20094884.2(1) 10-23-01

Doc#: 0405710111 Eugene "Gene" Moore Fee: \$60.50 Cook County Recorder of Deeds Date: 02/26/2004 11:30 AM Pg: 1 of 19

SECOND MODIFICATION AGREEMENT

THIS SECOND MODIFICATION AGREEMENT dated as of August 1, 2001, but actually executed and delivered on October 26, 2001, by and among CENTURY, L.L.C., an Illinois limited liability company (the "Mortgagor"), JOHN E. SHAFFER, DENNIS J. HIFFMAN, E. THOMAS COLLINS, JR., RICHARD E. HULINA and ESTATE OF HAROLD EISENBERG (the "Guarantors") and LASALLE BANK NATIONAL ASSOCIATION, a national banking association (the "Bank"), Successor by Merger to LaSalle National Bank, a national banking association ("Old LaSalle");

WITNESSFTH:

WHEREAS, the parties named below heretofore entered into the following documents (collectively, the "Documents"):

- (i) Construction Loan Agreement dated as of October 1, 1998 (the "Loan Agreement"), by and between the Mortgagor and Old LaSalle;
- (ii) Construction Loan Mortgage Note dated October 1, 1998 (the "Note"), from the Mortgagor to Old LaSalle in the principal amount of \$28,000,000;
- (iii) Construction Loan Mortgage and Security Agreement dated as of October 1, 1998, from the Mortgagor to Cld LaSalle, recorded in the Office of the Recorder of Deeds of

Permanent Tax Index Numbers and Address:

See Exhibit A

This Instrument Prepared By and to be Returned After Recording to:

Alvin L. Kruse Seyfarth Shaw Suite 4200 55 East Monroe Street Chicago, Illinois 60603

Cook County, Illinois, on December 3, 1998, as Document No. 08096990;

- (iv) Construction Loan Assignment of Rents and Leases dated as of October 1, 1998, from the Mortgagor to Old LaSalle, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on December 3, 1998, as Document No. 08096991;
- (v) Assignment of Plans, Permits and Contracts dated as of October 1, 1998, from the Mortgagor to Old LaSalle;
- (vi) Construction Loan Indemnity Agreement dated as of October 1, 1998, from the Mortgagor and John E. Shaffer, Dennis J. Hiffman, E. Thomas Collins, Jr., Richard E. Hulina and Harold Eisenberg to Old LaSalle; and
- (vii) Construction Loan Guaranty dated as of October 1, 1998 (the "Guaranty"), from John E. Shaffer, Dennis J. Hiffman, E. Thomas Collins, Jr., Richard E. Hulina and Harold Eisenberg to Old LaSalle; and

WHEREAS, Harola Eisenberg died subsequent to the execution and delivery of the Documents and his estate is now responsible for his obligations under the Documents; and

WHEREAS, the Documents were previously modified and amended by the Modification Agreement dated as of November 1, 2000 (the "Previous Modification"), by and among the parties to this Agreement, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on March 15, 2001, as Document No. 0010208007; and

WHEREAS, the Documents, as modified and amended by the Previous Modification, encumber the real estate described in Exhibit A attached hereto and the personal property located thereon (the "Premises"); and

WHEREAS, the parties desire to make certain modifications and amendments to the Documents, as previously modified and amended by the Previous Modification, as more fully provided for herein;

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

Section 1. Recitals Part of Agreement; References to Documents; Capitalized Terms. The foregoing recitals are hereby incorporated into and made a part of this Agreement. Except as otherwise stated herein, all references in this Agreement to any one or more of the Documents shall be deemed to include the previous modifications and amendments to the Documents provided for in the Previous Modification, whether or not express reference is made to such previous modifications and amendments. All capitalized terms not otherwise defined in this Agreement shall

have the meanings set forth in the Loan Agreement.

Section 2. Merger of Old LaSalle. The parties acknowledge that Old LaSalle was merged into the Bank effective as of May 1, 1999, and that by virtue of such merger the Bank is the successor by merger to all of rights and obligations of Old LaSalle under the Documents.

Section 3. Extension of Maturity Date. The maturity date of the Loan, as previously extended by the Previous Modification, is hereby further extended from August 1, 2001, to August 1, 2002, and all of the Documents are hereby modified and amended accordingly. Without limitation on the generality of the foregoing, the date "August 1, 2001" is hereby changed to "August 1, 2002" each time it appears in the Documents, as modified and amended by the Previous Modification.

Section 4. Reduction of Loan Amount. The amount of the Loan and the Loan Amount are hereby reduced from \$28,000,000 to \$26,775,000, and all of the Documents are hereby modified and amended accordingly. Without limitation on the generality of the foregoing, the amount "\$28,000,000" is hereby changed to "\$26,775,000" each time it appears in the Documents. The parties acknowledge that as of the date of the execution and delivery of this Agreement, the principal amount outstanding on the Loan is \$26,975,000 (which exceeds the reduced Loan Amount by \$200,000).

Section 5. Principal Payments. On the date of the execution and delivery of this Agreement, and as a condition to the agreements of the Bank contained herein, the Mortgagor shall make a payment on the principal of the Loan and the Note in the amount of \$500,000. The Mortgagor shall make payments on the principal of the Loan and the Note in the amount of \$300,000 each on January 15, 2002, and April 15, 2002. The Loan Documents are hereby modified and amended to incorporate the foregoing provisions of this Section.

Section 6. Loan Disbursements. Notwithstanding any provisions contained in the Documents, from and after the date of the execution and delivery of this Agreement, the proceeds of the Loan shall be disbursed in accordance with, and subject to the terms and conditions of, the provisions of the Loan Agreement relating to the disbursement of the proceeds of the Loan but for no purpose other than to pay or reimburse the actual cost to the Mortgagor of labor and materials required for the construction of tenant improvements under leases entered into in accordance with the provisions of the Loan Documents; provided, however, that the principal amount outstanding on the Loan shall at no time exceed the reduced Loan Amount of \$26,775,000. The last sentence of Section 4.1 of the Loan Agreement, which provides that no amount prepaid on the Loan and the Note may be borrowed again, shall not be applied to prevent disbursements of the Loan provided for above in this Section.

Section 7. Existing Cash Collateral

Account. (a) The "Cash Collateral Account" created under the Previous Modification shall continue to be held and disbursed by the Bank in accordance with the provisions of the Previous

Modification and this Section. The Cash Collateral Account shall be disbursed in accordance with, and subject to the terms and conditions of, the provisions of the Loan Agreement (as modified and amended by this Agreement) relating to the disbursement of the proceeds of the Loan, but for no purpose other than the following, and shall be so disbursed prior to the disbursement of any additional proceeds of the Loan for such purposes, and prior to the disbursement of any amounts from the Additional Cash Collateral Account referred to below for such purposes: (A) to pay or reimburse the actual cost to the Mortgagor of labor and materials required for the construction of tenant improvements under leases entered into in accordance with the provisions of the Loan Documents, (B) to pay leasing commissions to parties that are not related to or affiliated with the Mortgagor or any of the Guarantors, and (C) to pay marketing expenses that have been approved by the Bank. All of the Documents are hereby modified and amended to incorporate the foregoing provisions of this Section.

Section 8. Deposit of Cash Flow: Additional Cash Collateral Account. (a) On or before the 15th day of each calendar month, commercing with the month of November, 2001, the Mortgagor shall deposit an amount equal to Cash Flow (as defined below) for the immediately preceding calendar month into a blocked, interest-bearing money market deposit account in the name of the Mortgagor held by the Pank, to be known as the "Additional Cash Collateral Account." The Additional Cash Collateral Account shall be held as additional security for the payment and performance of all of the obligations of the Mortgagor under the Loan Agreement and the other Loan Dozuments, and the Mortgagor hereby assigns to the Bank, and grants a security interest to the Bank in, the Additional Cash Collater 1 Account, all amounts from time to time on deposit therein and all proceeds thereof. such purposes, this Agreement is intended to be a security agreement under the Code (as defined in Section 10 of this Agreement). The Mortgagor shall execute and deliver such additional security agreements, financing statements and other documents as the Bank shall from time to time request in order to create and perfect such security interest.

For purposes of this Agreement, the following terms shall have the following meanings:

"Cash Flow" shall mean, for any month, Income for such month minus Operating Expenses for such month.

"Expenses" shall mean, for any month, the operating expenses of the Premises for such month, including but not limited to, real estate taxes, common area maintenance, utilities, insurance and management fees, and including all principal and interest payable on the Loan during such month, but not including (i) depreciation or amortization, (ii) leasing commissions paid to parties related to or affiliated with the Mortgagor or any of the Guarantors, or (iii) marketing expenses other than those that have been approved by the Bank; all as determined on a cash basis in accordance with customary real estate accounting

practices consistently applied. For purposes of calculating Expenses, operating expenses of the Premises paid to the Guarantors or to parties related to or affiliated with the Mortgagor or any of the Guarantors shall be limited to the amount that would be paid to unrelated and unaffiliated parties for such operating expenses under comparable circumstances.

"Income" shall mean, for any month, all income of the Mortgagor for such month, including rental payments by tenants of the Premises and payments by such tenants as payment or reimbursement of operating expenses; all as determined on a cash basis in accordance with customary real estate accounting practices consistently applied.

- (b) Imounts held in the Additional Cash Collateral Account shall be disbursed as follows:
 - (i) Provided that no Default or Event of Default under the Loan Agreement or any of the other Loan Documents has occurred and is continuing, if in any month Income is less than Expenses, the mank shall disburse an amount equal to the amount of such deficit in Income to the Mortgagor from the Additional Cash Collaboral Account for the purpose of paying Expenses.
 - Amounts held in the Additional Cash Collateral Account shall be disbursed in accordance with, and subject to the terms and conditions of, the provisions of the Loan Agreement (as modified and amended by this Agreement) relating to the disbursement of the proceeds of the Loan, but for no purpose other than the following, and shall be so disbursed prior to the disbursement of any additional proceeds of the Loan for such purposes: (A) to pay or reimburse the actual cost to the Mortgagor of labor and materials required for the construction of tenant improvements under leases entered into in accordance with the provisions of the Loan Documents, (B) to pay leasing commissions to parties that are not related to or affiliated with the Mortgagor or any of the Guarantors, and (C) to pay marketing expenses that have been approved by the Fank. amounts shall be disbursed from the Additional Cash Collateral Account for such purposes until all amounce have been disbursed from the Cash Collateral Account.
- (c) All of the Documents are hereby modified and amended to incorporate the foregoing provisions of this Section.
- Section 9. Modification of Guaranty. The Guaranty is hereby modified and amended by changing the amount "\$12,000,000" to "\$11,800,000" each time it appears in Section 4 and Section 5 of the Guaranty.

Section 10. Modification Fee. The Mortgagor shall pay to the Bank a non-refundable modification fee in the amount of \$134,875, which amount shall be payable in installments as follows:

- (i) On the date of the execution and delivery of this Agreement, the sum of \$33,718.75, the payment of which shall be a condition to the agreements of the Bank contained in this Agreement.
- (ii) On 15th day of each of the months of January, April and July of 2002, the sum of \$33,718.75.

However, any unpaid portion of such fee shall be payable in full on the date of payment in full of all of the principal outstanding on the Loan, or on the date of the occurrence of any Event of Default under the Loan Agreement or any of the other Documents.

- Section 11. Uniform Commercial Code Matters. (a) For purposes of this Agreement, the term "Code" means the Uniform Commercial Code of the State of Illinois as from time to time in effect. All references in the Documents to the Code shall be deemed to be references to the Code as from time to time in effect, and all of the Documents are hereby modified and amended accordingly.
- (b) The Morcyagor represents and warrants to the Bank as follows:
 - (i) The exact legal name of the Mortgagor is as stated in the first paragraph of this Agreement.
 - (ii) The nature of the Mortgagor entity and the State in which it is organized are as stated in the first paragraph of this Agreement. The organization number of the Mortgagor, if any, in such State is as follows: 00108006.
 - (iii) The address of the Mortgagor's chief executive office is the address for notices to the Mortgagor set forth in Section 8.8 of the Loan Agreement.
 - (iv) The Mortgagor has no places of rusiness other than the chief executive office referred to in (iii) above and at the Premises in Chicago, Illinois.

With each financial statement that the Mortgagor is required to furnish to the Bank under the terms of the Loan Agreement, the Mortgagor shall furnish to the Bank a certificate of an authorized representative of the Mortgagor to the effect that there cas been no change in any of the information represented to the Bank in this paragraph, or if there has been any change in any of such information, disclosing each such change.

- (c) The Mortgagor shall not, without the prior written consent of the Bank, change the Mortgagor's legal name, the nature of the Mortgagor entity, the State in which the Mortgagor is organized, the Mortgagor's organization number in the State in which it is organized, if any, the address of the Mortgagor's chief executive office, or the addresses of the Mortgagor's other places of business, from those referred to in paragraph (b) of this Section.
 - (d) The Mortgagor acknowledges that by entering into

the security agreements contained in the Documents, the Mortgagor has authorized the filing of financing statements and amendments under the Code covering the collateral described in such security agreements, without the signature of the Mortgagor.

Section 12. Attachment to Note. The Bank may, and prior to any transfer by it of the Note shall, attach a copy of this Agreement to the original Note and place an endorsement on the original Note making reference to the fact that such attachment has been made.

Section 13. Documents to Remain in Effect; Confirmation of Obligations; References. The Documents shall remain in full force and effect as originally executed and delivered by the parties, except as previously modified and amended by the Previous Modification and as expressly modified and amended herein. The Mortgagor and the Guarantors hereby (i) confirm and redifirm all of their obligations under the Documents, as previously modified and amended by the Previous Modification and as modified and amended herein; (ii) acknowledge and agree that the Bank, by extering into this Agreement, does not waive any existing or future default or event of default under any of the Documents, or any rights or remedies under any of the Documents, except as expressly provided herein; (iii) acknowledge and agree that neither Old LaSalle hor the Bank has heretofore waived any default or event of default inder any of the Documents, or any rights or remedies under any of the Documents; and (iv) acknowledge that they do not have any defense, set-off or counterclaim to the payment or performance of any of their obligations under the Documents, as previously modified and amended by the Previous Modification and as modified and amended herein. All references in the Documents to any one or more of the Documents, or to the "Loan Documents," shall be deemed to refer to such Document, Documents or Loan Documents, as previously modified and amended by the Previous Modification and as the case may be, as modified and amended by this Agreement.

Section 14. Certifications, Representations and Warranties. In order to induce the Bank to enter into this Agreement, the Mortgagor and the Guarantors hereby certify, represent and warrant to the Bank that all certifications, representations and warranties contained in the Documents and in all certificates heretofore delivered to Old LaSalle and the Bank are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby ranade and made to speak as of the date of this Agreement.

Section 15. Entire Agreement. This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth.

Section 16. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

Section 17. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 18. Amendments, Changes and Modifications. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

Section 19. Construction. (a) The words "hereof," "herein," and "hereunder," and other words of a similar import refer to this Agreement as a whole and not to the individual Sections in which such terms are used.

- (b) References to Sections and other subdivisions of this Agreement are to the designated Sections and other subdivisions of this Agreement as originally executed.
- (c) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.
- (d) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.
- (e) The Mortgagor, the Guarantors and the Bank, and their respective legal counsel, have participated in the drafting of this Agreement, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

Section 20. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 21. Governing Law. This Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

[SIGNATURE PAGE(S) AND EXHIBIT(S), IF ANY, FOLLOW THIS PAGE]

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UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

CENTURY, L.L.C.

Ву

Duly Authorized Member of Board of Managers

Duly Authorized Member of

Board of Managers

John E. Shaffer

ESTATE OF HAROLD EISENBERG

Printed Name:

Title:

- 9 -

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UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

CENTURY, L.L.C.

Ву_	Duly Authorized Member of Board of Managers
By_	Duly Authorized Member of Board of Managers
JON C	John E. Shaffer
	940
Den	
E.	Thomas Collins, Jr.
	Richard E. Hulina
EST	ATE OF HAROLD EISENBERG
By_ P	rinted Name: itle:

- 9 -

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UNOFFICIAL COPY

Estate of Harold Eisenberg

By Sula S. Eisenberg

Printed Name: Sheila S. Eisenberg

Title: Frank Title: Executor

LASALLE BANK NATIONAL ASSOCIATION Property of Cook County Cert's Office

and of

STATE OF ILLINOIS) OUNTY OF COOK)
The foregoing instrument was acknowledged before me this 3/5+ day of October, 2001, by Tom Collins duly authorized members of the Board Managers of Century, L.L.C., an Illinois limited liability company, on behalf of the limited liability company.
"OFFICIAI CEAL" MARY RIONDAN Notary Public, State o' Illinois My Commission Expires Dd'03/)5
STATE OF ILLINOIS) 7 SS COUNTY OF COOK)
The foregoing instrument was acknowledged before me this day of October, 2001, by John E. Shaffer.
Notary Fublic
STATE OF ILLINOIS) COUNTY OF COOK) SS
The foregoing instrument was acknowledged before me this 315t day of October, 2001, by Dennis J. Hiffman.
"OFFICIAL SEAL" MARY RIORDAN My Commission Expires 08/03/05 STATE OF ILLINO
COUNTY OF COOK)
The foregoing instrument was acknowledged before me this 3/5/ day of October, 2001, by E. Thomas Collins, Jr.
VIARY RIORDAN Victary Public, State of Illinois - 11 - My Commission Expires 08/03/05

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STATE OF ILLINOIS)
) SS COUNTY OF COOK)
The foregoing instrument was acknowledged before me this day of October, 2001, by and, duly authorized members of the Board of Managers of Century, L.L.C., an Illinois limited liability company, on behalf of the limited liability company.
Notary Public
STATE OF ILLINO(S)) SS
COUNTY OF COOK
The foregoing instrument was acknowledged before me
this day of October, 2001, by John E. Shaffer.
OFFICIAL SEAL GRACE FILL NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPINES:07/28/05 NOTARY Public
STATE OF ILLINOIS)
COUNTY OF COOK) SS
The foregoing instrument was acknowledged before me this day of October, 2001, by Dennis J. Hiffman.
Notary Public
Notary Public
STATE OF ILLINOIS)
) SS COUNTY OF COOK)
The foregoing instrument was acknowledged before me this day of October, 2001, by E. Thomas Collins, Jr.

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		- 1	
STATE OF ILLINOIS)) SS)		
The forego this 315+ day of "OFFICIAL SEAL" MARY RICKLAN Notary Public, State A l'incis My Commission Expires 05/03	October	rument was acknowl, 2001, by Richard Notary Public	
STATE OF ILLINOIS) ss (00/	
The forego this day of Eisenberg.	October	trument was acknowl , 2001, by behalf of the Esta	,
		Notary Public	C T'S
STATE OF ILLINOIS)) SS)		O'ff.
	October of sociatio	trument was acknowl , 2001, by LaSalle Bank Nation n, Successor by Me anking association	nal Association, a rger to LaSalle
		Notary Public	

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STATE OF ILLINOIS)) SS)
The forego	ing instrument was acknowledged before me October, 2001, by E. Thomas Collins, Jr.
	Notary Public
STATE OF ILLIMOIS)
COUNTY OF COOK) SS)
	ing instrument was acknowledged before me October, 2001, by Richard E. Hulina.
	· C
	Notary Public
STATE OF ILLINOIS)) ss)
COUNTY OF COOK) SS
	ing instrument was acknowledged before me October, 2001, by Sheila S. Eisenberg on behalf of the Estate of Harold
OFFICIAL SEAL CECILIA GARCIA DE ALBA NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 10-19-2003	lailia Larrio De Alba Notaty Public

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UNOFFICIAL COPY

STATE	OF	ILLINOIS)	
		W.LL)	SS
COUNTY	O	W.LT)	

The foregoing instrument was acknowledged before me this day of October, 2001, by Anweg Patchin, of LaSalle Bank National Association, a national banking association, Successor by Merger to LaSalle National Bank, a national banking association, on behalf of the Property of Cook County Clerk's Office association.

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EXHIBIT A LEGAL DESCRIPTION OF THE PREMISES

[SEE ATTACHED]

Permanent Tax Index Numbers:

14-28-119-003: 14-28-119-004;

14-28-119-0°0; 14-28-119-006;

14-28-119-007-14-28-119-008:

14-28-119-014; and 14-28-119-024 CORRECTED FOR RECORDING BELOW

Address of Premises

2828 North Clark Street Chicago, Illinois

14-28-119-008

14-28-119-024

14-28-119-030

14-28-119-031

14-28-119-032

14-28-119-033

14-28-119-034

14-28-119-035

14-28-119-036 14-28-119-037

14-28-119-038

14-28-119-039

14-28-119-040

14-28-119-041

14-28-119-042

14-28-119-043

14-28-119-044

14-28-119-045

14-28-119-046

Lor Cook County Clark's Office

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PARCEL 1:

LOTS 1 AND 2 (EXCEPT THAT PART OF THE SOUTH .71 FEET, AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE, LYING EAST OF THE WEST 163.0 FEET, AS MEASURED ALONG THE SOUTH LINE OF SAID LOT 2) IN BROMLEY'S SUBDIVISION OF THE EAST PART OF THE SOUTH 1/2 OF LOT 10 IN BICKERDIKE'S AND STEELE'S SUBDIVISION IN THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAT OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 1, 2, 3, 4, 5 6, AND 7 IN THE SUBDIVISION OF THE NORTH 1/2 OF LOT 10 IN BICKERDIKE'S AND S'ELLE'S SUBDIVISION IN THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE EAST 207 FEET OF THE SOUTH 1/2 OF LOT 11 IN BICKERDIKE AND STEELE'S SUBDIVISION IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOTS 18 AND 19 IN RAWORTH AND OTHERS SUBDIVISION OF PART OF LOTS 11, 12, 15 AND 16 IN BICKERDIKE'S AND STEELE'S SUBDIVISION IN THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

