



Doc#: 0405710114
Eugene "Gene" Moore Fee: \$88.50
Cook County Recorder of Deeds
Date: 02/28/2004 11:34 AM Pg: 1 of 23

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FIFTH MODIFICATION AGREEMENT

THIS FIFTH MODIFICATION AGREEMENT dated as of November 1, 2003, by and among CENTURY, L.L.C., an Illinois limited liability company (the "Mortgagor"), JOHN E. SHAFFER ("Shaffer"), DENNIS J. HIFFMAN ("Hiffman"), E. THOMAS COLLINS, JR. ("Collins"), RICHARD E. HULINA ("Hulina") and SHEILA EISENBERG, as Trustee of a Trust known as the Sheila Trust (the "Sheila Trust") (Shaffer, Hiffman, Collins, Hulina and the Sheila Trust being sometimes referred to herein collectively as 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");

WITNESSETH:

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;

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
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603



Property of Cook County Clerk's Office

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(iii) Construction Loan Mortgage and Security Agreement 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. 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 (the "Indemnity Agreement"), from the Mortgagor, Shaffer, Hiffman, Collins, Hulina and Harold Eisenberg to Old LaSalle; and

(vii) Construction Loan Guaranty dated as of October 1, 1998 (the "Guaranty"), from Shaffer, Hiffman, Collins, Hulina and Harold Eisenberg to Old LaSalle; and

WHEREAS, Harold Eisenberg died subsequent to the execution and delivery of the Documents; and

WHEREAS, the Documents were previously modified and amended by the Modification Agreement dated as of November 1, 2000 (the "First Modification"), by and among the Mortgagor, Shaffer, Hiffman, Collins, Hulina, the Estate of Harold Eisenberg and the Bank, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on March 15, 2001, as Document No. 0010208007, the Second Modification Agreement dated as of August 1, 2001 (the "Second Modification"), by and among the Mortgagor, Shaffer, Hiffman, Collins, Hulina, the Estate of Harold Eisenberg and the Bank, the Third Modification Agreement dated as of August 1, 2002 (the "Third Modification"), by and among the Mortgagor, Shaffer, Hiffman, Collins, Hulina, the Sheila Trust and the Bank, and the Fourth Modification Agreement dated as of August 1, 2003 (the "Fourth Modification"), by and among the Mortgagor, Shaffer, Hiffman, Collins, Hulina, the Sheila Trust and the Bank (the First Modification, the Second Modification, the Third Modification and the Fourth Modification being sometimes referred to herein collectively as the "Previous Modifications"); and

WHEREAS, the Documents, as modified and amended by the Previous Modifications, 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 Modifications, 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; Defined Terms; Correction of Fourth Modification; References to Documents. (a) The foregoing recitals are hereby incorporated into and made a part of this Agreement.

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(b) All capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth in the Loan Agreement.

(c) The parenthetical definition relating to the Third Modification in the Fourth Modification is hereby corrected to read "Third Modification".

(d) 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 Modifications, whether or not express reference is made to such previous modifications and amendments.

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 Modifications, is hereby further extended from November 1, 2003, to February 1, 2004, and all of the Documents are hereby modified and amended accordingly. Without limitation on the generality of the foregoing, the date "November 1, 2003" is hereby changed to "February 1, 2004" each time it appears in the Documents, as modified and amended by the Previous Modifications.

Section 4. Reductions of Loan Amount, No Additional Disbursements. (a) The parties acknowledge that as of the November 1, 2003, date of this Agreement, the principal balance outstanding on the Loan was \$25,502,694.27. Pursuant to the provisions of Section 5(a) of this Agreement, the Mortgagor is required to make a payment on the principal of the Loan and the Notes in the amount of \$250,000 on the date of the execution and delivery of this Agreement, which will reduce the principal balance outstanding on the Loan and the Notes to \$25,252,694.27. Accordingly, the amount of the Loan and the Note and the Loan Amount, as previously reduced by the Previous Modifications, are hereby further reduced to \$25,252,694.27, and all of the Documents are hereby modified and amended accordingly. Without limitation on the generality of the foregoing, all references in the Documents, as previously modified and amended by the Previous Modifications, to the amount of the Loan and the Note and the Loan Amount are hereby changed to read "\$25,252,694.27".

(b) On January 2, 2004, the amount of the Loan and the Note and the Loan Amount shall be automatically further reduced to \$25,002,694.27, and all of the Documents, as modified and amended by the Previous Modifications, are hereby modified and amended accordingly.

(c) The parties acknowledge and agree that the Loan is fully disbursed and that the Mortgagor does not have any right to receive, and the Bank does not have any obligation to make, any additional disbursements of proceeds of the Loan.

(d) All of the Documents, as modified and amended by the Previous Modifications, are hereby modified and amended to incorporate the foregoing provisions of this Section 4.

Section 5. Principal Payments. (a) On or before the date of the execution and delivery of this Agreement, and as a condition to the agreements of the Bank contained herein,

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the Mortgagor shall make a payment on the principal of the Loan and the Note in the amount of \$250,000.

(b) On January 2, 2004, the Mortgagor shall make a payment on the principal of the Loan and the Note in an amount equal to the amount, if any, by which the principal amount then outstanding on the Loan and the Note exceeds the reduced Loan Amount of \$25,052,694.27 provided for in Section 4(b) of this Agreement.

(c) All of the Documents, as modified and amended by the Previous Modifications, are hereby modified and amended to incorporate the foregoing provisions of this Section 5.

Section 6. Extension Fee. The Mortgagor shall pay a non-refundable extension fee to the Bank in the amount of \$80,000, which shall be payable in two installments as follows: (i) \$40,000 on the date of the execution and delivery of this Agreement, and (ii) \$40,000 on the earlier of January 2, 2004, the date of the payment in full of all of the principal of and interest on the Loan, and the date of the occurrence of any Event of Default under the Loan Agreement or any of the other Documents.

Section 7. Representations and Warranties. The Mortgagor and the Guarantors hereby represent and warrant to the Bank as follows:

(a) The Mortgagor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, has all necessary power and authority to carry on its present business, and has full right, power and authority to enter into this Agreement, the Previous Modifications and each of the Documents to which it is a party and to perform and consummate the transactions contemplated hereby and thereby.

(b) Each of the Guarantors has all necessary power and authority power and authority to enter into this Agreement and such of the Previous Modifications and the Documents to which he or she is a party and to perform and consummate the transactions contemplated hereby and thereby.

(c) The Sheila Trust is a trust duly organized and existing under the laws of the State of Illinois. Sheila Eisenberg is the Trustee of the Sheila Trust and has all necessary power and authority to enter into this Agreement on behalf of the Sheila Trust in her capacity as Trustee of the Sheila Trust.

(d) This Agreement, the Previous Modifications and the Documents have been duly authorized, executed and delivered by such of the Mortgagor and the Guarantors as are parties thereto, and this Agreement, the Previous Modifications and the Documents constitute valid and legally binding obligations enforceable against such of the Mortgagor and the Guarantors as are parties thereto. The execution and delivery of this Agreement, the Previous Modifications and the Documents and compliance with the provisions thereof under the circumstances contemplated therein do not and will not conflict with or constitute a breach or violation of or default under the articles of organization or operating agreement of the Mortgagor, or any agreement or other instrument to which the Mortgagor or any of the Guarantors are a party, or by which they are bound, or to which their properties are subject, or any existing law, administrative regulation, court order or consent decree to which they are subject.

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(e) The Mortgagor and the Guarantors are in full compliance with all of the terms and conditions of the Documents to which they are a party, and no Default or Event of Default has occurred and is continuing with respect to any of the Documents.

(f) There is no litigation or administrative proceeding pending or threatened to restrain or enjoin the transactions contemplated by this Agreement, the Previous Modifications or any of the Documents, or questioning the validity thereof, or in any way contesting the existence or powers of the Mortgagor or the Guarantors, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement, the Previous Modifications or any of the Documents, or would result in any material adverse change in the financial condition, properties, business or operations of the Mortgagor or the Guarantors.

Section 8. 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 9. 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 Modifications and as expressly modified and amended herein. The Mortgagor and the Guarantors hereby (i) confirm and reaffirm all of their obligations under the Documents, as previously modified and amended by the Previous Modifications and as modified and amended herein; (ii) acknowledge and agree that the Bank, by entering 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 nor the Bank has heretofore waived any default or event of default under 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 Modifications 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 Modifications and as the case may be, as modified and amended by this Agreement.

Section 10. 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 remade and made to speak as of the date of this Agreement.

Section 11. 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 12. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

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Section 13. 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 14. 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 15. 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 16. 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.

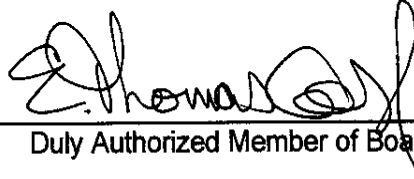
Section 17. Governing Law. This Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

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

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

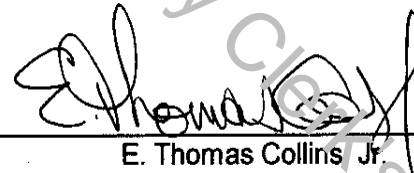
CENTURY, L.L.C.

By 
Duly Authorized Member of Board of Managers

By _____
Duly Authorized Member of Board of Managers

John E. Shaffer

Dennis J. Hiffman


E. Thomas Collins Jr.

Richard E. Hulina

Sheila Eisenberg, as Trustee of a Trust known as
the Sheila Trust

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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CENTURY, L.L.C.

By _____
Duly Authorized Member of Board of Managers

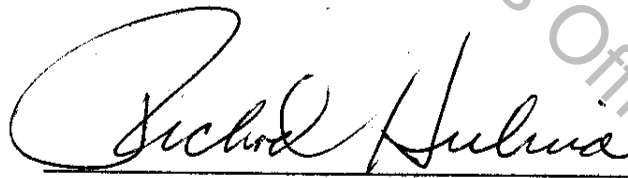
By  _____
Duly Authorized Member of Board of Managers

Property of Cook County Clerk's Office

John E. Shaffer

Dennis J. Hiffman

E. Thomas Collins, Jr.



Richard E. Hulina

Sheila Eisenberg, as Trustee of a Trust known as
the Sheila Trust

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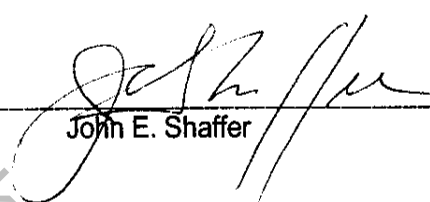
IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

CENTURY, L.L.C.

By _____
Duly Authorized Member of Board of Managers

By _____
Duly Authorized Member of Board of Managers

Property of Cook County Clerk's Office



John E. Shaffer

Dennis J. Hiffman

E. Thomas Collins, Jr.

Richard E. Hulina

Sheila Eisenberg, as Trustee of a Trust known as
the Sheila Trust

UNOFFICIAL COPY

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CENTURY, L.L.C.

By _____
Duly Authorized Member of Board of Managers

By _____
Duly Authorized Member of Board of Managers

John E. Shaffer



Dennis J. Hiffman

E. Thomas Collins, Jr.

Richard E. Hulina

Sheila Eisenberg, as Trustee of a Trust known as
the Sheila Trust

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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CENTURY, L.L.C.

By _____
Duly Authorized Member of Board of Managers

By _____
Duly Authorized Member of Board of Managers

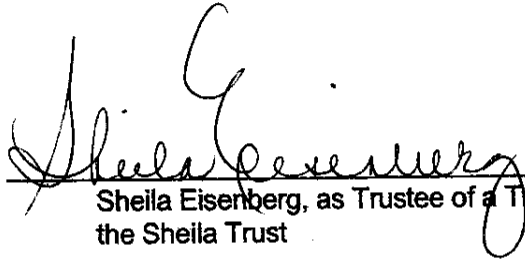
Property of Cook County Clerk's Office

John E. Shaffer

Dennis J. Hiffman

E. Thomas Collins, Jr.

Richard E. Hulina



Sheila Eisenberg, as Trustee of a Trust known as the Sheila Trust

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LASALLE BANK NATIONAL ASSOCIATION

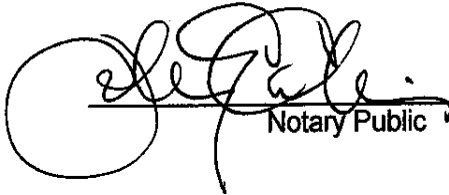
By Andrew P. Rilla
Title: FRP

Property of Cook County Clerk's Office

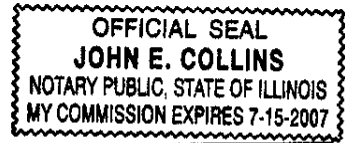
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 18th day of December, 2003, by E. Thomas Collins, JR 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 ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of December, 2003, by John E. Shaffer

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of December, 2003, by Dennis J. Hiffman.

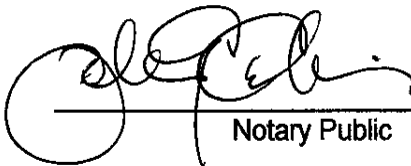
Notary Public

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 18TH day of December, 2003, by E. Thomas Collins, Jr. ✓



Notary Public



STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of December, 2003, by Richard E. Hulina.

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of December, 2003, by Sheila Eisenberg, as Trustee of a Trust known as the Sheila Trust.

Notary Public

Property of Cook County Clerk's Office

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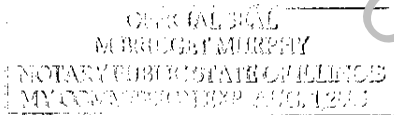
STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of December, 2003, by E. Thomas Collins, Jr.

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 29 day of December, 2003, by Richard E. Hulina.



m Budget Murphy

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of December, 2003, by Sheila Eisenberg, as Trustee of a Trust known as the Sheila Trust.

Notary Public

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of December, 2003, 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 ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this _____ day of December, 2003, by John E. Shaffer.

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 15th day of December, 2003, by Dennis J. Hiffman.

Karen M. Kirian

Notary Public



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of December, 2003, by E. Thomas Collins, Jr.

Notary Public

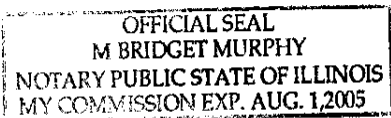
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of December, 2003, by Richard E. Kulina.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 29 day of December, 2003, by Sheila Eisenberg, as Trustee of a Trust known as the Sheila Trust.



M. Bridget Murphy
Notary Public

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 13th day of December, 2003, by Andriam. Patchu, FVP of LaSalle Bank National Association, a national banking association, on behalf of the association.

Maria T. Esparza

Notary Public



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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;~~

~~14-28-119-005; 14-28-119-006;~~

~~14-28-119-007; 14-28-119-008;~~

~~14-28-119-011; 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

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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 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

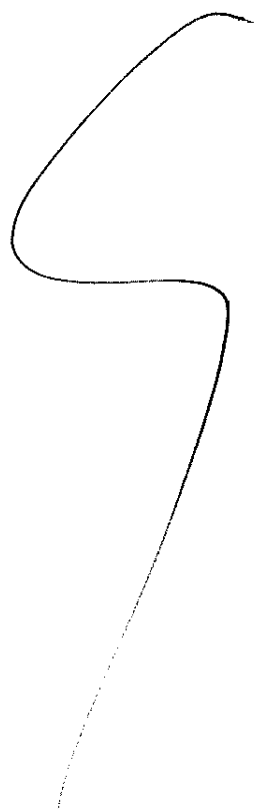
LOTS 1, 2, 3, 4, 5, 6, AND 7 IN THE SUBDIVISION OF THE NORTH 1/2 OF LOT 10 IN BICKERDIKE'S AND STEELE'S SUBDIVISION IN THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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.



Property of Cook County Clerk's Office