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Doc#: 1712817024 Fee: \$72.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/08/2017 10:14 AM Pg: 1 of 13

This instrument was prepared by, and upon recordation should be returned to:	Property Location: Lincoln Hwy/Cicero Ave Matteson, Illinois
Eric L. Pruitt, Esq. Baker Donelson 420 20th Street N., Suite 1400 Birmingham, AL 35203	Tax Parcel No.: 31-22-300-023
	Cross-reference: Inst. No. 98700252 Inst. No. 98700253 Inst. No. 99654736 Inst. No. 99955346 Recording Office of Cook County, Illinois

ASSUMPTION AND MODIFICATION OF MORTGAGE AND OTHER LOAN DOCUMENTS

THIS ASSUMPTION AND MODIFICATION OF MORTGAGE AND OTHER LOAN DOCUMENTS (this "Agreement") is entered into as of the 08th day of April, 2017, by and among **WEC 98C-5 LLC**, a Texas limited liability company (hereinafter referred to as "Borrower"); **WILSON CPS, LLC**, a New Jersey limited liability company (hereinafter referred to as "Wilson"); **CARSON MATTESON LLC**, a Delaware limited liability company (hereinafter referred to as "Carson"); and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (hereinafter referred to as "Lender"), as successor by merger to Wachovia Bank, National Association, successor by merger to SouthTrust Bank, National Association, successor by assignment from Red Mountain Funding, LLC.

RECITALS:

Borrower is indebted to Lender for a loan in the original principal amount of \$13,612,500.00 (the "Loan"), which is evidenced by a Promissory Note dated as of August 5, 1998 (the "Note"), payable by Borrower to the order of Red Mountain Funding, LLC ("Original Lender") in said principal amount. As security for the Loan, Borrower granted a first lien and security interest in the improved parcel of real estate located in Cook County, Illinois, more

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particularly described in **Exhibit A** attached hereto (the "Mortgaged Property"), pursuant to the following instruments which are currently owned and held by Lender:

(1) Mortgage, Security Agreement, and Assignment of Leases and Rents dated as of August 5, 1998, from Borrower to Original Lender, as recorded on August 10, 1998, with the office of the recorder of Cook County, Illinois, as Document No. 98700252 (the "Security Instrument"), as affected by that certain Assumption and Modification of Mortgage and Other Loan Documents dated June 28, 1999, between Borrower, Wilson, Wolverine Equities Company 98C L.P., and Original Lender, as recorded on July 8, 1999, with the office of the recorder of Cook County, Illinois, as Document No. 99654736 (the "First Modification"); and

(2) Assignment of Lease and Rents dated as of August 5, 1998, from Borrower to Original Lender, as recorded on August 10, 1998, with the office of the recorder of Cook County, Illinois, as Document No. 98700253 (the "Assignment"), as affected by the First Modification.

The Note, the Security Instrument, the Assignment, the First Modification, and the other documents, certificates, and instruments executed in connection with the Loan are collectively referred to as the "Loan Documents".

Original Lender assigned the Note, Security Instrument, Assignment and other Loan Documents to SouthTrust Bank, National Association by, among other instruments, that certain Assignment of Mortgage, Security Agreement and Assignment of Leases and Rents dated August 31, 1999, recorded October 10, 1999, with the office of the recorder of Cook County, Illinois, as Document No. 99955346. Lender is the successor by merger to Wachovia Bank, National Association, which was the successor by merger to SouthTrust Bank, National Association. Lender is the owner and holder of the Note, the Security Instrument, the Assignment, and the other Loan Documents.

Wilson, which is the sole member of Borrower, and Carson have entered into an agreement (the "Purchase Agreement") pursuant to which Carson shall acquire from Wilson the membership interest in Borrower and all issued and outstanding shares of stock in Wilson 98C-5, Inc., a Texas corporation, which is the sole manager of Borrower (the "Manager"). Borrower, Wilson, and Carson have requested that Lender (i) consent to Wilson's transfer and assignment of its membership interest in Borrower to Carson, (ii) consent to Wilson's transfer and assignment of the stock in Manager to Carson, and (iii) release and discharge Wilson from its obligations pursuant to the Loan and the Loan Documents from and after the date hereof. Lender is willing to grant each of the foregoing requests, provided that (i) Borrower satisfies all conditions for such transfer and assumption set forth in the Security Instrument and (ii) Borrower agrees to certain modifications to the Loan Documents as more particularly described herein.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to consent to the transfer of the membership interest in Borrower and the stock in Manager and the other matters described herein, the parties hereto agree as follows:

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1. **Definitions.** Capitalized terms used, but not otherwise defined, in this Agreement shall have the meanings ascribed to them in the Security Instrument.

2. **Consent to Transfer.** In reliance upon the representations, warranties, covenants, and agreements set forth herein and subject to the conditions precedent set forth in Section 6 below, Lender hereby consents to each of the following transfers and other matters:

(i) The transfer and assignment by Wilson of a one hundred percent (100%) membership interest in Borrower to Carson;

(ii) The transfer and assignment by Wilson of all issued and outstanding shares of stock in Manager to Carson;

(iii) The change of the corporate name of Manager to "Carson 98C-6, Inc."; and

(iv) The change of the registered agent and office of Borrower and Manager in the State of Texas.

The foregoing consent of Lender to the transfers and other matters described above (the "Permitted Events") shall not be construed or interpreted as Lender's consent or acquiescence to any subsequent sale, transfer, or encumbrance of all or any Interest in Borrower, or any other matter of a similar nature affecting Borrower, and any such subsequent sale, transfer, encumbrance, or such other matter shall be governed by the provisions of Section 9 of the Security Instrument.

3. **Assumption by Carson.** Carson hereby assumes and agrees to be bound by, and to pay and perform, all covenants, representations, warranties, and other obligations of Wilson, as sole member of Borrower, pursuant to the Loan and the Loan Documents (the "Obligations") strictly in accordance with the terms and conditions thereof, as such terms and conditions are modified pursuant to this Agreement and any other document or instrument executed in connection herewith (this Agreement and such other documents and instruments are hereinafter collectively referred to as the "Assumption Documents"). Borrower and Carson agree that the Loan Documents, as so modified, are in full force and effect, are subject to no defenses, setoffs, counterclaims, or rights of recoupment available to Borrower or Carson, and are enforceable against Borrower and Carson in accordance with their respective terms.

4. **Release of Wilson.** In reliance upon the representations, warranties, covenants, and agreements set forth herein but subject to the conditions precedent set forth in Section 6 below, Lender hereby releases and discharges Wilson from any and all liabilities and obligations arising from or relating to the Loan and the Loan Documents, provided that Wilson shall continue to be liable with respect to the breach of any representation, warranty, or covenant by Wilson set forth in the Loan Documents and this Agreement that exists as of the date hereof. By signing below, Lender hereby acknowledges that the conditions precedent set forth in Section 6 have been satisfied. For avoidance of doubt, the release of Wilson from the Loan and Loan Documents hereunder will not, and shall not be construed as, a release or satisfaction of any

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other loan obligations or other agreements between Wilson, any subsidiary or affiliate of Wilson, and Lender, other than the Loan and the Loan Documents.

5. **Amendments to Note and Security Instrument**. Subject to the conditions set forth in Sections 6 and 7 below, Borrower and Lender agree that the Loan Documents are hereby amended in the following respects:

(a) Each and every reference to an address for Borrower set forth in the Security Instrument and in any other Loan Document is hereby deleted, and the following address is substituted in lieu thereof, which shall constitute the address of Borrower for all purposes under the Security Instrument and the other Loan Documents:

c/o Gvest Real Estate Capital, LLC
136 Main St,
Pineville, NC 28134
Attn: Raymond M. Gee

With a copy to:

Christopher R. DeAgazio, P.C.
8 Cedar Street, Suite 45
Woburn, MA 01891
Attn: Christopher R. DeAgazio, Esq.

(b) Each and every reference to an address for Lender set forth in the Security Instrument and in any other Loan Document is hereby deleted, and the following address is substituted in lieu thereof, which shall constitute the address of Lender for all purposes under the Security Instrument and the other Loan Documents:

Wells Fargo Bank, National Association
301 South College Street, 15th Floor
Charlotte, NC 28202
MAC D1053-150
Attn: Catherine Vuksich

with a copy to:

Baker Donelson Bearman Caldwell & Berkowitz, PC
420 20th Street North, Suite 1400
Birmingham, AL 35203
Attn: Eric L. Pruitt, Esq.

(c) All references to the Note and the Security Instrument in each of the other Loan Documents shall henceforth refer to the Note and the Security Instrument as amended hereby and as the same might hereafter be amended, supplement, restated, or consolidated in accordance with the terms thereof.

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6. **Conditions Precedent.** Notwithstanding anything to the contrary in this Agreement, Lender's consent to the transactions described herein is subject to the following conditions precedent:

- (1) The due execution and delivery of this Agreement;
- (2) The due execution and delivery by Carson and Gvest Real Estate Capital, LLC of an Indemnity and Guaranty Agreement in form acceptable to Lender, and the due execution and delivery by Borrower, Carson and Gvest Real Estate Capital, LLC of a Hazardous Substances Indemnity Agreement in form acceptable to Lender;
- (3) Borrower executes, without any cost or expense to Lender, new financing statements or financing statement amendments and any additional documents reasonably requested by Lender;
- (4) Receipt by Lender of certified copies of the organizational documents of Carson, which shall be in form and content acceptable to Lender, together with evidence that Carson is qualified, registered, and in good standing in the state of its organization or formation and in the state where the Property is located (or evidence satisfactory to Lender and its counsel that such qualification and registration is not legally required), and certified resolutions of the governing body of Carson authorizing the transaction described or contemplated herein;
- (5) Receipt by Lender of certified resolutions of Carson, as sole shareholder of Manager, for the appointment of a new board of directors of Manager, including at least one director who qualifies as an Independent Director in the judgment of Lender;
- (6) Borrower shall cause to be delivered to Lender, without any cost or expense to Lender, such endorsements to Lender's title insurance policy, hazard insurance endorsements or certificates and other similar materials as Lender may deem necessary, all in form and substance reasonably satisfactory to Lender, including, without limitation, an endorsement or endorsements to Lender's title insurance policy insuring the lien of the Security instrument, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of this Agreement with no additional exceptions added to such policy and insuring that fee simple title to the Mortgaged Property is vested in Borrower, or, in lieu thereof, such other documents or evidence as Lender may reasonably require in order to confirm that such policy is unaffected by the transfer of the membership interest;
- (7) As of the date of this Agreement, Borrower is in compliance with the provisions of Section 20 of the Security Instrument;
- (8) Lender shall have received such legal opinions as may be reasonably requested by Lender, including a non-consolidation opinion in form and content acceptable to Lender;

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(9) Carson shall have amended Borrower's organizational documents to implement any changes which Lender deems necessary or desirable to effectuate a Secondary Market Transaction with respect to the Loan; and

(10) Borrower pays to Lender all out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Lender in connection with the preparation, negotiation, execution, and (if applicable) the recordation of this Agreement and the other Assumption Documents and the consummation of the transaction contemplated herein and therein.

7. **Tenant's Consent.** Under the terms of the Lease and the Subordination, Non-Disturbance, and Attornment Agreement among Lender, Borrower, and Tenant, Tenant has the right to approve any amendments to the substantive term of the Loan Documents entered into by Lender and Borrower which occur prior to Tenant's exercise of its option to purchase the Mortgaged Property pursuant to the Lease. Borrower, Wilson, and Carson agree to use commercially reasonable efforts to obtain Tenant's written approval of the amendments to the Loan Documents set forth in Section 5 above. Borrower and Lender agree that the amendments to the Loan Documents set forth in Section 5 above shall be null and void ab initio if both of the following events shall occur or fail to occur, as the case might be: (i) Tenant fails or refuses to consent to such amendments to the Loan Documents and (ii) Tenant exercises its option to purchase the Mortgaged Property pursuant to the Lease (collectively, the "Nullification Events"). Unless and until the Nullification Events occur, the amendments to the Loan Documents set forth in Section 5 above shall be effective and enforceable against Borrower in their entirety.

8. **Representations, Warranties, and Additional Covenants of Wilson.** Wilson represents and warrants to Lender, and covenants with Lender, that as of the date hereof (i) no Event of Default, or to Wilson's knowledge, event which with the giving of notice or lapse of time, or both, would constitute an Event of Default, exists under the Loan Documents; (ii) to the best of Wilson's actual knowledge, the Mortgaged Property is operating in compliance with the terms and conditions contained in the Loan Documents; (iii) there are no setoffs, defenses, or counterclaims on the part of Borrower to the payment or performance of the obligations under the Loan Documents; and (iv) to the best of Wilson's actual knowledge Lender has performed all of its obligations under the Loan Documents.

9. **Representations and Warranties of Carson.** As an inducement for Lender to grant the consent herein provided, Carson represents and warrants to Lender that (i) upon the transfer of the membership interest in Borrower to Carson, the representations and warranties contained in the Loan Documents shall be true and complete, including, without limitation, the representations and warranties set forth in Section 20 of the Security Instrument; (ii) Carson is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Delaware, and Carson's execution and delivery of this Agreement and the other Assumption Documents have been duly authorized by all necessary action of this members and managers; (iii) Carson has provided Lender true and correct copies of Carson's entity formation and governance documents and Carson's true and correct federal tax identification number; (iv) Carson's execution and delivery of this Agreement and the other Assumption Documents, and the transfer to Wilson of the membership interest in Borrower and the stock in Manager, do not constitute a violation by Carson of any agreement, law, statute, decree, or decision which is

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binding on Carson or Borrower; and (iv) all financial information regarding of Carson heretofore provided and hereafter to be provided to Lender is and will be true and complete in all respects as of their respective dates and fairly represent the financial condition of the business to which it pertains, and no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. Borrower and Carson agree that the foregoing representations and warranties shall be binding upon Borrower and that the falsity or inaccuracy of any of the foregoing representations and warranties in any material respect shall constitute an "Event of Default" pursuant to the Security Instrument and the other Loan Documents.

10. **No Representations by Lender.** Borrower and Carson acknowledge that Lender has made no representation or warranty, whether expressed or implied, regarding the Loan, the Mortgaged Property, or any matter relating to the Loan or the Mortgaged Property. Borrower and Carson further acknowledge and agree that Lender has made no specific investigation of Borrower's compliance with the terms and conditions of the Loan Documents, and nothing herein shall constitute a waiver of any Event of Default, or event, which with the giving of notice or lapse of time, or both would constitute an Event of Default, that may exist under the Loan Documents.

11. **Sequencing.** For purposes of this Agreement but subject to the conditions precedent set forth herein, the consent of Lender to the Permitted Events shall be deemed to have been granted immediately prior to the occurrence of the Permitted Events, but all other covenants, agreements, representations, and warranties shall be deemed effective contemporaneously with, and after giving effect to, the Permitted Events.

12. **No Novation.** The execution and delivery of this Agreement and the other Assumption Documents will not be interpreted or construed as, and in fact does not constitute, a novation, payment, or satisfaction of all or any portion of the Loan or any other obligations pursuant to the Loan Documents; rather, this Agreement and the other Assumption Documents are strictly amendatory in nature. The Loan will continue to be secured by the Security Instrument and the other Loan Documents, as amended herein without change in nature, amount, or priority.

13. **Counterparts.** This Agreement and the other Assumption Documents may be executed in any number of counterparts as may be convenient or required, each of which shall be an original with the same force and effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of this Agreement or any other Assumption Document by facsimile shall be equally as effective as delivery of an original executed counterpart of this Agreement or such other Assumption Document. Any party delivering an executed counterpart of this Agreement or any other Assumption Document by facsimile also shall deliver an original executed counterpart of this Agreement or such other Assumption Document, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement or such other Assumption Document.

14. **Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party to this Agreement by any court or other

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governmental or judicial authority by reason of such party's having or being deemed to have structured or dictated such provision.

15. **Integration**. The parties hereto acknowledge that to their knowledge there are no promises, agreements, understandings or commitments of any nature whatsoever that have been made by or on behalf of the Lender in respect to the Loan Documents, this Agreement, the other Assumption Documents, or the transactions contemplated by any of the Assumption Documents, except agreements as may be contained in written documents that have been duly executed by an authorized representative of Lender.

16. **Governing Law**. The validity, interpretation, enforcement, and effect of this Agreement and the other Assumption Documents shall be governed by, and construed in accordance with, the internal laws of the State of Illinois.

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INTENTIONALLY]

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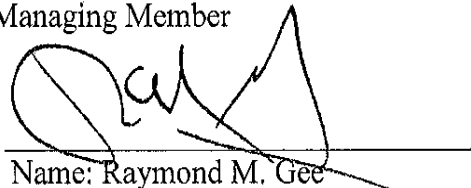
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written, with the intention that this Agreement take effect as an instrument under seal.

BORROWER:

WEC 98C-5 LLC

a Texas limited liability company

By: GVEST 98C-5, Inc., a Texas corporation
(formerly known as Wilson 98C-5, Inc.)
Its Managing Member



By: _____
Name: Raymond M. Gee
Title: President

Property of Cook County Clerk's Office

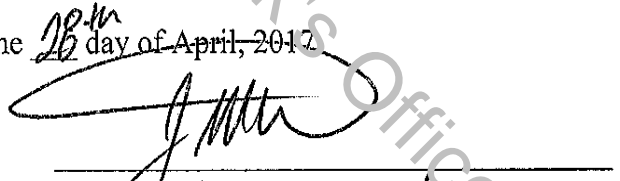
STATE OF NORTH CAROLINA)
COUNTY OF Mecklenburg)

I, the undersigned, a Notary Public in and for said State, certify that Raymond M. Gee personally came before me this day and acknowledged that he is the President of GVEST 98C-5, Inc., the Managing Member of WEC 98C-5, LLC, a Texas limited liability company, and that he, as the aforesaid President, being authorized to do so, executed the foregoing on behalf of GVEST 98C-5, Inc. WEC 98C-5, LLC.

Witness my hand and official seal, this the 28th day of April, 2017

[AFFIX NOTARY SEAL]

JONATHAN VISCONTI
Notary Public, North Carolina
Mecklenburg County
My Commission Expires


Notary Public
Print Name: Jonathan Visconti
My commission expires: 03-15-2022

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

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CARSON:

CARSON MATTESON LLC
a Delaware limited liability company

By: [Signature]
Name: Raymond M. Gee
Title: Manager

STATE OF NORTH CAROLINA)

COUNTY OF Mecklenburg)

I, the undersigned, a Notary Public in and for said State, certify that Raymond M. Gee personally came before me this day and acknowledged that he is Manager of Carson Matteson LLC, a Delaware limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of Carson Matteson LLC.

Witness my hand and official seal, this the 28th day of April, 2017.

[AFFIX NOTARY SEAL]

[Signature]
Notary Public

Print Name: JONATHAN VISCONTI
My commission expires Mecklenburg County
My Commission Expires
03-15-2022

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

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WILSON:

WILSON CPS, LLC

a New Jersey limited liability company

By: 

Name: Robert Wilson

Title: Manager

STATE OF NEW JERSEY)

COUNTY OF BERGEN)

I certify that on APRIL 25TH, 2017, Robert Wilson personally came before me and acknowledged to my satisfaction that this person (a) was the maker of the attached instrument; (b) was authorized to and did execute this instrument as Manager of Wilson CPS, LLC, a New Jersey limited liability company, the entity named in this instrument; and (c) executed this instrument as the act of the entity named in this instrument.

[AFFIX NOTARY SEAL]



Notary Public

Print Name: DEBORAH R. CHURCH

My commission expires: APRIL 7, 2018

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

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LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION

a national banking association
successor by merger to Wachovia Bank, National Association, successor by merger to SouthTrust Bank, National Association

By: Katherine A Harkness
Name: Katherine A. Harkness
Title: Senior Vice President

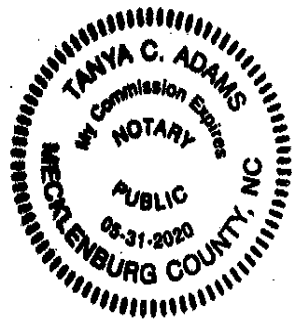
STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

I, the undersigned, a Notary Public in and for said State, certify that Katherine A. Harkness personally came before me this day and acknowledged that she is senior vice president of Wells Fargo Bank, National Association, a national banking association, and that she, as vice president, being authorized to do so, executed the foregoing on behalf of Wells Fargo Bank, National Association.

Witness my hand and official seal, this the 1 day of May, 2017.

[AFFIX NOTARY SEAL]

Tanya C. Adams
Notary Public
Print Name: Tanya C. Adams
My commission expires May 31, 2020



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EXHIBIT A

Real Property

STREET ADDRESS: CARSON PIRIE SCOTT AT LINCOLN MALL; LINCOLN HWY/CICERO AVE

CITY: MATTESON

COUNTY: COOK

TAX NUMBER: 31-22-300-023

LEGAL DESCRIPTION:

PARCEL 1:

LOT 2 IN LINCOLN MALL, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 21840371, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENTS CONTAINED IN THAT CERTAIN RECIPROCAL CONSTRUCTION OPERATION AND EASEMENT AGREEMENT DATED MARCH 7, 1972 AND RECORDED ON MARCH 24, 1972 AS DOCUMENT NUMBER 21846183, AS AMENDED BY EASEMENT AGREEMENT RECORDED ON MARCH 29, 1971, AS DOCUMENT 21433856, AND BY DOCUMENT NO. 24099069, IN, ON, OVER, UPON AND UNDER LOTS 1, 3, 4, 5 AND 6 IN LINCOLN MALL SUBDIVISION AFORESAID AS PROVIDED THEREIN.

PARCEL 3:

EASEMENTS CONTAINED IN THAT CERTAIN TOTAL SITE AGREEMENT DATED MARCH 7, 1972 AND RECORDED MARCH 24, 1972 AS DOCUMENT 21846182, AS AMENDED BY EASEMENT AGREEMENT RECORDED ON MARCH 29, 1971, AS DOCUMENT NO. 21433856, AND BY DOCUMENT NO. 24099069, IN, ON, OVER, UPON AND UNDER LOTS 1, 3, 4, 5, 8, 9, 10 11 AND 12 IN LINCOLN MALL SUBDIVISION AFORESAID AS PROVIDED THEREIN.