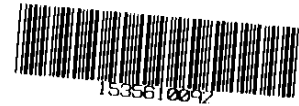


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Final

Doc#: 1535610092 Fee: \$60.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 12/22/2015 04:54 PM Pg: 1 of 12

Property of Cook County Clerk's Office

**THIS INSTRUMENT PREPARED BY  
AND WHEN RECORDED RETURN TO:**

Randall Johnson, Esq.  
City of Chicago Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
40016836 (2017)

## SECOND AMENDMENT TO CITY LOAN DOCUMENTS

This Second Amendment to City Loan Agreement (this "Amendment") is made in Chicago, Illinois as of December 22, 2015 (the "2<sup>nd</sup> Amendment Closing Date"), by and among the City of Chicago, an Illinois municipal corporation (the "City"), by and through its Department of Planning and Development ("DPD", as successor to the Department of Housing and Economic Development "HED") also formerly known as the Department of Housing ("DOH") and Diversey Neighborhood Development Corporation, an Illinois not-for-profit corporation (the "Borrower").

### RECITALS

A. Pursuant to an ordinance adopted on September 11, 1996, the City Council of the City (the "City Council") authorized a loan to the Borrower for the acquisition and rehabilitation of a building located at 712 West Diversey Parkway, in Chicago, Illinois, as more fully described in Exhibit A (together, the "Property") in the principal amount of \$1,073,955 which loan was amended pursuant to an First Amendment To City Loan Documents (the "First Amendment") dated as of June 21, 2013 (the "Amendment Closing Date") pursuant to an additional ordinance adopted on June 5, 2013 by the City Council (the "City Loan").

B. The City Loan is evidenced by that certain Housing Loan Agreement (the "City

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**Loan Agreement**”), dated as of December 23, 1996, secured by, among other things, that certain Junior Mortgage, Security Agreement and Financing Statement, dated as of December 23, 1996, executed by the Borrower in favor of the City (the **“City Mortgage”**), and recorded in the Office of the Cook County Recorder of Deeds as Document No. 96965719 and further evidenced by that certain Note dated as of December 23, 1996, made by the Borrower in favor of the City in the original principal amount of the Loan (the **“City Note”**). The City Loan Agreement, the City Mortgage, the City Note, and any other documents executed in connection with the Loan were amended pursuant to that certain First Amendment to Loan Documents entered into on June 21, 2013 and, (i) each as individually referred to hereinafter is as so amended and (ii) all such documents as thereby amended, are collectively referred to herein as the **“Financing Documents.”**

C. The City Mortgage is subordinate to liens securing that certain current loan in the original amount of \$300,000 (the **“Current Senior Loan”**) made by The Equitable Life Assurance Society of the United States (the **“Original Senior Mortgagee”**) secured by that certain Mortgage, Security Agreement and Fixture Filing (the **“Current Senior Mortgage”**), dated as of March 10, 1998, recorded March 12, 1998 as document number 98198131, as modified by a Modification of Mortgage effective as of April 1, 2013 by Borrower in favor of U.S. Bank National Association, a national banking association (the **“Current Senior Mortgagee”** or **“US Bank”**). US Bank is the successor-in-interest to the Federal Deposit Insurance Corporation, Receiver for Park National Bank, successor-by-merger to Regency Savings Bank, F.S.B., assignee of the Original Senior Mortgagee. The Current Senior Loan is evidenced by that certain Mortgage Note (the **“Current Senior Note”**) made payable by the Borrower to the order of Original Senior Mortgagee and dated as of March 10, 1998 as modified by the unrecorded Loan Modification Agreement effective as of April 1, 2013 by and between Borrower and US Bank (the **“Senior Amendment”**). The Current Senior Note shall mature on April 1, 2016 (the **“New Senior Maturity Date”**) pursuant to the terms and conditions set forth in the Senior Amendment. Upon execution of the First Amendment and the Senior Amendment, Borrower made certain payments set forth in the Senior Amendment to reduce the balance of the Current Senior Loan to approximately \$186,684.00.

D. DPD and Borrower desire to approve an amendment to the terms of the City Loan in a manner which (1) will not alter the principal balance of the Loan, (2) will extend the maturity date of the Loan, (3) will impose and extend certain affordability restrictions against the Property, and (4) will alter the repayment terms of the Loan (collectively, the **“Amendment”**); and

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained, the Recitals which are made a contractual part of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## AGREEMENTS

**Section 1.** The City and the Borrower agree that the City Loan Documents are hereby modified as follows:

**1.1.** This Second Amendment shall be included in the definition of the term **“Loan Documents”** as set forth in the City Loan Agreement.

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1.2. The Following Definitions shall be revised and added to the City Loan Agreement. "Financial Statements" shall be revised; and "Operating Expenses", "Operating Income" "Senior Debt Service" and "Surplus Cash" shall be added as definitions as follows:

A. **"Financial Statements"** shall be revised to add the following language: "This term shall be revised to also include those audited financial statements prepared in accordance with generally accepted accounting principles for any partial or full calendar year ending on December 31 after the 2<sup>nd</sup> Amendment Closing Date; Borrower, or any successor in interest to Borrower, shall be required to deliver such additional financial statements to the City no later than April 1 of the following calendar year."

B. **"Operating Expenses"** shall mean all cash expenses of operation of the Project including, without limitation, costs of utilities, reasonable maintenance, repairs & necessary replacements, real estate taxes, insurance premiums, reasonable professional and management fees, but shall not include any fees payable to the Borrower (or any successor thereof including any partnership, general partner or any affiliate thereof). Depreciation expense, any other noncash expenses, and capital expenses paid for by project reserves shall not be considered operating expenses.

C. **"Operating Income"** shall mean all cash received from operations of the Project in the ordinary course of business, including rental subsidies, but excluding capital contributions, loan proceeds, grants and other proceeds of capital transactions.

D. **"Senior Debt Service"** shall mean all payments of principal and interest on the existing Senior Loan. Senior debt service does not include debt service on loans from the Borrower to any successor in interest (including any partnership, general partner or any affiliate thereof).

E. **"Surplus Cash"** shall mean, for any partial or complete calendar year ending on December 31, Operating Income less the sum of (1) Operating Expenses for the same period and (2) Senior Debt Service for the same period. Surplus cash shall be determined on a noncumulative basis for each one-year period in accordance with generally accepted accounting principles consistently applied for such period. Surplus Cash shall be verified by the City DPD pursuant to a review of the annual audited Financial Statements delivered by April 1 of each year following the 2<sup>nd</sup> Amendment Closing Date.

1.3. Commencing on the date hereof, the repayment terms of the City Loan Agreement, the Note, the Regulatory Agreement and all other Financing Documents shall be and are hereby amended to require that the Borrower repay the City Loan as follows:

"The Borrower agrees to pay twenty-five percent (25%) of available Surplus

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Cash as a payment of principal and outstanding interest on an annual basis. The amount of Surplus Cash will be determined annually pursuant to an audited annual Financial Statement of the Project delivered to the City no later than April 1<sup>st</sup> of the year following the calendar year being audited, with the annual payment date occurring no later than May 1<sup>st</sup> of each year unless otherwise approved by the City in writing. Notwithstanding the foregoing, the entire remaining principal balance, together with interest thereon, and any other sums due under any of the Loan Documents, shall be due and payable in full on the earliest (the "**Maturity Date**") of: (i) the date on which all outstanding principal of and accrued and unpaid interest on any existing Senior Loan shall be due and payable in full (except for the Equitable Loan which shall be repaid in full prior to November 30, 2015); (ii) the date of the sale or refinancing of the Premises (except for any sale or refinancing which the City shall approve in writing prior to December 31, 2015); (iii) June 23, 2046; (iv) the date on which all outstanding principal of and accrued and unpaid interest on the Junior Loan shall be due and payable (except for the Junior Loan to IHDA which shall be repaid in full prior to December 31, 2015), or (v) the date as of which the principal of and interest on the Loan may become due and payable because of acceleration or prepayment as provided in any of the Loan Documents.

1.4. Commencing on the date hereof, the Regulatory Agreement and all other Financing Documents shall be and are hereby amended to require that the affordability restrictions on Project tenants set forth therein are changed pursuant to the revisions below:

A. The definition of "Low Income Families" set forth in Section I shall be deleted and replaced with the following text:

"**Low-Income Families**" shall mean and include Families whose annual income does not exceed **60%** of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by HUD, and thereafter such income limits shall apply to this definition.

B. The definition of "Moderate Income Families" shall be added to and set forth in Section I with the following text:

"**Moderate-Income Families**" shall mean and include Families whose annual income does not exceed **80%** of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by HUD, and thereafter such income limits shall apply to this definition.

C. The definition of "Low Income Project" set forth in Section I shall be deleted and replaced with the following text:

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**"Low-Income Project"** shall mean the 72 units in the Project finance with Section 108 Funds and required to be occupied by Low-Income Families; provided however, that upon the first availability of any of the units in the Current-Occupants Project, each such unit shall be added to the number of units in the Low-Income Project and shall be immediately subject to any and all restrictions applicable thereto.

D. The following definition of "Moderate Income Project" shall be added to and set forth as Section II 1. (e) of Exhibit B with the following text:

**"Moderate-Income Project"** shall mean the 84 units in the Project financed with Section 108 Funds and required to be occupied by Moderate-Income Families; provided however, that upon the first availability of any of the units in the Current-Occupants Project, each such unit shall be added to the number of units in the Low-Income Project and shall be immediately subject to any and all restrictions applicable thereto.

E. The definition of "Extremely Low Income Families" and "Extremely Low Income Project" are hereby added to and set forth in Section I of Exhibit B with the following text:

**"Extremely Low-Income Families"** shall mean and include Families whose annual income does not exceed **30%** of the Chicago area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by HUD, and thereafter such income limits shall apply to this definition.

**"Extremely Low-Income Project"** shall mean the 18 Units in the Project financed with Section 108 Funds and required to be occupied by Extremely Low-Income Families.

F. Section II. 1. (b) of Exhibit B shall be deleted and replaced with the following text:

(b) The Low-Income Project shall consist initially of the following unit configuration for Low-Income Families:

<u>Number of Bedrooms</u>	<u>Number of Units</u>
Studio	<u>52</u>
One-Bedroom	<u>20</u>
Total	72

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G. The following text shall be added to Exhibit B as a new Section II. 1. (e):

(e) The Extremely Low-Income Project shall consist initially of the following unit configuration for Low-Income Families:

<u>Number of Bedrooms</u>	<u>Number of Units</u>
Studio	<u>14</u>
One-Bedroom	<u>4</u>
Total	18

H. Section II. 1. (d) of Exhibit B is hereby deleted in its entirety.

**Section 2.** Except as specifically modified by this Amendment, the Borrower hereby represents, warrants and confirms to the City that:

2.1. All the City Loan Documents and the obligations of the Borrower thereunder remain in full force and effect, are hereby ratified and confirmed, and may be enforced against the Borrower in accordance with their terms by the City against the Borrower and the Property;

2.2. All representations, warranties, certifications, statements, affidavits and other items heretofore made or furnished to the City by or on behalf of the Borrower, in connection with the City Loan Documents were true, accurate and complete as of the date made or furnished to the City, and continue to be true, accurate and complete as if furnished or made by or with respect to the Borrower as of the date hereof, except as otherwise disclosed in writing by Borrower and accepted by the City;

2.3. The Borrower acknowledges and warrants to the City that it claims no defense, right of offset or counterclaim against enforcement of the City Loan Documents (as modified by this Amendment) and has no other claim against the City;

2.4. Any Event of Default under any of the City Loan Documents will be or has been cured to the satisfaction of the City as of the date hereof; and

2.5. The execution, delivery and performance of this Amendment and the consummation of the transactions hereby contemplated will not conflict with any law, statute or regulation to which the Borrower, or the Property is subject.

**Section 3.** The Parties hereto acknowledge and agree that this Amendment does not constitute a novation of the existing indebtedness under the City Loan, but is intended to be an amendment and modification of the City Loan Documents. Except as



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amended hereby, the provisions of the City Loan Documents remain in full force and effect and are hereby ratified and confirmed. The City Mortgage shall continue to secure repayment of all amounts due under the City Note as modified by this Amendment without loss of priority. The City Mortgage, the City Loan Documents and any and all renewals, modifications, extensions or advances thereunder or secured thereby (including interest thereon), unconditionally do and will remain at all times a lien, claim or charge on the Property.

**Section 4.** The Borrower: (i) is represented by independent legal counsel of their respective choice in the transactions contemplated by this Amendment; (ii) is fully aware and clearly understands all the terms contained in this Amendment; (iii) has voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Amendment; (iv) is not relying on any representation, either written or oral, express or implied, made by the City other than as set forth in this Amendment; (v) on its own initiative has made proposals to the City, the terms of which are reflected by this Amendment; and (vi) has received actual and adequate consideration to enter into this Amendment.

**Section 5.** In the event of a conflict or inconsistency between the provisions of the City Mortgage, the City Note or any of the other City Loan Documents and the provisions of this Amendment, the provisions of this Amendment shall govern and control.

**Section 6.** This Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that the Borrower may not assign this Amendment or its rights and obligations under the Financing Documents without the prior written consent of the City.

**Section 7.** This Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute a single agreement.

**Section 8.** This Amendment shall be governed by and construed in accordance with the internal laws of the State of Illinois without regard to its conflict of laws principles.

**Section 9.** If any provision of this Amendment is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this Amendment will not be affected thereby. It is the intention of the Parties that if any provision is so held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible that is legal, valid and enforceable.

**Section 10.** Neither this Amendment nor any of the provisions hereof can be changed, waived, discharged or terminated, except by an instrument in writing signed

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by all Parties to this Amendment.

**Section 11.** No waiver of any action or default will be implied from the failure or delay by the City to take any action in respect of such action or default. No express waiver of any condition precedent or default will affect any other default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Amendment or of the City Loan Documents will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any party will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request.

**Section 12.** The Borrower expressly agrees that no member, official, employee or agent of the City shall be individually or personally liable to the Borrower, or any of their successors or assigns, in the event of any default or breach by the City under this Amendment.

**Section 13.** This Amendment shall be recorded against the Property in the Office of the Cook County Recorder of Deeds at the expense of the Borrower.


*[The remainder of this page is intentionally left blank  
and the signature page follows.]*



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**IN WITNESS WHEREOF**, the undersigned have executed this Second Amendment to City Loan Documents as of the date first written above.

**CITY OF CHICAGO**, acting by and through its Department of Planning and Development



By: \_\_\_\_\_  
David L. Reifman  
Commissioner

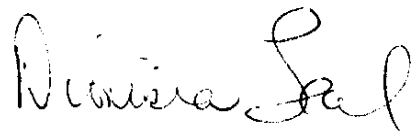
**DIVERSEY NEIGHBORHOOD DEVELOPMENT CORPORATION**,  
an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Michael Goldberg  
Executive Director

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a notary public in and for the County and State aforesaid, do hereby certify that David L. Reifman, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago, Illinois (the "City") 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 as such Commissioner, he signed and delivered the said instrument pursuant to authority, as his free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this December 22, 2015.



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**IN WITNESS WHEREOF**, the undersigned have executed this Second Amendment to City Loan Documents as of the date first written above.

**CITY OF CHICAGO**, acting by and through its  
Department of Planning and Development

By:   
David L. Reifman  
Commissioner

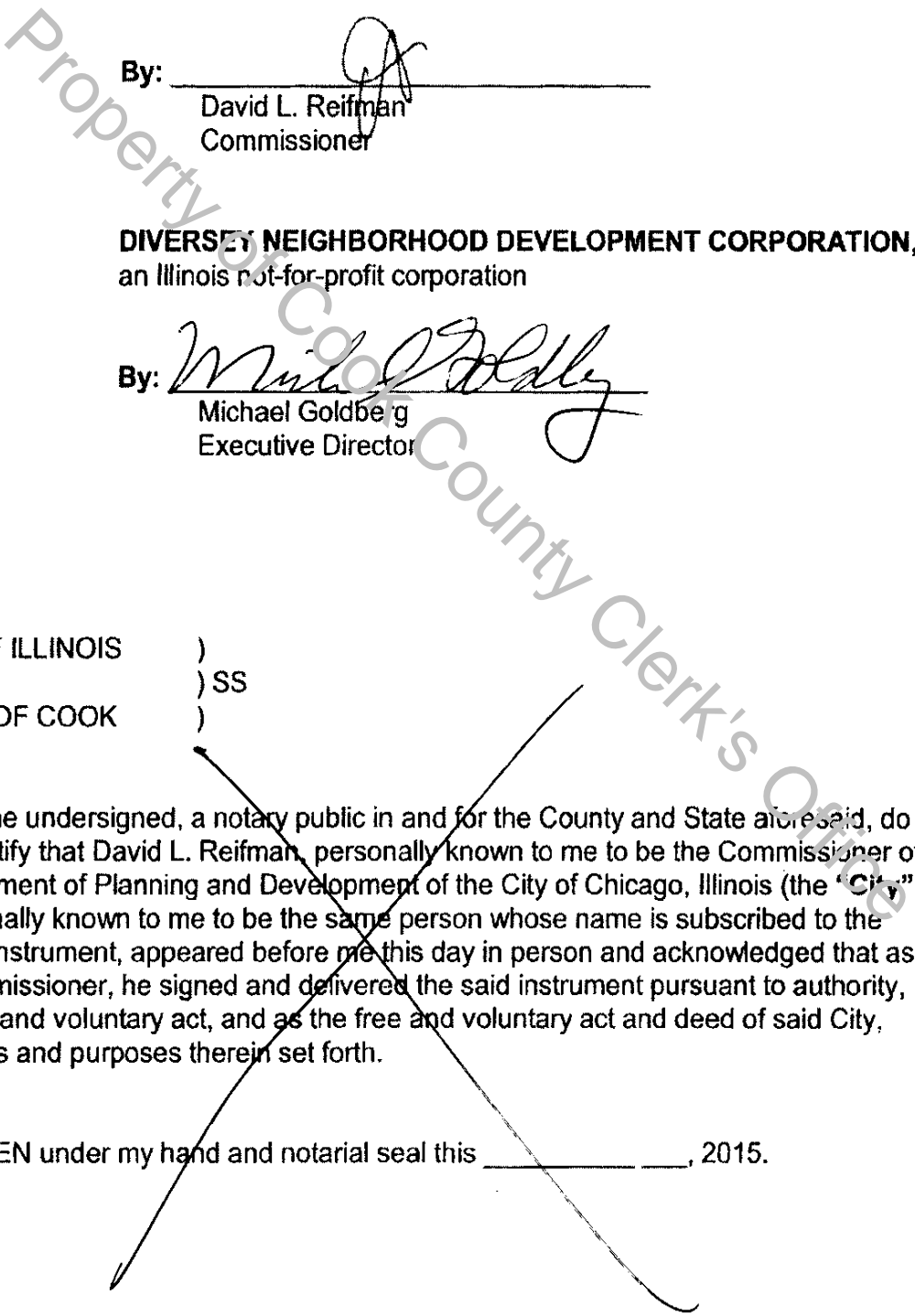
**DIVERSEY NEIGHBORHOOD DEVELOPMENT CORPORATION**,  
an Illinois not-for-profit corporation

By:   
Michael Goldberg  
Executive Director

STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF COOK     )

I, the undersigned, a notary public in and for the County and State aforesaid, do hereby certify that David L. Reifman, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago, Illinois (the "City") 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 as such Commissioner, he signed and delivered the said instrument pursuant to authority, as his free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_, 2015.



# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
                                      ) SS.  
COUNTY OF COOK         )

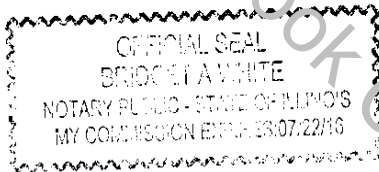
I, the undersigned, a notary public in and for the County and State aforesaid, do hereby certify that Michael Goldberg, personally known to me to be the Executive Director of Diversey Neighborhood Development Corporation, an Illinois not-for-profit corporation (the "Borrower") personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Executive Director, he signed and delivered the said instrument pursuant to authority, as his free and voluntary act, and as the free and voluntary act and deed of said Borrower, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this December 9, 2015.

*Bridget A. White*

Notary Public

(SEAL)



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## EXHIBIT A

### Legal Description

THE EAST ONE FOOT OF LOT 20 AND ALL OF LOTS 21,22 AND 23 IN WARNERS SUBDIVISION OF LOTS 17 AND 18 IN BICKERDIKE AND STEELE'S SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY INDEX NUMBER: 14-28-115-042-0000  
COMMONLY KNOWN AS 712 W. DIVERSEY, CHICAGO, ILLINOIS 60614

Property of Cook County Clerk's Office