



Doc#: 0622334076 Fee: \$42.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/11/2008 11:16 AM Pg: 1 of 10

*Prepared BY t*  
AFTER RECORDING RETURN TO:  
500 Staples Drive  
P.O. Box 9271  
Framingham, MA 01701-9271  
Attention: Real Estate Legal Department

**SUBORDINATION, NON-DISTURBANCE, AND ATTORNMEN T AGREEMENT**

*the 2nd* *August*  
THIS AGREEMENT is made as of ~~July~~ day of ~~July~~, 2006 by and among Wachovia Financial Services, Inc., having a place of business at One Boston Place, Boston, Massachusetts 02108 ("Mortgagee"), Berkshire-West 87<sup>th</sup> Street, LLC, a Massachusetts Limited liability company, having a principal place of business at 41 Taylor Street, 4<sup>th</sup> Floor, Springfield, Massachusetts 01103 ("Landlord") and Staples The Office Superstore East, Inc., a Delaware corporation, having a principal place of business at 500 Staples Drive, Framingham, Massachusetts 01701-9271 ("Tenant").

Landlord is the holder of a leasehold estate of certain premises located in Chicago, Cook County, Illinois and more particularly described on Exhibit A attached hereto (the "Shopping Center").

Reference is made to a Leasehold Construction Mortgage, Security Agreement, Fixture Filing and Collateral Assignment of Leases and Rents ("Mortgage") from Landlord to Mortgagee, dated ~~July~~ *August* 3, 2006 and recorded as Document No. 0622334076 in the Cook County Registry of Deeds.

Reference is made to a Lease ("Lease") dated November 21, 2005, between Landlord and Tenant of certain premises situated within the Shopping Center covered by said Mortgage (the "Premises").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual promises contained herein, the parties agree as follows:

1. Mortgagee hereby consents to the Lease and all of the provisions thereof.
2. Subject to the terms hereof, the Lease is and shall be subject and subordinate at all times to the lien of the Mortgage and to all renewals, replacements and extensions of the Mortgage to the full extent of the principal sum secured thereby and interest thereon.
3. Tenant agrees if the holder of said Mortgage, or any person claiming under said holder (whether by a foreclosure of the Mortgage, sale of Mortgagee's interest in the Lease or otherwise), shall succeed to the interest of Landlord in said Lease, Tenant will recognize, and attorn to, said holder, or such other person, as its landlord under the terms of said Lease.

*8707 FR 86268CS*

*#1688  
Chicago (87<sup>th</sup> Str.) IL 10  
SUSA*

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4. Mortgagee agrees that, in the event of foreclosure or other right asserted under said Mortgage by the holder thereof, said Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed (whether by a foreclosure, deed in lieu of foreclosure or otherwise), except for default continuing after notice and beyond applicable grace period and otherwise in accordance with the provisions of said Lease.

5. In the event Mortgagee succeeds to the interest of landlord under the Lease, Tenant will have the same remedies against Mortgagee for any default under the Lease; provided, however, that Mortgagee shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) under the Lease, except for non-monetary defaults of a continuing nature;

(ii) subject to any off-sets or abatements against Base Rent or other charges which Tenant may have against any prior landlord (including Landlord), except for the exercise of rights expressly set forth in the Lease;

(iii) bound by any Base Rent or other charges which Tenant might have paid for more than the current month to any prior landlord (including Landlord), except as expressly required under the Lease; or

(iv) bound by any amendment or modification of the Lease made without its consent, which consent shall not be unreasonably withheld or delayed.

Nothing herein contained shall impose any obligations upon Mortgagee to perform any of the obligations of Landlord under the Lease, unless and until Mortgagee shall become the ground lessee or mortgagee in possession of the Premises.

6. Tenant agrees to provide Mortgagee with a copy of any notice of default Tenant may send to Landlord pursuant to the terms of the Lease. Tenant agrees that Mortgagee shall have the same opportunity and the same time period to cure any default of Landlord as provided Landlord pursuant to the terms of the Lease. Unless changed by written notice to Tenant, Mortgagee's notice address is as follows:

WACHOVIA FINANCIAL SERVICES, INC.  
One Boston Place  
Boston, Massachusetts 02108  
Attention: Joshua Howes, Vice President

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with a copy to:

Reimer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts  
FAX NUMBER: 617-880-3456  
Attention: Martha S. Faigen, Esquire

All notices between Mortgagee and Tenant shall be sent in the manner set forth under the Lease.

7. Landlord agrees that, except provided herein, this Agreement does not constitute a waiver by Mortgagee of any of its rights under the Mortgage or related documents, and that the Mortgage and any related documents remain in full force and effect and shall be complied with in all respects by Landlord. Landlord represents and warrants that, as of the date of this Agreement and the date of the Mortgage, there is no mortgage or trust deed encumbering the Premises except the Mortgage made by Landlord and that certain Mortgage made by Silver Development LLC, fee owner of the Shopping Center, to LaSalle Bank National Association dated January 12, 2006 and recorded as Document No. 0602327021.

8. No material modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or effective unless in writing and signed by the parties.

The benefits and burdens of this Agreement shall inure to and bind the successors and assigned of their respective parties hereto.

**IN WITNESS WHEREOF**, each party has caused this instrument to be executed under seal by its duly authorized representative.

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MORTGAGEE:

WACHOVIA FINANCIAL SERVICES,  
INC.

Witness:

L. B. Cl

By: Filomena R. Cerqueira  
Name: Filomena R. Cerqueira  
Title: Vice President

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

On this 2nd day of August, 2006, before me, the undersigned notary public, personally appeared Filomena R. Cerqueira, as Vice President of WACHOVIA FINANCIAL SERVICES, INC., proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Martha S. Faigen  
Martha S. Faigen Notary Public  
My Commission Expires:  
February 23, 2007

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LANDLORD:

BERKSHIRE-WEST 87<sup>th</sup> STREET, LLC  
By: Berkshire Development, LLC, Its  
Manager

Witness:

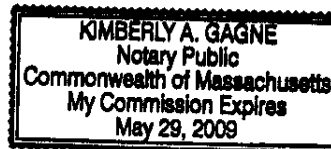
Aura M. Hayuski

By: [Signature]  
Name: Robert P. Cunningham  
Title: Chief Operating Officer

Wampden COMMONWEALTH OF MASSACHUSETTS  
County, SS.

On this 31<sup>st</sup> day of July, 2006, before me, the undersigned notary public, personally appeared Robert P. Cunningham, Chief Operating Officer of BERKSHIRE DEVELOPMENT, LLC, Manager of BERKSHIRE-WEST 87<sup>th</sup> STREET, LLC, proved to me through satisfactory evidence of identification, which was a valid Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of BERKSHIRE DEVELOPMENT, LLC and BERKSHIRE-WEST 87<sup>th</sup> STREET, LLC.

Kimberly A. Gagne  
Notary Public  
My Commission Expires: 5/29/09



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TENANT:

STAPLES THE OFFICE SUPERSTORE  
EAST, INC.

Witness:

*[Handwritten Signature]*

By: *[Handwritten Signature]*

Name:

Title:

**PAUL VAN CAMP**  
**Vice President, Property Management**

Property of Suffolk County Office

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

On this 17<sup>th</sup> day of July, 2006, before me, the undersigned notary public, personally appeared Paul Van Camp, as VP-Property Management of STAPLES THE OFFICE SUPERSTORE EAST, INC., proved to me through satisfactory evidence of identification, which was a valid Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of STAPLES THE OFFICE SUPERSTORE EAST, INC.

*[Handwritten Signature]*

Notary Public

My Commission Expires:

**SHERRIE KIRKER**  
**NOTARY PUBLIC**

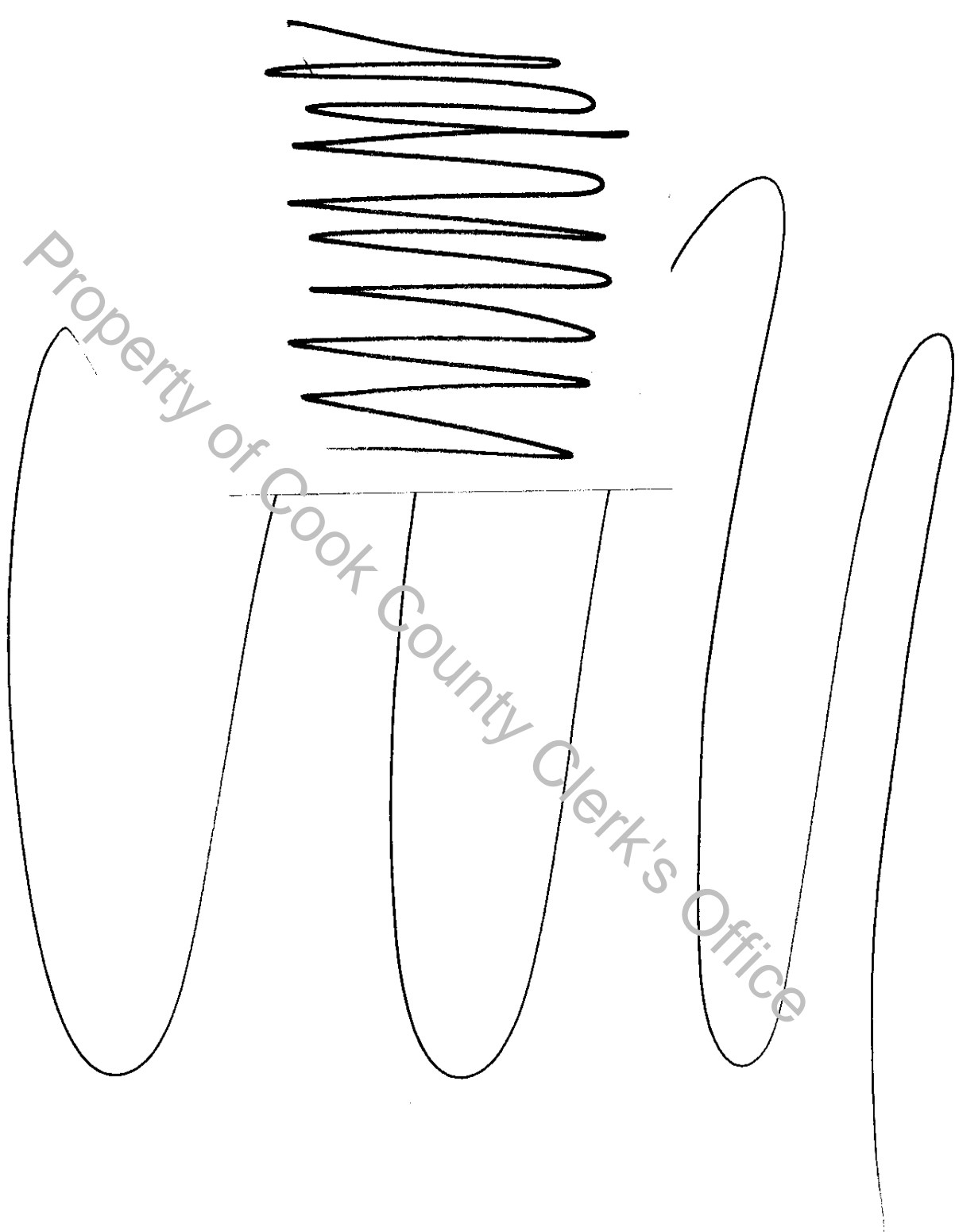
My Commission Expires ~~10-16-06~~

11-23-12



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Exhibit A



STREET ADDRESS: *161-167, 169, 207, 205, 223 West 87th Street*  
 CITY: CHICAGO COUNTY: COOK  
 TAX NUMBER: 25-04-200-003-0000 *25-04-200-016623*  
 LEGAL DESCRIPTION: *25-04-200-008609/018/015*

THE ESTATE OR INTEREST IN THE LAND DESCRIBED BELOW AND COVERED HEREIN IS: THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1.c. OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: SILVER DEVELOPMENT LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, AND BERKSHIRE-WEST 87TH STREET, LLC, A MASSACHUSETTS LIMITED LIABILITY COMPANY AS LESSEE, DATED MAY 20, 2005, A NOTICE OF WHICH LEASE WAS RECORDED ~ AS DOCUMENT ~, WHICH LEASE DEMISES THE FOLLOWING DESCRIBED LAND FOR A TERM OF YEARS BEGINNING AUGUST 20, 2006 AND ENDING AUGUST 20, 2031.

PARCEL 1:

A TRACT OF LAND IN THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS:  
 BEGINNING AT A POINT ON THE SOUTH LINE OF WEST 87TH STREET SAID POINT BEING 100 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST 1/4 OF SECTION 4 AND 305 FEET WEST OF THE NORTH AND SOUTH CENTER LINE OF SAID SECTION AND RUNNING THENCE EAST ALONG SAID SOUTH LINE OF WEST 87TH STREET, A DISTANCE OF 50 FEET TO AN INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND 255 FEET WEST OF SAID NORTH AND SOUTH CENTER LINE; THENCE SOUTH ALONG SAID PARALLEL LINE, A DISTANCE OF 357.68 FEET TO A POINT 457.68 FEET SOUTH OF SAID NORTH LINE OF THE NORTHEAST 1/4 OF SECTION 4; THENCE NORTHWESTERLY ON A STRAIGHT LINE A DISTANCE OF 61.57 FEET TO A POINT 421.21 FEET SOUTH OF THE SAID NORTH LINE OF THE NORTHEAST 1/4 AND 305 FEET WEST OF SAID NORTH AND SOUTH CENTER LINE OF THE NORTHEAST 1/4 OF SECTION 4; THENCE NORTH PARALLEL WITH SAID NORTH AND SOUTH CENTER LINE A DISTANCE OF 321.21 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

PARCEL 2:

AN IRREGULAR PARCEL OF LAND IN THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT A POINT OF INTERSECTION OF THE SOUTHERLY LINE OF WEST 87TH STREET WITH A LINE 5 FEET WEST OF AND PARALLEL TO NORTH AND SOUTH CENTER LINE OF SAID NORTHEAST 1/4 WHICH POINT OF INTERSECTION IS 69.66 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST 1/4, THENCE SOUTHERLY ON SAID LOT 5 FEET WEST OF AND PARALLEL TO SAID NORTH AND SOUTH CENTER LINE, A DISTANCE OF 575.27 FEET, THENCE NORTHWESTERLY ON A STRAIGHT LINE 307.91 FEET MORE OR LESS TO A POINT WHICH IS 255 FEET WEST OF SAID NORTH AND SOUTH CENTER LINE MEASURED AT RIGHT ANGLES THERETO AND 457.68 FEET SOUTH OF NORTH LINE OF SAID NORTHEAST 1/4, THENCE NORTHERLY FROM LAST DESCRIBED POINT ON A LINE WEST OF AND PARALLEL TO SAID NORTH AND SOUTH CENTER LINE, A DISTANCE OF 357.68 FEET TO THE POINT OF INTERSECTION OF SOUTHERLY LINE OF WEST 87TH STREET WITH THE LAST DESCRIBED COURSE; THENCE EASTERLY ON THE SOUTHERLY LINE OF WEST 87TH STREET, A DISTANCE OF 1.79 FEET TO A POINT; THENCE CONTINUING NORTHEASTERLY FROM THE LAST DESCRIBED POINT ON A CURVED LINE CONVEX TO THE SOUTH EAST HAVING A RADIUS OF 1033 FEET A DISTANCE OF 251 FEET MORE OR LESS TO POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

PARCEL 3:

AN IRREGULAR PLOT OF LAND IN THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: TO WIT:

COMMENCING AT A POINT OF INTERSECTION OF THE SOUTHERLY LINE OF WEST 87TH STREET WITH A LINE 305 FEET WEST OF AND PARALLEL TO NORTH AND SOUTH CENTER LINE OF SAID NORTHEAST 1/4 WHICH POINT OF INTERSECTION IS 100 FEET SOUTH OF NORTH LINE OF SAID NORTHEAST 1/4, THENCE SOUTHERLY ON SAID LINE 305 FEET WEST OF AND PARALLEL TO SAID NORTH AND SOUTH CENTER LINE, A DISTANCE OF 321.21 FEET THENCE NORTH WESTERLY ON A STRAIGHT LINE, 197.08 FEET MORE OR LESS TO A POINT 465 FEET WEST OF SAID NORTH AND SOUTH CENTER LINE MEASURED AT RIGHT ANGLES THERETO AND 304.51 FEET SOUTH OF NORTH LINE OF SAID NORTHEAST 1/4, THENCE NORTHERLY FROM LAST DESCRIBED POINT ON A LINE 465 FEET WEST OF AND PARALLEL TO SAID NORTH AND SOUTH CENTER LINE, A DISTANCE OF 204.51 FEET TO POINT OF



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INTERSECTION OF SOUTHERLY LINE OF WEST 87TH STREET WITH LAST DESCRIBED COURSE, THENCE EASTERLY ON SOUTHERLY LINE OF WEST 87TH STREET, A DISTANCE OF 160.01 FEET MORE OR LESS TO POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

PARCEL 4:

BEGINNING AT A POINT ON THE SOUTH LINE OF 87TH STREET AS RELOCATED; THENCE SOUTHWESTERLY ALONG SAID SOUTH LINE A DISTANCE OF 25 FEET MORE OR LESS TO THE WEST LINE OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 4; THENCE SOUTH ALONG SAID WEST LINE TO A POINT 436.70 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 4; THENCE EAST 170.96 FEET; THENCE NORTHWESTERLY AT AN ANGLE OF 69 DEGREES 12 MINUTES 35 SECONDS TO THE POINT OF BEGINNING.

ALSO A STRIP OF LAND BEING THE EASTERLY 5 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 4, LYING BETWEEN THE SOUTH LINE OF 87TH STREET AND A LINE 436.70 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 4, ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

THE ABOVE PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A TRACT OF LAND IN THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF 87TH STREET AS RELOCATED (AS DESCRIBED IN THE PLAT OF DEDICATION RECORDED MARCH 1, 1929 AS DOCUMENT 10297189) WITH A LINE DRAWN BETWEEN THE NORTHWEST CORNER OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 4 AND A POINT ON THE SOUTH LINE OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 4 WHICH IS 806.35 FEET WEST OF THE EAST LINE OF SAID SECTION 4; THENCE WESTERLY ALONG SAID SOUTHERLY LINE OF 87TH STREET 25 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 4; THENCE SOUTH ALONG SAID WEST LINE TO A POINT 436.70 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 4; THENCE EAST 170.96 FEET, MORE OR LESS, TO A POINT ON SAID LINE DRAWN BETWEEN THE <>NW CORNER OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 4 AND A POINT ON THE SOUTH LINE OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 4 WHICH IS 806.35 FEET WEST OF THE EAST LINE OF SAID SECTION 4; THENCE NORTHWESTERLY ALONG SAID LAST DESCRIBED LINE A DISTANCE OF 403.24 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

ALSO

THAT PART OF THE EASTERLY 5 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 4 LYING BETWEEN THE SOUTHERLY LINE OF 87TH STREET AS RELOCATED (SAID SOUTHERLY LINE BEING THE NORTHERLY LINE OF THE PROPERTY CONVEYED BY THE DEED RECORDED MARCH 1, 1929 AS DOCUMENT 10297191) AND A LINE 436.70 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 4, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

TRACT A

AN IRREGULAR PARCEL OF LAND IN THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMMENCING AT A POINT 436.70 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST 1/4 AND 5 FEET WEST OF THE NORTH AND SOUTH CENTERLINE OF SAID NORTHEAST 1/4; THENCE EASTERLY AT RIGHT ANGLES TO SAID NORTH AND SOUTH CENTERLINE A DISTANCE OF 175.96 FEET, MORE OR LESS, TO THE NORTHEASTERLY RIGHT OF WAY LINE OF THE BELT RAILWAY COMPANY OF CHICAGO; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 374.83 FEET; THENCE SOUTHERLY 79.05 FEET ON A LINE WHICH IS 307.60 FEET EAST OF AND PARALLEL WITH SAID NORTH AND SOUTH CENTERLINE; THENCE NORTHWESTERLY 385.02 FEET TO A POINT WHICH IS 5 FEET WEST OF SAID NORTH AND SOUTH CENTERLINE AND 640.03 FEET SOUTH OF THE NORTH LINE OF SAID NORTHEAST 1/4; THENCE NORTHERLY 203.33 FEET TO THE POINT OF BEGINNING; AND

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TRACT B

AN IRREGULAR PARCEL OF LAND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF TRACT A; THENCE SOUTHERLY ON AN EXTENSION SOUTH OF EASTERLY LINE OF TRACT A, 58.2 FEET; THENCE SOUTHWESTERLY AT AN ANGLE OF 129 DEGREES 01 MINUTES 47 SECONDS WITH LAST DESCRIBED COURSE AS MEASURED FROM NORTH TO SOUTHWEST A DISTANCE OF 50.4 FEET; THENCE NORTHWEST AT RIGHT ANGLES 166.2 FEET TO INTERSECTION WITH A LINE WHICH MAKES A RIGHT ANGLE WITH THE SOUTHWESTERLY LINE OF TRACT A FROM A POINT 147.45 FEET NORTHWESTERLY OF THE SOUTHEAST CORNER OF SAID TRACT A, WHICH POINT IS 44.52 FEET SOUTHWESTERLY FROM THE SOUTHWEST LINE OF SAID TRACT A AS MEASURED ALONG SAID RIGHT ANGLE LINE; THENCE SOUTHWESTERLY ON EXTENSION OF SAID RIGHT ANGLE LINE 16 FEET; THENCE NORTHWESTERLY 102.45 TO A POINT WHICH IS 44.2 FEET SOUTHWESTERLY OF, AS MEASURED AT RIGHT ANGLES TO, A POINT ON THE SOUTHWESTERLY LINE OF TRACT A WHICH IS 137.57 FEET SOUTHEASTERLY FROM THE SOUTHWEST CORNER OF TRACT A; THENCE NORTHWESTERLY TO THE SOUTHWEST CORNER OF TRACT A; THENCE SOUTHEASTERLY TO THE POINT OF BEGINNING.

PARCEL 6:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 5 AS SET FORTH AND DEFINED IN QUIT CLAIM DEED AND GRANT OF EASEMENT DATED MAY 8, 1974 AND RECORDED MAY 10, 1974 AS DOCUMENT 22713871.