

# UNOFFICIAL COPY



Doc#: 0404132109  
Eugene "Gene" Moore Fee: \$46.00  
Cook County Recorder of Deeds  
Date: 02/10/2004 03:03 PM Pg: 1 of 12

This instrument was prepared by  
and after recording return to:

Lewis A. Burleigh, Esq.  
Dechert LLP  
200 Clarendon Street, 27<sup>th</sup> Floor  
Boston, MA 02116

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SCP 2003D-20 LLC,  
Landlord

to

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, as trustee,  
Lender

and

Western Chic CVS, L.L.C.,  
Tenant

Dated as of December 18, 2003

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement") is dated as of the Effective Date set forth on **Schedule A** attached hereto and made a part hereof between WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, as Trustee ("Lender"), the Lessee set forth on **Schedule A** attached hereto and made a part hereof ("Tenant"), and the Borrower set forth on **Schedule A** attached hereto and made a part hereof ("Landlord").

### RECITALS

- A. Tenant is the tenant under that certain Lease described on **Schedule A** attached hereto and made a part hereof (the "Lease"), of the premises described in **Exhibit A** attached hereto and made a part hereof (the "Land"), together with the buildings and improvements located on the Land ("Improvements") (collectively, the "Mortgaged Property"). A memorandum or short form of the Lease may be recorded approximately simultaneously with the recording of this Agreement with the Registry of Deeds/Office of the Clerk or in the Land Records, as applicable, in the county or counties, city or cities, or town or towns as applicable, and state where the Land is located (the "Registry").
- B. This Agreement is being entered into in connection with a mortgage loan (the "Loan") from Lender to Landlord, secured by, inter alia: (a) a first mortgage, deed of trust or deed to secure debt on and of the Landlord's interest in the Mortgaged Property (the "Security Instrument") dated as of even date herewith to be recorded with the Registry concurrently with, but prior to, the recording of this Agreement; and (b) a first assignment of lease and rents (the "Assignment of Lease and Rents") dated as of even date herewith to be recorded with the Registry concurrently with, but prior to, the recording of this Agreement. The Security Instrument and the Assignment of Lease and Rents are hereinafter collectively referred to as the "Loan Documents."

### AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Tenant agrees that the Lease, subject to the provisions of Section 20(a) of Part II of the Lease, and notwithstanding the exercise of a "Substitute Collateral Right" pursuant to paragraph 19 of the Security Instrument, is and shall be, at the option of Lender upon notice to Tenant, at any time and from time to time, either subject and subordinate, or superior, to the Loan Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time. Such options of Lender may be exercised an unlimited number of times. This Agreement shall constitute notice to Tenant that for the time being, until further written notice to the contrary, Lender elects that the Lease is and shall be subject and subordinate as aforesaid.

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In addition, to the extent that the Lease shall entitle Tenant to notice of any mortgage, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument.

2. Notwithstanding the provisions of Section 1 hereof, Lender agrees that, if the Lender exercises any of its rights under the Loan Documents, including an entry by Lender pursuant to the Security Instrument or a foreclosure of, or exercise of any power of sale under, the Security Instrument, or any sale or transfer in lieu thereof, Lender shall not disturb Tenant's right of quiet possession of the Mortgaged Property under the terms of the Lease so long as no "Event of Default" (as defined in the Lease) shall have occurred and be continuing.
  
3. Tenant agrees that, in the event of a foreclosure of the Security Instrument by Lender or the acceptance of a conveyance in lieu of foreclosure by Lender or any other succession of Lender to ownership of Landlord's interest in the Mortgaged Property, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the Term (as defined in the Lease) of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.
  
4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:
  - (a) liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord), or
  - (b) subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord), or
  - (c) bound by any payment of "Fixed Rent" or "Additional Rent" (as such terms are defined in the Lease) which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord, (including, without limitation, the then defaulting Landlord), except to the extent such monies are actually received by Lender, or
  - (d) bound by any obligation of any prior Landlord to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any such prior Landlord's interest, except the obligations set forth in paragraph 33 (Completion Reserve) of the Security Instrument, or
  - (e) accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender, or
  - (f) bound by any amendment or modification of the Lease or by any waiver or forbearance on the part of any prior Landlord (including, without limitation, the then defaulting Landlord), in either case to the extent the same is made or given without the prior written consent of Lender; or

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- (g) liable with respect to warranties or indemnities of any nature whatsoever made by any prior Landlord (including, without limitation, the then defaulting Landlord), including any warranties or indemnities regarding use, compliance with zoning, hazardous wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for purpose, or possession except for the limited covenant of title set forth in the Lease. In the event that Lender shall acquire Landlord's estate in and to the Mortgaged Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Mortgaged Property, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Mortgaged Property for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease or under any new lease of the Mortgaged Property, except with respect to the misappropriation of insurance or condemnation proceeds which have been received by Lender.
5. Tenant hereby acknowledges Lender as being entitled to copies of all notices of Landlord default(s), if any, under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord and shall accept notices of default from Lender. Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease. If, in curing any such default, Lender requires access to the Mortgaged Property to effect such cure, Tenant shall furnish access to the Mortgaged Property to Lender as required by Lender to effect such cure at all reasonable times and manners; provided that Tenant's occupancy, use and enjoyment of the Mortgaged Property is not unreasonably disrupted thereby. Unless Lender otherwise agrees in writing, Lender shall have no liability to perform Landlord's obligations under the Lease, both before and after Lender's exercise of any right or remedy under this Agreement except as to the rights of Tenant set forth in paragraph 2 hereof. Neither Lender nor any other purchaser at foreclosure or recipient of a deed in lieu thereof shall become liable under the Lease unless and until Lender or such other purchaser or recipient becomes, and then only with respect to periods in which Lender or its designee or nominee is, the owner of Landlord's interest in the Mortgaged Property. Lender shall have the right, without Tenant's consent but subject to the provisions of this Agreement, to foreclose, or exercise any power of sale under, the Security Instrument or to accept a conveyance in lieu of foreclosure of the Security Instrument or to exercise any other remedies under the Loan Documents.
6. Tenant agrees that Tenant shall not, without the prior written consent of Lender, (a) amend or modify the Lease, (b) terminate, cancel or surrender the Lease except in accordance with the express provisions thereof, or enter into any agreement with Landlord to do so, (c) pay any installment of Fixed Rent or Additional Rent under the Lease more than one month in advance of the due date thereof or otherwise than in the manner provided for in the Lease, or (d) sublease all or any part of the Mortgaged Property except in accordance with the terms of the Lease. Tenant further agrees that upon the assignment or sublease of the Lease in accordance with the terms of the Lease,

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Tenant shall remain primarily liable for all obligations under the Lease. Tenant further agrees that, to the extent that the Mortgaged Property does not consist of one or more contiguous tax parcels that lie entirely within the boundaries of the Mortgaged Property (the "Tax Parcel Requirement"), Tenant will perform such commercially reasonable acts and make such filings as are necessary to cause the Mortgaged Property to comply with the Tax Parcel Requirement within a reasonable period of time after the date hereof, not to exceed eighteen (18) months, and until such time as the Tax Parcel Requirement is satisfied, Tenant will pay all "taxes" (as defined in the Lease) assessed and/or due against all real estate lying within any tax parcel that includes any portion of the Mortgaged Property as and when such taxes are due, or will comply with its obligations under Section 45(b) through 45(h) of the Lease in the event that Landlord delivers to Tenant a Section 45(b) Notice (as defined in the Lease) pursuant to Section 31(c) of the Lease.

7. Tenant has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby consents to the Assignment of Lease and Rents and confirms its agreement with the provisions of paragraph 15 thereof. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignment, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignment or by any subsequent receipt or collection of rents thereunder, unless Lender shall become the owner of the Mortgaged Property or shall specifically undertake such liability in writing.
8. In accordance with the terms of the Lease, Tenant agrees to permit Lender and or Landlord and Lender's and/or Landlord's representatives access to, and an opportunity to inspect, the Mortgaged Property during normal business hours and upon reasonable notice. Tenant further acknowledges and agrees to be bound by the license and right of access granted to Lender and its agents, employees, contractors, engineers, architects, nominees, attorneys and other representatives pursuant to paragraph 23(b) of the Security Instrument.
9. If Tenant is a corporation, the individual executing this Agreement on behalf of such corporation is duly authorized to execute and deliver this Agreement on behalf of such corporation, and that this Agreement is binding upon such corporation in accordance with its terms.
10. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Agreement, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party at such party's Notice Address as indicated on **Schedule A** attached hereto and made a part hereof (or to such other address or person as either party or person entitled to notice may by notice to the other party specify).

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier

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- delivery service, on the day following the business day such material is sent, or (iii) if sent by certified mail, three (3) business days after such notice has been sent.
11. The term "Lender" as used herein includes any successors or assigns of the Lender named herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a conveyance in lieu of foreclosure, and their successors and assigns, and the term "Tenant" as used herein includes the Tenant named herein (the "Original Tenant") and any successors or assigns of the Original Tenant.
  12. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.
  13. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, except by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.
  14. This Agreement shall be construed in accordance with the laws of the State or Commonwealth in which the Mortgaged Property is located.

***[BALANCE OF PAGE INTENTIONALLY LEFT BLANK.]***

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IN WITNESS WHEREOF, Lender has signed this Agreement as of the date first herein above set forth as its free act and deed for the uses and purposes herein contained.

WITNESS:

LENDER:

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, a national  
banking association, as Trustee

  
Name: \_\_\_\_\_  
JON CROASMUN

By:   
Name: Val T. Orton  
Title: Vice President

### ACKNOWLEDGEMENT

STATE OF UTAH

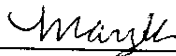
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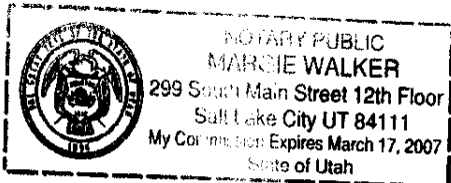
COUNTY OF SALT LAKE

Before me, a Notary Public in and for the State of Utah, personally appeared Val T. Orton, the Vice President of WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association, who, having been first duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of said national banking association, and stated that any representations contained therein are true.

Witness my hand and official seal this 16<sup>th</sup> day of December, 2003.

(NOTARIAL SEAL)

  
\_\_\_\_\_  
Notary Public  
Print Name:



I am a resident of \_\_\_\_\_ County, \_\_\_\_\_  
My commission expires:

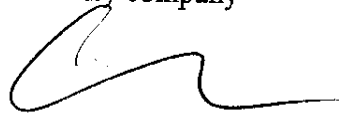
[Signatures continued on following page.]

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IN WITNESS WHEREOF, Tenant has signed this Agreement as of the date first hereinabove set forth as its free act and deed for the uses and purposes herein contained.

**TENANT:**

WESTERN CHIC CVS, L.L.C., an Illinois limited liability company



By: \_\_\_\_\_  
Name: Michael B. Nulman  
Title: Assistant Secretary

Property of Cook County Clerk's Office

STATE OF RHODE ISLAND )

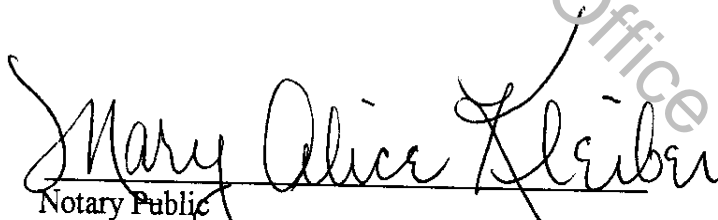
COUNTY OF PROVIDENCE )

ss:

Before me, a Notary Public in and for the State of Rhode Island, personally appeared Michael B. Nulman, the Assistant Secretary of WESTERN CHIC CVS, L.L.C., an Illinois limited liability company, who, having been first duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of said limited liability company, and stated that any representations contained therein are true.

Witness my hand and official seal this 12 day of December, 2003.

(NOTARIAL SEAL)



Notary Public  
Print Name:

I am a resident of Kent County, Rhode Island  
My commission expires:

IL SNDA

**Mary Alice Kleiber**  
**State of Rhode Island**  
**My Commission Expires 3-7-04**

[Signatures continued on following page.]



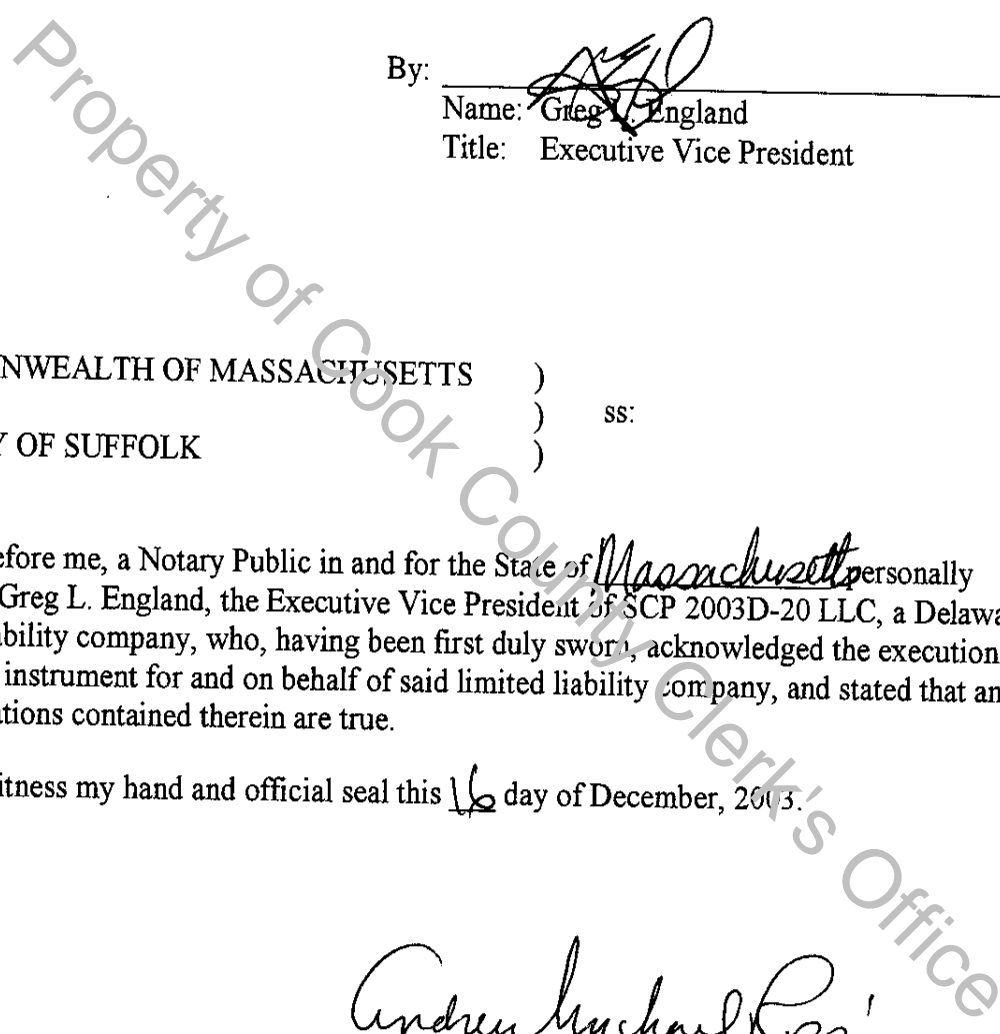
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IN WITNESS WHEREOF, Landlord has signed and sealed this Agreement as of the date first herein above set forth as its free act and deed for the uses and purposes herein contained.

LANDLORD:

SCP 2003D-20 LLC, a Delaware limited liability company

By: [Signature]
Name: Greg L. England
Title: Executive Vice President



COMMONWEALTH OF MASSACHUSETTS )
COUNTY OF SUFFOLK )

ss:

Before me, a Notary Public in and for the State of Massachusetts personally appeared Greg L. England, the Executive Vice President of SCP 2003D-20 LLC, a Delaware limited liability company, who, having been first duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of said limited liability company, and stated that any representations contained therein are true.

Witness my hand and official seal this 16 day of December, 2003.

(NOTARIAL SEAL)

[Signature: Andrew Michael Ross]
Notary Public
Print Name: Andrew Michael Ross

I am a resident of Essex County, Massachusetts
My commission expires: 7/19/07

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## SCHEDULE A MASTER SCHEDULE

<b>Effective Date:</b>	December 18, 2003
<b>Borrower:</b>	SCP 2003D-20 LLC, a Delaware limited liability company
<b>Address of (1) Borrower's principal place of business; (2) Guarantor's principal place of business; and (3) Borrower's Notice Address</b>	8333 Douglas Avenue, Suite 1500 Dallas, Texas 75225
<b>Loan Amount:</b>	\$6,573,419.40
<b>Security Instrument:</b>	Mortgage, Security Agreement and Assignment of Leases and Rents
<b>Guarantor:</b>	SCP 2003D L.P., a Texas limited partnership
<b>Lease:</b>	Lease, dated as of December 18, 2003, between Borrower, as landlord, and Lessee, as tenant
<b>Lessee:</b>	Western Chic CVS, L.L.C., an Illinois limited liability company
<b>Rent Commencement Date:</b>	December 18, 2003

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<b>Lender Notice Address:</b>	<p>Wells Fargo Bank Northwest, National Association, as Trustee  299 South Main Street  Salt Lake City, Utah 84111  Attn.: Corporate Trust Services/Val T. Orton  Fax: (801) 246-5053</p> <p><b>With a copy to:</b>  Dechert LLP  200 Clarendon Street, 27<sup>th</sup> Floor  Boston, Massachusetts 02116  Attn.: Lewis A. Burleigh, Esq.  Fax: (617) 426-6567</p>
<b>Lessee Notice Address:</b>	<p>Western Chic CVS, L.L.C.  c/o CVS Corporation  One CVS Drive  Woonsocket, Rhode Island 02895  Attn.: Property Administration Dept./Store # 2809  Fax: (401) 770-7887</p> <p><b>With a copy to:</b>  Mintz, Levin, Cohn, Ferris, Glosky and Popeo, P.C.  One Financial Center  Boston, Massachusetts 02111  Attn.: Andrew R. Urban, Esq.  Fax: (617) 542-2241</p>
<b>Complete Reserve Amount:</b>	\$0.00
<b>Interest Reserve Amount:</b>	\$0.00

*[End of Schedule A Master Schedule]*

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## Exhibit "A"

LEGAL DESCRIPTION  
 STORE NO. 2809  
 CHICAGO, IL

LOTS 19 TO 31, BOTH INCLUSIVE, (EXCEPT THAT PART OF LOTS 19 TO 24 TAKEN FOR WIDENING WESTERN AVENUE) TOGETHER WITH ALL THAT PART OF THE EAST-WEST 16 FOOT WIDE VACATED ALLEY LYING SOUTH OF THE SOUTH LINE OF SAID LOT 23, LYING NORTH OF THE NORTH LINE OF SAID LOTS 24 TO 28, BOTH INCLUSIVE, LYING EAST OF THE EAST LINE OF N. WESTERN AVENUE AS WIDENED BY ORDINANCE APPROVED APRIL 1, 1925 BY THE CITY COUNCIL OF THE CITY OF CHICAGO, JUDGMENT RENDERED THROUGH CONDEMNATION PROCEEDINGS IN THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS AS DOCKET NO. 419058, SAID EAST LINE OF N. WESTERN AVENUE BEING DESCRIBED AS A LINE DRAWN FROM A POINT ON THE SOUTH LINE OF SAID LOT 23, SAID POINT BEING 17.0 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 23 (AS MEASURED ALONG THE SOUTH LINE OF SAID LOT 23), TO A POINT ON THE NORTH LINE OF SAID LOT 24, SAID POINT BEING 17.0 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 24 (AS MEASURED ALONG THE NORTH LINE OF SAID LOT 24) AND LYING WEST OF A LINE DRAWN FROM THE SOUTHEAST CORNER OF SAID LOT 23 TO THE NORTHEAST CORNER OF SAID LOT 28, ALL IN BLOCK 8 IN CLYBOURN AVENUE ADDITION TO LAKEVIEW AND CHICAGO, BEING A SUBDIVISION IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

*Index No's; 14-30-117-001; 002; 003; 004;  
 14-30-117-022; 023; 024; 038*

*Address: 2800 N. Western Ave  
 Chgo, IL*