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EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 07/30/2019 04:19 PM PG: 1 OF 12

Property of Cook County Clerk's Office

SUBORDINATION, NON-DISTURBANCE,
AND ATTORNMENT AGREEMENT

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UNOFFICIAL COPY**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), is made this 11th day of July 2019, by and between Enterprise Leasing Company of Chicago, LLC a Delaware limited liability company, with offices 1050 N. Lombard Rd, Lombard IL, 60148 ("Tenant") and PSL Austin Lending LLC a Texas limited liability company, having its office at 100 Congress Avenue, Suite 1550, Austin, Texas 78701 ("Mortgagee") and 24 Mount Prospect, LLLP, a Delaware limited liability limited partnership, having its office at c/o ACRE Investment Company, LLC, 4683 Chabot Drive, Suite 220, Pleasanton, CA 94588 ("Landlord").

WITNESSETH:

WHEREAS, Tenant and Landlord have entered into a certain lease dated July 23, 2003 as assigned, modified, supplemented or amended (the "Lease") covering premises located at Mount Prospect Center, as more specifically set forth in the Lease and as more particularly described on EXHIBIT A hereto (the "Premises"); and

WHEREAS, Mortgagee has made or has agreed to make a mortgage loan ("Loan") to Landlord evidenced by a promissory note secured by, among other security, a certain Mortgage and Security Agreement ("Mortgage") on Landlord's property; and

WHEREAS, the Mortgage, and any other documents or instruments evidencing or securing the Loan are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, Mortgagee has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, Mortgagee and Tenant and Landlord hereby agree and covenant as follows.

1. The Lease and any extensions, renewals, replacements or modifications thereof, and Tenant's interest in the Premises under the Lease, are and shall at all times be subject, subordinate, and inferior to the lien of the Loan Documents and to the lien of all renewals, modifications and extensions thereof, subject to the terms and conditions set forth in this Agreement.

2. Notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of fixed rent or any other monetary obligation of Tenant as set forth on the Lease, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Mortgagee, and Tenant's occupancy of the Premises shall not be disturbed by Mortgagee for any reason whatsoever during the term of the Lease or any such extension or renewal thereof, except as would be permitted for Landlord to do so.

3. In addition, notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of fixed rent or any other monetary obligation of Tenant as set forth on the Lease, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Mortgagee will not join Tenant as a party defendant in any foreclosure action or other proceeding for the purpose of terminating Tenant's interest and estate under the Lease or for any other purpose.

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4. If the interests of Landlord in the Premises shall be transferred to and owned by Mortgagee by reason of foreclosure, deed in lieu of foreclosure, or other proceedings brought by it, or if Mortgagee takes possession of the Premises pursuant to any provision of the Loan Documents, then (i) Mortgagee and Tenant shall be directly bound to each other under all the terms, covenants and conditions of the Lease for the balance of the term thereof and for any extensions or renewals thereof which may be exercised by Tenant, with the same force and effect as if Mortgagee were the Landlord under the Lease; and (ii) Tenant does hereby attorn to Mortgagee as its landlord, said attornment to be effective and self-operative (without the execution of any further instruments), immediately upon Mortgagee succeeding to the interests of the Landlord under the Lease; provided, however, regarding items (i) and (ii) above, that Tenant shall have received written notice from Mortgagee that it has succeeded to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant and Mortgagee upon such attornment, to the extent of the then-remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth from and after Mortgagee's succession to the interests of the Landlord under the Lease, and Tenant shall have the same remedies against Mortgagee for the breach of any agreement contained in the Lease that Tenant might have under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided, however, that Mortgagee shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), except to the extent such act or omission continues by Mortgagee during the period of possession by Mortgagee or during a period during which Mortgagee is receiving rent from Tenant pursuant to Section 6 below, provided however, in any event Mortgagee shall only be liable for Mortgagee's acts or omissions; or

(b) subject to any defenses which Tenant might have against any prior landlord (including Landlord) prior to the date that Mortgagee first takes possession of the Premises; or

(c) bound by any fixed rent which Tenant might have paid for more than the current month; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is in an escrow or other fund available to Mortgagee.

5. Notwithstanding Section 4 above, upon the written request of either Mortgagee or Tenant to the other given at or around the time of any foreclosure, trustee's sale or deed in lieu thereof, the parties agree to execute a new lease of the Premises upon the same terms and conditions as the Lease between Landlord and Tenant, which new lease shall cover any unexpired term of the Lease existing prior to such foreclosure, trustee's sale or conveyance in lieu of foreclosure and include any rights of Tenant to extend or renew the term which were included in the Lease.

6. Tenant shall not be under any obligation to pay rent to Mortgagee until the Tenant shall have received written notice from Mortgagee that a default has occurred under the Loan Documents and directing such payments be made to Mortgagee. Landlord by its execution of this Agreement hereby consents to such direct payments by Tenant to Mortgagee and hereby releases and discharges Tenant of and from all liability to Landlord on account of any such payments. Upon receipt of such notice, Tenant shall make future payments due under the Lease to Mortgagee until notified otherwise in writing in accordance with the terms of the Lease and Tenant shall not be liable to Landlord to account for such payments.

7. (a) Tenant shall notify Mortgagee in writing at the address set forth herein of the occurrence of any default or event of default by Landlord under the Lease which would give Tenant the right to cancel or terminate the Lease; and Tenant will grant to Mortgagee up to 30 days or a reasonable time (not to exceed 30 days) in which to cure Landlord's default (which time shall be at least the period of time granted to the Landlord by the Lease), provided, however, that Mortgagee shall give Tenant written notice of Mortgagee's

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intent to cure Landlord's default within ten (10) days of receipt of Tenant's notice of Landlord's default. Tenant agrees that it will not terminate or cancel the Lease on account of such default until such notice to Mortgagee has been given, and Mortgagee has had the opportunity to cure any such default. Should Mortgagee fail to so notify Tenant of Mortgagee's intent to cure Landlord's default within said ten (10) days, then Tenant shall have all available rights and remedies (including any right to cure Landlord's default) under the Lease, at law and/or in equity. It is expressly understood and agreed that the above shall not be deemed to create any obligation of Mortgagee to cure any such default or defaults.

(b) Mortgagee shall copy Tenant on any notice of Mortgagor's default under the Loan Documents at the same time that Mortgagee shall serve a Notice of Default on Mortgagor. Failure of Mortgagee to give such notice to Tenant shall not invalidate or vitiate such notice as between Mortgagee - Mortgagor.

8. This Agreement may not be modified or amended except by a writing by all parties hereto. Upon satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.

9. Whenever in this Agreement it is provided that notice be given to or served upon any of the parties, each such notice or demand shall be in writing, and shall be given or served as follows: if given or served by the Mortgagee, by mailing the same to the Tenant and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Landlord and Tenant may from time to time designate by notice given to the Mortgagee; and if given or served by the Tenant, by mailing the same to the Mortgagee and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Mortgagee and the Landlord at the addresses listed on Page 1 of this Agreement or at such other addresses as the Mortgagee and Landlord may from time to time designate by notice given to the Tenant; and if given or served by the Landlord, by mailing the same to Tenant and Mortgagee by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Tenant and Mortgagee at the addresses listed on Page 1 of this Agreement or at such other addresses as the Tenant and Mortgagee may from time to time designate by notice given to Landlord.

10. Notwithstanding anything herein to the contrary, Tenant shall not be deemed to be in default under any of the terms or conditions of this Agreement until Tenant has received a fully executed original copy of this Agreement. Tenant's signature in this Agreement shall be void if Tenant has not received a fully executed original copy of this Agreement within sixty (60) days from the date of this Agreement.

11. This Agreement shall be binding upon the parties hereto, and their successors and assigns. In addition, this Agreement shall be binding upon any successor to Mortgagee's interest as Landlord of the Lease.

SIGNATURE PAGE FOLLOWS

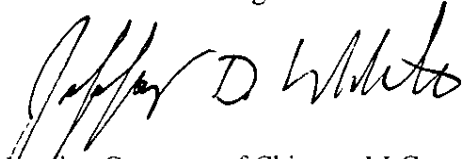
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IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

WITNESS:



TENANT:



Enterprise Leasing Company of Chicago, LLC
a Delaware limited liability company

BY: Jeffrey D. Wilder

ITS: Vice President / General Manager

WITNESS:

MORTGAGEE:

BY: _____

ITS: _____

WITNESS:

LANDLORD:

BY: _____

ITS: _____

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STATE OF Illinois
COUNTY OF DuPage

On this 16 day of July, 2019 before me personally appeared Teddy D. Wilton, who, being by me duly sworn, did depose and say that he/she resides at Arden Dr; that he/she is Vice President / General Mgr of Enterprise Learning Co of Chicago LLC a Delaware limited liability company described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

Rita D Minnberg
NOTARY PUBLIC

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 20__, before me personally appeared _____, who, being by me duly sworn, did depose and say that he/she resides at _____; that he/she is _____ of _____, the corporation described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

NOTARY PUBLIC

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 20__, before me personally appeared _____, who, being by me duly sworn, did depose and say that he/she resides at _____; that he/she is _____ of _____, the corporation described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

NOTARY PUBLIC

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WITNESS:

Kelly Amann

MORTGAGEE:

PSL AUSTIN LENDING LLC,
a Texas limited liability company

By:

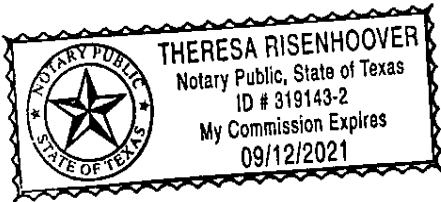
Joel Waxman, Manager

By:

Brian Barrow, Manager

STATE OF TEXAS
COUNTY OF TRAVIS

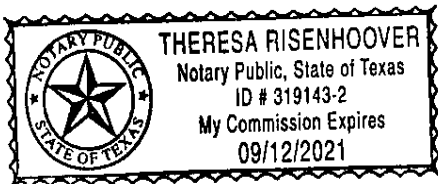
On this 17th day of July, 2019, before me personally appeared Joel Waxman, who, being by me duly sworn, did depose and say that he/she resides at 603 Pecan Grove Rd Austin TX that he/she is Manager of PSL Austin Lending LLC, the corporation described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.



Theresa Risenhoover
NOTARY PUBLIC

STATE OF TEXAS
COUNTY OF TRAVIS

On this 17th day of July, 2019, before me personally appeared Brian Barrow, who, being by me duly sworn, did depose and say that he/she resides at 1402 Alta Vista Ave Austin TX; that he/she is Manager of PSL Austin Lending LLC, the corporation described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.



Theresa Risenhoover
NOTARY PUBLIC

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WITNESS:

[Handwritten Signature]

LANDLORD:

24 MOUNT PROSPECT, LLLP,
a Delaware limited liability limited partnership

By: 24 Mount Prospect GP, LLC,
a California limited liability
company, General Partner

By: ACRE Investment Company, LLC,
a California limited liability
company, Manager

By: [Handwritten Signature]
Gabe Arechaederra, its Manager

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA } ss.

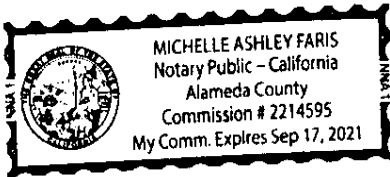
COUNTY OF Alameda

On July 17, 2019, before me, Michelle A. Faris, Notary Public,
personally appeared Gabe Arechaederra

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.




[Handwritten Signature]
Signature

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The undersigned, LHE Mount Prospect, LLC, an Illinois limited liability company, hereby joins in the aforementioned Subordination, Non-Disturbance, and Attornment Agreement, as "Landlord" (jointly and severally with 24 Mount Prospect, LLLP) and agrees to be bound by its terms as applicable to Landlord.

LHE MOUNT PROSPECT, LLC,
an Illinois limited liability company

By: LIGHTLY HELD EQUITIES, LLC,
a California limited liability company,
its Manager

By: 
Name: Shereef Bishay
Title: Manager

Address:
P.O. Box 205
Laguna CA
92653

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the

STATE OF CALIFORNIA

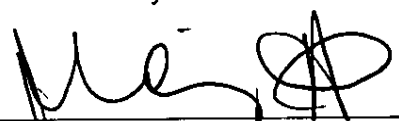
COUNTY OF Marin

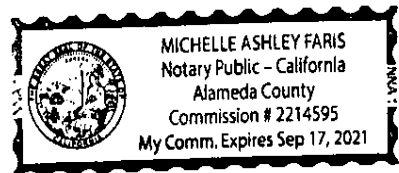
On July 23, 2019, before me,
Michelle A. Faris, Notary Public, personally appeared
Shereef Bishay

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

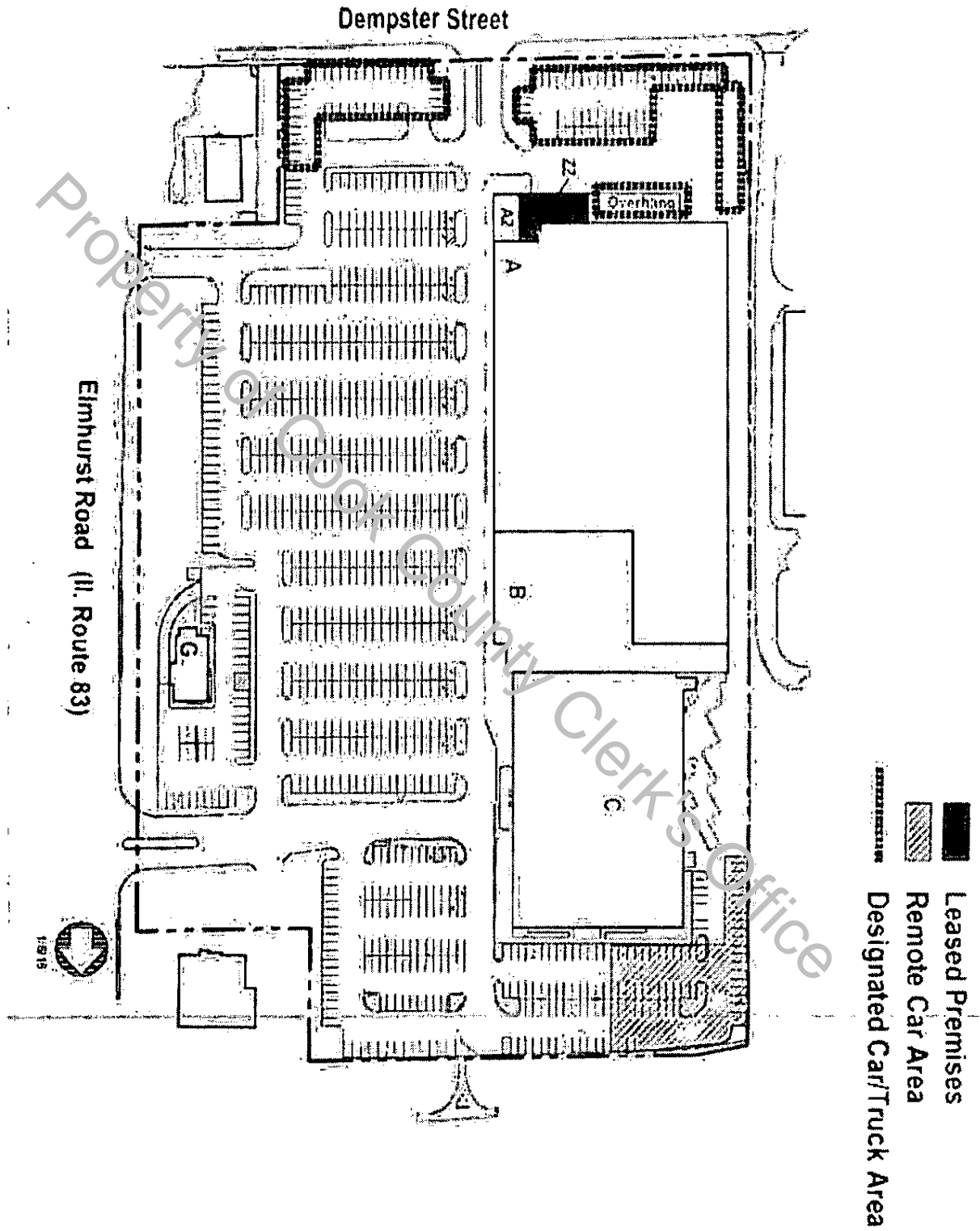

Signature



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EXHIBIT A

(Legal Description of Leased Premises)



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EXHIBIT A PROPERTY

LEGAL DESCRIPTION

PARCEL 1:

THAT PART PART OF THE SOUTH EAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 12 CHAINS SOUTH OF THE NORTH EAST CORNER OF SAID SOUTH EAST QUARTER OF SAID SECTION 14; THENCE WEST 11.5 CHAINS; THENCE SOUTH 2.35 CHAINS; THENCE WEST 8.50 CHAINS TO THE WEST LINE OF SAID SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER, THENCE SOUTH 5.66 CHAINS TO THE SOUTH WEST CORNER OF SAID SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER THENCE EAST 20 CHAINS TO THE SOUTH EAST CORNER OF SAID SECTION 14; THENCE NORTH 8.0 CHAINS TO THE POINT OF BEGINNING (EXCEPT THEREFROM THAT PART OF THE SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTH WEST CORNER OF SAID SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER, THENCE NORTH ALONG THE WEST LINE OF SAID SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER 385.20 FEET; THENCE EAST 552.28 FEET TO A POINT 355.38 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 14; THENCE SOUTH 385.38 FEET TO A POINT IN THE SOUTH LINE OF SAID SECTION 14 WHICH IS 582.0 FEET EAST OF THE SOUTH WEST CORNER OF SAID SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER; THENCE WEST ALONG THE SOUTH LINE OF SAID SECTION 14 TO THE POINT OF BEGINNING AND EXCEPT THEREFROM THE EAST 210 FEET OF THE SOUTH 220 FEET OF THE SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER OF SECTION 14, AFORESAID AND EXCEPT THEREFROM THAT PART OF THE EAST 50 OF THE SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER OF SECTION 14, AFORESAID WHICH LINE NORTH OF THE SOUTH 220 FEET OF THE SOUTH EAST QUARTER OF THE SOUTH EAST QUARTER OF SECTION 14, AFORESAID, AND SOUTH OF THE NORTH LINE OF THE HEREIN ABOVE DESCRIBED TRACT OF LAND), IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOT 2, EXCEPT THE EAST 200.00 FEET (MEASURED PERPENDICULARLY) OF THE NORTH 145.00 FEET (MEASURED ALONG THE EAST LINE THEREOF) IN KENROY'S HUNTINGTON BEING A SUBDIVISION OF PART OF THE EAST HALF OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 1 AND 2 OF THE LAND ARE ALSO KNOWN AS LOT 2 IN KENROY'S ELMHURST DEMPSTER SUBDIVISION BEING A SUBDIVISION OF PART OF THE EAST HALF OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DATED APRIL 19, 1973 AND RECORDED MAY 18, 1973 AS DOCUMENT 22327173, AS AMENDED BY LETTER OF CORRECTION RECORDED NOVEMBER 9, 1989 AS DOCUMENT 89536360.

PARCEL 3:

NON-EXCLUSIVE PERPETUAL EASEMENT FOR STORM WATER SEWER LINE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST NUMBER 33425, DATED APRIL 19, 1973 AND RECORDED MAY 22, 1973 AS DOCUMENT 22334719 AND AS AMENDED BY DOCUMENT RECORDED SEPTEMBER 26, 1973 AS DOCUMENT NUMBER 22492620.

PARCEL 4:

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PERPETUAL EASEMENT FOR STORM WATER SEWER LINE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM TRUSTEES OF SCHOOLS OF TOWNSHIP 41 NORTH, RANGE 11 EAST TO LASALLE NATIONAL BANK, TRUST NUMBER 33425 AND KENROY, INCORPORATED, DATED AUGUST 29, 1973 AND RECORDED SEPTEMBER 26, 1973 AS DOCUMENT NUMBER 22492619.

PARCEL 5:

NON-EXCLUSIVE PERPETUAL EASEMENT FOR STORM WATER SEWER LINE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM THE COMMONWEALTH EDISON COMPANY, A CORPORATION OF ILLINOIS, TO LASALLE NATIONAL BANK, TRUST NUMBER 33425 AND KENROY, INCORPORATED, DATED AUGUST 29, 1973 AND RECORDED SEPTEMBER 26, 1973 AS DOCUMENT NUMBER 22492621.

PARCEL 6:

EXCLUSIVE PERPETUAL EASEMENT FOR STORM WATER SEWER LINE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM MOUNT PROSPECT STATE BANK, TRUST NUMBER 270 AND KENROY INCORPORATED DATED AUGUST 29, 1973 AND RECORDED SEPTEMBER 26, 1973 AS DOCUMENT NUMBER 22492617.

PARCEL 7:

EXCLUSIVE PERPETUAL EASEMENT FOR STORM WATER SEWER LINE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT FROM HUNTINGTON COMMONS ASSOCIATION, NON-PROFIT CORPORATION OF ILLINOIS TO LASALLE NATIONAL BANK, TRUST NUMBER 33425 AND KENROY, INCORPORATED, A CORPORATION OF DELAWARE, DATED AUGUST 29, 1973 AND RECORDED SEPTEMBER 26, 1973 AS DOCUMENT NUMBER 22492618 AND AMENDED BY AMENDMENT RECORDED SEPTEMBER 28, 1973 AS DOCUMENT NUMBER 22495853.

Permanent Real Estate Index Number(s): 08-14-403-022-0000, 08-14-403-027-0000, 08-14-403-028-0000
Address of real estate: 1500 Elmhurst/1470 Elmhurst, Mount Prospect, Illinois 80056