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Doc#: 1001941013 Fee: \$96.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/19/2010 09:57 AM Pg: 1 of 31

## Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 18-10-200-022-0000

**Address:**

**Street:** 4800 South Vernon Avenue

**Street line 2:**

**City:** McCook

**State:** IL

**ZIP Code:** 60525

**Lender:** Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, in its capacity as Administrative Agent

**Borrower:** Koch Meat Co., Inc., an Illinois corporation, a/k/a Koch Meat Company, Inc., d/b/a Koch Poultry Co., d/b/a Koch Foods of Chicago, and d/b/a Koch Specialty Foods of Chicago

**Loan / Mortgage Amount:** \$320,000,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 77/10 et seq. because it is commercial property.

Box 400-CTCC

**Certificate number:** 14BEA166-3F79-4996-A5D5-3AB3EDD374C6

**Execution date:** 01/11/2010

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Property of Cook County Clerk's Office

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**PREPARED BY, RECORDING  
REQUESTED BY, AND WHEN  
RECORDED MAIL TO:**

\_\_\_\_\_  
Cindy J.K. Davis, Esq.  
Greenberg Traurig LLP  
3290 Northside Parkway  
Suite 400  
Atlanta, Georgia 30327

\_\_\_\_\_  
Above Space for Recorder's Use Only

**MORTGAGE, ASSIGNMENT  
OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING**

by and from

**KOCH MEAT CO., INC., an Illinois corporation, a/k/a Koch Meat Company, Inc.,  
d/b/a/Koch Poultry Co., d/b/a Koch Foods of Chicago, and d/b/a Koch Specialty  
Foods of Chicago, "Mortgagor"**

to

**COÖPERATIEVE CENTRALE RAIFFEISEN- BOERENLEENBANK B.A.,  
"RABOBANK NEDERLAND", NEW YORK BRANCH,  
in its capacity as Administrative Agent, "Mortgagee"**

Dated as of January 12, 2010

<b>Location:</b>	<b>4800 South Vernon</b>
<b>City:</b>	<b>McCook</b>
<b>State:</b>	<b>Illinois</b>
<b>RE Tax Permanent Index No.:</b>	<b>18-10-200-022-0000</b>

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## MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (Cook County, Illinois)

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**") is dated as of this 12 day of January, 2010, by and from KOCH MEAT CO., INC., an Illinois corporation, a/k/a Koch Meat Company, Inc., d/b/a/Koch Poultry Co., d/b/a Koch Foods of Chicago and d/b/a Koch Specialty Foods of Chicago, having an address of c/o Koch Foods Incorporated, 1300 West Higgins Road, Suite 100, Park Ridge, Illinois 60068, Attn: Mark J. Kaminsky ("**Mortgagor**"), to COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A., "RABOBANK NEDERLAND", NEW YORK BRANCH ("**Rabobank**") in its capacity as Administrative Agent ("**Agent**") for the Secured Parties (as hereinafter defined) pursuant to the Credit Agreement (as hereinafter defined), and the other Loan Documents (as defined in the Credit Agreement), having an office at 245 Park Avenue, 37th Floor, New York, New York 10167-0062, Attention: Loan Syndications (together with its successors and assigns, "**Mortgagee**").

### RECITALS:

WHEREAS, Mortgagor is the fee owner of the real property described in Exhibit A attached hereto.

WHEREAS, Mortgagor, Koch Foods Incorporated, a Delaware corporation ("**Parent**"), Koch Farms LLC, a Tennessee limited liability company, Koch Foods of Cumming LLC (f/k/a Greko, L.L.C.), a Georgia limited liability company, Koch Foods LLC, a Tennessee limited liability company, Koch Foods of Gainesville LLC (f/k/a Gress Foods LLC), a Georgia limited liability company, Koch Foods of Cincinnati LLC (f/k/a Preferred Foods, LLC), an Ohio limited liability company, Koch Foods of Mississippi LLC, a Mississippi limited liability company, Koch Farms of Mississippi LLC, a Mississippi limited liability company, Koch Foods of Alabama LLC, an Alabama limited liability company, Koch Farms of Alabama LLC, an Alabama limited liability company, Koch Foods of Ashland LLC, an Alabama limited liability company, Koch Farms of Ashland LLC, an Alabama limited liability company, Koch Foods of Gadsden LLC, an Alabama limited liability company, Koch Farms of Gadsden LLC, an Alabama limited liability company (hereinafter collectively referred to as the "**Borrowers**", or individually as a "**Borrower**"), Rabobank, in its capacity as Administrative Agent, Issuing Lender and Swingline Lender, and the various Lenders who are or may become a party thereto, have entered into that certain Credit Agreement, of even date herewith (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), providing for term loans, a revolving loan and other extensions of credit in the maximum principal amount of THREE HUNDRED TWENTY MILLION DOLLARS (\$320,000,000.00). As a condition to Lenders' and

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Rabobank's agreement to enter into the Credit Agreement, and to make available to the Borrowers the financial accommodations provided therein, Rabobank and Lenders have required that Mortgagor, among other things, secure the "Obligations" of the Borrowers under the Credit Agreement and the other Loan Documents (as defined in the Credit Agreement) by delivery of this Mortgage.

WHEREAS, Mortgagor is receiving a good and valuable benefit, the sufficiency and receipt of which is hereby acknowledged, from Mortgagee and the Secured Parties for entering into, and continuing to extend credit and provide financial accommodations under, the Credit Agreement, and the other Loan Documents with the Borrowers, the Parent and the other Subsidiaries of the Parent.

## ARTICLE 1 DEFINITIONS

**Section 1.1 Definitions.** All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) **"Event of Default"**: shall have the meaning ascribed to such term in Article 4 hereof.

(b) **"Insolvency Proceeding"**: Any judicial case or proceeding commenced by or against Parent, any Borrower, any Colligor or any Subsidiary under the Bankruptcy Code or otherwise relating to receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment or composition.

(c) **"Maturity Date"**: (i) the later of (A) the "Term Loan Maturity Date" (as defined in the Credit Agreement), or (B) the "Revolving Credit Maturity Date" (as defined in the Credit Agreement), or such earlier date on which the Obligations shall be due and payable in full, whether by acceleration, termination of the Credit Agreement or otherwise.

(d) **"Mortgaged Property"**: All of Mortgagor's interest in (1) the fee interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "Land"), (2) all improvements now owned or hereafter acquired by Mortgagor, now or at any time situated, placed or constructed upon the Land (the "Improvements"; the Land and Improvements are collectively referred to herein as the "Premises"), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to or installed in any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or

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not situated in easements (the "**Fixtures**"), (4) all reserves, escrows or impounds required under the Credit Agreement and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property (the "**Deposit Accounts**"), (5) all existing and future leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use or occupy, all or any part of the Mortgaged Property, whether made before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code, together with any extension, renewal or replacement of the same and together with all related security and other deposits (the "**Leases**"), (6) all of the rents, additional rents, revenues, royalties, income, proceeds, profits, early termination fees or payments, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property or any part thereof, whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (the "**Rents**"), (7) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the "**Property Agreements**"), (8) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, (9) all property tax refunds, utility refunds and rebates, earned or received at any time (the "**Tax Refunds**"), (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the "**Proceeds**"), (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the "**Insurance**"), (12) all of Mortgagor's right, title and interest in and to any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements or Fixtures (the "**Condemnation Awards**"), (13) all of Mortgagor's rights to appear and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagor in the Mortgaged Property, and (14) all rights, powers, privileges, options and other benefits of Mortgagor as lessor under the Leases, including, without limitation, the immediate and continuing right to claim for, receive, collect and receive all Rents payable or receivable under the Leases or pursuant thereto (and to apply the same to the payment of the Obligations), and to do all other things which Mortgagor or any lessor is or may become entitled to do under the Leases. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein. THE TERM "MORTGAGED PROPERTY" SHALL NOT INCLUDE ANY ITEMS OF PERSONAL PROPERTY IN WHICH

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MORTGAGEE HAS OBTAINED AND PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

(e) **“Obligations”**: All obligations and liabilities of the Borrowers, Obligors, Guarantors, the Parent and their respective Subsidiaries owing to the Secured Parties, including, without limitation, (1) the repayment of all amounts outstanding from time to time under the Credit Agreement and the other Loan Documents, with such indebtedness maturing on the Maturity Date, including principal, interest (including all interest that, but for the provisions of the Bankruptcy Code (as hereinafter defined), would have accrued), and other amounts which may now or hereafter be advanced under the Loan Documents, (2) the full and prompt performance of any and all repayment, fee, and indemnification obligations with respect to any Letters of Credit or Letter of Credit Documents, (3) fees, costs, expenses, charges and indemnification obligations accrued, incurred or arising in connection with any Loan Document, (4) any and all future advances made pursuant to the terms of the Credit Agreement, (5) all other payment obligations, (6) all "Obligations" under and as defined in the Credit Agreement, and (7) all of the present and future obligations of Borrowers, the Parent and their respective Subsidiaries arising under any Bank Product Agreements, including, in the case of each of clauses (1) through (7), reasonable attorneys fees and expenses and any interest, fees or expenses that accrue after the filing of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any Insolvency Proceeding. The Credit Agreement contains revolving credit facilities that permit the Borrowers to borrow certain principal amounts, repay all or a portion of such principal amounts, and reborrow the amounts previously paid to Mortgagee, all upon satisfaction of certain conditions stated in the Credit Agreement. This Mortgage also secures all Revolving Credit Loans, all Swingline Loans, and all other advances under the revolving credit features of the Credit Agreement.

(f) **“Permitted Encumbrances”**: shall have the meaning ascribed to such term in the Credit Agreement.

(g) **“Secured Parties”**: shall have the meaning ascribed to such term in the Credit Agreement.

(h) **“UCC”**: The Uniform Commercial Code of the state in which the Land is located or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the state in which the Land is located, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

## ARTICLE 2 GRANT

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**Section 2.1 Grant.** For and in consideration of good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Mortgagor herein set forth, to secure the full and timely payment and performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS, WARRANTS, CONVEYS AND CONVEYS, to Mortgagee, for the benefit of the Secured Parties, the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property and all parts, rights and appurtenances thereof, to Mortgagee and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

TO HAVE AND TO HOLD, the Mortgaged Property, together with all and singular the parts, rights, privileges, hereditaments, and appurtenances thereto in any ways belonging or appertaining, to the use, benefit, and behoof of Mortgagee, its successors and assigns. Notwithstanding anything to the contrary contained in the immediately preceding sentence, Mortgagor hereby agrees and acknowledges that the Obligations secured by this Mortgage include revolving loans and is intended to secure future advances; accordingly, this mortgage shall not be canceled by the full and complete repayment of the Obligations, so long as the Credit Agreement or the other Loan Documents remain in force and effect.

## ARTICLE 3

### WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

**Section 3.1 Title to Mortgaged Property and Lien of this Instrument.** Mortgagor (i) has good and indefeasible title to the Mortgaged Property, in fee simple (to the extent that the Mortgaged Property constitutes real property), free and clear of any liens, claims or interests, except the Permitted Encumbrances and (ii) has full power and lawful authority to encumber the Mortgaged Property in the manner and form set forth in this Mortgage. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property.

**Section 3.2 First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security satisfactory to Mortgagee).



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**Section 3.3 Payment and Performance.** Mortgagor shall pay the Obligations when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

**Section 3.4 Replacement of Fixtures.** Except as otherwise permitted under the Credit Agreement or any other Loan Document, Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be permitted under the Credit Agreement or any other Loan Document, or first approved in writing by Mortgagee.

**Section 3.5 Inspection.** Mortgagor shall permit Mortgagee and its agents, representatives and employees to inspect the Mortgaged Property and all books and records of Mortgagor located thereon. In the event that Mortgagee at any time has reasonable basis to believe that there may be a material violation of any Environmental Laws by Mortgagor or otherwise related to the Mortgaged Property, or any material liability arising under Environmental Laws related to the Mortgaged Property, Mortgagor shall permit Mortgagee and its agents, representatives and employees to conduct such environmental and engineering studies as Mortgagee may require. Provided that no Event of Default exists, all such testing and investigation shall be conducted at reasonable times and upon reasonable prior notice to Mortgagor, and shall not unreasonably interfere with the business operations of Mortgagor on the Mortgaged Property, and Mortgagee and its agents, representatives and employees shall comply with all rules and regulations of the Food and Drug Administration and all other similar Governmental Authorities having jurisdiction over the Mortgaged Property. Mortgagee shall restore the Mortgaged Property to the condition it was in immediately prior to such testing and investigation.

**Section 3.6 Other Covenants.** All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall, to the extent applicable, be covenants running with the land.

**Section 3.7 Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings and Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and



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authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Credit Agreement. Mortgagor, upon request by Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. Notwithstanding the foregoing, provided no Event of Default then exists, to the extent the Credit Agreement or any other Loan Document would allow Mortgagor to apply any condemnation proceeds to the repair or restoration of the Mortgaged Property, Mortgagor may receive such proceeds and apply the same to such repair or restoration.

(b) **Insurance Proceeds.** Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly, as more specifically described in the Credit Agreement. In the event that the issuer of such insurance policy fails to disburse directly or solely to Mortgagee but disburses instead either solely to Mortgagor or to Mortgagor and Mortgagee, jointly, Mortgagor shall immediately endorse and transfer such proceeds to Mortgagee. Upon Mortgagor's failure to do so, Mortgagee may execute such endorsements or transfers from and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact so to do. Notwithstanding the foregoing, provided no Event of Default then exists, to the extent the Credit Agreement or any other Loan Document would allow Mortgagor to apply any insurance proceeds to the repair or restoration of the Mortgaged Property, Mortgagor may receive such proceeds and apply the same to such repair or restoration.

**Section 3.8 Costs of Defending and Upholding the Lien.** If any action or proceeding is commenced to which action or proceeding Mortgagee is made a party or in which it becomes necessary for Mortgagee to defend or uphold the lien of this Mortgage including any extensions, renewals, amendments or modifications thereof, Mortgagor shall, on demand, reimburse Mortgagee for all expenses (including, without limitation, reasonable attorneys' fees and reasonable appellate attorneys' fees) incurred by Mortgagee in any such action or proceeding and all such expenses shall be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage or to recover or collect the Obligations, the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

**Section 3.9 TRANSFER OF THE MORTGAGED PROPERTY.** EXCEPT AS EXPRESSLY PERMITTED PURSUANT TO THE TERMS OF THE CREDIT AGREEMENT OR ANY OTHER LOAN DOCUMENT, MORTGAGOR SHALL NOT SELL, TRANSFER, PLEDGE, ENCUMBER, CREATE A SECURITY

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INTEREST IN, GROUND LEASE, OR OTHERWISE HYPOTHECATE, ALL OR ANY PORTION OF THE MORTGAGED PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF MORTGAGEE. THE CONSENT BY MORTGAGEE TO ANY SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, GROUND LEASE OR OTHER HYPOTHECATION OF, ANY PORTION OF THE MORTGAGED PROPERTY SHALL NOT BE DEEMED TO CONSTITUTE A NOVATION OR A CONSENT TO ANY FURTHER SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN, GROUND LEASE, OR OTHER HYPOTHECATION, OR TO WAIVE THE RIGHT OF MORTGAGEE, AT ITS OPTION, TO DECLARE THE OBLIGATIONS SECURED HEREBY IMMEDIATELY DUE AND PAYABLE, WITHOUT NOTICE TO MORTGAGOR OR ANY OTHER PERSON OR ENTITY, UPON ANY SUCH SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST, GROUND LEASE, OR OTHER HYPOTHECATION TO WHICH MORTGAGEE SHALL NOT HAVE CONSENTED.

**Section 3.10 Security Deposits.** To the extent required by law, or after an Event of Default has occurred and during its continuance, if required by Mortgagee, all security deposits of tenants of the Mortgaged Property shall be treated as trust funds not to be commingled with any other funds of Mortgagor. Within twenty (20) days after request by Mortgagee, Mortgagor shall furnish satisfactory evidence of compliance with this Section 3.10, as necessary, together with a statement of all security deposits deposited by the tenants and copies of all Leases not heretofore delivered to Mortgagee, as requested thereby, certified by Mortgagor.

## ARTICLE 4 DEFAULT

**Section 4.1 Events of Default.** The occurrence of any of the following events shall constitute an event of default under this Mortgage (each an “**Event of Default**”):

- (a) an “Event of Default” (as such term is defined in the Credit Agreement) shall have occurred;
- (b) the breach or violation of any of the terms contained in Sections 3.7, 3.8, or 3.9 of this Mortgage;
- (c) Mortgagor’s breach of any of the covenants set forth in this Mortgage and not referenced in clause (b) above, which breach or failure to comply continues for a period of thirty (30) days or more; provided, however, if such breach or failure to comply would otherwise result in an Event of Default under the Credit Agreement or any other Loan Document, such breach or failure to comply shall result in

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an Event of Default hereunder concurrently with the occurrence of an Event of Default under the Credit Agreement or such other Loan Document; or

(d) if any statement or representation in any warranty or representation set forth in Article 3 hereof shall now or hereafter prove to be false or misleading in any material respect.

## **ARTICLE 5** **REMEDIES AND FORECLOSURE**

**Section 5.1 Remedies.** If an Event of Default exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) To the extent permitted under the Credit Agreement, declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Notify all tenants of the Premises and all others obligated on leases of any part of the Premises that all rents and other sums owing on leases have been assigned to Mortgagee and are to be paid directly to Mortgagee, and to enforce payment of all obligations owing on leases, by suit, ejectment, cancellation, releasing, reletting or otherwise, whether or not Mortgagee has taken possession of the Premises, and to exercise whatever rights and remedies Mortgagee may have under any assignment of rents and leases.

(c) As and to the extent permitted by law, enter the Mortgaged Property, either personally or by its agents, nominees or attorneys, and take exclusive possession thereof and thereupon, Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct business thereat; (ii) complete any construction on the Premises in such manner and form as Mortgagee deems advisable in the reasonable exercise of its judgment; (iii) exercise all rights and power of Mortgagor with respect to the Premises, whether in the name of Mortgagor, or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof, which rights shall not be in limitation of Mortgagee's rights under any assignment of rents and leases securing the Obligations; and (iv) pursuant to the provisions of the Credit Agreement, apply the receipts from the Premises to the payment of the Obligations, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all

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amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees.

(d) Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee reasonably deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 5.7 hereof.

(e) Require Mortgagor to assemble any collateral under the UCC and make it available to Mortgagee, at Mortgagor's sole risk and expense, at a place or places to be designated by Mortgagee, in its sole discretion.

(f) Institute proceedings for the complete foreclosure of this Mortgage, either by judicial action or by power of sale (subject to the terms of Section 10.3 hereof), in which case the Mortgaged Property may be sold for cash or credit in accordance with applicable law in one or more parcels as Mortgagee may determine. Except as otherwise required by applicable law, with respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee or any of the Secured Parties may be a purchaser at such sale. If Mortgagee is the highest bidder, Mortgagee may credit the portion of the purchase price that would be distributed to Mortgagee against the Obligations in lieu of paying cash. In the event this Mortgage is foreclosed by judicial action, appraisal and valuation of the Mortgaged Property is waived. In the event of any sale made under or by virtue of this Article 5 (whether made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) all of the Obligations, if not previously due and payable, immediately thereupon shall become due and payable. The failure to make any such payments of the Premises party to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby.

(g) With or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial

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foreclosure of this Mortgage for the portion of the Obligations then due and payable (if Mortgagee shall have elected not to declare the entire Obligations to be immediately due and owing), subject to the continuing lien of this Mortgage for the balance of the Obligations not then due; or (1) as and to the extent permitted by law, sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property; or (2) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any Credit Document; or (3) to the extent permitted by applicable law, recover judgment on the Credit Agreement or any other Loan Document either before, during or after any proceedings for the enforcement of this Mortgage.

(h) Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Obligations, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 5.7 hereof.

(i) Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity.

**Section 5.2 Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion may direct; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**Section 5.3 Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulated and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, as the case may be, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or

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recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

**Section 5.4 Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Obligations, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

**Section 5.5 Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Mortgagee to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, except as otherwise specifically set forth in Section 4.1 hereof or elsewhere in this Mortgage or any other Loan Document, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

**Section 5.6 Discontinuance of Proceedings.** If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 5.7 Application of Proceeds.** The proceeds of any sale made under or by virtue of this Article 5, together with any Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing,



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improving and selling the same, including, without limitation (1) trustee's and receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses, and (4) costs of advertisement;

(b) to the payment of the Obligations in such manner and order of preference as set forth in the Credit Agreement and the other Loan Documents; and

(c) the balance, if any, to Mortgagor.

**Section 5.8 Occupancy After Foreclosure.** Except as otherwise required by applicable law, any sale of the Mortgaged Property or any part thereof in accordance with Section 5.1(f) or Section 5.1(g) hereof will divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

**Section 5.9 Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 5.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Obligations, and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses and all costs and expenses related to legal work, research and litigation) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

**Section 5.10 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to

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Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**Section 5.11 WAIVER OF MORTGAGOR'S RIGHTS. BY EXECUTION OF THIS MORTGAGE, MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF MORTGAGEE OR RABOBANK TO ACCELERATE THE APPLICABLE INDEBTEDNESS EVIDENCED BY THE CREDIT AGREEMENT OR OTHER LOAN DOCUMENTS, AS THE CASE MAY BE, UPON THE OCCURRENCE OF AN EVENT OF DEFAULT; (B) TO THE EXTENT ALLOWED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.1 HEREOF OR ELSEWHERE IN THIS MORTGAGE OR ANY OTHER TRANSACTION DOCUMENT, WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY MORTGAGEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO MORTGAGEE, (C) ACKNOWLEDGES THAT MORTGAGOR HAS READ THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO MORTGAGOR AND MORTGAGOR HAS CONSULTED WITH LEGAL COUNSEL OF MORTGAGOR'S CHOICE PRIOR TO EXECUTING THIS MORTGAGE; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR LOAN TRANSACTION.**

## **ARTICLE 6 ASSIGNMENT OF RENTS AND LEASES**

**Section 6.1 Assignment.** In furtherance of and in addition to the assignment made by Mortgagor in Section 2.1 of this Mortgage, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Mortgagee all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing and to the extent not prohibited by the Credit Agreement, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is

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granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice by Mortgagee (any such notice being hereby expressly waived by Mortgagor).

**Section 6.2 Perfection Upon Recordation.** Mortgagor acknowledges that Mortgagee has taken all actions necessary to obtain, and that upon recordation of this Mortgage, Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases. Mortgagor acknowledges and agrees that upon recordation of this Mortgage, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "**Bankruptcy Code**"), without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

**Section 6.3 Bankruptcy Provisions.** Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee 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 Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

**Section 6.4 No Merger of Estates.** So long as part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any tenant or any third party by purchase or otherwise.

## **ARTICLE 7** **SECURITY AGREEMENT**

**Section 7.1 Security Interest.** This Mortgage constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards and all other Mortgaged Property which is personal property to

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secure the payment and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor. THE TERM "MORTGAGED PROPERTY" SHALL NOT INCLUDE ANY ITEMS OF PERSONAL PROPERTY IN WHICH MORTGAGEE HAS OBTAINED AND PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

**Section 7.2 Financing Statements.** Mortgagor shall deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor's state of organization is the State of Illinois.

**Section 7.3 Fixture Filing.** To the extent permitted under the UCC of the state in which the Land is located, this Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the address of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

## **ARTICLE 8 RESERVED**

## **ARTICLE 9 MISCELLANEOUS**

**Section 9.1 Notices.** Any notice required or permitted to be given under this Mortgage shall be given in accordance with Section 9.1 of the Credit Agreement.

**Section 9.2 Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents;

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however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

**Section 9.3 Attorney-in-Fact.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder, however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the rate or rates at which interest is then computed on the Obligations; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section 9.3. Notwithstanding the foregoing, Mortgagee shall be liable for its gross negligence, willful misconduct, and bad faith in connection with exercising its rights hereunder to the extent determined by a court of competent jurisdiction in a final, non-appealable judgment.

**Section 9.4 Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

**Section 9.5 No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all such terms, provisions and conditions.

**Section 9.6 Credit Agreement.** If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern.

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**Section 9.7 Release or Reconveyance.** Upon payment and performance in full of the Obligations and termination of the Credit Agreement and the other Loan Documents, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor.

**Section 9.8 Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Obligations secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

**Section 9.9 Applicable Law.** This Mortgage shall be governed by and construed under the laws of the state in which the Mortgaged Property is located.

**Section 9.10 Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 9.11 Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagor and Mortgagee and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 9.12 Mortgagee as Agent; Successor Agent.**

(a) Agent has been appointed to act as Agent hereunder by the Secured Parties. Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of the Mortgaged Property) in accordance with the terms of the Credit Agreement and any related agency agreement among Agent and the Secured Parties (collectively, as amended, supplemented or otherwise modified or replaced from time to time, the "Agency Documents") and this Mortgage. Mortgagor and all other persons shall be entitled to rely on releases, waivers, consents, approvals, notifications and other acts of Agent, without inquiry into the existence of required consents or approvals of the Secured Parties therefor.

(b) Mortgagee shall at all times be the same Person that is Agent under the Agency Documents. Written notice of resignation by Agent pursuant to



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the Agency Documents shall also constitute notice of resignation as Agent under this Mortgage. Removal of Agent pursuant to any provision of the Agency Documents shall also constitute removal as Agent under this Mortgage. Appointment of a successor Agent pursuant to the Agency Documents shall also constitute appointment of a successor Agent under this Mortgage. Upon the acceptance of any appointment as Agent by a successor Agent under the Agency Documents, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent as the Mortgagee under this Mortgage, and the retiring or removed Agent shall promptly (i) assign and transfer to such successor Agent all of its right, title and interest in and to this Mortgage and the Mortgaged Property, and (ii) execute and deliver to such successor Agent such assignments and amendments and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the liens and security interests created hereunder, whereupon such retiring or removed Agent shall be discharged from its duties and obligations under this Mortgage. After any retiring or removed Agent's resignation or removal hereunder as Agent, the provisions of this Mortgage and the Agency Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was the Agent hereunder.

(c) Each reference herein to any right granted to, benefit conferred upon or power exercisable, exercised or action taken by the "Mortgagee" shall be deemed to be a reference to or be deemed to have been so taken, as the case may be, by Mortgagee in its capacity as Agent pursuant to the Agency Documents for the benefit of the Secured Parties all as more fully set forth in the Agency Documents.

## **ARTICLE 10** **LOCAL LAW PROVISIONS**

**Section 10.1** In the event of any inconsistency between the terms and conditions of the other articles and provisions of this Mortgage and this Article 10, the terms and conditions of this Article 10 shall control and be binding.

**Section 10.2** Mortgagor hereby represents and agrees that the proceeds of the Loan Documents secured by this Mortgage will be used for the purposes specified in the Illinois Interest Act, 815 ILCS 205/4(l), and the indebtedness secured hereby constitutes a business loan which comes within the purview of Section 205/4(1)(c) and a loan secured by a mortgage on real estate within the purview of Section 204/4(1)(l).

**Section 10.3** Any references to "power of sale" in this Mortgage are permitted only to the extent allowed by law.

**Section 10.4** The following words are hereby inserted in Section 1.1(d)(3) of this Mortgage, following the words "all materials, supplies, equipment,

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apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to or installed in any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements”:

and all proceeds and products of and accessions to and substitutions and replacements for all such fixtures and other property owned by Mortgagor

**Section 10.5** The text of Section 7.1 entitled “Security Interest” is hereby deleted and the following is substituted therefor:

Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the “Code”) with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a “fixture” (within the meaning of Section 9-313 of the Code) (which property is hereinafter referred to as “Personal Property”), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the “Collateral”), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor’s right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Obligations. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

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(i) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, except such incidental furnishings, fixtures and equipment which are leased by Mortgagor, such as furniture in model apartments and club houses, and whose value, in the aggregate, is immaterial relative to the owned collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents;

(ii) The Collateral is to be used by Mortgagor solely for business purposes;

(iii) The Collateral will be kept at the Premises (except for normal replacement of Personal Property) and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Premises but will not be affixed to any other real estate;

(iv) The only persons having any interest in the Mortgaged Property are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby;

(v) No financing statement (other than financing statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee 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 Collateral as security for the Obligations, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Mortgagee and no other party and liens and encumbrances, if any, expressly permitted hereby, and Mortgagor 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 Mortgagee to be desirable;

(vi) Upon default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon

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any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least twenty (20) days' notice of time and place of any public sale of the Collateral 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 Mortgagor hereinabove set forth at least twenty (20) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral 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 Mortgaged Property. If Mortgagee so elects, the Mortgaged Property and the Collateral 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 Mortgagee, shall be applied against the Obligations in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition;

(vii) The terms and provisions contained in this Section 10.5, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code;

(viii) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinabove set forth. This Mortgage is to be filed for recording with the recorder of deeds of the county or counties where the Premises is located. Mortgagee is the record owner of the Premises;

(ix) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Rents and Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee,

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including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder; and

(x) The address of Mortgagor, from which information concerning the security interests in the Collateral may be obtained, is set forth on page 1 of this Mortgage.

**Section 10.6** (a) In the event any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS Sections 5/15-1301 et. seq., Illinois Compiled Statutes) (the "Foreclosure Act" or "IMFL"), the provisions of the Foreclosure 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 Foreclosure Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Foreclosure Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Section 8.3 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

**Section 10.7** Mortgagor hereby waives (a) its statutory rights of redemption and reinstatement and (b) its homestead rights, to the fullest extent allowable by applicable law, including without limitation the Illinois Mortgage Foreclosure Law

**Section 10.8** To the extent Mortgagee is obligated to make advances, Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b)(1) of IMFL. That portion of the Obligations which comprises the principal amount then outstanding constitutes revolving credit indebtedness secured by a mortgage on real property, pursuant to the terms and conditions of IMFL. Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made by Mortgagee, whether such loans and advances are made as of the date hereof, or at any time in the future, and whether such future advances are obligatory, or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than twenty (20) years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this

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Mortgage and, although there may be no other indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Premises is located. The total amount of the Obligations may increase or decrease from time to time, but the total unpaid principal balance of the Obligations (including disbursements which Mortgagee may make under this Mortgage, or any other document or instrument evidencing or securing Obligations), at any time outstanding, shall not exceed three hundred percent (300%) of the face amount of the Obligations.

**Section 10.9** (i) All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and 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 or by IMFL (collectively "**Protective Advances**") shall have the benefit of all applicable provisions of IMFL, including those provisions of IMFL hereinbelow referred to:

(A) all advances by Mortgagee in accordance with the terms of this Mortgage to: (1) preserve or maintain, repair, restore or rebuild the Improvements upon the Land; (2) preserve the lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of IMFL;

(B) payments by Mortgagee of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (2) when due installments of 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 party thereof; (3) other obligations authorized by Mortgagee; or (4) 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 IMFL;

(C) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under any prior liens;

(D) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of IMFL; (2) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to this Mortgage or the Mortgaged Property;



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(E) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of IMFL;

(F) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of IMFL;

(G) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Mortgagee's interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (3) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or 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 (c)(1) of Section 15-1704 of IMFL; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the mortgaged real estate 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; (6) 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; (7) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) pursuant to any lease or other agreement for occupancy of the Improvements for amounts required to be paid by Mortgagor; and (9) if this Mortgage is insured, payments of FHA or private mortgage insurance required to keep insurance in force.

(ii) All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Loan Documents.

(iii) 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)(1) of Section 15-1302 of IMFL.

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(iv) 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 IMFL, apply to and be included in:

(A) determination of the amount of indebtedness secured by this Mortgage at any time;

(B) the indebtedness found due and owing to this Mortgage 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;

(C) if right of redemption has not been waived by Mortgagor in this Security Agreement, computation of the amount required to redeem, pursuant to Subsections (d) and (e) of Section 15-1603 of IMFL;

(D) determination of the amount deductible from sale proceeds pursuant to Section 15-1512 of IMFL;

(E) application of income in the hands of any receiver or Mortgagee in possession; and

(F) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 15-1508 and 15-1511 of IMFL."

**Section 10.10** In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of IMFL, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of IMFL."

**Section 10.11** Notwithstanding the terms of Section 1.1(c), the Maturity Date of the Obligations shall be January 11, 2013, unless otherwise agreed to in writing by Mortgagor and Mortgagee.

**Section 10.12 MORTGAGOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR**

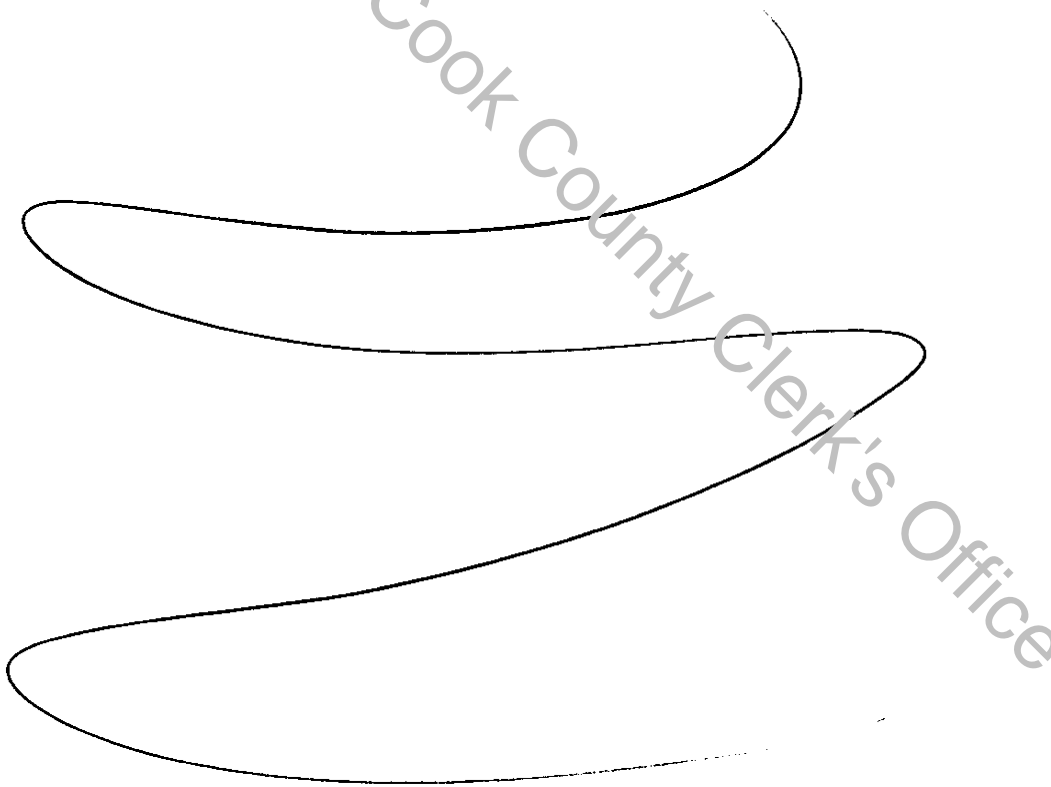
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**INDIRECTLY TO THE LOAN EVIDENCED BY THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF MORTGAGEE, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

**Section 10.13** Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 15-1201 of the Foreclosure Act or residential real estate as defined in Section 15-1219 of the Foreclosure Act.

**[The remainder of this page has been intentionally left blank]**

Property of Cook County Clerk's Office



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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and delivered by its duly authorized representative all as of the day and year first above written.

**MORTGAGOR:**

**KOCH MEAT CO., INC., an Illinois corporation, a/k/a Koch Meat Company, Inc., d/b/a/Koch Poultry Co., d/b/a Koch Foods of Chicago, and d/b/a Koch Specialty Foods of Chicago**

By: Mark Kaminsky  
Name: Mark Kaminsky  
Title: Secretary

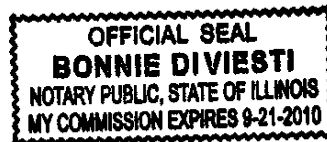
STATE OF Illinois )  
  ) SS.  
COUNTY OF Cook )

I, Bonnie Di Viesti, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Mark J. Kaminsky as Secretary of KOCH MEAT CO., INC., a/k/a Koch Meat Company, Inc., d/b/a/Koch Poultry Co., d/b/a Koch Foods of Chicago, and d/b/a Koch Specialty Foods of Chicago, a corporation of the State of Illinois, 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 to me that (he/she), being thereunto duly authorized, signed and delivered said instrument as the free and voluntary act of said corporation and as (his/her) own free and voluntary act, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 8 day of January, 2010.

Bonnie Di Viesti  
Notary Public

My Commission Expires: 9-21-2010



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## Exhibit A

### PARCEL 1:

LOT 4 IN THE FINAL PLAT OF SUBDIVISION OF MCCOOK INDUSTRIAL CENTER II FIRST RESUBDIVISION, BEING A RESUBDIVISION IN THE NORTHEAST ¼ OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 2005 AS DOCUMENT 0523545101, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS DATED JULY 8, 2005 AND RECORDED AUGUST 15, 2005 AS DOCUMENT 0522719099 FOR THE PURPOSE OF USE WITH RESPECT TO AMENITIES OVER THE FOLLOWING DESCRIBED LAND:

OUTLOTS A, B, C, D, AND E IN MCCOOK INDUSTRIAL CENTER II BEING A SUBDIVISION OF PART OF SECTION 10 AND SECTION 11, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NO. 0436539081, IN COOK COUNTY, ILLINOIS.