

# UNOFFICIAL COPY

Doc#: 1930416023 Fee: \$98.00  
Edward M. Moody  
Cook County Recorder of Deeds  
Date: 10/31/2019 09:48 AM Pg: 1 of 13

RECORDING REQUESTED BY AND  
AFTER RECORDING, RETURN TO:

Nixon Peabody LLP  
70 W. Madison, Suite 3500  
Chicago, IL 60602  
Attn: Daniel P. Strzalka

0041 10/31/19 10:48 AM  
SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement"), is made as of the 24 day of October, 2019, among CIBC BANK USA ("Lender"), VIENNA BEEF, LTD, an Illinois corporation ("Landlord"), and CHECK-FIL-A, INC., a Georgia corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord owns that certain real property located at 2501 N. Damen and W. Fullerton Avenues, in the City of Chicago, Cook County, Illinois, as more particularly described in Exhibit A attached hereto (the "Land"), and Landlord proposes to construct or cause to be constructed upon the Land certain improvements consisting of a multi-tenant outlet building (the "Building") together with other site improvements (collectively, the "Project"); and

WHEREAS, Landlord and Tenant have entered into that certain Ground Lease dated as of May 11, 2016 (as supplemented and amended from time to time, the "Lease"), pursuant to which Landlord has agreed to lease to Tenant the Land and all improvements on the Land, as more particularly described and defined as the "Demised Premises" in the Lease (and hereinafter referred to as the "Premises") on the terms and conditions set forth therein; and

WHEREAS, Lender has agreed to make a loan to Landlord in the original aggregate principal amount of \$9,925,000 (the "Loan"). The Loan is (a) evidenced by (i) that certain Construction Loan Note of even date herewith (as the same may be amended, modified and/or supplemented from time to time, the "Note"), (b) governed by, among other things, that certain Second Amendment to Second A&R Loan and Security Agreement of even date herewith by and between Landlord and Lender (as the same may be amended, restated and/or supplemented from time to time, the "Loan Agreement"), and (c) secured by, among other things, the Construction and Permanent Mortgage, Assignment of Leases Rents, Security Agreement and Fixture Filing of even date herewith made by Landlord to and in favor of Lender (the "Security Instrument") encumbering the Project, and assigning Landlord's interest in all leases affecting the Building (including the Lease) to Lender. All capitalized terms used herein without definition shall have the meanings given to such terms in the Loan Agreement; and

WHEREAS, as a condition to its execution and delivery of the Loan Agreement, the Lender has required that the Landlord and Tenant execute and deliver this Agreement;

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NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument, as if the Security Instrument had been executed and recorded prior to the Lease.

2. Nondisturbance. Lender agrees that provided the Lease is in full force and effect and Tenant is not in default (after the expiration of any applicable cure or grace periods) of any obligation on its part to be kept under the Lease, no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Premises in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan shall operate to terminate the Lease or Tenant's rights thereunder to possess and use the Premises.

3. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Premises by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan ("Successor Owner"). Provided the Lease is in full force and effect and Tenant is not in default (after the expiration of any applicable cure or grace periods) of any obligation on its part to be kept under the Lease at the time Successor Owner becomes owner of the Premises, Successor Owner shall perform all obligations of the landlord under the Lease from and after the date ("Transfer Date") title to the Premises was transferred to Successor Owner. Notwithstanding the foregoing, however, it is expressly agreed by Tenant that: (A) the liability of any Successor Owner as Landlord under this Lease shall exist only with respect to the period that Successor Owner is the owner of the Premises, and liability shall not be applicable to the period that Successor Owner is not the owner of the Premises (it being expressly acknowledged and agreed by Tenant that Successor Owner shall not be obligated to perform or otherwise remedy any incomplete or incorrect components of Landlord's Work (as defined in the Lease) "Landlord's Work Responsibility"; (B) in no event will any Successor Owner be: (1) liable for any act or omission of the party named above (or any successor in title thereto) as the Landlord under the Lease (other than acts or omissions which are of a continuing nature and persist beyond the Transfer Date except for the failure of the prior Landlord to satisfy the Landlord's Work Responsibility); (2) liable for the performance of Landlord's covenants pursuant to the provisions of the Lease which arise and accrue prior to such entity succeeding to the interest of Landlord (or any successor in title thereto) under this Lease or acquiring such right to possession (including Landlord's Work Responsibility); (3) subject to any offsets or defenses which Tenant may have at any time against Landlord (or any successor in title thereto) (provided, however, that the foregoing is not intended to prevent Tenant from the full benefit of any abated rent provisions, self-help or set-off rights as may be set forth in the Lease arising from the delay in the completion of the Landlord's Work Responsibility); (4) bound by any Rent which the Tenant may have paid previously for more than one (1) month; or (5) bound by any modification or amendment to the Lease that has the effect of reducing the Rent payable thereunder or shortening the Term thereof, or adversely affecting to any material extent the rights of the Landlord. Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner

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does arise pursuant to this Agreement, such liability shall be limited to Successor Owner's interest in the Premises.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and all other amounts due or to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on Lender's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with Lender's written instructions.

5. Lender Opportunity to Cure Landlord Defaults. Tenant agrees to give Lender, by overnight courier (e.g., FedEx) to Lender at the address for notices as provided herein, a copy of any notice or claim of default served upon the Landlord by Tenant, and Lender shall have the same rights as Landlord to cure such default within the timeframes (if any) set forth in the Lease before Tenant may exercise any right or remedy which it may have under the Lease on account of any such default of Landlord. Performance rendered by Lender on Landlord's behalf is without prejudice to Lender's rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Lender in connection with the Loan.

## 6. Miscellaneous.

(a) Notices. All notices under this Agreement will be effective only if made in writing and addressed to the address for a party provided below such party's signature. A new notice address may be established from time to time by written notice given in accordance with this Section. All notices will be deemed received only upon actual receipt.

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties relating to the subordination and nondisturbance of the Lease, and supersedes and replaces all prior discussions, representations and agreements (oral and written) with respect to the subordination and nondisturbance of the Lease. This Agreement controls any conflict between the terms of this Agreement and the Lease. This Agreement may not be modified, supplemented or terminated, nor any provision hereof waived, unless by written agreement of Lender and Tenant, and then only to the extent expressly set forth in such writing.

(c) Binding Effect. This Agreement binds and inures to the benefit of each party hereto and their respective heirs, executors, legal representatives, successors and assigns, whether by voluntary action of the parties or by operation of law. If the Security Instrument is a deed of trust, this Agreement is entered into by the trustee of the Security Instrument solely in its capacity as trustee and not individually.

(d) Unenforceability. Any provision of this Agreement which is determined by a government body or court of competent jurisdiction to be invalid, unenforceable or illegal shall be ineffective only to the extent of such holding and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

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(e) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns cover all genders. Unless otherwise provided herein, all days from performance shall be calendar days, and a "business day" is any day other than Saturday, Sunday and days on which Lender is closed for legal holidays, by government order or weather emergency.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Premises is located (without giving effect to its rules governing conflicts of laws).

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their respective obligations hereunder.

{Balance of this page intentionally blank; Signature page follows}

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IN WITNESS WHEREOF, this Subordination, Non-Disturbance and Agreement is executed as of the day and year first above written.

**LENDER:**

**CIBC BANK USA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Lender Notice Address:**

CIBC Bank USA  
120 S. LaSalle St.  
Chicago, Illinois 60603  
Attn: Mr. Thomas G. Estey  
Mr. Christopher M. Trimbach

**LANDLORD:**

**VIENNA BEEF, LTD.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Landlord Notice Address:**

Vienna Beef, Ltd.  
2501 N. Damen Ave.  
Chicago, IL 60647  
Attn: Jack Bodman

**TENANT:**

**CHICK-FIL-A, INC.**

By:   
Name:                     Dan Ludlam                      
Title:                     Director                    

**Tenant Notice Address:**

Chick-fil-A, Inc.  
5200 Buffington Road  
Atlanta, Georgia 30349  
Attn: Property Management – Real Estate Legal

Property of Cook County Clerk's Office

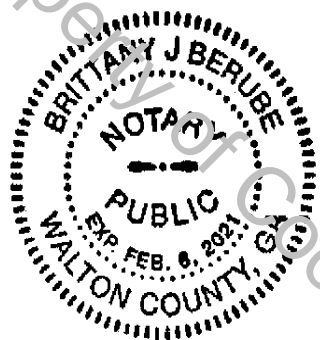
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Notary Acknowledgement for Tenant:

STATE OF Georgia )  
 ) ss:  
COUNTY OF Fulton )

On this, the 18<sup>th</sup> day of October, 2019, before me, the undersigned Notary Public, personally appeared Don Ludlam known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged to me that he/she is Director of Chick-fil-A, Inc. in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Brittany J. Berube  
Notary Public

{seal}

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**IN WITNESS WHEREOF**, this Subordination, Non-Disturbance and Agreement is executed as of the day and year first above written.

**LENDER:**

**TENANT:**

**CIBC BANK USA**

**CHICK-FIL-A, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Lender Notice Address:**

**Tenant Notice Address:**

CIBC Bank USA  
120 S. LaSalle St.  
Chicago, Illinois 60603  
Attn: Mr. Thomas G. Estey  
Mr. Christopher M. Trimbach

Chick-fil-A, Inc.  
5200 Buffington Road  
Atlanta, Georgia 30349  
Attn: Property Management – Real Estate Legal

**LANDLORD:**

**VIENNA BEEF, LTD.**

By: John P. Bodman  
Name: John P. Bodman  
Title: President

**Landlord Notice Address:**

Vienna Beef, Ltd.  
2501 N. Damen Ave.  
Chicago, IL 60647  
Attn: Jack Bodman

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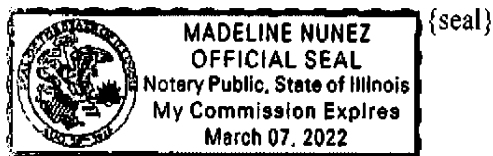
Notary Acknowledgement for Landlord:

STATE OF Illinois )  
COUNTY OF Cook ) ss:

On this, the 24 day of Oct, 2019, before me, the undersigned Notary Public, personally appeared John P. Bodman known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged to me that he/she is President of Vienna Beef Ltd. in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Madeline Nunez #1653875  
Notary Public

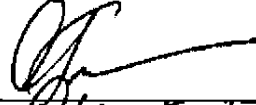




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**LENDER:**

**CIBC BANK USA**

By:   
 Name: Chris Trimbach  
 Title: AVP

**Lender Notice Address:**

CIBC Bank USA  
 120 S. LaSalle St.  
 Chicago, Illinois 60603  
 Attn: Mr. Thomas G. Estey  
 Mr. Christopher M. Trimbach

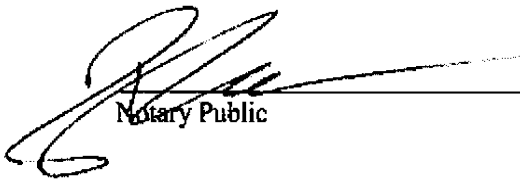
*Notary Acknowledgement for Lender:*

STATE OF IL )  
 ) ss:  
 COUNTY OF Cook )

On this, the 23 day of Sept, 2019, before me, the undersigned Notary Public, personally appeared Chris Trimbach known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged to me that he/she is AVP of CIBC Bank USA in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



  
 Notary Public

{seal}

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***Exhibit "A"***  
***(Legal Description of the Premises)***

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## EXHIBIT A

### Legal Description

#### PARCEL A:

THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST AND SOUTH OF THE NORTH BRANCH OF THE CHICAGO RIVER, NORTH OF FULLERTON AVENUE, NORTHEAST OF ELSTON AVENUE AND EAST OF THE EAST LINE OF ROBEY STREET, NOW KNOWN AS DAMEN AVENUE, AS NOW LOCATED; AND PART OF LOTS 21 THROUGH 32 BOTH INCLUSIVE IN BLOCK 8 AND THAT PART OF THE VACATED 16 FOOT EAST/WEST ALLEY LYING NORTH OF AND ADJOINING LOTS 21 TO 31 IN BLOCK 8, ALL IN FULLERTON'S ADDITION TO CHICAGO, SAID FULLERTON ADDITION BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE NORTH BRANCH OF THE CHICAGO RIVER AND THAT PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE CHICAGO RIVER AND WEST OF THE CHICAGO AND NORTHWESTERN RAILROAD;

#### DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 15; THENCE ON AN ASSUMED BEARING OF NORTH 01 DEGREES 49 MINUTES 39 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 15, ALSO BEING THE WEST LINE OF WOLCOTT AVENUE, PREVIOUSLY KNOWN AS BRAND STREET, A DISTANCE OF 1.70 FEET TO A POINT ON THE NORTH LINE OF FULLERTON AVENUE AS CONVEYED BY SPECIAL WARRANTY DEED RECORDED DECEMBER 9, 2013 AS DOCUMENT NUMBER 1334339074; THENCE SOUTH 88 DEGREES 36 MINUTES 10 SECONDS WEST, ALONG THE NORTH LINE OF SAID FULLERTON AVENUE, A DISTANCE OF 173.96 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 88 DEGREES 36 MINUTES 10 SECONDS WEST, ALONG THE NORTH LINE OF SAID FULLERTON AVENUE, A DISTANCE OF 288.89 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF VACATED ELSTON AVENUE; THENCE NORTH 46 DEGREES 44 MINUTES 02 SECONDS WEST ALONG THE LAST DESCRIBED LINE 28.44 FEET TO A POINT ON THE WESTERLY LINE OF SAID VACATED ELSTON AVENUE, ALSO BEING A POINT ON THE SOUTHERLY EXTENSION OF THE EAST LINE OF DAMEN AVENUE AS CONVEYED TO THE CITY OF CHICAGO PER DEED RECORDED AS DOCUMENT NUMBER 1334339074; THENCE NORTH 01 DEGREE 59 MINUTES 09 SECONDS WEST ALONG THE LAST DESCRIBED LINE 136.50 FEET; THENCE NORTH AND EAST THE FOLLOWING THREES COURSES

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ALONG THE EASTERLY AND SOUTHERLY LINES OF SAID PROPERTY CONVEYED TO THE CITY OF CHICAGO PER DEED RECORDED AS DOCUMENT NUMBER 1334339074; 1) NORTH 05 DEGREES 41 MINUTES 38 SECONDS WEST 35.91 FEET; 2) NORTH 40 DEGREES 56 MINUTES 13 SECONDS EAST 12.37 FEET; 3) NORTH 87 DEGREES 34 MINUTES 04 SECONDS EAST 308.76 FEET; THENCE SOUTH 00 DEGREES 20 MINUTES 12 SECONDS EAST, A DISTANCE OF 207.05 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

## PARCEL B:

THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST AND SOUTH OF THE NORTH BRANCH OF THE CHICAGO RIVER, NORTH OF FULLERTON AVENUE, NORTHEAST OF ELSTON AVENUE AND EAST OF THE EAST LINE OF ROBEY STREET, NOW KNOWN AS DAMEN AVENUE, AS NOW LOCATED; AND PART OF LOTS 15 THROUGH 21 BOTH INCLUSIVE IN BLOCK 8 AND THAT PART OF THE VACATED 16 FOOT EAST/WEST ALLEY LYING NORTH OF AND ADJOINING LOTS 15 TO 21 IN BLOCK 8 AND PART OF WOLCOTT AVENUE, ALSO KNOWN AS BRAND STREET, ALL IN FULLERTON'S ADDITION TO CHICAGO, SAID FULLERTON ADDITION BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE NORTH BRANCH OF THE CHICAGO RIVER AND THAT PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE CHICAGO RIVER AND WEST OF THE CHICAGO AND NORTHWESTERN RAILROAD;

## DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 15; THENCE ON AN ASSUMED BEARING OF NORTH 01 DEGREES 49 MINUTES 39 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 15, ALSO BEING THE WEST LINE OF SAID WOLCOTT AVENUE, PREVIOUSLY KNOWN AS BRAND STREET, A DISTANCE OF 1.70 FEET TO A POINT ON THE NORTH LINE OF FULLERTON AVENUE AS CONVEYED BY SPECIAL WARRANTY DEED RECORDED DECEMBER 9, 2013 AS DOCUMENT NUMBER 1334339074, SAID POINT BEING THE POINT OF BEGINNING; THENCE SOUTH 88 DEGREES 36 MINUTES 10 SECONDS WEST, ALONG THE NORTH LINE OF SAID FULLERTON AVENUE, A DISTANCE OF 173.96 FEET; THENCE NORTH 00 DEGREES 20 MINUTES 12 SECONDS WEST, A DISTANCE OF 207.05 FEET TO A POINT ON THE SOUTH LINE OF PARCEL OJ80002-A, PER SPECIAL WARRANTY DEED RECORDED DECEMBER 9, 2013 AS DOCUMENT NUMBER 1334339074, ALSO KNOWN AS RE-LOCATED ELSTON AVENUE; THENCE NORTH 87 DEGREES 34 MINUTES 04 SECONDS EAST ALONG SAID SOUTH LINE OF PARCEL OJ80002-A, A DISTANCE OF 85.99 FEET, TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG SAID PARCEL OJ80002-A AND IT'S SOUTHEASTERLY EXTENSION A DISTANCE OF 317.53 FEET, SAID LINE BEING THE ARC OF A TANGENT CIRCLE TO THE RIGHT HAVING A

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RADIUS OF 206.50 FEET AND WHOSE CHORD BEARS SOUTH 48 DEGREES 22 MINUTES 54 SECONDS EAST, A DISTANCE OF 287.16 FEET TO A POINT; THENCE SOUTH 40 DEGREES 57 MINUTES 08 SECONDS WEST, A DISTANCE OF 17.15 FEET, TO A POINT ON THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID FULLERTON AVENUE AS CONVEYED BY SPECIAL WARRANTY DEED RECORDED DECEMBER 9, 2013 AS DOCUMENT NUMBER 1334339074; THENCE SOUTH 88 DEGREES 36 MINUTES 10 SECONDS WEST ALONG THE LAST DESCRIBED LINE, A DISTANCE OF 114.26 FEET THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

*14-20-2017 401 004 017, 021 0023  
Corner of Danvers-Elston, Chicago, Ill  
60617*

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