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2002-04-15 11:43:05
Cook County Recorder 51.50



0020430109

When recorded mail to:
LandAmerica Financial Group, Inc.
Attn: POST CLOSING-DEPT.
3636 N. Central Ave., #350
Phoenix, AZ 85012
Escrow No. X01-23817



Property of Cook County

MEMORANDUM OF LEASE, MORTGAGE AND ASSIGNMENT OF RENTS
AND
LEASE SUPPLEMENT NO. 59 TO LEASE
11459 South Kedzie Avenue, Chicago, IL

5 of 6
01-07686

Lawyers Title Insurance Corporation

This Lease Supplement ("Lease Supplement") is hereby added as of the 20th day of July, 2001 to that certain Lease (as amended, supplemented or otherwise modified from time to time, the "Lease"), dated as of January 25, 2001 by and between State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Trustee of Convenience Statutory Trust - 2001, a Connecticut statutory trust (the "Lessor") having the address: c/o State Street Bank and Trust Company of Connecticut, National Association, 225 Asylum Street, Goodwin Square, Hartford, Connecticut 06103, Attn: Corporate/Muni Department and 7-Eleven, Inc. (the "Lessee") a Texas corporation, having the address: 2711 North Haskell Avenue, City Place Center East, Dallas, Texas 75202-3789. Upon execution hereof by the Lessor and the Lessee, and approval hereof by CBL Capital Corporation, as agent under the Participation Agreement (the "Agent"), this Lease Supplement will be included in and will be a part of the Lease for all purposes. Terms used but not otherwise defined herein have the meanings given to such terms in the Lease.

The parties, intending to be legally bound hereby, acknowledge and agree to the following:

The parcel of land (the "Land") more fully described on Exhibit "A" attached hereto and the improvements now or hereafter located thereon (the "Improvements") and described on Exhibit "B" attached hereto (the Land and the Improvements collectively referred to as the "Property") are hereby added by this Lease Supplement to the Lease and hereafter constitute a part of the "Properties" for all purposes of the Lease.

The parties agree that the Lessor under the Lease shall be either Convenience Statutory Trust-2001 or State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Trustee of Convenience Statutory Trust - 2001, as required by the laws of the state where the Property is located.

The Lessor hereby leases the Property to the Lessee, and the Lessee hereby leases and accepts the Property from the Lessor pursuant to the Lease.

The initial term of the Lease shall commence on the date of acquisition of the Property and continue until July 25, 2006. The Lessee has the option to extend the term of the Lease for a period or periods to be mutually agreed upon by the Lessor and Lessee, by giving 6 months prior written notice to the Lessor.

The Lessee hereby confirms, as of the date hereof, that all representations and warranties made in the Lease with respect to the Property heretofore covered by the Lease remain true and correct in all material respects; that all representations and warranties included in the Lease with respect to the Property are, as of the date hereof, true and correct as to the Land and the Improvements as if such Land and Improvements had been originally included within the term "Property"; and that no Default or Event of Default exists under the Lease.

The Lessee hereby acknowledges and confirms that as of the date hereof, the Lessee has no defense to the payment or performance of the Lessee's obligations under the Lease and that, to the best of the Lessee's knowledge, no claims, counterclaims, affirmative defenses, or other such rights exist against the Lessor, the Agent, or any Note Holder or Certificate Holder under the Lease.

The Lessee acknowledges and confirms hereby that it has examined the Property and title thereto, and that it accepts and approves (as between the Lessor, the Lessee, the Agent, the Note Holders and Certificate Holders, but not as to other third parties) the Property and all matters relating thereto as suitable and satisfactory for inclusion in the Lease.

It is expressly acknowledged and agreed that the Agent, the Note Holders and the Certificate Holders are intended to be beneficiaries of this Lease Supplement to the same extent as the Agent, the Note Holders and the Certificate Holders are beneficiaries of the Lease and the Instrument Guaranty.

(a) Lessee Mortgage/Deed of Trust. Pursuant to and supplementing Article XI of the Lease, the Lessor and the Lessee intend that the Lessee will treat the Lease and all Lease Supplements, for accounting purposes, as an operating lease. For all other purposes, including federal, state and local income tax, and bankruptcy purposes it is the intention of the parties hereto that (i) this Lease will constitute a deed of trust or mortgage lien in the principal amount of \$577,744.00, security agreement, assignment of leases and rents and financing statement or other similar instrument with a power of sale (the

"Lessee Mortgage") from the Lessee, as mortgagor, to the Lessor as mortgagee, or any successor thereto, against the Mortgaged Property (hereinafter defined), and NOW, THEREFORE, to secure the re-payment and performance of the Secured Loan due on July 25, 2006, subject to certain extension rights, the Lessee, as mortgagor, hereby has mortgaged, warranted, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed and assigned, WITH POWER OF SALE, and by these presents does mortgage, warrant, give, grant, bargain, sale, alienate, enfeoff, convey, confirm and assign WITH POWER OF SALE unto the Lessor, as mortgagee, or any successor thereto, forever a first and paramount Lien on the Mortgaged Property and grants a security interest to the Lessor in the Mortgaged Property, (ii) the Lessor shall have all of the rights, powers and remedies of a mortgagee, beneficiary and/or secured party available under applicable law to take possession of and sell (whether by judicial foreclosure, power of sale or otherwise) the Mortgaged Property; (iii) that the effective date of this Lease Supplement as a deed of trust and mortgage, security agreement, assignment of leases and rents and financing statement will be the effective date of this Lease Supplement with respect to the Mortgaged Property, (iv) that the recording of this Lease Supplement and the reference to Article XI of the Lease shall be deemed to be the recording of the Lessee Mortgage and (v) that this Lease Supplement, as a deed of trust, mortgage, security agreement, assignment of rents and financing statement will secure the payment and performance of the Secured Loan.

The term "Mortgaged Property" shall mean:

- (i) the Land;
- (ii) all Improvements now or hereafter located on the Property;
- (iii) the Lessee's interest under the Lease and all modifications, amendments, extensions and renewals of such instruments, and the leasehold estate, rights, options, rights of first refusal, rights of first offer, privileges, credits, options and other interests of the Lessee created thereby;
- (iv) all easements, rights-of-way, gores of land, streets, ways, licenses, railroad crossings, access and use agreements, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Property (including, without limitation, all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Property or now or hereafter transferred to the Property) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Property to the center line thereof;
- (v) all equipment, fixtures, machinery, apparatus, fittings, engineering supplies and other property of every kind and nature whatsoever which were purchased with the proceeds of the Secured Loan (including, without limitation, all

HVAC, refrigeration equipment and refrigerated vaults) and all additions thereto and renewals and replacements thereof or substitutions therefor, now or hereafter located upon or in, or attached to, any portion of the Property and which are now owned or hereafter acquired by the Lessee, or in which the Lessee has or shall have an interest, or appurtenances thereto and all building equipment, materials and supplies of any nature whatsoever owned by Lessee or in which Lessee has or shall have an interest, now or hereafter located upon the Property whether stored at the Property or off-site which were purchased with the proceeds of the Secured Loan (the "Equipment");

(vi) all awards or payments, including interest thereon, and the right to receive the same which may be made with respect to the Property, whether from a Condemnation (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Property;

(vii) all of the Lessee's right, title and interest in, to and under all leases, sub-leases and other agreements affecting the use or occupancy of the Property now or hereafter entered into (excluding 7-Eleven franchise agreements) and any renewals or extensions thereof and all guaranties of any of the foregoing and the right to receive and apply the rents, issues and profits of the Property to the payment of the Secured Loan;

(viii) all of the Lessee's right, title and interest in and to all contracts from time to time executed by the Lessee or any manager or agent on its behalf relating to the demolition, ownership, construction, management, leasing, operation, occupancy, sale or financing of the Property or any part thereof (excluding 7-Eleven franchise agreements and excluding agreements for the provision of services and maintenance on a regional or national basis) and all agreements relating to the purchase or lease of any portion of the Property or any property which is adjacent or peripheral to the Property (including, without limitation, development rights and air rights), together with the right to exercise such options, all consents, certifications, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property or any part thereof, to the extent assignable and all surveys, drawings, maps, plans, specifications and similar or related items relating to the Property;

(ix) all proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for a Casualty to the Property;

(x) the right, in the name and on behalf of the Lessee, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of the Lessor in the Property;

(xi) all refunds or rebates of Taxes or payments in lieu of Taxes, now or hereafter assessed or levied against the Property;

(xii) all the estate, right, title, claim or demand of any nature whatsoever of Lessee, either in law or in equity, in possession or expectancy, in and to the Property or any part thereof; and

(xiii) all products and proceeds of any portion of the Mortgaged Property.

Intellectual property of the Lessee associated with the ownership or operation of the Lessee's business is specifically excluded herefrom.

To have and to hold the above granted and described Mortgaged Property unto and to the proper use and benefit of the Lessor, and the successors and assigns of the Lessor, forever.

(b) Assignment of Leases and Rents. Lessee assigns to Lessor all rents arising from any lease or sublease of the Mortgaged Property (excluding any payments due under any 7-Eleven franchise agreement). Subject to the terms of this paragraph, the Lessor waives the right to enter the Property for the purpose of collecting the rent therefrom, and grants the Lessee the right to collect the rents and to let the Property or the Improvements or any part thereof as permitted by the terms of this Lease. The Lessee shall hold the rents, if any, in trust for use in payment of the Secured Loan. The right of the Lessee to collect the rents and to let the Property or any part thereof may (subject to any limitations set forth in Article VI of the Participation Agreement) be revoked by the Lessor upon any Liquidation Event and thereafter the Lessor may let the Property or the Improvements or any part thereof and may retain and apply the rents toward payment of the Secured Loan in such order, priority and proportions as the Lessor, in its discretion, shall deem proper, or toward the operation, maintenance and repair of the Improvements, and irrespective of whether the Lessor shall have commenced a foreclosure hereof or shall have applied or arranged for the appointment of a receiver. The Lessor shall give to the Lessee notice of such revocation of the right to let and collect the rents within a reasonable time thereafter.

(c) Appointment of Receiver. The Lessor, in any action to foreclose the Lessee Mortgage (subject to any limitations set forth in Article VI of the Participation Agreement), shall be entitled to the appointment of a receiver. In addition, upon the actual or threatened waste to any part of the Mortgaged Property or upon the occurrence of a Liquidation Event, the Lessor shall be at liberty, without notice, to apply for the appointment of a receiver of the rents, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Mortgaged Property as security for the Secured Loan, or the solvency or insolvency of any Person then liable for the payment of the Secured Loan.

(d) Foreclosure and Sale of Mortgaged Property. Upon the occurrence of a Liquidation Event, the Lessor shall be entitled to exercise any right or remedy permitted to mortgagees under the laws of the state in which the subject Mortgaged Property is located, including the right to sell the Mortgaged Property in a non-judicial foreclosure pursuant to the power of sale granted herein. If the Lessee Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the discretion of the Lessor, be sold in one or more parcels or in several interests or portions and in any order or manner.

(e) Non-Waiver. The failure of the Lessor to insist upon strict performance of any term of this Lease Supplement shall not be deemed to be a waiver of any term hereof. No delay or omission by the Lessor in the exercise of any right, power or remedy accruing hereunder shall be construed to be a waiver of any default or acquiescence therein. A waiver in one or more instances to exercise any right, power or remedy accruing hereunder shall apply only to the particular instance or instances, and at the particular time or times or ly, and no such waiver shall be deemed a continuing waiver, but every term, covenant, provision or condition establishing such right, power or remedy shall survive and continue to remain in full force and effect.

(f) Waiver of Statutory Rights. The Lessee shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the Lessee Mortgage, but hereby waives the benefit of such laws to the full extent that the Lessee may do so under applicable law. The Lessee for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien of the Lessee Mortgage and agrees that any court having jurisdiction to foreclosure such lien may order the Mortgaged Property sold as an entirety. The Lessee hereby waives for itself and all who may claim through or under it, and to the full extent Lessee may do so under applicable law, any and all rights of redemption from sale under any order or decree of foreclosure hereof or granted under any statute now existing or hereafter enacted.

(g) Security Agreement. This Lease Supplement constitutes both a real property mortgage, a security agreement and a financing statement, within the meaning of the Uniform Commercial Code of the State of Illinois (the "UCC"), and the Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature of the Lessee in the Mortgaged Property. A photocopy of this Lease Supplement may be filed as a financing statement. Lessee by executing and delivering this Lease Supplement has granted to Lessor, as security for the Secured Loan, a security interest in such of the Mortgaged Property as is governed by the UCC (including, but not limited to, the Equipment) in favor of Lessor. If an Event of Default shall occur under the Lease or the Participation Agreement, Lessor, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured

party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of such of the Mortgaged Property as is governed by the UCC (including, but not limited to, the Equipment) or any part thereof, and to take such other measures as Lessor may deem necessary for the care, protection and preservation thereof. Upon request or demand of Lessor, Lessee shall at its expense assemble such of the Mortgaged Property as is movable and which is governed by the UCC (including, but not limited to, the Equipment) and make it available to Lessor at a convenient place acceptable to Lessor. Lessee shall pay or cause to be paid to Lessor on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lessor in protecting its interest in such of the Mortgaged Property as is governed by the UCC (including, but not limited to, the Equipment) and in enforcing its rights hereunder with respect thereto. Any notice of sale, disposition or other intended action by Lessor with respect to such of the Mortgaged Property as is governed by the UCC (including, but not limited to, the Equipment) sent to Lessee in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute reasonable notice to Lessee, and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the UCC unless objected to by Lessee within five (5) days after receipt by Lessee of such notice. The proceeds of any sale or disposition of such of the Mortgaged Property as is governed by the UCC (including, without limitation, the Equipment), or any part thereof, shall be applied by Lessor to the payment of the Secured Loan in such priority and proportions as set forth in the Participation Agreement.

(h) Increase in Secured Indebtedness and Future Advances. This Lease Supplement secures all future advances to be made to Lessee pursuant to and in accordance with the Participation Agreement, whether such advances are obligatory or optional. Notice is hereby given that the indebtedness secured hereby may increase as a result of advances of funds pursuant to and in accordance with the Participation Agreement, and as a result of any Event of Default under the Lease or the Participation Agreement due to, for example, and without limitation, unpaid interest or late charges, unpaid taxes or insurance premiums which Lessor elects to advance, defaults under leases that Lessor elects to cure, and/or attorneys' fees or costs incurred by Lessor in protecting the Mortgaged Property, the security of the Lessee Mortgage or Lessor's rights and interests.

(i) Governing Law. THIS LEASE SUPPLEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT AS TO MATTERS RELATING TO THE CREATION OF THE LEASEHOLD ESTATE HEREUNDER AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT THERETO, WHICH WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF ILLINOIS. WITHOUT LIMITING THE FOREGOING, IN THE EVENT THAT THIS LEASE IS DEEMED TO CONSTITUTE A FINANCING WHICH IS THE INTENTION OF THE PARTIES, THE LAWS OF THE STATE OF NEW YORK,

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WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, WILL GOVERN THE CREATION, TERMS AND PROVISIONS OF THE INDEBTEDNESS EVIDENCED HEREBY, BUT THE LIEN AND MORTGAGE CREATED HEREBY AND THE CREATION AND THE ENFORCEMENT OF SAID LIEN AND MORTGAGE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF ILLINOIS.

(j) Counterparts. The parties may sign this Lease in any number of counterparts and on separate counterparts, each of which will be an original but all of which when taken together will constitute one and the same instrument.

(k) Inapplicable Provisions. If any term, covenant or condition of this Lease Supplement shall be held to be invalid, illegal or unenforceable in any respect, this Lease Supplement shall be construed without such provision.

(l) Additional Property. This Lease shall automatically be deemed to include any additional land contiguous to the Land which is leased to the Lessor pursuant to a ground lease or which is acquired in fee by the Lessor.

EXECUTED as of the date first written above.

[SEE ATTACHED SIGNATURE PAGES]

SIGNATURE PAGE ATTACHED TO LEASE SUPPLEMENT

LESSOR:

STATE STREET BANK AND TRUST
COMPANY OF CONNECTICUT, NATIONAL
ASSOCIATION, a national banking association,
not in its individual capacity but solely as
Trustee of CONVENIENCE STATUTORY
TRUST - 2001

By: _____

Name:


Peter M. Murphy

Title:

Assistant Secretary

Property of Cook County Clerk's Office

SIGNATURE PAGE ATTACHED TO LEASE SUPPLEMENT

LESSEE:

7-ELEVEN, INC.

By: 

Don Thomas
Vice President

Property of Cook County Clerk's Office

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SIGNATURE PAGE ATTACHED TO LEASE SUPPLEMENT

AGENT:

CBL CAPITAL CORPORATION

By: Robert Morehead
Robert Morehead
Vice President

Property of Cook County Clerk's Office

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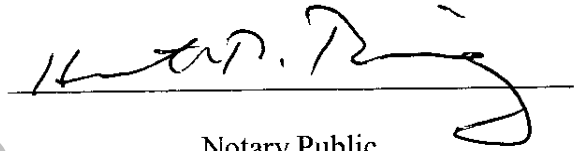
20430109

STATE MASSACHUSETTS)
)
) : ss.:
)
COUNTY OF SUFFOLK)

On this 12th day of July, 2001, before me, personally appeared Peter Murphy, to me known to be the **Assistant Secretary** of STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, a national banking association in its capacity as Trustee and on behalf of CONVENIENCE STATUTORY TRUST-2001, a trust organized in accordance with the laws of the State of Connecticut, the national banking association described in and which executed the foregoing instrument, and acknowledged that he executed the same as the free act and deed of said national banking association, in its capacity as Trustee and on behalf of CONVENIENCE STATUTORY TRUST - 2001.

Witness my hand and official seal.

KENNETH R. RIN
Notary Public
My Commission Expires July 12, 2002



Notary Public

My commission expires on:

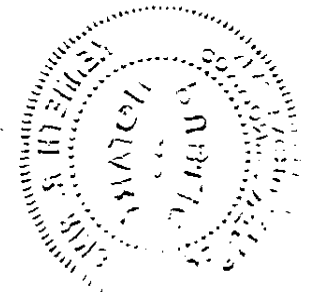
[Seal]

Cook County Clerk's Office

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Property of Cook County Clerk's Office

COOK COUNTY CLERK'S OFFICE
JAN 15 2013



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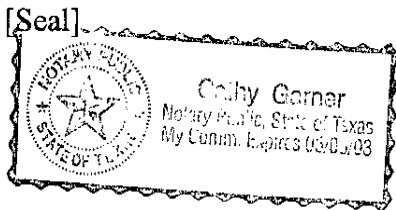
STATE OF TEXAS)
 :SS.:
COUNTY OF DALLAS)

On this the 12 day of July, 2001, before me, personally appeared Don Thomas, to me known to be the Vice President of 7-Eleven, Inc., the corporation described in and which executed the foregoing instrument, and acknowledged that he executed the same as the free act and deed of said corporation.

Witness my hand and official seal.


Notary Public

My commission expires:



Property of Cook County Clerk's Office

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20430109

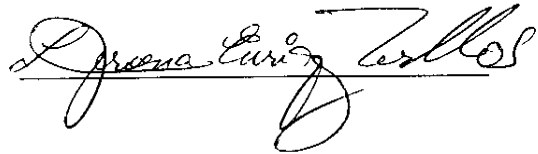
STATE OF CALIFORNIA)

: ss.:

COUNTY OF SAN MATEO)

On this th13 day of July, 2001, before me, personally appeared Robert Morehead, to me known to be the Vice President of CBL CAPITAL CORPORATION, a Delaware corporation, the corporation described in and which executed the foregoing instrument, and acknowledged that he executed the same as the free act and deed of said corporation.

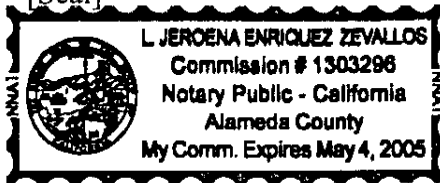
Witness my hand and official seal.



Notary Public

My commission expires on:

[Seal]



Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION

20430109

That part of the Southwest 1/4 of the Southwest 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 24, Township 37 North, Range 13, East of the Third Principal Meridian, lying South of a line 135 feet North of and parallel to the Northerly line of 115th Street and West of a line 140 feet East of and parallel to the Easterly line of Kedzie Avenue, in Cook County, Illinois;

ALSO

The West 17 feet of Lots 5 and 6 in Finitzo's Shelley Lane Subdivision of the Southwest 1/4 of the Southwest 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 24, Township 37 North, Range 13 East of the Third Principal Meridian (except that part thereof lying South of a line 135 feet North of and parallel to the Northerly line of 115th Street and West of a line 140 feet East of and parallel to the Easterly line of Kedzie Avenue), in Cook County, Illinois;

All of the above-described property being that property conveyed by Deed dated June 2, 1981 recorded September 16, 1981 commitment number 26000534 from Shell Oil Company, a Delaware corporation to The Southland Corporation, a Texas corporation;

Exception from the above-described property that part thereof described below conveyed by Deed dated February 16, 1983 recorded April 26, 1983 as Document Number 26582696 from The Southland Corporation, a Texas corporation, to the People of the State of Illinois, for the use and benefit of the Department of Transportation, described as follows:

That portion of that part of the Southwest 1/4 of the Southwest 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 24, Township 37 North, Range 13, East of the Third Principal Meridian, lying South of a line 135 feet North of and parallel to the Northerly line of 115th Street and West of a line 140 feet East of and parallel to the Easterly line of Kedzie Avenue, in Cook County, Illinois, bounded and described as follows:

Beginning at the Southwest corner of the above described property; thence on an assumed bearing of North 00 degrees 00 minutes 00 seconds West 20 feet along the Easterly line of Kedzie Avenue; thence South 44 degrees 45 minutes 24 seconds East 28.40 feet to a point in the Northerly line of 115th Street; thence North 89 degrees 30 minutes 49 seconds West 20.00 feet along the said Northerly line of 115th Street to the point of beginning, in Cook County, Illinois.

X01-23817
FFCA No. 8000-6831
Store No. 23364/Southland
11459 South Kedzie Avenue
Chicago, IL, County of Cook

24-24-116-022
24-24-116-023
24-24-116-024

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Exhibit B

(Description of the Improvements)

An approximately 2,590 square foot building to be used as a retail convenience store.

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