



2005K089970

Doc#: 0524318082 Fee: \$56.50
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 08/31/2005 03:00 PM Pg: 1 of 17

SANDY WEGMAN
RECORDER
KANE COUNTY, IL

RECORDED ON
08/03/2005 10:49AM

REC FEE: 38.00
PAGES: 17

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MODIFICATION OF PROMISSORY NOTE
REAL ESTATE MORTGAGE
AND RELATED LOAN DOCUMENTS

This Modification of Promissory Note, Real Estate Mortgage and Related Loan Documents ("Agreement") is made as of the first day of May, 2005 ("Effective Date") by and between The PrivateBank and Trust Company ("Lender") and Burton Wells, Ltd., an Illinois corporation ("Wells"), North Star Trust Company, as Trustee of Trust #04-7154 dated May 11, 2004 ("Aurora Land Trust") (Wells and Aurora Land Trust are referred to herein collectively as "Borrower"), Michael Shain and Catherine Shain (Michael Shain and Catherine Shain are referred to herein collectively as "Guarantors" or individually as a "Guarantor").

RECITALS:

1311578 at 1/1

A. Pursuant to that certain Promissory Note from Borrower to Lender ("Note") and the Loan and Security Agreement ("Loan Agreement") setting forth the terms of a secured loan from Lender to Borrower, Lender has, among other things, extended a loan in the original principal amount of Two Million Six Hundred Fifteen Thousand Dollars (\$2,615,000.00) to Borrower ("Loan").

B. As of the Effective Date, the principal balance remaining due to Lender from Borrower pursuant to the Note is Two Million Five Hundred Seventy-Nine Thousand Five Hundred Eighty-Four Dollars and Fourteen Cents (\$2,579,584.14).

C. As a condition to and security for such Loan and financial assistance, Lender has required Aurora Land Trust to execute and deliver a Mortgage, Assignment of Leases and Rents,

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Financing Statement and Security Agreement ("Aurora Mortgage") on the real property and improvements thereto located at 372 W. Indian Trail, Aurora, Illinois, as more particularly described in Exhibit A attached hereto and made a part hereof by reference ("Aurora Property").

D. As a condition to and security for such Loan and financial assistance, Lender required North Star Trust Company, not individually, but solely as Trustee under Agreement dated April 19, 1999, and known as Trust #99-1716 ("Skokie Land Trust") to execute and deliver a Junior Mortgage ("Skokie Mortgage") on the real property and improvements thereto located at 9421 Kildare Avenue, Skokie, Illinois, as more particularly described in Exhibit B attached hereto and made a part hereof by reference ("Skokie Property").

E. As a condition to such Loan and financial assistance, all of the indebtedness, obligations and liabilities of Borrower to Lender, howsoever created, arising or evidenced, whether now existing or hereafter arising, have been unconditionally guaranteed by Michael Shain and Catherine Shain, who are beneficiaries or contingent beneficiaries of the Skokie Land Trust and are shareholders of Wells ("Guarantors" or individually a "Guarantor") and as such have received a direct interest and financial advantage from the Loan.

F. The Borrower is delinquent in the payment of sums due pursuant to the Note and is in breach of the terms of the Loan Agreement regarding payment of escrow account funds.

G. The Note, Loan Agreement, Aurora Mortgage, Skokie Mortgage, the Guaranties executed and delivered by the Guarantors and all other documents evidencing, securing or arising from the Loan are hereinafter collectively referred to as the "Loan Documents".

H. Lender has agreed to temporarily refrain and forebear from taking action against Borrower, Skokie Land Trust, or the Guarantors pursuant to the Loan Documents with respect to the delinquency and breach by Borrower pursuant to and provided that the Borrower and

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Guarantors execute, deliver and comply with this Agreement which amends the terms of the Note to, among other things: (i) modify the principal amount due, and (ii) modify the installment payments.

NOW THEREFORE, for and in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lender, Borrower and the Guarantors agree upon the following terms and conditions:

AGREEMENTS

1. **AFFIRMATION OF RECITALS.** The Recitals set forth above are true and correct and are incorporated herein by this reference.

2. **AMENDMENT OF NOTE.** The Note is hereby amended as follows:

2.1. **Principal Sum Due on Note.** Effective as of the Effective Date, the principal sum due on the Note and due pursuant to the terms of the Loan shall be increased by the amount of Twenty-Six Thousand Two Hundred Sixty-Two Dollars and Two Cents (\$26,262.02). All references in the Note, if any, to the principal sum, the amount of the Note or any reference to the sum remaining due shall be modified, effective as of June 1, 2005, to mean the sum of Two Million Six Hundred Five Thousand Eight Hundred Forty-Six Dollars and Sixteen Cents (\$2,605,846.16) ("New Principal Amount").

2.2. **Installment Payments Pursuant to Note.** Notwithstanding any reference to amortization period set forth in the Note or any of the Loan Documents, the New Principal Amount shall be payable in monthly installments of principal and interest in the amount of Seventeen Thousand Four Hundred Eighty-Eight Dollars and Twenty-Eight Cents (\$17,488.28) with the first payment commencing upon June 1, 2005, and

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continuing on the first day of each month thereafter, with a final payment of the entire remaining balance of principal and accrued interest being due and payable on June 1, 2007, the Maturity Date set forth in the Note. All references in the Note, if any, to the first installment payment thereunder shall be amended to be references to the first installment payment due on the Effective Date of this Agreement.

2.3. **Force and Effect of Existing Note.** Except as specifically set forth to the contrary hereinabove, the Note remains unmodified and in full force and effect and the Borrower hereby ratifies all of the terms, conditions, rights and obligations therein set forth. References to the Note in all of the Loan Documents shall be hereinafter deemed to refer to the Note, as modified hereby.

3. **AMENDMENT OF AURORA MORTGAGE.** The Aurora Mortgage is hereby specifically amended as follows:

3.1. **References to Note.** All references in the Aurora Mortgage to the Note shall be deemed to be references to the Note as modified hereby.

3.2. **Force and Effect of Mortgage.** Except as specifically set forth to the contrary hereinabove, the Aurora Mortgage remains unmodified and in full force and effect.

4. **ESCROW ACCOUNT.** As a condition of Lender's forbearance pursuant to this Agreement, Borrower shall forthwith modify the amount of its monthly escrow account payments pursuant to the Aurora Mortgage in order to increase the balance in the escrow account established for the Aurora Property as follows: On June 1, 2005, July 1, 2005 and August 1, 2005 Borrower shall pay the amount of Three Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$3,666.67) to Lender for credit to the escrow account established with

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Lender for the Aurora Property; thereafter, the amount of escrow account deposits shall be as determined by Lender in its reasonable discretion and pursuant to the terms of the Note, the Aurora Mortgage and the Loan Documents.

5. **CONDITIONS PRECEDENT.** The agreement by the Lender to modify the Loan terms pursuant to this Agreement is subject to the following conditions precedent:

5.1. **This Agreement.** Borrower shall have delivered to the Lender a properly completed and fully executed copy of this Agreement.

5.2. **Evidence of Authorization** The Lender shall have received evidence from Borrower, reasonably satisfactory to Lender, of the authorization of Borrower to enter into this Agreement.

5.3. **Reaffirmation.** Guarantors shall have reaffirmed their respective guarantees of all of Borrower's liabilities pursuant to the Loan.

6. **REPRESENTATIONS AND WARRANTIES.** The foregoing amendments and modifications are made by the Lender in reliance upon Borrower's representations and warranties that, as of the date of this Agreement:

6.1. **Compliance.** Borrower is in compliance with all of the covenants, representations and warranties of Borrower set forth in the Loan Documents and no default or event which, upon notice or by lapse of time would constitute a default, has occurred except as expressly set forth in the Recitals hereto;

6.2. **Authority.** Wells has full power and authority to enter into this Agreement, to borrow under the Note and Loan Agreement as amended by this Agreement, pursuant to all proper and necessary corporate action, and no shareholder, public authority or regulatory consents, nor any consent from any other lender (including

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the consent of the Senior Lender, as defined in the Skokie Mortgage), are required to be obtained as a condition to the validity or enforceability of this Agreement;

6.3. **Binding Effect.** This Agreement is a valid and legally binding obligation of the Borrower, fully enforceable against the Borrower in accordance with its terms; and

6.4. **No Violation of Applicable Law or Agreements.** The execution and performance by the Borrower of this Agreement and the transactions contemplated thereby will not (i) violate any provision of law, any order of any court or other governmental agency, or the charter or bylaws of Borrower, or (ii) violate any indenture, contract, agreement or other instrument to which the Borrower is a party or by which it or any of its property is bound or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property or assets of the Borrower.

7. **INDEBTEDNESS ACKNOWLEDGED.** Borrower acknowledges that the Indebtedness evidenced by the Loan Agreement and the Note is just and owing and agrees to pay the Indebtedness in accordance with the terms of the Note and Loan Documents, as modified by this Agreement. Borrower further acknowledges and represents that no event has occurred and no condition presently exists that would constitute a Default or Event of Default by Borrower under the Loan Agreement or any of the Loan Documents, with or without notice or lapse of time, except as expressly set forth in the Recitals hereto.

8. **VALIDITY OF LOAN DOCUMENTS.** Borrower hereby ratifies, reaffirms, acknowledges and agrees that the Note, and the other Loan Documents represent valid, enforceable and collectable obligations of Borrower, and that Borrower has no existing claims, defenses (personal or otherwise) or rights of set-off whatsoever with respect to the Liabilities of Borrower under the Loan Agreement, the Note or any of the other Loan Documents. Guarantors

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hereby ratify, reaffirm, acknowledge and agree that their respective Guaranties represent valid, enforceable and collectable obligations of the Guarantors, and that Guarantors have no existing claims, defenses (personal or otherwise) or rights of set-off whatsoever with respect to the their respective Guaranties.

9. **REAFFIRMATION OF WARRANTIES.** Borrower hereby reaffirms to the Lender each of the representations, warranties, covenants and agreements of Borrower set forth in the Loan Agreement and other Loan Documents with the same force and effect as if each were separately stated herein and made as of the date hereof.

10. **RATIFICATION OF TERMS AND CONDITIONS.** All of the terms, conditions and provisions of the Note, Loan Agreement, Skokie Mortgage and each of the other Loan Documents shall continue in full force and effect and shall remain unaffected and unchanged except as specifically amended or contemplated hereby and all Loan Documents, as modified in this Agreement, are hereby ratified and reaffirmed. In the event of any conflict between the terms and conditions of this Agreement and the Note, Loan Agreement or any of the other Loan Documents, the provisions of this Agreement shall govern and control.

11. **ADDITIONAL PROVISIONS.** This Agreement shall be effective only upon:

11.1. **Obligor's Indemnification to Lender.** Payment by Borrower to Lender of all amounts incurred by or on behalf of Lender for recording expenses, title insurance fees (including, without limitation, a title search and issuance of any date down or other endorsements, if not already paid by Borrower, and all other costs incurred or to be incurred by or on behalf of Lender by reason of the matters specified herein and the preparation of this Agreement and all other documents necessary and required to effectuate the provisions hereof, including, without limitation, all costs and expenses with

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respect to compliance by the Borrower with the terms and conditions hereof, Lender's attorneys' fees and costs, and Lender's enforcement thereof. The rights and remedies of Lender contained in this Section 11 shall be in addition to, and not in lieu of, the rights and remedies contained in the Loan Documents, as herein amended, and as otherwise provided by law.

11.2. **Recording of Agreement.** This Agreement shall be executed in multiple counterpart copies, and a counterpart of this Agreement shall be recorded in the Office of the Recorder of Deeds of Kane County, Illinois and, at the discretion of Lender, a counterpart of this Agreement may be recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

12. **EFFECTIVENESS.** This Agreement shall not be effective until the same is executed and accepted by the Lender and Borrower complies with any conditions precedent set forth above, at which time it shall be effective as of the Effective Date set forth herein.

13. **GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles.

14. **CONSTRUCTION.** This Agreement shall not be construed more strictly against Lender merely by virtue of the fact that the same has been prepared by Lender or its counsel, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement.

15. **GENDER.** All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders and any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.



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16. **ENTIRE AGREEMENT.** Borrower and Lender acknowledge that there are no other agreements or representations, either oral or written, express or implied, that are not embodied in this Agreement and the Loan Documents. This Agreement and the Loan Documents together represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender.

17. **BENEFIT.** This Agreement shall be binding upon and shall inure to the benefit of Borrower, Guarantors and Lender, and their respective successors, assigns, grantees, heirs, executors, personal representatives and administrators.

18. **NO OTHER LIENS; AUTHORITY.** Borrower represents to Lender that there is no other ownership interest, mortgage lien, trust deed, or other interest, now outstanding against the Aurora Property, other than the lien of the Loan Documents. Borrower represents to Lender that there is no other ownership interest, mortgage lien, trust deed, or other interest, now outstanding against the Skokie Property, other than the Senior Lien (as defined in the Skokie Mortgage) and the lien of the Loan Documents. Borrower has duly authorized, executed and delivered this Agreement, and acknowledges that the Loan Documents are valid and enforceable in accordance with their terms against the Borrower, the Skokie Land Trust and the Guarantors.

19. **DEFAULTS.** The occurrence of any one or more of the following shall constitute a Default under this Agreement:

19.1. **Representations and Warranties.** The untruthfulness of any statement, representation or warranty contained in this Agreement, or the existence of misrepresentation of fact or fraud contained in any document or information heretofore or hereafter submitted or communicated to Lender in support of this Agreement.

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19.2. **Breach.** The breach or violation of any term, covenant, or condition contained in this Agreement.

19.3. **Default.** Any other default, not timely cured within any applicable cure or grace period, under any of the Loan Documents. Any Default hereunder shall constitute a Default or Event of Default, as applicable, under each of the Loan Documents.

20. **TERMINATION.** Immediately following the occurrence of any Default under this Agreement, Lender may, at its sole discretion: (i) exercise any or all of its rights and remedies under the Loan Documents and/or (ii) pursue any other remedies available to it permitted by Illinois law.

21. **PRIORITY OF MORTGAGE.** The Aurora Property shall remain in all respects subject to the lien, charges and encumbrance of the Aurora Mortgage, as herein amended, and nothing herein contained and nothing done pursuant hereto, shall affect the liens, charges or encumbrances of the Aurora Mortgage, as herein amended, or the priority thereof with respect to other liens, charges, encumbrances or conveyances, or release or affect the liability of any party or parties whomsoever who may now or hereafter be liable under or on account of the Loan Documents, as herein amended. The Skokie Property shall remain in all respects subject to the lien, charges and encumbrance of the Skokie Mortgage, as herein amended, and nothing herein contained and nothing done pursuant hereto, shall affect the liens, charges or encumbrances of the Skokie Mortgage, as herein amended, or the priority thereof with respect to other liens, charges, encumbrances or conveyances, or release or affect the liability of any party or parties whomsoever who may now or hereafter be liable under or on account of the Loan Documents, as herein amended.

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22. **CONSENT TO AGREEMENT.** The undersigned acknowledge that they have thoroughly read and reviewed the terms and provisions of this Agreement and are familiar with same, that the terms and provisions contained herein are clearly understood by each of the undersigned and have been fully and unconditionally consented to by Borrower, Skokie Land Trust and the Guarantors and each has had full benefit and advice of counsel of their own respective selection, in regard to understanding the terms, meaning and effect of this Agreement, and that this Agreement has been entered into by each of the undersigned, freely, voluntarily, with full knowledge, and without duress, and that in executing this Agreement. Each of the undersigned is relying on no other representations, either written or oral, or express or implied, made to the undersigned, or any of them, by Lender.

23. **COUNTERPARTS.** It is understood and agreed that this Agreement may be executed by the parties in several counterparts by the parties, each of which shall, for all purposes, be deemed an original and all of such counterparts taken together, shall constitute one and the same Agreement, even though all of the parties hereto may not have executed the same counterpart of this Agreement.

24. **DEFINITION OF TERMS.** All initial-capitalized terms not expressly defined in this Agreement shall bear the same respective definitions herein as they bear in the Loan Documents, as herein amended.

25. **TRUSTEE EXCULPATION.** This Agreement is executed by North Star Trust Company, as Trustee of the Aurora Land Trust, not personally but as trustee in the exercise of the power and authority conferred upon and vested in it as such trustee. It is expressly understood and agreed that nothing herein contained or in the this Agreement or the Loan Documents shall be construed as creating any liability on trustee personally to pay the

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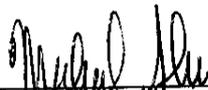
Indebtedness or any interest that may accrue thereon, or any indebtedness accruing under the Note or this Agreement, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by North Star Trust Company and by every person now or hereafter claiming any right or security hereunder. So far as North Star Trust Company personally is concerned, the Lender or other legal holder or holders of the Loan and the owner or owners of any Indebtedness accruing hereunder shall look solely to the Aurora Property and/or the Skokie Property by the Aurora Mortgagee and the Skokie Mortgagee for the payment, by the enforcement of the lien(s) created, in the manner herein and in the Loan Documents provided, or by action against any other security at any time given to secure the payment, or by action to enforce the personal liability of the Guarantors.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered at Chicago, Illinois as of the date first above written.

Burton Wells, Ltd., an Illinois corporation

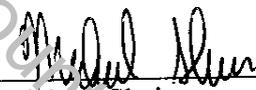
By: 
Name: Michael Shain
Title: Pres of Co

North Star Trust Company, as Trustee of Trust #04-7154 dated May 11, 2004

By: 
Name: DAVID ROSENFELD
Title: VICE PRESIDENT

Property of Cook County Clerk's Office

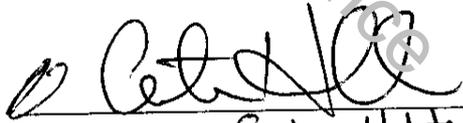
GUARANTORS:


Michael Shain


Catherine Shain

LENDER:

The PrivateBank and Trust Company

By: 
Name: Carter Hulata
Title: Associate managing Director

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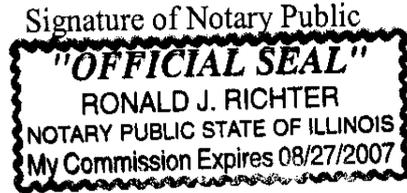
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State of Illinois)
County of Cook) ss.

This instrument was acknowledged before me on July 19, 2005 by Michael Shain as President of Burton Wells, Ltd., an Illinois corporation as the free and voluntary act of the corporation for the uses and purposes set forth.

(Seal)

Ronald J. Richter
Signature of Notary Public



State of Illinois)
County of ILLINOIS) ss.

On this 19 day of JULY, 2005, before me, a Notary Public in and for said County and State, appeared DAVID ROSENFELD for North Star Trust Company, as Trustee of Trust #04-7154 dated May 11, 2004, to me personally known, who being by me duly sworn, did say that the foregoing instrument was signed and delivered by him as his own free and voluntary act for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(Seal)

Silvia Medina
Signature of Notary Public

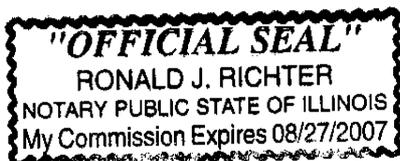


State of Illinois)
County of Cook) ss.

On this 19th day of July, 2005, before me, a Notary Public in and for said County and State, appeared Michael Shain to me personally known, who being by me duly sworn, did say that the foregoing instrument was signed and delivered by him as his own free and voluntary act for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(Seal)



Ronald J. Richter
Signature of Notary Public

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State of Illinois)
County of Cook) ss.

On this 19th day of July, 2005, before me, a Notary Public in and for said County and State, appeared Catherine Shain to me personally known, who being by me duly sworn, did say that the foregoing instrument was signed and delivered by her as her own free and voluntary act for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(Seal)



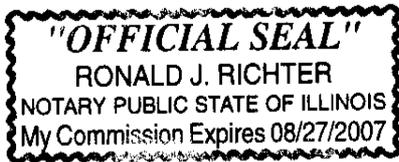
Ronald J. Richter
Signature of Notary Public

State of Illinois)
County of Cook) ss.

On this 19 day of July, 2005, before me, a Notary Public in and for said County and State, appeared Carl J. Huhta as AMO of The PrivateBank and Trust Company, to me personally known, who being by me duly sworn, did say that the foregoing instrument was signed and delivered by him as his own free and voluntary act for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(Seal)



Ronald J. Richter
Signature of Notary Public

This Document Prepared By
and Return To:

Valerie J. Freireich
CHUHAK & TECSON, P.C.
30 South Wacker Drive
Suite 2600
Chicago, IL 60606
(312) 444-9300

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EXHIBIT A

Borrower Real Property Legal Description (372 W. Indian Trail, Aurora, Illinois)

LEGAL DESCRIPTION

LOTS 11, 12, 13, 14 AND 15 (EXCEPT THE NORTHERLY 40 FEET OF SAID LOTS 11 AND 15) OF SCHWABE SUBDIVISION, CITY OF AURORA, KANE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 15-16-226-014

PERMANENT INDEX NUMBER: 15-16-226-017

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EXHIBIT B

Borrower Residential Property Legal Description (9421 Kildare Avenue, Skokie, Illinois)

LEGAL DESCRIPTION

LOT 6 IN THE RESUBDIVISION OF BLOCK 11 IN KRENN AND DATO'S DEVONSHIRE MANOR ANNEX, BEING A SUBDIVISION OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 10-15-209-028