNTY, ILLINOIS.**

**The Real Property or its address is commonly known as 2550 Landmeier Road, Elk Grove Village, IL 60007.**

**The Real Property tax identification number is 08-26-401-038.**

Property of Cook County Clerk's Office