



Doc# 1903816155 Fee \$58.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 02/07/2019 01:09 PM PG: 1 OF 11

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Riemer & Braunstein LLP
71 South Wacker Drive, Suite 3515
Chicago, Illinois 60606
Attn: Erica E. Ruggieri, Esq.

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of January 30, 2019, by and from 328 N. CARPENTER, L.L.C., a Delaware limited liability company ("Borrower") to and for the benefit of CIBC BANK USA, an Illinois state chartered bank, its successors and assigns ("Administrative Agent"), as agent for the lenders described in the Loan Agreement, defined below (together with their successors and assigns, the "Lenders" and individually, a "Lender") and for the benefit of the Lenders.

RECITALS:

A. Borrower is the owner of certain real property located in Cook County, State of Illinois more particularly described in Exhibit A attached hereto ("Property").

B. The Lenders have agreed to make certain loans to Borrower in the aggregate maximum principal amount of Thirty-Five Million Four Hundred Forty Thousand and 00/100 Dollars (\$35,440,000.00) (collectively, the "Loan") pursuant to that certain Construction Loan and Security Agreement dated as of even date herewith by and among Borrower, Administrative Agent and the Lenders (as amended, modified and restated from time to time, the "Loan Agreement"). The Loan is evidenced by those certain Promissory Notes dated as of even date herewith from Borrower to each Lender in the aggregate maximum principal amount of the Loan (as amended, modified and restated from time to time, the "Notes").

C. The Loan is secured by: (i) that certain Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of even date herewith on the Property (as amended, modified and restated from time to time, the "Mortgage"), and (ii) certain other documents evidencing or securing the Loan (together with the Notes, the Loan Agreement and the Mortgage, the "Loan Documents").

D. The obligations of Borrower under the Loan Agreement, the Notes, the Mortgage, this Assignment, and the other Loan Documents are collectively referred to herein as the "Obligations".

E. Borrower is required as a condition to the making of the Loan to transfer and assign to the Lenders all of Borrower's right, title and interest in, to and under the Leases and Rents (as defined below).

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AGREEMENT:

NOW, THEREFORE, as an inducement for the making of the Loan, Borrower hereby represents, warrants, covenants and agrees as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:

“**Event of Default**” means an Event of Default, as defined in the Loan Agreement.

“**Leases**” means all leases, subleases, rental contracts, occupancy agreements, licenses and other arrangements (in each case whether existing now or in the future) pursuant to which any person or entity occupies or has the right to occupy or use any portion of the Property, and includes (a) any supplement, modification, amendment, renewal or extension of any Lease and (b) any security or guaranty for any Lease.

“**Lessees**” means the lessees under the Leases or any subtenants or occupants of the Property.

“**Rents**” means all rents, issues, income, revenues, royalties, profits and other amounts now or in the future payable under any of the Leases, including those past due and unpaid.

Capitalized terms used in this Assignment and not otherwise defined are used as defined in the Loan Agreement.

2. **Assignment.** As security for the payment and performance of the Obligations, Borrower hereby absolutely and unconditionally transfers, sets over and assigns to Administrative Agent, on behalf of the Lenders, all present and future right, title and interest of Borrower in, to and under the Leases and the Rents, together with all advance payments, security deposits and other amounts paid or payable to or deposited with Borrower under any of the Leases and all other rights and interests of Borrower under or in respect of any of the Leases. This Assignment is intended to be and is an absolute present assignment from Borrower to Administrative Agent, on behalf of the Lenders, it being intended hereby to establish a complete and present transfer of all Leases and Rents with the right, but without the obligation, to collect all Rents.

3. **License.** Except as hereinafter set forth, Borrower shall have a license to collect the Rents accruing under the Leases as they become due (“**License**”), but not in advance, and to enforce the Leases. The License is revocable, at Administrative Agent’s option, upon the occurrence of an Event of Default. Borrower covenants and agrees that in exercising its License it shall hold all Rents in trust and shall apply the same first to the payment of the reasonable expenses of owning, maintaining, repairing, operating and renting the Property, and then to payment of the Obligations.

4. **Representations and Warranties.** Borrower hereby represents and warrants to Administrative Agent and the Lenders as of the date of this Assignment that: (a) Borrower is the absolute owner of the entire lessor’s interest in each of the Leases, if any, with absolute right and title to assign the Leases and the Rents; (b) to Borrower’s knowledge, the Leases, if any, are

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valid, enforceable and in full force and effect and have not been modified, amended or terminated; (c) there are no outstanding assignments or pledges of the Leases or of the Rents and no other party has any right, title or interest in the Leases or the Rents; (d) to Borrower's knowledge, there are no existing defaults under the provisions of the Leases on the part of the lessor and to Borrower's knowledge, there are no existing defaults under the provisions of the Leases on the part of the Lessees thereunder; (e) to Borrower's knowledge, no Lessee has any defense, set-off or counterclaim against Borrower; (f) except as disclosed in writing to Administrative Agent, no Lessee has any purchase option or first refusal right or any right or option for additional space with respect to the Property; (g) Borrower has not accepted prepayments of installments of rent or any other charges under any Lease for a period of more than one (1) month in advance; and (h) to Borrower's knowledge, except as otherwise disclosed to Administrative Agent in writing, all work required to be performed by Borrower, as landlord, as of the date hereof under any Lease has been completed in accordance with the provisions of the Lease.

5. Covenant of Borrower.

5.1 New Leases and Lease Terminations and Modifications. Except as permitted in the Loan Agreement, Borrower shall not enter into, cancel, surrender or terminate (except as a result of a material default by the Lessees thereunder and failure of such Lessee to cure the default within the applicable time periods set forth in the Lease), materially and adversely amend or modify any Lease, or make any subsequent assignment or pledge of a Lease, or consent to the subordination of the interest of any Lessee in any Lease, or consent to any assignment by any Lessee or any subletting of its premises, other than as permitted under any specific Lease, without the prior written consent of Administrative Agent; provided, however, such prior written consent shall not be required if and only if: (A) at the time Borrower enters into, terminates, cancels, surrenders, amends, modifies or consents to an assignment or subletting such Lease, no Event of Default shall have occurred under the Loan Documents and be continuing; and (B) such Lease constitutes an Approved Lease (as set forth in Section 7.32 of the Loan Agreement). Any attempt to do any of the foregoing without the prior written consent of Lender (if such consent is required) shall be null and void.

5.2 Performance under Leases. The Borrower shall observe and perform, in all material respects, all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and the Borrower shall not do or suffer to be done anything to impair the security thereof. Except as permitted in this Assignment or in the Loan Agreement, Borrower shall not, unless consented to by Administrative Agent: (i) release the liability of any Lessee under any Lease or any guaranty thereof; (ii) consent to any Lessee's withholding of rent or making monetary advances and off-setting the same against future rentals; (iii) consent to any Lessee's claim of a total or partial eviction; (iv) consent to a termination or cancellation of any Lease, except as specifically provided above; or (v) enter into any oral leases with respect to all or any portion of the Property;

5.3 Collection of Rents. The Borrower shall not collect any of the Rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits and the first month's Rent payable upon execution of the applicable Lease;

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5.4 Further Assignment. The Borrower 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, except as specifically permitted by the Loan Documents;

5.5 Lease Guaranty. Except as permitted in the Loan Agreement, Borrower shall not materially or adversely 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; provided, however, that this Section 5.5 shall not apply to Approved Leases so long as Borrower is acting in the ordinary course of Borrower's business;

5.6 Waive Rental Payments. Except for concessions granted under the Leases, Borrower shall not waive or excuse the obligation to pay rent under any Lease;

5.7 Defending Actions. The Borrower 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 Lessee or guarantor thereunder, and shall pay all reasonable out-of-pocket costs and expenses of the Administrative Agent, on behalf of the Lenders, including court costs and reasonable attorneys' fees, in any such action or proceeding in which the Administrative Agent must appear;

5.8 Enforcement. The Borrower shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the Lessees and guarantors thereunder;

5.9 Notice. Borrower shall immediately notify the Administrative Agent of any material breach by a Lessee or guarantor under any Lease; provided, however, that this Section 5.9 shall not apply to Approved Leases;

5.10 Subordination. The Borrower shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

5.11 Bankruptcy of Lessee. If any Lessee is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Borrower covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of the Administrative Agent, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to the Borrower and Administrative Agent, on behalf of the Lenders. If an Event of a Default has occurred and is continuing, the Borrower hereby assigns any such payment to the Lenders and further covenants and agrees that upon the request of the Administrative Agent, it will duly endorse to the order of the Administrative Agent, on behalf of the Lenders, any such check; provided, however, that this Section 5.11 shall not apply to Approved Leases; and

6. Cancellation of Lease. In the event that any Lease permits cancellation thereof on payment of consideration and the privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Administrative Agent, on behalf of the

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Lenders, and if an Event of Default has occurred, shall be applied to the Obligations in whatever order Administrative Agent shall choose in its reasonable discretion and without any prepayment penalty or charge. Prior to such Event of Default, Borrower may use and apply such termination payments to expenses of the Property or any other lawful purpose.

7. **Lenders' Rights Upon Lessee Bankruptcy.** Upon the occurrence of an Event of Default, and if a Lessee under a Lease files or has filed against it any petition in bankruptcy or for reorganization, or undertakes or is subject to similar action, Administrative Agent, on behalf of the Lenders, shall have, and is hereby assigned by Borrower, all of the rights which would otherwise inure to the benefit of Borrower in such proceedings, including, without limitation, the right to seek "adequate protection" of its interests, to compel rejection of any Lease, and to seek such claims and awards as may be sought or granted in connection with the rejection of such Lease. Unless otherwise consented to by Administrative Agent in writing, Administrative Agent's exercise of any of the rights provided herein shall preclude Borrower from the pursuit and benefit thereof without any further action or proceeding of any nature. Administrative Agent, however, shall not be obligated to make timely filings of claims in any bankruptcy, reorganization or similar action or to otherwise pursue creditor's rights therein.

8. **Default of Borrower.**

8.1 **Remedies.** Except as set forth herein, upon the occurrence of an Event of Default, Borrower's License to collect Rents shall immediately cease and terminate. Administrative Agent, on behalf of the Lenders, shall thereupon be authorized at its option to enter and take possession of all or part of the Property, in person or by agent, employee or court appointed receiver, and to perform all acts necessary for the operation and maintenance of the Property in the same manner and to the same extent that Borrower might reasonably so act. In furtherance thereof, Administrative Agent shall be authorized, but under no obligation, to collect the Rents arising from the Leases, and to enforce performance of any other terms of the Leases including, but not limited to, Borrower's rights to fix or modify rents, sue for possession of the leased premises, relet all or part of the leased premises, and collect all Rents under such new Leases. Borrower shall also pay to Administrative Agent, on behalf of the Lenders, promptly upon any Event of Default: (a) all rent prepayments and security or other deposits paid to Borrower pursuant to any Lease assigned hereunder; and (b) all charges for services or facilities or for escalations which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default. Administrative Agent will, after payment of all proper costs, charges and any damages, apply the net amount of such Rents to the Obligations. Administrative Agent shall have sole discretion as to the manner in which such Rents are to be applied, the reasonableness of the costs to which they are applied, and the items that will be credited thereby.

8.2 **Notice to Lessee.** Borrower hereby irrevocably authorizes each Lessee, upon demand and written notice from Administrative Agent of the occurrence of an Event of Default, to pay all Rents under the Leases to Administrative Agent, on behalf of the Lenders. Borrower agrees that each Lessee shall have the right to rely upon any written notice from Administrative Agent directing such Lessee to pay all Rents to Administrative Agent, without any obligation to inquire as to the actual existence of an Event of Default, notwithstanding any notice from or

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claim of Borrower to the contrary. Borrower shall have no claim against any Lessee for any Rents paid by Lessee to Administrative Agent.

8.3 Assignment of Defaulting Borrower's Interest in Lease. Administrative Agent shall have the right to assign Borrower's right, title and interest in and to the Leases to any person acquiring title to the Property through foreclosure or otherwise. Such assignee shall not be liable to account to Borrower for the Rents thereafter accruing.

8.4 No Waiver. Administrative Agent's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Administrative Agent and/or the Lenders' rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Lender has under the Loan Agreement, the Notes, the Mortgage and any of the other Loan Documents. Lender's rights and remedies hereunder may be exercised as often as Lender deems expedient.

8.5 Costs and Expenses. The out-of-pocket cost and expenses (including any receiver's fees and expenses) incurred by Administrative Agent and/or the Lenders pursuant to the powers contained in this Assignment shall be immediately reimbursed by Borrower to Administrative Agent, on behalf of the Lenders, on written demand, shall be secured hereby and, if not paid by Borrower, shall bear interest from the date due at the Default Rate. Administrative Agent and/or the Lenders shall not be liable to account to Borrower for any action taken pursuant hereto, other than to account for any Rents actually received by Administrative Agent and/or the Lenders.

9. Indemnification of Lenders. Except with respect to Administrative Agent's or Lender's gross negligence or willful misconduct to the extent that such gross negligence or willful misconduct is determined by the final judgment of a court of competent jurisdiction and not subject to further appeal, Borrower hereby agrees to indemnify, defend, protect and hold Administrative Agent and the Lenders harmless from and against any and all liability, loss, cost, expense or damage (excluding foreseeable and unforeseeable consequential damages) that Administrative Agent and/or the Lenders may or might incur under the Leases or by reason of this Assignment (including reasonable attorney fees). Such indemnification shall also cover any and all claims and demands that may be asserted against the Administrative Agent and/or the Lenders under the Leases or this Assignment. Nothing in this section shall be construed to bind Administrative Agent and/or the Lenders to the performance of any Lease provisions, or to otherwise impose any liability upon Administrative Agent and/or the Lenders, including, without limitation, any liability under covenants of quiet enjoyment in the Leases in the event that any Lessee shall have been joined as party defendant in any action to foreclose the Mortgage and shall have been barred thereby of all right, title, interest, and equity of redemption in the Property. This Assignment imposes no liability upon Administrative Agent and/or the Lenders for the operation and maintenance of the Property or for carrying out the terms of any Lease before Administrative Agent has entered and taken possession of the Property. Any loss or liability incurred by Administrative Agent and/or the Lenders by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Administrative Agent's request, be immediately reimbursed by Borrower. Such reimbursement shall include interest at the Default Rate provided in the Loan Agreement, costs, expenses and reasonable attorney fees. Administrative Agent, on behalf of the Lenders, may, upon entry and

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taking of possession, collect the Rents and apply them to reimbursement for any such loss or liability. The provisions of this Section 9 shall survive repayment of the Obligations and any termination or satisfaction of this Assignment.

10. **Additions to, Changes in and Replacement of Obligations.** Administrative Agent, on behalf of the Lenders, may take security in addition to the security already given to the Lenders for the payment of the Obligations or release such other security, and may release any party primarily or secondarily liable on the Obligations, may grant or make extensions, renewals, modifications or indulgences with respect to the Obligations or the Mortgage and replacements thereof, which replacements of the Obligations or the Mortgage may be on the same terms as, or on terms different from, the present terms of the Obligations or the Mortgage, and may apply any other security held by it to the satisfaction of the Obligations, without prejudice to any of its rights hereunder.

11. **Power of Attorney.** In furtherance of the purposes of this Assignment, Borrower hereby appoints Administrative Agent, on behalf of the Lenders, as Borrower's attorney-in-fact, with full authority in the place of Borrower, at the option of Administrative Agent at any time after the occurrence of an Event of Default, and in the name of Borrower or Administrative Agent, to (a) collect, demand and receive the Rents and other amounts payable under any Lease, (b) bring suit and take other action to enforce the Leases, (c) enforce, supplement, modify, amend, renew, extend, terminate and otherwise administer the Leases and deal with Lessees in relation to the Leases, (d) give notices, receipts, releases and satisfactions with respect to the Leases and the Rents and other amounts payable under any Lease, and (e) take such other action as Administrative Agent may reasonably deem necessary or advisable in connection with the exercise of any right or remedy or any other action taken by Administrative Agent under this Assignment.

12. **No Mortgagee in Possession; No Other Liability.** The acceptance by Administrative Agent, on behalf of the Lenders, of this Assignment, with all of the rights, power, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Property by Administrative Agent, be deemed or construed to: (a) constitute Administrative Agent and/or any Lender as a mortgagee in possession nor place any responsibility upon Administrative Agent and/or any Lender for the care, control, management or repair of the Property, nor shall it operate to make Administrative Agent and/or any Lender responsible or liable for any waste committed on the Property by any Lessee, occupant or other party, or for any dangerous or defective condition of the Property, nor thereafter at any time or in any event obligate Administrative Agent and/or any Lender to appear in or defend any action or proceeding relating to the Leases or to the Property; (b) require Administrative Agent and/or any Lender to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases; or (c) require Administrative Agent and/or any Lender to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by Lessees and not assigned and delivered to Administrative Agent. Administrative Agent and/or any Lender shall not be liable in any way for any injury or damage to person or property sustained by any person in or about the Property.

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13. **Termination of Assignment.** Administrative Agent, on behalf of the Lenders, shall terminate and release this Assignment as to all or a portion of the Property to the same extent as the Mortgage is released in whole or in part.

14. **Miscellaneous.**

14.1 **Severability.** If any term of this Assignment or the application hereof to any person or set of circumstances, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such provision or part thereof to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent consistent with applicable law.

14.2 **Captions.** The captions or headings at the beginning of each section hereof are for the convenience of the parties only and are not part of this Assignment.

14.3 **Counterparts.** This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be construed together and shall constitute one instrument. It shall not be necessary in making proof of this Assignment to produce or account for more than one such counterpart.

14.4 **Notices.** All notices or other written communications hereunder shall be given in the manner set forth in the Loan Agreement.

14.5 **Modification.** No amendment, modification or cancellation of this Assignment or any part hereof shall be enforceable without Administrative Agent's prior written consent.

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

14.7 **Successors and Assigns; Gender; Joint and Several Liability.** The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all subsequent owners of the Property, and all subsequent holders of the Notes and the Mortgage, subject in all events to the provisions of the Mortgage regarding transfers of the Property by Borrower. In this Assignment, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. If there is more than one (1) party constituting Borrower, all obligations of each Borrower hereunder shall be joint and several.

14.8 **Expenses.** Borrower shall pay on written demand all reasonable out-of-pocket costs and expenses incurred by Administrative Agent and/or the Lenders in connection with the review of Leases, including reasonable fees and expenses of Administrative Agent's outside counsel; provided, however, that this Section 14.8 shall not apply to Approved Leases.

15. **WAIVER OF JURY TRIAL.** BORROWER BY ITS ACCEPTANCE HEREOF, HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND

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UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER, ADMINISTRATIVE AGENT AND THE LENDERS ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN OR AMONG BORROWER, ADMINISTRATIVE AGENT AND THE LENDERS. THIS PROVISION IS A MATERIAL INDUCEMENT TO ADMINISTRATIVE AGENT AND THE LENDERS TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

[Signature page follows]

Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

REAL PROPERTY IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, DESCRIBED AS FOLLOWS:

THAT PART OF LOTS 1, 4, 5, 8, 9, 12, 13 AND 16 IN SUB BLOCK 13, IN CARPENTER'S ADDITION TO CHICAGO, TAKEN AS A TRACT AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 00 DEGREES 09 MINUTES 38 SECONDS WEST ALONG THE EAST LINE OF SAID TRACT 127.04 FEET; THENCE NORTH 89 DEGREES 38 MINUTES 06 SECONDS WEST 120.53 FEET TO THE WEST LINE OF SAID TRACT; THENCE NORTH 00 DEGREES 10 MINUTES 25 SECONDS EAST ALONG THE WEST LINE OF SAID TRACT 127.02 FEET TO THE NORTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89 DEGREES 38 MINUTES 41 SECONDS EAST ALONG THE NORTH LINE OF SAID TRACT 120.50 FEET TO THE POINT OF BEGINNING, ALL IN THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 318-328 North Carpenter Street and 1039 West Carroll Avenue, Chicago Illinois
(f/k/a 328 North Carpenter Street)

Permanent Index Number: 17-08-410-016-0000

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