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Much Shelist
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606.1615
Attn: Jason L. LaBella, Esq.

Land America
10 S. LaSalle St., Ste 2500
Chicago, IL 60603

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ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES ("Assignment") is made and delivered as of the 30 day of June, 2004 by **NICHOLAS A. KARRIS ("Assignor")**, to and for the benefit of **BANCO POPULAR NORTH AMERICA**, its successors and assigns ("**Assignee**").

RECITALS:

A. Pursuant to the terms and conditions of a Loan Agreement of even date herewith (as amended, restated or replaced from time to time "**Loan Agreement**") by and among (i) **WATER TOWER REALTY COMPANY**, an Illinois corporation ("**Water Tower**"), (ii) **CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE U/T/A DATED JULY 7, 1993, AND KNOWN AS TRUST NO. 1098385 ("42 E. Superior Trust")**, (iii) Assignor, (iv) **33 HURON, LLC**, an Illinois limited liability company ("**Huron LLC**"), (v) **CHICAGO TITLE LAND TRUST COMPANY AS TRUSTEE U/T/A DATED SEPTEMBER 8, 2000, AND KNOWN AS TRUST NO. 1108820 ("16 W. Erie Trust")**, (vi) **16 W. ERIE, LLC**, an Illinois limited liability company ("**Erie LLC**"), (vii) **KARRIS FAMILY, LLC**, a Delaware limited liability company ("**Karris LLC**"), (viii) **CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE U/T/A DATED SEPTEMBER 9, 1977, AND KNOWN AS TRUST NO. 1070589 ("679 N. Michigan Trust")**, and (ix) **WATER TOWER CAPITAL GROUP, LTD. NO. 1 LIMITED PARTNERSHIP**, a(n) _____ limited partnership ("**Capital Group**"; Water Tower, 42 E. Superior Trust, Assignor, Huron LLC, 16 W. Erie Trust, Erie LLC, Karris LLC, 679 N. Michigan Trust, and Capital Group are collectively referred to herein as "**Borrowers**"; and any of them individually, a "**Borrower**") and Assignee, Assignee has agreed to loan to Borrowers up to the maximum principal amount of Ten Million and No/100 Dollars (\$10,000,000.00) ("**Loan**"). The Loan shall be evidenced by a certain Promissory Note of even date herewith (as amended, restated or replaced from time to time, "**Note**") made by Borrowers payable to Assignee in the principal amount of the Loan and due on June __, 2005 ("**Maturity Date**"), except as may be accelerated pursuant to the terms hereof or of the Note, the Loan Agreement or any other Loan Document (as defined in the Loan Agreement).

B. A condition precedent to Assignee's making of the Loan to Borrower is the execution and delivery by Assignor of this Assignment.

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. **Definitions.** All capitalized terms which are not defined herein shall have the meanings ascribed thereto in that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith from Assignor for the benefit of Assignee (as amended, modified, replaced or restated from time to time, "**Mortgage**") given as security for the Loan.

2. **Grant of Security Interest.** Assignor hereby grants, transfers, sets over and assigns to Assignee, all of the right, title and interest of Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts and other receivables arising out of or from the land legally described in Exhibit A attached hereto and made a part hereof and all buildings and other improvements located thereon (said land and improvements being hereinafter referred to collectively as the "**Premises**"), including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (collectively, "**Subleases**"), now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Subleases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Subleases, including rights to termination fees and compensation with respect to rejected Subleases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is an absolute transfer and assignment of the foregoing interests to Assignee given to secure:

(a) Payment by Borrowers when due of (i) the indebtedness evidenced by the Note and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to Assignee by Borrowers under or with respect to the Loan Documents (as defined in the Note); and (iii) all costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) Observance and performance by Borrowers of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrowers or any other obligor to or benefiting Assignee which are evidenced or secured by or otherwise provided in the Note, this Assignment or any of the other Loan Documents, together with all amendments and modifications thereof.

3. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that:

(a) Assignor is the tenant under that certain Lease and Option Agreement to Lease Additional Space dated as of January 1, 1982, regarding a portion of the property commonly known as 717 North Michigan Avenue, Chicago, Illinois (the "**Lease**"), with 717 JOINT VENTURE, an Illinois general partnership ("**Landlord**"), successor in interest to LASALLE NATIONAL BANK, as Trustee under Trust Agreement dated April 1, 1981, and known as Trust No. 103814

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(b) Assignor has the full right, power and authority under the Lease to lease or sublease all or any portion of the Premises to any party for the lawful use and occupancy thereof;

(c) this Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(d) Assignor is the lessor under all Subleases;

(e) there is no other existing assignment of Assignor's entire or any part of its interest in or to any of the Subleases, or any of the rents, issues, income or profits assigned hereunder, nor has either Assignor entered into any agreement to subordinate any of the Subleases or such Assignor's right to receive any of the rents, issues, income or profits assigned hereunder;

(f) Assignor has not executed any instrument or performed any act which may prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation; and

(g) there are no defaults by the landlord and, to Assignor's knowledge, there are no material defaults by tenants under any Subleases, or by Assignor or Landlord under the Lease.

4. **Covenants of Assignor.** Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Assignor shall not lease or sublease any portion of the Premises unless Assignor obtains Assignee's prior written consent to all aspects of such lease or sublease;

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Subleases to be observed or performed by the lessor thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. Assignor shall not (i) release the liability of any tenant under any Sublease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Sublease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Subleases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents;

(e) Assignor shall not modify the terms and provisions of any Sublease, nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Sublease, except as expressly permitted

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thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Sublease, without Assignee's prior written consent; provided, however, that Assignor may cancel or terminate any Sublease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Sublease;

(f) Assignor shall not accept a surrender of any Sublease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Sublease or of any interest in any Sublease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Sublease for the early termination or surrender thereof shall be paid jointly to Assignor and Assignee;

(g) Assignor shall not alter, modify or change the terms of any guaranty of any Sublease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;

(h) Assignor shall not waive or excuse the obligation to pay rent under any Sublease;

(i) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Sublease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear;

(j) Assignor shall give prompt notice to Assignee of any notice of any default by the lessor under any Sublease received from any tenant or guarantor thereunder;

(k) Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Sublease to be observed and performed by the tenants and guarantors thereunder and shall immediately notify Assignee of any material breach by the tenant or guarantor under any such Sublease;

(l) Assignor shall not permit any of the Subleases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(m) Assignor shall not execute any Sublease after the date of this Assignment unless there shall be included in such Sublease a provision providing that the tenant under such Sublease acknowledges that such Sublease has been assigned pursuant to this Assignment and agrees not to look to Assignee as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Sublease unless such sums have actually been received in cash by Assignee as security for tenant's performance under such Sublease;

(n) If any tenant under any Sublease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or

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rejection of the Subleases assigned hereby, Assignor covenants and agrees that if any such Sublease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Sublease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which shall be applied in accordance with the provisions of Paragraph 8 below; and

(o) Not later than thirty (30) days after the end of each calendar quarter, Assignor shall deliver to Assignee a certified rent roll for the Premises as of the last day of such period in a form reasonably satisfactory to Assignee.

5. **Rights Prior to Default.** Unless or until an Event of Default (as defined in Paragraph 6) shall occur, Assignor shall have the right to collect, at the time (but in no event more than thirty days in advance) provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Upon the occurrence of an Event of Default, Assignor's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to Assignor. Assignee shall have the right to notify the tenants under the Subleases of the existence of this Assignment at any time.

6. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Mortgage or (b) any other Event of Default described in the Note, Mortgage or the other Loan Documents.

7. **Rights and Remedies Upon Default.** At any time upon or following the occurrence of any Event of Default, Assignee, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable,

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Subleases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Subleases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Subleases to pay all

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rents and other amounts payable under the Subleases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Subleases to be observed or performed by the tenants thereunder, and Assignor shall facilitate in all reasonable ways Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Subleases to thereafter pay all such rents and other amounts to Assignee; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate and shall be secured by this Assignment.

8. **Application of Proceeds.** All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default shall be applied in accordance with the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) and, unless otherwise specified in such act, in such order as Assignee shall elect in its sole and absolute discretion.

9. **Limitation of Assignee's Liability.** Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Sublease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify, defend (using counsel satisfactory to Assignee) and hold Assignee harmless from and against any and all liability, loss or damage which Assignee may incur under any Sublease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Sublease; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignor incurs as a result of Assignee's gross negligence or willful misconduct. Should Assignee incur any such liability, loss or damage under any Sublease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Sublease, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Assignee of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof or of the Mortgage.

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10. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments, and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

11. **Further Assurances.** Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Subleases as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may request, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.

12. **Security Deposits.** Assignor acknowledges that Assignee has not received for its own account any security deposited by any tenant pursuant to the terms of the Subleases and that Assignee assumes no responsibility or liability for any security so deposited.

13. **Severability.** If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Assignee and Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

14. **Successors and Assigns.** This Assignment is binding upon Assignor and its legal representatives, successors and assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns.

15. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

16. **Duration.** This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

17. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

18. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered

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or mailed in the manner and to the addresses of Assignor and Assignee, as the case may be, as specified in the Mortgage.

19. **Waiver of Trial by Jury.** ASSIGNOR AND ASSIGNEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. ASSIGNOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST ASSIGNEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL INCIDENTAL OR PUNITIVE DAMAGES.

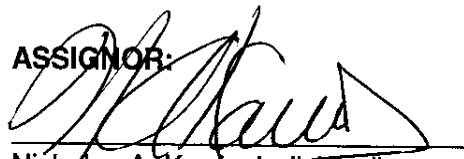
20. **Exculpation.** This Assignment is executed by Assignor, not individually, but solely as Trustee under the aforesaid Trust Agreement. Said Trust Agreement is made a part of this Assignment and any claims against Assignor which may result from the execution of this Assignment are payable only out of any trust property which may be held under the Trust Agreement, and Assignor shall not be held personally liable for the performance of any of the terms and conditions of this Assignment or for the validity or condition of the title of said trust property or for any agreement with respect thereto. Any and all personal liability of Assignor is expressly waived by Assignee and its successors and assigns.

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IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment as of the day and year first above written.

ASSIGNOR:



Nicholas A. Karris, Individually

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STATE OF ILLINOIS)

COUNTY OF COOK) SS.

I, JEANETTE DRESDOW, a Notary Public in and for said County, in the State aforesaid, do hereby certify that NICHOLAS A. KARRIS, 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 the said instrument as his 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 28 day of June, 2004.



Jeanette Dresdow

 Notary Public

Cook County Clerk's Office

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EXHIBIT A

Legal Description of Premises

THE LEASEHOLD ESTATE CREATED BY LEASE EXECUTED BY LASALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 1, 1981 AND KNOWN AS TRUST NUMBER 103814, LESSOR AND WATER TOWER REALTY COMPANY, AN ILLINOIS CORPORATION, LESSEE, DATED JANUARY 1, 1982, A MEMORANDUM OF WHICH LEASE WAS RECORDED FEBRUARY 2, 1982 AS DOCUMENT NUMBER 26131022, WHICH LEASE DEMISES A PORTION OF PARCELS 1 AND 2 AS DESCRIBED IN THE LEASE FOR A TERM OF YEARS BEGINNING JANUARY 1, 1982 AND ENDING MARCH 31, 2047.

PARCEL 1:

THE WEST ½ OF THE NORTH ½ OF BLOCK 45 IN KINZIE'S ADDITION TO CHICAGO, A SUBDIVISION OF THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

AN EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS RESERVED IN THE DEED FROM AYRES BOAL AND LESLEY J. BOAL TO MERCHANTS SYNDICATE CATALOG COMPANY, A CORPORATION OF NEBRASKA, DATED MARCH 9, 1914 AND RECORDED MARCH 31, 1914 AS DOCUMENT NUMBER 5386485 FOR LIGHT, AIR, INGRESS AND EGRESS OVER, THROUGH AND ACROSS THE SOUTH 15 FEET OF THE EAST ½ OF THE NORTH ½ OF BLOCK 45 IN KINZIE'S ADDITION TO CHICAGO AFORESAID, AS AND FOR A PRIVATE ALLEY, IN COOK COUNTY, ILLINOIS.

P.I.N.: 17-10-106-001

P/A: 717 North Michigan Avenue
Chicago, Illinois