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This instrument was prepared  
by and, after recording,  
return to:

Doc#: 0812633151 Fee: \$58.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/05/2008 01:47 PM Pg: 1 of 12

Robert N. Sodikoff  
Aronberg Goldgehn Davis &  
Garmisa  
330 North Wabash - Suite 3000  
Chicago, Illinois 60611

Location:

3758 West Fullerton Avenue  
Chicago, Illinois

Permanent Real Estate Tax  
13-26-327-034-1011

Space above this line for Recorder's use only

## ASSIGNMENT OF LEASES AND RENTS

5000  
SA5541193 JICTI

**THIS ASSIGNMENT OF LEASES AND RENTS** is made and delivered as of the 1<sup>st</sup> day of February, 2008 by **LOHAN-FULLERTON LLC**, an Illinois limited liability company ("Assignor"), whose address is 3716 West Fullerton, Chicago, Illinois 60647 to **FIRST DUPAGE BANK**, an Illinois banking corporation ("Bank"), whose address is 520 North Cass Avenue, Westmont, Illinois 60559.

ACCORDINGLY, Assignor hereby assigns to Bank as follows:

Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers, sets over and assigns to Bank, all of the right, title and interest of Assignor: (i) in and to all of the rents, issues, assessments, accounts, and profits of and from the Property described in Exhibit A attached hereto and made a part hereof ("Property"); (ii) in and to all leases and subleases ("Leases") now or hereafter existing on all or any part of the Property; (iii) in and to all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all of Assignor's interest in any tenant improvements and fixtures located on the Property.

THIS ASSIGNMENT OF LEASES AND RENTS IS GIVEN TO SECURE:

BOX 333-CTI

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A. Payment by Assignor when due of: (i) that certain Construction Loan, which loan is evidenced by that certain Promissory Note dated as May 11, 2005, as amended, of Damen Park LLC (“Damen”), an affiliate of Assignor, to Bank, as Lender, in the current principal amount of \$6,773,400.00, as amended or restated from time to time (“Damen Note”); (ii) that certain Construction Loan, which loan is evidenced by that certain Amended and Restated Promissory Note dated as of September 4, 2007, as amended, of Winchester Park LLC (“Winchester”), an affiliate of Assignor, to Bank, as Lender, in the current principal amount of \$2,608,000.00, as amended or restated from time to time (“Winchester Note” and collectively with the Damen Note, the “Notes”); (iii) any other obligations, liabilities or indebtedness which may be due and owing from the Assignor to Bank, or by any co-maker or guarantor of the Notes, whether such obligations, liabilities or indebtedness are now existing or hereafter created, direct or indirect, absolute or contingent, joint or several due or to become due, howsoever created, evidenced or arising and howsoever acquired by Bank, and any and all renewals, extensions or refinancings thereof; and (iv) all costs and expenses paid or incurred by Bank in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys’ fees. Damen and Winchester are each individually “Borrower” and collectively “Borrowers”.

B. Observance and performance by Assignor of the covenants, terms, conditions and agreements contained in the Notes, this Assignment, the Mortgage and Security Agreement (“Mortgage”) of even date herewith made by the Assignor to Bank and creating a first mortgage lien on the Property, and any other document or instrument evidencing or securing the Notes or delivered to induce Bank to disburse the proceeds thereof. The Mortgage, this Assignment and all such other documents and instruments evidencing or securing the Notes and delivered to induce Bank to disburse the proceeds thereof are hereinafter collectively referred to as the “Loan Documents”.

AND ASSIGNOR HEREBY COVENANTS, AGREES, REPRESENTS AND WARRANTS AS FOLLOWS:

1. Representations and Warranties of Assignor. The Assignor represents and warrants to Bank that:

(a) This Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions, subject to applicable bankruptcy, insolvency or similar laws affecting creditors rights generally;

(b) Assignor is or will be the lessor under all Leases, if any, in each case either directly or as successor in interest to the named lessor thereunder;

(c) Assignor has not heretofore made any other assignment of its entire or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income or profits assigned hereunder or entered into under any agreement to subordinate any of the Leases, or Assignor’s right to receive any of the rents, issues, income or profits

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assigned hereunder.

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

(e) No Leases are in existence as of the date hereof except for the existing leases to Affiliates of Assignor; and

(f) No tenant is in default under any Lease.

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

(a) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases, if any, 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 for Leases or other similar obligations in excess of \$20,000 of value in the aggregate, or without the express written consent of Bank: (i) release the liability of any tenant thereunder; or (ii) allow any tenant thereunder to withhold the payment of rent or to make monetary advances and offset the same against future rentals; or (iii) consent to Assignor's claim of total or partial eviction; or (iv) permit any tenant thereunder to terminate or cancel any Lease; or (v) enter into any oral leases with respect to all or any portion of the Property;

(b) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

(c) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder without the prior written consent of Bank;

(d) Assignor shall not accept a surrender of any Lease in which the tenant thereunder is in default, or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease 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 other than any Lease in which the tenant is in default;

(e) Assignor shall not alter, modify or change the terms of any guaranty of any Lease for Leases or other similar obligations in excess of \$20,000 of value in the aggregate, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law, without the prior written

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consent of Bank;

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

(g) Assignor shall enforce the Leases and all rights and remedies of the lessor thereunder in case of default thereunder by any tenant;

(h) 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 Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Bank, including court costs and attorneys' fees, in any such action or proceeding in which Bank may appear;

(i) Assignor shall give prompt notice to Bank of any notice of any default on the part of the lessor with respect to any Lease received from any tenant or guarantor for Leases or other similar obligations in excess of \$20,000 of value in the aggregate thereunder;

(j) Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenant(s) thereunder;

(k) To the extent applicable, Assignor shall furnish to Bank within thirty (30) days after the end of each calendar quarter, or within thirty (30) days after Lender's written request, a written statement containing the names of all tenants and subtenants of the Property, amount of monthly rental, security deposit, term of Lease and whether or not such Lease is in default; and

(l) In the event that any tenant under any Lease 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 rejection of the Leases assigned hereby, Assignor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Bank, and any check in payment of damages for termination or rejection of any such Leases will be made payable both to Assignor and Bank. Assignor hereby assigns any such payment to Bank and further covenants and agrees that upon the request of Bank, it will duly endorse to the order of Bank any such check, the proceeds of which will be applied in accordance with the provisions of paragraph 6 below.

3. Rights Prior to Default. So long as Assignor is not in default hereunder, Bank shall not demand from tenants under the Leases or any other person liable thereunder, any of the rents, issues, income and profits assigned hereunder, and Assignor shall have the right to collect at the time, but not more than thirty (30) days in advance of the date, provided for the payment

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thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Bank shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

4. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Assignment:

(a) Assignor's failure to pay any installment of principal or interest or any other amount required under the Notes, the Mortgage or any other Loan Document when due and payable, whether at maturity or by acceleration or otherwise, and failure to cure within the applicable cure period, if any;

(b) Assignor's failure to perform or observe any other covenant, agreement, representation, warranty or other provision contained in the Notes, the Mortgage (other than an Event of Default described elsewhere in this Paragraph 4) or the other Loan Documents, and such failure continues for more than 30 days following written notice thereof given by Bank to Assignor, unless the Event of Default is not capable of being cured within 30 days, Assignor commences to cure the Event of Default within said 30 days and thereafter Assignor diligently prosecutes the cure of the Event of Default, in which event Assignor will have additional time as is reasonably necessary, not to exceed 30 additional days, to cure such Event of Default; provided, however, that the 30 day cure period does not apply to the other subparagraphs of this Paragraph 4;

(c) the occurrence of any breach in any material respect of any representation or warranty contained in this Assignment or any other Loan Document;

(d) the occurrence of a Prohibited Transfer under the Mortgage;

(e) the entry by a court having jurisdiction of a decree or order for relief in respect of Assignor in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law; or if Assignor, or any person in control of Assignor: (i) files a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the Federal Bankruptcy Act or any similar state or federal law; (ii) consents to or suffers the appointment of or taking possession by a receiver, liquidator, or trustee (or similar official) of the Assignor or for any part of the Property or any substantial part of the Assignor's other property; (iii) makes any assignment for the benefit of Assignor's creditors; or (iv) fails generally to pay Assignor's debts as they become due;

(f) the attachment, seizure, or levy of all or a substantial part of Assignor's assets;

(g) the dissolution or termination of existence of Assignor, voluntarily or involuntarily, or the amendment or modification in any respect of the corporate documents

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of Assignor that would or may adversely affect Assignor's performance of its obligations under the Notes, this Mortgage or the other Loan Documents; or

(h) the occurrence of an Event of Default under the Loan Agreement, any of the Loan Documents or any of the documents evidencing and securing the loans under the Mortgage Note and the Term Note.

5. Rights and Remedies Upon Default. At any time upon or following the occurrence of any one or more Events of Default hereunder, Bank may, at its option, exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event or Events 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 or co-maker of the Notes from any obligation hereunder, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien granted by the Loan Documents:

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

(b) Enter upon and take possession of the Property, 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 Bank may deem necessary or proper, with full power to make from time to time all alterations, renovation, repairs or replacements thereto or thereof as may seem proper to Bank, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Bank deems necessary or proper;

(c) Either with or without taking possession of the Property, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Property and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder, provided that, for such purpose, this Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Bank, without proof of default hereunder, upon receipt from Bank of written notice to thereafter pay all such rents and other amounts to Bank and to comply with any notice or demand by Bank for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Assignor will facilitate in all reasonable ways Bank's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Bank; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Bank may deem necessary, and any amount so paid by Bank shall become immediately due and payable by Assignor with interest thereon until paid at

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an annual rate ("Default Rate") equal to five percent (5%) plus the rate then in effect under the Notes and shall be secured by this Assignment.

6. Application of Proceeds. All sums collected and received by Bank out of the rents, issues, income and profits of the Property following the occurrence of any one or more Events of Default under the provisions of Paragraph 4 of this Assignment shall be applied as follows:

(a) First, to reimbursement of Bank for and of all expenses (including court costs and reasonable attorneys' fees) of: taking and retaining possession of the Property; managing the Property and collecting the rents, issues, income and profits thereof, including without limitation, salaries, fees and wages of a managing agent and such other employees as Bank may deem necessary and proper; operating and maintaining the Property, including without limitation, taxes, charges, claims, assessments, water rents, sewer rents, other liens, and premiums for any insurance provided in the Mortgage; the cost of all alterations, renovations, repairs or replacements of or to the Property which Bank may deem necessary and proper, with interest thereon at the Default Rate;

(b) Second, to reimbursement of Bank for and of all sums expended by Bank pursuant to Paragraph 5(d) above to make any payment or do any act required herein of Assignor, together with interest thereon as provided herein;

(c) Third, to reimbursement of Bank for and of all other sums with respect to which Bank is indemnified pursuant to Paragraph 7 below, together with interest thereon as provided herein;

(d) Fourth, to reimbursement of Bank for and of all other sums expended or advanced by Bank pursuant to the terms and provisions of or constituting additional indebtedness under any of the Loan Documents, with interest thereon as provided therein;

(e) Fifth, to the payment of all accrued and unpaid interest on the principal sum of the Notes;

(f) Sixth, to payment of the unpaid balance of the principal sum of the Notes;  
and

(g) Seventh, any balance remaining to Assignor, its respective heirs, legatees, administrators, legal representatives, successors and assigns.

7. Limitation of Bank's Liability. Bank shall not be liable for any loss sustained by Assignor resulting from Bank's failure to let the Property following the occurrence of any one or more Events of Default under the provisions hereof or from any other act or omission of Bank in managing, operating or maintaining the Property following the occurrence of any one or more Events of Default under the provisions hereof, except for the gross negligence or willful

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misconduct of Bank. Bank shall not be obligated to observe, perform or discharge, nor does Bank hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify Bank for, and to hold Bank harmless of and from, any and all liability, loss or damage which Bank may or might incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Bank 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 Lease. Should Bank incur any such liability, loss or damage under any Lease 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 attorneys' fees, shall become immediately due and payable by Assignor with interest hereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility for the care, control, management or repair of the Property or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease upon Bank, nor shall it operate to make Bank responsible or liable for any waste committed upon the Property by any tenant, occupant or other party, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing herein or in the Mortgage contained, and no exercise by Bank of any of the rights herein or in the Mortgage conferred shall constitute or be construed as constituting Bank a "mortgagee in possession" of the Property, in the absence of the taking of actual possession of the Property by Bank pursuant to the provisions hereof. Bank has not received nor been transferred any security deposited by any tenant with the lessor under the terms of any Lease and Bank assumes no responsibility or liability for any security so deposited.

8. Non-Waiver. Nothing contained in this Assignment and no act done or omitted to be done by Bank pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Bank of its rights and remedies under the Notes, the guaranty thereof or any of the Loan Documents; this Assignment is made and accepted without prejudice to any of the rights and remedies of Bank under the terms and provisions of such instruments; and Bank 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. Bank 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.

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



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10. Security Deposits. Assignor hereby acknowledges that Bank has not received nor been transferred any security deposited by any tenant with lessor under the terms of the Existing Leases and that Bank assumes no responsibility or liability for any security so deposited.

11. Severability. The invalidity or unenforceability of any particular provision of this Assignment shall not affect the other provisions, and this Assignment shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.

12. Benefit. This Assignment is binding upon each Assignor, and his, her or its respective members, joint venturers, if any, heirs, legatees, legal representatives, administrators, successors and permitted assigns, and the rights, powers and remedies of Bank under this Assignment shall inure to the benefit of Bank and its successors and assigns, including without limitation, the holder from time to time of the Notes.

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

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

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

16. Notices. All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Mortgage.


17. **WAIVER OF JURY TRIAL. ASSIGNOR WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (I) UNDER THIS ASSIGNMENT OF LEASES AND RENTS OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT WHICH MAY BE DELIVERED IN THE FUTURE IN CONNECTION WITH THE LOANS EVIDENCED BY THE NOTES, (II) ARISING FROM THE TRANSACTIONS CONTEMPLATED BY THE LOAN AGREEMENT OR THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

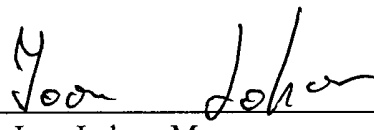
[Signature page follows.]

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

**LOHAN-FULLERTON LLC,**  
an Illinois limited liability company

By:   
Vasile Lohan, Manager

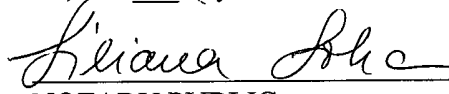
By:   
Ioan Lohan, Manager

By: \_\_\_\_\_  
Gheorghe Lohan, Manager

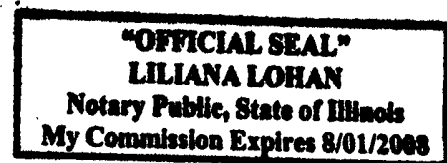
STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Vasile Lohan, Ioan Lohan and Gheorghe Lohan, the Managers of Lohan-Fullerton LLC ("Company"), who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such 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 the Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 30<sup>th</sup> day of March, 2008.

  
NOTARY PUBLIC

# 473809.3



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

**LOHAN-FULLERTON LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Vasile Lohan, Manager

By: \_\_\_\_\_  
Ioan Lohan, Manager

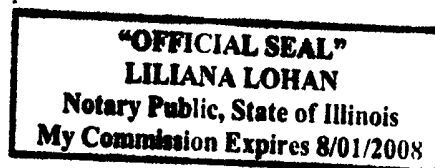
By: *Gheorghe Lohan* \_\_\_\_\_  
Gheorghe Lohan, Manager

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Vasile Lohan, Ioan Lohan and Gheorghe Lohan, the Managers of Lohan-Fullerton LLC ("Company"), who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such 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 the Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 30th day of March, 2008.

*Liliana Lohan*  
NOTARY PUBLIC



# 473809.3

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## EXHIBIT A

### LEGAL DESCRIPTION

UNIT COMMERCIAL-EAST TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN THE HAMLIN SQUARE CONDOMINIUM AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NO. 0408445056, IN THE SOUTHWEST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY TAX IDENTIFICATION NO.: 13-26-327-034-1011  
(AFFECTS COMMERCIAL EAST)

COMMONLY KNOWN AS: 3758 WEST FULLERTON AVENUE  
CHICAGO, ILLINOIS