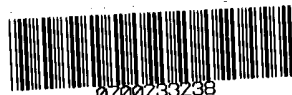


# UNOFFICIAL COPY



Doc#: 0700233238 Fee: \$78.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/02/2007 11:42 AM Pg: 1 of 10

WHEN RECORDED RETURN TO:  
Angela Hsu, Esq.  
Duke Realty Corporation  
3950 Shackleford Road, Suite 300  
Duluth, GA 30096

PINS: 12-30-300-011-0000  
12-30-300-013-0000

Space above this line for recorder's use only

## FIRST MODIFICATION TO DECLARATION OF EASEMENTS

THIS FIRST MODIFICATION TO DECLARATION OF EASEMENTS (this "**Modification**") is made this 8<sup>th</sup> day of December, 2006, by DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership ("**Duke**"), NL QUALIFIED, LLC, a Illinois limited liability company ("**NL**") and CELLI LEASING COMPANY, an Illinois corporation ("**Lot 2 Owner**").

### RECITALS:

WHEREAS, NL is the current owner of that certain parcel of improved real property known as **Lot 1** pursuant to that plat of subdivision known as the Northlake Two Subdivision recorded as Document No. 0427244049, in the office the recorder of Cook County, Illinois (the "**Plat**");

WHEREAS, Lot 2 Owner is the current owner of that certain parcel of unimproved real property known as **Lot 2** of Northlake Two Subdivision pursuant to the Plat;

WHEREAS, Duke was the predecessor in interest for Lot 1 and Lot 2 and is the current owner of that certain parcel of improved real property known as **Lot 3** of Northlake Two Subdivision pursuant to the Plat;

WHEREAS, Duke recorded that certain Declaration of Easements (the "**Declaration**") dated September 29, 2004, as Document No. 0428118172 in the office the recorder of Cook County, Illinois, which Declaration affects Lots 1, 2 and 3 and establishes certain joint driveway and joint drainage easements;

WHEREAS, Duke, NL and the Lot 2 Owner as the owners of the Development wish to amend the Declaration to modify the maintenance obligations thereunder as set forth herein;

WHEREAS, Duke created certain easements pursuant to the Plat which easements were referenced in the Declaration and which were subsequently abrogated pursuant to that Plat of Easement Abrogation recorded as Document No. 0619539001 (the "**Abrogation Plat**") and further relocated by Duke pursuant to that Plat of Easement Grant recorded as Document No. 0619539002 (the "**Modified Plat**");

WHEREAS, Duke, NL and the Lot 2 Owner as the owners of the Development wish to amend the Declaration to reflect changes made to the Plat by the Abrogation Plat and the Modified Plat by deleting Exhibit B-2 and substituting a new Exhibit B-2 as set forth herein;

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NOW THEREFORE, the owners of the Development hereby amend, create, establish, and modify, for the benefit of owners of the Development and the successors-in-title to owners of the Development, as well as the tenants of the Lots, and their invitees, customers, agents, employees, licensees and guests, the following:

1. Substitution of Exhibit B-2 Showing the Drainage Easement Areas in the Joint Drainage Easement. Duke created certain drainage easements pursuant to the Plat which drainage easements were referenced in the Declaration and which were subsequently abrogated pursuant to the Abrogation Plat and which were further relocated by Duke pursuant to the Modified Plat. Accordingly the owners of the Development hereby delete Exhibit B-2 and substitute in lieu thereof the new Exhibit B-2 attached hereto and incorporated herein by this reference (the "New Exhibit B-2") which New Exhibit B-2 shows in slant hatching the current Drainage Easement Areas after the changes made by the Abrogation Plat and the Modified Plat.
  
2. Maintenance Obligations/Costs for the Joint Driveway Easement. Paragraph 1b. of the Declaration is hereby deleted in its entirety and the following is inserted in lieu thereof: "The owner of Lot 3 shall keep and maintain the Joint Driveway Easement Area: (i) in good condition and repair (and replaced as necessary), and (ii) in compliance with all applicable laws, rules, regulations, ordinances, and this Declaration. Prior to the issuance of a certificate of occupancy with respect to any vertical structures or buildings on Lot 2 with a footprint of equal to or greater than 2000 gross square feet ("**Lot 2 C of O Date**"), the owner of Lot 1 and the owner of Lot 3 shall share equally in the cost of maintaining the Joint Driveway Easement Area (i) in good condition and repair (and replaced as necessary), and (ii) in compliance with all applicable laws, rules, regulations, ordinances, and this Declaration, and the owner of Lot 1 shall reimburse the owner of Lot 3 (within thirty (30) days following the such owner's receipt of an invoice therefor) for its share in the customary and ordinary costs and expenses incurred by the owner of Lot 3 to keep and maintain the Joint Driveway Easement Area (i) in good condition and repair (and replaced as necessary), and (ii) in compliance with all applicable laws, rules, regulations, ordinances, and this Declaration. Thereafter, starting from the Lot 2 C of O Date, each of the owner of Lot 1 and the owner of Lot 2 shall reimburse the owner of Lot 3 (within thirty (30) days following the such owner's receipt of an invoice therefor) for its Prorata Share (hereinafter defined) of the customary and ordinary costs and expenses incurred by the owner of Lot 3, to keep and maintain the Joint Driveway Easement Area (i) in good condition and repair (and replaced as necessary), and (ii) in compliance with all applicable laws, rules, regulations, ordinances, and this Declaration. For purposes of this Declaration, an owner's "Prorata Share" shall be calculated as a fraction, using the acreage of each Lot as the numerator and the aggregate acreage of the Development as the denominator. Notwithstanding the foregoing, the owner of any Lot may perform any emergency repairs necessary to the Joint Driveway Easement Area, at its own cost and expense, to prevent damage or loss of service to its Lot or to prevent imminent injury to persons or property."
  
3. Maintenance Obligations/Costs for the Joint Drainage Easement. Paragraph 2b. of the Declaration is hereby deleted in its entirety and the following is inserted in lieu thereof: "Prior to, the Lot 2 C of O Date, the owner of Lot 3 shall keep and maintain the Drainage Pond and the drainage lines and related facilities within the Drainage Easement Areas (i) in good condition and repair (and replaced as necessary), and (ii) in compliance with all applicable laws, rules, regulations, ordinances, and this Declaration, and the owner of Lot 1 and the owner of Lot 3 shall share equally in the cost of maintaining the Drainage Pond and the drainage lines and related facilities within the Drainage Easement Areas, and the owner of Lot 1 shall reimburse the owner of Lot 3 (within thirty (30) days following the such owner's receipt of an invoice therefor) for its share in the customary and ordinary costs and expenses incurred by the owner of Lot 3 in connection with such maintenance. Thereafter, starting from the Lot 2 C of O Date, each of the owner of Lot 1 and the owner of Lot 2 shall reimburse the owner of Lot 3 (within thirty (30) days following the such owner's receipt of an invoice therefor) for its Prorata Share (hereinafter defined)

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of the customary and ordinary costs and expenses incurred by the owner of Lot 3 from and after the Lot 2 C of O Date, since the Lot 3 owner is responsible to maintain the Drainage Pond and the drainage lines and related facilities within the Drainage Easement Areas in good repair and in compliance with all applicable laws, rules, regulations and ordinances. The owner of each Lot shall obtain insurance for that portion of the Drainage Pond and the drainage lines and related facilities within the Drainage Easement Areas that lies on such owner's Lot. The owner of each Lot shall, at such owner's sole cost and expense, keep the drainage lines and related facilities located on such owner's Lot (i) in good condition and repair (and replace as necessary), and (ii) in compliance with all applicable laws, rules, regulations and ordinances. For purposes of this Declaration, an owner's "Prorata Share" shall be calculated as a fraction, using the acreage of each Lot as the numerator and the aggregate acreage of the Development as the denominator. Notwithstanding the foregoing, the owner of any Lot may perform any emergency repairs necessary to the Drainage Easement Areas, at such owner's sole cost and expense, to prevent damage or loss of service to its Lot or to prevent imminent injury to persons or property."

4. Damage to Drainage Facilities. Paragraph 2c. of the Declaration is hereby deleted in its entirety and the following is inserted in lieu thereof: "Notwithstanding the provisions of subparagraph 2 b. above, in the event the owner of a Lot (or its tenants, subtenants, employees, agents, customers or invitees) damages the drainage lines and/or related facilities located on another Lot by its own negligence or willful act or through any non-customary use, such owner shall be responsible for repairing said damage at its sole cost and expense. In addition, in the event the construction of improvements upon Lot 1, Lot 2 and/or Lot 3 causes an undue increase in silt accumulation in the Detention Pond, any cost or expense incurred in removal of silt from the Detention Pond shall be paid for by the party responsible for creating the silt, and, if repaired by the owner of Lot 3, shall be reimbursed in accordance with the invoicing procedure set forth in subparagraph 2(b) above."

5. Notices. Paragraph 6 of the Declaration is deleted in its entirety and the following inserted in lieu thereof:

Any notice sent pursuant to this Declaration shall be in writing and sent by personal delivery, overnight mail or delivery service, or United States certified or registered mail, return receipt requested, with adequate postage prepaid. Notices given by personal delivery or by overnight mail or delivery service shall be deemed effective upon delivery. Notice given by United States certified or registered mail, return receipt requested shall be effective upon being so deposited, but the time period in which a response to any notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the notice as evidenced by the return receipt. Rejection or other refusal by the addressee to accept or the inability of the United States Postal Service to deliver because of a changed address of which no notice was given shall be deemed to be the receipt of the notice sent.

Any notice sent to an owner shall be delivered to the following addresses:

**DUKE:** Duke Realty Limited Partnership  
c/o Duke Realty Corporation  
6133 N. River Road, Suite 200  
Rosemont, Illinois 60018  
Fax: 847/232-5694

With copy to: Duke Realty Corporation  
6133 N. River Road, Suite 200  
Rosemont, Illinois 60018

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Attn: Legal Dept. - Chicago Market Attorney  
Fax: 847/232-5694

NL: NL Qualified, LLC  
c/o The Koman Group, L.L.C.  
One City Place Drive, Suite 540  
Creve Coeur, Missouri 63141  
Attention: General Counsel

With copy to: Craig Olschansky, Esq.  
Thompson Coburn LLP  
One US Bank Plaza  
St. Louis, Missouri 63101  
Fax: 314/552-7483

LOT 2 OWNER:  
Celli Leasing Company  
10328 W. Belle Plaine Avenue  
Schiller Park, Illinois 60176  
Attn: Carlo Celli  
Fax: 847/928-6228

6. **Enforcement.** The following is deemed appended to the Declaration as Paragraph 8 thereof: "In the event that the owner of a Lot in the Development incurs any costs or expenses which are to be paid or reimbursed by the owners of other Lots in the Development pursuant to this Declaration, the owner that was so billed shall pay such costs or expenses to the invoicing Lot owner within thirty (30) days after receipt of a written notice detailing such costs, and if the statement is not so paid, the amount shall bear interest at a rate equal to the rate publicly announced by the Wall Street Journal Eastern Edition, or its successor at its "prime rate" plus two percent (2%) per annum, or at the highest rate permitted by law, whichever is less, from the date of receipt of the statement until the date payment is made. All unpaid customary and ordinary costs and expenses shall be evidenced by statements delivered to the owner(s) as required hereinabove, together with interest, costs, and related reasonable attorney's fees. If such failure to pay continues after the passage of the thirty-first (31<sup>st</sup>) day after receipt of such notice, the invoicing owner may institute suit to collect all amounts due, including reasonable attorney's fees. In that event, amounts remitted to the invoicing owner pursuant to the terms hereof shall include reasonable attorneys' fees and costs of collection. In the event of a dispute between the owners about the any costs or expense which are to be paid or reimbursed pursuant to the terms of this Declaration, the owners agree to at all times cooperate with one another regarding such dispute, which obligation shall include, but shall not be limited to, providing supporting documentation, receipts and other evidence of payment reasonably requested by the other parties."

7. **Miscellaneous.** Except as hereinabove provided, all other terms and conditions of the Declaration shall remain unchanged and in full force and effect, and are hereby ratified and confirmed by the parties hereto. This Modification may be signed in multiple counterparts, with signature to each being signature to all such counterparts, each of which, when taken together, shall constitute a fully executed and binding original Modification. This Modification is deemed part of the Declaration for all purposes including, without limitation, the provisions of Paragraph 3 thereof.

8. **Modifications.** Paragraph 4 of the Declaration is hereby deleted in its entirety and the following is inserted in lieu thereof: "This Declaration may be amended only by a written instrument executed by the then current fee simple owner of each Lot which consent shall not be unreasonably withheld or conditioned and shall be given or denied within thirty (30) days after a request by the then current fee

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simple owner of a Lot requesting such consent. The party requesting the modification shall pay all reasonable professional fees incurred in reviewing the proposed modification, including reasonable attorneys fees."

9. Definition of Terms. All capitalized terms, which are not defined herein, shall have the same meaning ascribed to them in the Declaration.

IN WITNESS WHEREOF, the owners of Lots 1, 2 and 3 have executed this Modification as of the date first set forth above.

"DUKE"

DUKE REALTY LIMITED PARTNERSHIP,  
an Indiana limited partnership

By: DUKE REALTY CORPORATION, an  
Indiana corporation, its general partner, d/b/a  
Duke Realty of Indiana Corporation

By: [Signature]  
Name: John R. Gaskin  
Title: Senior Vice President

### NOTARY ACKNOWLEDGEMENT

STATE OF Georgia )  
 ) ss:  
COUNTY OF Gwinnett )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John R. Gaskin, whose name as Sr. Vice President of Duke Realty Corporation d/b/a Duke Realty of Indiana Corporation, the general partner of Duke Realty Limited Partnership, an Indiana limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the said instrument, he, as such Officer, and with full authority, executed the same voluntarily for and as the act of such corporation and limited partnership.

Given under my hand and seal this 8th day of December, 2006.

Notary Public, Gwinnett County, Georgia  
My Commission Expires April 1, 2008

[Signature]  
Notary Public



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## NL QUALIFIED, LLC

By: 1031 Exchange Service L.L.C., its sole member

By: *Tonia L. Shelton*  
Name: Tonia L. Shelton  
Title: Manager

### NOTARY ACKNOWLEDGEMENT

STATE OF Missouri )  
 ) ss:  
COUNTY OF St. Louis )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Tonia L. Shelton, whose name as Manager of 1031 Exchange Service L.L.C., the sole member of NL Qualified, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the said instrument, she, as such manager, and with full authority, executed the same voluntarily for and as the act of such limited liability company.

Given under my hand and seal this 7th day of December, 2006.

GAIL A. SINNETT  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: May 5, 2007

*Gail A. Sinnett*  
Notary Public

[NOTARIAL SEAL]

[SIGNATURES CONTINUE ON THE NEXT PAGE]

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[SIGNATURES CONTINUE ON THE NEXT PAGE]

“LOT 2 OWNER”

CELLI LEASING COMPANY

By: *E.M. Celli*  
Name: E.M. CELLI  
Title: PRES.

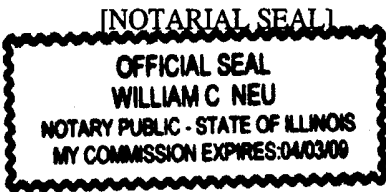
NOTARY ACKNOWLEDGEMENT

STATE OF ILLINOIS )  
 ) ss:  
COUNTY OF DUPAGE )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that E.M. CELLI as the PRESIDENT of Celli Leasing Company is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the said instrument, he, with full authority, executed the same voluntarily for and on the act of such Corporation.

Given under my hand and seal this 1<sup>ST</sup> day of December, 2006.

*William C. Neu*  
Notary Public



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NEW EXHIBIT B-2

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REVISED EXHIBIT B-2

DUKE REALTY CORPORATION  
NORTHLAKE TWO SUBDIVISION

P.L.N. 12-30-300-011  
P.I.N. 12-30-300-015

14

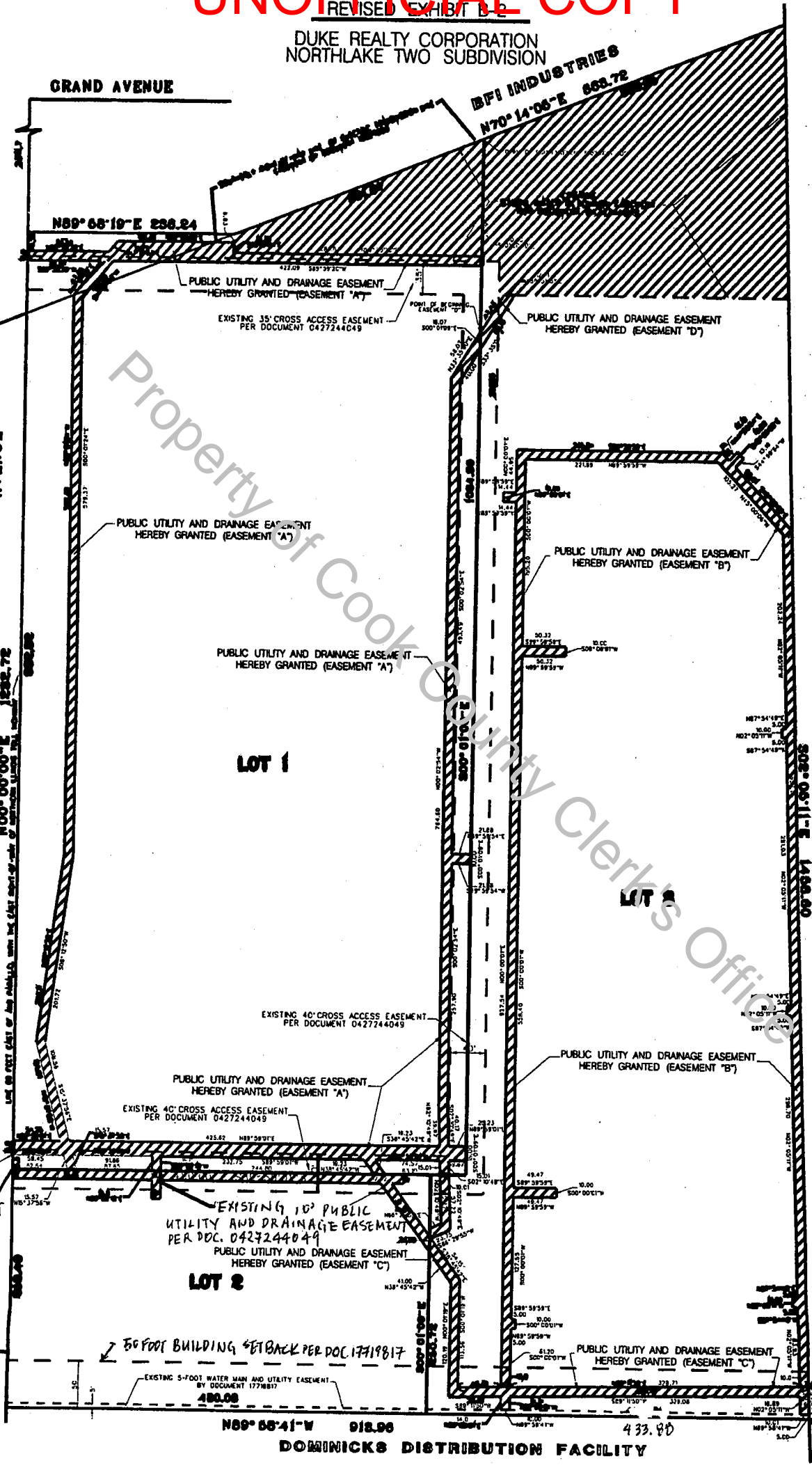


I-294 / TRS STATE TOLLWAY  
CLEAR WIDTH OF STATE TOLLWAY SHALL BE MAINTAINED

POINT OF COMMENCEMENT  
EASEMENT "A"  
NORTHWEST  
CORNER OF LOT  
1

NEW PROVISIO RAIL YARDS

POINT OF BEGINNING  
EASEMENT "B"  
POINT OF BEGINNING  
EASEMENT "C"  
POINTS OF BEGINNING  
EASEMENTS  
"B" AND "C"



DOMINICKS DISTRIBUTION FACILITY

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LOTS 1, 2 AND 3 IN DUKE REALTY CORPORATION NORTHLAKE TWO SUBDIVISION, A SUBDIVISION OF PART OF SECTIONS 30 AND 31, TOWNSHIP 40, NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office