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Doc#: 0408241005

Eugene "Gene" Moore Fee: \$48.00

Cook County Recorder of Deeds

Date: 03/22/2004 03:12 PM Pg: 1 of 13

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN
TO:

Bell, Boyd & Lloyd LLC
70 West Madison Street
Suite 3100
Chicago, Illinois 60602
Terrence E. Budny, Esq.

This space reserved for Recorder's use only

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 15th day of January, 2004, by and between FULLERTON-KIMBALL, LLC, an Illinois limited liability company ("Borrower"), THOMAS J. GAMSJAEGER, HOWARD E. NATINSKY, GERALD L. NUDO and LAURENCE H. WEINER (individually and collectively, "Guarantor"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

Recitals

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of up to THREE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$3,700,000) pursuant to the terms and conditions of a Construction Loan Agreement dated as of February 25, 2003, between Borrower and Lender (the "Loan Agreement", all terms not otherwise defined herein having the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated February 25, 2003, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated February 25, 2003, from Borrower to Lender recorded with the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") on March 27, 2003, as Document No. 0030415509 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated February 25, 2003, from Borrower to Lender and recorded in the Recorder's Office on March 27, 2003, as Document No. 0030415510 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated February 25, 2003, from Borrower and Guarantor to Lender (the "Indemnity Agreement"); (iv) that certain Guaranty of Payment and Completion dated February 25, 2003, from Guarantor to Lender (the "Guaranty"). and (v) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity

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Agreement, the Guaranty and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. Borrower, Lender and Guarantor desire to amend the Loan Documents in accordance with the provisions of this Agreement.

Agreements

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Letter of Credit Facility.** The Loan shall include a letter of credit facility in the form of a letter of credit issued to the City of Chicago, as beneficiary (the "Letter of Credit"). Lender's contingent liability under the Letter of Credit shall constitute a portion of the Loan Amount, and shall automatically reduce, dollar for dollar, the amount which Borrower may borrow under the Loan Agreement. At no time shall the sum of the outstanding principal balance of the Loan and the stated amount of the Letter of Credit exceed the Loan Amount.

2. **Amendments to Loan Agreement.** The Loan Agreement is amended as follows:

(a) By adding the following definitions to Article 1, in appropriate alphabetical order:

"Application: As defined in Section 3.6(a)."

"Letter of Credit: That certain letter of credit issued by Lender to the City of Chicago, as beneficiary."

"Release Event: As defined in Section 3.6(c)."

"Unexpired Letter of Credit: As defined in Section 3.6(c)."

(b) By deleting the definition of Loan Amount in Article 1, and inserting the following in its place:

"Loan Amount: Three Million Seven Hundred Thousand Dollars (\$3,700,000), which includes the Letter of Credit."

(c) By inserting the following as Section 3.6:

"3.6 Letter of Credit.

(a) Issuance and Purpose. Lender agrees to issue the Letter of Credit pursuant to an application and master letter of credit agreement of Lender (both of

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which are collectively referred to as the "Application," and both of which shall constitute Loan Documents) duly executed and delivered by Borrower to Lender. The Letter of Credit shall secure the obligation of Borrower to complete certain landscaping on the Land. In no event shall the stated amount of the Letter of Credit and the outstanding principal balance of the Loan exceed \$3,700,000.

(b) Draws. Borrower shall reimburse Lender for any amount drawn under the Letter of Credit plus interest thereon at the Default Rate (or at the rate set forth in the Application, whichever is higher) within one (1) Business Day after the date such draft is paid by Lender and failure to reimburse Lender by such date shall constitute an Event of Default hereunder without notice to Borrower of any kind. All draws, payments or disbursements made at any time or from time to time by the Lender under the Letter of Credit, and also all charges and expenses in connection therewith, shall be deemed indebtedness of Borrower evidenced by the Note and all such draws, payments, disbursements, charges and expenses under the Letter of Credit shall be secured by this Agreement, the Mortgage and the other Loan Documents.

(c) Unexpired Letter of Credit. The Letter of Credit shall be irrevocable and shall have the expiration date as set forth in the Application. The expiration date of the Letter of Credit may extend beyond the Maturity Date, subject to the provisions of this Section 3.6(c). If the Letter of Credit remains unexpired and outstanding at the time Borrower, but for its obligations with respect to such unexpired and outstanding Letter of Credit (the "Unexpired Letter of Credit"), would otherwise under the terms of this Agreement and the Loan Documents be entitled to receive from Lender a full release of all of Lender's security for the Loan (a "Release Event"), then notwithstanding anything in this Agreement or the Loan Documents to the contrary, the Unexpired Letter of Credit shall continue to be secured by the Guaranty until such time as the Unexpired Letter of Credit expires and advances made by Lender with respect to the Unexpired Letter of Credit, if any, all interest thereon and all other sums due and payable to Lender in connection with the Unexpired Letter of Credit have been paid in full.

Borrower's obligation to reimburse the Lender for payments and disbursements made by Lender under the Letter of Credit honoring a demand for payment made by a beneficiary thereunder shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which Borrower may have or may have had against Lender, including any defense based on any non-application or misapplication by the beneficiary of the proceeds of such drawing or the legality, validity, regularity or enforceability of the Letter of Credit. Upon the occurrence of a Release Event or an Event of Default, an amount equal to the contingent liability of Lender under the Letter of Credit shall, at the option of Lender and without notice to Borrower, be deemed (as between Lender and Borrower) to have been paid or disbursed by Lender under the Letter of Credit (notwithstanding that such amount may not in fact have been so paid or disbursed), and Borrower shall be immediately obligated to reimburse Lender for the amount deemed to have been so paid or disbursed by Lender. Any amounts so received by Lender pursuant to the provisions of the foregoing sentence shall be cash collateral and shall be deposited by

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Lender in a cash collateral account as collateral security for the repayment of all obligations and liabilities of Borrower to Lender relating to the Letter of Credit, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due, including under or in connection with any one or more of this Agreement, the Note, the Mortgage, the Letter of Credit, and the other Loan Documents, until such time as all of such obligations and liabilities are paid, performed and satisfied in full, and Lender has no further liability or obligation of any kind whatsoever (whether conditional, contingent or otherwise) hereunder, under or with respect to the Letter of Credit, or under or with respect to any of the other Loan Documents.

(d) Letter of Credit Fee. Borrower shall pay to Lender a fee for issuance of the Letter of Credit equal to one and five tenths percent (1.5%) of the stated amount of the Letter of Credit. Such fee shall be payable on the date of issuance of the Letter of Credit.

(e) Termination of Letter of Credit. If the Letter of Credit has not been presented for a draw pursuant to its terms, the Letter of Credit shall terminate upon the earlier to occur of the stated expiry date thereof or the date the Letter of Credit is returned to Lender."

3. Amendment to Note. The Note is amended by adding the following as Section 3.1(d):

"(d) Notwithstanding the foregoing provisions of this Section 3.1, amounts due and payable to Lender with respect to the Letter of Credit, including without limitation any amount drawn on the Letter of Credit and interest thereon, shall be due and payable in accordance with the provisions of the Loan Agreement."

4. Amendment to Mortgage. The Mortgage is amended as follows:

(a) By inserting the phrase "which amount includes a letter of credit facility" at the end of the first sentence of Recital A.

(b) By adding the following as Paragraph 37(o):

"o. Letter of Credit. The principal balance of the Note shall also include any Loan proceeds advanced from time to time to fund draws upon the Letter of Credit. The amount of the Letter of Credit and Loan proceeds advanced to fund draws thereunder shall be deemed to be additional principal under the Note and shall be included within the indebtedness secured hereby, and, along with all draws, payments, disbursements, charges and expenses made or incurred by Mortgagee from time to time under the Letter of Credit, shall be secured by this Mortgage. Loan proceeds advanced to fund draws thereunder made after the date hereof in respect of the Letter of Credit shall have the same priority as if such advances were made on the date hereof."

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5. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement and the other Loan Documents are true and correct in all material respects as of the date hereof.

(b) There is currently no Event of Default (as defined in the Loan Agreement) under the Loan Agreement, the Note, the Mortgage or the other Loan Documents, and to the actual knowledge of Borrower there is no event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Loan Agreement, the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

(g) The Co-Managers of Borrower have the requisite power and authority to execute and deliver this Agreement on behalf of Borrower as its Co-Managers. The execution and delivery of this Agreement by the Co-Managers of Borrower on behalf of Borrower have been duly authorized by all requisite action by or on behalf of Borrower.

6. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Lawyers Title Insurance Corporation to issue, with respect to Lender's title insurance policy No. 02-18286 (the "Title Policy"), (i) a date-down endorsement covering the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender, (ii) a letter of credit endorsement, and (iii) the endorsements described in Section 3.5 of the Loan Agreement, all of which endorsements shall be subject to the Lender's approval, which approval shall not be unreasonably withheld.

7. **Reaffirmation of Guaranty and Indemnity Agreement.** Guarantor ratifies and affirms the Guaranty and the Indemnity Agreement and agrees that the Guaranty and the

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Indemnity Agreement are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty and the Indemnity Agreement are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty and Indemnity Agreement continue to be the valid and binding obligations of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder.

8. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

9. **Miscellaneous.**

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

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its or his respective counsel of the legal and practical effect of this Agreement, and recognizes that it or he is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its or his own free will, without promises or threats or the exertion of duress upon it or him. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledge that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

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(f) Any references to the "Loan Agreement", "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement, the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's and Guarantor's obligations under this Agreement.

SIGNATURE PAGE FOLLOWS

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

LENDER:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: Mark Eisenmann

Name: Mark Eisenmann

Title: AVP

BORROWER:

FULLERTON-KIMBALL, LLC, an Illinois limited liability company

By: Thomas J. Gamsjaeger

Name: Thomas J. Gamsjaeger

Title: Co-Manager

By: Howard E. Natinsky

Name: Howard E. Natinsky

Title: Co-Manager

GUARANTOR:

Thomas J. Gamsjaeger

Howard E. Natinsky

Gerald L. Nido

Laurence H. Weiner

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

LENDER:

**LASALLE BANK NATIONAL
ASSOCIATION**, a national banking
association

By: _____
Name: _____
Title: _____

BORROWER:

FULLERTON-KIMBALL, LLC, an
Illinois limited liability company

By: _____
Name: Thomas J. Gamsjaeger
Title: Co-Manager

By: _____
Name: Howard E. Natinsky
Title: Co-Manager

GUARANTOR:

Thomas J. Gamsjaeger

Howard E. Natinsky

Gerald H. Nudo

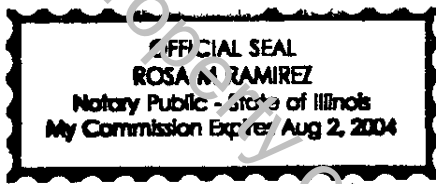
Laurence H. Weiner

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STATE OF ILLINOIS)
) ss.
 COUNTY OF COOK)

I Rosa M. Ramirez, a Notary Public in and for said County, in the State
 aforesaid, DO HEREBY CERTIFY that Mark Eisenmann, AVP of
 LaSalle Bank National Association, who is personally known to me to be the same person whose
 name is subscribed to the foregoing instrument, appeared before me this day in person and
 acknowledged that he signed and delivered said instrument as his own free and voluntary act for
 the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of January, 2004.



Rosa M. Ramirez
 Notary Public

My Commission Expires: 8/2/04

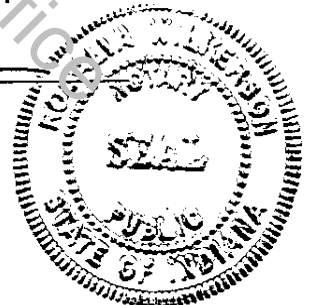
STATE OF ^{Indiana} ILLINOIS)
) ss.
 COUNTY OF ^{LAKE} COOK)

I, Rosalba Wilkerson, a Notary Public in and for said County, in the State
 aforesaid, do hereby certify that Thomas J. Gamsjaeger and Howard E. Natinsky, Co-Managers
 of Fullerton-Kimball, LLC, an Illinois limited liability company, who are personally known to
 me to be the same persons whose name are subscribed to the foregoing instrument as such Co-
 Managers, appeared before me this day in person and acknowledged that they signed and
 delivered the said instrument as their own free and voluntary act and as the free and voluntary act
 of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 20th day of January, 2004.

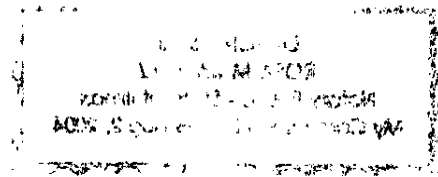
Rosalba Wilkerson
 Notary Public

My Commission Expires: 12/6/06



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STATE OF ^{Indiana} ~~ILLINOIS~~)
) ss.
 COUNTY OF LAKE)

I Rosalba Wilkerson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Thomas J. Gamsjaeger, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of January, 2004.

Rosalba Wilkerson
 Notary Public

My Commission Expires: 12-16-06



STATE OF ^{Indiana} ~~ILLINOIS~~)
) ss.
 COUNTY OF LAKE)

I Rosalba Wilkerson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Howard E. Natinsky, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of January, 2004.

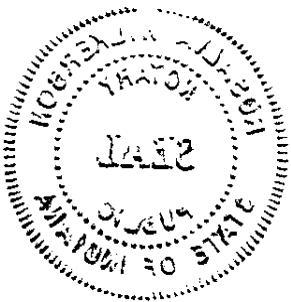
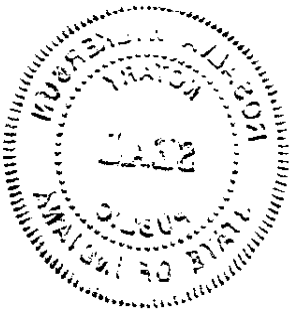
Rosalba Wilkerson
 Notary Public

My Commission Expires: 12-16-06



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STATE OF ^{Indiana} ILLINOIS)
) ss.
 COUNTY OF LAKE)

I Rosalba Wilkerson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gerald L. Nudo, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 12 day of ^{March}~~January~~, 2004.

Rosalba Wilkerson
 Notary Public

My Commission Expires: 12-16-06



STATE OF ^{Indiana} ILLINOIS)
) ss.
 COUNTY OF LAKE)

I Rosalba Wilkerson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Laurence H. Weiner, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 12 day of ^{March}~~January~~, 2004.

Rosalba Wilkerson
 Notary Public

My Commission Expires: 12-16-06



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EXHIBIT A

THE PROPERTY

PARCEL 1:

LOT 54 AND 55 IN DEZENG'S LOGAN SUBDIVISION OF BLOCK 3 IN GARRETT'S SUBDIVISION OF PART OF THE EAST ½ OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 56 IN DEZENG'S LOGAN SQUARE SUBDIVISION OF BLOCK 3 IN GARRETT'S SUBDIVISION OF PART OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 57 IN THE WEST 3 FEET OF LOT 58 IN DEZENG'S LOGAN SQUARE SUBDIVISION OF BLOCK 3 IN GARRETT'S SUBDIVISION OF PART OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THE EAST 22 FEET OF LOT 58 AND WEST 6 FEET OF LOT 59 IN DEZENG'S LOGAN SQUARE SUBDIVISION OF BLOCK 3 IN GARRETT'S SUBDIVISION OF PART OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

THE EAST 19 FEET OF LOT 59 AND THE WEST 9 FEET OF LOT 60 IN DEZENG'S LOGAN SQUARE SUBDIVISION OF BLOCK 3 IN GARRETT'S SUBDIVISION IN THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

THE EAST SIXTEEN (16) FEET OF LOT SIXTY (60) AND ALL OF LOT SIXTY ONE (61) AND THE WEST FIFTEEN (15) FEET OF LOT SIXTY TWO (62) IN DEZENG'S LOGAN SQUARE SUBDIVISION OF BLOCK THREE (3) IN GARRETT'S SUBDIVISION IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION TWENTY SIX (26), TOWNSHIP FORTY (40) NORTH, RANGE THIRTEEN (13), EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.s: 13-26-427-029-0000 (Parcel 1)
 13-26-427-030-0000 (Parcel 2)
 13-26-427-031-0000 (Parcel 3)
 13-26-427-032-0000 (Parcel 4)
 13-26-427-033-0000 (Parcel 5)
 13-26-427-034-0000 (Parcel 6)

Property commonly known as: Northeast corner of Kimball and Fullerton, Chicago, Illinois.