

# UNOFFICIAL COPY

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THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Doc#: 1530108106 Fee: \$76.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 10/28/2015 12:03 PM Pg: 1 of 15

MELTZER PURTILL & STELLE LLC  
300 S. Wacker Drive, Suite 3500  
Chicago, Illinois 60606  
Attn: William J. Mitchell

Permanent Real Estate Tax No.:  
See Exhibit A

Property Address:  
See Exhibit A

*This space reserved for Recorder's use only*

## FIRST MODIFICATION OF LOAN DOCUMENTS

**THIS FIRST MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made as of the 20<sup>th</sup> day of October, 2015, by and among **1246 PRATT LLC**, a Delaware limited liability company (the "Borrower"), **DONAL P. BARRY, SR.**, individually, **DONAL P. BARRY, JR.**, individually, **JAMES W. PURCELL**, individually, **SEAN BARRY**, individually, **MICHAEL PURCELL**, individually, and **KATHLEEN BARRY**, individually (each, a "Guarantor" and collectively, the "Guarantors") and **FIRSTMERIT BANK, N.A.**, its successors and assigns ("Lender").

## RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Nine Million Nine Hundred Eighty-Two Thousand Two Hundred Seventy-Four and 00/100 Dollars (\$9,982,274.00) pursuant to the terms and conditions of a Loan Agreement dated as of October 30, 2012 among Borrower, Guarantors and Lender, (the "Loan Agreement"; all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated October 30, 2012, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 30, 2012 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on November 15, 2012, as Document No. 1232046187 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A** hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated October 30, 2012, from Borrower to Lender and recorded in the Recorder's Office on November 15, 2012, as Document No. 1232046188 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated October 30, 2012 from Borrower and the Guarantors to Lender (the "Indemnity Agreement"); (iv) that certain Guaranty dated October 30, 2012 from the Guarantors to Lender (the "Guaranty"); and (v) certain other loan documents (the Note, the

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Mortgage, the Assignment of Leases, the Indemnity Agreement, the Guaranty, and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. Borrower now desires to amend the Loan Documents in order to extend the Maturity Date from October 30, 2015 to January 30, 2016, as more fully set forth below.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date**. The Maturity Date of the Note is extended to January 30, 2016. Any reference in the Note, the Loan Agreement or any other Loan Document to the Maturity Date shall mean January 30, 2016.

2. **Amendment of Loan Agreement**. The following definition in Section 1.1 of the Loan Agreement is hereby amended and restated in its entirety to read as follows:

“Maturity Date: January 30, 2016 or the First Extended Maturity Date or Second Maturity Date, if applicable.”

3. **Amendment of Mortgage**. The Mortgage is hereby amended to reflect the terms hereof including, without limitation, the extension of the Maturity Date. Any references in the Mortgage to the Property shall be deemed to mean and refer to the Property as amended hereby. Borrower and Guarantors each agree that Lender shall have the right to record this Agreement in the Recorder's Office to reflect the subject matter of this Agreement.

4. **Other Conforming Amendments**. The Loan Documents are hereby amended to reflect the terms of this Agreement including, without limitation, the extension of the Maturity Date.

5. **Representations and Warranties of Borrower and Guarantors**. Borrower and each Guarantor hereby represent, covenant and warrant to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof and shall continue to be, true and correct until the Loan is indefeasibly repaid in full and neither Borrower nor any Guarantor knows of any default under any of the Loan Documents.

(b) Borrower and each Guarantor are in full compliance with all of the terms and conditions of the Loan Documents to which they are a party, and no Event of Default has occurred and is continuing with respect to any of the Loan Documents.

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(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower and each Guarantor enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of the Property, Borrower, any Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) There is no litigation or administrative proceeding pending or, to the knowledge of Borrower or any Guarantor, threatened to restrain or enjoin the transactions contemplated by this Agreement or any of the Loan Documents, or questioning the validity thereof, or in any way contesting the existence or powers of any of the Borrower or any Guarantor, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement or any of the Loan Documents, or would result in any material adverse change in the financial condition, properties, business or operations of the Borrower or any Guarantor.

(f) The Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of the Borrower. This Agreement has been duly executed and delivered on behalf of the Borrower.

6. **Reaffirmation of Guaranty.** Each Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of each Guarantor in the Guaranty are, as of the date hereof, true and correct and no Guarantor knows of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty. All waivers set forth in the Guaranty are hereby incorporated herein by this reference.

7. **Additional Requirements.** The obligations of Lender to amend the Loan shall be subject to Borrower and others having delivered, or having caused to be delivered, to Lender, the following items, all of which shall be in form and substance acceptable to Lender:

- (a) This Agreement, executed by all parties;
- (b) A good standing certificate with respect to the Borrower;
- (c) A good standing certificate with respect to 1246 Pratt Management SPE Inc. (the "Manager");

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- (d) Resolutions of the members of the Borrower;
- (e) Resolutions of the directors of the Manager; and
- (f) Such other documents as Lender may reasonably require.

8. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

9. **Bankruptcy Provisions.** Borrower and each Guarantor hereby acknowledge and agree that, if a petition under any section, chapter or provision of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the "Bankruptcy Code") or similar law or statute is filed by or against Borrower or any Guarantor, (i) they shall not contest, and they shall consent to, the relief requested in any motion or application of Lender made in any court of competent jurisdiction seeking sale pursuant to 11 U.S.C. § 363, or a modification or termination of any automatic stay or other injunction against the Lender resulting from such filing, and (ii) they shall execute any order or other document necessary to effectuate such modification or termination. If at any time Borrower or any Guarantor seeks relief under the Bankruptcy Code, including, without limitation, the filing of a petition under Chapter 7 or 11 thereof, Borrower or such Guarantor shall be deemed to have taken such action in bad faith. Furthermore, if such action is taken against Borrower or any Guarantor by a third party, Borrower or such Guarantor shall take all action necessary to have (A) the petition filed by such third party dismissed, including consenting to the immediate dismissal thereof, and (B) any additional relief requested by such third party denied, unless instructed in writing to the contrary by Lender. Lender is specifically relying upon the representations, warranties, covenants and agreements contained in this Agreement and such representations, warranties, covenants and agreements constitute a material inducement to accept the terms and conditions set forth in this Agreement and, but for the receipt of the benefit of such representations, warranties, covenants and agreements, the Lender would not have agreed to such terms and conditions.

10. **Waiver of Defenses.** As of the date of this Agreement, Borrower and each Guarantor acknowledge that they have no defense, offset, or counterclaim to any of Borrower or any Guarantor's obligations under the Loan Documents. Borrower and each Guarantor hereby irrevocably waive and release any and all claims, actions, causes of action, suits and defenses which such party might hereafter have against Lender for or by reason of any matter, cause, or thing whatsoever which relates to the Loan, this Agreement, or any discussion between the Borrower, any Guarantor, and the Lender.

11. **Release of Claims.** Borrower and each Guarantor hereby fully and forever remise, release and discharge the Lender from any and all claims, demands, agreements, contracts, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, accounts, damages, judgments, losses and liabilities of whatever kind or nature in law, equity or otherwise, whether known or unknown, existing as of the date hereof or arising at any time in the future, which the Borrower or any Guarantor had, may have had, now has, or can,

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shall or may have, for or by any reason of any and all matters, causes or things whatsoever from the beginning of time to and including the day the Note is repaid in full.

12. **Covenant Not to Sue.** Borrower and each Guarantor covenant that they will never institute any suit or action at law or equity against the Lender, nor institute, prosecute or in any way aid in the institution or prosecution of any claim, demand, action, or cause of action for damages, costs, loss of services, expenses, or compensation for or on account of any damage, loss or injury either to person or property, or both, whether developed or undeveloped, resulting or to result, known or unknown, past, present, or future which are, were, might, or could have been asserted against the Lender in connection with any of the matters released herein.

13. **No Course of Dealing.** Borrower and each Guarantor acknowledge and agree that this Agreement is limited to the terms outlined herein, and shall not be construed as an amendment of any other terms or provisions of the Loan Documents. This Agreement shall not establish a course of dealing or be construed as evidence of any willingness on the Lender's part to grant other or future amendments, should any be requested.

14. **No Joint Venture.** Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or any Guarantor nor shall privity of contract be presumed to have been established with any third party.

15. **Binding Agreement.** This Agreement shall not be construed more strictly against Lender than against Borrower or any Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, each Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, each Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

16. **Entire Agreement.** Borrower, each Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, each Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

17. **Construction of Agreement.** Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the



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Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular. The Borrower, each Guarantor and their respective legal counsel have participated in the drafting of this Agreement, and accordingly, the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

18. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

19. **Amendments, Changes and Modifications.** This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

21. **Time of the Essence.** Time is of the essence of each of Borrower and each Guarantor's obligations under this Agreement.

22. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

23. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

24. **VENUE.** TO INDUCE LENDER TO ACCEPT THIS AGREEMENT, BORROWER AND EACH GUARANTOR IRREVOCABLY AGREE THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER, OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED IN COURTS WITHIN KANE COUNTY, STATE OF ILLINOIS AND EACH OF THEM HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE. BORROWER AND EACH GUARANTOR EACH HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT OR HIM OR ANY OF THEM BY LENDER IN ACCORDANCE WITH THIS PARAGRAPH OR UNDER THE NOTE AND/OR MORTGAGE.

25. **WAIVER OF JURY TRIAL.** BORROWER AND EACH GUARANTOR IRREVOCABLY WAIVES, TO THE EXTENT APPLICABLE, ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT DELIVERED OR WHICH MAY IN THE

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FUTURE BE DELIVERED IN CONNECTION HERewith OR WITH THE NOTE OR LOAN DOCUMENTS, AND/OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR ANY INSTRUMENT, DOCUMENT, OR AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY, TO THE EXTENT SUCH MATTER IS TRIED AT ALL.

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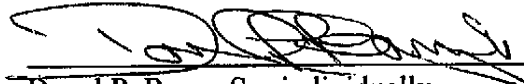
IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

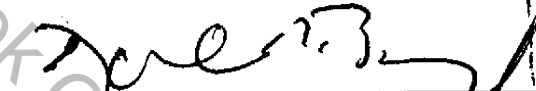
1246 PRATT LLC, a Delaware limited liability company


By: 1246 Pratt Management SPE Inc., a Delaware corporation, its Manager

By:   
Name: DONAL P BARRY SR  
Its: President.

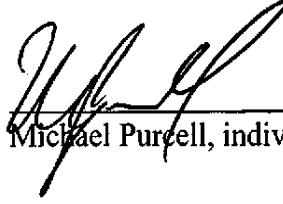
**GUARANTORS:**

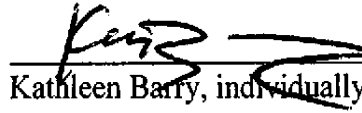
  
Donal P. Barry, Sr., individually

  
Donal P. Barry, Jr., individually

  
James W. Purcell, individually

  
Sean Barry, individually

  
Michael Purcell, individually

  
Kathleen Barry, individually

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**LENDER:**

**FIRSTMERIT BANK, N.A.**, a national banking association

By: *Alex P. Bliss*  
Name: Alex P. Bliss  
Title: SVP

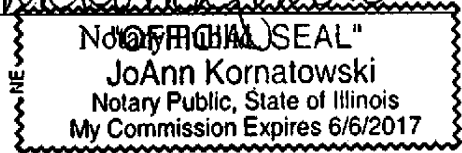
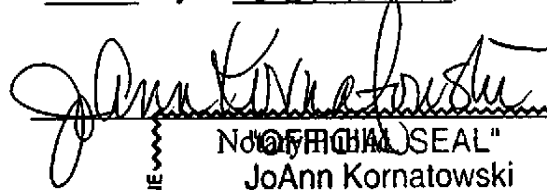
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STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Don Barry, Sr., President of 1246 Pratt Management SPE Inc., a Delaware corporation, the Manager of 1246 PRATT LLC, a Delaware limited liability company, is 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 said instrument as his/her own free and voluntary act and the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of October, 2015.

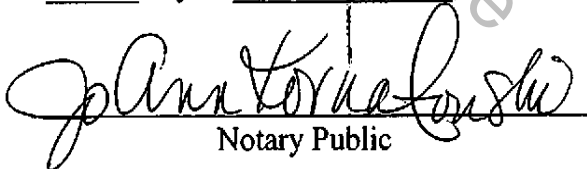
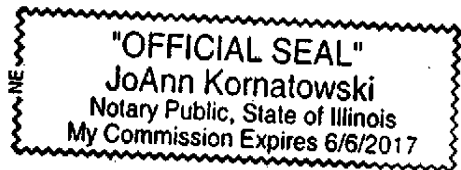


My Commission Expires: 6/6/2017

STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that DONAL P. BARRY, SR., individually, is 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of October, 2015.

  
Notary Public

My Commission Expires: 6/6/17

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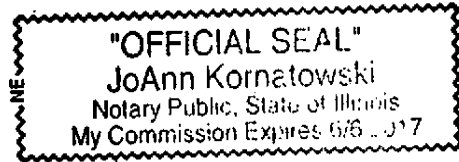
STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF Cook     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that DONAL P. BARRY, JR., individually, is 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of October, 2015.

JoAnn Kornatowski  
Notary Public

My Commission Expires: 6/6/2017



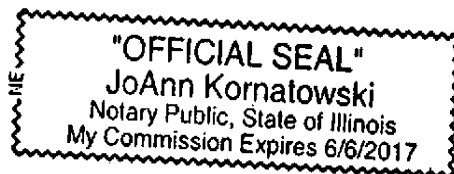
STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF Cook     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that JAMES W. PURCELL, individually, is 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of October, 2015.

JoAnn Kornatowski  
Notary Public

My Commission Expires: 6/6/2017



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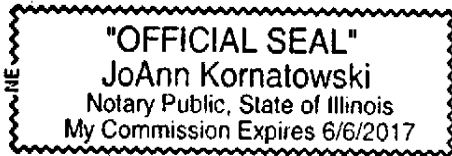
STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that SEAN BARRY, individually, is 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of October, 2015.

JoAnn Kornatowski  
Notary Public

My Commission Expires: 6/6/2017



STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MICHAEL PURCELL, individually, is 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of October, 2015.

JoAnn Kornatowski  
Notary Public

My Commission Expires: 6/6/2017



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STATE OF ILLINOIS     )  
  ) .ss  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that KATHLEEN BARRY, individually, is 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 she signed and delivered said instrument as her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of October, 2015.

JoAnn Kornatowski  
Notary Public

My Commission Expires: 6/6/2017



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STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ALEC BLISS, SVP of FIRSTMERIT BANK, N.A., is 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 said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23<sup>RD</sup> day of OCTOBER, 2015.

Janet Gallichio  
Notary Public

My Commission Expires: 02/05/2017





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## EXHIBIT A

### THE PROPERTY

LOT 13 IN BLOCK 6 IN L. E. INGALL'S SUBDIVISION OF BLOCKS 5 AND 6 OF THE CIRCUIT COURT PARTITION BEING A SUBDIVISION OF THE EAST 1/2 OF THE NORTHWEST 1/4 AND THE NORTHEAST FRACTIONAL 1/4 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 1246 West Pratt, Chicago, IL

PIN: 11-32-124-014-0000

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