

# UNOFFICIAL COPY

Doc#: 2127746174 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 10/04/2021 11:25 AM Pg: 1 of 11

THIS INSTRUMENT PREPARED BY/RECORD AND RETURN TO: Mark R. Wysocki, Esq.,  
Mombach, Boyle, Hardin & Simmons, P.A., 100 NE Third Avenue, Suite 1000, Fort Lauderdale,  
Florida 33301

## ASSIGNMENT OF RENTS, LEASES AND DEPOSITS

THIS ASSIGNMENT is made and entered into as of the 20th day of September, 2021, by RCI HOLDINGS, INC., a Texas corporation ("Assignor"), whose address is 10737 Cutten Road, Houston, TX 77066, in favor of Centennial Bank ("Assignee"), whose address is 6300 NE Third Avenue, Suite 300, Fort Lauderdale, Florida 33334, its successors and assigns.

### WITNESSETH:

**WHEREAS**, contemporaneously herewith, Assignor has executed and delivered to Assignee a promissory note in the principal amount of Ninety-Nine Million One Hundred Forty-Five Thousand Eight Hundred Thirty-Eight and 22/100 Dollars (\$99,145,838.22) (hereinafter referred to as the "Note"), secured by an Amended and Restated Mortgage, Security Agreement, Fixture Filing and Assignment of Rents, Leases and Deposits dated of even date herewith (hereinafter referred to as the "Mortgage"), on the property of Assignor in Cook County, Illinois, the legal description of which is set forth as follows:

SEE LEGAL DESCRIPTIONS, ANNEXED HERETO AND MADE A PART  
HEREOF AS EXHIBIT "A"

together with all buildings and improvements now or hereafter constructed thereon (all of such property being hereinafter collectively referred to as the "Property"); and

**WHEREAS**, as additional security for the Note and the obligations of Assignor thereunder, Assignor has executed and delivered to Assignee this Assignment.

**NOW, THEREFORE**, for value received and as security for the payment of said obligations of Assignor, Assignor, for itself and for its successors and assigns, does hereby transfer, assign and deliver unto Assignee, its successors and assigns, all of the right, title and interest of Assignor in and to (1) all leases, subleases, tenancies and any other agreement affecting the use of the Property, whether written or oral, now or hereafter existing with respect to any portion or portions of the Property, together with any renewals or extensions thereof and leases, subleases, tenancies, and such

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agreements in substitution therefor (all of which are hereinafter collectively referred to as the "Leases" or "Assigned Leases" and singularly as "Lease"), (2) all rents, deposits, issues, profits and other payments of every kind due or payable and to become due or payable to Assignor by virtue of the Assigned Leases, or otherwise due or payable and to become due or payable to Assignor as the result of any issue, possession or occupancy of any portion or portions of the Property, (3) all right, title and interest of Assignor in and to all guarantees of the Assigned Leases and (4) any award made in any court proceeding involving any of the lessees in any bankruptcy, insolvency or reorganization proceedings in any state or federal court.

**TO HAVE AND TO HOLD** the same unto Assignee, its successors and assigns, until such time as the indebtedness secured by the Mortgage shall have been paid in full, for the purpose of further and collaterally securing: (1) payment of the indebtedness evidenced by the Note together with the interest on said indebtedness; (2) payment of all sums, with interest thereon, to become due and payable to Assignee hereunder or under the provisions of the Note, the Mortgage and any other documents, instruments and agreements related thereto and executed in connection therewith and all modifications, amendments and renewals thereof (collectively, the "Loan Documents"); and (3) performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein, or in the Note, the Mortgage, or any associated Loan Document or any other obligation of Assignor to Assignee now or hereafter existing (hereinafter collectively referred to as the "Obligations").

This instrument of Assignment is delivered and accepted upon the following terms and conditions:

1. Assignor's License to Operate if no Default. This Assignment shall be and constitute an absolute assignment effective upon execution, however, so long as no default shall exist under the Obligations, which is not cured pursuant to any applicable cure period, Assignor shall have a revocable license, revocable by Assignee upon the occurrence of a default under the Obligations, to manage and operate the Property and to collect, receive and apply for its own account all rents, issues and profits accruing by virtue of the Assigned Leases, and to execute and deliver proper receipts and acquittances therefor, provided, however, that without the written consent of Assignee, Assignor shall not collect any installment of rent or other required sums, in advance, other than a security deposit and rent for the last month of any lease or sublease term (hereinafter referred to as "Permitted Advance Rental Payments"). As to any security deposits and/or prepaid rents, Assignor shall furnish to Assignee satisfactory evidence that Assignor has maintained such security deposits and/or prepaid rents in accordance with the requirements of applicable law.

2. Assignee's Rights in Event of Default which has not been cured within any applicable cure period.

2.1 Immediately upon the occurrence of any default under the Obligations, the revocable license described in paragraph 1 above shall cease and terminate upon demand and notice made by Assignee, and, in such event, Assignee is hereby expressly and irrevocably authorized to enter and take possession of the Property by actual physical possession, or by written notice served personally upon or sent by registered mail to Assignor as Assignee may elect, without further authorization, notice or demand and without the commencement of any action to foreclose the Mortgage or to exercise its power of sale thereunder.

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2.2 Assignor does hereby constitute and appoint Assignee, irrevocably, with full power of substitution and revocation, its true and lawful attorney, coupled with an interest, for it and in its name, place and stead, to do and perform any or all of the following actions, as fully for all intents and purposes, as it could do if personally present, hereby ratifying and confirming all that its said attorney or its substitution shall lawfully do or cause to be done by virtue hereof:

- (a) manage and operate the Property or any part thereof;
- (b) lease any part or parts thereof for such periods of time, and upon such terms and conditions as Assignee may, in its sole discretion, deem proper;
- (c) enforce, cancel or modify any of the Leases;
- (d) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for all rents, issues, profits and other amounts that may then be or may thereafter become due, owing or payable with respect to the Property or any part thereof from any present or future lessees, tenants, subtenants or occupants thereof;
- (e) institute, prosecute to completion or compromise and settle, all summary proceedings, actions for rent or for removing any and all lessees, tenants, subtenants or occupants of the Property or any part or parts thereof;
- (f) enforce or enjoin or restrain the violation of any of the terms, provisions and conditions of any Lease or Leases, now or hereafter affecting the Property or any part thereof;
- (g) make such repairs and alterations to the Property as Assignee may, in its reasonable discretion, deem proper;
- (h) pay, from and out of rents, issues and profits collected in respect of the Property or any part thereof, or from or out of any other funds, the rent and all other charges required to be paid under any ground leases on which the Mortgage may constitute a lien, any taxes, assessments, water rates, sewer rates, or other government charges levied, assessed or imposed against the Property, or any portion thereof, and also any and all other charges, costs and expenses which it may be necessary or advisable for Assignee to pay in the management or operation of the Property, including without limiting the generality of any rights, powers, privileges and authority hereinbefore or hereinafter conferred) the costs of repairs and alterations, commissions for renting the Property or any portions thereof, any legal expenses in enforcing claims, preparing papers or for any other services that may be required; and
- (i) generally, do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Property, as fully as Assignor might do, provided, however, that any action, or failure or

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refusal to act, by Assignee under this Assignment shall be at its election and without any liability on its part.

2.3 Assignee shall apply the net amount of rents, issues and profits received by it from the Property, after payment of all costs and charges incurred by Assignee (including any liability, loss, expense or damage hereinafter referred to in paragraph 5 hereof), first to the payment, when due, of the installments of interest payable under the Note and thereafter to the payment of principal thereunder. Any of such funds remaining after such application shall be paid as soon as reasonably practicable by Assignee to such persons as Assignor may designate to Assignee in writing.

2.4 Assignee shall be accountable to Assignor only for monies actually received by Assignee pursuant to this Assignment and the acceptance of this Assignment shall not constitute a satisfaction of any indebtedness, liability or obligations, or any part thereof, now or hereafter owed by Assignor to Assignee, except to the extent of amounts actually received and applied by Assignee on account of the same.

2.5 The rights and powers of Assignee hereunder shall continue and remain in full force and effect until all amounts secured hereby, including any deficiency resulting from foreclosure sale, are paid in full, and shall continue after commencement of foreclosure and after foreclosure sale and until expiration of the equity of redemption, notwithstanding sale of the Property to a purchaser other than Assignee. Assignee shall not be liable to Assignor or any one claiming under or through Assignor by reason of anything done or left undone by Assignee hereunder.

3. Attornment of Lessees in Event of Default. ASSIGNOR HEREBY IRREVOCABLY DIRECTS EACH LESSEE AND/OR SUBLESSEE UNDER EACH OF THE LEASES UPON DEMAND AND NOTICE FROM ASSIGNEE OF ASSIGNOR'S DEFAULT UNDER ANY OF THE OBLIGATIONS, TO PAY ASSIGNEE ALL RENTS, DEPOSITS AND PROFITS ACCRUING OR DUE UNDER ITS LEASE FROM AND AFTER THE RECEIPT OF SUCH DEMAND AND NOTICE. ANY LESSEE MAKING SUCH PAYMENT TO ASSIGNEE SHALL BE UNDER NO OBLIGATION TO INQUIRE INTO OR DETERMINE THE ACTUAL EXISTENCE OF ANY SUCH DEFAULT(S) CLAIMED BY ASSIGNEE.

4. Covenants of Assignor. Assignor, for itself and for its successors and assigns, covenants and warrants as follows:

(a) that each of the Leases now or hereafter in effect is and shall be a valid and existing lease or sublease and that there are, to the extent ascertainable by Assignor, no defaults on the part of any of the parties thereto;

(b) that Assignor has not sold, assigned, transferred, mortgaged or pledged any of the rents, issues or profits from the Property or any part thereof, whether now or hereafter to become due, to any person, firm or corporation other than Assignee;

(c) that no rents, issues, deposits or profits of the Property, or any part thereof, becoming due subsequent to the date hereof have been collected nor has payment of any of the sums been anticipated, waived, released, discounted or otherwise discharged or compromised;

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(d) that Assignor will not assign, pledge or otherwise encumber any of the Leases or any of the rents thereunder;

(e) that excepting in the normal and ordinary course of business, Assignor will not enter into any new lease agreement or amend, modify, terminate or accept any surrender of any Lease;

(f) that Assignor will not waive or give any consent with respect to any default or variation in the performance of any of the terms, covenants and conditions on the part of any lessee, sublessee, tenant or other occupant to be performed under any of the Leases without the written consent of Assignee, but will at all times take proper steps to enforce all of the provisions and conditions thereof;

(g) that Assignor will not collect or receive, without in each case having obtained the prior written consent of Assignee thereto, from any such lessee, sublessee, tenant or other occupant, any installment of rent in advance of the respective dates prescribed in the Leases, except for Permitted Advance Rental Payments;

(h) that Assignor will perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions on its part to be performed and observed with respect to each of the Leases;

(i) that Assignor will, upon written request by Assignee, while this Assignment remains in force and effect, serve such written notice upon any lessee, sublessee, tenant or other occupant of any portion of the Property, or any portion thereof, concerning this assignment, or include among the written provisions of any instrument hereafter creating any such lease, sublease, tenancy or right of occupancy specific reference to this assignment, and make, execute and deliver all such powers of attorney, instruments of pledge or assignment, and such other instruments or documents as Assignee may reasonably request at any time for the purpose of securing its rights hereunder;

(j) that at all times during which this Assignment shall be in effect, Assignor will use its best efforts to keep the Property fully rented at the highest possible rentals obtainable;

(k) that Assignor will notify Assignee promptly when any Lease is hereafter executed, extended, renewed, amended or modified and that it will furnish to Assignee, on demand, true copies of all Leases hereafter executed and true copies of each agreement or letter effecting the renewal, amendment or modification of any Assigned Lease;

(l) not to enter into any new lease agreement with any operating dry cleaner or gasoline service station or any similar type or types of establishment without first obtaining the written consent of Assignee, which may be withheld by Assignee, in its sole and absolute discretion.

Assignor acknowledges and agrees that the approval (directly or indirectly) of any Lease by Assignee shall not be construed in any manner to create any liability or responsibility as to Assignee

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in the event that such Lease or the tenant thereunder should default. The review of any Lease by Assignee shall be solely for Assignee's own purposes, shall not constitute any representation by Assignee as to the subject Lease or as to the tenant thereunder and may not and shall not be relied upon by Assignor in any manner. Assignee shall independently review and approve any Lease and the tenant thereunder prior to execution thereof by Assignor.

## 5. Indemnification.

5.1 Assignor hereby agrees to indemnify, defend, and hold Assignee harmless (a) against and from any and all liability, loss, damage and expense, including reasonable attorneys' fees, which it may or shall incur under or in connection with any of the Leases, or by reason of any of the Obligations, or by reason of any action taken by Assignee under any of the Obligations (including, without limitation, any action which Assignee in its discretion may take to protect its interest in the Property, including, without limitation, the making of advances and the entering into of any action or proceeding arising out of or connected with the Leases or the Obligations), and (b) against and from any and all claims and demand whatsoever which may be asserted against Assignor by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants and conditions contained in any of the Leases.

5.2 Should Assignee incur any such liability, loss, damage or expense, the amount thereof, together with interest thereon at the highest rate permitted under applicable law, shall be payable by Assignor to Assignee immediately upon demand, or at the option of Assignee, Assignee may reimburse itself therefor out of any rents, issues or profits of the Property collected by Assignee.

5.3 Nothing contained herein shall operate or be construed to obligate Assignee to perform any of the terms, covenants or conditions contained in any Lease, or to take any measures, legal or otherwise, to enforce collection of any of said rents or other payments, or otherwise to impose any obligation upon Assignee with respect to any of said Leases, including but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained.

5.4 Prior to actual entry into any taking possession of the Property by Assignee, this Assignment shall not operate to place upon Assignee any responsibility for the operation, control, care, management or repair of the Property, and the execution of this Assignment by Assignor shall constitute conclusive evidence that all responsibility for the operation, control care, management and repair of the Property is and shall be that of Assignor prior to such actual entry and taking of possession.

6. Exercise of Remedies. Failure of Assignee to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time, or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of but are in addition to any other rights and remedies which Assignee shall have under or by virtue of any other of the Obligations. The rights and remedies of Assignee hereunder may be exercised from time to time and as often as such exercise is deemed expedient.

7. Assignment by Assignee. Assignee shall have the right to assign to any subsequent holder of the Mortgage, or to any person acquiring title to the Property, Assignor's rights, title and

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interest in any Lease or sublease hereby or hereafter assigned, subject, however, to the provisions of this Assignment. After Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in said Property, no assignee of Assignor's interest in said Leases shall be liable to account to Assignor for any rents, income, revenue, issues or profits thereafter accruing.

8. Termination of this Agreement. Upon payment in full of all the indebtedness secured by the Mortgage, as evidenced by a recorded satisfaction or release of Mortgage, as well as any sums which may be payable hereunder, this Assignment shall become and be void and of no further effect and, in that event, upon the request of Assignor, Assignee covenants to execute and deliver to Assignor instruments effective to evidence the termination of this Assignment and/or the reassignment to Assignor of the rights, power and authority granted herein.

9. No Merger of Assigned Leases. As against Assignee, at all times during which this Assignment shall be in effect, there shall be no merger of the Leases or the leasehold estate created thereby with the fee estate in the Property by reason of the fact that the Leases or any interest therein may be held by or for the account of any person, firm or corporation which may be or become the owner of said fee estate, unless Assignee shall consent in writing to said merger.

10. Notice.

(a) All notices given hereunder shall be in writing and addressed as follows:

Assignee: Centennial Bank  
2101 W. Commercial Blvd., Suite 5000  
Fort Lauderdale, Florida 33309  
Attn: Michael W. Barnett, Vice President

with copy to: Mark R. Wysocki, Esq.  
Mombach, Boyle, Hardin & Simmons, P.A.  
100 NE Third Avenue, Suite 1000  
Fort Lauderdale, Florida 33301

Assignor: RCI Holdings, Inc.  
10737 Cutten Road  
Houston, Texas 77066  
Attn: Eric Langan

with copy to: Robert D. Axelrod, Esq.  
Axelrod & Smith  
5300 Memorial Drive, Suite 1000  
Houston, Texas 77007

(b) Any notice, report, demand or other instrument authorized or required to be given or furnished hereunder to Assignor or Assignee shall be deemed given or furnished when addressed to the party intended to receive the same at the above address (i) on the day of delivery, if hand-delivered; (ii) or one day after being delivered to an expedited courier for overnight delivery;

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or (iii) two days after being deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party.

(c) Each party may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party, but no such notice of change shall be effective unless and until received by such other party.

(d) Notwithstanding anything in this instrument to the contrary, all requirements of notice shall be deemed inapplicable if Assignee is prevented from giving such notice by bankruptcy or any other applicable law. In such event, the cure period, if any, shall then run from the occurrence of the event or condition of default rather than from the date of notice.

## 11. Miscellaneous Provisions.

11.1 Whenever the context so requires, reference herein to the neuter gender shall include the masculine and/or feminine gender, and the singular number shall include the plural.

11.2 All of the provisions of this Assignment shall be deemed and construed to be "conditions" and "covenants" as though the words specifically expressing or importing covenants and conditions were used in each separate provision hereof.

11.3 This Assignment is being delivered and is intended to be performed in the State of Illinois and shall be construed and enforced in accordance with and governed by the internal laws (and not the law of conflicts) of such state.

11.4 No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless Assignee shall have consented thereto in writing.

11.5 In the event there is any conflict between the terms and provisions of the Mortgage and the terms and provisions of this Assignment, the terms and provisions of this Assignment shall prevail.

11.6 The terms, covenants, and conditions contained herein shall inure to the benefit of, and bind Assignee and Assignor and their respective successors and assigns or executors, administrators, successors and assigns, as the case may be.

11.7 The captions of this Assignment are for convenience and reference only and neither in any way define, limit, or describe the scope or interest of this Assignment nor in any way affect this Assignment.

11.8 In case any one or more of the provisions contained in this Assignment are, or shall for any reason be held to be, invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.



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11.9 The rights and remedies in favor of Assignee granted by this Assignment shall be in addition to and shall not in any way constitute a limitation upon the rights and remedies available to Assignee under applicable law.

11.10 Assignee may take or release other security for the payment of the Obligations, and, may release any party primarily or secondarily liable therefore, and, may apply any other security held by it to the satisfaction of the Obligations, without prejudice to any of its rights under this Assignment.

ASSIGNOR AND ASSIGNEE HEREBY MUTUALLY KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO TRIAL BY JURY AND NO PARTY NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF THE PARTIES (ALL OF WHOM ARE HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEEDING BASED UPON OR ARISING OUT OF THIS ASSIGNMENT OR ANY ASSOCIATED LOAN DOCUMENTS OR ANY INSTRUMENT EVIDENCING, SECURING OR RELATING TO THE INDEBTEDNESS OR OTHER OBLIGATIONS SECURED HEREBY OR ANY RELATED AGREEMENT OR INSTRUMENT, ANY OTHER COLLATERAL FOR THE INDEBTEDNESS SECURED HEREBY OR ANY COURSE OF ACTION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS RELATING TO THE LOAN EVIDENCED BY THE NOTE OR TO THIS ASSIGNMENT. THE PARTIES ALSO WAIVE ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES. THE WAIVER CONTAINED HEREIN IS IRREVOCABLE, CONSTITUTES A KNOWING AND VOLUNTARY WAIVER, AND SHALL BE SUBJECT TO NO EXCEPTIONS. ASSIGNEE HAS IN NO WAY AGREED WITH OR REPRESENTED TO ASSIGNOR OR ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, Assignor has caused these presents to be signed the day and year first above written.

Signed, sealed and delivered  
in the presence of:

RCI HOLDINGS, INC., a Texas corporation

RB AO  
Print Name: Robert Axelrod

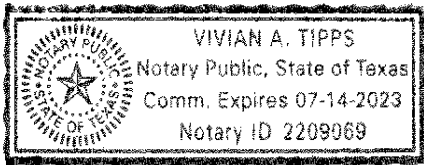
By: [Signature]  
Eric Langan, President

[Signature]  
Print Name: Cameron Taber

STATE OF TEXAS  
COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this 22<sup>ND</sup> day of September, 2021 by  Eric Langan, as President of, and on behalf of, RCI HOLDINGS, INC., a Texas corporation, who () is personally known to me or () produced a driver's license as identification.

[Signature]



Notary Public - State and County Aforesaid  
Print Name:  
My Commission Expires:

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## EXHIBIT A COOK COUNTY PROPERTY

**1531 N Kingsbury Street, Chicago, IL 60642 - File No. 21000331018**

LOT 26 IN YALES RESUBDIVISION OF BLOCK 45 IN ELSTON'S ADDITION TO CHICAGO IN THE NORTHEAST 1/4 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN,

EXCEPTING THAT PART OF LOT 26, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT ON KINGSBURY STREET AND RUNNING THENCE NORTH-WESTERLY ALONG THE LOT LINE 15 FEET; RUNNING THENCE NORTHEASTERLY ALONG A LINE DRAWN PARALLEL TO THE LOT LINE BETWEEN LOTS 26 AND 27 TO THE ALLEY; THENCE SOUTHEASTERLY ALONG SAID ALLEY TO THE MOST SOUTHERLY CORNER OF SAID LOT 26 ON SAID ALLEY; THENCE SOUTHWESTERLY ALONG LOT LINE TO THE PLACE OF BEGINNING,

TOGETHER WITH,

LOT 2 AND THAT PART OF LOT 1 IN THE RESUBDIVISION OF LOTS 23, 24 AND 25 IN YALE'S RESUBDIVISION OF BLOCK 45 IN ELSTON'S ADDITION TO CHICAGO IN THE NORTHEAST 1/4 SECTION 5, AFORESAID, LYING SOUTH OF A LINE DRAWN FROM A POINT IN THE SOUTHWESTERLY LINE OF SAID LOT, 17.0 FEET SOUTHERLY OF THE NORTHWESTERLY CORNER THEREOF TO A POINT IN THE NORTHEASTERLY LINE OF LOT 1, AFORESAID, 16.62 FEET SOUTHERLY OF THE NORTHEASTERLY CORNER THEREOF ALL IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.