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CHI 8434/6102 RS 14/1
THIS INSTRUMENT PREPARED BY:
Christyl Marsh
Cohen, Salk & Hoffman, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

Doc#: 2324313182 Fee: \$107.00
Karen A. Yarbrough
Cook County Clerk
Date: 08/31/2023 10:27 AM Pg: 1 of 12

AND AFTER RECORDING MAIL TO:
First Eagle Bank
1201 W. Madison Street
Chicago, Illinois 60607
Attn: Zachary Braun

SECOND MODIFICATION AGREEMENT

THIS SECOND MODIFICATION AGREEMENT (hereinafter referred to as this "Modification Agreement") made as of August 10, 2023, by and among **3535 N. Western Avenue LLC**, an Illinois limited liability company ("Western"), **Albany Bank & Trust Company, N.A.**, not personally but solely as trustee under Trust Agreement dated October 8, 2003 and known as **Trust No. 11-5929** ("Trustee") (Western and Trustee are collectively referred to as "Borrower"), **Adam Winick, Harold J. Hayes and Robert D. Gecht** (each a "Guarantor," and collectively, the "Guarantors") (Borrower and Guarantors are hereinafter each sometimes individually referred to as an "Obligor," and collectively, the "Obligors") and **First Eagle Bank** ("Lender").

WITNESSETH:

WHEREAS, Lender extended to Borrower a term loan in the original principal amount of \$1,400,000.00 (as modified, restated or replaced from time to time, the "Loan");

WHEREAS, to evidence the Loan, Borrower executed and delivered to Lender that certain promissory note dated as of August 15, 2013 in the original principal sum of One Million Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00) (as modified, restated or replaced from time to time, the "Note"), which Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor, as modified from time to time, are hereinafter collectively referred to as the "Loan Documents");

- (i) mortgage, security agreement, assignment of leases and rents and fixture filing dated as of August 15, 2013, made by Trustee in favor of Lender, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office"), as Document No. 1324141203 (the "Mortgage") on property commonly known as 3535 N. Western Avenue, Chicago, Illinois and legally described on **Exhibit A** attached hereto and made a part hereof (the "Premises");
- (ii) assignment of rents and leases dated as of August 15, 2013 made by Trustee in favor of Lender, and recorded in the Recorder's Office, as Document No. 1324141204 (the "Assignment");

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- (iii) collateral assignment of beneficial interest and security agreement dated as of August 15, 2013 made by Western in favor of Lender (the "Collateral ABI");
- (iv) guaranty dated as of August 15, 2013 made by Guarantors in favor of Lender (the "Guaranty"); and
- (v) environmental indemnity agreement dated as of August 15, 2013 made by Western and Guarantors in favor of Lender.

WHEREAS, the maturity date of the Loan was previously extended from August 31, 2018 to August 31, 2023, and in connection therewith, Borrower executed and delivered to Lender an amended and restated promissory note dated August 29, 2018 in the stated principal amount of \$1,141,098.67 payable to the order of Lender on August 31, 2023 (the "First Amended Note"), in replacement of and substitution for the original Note, and Obligors and Lender executed that certain modification agreement dated August 29, 2018, recorded in the Recorder's Office, as Document No. 1826744045, which modified the Loan Documents.

WHEREAS, Obligors are desirous of (i) extending the maturity date of the First Amended Note from August 31, 2023 to August 31, 2028, (ii) adding an option to further extend the maturity date of the First Amended Note from August 31, 2028 to August 31, 2033, (iii) adjusting the interest rate charged on the First Amended Note, and (iv) making certain other changes thereto, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, first and subsisting lien on the Premises (as defined in the Mortgage) and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there is no existing second mortgage or other liens subsequent to the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct.
2. As of the date hereof, the total outstanding principal balance of the First Amended Note is \$861,497.31. Concurrent with the execution of this Modification Agreement, Borrower shall (a) pay down the outstanding principal balance of the Loan to \$750,000.00, and (b) execute and deliver to Lender a second amended and restated promissory note of even date herewith in the original principal amount of Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00), payable to the order of Lender on August 31, 2028 (subject to extension to August 31, 2033, the "Second Amended Note"). Each reference in the Loan Documents to the term "Note" shall hereafter be deemed to be a reference to the First Amended Note. Each reference in the Loan Documents to the term "Loan" shall hereafter mean that certain \$750,000.00 term loan made by Lender to Borrower and evidenced by the Second Amended Note. Each reference in the Loan Documents to

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the term “maturity” or “Maturity Date” shall hereafter mean August 31, 2028, subject to extension to August 31, 2033, as provided in the Second Amended Note.

3. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Second Amended Note.

4. Except for the modifications stated herein, the Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the Loan evidenced by the Second Amended Note shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Second Amended Note and other Loan Documents, to forgive or waive any violation, default or breach under the Second Amended Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

5. Contemporaneously with the execution of this Modification Agreement by Lender, Obligors shall pay to Lender a non-refundable modification fee, as set forth in the Second Amended Note, plus all of Lender’s attorneys’ fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the “Additional Fees”). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Second Amended Note).

6. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to affect the lien, charge or encumbrance of the Mortgage, or the priority thereof over any other liens, charges, or encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Second Amended Note, the Mortgage and/or the other Loan Documents, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

7. This Modification Agreement shall extend to and be binding upon each of the Obligors and their heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

8. Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of the date hereof.

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(b) There is currently no Event of Default (as defined in the Mortgage) under the Second Amended Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Second Amended Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantors or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Second Amended Note, the Loan or the Loan Documents, as modified to date.

(f) Western is validly existing under the laws of the state of its formation or organization and has the requisite power and authority to execute and deliver this Modification Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Modification Agreement and the performance of the Loan Documents as modified to date have been duly authorized by all requisite action by or on behalf of Western. This Modification Agreement has been duly executed and delivered on behalf of Western.

9. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Second Amended Note, the Guaranty and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Second Amended Note, the Guaranty and other Loan Documents, as so amended.

Without limiting the generality of the foregoing paragraph, each Guarantor hereby further represents and warrants to the Lender with the intent that the Lender rely thereon, as follows with regard to the Guaranty, as hereby modified: (a) the Guaranty is in full force and effect and is binding and enforceable against the Guarantor in accordance with its terms; (b) the Guarantor irrevocably consents and agrees to the Borrower's execution and delivery of this Modification Agreement; (c) the liability of the Guarantor to the Lender under the Guaranty shall in no way be affected, modified, altered, or discharged in any fashion by the Borrower's execution, delivery or performance of the Second Amended Note or this Modification Agreement; (d) the Guarantor hereby restates and reaffirms to Lender all terms and provisions of the Guaranty as if set forth in full herein; and (e) the Guarantor does not possess any claims, defenses, offsets, or counterclaims against the enforcement of the Guaranty as of the date hereof, and any and all such claims, defenses, offsets and

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counterclaims, whether known or unknown, are forever waived and released, and the Guarantor is unconditionally liable under the Guaranty, for the payment and performance of all present and future indebtedness and all other obligations described therein.

10. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois (exclusive of choice of law principles), including all matters of construction, validity and performance.

11. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

12. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

13. This Modification Agreement is executed by Albany Bank & Trust Company, N.A., not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee, and it is expressly understood and agreed that nothing in this Modification Agreement shall be construed as creating any personal liability on said Trustee.

14. Lender's consent to this Modification Agreement shall be subject to Lender (or Lender's nominee) having received the following in a form and substance acceptable to Lender on or before August 31, 2023 (the "Modification Termination Date"):

- (a) A certified copy of the land trust agreement showing Lender's Collateral ABI as lodged; and
- (b) Such other documents as Lender may reasonably require.

The Obligors' failure to deliver the aforementioned documents and items to Lender on or before the Modification Termination Date shall, at the option of Lender, result in this Modification Agreement (including all agreements and waivers of Lender contained herein) being null and void.

15. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

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TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

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IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

BORROWER:

Albany Bank & Trust Company, N.A.,
as Trustee, as aforesaid

By: [Signature]

Name: Constantinos Almiras

Title: General Counsel & Trust Officer

3535 N. Western Avenue LLC, an Illinois
limited liability company

By: Adam P. Winick Trust dated September
23, 1999, a member

By: [Signature]

Name: Adam P. Winick

Title: Trustee

By: [Signature]

Harold J. Hayes, a/k/a H. Joseph Hayes,
a member

By: Gecht Family Trust, a member

By: [Signature]

Name: Robert D. Gecht

Title: Trustee

GUARANTORS:

[Signature]
Adam Winick, individually

[Signature]
Harold J. Hayes, individually

[Signature]
Robert D. Gecht, individually

LENDER:

First Eagle Bank

By: [Signature]

Name: Zachary Braun

Title: Senior Vice President

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that KONSTANTINOS ANGIROS, a ^{GENERAL COUNSEL} ~~TRUST OFFICER~~ of **Albany Bank & Trust Company, N.A.**, not personally but as trustee under Trust Agreement dated October 8, 2003 and known as Trust No. 11-5929, who is known to me to be the same person whose name is subscribed to the foregoing instrument as such trustee, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as her/his own free and voluntary act and as the free and voluntary act of said trust company, for the uses and purposes therein stated.

GIVEN under my hand and notarial seal, this 11th day of AUGUST, 2023.



Notary Public

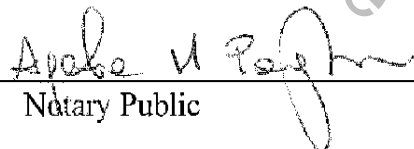
My Commission Expires: 10-27-2025

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)



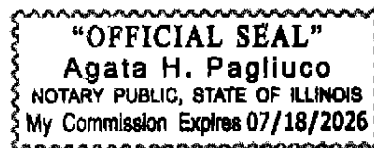
I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Zachary Braun, a Senior Vice President of **First Eagle Bank**, known to me to be the same person whose name is subscribed to the foregoing instrument as such officer appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said bank.

Given under my hand and notarial seal this 11th day of August, 2023.



Notary Public

My Commission Expires: 07/18/2026

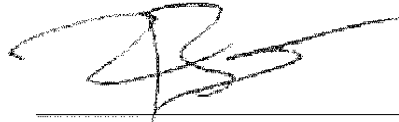


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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

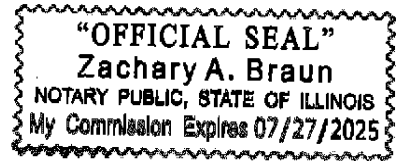
I, the undersigned, a Notary Public in the State and County aforesaid, DO HEREBY CERTIFY that **Adam P. Winick**, the Trustee of the Adam P. Winick Trust dated September 23, 1999, a member of 3535 N. Western Avenue LLC, an Illinois limited liability company (the "Company"), who is known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as such trustee of such member of the Company, as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 10 day of August, 2023.



Notary Public

My Commission Expires: _____



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

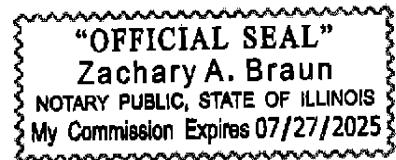
I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **Adam Winick** personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 10 day of August, 2023.



Notary Public

My Commission Expires: _____




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STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

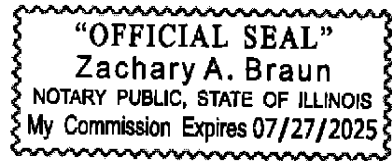
I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Harold J. Hayes**, a member of 3535 N. Western Avenue LLC, an Illinois limited liability company (the "Company"), who is known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as a member of the Company as his own free and voluntary act, for the uses and purposes therein stated.

Given under my hand and notarial seal this 10 day of August, 2023.



Notary Public

My Commission Expires: _____



STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **Harold J. Hayes** personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 10 day of August, 2023.



Notary Public

My Commission Expires: _____



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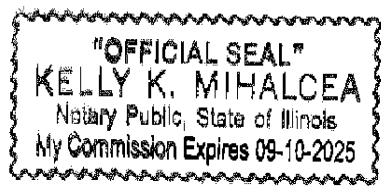
STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Robert D. Gecht**, the trustee of the Gecht Family Trust, a member of 3535 N. Western Avenue LLC, an Illinois limited liability company (the "Company"), who is 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 he signed, sealed and delivered the said instrument as the trustee of the member of the Company, as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of August, 2023.

Kelly K. Mihalcea
Notary Public

My Commission Expires: 09/10/2025



STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that **Robert D. Gecht** personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 11th day of August, 2023.

Kelly K. Mihalcea
Notary Public

My Commission Expires: 09/10/2025



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EXHIBIT A

Legal Description

PINS: 14-19-300-002-0000 14-19-300-003-0000
 14-19-300-004-0000 14-19-300-005-0000

Address: 3535 N. Western Avenue, Chicago, Illinois

PARCEL 1:

LOT 72 (EXCEPT THE WEST 17.00 FEET THEREOF); LOT 73 (EXCEPT THE NORTH 11 FEET AND 1-INCH ALSO EXCEPT THE WEST 17.00 FEET THEREOF); THE NORTH 11 FEET AND 1-INCH (EXCEPT THE WEST 75.00 FEET THEREOF) OF LOT 73; LOT 74 (EXCEPT THE WEST 75.00 FEET THEREOF); LOT 75 (EXCEPT THE WEST 75.00 FEET THEREOF); LOT 76 (EXCEPT THE WEST 75.00 FEET THEREOF); LOT 77 (EXCEPT THE WEST 17.00 FEET THEREOF) IN SHELDON ESTATES SUBDIVISION OF BLOCK 32 IN OGDEN'S SUBDIVISION OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 THEREOF AND THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 THEREOF AND THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE WEST 58.00 FEET OF THAT PART OF LOTS 74, 75, 76 AND THE NORTH 11 FEET 1-INCH OF LOT 73 (TAKEN AS A TRACT), LYING EAST OF THE WEST 50.00 FEET EAST OF AND ADJOINING THE WEST LINE OF SECTION 19 IN SHELDON ESTATES SUBDIVISION OF BLOCK 32 IN OGDEN'S SUBDIVISION OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 THEREOF AND THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 THEREOF AND THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION), IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 78 (EXCEPT THAT PART LYING WEST OF A LINE DRAWN 50.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 19, IN SHELDON ESTATES SUBDIVISION OF BLOCK 32 IN OGDEN'S SUBDIVISION OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 THEREOF AND THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 THEREOF AND THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION), IN COOK COUNTY, ILLINOIS.