

# UNOFFICIAL COPY

9 2 4 3 3 2 1

## 92406828

Frontage.Doc.

### COLLATERAL ASSIGNMENT OF RENTS, LEASES, ISSUES, PROFITS AND CONTRACTS

THIS ASSIGNMENT, made this 9th day of April, 1992, by American National Bank and Trust Company of Chicago, duly authorized to accept and execute trusts in the State of Illinois, not personally, but as trustee ("Trustee") under the provisions of a deed or deeds in trust, duly recorded and delivered to said corporation pursuant to a trust agreement dated September 6, 1972 ("Trust Agreement") and known as Trust No. 77134 and its beneficiary, Richard S. Lewis ("Beneficiary") (Trustee and Beneficiary collectively "Assignor") to NBD Highland Park Bank N.A., a national banking association, having its principal place of business in Highland Park, Illinois ("Assignee");

This instrument controls to the extent of any inconsistency with paragraphs 17 and 18 of the Mortgage of even date herewith. Nevertheless, all rights hereunder and under other loan documents of even date herewith in favor of NBD Highland Park Bank, N.A. are cumulative. All such loan documents shall be interpreted and construed so as to be consistent with each other to the maximum extent permitted by law.

RECORDING \$39.00  
T#3333 TRAN 6822 06/09/92 11:22:00  
#8204 + C \*-92-406828  
COOK COUNTY RECORDER

### WITNESSETH THAT

ASSIGNOR DOES HEREBY BARGAIN, SELL, ASSIGN, CONVEY, SET OVER, DELIVER AND TRANSFER (COLLECTIVELY, "Transfer") TO ASSIGNEE:

- (i) All leases of or affecting the Premises, or any portion thereof, now existing or executed at any time in the future, and all amendments, extensions and renewals of such leases (collectively, "Leases");
- (ii) All other contracts, licenses, concessions, franchises, permits and rights affecting the Premises, creating or granting any interests in or under the Premises in addition to any interests granted under the Leases, if any, and otherwise giving rise to or entitling Assignor to any item of Income, as defined below (collectively, "Other Contracts");
- (iii) All rents, issues, profits, proceeds, avails, emoluments and any and all other income whatsoever arising under or in connection with the Premises, whether under or in connection with the Leases, Other Contracts, or any of them, or on account of the possession, use, occupancy, license or exploitation of the Premises, including any rights and claims for damages against any obligors under any of the Leases and Other Contracts, including rights to compensation with respect to rejected Leases and Other Contracts pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement or successor section thereof (collectively, "Income"); and
- (iv) All of Assignor's interest in any tenant improvements and fixtures located on the Premises (collectively, "Tenant Improvements").

(The Leases and Other Contracts are sometimes collectively "Contracts" and the Contracts, Income and Tenant Improvements are sometimes collectively the "Collateral". An "Obligor" under any Contract is a counterparty to the Assignor under such Contract.)

Prepared by: John A. Williamson Street Address: 1840 Frontage Road, Northbrook, IL 60062  
NBD Highland Park Bank, N.A.  
513 Central Ave. Highland Park, IL 60035 P.I.N. 04-13-108-007, 04-13-108-008, 04-13-108-033, 04-13-108-32

92406828

00  
39/1

# UNOFFICIAL COPY

AND ASSIGNOR HEREBY ACKNOWLEDGES,  
AGREES, REPRESENTS AND WARRANTS AS FOLLOWS:

1. Assignor's Acknowledgments.

(a) Assignor hereby acknowledges and agrees that:

(i) Trustee and Beneficiary are obtaining a loan in the principal amount of \$300,000.00 from Assignee evidenced by a Note of even date herewith;

(ii) Trustee and Beneficiary are delivering and causing delivery of the certain loan documents, including the Note, evidencing the indebtedness ("Indebtedness") of the Assignor to the Assignee in the amount set forth in the Note and a mortgage of even date herewith ("Mortgage") upon the Premises (such Premises being legally described and commonly known as set forth in Exhibit A); and

(iii) Assignee is executing and delivering this Assignment further to secure the Trustee's and Beneficiary's performance of their obligations under the Note, Mortgage and all other agreements of Trustee and Beneficiary in favor of Assignee ("Loan Documents").

(b) The Assignor hereby further acknowledges and agrees that the foregoing Transfer of the Collateral is intended to establish a complete and present, absolute transfer of each item of Collateral to Assignee with the right, but not with the obligation, to act in the contractual capacity of the Assignor under the Contracts, and to collect each and every item of Income. Assignor agrees to deposit with the Assignee such originals or copies of the Contracts and all subsequent amendments, extensions and renewals thereof as the Assignee may now or hereafter require from time to time and in all events to deposit all Contracts executed subsequent to the date hereof.

2. Representations, Warranties and Covenants of Assignor.

(a) The Assignor represents and warrants to Assignee that:

(i) This Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(ii) Assignor has not heretofore made any other assignment of its entire or any part of its interest in any of the Contracts or any of the Income and has not heretofore entered into any agreement to subordinate any of its interests in the Contracts, or Assignor's right to receive any of the Income assigned hereunder to the interests of any other person; and

(iii) Assignor has not heretofore entered into any agreement or acted in any manner which might prevent or restrict Assignee from the assignment of his rights.

(b) Assignor covenants and agrees that so long as this Assignment remains in effect:

(i) Assignor shall not enter into any Lease for all or any portion of the Premises without the prior written consent of Assignee;

(ii) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Contracts to be observed or performed by the Assignor, and Assignor shall not do or suffer to be done anything to impair the security thereof, or without the express written consent of Assignee, (A) release the liability of any Obligor, (B) permit any Obligor thereunder to withhold any payment or to make monetary advances and off-set the same against future payments, or (C) permit any

# UNOFFICIAL COPY

9 2 4 0 5 3 2

Obligor to claim a total or partial eviction, (D) permit any Obligor under any Lease to terminate or cancel any Contract, or (E) enter into any oral Contracts with respect to all or any portion of the Premises;

(iii) Assignor shall not collect any item of Income more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

(iv) Assignor shall not make any other assignment of any portion of its interest in any Contract or in any item of Income without the prior written consent of Assignee;

(v) Assignor shall not alter, modify or change the terms and provisions of any Contract or give any consent (including, but not limited to, any consent to any assignment of any Contract, or subletting under any Lease) or approval, required or permitted by such terms and provisions or cancel or terminate any Contract (other than any Contract in which the Obligor thereunder is in default) without the prior written consent of Assignee or waive or excuse the obligation to make any payments under any Contract representing any item of Income;

(vi) Assignor shall not accept a surrender of any Contract other than any Contract in which the Obligor thereunder is in default, or convey or transfer, or suffer or permit a conveyance or transfer, of the portion of the Premises demised under any Lease or of any interest in any Contract so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any Obligor;

(vii) Assignor shall not alter, modify or change the terms of any guaranty of any Contract, or cancel or terminate any such guaranty or (o) or suffer to be done anything which would terminate any such guaranty as a matter of law, without the prior written consent of Assignee;

(viii) Assignor shall enforce the Contracts and all rights and remedies of the Assignor in case of default thereunder by any Obligor;

(ix) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Contract or the obligations, duties or liabilities of any Obligor or guarantor, and shall pay all costs and expenses of Assignee, including court costs and attorneys' fees, in any such action or proceeding in which Assignee may appear;

(x) Assignor shall give prompt notice to Assignee of any notice of any default on the part of any Obligor or guarantor with respect to any Contract;

(xi) Assignor shall enforce strictly the observance and performance of each covenant, term, condition and agreement contained in each Contract;

(xii) Assignor shall not permit its interests in any Contracts to become subordinate to any lien or liens other than liens securing the Indebtedness or liens for general real estate taxes not delinquent;

(xiii) Assignor shall not execute hereafter any Lease unless there shall be included therein a provision providing that the obligor thereunder acknowledges that such Contract has been assigned pursuant to this Agreement and agrees not to look to Assignee as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by Assignor under such Contract unless such sums have actually been received in cash by Assignee as security for the obligor's performance under such Contract, without the prior written consent of Assignee;

(xiv) Assignor shall furnish to Assignee, within ten (10) days after a request by Assignee to do so, a written statement containing the names of all persons (or as applicable, class of persons) retaining

UNOFFICIAL COPY

# UNOFFICIAL COPY

3 2 4 0 1 2

possession of any portion of the Premises identifying the basis for such possession, whether by Contract or otherwise;

(xv) Assignor shall, within fifteen (15) days of any written demand therefore by Assignee, obtain from any such persons so identified in Section 2(b)(xiv) as required by Assignee, including all Obligor, a certificate or estoppel affidavit with respect to the status of the subject possession and applicable Contract;

(xvi) In the event that any Obligor or guarantor under any Contract is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of any Contract assigned hereby, Assignor covenants and agrees that, as to any such Contract so terminated or rejected, it shall not make any settlement for damages without the prior written consent of Assignee. Any check in payment of damages for termination or rejection of any such Contract will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, Assignor will duly endorse to the order of Assignee any such check and deliver the same immediately to Assignee for application to the Indebtedness or any portion thereof in such manner as Assignee deems appropriate.

### 3. Rights Prior to Default.

So long as Assignor is not in default hereunder or any of the other Loan Documents, Assignee shall not demand from any Obligor or any other person liable under any Contract, any payment thereunder representing an item of Income, and Assignor shall have the license to collect at the time, but not more than thirty (30) days in advance, of the date provided for the payment thereof, all items of Income, and to retain, use and enjoy the same for its own account. Nevertheless, it is understood and agreed that this is a present and absolute assignment of all rights of Assignor in and to the Collateral, subject only to the license granted to Assignor pursuant to this Section 3. The license granted to Assignor hereunder shall immediately terminate upon default by Assignor hereunder or by Trustee or Beneficiary under any of the Loan Documents. Assignee reserves the right, exercisable at any time, to notify all or any of the Obligor of the existence of this Assignment at any time.

### 4. Power of Attorney.

Subject to Section 3, Assignor hereby appoints Assignee as Assignor's true and lawful attorney-in-fact, with full power of substitution and with power for it and in its name, place and stead, to demand, collect, receipt for and give complete acquittance for any and all items of Income which may be or become due and payable by any Obligor, and in its discretion, to file any claim or take any other action, prosecute any proceeding and settle any claims, either in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or desirable to collect and enforce the payment of any and all items of Income. The Obligor under the Contracts and any and all other occupants and users of the Premises, or any part thereof, are hereby expressly authorized to pay all items of Income and other amounts otherwise due Assignor to Assignee or such nominee as Assignee may designate in writing delivered to and received by any such persons, such persons to be expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made to Assignee; and Assignee may under the power of attorney granted above, direct such Obligor to so make payment directly to it.

### 5. Enforcement of Rights; Perfection

(a) Assignor hereby grants Assignee full power to use all measures, legal and equitable, it deems necessary or proper, with or without taking possession of the Premises, to enforce this Assignment and to collect each and every item of Income, and otherwise in its discretion to enter upon the Premises, or any part thereof, and take, to the fullest extent permitted by law, possession thereof forthwith and to effect the cure of any default on the part of Assignor, as a party under any Contract. Assignor hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times hereafter, without notice to Assignor,

with full power to use and apply each and every item of Income herein assigned to the payment of all *Indebtedness* and of the costs of managing and operating the Premises, taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the Improvements or of making the same rentable, all in such order and amounts as Assignee may determine in its sole discretion. Any amounts collected hereunder by Assignee which are in excess of those applied to satisfy in full the *Indebtedness* and all of the obligations and liabilities of Assignor to Assignee under the Loan Documents and the matters stated in the prior sentence at the time due shall be promptly paid to Trustee. Assignee shall be under no obligation to exercise any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the Assignor as a party under any of the Contracts and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Assignor under any of the Contracts.

(b) In addition to the rights granted to Assignee under Section 5(a), Assignor agrees that, upon default under this Assignment or any other Loan Document and thereafter, Assignor shall deposit with Assignee each and every item of Income Assignor may receive from time to time, in such manner, in such form and endorsed to Assignee as Assignee may from time to time require; and shall otherwise direct such Obligors to make payment of each item of Income directly to Assignee or as Assignee directs.

(c) Assignee may, and is hereby authorized, to take such actions as it deems reasonably necessary and proper, including recording this Assignment, filing appropriate financing statements, obtaining the appointment of a trustee or receiver as to any or all of the Collateral and giving notices to Assignor in conformity with the Federal Bankruptcy Code, as Assignee deems necessary and proper to perfect Assignee's interest in the Collateral. Assignor will cooperate as requested with Assignee to assure perfection of Assignee's interest in the Collateral. Upon default, Assignor shall hold and sequester, as trustee for the benefit of Assignee, any and all items or cash representing Income and shall in no event dispose of or dissipate any of such Income.

#### 6. Limitation of Assignee's Liability; Indemnification.

(a) Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises following the occurrence of any one or more events of default under the provisions hereof or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of any one or more events of default under the provisions hereof. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Contract to be observed or performed by the Assignor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment. This Assignment shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing herein or in the Mortgage and no exercise by Assignee of any of the rights herein or in the Mortgage shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof. Assignee has not received nor been transferred any security deposited by any Obligor under the terms of any Contract and Assignee assumes no responsibility or liability for any security so deposited.

(b) Assignor hereby agrees to indemnify Assignee and to hold it harmless from any liability, loss, cost, damage or expense including court costs and attorneys' fees which may or might be incurred by Assignee under the Contracts or otherwise by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Contracts, except that Assignor shall not be liable for the acts of gross negligence or willful misconduct of Assignee, its agents, employees or representatives. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason

# UNOFFICIAL COPY

of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and attorney's fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. It is further agreed that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Assignee, nor shall it operate to make Assignee liable for the carrying out of any of the terms and conditions of any of the Contracts, for any waste of the Premises by the Assignor or by any other party, for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or control of the Premises which may result in any property loss or injury or death to any person.

## 7. Non-Waiver.

Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, any Guaranty thereof, the Mortgage, or any other Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments; and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

## 8. Further Assurances.

Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may reasonably request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.

## 9. Continuing Obligations

This Assignment and each covenant, warranty, and grant of power hereunder shall remain in full force and effect, until payment in full of Assignor's Indebtedness and its satisfaction of all of the obligations and liabilities of Assignor to Assignee under the Loan Documents. This Assignment shall inure to the benefit of Assignee and any subsequent holder of the Note, and shall be binding upon Assignor and its heirs, legal representatives, successors and assigns, and any subsequent owner of the Premises.

## 10. Miscellaneous.

(a) The invalidity or unenforceability of any particular provision of this Assignment shall not affect the other provisions, and this Assignment shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

(b) This Assignment is binding upon each Assignor, and his, her or its respective heirs, legatees, legal representatives, administrators, successors and permitted assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns, including without limitation, the holder from time to time of the Note.

(c) This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

(d) This Assignment shall remain in full force and effect until such time as all obligations under the Loan Documents have been satisfied in full.

20080925

# UNOFFICIAL COPY

(e) This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

(f) All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Mortgage.

(g) Beneficiary, the Trustee under the Trust and Managing Agent shall be jointly and severally liable hereunder. An action to enforce this Assignment may be brought against either Beneficiary or the Trust without any reimbursement or joinder of any of the other parties in such action. Any amounts due under this Assignment may be recovered in full from either the Beneficiary or Trust property or Income received by the Managing Agent.

(h) This Assignment is executed by the Trustee, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Assignment shall be construed as creating any liability on such Trustee personally to perform any express or implied covenant, condition or obligation under this Assignment, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Assignment. Notwithstanding the foregoing, the Assignee shall not be precluded from: (i) recovering any condemnation awards or insurance proceeds attributable to the Premises; (ii) recovering any tenant security deposits, advance or pre-paid rents; (iii) enforcing the personal liability of Beneficiary of the payment of the Note and performance of the Loan Documents; and/or (iv) enforcing the personal liability of any guarantor of the Note and the Loan Documents.

This Agreement or Rents is executed by American National Bank and Trust Company of Chicago, not personally but as Trustee only. It is expressly understood and agreed by the parties hereto, anything contained therein to the contrary notwithstanding, that each and all of the promises, covenants, undertakings and agreements herein made are not intended as personal promises, covenants, undertakings and agreements of the said Trustee, nor as any admission that the said Trustee is entitled to any of the rents, issues, or profits under the said Trust, it being understood by all parties hereto that the Trustee at no time is entitled to receive any of the rents, issues, or profits of or from said trust property. This instrument is executed by American National Bank and Trust Company of Chicago, as Trustee, solely in the exercise of the authority conferred upon it as said Trustee, and no personal liability or responsibility shall be assumed by, nor at any time be asserted or enforced against it, its agents or employees, on account hereof, or on account of any promises, covenants, undertakings or agreements herein or in said Note contained, either expressed or implied, all such liability, if any, being expressly waived and released by the mortgagee or holders of said Note and by all persons claiming by, through or under said Mortgage or the holder or holders, owner or owners of said Note and by every person now or hereafter claiming any right or security thereunder. It is understood and agreed that American National Bank and Trust Company of Chicago, individually or as Trustee, shall have no obligation to see to the performance or nonperformance of any of the covenants or promises herein contained, and shall not be liable for any action or nonaction taken in violation of any of the covenants herein contained.

IN WITNESS WHEREOF, the Trustee and Beneficiary have executed these presents as of the day and year first above written.

TRUSTEE:

BENEFICIARY:

American National Bank and Trust Company of Chicago,  
not personally but as Trustee aforesaid

By:

Title:

Attest:

Title:

J. MICHAEL WHELAN

Richard S. Lewis

92408929

# UNOFFICIAL COPY

9 2 4 0 5 3 2 1

## TRUSTEE'S ACKNOWLEDGMENT

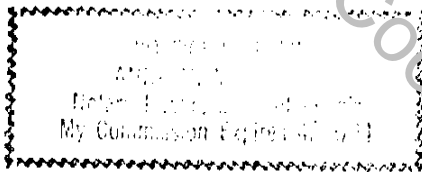
STATE OF ILLINOIS )

) SS.

COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that IRWIN WILLIAM VICE President of American National Bank and Trust Company of Chicago, and Gregory S. Koznyk Assistant Secretary of said company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE President and Assistant Secretary, respectively, 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 company, for the uses and purposes therein set forth; and the said Gregory S. Koznyk Secretary then and there acknowledged that (s)he, as custodian of the corporate seal of said company, did affix the corporate seal of said company to said instrument as said secretary's own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of MAY 20 1992.



[Signature]  
Notary Public  
My Commission Expires: \_\_\_\_\_



# UNOFFICIAL COPY

## BENEFICIARY'S ACKNOWLEDGMENT

STATE OF ILLINOIS)

)SS:  
COUNTY OF Lake)

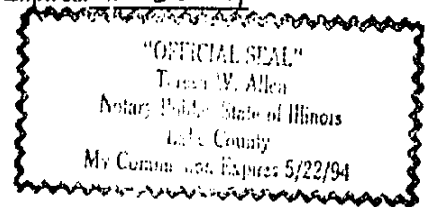
I, Teresa W. Allen, a Notary Public in and for the State and County aforesaid, do hereby certify that before me this day personally appeared Richard S. Lewis known to me to be the same person(s) executing the above and foregoing Assignment, and acknowledged to me that he executed and delivered the above and foregoing Agreement as his free and voluntary act, for the uses and purposes set forth in said Assignment.

IN WITNESS WHEREOF, I have hereto set my hand and official seal this 8<sup>th</sup> day of May, 1992.

Teresa W. Allen

Notary Public

My Commission Expires: 5-22-94



Property of Cook County Clerk's Office

001000008

# UNOFFICIAL COPY

## EXHIBIT "A"

PARCEL 1: Lots 18 and 19 (except that part of said Lots 18 and 19 taken for highway) and all of Lots 7 and 8 all in Block 8 in First Addition to Skokie Highland Subdivision, a subdivision of part of the North 1/2 of the Northwest 1/4 of Section 13, Township 42 North, Range 12 East of the Third Principal Meridian;

also

PARCEL 2: The easterly 1/2 of vacated Humphrey Avenue lying West and adjoining Lots 7 and 8 aforesaid, in Cook County, Illinois.

Common Address: 1340 Frontage Road, Northbrook, Illinois 60062

PIN: 04-13-108-007, 04-13-108-008, 04-13-108-033, 04-13-108-32

Property of Cook County Clerk's Office

04-13-108-32