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# UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING MAIL TO:

Christyl Marsh  
Cohen, Salk & Huvar, P.C.  
630 Dundee Road, Suite 120  
Northbrook, Illinois 60062

Loan # 103287



Doc#: 1120203002 Fee: \$58.25  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/21/2011 09:47 AM Pg: 1 of 11

Property of Cook County, Ill.

## SIXTH MODIFICATION AGREEMENT

**THIS SIXTH MODIFICATION AGREEMENT** (hereinafter referred to as this "Modification Agreement") made as of this 5th day of March, 2011, by and among CARROLL PLACE, LLC, an Illinois limited liability company ("Borrower"), ROBERT C. KING (the "Guarantor"), PARC INVESTMENT PROPERTIES LLC, an Illinois limited liability company ("Parc") (Borrower, Guarantor, and Parc are hereinafter collectively referred to as the "Obligors"), and MB FINANCIAL BANK, N.A. ("Lender").

### WITNESSETH:

**WHEREAS**, Borrower has executed and delivered to Lender that certain amended and restated mortgage note dated as of June 1, 2007 in the original principal sum of One Million Six Hundred Eighty Thousand and 00/100 Dollars (\$1,680,000.00) (as modified, restated or replaced from time to time, the "Note"), which Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor as modified, restated or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents"):

- (i) mortgage and security agreement dated as of October 31, 2005 made by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office"), as Document No. 0531845012 (the "Oak Mortgage") encumbering property commonly known as 1881 Oak Street, Evanston, Illinois and legally described on **Exhibit "A"** attached hereto and made a part hereof (the "Oak Premises");
- (ii) junior mortgage and security agreement dated as of November 30, 2007 made by Parc in favor of Lender, recorded in the Recorder's Office, as Document No. 0734039102 (the "Maple Mortgage") (the Oak Mortgage and Maple Mortgage are sometimes hereinafter referred to, individually, as the "Mortgage", and, collectively, as the "Mortgages") encumbering property commonly known as 1890 Maple Avenue, Evanston, Illinois and legally described on **Exhibit "B"** attached hereto and made a part hereof (the "Maple Premises") (the Oak Premises and the Maple Premises are sometimes hereinafter referred to, collectively, as the "Premises");

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- (iii) assignment of rents and of lessor's interest in leases dated as of October 31, 2005 made by Borrower in favor of Lender encumbering the Oak Premises, recorded in the Recorder's Office as Document No. 0531845013 (the "Assignment of Rents");
- (iv) guaranty dated as of October 31, 2005 made by Guarantor in favor of Lender (the "Guaranty"); and
- (v) environmental indemnity agreement dated as of October 31, 2005 made by Borrower and Guarantor in favor of Lender.

**WHEREAS**, the original principal sum of the loan was increased from \$1,500,000.00 to \$1,680,000.00 and the Loan Documents were previously modified by that certain Modification Agreement dated as of June 1, 2007, made by and among Borrower, Guarantor and Lender and recorded in the Recorder's Office as Document No. 0719044043, whereby the principal amount of the loan was increased and the maturity date of the loan was extended to December 1, 2008.

**WHEREAS**, the Note and the Loan Document were further modified pursuant to that certain modification agreement dated as of November 30, 2007, by and among Borrower, Guarantor and Lender, recorded in the Recorder's Office as Document No. 0734039106, whereby (i) the Note was amended to cross-default it with that certain mortgage note dated as of November 30, 2007 made by Parc in favor of Lender in the original principal amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) (as modified, restated or replaced from time to time, the "Parc Note"), and (ii) Borrower executed a junior mortgage and security agreement (the "Junior Mortgage") encumbering the Oak Premises as additional collateral securing the Parc Note.

**WHEREAS**, the Note and the Loan Documents were further modified pursuant to that certain third modification agreement dated as of December 1, 2008, by and among Borrower, Guarantor, Parc and Lender, recorded in the Recorder's Office as Document No. 0902750044, whereby among other modifications, the following changes were made to the Note and Loan Documents: (i) the interest rate was adjusted, (ii) an interest rate floor of 5.5% per annum was established, and (iii) the maturity date was extended to December 1, 2009.

**WHEREAS**, the Note and the Loan Documents were further modified pursuant to that certain fourth modification agreement dated as of December 1, 2009, by and among Borrower, Guarantor, Parc and Lender, recorded in the Recorder's Office as Document No. 1001234043, whereby among other modifications, the following changes were made to the Note and Loan Documents: (i) adjusting the interest rate charged on the Note to a variable rate per annum based upon the Lender's reference rate, (ii) changing the interest rate floor to 6.0% per annum, (iii) extending the maturity date of the Note to December 5, 2010, and (iv) changing the monthly payment date to be the fifth (5<sup>th</sup>) day of each month.

**WHEREAS**, the Note and the Loan Documents were further modified pursuant to that certain fifth modification agreement dated as of December 5, 2010, by and among Borrower, Guarantor, Parc and Lender, recorded in the Recorder's Office as Document No. 1104556084, whereby among other modifications, the following change was made to the Note and Loan Documents: the maturity date was extended to March 5, 2011.

**WHEREAS**, Parc is controlled by and substantially owned by Guarantor.

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**WHEREAS**, Obligors are desirous of (i) extending the maturity date of the Note to July 5, 2011, (ii) adjusting the interest rate, and (iii) making certain other changes thereto, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

**NOW THEREFORE**, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Oak Mortgage held by Lender is a valid, first and subsisting lien on the Oak Premises, that the lien of the Maple Mortgage held by Lender is a valid and subsisting junior lien on the Maple Premises, and that the execution of this Modification Agreement will not impair the liens of said Mortgages and that there are no existing subsequent mortgages or other liens subsequent to the liens of the Mortgages held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct.
2. The Note is hereby modified as follows:
  - a. The phrase "equal to a variable rate per annum equal to one percent (1.0%) above the Reference Rate (as hereinafter defined)" as it appears in Section 2.1 is deleted and replaced with the phrase "equal to a variable rate per annum equal to one and three-quarters percent (1.75%) above the Reference Rate (as hereinafter defined)".
  - b. The Maturity Date of the Note is hereby extended to July 5, 2011 (as such maturity date may be extended from time to time in the Lender's sole discretion). Borrower shall continue to make monthly payments of interest only on the Note continuing on March 5, 2010, and on the fifth (5<sup>th</sup>) day of each month thereafter through and including the month immediately prior to the month in which the Maturity Date (as herein modified, and as such maturity date may be extended from time to time in the Lender's sole discretion) occurs, followed by a final payment of all accrued but unpaid interest and the unpaid principal balance of the Note on the Maturity Date (as herein modified, and as such maturity date may be extended from time to time in the Lender's sole discretion).
  - c. The following is added a new paragraph 12:
 

**"12. Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lender to identify Borrower in accordance with the Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control

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("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended."

3. The Oak Mortgage is hereby modified by deleting the date "March 5, 2011" in the first "Whereas" paragraph on page 1 and replacing it with the date "July 5, 2011 (as such maturity date may be extended from time to time in the Mortgagee's sole discretion)".

4. The Maple Mortgage is hereby modified by deleting the date "March 5, 2011" in the first "Whereas" paragraph on page 1 and replacing it with the date "July 5, 2011 (as such maturity date may be extended from time to time in the Mortgagee's sole discretion)".

5. Concurrent with the execution of this Modification Agreement, Borrower shall deposit an additional \$23,979.00 into the Blocked Account (as such term is defined in the Blocked Account Agreement) to replenish the interest reserve.

6. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Note, as hereby modified. Each reference in the Loan Documents to the term "Maturity Date" shall hereafter mean July 5, 2011.

7. Except for the modifications stated herein, the Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the loan evidenced by the Note shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Note and other Loan Documents, to forgive or waive any violation, default or breach under the Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

8. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees").

9. The Premises described in the Mortgages shall remain in all events subject to the liens, charges or encumbrances of the Mortgages, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to affect the liens, charges or encumbrances of the Mortgages, or the priority thereof over any other liens, charges, or encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Note, the Mortgages and/or the Assignment of Rents, nor shall anything herein contained or done in pursuance thereof affect or

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be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

10. This Modification Agreement shall extend to and be binding upon each of the Obligors and their respective heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

11. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Note, the Guaranty and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Note, the Guaranty and other Loan Documents, as so amended.

Without limiting the generality of the foregoing paragraph, the Guarantor hereby further represents and warrants to the Lender with the intent that the Lender rely thereon, as follows with regard to the Guaranty, as hereby modified: (a) the Guaranty is in full force and effect and is binding and enforceable against the Guarantor in accordance with its terms; (b) the Guarantor irrevocably consents and agrees to the Borrower's execution and delivery of this Modification Agreement; (c) the liability of the Guarantor to the Lender under the Guaranty shall in no way be affected, modified, altered, or discharged in any fashion by the Borrower's execution, delivery or performance of this Modification Agreement; (d) the Guarantor hereby restates and reaffirms to Lender all terms and provisions of the Guaranty as if set forth in full herein; and (e) the Guarantor does not possess any claims, defenses, offsets, or counterclaims against the enforcement of the Guaranty as of the date hereof, and any and all such claims, defenses, offsets and counterclaims, whether known or unknown, are forever waived and released, and the Guarantor is unconditionally liable under the Guaranty, for the payment and performance of all present and future indebtedness and all other obligations described therein.

12. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois (exclusive of choice of law principals), including all matters of construction, validity and performance.

13. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

14. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

15. Lender's consent to this Modification Agreement shall be subject to Lender (or Lender's nominee) having received the following in a form and substance acceptable to Lender on or before June 30, 2011 (the "Modification Termination Date"):

- a. Verification of the Guarantor's liquidity position; and
- b. Such other documents as Lender may reasonably require.

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The Obligors' failure to deliver the aforementioned documents and items to Lender on or before the Modification Termination Date shall, at the option of Lender, result in this Modification Agreement (including all agreements and waivers of Lender contained herein) being null and void.

16. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

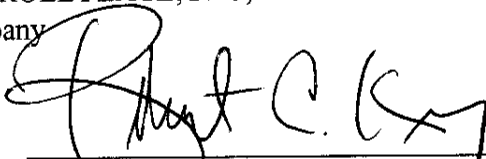
TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

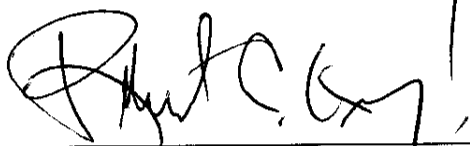
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IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

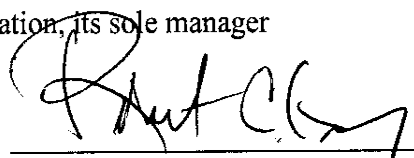
CARROLL PLACE, LLC, an Illinois limited liability company

By:   
Robert C. King, its sole Member

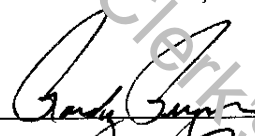
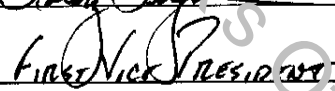
  
ROBERT C. KING, individually

PARC INVESTMENT PROPERTIES LLC, an Illinois limited liability company

By: CARROLL PROPERTIES, INC., an Illinois corporation, its sole manager

By:   
Robert C. King, President

MB FINANCIAL BANK, N.A.

By:   
Its:  Frank Nick, President

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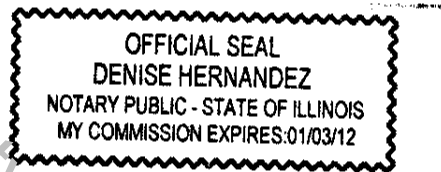
STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that ROBERT C. KING personally known to me as the sole Member of CARROLL PLACE, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as such sole Member of said limited liability company, pursuant to authority, given by the member of said limited liability company, as his own and free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 01/03/12



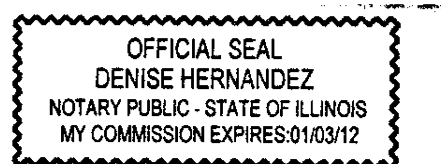
STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that ROBERT C. KING, personally known to me to be the same person whose name is subscribed to the foregoing instrument, personally appeared before me this day and of his own free will, subscribed his name to the foregoing instrument for the uses and purposes therein contained.

Given under my hand and notarial seal this 30<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 01/03/12





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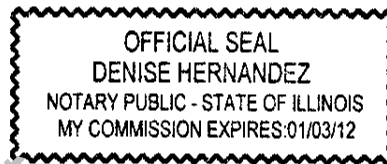
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that ROBERT C. KING personally known to me as president of CARROLL PROPERTIES, INC., an Illinois corporation, which is the sole manager of PARC INVESTMENT PROPERTIES LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30TH day of June, 2011.

*Denise Hernandez*  
Notary Public

My Commission Expires: 01/03/12



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Randy Perryman, of MB FINANCIAL BANK, N.A., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Randy Perryman, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30th day of June, 2011.

*Rose Marie Thomas*  
Notary Public

My Commission Expires: May 1, 2015



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## EXHIBIT "A"

### OAK PREMISES LEGAL DESCRIPTION

PINS: 11-18-112-011-0000 (affects lot 9 [except the west 26 feet thereof] of parcel 1)  
 11-18-112-012-0000 (affects the west 1/2 of lot 8 of parcel 1)  
 11-18-112-013-0000 (affects the east 1/2 of lot 8 of parcel 1)  
 11-18-112-014-0000 (affects lots 6 and 7 of parcel 1)  
 11-18-112-045-0000 (affects parcel 2 and other property)

ADDRESS: 1381 Oak Street, Evanston, Illinois 60201

#### PARCEL 1:

LOTS 6, 7, 8 AND LOT 9 (EXCEPT THE WEST 26 FEET THEREOF) IN BLOCK 1 IN CIRCUIT COURT SUBDIVISION, IN PARTITION OF LOT 22 IN COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS;

ALSO, THE NORTH HALF OF THE VACATED 16 FOOT ALLEY LYING SOUTH OF AN ADJOINING SAID LOTS 6, 7, 8 AND LOT 9 (EXCEPT THE WEST 26 FEET THEREOF).

#### PARCEL 2:

THE WEST 20 FEET OF LOT 1 IN CITY CONSOLIDATION NO. 1 OF LOTS 1, 2, 3, 4 AND 5 IN CIRCUIT COURT SUBDIVISION IN PARTITION OF LOT 22, BEING THAT TRIANGULAR PIECE OF LAND BOUNDED ON THE NORTH BY EMERSON STREET, ON THE SOUTHWESTERLY BY EAST RAILROAD AVENUE, AND ON THE EAST BY MAPLE AVENUE (EXCEPT 1 ACRE IN THE NORTHWEST CORNER THEREOF) IN COUNTY CLERK'S DIVISION, IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS, TOGETHER WITH THE WEST 20 FEET OF THE NORTH HALF OF THE VACATED 16 FOOT ALLEY LYING SOUTH OF AND ADJOINING SAID LAND.

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## EXHIBIT "B"

### MAPLE PREMISES LEGAL DESCRIPTION

PIN: 11-18-112-045-0000 (affects parcel 1 and other property)

ADDRESS: 1890 Maple Avenue, Evanston, Illinois

#### PARCEL 1:

LOT 1 (EXCEPT THE WEST 20 FEET THEREOF) IN CITY CONSOLIDATION NO. 1 OF LOTS 1, 2, 3, 4 AND 5 IN CIRCUIT COURT SUBDIVISION OF PARTITION OF LOT 22, BEING A TRIANGULAR PIECE OF LAND BOUNDED ON THE NORTH BY EMERSON STREET, ON THE SOUTHWESTERLY BY EAST RAILROAD AVENUE AND ON THE EAST BY MAPLE AVENUE (EXCEPT 1 ACRE IN THE NORTHWEST CORNER THEREOF) IN COUNTY CLERK'S DIVISION, IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS, TOGETHER WITH THE NORTH HALF OF THE VACATED 16 FOOT ALLEY LYING SOUTH OF AND ADJOINING THE SUBJECT LAND (EXCEPT THE WEST 20 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN ACCESS EASEMENT AGREEMENT RECORDED OCTOBER 30, 2000 AS DOCUMENT 00852574 MADE BY AND BETWEEN EVANSTON NORTHWESTERN HEALTHCARE CORPORATION, CHS 1033 UNIVERSITY ASSOCIATES LIMITED PARTNERSHIP, 1881 OAK LLC AND 1890 MAPLE LLC FOR INGRESS, EGRESS, ACCESS AND VEHICULAR MANEUVERING AND EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN ACCESS EASEMENT AGREEMENT RECORDED APRIL 27, 2007 AS DOCUMENT 0711733064 MADE BY AND BETWEEN 1033 UNIVERSITY, LLC, CARROLL PLACE, LLC AND 1890 MAPLE LLC FOR PEDESTRIAN AND VEHICULAR PASSAGE, CIRCULATION AND INGRESS AND EGRESS.