

# UNOFFICIAL COPY

EXECUTION

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## AGREEMENT REGARDING SECOND AMENDMENT TO MORTGAGE AND OTHER LOAN DOCUMENTS

THIS AGREEMENT (this "Agreement") is made as of the 30<sup>th</sup> day of March, 1990 between CHICAGO TITLE AND TRUST COMPANY, not personally but solely as Trustee under Trust Agreement dated April 16, 1985 and known as Trust No. 1086781; having its principal address at 111 Washington Street, Chicago, Illinois 60602 (the "Borrower"), and SWISS BANK CORPORATION, NEW YORK BRANCH, a branch of a banking corporation organized under the laws of Switzerland, having an office at 4 World Trade Center, New York, NY 10048 (the "Lender").

### W I T N E S S E T H:

WHEREAS, the Borrower and the Lender are parties to a building loan agreement, dated as of June 16, 1988 (as amended by the Agreement regarding Amendment to Mortgage and Other Loan Documents, dated as of April 11, 1989 (the "First Loan Amendment"), the "Building Loan Agreement"; capitalized terms used herein without definitions shall have the meanings set forth in the Building Loan Agreement), pursuant to which the Lender has agreed to make available to the Borrower a loan (the "Loan") in the maximum principal amount of up to \$148,000,000.00 for the purpose of financing the acquisition cost of and ground rent related to the Land and certain costs of constructing an office tower and related site improvements thereon and certain operating deficits; and

WHEREAS, the Loan is evidenced and secured by the Loan Documents, which include, inter alia, the Mortgage and the Assignment of Leases and Rents; and

WHEREAS, the Mortgage and the Assignment of Leases and Rents encumber the Land which is described in Exhibit A, the Mortgage was recorded in the office of the County Clerk, Cook County, Illinois, on June 17, 1988 as Document No. 88264595 and the Assignment of Leases and Rents was recorded in the office of the County Clerk, Cook County, Illinois, on June 17, 1988 as Document No. 88264596; and

WHEREAS, the First Loan Amendment was recorded in the office of the County Clerk, Cook County, Illinois, on May 1, 1989 as Document No. 89192822; and

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WHEREAS, the parties desire to amend the Loan Documents to the extent required to include all right, title and interest of the Borrower in, to and under the Easement (as hereinafter defined) which pertains to the Land, as part of the collateral securing the Loan, and in connection therewith the parties desire to spread the liens of the Mortgage and the Assignment of Leases and Rents to cover the Easement.

NOW THEREFORE, with reference to the foregoing recitals and in reliance thereon and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender agree as follows:

1. The Building Loan Agreement and the other Loan Documents (including, without limitation, the Mortgage and the Assignment of Leases and Rents) are hereby amended as of the Effective Date (as hereinafter defined) as follows:

a. All references in such documents to the collateral which secures the Loan and the Obligations of the Borrower thereunder (collectively, the "Obligations") shall be deemed to include all right, title and interest of the Borrower in and to the easement described in Exhibit B attached hereto (the "easement").

2. The liens of each of the Mortgage and the Assignment of Leases and Rents are hereby spread to cover all right, title and interest of the Borrower in and to the Easement, so that the collateral described in and encumbered by each of such liens shall be deemed to include the following:

"TOGETHER with all right, title and interest of the grantee in, to and under the easement agreement, dated December 21, 1988 and recorded in the office of the County Clerk, Cook County, Illinois on December 23, 1988 as Document No. 88-592269, made by the City of Chicago, as grantor, in favor of Chicago Title and Trust Company, not personally but solely as Trustee under Trust Agreement dated April 16, 1985 and known as Trust No. 1086781 (as successor by assignment from Rubloff Inc., which assignment is dated February 12, 1990 and was recorded in the Office of the County Clerk, Cook County, Illinois as Document No. 90090675), as grantee."

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3. From and after the Effective Date, all references in the Building Loan Agreement, the Mortgage, the Assignment of Leases and Rents and the other Loan Documents to the collateral securing the Obligations shall include all right, title and interest of the Borrower in, to and under the Easement.

4. The Borrower hereby (a) represents that no Event of Default has occurred and is continuing under the Building Loan Agreement and that the organization and authorization documents described in clause (k) of section 6.1 of the Building Loan Agreement are in full force and effect and have not been modified or amended since the date of their delivery to the Lender, and (b) reaffirms all the representations set forth in Exhibit E to the Building Loan Agreement, in each case as of the date hereof and as of the Effective Date.

5. This Agreement is limited as specified and shall not constitute a modification or waiver of or otherwise affect in any way any of the provisions of any of the Loan Documents. As amended hereby, the Loan Documents are ratified and confirmed in all respects.

6. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which counterparts when executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

7. The Borrower agrees to and shall execute and deliver or cause to be executed and delivered to the Lender all other instruments, certificates, agreements and consents as the Lender may reasonably require in order to confirm or assure the terms of this Agreement.

8. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the laws of the State of Illinois.

9. This Agreement shall be and become effective on the date (the "Effective Date") on which the following conditions precedent have been satisfied:

a. the Lender and the Borrower shall have executed and delivered this Agreement;

b. the Borrower shall have furnished to the Lender an endorsement or amendment to the Title Insurance

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Policy covering the lien of the Mortgage on the Easement which is acceptable to the Lender in all respects; and

c. the Borrower shall furnish to the Lender such authorization and other papers and documents relating to this Agreement as the Lender may require.

10. It is expressly understood and agreed by and between the parties hereto that, anything contained herein to the contrary notwithstanding, this Agreement is executed by the Company, not personally, but solely as trustee under the Trust Agreement and it is expressly understood and agreed that, anything contained herein to the contrary notwithstanding, each and all of the representations, covenants, undertakings and agreements herein made by the Company are made and intended not as personal representations, covenants, undertakings and agreements by the Company or for the purpose or with the intention of binding the Company personally but are made and intended for the purpose of binding only the Trust Estate, and this instrument is executed and delivered by the Company not in its own right, but solely in the exercise of the powers conferred upon it as Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Company, on account of this instrument or on account of any representation, covenant, undertaking or agreement of the Company in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, each of the Lender and the Company, in the case of Company not personally but as Trustee aforesaid, has caused these presents to be signed by duly authorized officer(s) and its corporate seal to be hereunto affixed and attested as of the date and year first above written.

SWISS BANK CORPORATION,  
New York Branch

By : Thomas Rothlisberger  
Name: Thomas Rothlisberger  
Title: Assistant Vice President

Office

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By: [Signature]  
Name: \_\_\_\_\_  
Title: Lisa J. Lichtenberger  
Assistant Treasurer

CHICAGO TITLE AND TRUST COMPANY,  
not personally but solely as  
Trustee under Trust Agreement  
dated April 16, 1985 and is known  
as Trust No. 10867#1

By: [Signature] [Signature]  
Name: MONICA JILES  
Title: ASST. VICE PRESIDENT  
ASST. SECRETARY

Each of the undersigned hereby consents to the foregoing  
Agreement and any modification effected by such Agreement of  
any Building Loan Document:

RUBLOFF INC.

By: [Signature]  
Name: Stephen J. Sinclair  
Title: Sr. Vice President

RIVERSIDE PARK I ASSOCIATES LIMITED PARTNERSHIP

By: Lake Michigan Properties IV, Inc.,  
its General Partner

By: [Signature]  
Name: Stephen J. Sinclair  
Title: Sr. Vice President

ILLINOIS BELL ADMINISTRATION CENTER, INC.

By: [Signature] BTO  
Name: James E. Wilkes 5/8/90  
Title: President

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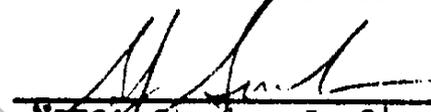
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## R. I. LIMITED PARTNERSHIP

By: Riverside Park I Associates Limited Partnership,  
its General Partner

By: Lake Michigan Properties IV, Inc.,  
its General Partner

By:   
Name: Stephen J. Sinclair  
Title: Sr. Vice President

## OLGP RIVERSIDE PARTNERSHIP

By: OLGP Riverside Corp.,  
its Managing General Partner

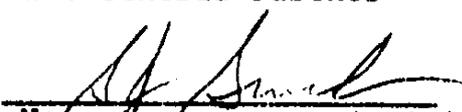
By:   
Name: G. MARK LORETO  
Title: VP

## 100 RIVERSIDE JOINT VENTURE

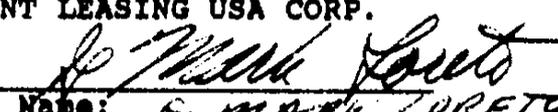
By: R. I. Limited Partnership,  
its General Partner

By: Riverside Park I Associates Limited Partnership,  
its General Partner

By: Lake Michigan Properties IV, Inc.,  
its General Partner

By:   
Name: Stephen J. Sinclair  
Title: Sr. Vice President

ORIX USA CORPORATION formerly known as  
ORIENT LEASING USA CORP.

By:   
Name: G. MARK LORETO  
Title: VP

50 NORTH RIVERSIDE LIMITED PARTNERSHIP

By: R.I. Limited Partnership,  
its General Partner

By: Riverside Park I Limited Partnership,  
its General Partner

By:

  
Name: Stephen J. Sinclair  
Title: Sr. Vice President

Property of Cook County Clerk's Office

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STATE OF NY )  
COUNTY OF NY ) SS

I, MARY LOU STEFFICH, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that THOMAS ROTHLSBERGER and LISA LICHTENBERGER personally know to me to be the same persons whose names are subscribed to the foregoing instrument as the ASS. VICE PRESIDENT and ASSISTANT TREASURER respectively of SWISS BANK CORPORATION, New York Branch, a SWISS corporation appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 15 day of May, 1989.

Mary Lou Steffich  
NOTARY PUBLIC

MY COMMISSION EXPIRES

8-31-90

MARY LOU STEFFICH  
NOTARY PUBLIC, State of New York  
No. 31-4766724  
Queens County, New York County  
Commission Expires ~~March 30, 1990~~ 8/31/90

Property of Cook County Clerk's Office

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STATE OF ILLINOIS        )  
                                  )SS  
COUNTY OF COOK         )

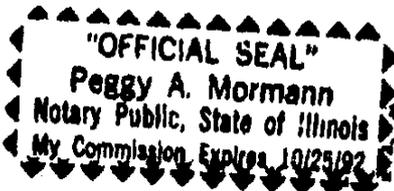
I, Peggy A. Mormann, a Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY that Stephen J. Morrison personally known to me to be the same person whose name is subscribed to the foregoing instrument as the Secretary of RUBLOFF, INC., a Delaware corporation appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 9th day of May, 1989.

Peggy A. Mormann  
NOTARY PUBLIC

MY COMMISSION EXPIRES

10/25/92



PROPERTY of Cook County Clerk's Office

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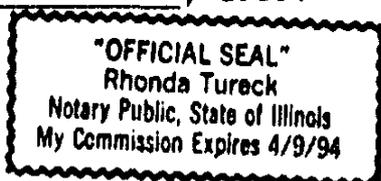
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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, RHONDA TURECK, a notary public in and for said County, in the State aforesaid, do hereby certify that MONICA JILES and LYADA S. BARRIE, of Chicago Title and Trust Company who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such ASST. VICE PRESIDENT and ASST. SECRETARY respectively, appeared before me this day in person and acknowledged that they signed and delivered the foregoing instrument as their own free and voluntary act and as the free and voluntary act of said trust company, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said ASST. SECRETARY then and there acknowledged that he/she, as custodian of the corporate seal of said trust company did affix the corporate seal of said trust company to said instrument as his/her own free and voluntary act and as the free and voluntary act of said trust company as Trustee as aforesaid, for the uses and purposes therein set forth.

MAY 9 1990

Given under my hand and notarial seal \_\_\_\_\_ day of \_\_\_\_\_, 1989.



[Handwritten Signature]  
Notary Public

MY COMMISSION EXPIRES:

\_\_\_\_\_

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STATE OF New York )  
 )  
COUNTY OF Queens ) SS

**YVONNE A. ANTREASNYAN**  
Notary Public, State of New York  
No. 41-4881687  
Qualified in Queens County  
Commission Expires March 30, 1992

I, Yvonne A. Antreasnyan, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that J. Mark Herz personally known to me to be the same person whose name is subscribed to the foregoing instrument as the V.P. of OLGP RIVERSIDE CORP., a Delaware corporation which is the Managing General Partner of OLGP Riverside Partnership, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation, acting as General Partner aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 16<sup>th</sup> day of April, 1989.

Yvonne A. Antreasnyan  
NOTARY PUBLIC

MY COMMISSION EXPIRES  
March 31, 1992

COOK County Clerk's Office

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MAZDAH A BONDY  
1000 North Dearborn Street  
Chicago, IL 60610  
Tel: (773) 327-1000  
Fax: (773) 327-1001

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Peggy A. Mormann, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Richard J. ... personally known to me to be the same person whose name is subscribed to the foregoing instrument as the general partner of LAKE MICHIGAN PROPERTIES IV, INC., an Illinois corporation which is the General Partner of Riverside Park I Associates Limited Partnership, being the General Partner of R.I. Limited Partnership appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation acting as General Partner aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 9<sup>th</sup> day of May, 1989.

Peggy A. Mormann  
NOTARY PUBLIC

MY COMMISSION EXPIRES  
10/25/92



Notary of Cook County Clerk's Office

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STATE OF ILLINOIS        )  
                                  )SS  
COUNTY OF COOK         )

I, Peggy A. Mormann, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that [Signature] personally known to me to be the same person whose name is subscribed to the foregoing instrument as the [Signature] of LAKE MICHIGAN PROPERTIES, IV, INC., an Illinois corporation which is the General Partner of Riverside Park I Associates Limited Partnership, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation, acting as General Partner aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 9<sup>th</sup> day of May, 1989.

Peggy A. Mormann  
NOTARY PUBLIC

MY COMMISSION EXPIRES  
11/25/92



CLERK OF COOK COUNTY Clerk's Office

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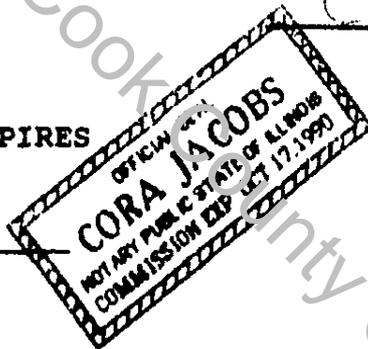
STATE OF ILLINOIS        )  
                                  )SS  
COUNTY OF COOK         )

I, CORA JACOBS, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JAMES E. WILKES personally known to me to be the same person whose name is subscribed to the foregoing instrument as the President of ILLINOIS BELL ADMINISTRATION CENTER, INC., an Illinois corporation appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 9th day of May, 1989.

Cora Jacobs  
NOTARY PUBLIC

MY COMMISSION EXPIRES



Notary Clerk's Office

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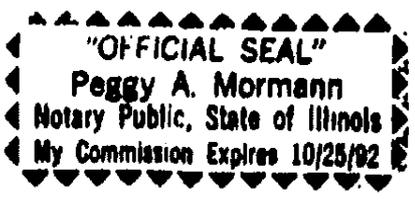
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Peggy A. Mormann, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Stephen J. ... personally known to me to be the same person whose name is subscribed to the foregoing instrument as the ... of LAKE MICHIGAN PROPERTIES IV, INC., an Illinois which is the General Partner of Riverside Park I Associates Limited Partnership, being the General Partner of R.I. Limited Partnership, being the General Partner of 50 North Riverside Limited Partnership, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation, acting as General Partner aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 9th day of July, 1986

Peggy A. Mormann  
NOTARY PUBLIC

MY COMMISSION EXPIRES  
10/25/92



Cook County Clerk's Office

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EXHIBIT A

PARCEL 1: (FEE PARCEL)

ALL OF WEST WATER STREET (NOW VACATED) LYING SOUTH OF THE SOUTH LINE OF RANDOLPH STREET, LYING NORTH OF THE NORTH LINE OF WASHINGTON STREET, LYING WEST OF AND ADJOINING WHARFING LOTS 1 TO 5, BOTH INCLUSIVE, IN BLOCK "0" IN ORIGINAL TOWN OF CHICAGO IN THE SOUTH PART OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND LYING EAST OF A DIRECT LINE DRAWN FROM A POINT ON THE SOUTH LINE OF LOT 9 IN BLOCK 44 IN ORIGINAL TOWN OF CHICAGO, 41.87 FEET EAST OF THE SOUTH WEST CORNER OF SAID LOT 9, TO A POINT ON THE NORTH LINE OF LOT 1 IN SAID BLOCK 44, 85.70 FEET EAST OF THE NORTH WEST CORNER OF SAID LOT 1, AS SHOWN AND LOCATED ON THE PLAT RECORDED AUGUST 18, 1855, AS DOCUMENT NUMBER 62008 IN COOK COUNTY, ILLINOIS.

PARCEL 2: (LEASEHOLD PARCEL)

THAT PART OF LOTS 1, 4, 5, 8 AND 9 LYING WEST OF A DIRECT LINE DRAWN FROM THE POINT OF INTERSECTION OF THE WEST LINE OF WEST WATER STREET (NOW VACATED) AND THE SOUTH LINE OF SAID LOT 9, BEING A POINT ON THE SOUTH LINE OF LOT 9 APPROXIMATELY 41.87 FEET EAST OF THE SOUTH WEST CORNER OF LOT 9, TO THE POINT OF INTERSECTION OF THE WEST LINE OF WEST WATER STREET (NOW VACATED) AND THE NORTH LINE OF LOT 1, BEING APPROXIMATELY 85.70 FEET EAST OF THE NORTH WEST CORNER OF LOT 1 IN BLOCK 44 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE MAP OF THE TOWN OF CHICAGO BY JAMES THOMPSON DATED AUGUST 4, 1830 AND FILED FOR RECORD MAY 29, 1837 AND RECORDED JULY 6, 1837 IN BOOK H OF MAPS, PAGE 298 AS DOCUMENT 5060 IN COOK COUNTY, ILLINOIS.

PARCEL 3: (EASEMENT)

NON-EXCLUSIVE PERPETUAL EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 FOR THE PURPOSES OF INGRESS AND EGRESS AS CREATED BY ASSIGNMENT OF NON-EXCLUSIVE EASEMENT DATED APRIL 8, 1986 AND RECORDED APRIL 10, 1986 AS DOCUMENT 86138458 MADE BY AND BETWEEN CHICAGO UNION STATION COMPANY, AND CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 16, 1985 AND KNOWN AS TRUST NUMBER 1087681 OVER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY:

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ALL THAT CERTAIN STRIP OR PARCEL OF LAND, SITUATED IN THE CITY OF CHICAGO, COUNTY OF COOK AND THE STATE OF ILLINOIS, AND BEING LOCATED EASTERLY OF CANAL STREET AND NORTHERLY OF THE SOUTHERLY LINE OF LAKE STREET, DRAWN FROM A POINT ON THE EASTERLY LINE OF CANAL STREET, APPROXIMATELY ONE HUNDRED (100) FEET SOUTH OF THE SOUTH LINE OF VACATED CARROLL AVENUE, AND AS LIES NORTHEASTERLY OF A LINE PARALLEL TO AND EIGHT (8) FEET NORTHERLY AND RADially DISTANT FROM THE CENTER LINE OF THE TRACK JOINTLY OWNED BY CONSOLIDATED RAIL CORPORATION AND THE CHICAGO, MILWAUKEE, ST. PAUL, AND PACIFIC RAILROAD COMPANY AS SHOWN MARKED --- ET --- ON PLAN 1856 (CONSOLIDATED RAIL CORPORATION'S CASE PLAN NUMBER 65972), WHICH PLAN IS ATTACHED AS EXHIBIT "E" TO ASSIGNMENT OF NON-EXCLUSIVE EASEMENT DATED APRIL 8, 1986 AND RECORDED APRIL 10, 1986 AS DOCUMENT 86138456, ALL IN THE EAST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index No.: 17-09-334-002  
17-09-335-001

Common Address: 100 North Riverside Plaza  
Chicago, Illinois

Prepared by and after recording  
should be returned to:

Daniel Arbess  
White & Case  
1155 Avenue of the Americas  
New York, New York 10036

**BOX 302**

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