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Doc#: 0407011109  
Eugene "Gene" Moore Fee: \$50.00  
Cook County Recorder of Deeds  
Date: 09/10/2004 11:13 AM Pg: 1 of 14

## MORTGAGE, SECURITY AND RECAPTURE AGREEMENT

THIS MORTGAGE, SECURITY AND RECAPTURE AGREEMENT ("Mortgage") is made as of this 3rd day of February, 2004 from Marcus Spencer (individually "Mortgagor"), to the CITY OF CHICAGO, an Illinois municipal corporation, having its principal office at City Hall, Chicago, Illinois 60602 ("City" or "Mortgagee").

### RECITALS

WHEREAS, the City Council of the City, by ordinance adopted June 7, 1990, established the New Homes for Chicago Program ("New Homes Program") to facilitate the construction of new single family housing within the City which shall be affordable to many families; and

WHEREAS, pursuant to the objectives of the New Homes Program, the City and West Village JV, L.L.C., an Illinois limited liability company ("Developer"), executed that certain "Redevelopment Agreement, New Homes For Chicago Program, West Village JV, L.L.C." entered into between Grantor and Grantee as of December 19, 2000 and recorded with the Office of the Recorder of Deeds of Cook County, Illinois on March 22, 2001 as document #0010226696 ("Redevelopment Agreement"), whereby Developer redeveloped that certain real property legally described on Exhibit A attached hereto ("Land") by constructing a single family housing unit or two-flat building, as the case may be, ("Unit") improving the Land; and

WHEREAS, pursuant to the terms and conditions of the Redevelopment Agreement, the purchase price for the land paid for by developer to the City had been reduced from its fair market value to nominal consideration; and

WHEREAS, the Home was constructed by Developer in part by utilizing Ten Thousand Dollars (\$10,000.00) of City funds which served to improve the quality of the construction of the Home;

WHEREAS, the expenditure of the City funds to construct the Home is not reflected in the sales price for the Home and the Land to be paid by the initial homebuyer to Developer at closing, in conjunction with the objective of the New Homes Program that the Home be made affordable; and

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WHEREAS, the lower sales price for the Home and the Land have therefore enabled potential homebuyers of low and moderate income levels to become homeowners; and

WHEREAS, pursuant to the terms of the Redevelopment Agreement, Developer proposes to convey the Land and the completed Home to Mortgagor as the initial homebuyer; and

WHEREAS, Mortgagor has covenanted to Mortgagee herein that it meets the income eligibility requirements to participate as an initial homebuyer under the New Homes Program; and

WHEREAS, in consideration for the City's willingness to forego reimbursement of the City's funds at closing, Mortgagor has executed and delivered to the Mortgagee that certain covenant of residency ("Covenant of Residency") reflecting the recapture provisions described in the enabling ordinance for the New Homes Program and in the Mortgage solely in the event that the Land is sold by Mortgagor at a price in excess of the purchase price within the four (4) year period commencing with the date of conveyance of the Land from Developer to Mortgagee; and

WHEREAS, the City is desirous of securing the recapture provision described in the New Homes Program, the Covenant of Residency and in the Mortgage; and

NOW, THEREFORE, to secure the performance and observance by Mortgagor of all the terms, covenants and conditions described in the Covenant of Residency and the Mortgage, and in order to charge the properties, interests and rights hereinafter described with such consideration, Mortgagor has executed and delivered the Mortgage and does hereby grant, convey, assign, mortgage, grant a security interest in, and confirm unto Mortgagee and its successors and assigns forever, all of the following described property (which is hereinafter sometimes referred to as "Mortgaged Property"):

(A) The Land;

(B) All structures and improvements of every nature whatsoever now or hereafter situated on the Land, including, without limitation, the Unit, all fixtures of every kind and nature whatsoever which are or shall be attached to said buildings, structures or improvements, and now or hereafter owned by Mortgagor, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing ("Improvements");

(C) All rents and issues of the Land and Improvements from time to time and all of the estate, right, title, interest, property, possession, claim and demand at law, as well as in equity of Mortgagor, in and to the same;

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TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein;

WITHOUT limitation of the foregoing, Mortgagor hereby further grants unto Mortgagee, pursuant to the provisions of the Uniform Commercial Code of the State of Illinois, a security interest in all of the above-described property, which are or are to become fixtures.

THIS MORTGAGE IS GIVEN TO SECURE: (a) payment of the recapture provision evidenced by the terms of the Covenant of Residency and the Mortgage, and (b) performance of each and every of the covenants, conditions and agreements contained in the Covenant of Residency and the Mortgage, and in any other agreement, document or instrument to which reference is expressly made in the Mortgage.

## ARTICLE I

### INCORPORATION OF RECITALS

The recitals set forth above constitute an integral of the Mortgage and are hereby incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

## ARTICLE II

### COVENANTS, REPRESENTATIONS AND WARRANTIES

Mortgagor covenants and agrees with Mortgagee that:

#### 2.01 Taxes and Assessments.

(a) Mortgagor will pay when due all general taxes and assessments, special assessments, water charges and all of the charges against the Mortgaged Property and shall, upon written request, furnish to Mortgagee receipts evidencing payment thereof, provided that Mortgagor, in good faith and with reasonable diligence, may contest the validity or amount of any such taxes, assessments or charges, provided that during any such contest the enforcement of the lien of such taxes, assessments or charges is stayed.

(b) Mortgagor will not suffer (unless bonded or insured over) any mechanic's, laborer's, materialmen's, or statutory lien to remain outstanding upon any of the Mortgaged Property. Mortgagor may contest such lien, provided that Mortgagor shall first post a bond in the amount of the contested lien, or provide title insurance over such contested lien, and further provided that Mortgagor shall diligently prosecute the contested lien and cause the removal of the same.

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## 2.02 Insurance.

Mortgagor shall keep the Mortgaged Property continuously insured in such amounts and against such risks as required of Mortgagor by the Senior Lender (as hereinafter defined), paying the premiums for said insurance as they become due. Policies of insurance shall name Mortgagee as an additional insured. All policies of insurance shall provide that the same shall not be canceled, except upon thirty (30) days prior written notice to Mortgagee.

## 2.03 Maintenance of the Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair, will not commit or suffer any waste thereof, and will keep the same in a clean, orderly and attractive condition. Mortgagor shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Mortgagor will immediately give written notice of the same to Mortgagee.

(c) Mortgagee or its representatives shall have the right to inspect the Mortgaged Property to assure compliance with the terms of the Mortgage and the Covenant of Residency.

(d) Mortgagor shall promptly comply, and cause the Mortgaged Property to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Mortgaged Property or any part thereof and with all instruments and documents of record or otherwise affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Mortgagor, subject to the rights of co-insurer, will promptly restore the Mortgaged Property to the equivalent of its condition prior to the casualty, to the extent of any insurance proceeds made available to Mortgagor for that purpose.

## 2.04 Subordination.

The Mortgage shall be subject and subordinate in all respects to that certain mortgage dated as of \_\_\_\_\_, between Mortgagor and \_\_\_\_\_ ("Senior Lender"), recorded with the Office of the Recorder of Deeds of Cook County, Illinois on \_\_\_\_\_ as document # \_\_\_\_\_ to secure indebtedness in the original principal amount not to exceed the ceiling base price of \_\_\_\_\_ (excluding options and extras) pursuant to the terms of the Redevelopment Agreement

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("Senior Mortgage") and shall also be subordinate to any subsequent mortgage that replaces the Senior Mortgage.

## 2.05 Income Eligibility.

Mortgagor covenants to Mortgagee that it meets the income eligibility requirements established by the City pursuant to the New Homes Program in order to participate as an initial homebuyer under the New Homes Program.

## 2.06 Income Eligibility of Households Which Rent the Rental Unit.

With regard to the rental of the housing unit ("Rental Unit") of the Two-Flat Building which is not occupied by the Mortgagor, the Mortgagor hereby covenants to the City that each household occupying the Rental Unit as its domicile shall meet the income eligibility requirements of the New Homes Program. This provision shall be in effect for a period of four (4) years commencing with the closing date.

Prior to the commencement of the initial occupancy of the Rental Unit, the Mortgagor shall, in conjunction with Boulevard Joint Venture, an Illinois Joint Venture and an entity of Developer, deliver to the City through its Department of Housing an affidavit attesting to the monthly rent of the Rental Unit, the lease term, and containing a statement that the tenants of the Rental Unit shall meet the income eligibility standards of the New Homes Program. This affidavit shall thereafter be delivered to the Department of Housing on an annual basis during the four (4) year period described in this Section 2.06.

## ARTICLE III

### RECAPTURE OF PROFIT PROVISIONS

#### 3.01 Generally.

The amount of City funds disbursed by the City with regard to the construction of the Unit is Ten Thousand and no/100 Dollars (\$10,000). Mortgagor, as an initial homebuyer under the New Homes Program, covenants to the City that it shall own the Mortgaged Property and utilize the Unit improving the Mortgaged Property as

its primary residence for a period of Four (4) years commencing with the Conveyance Date of the Mortgaged Property from Developer to Mortgagor, as evidenced by the execution of the Covenant of Residency for the benefit of the City.



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## 3.02 Recapture.

If Mortgagor conveys the Mortgaged Property, or executes a deed in lieu of foreclosure, prior to the expiration of said four (4) year period at a price in excess of the purchase price paid for the Mortgaged Property by Mortgagor to Developer on the Conveyance Date, the City shall be entitled to recapture, and Mortgagor shall be obligated to pay the City, such amount equal to the lesser of the following sums:

(a) the difference between the original purchase price for the Mortgaged Property paid by Mortgagor to Developer and the resale price; or

(b) an amount equal to the City funds described in paragraph 3.01 above, provided that this amount shall decline by twenty five percent (25%) on the anniversary of each year subsequent to the Conveyance Date.

## 3.03 Release of Mortgage.

If, during the four (4) year period commencing with the Conveyance Date, Mortgagor: (a) retains ownership of the Mortgaged Property and use of the Unit as its primary residence, (b) conveys the Mortgaged Property for a purchase price less than or equal to the purchase price that Mortgagor paid to Developer for the Mortgaged Property on the Conveyance Date, or (c) conveys the Mortgaged Property for a price in excess of said purchase price and pays the City the amount the City is entitled to receive pursuant to the provisions described in section 3.02 above, then Mortgagor shall be deemed to have fully complied with the provisions contained in the Mortgage and Mortgagor shall be under no further obligation to Mortgagee. In such event, within thirty (30) days of receipt of a written request from Mortgagor, Mortgagee shall execute a release of the Mortgage. Said release shall be in recordable form.

## ARTICLE IV

### DEFAULT

#### 4.01 Events of Default.

The terms "Event of Default" or "Events of Default", wherever used in the Mortgage, shall mean any one or more of the following events:

(a) Failure by Mortgagor to duly observe or perform any material term, covenant, condition, or agreement of the Covenant of Residency or the Mortgage after the expiration of all cure periods as provided herein); or

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(b) A default continuing beyond all applicable cure periods under the Senior Financing and permitting foreclosure thereunder.

## 4.02 Acceleration of Maturity.

(a) If an Event of Default due to a failure to make any payment when the same is due and owing ("Monetary Event of Default") shall have occurred under the Senior Lender's security documents, the Covenant of Residency or the Mortgage, and shall have continued for ten (10) days following notice thereof from Mortgagee to Mortgagor, the entire amount of City funds described herein and secured hereby, at Mortgagee's sole option, shall become immediately due and payable without further notice or demand.

(b) If an Event of Default (other than a Monetary Event of Default), shall have occurred under the Senior Lender's security documents, and shall have continued for sixty (60) days following the receipt of notice thereof from Mortgagee to Mortgagor, the City funds secured hereby, at Mortgagee's sole option, shall immediately become due and payable without further notice or demand; provided, however, that in the event such default cannot reasonably be cured within such sixty (60) day period and if Mortgagor has commenced efforts to cure, then the time to cure shall be extended so long as said party diligently continues to cure such default.

(c) Except as otherwise permitted by the terms of the Mortgage and as evidenced by Mortgagee's written consent, any sale, partial sale, refinancing, syndication or other disposition of the Mortgaged Property shall entitle the Mortgagee to declare the City funds secured hereby immediately due and payable without further notice or demand; provided, however, the replacement or substitution of any machinery, equipment or fixtures, now owned or hereafter acquired by Mortgagor, with machinery or equipment of like kind and value, whether or not such machinery or equipment is deemed a fixture under applicable provisions of the Illinois Uniform Commercial Code, will not be an Event of Default under the Mortgage, provided Mortgagor executes such documents as may be necessary to assure Mortgagee of a continuing perfected secured interest in such replacement or substituted machinery, equipment or fixtures.

## 4.03 Remedies.

(a) Subject to the rights of the Senior Lender, when the City funds hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. The Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by any foreclosure of the Senior Mortgage, and may be foreclosed successively and in parts, until all of the Mortgaged Property has been foreclosed against. In any such foreclosure, or upon the enforcement of any other

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remedy of Mortgagee under the Mortgage or the Covenant of Residency, there shall be allowed and included as additional indebtedness, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs involved in title insurance and title examinations. All expenditures and expenses of the nature in this section 4.03 mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of the Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting the Mortgage, the Covenant of Residency or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the lesser of the highest rate permitted by law or fifteen percent (15%) per annum, and shall be secured by the Mortgage. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incidental to the foreclosure proceedings, including all such items as are mentioned in this section; (ii) all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Covenant of Residency and the Mortgage; (iii) all principal and interest remaining to be paid pursuant to the recapture provisions described in the Covenant of Residency; and (iv) any remaining amounts due to Mortgagor, its successors or assigns, as their rights may appear.

(b) Mortgagor shall not and will not apply for or avail itself of any appraisement, 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 Mortgage, but hereby waives the benefit of such laws. Mortgagor, 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 marshaled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of the Mortgage on its behalf and on behalf of each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the Mortgaged Property subsequent to the date of the Mortgage.

(c) Upon any other entering upon or taking of possession of the Mortgaged Property after the occurrence of an Event of Default and the expiration of the applicable cure period and other than by means of a foreclosure, Mortgagee, subject to the rights of the Senior Lender, may hold, use, manage and control the Mortgaged Property and, from time to time (i) make all



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necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property required in connection therewith; (ii) insure or keep the Mortgaged Property insured; (iii) manage the Mortgaged Property and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may reasonably determine to be to its best advantage. Mortgagee may collect and receive all the rents, issues, profits and revenues of the same, including those past due as well as those accruing thereafter, and, after deducting to the extent reasonable: (aa) expenses of taking, holding and managing the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other similar charges as Mortgagee may determine to pay; (ee) other proper charges upon the Mortgaged Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Mortgagee, shall apply the remainder of the monies and proceeds so received by Mortgagee first to payment of accrued interest; and second to the payment of principal. The balance of such funds, if any, after payment in full, of all of the aforesaid amounts (including, without limitation, the entire outstanding principal balance under the Covenant) shall be paid to Mortgagor.

#### 4.04 Receiver.

Subject to the rights of the Senior Lender, if an Event of Default shall have occurred and be continuing after an applicable cure period has expired, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall otherwise have all of the rights and powers to the fullest extent permitted by law.

#### 4.05 Purchase by Mortgagee.

Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit to the purchase price; provided, however, that the Senior Lender has been paid in full.

#### 4.06 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to Mortgagee by the Mortgage is intended to be exclusive of any

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other right, power or remedy, but each and every right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law, in equity or by statute.

## 4.07 Waiver.

No delay or omission of Mortgagee or of any holder of the Covenant to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by the Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. No consent or waiver, expressed or implied, by Mortgagee to or of any breach or Event of Default by Mortgagor in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies on account of any breach or default by Mortgagor.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

#### 5.01 Successors and Assigns.

The Mortgage shall inure to the benefit of and be binding upon Mortgagor and Mortgagee and their respective legal representatives, successors and assigns. Whenever a reference is made in the Mortgage to Mortgagor or to Mortgagee, such reference shall be deemed to include a reference to legal representatives, successors and assigns of Mortgagor or Mortgagee, as applicable.

#### 5.02 Terminology.

All personal pronouns used in the Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and sections are for convenience only and neither limit nor amplify the provisions of the Mortgage, and all references herein to articles, sections or paragraphs shall refer to the corresponding articles, sections or paragraphs of the Mortgage unless specific reference is made to such articles, sections or paragraphs of another document or instrument.

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## 5.03 Severability.

If any provision of the Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of the Mortgage and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by law.

## 5.04 Security Agreement.

The Mortgage shall be construed as a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Mortgaged Property which constitutes fixtures. Mortgagee shall have all the rights with respect to such fixtures afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by the Mortgage or any other agreement.

## 5.05 Modification.

No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns. Mortgagor shall have no right to convey the Land into a land trust without obtaining the prior written consent of the City.

## 5.06 No Merger.

It being the desire and intention of the parties that the Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Mortgagee as evidenced by an appropriate document duly recorded, the Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.


## 5.07 Applicable Law.

The Mortgage shall be interpreted, construed and enforced under the laws of the State of Illinois.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be executed as of the day and year first above written

  
\_\_\_\_\_  
Marcus Spencer

This Document  
Prepared by:

C. Grant McCorkhill  
Holland & Knight LLC  
131 South Dearborn  
30<sup>th</sup> Floor  
Chicago, IL 60603  
312/715-5743

**To be returned to:**

Mark Lenz  
Assistant Corporation Counsel  
City of Chicago  
30 North LaSalle Street  
Suite 1610  
Chicago, Illinois 60602  
312/744-1041

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)  
COUNTY OF COOK )

I, Sherry A Hojnacki, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MARCUS SPONCKE personally known to me as the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of ~~January~~ February, 2004.

Sherry A Hojnacki  
Notary Public

My commission expires \_\_\_\_\_



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## EXHIBIT A

### LEGALLY DESCRIBED AS:

THAT PART OF LOTS 25 TO 42 BOTH INCLUSIVE TAKEN AS A TRACT IN BLOCK 4 IN D.S. GOODWIN'S SUBDIVISION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH 90 DEGREES EAST ALONG THE SOUTH LINE THEREOF 389.57 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 90 DEGREES 00' 00" EAST ALONG SAID SOUTH LINE 25.0 FEET; THENCE NORTH 00 DEGREES 20' 03" WEST 149.48 FEET; THENCE SOUTH 89 DEGREES 58' 19" WEST 25.0 FEET; THENCE SOUTH 00 DEGREES 20' 03" EAST 149.47 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Commonly known as: 3418 West 13<sup>th</sup> Place  
CHICAGO, ILLINOIS

Permanent Index Number: 15-23-203-020-0000 (PART)

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