

AFTER RECORDING RETURN TO:
FIDELITY NATIONAL TITLE
1900 WEST LOOP SOUTH, SUITE 200
HOUSTON, TX 77027
GF# FAH20012498

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Doc# 2105657022 Fee \$88.00

Loan No. 343881
RECORDING REQUESTED BY

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/25/2021 10:17 AM PG: 1 OF 13

~~WHEN RECORDED MAIL TO~~

Prepared By:

The Northwestern Mutual Life Ins. Co.
720 East Wisconsin Avenue - Rm N16WC
Milwaukee, WI 53202
Attn: Nadine T. Hansohn

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This instrument was prepared by James McFarland, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Ave., Milwaukee, WI, 53202

AVENUE O ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

(With License Back)

THIS Avenue O Absolute Assignment of Leases and Rents (this "Assignment") is made as of the 24 day of February, 2021, by NP AVENUE O BUILDING D, LLC, a Missouri limited liability company, whose mailing address is c/o NorthPoint Holdings, LLC, 4825 NW 41st Street, Suite 500, Riverside, MO, 64150, Attention: Nathaniel Hagedorn, (herein called "Borrower") in favor of THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, whose mailing address is c/o Real Estate Department, 720 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202 (herein called "Lender").

WITNESSETH

FOR AND IN CONSIDERATION of the indebtedness hereinafter described, Borrower has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey, unto Lender, its successors, and assigns forever all and singular the property hereinafter described (collectively, the "Security"), to wit:

- (a) All rents, issues, and profits arising from or related to the land situated in the County of Cook and State of Illinois and described in Exhibit "A" attached hereto and fully incorporated herein by reference for all purposes and all improvements and any other property, whether real, personal, or mixed, located

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thereon (which land, improvements, and other property are hereinafter collectively called the "Property");

(b) All of Borrower's rights, titles, interests, and privileges, as lessor, in the leases now existing or hereafter made affecting the Property, whether or not made by Borrower and as the same may have been, or may from time to time hereafter be, modified, extended, and renewed (hereinafter collectively called the "Leases" and individually called a "Lease");

(c) All tenant security deposits and other amounts due and becoming due under the Leases;

(d) All guarantees of the Leases, including guarantees of tenant performance;

(e) All insurance proceeds, including rental loss coverage and business interruption coverage with respect to the Leases; and

(f) All judgments and settlements of claims in favor of Borrower (including condemnation proceeds, if any) and all rights, claims, and causes of action under any court proceeding, including without limitation any bankruptcy, reorganization, or insolvency proceeding, or otherwise arising from the Leases.

TO HAVE AND TO HOLD the Security unto Lender, its successors, and assigns forever, and Borrower does hereby bind itself, its heirs, legal representatives, successors, and assigns, to warrant and forever defend the Security unto Lender, its successors, and assigns forever against the claim or claims of all persons whomsoever claiming the same or any part thereof.

ARTICLE I DEFINITIONS

1.01 **Terms Defined Above.** As used in this Assignment, the terms "Borrower", "Leases", "Lender", "Property", and "Security" shall have the respective meanings indicated above.

1.02 **Certain Definitions.** The following terms shall have the meanings assigned to them below whenever they are used in this Assignment, unless the context clearly otherwise requires. Except where the context otherwise requires, words in the singular form shall include the plural and vice versa.

"**Event of Default**" shall mean any Event of Default as defined in the Lien Instrument.

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"Lien Instrument" shall mean that certain Avenue O Mortgage and Security Agreement of even date herewith executed by Borrower and granting a lien on the Property to Lender, as such instrument may be amended and restated from time to time.

"Loan Commitment" shall mean that certain Loan Application dated September 18, 2020 from Borrower to Lender together with that certain acceptance letter issued by Lender dated November 12, 2020.

"Loan Documents" shall mean the Note, the Lien Instrument, that certain Delaware City Mortgage and Security Agreement of even date herewith executed by NP Delaware City Building III, LLC, a Missouri limited liability company, (the "Delaware City Borrower") that certain Salisbury Deed of Trust and Security Agreement of even date herewith executed by NP Salisbury Industrial, LLC, a Missouri limited liability company, (the "Salisbury Borrower") the Loan Commitment, this Assignment, that certain Delaware City Absolute Assignment of Leases and Rents of even date herewith executed by the Delaware City Borrower, that certain Salisbury Absolute Assignment of Leases and Rents executed by the Salisbury Borrower, that certain Certification of Borrowers of even date herewith, that certain Guarantee of Recourse Obligation of even date herewith, that certain Bankruptcy Guarantee of even date herewith, that certain Net Worth Maintenance Agreement of even date herewith, that certain Certificate, Contribution, and Indemnity Agreement of even date herewith, that certain Fraudulent Conveyance Indemnity Agreement of even date herewith, those certain Limited Liability Company Supplements dated contemporaneously herewith, any other supplements and authorizations required by Lender, and all other instruments and documents and all other instruments and documents executed by Borrower, the Delaware City Borrower, or the Salisbury Borrower and delivered to Lender in connection with, or as security for, the indebtedness evidenced by the Note (as the same may be amended from time to time), except any separate environmental indemnity agreement.

"Note" shall mean that certain Promissory Note of even date herewith in the original principal amount of \$127,000,000.00 executed by Borrower, the Delaware City Borrower, and the Salisbury Borrower and payable to the order of Lender, as such instrument may be amended, renewed, and restated from time to time.

"Obligations" shall mean the following:

- (a) The indebtedness evidenced by the Note and all interest thereon;

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(b) The performance of all covenants and agreements of Borrower contained in the Loan Documents;

(c) All funds hereafter advanced by Lender to or for the benefit of Borrower as contemplated by any covenant or provision contained in any Loan Document and all interest thereon;

(d) All renewals, extensions, rearrangements, and modifications of any of the Obligations described hereinabove; and

(e) Any and all attorneys' fees and expenses of collection payable under the terms of any Loan Document.

ARTICLE II ASSIGNMENT

2.01 **Absolute Assignment**. This Assignment is, and is intended to be, an absolute and present assignment of the Security from Borrower to Lender with a concurrent license back to the Borrower (which license is subject to revocation upon the occurrence of an Event of Default as herein provided) and is not intended as merely the granting of a security interest relating to the Obligations.

2.02 **License**. Borrower is hereby granted the license to manage and control the Security and to collect at the time of, but not prior to, the date provided for the payment thereof, all rents, issues, and profits from the Property and to retain, use, and enjoy the same. The license created and granted hereby shall be revocable upon the terms and conditions contained herein. Notwithstanding the foregoing, any fee which exceeds \$250,000 payable with respect to the termination or contraction of a Lease shall be paid directly to, and held by, Lender and shall be released by Lender in amounts subject to Lender's approval upon receipt by Lender of evidence suitable to Lender to reimburse Borrower for leasing commissions, tenant improvements, and other reasonable costs of re-leasing the space vacated in connection with such Lease termination or contraction. In addition, if the entire space which was vacated in connection with such Lease termination or contraction is re-leased under a Lease or Leases satisfactory to Lender that do not contain a requirement that Borrower make tenant improvement expenditures or tenant improvement allowances or leasing commissions, Lender shall release the amounts remaining in the escrow to Borrower within five (5) business days of its written request. Lender shall continue to hold said escrow until the earlier of (i) the date on which all amounts in the escrow have been disbursed to Borrower pursuant to the immediately preceding sentence, or (ii) the maturity date of the Note. If the escrow is still being held on the maturity date of the Note, Lender shall have the option of applying the amount to the prepayment of the Obligations without a prepayment fee or disbursing it to Borrower. Any amounts held by Lender at any time there shall occur an Event of Default shall be

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applied to the outstanding amounts due under the Obligations with the prepayment fee payable pursuant to the Note.

2.03 Revocation of License. Immediately upon the occurrence of an Event of Default and at any time thereafter, Lender may, at its option and without regard to the adequacy of the security for the Obligations, either by an authorized representative or agent, with or without bringing or instituting any judicial or other action or proceeding, or by a receiver appointed by a court, immediately revoke the license granted in Section 2.02, as evidenced by a written notice to said effect given to Borrower, and further, at Lender's option (without any obligation to do so), take possession of the Property and the Security and have, hold, manage, lease, and operate the Property and the Security on such terms and for such period of time as Lender may deem proper, and, in addition, either with or without taking possession of the Property, demand, sue for, or otherwise collect and receive all rents, issues, and profits from the Property, including those past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs, or replacements thereto or thereof as may seem proper to the Lender in its sole discretion, and to apply (in such order and priority as Lender shall determine in its sole discretion) such rents, issues, and profits to the payment of:

(a) all expenses of (i) managing the Property, including without implied limitation, the salaries, fees, and wages of a managing agent and such other employees as Lender may in its sole discretion deem necessary or desirable, (ii) operating and maintaining the Property, including without implied limitation, all taxes, charges, claims, assessments, water rents, sewer rents, any other liens, and premiums for all insurance which Lender may in its sole discretion deem necessary or desirable, (iii) the cost of any and all alterations, renovations, repairs, or replacements of or to the Property, and (iv) any and all expenses incident to taking and retaining possession of the Property and the Security, and

(b) the Obligations.

The exercise by Lender of the rights granted it in this Section 2.03 and the collection and receipt of rents, issues, and profits and the application thereof as herein provided shall not be considered a waiver of any Event of Default.

2.04 Trust Funds. All monies or funds covered by this Assignment paid to, or for the benefit of, Borrower after any default are hereby declared, and shall be deemed to be, trust funds in the hands of Borrower for the sole benefit of Lender, until all defaults have been cured or waived or the Obligations have been paid and performed in full. Borrower or any officer, director, representative, or agent thereof receiving such trust funds or having control or direction of same is hereby made and shall be construed to be a trustee of such trust funds so received or under its control and direction, and such person shall be under a strict obligation and duty should such persons receive or

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constructively receive trust funds to (1) remit any and all such trust funds to Lender within twenty-four (24) hours of receipt, upon demand therefor by Lender or (2) to apply such trust funds only to Obligations then due or the operating expenses of the Property.

ARTICLE III COVENANTS, REPRESENTATIONS AND WARRANTIES

3.01 **Liability.** Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property or the Security after an Event of Default, except for acts constituting gross negligence or willful misconduct. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty, or liability under any Lease, and Borrower shall and does hereby indemnify Lender for, and save and hold Lender harmless from, any and all liability, loss, or damages, except so much thereof as shall result from the gross negligence or willful misconduct of Lender, which may or might be incurred under any Lease or under or by reason of this Assignment 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 perform or discharge any of the terms, covenants, or agreements contained in any Lease, including without implied limitation, any claims by any tenants of credit for rents for any period paid to and received by Borrower but not delivered to Lender. Should Lender incur any such liability under any Lease in defense of any such claim or demand, the amount thereof, including without implied limitation all costs, expenses, and attorneys' fees, shall be added to the principal of the Note and Borrower shall reimburse Lender therefor immediately upon demand. This Assignment shall not operate to place responsibility upon Lender for the control, care, upkeep, management, operation, or repair of the Property and the Security or for the carrying out of any of the terms and conditions of any Lease; nor shall this Assignment operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other party, for any dangerous or defective condition of the Property, or for any negligence in the control, care, upkeep, operation, management, or repair of the Property resulting in loss or injury or death to any tenant, licensee, employee, stranger, or other person whatsoever.

3.02 **Termination.** Upon payment and performance of the Obligations in full, this Assignment shall become null and void and of no further legal force or effect, but the affidavit, certificate, letter, or statement of any officer, agent, authorized representative, or attorney of Lender showing any part of the Obligations remaining unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment upon which any person may, and is hereby authorized to, rely. Borrower hereby authorizes and directs all tenants under the Leases, all guarantors of Leases, all insurers providing rental loss or business interruption insurance with respect to the Property, all governmental authorities, and all other

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occupants of the Property, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Note and that an Event of Default exists, to pay over to Lender all rents and other amounts due and to become due under the Leases and under guaranties of the Leases and all other issues and profits from the Property and to continue so to do until otherwise notified in writing by Lender. This right may be exercised without Lender taking actual or constructive possession of the Property or any part thereof.

3.03 Security. Lender may take or release any security for the payment or performance of the Obligations, may release any party primarily or secondarily liable therefor, and may apply any security held by it to the satisfaction of all or any portion of the Obligations, without prejudice to any of its rights under this Assignment, the other Loan Documents, or otherwise available at law or in equity.

3.04 Covenants. Borrower covenants and agrees:

(a) to observe and perform all the obligations imposed upon the lessor under all Leases and not to do or permit to be done anything to impair the same without Lender's prior written consent,

(b) not to collect any of the rent or other amounts due under any Lease or other issues or profits from the Property in any manner in advance of the time when the same shall become due (save and except only for collecting one month's rent in advance plus the security deposit, if any, at the time of execution of a Lease),

(c) not to execute any other assignment of rents, issues, or profits arising or accruing from the Leases or from the Property,

(d) not to enter into any Lease affecting the Property without the prior written consent of Lender, except that Lender's prior written consent shall not be required for those Leases (i) which are not Major Leases or (ii) entered into in the ordinary course of business and utilizing the Borrowers' standard form lease previously approved by Lender, with no substantial modifications thereto,

(e) to execute and deliver, at the request of Lender, all such further assurances and acknowledgments of the assignment contained herein and the other provisions hereof, with respect to specific Leases or otherwise, as Lender shall from time to time require,

(f) to obtain from any tenant at the Property, from time to time as requested by Lender, estoppel certificates, in form and substance satisfactory to Lender, confirming the terms of such tenant's Lease and the absence of default thereunder,

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(g) not to cancel, surrender, or terminate any Major Lease, exercise any option which might lead to such termination or consent to any change, modification, or alteration thereof, to the release of any party liable thereunder, or to the assignment of the lessee's interest therein, without the prior written consent of Lender, and any of said acts, if done without the prior written consent of Lender, shall be null and void, and

(h) unless Lender has given its prior written consent to another provision, any Lease agreement affecting the Property shall have a provision which prohibits, in violation of Applicable Laws (as hereinafter defined), the usage, storage, or disposal at the Property of hazardous substances, toxic substances, or other material that could be a hazard to health, safety, or property values, or materials for which the mere presence would be a violation of any federal, state, or local law, statute, ordinance, rule, regulation, or code (collectively, "Applicable Laws"), and shall prohibit the presence at the Property of underground tanks and shall prohibit the presence at the Property of above ground tanks which, in aggregate, have a capacity of more than 250 gallons (other than above ground tanks for the storage of gasoline or diesel fuel) without the prior written consent of Borrower, and Borrower shall not grant said consent without the consent of Lender.

As used herein, "Major Lease" means a Lease pertaining to rentable square footage of more than 100,000 square feet.

If Lender fails to respond to any request for consent to a lease agreement, a provision of a Lease agreement with respect to hazardous substances and/or underground or above ground tanks, an amendment to the Lease agreement, or a termination of a Lease agreement within ten (10) business days after written request, Lender shall be deemed to have approved such request; provided, however, that the applicable Borrower's request pursuant hereto shall be required to state in bold type and in at least 16-point font that: **Lender fails to respond to a request for consent to a [Lease agreement] [a provision of a Lease agreement with respect to hazardous substances and/or underground or above ground tanks] [amendment to a Lease agreement] [termination of a Lease agreement] within ten (10) business days after the written request, Lender shall be deemed to have approved such request.**

3.05 Authority to Assign. Borrower represents and warrants that (a) Borrower has full right and authority to execute this Assignment and has no knowledge of any existing defaults under any of the existing Leases, (b) all conditions precedent to the effectiveness of said existing Leases have been satisfied, (c) Borrower has not executed or granted any modification of the existing Leases, either orally or in writing, (d) the existing Leases are in full force and effect according to the terms set forth in the lease instruments heretofore submitted to Lender, and (e) Borrower has not executed any other instrument which might prevent Lender from operating under any of the terms and conditions of this Assignment, including any other assignment of the Leases or the rents, issues, and profits from the Property.

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3.06 **Cross-Default.** Violation or default under any of the covenants, representations, warranties, and provisions contained in this Assignment by Borrower shall be deemed a default hereunder as well as under the terms of the other Loan Documents; and any default thereunder shall likewise be a default under this Assignment. Any default by Borrower under any of the terms of any Lease shall be deemed a default hereunder and under the terms of the other Loan Documents, and any expenditures made by Lender in curing such default on Borrower's behalf, with interest thereon at the Default Rate (as defined in the Note), shall become part of the Obligations.

3.07 **No Mortgagee in Possession.** The acceptance by Lender of this Assignment, with all of the rights, powers, privileges, and authority created hereby shall not, prior to entry upon and taking possession of the Property by Lender, be deemed or construed to constitute Lender a "mortgagee in possession", or hereafter or at any time or in any event obligate Lender to appear in or defend any action or proceeding relating to any Lease, the Property, or the Security, to take any action hereunder, to expend any money, incur any expense, perform or discharge any obligation, duty, or liability under any Lease, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by any tenant and not actually delivered to Lender. Lender shall not be liable in any way for any injury or damage to any person or property sustained in or about the Property.

3.08 **Representation and Warranty.** Borrower represents and warrants that no Lease grants the tenant thereunder or any other party (i) the right or option to acquire the Property or any portion of the Property; or (ii) any rights with respect to any other property owned by Borrower.

ARTICLE IV GENERAL

4.01 **Remedies.** The rights and remedies provided Lender in this Assignment and the other Loan Documents are cumulative. Nothing contained in this Assignment, and no act done or omitted by Lender pursuant hereto, including without implied limitation the collection of any rents, shall be deemed to be a waiver by Lender of any of its rights and remedies under the other Loan Documents or applicable law or a waiver of any default under the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies provided Lender by the other Loan Documents. The right of Lender to collect the principal sum and interest due on the Note and to enforce the other Loan Documents may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

4.02 **Notices.** Any notices, demands, requests, and consents given, permitted, or required hereunder shall be given in the manner prescribed in the Lien Instrument.

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4.03 **Captions**. The titles and headings of the various Articles and Sections hereof are intended solely for reference and are not intended to modify, explain, or affect the meaning of the provisions of this Assignment.

4.04 **Severability**. If any of the provisions of this Assignment or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Assignment, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

4.05 **Attorneys' Fees**. In the event of any controversy, claim, dispute, or litigation between Borrower and Lender to enforce any provision of this Assignment or any right of Lender hereunder, Borrower agrees to pay to Lender all costs and expenses, including reasonable attorneys' fees incurred therein by Lender, whether in preparation for or during any trial, as a result of an appeal from a judgment entered in such litigation or otherwise.

4.06 **Amendments**. This Assignment may not be modified, amended, or otherwise changed in any manner unless done so by a writing executed by Borrower and Lender.

4.07 **Benefits**. This Assignment and all the covenants, terms, and provisions contained herein shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, administrators, successors, and assigns.

4.08 **Assignment**. Borrower shall have no right to assign or transfer the revocable license granted herein. Any such assignment or transfer shall constitute a default.

4.09 **Time of Essence**. Time is of the essence of this Assignment.

4.10 **Governing Law**. The laws of the state in which the Property is located shall govern and control the interpretation of this Assignment and the rights, obligations, duties, and liabilities of Borrower and Lender.

4.11 **Limitation of Liability**. Notwithstanding any provision contained in this Assignment, the personal liability of Borrower shall be limited as provided in the Note.

*[Remainder of page left blank;
Signature of Borrower on following page.]*

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IN WITNESS WHEREOF, this Assignment has been executed by Borrower as of the day and year first-above written.

NP AVENUE O BUILDING D, LLC, a Missouri limited liability company

By: NPD Management, LLC, a Missouri limited liability company, its Manager

By: *Nathaniel Hagedorn*
Nathaniel Hagedorn
Its Manager

Property of Cook County Notary Public Office

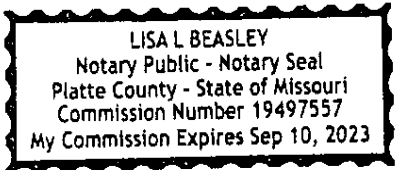
STATE OF MISSOURI)
)ss.
COUNTY OF PLATTE)

I, *Lisa Beasley*, a Notary Public in and for said County and State, do hereby certify that Nathaniel Hagedorn, personally known to me to be the same person whose name is subscribed to the foregoing instrument is the Manager of NPD Management, LLC, a Missouri limited liability company, the Manager of NP AVENUE O BUILDING D, LLC, a Missouri limited liability company, the limited liability company named as Mortgagor therein, and known to me to be such officer, appeared before me this day in person and severally acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this *26th* day of January, 2021.

My commission expires:
9-10-23

Lisa Beasley
Missouri, Notary Public



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EXHIBIT "A"

(Description of Property)

[To be attached]

[NOTE: Legal description must contain the Permanent Tax No. and the common address of the Property.]

Property of Cook County Clerk's Office

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

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LEGAL DESCRIPTION - ILLINOIS

LOTS 1 AND 3 IN NORTHPOINT'S AVENUE O INDUSTRIAL PARK-SUBDIVISION 1, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 19 AND PART OF THE NORTHEAST QUARTER OF SECTION 30, ALL IN TOWNSHIP 37 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 22, 2020 AQS DOCUMENT 2035716179, IN COOK COUNTY, ILLINOIS.

11719-23 Burke Ave., Chicago, IL 60617

Perm Tax Nos.:

26-19-206-042-0000; 26-19-400-012-0000; 26-19-400-013-0000; 26-19-400-014-0000; 26-19-400-015-0000, 26-19-400-016-0000; 26-30-200-006-0000; 26-30-200-010-0000; 26-30-201-006-0000; 26-30-201-011-0000

Property of Cook County Clerk's Office