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

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Permanent Tax Index Numbers:

17-16-202-013  
17-16-202-014

Property Address:

230 W. Monroe Street  
Chicago, Cook County Illinois



Doc#: 0735518045 Fee: \$82.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
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## MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FINANCING FILING

This Document Serves as a Fixture Filing under the Illinois Uniform Commercial Code, Chapter 810 ILCS 5/9-502(b) *et seq.* Borrower's Organizational Identification Number: 3463189.

**THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** (hereinafter, the "**Mortgage**") dated as of December 20, 2007, is executed by **230 WEST MONROE PT, LLC**, a Delaware limited liability company, having an address at 3001 Summer Street, Stamford, Connecticut 06904 (hereinafter, "**Borrower**"), to and for the benefit of **ANGLO IRISH BANK CORPORATION PLC**, a banking corporation organized under the laws of the Republic of Ireland, having its principal place of business at 18/21 St. Stephen's Green, Dublin 2, Ireland and an address at 71 South Wacker Drive, Suite 1840, Chicago, Illinois 60606, as agent (hereinafter, "**Agent**"), under a Loan Agreement (hereinafter, the "**Loan Agreement**") of even date herewith among Borrower, Anglo Irish Bank Corporation plc and the other lending institutions which become parties to the Loan Agreement (Anglo Irish Bank Corporation plc and the other lending institutions which become parties to the Loan Agreement are referred to individually as a "**Lender**" and collectively as "**Lenders**").

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The term Borrower shall include, wherever the context permits, its successors and assigns. The terms Agent and Lenders shall include, wherever the context permits, their respective successors and assigns as the holder for the time being of this Mortgage, the Note (as defined herein) and other Obligations (as defined herein) hereby secured.

This Mortgage is granted pursuant to the terms, provisions and conditions of the Loan Agreement. Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Loan Agreement.

Borrower hereby GRANTS, BARGAINS, ASSIGNS, WARRANTS, CONVEYS, and MORTGAGES to Agent, on behalf of Lenders, their respective successors and assigns, forever all of Borrower's estate, right, title, and interest, whether now or hereafter acquired, in and to the Real Estate (as defined herein), together with the following described property, whether now or hereafter acquired (the Real Estate, together with a security interest in and a lien on the following described property being hereinafter referred to collectively as the "**Mortgaged Property**"), all of which other property is hereby pledged on a parity with the Mortgaged Property and not secondarily:

A. Real Estate. The land more particularly described on Exhibit A which is annexed hereto and made a part hereof (hereinafter, the "**Land**") together with the improvements and other structures now or hereafter situated thereon (such improvements being sometimes called the "**Improvements**") commonly known as and numbered 230 W. Monroe Street, Chicago, Cook County, Illinois, together with all rights, privileges, tenements, hereditaments, appurtenances, easements, including, but not limited to, rights and easements for access and egress and utility connections, and other rights now or hereafter appurtenant thereto (hereinafter, the "**Real Estate**");

B. Fixtures. All real estate fixtures or items which by agreement of the parties may be deemed to be such fixtures, now or hereafter owned by Borrower, or in which Borrower has or hereafter obtains an interest, and now or hereafter located in or upon the Real Estate, or now or hereafter attached to, installed in, or used in connection with any of the Real Estate, including, but not limited to, any and all portable or sectional buildings, bathroom, plumbing, heating, lighting, refrigerating, ventilating and air-conditioning apparatus and equipment, garbage incinerators and receptacles, elevators and elevator machinery, boilers, furnaces, stoves, tanks, motors, sprinkler and fire detection and extinguishing systems, doorbell and alarm systems, window shades, screens, awnings, screen doors, storm and other detachable windows and doors, mantels, partitions, built-in cases, counters and other fixtures whether or not included in the foregoing enumeration (hereinafter, the "**Fixtures**");

C. Additional Appurtenances. All bridges, easements, rights of way, licenses, privileges, hereditaments, permits and appurtenances hereafter belonging to or enuring to the benefit of the Real Estate and all right, title and interest of Borrower in and to the land lying within any street or roadway adjoining any of the Real Estate and all right, title and interest of Borrower in and to any vacated or hereafter vacated streets or roads adjoining any of the Real Estate and any and all reversionary or remainder rights (hereinafter, the "**Additional Appurtenances**");

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D. Awards. All of the right, title and interest of Borrower in and to any award or awards heretofore made or hereafter to be made by any municipal, county, state or federal authorities to the present or any subsequent owners of any of the Real Estate or the Land, or the Improvements, or the Fixtures, or the Additional Appurtenances, or the Leases or the Personal Property, including, without limitation, any award or awards, or settlements or payments, or other compensation hereafter made resulting from (x) condemnation proceedings or the taking of the Real Estate, or the Land, or the Improvements, or the Fixtures, or the Additional Appurtenances, or the Leases or the Personal Property, or any part thereof, under the power of eminent domain, or (y) the alteration of grade or the location or discontinuance of any street adjoining the Land or any portion thereof, or (z) any other injury to or decrease in value of the Mortgaged Property (hereinafter, the "Awards");

E. Insurance Proceeds. All proceeds paid for any damage or loss to all or any portion of the Real Estate, the Fixtures, the Additional Appurtenances, any other Personal Property or any other portion of the Mortgaged Property (hereinafter, "Insurance Proceeds");

F. Leases. All leases now or hereafter entered into of the Real Estate, or any portion thereof, and all rents, issues, profits, revenues, earnings and royalties therefrom, and all right, title and interest of Borrower thereunder, including, without limitation, all cash, letters of credit, or securities deposited thereunder to secure performance by the tenants or occupants of their obligations thereunder, whether such cash, letters of credit, or securities are to be held until the expiration of the terms of such leases or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of such terms including, without limitation, the right to receive and collect the rents thereunder and also including, without limitation, all obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property by Borrower or any operator or manager of the Real Estate (including, without limitation, from the rental of any office space), and all right, title and interest of Borrower thereunder (hereinafter, the "Leases");

G. Proceeds. All proceeds, products, replacements, additions, substitutions, renewals and accessions of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the UCC (as hereinafter defined);

H. Personal Property. All tangible and intangible personal property now owned or at any time hereafter acquired by Borrower of every nature and description, and whether or not used in any way in connection with the Real Estate, the Fixtures, the Additional Appurtenances, or any other portion of the Mortgaged Property, including, without limitation express or implied upon the generality of the foregoing, all Equipment, Goods, Inventory, Fixtures, Accounts, Instruments, Documents and General Intangibles (as each such capitalized term is defined in the UCC) and further including, without any such limitation, the following whether or not included in the foregoing: materials; supplies; furnishings; chattel paper; money; bank accounts; security deposits; utility deposits; any insurance or tax reserves deposited with Agent; any cash collateral deposited with Agent; claims to rebates, refunds or abatements of real estate taxes or any other taxes; contract rights; plans and specifications; licenses, permits, approvals and other rights; the rights of Borrower under contracts with respect to the Real Estate or any other portion of the Mortgaged Property, or the Project; signs, brochures, advertising, the name by which the

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Mortgaged Property is known and any variation of the words thereof, and good will; copyrights, service marks, and all goodwill associated therewith; intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, fittings, apparatus, tools, machinery, engines, dynamos, motors, boilers, incinerators, and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Real Estate, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Real Estate; the Insurance Proceeds, all Awards; all Leases; all books and records; and all proceeds, products, additions, accessions, substitutions and replacements to any one or more of the foregoing (collectively, the "**Personal Property**"); and

I. After Acquired Property. Any and all after-acquired right, title or interest of Borrower in and to any property of the types described in the preceding granting clauses.

The term "**Obligations**" shall mean and include:

A. The payment of the principal sum, interest at variable rates, charges and indebtedness evidenced by and in accordance with a promissory note (hereinafter, the "**Note**") dated as of even date herewith, including any extensions, renewals, replacements, modifications and amendments thereof, in the original amount of EIGHTY EIGHT MILLION TWENTY EIGHT THOUSAND DOLLARS (\$88,028,000.00) given by Borrower to the order of Agent, which Note is due and payable on or before the Maturity Date (as defined in the Note);

B. The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and condition to be paid, performed, satisfied and complied with by Borrower under and pursuant to this Mortgage or the Loan Agreement and also by Borrower under and pursuant to each of the other Loan Documents referred to in, or executed in connection with, the Loan Agreement;

C. The payment of all costs, expenses, reasonable legal fees and liabilities incurred by Agent in connection with the enforcement of Agent's or any Lender's rights or remedies under this Mortgage, the other Loan Documents, or any other instrument, agreement or document which evidences or secures any other obligations or collateral therefor, whether now in effect or hereafter executed; and

D. The payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower to Agent or any Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation express or implied upon the generality of the foregoing, each liability and obligation of Borrower under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby and all liabilities and obligations of Borrower to Agent (or any affiliate of Agent) under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or similar interest rate or foreign exchange protection agreement between Borrower and Agent (or affiliate of Agent) designed to protect against fluctuations in interest rates or currency exchange rates.

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Borrower covenants, warrants, represents and agrees with Agent and Lenders, and their respective successors and assigns, that:

1. Title. Borrower has fee simple title to the Real Estate and good record and marketable title to the remainder of the Mortgaged Property and has good right, full power and lawful authority to grant and convey the same in the manner aforesaid; and that the Mortgaged Property is free and clear of all encumbrances and exceptions, except for the Permitted Title Exceptions, if any, as set forth on Exhibit B which is annexed hereto and made a part hereof. Borrower shall make any further assurances of title that Agent may in good faith require including, without limitation, such further instruments as may be requested by Agent to confirm the assignment to Agent of all Awards.
2. Performance of Obligations. Borrower shall pay the Note and interest thereon as the same shall become due and payable, and pay and perform and observe all of the obligations and conditions set forth in each of the Note, this Mortgage, the Assignment of Leases and Rents, the Loan Agreement, and each of the other Loan Documents or other agreements, if any, executed by Borrower in connection with the Loan.
3. Protection and Maintenance. Borrower shall protect and maintain, or cause to be maintained, in good order, repair and tenantable condition at all times, the buildings and structures now standing or hereafter erected on the Mortgaged Property, and any additions and improvements thereto, and all Personal Property now or hereafter situated therein, and the utility services and access roads, and all building fixtures and equipment and articles of personal property now or hereafter acquired by Borrower and used in connection with the operation of the Mortgaged Property, and where the obligation to maintain the same does not rest with any tenant at the Mortgaged Property. Borrower shall promptly replace any of the aforesaid which may become lost, destroyed or unsuitable for use and that is required for the operations on the Improvements with other property of similar character.
4. Insurance Coverages. Borrower shall insure the Mortgaged Property and the operation thereof with such coverages and in such amounts as are required by the provisions of the Loan Agreement and shall at all times keep such insurance in full force and effect and pay all premiums when due. Certificates or binders evidencing all such policies issued by the insurer in form, content and manner of execution reasonably satisfactory to Agent shall be delivered to Agent and Lenders, and Borrower shall request that its insurer endeavor to deliver to Agent and Lenders a replacement certificate as replacement for an expiring policy required to be deposited hereunder together with proof of payment of the premiums therefor in advance at least thirty (30) days before the date of such expiration. Borrower hereby irrevocably appoints Agent its true and lawful attorney-in-fact, with full power of substitution, to assign any such policy in the event of the foreclosure of this Mortgage.
5. Insurance Proceeds. Subject to the provisions of the Loan Agreement relating to the application of Insurance Proceeds, the proceeds of any hazard insurance shall be applied to or toward the indebtedness secured hereby in such order as Agent may reasonably determine. Notwithstanding anything in this Section 5 to the contrary, if the insurer



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- denies liability to Borrower, Borrower shall not be relieved of any obligation under Section 3 of this Mortgage. If, however, pursuant to the provisions hereof and of the Loan Agreement, Agent and Lenders apply insurance proceeds to the Loan and does not release the same to Borrower, the obligation of Borrower to repair, restore or rebuild shall cease.
6. Eminent Domain. Subject to the provisions of the Loan Agreement relating to the application of condemnation proceeds, the Awards of damages on account of any condemnation for public use of, or injury to, the Mortgaged Property shall be paid to Agent. Such Awards shall, at the option and in the sole discretion of Agent, be applied to or toward the indebtedness secured hereby in such order as Agent may reasonably determine, or in the case of a partial taking, (a) may be so applied or released to Borrower upon such conditions as Agent may prescribe in accordance with the terms of the Loan Agreement, (b) may be applied to restoration of that part of the Mortgaged Property which remains, but not in amounts greater than are required to restore or repair such damage or injury; and (c) any balance remaining shall be applied by Agent to or toward the indebtedness secured hereby in such order as Agent may reasonably determine. If Agent applies such Awards to the Loan and does not release the same to Borrower, the obligation of Borrower to repair, restore or rebuild shall cease.
  7. No Waste; Compliance With Law. Borrower shall endeavor to not commit or suffer any strip or waste of the Mortgaged Property, or any portion thereof, or any violation of any Legal Requirements affecting the Mortgaged Property or any business conducted thereon, and shall endeavor to not commit or suffer any demolition, removal or material alteration of any of the Mortgaged Property (except for the replacement of Fixtures and Personal Property in the ordinary course of business, so long as items of comparable value and quality are installed if required for the operation of the Mortgaged Property), without the express prior written consent of Agent in each instance which consent shall not be unreasonably withheld or delayed, and shall not violate nor suffer the violation of the covenants and agreements, if any, of record against the Mortgaged Property, and in all respects Borrower shall comply with, and keep in full force and effect all licenses, permits and other governmental authorizations for the operation of the Mortgaged Property for its intended purposes, including, without limitation express or implied, the licenses, permits and authorizations referenced in the Loan Agreement.
  8. Environmental and Related Matters; Indemnification. Borrower shall at all times comply with all of the terms, conditions and provisions imposed on the indemnitors under the Environmental Indemnity and both before and after the repayment of the Loan, in accordance with the terms of the Environmental Indemnity Agreement.
  9. Payment of Taxes and Prevention of Liens. Borrower shall pay before delinquent or before any penalty for nonpayment attaches thereto, all taxes, assessments and charges of every nature that may now or hereafter be levied or assessed upon the Mortgaged Property or any part thereof, or upon the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or as income taxes, but only to the extent not paid by tenants under the Leases directly to the applicable taxing authority. Borrower

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may apply for tax abatements and prosecute diligently and in good faith claims for refund so long as: (a) no additional taxes, interest thereon or penalties are incurred thereby, and (b) no proceedings are instituted to divest Borrower of title to all or any portion of the Mortgaged Property. Borrower shall pay all sums which, if unpaid, may result in the imposition of a lien on the Mortgaged Property before such lien may attach (except that real estate taxes need not be paid prior to the due date thereof) or which may result in conferring upon a tenant of any part or all of the Mortgaged Property a right to recover such sums as prepaid rent.

10. Due On Sale; No Other Encumbrances; No Transfer of Ownership Interests; Failure to Comply with Permitted Exceptions. Except as otherwise specifically provided for in the Loan Agreement with respect to Permitted Transactions, or in this Mortgage, it shall be an Event of Default under the Loan Agreement, a breach of the conditions of this Mortgage and an event permitting Agent or any Lender to accelerate all indebtedness secured hereby, if, without Agent's prior written consent in each instance, which consent may be granted, withheld or conditionally granted in Agent's sole discretion: (a) there is any sale, conveyance, transfer or encumbrance of, or lien imposed upon, all or any portion of the Mortgaged Property; or (b) there is any transfer or assignment of, or grant of any security interest in, any of the direct or indirect ownership interests in Borrower; or (c) there is a failure to comply with the provisions of, or there is a default under, any of the Permitted Title Exceptions unless cured within any applicable grace period provided for in the applicable Permitted Title Exception.
11. Agent's and Lenders' Rights. If Borrower shall neglect or refuse: (a) to maintain and keep in good repair the Mortgaged Property or any part thereof as required by this Mortgage or the Loan Agreement, or (b) to maintain and pay the premiums for insurance which may be required by this Mortgage or the Loan Agreement, or (c) to pay and discharge all taxes of whatsoever nature, assessments and charges of every nature as required by this Mortgage or the Loan Agreement, or (d) to pay the sums required to be paid by this Mortgage or the Loan Agreement, or (e) to satisfy any other terms or conditions of this Mortgage, or any instrument secured hereby; Agent may, at its election in each instance, but without any obligation whatsoever to do so, upon thirty (30) days' prior written notice (except in the case of (i) an emergency where there is danger to person or property, or (ii) required insurance coverage would lapse, or (iii) an Event of Default exists, in each of which events no notice shall be required), cause such repairs or replacements to be made, obtain such insurance or pay said taxes, assessments, charges, and sums, incur and pay reasonable amounts in protecting its rights hereunder and the security hereby granted, pay any balance due under any conditional agreement of sale (or lease) of any property included as a part of the Mortgaged Property, and pay any amounts as Agent deems reasonably necessary or appropriate to satisfy any term or condition of this Mortgage, which Borrower shall have failed to satisfy, or to remedy any breach of such term or condition, and any amounts or expenses so paid or incurred shall be due and payable by Borrower to Agent and Lenders within thirty (30) days of Borrower's receipt of a written demand therefor together with interest thereon from the date following the aforesaid 30-day period at the Default Rate (as defined in the Note) and until paid, and shall be secured hereby equally and ratably, and the same may be collected as part of said principal debt in any suit hereon or upon the Note. No payment by Agent or Lenders

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shall relieve Borrower from any default hereunder or impair any right or remedy of Agent or Lenders consequent thereon.

12. Tax Reserve and Insurance Reserve. Borrower shall upon the request of Agent following and during the continuance of an Event of Default, pay to Agent on dates upon which installments of interest are payable under the Note or the Loan Agreement, such amounts as Agent from time to time estimates as necessary to create and maintain a reserve fund from which to pay before the same become delinquent: (a) all taxes, assessments, liens and charges on or against the Mortgaged Property, and (b) all premiums for insurance policies which are required by this Mortgage. Such payments, if so requested, shall be invested in a non-interest bearing account which shall be held by Agent as Cash Collateral. In the event of any Event of Default under the Loan Agreement or under the terms of this Mortgage, any part or all of such reserve fund may be applied, at the option of Agent, to cure any such Event of Default or to any part of the indebtedness hereby secured.
13. Certain Expenses. If any action or proceeding is commenced, including, without limitation, an action to foreclose this Mortgage or to collect the debt hereby secured, to which action or proceeding Agent or any Lender is made a party by reason of the execution of this Mortgage, or by reason of any obligation which it secures, or by reason of entry or any other action under this Mortgage, or if in Agent's judgment it becomes necessary in connection with legal proceedings or otherwise to defend or uphold this Mortgage or any act taken to defend or uphold this Mortgage or any act taken under this Mortgage, all sums reasonably paid or incurred by Agent or any Lender for the expense of any litigation or otherwise, in connection with any rights created by this Mortgage or any other Loan Document, shall be paid by Borrower, or may at the option of Agent, if not so paid, be added to the debt secured hereby and shall be secured hereby equally and ratably and shall bear interest until paid at the Default Rate if Borrower fails to pay such amounts within thirty (30) days of written demand therefor.
14. Regarding Leases. Except as otherwise provided in the Loan Agreement, Borrower shall not enter into any Leases and shall not modify or amend any Leases without Agent's prior written consent in each instance. As to each permitted Lease, Borrower will perform every material obligation of the lessor and, to the extent commercially reasonable, will enforce every material obligation of the lessee in the Leases and, except as otherwise provided in the Loan Agreement, Borrower will not: (a) cancel any Lease, nor terminate or accept a surrender thereof, or reduce the rent payable thereunder or modify or amend any such Lease except as may be set forth in any Lease; (b) accept any prepayment of rent thereunder (except any rent which may be required to be prepaid by the terms of any Lease); or (c) enter into any new Leases, without first obtaining on each occasion the prior written consent of Agent.
15. Declaration of Subordination. At the option of Agent, which may be exercised at any time or from time to time, by written notice to Borrower and to any applicable tenant, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to the Insurance Proceeds or Awards), to any and all leases of all or any part of the Mortgaged Property upon the execution by Agent and recording or



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filing thereof, at any time hereafter in the appropriate official records of the county wherein the Mortgaged Property are situated of a unilateral declaration to that effect.

16. Further Assignment by Borrower.

(a) As further security for the repayment of the Note, and any amounts due pursuant to this Mortgage, Borrower does hereby sell, assign and transfer to Agent on behalf of Lenders all rents, leases, issues, deposits and profits now due and which may hereinafter become due under or by reason of any lease or any letting of, or any agreement for the use, sale or occupancy of the Mortgaged Property or any portion thereof (whether written or verbal), which may have been heretofore or may hereafter be made or agreed to or which may be made or agreed to by Agent under the powers herein granted including without limitation sale contracts, leases, escrow and other agreements, it being Borrower's intention hereby to establish an absolute transfer and assignment of all such leases, contracts, escrows and agreements pertaining thereto (such leases, contracts, escrows and agreements being collectively referred to hereinbelow as "**agreements**" and any such individual lease, contract, escrow or other agreement being referred to hereinbelow as an "**agreement**"), and all the avails thereof, to Agent on behalf of Lenders.

Following the occurrence and during the continuance of an Event of Default, Borrower shall hereby irrevocably appoint Agent as its true and lawful attorney in its name and stead (with or without taking possession of the Mortgaged Property) to rent, lease, let, or sell all or any portion of the Mortgaged Property to any party or parties at such price and upon such term as Agent in its sole and absolute discretion may determine, to exercise any and all rights including rights of first refusal and options of any Borrower to purchase and otherwise acquire title to all or any part of the Mortgaged Property, and to collect all of such rents, issues, deposits, profits and avails now due or that may hereafter become due under any and all of such agreements or other tenancies now or hereafter existing on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Agent would have upon taking possession of the Mortgaged Property pursuant to the provisions set forth hereinbelow.

This assignment confers upon Agent a power coupled with an interest and it cannot be revoked by Borrower.

Notwithstanding anything to the contrary contained herein, unless and until the occurrence and continuance of an Event of Default, Borrower is hereby given a license to manage and operate the Mortgaged Property and collect all rents under and pursuant to any agreement.

(b) Borrower does further specifically authorize each and every present and future lessee or purchaser of all or any portion of the Mortgaged Property to pay all unpaid rentals or deposits agreed upon in any lease or agreement pertaining to the Mortgaged Property to Agent upon receipt of demand from Agent, following the occurrence and during the continuance of an Event of Default, to pay the same without

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any further notice or authorization by Borrower, and Borrower hereby waives any rights or claims it may have against any lessee by reason of such payments to Agent.

(c) Nothing herein contained shall be construed as making or constituting Agent a "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by Agent pursuant to the provisions set forth herein. In the exercise of the powers herein granted Agent, no liability shall be asserted or enforced against Agent, except as expressly set forth in the Assignment of Leases and Rents, all such liability being expressly waived and released by Borrower.

(d) Without limitation of the provisions of Section 17 of this Mortgage or of the absolute nature of the assignment of the rents, leases, issues, deposits and profits as set forth hereinabove, Borrower and Agent agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Borrower acquired before the commencement of a case in bankruptcy and to all amounts paid as rents, leases, issues, deposits and profits, and (c) such security interest shall extend to all rents, leases, issues, deposits and profits acquired by the estate after the commencement of any case in bankruptcy. Without limitation of the provisions of Section 17 of this Mortgage or of the absolute nature of the assignment of the rents, leases, issues, deposits and profits hereunder, to the extent Borrower (or Borrower's bankruptcy estate) shall be deemed to hold any interest in any such rents, leases, issues, deposits and profits after the commencement of a voluntary or involuntary bankruptcy case, Borrower hereby acknowledges and agrees that all such rents, leases, issues, deposits and profits are and shall be deemed to be "cash collateral" under Section 363 of the Bankruptcy Code. Borrower may not use the cash collateral without the consent of Agent and/or an order of any bankruptcy court pursuant to 11 U.S.C. 363(c)(2), and Borrower hereby waives any right it may have under the Bankruptcy Code to assert that such rents, leases, issues, deposits and profits do not constitute cash collateral. No consent by Agent to the use of cash collateral by Borrower shall be deemed to constitute Agent's approval, as the case may be, of the purpose for which such cash collateral was expended.

(e) This Mortgage is intended to constitute a notice of assignment of rents or profits under 765 ILCS 5/31.5 (1992, as amended) of the laws of the State of Illinois.

(f) In the event of any conflict between the provisions of this Section 16 and the provisions of the Assignment of Leases and Rents, or any of the other Loan Documents, Agent shall have the right, from time to time, to determine which provision shall govern.

## 17. Security Agreement.

17.1 This Mortgage shall be deemed a "Security Agreement" as defined in the Uniform Commercial Code of the State of Illinois, as amended from time to time (the "UCC"), and creates a security interest in favor of Agent on behalf of Lenders in all property including, without limitation, (a) all sums at any time on deposit for the benefit of Borrower or held by Agent (whether deposited by or on behalf of Borrower or anyone

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else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) the Personal Property, and that a security interest in and to the Personal Property is hereby granted to Agent on behalf of Lenders, and the Personal Property and all of Borrower's right, title and interest therein are hereby assigned to Agent on behalf of Lenders, all to secure the Obligations.

17.2 All of the provisions contained in this Mortgage pertain and apply to the Personal Property as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Section 17 shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Borrower (being the Debtor as that term is used in the UCC) is and will be the true and lawful owner of the Personal Property, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Agent and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(b) The Personal Property is to be used by Borrower solely for business purposes.

(c) The Personal Property will be kept at the Mortgaged Property and will not be removed therefrom without the consent of Agent (being the Secured Party as that term is used in the UCC). The Personal Property may be affixed to the Real Estate but will not be affixed to any other real estate.

(d) The only persons having any interest in the Mortgaged Property are Borrower, Agent, Lenders and holders of interests, if any, expressly permitted hereby.

(e) No financing statement (other than financing statements showing Agent as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto; and Borrower, at its own cost and expense, and promptly furnish to Agent such further information and will execute and deliver to Agent such financing statements and other documents in form reasonably satisfactory to Agent and will do all such acts as Agent may reasonably request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Personal Property as security for the Obligations, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Agent and Lenders and other party, and liens and encumbrances (if any) expressly permitted hereby or any other Loan Document; and Borrower will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Agent to be desirable. Borrower hereby irrevocably authorizes Agent at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Personal Property as all assets of Borrower (or words of similar effect), regardless of whether any particular asset comprised in the Personal Property falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or

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amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower, and in the case of a financing statement filed as a fixture filing or indicating Personal Property as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Personal Property relates. Borrower agrees to furnish any such information to Agent promptly upon request. Borrower further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Agent with respect to the Personal Property in any jurisdiction prior to the date of this Mortgage.

17.3 Borrower and Agent agree that the filing of such a financing statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing the intention of the parties hereto that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Agent, or (c) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (i) the rights in or the proceeds of any fire or hazard insurance policy, or (ii) any award in eminent domain proceedings for a taking or for loss of value, or (iii) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Mortgaged Property whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Agent and Lenders under this Mortgage or impugning the priority of Agent's and Lenders' lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Agent and Lenders in the event any court or judge shall at any time hold with respect to clauses (i), (ii) and (iii) that notice of Agent's and Lenders' priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the UCC records.

17.4 Upon an Event of Default, Agent and Lenders shall have the remedies of a secured party under the UCC, including, without limitation, the right to take immediate and exclusive possession of the Personal Property, or any part thereof, and for that purpose, so far as Borrower can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Personal Property or any part thereof may be situated and remove the same therefrom (provided that if the Personal Property is affixed to real estate, such removal shall be subject to the conditions stated in the UCC); and Agent shall be entitled to hold, maintain, preserve and prepare the Personal Property for sale, until disposed of, or may propose to retain the Personal Property subject to Borrower's right of redemption



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in satisfaction of Borrower's obligations, as provided in the UCC. Agent may render the Personal Property unusable without removal and may dispose of the Personal Property on the Real Estate. Agent may require Borrower to assemble the Personal Property and make it available to Agent for its possession at a place to be designated by Agent which is reasonably convenient to both parties. Agent will give Borrower at least ten (10) days notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Borrower hereinafter set forth at least thirty (30) days before the time of the sale or disposition. Agent may buy at any public sale. Agent may buy at private sale if the Personal Property is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Real Estate. If Agent so elects, the Mortgaged Property may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Agent and Lenders, shall be applied against the Obligations in such order or manner as Agent shall reasonably select. Agent will account to Borrower for any surplus realized on such disposition.

17.5 Borrower shall execute, acknowledge and deliver to Agent, within ten (10) days after request by Agent, any and all security agreements, financing statements and any other similar security instruments reasonably required by Agent, in form and of content reasonably satisfactory to Agent, covering all property of any kind whatsoever owned by Borrower that, in the reasonable opinion of Agent, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the state in which the Mortgaged Property are located. Borrower shall further execute, acknowledge and deliver any financing statement, affidavit, continuation statement, certificate or other document as Agent may reasonably request in order to perfect, preserve, maintain, continue and extend such security instruments. Borrower further agrees to pay to Agent all fees, costs and expenses (including, without limitation, all reasonable attorneys' fees and expenses and court costs) incurred by Agent in connection with the preparation, execution, recording, filing and refiling of any such document.

17.6 The terms and provisions contained in this Section 17, unless the context otherwise requires, shall have the meanings and be construed as provided in the UCC.

18. Right to Deal with Successor. Agent may, without notice to any person, deal with any successor in interest of Borrower herein regarding this Mortgage and the debt hereby secured in all respects as it might deal with Borrower herein, without in any way affecting the liability hereunder or upon the debt hereby secured of any predecessor in interest of the person so dealt with; and no sale of the Mortgaged Property, nor any forbearance on the part of Agent, nor any extension by Agent of the time for payment of the debt hereby secured, shall operate to release, discharge, modify, change or affect the

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original liability of any predecessor in interest of the equity owner at the time of such sale, forbearance or extension.

19. Events of Default. It shall be an "**Event of Default**" under this Mortgage when and if (a) an Event of Default occurs under the terms of the Loan Agreement; or (b) a default occurs in Borrower's observance or performance of any covenant, requirement or condition in this Mortgage, and such default is not cured within thirty (30) days after notice to Borrower, or if such default cannot reasonably be cured within such 30-day period, Borrower shall have an additional ninety (90) days to effectuate such cure provided it commences a cure within the aforesaid 30-day period.
20. Acceleration of Debt. If there is an Event of Default under the Note, this Mortgage, the Loan Agreement or any other Loan Document or if an event occurs which pursuant to the Note, this Mortgage, the Loan Agreement or any other Loan Document entitles Agent to accelerate the Loan, then, at the option of Agent, the entire indebtedness hereby secured shall become immediately due and payable without further notice.
21. Additional Rights of Agent.
  - 21.1 Enter and Perform. Borrower authorizes Agent, in addition to all other rights granted by law or by this Mortgage, or by any of the other Loan Documents, upon the occurrence and during the continuance of an Event of Default under the Note, the Loan Agreement, or any other Loan Documents to enter and take possession of all or any part of the Mortgaged Property and to use, lease, operate, manage and control the same and conduct the business thereof, and perform lessor's obligations under any Lease or Borrower's obligations under any other agreement affecting all or any part of the Mortgaged Property, and collect the rents, profits and all receipts of every nature therefrom as Agent shall deem best.
  - 21.2 Repairs and Improvements. Upon every such entry, Agent may, from time to time and at the expense of Borrower, make all such repairs, replacements, alterations, additions and improvements to the Mortgaged Property as Agent may deem proper, but in no event shall Agent be obligated to do so, and may, but shall not be obligated to, exercise all rights and powers of Borrower, either in the name of Borrower, or otherwise as Agent shall determine. Without limitation express or implied upon the generality of the foregoing, Agent shall have the right to do all things necessary or desirable in order to keep in full force and effect all applicable licenses, permits and authorizations and any amendments thereto.
  - 21.3 Pay Costs and Expenses. Upon such entry, Agent may, at its option, but without any obligation to do so, do any one or more of the following: (a) pay and incur all expenses necessary or deemed by it appropriate for the holding and operating of the Mortgaged Property, the conduct of any business thereon, the maintenance, repair, replacement, alteration, addition and improvement of the Mortgaged Property, including without limitation payments of taxes, assessments, insurance, wages of employees connected with the Mortgaged Property or any business conducted thereon, (b) pay and incur all charges and reasonable compensation for services of Agent, its

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attorneys and accountants and all other persons engaged or employed in connection with the Mortgaged Property or of any business conducted thereon and, (c) may, but shall not be obligated to, make payments or incur liability with respect to obligations arising prior to the date it takes possession.

21.4 Add to Secured Indebtedness. All obligations so paid or incurred by Agent in Section 21.3 shall be reimbursed or paid for by Borrower within thirty (30) days of written demand therefor and prior to the repayment thereof shall be added to the debt secured hereby and shall bear interest at the Default Rate if not paid within the aforesaid 30-day period, and shall be secured hereby equally and ratably. Agent may also reimburse itself therefor from the income or receipts of the Mortgaged Property or any business conducted thereon, or from the sale of all or any portion of the Mortgaged Property. Agent may also apply toward any of the Obligations, any tax or insurance reserve account, deposit or any sum credited or due from Agent to Borrower without first enforcing any other rights of Agent against Borrower or the against any endorser or guarantor of any of the Obligations or against the Mortgaged Property.

21.5 Attorney-In-Fact. From and after the occurrence and during the continuance of an Event of Default, Borrower shall irrevocably constitutes and appoints Agent, or any agent designated by Agent, for so long as this Mortgage remains undischarged of record, as attorney-in-fact of Borrower to execute, acknowledge, seal and deliver all instruments, agreements, deeds, certificates and other documents of every nature and description in order to carry out or implement the exercise of Agent's rights hereunder and under the other Loan Documents.

22. Setoff. The terms and provisions of Section 13 of the Loan Agreement are incorporated herein by reference.
23. Contest of Laws. Subject always to the additional terms and conditions set forth in Section 10.1 of the Loan Agreement, Borrower shall have the right to contest by appropriate legal proceedings, but without cost or expense to Agent or any Lender, the validity of any Legal Requirements affecting the Mortgaged Property subject to the provisions of the Loan Agreement and the Environmental Indemnity dealing with the right to contest, but only if compliance may be so contested without: (a) the imposition of any charge, lien or liability against the Mortgaged Property, (b) the loss or suspension of any license, right or permit with respect to the Mortgaged Property, and (c) causing any Default to exist under the Loan Agreement or any other Loan Document. Subject to the foregoing, Borrower may postpone compliance therewith until the final determination of any such proceedings, provided (x) it shall be prosecuted with due diligence and dispatch, and if any lien or charge is incurred, Borrower may, nevertheless, make the contest and delay compliant, and (y) that the same is and may be done without causing any Default to exist under the Loan Agreement or any of the other Loan Documents.
24. Notices. Any demand, notice or request by either party to the other shall be given in the manner provided therefor in the Loan Agreement.

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25. Agent/Lender Not Obligated; Cumulative Rights. Nothing in this instrument shall be construed as obligating Agent or any Lender to take any action or incur any liability with respect to the Mortgaged Property or any business conducted thereon, and all options given to Agent are for its benefit and shall and may be exercised in such order and in such combination as Agent in its sole discretion may from time to time decide.
26. Severability. In case any one or more of the provisions of this Mortgage, the Note, the Assignment of Leases and Rents, the Loan Agreement, any of the other Loan Documents, or any other agreement now or hereafter executed in connection with any one or more of the foregoing are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. Each of the provisions of every such agreement, document or instrument shall be enforceable by Agent to the fullest extent now or hereafter not prohibited by applicable law.
27. No Waiver. No consent or waiver, express or implied, by Agent to or of any Default by Borrower shall be construed as a consent or waiver to or of any other Default at the same time or upon any future occasion.
28. Foreclosure. When all or any part of the Obligations shall become due, whether by acceleration or otherwise, due to an uncured Event of Default, Agent shall have the right to foreclose the lien hereof for such Obligations or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes) (as may be amended from time to time, the "**Act**").
29. Compliance with the Illinois Mortgage Foreclosure Law.
- (a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the Act, the provision of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.
- (b) Borrower, Agent and Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Agent and Lenders shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.
- (c) If any provision of this Mortgage shall grant to Agent and Lenders any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Agent and Lenders under the Act in the absence of said provision, Agent and Lenders shall be vested with the rights granted in the Act to the full extent permitted by law.
- (d) All advances, disbursements and expenditures made or incurred by Agent and/or Lenders after the occurrence and during the continuance of an Event of Default, entitling Agent and Lenders to pursue such remedy, before and during a foreclosure, and



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before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage, the other Loan Documents or by the Act (collectively "**Protective Advances**"), shall have the benefit of all applicable provisions of the Act, including, without limitation, those provisions of the Act herein below referred to:

(i) all advances by Agent and/or Lenders in accordance with the terms of this Mortgage or the other Loan Documents to: (A) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(ii) payments by Agent and/or Lenders of (A) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien or encumbrance); (B) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(iii) advances by Agent and/or Lenders in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien);

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d) and 15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against Agent and/or Lenders for the enforcement of this Mortgage or arising from the interest of Agent and Lenders hereunder; or (C) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Mortgaged Property;

(v) Agent's and any applicable Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection 15-1508(b)(1) of the Act;

(vi) expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the Act;

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(vii) expenses incurred and expenditures made by Agent and/or Lenders for any one or more of the following: (A) premiums for casualty and liability insurance paid by Agent whether or not Agent or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property imposed by Subsection 15-1704(c)(1) of the Act; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments deemed by Agent to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; and (D) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become due and payable within thirty (30) days of written demand therefor and with interest thereon from the date following the aforesaid 30-day period until paid at the Default Rate.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (1) any determination of the amount of indebtedness secured by this Mortgage at any time;
- (2) the indebtedness found due and owing to Agent and Lenders in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (3) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections 5-1603(d)(2) and (e) of the Act;
- (4) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;
- (5) application of income in the hands of any receiver or mortgagee in possession; and

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(6) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the Act.

(e) In addition to any provision of this Mortgage authorizing Agent, from and after the occurrence and during the continuance of an Event of Default entitling Agent to pursue such remedy, to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Agent shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Agent, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the Act.

30. Appointment of Receiver. Upon, or at any time prior or after, the filing of any complaint to foreclose the lien of this Mortgage or instituting any other foreclosure of the liens and security interests provided for in this Mortgage or any other legal proceedings under this Mortgage from and after the occurrence and during the continuance of an Event of Default entitling Agent to pursue such remedy, Agent may, at Agent's sole option, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Mortgaged Property, as a matter of strict right, but with reasonable prior notice to Borrower, and Borrower does hereby irrevocably consent to such appointment and agrees not to oppose any application therefore by Agent, but nothing herein is construed to deprive Agent of any other right, remedy or privilege Agent may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Agent to receive payment of all of the rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. Such appointment may be made either before or after sale; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Agent hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to take possession, control and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where Borrower has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Borrower or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that maybe necessary or useful in such cases for the protection, possession, control management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing leases and make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to leases to extend or renew terms to

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expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Mortgaged Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

31. Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the Mortgaged Property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption and reinstatement under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Agent, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower waives and shall not make any claim or take any benefit or advantage of any statute, law, stay, moratorium, regulation or judicial decision providing for homestead rights or exemptions. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act.
32. Use of Proceeds. Borrower represents and warrants to Agent and Lenders (a) that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(c) (or any substitute, amended or replacement statute), and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(c), and (b) that the Loan evidenced by the Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 *et seq.*



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33. Fixture Financing Statement. From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the UCC with respect to the Mortgaged Property and the goods described herein, which goods are or are to become fixtures related to the Mortgaged Property. The addresses of Borrower (Debtor) and Agent (Secured Party) are set forth below. This Mortgage is to be filed for recording with the recorder of deeds of the county or the counties where the Mortgaged Property is located. For this purpose, the following information is set forth:

- (a) Name and Address of Debtor:

230 West Monroe PT, LLC  
 c/o GE Asset Management  
 3001 Summer Street  
 Stamford, Connecticut 06904

- (b) Name and Address of Secured Party:

Anglo Irish Bank Corporation plc  
 71 South Wacker Drive, Suite 1840  
 Chicago, Illinois 60606

- (c) This document covers goods which are or are to become fixtures.
- (d) Debtor is the record owner of the Premises.
- (e) Debtor's chief executive office is located in the State of Connecticut.
- (f) Debtor's state of formation is Delaware.
- (g) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.
- (h) Debtor's Organizational Identification Number is 3463186.
- (i) Debtor agrees that:

(i) Where Mortgaged Property is in possession of a third party, Borrower will join with Agent in notifying the third party of Agent's interest and obtaining an acknowledgment from the third party that it is holding the Mortgaged Property for the benefit of Agent and Lenders;

(ii) From and after the occurrence and during the continuance of an Event of Default entitling Agent to exercise such remedy, Borrower will cooperate with Agent in obtaining control with respect to the Mortgaged Property consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

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(iii) Until the Obligations are paid in full, Borrower will not change the state where it is located or change its company name without giving Agent at least thirty (30) days prior written notice in each instance.

34. Interest Laws. It being the intention of Agent, Lenders and Borrower to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("**Excess Interest**") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Section 34 shall govern and control; (b) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Agent may have received hereunder shall, at the option of Agent, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the interest rate then in effect under the Note shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State of Illinois, and the Note, this Mortgage and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the interest rate; and (e) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall have any action against Agent or any Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.
35. Other Amounts Secured; Maximum Indebtedness. Borrower acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Agent or Lenders in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed ONE HUNDRED SEVENTY SIX MILLION FIFTY SIX THOUSAND DOLLARS (\$176,056,000.00) It is agreed that any future advances made by Agent and/or Lenders for the benefit of Borrower from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Agent and /or Lenders, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the indebtedness secured hereby over all

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subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

36. Adjustable Mortgage Loan Provision. The Note which this Mortgage secures is an adjustable note on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Note.
37. Deed in Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.
38. Collateral Protection Act. Unless Borrower provides Agent with evidence of the insurance required by and in accordance with the terms set forth in the Loan Agreement, Agent may purchase insurance at Borrower's expense to protect Agent's and Lenders' interests in the Mortgaged Property or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Borrower's interests. The coverage Agent purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Mortgaged Property or any other collateral for the indebtedness secured hereby. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained insurance as required by the Loan Agreement. If Agent purchases insurance for the Mortgaged Property or any other collateral for the indebtedness secured hereby, Borrower shall be responsible for the costs of that insurance, including interest in any other charges that Agent may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et seq.*, Borrower hereby acknowledges Agent's right pursuant to this Section 38 to obtain collateral protection insurance.
39. Forbidden Entity. Borrower hereby certifies that it is not a "forbidden entity" as that term is defined in Section 22.6 of the Illinois Deposit of State Moneys Act, 15 ILCS 520/22.6; Public Act 094-0079.
40. Rights of Tenants. From and after the occurrence and during the continuance of an Event of Default entitling Agent to exercise such remedy, Agent shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Agent. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the Obligations, or any part thereof or any deficiency remaining

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unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

41. Certification. The undersigned hereby certifies that Borrower is a duly organized, validly existing organized and in good standing under the laws of the State of Delaware and is duly qualified to transact business in the State of Illinois, and that the execution and delivery hereof and of all of the other Loan Documents by Borrower has been duly authorized by a resolution of its manager which is in full force and effect.
42. Headings. Headings and captions in this Mortgage are for convenience and reference only and the words and phrases contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of any of the provisions hereof.
43. Severability. If any provision of this Mortgage or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.
44. Time of Essence. Time shall be of the essence of each and every provision of the Loan Agreement, the Note, this Mortgage and each of the other Loan Documents.
45. **JURY WAIVER. BORROWER, AGENT AND EACH LENDER MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS MORTGAGE, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF AGENT OR ANY LENDER RELATING TO THE ADMINISTRATION OF THE LOAN OR ENFORCEMENT OF THE LOAN DOCUMENTS, AND AGREE THAT NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR BORROWER, AGENT, AND EACH LENDER TO ENTER INTO THE TRANSACTIONS CONTEMPLATED HEREBY. THIS**



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SECTION SHALL BE DEEMED A COVENANT AND ENFORCEABLE INDEPENDENTLY OF ALL OTHER PROVISIONS OF THIS MORTGAGE. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY BORROWER, AND BORROWER ACKNOWLEDGES THAT NEITHER AGENT NOR ANY LENDER NOR ANY PERSON ACTING ON BEHALF OF AGENT OR ANY LENDER HAS MADE ANY REPRESENTATIONS TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN CONNECTION WITH THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

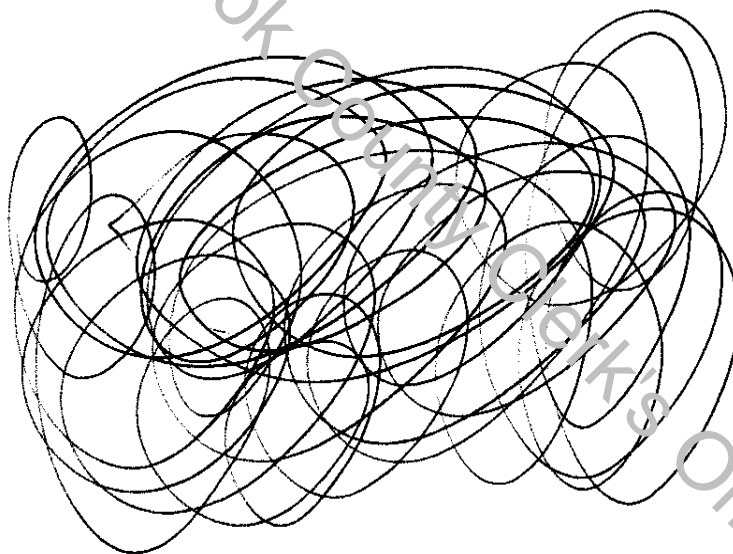
46. Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Land.
47. Rights and Remedies Cumulative. All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.
48. Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein or of any breach or default by any other interested party referred to herein regarding the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.
49. Governing Law; Litigation. The place of the location of the Mortgaged Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State. To the extent that this Mortgage may operate as a security agreement under the UCC, Agent and Lenders shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER, AGENT AND EACH OF THE LENDERS HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER, AGENT AND EACH OF THE LENDERS HEREBY EXPRESSLY WAIVE ANY RIGHT EACH MAY HAVE TO**

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**ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 49. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER, AGENT AND EACH OF THE LENDERS HEREBY WAIVE PERSONAL SERVICE OF PROCESS, AND AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO EACH SUCH PARTY AT THE ADDRESS STATED IN THIS MORTGAGE AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.**

50. Release of Mortgage. Agent agrees to file a release and/or termination of this Mortgage in the County records where it is filed upon satisfaction of the Obligations.

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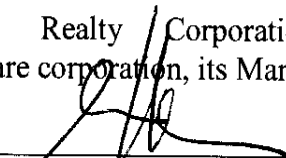
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IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly executed and delivered as a sealed instrument as of the date first written above.

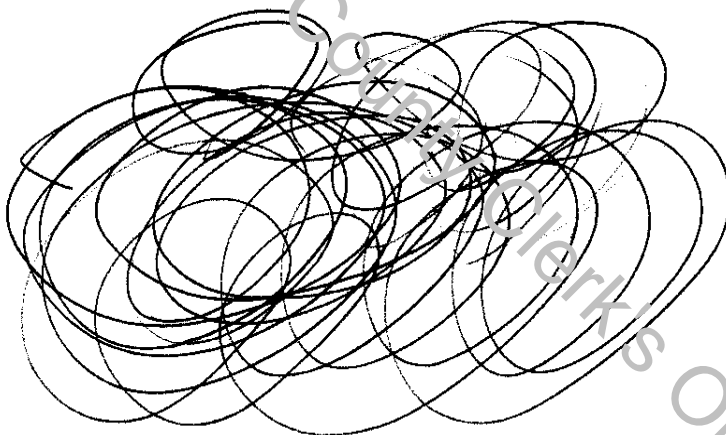
**BORROWER:**

**230 WEST MONROE PT, LLC**, a Delaware limited liability company

By: NACA Realty Corporation, a Delaware corporation, its Manager

By:   
Name: Gerald Karr  
Title: Executive Vice President

Property of Cook County Clerk's Office

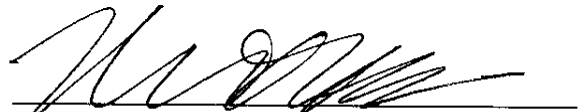


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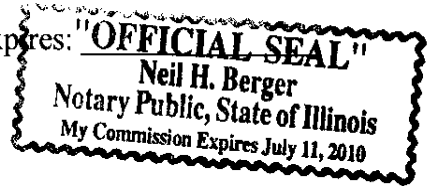
STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Gerald Karr, the Exec. VP of NACA Realty Corporation, a Delaware corporation, the Manager of 230 WEST MONROE PT, LLC (above named Borrower), a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Exec. VP, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20<sup>th</sup> day of December, 2007.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:





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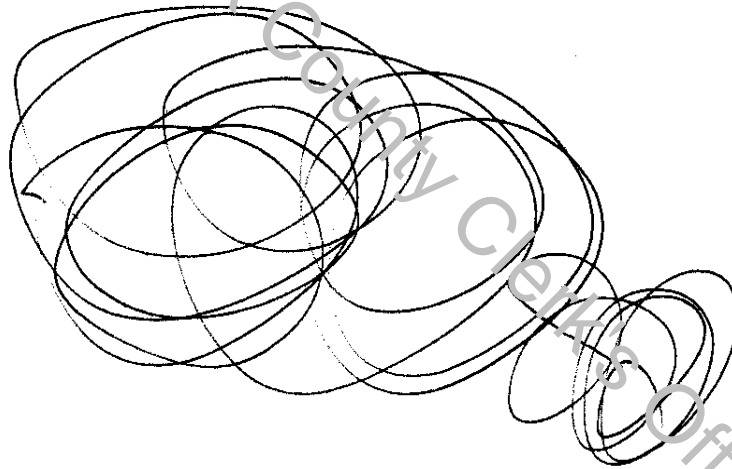
## EXHIBIT A

### Legal Description

ALL OF LOT 7 AND ALL OF LOT 8 (EXCEPT THE WEST 40.00 FEET THEREOF TAKEN FOR WIDENING OF FRANKLIN STREET) IN BLOCK 94 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING FROM SAID PREMISES THE NORTH 9.00 FEET THEREOF TAKEN FOR ALLEY), IN COOK COUNTY, ILLINOIS.

PINS: 17-16-202-013  
17-16-202-014

Property Address: 240 West Monroe Street, Chicago, Illinois



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## EXHIBIT B PERMITTED TITLE EXCEPTIONS

Title exceptions referenced in First American Title Insurance Company Policy Number NCS-328173-CHI2 as of the date of this Mortgage.

Property of Clerk's Office

