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Doc# 1935316131 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 12/19/2019 02:53 PM PG: 1 OF 9

This instrument was prepared by:
~~and, when recorded, should be returned to:~~

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, GA 30363
Attn: Rusty A. Fleming, Esq.
Tel: (404) 322-6466

Premises: 9901-9913 South 78th Ave., Hickory Hills, Cook County, Illinois 60457

ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

This **ABSOLUTE ASSIGNMENT OF RENTS AND LEASES** (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as this "Assignment") made ^{on} ~~the~~ 17th day of December, 2019, by **VIP HICKORY HILLS, LLC**, an Illinois limited liability company, having an address at c/o Value Industrial Partners, LLC, 970 N. Oaklawn Ave., Suite 300, Elmhurst, Illinois 60126 (hereinafter individually and collectively as the context may require, referred to as the "Assignor"), as assignor, to **VOYA INVESTMENT MANAGEMENT, LLC**, a Delaware limited liability company, in its capacity as collateral agent on behalf of certain "Lenders" (as such term is defined below), having an address of 5780 Powers Ferry Road, NW, Suite 300, Atlanta, Georgia 30327-4349 (hereinafter, in such capacity, together with its successors and/or assigns, collectively referred to as the "Assignee"), as assignee.

WITNESSETH:

WHEREAS, pursuant to the terms, conditions, and provisions of that certain Loan Agreement dated of even date herewith, executed by and among the Assignor and (collectively, the "Borrower"), certain lenders party thereto from time to time (hereinafter collectively referred to as the "Lenders"), and the Assignee (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted and/or supplemented, referred to as the "Loan Agreement"), the Lenders have agreed to make available to the Borrower a commercial mortgage loan facility in the aggregate original principal amount of **FORTY-SEVEN MILLION AND 00/100 (\$47,000,000.00) DOLLARS** (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Loan"); and

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WHEREAS, capitalized terms used but not otherwise expressly defined herein shall have the same meanings when used herein as set forth in the Loan Agreement; and

WHEREAS, as of the date hereof, the Loan is evidenced by the Notes and secured by, *inter alia*, the Security Instrument, which Security Instrument encumbers certain real property currently owned by the Assignor as more particularly described in Exhibit "A" attached hereto and hereby made a part hereof (hereinafter referred to as the "Mortgaged Premises"); and

WHEREAS, as a condition to the Lenders' obligation to make the Loan, the Assignor has agreed to absolutely and unconditionally assign to the Assignee, for the benefit of the Lenders, all of the Assignor's rights, title, and interests in, to, and under the "Leases" (as such term is hereinafter defined) affecting the Mortgaged Premises, including the Assignor's rights, title, and interests in, to, and under the "Rents" (as such term is hereinafter defined) therefrom, subject only to the terms and conditions herein set forth.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Assignor hereby covenants and agrees to and for the benefit of the Assignee, on behalf of the Lenders, as follows:

ARTICLE 1 **ASSIGNMENT**

1.1 **Assignment.** The Assignor hereby irrevocably and absolutely assigns to the Assignee all of the Assignor's rights, title, and interests in, to, and under: (a) all leases, subleases, license agreements, concessions, tenancies and other use or occupancy agreements, whether oral or written, with respect to the Mortgaged Premises or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Mortgaged Premises or any portion thereof, whether now existing or entered into after the date hereof (hereinafter individually referred to as a "Lease" and collectively referred to as the "Leases"); and (b) any and all rents, revenues, issues, income, royalties, receipts, profits, contract rights, accounts receivable, general intangibles, and other amounts now or hereafter becoming due to the Assignor in connection with or under the Leases (whether due for the letting of space, for services, materials, or installations supplied by the Assignor or for any other reason whatsoever), including, without limitation, all insurance, tax, and other contributions, insurance proceeds, condemnation awards, lease termination payments, damages following defaults by tenants under the Leases (hereinafter collectively referred to as the "Tenants", and individually referred to as a "Tenant"), cash, letters of credit, or securities deposited by Tenants to secure performance of their obligations under the Leases, and all other extraordinary receipts, and all proceeds thereof, both cash and non-cash (hereinafter collectively referred to as the "Rents"), including, without limitation, the following:

(i) all claims, rights, privileges and remedies on the part of the Assignor, whether arising under the Leases or by statute or at law or in equity or otherwise, arising out of or in connection with any failure by any Tenant to pay the Rents or to perform any of its other obligations under its Lease;

(ii) all rights, powers and privileges of the Assignor to exercise any election or option or to give or receive any notice, consent, waiver or approval under or with respect to the Leases; and

(iii) all other claims, rights, powers, privileges and remedies of the Assignor under or with respect to the Leases, including, without limitation, the right, power and privilege (but not the

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obligation) to do any and all acts, matters and other things that the Assignor is entitled to do thereunder or with respect thereto.

The term "Leases" as used herein shall also include all guarantees of and security for the Tenants' performance thereunder, and all amendments, extensions, renewals, or modifications thereto. This is a present and absolute assignment, not an assignment for security purposes only, and the Assignee's rights in and to the Leases and the Rents is not contingent upon, and may be exercised without possession of, the Mortgaged Premises.

1.2 **Grant of License.** Notwithstanding the foregoing Section 1.1 to the contrary, the Assignee hereby confers upon the Assignor a revocable license (hereinafter referred to as the "License") to exercise the rights as landlord under the Leases and to collect and retain the Rents as they become due and payable, for so long as no Event of Default exists. Upon the occurrence of an Event of Default, and written notice to Assignor, the License shall be automatically revoked and the Assignee shall be entitled, at its option, to give the Tenants a written notice (hereinafter referred to as a "Tenant Notice") requesting that the Tenants pay all Rents and other amounts due and owing under the Leases directly to the Assignee and to perform any of the Tenants' respective obligations under the Leases for the benefit of the Assignee. At such time, if at all, as such Event of Default is waived by the Assignee (if the Assignee, in its sole and absolute discretion, agrees in writing to waive said Event of Default) or if the cure of said Event of Default shall have been accepted in writing by the Assignee, the License shall be reinstated on the terms contained in this Section 1.2. The Assignor hereby irrevocably authorizes and directs the Tenants under the Leases to rely upon and comply with any notice or demand by the Assignee in accordance with the terms of this Section 1.2 for the payment to the Assignee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the Tenants' undertakings under the Leases, and the Tenants shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. The Assignor hereby relieves the Tenants from any liability to the Assignor by reason of relying upon and complying with any such notice or demand by the Assignee.

1.3 **Effect of Assignment.** The foregoing irrevocable and absolute assignment shall not cause the Assignee or any Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management, or repair of the Mortgaged Premises or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants, and conditions of the Leases; or (c) responsible or liable for (i) any waste committed on the Mortgaged Premises by the Tenants under any of the Leases or any other parties; (ii) for any dangerous or defective condition of the Mortgaged Premises; or (iii) for any negligence in the management, upkeep, repair, or control of the Mortgaged Premises resulting in loss or injury or death to any Tenant, licensee, employee, invitee, or other Person. The Assignee shall not directly or indirectly be liable to the Assignor or any other Person as a consequence of: (1) the exercise of or failure to exercise by the Assignee, or any of its employees, agents, contractors, or subcontractors, any of the rights, remedies, or powers granted to the Assignee hereunder; or (2) the failure or refusal of the Assignee to perform or discharge any obligation, duty or liability of the Assignor arising under the Leases.

1.4 **Representations and Warranties.** The Assignor hereby represents and warrants that: (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and to the best of its knowledge, no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (b) no rent or other payment under any existing Lease, if any, has been paid by any Tenant for more than one (1) month in advance; and (c) none of the landlord's interests under any of the Leases has been transferred or assigned by the Assignor.

1.5 **Covenants.**

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(a) Except as otherwise set forth in the Loan Agreement, all Leases entered into after the date hereof are subject to the prior express written approval of the Assignee as to form and content, and the Assignor shall not enter into any Lease without the prior express written consent of the Assignee.

(b) The Assignor shall not, without the prior express written consent of the Assignee execute an assignment or pledge of any Rents and/or any Leases.

(c) The Assignor shall not permit any Lease or any part thereof to become subordinate to any lien other than the lien hereof and liens in favor of the Assignee.

1.6 **Estoppel Certificates.** Except as otherwise set forth in the Loan Agreement, within thirty (30) days after written request by the Assignee the Assignor (a) shall deliver to the Assignee an estoppel certificate executed by the Assignor and (b) shall use its commercially reasonable efforts to deliver to the Assignee an estoppel certificate executed by any Tenant for whom such an estoppel certificate is requested by the Assignee certifying (if such be the case): (i) that the foregoing pledge and the applicable Lease(s) are in full force and effect; (ii) the date of the applicable Tenant's most recent payment under said Lease(s); (iii) that there are no defenses or offsets outstanding, or stating those claimed by the Assignor or said Tenant under the foregoing pledge or the applicable Lease(s), as the case may be; and (iv) any other information reasonably requested by the Assignee.

ARTICLE 2 RIGHTS AND REMEDIES

2.1 **Assignee's Powers and Rights.** At any time during the term of the Loan, the Assignee may, at its option from and after the occurrence of an Event of Default and after giving a Tenant Notice, receive and collect all of the Rents as they become due. The Assignee shall thereafter continue to receive and collect all of the Rents, as long as the Assignee deems such receipt and collection to be necessary or desirable, in the Assignee's sole and absolute discretion.

2.2 **Power of Attorney.** The Assignor hereby irrevocably appoints the Assignee its true and lawful attorney, coupled with an interest, with full power of substitution and with full power for the Assignee in its own name and capacity or in the name and capacity of the Assignor, from and after the occurrence of an Event of Default and after the giving of a Tenant Notice, to demand, collect, receive, and give complete acquittance for any and all Rents and, at the Assignee's discretion, to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of the Assignor or otherwise, which the Assignee may deem necessary or desirable in order to collect and enforce the payment of the Rents. The Tenants are hereby expressly authorized and directed to pay all Rents and any other amounts due to the Assignor pursuant to the Leases or otherwise, to the Assignee, or such nominee as the Assignee may designate in a Tenant Notice delivered to such Tenants, and the Tenants are expressly relieved of any and all duty, liability, or obligation to the Assignor with respect to all payments so made.

2.3 **Remedies.** From and after the occurrence of an Event of Default and after the giving of a Tenant Notice, the Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by the Assignee necessary or proper to enforce this Assignment and to collect the Rents assigned hereunder, including the right of the Assignee or its designee to enter upon the Mortgaged Premises, or any part thereof, with or without force and with or without process of law and take possession of all or any part of the Mortgaged Premises together with all personal property, fixtures, documents, books, records, papers,

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and accounts of the Assignor relating thereto, and may exclude the Assignor, its agents and servants, wholly therefrom. The Assignor herein grants full power and authority to the Assignee to exercise all rights, privileges, and powers herein granted at any and all times after the occurrence of an Event of Default and after the giving of a Tenant Notice, without further notice to the Assignor, with full power to use and apply all of the Rents and other income herein assigned to the payment of the costs of managing and operating the Mortgaged Premises and of any indebtedness or liability of the Assignor to the Assignee, including, but not limited to, the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding, and restoring the improvements on the Mortgaged Premises or of making the same rentable, reasonable attorneys' fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due (and all other amounts due under the Loan Agreement) from the Assignor to the Assignee on the Loan, all in such order as the Assignee may determine, in its sole and absolute discretion. The Assignee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the landlord under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of the Assignor in the Leases. It is further understood and agreed that this Assignment shall not operate to place responsibility for the control, care, management, or repair of the Mortgaged Premises, or any parts thereof, upon the Assignee, nor shall it operate to make the Assignee liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Mortgaged Premises by any Tenant or any other Person, or for any dangerous or defective condition of the Mortgaged Premises or for any negligence in the management, upkeep, repair, or control of the Mortgaged Premises resulting in loss or injury or death to any Tenant, licensee, employee, or stranger. If the Assignor shall fail to pay, perform or observe any of its covenants or agreements hereunder, the Assignee may pay, perform or observe the same and collect the cost thereof from the Assignor all as more fully provided in the Loan Agreement.

2.4 **Assignee Not Liable; Indemnification.** Anything contained herein or in any of the Leases to the contrary notwithstanding: (a) the Assignor shall at all times remain solely liable under the Leases to perform all of the obligations of the Assignor thereunder to the same extent as if this Assignment had not been executed; (b) neither this Assignment nor any action or inaction on the part of the Assignor or the Assignee shall release the Assignor from any of its obligations under the Leases or constitute an assumption of any such obligations by the Assignee; and (c) the Assignee shall not have any obligation or liability under the Leases or otherwise by reason of or arising out of this Assignment, nor shall the Assignee be required or obligated in any manner to make any payment or perform any other obligation of the Assignor under or pursuant to the Leases; or to make any inquiry as to the nature or sufficiency of any payment received by the Assignee, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which have been assigned to the Assignee or to which it may be entitled at any time or times. The Assignor shall and does hereby agree to defend and indemnify the Assignee and each Lender and hold the Assignee and each Lender harmless from and against any and all liability, loss, or damage which the Assignee or any Lender may or might incur, and from and against any and all claims and demands whatsoever which may be asserted against the Assignee or any Lender, in connection with or with respect to the Leases or this Assignment, whether by reason of any alleged obligation or undertaking on the Assignee's or any Lender's part to perform or discharge any of the covenants or agreements contained in the Leases or otherwise, except to the extent that such liability, loss, or damage arises out of the gross negligence or willful misconduct of the Assignee, to the extent that any such gross negligence or willful misconduct is determined by the final judgment of a court of competent jurisdiction, not subject to further appeal, in proceedings to which the Assignee is a proper party. Should the Assignee or any Lender incur any such liability, loss, or damage in connection with or with respect to the Leases or this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and attorneys' fees, shall be paid by the Assignor to the Assignee or the applicable Lender immediately upon demand, together with interest thereon from the date of advancement at the Default Rate until paid in full.

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2.5 **Foreclosure.** Upon foreclosure of the lien of the Security Instrument and sale of the Mortgaged Premises pursuant thereto, or delivery and acceptance of a deed in lieu of foreclosure, all rights, title, and interests of the Assignor in, to, and under the Leases shall thereupon vest in and become the absolute property of the purchaser of the Mortgaged Premises in such foreclosure proceeding, or the grantee in such deed, without any further act or assignment by the Assignor. Nevertheless, the Assignor shall execute, acknowledge, and deliver from time to time such further instruments and assurances as the Assignee may require in connection therewith and hereby irrevocably appoints the Assignee the attorney-in-fact of the Assignor in its name and stead to execute all appropriate instruments of transfer or assignment, or any instrument of further assurance, as the Assignee may deem necessary or desirable, and the Assignee may substitute one or more persons with like power, the Assignor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof.

ARTICLE 3 MISCELLANEOUS

3.1 **No Oral Change.** This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of the Assignor or the Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

3.2 **General Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the term "Assignee" shall mean "the Assignee and any subsequent administrative agent hereunder" and the term "Lenders" shall mean "the Lenders and any subsequent holder of any of the Notes," the word "Note" and "Notes" shall mean "the Note(s) and any other evidence of indebtedness secured by the Note(s)," the term "Mortgaged Premises" shall include any portion of the Mortgaged Premises and any interest therein, the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorney's, paralegal's and law clerk's fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Assignee in protecting its interest in the Mortgaged Premises, the Leases and the Rents and enforcing its rights hereunder; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

3.3 **Inapplicable Provisions.** If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

3.4 **Governing Law.** This Assignment shall be governed by, and construed in accordance with, the laws of the State of Illinois, without regard to conflicts of law principles of the State of Illinois.

3.5 **Termination of Assignment.** Upon indefeasible repayment in full of the Loan and all other Indebtedness, this Assignment shall become and be void and of no effect.

3.6 **Notices.** All notices or other written communications hereunder shall be delivered in accordance with the requirements of Section 10.1 of the Loan Agreement.

3.7 **WAIVER OF TRIAL BY JURY. THE ASSIGNOR AND, BY ITS ACCEPTANCE HEREOF, THE ASSIGNEE, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY**

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TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS ASSIGNMENT, OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTION OF ANY PARTY HERETO. NO PARTY SHALL SEEK TO CONSOLIDATE BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY THE ASSIGNOR OR THE ASSIGNEE EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY THE ASSIGNOR AND THE ASSIGNEE.

3.8 **Successors and Assigns.** This Assignment shall bind the Assignor and the Assignor's successors and assigns and shall inure to the benefit of the Assignee, for itself and in its capacity as the administrative agent for the Lenders, and the Assignee's successors and assigns, and for the benefit of the Lenders and their respective successors, assigns, and participants.

3.9 **Non-Waiver.** Waiver or acquiescence by Assignee of any default by the Assignor, or failure of the Assignee to insist upon strict performance by the Assignor of any covenants, conditions or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

3.10 **Severability.** If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the full extent permitted by law.

3.11 **Rights and Remedies Cumulative.** The rights and remedies of the Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Assignee shall have under the Loan Agreement, the Security Instrument, the Security Agreement, or any other Loan Document, or at law or in equity.

3.12 **Headings, Etc.** The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

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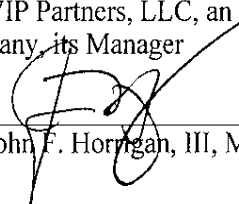
Voya Loan No. 29902

IN WITNESS WHEREOF, the Assignor has executed this Assignment as of the day and year set forth above.

ASSIGNOR:

VIP HICKORY HILLS, LLC, an Illinois limited liability company

By: VIP Partners, LLC, an Illinois limited liability company, its Manager

By:  _____
John F. Horrigan, III, Member

Property of Cook County Clerk's Office

ACKNOWLEDGEMENT

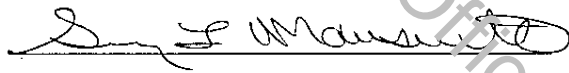
STATE OF IL)

) ss

COUNTY OF DeKalb)

BE IT REMEMBERED, that on this 10th day of December, 2019, before me the undersigned, a Notary Public in and for the county and state aforesaid, came John F. Horrigan, III, Member of VIP Partners, LLC, an Illinois limited liability company, Manager of VIP Hickory Hills, LLC, an Illinois limited liability company, who is personally known to me to be the same person who executed the within instrument of writing in such capacity and on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.

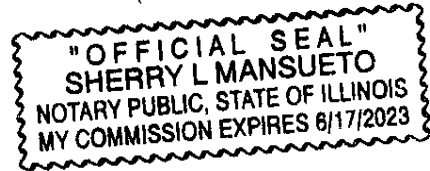


Printed Name: Sherry L Mansueto

Notary Public

My commission expires:

6/17/2023



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Voya Loan No. 29902

EXHIBIT "A"

Legal Description of the Mortgaged Premises

Lot 12 in K & K Industrial Park Subdivision, being a subdivision of part of the Northwest 1/4 and the Southwest 1/4 of Section 12, Township 37 North, Range 12 East of the Third Principal Meridian, according to Plat of Subdivision recorded July 11, 1979 as Document No. 25045447 and the Certificate of Correction recorded August 9, 1979 as Document No. 25092173 and the Consent and Ratification thereof recorded August 16, 1979 as Document No. 25103087, in Cook County, Illinois.

23-12-300-017

When recorded, return to:
 Fidelity National Title
ATTN: John Wallace
National Commercial Services
20 N. Clark St. Ste. #220
Chicago, IL 60602