

# UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY AND  
RETURN RECORDED DOCUMENT TO:

Mark C. Vaughan  
WILDMAN, HARROLD, ALLEN & DIXON LLP  
225 West Wacker Drive  
Suite 2800  
Chicago, Illinois 60606-1229



Doc#: 0806603037 Fee: \$60.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/06/2008 12:32 PM Pg: 1 of 13

## DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made and entered into this 4th day of March, 2008, by and between ILLINOIS FRANKLIN ASSOCIATES, LLC, an Illinois limited liability company ("IFA"), and 212-232 WEST ILLINOIS STREET L.L.C., an Illinois limited liability company ("West Illinois").

### RECITALS

A. IFA is the owner of certain real property identified as the "Redevelopment Parcel" on the Site Plan attached hereto as Exhibit A and incorporated herein by reference and legally described on Exhibit B attached hereto and incorporated herein by reference.

B. West Illinois is the owner of certain real property hereinafter referred to as the "Restaurant Parcel" and legally described on Exhibit C attached hereto and incorporated herein by reference.

C. IFA and West Illinois desire to establish certain easements, covenants, conditions and restrictions with respect to parking, a dumpster, and restaurant activities on the Redevelopment Parcel on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants and agreements herein contained, Declarant declares as follows:

### AGREEMENTS

1. **Definitions.** For purposes hereof:

(a) The term "Owner" or "Owners" shall mean IFA and West Illinois and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the Redevelopment Parcel and/or the Restaurant Parcel, whether by sale,

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assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

(b) The term "Parcel" or "Parcels" shall mean the Redevelopment Parcel and the Restaurant Parcel, and any future subdivisions thereof.

(c) The term "Permittees" shall mean the occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel and/or (ii) such occupant(s).

(d) The term "Site Plan" shall mean that site plan attached hereto as Exhibit A and by reference made a part hereof. Except as may be otherwise provided in this Declaration, the Site Plan is for identification purposes only.

2. **Parking Easement.** IFA hereby grants and conveys to West Illinois for its use and for the use of its Permittees, an exclusive easement for the parking of vehicles (the "Parking Easement") on the outdoor parking area currently used by Gene & Giorgetti's restaurant at the northeast corner of Franklin Street and Illinois Street, Chicago, Illinois and depicted on the Site Plan (the "Parking Area"). In no event shall West Illinois have the right to alter the location of ingress and egress to the Parking Area without the prior written approval of IFA, which approval may be withheld in IFA's sole and absolute discretion. The Parking Easement shall terminate on the date that IFA's construction of a multi-story residential apartment building and/or other improvements on the Redevelopment Parcel prohibits the use of the Parking Area.

3. **Dumpster Easement.** IFA hereby grants and conveys to West Illinois for its use and for the use of its Permittees, a non-exclusive easement to maintain and access a trash dumpster of up to five feet by eight feet (the "Dumpster Easement") in the vicinity of the northwest corner of the Property at a location mutually acceptable to the Owners from time to time (the "Dumpster Area"). The Dumpster Easement shall terminate on the date that IFA conveys a trash area on the Redevelopment Parcel to West Illinois as contemplated in the Real Estate Sale Contract dated September 8, 2006, as amended, by and between IFA and West Illinois.

4. **Maintenance, Insurance and Taxes.**

(a) **Maintenance.** IFA shall maintain and repair the Parking Area and Dumpster Area. Such maintenance shall include (i) maintaining, repairing and resurfacing, when necessary, all paved surfaces within the Parking Area in a level, smooth and evenly covered condition, and (ii) removing all snow and sweeping both the Parking Area and Dumpster Area.

(b) **Insurance.** West Illinois shall also maintain or cause to be maintained in full force and effect at least the minimum insurance coverages set forth below:

- (i) Commercial General Liability Insurance covering the Parking Area and Dumpster Area with a combined single limit of liability of \$2,000,000.00 for bodily injury, personal injury and property damage, arising out of any one occurrence; each Owner shall be a "named insured" under such policy. It is the agreement of the

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Owners that the insurance maintained by West Illinois shall be primary insurance and not contributory with the insurance maintained by the Owners.

- (ii) Workers' compensation and employer's liability insurance:
  - A. Worker's compensation insurance as required by any applicable law or regulation.
  - B. Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.

(iii) Automobile Liability Insurance: Automobile liability insurance including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined.

(c) IFA shall pay all taxes, assessments or charges of any type levied or made by an governmental body or agency with respect to the Redevelopment Parcel; provided, however, nothing herein contained shall affect or alter the terms or provisions of any lease which provides for the payment of taxes and assessments by a Permittee.

**5. Indemnification.** West Illinois shall indemnify, defend and hold IFA harmless from and against all claims or demands, including any action or proceeding brought thereunder, and all costs, losses, liabilities and expenses of any kind (including reasonable attorneys' fees) relating to accidents, injuries, loss or damage of or to any person or property, or otherwise related to or arising from the use by West Illinois or its Permittees of the easements granted in this Declaration except for any matters caused by the gross negligence or willful misconduct of IFA. The indemnification of this Section 5 shall survive the termination of this Declaration.

**6. No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Redevelopment Parcel. No easements, except those expressly set forth herein, shall be implied by this Declaration.

**7. Restaurant Restriction.** IFA hereby covenants and agrees not to operate a restaurant on the Redevelopment Property that contains a black iron exhaust system. This restriction shall not prohibit IFA from operating a sandwich shop, coffee house, or any other restaurant or similar facility which does not operate a black iron exhaust system. The terms of this restriction shall terminate when Gene & Georgetti's restaurant or any successor restaurant thereto is no longer operated at the Gene & Georgetti's location on the Restaurant Parcel.

**8. Term.** Except as otherwise stated herein or unless this Declaration is modified, amended, canceled or terminated by the written consent of all Owners in accordance with

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Section 11(B) below, the covenants, conditions, restrictions and easements granted in this Declaration shall be permanent and perpetual. In the event that the easements, covenants, conditions and/or restrictions contained within this Declaration are terminated, each Owner hereby agrees to execute a release or termination of this Declaration upon written request of the other Owner.

## 9. Remedies and Enforcement.

(a) All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

(b) Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate as published from time to time in The Wall Street Journal, plus a percent not to exceed the maximum rate of interest allowed by law. Notwithstanding the foregoing, in the event of an emergency, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, as above described; provided, however, the reimbursement herein shall only apply to emergencies.

(c) Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien priority with respect thereto with the Cook County Recorder of Deeds, provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded with the Cook County Recorder of Deeds, prior to the date of recordation of said notice of lien priority, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien priority. All liens recorded subsequent to the recordation of the notice of lien priority described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien priority was recorded, or a judicial determination of non-liability of an alleged defaulting party, the party recording same shall record an appropriate release of such notice of lien priority and Assessment Lien.

(d) Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.



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(e) No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Lot made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Lot covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

## 10. Miscellaneous.

(a) Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

(b) Amendment. The Owners agree that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Parcels, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Cook County Recorder of Deeds.

(c) No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

(d) No Agency. Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

(e) Covenants to Run with Land. It is intended that each of the easements, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

(f) Severability. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of both Parcels by the same person or entity, at the time of this Declaration or in the future, shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

(g) Estoppel Certificates. At the request of any Owner, all other Owners shall, within 14 days after such request, deliver to such requesting Owner and its designees an estoppel certificate stating: (i) whether or not this Declaration has been modified or amended and, if so, identifying and describing any such modification or amendment, (ii) whether such Owner knows of any default under this Declaration on the part of another Owner (including the requesting

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party) bound hereby or has knowledge of any claim hereunder against another party and, if so, specifying the nature of said default or claim, (iii) whether or not approval or consent is required under this Declaration with respect to any acts specifically identified by the recipient of such estoppel certificate, and (iv) such other factual matters regarding this Declaration, the parties' performance or otherwise related to the parties' relationship hereunder as reasonably requested by an Owner.

(h) Notices. All notices, demands and requests (collectively the "notice") required or permitted to be given under this Declaration must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the party intended, (ii) delivered to the then current address of the party intended, or (iii) rejected at the then current address of the party intended, provided such notice was sent prepaid. The initial notice address for each Owner is set forth below its signature. Each Owner shall have the right to change the notice address upon written notice to the other Owner.

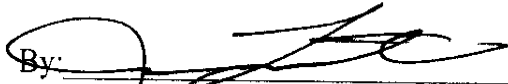
(i) Counterparts. This Declaration may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Declaration may be executed and notarized on separate pages and when attached to this Declaration shall constitute one complete document.

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IN WITNESS WHEREOF, the parties have executed this Declaration on the day and year first above-written.


**ILLINOIS FRANKLIN ASSOCIATES, LLC,**  
an Illinois limited liability company.

By:   
Name: JAMES LETCHFORD  
Its: MANAGER

Notice Address:

908 N. Halsted Street  
Chicago, Illinois 60622  
Attention: Fred Latsko  
Telecopier: (312) 642-9696

**212-232 WEST ILLINOIS STREET L.L.C.,**  
an Illinois limited liability company:

By:   
Name: ANTHONY A. DURPETTI  
Title: MANAGER

Notice Address:

500 N. Franklin Street  
Chicago, Illinois 60610

Property of Cook County Clerk's Office

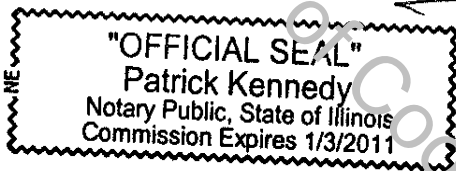
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STATE OF ILLINOIS        )  
  )        SS  
COUNTY OF COOK        )

I, Patrick Kennedy, a Notary Public, do hereby certify that Fred Latsko, personally known to me to be the Manager of Illinois Franklin Associates, LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument, pursuant to authority to act on behalf of and bind said limited liability company, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 4 day of March, 2008.

My commission expires:  
01.03.11



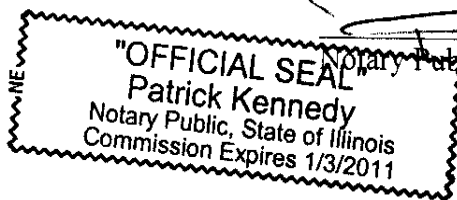
[Signature]  
Notary Public

STATE OF ILLINOIS        )  
  )        SS  
COUNTY OF COOK        )

I, Patrick Kennedy, a Notary Public, do hereby certify that Anthony Dabetti, personally known to me to be the Manager, of 212-232 West Illinois Street L.L.C. an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument, pursuant to authority to act on behalf of and bind said limited liability company, as his/her free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 4 day of March, 2008.

My commission expires:  
01.03.11



[Signature]  
Notary Public

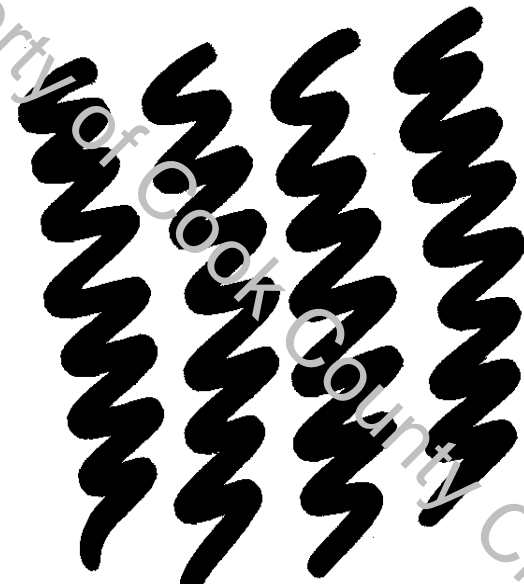


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## EXHIBIT A

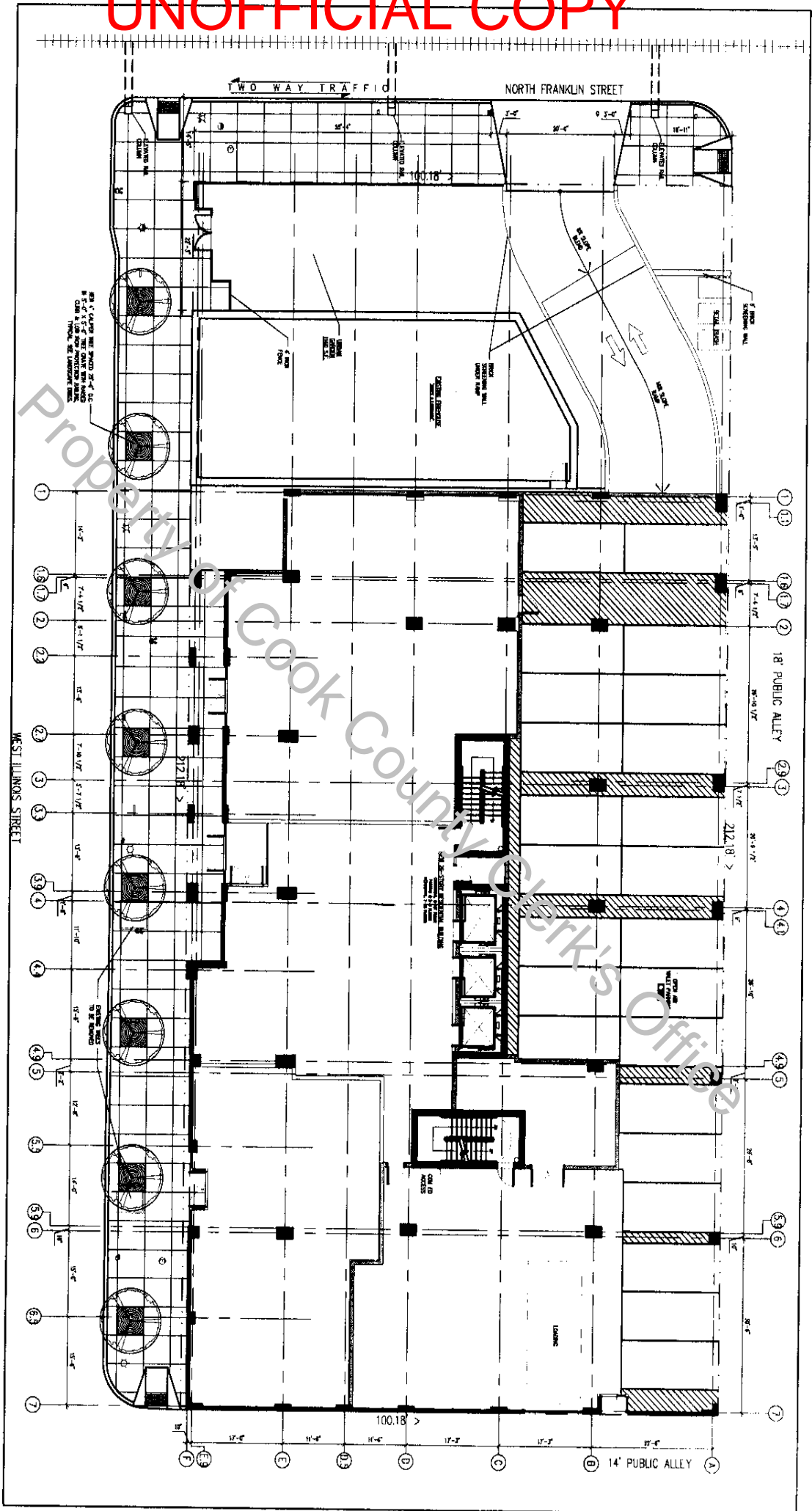
### SITE PLAN

Property of Cook County Clerk's Office

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FRANKLIN/ILLINOIS SITE PLAN



1/16" = 1'-0"

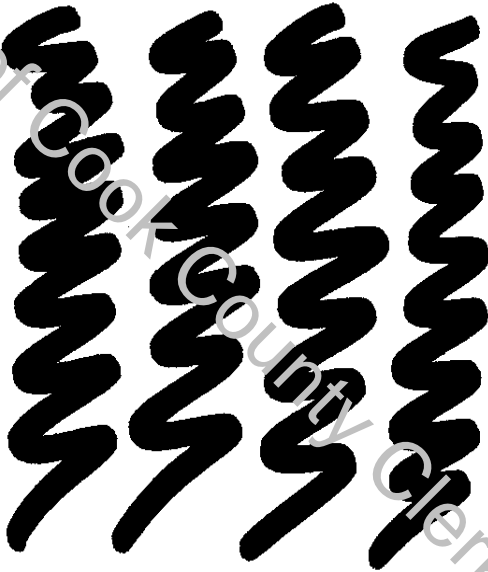
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## EXHIBIT B

### LEGAL DESCRIPTION OF REDEVELOPMENT PARCEL

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## EXHIBIT B

### LEGAL DESCRIPTION

LOTS 18, 19, 20, 21, 22, 23, 24, 25 AND 26 IN BLOCK 12 IN NEWBERRY'S ADDITION TO CHICAGO IN THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Number:	17-09-244-004-0000
	17-09-244-005-0000
	17-09-244-006-0000
	17-09-244-007-0000
	17-09-244-008-0000

Property of Cook County Clerk's Office

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## EXHIBIT C

### LEGAL DESCRIPTION OF THE RESTAURANT PARCEL

The South 40 Feet of Lots 25 and 26 in Block 5 in Butler, Wright and Webster's Addition in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Commonly known as: 500 North Franklin  
P.I.N.: 17-09-243-016

The North 10.00 feet of the South 57.81 feet of Lot 26; also, The East 13.555 feet of the North 10.00 feet of the South 57.81 of Lot 25; also, That part of Lots 25 and 26 lying South 47.81 feet of said Lots and lying North of the South line of the North 60.00 feet of said Lots; also, The East 18.39 feet of the South 47.81 feet of Lot 24, all in Block 5 in Butler, Wright and Webster's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Commonly known as: 500 North Franklin  
P.I.N.: 17-09-243-023