



Doc#: 1135331101 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/19/2011 04:13 PM Pg: 1 of 11

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This Document Prepared by  
and after Recording Return to:

Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606  
Attn: Derek L. Cottier, Esq.

### ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES ("Assignment") is made and delivered as of December 19, 2011 by VICEROY HOTEL LIMITED PARTNERSHIP, an Illinois limited partnership ("Assignor"), to and for the benefit of U.S. BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

#### RECITALS:

A. Lender has agreed to make a construction bridge loan to Assignor in the stated principal amount of Six Million One Hundred Twenty-Two Thousand Eight Hundred Seventy-Seven and No/100 Dollars (\$6,122,877.00) (the "Loan"). The Loan is being made pursuant to the terms and conditions of that certain Construction Loan Agreement by and between Assignor and Lender of even date herewith (as amended, modified, replaced or restated from time to time, the "Loan Agreement"). The Loan is evidenced by that certain Promissory Note of even date herewith made by Assignor to the order of Lender in the stated principal amount of \$6,122,877.00 (as amended, modified, replaced or restated from time to time, the "Note").

B. A condition precedent to Lender's making of the Loan to Assignor is the execution and delivery by Assignor of this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. **Definitions.** All capitalized terms which are not defined herein shall have the meanings ascribed thereto in that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith from Assignor for the benefit of Lender (as amended, modified, replaced or restated from time to time, "Mortgage") given as security for the Loan.

2. **Grant of Security Interest.** Assignor hereby grants, transfers, sets over and assigns to Lender, all of the right, title and interest of Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts and other receivables arising out of or from the land legally described on **Exhibit A** attached hereto and made a part hereof and all buildings and other improvements located thereon (said land and improvements being hereinafter

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referred to collectively as the "Premises"), including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (each a "Lease" and collectively the "Leases") now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit, including but not limited to: (A) that certain Lease Agreement by and between Assignor and St. Leonard's Ministries dated as of even date herewith, and (B) that certain Lease Agreement by and between Assignor and St. Leonard's Ministries dated as of even date herewith (jointly, the "Commercial Space Leases"); (iii) that certain Agreement to Enter Into Housing Assistance Payments Contract by and between Assignor and the Chicago Housing Authority dated December 14, 2011 (subject, with respect to Lender's right to enforce the obligations of the CHA thereunder, to the prior written consent of the Chicago Housing Authority and the Secretary of Housing and Urban Development); (iv) that certain Housing Assistance Payments Contract to be entered into by and between Assignor and the Chicago Housing Authority (subject, with respect to Lender's right to enforce the obligations of the CHA thereunder, to the prior written consent of the Chicago Housing Authority and the Secretary of Housing and Urban Development); (v) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (vi) all tenant improvements and fixtures located on the Premises. This Assignment is an absolute transfer and assignment of the foregoing interests to Lender given to secure:

(a) Payment by Assignor when due of (i) the indebtedness evidenced by the Note and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to Lender by Assignor under or with respect to the Loan Documents (as defined in the Loan Agreement); and (iii) all costs and expenses paid or incurred by Lender in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) Observance and performance by Assignor of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Assignor or any other obligor to or benefiting Lender which are evidenced or secured by or otherwise provided in the Note, this Assignment or any of the other Loan Documents, together with all amendments and modifications thereof.

3. **Representations and Warranties of Assignor.** Assignor represents and warrants to Lender that:

(a) this Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) as of the date hereof, there are no Leases affecting any portion of the Premises, except for the Commercial Space Leases;

(c) with the exception of the assignments or liens created by the Subordinate Loan Documents (as defined in the Loan Agreement), there are no other existing assign-

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ments of Assignor's entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has Assignor entered into any agreement to subordinate any of the Leases or Assignor's right to receive any of the rents, issues, income or profits assigned hereunder; and

(d) Assignor has not executed any instrument or performed any act which may prevent Lender from operating under any of the terms and provisions hereof or which would limit Lender in such operation.

4. **Covenants of Assignor.** Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Assignor shall not lease any portion of the Premises unless Assignor obtains Lender's prior written consent to all aspects of such lease; provided, however, Lender hereby consents to the execution by Assignor of Acceptable Leases (as defined in the Loan Agreement) in the ordinary course of its business for the 89 residential rental units to be constructed on the Premises. Execution of any lease for commercial space within the Premises shall be subject to the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. Assignor shall not (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, or (iv) enter into any oral leases with respect to all or any portion of the Premises;

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Except for rights granted under the Subordinate Loan Documents, Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents;

(e) Assignor shall not, without the prior written consent of Lender: (i) materially modify the terms and provisions of any Lease, unless such modification does not materially adversely affect Lender's interest in any of the Leases or otherwise violate the Loan Documents or any of the Project Agreements; (ii) give any consent to (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions, unless the giving of such consent or approval does not materially adversely affect Lender's interest in any of the Leases or otherwise violate the Loan Documents or any of the Project Agreements; or (iii) cancel or terminate any Lease;

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provided, however, that Assignor may cancel or terminate any Lease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Lease;

(f) Assignor shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Lease for the early termination or surrender thereof shall be paid jointly to Assignor and Lender;

(g) Assignor shall not materially alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;

(h) Except in the exercise of its reasonable business judgment relating to operating supportive housing project, Assignor shall not waive or excuse the obligation to pay rent under any Lease;

(i) Except in the exercise of its reasonable business judgment relating to operating supportive housing project, Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Lender, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Lender may appear;

(j) Assignor shall give prompt notice to Lender of any notice of any default by the lessor under any Lease received from any tenant or guarantor thereunder;

(k) Except in the exercise of its reasonable business judgment relating to operating supportive housing project, Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder; and

(l) Assignor shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby, the other Permitted Encumbrances (as defined in the Loan Agreement), and liens for general real estate taxes not delinquent.

5. **Rights Prior to Default.** Unless or until an Event of Default (as defined in Section 6) shall occur, Assignor shall have the right to collect, at the time (but in no event more than thirty days in advance) provided for the payment thereof, all rents, rental subsidy assistance payments, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Upon the occurrence of an Event of Default, Assignor's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to Assignor. Lender shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

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6. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Mortgage or (b) any other Event of Default described in either Note, the Loan Agreement, the Mortgage or the other Loan Documents. Notwithstanding anything to the contrary contained herein, Lender shall accept or reject cure of any default made or tendered by one or more of the Limited Partners (as defined in the Loan Agreement) pursuant to the terms and conditions set forth in Section 11.1 of the Loan Agreement.

7. **Rights and Remedies Upon Default.** At any time upon or following the occurrence of any Event of Default, Lender, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Lender deems necessary or proper, all of the foregoing subject to the terms, conditions and requirements of the Regulatory Agreements (as defined in the Loan Agreement);

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder, subject to the Regulatory Agreements. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Lender, without proof of default hereunder, upon receipt from Lender of written notice to thereafter pay all such rents and other amounts to Lender and to comply with any notice or demand by Lender for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and Assignor shall facilitate in all reasonable ways Lender's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Lender; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Lender may deem necessary, and any amount so paid by

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Lender shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate (as defined in the Loan Agreement) and shall be secured by this Assignment.

8. **Application of Proceeds.** All sums collected and received by Lender out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default shall be applied in accordance with the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes) and, unless otherwise specified in such act, in such order as Lender shall elect in its sole and absolute discretion.

9. **Limitation of Lender's Liability.** Lender shall not be liable for any loss sustained by Assignor resulting from Lender's failure to let the Premises or from any other act or omission of Lender in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Lender shall not be obligated to observe, perform or discharge, nor does Lender hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify, defend (using counsel satisfactory to Lender) and hold Lender harmless from and against any and all liability, loss or damage which Lender may incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignor incurs as a result of Lender's gross negligence or willful misconduct. Should Lender incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Lender for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Lender responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Lender of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Lender a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions hereof or of the Mortgage.

10. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Lender pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Lender of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Lender under the terms and provisions of such instruments, and Lender may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Lender may take or release any other

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security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

11. **Further Assurances.** Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Lender may designate) and shall do or cause to be done such further acts, as Lender may request, in order to permit Lender to perfect, protect, preserve and maintain the assignment made to Lender by this Assignment.

12. **Security Deposits.** Assignor acknowledges that Lender has not received for its own account any security deposited by any tenant pursuant to the terms of the Leases and that Lender assumes no responsibility or liability for any security so deposited.

13. **Severability.** If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Lender and Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

14. **Successors and Assigns.** This Assignment is binding upon Assignor and its legal representatives, successors and assigns, and the rights, powers and remedies of Lender under this Assignment shall inure to the benefit of Lender and its successors and assigns.

15. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Lender at the time of such amendment, modification or supplement.

16. **Duration.** This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

17. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

18. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of Assignor and Lender, as the case may be, as specified in the Mortgage.

19. **Consent to Jurisdiction.** **TO INDUCE THE LENDER TO ACCEPT THIS ASSIGNMENT, ASSIGNOR IRREVOCABLY AGREES THAT, SUBJECT TO THE LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS ASSIGNMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS.**

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ASSIGNOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO ASSIGNOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

20. Jury Waiver. ASSIGNOR AND THE LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT, OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

21. Waiver of Defenses. EXCEPT FOR CLAIMS FOR FRAUD, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR LENDER'S FAILURE TO OTHERWISE ACT IN A COMMERCIALY REASONABLE MANNER, ASSIGNOR WAIVES EVERY PRESENT AND FUTURE DEFENSE (OTHER THAN THE DEFENSE OF PAYMENT IN FULL), CAUSE OF ACTION, COUNTERCLAIM OR SETOFF WHICH ASSIGNOR MAY NOW HAVE OR HEREAFTER MAY HAVE TO ANY ACTION BY LENDER IN ENFORCING THIS ASSIGNMENT OR ANY OF THE LOAN DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER GRANTING ANY FINANCIAL ACCOMMODATION TO THE ASSIGNOR.

22. Waiver of Special Damages. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ASSIGNOR SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS ASSIGNMENT ANY OTHER LOAN DOCUMENT, THE TRANSACTIONS CONTEMPLATED THEREBY, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.



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IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment as of the day and year first above written.

**ASSIGNOR:**

**VICEROY HOTEL LIMITED PARTNERSHIP**, an Illinois limited partnership

By: Viceroy GP, LLC, an Illinois limited liability company

Its: General Partner

By: Heartland Housing, Inc., an Illinois not-for-profit corporation

Its: Managing Member

By: 

Name: Michael Goldberg

Title: Executive Director

Property of Cook County Clerk's Office

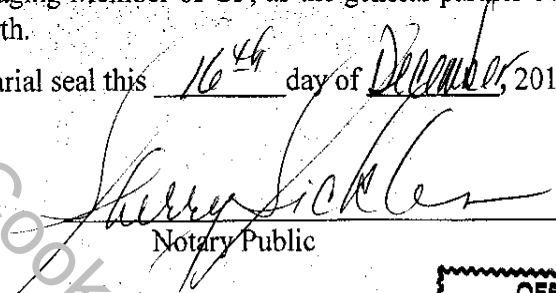
Signature Page to Assignment of Rents

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **Michael Goldberg**, the **Executive Director**, of Heartland Housing, Inc., an Illinois not-for-profit corporation ("Heartland"), the Managing Member of Viceroy GP, LLC, an Illinois limited liability company ("GP"), the General Partner of **VICEROY HOTEL LIMITED PARTNERSHIP**, an Illinois limited partnership ("Assignor"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such **Executive Director**, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of Heartland, as the Managing Member of GP, as the general partner of Assignor, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 16<sup>th</sup> day of December, 2011.

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

My Commission Expires:



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## EXHIBIT A

### LEGAL DESCRIPTION OF THE REAL ESTATE

LOTS 6 THROUGH 13 IN LAFLIN AND MATHER'S SUBDIVISION OF THE NORTH PART OF BLOCK 'D' IN THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, SOMETIMES CALLED BLOCK 'D' IN WRIGHT'S ADDITION TO CHICAGO AND BEING IN THE SOUTH PART OF LOT 4 IN THE CIRCUIT COURT PARTITION OF THE SOUTHWEST 1/4 OF SECTION 8 AFORESAID, IN COOK COUNTY, ILLINOIS.

Address: 1517-21 W. Warren Boulevard, Chicago, Illinois

PIN: 17-08-332-005-0000, 17-08-332-006-0000, 17-08-332-007-0000, VOL. 590.

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