

UNOFFICIAL COPY 93076511

Mortgage

THIS MORTGAGE is made on December 17, 1992, between

First Name: Theodore Prociuk, A married man
whose address is: 9325 King Street, Franklin Park, Illinois (the "Mortgagor")
and HBD Bank (Bank Name)
a State (national/state) banking Corporation
(association/corporation) whose address is: 211 South Wheaton Avenue, Wheaton, Illinois (the "Mortgagee")
* To be deleted when this Mortgage is not executed by a Land Trust.

The Mortgagor MORTGAGES, CONVEYS AND WARRANTS to the Mortgagee real property and all the buildings, structures and improvements on it described as:
Land located in the County of Cook, State of Illinois:

See attached Exhibit A

DEPT-11 477 50
180000 TRUST 0089 01/27/93 10:17 00
43038 4 10-15-93-43038 J.L.
COOK COUNTY RECORDER

("the Premises")
Commonly known as:
Tax Parcel Identification No.:

The Premises shall also include all of the Mortgagor's right, title and interest in and to the following:

74-02-689 D2

- (1) All easements, rights of way, licenses, privileges and hereditaments.
- (2) Land lying in the bed of any road, or the like, opened, proposed or vacated, or any strip or gore, adjoining the Premises.
- (3) All machinery, apparatus, equipment, fittings, fixtures, and articles of personal property of every kind and nature whatsoever located now or in the future in or upon the Premises and used or useable in connection with any present or future operation of the Premises (all of which is called "Equipment"). It is agreed that all Equipment is part of the Premises and appropriated to the use of the real estate and, whether affixed or annexed or not, shall for the purposes of this Mortgage unless the Mortgagee shall otherwise elect, be deemed conclusively to be real estate and mortgaged and warranted to the Mortgagee.
- (4) All mineral, oil, gas and water rights, royalties, water and water stock, if any.
- (5) All awards or payments including interest made as a result of the exercise of the right of eminent domain; the alteration of the grade of any street, any loss of or damage to any building or other improvement on the Premises, any other injury to or decrease in the value of the Premises, any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Premises, and the reasonable attorneys' and paralegals' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of any such award or payment.
- (6) All of the rents, issues and profits of the Premises under present or future leases, or otherwise.

The Premises are unencumbered except as follows: None

("Permitted Encumbrances"). If the Premises are encumbered by Permitted Encumbrances, the Mortgagor shall perform all obligations and make all payments as required by the Permitted Encumbrances. The Mortgagor shall provide copies of all writings pertaining to Permitted Encumbrances, and the Mortgagee is authorized to request and receive that information from any other person without the consent or knowledge of the Mortgagor.

This Mortgage secures the indebtedness or obligation evidenced by:

- (i) The note(s) dated December 17, 1992 in the principal amount(s) of \$2,100,000.00, respectively, maturing on December 17, 1997 1997 12, 00, executed and delivered by Mortgagor to the Mortgagee with interest at the per annum rate of Eight and One Half percent (8.5 %) on the principal balance remaining from time to time unpaid. Interest after default or maturity of the note, whether by acceleration or otherwise, on the principal balance of the note remaining from time to time unpaid shall be at the per annum rate of Eleven and One Half percent (11.5 %); and
- (ii) the guaranty of the debt of executed and delivered by to the Mortgagee; and
- (iii) including any extensions, renewals, modifications or replacements without limit as to the number or frequency (the "Debt").

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LIMITATION ON AMOUNT SECURED BY MORTGAGE. Notwithstanding anything to the contrary contained in this Mortgage, the amount secured by this Mortgage shall not exceed the principal sum of \$ 2,100,000.00 at any one time outstanding.

FUTURE ADVANCES AND CROSS-LIEN: The Debt shall also include all other present and future, direct and indirect obligations and liabilities of the Mortgagor, or any one or more of them, with or without others, to the Mortgagee. This shall not apply to any obligation or debt incurred for personal, family or household purposes unless the note or guaranty expressly states that it is secured by this Mortgage.

the Mortgagor. Upon the request of the Mortgagee, the Mortgagor shall immediately furnish to the Mortgagee all notices of amounts due and receipts evidencing payment. The Mortgagor shall promptly notify the Mortgagee of any lien on all or any part of the Premises and shall promptly discharge any unpermitted lien or encumbrance.

This Mortgage shall also secure the performance of the promises and agreements contained in this Mortgage.

3. CHANGE IN TAXES. In the event of the passage of any law or regulation, state, federal or municipal, subsequent to the date of this Mortgage in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting such taxes, the entire principal secured by this Mortgage and all interest accrued shall become due and payable immediately at the option of the Mortgagee.

The Mortgagor promises and agrees as follows:

4. INSURANCE. Until the Debt is fully paid, the Mortgagor shall keep the Premises and the present and future buildings and other improvements on the Premises constantly insured for the benefit of the Mortgagee against fire and such other hazards and risks customarily covered by the standard form of extended coverage endorsement available in the State of Illinois, including risks of vandalism and malicious mischief, and shall further provide flood insurance of the Premises are situated in an area designated as a flood risk area by the Director of the Federal Emergency Management Agency or as otherwise required by the Flood Disaster Protection Act of 1973 and regulations issued under it.

1. PAYMENT OF DEBT; PERFORMANCE OF OBLIGATIONS. The Mortgagor shall promptly pay when due, whether by acceleration or otherwise, the Debt for which the Mortgagor is liable, and shall promptly perform all obligations to which the Mortgagor has agreed under the terms of this Mortgage and any loan documents evidencing the Debt.

2. TAXES. The Mortgagor shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions, and other charges which may become a lien prior to this Mortgage. Should the Mortgagor fail to make such payments, the Mortgagee may, at its option and at the expense of the Mortgagor, pay the amounts due for the account of

J. Mail

UNOFFICIAL COPY

Notary Public

My Commission Expires

19

day of

Given under my hand and notarial seal this

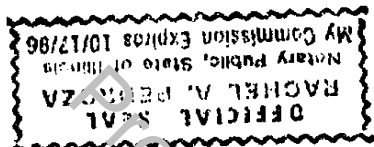
association, as trustee for the uses and purposes therein set forth

of said corporation (association) to said instrument as his own free and voluntary act, and as the free and voluntary act of said (corporation) and also therein and there acknowledging that he, as president of said (corporation) (association), attested the said corporate seal

acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said (cor- poration) and

of said (corporation) (association) personally known to me to be the same persons whose names are subscribed to the foregoing instrument as (corporation) (association) and

a Notary Public in and for said County, in the State aforesaid, do hereby certify that



Rachel A. Peltz
19

County of
State of Illinois
My Commission Expires

and voluntary act, for the uses and purposes herein set forth

instrument, appeared before me this day in person, and acknowledged that the (person) signed and delivered the said instrument as his/her free

personally known to me to be the same person(s) whose name(s) is subscribed to the foregoing

a Notary Public in and for said County and State, do hereby certify that

County of Cook
State of Illinois

Theodore Proctuk
Theodore Proctuk

and

Prepared by and return to:
Gregory G. Coppola
NBD Bank
One South Northwest Highway
Park Ridge, Illinois 60068

Witness my hand and seal of Notary Public on this day and year set forth above



2. WAIVER OF RIGHT OF RESCISSION, MORTGAGOR HEREBY WAIVES AND AGREES TO WAIVE ALL RIGHTS OF RESCISSION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE

AND ANY RIGHTS OF RESCISSION AVAILABLE TO THE LENDERS OF THE MORTGAGE AND TO THE MORTGAGOR, AND ON BEHALF OF EACH AND EVERY LENDER, GRADIENTS OF THE MORTGAGOR, ACQUIRE INTEREST IN THE PREMISES AS OF OR PRIOR TO THE DATE OF THIS MORTGAGE IN THE EVENT THE MORTGAGOR IS AN

EMPLOYEE OF THE BANK OR BANKING INSTITUTION WHICH IS THE MORTGAGOR OR THE MORTGAGEE, AND ALL RIGHTS OF RESCISSION ARE HEREBY WAIVED

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the presence, disposal, release or threatened release of any Hazardous Material on, over, under, from or affecting the Premises, or soil, water, vegetation, buildings, personal property, persons or animals, or any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Premises, or any lawsuit brought or threatened settlement reached by government order relating to such Hazardous Materials with respect to the Premises, and of all any violation of laws, orders, regulations, requirements or demands of government authorities or any policies or requirements of the Mortgagee, which are based upon or in any way related to such Hazardous Materials used on the Premises. The indemnity obligations under this paragraph are specifically limited as follows:

(i) The Mortgagor shall have no indemnity obligation with respect to Hazardous Materials that are first introduced to the Premises, or any part of the Premises, subsequent to the date that the Mortgagor's interest in and possession of that part of the Premises to which such Hazardous Materials have been so introduced shall have fully terminated by foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure;

(ii) The Mortgagor shall have no indemnity obligation with respect to any Hazardous Materials introduced to the Premises or any part of the Premises by the Mortgagee, its successors or assigns.

The Mortgagor agrees that in the event this Mortgage is foreclosed or the Mortgagor tenders a deed in lieu of foreclosure, the Mortgagor shall deliver the Premises to the Mortgagee free of any and all Hazardous Materials which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises.

For purposes of this Mortgage, "Hazardous Materials" means any materials or substance: (i) which is or becomes defined as a "hazardous substance", "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC Section 9601 et seq) and amendments thereto and regulations promulgated thereunder; (ii) containing gasoline, oil, diesel fuel or other petroleum products; (iii) which is or becomes defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act (42 USC Section 6901 et seq) and amendments thereto and regulations promulgated thereunder; (iv) containing polychlorinated biphenyls (PCBs); (v) containing asbestos; (vi) which is radioactive; (vii) which is biologically hazardous or (viii) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance or policy; or (ix) which is or becomes defined as a "hazardous waste", "hazardous substance", "pollutant" or "contaminant" under any federal, state or local statute, regulation or ordinance; or (x) any toxic, explosive, corrosive or otherwise hazardous substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, or (xi) which causes a nuisance upon or waste to the Premises.

"Governmental Regulation(s)" means any law, regulation, rule, policy, ordinance or similar requirement of the United States, any state, any county, city or other agency or subdivision of the United States or any state.

The provisions of this section shall be in addition to any and all other obligations and liabilities the Mortgagor may have to the Mortgagee under the Debt, any loan document, and in common law, and shall survive (a) the repayment of all sums due for the Debt, (b) the satisfaction of all of the other obligations of the Mortgagor in this Mortgage and under any loan document, (c) the discharge of this Mortgage, and (d) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Mortgage, it is the intention of the Mortgagor and the Mortgagee that the indemnity provisions of this section shall only apply to an action commenced against any owner or operator of the Premises in which any interest of the Mortgagee is threatened or any claim is made against the Mortgagee for the payment of money.

17. EVENTS OF DEFAULT/ACCELERATION: Upon the occurrence of any of the following, the Mortgagee shall be entitled to exercise its remedies under this Mortgage or as otherwise provided by law: (1) The Mortgagor or, if other than the Mortgagor, any principal obligor of the Debt ("Principal Obligor") fails to pay when due any amount payable under the notes, the guaranty, or any other agreement evidencing the Debt, (2) the Mortgagor or Principal Obligor (a) fails to observe or perform any other term of the note(s), the guaranty, or any other agreement evidencing the Debt or (b) makes any materially incorrect or misleading representation in any financial statement or other information delivered to the Mortgagee, (3) the Mortgagor or Principal Obligor defaults under the terms of this Mortgage, any loan agreement, mortgage, security agreement, or other document executed as part of the Debt transaction or any guaranty of the Debt becomes unenforceable in whole or in part, or any guarantor fails to promptly perform under such a guaranty; (4) the Mortgagor fails to pay when due any amount payable under any note or agreement evidencing debt to the Mortgagee or defaults under the terms of any agreement or instrument relating to or securing any debt for borrowed money owing to the Mortgagee; (5) a "reportable event" (as defined in the Employee Retirement Income Security Act of 1974 as amended) occurs that would permit the Pension Benefit Guaranty Corporation to terminate any employee benefit plan of the Mortgagor or Principal Obligor or any affiliate of the Mortgagor or Principal Obligor, (6) the Mortgagor or Principal Obligor becomes insolvent or unable to pay its debts as they become due; (7) the Mortgagor or Principal Obligor (a) makes an assignment for the benefit of creditors, or (b) consents to the appointment of a custodian, receiver, or trustee for itself or for a substantial part of its assets, or (c) commences any proceeding under any bankruptcy, reorganization, liquidation, insolvency or similar laws of any jurisdiction, (8) a custodian, receiver, or trustee is appointed for the Mortgagor or Principal Obligor or for a substantial part of its assets without the consent of the party against which the appointment is made, and is not removed within 60 days after such appointment, (9) proceedings are commenced against the Mortgagor or Principal Obligor under any bankruptcy, reorganization, liquidation, or similar laws of any jurisdiction, and such proceedings remain undismissed for 60 days after commencement of the Mortgagor or Principal Obligor or consents to the commencement of such proceedings, (10) any judgment is entered against the Mortgagor or Principal Obligor, or any attachment, levy, or garnishment is issued against any property of the Mortgagor or Principal Obligor, (11) any proceedings are instituted for the foreclosure or collection of any mortgage, judgment or lien affecting the Premises, (12) the Mortgagor sells, transfers or hypothecates any part of the Premises except as provided in this Mortgage without the prior written consent of the Mortgagee, (13) the Mortgagor or Principal Obligor dies, (14) The Mortgagor or Principal Obligor, without the Mortgagee's written consent, (a) is dissolved, (b) merges or consolidates with any third party, (c) sells a material part of its assets or business outside the ordinary course of its business, or (d) agrees to do any of the foregoing, (15) there is a substantial change in the existence or prospective

condition of the Mortgagor or Principal Obligor which the Mortgagee in good faith determines to be materially adverse.

18. REAFFIRMATION/DEFAULT: Upon the occurrence of any of the events of default set forth in this Mortgage, at the option of the Mortgagee, the note and/or any other instrument shall become immediately due and payable and Mortgagee shall pay all expenses of Mortgagee including attorneys' and paralegals fees and all expenses incurred in connection with this Mortgage and all expenses incurred in the enforcement of Mortgagee's rights in the Premises and other assets included in connection with the disposition of the Premises. Where the instruments executed hereby shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage. In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional indebtedness to the judgment or foreclosure all expenditures and expenses which may be found or awarded to or by a court of competent jurisdiction, including but not limited to: costs, outlays, disbursements and special services, stenographic charges, public and copy and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, liens certificates, tax and lien searches, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute the foreclosure suit or to evidence to holders at any foreclosure sale. All of the foregoing items which may be expended after entry of the foreclosure judgment may be estimated by Mortgagee. All expenditures and expenses mentioned in this paragraph, when incurred or paid by Mortgagee shall become additional indebtedness secured hereby and shall be immediately due and payable, with interest thereon at the highest rate permitted under any of the instruments evidencing any of the Debt. This paragraph shall also apply to any expenditures or expenses incurred or paid by Mortgagee on behalf of Mortgagee in connection with (a) any proceeding, including without limitation, probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness secured hereby; or (b) any preparation for the commencement of any suit for the foreclosure of this Mortgage after accrual of the right to foreclose whether or not actually commenced or preparation for the commencement of any suit to collect upon or enforce the provisions of the note or any instrument which secures the note after default, whether or not actually commenced; or (c) any preparation for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced. The proceeds of any foreclosure sale shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all the items that are above mentioned; second, all other items which under the terms of this Mortgage constitute indebtedness secured by this Mortgage additional to that evidenced by the note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the note and the liabilities (first to interest and then to principal); fourth, any surplus to Mortgagor or Mortgagor's heirs, legal representatives, successors or assigns, as their rights may appear. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may grant the Mortgagee the right to possess the Premises pursuant to Chapter 10, Sections 15-1701 through 15-1703 of the Illinois Revised Statutes and/or appoint a receiver of the Premises. Such grant and/or appointment may be made either before or after entry of judgment of foreclosure, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for the grant and/or without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not. Mortgagee may be appointed as the receiver. The Mortgagee in possession and/or receiver shall have all powers conferred by law including but not limited to the power to collect the rents, issues and profits of the Premises during the pendency of the foreclosure suit and, in case of an entry of judgment of foreclosure, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of Mortgagee in possession or receiver, would be entitled to collect the rents, issues and profits. The Mortgagee in possession and/or receiver shall also have all other powers which may be necessary or are usual for the protection, possession, control, management and operation of the Premises. The court in which the foreclosure suit is filed may from time to time authorize the Mortgagee in possession or receiver to apply the net income in its hands in payment in whole or in part of the indebtedness secured hereby, or secured by any judgment, including this Mortgage, or any tax, special assessment or other lien or encumbrance which may be or will become superior to the lien hereof or of the judgment, and the deficiency judgment against Mortgagor or any guarantor of the note in case of a foreclosure sale and deficiency. No action for the enforcement of the lien or of any provision of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the note.

19. REPRESENTATIONS. If the Mortgagor is a corporation, it represents that it is a corporation duly organized, existing and in good standing under the laws of its state of incorporation, that it is duly qualified and in good standing under the laws of Illinois, and that the execution and delivery of this Mortgage and the performance of the obligations it imposes are within its corporate powers, have been duly authorized by all necessary action of its board of directors, and do not contravene the terms of its articles of incorporation or by-laws. If the Mortgagor is a general or limited partnership, it represents that it is duly organized and existing and that the execution and delivery of this Mortgage and the performance of the obligations it imposes do not conflict with any provision of its partnership agreement and have been duly authorized by all necessary action of its partners. Each Mortgagor represents that the execution and delivery of this Mortgage and the performance of the obligations it imposes do not violate any law and do not conflict with any agreement by which it is bound, and that no consent or approval of any governmental authority or any third party is required for the execution or delivery of this Mortgage or the performance of the obligations it imposes and that this Mortgage is a valid and binding agreement enforceable in accordance with its terms. Each Mortgagor further represents that it shall provide all balance sheets, profit and loss statements, and other financial statements, as requested by Mortgagee. Any such statements that are furnished to the Mortgagee are accurate and fairly reflect the financial condition of the organization and persons to which they apply on their effective dates, including contingent liabilities of every type, which financial condition has not changed materially and adversely since those dates.

20. NOTICES. Notice from one party to another relating to this Mortgage shall be deemed effective if made in writing (including electronic communications) and delivered to the recipient's address, telex number or telecopier number set forth above by any of the following means: (a) hand delivery, (b) registered or certified mail, postage prepaid, with return receipt requested, (c) first class or express mail, postage prepaid, (d) Federal Express, Parcelair Courier or like overnight courier service or (e)

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subject to the limitations set forth below, the Mortgagee shall have the right to... subject to the limitations set forth below, the Mortgagee shall have the right to...

10. ASSIGNMENT OF INTEREST AS TENANT OR REVERSEE, IN THE MORTGAGE

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11. PAYMENT OF OTHER OBLIGATIONS, THE MORTGAGEE'S OBLIGATION TO MAINTAIN THE PROPERTY AND TO REPAIR AND IMPROVE THE PROPERTY

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12. HAZARDOUS WASTE, THE MORTGAGEE'S OBLIGATION TO MAINTAIN THE PROPERTY AND TO REPAIR AND IMPROVE THE PROPERTY

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13. ADDITIONAL TERMS, ASSIGNMENT OF INTEREST AND SUBORDINATION TO ANY OTHER MORTGAGE

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EXHIBIT A:

PARCEL 1:

THE NORTH 420 FEET OF LOT 3 (AS MEASURED ALONG THE EAST AND WEST LINES THEREOF), EXCEPT THE WEST 42 FEET OF SAID LOT 3, (AS MEASURED ALONG THE NORTH AND SOUTH LINES THEREOF) IN CONTROLS COMPANY OF AMERICA'S SUBDIVISION, BEING PART OF THE NORTHEAST 1/4 OF SECTION 21 AND THE NORTHWEST 1/4 OF FRACTIONAL SECTION 22, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF THE MINNEAPOLIS ST. PAUL AND SAULT STE. MARIE RAILROAD AND NORTHEASTERLY OF THE CENTER LINE OF 25TH AVENUE, AS DEDICATED BY PLAT RECORDED FEBRUARY 14, 1936 AS DOCUMENT 11760495, IN COOK COUNTY, ILLINOIS
COMMONLY KNOWN AS: 9655 SORENG, SCHILLER PARK
TAX PARCEL IDENTIFICATION NO. 12-21-201-022-0000

PARCEL 2:

THE WEST 300 FEET OF THE EAST 1500 FEET OF THE NORTH 412.25 FEET OF THE SOUTH 1286.75 FEET OF FRACTIONAL SECTION 22, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS
COMMONLY KNOWN AS: 5200 OTTO, FRANKLIN PARK
TAX PARCEL IDENTIFICATION NO. 12-09-213-012-0000

PARCEL 3:

LOT 7 (EXCEPT THE NORTHERLY 20 FEET OF LOT 7) IN H. L. CARLSEN'S INDUSTRIAL SUBDIVISION, A SUBDIVISION OF PART OF LOT 5 IN HENRY HACHEMEISTER'S DIVISION OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN AND PART OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS
COMMONLY KNOWN AS: 9325 KING, FRANKLIN PARK
TAX PARCEL IDENTIFICATION NO. 12-22-308-009-0000

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