IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHELBOURNE NORTH WATER STREET CORPORATION, f/k/a SHELBOURNE NORTH WATER STREET, L.P.,	)	
Plaintiff,	)	
v.	)	Case No.
NATIONAL ASSET MANAGEMENT AGENCY and NATIONAL ASSET LOAN MANAGEMENT, Statutory Bodies of the Republic of Ireland,	)	
Defendants.	)	

VERIFIED COMPLAINT, JURY DEMAND AND NOTICE OF RELIANCE ON FOREIGN LAW

Plaintiff Shelbourne North Water Street Corporation, f/k/a Shelbourne North Water Street, L.P., by its attorneys J. Joseph Bainton and Katherine B. Felice of Barclay Damon LLP and Michael J. Kelly and Adam C. Toosley of Freeborn & Peters LLP, for its Verified Complaint against Defendants National Asset Management Agency and National Asset Loan Management, Statutory Bodies of the Republic of Ireland, respectfully states:

Nature of the Action

1. This action arises from Defendants' willful and malicious conduct that frustrated completion of the iconic Chicago Spire Development Project on Lakeshore Drive that would have brought world-wide acclaim to the City of Chicago for this engineering marvel designed by the world famous architect Santiago Calatrava; damaged Plaintiff in the sum of $1.21 Billion representing the loss of some $525 Million in cash and equity invested in the Project and another $685 Million profit it would have earned had the Project been completed as it should have been;

and misled the Special Liquidators of the Irish Bank Resolution Corporation to accept some $57 Million less than they could have received in satisfaction of loans related to the Spire Project thus cheating the Irish tax payers out of that $57 Million out of sheer spite that certain of NAMA's principals felt toward Garrett Kelleher for repeatedly demonstrating their incompetence and proving in the Irish High Court the blatant efforts of Defendants and their principals to mislead that Court in order to harm unjustly another company owned by Mr. Kelleher.

2. This action arises under the Diversity Jurisdiction of this Court and asserts claims for (a) breach of contract; (b) tortious interference with contract; (c) tortious interference with prospective economic advantage; (d) breach of both statutory and common law duties to preserve the confidential information of Plaintiff; and (e) negligent spoliation of evidence.

3. This Court has jurisdiction over the subject matter of this action based upon the complete diversity of citizenship between Plaintiff and Defendants pursuant to 28 U.S.C. § 1332 and that the matters in controversy exceed $75,000 exclusive of interest and costs.

4. Venue is proper in this District because (a) it is the principal place of business of Plaintiff; (b) most of the conduct from which the claims asserted herein arise occurred within this District; and (c) most of the non-party prescient witnesses whose attendance at trial cannot be obtained other than by subpoena reside within the subpoena power of this Court.

The Parties and Related Persons

Shelbourne, Its Principal, Affiliates and Lender

5. Plaintiff Shelbourne North Water Street Corporation, f/k/a Shelbourne North Water Street, L.P. ("Shelbourne") is a corporation organized under the laws of Delaware that maintains its principal place of business within this District.

6. At all relevant times Shelbourne was owned entirely by Milltown, LLC ("Milltown"). Milltown is a limited liability company organized under the laws of the State of Illinois that maintains its principal place of business within this District.

7. At all relevant times Milltown was owned entirely by Garrett Kelleher ("Kelleher").

8. Kelleher was born in and is a citizen of the Republic of Ireland ("Ireland").

9. At all relevant times Kelleher was a well-known international real estate developer, who owned all or substantial interests either directly or indirectly in juridical entities organized under the laws of various jurisdictions around the world, whose businesses were the acquisition and development of various real estate projects.

10. The majority of these businesses had "Shelbourne" as part of their name.

11. As more fully explained below, the "business" of the Kelleher juridical entity defined above as Shelbourne was the development of a project known to many Chicagoans and many others around the world as the "Chicago Spire."

12. For many years prior to the World Financial Crisis of 2008, Anglo Irish Bank Corporation ("Anglo") had provided real estate acquisition and development financing to many of the Kelleher owned companies, including Selbourne.

13. Kelleher and one of his companies first borrowed a sum less than $10 Million from Anglo in 1997.

14. That loan was then recommended to Anglo's credit by Tony Campbell and Declan Quilligan, who were Kelleher's relationship managers at the time.

15. 9 years later Tony Campbell had risen to be CEO of Anglo-US and Declan Quilligan had risen to become CEO of Anglo-UK, two successful arms of the Anglo Group.

16. They, together with David Drumm, the CEO of Anglo Group, approved the Spire Loan facility from which this action arises.

17. Anglo's typical real estate acquisition and development financing was provided in the form of a "Facility Agreement" that contemplated borrowings in increasing amounts on the assumption that the real estate development project that was the subject of the facility proceeded generally as planned.

18. As a general practice, Anglo asked for developers such as Kelleher to guarantee personally such facilities "regardless of the loan to value ratio" so that Anglo could know that it "could rely on the borrower to use all of their experience, skill, relationships and resources to ensure that the Bank's interests were protected and secure at all times."

19. This practice by Anglo is confirmed in a letter dated 5 August 2014 to Kelleher from Joe McWilliams, Anglo's Director of Lending between 2006 and 2009 of which a copy is attached as Plaintiff's Exhibit. [1]

20. Over the years a general course of conduct in respect of such project financing evolved between and among Kelleher, Kelleher's companies and Anglo as well as between the Kelleher Group and other equally well-respected real estate development lenders.

21. With the exception of NAMA (as defined below), Kelleher was able to maintain over 20 years of good banking relations both before and throughout the World Financial Crisis with all of his companies' other long term lenders as is confirmed by PX-2, which consists of letters from the Bank of Ireland, the Irish subsidiary of Royal Bank of Scotland, Ulster Bank Ireland Limited and Investec, all dated in the fall of 2014.

[1] In the interest of brevity, future reference to documents attached to this Complaint as Plaintiff's Exhibits will be in the form of "PX-[Number]."

22. For example, Ulster Bank wrote:

> You have worked with the Bank on a consensual asset disposal strategy and to date you have worked in a fully cooperative manner with the Bank on a mutually agreed divestment strategy.
>
> In all aspect of these [enumerated prior] transactions the Bank have found your strategic / management ability undoubted and prior to the downturn in the economy and overall collapse of the property market you maintained an exemplary repayment record with the Bank.

23. Bank of Ireland ("BOI") wrote:

> Mr. Kelleher has had a relationship with BOI for over 20 years with significant borrowings to him and Shelbourne Developments Limited. The bulk of this debt was repaid in full during 2008.
>
> During this time Mr. Kelleher and his colleagues in Shelbourne were professional to deal with and were experienced property developers and investors both in Ireland and internationally.

24. Thus these documents show that the cooperation and involvement of Kelleher and his Shelbourne companies was instrumental in resolving significant indebtedness to leading Irish financial institutions and that when times proved unexpectedly hard through no fault of Kelleher or his companies, both they and he "did the right thing."

25. Shelbourne attempted to do no less in respect of the Loans related to the Chicago Spire.

26. The Anglo/Shelbourne "Facility" relating to the development of the Chicago Spire is described in detail below because it is highly relevant to the claims asserted herein.

27. On July 1, 2011, Anglo and Irish Nationwide Building Society were merged by order of Michael Noonan, Ireland's then Finance Minister, who has since become the subject of substantial criticism both within and without the halls of the Irish Government for having aided and abetted the fire-sale of Ireland's assets to principally United States "Vulture Funds" to the long-term detriment of its citizens.

28. The merged entity was named Irish Bank Resolution Corporation ("IBRC").

29. As a consequence of the merger, Shelbourne's obligations previously owed in name to "Anglo" thus became owed to IBRC by operation of well-settled Irish corporate law.

30. No change in the underlying documentation relating to the Spire Loans was required to transfer the obligations of Shelbourne to IBRC as the successor by merger to Anglo.

NAMA, NALM, Their Creation and Principals

The 2008 Financial Crisis

31. Like the United States, in the fall of 2008 Ireland was facing grave financial crisis.

32. Due in significant part to real estate lending, all of Ireland's banks were facing insolvency.

33. Indeed, Ireland had suffered the largest financial collapse of any developed country since the 1930's.

34. Thus on September 29, 2008 Ireland issued its infamous "Bank Guarantee," whereby the Government guaranteed up to £100,000 of deposits for each depositor and, controversially, all lenders, including unsecured bondholders.

35. This exposed the State to massive multi-billion-euro-debts and inevitably forced it into the arms of the EU Commission, the European Central Bank and the International Monetary Fund Bailout Program, commonly referred to as "The Troika."

36. The Bank Guarantee proved to have been little more than a "Band-Aid" and thus proved to be a horrible idea that was undertaken without consulting Brendan McDonagh ("McDonagh"), a senior executive with the National Treasury Management Agency ("NTMA").

37. NTMA was charged with handling the State's finances and ensuring access to the best bond yields and returns on the international market.

38. In the weeks and months that followed the issuance of that Guarantee McDonagh, the then Attorney General, economists and Arthur Cox Solicitors were all central to discussions about the creation of a "bad bank" to whose balance sheet the now grossly under secured real estate development loans that were on the books of Ireland's major banks, including Anglo, could be transferred thus "cleaning up" the balance sheets of the Irish banks and then theoretically allowing them to successfully reenter the capital markets.

39. In turn it was hypothesized that these banks would then be able to resume their crucial function of lending to commercial and other borrowers and thus help Ireland's economy recover.

40. Unfortunately, time proved that the capital markets did not view the "purple bonds" on the balance sheets of Ireland's banks that they had received in exchange for their toxic assets any more favorably than the capital markets had viewed the toxic assets, so this grand plan failed.

41. As a result the indigenous Irish banks have not yet been able to provide conventional lending to a level that can resolve the grave financial issues still confronting Ireland.

42. Over centuries world-wide real estate markets generally have proven themselves to be cyclical.

43. 2010-2012 was definitely a down cycle period.

44. The world's real estate markets have for the most part since recovered.

45. As Shelbourne predicted and had brought to the attention of NAMA and its principals at the time, the real estate market recovered in the United States long before it began to recover in Ireland.

46. For example, most major projects under construction in 2008 in the United States, other than the Spire, have since been completed.

47. The Anglo indebtedness of all Shelbourne/Kelleher related entities, which aggregated roughly $600 Million, was only half of the issues confronting Kelleher.

48. Indebtedness for real estate acquisition and development loans to all Irish lenders (including Anglo) owed by all Kelleher group entities as of 2008 totaled approximately $1.2 Billion.

49. As described below, successfully completing construction of the Chicago Spire was the "lynchpin" to Kelleher's plan to address other obligations of other "Shelbourne" entities located in countries whose recovery from a World Financial Crisis he predicted (correctly) would lag behind that of the United States.

NAMA and Its Affiliate NALM Are Created

50. Thus after many fits and starts Defendants National Asset Management Agency ("NAMA") and its affiliate National Asset Loan Management ("NALM") were born when the NAMA Act of 2009 became the law of Ireland on December 21, 2009.

51. NAMA was in all practical effect a "start-up" real estate development/workout company, fully funded by the Irish government/tax payers, with a state imposed operating budget that was inadequate to hire competent real estate professionals that ended up employing even at its highest levels individuals with no relevant experience or training, who learned about real estate development "on the job" from some of the world's foremost real estate developers such

as Plaintiff and those foreign real estate professionals to whom NAMA effectively gave away enormously valuable real estate under NAMA's control for pennies on the dollar.

52. Many of these same former NAMA employees are today, with the benefit of the education they received at NAMA at the expense of the Irish tax payers, now receiving rich compensation working for REITS and other real estate companies that own properties acquired from NAMA on the cheap.

53. NALM is an indirect subsidiary of NAMA, which itself is 51% privately owned, and has no independence from NAMA and in all respects material to this action was controlled by NAMA.

54. A copy of NAMA's current "corporate tree" downloaded from its website is attached hereto as PX-3.

55. To the observation of Shelbourne, all acts (and failures to act) purportedly taken on behalf of NALM were taken by the same natural persons whose principal employer and business cards said NAMA.

56. Indeed, Shelbourne learned of NALM's involvement with the Chicago Spire only after the events giving rise to this action had all occurred.

57. Accordingly, unless specific circumstances warrant specific reference to NALM, NAMA and NALM are referred to below collectively as NAMA.

NAMA's Leaders

58. After it was created McDonagh became NAMA Managing Director and later its Chief Executive Officer.

59. McDonagh has spent his entire professional life as a certified public accountant and had no relevant experience in property development or finance, yet he was charged with acquiring some €77 Billion in distressed real estate loans.

60. Nothing on McDonagh's resume remotely suggested he was qualified to head a start-up company charged with managing one of the largest portfolio of loans ever assembled.

John Mulcahy

61. McDonagh was joined by a team of advisors, headed by John Mulcahy ("Mulcahy").

62. Together with Barden Gale, Mulcahy had been a non-executive director of the property advisory committee of the National Pension Reserve Fund (another NTMA subsidiary) since 2004 and for many years had been a partner and head of the Dublin office of Jones Lang LaSalle ("JLL").

63. At all relevant times, JLL was arguably one of the largest and best known global commercial real estate agents and advisors regarding commercial, industrial or retail real estate.

64. JLL had, however, little if any, relevant experience with residential properties such as the Chicago Spire.

65. Mulcahy headed JLL's Dublin Office for many years, during which neither it nor he gained any experience with residential properties.

66. JLL's Dublin's office was in the business of selling or leasing commercial real estate after it had been developed by someone else.

67. In its best years, JLL's Dublin office generated no more than € 22 Million of fee income all from commercial real estate advisory work and transaction fees.

68. After playing a significant role in creating NAMA, Mulcahy was named Head of Portfolio Management.

69. Among his principal responsibilities he was charged with overseeing the negotiations with the failed banks regarding the determination of the face amount of "purple bonds" they would receive in exchange for distressed/toxic loans being transferred to NAMA or a NAMA affiliate such as NALM.

70. At all relevant times, Mulcahy pushed his underling Enda Farrell, who he had known from the NPRF, to endeavor to reduce the consideration paid by NAMA or one of its affiliates to the failed Irish bank for one of its toxic assets and then sought to maximize NAMA's recovery on that asset in order to make a profit for NAMA rather than minimize the loss the state guaranteed banks would take.

71. While the profits of NAMA were in one sense ultimately paid to NTMA and in the same sense the losses resulting from guaranteed loans not being repaid were also born by NTMA, Mulcahy's self-aggrandizing agenda was clear.

72. Mulcahy's principal concern was the financial performance of NAMA and its affiliates and not the realization of the financial potential of real estate development loans about which he and most members of the staff he hired in fact knew next to nothing and certainly had had no prior relevant experience.

73. Mulcahy appeared to be more concerned with NAMA's performance than the costs that were ultimately being imposed upon the Irish tax payers as a consequence of the excessive and commercially unreasonable "haircuts" NAMA imposed on the indigenous banks .

74. Upon the creation of NAMA, based upon his well-respected relationship building skills and clearly not relevant experience, Mulcahy's principal responsibility was disposing of €77 Billion of distressed real estate loans – a task for which he had no prior relevant experience.

75. Mulcahy also had no relevant experience with respect to the security for most of the €77 Billion of distressed loans, namely real estate development projects at various stages of completion or planning.

76. NTMA and NAMA could have better used Mulcahy's many, many contacts in the real estate world to have found someone actually qualified by real life experience to address the proper disposition of that € 77 Billion of distressed property loans, the vast majority of which related to real estate development in need of "working out" due to the World Financial Crisis.

77. Even if Mulcahy had been qualified, the successful accomplishment of Mulcahy's task was virtually impossible because NAMA, chaired by the former Anglo director and Head of the Irish Revenue Commissioners Frank Daly, were simply not prepared to pay salaries commensurate to the quality of real estate professionals this € 77 Billion task required.

78. Among many other things, the ultimate return achieved by NAMA on the portfolio of loans for which it assumed responsibility proves beyond any doubt the old adage that "one gets what one pays for."

79. While head of the JLL Dublin Office, Mulcahy was a frequent visitor to its Head Office, which is located in Chicago.

80. Accordingly, Mulcahy was very familiar personally with the Chicago Spire, which was the most significant real estate development project in that City in recent – or for that matter distant – memory.

81. Thus when Mulcahy learned that the most important real estate project in JLL's home city came under his jurisdiction and that it involved at least $65+ Million, he instructed his underlings to keep him "in the loop."

Sections 90 and 91 of the NAMA Act

82. There are two sections of the NAMA Act that are particularly significant to this case and therefore of which Shelbourne hereby gives express notice of reliance pursuant to Federal Rule of Civil Procedure 44.1, namely Sections 90 and 91. They provide:

> 90.— (1) Subject to *subsection (7)*, the service of an acquisition schedule on a participating institution in accordance with *section 87* or *89* operates by virtue of this Act to effect the acquisition of each bank asset specified in the acquisition schedule by NAMA or the specified NAMA group entity, on the date of acquisition specified in the acquisition schedule as the date of acquisition of the bank asset, notwithstanding that the consideration for the acquisition has not been paid.
>
> (2) The acquisition of a bank asset pursuant to *subsection (1)* is subject to the terms and conditions set out in the acquisition schedule and any general terms and conditions specified by NAMA under *section 86 (1)* except to any extent that the acquisition schedule excludes or modifies such specified terms and conditions.
>
> (3) Unless otherwise provided in an acquisition schedule, where an eligible bank asset is acquired, every relevant contract is deemed to be assigned to NAMA or the specified NAMA group entity, as the case may be.
>
> (4) In *subsection (3)* " relevant contract " means a contract—
>
> (*a*) relating to the bank asset,

(*b*) to which the participating institution is a party or in which it has an interest, and

(*c*) the existence of which has been disclosed to NAMA in writing.

(5) Unless otherwise provided in an acquisition schedule, where an eligible bank asset is acquired, NAMA or the specified NAMA group entity, as the case may be, becomes entitled to the benefit of—

(*a*) any certificate of title, solicitor's undertaking, warranty, valuation, report, certificate or document issued to the participating institution or upon which the participating institution is entitled to rely in connection with the asset, (*a*) any certificate of title, solicitor's undertaking, warranty, valuation, report, certificate or document issued to the participating institution or upon which the participating institution is entitled to rely in connection with the asset,

(*b*) an instruction, order, direction, bond, opinion, search, enquiry, declaration, consent, notice, power of attorney, authority or right given to, held by or issued for the benefit of, directly or indirectly, the participating institution in connection with the asset, and

(*c*) any other benefit arising under or in connection with any insurance or assurance policy or payment direction relating to the asset.

(6) Subject to *section 91* , *subsections (1)*, *(3)* and *(5)* have effect in relation to a bank asset notwithstanding—

(*a*) any legal (including contractual) or equitable restrictions on the acquisition of the bank asset or any part of it,

(*b*) any legal or equitable restriction, inability or incapacity relating to or affecting any matter referred to in the acquisition schedule (whether generally or in particular) or any requirement for a consent, notification, authorization, license or document to similar effect (by whatever name and however described), in each case,

(*c*) any insignificant or immaterial error or any obvious error, or

(*d*) any provision of any enactment to the contrary.

(7) The service of an acquisition schedule on a participating institution in accordance with *sections* *87* and *89* does not have the effects mentioned in *subsections* *(1)*, *(3)* and *(5)* in relation to a bank asset if—

(*a*) notwithstanding that the participating institution stated in information provided under *section 80* that it did not consider the bank asset to be an eligible bank asset, and that it objected to its acquisition NAMA decided under *section* *85* *(3)* to take steps to acquire the bank asset, and

(*b*) on the acquisition date—

(i) the Minister has not confirmed the inclusion of the bank asset in the acquisition schedule in accordance with *section 117* , or

(ii) NAMA—

(I) has amended the acquisition schedule to remove the bank asset from the acquisition schedule, or

(II) has revoked the acquisition schedule in accordance with *section* *89* or *121* .

91.— (1) In this Part— foreign bank asset ” means a bank asset in which the transfer or assignment of any right, title or interest that NAMA proposes to acquire is governed in whole or in part by the law of a state (including the law of a territorial unit of a state) other than the State; “ foreign law ”, in relation to a foreign bank asset or a transaction in relation to a foreign bank asset means the law of a state other than the State.

(2) In this section, where a bank asset is to be acquired by a NAMA group entity, a reference to NAMA in this section (but not in *sections* 92 and 93 as applied by *subsection (10)*) shall be construed as a reference to the NAMA group entity.

(3) To the extent that a bank asset proposed to be acquired by NAMA is or includes a foreign bank asset—

(*a*) if the law governing the transfer or assignment of the foreign bank asset permits the transfer or assignment of that asset, the participating institution shall if NAMA so directs do everything required by law to give effect to the acquisition, or

(*b*) if the relevant foreign law does not permit the transfer or assignment of the foreign bank asset, the participating institution shall if NAMA so directs do all that the participating institution is permitted to do under that law to assign to NAMA the greatest interest possible in the foreign bank asset.

(4) A participating institution, to the extent that a foreign bank asset is one to which *subsection (3) (b)* applies—

(*a*) is subject to duties, obligations and liabilities as nearly as possible corresponding to those of a trustee in relation to that bank asset, and

(*b*) shall hold the bank asset for the benefit and to the direction of NAMA, in each case subject to the nature of, and the terms and conditions of the acquisition of, the foreign bank asset.

(5) *Subsection (3)* applies in so far as the service of an acquisition schedule would not, of itself, as a matter of foreign law, operate to give effect to the acquisition of a foreign bank asset or otherwise effect or achieve the result referred to in that subsection in relation to such a bank asset.

(6) Without prejudice to *subsection (4)*, a participating institution shall, immediately upon being so directed by NAMA to do so, execute and deliver to NAMA any contract, document, agreements, deed or other instrument that NAMA considers necessary or desirable to ensure that there is effected a binding acquisition by NAMA or the NAMA group entity concerned, under the applicable law, of the interest specified in the relevant acquisition schedule. NAMA may issue more than one direction under this subsection in connection with a foreign bank asset.

(7) A trust, duty, obligation or liability created or constituted by this section shall not be taken to constitute a security.

(8) A participating institution shall comply with any direction of NAMA in relation to any duty, obligation or liability under this section.

(9) A participating institution shall obtain, make, maintain and comply with any authorization, consent, approval, resolution, license, exemption, filing, notarization or registration that is necessary in the State and in any other place in connection with ensuring the legality and enforceability of any act, matter or thing referred to in this section. (9) A participating institution shall obtain, make, maintain and comply with any

authorization, consent, approval, resolution, license, exemption, filing, notarization or registration that is necessary in the State and in any other place in connection with ensuring the legality and enforceability of any act, matter or thing referred to in this section.

(10) *Sections 92* and *93* apply with any necessary modifications in relation to a foreign bank asset.

83. Section 91 of the NAMA Act recognized that, as a matter of international law, Ireland was powerless to enact legislation governing the transfer of property/asset located outside of its borders whose transfer was governed by "foreign law."

84. Section 91 therefore requires NAMA to perfect any transfers to it (or an affiliate) of any such property/asset in accordance with the law of the state/country in which the property/asset is located.

85. This includes, without limitation, the transfer of any "beneficial interest" in such property/asset.

Background of This Action

86. The "Chicago Spire," at 2,000 feet will be the tallest residential building in the North America and when it began it would have been the tallest residential building in the world.

87. To date Shelbourne has over $225 Million of its own cash invested and $300 Million of equity in the Project that it still hopes to complete because for the reasons explained below Shelbourne remains the only person logically capable of completing it because it still owns the intellectual property necessary to construct it and it still maintains the good will of the diverse governmental and community interests without which a project of this dimension would be doomed..

88. This iconic structure, representing the last major undeveloped site in downtown Chicago on the famous Lake Michigan shoreline, is to be situated on 2.2 acres within a 7 acre Peninsula bounded by the Chicago River, Lake Michigan and Ogden Slip that Shelbourne and its affiliates had assembled.

89. Beginning in July 2006 Shelbourne assembled an international "Best in Class" team of international architects, engineers, market researchers, construction companies and marketing specialists to determine the feasibility of this Project and ultimately to proceed with it.

90. In total, Shelbourne and its affiliates employed over 30 consultancy firms.

91. Shelbourne engaged the world renowned Spanish architect, structural engineer, sculptor and painter Santiago Calatrava to design the breath taking Chicago Spire.

92. Mr. Calatrava's other celebrated structures include the Lisbon Train Station, the Bilboa Airport, the Milwaukee Art Museum, the Athens Olympic Sports Complex, the City of Arts and Sciences and Opera House in Valencia, the Margaret Hunt Hill Bridge in Dallas, the Peace Bridge in Calgary Canada and the WTC Hub in New York City.

93. His design for the Chicago Spire obtained world-wide acclaim and is symptomatic of the extraordinarily high quality that Shelbourne brought to all aspects of the Project.

94. By May 2007, having completed Phase II environmental work prior to commencing the substructure works, at considerable expense, via both Shelbourne and a network of other companies he owned, Kelleher obtained not only all the required zoning and permitting from a plethora of federal, state and City authorities, but Shelbourne and its affiliates also obtained easements and other rights in respect of the adjoining roughly 5 acres, which is owned by the City of Chicago, collectively referred to as the "Other Kelleher Related Rights."

95. Shelbourne was successful in securing the strong support of the Mayor's Office combined with all of the diverse, local community interest groups for the construction of this iconic building.

96. Once the City and all other stakeholders were behind the Project things went more smoothly than one would normally anticipate.

97. While the complete explanation from a technical perspective is, like the entire Project, complicated, the reality is without either (a) the Other Kelleher Related Rights or (b) a new developer successfully obtaining something that approximates the Other Kelleher Related Rights, the Spire could not be constructed.

98. The cost of obtaining something equivalent to the Other Kelleher Related Rights is daunting and there is no guarantee that such an endeavor would be successful.

99. While without any doubt the Other Kelleher Related Rights were obtained based upon the merits of the Project, the good reputation that Shelbourne had earned over 20 years in Chicago in particular and Kelleher had earned in the international real estate development community in general necessarily played some positive role in Shelbourne's quest for these rights.

100. Shelbourne and Kelleher's good standing in the Chicago community was evidenced, among other ways, by Mayor Daly's request that Kelleher assist the City in its bid for the 2016 Olympic Games.

101. The importance of the Kelleher Related Rights is readily illustrated by the fact that the existing, completed, and structurally integral substructure of the Spire exists in part on land that is not only within the 2.2 acre Spire Site, but also extends into the adjoining 5 acres that is owned by the City of Chicago.

102. Without the Other Kelleher Related rights, portions of that $300 Million substructure cannot be used.

103. The two facts that (a) the City of Chicago is committed to the development of this last "important" lakefront site at the estuary of the Chicago River by the construction of an architecturally significant building, i.e. the Chicago Spire or equivalent, and (b) the Spire cannot be constructed without the Other Kelleher Related Rights, or equivalent, explains why the site remains today a large unsightly hole in the ground.

Pre-Sales Began

104. By the end of 2007, at a cost of approximately $10 Million, Shelbourne constructed a museum quality "Sales Center" occupying a full floor of the NBC Tower in Chicago that overlooked the Spire site and contained exemplar units.

105. Beginning in January 2008, pre-sales of condominiums began on a global basis.

106. This was the first Chicago project to be marketed in this manner with the support of many diverse civic organizations.

107. As a general matter, the citizens/tax payers of Chicago were proud of this Project; viewed it as a positive development for their City; and in their own different ways lended their help to its success in whatever way they could.

108. Circa 370 of 1,200 condos were sold, half of which were sold to persons residing outside of the United States.

109. This was due in some part to the fact that these special, luxury units sold for roughly between $900 a square foot to $3,600, with an average of $1,400 per square foot.

110. These were favorable prices compared to other comparable luxury units in less significant buildings in other cities.

111. As was widely reported in the press, the 10,000 square foot duplex pent house at floors 141 and 142 was sold to Ty Warner, the then owner of the Four Seasons, New York, for $36 Million.

112. Shelbourne engaged a firm of United Kingdom solicitors with global offices well familiar with international projects to make certain that its sales activities were compliant with the laws in the countries in which Shelbourne was engaging in sales activities and in the United States, paying special attention to laws governing "money laundering."

113. Shelbourne successfully engaged J.P. Morgan Private Bank to pre-approve prospective purchasers for mortgages.

114. Sales continued to flourish based upon glamorous sales events held in Chicago, Singapore, Dublin, Hong Kong, Kuala Lumpur, Jakarta, Beijing, Shanghai, Cape town, Johannesburg, Abu Dhabi, Doha, London and New York City.

115. In the meantime, construction proceeded on schedule.

116. The entire design, marketing, sales, foundation and substructure of the Spire was completed at a cost of some $300 Million.

117. This $300 Million included the cost of the IP necessary for the plans for the entire Project, which Shelbourne still owns.

118. The Spire site acquisition and development was funded by a $225 Million equity investment by Shelbourne and a further $90+/- Million advanced pursuant to a Loan Facility with Anglo, which was guaranteed personally by Kelleher, whose details are discussed below.

119. In August 2008, Anglo's ability to keep funding this and all other real estate development projects as it had historically done evaporated due to the Irish financial crisis.

120. As noted above, the Chicago Spire Project was in every sense on – or ahead of – schedule.

121. So too was the payment of Shelbourne's obligations under its Loan Facility.

122. Accordingly given their historic relationship, Shelbourne had every reasonable expectation for Anglo to continue to lead the funding of the Project through its completion as Tony Campbell had initially indicated.

123. Not only did Anglo disappear as a funding source for a credit worthy project such as the Chicago Spire, but so too did alternative funding sources due to the World Financial Crisis.

124. By ironic comparison, Trump Tower in Chicago began construction some 9 months earlier than the Chicago Spire with Deutsche Bank and Credit Suisse as its principal funders.

125. When the crisis occurred, those banks continued to invest their then very limited capital in completing the Trump Project in order to preserve the funds already invested.

126. Thus, Trump Tower was completed and its loans ultimately honored.

127. By comparison, due to the collapse of the Irish economy, Anglo had no funds to invest to save its investment.

128. With no continuing source of funds, the Spire Project, which was very much "on track," came to a grinding and painful halt.

129. By this time, Kelleher had either sold, or refinanced, all other assets available to him in order to provide funding for the Spire Project.

130. Thus neither Shelbourne nor Kelleher had further liquidity with which to address the crisis.

The Purported Transfer of the Spire Loans and Other Kelleher Guaranteed Loans to NAMA As Part of the "Shelbourne Connection"

131. At the time of the financial crisis, the Spire represented only a portion of the problem that Anglo and ultimately Kelleher confronted together.

132. Companies owned wholly, partially, directly or indirectly by Kelleher, whose debt he guaranteed personally either entirely or in part owed Anglo on the order of $600 Million of which only roughly $90 Million related to the Spire and of that roughly $90 Million, $6 Million was owed by Milltown.

133. In addition, other Kelleher owned real estate companies owed other Irish banks another roughly $600 Million, bringing the total aggregate debt that as CEO of all of these companies Kelleher had to address to approximately $1.2 Billion.

134. All of this debt related to real properties developed or being developed.

135. As noted above, NAMA was created as a "bad bank" on December 21, 2009 to acquire property development loans from Irish banks in return for government purple debt bonds ostensibly with a view to improving the availability of credit in the Irish economy.

136. Kelleher was advised by both Anglo and NAMA in or about October 2010 that "his loans," including the Chicago Spire related loans, would be transferred to NAMA from Anglo as part of "Tranche 3" on November 1, 2010.

137. "His Loans" were referred to collectively by NAMA as the "Shelbourne Connection" and assigned **collectively** Account No. 0051.

138. No juridical entity named the "Shelbourne Connection" ever existed anywhere.

139. The "Shelbourne Connection" was a term of art created by NAMA to describe generally loans to entities in which Kelleher had an interest and generally were personally guaranteed in whole or in part by him.

140. From October 2010, until the bitter end, both Shelbourne and Kelleher dealt with various personnel of NAMA and otherwise conducted their affairs in relation to the Chicago Spire debt as though this representation by NAMA regarding its ownership of the Spire Loans were true.

141. There was no reason for Kelleher or Shelbourne to have believed or even suspected that Anglo's and NAMA's representations regarding ownership of the Spire Loans were not true.

142. There was no reason at any relevant time for Kelleher or Shelbourne not to have relied in good faith upon Anglo's and NAMA's representations regarding NAMA's ownership of the Spire Loans.

143. At all relevant times, NAMA conducted itself in a manner wholly consistent with its representations regarding ownership of, among other things, the Chicago Spire Loans.

144. It was only after Shelbourne suffered the damages for which recovery is sought herein that it learned through discovery proceedings in other cases and through its own investigation that Anglo's and NAMA's representations regarding NAMA's ownership of the Spire Loans were completely false.

145. As discussed below, the ownership of those Loans remained with IBRC (as successor by merger to Anglo) until May 21, 2013, when, in conformity with Section 91 of the NAMA Act, ownership of the Spire Loans was transferred to NALM.

The Illinois State Court Foreclosure Proceeding

146. As a result of the cessation of cash flow, in September 2010, Lorig Construction Company ("Lorig"), a minor contractor owed approximately $500,000, which had previously

filed a mechanics lien, commenced a foreclosure lawsuit in the Circuit Court of Cook County Illinois (the "Foreclosure Proceeding").

147. Lorig has constructed the valuable ramps into the substructure off of Lakeshore Drive that lead to a seven level subterranean 1,400 vehicle parking facility whose structure had already been completed.

148. A portion of this structure was constructed on land owned by the City of Chicago, pursuant to the terms of certain of the Other Kelleher Rights.

149. Under the law of Illinois, a mechanic's lien can, but need not necessarily, have priority over a first mortgage on real property depending upon specific facts.

150. In substance, if the work underlying the mechanics' lien increased the value of the real property then the lien will enjoy priority over the first mortgage in the amount of such increased value.

151. In October 2010 Anglo, represented by Quarles & Brady, who later proved to be NAMA's regular Illinois counsel, filed a "defensive" foreclosure action to assert its interest in the dirt by reason of its first mortgage.

152. This filing by Anglo in October 2010 occurred one month before Shelbourne was advised its loans were being transferred to NAMA as part of the "Shelbourne Connection" in "Tranche 3."

The September 2011 Interim Support Agreement

153. NAMA considered and rejected various business plans proposed by Shelbourne that contemplated NAMA funding completion of the Spire or some alternative project.

154. Mulcahy had also rejected Shelbourne's proposal to advance approximately $10 Million to "stabilize" the Project by dealing with existing lien litigation and otherwise "keep the lights on."

155. By the fall of 2011 NAMA and Shelbourne/Kelleher were at a crossroads.

156. NAMA desperately needed Kelleher's personal cooperation in order to meet its purported goal of maximizing its return on security for the Anglo Loans it claimed to own in the form of the Spire Project.

157. Shelbourne desperately wanted to complete the Project because it believed that the United States economy was "on the turn" and the recovery of the Irish economy was likely a number of years behind the United States.

158. Thus, completion of the Spire Project afforded Kelleher the means with which to deal with his overarching problems with other Irish loans.

159. At the outset, NAMA acknowledged that it had absolutely no competency in respect of the United States real estate market.

160. In the Chicago Spire, NAMA was confronting unquestionably a complex project that only an experienced real estate developer would have the competency to undertake.

161. From Shelbourne's perspective it was clear that Project Financing needed to be found elsewhere or it (and Kelleher as the Guarantor of its indebtedness) would have to face the consequences of the indebtedness to NAMA as the purported successor to Anglo.

162. That said, in November 2011 Shelbourne's ability to find financing to redeem its Loans at par, including accrued interest, was a challenging proposition although "green shoots" were beginning to appear in the U.S. real estate market.

163. Most importantly, NAMA, as the purported owner of the Spire Loans and therefore the real party in interest in the pending Foreclosure Proceeding, needed Selbourne's and Kelleher's help desperately in connection with the Foreclosure Proceeding because NAMA needed an appraisal of the mortgaged property in order to oppose the claims of several mechanics lien holders.

164. In a letter from NAMA's Chicago Counsel dated September 9, 2011, sent in order to induce Shelbourne to sign an "Interim Support Letter" that NAMA's counsel had already drafted and sent to Shelbourne's counsel, NAMA stated:

> There can be no reasonable doubt that the property can be sold for a price anywhere near the total amount owed to all parties in the Spire [foreclosure] litigation. Furthermore, because there is no way to cause the property to be sold free and clear of all liens, except for a judicial foreclosure sale, we have to proceed in that manner.
>
> * * *
>
> There is a very practical solution to the property owner's involvement in this case and the solution has been delivered to you in the form of a Stipulated Judgment of Consent Foreclosure. If your client is seriously interested in efficiently resolving this matter, the owner's agreement to that form of foreclosure would be a meaningful first step.

A copy of that letter is attached as PX-4.

165. At a judicial foreclosure sale, Shelbourne would have had the opportunity to bid on the Spire Site "free and clear of all liens."

166. Although Shelbourne did not technically own the Other Kelleher Related Rights, it had ready access to them.

167. Thus, together with an investor, it could contribute those interests and its other intellectual property so as to be able to be the highest bidder.

168. Its bid – at public auction – needed only be the highest and not the full amount of the debt.

169. With this opportunity foremost in Shelbourne's mind, NAMA and Shelbourne struck a deal that "pinched both of their toes" that was memorialized in an agreement drafted by NAMA dated 16th September 2011 labeled "Strictly Private and Confidential Addressee Only" and signed by both Kevin Nowlan and Peter Malbasha ("Malbasha") of NAMA (the "September 2011 Interim Support Agreement").

170. This document was signed by Kelleher on September 23, 2011.

171. From NAMA's perspective, the September 2011 Interim Support Agreement (drafted by NAMA's Illinois counsel) obliged Shelbourne and Kelleher to provide it with all of the highly confidential information it needed in order to understand the hugely complex, partially developed Spire Project in order to formulate a meaningful appraisal of it for use in the Foreclosure Proceeding in general and to oppose the claims of the mechanics lien holders in particular.

172. Such an appraisal was critical to NAMA's litigation of the priority of the mortgage on the Spire site that secured what it falsely claimed to be the Spire Loans that it owned.

173. As noted above, as of September 2011, in excess of some $300 Million had already been spent in development.

174. A copy of the September 2011 Interim Support Agreement is attached hereto as Plaintiff's Exhibit 5.

175. Paragraph 2(d)(iii) of the September 2011 Interim Support Agreement states in pertinent part that:

> (d) [Shelbourne/Kelleher] must comply with the following conditions (to the full satisfaction of NAMA) within the timeframes specified:

* * *

> (iii) [Shelbourne/Kelleher] to co-operate with and facilitate the Receiver in relation to all dealings regarding the Spire development, Chicago. In particular [Shelbourne/Kelleher] shall not contest the pending or proposed foreclosure lawsuit and shall fully and actively cooperate with such legal proceeding and shall execute, sign, complete and deliver all and any documentation in relation to same as and when required by NAMA and/or Anglo-Irish Bank plc. Furthermore and without derogating from the generality of the foregoing, [the Mortgagee, whose debt was personally guaranteed by Kelleher] shall agree to a **"Consent Foreclosure"** and shall sign all necessary documentation in that regard to help expedite matters and shall attend to same immediately upon receipt of all relevant documentation and in any event within one month from the date hereof.

(Emphasis added.)

176. "Consent Foreclosure" is a phrase of art generally in the United States and is typically governed by state statute.

177. In Illinois it is Section 15-1402 of the Illinois Foreclosure Act.

178. In material part it provides for the release of all personal guarantees. In other words, in the United States, when a lender asks a corporate borrower as part of a "workout deal" to agree to a "Consent Foreclosure" that is plain English shorthand for "we will release Shelbourne principal's personal guarantee" as part of defined court proceedings that have a defined time table by law.

179. Before entering into the September 2011 Interim Support Agreement, Malbasha of NAMA confirmed by an e-mail to Shelbourne dated August 17, 2011 that "by procuring an order of foreclosure, the marketability of the Spire site will be greatly improved and its value will therefore be maximized."

180. In so many words that e-mail re-affirms NAMA's commitment to have "the foreclosure process finished out and finalized."

181. In order to induce Shelbourne to sign the September 2011 Interim Support Agreement, NAMA threatens in this e-mail to withhold the payroll of Shelbourne's staff, who had already worked 17 days working on NAMA assets.

182. This threat approaches extortion, if it does not in fact constitute it.

183. In reliance upon NAMA's promise to fund its day to day operations, Shelbourne had asked loyal staff members to come to work for over two weeks with the understanding that they would be paid their salaries for their efforts.

184. Now NAMA was placing Shelbourne in the position of having to tell these hard working people that it could not pay them as it had promised.

185. Not paying hard working loyal staff was not an option that Shelbourne could entertain.

186. NAMA's extortion was, however, good reason for Shelbourne to have believed and then to have relied upon NAMA's frequently stated commitment to completing the foreclosure process so that the property could be sold free and clear of all liens.

187. Again, as part of that Illinois statutory process, Shelbourne could have acquired the Spire Site by simply being the highest bidder, not paying the total amount it owed, which played a substantial part in Shelbourne succumbing to NAMA's extortion.

188. Putting NAMA's unseemly extortion to the side, the consideration for Shelbourne and Kelleher for entering into the September 2011 Interim Support Agreement consisted essentially of three things, namely (a) time; (b) a release of Kelleher's personal guarantees of the Spire Loans; and (c) the potential to purchase the Spire site at judicial auction for a sum less than the full amount due under the Loans.

Neither NAMA Nor NALM Owned The Loans NAMA Publicly Offered For Sale and To Which The September 2011 Interim Support Agreement Related

189. Perhaps the most shocking fact about this case is that NAMA never, ever owned the Spire Loans it so publicly offered for sale.

190. Its affiliate, National Asset Loan Management Limited ("NALM"), did not acquire the Chicago Spire Loans until May 21, 2013 – after literally all of the events giving rise to the principal claims of Shelbourne asserted herein.

191. This fact is not subject to reasonable dispute as the transfer documents – all dated May 21, 2013 – from IBRC – **not to NAMA** – but rather to NALM, a "NAMA group entity" within the meaning of the NAMA Act, are attached hereto as PX-6, PX-7 and PX-8.

192. Indeed consistent with the fact that no transfer of the Anglo/IBRC Loans occurred before May 21, 2013 is the fact that in a Certificate issued by NAMA in 2014 attesting to transfers of Loans to NALM in November 2010, the Spire Loans are not scheduled.

193. A copy of this NAMA Certificate is attached as PX-9.

194. The reasonable beliefs of all concerned (except NAMA, which obviously knew better) that NAMA owned the Spire Loans explained the conduct of Shelbourne and others described below.

195. NAMA falsely claiming that it owned the Spire Loans had enormous legal and practical significance.

196. Common experience teaches that a failed or failing real estate developer is a logical participant in any "Work Out" of a failed real estate development loan.

197. That was particularly true in the case of the Chicago Spire given the critical need for the Related Kelleher Rights in order to complete the Spire Project.

198. The NAMA Act flatly prohibits NAMA (or any NAMA affiliate such as NALM) from selling any defaulted loan it acquires from a failed Irish bank (such as Anglo/IBRC) to the defaulting borrower or any entity in which a defaulting borrower has any interest or affiliation.

199. No such legal restriction applied to IBRC.

200. This disparity (with the Irish tax payer ultimately paying the ultimate bill flowing from it) has been the topic of considerable discussion in the Irish press and before the Irish Oireachtas (its legislative body).

201. Thus NAMA's deceit as to the purported assignment of the Chicago Spire Loans to it resulted in Shelbourne not knowing that it could propose a "Work Out" of those Loans to IBRC, which was at liberty under Irish law to accept an offer to pay-off those Loans on terms that resulted in a recovery of far less than 100% of all principal, interest and penalty interest then due.

202. That same deceit prevented IBRC and its Special Liquidators from knowing of Shelbourne's interest and ability to resolve its indebtedness at a sum of money vastly higher than the creditors of IBRC ultimately received.

203. Indeed, both before and after April 30, 2013, IBRC and/or its Special Liquidators accepted "Work Outs" of real estate development loans that resulted in recoveries of less than 100% of all principal, interest and penalty interest due in respect of those loans.

204. In reports to NTMA and other bodies of the government of Ireland, IBRC and/or its Special Liquidators has stated in substance that such "Workouts" represented successes under the circumstances.

NAMA's Appointment of JLL To Aid It in Preparation of An Appraisal of the Spire Site, As If It Actually Owned the Loans Secured by That Site.

205. As noted above, not surprisingly Mulcahy hired his old firm, JLL, whose head office is in Chicago, to be NAMA's agent in respect of the most prestigious real estate project in the City.

206. Between September 2011 and into 2013 Shelbourne, Kelleher and NAMA proceeded exactly as the September 2011 Interim Support Agreement contemplated.

207. The Shelbourne parties cooperated beyond any reasonable measure with NAMA in terms of disclosing to its Chicago based agent and Mulcahy's former employer, JLL, all of their confidential information relating to the Spire Project thus enabling JLL/NAMA to create a virtual Data Room so that the extraordinarily complex task of preparing an appraisal of the partially completed Spire Project could be completed for use in the pending Foreclosure Proceeding.

208. Part of that process included assisting NAMA, its counsel Quarles & Brady and their consultants and appraisers in evaluating the value of each of the mechanics' liens.

209. In addition, as part of his overall duty of cooperation to NAMA, Kelleher also provided NAMA with complete information relating to other companies within the NAMA named "Shelbourne Connection" as well as personal financial information, including personal financial statements.

210. From September 23, 2011, Shelbourne relied the upon the terms of the September 2011 Interim Funding Agreement, which it signed so that the property "could be sold free and clear of all liens" at a judicial foreclosure, which was according to NAMA's counsel (as well as its own) the only way such a thing could be accomplished.

Breach of the September 2011 Interim Support Agreement By the Sale of the Loans

211. In violation of the September 2011 Interim Support Agreement, NAMA ultimately offered for sale very publicly and then sold the defaulted Shelbourne Spire Loans, with Kelleher's personal guarantees still attached.

Undisclosed Agency of NAMA for IBRC

212. In an internally inconsistent document on the letterhead of JLL dated 13 March 2013, JLL initially states that it has been exclusively instructed by NALM to obtain offers for the acquisition of $92.8 Million of par debt matured loan collateralized by the Spire Site.

213. The same document never again refers to NALM, but makes statements to the effect that "a draft of the loan sale and purchase deed to be entered in between NAMA and the successful bidder" will be available in the Data Room [a defined term]" and that "NAMA is under no obligation to accept the highest bid or any bid at all."

214. This document was available only to individuals who signed a Non-Disclosure Agreement described below representing that they had had no contact with Shelbourne or any of its affiliates or principals.

215. Accordingly Shelbourne could not and did not obtain a copy of this letter until after it suffered the damages for which recovery is sought herein.

216. A copy of this document is attached as PX-10.

217. PX-10 also states that the "Draft Deed will be made available in the Data Room for information purposes only."

218. In contemplation of litigation, Shelbourne obtained from Philip Sylvester, an unsuccessful bidder for the Spire Loans, a copy of the "Loan Purchase and Sale Agreement" he actually submitted to JLL as part of his attempt to purchase the Spire Loans.

219. According to Mr. Sylvester this form of "Loan Purchase and Sale Agreement" was included in the "Bid Package" given to all bidders who had otherwise complied with the bidding requirements identified below as PX-12 through PX-14 and presumably was the "Deed" to which reference is made in PX-10.

220. A copy of the Loan Purchase and Sale Agreement ("LSA") as submitted to JLL by Mr. Sylvester is attached as PX-11.

221. Section 5.1(b) of the LSA contains Representations and Warranties by Seller as to the Loan as of the Closing Date and states:

> **Ownership by NALM.** NALM hereby represents and warrants to Purchaser with respect to the Loan as of the Closing Date that NALM holds all of the interests in the Loan that NALM acquired from IBRC pursuant to the terms, and operation of the NAMA Act, and to that to the best of NALM's knowledge and belief the terms of the said acquisition represents the entire beneficial interest in the Loan and NALM has not made any prior sale, transfer, release, waiver or sub-participation of its interest in the Loan.
>
> **Ownership by IBRC.** IBRC hereby represents and warrants to Purchaser with respect to the Loan as of the Closing Date that IBRC holds all residual interests in the Loan that did not transfer to NALM pursuant to the terms, and operation, of the NAMA Act and that this represents the legal interest in the Loan and IBRC has not made any prior sale, transfer, release, waiver or sub-participation of its interest in the Loan other than the transfer of the Loan to NALM in terms of the NAMA Act.

222. Again, the Spire Loans are not listed in PX-9 as among those "Shelbourne Connection" Loans transferred to NALM in 2010 and, moreover, because they are United States assets, pursuant to Section 91 of the NAMA Act, could only have been transferred via documentation such as PX-6 through PX-8, which are all dated May 21, 2013.

223. Thus the LSA is conclusive evidence that NAMA and NALM were acting as the agents of IBRC in respect of the Spire Notes and the Mortgage and Security Agreement securing those Notes until such time as the Notes were actually transferred to NALM on May 21, 2013.

JLL's Misleading Information Resulting In Few and Low Bids

224. Shelbourne learned long after the fact that JLL prepared a Confidential Memorandum that was made available to potential bidders that contained grave material misstatements of fact that it would have corrected had it been afforded the opportunity to review it for its accuracy.

225. Among those misstatements of fact was a misstatement to the effect that planning and zoning for the Project was expiring in May 2013, some 14 months earlier than it actually was due to expire and likely before the bid process could be completed.

226. Those misstatements of fact gravely adversely affected the price for which any reasonable, willing purchaser would pay for the Spire property, especially a global real estate developer or investor.

227. NAMA Barrister, Mr Brian O'Moore Senior Counsel boasted in proceedings in the High Court in Dublin that JLL had marketed the Spire Loans globally and that it had received hundreds of expressions of interests.

228. However, neither Mr. O'Moore nor NAMA's team of solicitors, in-house lawyers and executives were able to answer Mr Judge Fullam of the Irish High Court's question regarding the number of bids JLL actually received.

229. Clearly no knowledgeable or sophisticated international investor/developer would have wished to become embroiled in a Project the size and complexity of the Chicago Spire under the (false) impression that the site had no planning or zoning approvals.

230. Had potential bidders understood that were construction to resume before September 2014 planning and zoning approvals would not be an issue, the number and amount of bids obviously would have been greater.

231. Upon information and belief, the JLL Memorandum was so materially misleading by knowing admission as to be fraudulent because it failed to disclose the existence and importance of the Related Kelleher Rights.

232. The Virtual Data Room, which had originally been created to assist in the preparation of the Spire Appraisal needed for the Foreclosure Proceeding, was converted for use in aid of selling the Spire Loans in breach of the very Agreement that created it.

233. Indeed the Data Room created for the purpose of preparing the Spire Appraisal for use in the Foreclosure Proceeding was converted to the Data Room used by NAMA for the express purpose of breaching the September 2011 Interim Support Agreement.

Special Conditions to Bidding/Sale Process

234. A condition of access to the Data Room; receiving the JLL Report; bidding for the Spire asset; and being the successful bidder was a representation by an interested party that it had and would have no association, assistance or even communication with Kelleher, Shelbourne or any of its affiliates or any professionals or consultants previously employed by Shelbourne or its affiliates.

235. Because at the time the bids were being sought, the Loans still actually had not yet been transferred to NAMA, NALM or any other NAMA affiliate in accordance with Section 91 of the NAMA Act, these restrictions were completely unnecessary and materially drove down the price of all bids, particularly taking into account the value of the Related Kelleher Rights.

236. Copies of NAMA's Offer for Sale of Loans it did not own; the related Non-Disclosure Agreement ("NDA") and related Bidding Instructions confirming these facts are attached as PX-12, PX-13 and PX-14.

Shelbourne's Timely Offer to Redeem Its Defaulted Loans at Par, i.e. $92+/- Million, Before Either Their Sale To a Third-Party or the Occurrence of a Foreclosure Sale

237. While fulfilling its obligations under the September 2011 Interim Support Agreement on a more than timely basis, Shelbourne put the time that it "bought" with that agreement to good use.

238. Shelbourne found an investor ready, willing and able to advance $92+/- Million to fund the redemption of the Spire Loans at par (meaning 100% of all monies actually owed) so that they could regain control of the Spire site and then go on to finish construction of the Chicago Spire.

239. This would have been a "win/win" situation for all concerned.

240. The Irish tax payers would not have lost so much as a penny, including accrued interest.

241. The citizens of Chicago would have gotten the iconic Chicago Spire thus bringing even more world-wide acclaim to their great city.

242. Shelbourne would have recouped its $225 Million of cash, its $300 Million of equity and earned a minimum $685 Million in profit for a total of $1.21 Billion.

243. On March 16, 2013, only a few weeks after JLL, as NAMA's purported agent, had in violation of the September 2011 Interim Support Agreement begun marketing the Spire Loans, Kelleher advised David Bennett ("Bennett") and Malbasha of NAMA at a meeting in Dublin that Shelbourne had made arrangements for Bridgehouse Capital Ltd. ("Bridgehouse") to fund the redemption of Shelbourne's Loans that were secured by, among other things, a mortgage on the Chicago Spire site.

244. Shelbourne's ability to redeem its Notes (at par) was confirmed that same day both orally and in a letter of the same date by its Chicago counsel, Thomas J. Murphy, to NAMA's Chicago counsel, Leonard S. Shiffler of Quarles & Brady.

245. A copy of Mr Murphy's letter is attached as PX-15.

246. Shelbourne, Bridgehouse's principal, Andrew Ruhan, and his team of professional advisors, then sought access to the Data Room to complete customary due diligence incident to a transaction of this nature.

247. Access to the Data Room was the lynchpin to completion of the process of paying off in full, together will all accrued interest (including penalty interest), the indebtedness that NAMA was claiming was related to the Spire Project for a host of reasons.

248. It was unclear both as questions of fact and law what "loans" NAMA was purporting to offer for sale as related to the Spire Project, i.e. what loans needed to be repaid in order to regain title to the dirt.

249. The last of five notes in the approximate amount of $6 Million, whose proceeds were unquestionably used to further the Spire Project – indeed the loan's proceeds were disbursed by Anglo directly to Shelbourne creditors – was not the legal obligation of Shelbourne, but rather was that of Milltown and was not secured by any mortgage.

250. Thus it was unclear whether this unquestionably Spire related $6 Million loan was part of what NAMA was claiming to own and then offer for sale.

251. Neither Shelbourne, nor Bridgehouse, could determine if this $6 Million Note was among the "loans" being offered for sale by NAMA and the only way Shelbourne/Bridgehouse could determine that was by access to the Data Room since NAMA refused to meet with them or otherwise provide reliable information.

252. As Shelbourne claimed at the time, and subsequent highly public civil litigation has confirmed, Anglo engaged for years in a pattern of interest overcharging.

253. Indeed, present members of NAMA's Board know this from their time at Anglo.

254. There was an obvious need for access to the Anglo interest calculation documents that were resident in the Data Room and nowhere else.

255. Shelbourne could not get timely, straight or consistent answers from NAMA as to the amount of money it claimed Shelbourne owed.

256. In one spread sheet provided by NAMA in answer to this inquiry, there are there several different "pay-off" amounts, all of them wrong.

257. No competent counsel engaged by Bridgehouse would ever permit it to make a $90+/- Million investment, whose purpose was to fund the redemption of certain loans, without conducting due diligence of the lender whose indebtedness the Bridgehouse's investment was intended to satisfy.

258. Indeed, in a "Take Out" loan transaction, no competent Chicago lawyer would permit his/her client, the take out lender, to pay over some $90 Million without an opinion from counsel for the bank receiving the money that that bank no longer had any claim against its former borrower upon receipt of the $90 Million.

259. NAMA knew that to be true and to be the custom and practice in Chicago.

260. Thus complying with this practice fell within NAMA's duty of reasonableness imposed upon it by the NAMA Act.

261. NAMA denied Bridgehouse access to the Data Room being maintained by JLL and otherwise refused to engage with Bridgehouse's or Shelbourne's counsel regarding

Bridgehouse's funding of the redemption of the "Loans," whatever loans may have been at issue, because Bridgehouse would not sign the standard NDA.

262. This was confirmed in writing in an e-mail from Kelleher to Bennett, Malbasha and Moriarty ("Moriarty") of NAMA dated June 5, 2013 that states in pertinent part:

> David,
>
> The below is my recollection of our meeting with Andy Ruhan and subsequent communications:
>
> A. You would consider whether he could access the data room via your lawyers – i.e. circumventing the JLL process. This was subsequently denied by NAMA as you indicated that that would prejudice NAMA with others OR
>
> B. He could sign up – at the then late stage – to the terms of NDA or CA that JLL has issued. **Given that he was introduced by me and that the basis of him being prepared to redeem the loans was that he had my cooperation before, during and subsequently this was completely <u>impossible</u>.**
>
> *** * ***
>
> Andy Ruhan's view is that he will wait until the current sales process is complete and then look to deal with the purchaser. He expressed to Shelbourne in the meeting that from his perspective it made no sense for NAMA to be selling the loans, whilst in the middle of litigation and excluding me and my associates from the process. Also, as I am sure you are aware my lawyer in Chicago, Tom Murphy, has written to NAMA's lawyer indicating that Andy Ruhan **wishes to fund my redemption of the Spire loans.**

(Emphasis added.)

263. Kelleher's e-mail received the following nonsensical response from Bennett of NAMA:

> For the avoidance of doubt we should clarify one point Shelbourne raise below:
>
> Mr Ruhan's request for access to the JLL data room [sic] was never declined by NAMA – quite to the contrary, Mr Ruhan was encouraged to engage with JLL but instead choose not to sign up to the terms and conditions associated with the sale and under which other interested parties had previously signed up to.

264. A copy of this e-mail exchange is attached hereto as PX-16.

265. In round numbers, the Shelbourne offer (funded by Bridgehouse) to redeem the Notes would have netted NAMA – which was falsely claiming to own the Loans -- approximately $92.5 Million and would have represented a 100% recovery of principal and accrued interest (including penalty interest).

NAMA's Attempted Fraud Regarding the April 24 Meeting

266. In discovery in litigation in Ireland brought by NALM against Kelleher based upon his guarantees of the obligations of other "Shelbourne Connection" entities that was commenced based upon his alleged failure to honour his duty to cooperate with NAMA pursuant to the September 2011 Interim Support Agreement to which NALM was not a party, Shelbourne has obtained copies of three NAMA internal documents relating to the foregoing that show the continuing dishonesty or fraud of NAMA.

267. PX-17 are the handwritten notes of Malbasha, who was one of the two NAMA officials who attended the April 24 Meeting at which "redemption" of Shelbourne's Loans was discussed.

268. Literally the very first substantive word in Malbasha's notes is **"Redemption."**

269. Also noteworthy is the fact that his notes state: "issue with IBRC loans in States – overcharging."

270. Malbasha's notes also confirm that Bridgehouse needed one week to "review info in data room" and then three weeks for the assessment of creditors and to purchase the loans obviously at par value since the first word of his notes is "Redemption."

271. PX-18 is an e-mail exchange between the two NAMA participants in the April 24 Meeting, Messrs Bennett and Malbasha.

272. Bennett was the senior of the two.

273. They begin with an email from Bennett to Malbasha sent on May 22, 2013 asking Malbasha if he had ever completed the "Minutes" of the April 24 Meeting with Messrs Ruhan and Kelleher because "Obviously important to have something on file for this."

274. May 22, 2013 was the day after the IBRC Spire Loans were transferred to NALM in conformity with Section 91 of the NAMA Act of 2009, As Amended. *See* PX-6 through PX-8.

275. Prior to May 21, 2013 neither NAMA nor NALM had complied with the requirements of Section 91 of the NAMA Act in respect of the Spire Loans and, therefore, by operation of Irish law could have had no beneficial or legal interest in the Spire Loans.

276. Then a week later Bennett sent Malbasha another e-mail in the chain stating "Not sure you came back to me on this."

277. Knowing how events actually unfolded and knowing he could no longer hide from Bennett's demands, Malbasha chose to "re-write history."

278. He prepared type-written "Minutes" of the April 24 Meeting that vary materially from his handwritten notes.

279. These Minutes are attached as PX-19.

280. Nowhere in the typed Minutes appears the word "Redemption," which is the first substantive word in Malbasha's handwritten notes of the meeting.

281. Instead the typed Minutes state the Mr Ruhan said he did not "bid" for the Spire Loans "as he felt he could not comply with the terms of the NDA."

282. The substantive difference between "bidding" for a loan and "redeeming" a loan is as big a difference as that between day and night.

283. One can "bid" any amount for a loan being offered for sale recognizing that the owner of the loan has no obligation to accept the "bid."

284. One can "redeem" a loan for only one amount, that amount being the total amount due including interest and any other proper charges, and the holder of the note must accept payment in full.

285. Malbasha's wilful and wanton disregard for the truth is further reflected in last e-mail in the exchange that is part of PX-18, that transmits PX-19 (the typed Minutes) to Bennett with the comment "Feel free to amend."

286. The typed Minutes of the April 24 Meeting further corroborate NAMA's continuing deceit as to its ownership of the Shelbourne Loans. They state:

> AR [Andrew Ruhan] said that he really wanted to know about the status of the loan process. We explained that we were waiting for the first round bids and that no decision had been made by NAMA at this time.

287. Of course we now know that as of April 24, 2013 the decision was that of IBRC.

It is noteworthy that Bennett felt the need for there to be "something on file" literally the day after IBRC transferred the Shelbourne Loans – not to NAMA – but rather to NALM.

Malbasha's and NAMA's Adjudicated "Misleading" the Irish High Court

288. Indeed, Malbasha's "misleading" testimony is an adjudicated fact as is NAMA's.

289. In another case involving a "Shelbourne Connection" company, Middleview Limited, Irish High Court Judge Brian Cregan found Malbasha's testimony "positively misleading the court" on no less than seven different occasions. A copy of that decision is attached hereto as PX-20.

290. By the time of this December 2015 decision, NAMA's former employees and non-executive directors were under investigation by criminal, civil and legislative bodies in

Ireland and the United Kingdom, as well as the United States Securities and Exchange Commission.

291. NAMA had been widely charged with "giving away" most of the properties that NAMA had taken over to investment funds for a fraction of their value by bulk sales of loans that only a handful of investors around the world could purchase.

292. This was far removed from the task assigned to NAMA in 2009, which was to address the problem essentially borrower by borrower.

293. Without a doubt, out of spite NAMA had caused the Spire Loans to be sold for approximately 1/3 of what Shelbourne was ready, willing and able to pay in flagrant and shameful disregard of its duties to the Irish tax payers.

294. Claiming "reputational damage" to Malbasha, NAMA made an application to Judge Cregan to review and revise his judgment in respect of his findings regarding Malbasha misleading the Court.

295. On January 29, 2016, Judge Cregan rendered a thoughtful and detailed decision reaffirming his earlier conclusion that stated paragraphs of a Malbasha affidavit and an affidavit submitted by Margaret Magee also of NAMA "all combined to leave the court with a misleading impression of what happened." A copy of that Decision is attached as PX-21.

296. Rather be grateful for Judge Cregan's acceptance of Malbasha's representation that he did not intend to mislead the Court, NAMA once again vouched for Malbasha's indefensible conduct and appealed Judge Cregan's ruling.

297. This was a desperate move by a desperate litigant that was feeling the walls close in on all sides.

298. As any objective person would have expected, Judge Cregan's rulings regarding Malbasha's and Magee's misleading affidavits – subsequently vouched for and reaffirmed by NAMA by reason of its appeal – were upheld.

299. A copy of that opinion is attached hereto as PX-22.

The Appointment of "Special Liquidators" for IBRC on February 7, 2013; Blatant Inconsistencies Between Statements in Their Chapter 15 Petition and NAMA's Conduct; and NAMA's Conduct Indicating Malice Toward Shelbourne/Kelleher

300. As noted above, the Spire debt represented about 15% of Kelleher's issues with NAMA. While Shelbourne was and is a discrete juridical entity, whose purported obligations both to and from NAMA are discrete and there existed no cross-collateralization between Shelbourne and any other entity in which Kelleher had a direct or indirect interest (other than Kelleher's personal guarantee, which was discharged by Kelleher's performance of his obligations under the September 2011 Interim Support Agreement), NAMA never looked at things that way.

301. Hence the NAMA term the "Shelbourne Connection" meaning "everything Kelleher owed regardless of legal nicety."

302. In unrelated proceedings in Ireland Kelleher defended various rights successfully.

303. Although initially Kelleher did all that he could do to honour obligations originally due Anglo (including moving back to Ireland to do so), for long and complicated reasons by mid-2013 there was very "bad blood" between NAMA and Kelleher.

304. Indeed, by 2013 there was bad blood between NAMA and many other Irish real estate developers.

305. On February 7, 2013, as the Ruhan/Bridgehouse opportunity was coming on the scene and while the Loans still were an asset of IBRC, the Irish Minister for Finance appointed

Kieran Wallace and Eamonn Richardson Special Liquidators of IBRC (the "Special Liquidators").

306. Both men are partners in the Dublin office of the international public accounting firm of KPMG.

307. On August 28, 2013, the Special Liquidators filed a Chapter 15 Petition for Recognition of a Foreign Proceeding in the United States Bankruptcy Court for the District of Delaware. (Case No. 13-12159).

308. A copy of their Chapter 15 Petition is attached hereto as PX-23.

309. The Petition contains a host of admissions by IBRC as to events and their dates, which are also binding on NAMA as admissions.

310. Upon their appointment, the Special Liquidators should have been substituted as the real party in interest in the Foreclosure Proceeding in Chicago, which certainly would have placed Shelbourne on notice that its loans had not in fact been transferred in November 2010 as part of Tranche 3.

311. Paragraphs 20 through 22 of the IBRC Chapter 15 Petition state:

> 20. Following their appointment, the Special Liquidators were tasked with conducting an orderly winding up of IBRC in accordance with the Bank Resolution Act, the Ministerial Instructions issued on February 7, 2013, May 10, 2013 and July 20, 2013 by the Finance Minister pursuant to section 9 of the Bank Resolution Act (the "Ministerial Instructions") and applicable Irish law. Shortly after the commencement of the Irish Proceeding, the Special Liquidators sent a letter to all of IBRC's known creditors notifying them of the issuance of the Special Liquidation Order and prescribing the manner by which they should file claims against IBRC. The Special Liquidators are obliged to continue to keep all creditors informed of the progress of the Irish Proceeding as required under the European Communities (Reorganization and Winding Up of Credit Institutions) Regulations, 2011.
>
> 21. As part of the Irish Proceeding, the Special Liquidators are responsible for overseeing the sales and valuation process in respect of IBRC's loan book. Specifically, the Special Liquidators have been directed to appoint independent

appraisers to complete a valuation of IBRC's assets and liabilities. Subsequently, all assets will be offered for sale to the highest bidder whose bid equals or exceeds the value as determined by the independent appraisers (the **"Valued Price").** If bids received do not at least match the Valued Price, the assets will be sold to NAMA at the Valued Price.

22. Since their appointment, the Special Liquidators have taken significant steps towards preparing for the sale of IBRC's assets, including its loan book. In this regard, the Special Liquidators have engaged the services of independent professional appraisers for the purpose of valuing IBRC's loan book and assets. The Special Liquidators have also engaged, among others, legal and property advisors to conduct due diligence of IBRC's loan book and collateral securing the loans. **The Special Liquidators are currently in the process of developing a framework strategy for the marketing and sale of IBRC's assets.**

(Emphasis added.)

Subsequent Sale of the Notes With Kelleher's Guarantees Still Attached to RMW Acquisition

312. Shortly after NALM -- not NAMA -- acquired the Notes on May 21, 2013 it then sold them to RMW Acquisition Company ("RMW") for, upon information and belief, approximately $35 Million in or about July 2013, with Kelleher's personal guarantees still attached to the Loans.

313. There is nothing about the character of the Special Liquidators or their conduct of the liquidation of IBRC to date that would support any allegation that they knowingly cheated the creditors of IBRC out of $57 Million at the time they sold the Notes for roughly a third of the price that Shelbourne had been ready, willing and able to pay.

314. Upon information and belief, neither NAMA nor NALM ever informed them of Shelbourne's far superior offer.

AS AND FOR A FIRST CLAIM
(Breach of Contract)

315. Shelbourne restates and realleges its allegations from Paragraphs 1-314 herein as Paragraph 315 of Count I.

316. By facilitating the sale of the Shelbourne Loans rather that causing IBRC to proceed with the foreclosure so that the Spire Site could be sold free and clear of all liens, thus allowing Shelbourne to bid at the foreclosure auction, NAMA breached the September 2011 Interim Support Agreement because it had the power to cause IBRC to honour the Agreement, or, alternatively, at least to negotiate in good faith with Shelbourne regarding the resolution of its indebtedness to IBRC on terms that would have resulted in IBRC receiving tens of millions of dollars more than it ultimately received as the consequence of NAMA's deceitful conduct as described above.

317. Upon information and belief, NAMA affirmatively failed to disclose to the Special Liquidators Shelbourne's communications to it regarding the fact that it was ready, willing and able to redeem its Loans at par.

318. After the Loans were sold to RMW, RMW commenced litigation against Kelleher based upon his personal guarantees that should have been released pursuant to the terms of the September 2011 Interim Support Agreement.

319. Kelleher has claims for indemnification against Shelbourne for his costs of defending that litigation that was ultimately dismissed because RMW would not produce the Loan transfer documents.

320. As a consequence of NAMA's breach of the September 2011 Interim Support Agreement, Shelbourne suffered money damages in a sum to be proven at trial that are estimated to be approximately $1.21 Billion.

AS AND FOR A SECOND CLAIM
(Tortious Interference With Contract)

321. Shelbourne restates and realleges its allegations from Paragraphs 1-320 herein as Paragraph 321 of Count II.

322. Upon information and belief based upon PX-10 and PX-11, sometime after their appointment and before March 13, 2013, the Special Liquidators and NAMA/NALM entered into an agreement whereby NAMA/NALM became the agent of the Special Liquidators in respect of the collection of the Spire Loans.

323. Pursuant to that agreement the Special Liquidators assented to NAMA/NALM's acting on their behalf and subject to their control as their agent in dealing with others in respect to the Spire Notes including expressly Shelbourne and Kelleher.

324. Paragraph 3 of the Shelbourne's Note secured by a mortgage on the Spire site states in pertinent part:

> The Borrower may prepay the outstanding Principal Sum, in whole at any time … provided, however, that: (i) Borrower gives the Lender at least seven (7) Business Days prior written notice … and (ii) each prepayment is accompanied by payment of accrued interest …. In the event the outstanding Principal Sum is prepaid prior to the Maturity Date, **whether by reason of the acceleration of the maturity of this Note** or otherwise, the "Breakage Cost" set forth below shall also be due and payable. ….

(Emphasis added.)

325. In addition, 735 ILCS 5-15-1605 states that a defaulting mortgagee can redeem its property up to the time of a foreclosure sale.

326. At the time of the April 24 Meeting discussed above, bids had not yet even been solicited, much less a bid accepted.

327. Shelbourne thus had a contractual right to redeem its Loans.

328. NAMA/NALM knew of this contractual right and that it was enforceable.

329. In addition, unlike NAMA/NALM, IBRC and its Special Liquidators suffered no statutory disability that prevented it from accepting from Shelbourne a sum of money vastly larger than the sum of money it ultimately received for the Spire Loans from NALM, but significantly less that the full amount due.

330. Accordingly, Shelbourne also had a contractual right to make an offer of compromise to IBRC and its Special Liquidators to resolve its indebtedness represented by the Spire Notes for a sum of money far less than the total amount owed, while still far larger than the sum that IBRC ultimately received.

331. NAMA/NALM knew of Shelbourne's right to make an offer of compromise to the Special Liquidators and that it was enforceable.

332. NAMA/NALM, as agent, never disclosed to its principal, the Special Liquidators, (a) Mr. Murphy's March 16, 2013 letter confirming Shelbourne's desire to redeem the Spire Loans (PX-15); (b) the substance of what occurred at the April 24 Meeting among Messrs Ruhan, Kelleher, Bennett and Malbasha; (c) the e-mail exchange following NAMA's denial of access to the Data Room to Bridgehouse and its advisors (PX-17); the substance of that e-mail exchange; or (d) the substance of Malbasha's handwritten notes of the April 24 Meeting (PX-16).

333. A reasonable person serving as an agent to the Special Liquidators would have advised them of all of the information to which reference is made in the foregoing paragraph and that Shelbourne was ready, willing and able to redeem its Loans subject to Bridgehouse conducting ordinary and customary due diligence by having access to the Data Room to determine, among other things, what Loans were necessary to be redeemed in order to acquire all

rights to the Spire Site and what amount was truly owed given the legitimate questions about Anglo's practice of interest overcharging.

334. A reasonable person serving as an agent to the Special Liquidators would have advised them that Shelbourne was ready, willing and able to make an offer to purchase its Loans at a price significantly higher than the price the Liquidators ultimately received for the Loans.

335. Upon information and belief, the Special Liquidators were never advised that Bridgehouse had sought access to the Data Room for the sole and express purpose of conducting due diligence in contemplation of funding the redemption of the Chicago Spire Loans.

336. NAMA/NALM, as agent to the Special Liquidators, had a duty to advise them of Bridgehouse's aforesaid request and the specific purpose underlying the request.

337. In addition, as agent to the Special Liquidators, NAMA/NALM had a duty to advise them in April 2013 that Shelbourne was ready, willing and able to negotiate the purchase of the Chicago Spire Loans at a price more than double the price at which NAMA was predicting the Special Liquidators would receive.

338. Upon information and belief, NAMA/NALM wilfully, without justification or excuse and motivated purely by malice directed toward Kelleher breached their duties owed to the Special Liquidators.

339. The failures of NAMA/NALM, as the Special Liquidators' agents, to advise the Special Liquidators of Shelbourne's demand to redeem its Loans at par or to purchase them at a price vastly higher than the price that the Special Liquidators ultimately obtained made no sense, legal or otherwise.

340. NAMA/NALM could have had no motive or explanation for their irrational actions that prevented redemption of Shelbourne's Loans and prevented the Special Liquidators

from recovering much more for the Spire Loans than they ultimately recovered other than malice toward Shelbourne and its principal Kelleher.

341. NAMA/NALM could have had no other conceivable motive to impose as much as a $57 Million burden on the already overburdened Irish taxpayers; deprive the creditors of IBRC of as much as $57 Million; and also deprive the citizens of Chicago of a real estate project that would have brought the City world-wide acclaim.

342. So pure malice toward Shelbourne and Kelleher can be the only explanation for NAMA/NALM's conduct.

343. NAMA/NALM intentionally, without justification and with extreme and irrational malice caused the breach of Shelbourne's contracts with IBRC/the Special Liquidators by (a) deceitfully representing to Shelbourne in particular and to the public in general that it was the owner of the Spire Loans and (b) deceitfully failing to disclose to the Special Liquidators that Shelbourne was ready, willing and able to redeem its Loans or otherwise purchase them at a price vastly higher than the Special Liquidators ultimately received.

344. Had NAMA/NALM not breached its fiduciary duties to the Special Liquidators and therefore had the Special Liquidators known in April 2013 that they could receive at least twice the amount that they ultimately received in satisfaction of the Spire Loans they gladly would have accepted that sum.

345. Indeed, the Special Liquidators had a fiduciary duty to the creditors of IBRC to accept the higher amount from Shelbourne.

346. Now that the Special Liquidators are on actual notice by reason of the filing of this action of NAMA/NALM's deceitful and malicious conduct and its wilful and wanton breach of their duties to the Special Liquidators as their agent, they have a fiduciary duty to bring suit

against NAMA/NALM to recover for the benefit of IBRC's creditors the damages that NAMA/NALM's deceit caused, namely the difference between what IBRC actually recovered for the Spire Loans as compared to what it could have recovered from Shelbourne.

347. NAMA/NALM's aforesaid tortious interference with its contract with IBRC and its Special Liquidators also caused damages to Shelbourne resulting in its loss of the Spire Site and ultimately its ability (to date) to complete construction of the Chicago Spire.

348. These damages are estimated to be approximately $1.21 Billion.

AS AND FOR A THIRD CLAIM
(Tortious Interference With Prospective Economic Advantage)

349. Shelbourne restates and realleges its allegations from Paragraphs 1-348 herein as Paragraph 349 of Count III.

350. Shelbourne had a reasonable expectancy it would enter into a valid business relationship with Bridgehouse whereby Bridgehouse would fund paying off its Loans in full and then develop the Chicago Spire with it.

351. By no later than April 24, 2013, NAMA knew of this expectancy.

352. NAMA's above described malicious and intentional interference with this expectancy prevented it from ripening into a valid business relationship.

353. Upon information and belief, NALM may have played some role in the tortious conduct that appeared at the time to have been conducted by entirely by NAMA.

354. Thus to whatever extent NALM bears some responsibility for the damages that appear to have been caused solely by NAMA, recovery is also sought against NALM.

355. As a consequence of the tortious interference with its prospective economic advantage, Shelbourne suffered damages that are estimated to be approximately $1.21 Billion.

AS AND FOR A FOURTH CLAIM
(Breach of Statutory and Common Law Duties to Preserve Confidential Information)

356. Shelbourne restates and realleges its allegations from Paragraphs 1-355 herein as Paragraph 356 of Count IV.

357. A former employee of NAMA, Enda Farrell, was charged with and pleaded guilty to eight counts of unlawfully disclosing information in violation of the 2009 NAMA Act.

358. He was received a two year suspended sentence from the Irish Criminal Court.

359. Originally, NAMA vigorously denied that any of Farrell's "leaks" related to the Spire.

360. On November 7, 2016, NAMA admitted that among the confidential information that its employee Enda Farrell had leaked was confidential information relating to the Spire notwithstanding prior strenuous denials to the contrary by Moriarty of NAMA.

361. This Moriarty admission followed a story published in the *Irish Times* on September 11, 2016 that Farrell had informed the Irish authorities that Farrell "provided a major US property fund with a confidential valuation report on a significant US asset, which was then under Nama's control."

362. Upon information and belief, that "major US property fund" was Apollo Real Estate Advisors ("AREA") and the "significant US asset" was the Chicago Spire.

363. The individual who received the data was its CEO Lee Neibart, someone well known to Mulcahy from his JLL and NPRF days.

364. At the time Shelbourne had already entered into a NDA with AREA regarding funding the redemption of its Loans and then developing the Spire Project and was in the process of negotiations.

365. Those negotiations were terminated precipitously by AREA.

366. Upon information and belief, AREA terminated those negotiations based upon false information "leaked" by Farrell.

367. Upon information and belief, Shelbourne was unsuccessful in finding other investors based upon false information "leaked" by Farrell.

368. But other than admitting that the information was "confidential," NAMA has refused to provide Shelbourne with a copy of what was "leaked" claiming it to still be confidential.

369. NAMA had statutory and common law duties to take reasonable care to preserve Shelbourne's confidences.

370. The criminal conviction of Edna Farrell in Ireland constitutes *res judicata* that NAMA violated its statutory duty under the NAMA Act.

371. NAMA was grossly negligent in preserving Shelbourne's confidences.

372. As a result of its breaches of these duties, Shelbourne suffered damages in an amount to be proven at trial, but in no event less than $75,000, exclusive of interest and costs.

AS AND FOR A FIFTH CLAIM
(Negligent Spoilation of Evidence)

373. Shelbourne restates and realleges its allegations from Paragraphs 1-372 herein as Paragraph 373 of Count V.

374. By March 12, 2015, NAMA and certain companies that NAMA had dubbed in 2010 as being within the "Shelbourne Connection" and Kelleher were already involved in litigation with one another.

375. The threat of litigation between Shelbourne and NAMA was plainly obvious to any reasonable person by that date.

376. Nonetheless on that date NAMA issued a Memorandum adopting a policy calling for the destruction of all e-mails and other written communication of former employees.

377. A copy of that Memorandum is attached hereto as PX-24.

378. Upon information and belief pursuant to PX-24 copies of highly relevant probative documents relevant to this action have been destroyed.

379. A reasonable person in NAMA's place would have perceived that the destroyed evidence would be material to this potential action.

380. Thus NAMA had a duty to preserve this evidence.

381. By destroying this evidence NAMA breached that duty.

382. As a consequence of the destruction of this evidence Shelbourne has been damaged because it has become more difficult to prove some or all of the claims asserted herein.

WHEREFORE Shelbourne demands judgment against NAMA and NALM as follows:

1. On its First Claim for money damages in an amount to be proven at trial that are estimated to be not less than $1.21 Billion, exclusive of interest and costs.
2. On its Second Claim for money damages in an amount to be proven at trial that are estimated to be not less than $1.21 Billion, exclusive of interest and costs.
3. On its Third Claim for money damages in an amount to be proven at trial that are estimated to be not less than $1.21 Billion, exclusive of interest and costs.
4. On its Fourth Claim for money damages in an amount to be proven at trial that are estimated to be not less than $75,000 exclusive of interest and costs.
5. On its Fifth Claim for money damages in an amount to be proven at trial that are estimated to be not less than $75,000, exclusive of interest and costs.

6. Awarding it the costs of this action, together with such other, further or different relief as to this Court may seem just and proper.

Dated: Chicago, Illinois
February 27, 2018

BARCLAY DAMON LLP

By: /s/ J. Joseph Bainton

J. JOSEPH BAINTON
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-- and –

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VERIFICATION

Pursuant to 28 U.S.C. § 1746 I hereby affirm and verify that I have read the foregoing Verified Complaint and know the allegations contained therein to be true of my own personal knowledge except those matters alleged upon information and belief and those allegations I believe in all good faith to be true.

Dated: Dublin, Ireland
February 26, 2018

Garrett Kelleher

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a trial by jury of all issues triable of right by jury.

NOTICE OF RELIANCE ON FOREIGN LAW

Pursuant to Federal Rule of Civil Procedure 44.1, Plaintiff hereby gives notice that it relies on foreign law, namely the NAMA Act of 2009, as amended as of the date of the filing of this action, of the Republic of Ireland and Section 1605(a) of the Treaty of Friendship, Commerce and Navigation between the United States and Ireland, 1 U.S.T. 788.

59 Rathasker Heights,
Naas,
Co Kildare

5 August 2014

Garrett Kelleher,
505 North State Street,
Chicago IL60654,
USA.

Dear Garrett,

Re; Garrett Kelleher and Shelbourne Developments Ltd Relationship With Anglo Irish Bank Plc.

I outline below my understanding and recollection of the history and relationship of Garrett Kelleher (Mr. Kelleher) and Shelbourne Developments Ltd (Shelbourne) with Anglo Irish Bank Plc. With regard to my role with Anglo Irish Bank Plc, I was employed with the Bank from 1999 to 2009 and acted as a Director in the Lending Ireland Division from 2006 to 2009.

Mr. Kelleher's Group was one of the larger borrowers in my portfolio in the Bank and I engaged with the principal of Shelbourne personally, Mr. Kelleher, re all banking propositions. Mr. Kelleher had assembled a highly professional team under the Managing Director, Chris O'Connell, Finance Director, Emmet O'Reilly, Tom Hamilton Director of Property, Richard Moyles Development Director, Sarah McDonnell Associate director Construction and Brian Berg Associate Director Development.

In September 2008, the Bank's exposure to Shelbourne/Mr. Kelleher between personal and corporate loans in the US, Ireland and Brussels was circa €450m. As director of lending, I was the most senior individual at Anglo Irish Bank Plc that Shelbourne/Mr. Kelleher dealt with in Ireland for approximately 10 years and it was I who would recommend any loan proposal to credit committee from Shelbourne.

Mr. Kelleher and the Shelbourne team were viewed by myself and the Bank as an internationally experienced professional developer with a proven track record of 25 years and in all instances where loans were advanced to Mr. Kelleher for the acquisition of personal assets or Shelbourne Group assets the Bank insisted that there be full or partial recourse from Mr. Kelleher personally. To my recollection Mr. Kelleher's most valuable asset and that which he had most equity in was the Chicago Spire site and environs which had an enterprise value in early 2008 of circa $500m with debt at the time of approximately $50m.

Anglo Irish Bank Plc had a general lending policy whereby it insisted on borrowers and in particular developers providing personal guarantees and in many instances this policy was adapted regardless of the loan to value ratio of the subject loan. The Bank, in the case of Mr. Kelleher is a good example, needed to know that they could rely on the borrower to use all their experience, skill, relationships and resources to ensure that the Bank's interests were protected and secure at all times. In many instances, regardless of the security the Bank may have in a particular asset, the Bank insisted on personal guarantees so that they knew that the commitment of the borrower was there.

The case of the Bank's dealings with Mr. Kelleher, the Bank in requiring Mr. Kelleher to provide a guarantee was more relying on Mr. Kelleher's commitment to remain focussed and employ all his considerable skills, resources, relationships and experience to repay the Bank as much as contributing personal cash in the event of a default. It would be fair to say therefore that the security offered through the guarantee in the case of Mr. Kelleher was as much his personal skill, acumen, experience, integrity as much as the consideration under the guarantee itself. The Bank wanted to know that the key man had additional interest in the project.

Anglo's primary concern in taking personal guarantees was to ensure that the Borrower remained committed to the project especially if difficulties were encountered. Anglo Irish Bank Plc believed that the amount to be recovered under any guarantee would be the subject of negotiation, with number of factors to be taken into consideration such as the level of co-operation of the Borrower net worth and liquidity of Borrower etc. This approach reflected the fact that Anglo Irish Bank Plc regarded itself as relationship lenders. Ultimately, the Bank's credit committee, of which I was a member, would decide on what action should be taken on foot of a guarantee.

In the case of most developers, and certainly in the case of Mr. Kelleher, their net worth was entire a function of the real or perceived equity they might have had at a particular time across all their property assets. In most instances, the vast majority or all of the developers net worth was the differential between the value of the assets or the estimated/perceived value of the assets at a particular point and the debt outstanding.

Anglo Irish Bank Plc invariably accepted these net worth statements without any third party audit the assets or a third party review of the portfolio which was the subject of the net worth statement The Bank relied primarily on being able to compel the developer to protect and maximise the Banks recovery if the situation were to occur by knowing he would do all he could to maximise the recovery. If, therefore, the borrower or Mr. Kelleher in this instance, was prohibited from using his skills and resources to maximise the recovery for both the Bank AND himself then that action, in my view, would contravene the basis and intent of the guarantee itself.

The Modillion portfolio primarily consists of 6 prime Dublin redevelopment sites. The financing of thi portfolio closed late December 2007 and the purpose of the advancement was to finance the phased redevelopment of these key sites. The basis of the DTZ valuation, which was ordered by th Bank, was their redevelopment potential and in particular Shelbourne and Mr. Kelleher's vision for these assets.

Development plans had been developed for all these key sites with top tier Dublin and international Architectural firms and in a number of instances planning applications were ready to be lodged. The Bank approved the Shelbourne business plan for these sites which was the basis o the loan.

The Bank then advanced the senior debt facility it did because it was confident that Mr. Kelleher and the team he had assembled across all the disciplines of the property development business and based on a proven track record could implement this business plan. The loans advanced were development site loans and not investment loans - these assets were not valued as a functi of the in place income rather their residual value from their development potential.

This adequately explains my recollection of your relationship with Anglo Irish Bank Plc and the poli in relation to personal guarantees.

Yours sincerely,

Joe McWilliams

Investec

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Swift: IRBK IE 2D
Website: www.investec.ie

Mr. Garrett Kelleher
32 Herbert Park
Ballsbridge
Dublin 4

PLAINTIFF'S EXHIBIT 2

7th August 2014

Dear Garrett,

You have been a client of Investec since 2007. Notwithstanding the difficulties in relation to the meeting of commitments in respect of your corporate facilities, you have co-operated with the Bank in ongoing attempts to address these difficulties.

The Bank acknowledges that the management of the assets, which are held as security for its exposure to you both personally and your companies are best managed by you/Shelbourne Developments at this time.

Should you wish to discuss the above, please do not hesitate to contact Martin Cooke at his direct line (01-4210117) or mobile (086-8264506).

Yours sincerely,

Michael Cullen

Ulster Bank Ireland Limited
Global Restructuring Group - Ireland
Ulster Bank Group Centre
Georges Quay
Dublin 2

Telephone: 01-6084000
Fax: 01-6084244

www.ulsterbank.com

Mr. Garrett Kelleher
C/O Shelbourne Developments Ltd
75 St Stephen's Green
Dublin 2.
28/07/14

RH

Dear Mr Kelleher,

I refer to our recent telephone conversation and advise that as a customer of RCRI you have worked with the Bank on a consensual asset disposal strategy and to date you have worked in a fully cooperative manner with the Bank on a mutually agreed divestment strategy.

You have maintained a long standing banking relationship Ulster Bank Ireland and were previously a customer of First Active who were acquired by the Bank in 2004, the RBS also participated with you as a 19.9% partner by way of funding to Modillion Ltd which provided equity in to an overall €330m investment property portfolio. In all aspects of these transactions the Bank have found your strategic / management ability undoubted and prior to the downturn in the economy and overall collapse of the property market you maintained an exemplary repayment record with the Bank.

The following assets have been sold and facilities have been reduced and in some cases fully repaid as below:-

a) Nanterre Office / Residential site in Paris €12.9m (loans repaid in Full)
b) Friends First Investment maturity €5m (partial loan repayment)
c) 4 Residential units in Le Grande Tourtre France €320k (partial loan repayment)
d) Residential Investment Property in Inchicore Dublin 8 €169k (partial loan repayment)

In addition to the above a number of assets are contracted for sale with further debt reduction anticipated within the next 3 / 6 months.

The bank wish to advise that your further cooperation will be required to ensure the agreed milestones are achieved and acknowledge your help and assistance in achieving asset disposals to date.

Yours faithfully

Alan Mathews

Portfolio Manager

Bank of Ireland

Business Banking
40 Mespil Road
Tel +353 (01) 661 5933
Fax +353 (01) 665 3482
www.bankofireland.com

Garrett Kelleher
c/o Noel Smyth and Partners,
22 Fitzwilliam Square
Dublin 2

August 7th, 2014

Re: The Governor and Company of the Bank of Ireland ("BoI") and Mr Garrett Kelleher

Dear Mr Kelleher,

Further to your request please see below a summary of your dealings with BoI.

Mr Kelleher has had a relationship with BoI for over 20 years with significant borrowings to him and Shelbourne Developments Limited. The bulk of this debt was repaid in full during 2008.

During this time Mr Kelleher and his colleagues in Shelbourne were professional to deal with and were experienced property developers and investors both in Ireland and internationally.

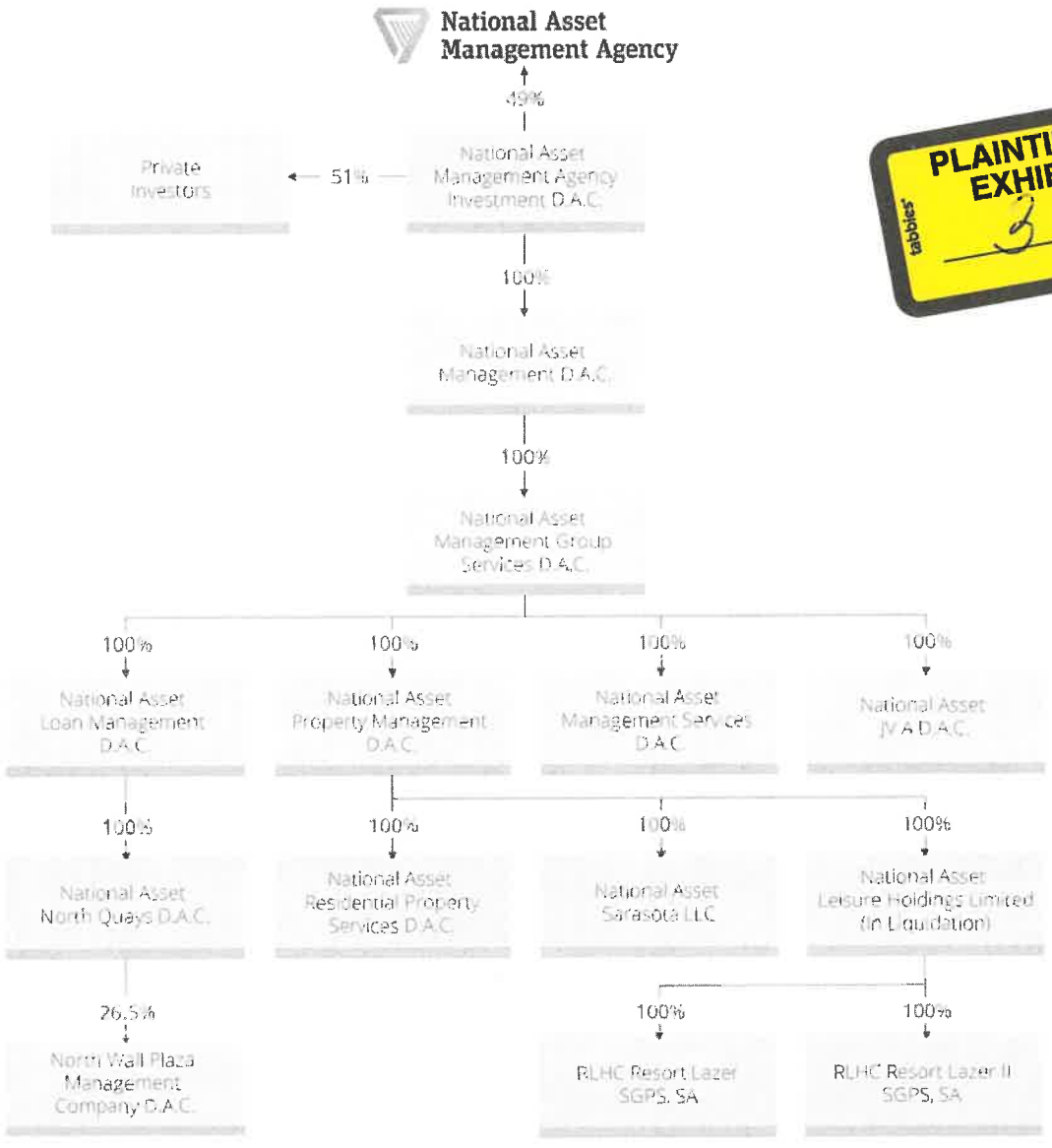
The remaining personal debt to Mr Kelleher was sold during 2012 following a consensual sales process. Mr Kelleher's significant personal involvement was instrumental in the successful conclusion of this sale. Whilst the bank suffered a loss on his sale, Mr Kelleher's involvement reduced the quantum of this loss.

Yours sincerely,

Niall Tempany

Group Structure

The National Asset Management Agency is structured in such a way that the debt it issues to purchase acquired loans is not treated as part of Ireland's General Government Debt under European accounting rules.



This affords the Agency similar accounting treatment to bank support schemes in other EU member states such as France and Germany.

In a decision issued in July 2009, Eurostat (the statistical office of the European Union) ruled that special purpose vehicles (SPVs) which were majority owned by private companies would be regarded as being outside of the government sector if they met a number of conditions. Among the conditions were that the SPVs were of temporary duration and were established for the sole purpose of addressing the financial crisis.

In order to avail of this accounting treatment, NAMA established an investment holding company – National Asset Management Agency Investment D.A.C. – which is majority-owned by private investors. 51% of its shares are collectively owned by private companies (New Ireland Assurance Co. plc, BNY Custodial Nominees (Ireland) Ltd, The Representative Church Body and The Church of Ireland Clergy Pensions Fund) and the remaining 49% are owned by NAMA. Under the shareholders' agreement between NAMA and the private investors, NAMA exercises a veto over decisions taken by the company. Eurostat gave its approval to this structure in October 2009

Quarles & Brady LLP

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E-Mail: leonard.shifflett@quarles.com

PLAINTIFF'S EXHIBIT 4 tabbies

September 9, 2011

VIA E-MAIL & U.S. MAIL

Thomas J. Murphy, Esq.
Thomas J. Murphy P.C.
111 West Washington Street
Suite 1920
Chicago, IL 60602

RE: *Anglo Irish Bank Corporation Limited v. Shelbourne North Water Street, L.P. et al.*; Case No. 10 CH 27970

Dear Tom:

Thank you for your letter of September 1, 2011. I have some knowledge (albeit second hand) of the discussions Mr. Kelleher has had with NAMA and Anglo Irish Bank, but I am not the legal counsel directing those efforts. Therefore, it would be inappropriate for me to respond to your comments regarding that process. With that reservation in mind, I want to make sure that my silence regarding your characterization of that process does not signify agreement.

Tom, you, Mr. Kelleher, the Bank, NAMA and we are aligned to the extent that we all wish to resolve the issues relating to The Spire as efficiently as practicable. There can be no reasonable doubt that the property can be sold for a price anywhere near the total amount owed to all parties in the Spire litigation. Furthermore, because there is no way to cause the property to be sold free and clear of the liens, except through a judicial foreclosure sale, we have to proceed in that manner. If it were merely a matter of selling the property through a judicial role, it may not be necessary to determine the value of the property. However, as you are well aware and as has been underlined in the reasoning applied by the court in the recent decision of the Illinois Supreme Court in *LaSalle Bank v. Cypress Creek I, LP*, because there are liens with allegedly competing priorities, it is necessary to determine the value of the property both with and without improvements. It is no mystery that in order to complete the valuation process, the Bank's consultants need access to the documents listed in my prior letters to you. Shelbourne has those documents, and they are being housed in a small office suite here in Chicago. While you state in your letter that your client is concerned about potential liability that may arise from the release of these documents, the basis of that concern is not obvious to me. But in any event

because your client will not voluntarily provide the requested material, we will apply to the court for appropriate orders.

There is a very practical solution to the property owner's involvement in this case and that solution has been delivered to you in the form of a Stipulated Judgment of Foreclosure. If your client is seriously interested in efficiently resolving this matter, the owner's agreement to that form of foreclosure would be a meaningful first step.

Sincerely,

Leonard S. Shifflett

LSS/sd

cc: Sheila Browne, Esq. *(Via E-Mail)*
Mr. Brian Motherway *(Via E-Mail)*
Thomas A. McCarthy, Esq. *(Via E-Mail)*

Gníomhaireacht Náisiúnta um Bhainistíocht Sócmhainní
National Asset Management Agency

Strictly Private and Confidential
Addressee Only
Mr. Garrett Kelleher
Executive Chairman
Shelbourne Development Group
1 Hume Street
Dublin 2

16th September 2011

Re: Shelbourne Connection Business Plan

Dear Mr. Kelleher,

1. NAMA Executive Committee considered the Connection's proposed business plan at its meeting on 30th June 2011. Unfortunately the business plan as submitted was not accepted by the Committee. This followed a review by NAMA's Business Plan Reviewer, Cushman and Wakefield, together with full internal assessment by NAMA executives.

2. Notwithstanding this decision, NAMA remains willing to consider interim support for this Connection (during which time the performance of the Connection will be assessed) on the following basis:

   (a) NAMA's interim support for this Connection will be for a period of 6 months from the date of this letter, subject to a review by NAMA after 3 months.

   (b) Subject to NAMA's normal credit process, NAMA will provide loan facilities at its discretion to the Connection up to a maximum of €300,000 (annualised) to be applied to the following costs:

      (i) External financial consultant (satisfactory to NAMA) to work with Shelbourne Connection with responsibility for monitor and implementation of robust oversight of Connection activities, including execution of NAMA restructuring plan; and

(ii) Salaries and overheads associated with the ongoing management and enhancement of NAMA real estate security. NAMA will not support the payment of existing creditors except for consideration of the outstanding rates to Dublin Corporation

(c) Certain costs will be agreed at the asset level (such as selected capital expenditure and letting/disposal fees) subject to prior NAMA Credit approval.

(d) The Connection must comply with the following conditions (to the full satisfaction of NAMA) within the timeframes specified:

(i) Garrett Kelleher shall, within 4 weeks of the date of this letter, execute an undated Mortgage and Charge (together with all necessary supplementary documentation) in a form to be agreed by Garrett Kelleher and NAMA through their respective legal advisers, A&L Goodbody and LK Shields, in order to effect a first legal charge over the shares held by him in Dolmen Securities Limited. The executed undated Mortgage and Charge will be held in escrow upon the terms of an escrow agreement to be agreed by their respective legal advisers

(ii) Garrett Kelleher, shall within 8 weeks of the date of this letter, provide a reconciliation of the disbursement of equity release received with respect to Architrave / Modillion refinancing

(iii) The Connection to co-operate with and facilitate the Receiver in relation to all dealings regarding the Spire development, Chicago. In particular the Connection shall not contest the pending or proposed foreclosure lawsuit and shall fully and actively cooperate with such legal proceedings and shall execute, sign, complete and deliver all and any documentation in relation to same as and when required by NAMA and/ or Anglo Irish Bank plc. Furthermore and without derogating from the generality of the foregoing, the Connection shall agree to a "Consent Foreclosure" and shall sign all necessary documentation in that regard to help expedite matters and shall attend to same

immediately upon receipt of all relevant documentation and in any event within one month from the date hereof

(iv) Property strategy document to be agreed with NAMA within 4 weeks of the date of this letter and to include a breakdown of actions that will need to be achieved on a month by month basis

(v) All rental income to be mandated to NAMA and a charge taken over the rental bank accounts

(vi) Existing security to remain in place and to be improved and perfected where required by NAMA

(vii) Any title issues involving any assets of the Connection, including any problems and the means of resolving these problems, must be documented by the Connection and produced to NAMA within 3 months of the date of this letter

(viii) An up-to-date statement of affairs from the Connection, in the NAMA prescribed format, detailing all assets valued in excess of €5,000 must be provided to NAMA (completed)

(ix) Where it is within its capacity, the Connection shall reverse transfers to connected parties over the previous 5 years. These reversals of transfers must be completed and first legal charges granted to NAMA over the assets the subject of the transfers

3. NAMA expressly reserves all of its rights and remedies arising now or subsequently:

(a) under any facility agreement or finance document currently in existence between any part of the Connection and NAMA and/or any participating institution (as defined in the National Asset Management Agency Act 2009) (a **"PI"**);

(b) under any security or other document currently in existence from any part if the Connection or any third party in favour of NAMA and/or a PI in respect of the liabilities of the Connection or any part thereof;

(c) under any document with a third party that creates rights against and/or obligations to the Connection over which NAMA has security;

(d) as a matter of law as a result of any current or future breach of any of the documents at (a) to (c) (the **"Documents"**).

The discussions leading to the issuance of this letter or the issuance and acceptance of this letter do not constitute a waiver or amendment to the terms of (or the rights of any party under) any of the Documents or otherwise under any applicable law and all such rights, including the right to enforce any security held by NAMA, are expressly reserved and may be exercised without further notice. Any time, indulgence, delay or failure to take any action by NAMA shall not constitute any waiver of any contravention of the Documents.

For the avoidance of doubt, any facilities to the Connection currently in default remain in default.

4. **Notwithstanding any other provisions of this letter, NAMA may terminate any support it may provide to the Connection, including the arrangements set out in this letter, at any time.**

5. If the Connection complies with all the terms of this letter, NAMA may be willing to consider an extended working relationship period with the Connection beyond this 6 month period, including the restructure of facilities and the incentivisation of key personnel. However this is strictly at the sole discretion of NAMA and is subject to the approval of NAMA's Credit Committee. This letter should not in any way be taken as a commitment by NAMA to consider an extended working relationship.

6. The existence and terms of this letter are strictly private and confidential and must not be disclosed to any person by the Connection other than to their legal and financial advisers in connection with the provisions of this letter.

7. If the Connection agrees to the terms of this letter, please return a validly accepted letter to NAMA by 23 September 2011.

Yours sincerely,

Kevin Nowlan
Senior Portfolio Manager

Peter Malbasha
Portfolio Manager

16/9/2011

I confirm that I have read and fully understand the terms of this letter and agree to comply with the terms thereof. I further confirm that all information has been disclosed and provided to NAMA and I confirm the accuracy of all such information and I understand that in the event of additional material information or assets, or any inaccuracies in information provided, being subsequently discovered by NAMA, NAMA reserves its rights to take whatever action it deems appropriate, including the termination of any support it may provide to the Connection.

Signed by Garrett Kelleher

Witnessed by.....

ALLONGE

THIS ALLONGE is made to that certain Amended and Restated Promissory Note dated as of September 11, 2008, in the original principal amount of $69,500,000.00 as amended by that certain First Amendment to Amended and Restated Promissory Note dated April 27, 2009 made by Shelbourne North Water Street, L.P., a Delaware limited partnership, to Anglo Irish Bank Corporation plc, a banking corporation organized under the laws of Ireland.

Pay to the order of NATIONAL ASSET LOAN MANAGEMENT LIMITED, ("NALM") a company incorporated in Ireland under registration number 480246 having its registered office at Treasury Building, Grand Canal Street, Dublin 2, Ireland and a National Asset Management Agency ("NAMA") group entity for the purposes of the National Asset Management Agency Act, 2009

Executed to be effective as of May ___, 2013.

SIGNED AND DELIVERED as a **Deed** by **KIERAN WALLACE/EAMONN RICHARDSON**
acting solely in his capacity as special liquidator of
Irish Bank Resolution Corporation Limited (in special liquidation)

C0560

E_ _ _

~~[Kieran Wallace]~~ [Eamonn Richardson]
As Special Liquidator

in the presence of:-

Laura Greene
(Signature of Witness)

Stokes Place, St. Stephens Green, D.2
(Address of Witness)

DATED 2013

IRISH BANK RESOLUTION CORPORATION LIMITED (IN SPECIAL LIQUIDATION)
(as Assignor)

and

NATIONAL ASSET LOAN MANAGEMENT LIMITED
(as Assignee)

DEED OF ASSIGNMENT & ASSUMPTION OF LOAN DOCUMENTS & MORTGAGE AND SECURITY AGREEMENT
relating to Shelbourne North Water Street, L.P.

Index

THIS DEED OF ASSIGNMENT is made on 2013

BETWEEN

(1) **IRISH BANK RESOLUTION CORPORATION LIMITED** (IN SPECIAL LIQUIDATION) formerly Anglo Irish Bank Corporation Limited, a company incorporated under the laws of Ireland under registration number 22045 having its registered office at 1 Stokes Place, St. Stephen's Green, Dublin 2, acting through its joint special liquidators Kieran WallaceEamonn Richardson of KPMG ("**IBRC**");and

(2) **NATIONAL ASSET LOAN MANAGEMENT LIMITED** (a company incorporated in Ireland with number 480246) (the "**Assignee**").

INTRODUCTION

(A) The Assignee is entering into this Agreement in furtherance, inter alia, of the purposes, functions and powers of the National Asset Management Agency ("**NAMA**") as set out in the National Asset Management Agency Act 2009 (an Act of the Oireachtas) (the "**NAMA Act**").

(B) The Assignee is a NAMA group entity for the purposes of the NAMA Act and is entering into this Agreement in furtherance, inter alia, of the purposes, functions and powers of NAMA as set out in the NAMA Act.

(C) The beneficial right, title and interest of the Assignor in the Loan Documents (as defined below) has transferred to the Assignee in accordance with the Assignee's rights under the NAMA Act, in accordance with the Acquisition Terms and Conditions entered into between the Assignor and the Assignee, and the legal right, title and interest in the Security Documents is to be transferred to the Assignee pursuant to the terms and conditions of this Agreement.

(D) Pursuant to Section 4 of the Irish Bank Resolution Corporation Act, 2013 of Ireland (the "**IBRC Act**") the Minister for Finance made the Irish Bank Resolution Corporation Act 2013 (Special Liquidation) Order 2013 (the "**Special Liquidation Order**") on 7th February 2013 in respect of IBRC providing for the orderly winding-up of IBRC under the provisions of the IBRC Act.

(E) Pursuant to the Special Liquidation Order, Kieran Wallace and Eamonn Richardson of KPMG, 1 Stokes Place, St. Stephen's Green, Dublin 2 were appointed joint Special Liquidators of the Assignor and contract as agent of IBRC without personal liability.

(F) Pursuant to the Special Liquidation Order, any act required or authorised by the IBRC Act to be done by a special liquidator pursuant to the IBRC Act may be done by either or both of the joint Special Liquidators, acting either jointly or individually.

AGREED TERMS

1. Definitions and interpretation

1.1 *Definitions*

In this Deed, unless the context otherwise requires, the following expressions have the following meanings:

"**Assigned Assets**" means the assets assigned pursuant to this Deed;

"**Assigned Documents**" means in relation to the Loans:

(a) the Finance Documents;

(b) any other guarantee, indemnity, security document, collateral warranty or other form of assurance issued to, or subsisting in favour of any Assignor (or any person on its behalf) in respect of a Loan;

(c) any other subordination, priority or other inter-creditor agreement entered into in respect of, or in connection with, a Loan; and

(d) each document amending, supplementing, assigning or novating any of (or any rights or obligations under any of) the documents described in paragraphs (a) to (c) inclusive above;

"**Borrower**" means Shelbourne North Water Street, L.P., a Delaware limited partnership;

"**Loan and/or Loans**" means all monies advanced or committed to be advanced by any Assignor in connection with each of the loan facilities contained in the Loan Agreement;

"**Loan Agreement**" means the Facility Letter Agreement and Mortgage and Security Agreement together with each and every amendment and restatement thereto as more particularly listed in part 1 (Loan Documents) of schedule 1;

"**Finance Documents**" means the Loan Documents and each of the Security Documents including (but not limited to) the documents listed in schedule 1 (Finance Documents);

""**Obligors**" means the Borrower and each grantor of a Security Document (and each an "**Obligor**");

"**Party**" means a party to this Deed;

"**Property**" means certain real property situated in the City of Chicago, County of Cook, State of Illinois and more particularly described in schedule 3;

"**Security**" means any mortgage, charge, pledge, lien, hypothecation, guarantee, right of set-off, assignment or deposit by way of security or any other encumbrance or security interest of any kind (other than a lien arising in the ordinary course of business by operation of law) or any other type of preferential arrangement (including title transfer, defeasance and retention arrangements) having a similar effect; and

"**Security Documents**" means each document creating or evidencing Security granted to or held by any Assignor in its capacity as lender, agent and/or security trustee under or in connection with the Loan Agreement and which has not been released, terminated or discharged.

2. Construction

2.1 *Interpretation*

(a) In this Deed, unless the contrary intention appears, a reference to:

(i) a Party or any other person includes its successors in title, permitted assigns and permitted transferees; and

(ii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or any other legal entity or two or more of the foregoing; and

(iii) words importing the singular shall include the plural and vice versa and where there are two or more persons included in the expressions the "**Assignor**":

(A) references to the Assignor are references to all or any of them as the context may require; and

(B) agreements, undertakings, covenants, obligations, warranties and representations given, undertaken, made or assumed by the Assignor shall be deemed to have been respectively given, undertaken, made or assumed by them jointly and severally and construed accordingly.

(b) The headings and sub-headings are for ease of reference only and do not affect the meaning of this deed.

(c) References to each Finance Document and any other document shall be references to that Finance Document or other document as amended, supplemented, novated, replaced and restated in any manner from time to time.

(d) Terms defined in the Facility Agreement have the same meaning when used herein unless the context requires otherwise.

3. Assignment

The Assignor hereby assigns to the Assignee absolutely all of its rights under or arising out of each of the Assigned Assets which shall include:

(a) the whole of its right, title and interest and benefit in and to the Loans together with the right to demand, sue for, recover and receive all payments of principal and interest and all other sums due or to become due in respect of the Loans;

(b) the whole of its right, title, interest and benefit in and to the right to sue on all covenants made or expressed to be in its favour under, or in relation to the Loans;

(c) all of its other rights, titles, interest and benefits in relation to the Loans;

(d) the whole of its right, title and interest and benefit in and to the Assigned Documents;

(e) the whole of its right, title, interest and benefit in and to the right to sue on all covenants made or expressed to be in its favour under, or in relation to the Assigned Documents; and

(f) all of its other right, title, interest and benefit, whether present or future and actual or contingent, in respect of the Facilities, the Assigned Documents and the Loans.

4. Representation and warranty

The Assignor represents and warrants to the Assignee that the Assigned Assets are free from any rights of set-off.

5. Assignment of rights

This Deed shall be binding upon and enure to the benefit of each Party and its successors and permitted assigns.

6. Further assurance

Each Assignor shall promptly on request (and at the cost of the Assignee) do all such acts and execute all such documents as the Assignee may reasonably specify to perfect the assignments intended to be effected by this Deed.

7. Partial invalidity

Each of the provisions of this deed is separate and severable and enforceable accordingly and if at any time any provision is adjudged by any court of competent jurisdiction to be void or unenforceable, the validity, legality and enforceability of the remaining provisions hereof or of that provision in any other jurisdiction shall not in any way be affected or impaired thereby.

8. Counterparts

8.1 This deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this deed.

8.2 This document takes effect as a deed notwithstanding the fact that one party may only execute this document under hand.

9. Communications

Any notice or other communication to be given or made by a Party to any other Party shall be in writing in the English language and shall be addressed to that Party's address for purpose of notices as set out below or to such other address as it shall have been specified to the other parties hereto in accordance with the provisions of this clause 9 and may be:

(a) personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address; or

(b) by pre-paid registered post, in which case it shall be deemed to have been given three Business Days after the date of posting.

Notices to Irish Bank Resolution Corporation Limited:	Kieran Wallace and Eamonn Richardson Joint Special Liquidators Irish Bank Resolution Corporation Limited (In Special Liquidation) 1 Stokes Place St. Stephens Green Dublin 2

Notices to the Assignee:

NAMA
Treasury Building
Grand Canal Street
Dublin 2

FAO: Head of Legal

10. Governing law and jurisdiction

10.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by the law of the State of Illinois, USA

10.2 The parties irrevocably agree that the courts of the State of Illinois, USA.have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

This Deed has been entered into on the date stated at the beginning of this Deed.

SCHEDULE 1

Finance Documents

Part 1

Loan Documents

1. Facility Letter agreement between Assignor and Shelbourne North Water Street, L.P., a Delaware limited partnership (referred to herein as "Borrower"), agreeing to a loan in the amount of $54,500,000.00, dated July 18, 2006.

2. Promissory Note made by Borrower, payable to Assignor, in the principal amount of $54,500,000.00, dated July 20, 2006.

3. Mortgage and Security Agreement executed by Borrower in favor of Assignor, dated July 20, 2006, and recorded in the Office of the Cook County Recorder of Deeds on July 31, 2006 as Document No. 0621243299.

4. Collateral Assignment and Security Agreement in Respect of Contracts, Licenses and Permits, executed by Borrower in favor of Assignor, dated July, 2006

5. Security Agreement, given by Borrower in favor of Assignor, dated July, 2006.

6. Officer's Certificate to Security Agreement, executed by Borrower, dated July, 2006.

7. Environmental Compliance and Indemnity Agreement given by Borrower and Garrett Kelleher in favor of Assignor, dated July 20, 2006.

8. First Amendment to Facility Letter between Assignor and Borrower, dated January 1, 2008.

9. First Amendment to Promissory Note executed by Assignor and Borrower, dated January 1, 2008.

10. First Amendment to Mortgage and Security Agreement executed by Borrower in favor of Assignor, dated September 11, 2008 and recorded in the Office of the Cook County Recorder of Deeds on September 11, 2008 as Document No. 0825503092.

11. Second Amendment to Facility Letter between Assignor and Borrower, agreeing to increase the loan amount to $69,500,000.00, dated September 11, 2008.

12. Amended and Restated Promissory Note made by Borrower, payable to Assignor, in the principal amount of $69,500,000.00, dated September 11, 2008.

13. Affidavit given by Garrett Kelleher regarding ownership of Borrower, dated December 29, 2008.

14. Third Amendment to Facility Letter between Assignor and Borrower, dated April 27, 2009.

15. First Amendment to Amended and Restated Promissory Note executed by Assignor and Borrower, dated April 27, 2009.

16. Forbearance Agreement between Assignor and Borrower, dated April 21, 2010.

17. Subordination Agreement executed by Chicago Spire, LLC and by Shelbourne Lakeshore Limited in favor of Assignor, dated April 21, 2010.

18. UCC-1 Financing Statement filed with the Cook County Recorder of Deeds on July 31, 2006 as Document No. 0621243300.

19. Loan Policy No. AC 0401511 issued by Chicago Title Insurance Company, with an effective date of July 31, 2006.

20. Date Down Endorsement attached to Policy No. N01080780 issued by Near North National Title as issuing agent for Chicago Title Insurance Company, extending the effective date of the Loan Policy to September 11, 2008.

21. Guaranty made by Garrett Kelleher to Assignor, dated July 20, 2006.

22. Non-Recourse Carveout Guaranty made by Garrett Kelleher to Assignor, dated July 20, 2006.

Part 2

Security Documents

Mortgage and Security Agreement executed by Shelbourne North Water Street, L.P., a Delaware limited partnership, dated July 20, 2006 and recorded on July 31, 2006 in the Office of the Cook County Recorder of Deeds as Document No. 0621243299, as amended by that certain First Amendment to Mortgage and Security Agreement, dated September 11, 2008 and recorded on September 11, 2008 in the Office of the Cook County Recorder of Deeds as Document No. 0825503092, and encumbering that certain real property situated in the City of Chicago, County of Cook, State of Illinois and described on Exhibit A attached hereto (the "Property") as the same may have been assigned, amended, supplemented, restated or modified.

SCHEDULE 2

ACKNOWLEDGMENT OF ASSIGNOR

COUNTY OF DUBLIN, IRELAND

I, the undersigned, a Notary Public in and for said County, DO HEREBY CERTIFY, that EAMONN RICHARDSON, ~~and~~ _____, the SPECIAL LIQUIDATOR, and _____, ~~respectively,~~ of IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation), the Assignor in the foregoing instrument, and personally known or identified 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 they signed and delivered said instrument in his/her authorized capacity, and that he/she delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of IRISH BANK RESOLUTION CORPORATION LIMITED, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21 day of May, 2013.

By: Lyra Drum [SEAL]

APOSTILLE
(Convention de La Haye du 5 octobre 1961)

1. Country: Pays/País:	IRELAND
This public document Le présent acte public / El presente documento público	
2. has been signed by a été signé par ha sido firmado por	Ms. Georgina Drum
3. acting in the capacity of agissant en qualité de quien actúa en calidad de	Notary Public
4. bears the seal / stamp of est revêtu du sceau / timbre de y está revestido del sello / timbre de	--------

Certified
Attesté / Certificado

5. at à / en	Dublin	**6. the** le / el día	23/05/2013
7. by par / por	Department of Foreign Affairs and Trade		
8. No sous no bajo el número	6182762013		
9. Seal / stamp: Sceau / timbre: Sello / timbre:	**10. Signature:** Signature: Firma: Mary Daly		

This Apostille only certifies the authenticity of the signature and the capacity of the person who has signed the public document and, where appropriate, the identity of the seal or stamp which the public document bears. This Apostille does not certify the content of the document for which it was issued. To verify the issuance of this Apostille, see www.apostilles.dfat.ie

ACKNOWLEDGMENT OF ASSIGNEE

COUNTY OF DUBLIN, IRELAND

I, the undersigned, a Notary Public in and for said County, DO HEREBY CERTIFY, that SARAH CHARGE, the AUTHORISED SIGNATORY, of NATIONAL ASSET LOAN MANAGEMENT LIMITED, the Assignee in the foregoing instrument, and personally known or identified 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 they signed and delivered said instrument in his/her authorized capacity, and that he/she delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of NATIONAL ASSET MANAGEMENT AGENCY, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 22nd day of MAY, 2013.

By: John Redmond [SEAL]
Notary Public

John Redmond
6 Clanwilliam Terrace
Grand Canal Quay , Dublin 2
Notary Public for the County & City of Dublin
and for the Counties of Wicklow Kildare & Meath
Commissioned for Life

SCHEDULE 3

APOSTILLE
(Convention de La Haye du 5 octobre 1961)

1. Country: Pays/País:	IRELAND
This public document Le présent acte public / El presente documento público	
2. has been signed by a été signé par ha sido firmado por	Mr. John Redmond
3. acting in the capacity of agissant en qualité de quien actúa en calidad de	Notary Public
4. bears the seal / stamp of est revêtu du sceau / timbre de y está revestido del sello / timbre de	----------
Certified Attesté / Certificado	
5. at à / en: Dublin	6. the le / el día: 23/05/2013
7. by par / por	Department of Foreign Affairs and Trade
8. No sous no bajo el número	3776612013
9. Seal / stamp: Sceau / timbre: Sello / timbre:	10. Signature: Signature: Firma: Mary Daly

This Apostille only certifies the authenticity of the signature and the capacity of the person who has signed the public document and, where appropriate, the identity of the seal or stamp which the public document bears. This Apostille does not apply to the content of the document for which it was issued. To verify the issuance of this Apostille, see www.authentications.dfat.ie

LEGAL DESCRIPTION OF THE PROPERTY (2 pages)

PARCEL 1:
BLOCK 15 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106320, IN COOK COUNTY, ILLINOIS EXCEPT:

THAT PART OF BLOCK 15 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID BLOCK 15 177.45 FEET SOUTH OF THE NORTHWEST CORNER THEREOF, AND RUNNING THENCE EAST ALONG A STRAIGHT LINE PARALLEL WITH THE NORTH LINE OF SAID BLOCK 15 TO A POINT ON THE MOST WESTERLY EAST LINE OF SAID BLOCK 15; THENCE SOUTH ALONG SAID MOST WESTERLY EAST LINE OF SAID BLOCK 15 TO THE MOST WESTERLY SOUTHEAST CORNER OF SAID BLOCK 15; THENCE WEST ALONG THE SOUTH LINE OF SAID BLOCK 15 TO THE SOUTHWEST CORNER OF SAID BLOCK 15; THENCE NORTH ALONG THE WEST LINE OF SAID BLOCK 15 TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

ALSO:
A PART OF THE FORMER LIGHTHOUSE SITE ADJOINING THE EASTERLY AND SOUTHERLY LINES OF BLOCK 15 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND DESCRIBED AS FOLLOWS:

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PARCEL 2:

BLOCK 6 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106320, EXCEPTING THEREFROM THE WEST 563 FEET OF BLOCK 6 AFORESAID, IN COOK COUNTY, ILLINOIS.

ALSO:
A PERPETUAL, EXCLUSIVE AND IRREVOCABLE EASEMENT TO USE THE SURFACE AND SUBTERRANEAN AREA OF THE FOLLOWING:

THAT PART OF VACATED EAST RIVER DRIVE IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, VACATED BY ORDINANCE RECORDED JUNE 27, 2001 AS DOCUMENT NUMBER 0010563996 AND DESCRIBED AS FOLLOWS: BEGINNING AT NORTHEAST CORNER

VACATED EAST RIVER DRIVE, AFORESAID; THENCE SOUTH 89"55"40" WEST, ALONG THE NORTH LINE THEREOF, 66.00 FEET TO THE NORTH MOST NORTHWEST CORNER OF SAID VACATED EAST RIVER DRIVE, THENCE SOUTH 00"04"20" EAST, ALONG THE WEST LINE OF VACATED EAST RIVER DRIVE AND THE SOUTHERLY EXTENSION THEREOF, 112.72 FEET TO A POINT ON THE SOUTHEASTERLY LINE THEREOF; THENCE NORTH 79"08"47" EAST, ALONG THE SOUTHEASTERLY LINE OF VACATED EAST RIVER DRIVE, 67.19 FEET TO SOUTHEAST CORNER THEREOF; THENCE NORTH 00"04"20" WEST, ALONG THE EAST LINE OF VACATED EAST RIVER DRIVE, 100.15 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Tax PIN: 07-10-221-007-0000
07-10-221-012-0000
07-10-221-014-0000
07-10-221-072-0000
07-10-221-073-0000

Street Address: 400 E. North Water Street, Chicago, Illinois

EXECUTION PAGE

The Assignor

SIGNED AND DELIVERED as a **Deed** by **KIERAN WALLACE/EAMONN RICHARDSON**
acting solely in his capacity as special liquidator of
Irish Bank Resolution Corporation Limited (in special liquidation)

C0554

[~~Kieran Wallace~~] [Eamonn Richardson]
As Special Liquidator

in the presence of:-

(Signature of Witness)

Stokes Place, St. Stephens Green, D.2

(Address of Witness)

The Assignee

The COMMON SEAL of)
NATIONAL ASSET LOAN MANAGEMENT LIMITED)
was affixed to this DEED and this DEED)
was DELIVERED)

SARAH CLARKE
Company Secretary

~~Authorised Signatory~~
PAULA FLINTER
Authorised Signatory
Authorised Signatory

Witness signature: .....

Witness name: .....

Witness address: .....

.....

Witness occupation:.....

APPROVED FOR SEALING

Prepared By And When Recorded Mail To:

Quarles & Brady LLP
300 North LaSalle Street
Suite 4000
Chicago, Illinois 60654

(Space above this line for Recorder's use)

ASSIGNMENT OF MORTGAGE AND SECURITY AGREEMENT

IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045 ("**Assignor**"), having its registered office at 1 Stokes Place, St. Stephen's Green, Dublin 2, acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **hereby assigns, transfers, sets over and conveys** to NATIONAL ASSET LOAN MANAGEMENT LIMITED, ("NALM") a company incorporated Ireland under registration number 480246 having its registered office at Treasury Building, Grand Canal Street, Dublin 2, Ireland and a National Asset Management Agency ("NAMA") group entity for the purposes of the National Asset Management Agency Act, 2009 ("**Assignee**"), all of Assignor's right, title and interest in and to the Mortgage and Security Agreement executed by Shelbourne North Water Street, L.P., a Delaware limited partnership, dated July 20, 2006 and recorded on July 31, 2006 in the Office of the Cook County Recorder of Deeds as Document No. 0621243299, as amended by that certain First Amendment to Mortgage and Security Agreement, dated September 11, 2008 and recorded on September 11, 2008 in the Office of the Cook County Recorder of Deeds as Document No. 0825503092, and encumbering that certain real property situated in the City of Chicago, County of Cook, State of Illinois and described on Exhibit A attached hereto (the "**Property**") as the same may have been assigned, amended, supplemented, restated or modified.

TO HAVE AND TO HOLD the same unto Assignee and to the successors and assigns of Assignee forever.

[THE REMAINDER OF THIS PAGE WAS LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, Assignor has duly executed this Assignment as of May ___, 2013.

SIGNED AND DELIVERED as a **Deed** by **KIERAN WALLACE/EAMONN RICHARDSON**
acting solely in his capacity as special liquidator of
Irish Bank Resolution Corporation Limited (in special liquidation)

C0558

[~~Kieran Wallace~~] [Eamonn Richardson]
As Special Liquidator

in the presence of:-

(Signature of Witness)

Stokes Place, St Stephens Green, D.2
(Address of Witness)

[Acknowledgments On Next Page]

ACKNOWLEDGMENTS

COUNTY OF DUBLIN, IRELAND

I, the undersigned, a Notary Public in and for said County, DO HEREBY CERTIFY, that EAMONN RICHARDSON, ~~and~~ _____, the SPECIAL LIQUIDATOR, ~~and~~ _____, ~~respectively~~, of IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation), the Assignor in the foregoing instrument, and personally known or identified 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 they signed and delivered said instrument in his/her authorized capacity, and that he/she delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of IRISH BANK RESOLUTION CORPORATION LIMITED, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21 day of May, 2013.

By: Lyna Drum [SE
Notary Public

GEORGINA DRUM
168 PEMBROKE ROAD,
BALLSBRIDGE, DUBLIN 4.
Notary Public for the County and City of Dublin
Ireland.
Commissioned for Life

APOSTILLE
(Convention de La Haye du 5 octobre 1961)

1. Country: Pays/País:	**IRELAND**
This public document Le présent acte public / El presente documento público	
2. has been signed by a été signé par ha sido firmado por	Ms. Georgina Drum
3. acting in the capacity of agissant en qualité de quien actúa en calidad de	Notary Public
4. bears the seal / stamp of est revêtu du sceau / timbre de y está revestido del sello / timbre de	---------
Certified Attesté / Certificado	
5. at à / en: Dublin	**6. the** le / el día: 21/05/2013
7. by par / por	Department of Foreign Affairs and Trade
8. No sous no bajo el número	7642902013
9. Seal / stamp: Sceau / timbre: Sello / timbre:	**10. Signature:** Signature: Firma: Gerard R Nolan

This Apostille only certifies the authenticity of the signature and the capacity of the person who has signed the public document, and where appropriate, the identity of the seal or stamp which the public document bears. This Apostille does not certify the content of the document for which it was issued. To verify the issuance of this Apostille, see www.authentications.dfat.ie

QB\146754.00005\21178906.1

EXHIBIT A

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Tax PIN: 07-10-221-007-0000
07-10-221-012-0000
07-10-221-014-0000
07-10-221-072-0000
07-10-221-073-0000

Street Address: 400 E. North Water Street, Chicago, Illinois

Bainton, J. Joseph

From: Garrett Kelleher <garrett.kelleher@shelbournedevelopment.com>
Sent: Monday, February 26, 2018 11:10 AM
To: Bainton, J. Joseph
Subject: FW: Chicago Spire

-----Original Message-----
From: Garrett Kelleher
Sent: 05 June 2013 09:49
To: 'dbennett@nama.ie' <dbennett@nama.ie>
Cc: 'pmalbasha@nama.ie' <pmalbasha@nama.ie>; 'mmoriarty@nama.ie' <mmoriarty@nama.ie>
Subject: Re: Chicago Spire

David,
The below is my recollection of our meeting with Andy Ruhan and subsequent communications :
A. You would consider whether he could access the data room via your lawyers - ie circumventing the JLL process. This was subsequently declined by NAMA as you indicated that that would prejudice NAMA with others OR B. He could sign up - at the then late stage - to the terms of NDA or CA that JLL had issued. Given that he was introduced by me and that the basis of him being prepared to redeem the loans was that he had my cooperation before, during and subsequently this was completely impossible.
Following the NAMA meeting, Andy Ruhan met with me in Chicago. He brought his team from NY along. The receiver for the site, Mr Steve Bell, gave us all access to the site. We met with a number of those parties who had previously been involved.
Andy Ruhan's view is that he will wait until the current sales process is complete and then look to deal with the purchaser. He expressed to you in the meeting that from his perspective it made no sense for NAMA to be selling the loans, whilst in the middle of litigation and excluding me and my associates from the process. Also, as I am sure you are aware my lawyer in Chicago, Tom Murphy, has written to NAMA's lawyer Quarles and Brady indicating that Andy Ruhan wishes to fund my redemption of the Spire loans.
In any event, the purpose of me wishing to meet this week is to discuss the EB5 certification.
Regards
Garrett

----- Original Message -----
From: David Bennett <DBennett@nama.ie>
To: Garrett Kelleher
Cc: Peter Malbasha <PMalbasha@nama.ie>; Michael Moriarty <MMoriarty@nama.ie>
Sent: Wed Jun 05 09:00:24 2013
Subject: RE: Chicago Spire

Garrett,

Thanks - see you then.

For the avoidance of doubt we should clarify one point you raise below: -

Mr Ruhan's request for access to the JLL dataroom was never declined by NAMA - quite the contrary, Mr Ruhan was encouraged to engage with JLL but instead choose not to sign up to the terms and conditions associated with the sale and under which other interested parties had previously signed up to.

Regards
Dave

David Bennett
Senior Manager – Asset Recovery

National Asset Management Agency | Treasury Building, Grand Canal Street, Dublin 2, Ireland
E: dbennett@nama.ie | D: +353 1 522 4304 | M: +353 87 1675 183 | F: +353 1 665 0001

-----Original Message-----
From: Garrett Kelleher [mailto:Garrett.Kelleher@shelbournedevelopment.com]
Sent: 05 June 2013 08:56
To: Michael Moriarty
Cc: Peter Malbasha; David Bennett
Subject: Re: Chicago Spire

Michael,
Will see you then.
Regards
Garrett

----- Original Message -----
From: Michael Moriarty <MMoriarty@nama.ie>
To: Garrett Kelleher
Cc: David Bennett <DBennett@nama.ie>; Peter Malbasha <PMalbasha@nama.ie>
Sent: Wed Jun 05 08:10:24 2013
Subject: RE: Chicago Spire

Garrett,
David Bennett, Peter Malbasha and I are available to meet you here tomorrow , Thursday, at 12 o clock if that suits you.
Regards,
Michael Moriarty

-----Original Message-----
From: Garrett Kelleher [mailto:Garrett.Kelleher@shelbournedevelopment.com]
Sent: 04 June 2013 11:58
To: Michael Moriarty
Subject: Fw: Chicago Spire

Michael,
I hope you're well.
I wonder when might you might be free to meet to discuss my email below ?
Many Thanks
Regards

Garrett

----- Original Message -----
From: John Mulcahy <JMulcahy@nama.ie>
To: Garrett Kelleher
Cc: David Bennett <DBennett@nama.ie>; Peter Malbasha <PMalbasha@nama.ie>; Michael Moriarty <MMoriarty@nama.ie>
Sent: Tue Jun 04 10:18:39 2013
Subject: RE: Chicago Spire

Thanks you Garrett for this information. As you know I am not involved in this project and the colleagues who have that task are David , Peter and Michael Moriarty

Regards
John

-----Original Message-----
From: Garrett Kelleher [mailto:Garrett.Kelleher@shelbournedevelopment.com]
Sent: 31 May 2013 22:52
To: John Mulcahy
Cc: David Bennett; Peter Malbasha
Subject: Chicago Spire

John,
After three years I have managed to have the Chicago Spire site certified as an EB5 Regional Center.
Our application has been a joint venture with NYCMRC - New York City Metro Regional Center.
EB5 is a US Government program whereby foreign nationals, by investing a minimium of $500,000 (typically $1m) can ultimately attain a Green Card - $6bn of equity has been raised in the last year for similiar programs however none with the profile of the Chicago Spire.
This program, as you might imagine, is very popular in China and most of the equity raised for similiar projects has emanated from China.
The Chicago Spire project is now the only project certified in downtown Chicago.
I have spent extensive time in China since 2007 working on various sources of debt in particular trade finance debt from China EXIM for circa $460m of material with China State Construction.
We were very successful selling condominiums in H1 of 2008 in HK, Beijing and Shanghai - the deposits on these sales was returned with the appointment of CBRE as Receiver.
With the announcement in the last few days I have now been engaged with China to source senior debt to stabilze the site, resurrect the discussions regarding trade finance and commence the EB5 equity discussions.
I have in recent weeks brought a UK investor to meet with Peter Malbasha and David Bennett with a view to redeeming the loans (this is someone I sourced after I learned of NAMA's decision to sell the loans but before learning of the EB5 certification). The investor wished to have access to the data room which was declined by NAMA - he has indicated that he may endeavour to deal with the purchaser of the loans being offered by JLL subsequent to the sale - yesterday I spoke with David Bennett who asked me about the investor, Andy Ruhan, and I indicated I have not spoken with him for a couple of weeks. I will not now require a third party investor with EB5.
The EB5 certification is a gamechanger for the project and the site particularily because of the profile of the Chicago Spire in China and the axis between Shanghai/Beijing and Chicago.
It would make a lot more sense for NAMA to arrest the current process where they are progressing the sale of the loans at less than 50c in the $1 and explore how they could be repaid at par as opposed to having some other

party benefit. I have been advised that I will still be able to redeem the loans at par post the sale through Cook County if the buyer does not engage.
The profits on the project at current exit values are a multiple of my exposure to NAMA through my personal guarantees.
Can we meet next week to discuss ?
Regards
Garrett

NATIONAL ASSET MANAGEMENT AGENCY ACT 2009

(the "**Act**")

Certificate under Section 108 of the Act

This certificate is given pursuant to Section 108 of the Act. Terms used in this certificate will bear the same meaning as in the Act unless the context otherwise so admits or requires.

Pursuant to Section 108 of the Act, National Asset Loan Management Limited ("**NALM**") (a NAMA group entity under the Act) hereby certifies that the bank assets consisting of the following (the "**Bank Assets**");

i. The loan accounts referred to in the Schedule to this Certificate;

ii. Facility Agreement dated 16 June 2005 and made between Anglo Irish Bank Corporation plc of the one part and CWD Properties Limited of the other part;

iii. Deed of Guarantee and Indemnity dated on or about 16 June 2005 and made between Anglo Irish Bank Corporation plc of the one part and Garrett Kelleher of the other part;

iv. Senior Facilities Agreement dated 19 December 2007 as amended and/or restated on 22 April 2008, 4 June 2008, 10 July 2008 and 10 November 2009 and made between Anglo Irish Bank Corporation plc of the one part and Knights Properties Limited, Riband Investments Limited, Middleview Limited, Shamrock Building Company Limited, Shelbourne Properties Limited, Cuprum Properties Limited, Dirstil Limited, Warbler Limited, Turson Limited and Modillion Limited of the other part; and

v. Deed of Guarantee and Indemnity dated 19 December 2007 and made between Anglo Irish Bank Corporation plc and Garrett Kelleher

were transferred to NALM in accordance with Part 6 of the Act on or about 1 November 2010 and that accordingly the Bank Assets are held by NALM as at the date hereof.

Dated: 16 July 2014

PRESENT when the **COMMON SEAL** of **NATIONAL ASSET LOAN MANAGEMENT LIMITED** was affixed hereto:

PAULA FLINTER
Authorised Signatory

APPROVED FOR SEALING

SARAH CLARKE
Company Secretary

SCHEDULE

Cuprum Properties Limited	Anglo Irish Bank Corporation	06004713 02494900 1402/506039/08
Cuprum Properties Limited	Anglo Irish Bank Corporation	06004711 02494897 1402/506039/07
Cuprum Properties Limited	Anglo Irish Bank Corporation	06004735 02511365 1402/506039/09
Shelbourne Properties Limited	Anglo Irish Bank Corporation	06004710 02494828 1402/408201/02
Shelbourne Properties Limited	Anglo Irish Bank Corporation	06004709 02494825 1402/408201/01
Turson Limited	Anglo Irish Bank Corporation	06004712 02494899 1402/504321/07 and 06
Knights Property Limited	Anglo Irish Bank Corporation	06004706 02494815 1402/408203/01
Knights Property Limited	Anglo Irish Bank Corporation	06004728 02502443 1402/408203/02
Modillion Limited	Anglo Irish Bank Corporation	06004703 02494227 1402/512867/02
Modillion Limited	Anglo Irish Bank Corporation	06004704 02494664

		1402/512867/03
Modillion Limited	Anglo Irish Bank Corporation	06004416 02973114 n/a
Dirstil Limited	Anglo Irish Bank Corporation	06004714 02494924 1402/503627/03
Dirstil Limited	Anglo Irish Bank Corporation	06004727 02502441 1402/503627/04
Warbler Limited	Anglo Irish Bank Corporation	06004707 02494816 1402/408202/01
Warbler Limited	Anglo Irish Bank Corporation	06004708 02494819 1402/408202/02
CWD Properties Limited	Anglo Irish Bank Corporation	06004490 02283733 1402/217389/01

JONES LANG LASALLE

13 March 2013

Re: Light Loan Sale

SUBJECT TO CONTRACT/CONTRACT DENIED

Dear Sirs,

Jones Lang LaSalle ("**JLL**") has been exclusively instructed by National Asset Loan Management Limited ("**NALM**"), a subsidiary of the National Asset Management Agency ("**NAMA**") to obtain offers for the acquisition of a $92.8 million par debt matured loan, collateralized by a 2.18 acre development site located at 400 North Shore Drive, Chicago (the "**Light Loan**") (the "**Proposed Transaction**"). This letter summarises the process for the Proposed Transaction.

Part A: Process and Timeline

The Proposed Transaction will involve a two stage bidding process and will consist of the following steps:

Stage 1

1. You will be granted access to the first phase of a secure online data room, hosted by JLL (the "**Data Room**") containing the following information relating to the Light Loan:

   (i) a confidential information memorandum (the "**Information Memorandum**"), providing an overview of the Light Loan and the Proposed Transaction;
   (ii) loan and security documents relating to the Light Loan
   (iii) property information relating to the Light Loan
   (iv) title documents; and
   (v) a draft of the loan sale and purchase deed to be entered into between NAMA and the successful bidder (the "**Draft Deed**").

   Your attention is drawn to the Data Room terms and conditions set out in the Appendix 1 (the "**Data Room Conditions**"). Access to the Data Room shall at all times be subject to the Data Room Conditions.

2. Questions and answers ("**Q&A**") will be allowed during Stage 1, on the following basis:

   (i) all questions must be submitted in writing on a Q&A template (to be provided by JLL) to: maggie.coleman@am.jll.com and krupa.shah@am.jll.com;

(ii) you must designate no more than two persons to send questions during Stage 1. Questions will only be accepted from those two persons;

(iii) NAMA may share any question received or answer provided via the Data Room at its discretion;

(iv) NAMA and their respective advisers reserve the right not to answer any questions and to defer, exclude or otherwise restrict any answers at their sole discretion; and

(v) final questions must be submitted no later than **5pm on Monday, April 22, 2013.**

3. Stage 1 bid proposals outlining your commitment to the Proposed Transaction and detailing your offer must be submitted in writing (delivery of hard copy and/or by e-mail is acceptable) to JLL, marked for the attention of Peter Nicoletti (peter.nicoletti@am.jll.com), Thomas Kirschbraun (thomas.kirschbraun@am.jll.com) and Maggie Coleman (maggie.coleman@am.jll.com) and received by **5:00PM EDT on Tuesday, April 23, 2013.** Your Stage 1 bid proposal must include all information set out in Part B of this letter, below.

4. Following submission, your Stage 1 bid proposal will be reviewed by JLL and NAMA. Allowing sufficient and reasonable time for assessment, you will be notified as to the success or otherwise of your Stage 1 bid. We anticipate that you will be notified on or about **Wednesday, April 24, 2013.**

Stage 2

1. It is anticipated that a limited number of parties will be invited to Stage 2, at which time they shall receive a further letter setting out the next steps in the process leading to the completion of the Proposed Transaction (the "**Stage 2 Process Letter**"). During Stage 2, parties shall be given the opportunity to complete due diligence.

2. A final Stage 2 bid proposal will be requested, the details and procedure of which will be explained in the Stage 2 Process Letter.

3. A preferred bidder may be selected, at NAMA's discretion, after which it is anticipated that legally binding loan sale documentation will be executed, with completion taking place on or before **Tuesday, April 30, 2013.**

5. NAMA reserves the right at its discretion not to proceed with Stage 2.

Part B: Stage 1 Bid Proposals

Your Stage 1 bid proposal must include the following information. You may provide supplementary information, where relevant.

1. The total consideration that you are prepared, subject to contract, to pay for the Light Loan in dollars (the "**Bid Amount**").

2. Any conditions attached to the proposal must be clearly set out, including full details of your further requirements for your due diligence on the loan, security and obligors as well as specific

requirements in relation to legal documentation. Full details of all assumptions that you have made in calculating the Bid Amount. Confirmation that there are no other conditions attached to your bid.

3. The identity of the bidder(s) (including details as to whether the bidder(s) will be buying in trust for a third party and, if so, the details of the beneficiaries), together with supporting background information and a detailed track record of the bidder(s) including details of your experience in purchasing similar loans. If your offer is made on behalf of a consortium then all parties that comprise the consortium must be separately identified.

4. Confirmation that you can and will comply with the timetable as outlined and are capable of completing an acquisition on the terms as set out in this letter.

5. Specify how you will fund the acquisition. Full details of your funding strategy and confirmation that you have in place the necessary financing arrangements or cash resources (please state which) to complete the Proposed Transaction should be included. Please confirm the source of debt finance and include any supporting information, terms received in principle, a detailed timeline for the financing approval and details of any conditions attached to that financing which are relevant to your bid. Note that bidders' intentions regarding the financing structure will be a factor in selecting bidders proceeding to Stage 2.

6. Full details of any third party consents, shareholder or other approvals that will be necessary in order to complete the Proposed Transaction, together with the process and associated timelines required in order to obtain these consents.

7. Identification, title, role and contact details for the key members of your team and any legal, financial and other advisers who will be assisting you.

8. Confirmation of compliance with section 172 of the National Asset Management Agency Act 2009 to be furnished by you, in the same form as the letter of disclosure and warranty to be made available to you in the Data Room. In this regard please note that any such disclosure will be considered by NAMA on a case-by-case basis.

Part C: Conditions

The following conditions apply to the Proposed Transaction (in addition to any such other terms and conditions contained in the Confidentiality Agreement, the Information Memorandum, the loan sale documentation or otherwise communicated to you in writing):

1. By entering the Data Room, you agree to be bound by the terms and conditions of this Process Letter;

2. Maggie Coleman and Thomas Kirschbraun of JLL will be your primary points of contact throughout the Proposed Transaction;

3. You will be responsible for all costs, expenses and liabilities incurred by you in connection with the Proposed Transaction;

4. NAMA reserves the right to sell the Light Loan to any person (whether or not a bidder) at any time; or to amend, vary, suspend or discontinue the Proposed Transaction without notice, at NAMA's discretion;

5. NAMA is under no obligation to accept the highest bid or any bid at all;

6. The Draft Deed will be made available in the Data Room for information purposes only. Bidders are not required to provide comments on the Draft Deed with their Stage 1 Bids, however it should be noted that (i) the final form of loan sale and purchase deed entered into shall be in substantially the same form as the Draft Deed; (ii) NAMA reserves the right to make such amendments to the Draft Deed as it deems necessary or desirable; and (iii) NAMA shall not offer any warranties and/or indemnities to a successful bidder, other than those set out in the Draft Deed;

7. You must not (or permit anyone acting on your behalf to) make any enquiries of any borrower, guarantor, obligor or provider of any security or other credit support under or in connection with any facility or credit provided under the documents relating to the Light Loan, any affiliate or shareholder of or investor in, such borrower, guarantor or provider of security or other credit support and, in each case, their respective officers, employees and advisers without the prior consent of NAMA;

8. You must not (or permit anyone acting on your behalf to) enter into any discussions, communications, negotiations or correspondence of whatsoever nature with any co-owner, local planning or other authority, or any person or body with responsibility for the control or regulation of the development or use of land or protected structures with respect to any of the property assets which form part of the security for the Light Loan, without the prior written consent of NAMA;

9. Bid proposals and the contents thereof must not be disclosed to any other bidder;

10. If NAMA accepts a final Stage 2 bid, the bidder in question will be required to pay a 10% non-refundable deposit (of transaction value), with such non-refundable deposit to be held by the

nominated escrow agent on terms that on completion it is to be paid to NAMA, to be offset against the purchase price in accordance with the loan sale documentation. It is intended that completion of the Proposed Transaction will occur within 1-2 weeks of NAMA's acceptance of a final Stage 2 bid; and

11. You confirm that the information provided by you in your bid proposal is true, accurate and complete. You will notify us immediately should such information change materially.

By clicking 'I Accept' below to gain access to the Data Room, you acknowledge that you have read, understood and agree to (i) the terms of this Process Letter, (ii) the terms of the Confidentiality Agreement and (iii) the Data Room Conditions.

Appendix 1

Data Room Conditions

I am being granted access to the information contained in this on-line data room (the "**Data Room**") (the "**Information**") for the purposes of considering the investment opportunity known as the Light Loan (the "**Proposed Transaction**").

I understand that my access to this Data Room is subject to the applicable laws and the following conditions:

1. All of the Information is considered confidential, and is subject to: (i) the non-disclosure agreement entered into by the organisation which I represent or advise (the "**Interested Party**") (the "**Non-Disclosure Agreement**"); and (ii) the process letter which has been accepted by the Interested Party (the "**Process Letter**").

2. I will maintain the Information in confidence and will not disclose any of the Information to others including within the organisation I represent or advise, except as expressly permitted by the Non-Disclosure Agreement. I confirm that I understand and agree to comply with the terms of the Non-Disclosure Agreement and the Process Letter.

1. I confirm that I am an authorised user of the Data Room to whom a password to access the Data Room has been issued and I have not received a password to access the Data Room by unauthorised means.

2. I will not attempt to forward, download (other than in order to view the information within the confines of the on-line Data Room), scan, copy, print, reproduce or otherwise capture any of the Information, except that I may print Information for which the print capability has been enabled. I will not attempt to circumvent or disable any of the security features of the Data Room, and will not enable or allow others to access the Data Room using my authorisation to the Data Room.

3. I will not deface, mark, alter, modify, vary, move, damage any of the Information or destroy or alter the sequence of the Information.

4. I will take all necessary steps to ensure that none of the Information is visible to, or capable of being overlooked by, other persons. I will not leave my computer (or other communications device through which I have logged-on to the Data Room) unattended whilst I am logged-on to the Data Room. I will ensure that I log-out of the Data Room when I have finished using it, by closing down my internet browser programme.

5. Neither NAMA nor JLL, nor their advisers represent the Information as being comprehensive or that the Data Room contains all information that may be desirable or necessary in order to evaluate the Proposed Transaction.

6. The Information has not been independently verified. The sole purpose of making available the Information is to provide information to assist the Interested Party in making its own evaluation of the Proposed Transaction. It is not intended to form the basis of any investment decision. Accordingly, no information provided by NAMA, JLL or their advisers should be regarded as the giving of investment advice to the Interested Party. None of the Information or any part thereof, constitutes an offer, invitation or proposal by or on behalf of NAMA, JLL or any of their advisors.

7. At the sole discretion of NAMA and/or JLL, further Information may be added to or removed from the Data Room at any time and the Information is subject to updating, expansion, revision and amendment. No obligation is accepted to update, expand, revise or amend the Information.

8. Neither NAMA, JLL nor their advisers accept any responsibility to inform the Interested Party or any of its advisers of any matter arising or coming to any of their notice which may affect any matter referred to in the Information (including but not limited to any error or omission which may become apparent after the Interested Party has been granted access to review the Information).

9. I acknowledge and accept that neither NAMA nor JLL nor their advisers are making any representations or warranties, express or implied, as to the accuracy or completeness of the Information, and no person, so far as permitted by law and except in the case of fraud, will have any liability with respect to any use or reliance upon any of the Information, for any loss or damage (whether foreseeable or not) suffered by, or costs or expenses incurred by, the Interested Party or any of its advisers from acting on, or refraining from acting because of any matter contained in or forming part of or omitted from the Information (regardless of whether the loss or damage arises in connection with any negligence, default, lack or care or misrepresentation arising in contract or equity on the part of the NAMA or JLL or any of their advisers).

FORM OF LSA FOR THE BID OF PHILLIP SYLVESTER 5/9/13

LOAN PURCHASE AND SALE AGREEMENT

THIS LOAN PURCHASE AND SALE AGREEMENT ("Agreement") is made as of the ____ day of _____, 2013 by and between IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045 having its registered office at 1 Stokes Place, St. Stephen's Green, Dublin 2 ("IBRC"), acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG, and NATIONAL ASSET LOAN MANAGEMENT LIMITED ("NALM"), an Irish statutory body created by the National Asset Management Agency Act, 2009, (each a "Seller" and collectively, the "Seller"), and SET LLC ①, a a FLORIDA LIMITED LIABILITY COMPANY (the "Purchaser").

① WHOLLY OWNED BY PHILLIP SYLVESTER

RECITALS

WHEREAS, the Irish Government passed the National Asset Management Agency Act, 2009, (the "NAMA Act") to address and strengthen the systematic stability of credit institutions in Ireland by providing, in part, for the creation of the National Asset Management Agency ("NAMA") to facilitate the holding, managing, and disposition of certain assets owned by certain Irish financial institutions, including assets of IBRC.

WHEREAS, NALM is a subsidiary of NAMA and has been established for the purpose of the acquisition, holding, and management of loan assets from, amongst others, IBRC, and the sale of loans is in the ordinary course of business of NALM and IBRC.

WHEREAS, pursuant to Section 4 of the Irish Bank Resolution Corporation Act, 2013 of Ireland (the "IBRC Act"), the Minister for Finance made the Irish Bank Resolution Corporation Act 2013 (Special Liquidation) order 2013 (the "Special Liquidation Order") on February 7, 2013 in respect of IBRC providing for the orderly winding-up of IBRC under the provisions of the IBRC Act.

WHEREAS, pursuant to the Special Liquidation Order, Kieran Wallace and Eamonn Richardson of KPMG, 1 Stokes Place, St. Stephen's Green, Dublin 2 were appointed joint special liquidators of IBRC.

WHEREAS, pursuant to the Special Liquidation Order, any act required or authorized by the IBRC Act to be done by a special liquidator pursuant to the IBRC Act may be done by either or both of the joint special liquidators, acting either jointly or individually.

WHEREAS, Purchaser desires to purchase, and assume and Seller desires to sell, transfer, assign and convey all of the Seller's rights, title and interest in and to the Loan and Loan Documents on the terms and conditions set forth below.

WHEREAS, Purchaser is a sophisticated and experienced purchaser of mortgage loans and loans and has access to expert technical, financial and legal advice.

NOW THEREFORE, in consideration of the mutual promises herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

ARTICLE I
PURCHASE AND SALE OF THE LOAN

Section 1.1 Definitions. The following terms shall have the meanings indicated below:

"Borrower" means Shelbourne North Water Street, L.P., a Delaware limited partnership.

"Closing" means the occurrence of all acts required by this Agreement to assign and transfer the Loan and the related Loan Documents from Seller to Purchaser, including without limitation, due execution and delivery of the Seller's Documents and Purchaser's closing items for the transfer of the Loan and related Loan Documents and Seller's receipt of the Purchase Price for such Loan and other sums due to Seller hereunder in connect with the transfer of the Loan.

"Closing Certificate" has the meaning given in Section 3.3(d).

"Closing Date" means _____, 2013 or such other date upon which Seller and Purchaser mutually agree.

"Confidentiality Agreement" means that certain confidentiality agreement executed by the Purchaser in favor of the Seller in connection with the purchase of the Loan.

"Deposit" means an amount equal to 10% of the Purchase Price.

"Escrow Agent" has the meaning given in Section 1.4.

"Foreclosure Litigation" means that certain litigation currently pending in the Chancery Division of the Circuit Court of Cook County, Illinois originally filed as *Lorig Construction Corporation v. Shelbourne North Water Street, L.P., et. al.*, Case No. 10 CH 27970.

"Escrow Closing Agreement" has the meaning given in Section 2.1.

"Guarantor" means Garrett Kelleher.

"IBRC" has the meaning given in the first paragraph of this Agreement.

"Lender" means IBRC.

"Loan Documents" means the documents or instruments described on **Exhibit A** attached hereto being the documents or instruments executed in connection with the making of the Loan, and evidencing or securing the Loan, together with all security for such Loan (provided such security shall not include any security or collateral over immovable property located in the Republic of Ireland or any stocks or marketable securities of a company registered in the Republic of Ireland) or interests and all of the Seller's rights, security interests, liens and charges arising thereunder, including, without limitation, all of Seller's rights to principal, unpaid interest, fees and other charges due under the Loan.

"Litigation File" has the meaning given in Section 3.2(g)

"Loan File" has the meaning given in Section 3.2(d).

"Loan" means the $69,500,000.00 mortgage loan made by Lender to Borrower, which loan is evidenced by, among other things, the Note.

"NAMA" has the meaning given in the first paragraph of the Recitals.

"NAMA Act" has the meaning given in the first paragraph of the Recitals.

"NALM" has the meaning given in the first paragraph of this Agreement.

"Non-Recourse Carve-Out Guaranty" means that certain Guaranty executed by Guarantor and further described on **Exhibit A** attached hereto.

"Note" means that certain Amended and Restated Promissory Note dated as of September 11, 2008, in the principal amount of $69,500,000.00, made by Borrower and payable to Lender, and amended by that certain First Amendment to Amended and Restated Promissory Note dated April 27, 2009.

"Permitted Assignment" has the meaning given in Section 8.5.

"Purchase Price" has the meaning given in Section 1.3.

"Receiver's Certificates" means those certain three (3) Receiver's Certificates in the principal amounts of $1,500,000.00, $1,150,000.00, and $750,000.00, and dated March 25, 2011, April 2, 2012, and _____, 2013, respectively, issued by the receiver in the Foreclosure Litigation pursuant to court order, payable to Seller, and to be assigned by the Seller to the Purchaser at Closing as required in Section 3.2(h) hereof.

"Reserves" means the positive balance of all funds held by Seller as reserves, escrows, impounds and deposits under the Note and Loan Documents on account of interest, taxes, insurance premiums, insurance proceeds, maintenance, or any other purpose related to the Loans.

Section 1.2 Purchase and Sale. Subject to the terms and provisions set forth in this Agreement, on the Closing Date, Purchaser shall purchase and assume all of Seller's right, title and interest in and to and obligations under the Loan and the Loan Documents, and Seller shall transfer, assign and convey all of its right, title and interest in and to such Loan and such Loan Documents to Purchaser. The Loan and Loan Documents shall be sold to Purchaser with all servicing rights being released to Purchaser.

Section 1.3 Purchase Price. The purchase price for the Loan (the "Purchase Price") shall be equal to $ PER BID _____, but less any payments of principal received by the Seller between the date of this Agreement and the Closing Date. Subject to the provisions in Section 3.6 of this Agreement, Purchaser shall receive a credit at the Closing in the amount of any reserve, impound, and/or escrow accounts being held by Seller in connection with the Loan.

Section 1.4 Payment of the Purchase Price. The Purchase Price less the amount of the Deposit (as hereinafter defined) to the extent paid and deposited shall be remitted to Chicago Title Insurance Company, 10 South LaSalle Street, Suite 3100, Chicago, Illinois 60603, Attention Linda Tyrrell, Senior Escrow Officer, Telephone: (312) 223-3361, Facsimile: (312) 223-4857, and E-mail: linda.tyrrell@ctt.com ("Escrow Agent") in accordance with the wire transfer instructions attached hereto as **Exhibit B** and shall be deposited on the Closing Date prior to 12:00 P.M. (Central Time) in immediately available federal funds.

Section 1.5 Application of the Deposit. On the Closing Date, Purchaser shall receive a credit toward the Purchase Price equivalent to the amount of the Deposit plus any interest earned thereon.

ARTICLE II
OPENING OF ESCROW AND DEPOSIT

Section 2.1 Escrow. Concurrently with the execution of this Agreement by Purchaser and Seller, the parties shall submit a copy of this Agreement and that certain letter, setting forth closing procedures to be followed by Escrow Agent, addressed to Escrow Agent by and among Seller, Purchaser, and Escrow Agent, in the form of **Exhibit I** attached hereto and made a part hereof (the "Escrow Closing Agreement") for its execution.

Section 2.2 Deposit. Purchaser shall deliver the Deposit to Escrow Agent by wire transfer in immediately available funds simultaneously with the execution of this Agreement. The defined term "Deposit" as used in this Agreement shall include both the initial $[10%] plus any interest earned thereon. The Deposit shall be held by Escrow Agent in accordance with the terms of a separate strict joint order escrow agreement to be executed and delivered simultaneously with this Agreement by Seller, Purchaser, and Escrow Agent. If this transaction closes as provided in this Agreement, the entire amount of the Deposit will be paid to Seller, and the Deposit shall be applied to the payment of the Purchase Price. The entire amount of the Deposit shall be returned immediately to Purchaser if Seller: (a) does not accept Purchaser's offer and declines to execute this Agreement; or (b) in the event of the failure of any of the conditions precedent set forth in Section 6.2. In the event of a breach of this Agreement by Purchaser and provided that Seller is not then in breach of this Agreement, the Deposit shall be applied as provided in Section 2.3 below. For the avoidance of any doubt, in the event the Deposit is not delivered to the Escrow Agent by the Purchaser on the date of this Agreement, the Seller shall be entitled to immediately and without further notice declare this Agreement void and null and thereafter Purchaser and Seller shall have no further obligations to each other.

Section 2.3 LIQUIDATED DAMAGES. IF THE TRANSACTION DOES NOT CLOSE DUE TO A BREACH BY PURCHASER UNDER THIS AGREEMENT, SELLER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT IN WRITING IMMEDIATELY AND TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY (EXCEPT AS PROVIDED BELOW). THE PARTIES AGREE THAT SELLER'S ACTUAL DAMAGES AS A RESULT OF PURCHASER'S BREACH UNDER THIS AGREEMENT WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, AND THE DEPOSIT IS THE BEST ESTIMATE OF THE AMOUNT OF DAMAGES SELLER WOULD SUFFER AS A RESULT OF SUCH BREACH; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT SELLER'S RIGHT TO OBTAIN REIMBURSEMENT FOR ATTORNEYS' FEES AND COSTS RELATING TO COLLECTION OF THE DEPOSIT TO THE EXTENT SELLER IS ACTUALLY FOUND TO BE ENTITLED TO SUCH DEPOSIT. THE PAYMENT OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY.

ARTICLE III
CLOSING

Section 3.1 Closing. The Closing shall be held on the Closing Date at 12:00 P.M. (Central Time) through an escrow at the offices of Escrow Agent, or at such other date and time as the parties may mutually agree in writing before the Closing Date.

Section 3.2 Seller's Documents. Seller agrees to execute, deliver and/or provide to Escrow Agent the following at the Closing:

(a) **Assignment of Mortgage.** An original, executed and notarized assignment of mortgage ("Mortgage Assignment") in the form attached hereto as **Exhibit C**.

(b) **Assignment and Assumption of Loan Documents.** Two (2) executed counterparts of the Assignment and Assumption of Loan Documents in the form attached as **Exhibit C-1;**

(c) **Note and Allonge.** The original Note endorsed (without recourse or warranty) to Purchaser in the form attached hereto as **Exhibit D**;

(d) **Loan File.** An original to the extent an original is available, or a copy if no original is available, of each of the Loan Documents and lender's loan policy of title insurance (the "Loan File").

(e) **Notice to Borrower.** Written notice to the Borrower that Purchaser has purchased the Loan in the form attached hereto as **Exhibit E**;

(f) **UCC Financing Statements.** A UCC-3 Financing Statement assigning from Seller to Purchaser the UCC-1 Financing Statements more particularly described on **Exhibit A** attached hereto;

(g) **Litigation File.** A CD containing copies of the documents identified on **Exhibit F** attached hereto; and

(h) **Assignment of Receiver's Certificates.** The original Receiver's Certificates and an original executed Assignment of Receiver's Certificates assigning Seller's rights in the Receiver's Certificates to Purchaser in the form of **Exhibit G** attached hereto.

Section 3.3 Purchaser's Closing Items. Purchaser agrees to deliver to Escrow Agent on or before the Closing Date:

(a) **Payment.** All amounts due in satisfaction of the Purchase Price under Article I;

(b) **Assignment and Assumption of Loan Documents.** Two (2) executed counterparts of the Assignment and Assumption of Loan Documents;

(c) **Closing Certificate.** Original, executed certificate of Purchaser ("Closing Certificate") certifying that the Representations and Warranties of Purchaser set forth in Section 4.1 hereof are true as of the Closing Date.

Section 3.4 Costs. Purchaser shall pay the legal fees and the expenses of its attorneys and any fees and taxes necessary to record any documents, any charges incurred in connection with any title reports, title endorsements, policies or continuations ordered by or on behalf of Purchaser, and any other expenses necessary to complete this transaction. Seller shall pay only its own legal fees. Except as set forth in Section 1.3 hereof, there shall be no adjustments to the balance of the Purchase Price due and payable at the Closing, and all payments made under this Agreement should be made free and clear of any deduction or withholding save for such withholding or deduction as may be required to be made from such payments by any law, regulation or practice. If any such deduction or withholding is made or required to be made, the Purchaser shall increase the amount to be paid to the Seller to ensure the Seller receives and retains a sum equal to the sum which it would have received and retained had no such deduction or withholding been made or required to be made.

Section 3.5 Closing Instructions. At Closing, Escrow Agent is authorized and directed to comply with the closing instructions set forth in the Escrow Closing Agreement.

Section 3.6 Reserve, Impound, and Escrow Accounts. Purchaser is receiving a credit at the Closing in the amount of any reserve, impound, and/or escrow accounts being held by the Seller in connection with the Loan. Purchaser covenants and agrees that it will reconstitute any reserve, impound, and/or escrow accounts which were held by Seller in connection with the Loan and which Purchaser received a credit for at the Closing. If requested by Purchaser in writing prior to the Closing, Seller and Purchaser will enter into a letter agreement at Closing which memorializes the amount of funds being credited to Purchaser and the description of the reserve, impound, and/or escrow for such funds. The provisions of this Section 3.6 shall survive the Closing.

Section 3.7 Substitution of Counsel. Within three (3) business days following Closing, Purchaser shall file with the Clerk of Court of Cook County a motion to have Purchaser substituted for Seller as a party in the Foreclosure Litigation ("Motion To Substitute Party"). The form of the Motion To Substitute Party is attached hereto as **Exhibit H**.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PURCHASER; PURCHASER'S WAIVER OF CAUSES OF ACTION

Section 4.1 Representations and Warranties by Purchaser. Each of the following representations and warranties by Purchaser is true and correct as of the date hereof and shall be true and correct on the Closing Date:

(a) **Authority.** Purchaser is a LIMITED LIABILITY COMPANY duly formed and validly existing and in good standing under the laws of the State of FLORIDA. Purchaser has taken all necessary action to authorize its execution, delivery and performance of this Agreement and has the power and authority to execute, deliver and perform this Agreement and all related documents and all the transactions contemplated hereby, including, but not limited to, the authority to purchase, acquire and assume all of the Seller's rights, title and interest in and to the Loan and the Loan Documents in accordance with this Agreement and, assuming due authorization, execution and delivery by each other party hereto, this

Agreement and all the obligations of Purchaser hereunder are the legal, valid and binding obligations of Purchaser enforceable in accordance with the terms of this Agreement, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Upon Seller's request, Purchaser shall provide evidence of Purchaser's authority to Seller at Closing.

(b) **Conflict with Existing Laws or Contracts.** The execution and delivery of this Agreement and the performance of its obligations hereunder by Purchaser will not: (1) conflict with any provision of any law or regulation to which Purchaser is subject, (2) conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Purchaser is a party or by which it is bound or any order or decree applicable to Purchaser, or (3) result in the creation or imposition of any lien on any of its assets or property which would materially and adversely affect the ability of Purchaser to carry out the terms of this Agreement. Purchaser has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery and performance by Purchaser of this Agreement.

(c) **Legal Action Against Purchaser**. There are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied nor any legal actions, suits or other legal or administrative proceedings pending against Purchaser in any court or by or before any other governmental agency or instrumentality which would materially affect the ability of Purchaser to carry out the transaction contemplated by this Agreement.

(d) **Bankruptcy or Debt of Purchaser; Financial Condition**. Purchaser has not had appointed for it or the whole or any substantial part of its property, a receiver, conservator, trustee, custodian, manager, liquidator or similar and has not commenced as debtor any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law. Purchaser's financial condition is, and shall at all times through the Closing, such as to enable Purchaser to perform all of its monetary obligations under this Agreement. Purchaser has sufficient funds available to consummate the transactions contemplated by this Agreement.

(e) **Information True and Correct, Full Disclosure.** The information provided by Purchaser in connection with its qualification as a bidder was true and correct on the date provided and did not omit any information necessary to the accuracy and full disclosure of information provided and such information is accurate and complete on the date hereof except as the Purchaser has otherwise disclosed in writing to the Seller upon or prior to submitting its bid.

(f) **Confidentiality Agreement.** The Purchaser has not violated any of the terms of the Confidentiality Agreement.

(g) **Not a Security.** Neither the Loan Documents nor this Agreement nor any interest created hereby is intended to be or shall be deemed to be a security within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934. Purchaser acknowledges that neither this Agreement nor any of the Loan Documents is or is intended to be registered under the Securities Act of 1933.

(h) **Decision to Purchase.** Purchaser is a sophisticated investor and its decision to purchase and assume all of the Seller's rights, title and interest in and to the Loan and the Loan Documents is based upon its own independent expert evaluations of the Loan Documents and other materials deemed relevant by Purchaser and its agents. Purchaser has not relied, in entering into this Agreement, upon any oral or written information from Seller, or any of its employees, agents or representatives, except as otherwise specifically provided herein. Purchaser further acknowledges that no employee or representative of Seller has been authorized to make, and that Purchaser has not relied upon, any statements or representations other than those specifically contained in Section 5.1 of this Agreement. By proceeding with Closing, Purchaser shall be deemed to have acknowledged to Seller that Purchaser has reviewed the Loan Documents and Loan File and that Purchaser is thoroughly acquainted and satisfied with all aspects thereof, and is purchasing the Loan "AS-IS", "WHERE-IS" without any covenants, warranties, representations or agreements as to the Loan except as set forth in Section 5.1 of this Agreement.

(i) **Compliance with Executive Order 13224.** Purchaser is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the office of Foreign Assets Control, Department of the Treasury and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"). Further, Purchaser covenants and agrees to make its policies, procedures and practices regarding compliance with the Orders, if any, available to Seller for its review and inspection during normal business hours and upon reasonably prior notice.

(j) **Entire Consideration.** Purchaser did not receive any payments or other consideration from Borrower or Guarantor to fund any portion of the Purchase Price, and Purchaser is not acquiring the Loan or the Loan Documents on behalf of or pursuant to any agreement with Borrower or Guarantor.

(k) **Loan Sold "AS IS."** PURCHASER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE LOAN IS BEING SOLD "AS IS", "WHERE IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION, WARRANTY OR RECOURSE WHATSOEVER AS TO EITHER COLLECTIBILITY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. EXCEPT AS SET FORTH IN SECTIONS 5.1(b) and (c), SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE LOAN, THE PACKAGING OF THE LOAN AND THE LOAN DOCUMENTS, THE SECURITY OR COLLATERAL FOR THE LOAN OR THE LOAN FILE.

(l) **No Warranties or Representations.** Purchaser acknowledges that with regard to any data prepared or submitted by brokers, borrowers or other third parties, Seller makes no warranties or representation of any kind as to the completeness or accuracy of such information provided by Seller with respect to the Loan.

(m) **Rescheduling or Renegotiation of Loan.** Purchaser acknowledges that any rescheduling or renegotiation of the Loan that occurs on or after the Closing Date or

any waiver given, amendment made or other action of any kind taken by the Purchaser shall be for the account of and the responsibility of the Purchaser, who will be subject to the rescheduled or renegotiated terms of such waiver or amendment, as the case may be.

(n) **Tax Analysis.** Purchaser acknowledges that it is responsible for making its own independent tax analysis of the Loan Documents and the transactions contemplated by and occurring pursuant to this Agreement.

Section 4.2. Purchaser's Waiver of Cause of Action. Purchaser hereby waives any right, claim or cause of action it might now or in the future have against the Seller as a result of its purchase of the Loan and Loan Documents subject to this Agreement; provided, however, that this waiver does not include any action taken as a result of Seller's failure to perform under the terms of this Agreement or a material breach of Seller's representations or warranties hereunder, subject to the express survival limitations set forth in Section 5.1(c) of this Agreement. Purchaser agrees that no claim may be made by Purchaser against Seller or their respective shareholders, directors, officers, employees or agents for any special, indirect, or consequential damages related to any breach or wrongful conduct (whether the claim therefore is based on contract, tort or duty imposed by law) in connection with, arising out of or in any way related to the transactions contemplated and relationship established by this Agreement, any other document executed in connection herewith or any of the Loan Documents, or any act, omission, or event occurring in connection therewith. Purchaser hereby waives, releases, and agrees not to bring a claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 4.3. Broker. Purchaser is responsible for any commission earned or claimed by any broker employed by Purchaser.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF SELLER

Section 5.1 Representations and Warranties by Seller. Each of the following representations and warranties by Seller is true and correct as of the date hereof and shall be true and correct on the Closing Date:

(a) **Authority.** IBRC is a company incorporated under the laws of Ireland and is operating pursuant to the IBRC Act, and NALM is an Irish statutory body created by the NAMA Act, and both Sellers are validly existing under the laws of Ireland. IBRC, pursuant to the Special Liquidation Order, and NALM have taken all necessary action to authorize its execution, delivery and performance of this Agreement and has the power and authority to execute, deliver and perform this Agreement and all related documents and at Closing shall have authority to execute, deliver and perform all the transactions contemplated hereby, including, but not limited to, the authority to sell, assign and transfer all of the Seller's rights, title and interest in and to the Loan and the Loan Documents in accordance with this Agreement and, assuming due authorization, execution and delivery by each other party hereto, this Agreement.

(b) **Representations and Warranties by Seller as to the Loan as of the Closing Date.**

(1) **Ownership by NALM.** NALM hereby represents and warrants to Purchaser with respect to the Loan as of the Closing Date that NALM holds all

of the interests in the Loan that NALM acquired from IBRC pursuant to the terms, and operation, of the NAMA Act, and that to the best of NALM's knowledge and belief the terms of the said acquisition represents the entire beneficial interest in the Loan and NALM has not made any prior sale, transfer, release, waiver or sub-participation of its interest in the Loan.

(2) **Ownership by IBRC.** IBRC hereby represents and warrants to Purchaser with respect to the Loan as of the Closing Date that IBRC holds all residual interests in the Loan that did not transfer to NALM pursuant to the terms, and operation, of the NAMA Act and that this represents the legal interest in the Loan and IBRC has not made any prior sale, transfer, release, waiver or sub-participation of its interest in the Loan other than the transfer of the Loan to NALM in terms of the NAMA Act.

(c) **Representations and Warranties by Seller as to the Loan Concerning Loan Balances and Payments.** Seller hereby represents and warrants to Purchaser with respect to the Loan as of the date hereof:

(1) **Loan Balance of Note.** As of _____, 2013, the amount outstanding under the Note is $_____, and to the best knowledge of the Seller, the unpaid principal balance is $_____; the accrued but unpaid interest is $_____; and the Reserves are $0.

Unless expressly stated otherwise in this Agreement, all warranties and representations (either express or implied) of Seller set forth in this Agreement, as well as Purchaser's right to enforce its remedies hereunder for any breach of the same, shall survive the Closing for sixty (60) days (i.e., meaning that Purchaser must commence a claim in a court of competent jurisdiction within said 60-day period). In the event that Purchaser has actual knowledge, through its due diligence investigations or otherwise, that any of the representations or warranties made by Seller under this Agreement were not true or correct when made or that Seller has breached a covenant hereunder, and if Purchaser nevertheless closes the transaction contemplated by this Agreement, then Purchaser shall be deemed to have waived any such representation, warranty, or covenant breach (as applicable) and shall have no further claim against Seller with respect thereto. Furthermore, the liability of Seller for breach of any warranty or representation shall be limited to the lesser of (i) Seller's actual damages caused by such breach, and (ii) the Purchase Price.

ARTICLE VI
CONDITIONS PRECEDENT TO CLOSING

The respective obligations of Purchaser and Seller to complete the purchase and sale of the Loan pursuant to this Agreement is subject to the fulfillment on or prior to Closing Date of each of the following additional conditions to be fulfilled by the other, unless the same is specifically waived in writing by the party for whose benefit the same is to be fulfilled:

Section 6.1 Conditions for the Benefit of Seller.

(a) **Performance of Covenants.** Purchaser shall have performed all of its covenants and agreements contained herein which are required to be performed by it on or prior to the Closing Date.

(b) **Representations and Warranties.** All representations and warranties of Purchaser in Section 4.1 shall be true in all material respects at and as if made on the Closing Date.

Section 6.2 Conditions for the Benefit of Purchaser.

(a) **Performance of Covenants.** Seller shall have performed all of its covenants and agreements contained herein which are required to be performed by it on or prior to the Closing Date.

(b) **Representations and Warranties.** Subject to the terms of Section 5.1(c), all representations and warranties of Seller, if any, contained in this Agreement shall be true in all material respects at and as if made on the Closing Date.

ARTICLE VII
DEFAULT

Section 7.1 Purchaser's Default Prior to the Closing. In the event Purchaser shall default in its obligations to purchase and assume all of the Seller's rights, title and interest in and to the Loan and the Loan Documents, materially breach a representation or warranty or covenant hereunder or otherwise fail to perform any material obligation under this Agreement prior to the Closing hereunder for any reason other than Seller's failure to perform Seller's obligations under this Agreement, Seller shall be immediately released from its obligation to sell the Loan to Purchaser and Seller's sole and exclusive remedy shall be to terminate this Agreement (subject only to those provisions that survive in favor of Seller) by giving written notice of cancellation to Purchaser and Escrow Agent, in which case, Purchaser shall immediately deliver a written direction to the Escrow Agent directing the Escrow Agent to immediately release the Deposit to Seller and Escrow Agent shall then release the Deposit to Seller pursuant to Section 2.2 hereof. Purchaser's duties and obligations under the Confidentiality Agreement shall continue in full force and effect until the expiration of its term.

Section 7.2 Seller's Default Prior to the Closing. If Seller fails or refuses to consummate the sale of all of the Seller's rights, title and interest in and to the Loan and the Loan Documents to the Purchaser pursuant to and in accordance with this Agreement on the Closing Date or fails to perform any of Seller's other obligations hereunder for any reason other than Purchaser's failure to perform Purchaser's obligations under this Agreement, then such event shall constitute a default by Seller hereunder, Purchaser shall be immediately released from its obligation to purchase the Loan from Seller and Purchaser shall have the right within thirty (30) days, as its sole and exclusive remedy, to: (i) seek to enforce specific performance of Seller's obligations under this Agreement by instituting a suit for specific performance within thirty (30) days of Seller's default hereunder; or (ii) terminate this Agreement by written notice delivered to Seller, whereupon neither party hereto shall have any further rights or obligations hereunder (except as expressly set forth herein as surviving termination), and the Escrow Agent shall deliver the Deposit to the Purchaser and Seller shall pay and reimburse Purchaser for all of Purchaser's reasonable out-of-pocket costs, fees, and expenses incurred by Purchaser in connection with this Agreement and/or the transaction contemplated hereunder in an amount not to exceed $10,000.00.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 Purchaser's Indemnity. Purchaser indemnifies and agrees to hold harmless the Seller from any claim, loss or damage arising from the Purchaser's foreclosure of the mortgage or any other exercise by Purchaser of remedies under the Loan Documents or the Purchaser's exercise of rights under any lease affecting the applicable property; provided, however, that nothing herein shall be construed as an obligation to indemnify the Seller for the Seller's own gross negligence or willful misconduct or Seller's breach of any of its representations, warranties, or covenants under this Agreement. The indemnities contained in this Section 8 shall survive the Closing or the earlier termination of this Agreement.

Section 8.2 Status of Loan. Until the Closing or the earlier termination of this Agreement, Seller shall retain all its rights and remedies under the Loan Documents, including, without limitation, the right to: (i) accept any permitted full prepayment of the Loan from the borrower(s) in which case this Agreement shall automatically terminate with Purchaser and Seller having no further liabilities or obligations to each other except that the Deposit shall be returned to Purchaser; or (ii) accept any permitted partial prepayment of principal of the Loan from Borrower in which case, Seller shall advise Purchaser in writing of the amount of the partial prepayment of principal and proceed to the Closing with a reduction in the Purchaser Price equal to the amount of the partial prepayment of principal. Seller agrees not to amend or waive any of the provisions of the Loan Documents. If, prior to the Closing, the Borrower or the property subject to the Loan becomes subject to an action under the United States Bankruptcy Code, the Seller shall retain all its rights under the Loan Documents and the Bankruptcy Code as a creditor of the Borrower and may exercise such rights in its discretion (such Bankruptcy action shall not constitute a Seller default under this Agreement). Nothing in this Agreement shall give the Purchaser any right to amend or waive any of the terms of the Loan Documents prior to the Closing. Purchaser acknowledges that Borrower is neither a party to nor a beneficiary of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Seller hereby agrees to continue to adhere to Seller's customary practices regarding compliance with all of the obligations and duties as lender under the Loan Documents arising after the date of this Agreement up to and including the Closing Date.

Section 8.3 Notices. Unless otherwise provided for herein, all notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered, if sent by registered or certified mail (return receipt requested) or by recognized overnight delivery service, (b) when delivered, if delivered personally, (c) on the date of a facsimile, if (i) the transmittal form showing a successful transmittal is retained by the sender, and (ii) the facsimile communication is followed by mailing or sending a copy thereof to the addressee of the facsimile in accordance with this paragraph, in each case to the parties at the following addresses (or at such other addresses as shall be specified by like notice):

To Seller: National Asset Loan Management Limited
Grand Canal Street
Dublin 2, Ireland
Attention: Head of Legal and Tax
Telephone: (353) 1-665-0000

Copy to: Irish Bank Resolution Corporation Limited (In Special Liquidation)
Stephen Court
18/21 St. Stephen's Green
Attention: U.S. Real Estate Division
Telephone: (353) 1-616-2000

To Purchaser: _____
_____
_____
Attention: _____
Telephone: (____) ____-_____
Facsimile: (____) ____-_____

Copy to: _____
_____
_____
Attention: _____
Telephone: (____) ____-_____
Facsimile: (____) ____-_____

To Escrow Agent: Chicago Title Insurance Company
10 South LaSalle Street
Suite 3100
Chicago, Illinois 60603
Attention: Linda Tyrrell
Telephone: (312) 223-3361
Facsimile: (312) 223-4857

Notices shall be deemed to have been delivered on the date when received.

Section 8.4 Time. Time shall be of the essence as to all dates and time periods specified in this Agreement.

Section 8.5 Assignment. Neither this Agreement nor any rights, privileges, options, or obligations in connection with this Agreement shall be assigned by Purchaser to any person or entity except as expressly permitted herein. Purchaser will be permitted to assign this Agreement to an affiliate of Purchaser, provided that such affiliate is a wholly-owned subsidiary of Purchaser or otherwise under the direct control of Purchaser (a "Permitted Assignment"), and further provided Purchaser provides Seller written notice of such assignee at least five (5) business days prior to the Closing Date. Following a Permitted Assignment and the Closing, Purchaser shall remain jointly and severally liable for all of the obligations and liabilities of "Purchaser" under this Agreement. If Purchaser assigns any rights under this Agreement except in connection with a Permitted Assignment, such assignment will constitute a breach of this Agreement for which Seller will have its rights under Section 2.3 of this Agreement.

Section 8.6 Brokers. If any claim for brokerage fees or other compensation in connection with this transaction is made by any broker, salesperson, or finder claiming to have dealt through or on behalf of one of the parties hereto, such party will indemnify and hold the other party harmless from any liabilities, costs, fees, and expenses in respect to such claim. The

provisions of this Section 8.6 shall survive the Closing or the earlier termination of this Agreement.

Section 8.7 Ambiguities. This Agreement and the Exhibits hereto have been negotiated at arms' length by Seller and Purchaser, and the parties mutually agree that, for the purpose of construing the terms of this Agreement and the Exhibits, neither party shall be deemed responsible for the authorship thereof.

Section 8.8 Severability. If any provision of this Agreement (the deletion of which does not adversely affect the receipt of any material benefit by or in favor of any party hereunder or substantially increase the burden on any party hereto) shall be held invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

Section 8.9 Headings; Construction. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement. Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such noun or pronoun and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

Section 8.10 Counterparts. This Agreement may be executed in any number of counterparts. Each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

Section 8.11 Applicable Law. This Agreement will be construed and enforced in accordance with the laws of the State of Illinois.

Section 8.12 Further Assurances. Seller and Purchaser shall each execute and deliver to the other all further documents or instruments reasonably requested by either of them to effect the transaction contemplated by this Agreement, as long as any such additional document does not individually or together with other documents impose material, additional obligations upon the signing party. The provisions of this Section 8.12 shall survive the Closing.

Section 8.13 Third Parties. Neither the Borrower nor any third party shall have rights or claims under this Agreement.

Section 8.14 No Modification. Nothing in this Agreement shall be construed as a modification of the Loan or a waiver of Seller's rights thereunder.

Section 8.15 Recording Prohibited. This Agreement shall not be recorded in any office or place of public record. If Purchaser shall record this Agreement or cause or permit the same to be recorded, Seller may, at its option, elect to treat such act as a default by Purchaser under this Agreement

Section 8.16 Rights Cumulative; Waivers. The rights of each of the parties under this Agreement are cumulative and may be exercised as often as any party considers appropriate. The rights of each of the parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Failure to exercise or any delay in exercising any of such rights also shall not operate as a waiver or variation of that or any other such right. Defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any party

shall in any way preclude such party from exercising any such right or constitute a suspension or any variation of any such right.

Section 8.17 Confidentiality. Purchaser and Seller shall keep the terms of this Agreement strictly confidential and shall not disclose or permit their officers, employees, attorneys or agents to disclose to any person, including without limitation any tenant of any property subject to the Loan, the terms of this Agreement, including, without limitation, the Purchase Price, unless or until this Agreement is terminated or fully performed by the parties; provided, however, that Purchaser and Seller shall have the right to disclose the terms of this Agreement to persons and firms, such as insurers, attorneys, auditors, and accountants, who are retained or engaged by the Purchaser and Seller to provide services and to perform services that are necessary and usual for the transaction contemplated by this Agreement, all in a manner consistent with the terms of the Confidentiality Agreement. Purchaser and Seller shall have the right to disclose the terms of this Agreement as may be required by applicable laws, ordinances or regulations.

Section 8.18 WAIVER OF JURY TRIAL. SELLER AND PURCHASER HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND UNCONDITIONALLY WAIVE THEIR RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, OR ANY OF THE RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, AND SELLER AND PURCHASER HEREBY FURTHER AGREE THAT ANY SUCH ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT IN COOK COUNTY, ILLINOIS AND NOT BEFORE A JURY.

Section 8.19 Entire Agreement; Prior Understandings. This Agreement supersedes any and all prior discussions and agreements between Seller and Purchaser with respect to the purchase of the Loan and the Loan Documents and other matters contained herein, and this Agreement contains the sole, final and complete expression and understanding between Seller and Purchaser with respect to the transactions contemplated herein. This Agreement may not be changed except by a subsequent written instrument signed by the party against whom the enforcement of such change is sought.

Section 8.20 Attorneys' Fees. Should either party institute any action or proceeding to enforce this Agreement, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with such action or proceeding. The term "attorneys' fees" shall mean and include attorneys' fees and any and all other law-firm costs incurred in connection with the action or proceeding and preparations therefor. The term "action or proceeding" shall mean and include actions, proceedings, suits, arbitrations, appeals and other similar proceedings.

[THE REMAINDER OF THIS PAGE WAS LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement to be effective as of the date first set forth above.

SELLER:

IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045, acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

NATIONAL ASSET LOAN MANAGEMENT LIMITED , an Irish statutory body created by the National Asset Management Agency Act, 2009

By: _____
Name: _____
Title: _____

PURCHASER:

SET LLC, a FLORIDA LIMITED LIABILITY COMPANY

By: _____
Name: PHILLIP SYLVESTER
Title: MANAGER

EXHIBIT A

LOAN DOCUMENTS

1. Facility Letter agreement between Lender and Borrower agreeing to a loan in the amount of $54,500,000.00, dated July 18, 2006.

2. Promissory Note made by Borrower, payable to Lender, in the principal amount of $54,500,000.00, dated July 20, 2006.

3. Mortgage and Security Agreement executed by Borrower in favor of Lender, dated July 20, 2006, and recorded in the Office of the Cook County Recorder of Deeds on July 31, 2006 as Document No. 0621243299.

4. Collateral Assignment and Security Agreement in Respect of Contracts, Licenses and Permits, executed by Borrower in favor of Lender, dated July, 2006.

5. Security Agreement, given by Borrower in favor of Lender, dated July, 2006.

6. Officer's Certificate to Security Agreement, executed by Borrower, dated July, 2006.

7. Environmental Compliance and Indemnity Agreement given by Borrower and Guarantor in favor of Lender, dated July 20, 2006.

8. First Amendment to Facility Letter between Lender and Borrower, dated January 1, 2008.

9. First Amendment to Promissory Note executed by Lender and Borrower, dated January 1, 2008.

10. First Amendment to Mortgage and Security Agreement executed by Borrower in favor of Lender, dated September 11, 2008 and recorded in the Office of the Cook County Recorder of Deeds on September 11, 2008 as Document No. 0825503092.

11. Second Amendment to Facility Letter between Lender and Borrower, agreeing to increase the loan amount to $69,500,000.00, dated September 11, 2008.

12. Amended and Restated Promissory Note made by Borrower, payable to Lender, in the principal amount of $69,500,000.00, dated September 11, 2008.

13. Affidavit given by Garrett Kelleher regarding ownership of Borrower, dated December 29, 2008.

14. Third Amendment to Facility Letter between Lender and Borrower, dated April 27, 2009.

15. First Amendment to Amended and Restated Promissory Note executed by Lender and Borrower, dated April 27, 2009.

16. Forbearance Agreement between Lender and Borrower, dated April 21, 2010.

17. Subordination Agreement executed by Chicago Spire, LLC and by Shelbourne Lakeshore Limited in favor of Lender, dated April 21, 2010.

18. UCC-1 Financing Statement filed with the Cook County Recorder of Deeds on July 31, 2006 as Document No. 0621243300.

19. Loan Policy No. AC 0401511 issued by Chicago Title Insurance Company, with an effective date of July 31, 2006.

20. Date Down Endorsement attached to Policy No. N01080780 issued by Near North National Title as issuing agent for Chicago Title Insurance Company, extending the effect date of the Loan Policy to September 11, 2008.

NOTE: Guarantor executed a Guaranty and a separate Non-Recourse Carveout Guaranty each dated as of July 20, 2006 (collectively, the "Guarantees"). The Guarantees are not being assigned as part of the Agreement and Purchaser shall acquire no right, title or interest in the Guarantees, it being agreed and acknowledged that all rights in the Guarantees shall remain with Seller.

EXHIBIT B

WIRING INSTRUCTIONS

Wire to: _____

ABA Number: _____

Account Name: Chicago Title Insurance Company

Account Number: _____

Reference: Escrow No: _____
NAMA Loan Sale - Shelbourne North Water Street, L.P.

Attention: Linda Tyrrell

IMPORTANT:

PLEASE REFERENCE THE *ESCROW NUMBER* IN YOUR WIRE TRANSMITTAL

EXHIBIT C

FORM OF ASSIGNMENT OF MORTGAGE

Prepared By:

Quarles & Brady LLP
300 North LaSalle Street
Suite 4000
Chicago, Illinois 60654

And When Recorded Mail To:

_____
_____
_____

Attention: _____

(Space above this line for Recorder's use)

ASSIGNMENT OF MORTGAGE AND SECURITY AGREEMENT

IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045 having its registered office at 1 Stokes Place, St. Stephen's Green, Dublin 2, acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG, and NATIONAL ASSET LOAN MANAGEMENT LIMITED, an Irish statutory body created by the National Asset Management Agency Act, 2009 (collectively, "**Assignor**"), whose address is c/o NAMA, Grand Canal Street, Dublin 2, Ireland, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assigns, transfers, sets over and conveys to _____, a(n) _____ ("**Assignee**"), whose address is _____, all Assignor's right, title and interest in and to the Mortgage and Security Agreement executed by Shelbourne North Water Street, L.P., a Delaware limited partnership, dated July 20, 2006 and recorded on July 31, 2006 in the Office of the Cook County Recorder of Deeds as Document No. 0621243299, as amended by that certain First Amendment to Mortgage and Security Agreement, dated September 11, 2008 and recorded on September 11, 2008 in the Office of the Cook County Recorder of Deeds as Document No. 0825503092, and encumbering that certain real property situated in the City of Chicago, County of Cook, State of Illinois and described on Exhibit A attached hereto (the "**Property**") as the same may have been assigned, amended, supplemented, restated or modified.

TO HAVE AND TO HOLD the same unto Assignee and to the successors and assigns of Assignee forever.

This Assignment is made without recourse or representation or warranty, express, implied or by operation of law, of any kind and nature whatsoever.

[THE REMAINDER OF THIS PAGE WAS LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, Assignor has duly executed this Assignment as of _____, 2013.

IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045, acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

NATIONAL ASSET LOAN MANAGEMENT LIMITED, an Irish statutory body created by the National Asset Management Agency Act, 2009

By: _____
Name: _____
Title: _____

[Acknowledgments On Next Page]

ACKNOWLEDGMENTS

COUNTY OF DUBLIN, IRELAND

I, the undersigned, a Notary Public in and for said County, DO HEREBY CERTIFY, that _____, and _____, the _____, and _____, respectively, of IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation), the Assignor in the foregoing instruments, and personally known or identified 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 they signed and delivered said instrument in his/her authorized capacity, and that he/she delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of IRISH BANK RESOLUTION CORPORATION LIMITED, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2013.

By: _____ [SEAL]
Notary Public

COUNTY OF DUBLIN, IRELAND

I, the undersigned, a Notary Public in and for said County, DO HEREBY CERTIFY, that _____, the _____, of NATIONAL ASSET LOAN MANAGEMENT LIMITED, the Assignor in the foregoing instruments, and personally known or identified 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 they signed and delivered said instrument in his/her authorized capacity, and that he/she delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of NATIONAL ASSET MANAGEMENT AGENCY, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2013.

By: _____ [SEAL]
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY (2 pages)

PARCEL 1:

BLOCK 15 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106320, IN COOK COUNTY, ILLINOIS EXCEPT:

THAT PART OF BLOCK 15 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID BLOCK 15 177.45 FEET SOUTH OF THE NORTHWEST CORNER THEREOF, AND RUNNING THENCE EAST ALONG A STRAIGHT LINE PARALLEL WITH THE NORTH LINE OF SAID BLOCK 15 TO A POINT ON THE MOST WESTERLY EAST LINE OF SAID BLOCK 15; THENCE SOUTH ALONG SAID MOST WESTERLY EAST LINE OF SAID BLOCK 15 TO THE MOST WESTERLY SOUTHEAST CORNER OF SAID BLOCK 15; THENCE WEST ALONG THE SOUTH LINE OF SAID BLOCK 15 TO THE SOUTHWEST CORNER OF SAID BLOCK 15; THENCE NORTH ALONG THE WEST LINE OF SAID BLOCK 15 TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

ALSO:

A PART OF THE FORMER LIGHTHOUSE SITE ADJOINING THE EASTERLY AND SOUTHERLY LINES OF BLOCK 15 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY SOUTHEAST CORNER OF SAID BLOCK 15, AND RUNNING THENCE WEST ALONG A STRAIGHT LINE PARALLEL WITH THE NORTH LINE OF SAID BLOCK 15 (SAID STRAIGHT LINE INTERSECTING THE WEST LINE OF SAID BLOCK 15 AT A POINT 177.45 FEET SOUTH OF THE NORTHWEST CORNER THEREOF), A DISTANCE OF 92.895 FEET TO AN INTERSECTION WITH AN EASTERLY LINE OF SAID BLOCK 15 SAID EASTERLY LINE BEING ALSO THE WESTERLY LINE OF SAID FORMER LIGHTHOUSE SITE; THENCE NORTHEASTWARDLY ALONG SAID EASTERLY LINE OF BLOCK 15 A DISTANCE OF 32.286 FEET TO AN INTERSECTION WITH A SOUTHERLY LINE OF SAID BLOCK 15 SAID INTERSECTION BEING THE NORTHWEST CORNER OF SAID FORMER LIGHTHOUSE SITE; AND THENCE

SOUTHEASTWARDLY ALONG SAID SOUTHERLY LINE OF BLOCK 15, SAID SOUTHERLY LINE BEING ALSO THE NORTHERLY LINE OF SAID FORMER LIGHTHOUSE SITE, A DISTANCE OF 87.19 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

PARCEL 2:

BLOCK 6 IN CITYFRONT CENTER, BEING A RESUBDIVISION IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 24, 1987 AS DOCUMENT 87106320, EXCEPTING THEREFROM THE WEST 563 FEET OF BLOCK 6 AFORESAID, IN COOK COUNTY, ILLINOIS.

ALSO:

A PERPETUAL, EXCLUSIVE AND IRREVOCABLE EASEMENT TO USE THE SURFACE AND SUBTERRANEAN AREA OF THE FOLLOWING:

THAT PART OF VACATED EAST RIVER DRIVE IN THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, VACATED BY ORDINANCE RECORDED JUNE 27, 2001 AS DOCUMENT NUMBER 0010563996 AND DESCRIBED AS FOLLOWS: BEGINNING AT NORTHEAST CORNER VACATED EAST RIVER DRIVE, AFORESAID; THENCE SOUTH 89"55"40" WEST, ALONG THE NORTH LINE THEREOF, 66.00 FEET TO THE NORTH MOST NORTHWEST CORNER OF SAID VACATED EAST RIVER DRIVE, THENCE SOUTH 00"04"20" EAST, ALONG THE WEST LINE OF VACATED EAST RIVER DRIVE AND THE SOUTHERLY EXTENSION THEREOF, 112.72 FEET TO A POINT ON THE SOUTHEASTERLY LINE THEREOF; THENCE NORTH 79"08"47" EAST, ALONG THE SOUTHEASTERLY LINE OF VACATED EAST RIVER DRIVE, 67.19 FEET TO SOUTHEAST CORNER THEREOF; THENCE NORTH 00"04"20" WEST, ALONG THE EAST LINE OF VACATED EAST RIVER DRIVE, 100.15 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Tax PIN: 07-10-221-007-0000
07-10-221-012-0000
07-10-221-014-0000
07-10-221-072-0000
07-10-221-073-0000

Street Address: 400 E. North Water Street, Chicago, Illinois

EXHIBIT C-1

FORM OF ASSIGNMENT AND ASSUMPTION OF LOAN DOCUMENTS

ASSIGNMENT AND ASSUMPTION OF LOAN DOCUMENTS

IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045 having its registered office at 1 Stokes Place, St. Stephen's Green, Dublin 2, acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG, and NATIONAL ASSET LOAN MANAGEMENT LIMITED, an Irish statutory body created by the National Asset Management Agency Act, 2009 (collectively, "**Assignor**"), whose address is c/o NAMA, Grand Canal Street, Dublin 2, Ireland, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assigns, transfers, sets over and conveys to _____, a(n) _____ ("**Assignee**"), whose address is _____, all Assignor's right, title and interest in and to the loan documents described on **Schedule "A"** attached hereto ("**Loan Documents**") and incorporated herein, as each may have been assigned, amended, supplemented, restated or modified.

TO HAVE AND TO HOLD the same unto Assignee and to the successors and assigns of Assignee forever.

This Assignment is made without recourse or representation or warranty, express, implied or by operation of law, of any kind and nature whatsoever.

This is Assignment is given subject to the terms and conditions as set forth the Loan Purchase and Sale Agreement between Assignor, as Seller, and Assignee, as Purchaser, dated as of _____, 2013 (the "**Loan Purchase Agreement**").

Assignee hereby assumes the Loan Documents and agrees to be bound by the terms of the Loan Documents applicable to the lender thereunder and to assume all the obligations of "Lender" thereunder to the extent first arising after the Closing Date (as defined in the Loan Purchase Agreement), including, without limitation, loan administration and servicing obligations. Assignee accepts all risks of collection, authenticity, and enforceability of the documents other than as expressly set forth in the Loan Purchase Agreement. Assignee hereby agrees to indemnify and hold Assignor harmless as provided in the Loan Purchase Agreement.

[THE REMAINDER OF THIS PAGE WAS LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Assignment as of _____, 2013.

ASSIGNOR:

IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045, acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

NATIONAL ASSET LOAN MANAGEMENT LIMITED, an Irish statutory body created by the National Asset Management Agency Act, 2009

By: _____
Name: _____
Title: _____

ASSIGNEE:

_____,
a _____

By: _____
Name: _____
Title: _____

[Acknowledgments On Next Page]

ACKNOWLEDGMENT OF ASSIGNOR

COUNTY OF DUBLIN, IRELAND

I, the undersigned, a Notary Public in and for said County, DO HEREBY CERTIFY, that _____, and _____, the _____, and _____, respectively, of IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation), the Assignor in the foregoing instruments, and personally known or identified 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 they signed and delivered said instrument in his/her authorized capacity, and that he/she delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of IRISH BANK RESOLUTION CORPORATION LIMITED, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2013.

By: _____ [SEAL]
Notary Public

COUNTY OF DUBLIN, IRELAND

I, the undersigned, a Notary Public in and for said County, DO HEREBY CERTIFY, that _____, the _____, of NATIONAL ASSET LOAN MANAGEMENT LIMITED, the Assignor in the foregoing instruments, and personally known or identified 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 they signed and delivered said instrument in his/her authorized capacity, and that he/she delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of NATIONAL ASSET MANAGEMENT AGENCY, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2013.

By: _____ [SEAL]
Notary Public

ACKNOWLEDGMENT OF ASSIGNEE

STATE OF _____)
) ss
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, DO HEREBY CERTIFY, that _____ _____, the _____, of _____, the Assignee in the foregoing instruments, and personally known or identified 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 they signed and delivered said instrument in his/her authorized capacity, and that he/she delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of _____, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2013.

By: _____ [SEAL]
Notary Public

SCHEDULE A

LOAN DOCUMENTS

1. Facility Letter agreement between Lender and Borrower agreeing to a loan in the amount of $54,500,000.00, dated July 18, 2006.

2. Promissory Note made by Borrower, payable to Lender, in the principal amount of $54,500,000.00, dated July 20, 2006.

3. Mortgage and Security Agreement executed by Borrower in favor of Lender, dated July 20, 2006, and recorded in the Office of the Cook County Recorder of Deeds on July 31, 2006 as Document No. 0621243299.

4. Collateral Assignment and Security Agreement in Respect of Contracts, Licenses and Permits, executed by Borrower in favor of Lender, dated July, 2006

5. Security Agreement, given by Borrower in favor of Lender, dated July, 2006.

6. Officer's Certificate to Security Agreement, executed by Borrower, dated July, 2006.

7. Environmental Compliance and Indemnity Agreement given by Borrower and Guarantor in favor of Lender, dated July 20, 2006.

8. First Amendment to Facility Letter between Lender and Borrower, dated January 1, 2008.

9. First Amendment to Promissory Note executed by Lender and Borrower, dated January 1, 2008.

10. First Amendment to Mortgage and Security Agreement executed by Borrower in favor of Lender, dated September 11, 2008 and recorded in the Office of the Cook County Recorder of Deeds on September 11, 2008 as Document No. 0825503092.

11. Second Amendment to Facility Letter between Lender and Borrower, agreeing to increase the loan amount to $69,500,000.00, dated September 11, 2008.

12. Amended and Restated Promissory Note made by Borrower, payable to Lender, in the principal amount of $69,500,000.00, dated September 11, 2008.

13. Affidavit given by Garrett Kelleher regarding ownership of Borrower, dated December 29, 2008.

14. Third Amendment to Facility Letter between Lender and Borrower, dated April 27, 2009.

15. First Amendment to Amended and Restated Promissory Note executed by Lender and Borrower, dated April 27, 2009.

16. Forbearance Agreement between Lender and Borrower, dated April 21, 2010.

17. Subordination Agreement executed by Chicago Spire, LLC and by Shelbourne Lakeshore Limited in favor of Lender, dated April 21, 2010.

18. UCC-1 Financing Statement filed with the Cook County Recorder of Deeds on July 31, 2006 as Document No. 0621243300.

19. Loan Policy No. AC 0401511 issued by Chicago Title Insurance Company, with an effective date of July 31, 2006.

20. Date Down Endorsement attached to Policy No. N01080780 issued by Near North National Title as issuing agent for Chicago Title Insurance Company, extending the effect date of the Loan Policy to September 11, 2008.

NOTE: Guarantor executed a Guaranty and a separate Non-Recourse Carveout Guaranty each dated as of July 20, 2006 (collectively, the "Guarantees"). The Guarantees are not being assigned as part of the Agreement and Purchaser shall acquire no right, title or interest in the Guarantees, it being agreed and acknowledged that all rights in the Guarantees shall remain with Seller.

EXHIBIT D

FORM OF ALLONGE TO NOTE

ALLONGE

THIS ALLONGE is made to that certain Amended and Restated Promissory Note dated as of September 11, 2008, in the original principal amount of $69,500,000.00 as amended by that certain First Amendment to Amended and Restated Promissory Note dated April 27, 2009 made by Shelbourne North Water Street, L.P., a Delaware limited partnership, to Anglo Irish Bank Corporation plc, a banking corporation organized under the laws of Ireland.

Pay to the order of _____, a(n) _____, **without recourse or representation or warranty, express, implied or by operation of law, of any kind and nature whatsoever.**

Executed to be effective as of _____, 2013.

IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045, acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

NATIONAL ASSET LOAN MANAGEMENT LIMITED, an Irish statutory body created by the National Asset Management Agency Act, 2009

By: _____
Name: _____
Title: _____

EXHIBIT E

FORM OF NOTICE OF LOAN SALE TO BE SENT TO BORROWER

National Asset Loan Management Limited
Grand Canal Street
Dublin 2, Ireland

_____, 2012

VIA CERTIFIED MAIL

Shelbourne North Water Street, L.P.
c/o Thoms J. Murphy P.C.
111 West Washington Street
Suite 1920
Chicago, Illinois 60602

Re: $69,500,000.00 Loan originally made by Anglo Irish Bank Corporation plc to Shelbourne North Water Street, L.P. ("Borrower")

Dear Sir or Madam:

Please be advised that the Irish Bank Resolution Corporation Limited (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a corporation under the laws of Ireland, and National Asset Management Agency, an Irish statutory body created by the National Asset Management Agency Act, 2009 have sold the above referenced Loan to _____, a(n) _____, whose address is _____.

From and after the date of this notice, all payments under your Loan should be made to the order of _____ and mailed to:

_____
_____
_____
Attn:_____

Thank you for your attention in this matter.

IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045,

acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

NATIONAL ASSET LOAN MANAGEMENT LIMITED , an Irish statutory body created by the National Asset Management Agency Act, 2009

By: _____
Name: _____
Title: _____

EXHIBIT F

INDEX OF DOCUMENTS IN LITIGATION FILE

EXHIBIT G

FORM OF ASSIGNMENT OF RECEIVER'S CERTIFICATES

IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045 having its registered office at 1 Stokes Place, St. Stephen's Green, Dublin 2, acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG, and NATIONAL ASSET LOAN MANAGEMENT LIMITED, an Irish statutory body created by the National Asset Management Agency Act, 2009 (collectively, "**Assignor**"), whose address is c/o NAMA, Grand Canal Street, Dublin 2, Ireland, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assigns, transfers, sets over and conveys to _____, a(n) _____("**Assignee**"), whose address is _____, all Assignor's right, title and interest in and to the Receiver's Certificates described on **Schedule "A"** attached hereto ("**Receiver's Certificates**") and incorporated herein, as each may have been assigned, amended, supplemented, restated or modified.

TO HAVE AND TO HOLD the same unto Assignee and to the successors and assigns of Assignee forever.

This Assignment is made without recourse or representation or warranty, express, implied or by operation of law, of any kind and nature whatsoever.

[SIGNATURAGE ON NEXT PAGE]

IN WITNESS WHEREOF, Assignor has duly executed this Assignment as of _____, 2013.

ASSIGNOR:

IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045, acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

NATIONAL ASSET LOAN MANAGEMENT LIMITED, an Irish statutory body created by the National Asset Management Agency Act, 2009

By: _____
Name: _____
Title: _____

SCHEDULE A

RECEIVER'S CERTIFICATES

1. Receiver's Certificate and Grant of Lien No. 1 in the amount of $1,500,000.00 dated March 25, 2011
2. Receiver's Certificate and Grant of Lien No. 2 in the amount of $1,150,000.00 dated March April 2, 2012
3. Receiver's Certificate and Grant of Lien No. 3 in the amount of $750,000.00 dated _____, 2013

EXHIBIT H

FORM OF MOTION TO SUBSTITUTE PARTY

EXHIBIT I

FORM OF ESCROW AGREEMENT

Chicago Title Insurance Company
10 South LaSalle Street, Suite 3100
Chicago, Illinois 60603
Attn: Linda Tyrrell
Telephone: (312) 223-3361
Facsimile: (866) 223-4857
Email: linda.tyrrell@ctt.com

_____
_____
Attention: _____
Telephone: (____) ____-_____
Facsimile: (____) ____-_____
E-mail: _____

RE: Sale of Loan by IRISH BANK RESOLUTION CORPORATION LIMITED (In Special Liquidation) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a company incorporated under the laws of Ireland under registration number 22045 having its registered office at 1 Stokes Place, St. Stephen's Green, Dublin 2, acting through its joint special liquidators, Kieran Wallace and Eamonn Richardson, of KPMG, and NATIONAL ASSET LOAN MANAGEMENT LIMITED, an Irish statutory body created by the National Asset Management Agency Act, 2009 (collectively, the "Seller"), to _____, a(n) _____ ("Purchaser"), pursuant to that certain Loan Purchase and Sale Agreement dated as of _____, 2013 ("Agreement")

Purchaser and Title Company:

This letter shall constitute the escrow instructions to be followed by First American Title Insurance Company (the "Title Company") for the closing of the sale of the above-referenced loan (the "Loan") by Seller to Purchaser on _____, 2013 (the "Closing Date"). All capitalized terms used in these escrow instructions which are not otherwise defined herein shall have the same meanings as set forth in the Agreement.

1. **Seller Deposits:** The undersigned, on behalf of Seller, is depositing the following enclosed items (collectively, the "Seller's Deposits") with the Title Company in escrow in connection with the above-referenced transaction:

   a) **Loan Documents:** The documents listed on Schedule 1 attached hereto and incorporated herein (the "Loan Documents").

   b) **Closing Documents:** Originals of the following documents executed by Seller (the "Closing Documents"):

      i. One (1) Allonge for the Note, which shall be attached to the original Note;

      ii. One (1) Assignment of Mortgage and Security Agreement;

      iii. Two (2) counterparts of the Assignment and Assumption of Loan Documents;

iv. One (1) Assignment of Receiver's Certificates which will be attached to the three (3) original Receiver's Certificates;

v. Form UCC-3 Assignment of the UCC-1 Financing Statement identified on Exhibit A to the Agreement;

vi. Original notice of sale of loan documents as described in Sections 3.2(e) of the Agreement; and

vii. One (1) counterpart of the final settlement statement (the "Final Settlement Statement") prepared by the Title Company executed by or on behalf of Seller.

2. **Purchaser's Deposits:** The undersigned, on behalf of Purchaser, is depositing the following items (collectively, the "Purchaser's Deposits") with the Title Company in escrow in connection with the above-referenced transaction:

a) **Purchase Price:** The full amount of the Purchase Price in the amount of $_____ less the $_____ held by the Title Company as an earnest money deposit (including any interest earned thereon), plus or minus any credits to or against the Purchase Price agreed to by Purchaser and Seller and set forth on a final fully executed Final Settlement Statement prepared by the Title Company, by wire transfer of federal funds into an escrow with the Title Company by no later than 12:00 p.m. (Central Time) on the Closing Date.

b) **Assignment and Assumption of Loan Documents:** Two (2) counterparts of the Assignment and Assumption of Loan Documents;

c) **Final Settlement Statement:** One (1) counterpart of the Final Settlement Statement prepared by the Title Company executed by or on behalf of Purchaser.

3. **Conditions.** When:

a) The Title Company has accepted these escrow instructions; and

b) The Title Company has received and is holding all of Seller's and Purchaser's Deposits referred to in Paragraphs 1 and 2 above which are duly-executed and acknowledged where required and is in a position to disburse funds in accordance with the final fully executed Final Settlement Statement prepared by the Title Company.

THEN, the Title Company is authorized and directed to proceed as follows:

a) Date as of the Closing Date the Closing Documents referenced in Subparagraph 1(b) above;

b) Record:

(i) the Assignment of Mortgage and Security Agreement in the Office of the Recorder of Deeds, Cook County, Illinois;

(ii) the UCC-1 in the Office of the Recorder of Deeds, Cook County, Illinois.

c) Disburse to the Seller the proceeds of the sale in the amount set forth on the final fully executed Final Settlement Statement and in accordance with the following wiring instructions;

By Wire: Name of Bank:_____
Account No._____
Credit to: National Asset Management Agency
ABA Routing No._____
Attn: _____

The physical address of the Bank is:

_____
_____
_____
_____

d) Disburse to the Purchaser any amounts overdeposited by Purchaser with the Title Company in accordance with separate instructions to the Title Company from Purchaser;

e) Deliver to Purchaser and Seller one (1) original of the Assignment and Assumption of Loan Documents with original counterpart signatures;

f) Deliver to Purchaser and Seller a Final Settlement Statement with full counterpart signatures; and

g) Deliver to Purchaser all the other items described in Paragraph 1 above.

4. **Loan Purchase and Sale Agreement:** Seller and Purchaser have entered into the Agreement with respect to the sale of the Loan and these escrow instructions are executed for the purposes of consummating the transaction described in the Agreement. These escrow instructions do not amend, supersede, or modify the Agreement, but the Title Company is to be governed solely by these escrow instructions.

5. **Closing Costs:** Purchaser shall pay the legal fees and the expenses of its attorneys and all fees necessary to record any documents relating to this transaction, any charges incurred in connection with any escrow, title reports, title endorsements, policies or continuations provided for herein, and any other expenses or closing costs necessary to complete this transaction. Seller shall pay its own legal fees and expenses.

6. **General Provisions:** The Title Company shall have obtained whatever assurances it deems necessary from the appropriate parties to firmly bind itself to fully and completely carry out these escrow instructions. In the event that for any reason the Title Company is not prepared to comply with these instructions on or before 5:00 p.m. Central Time on the Closing Date, then upon the written

demand of the party not at fault, and without notice to any other person and irrespective of any other notification, demand or instruction received from any other person whether or not a party to these instructions, the Title Company is directed to immediately return to the party not at fault its deposits. In the absence of such written demand, the Title Company is directed to continue to comply with these instructions without reference to the date referred to above.

[***Remainder of page left intentionally blank. Signature pages follow on next page.***]

These instructions shall not be modified or amended unless agreed to in writing and executed by the undersigneds on behalf of Seller and Purchaser and by the Title Company.

SELLER:

NATIONAL ASSET LOAN MANAGEMENT LIMITED, an Irish Statutory body

IRISH BANK RESOLUTION CORPORAITON LIMITED (In Special Liquidatin) (f/k/a as Anglo Irish Bank Corporation Limited, f/k/a Anglo Irish Bank Corporation plc), a corporation existing under the laws of Ireland

By: Quarles & Brady LLP, their attorneys

By:_____
Name: Thomas A. McCarthy
Title: Partner

PURCHASER:

_____, a
_____

By: _____

By:_____
Name: _____
Title: Its Attorney

TITLE COMPANY:

CHICAGO TITLE INSURANCE COMPANY

By:_____
Name: Linda Tyrrell
Title: Senior Escrow Officer

SCHEDULE 1 TO ESCROW AGREEMENT

1. Facility Letter agreement between Lender and Borrower agreeing to a loan in the amount of $54,500,000.00, dated July 18, 2006.

2. Promissory Note made by Borrower, payable to Lender, in the principal amount of $54,500,000.00, dated July 20, 2006.

3. Mortgage and Security Agreement executed by Borrower in favor of Lender, dated July 20, 2006, and recorded in the Office of the Cook County Recorder of Deeds on July 31, 2006 as Document No. 0621243299.

4. Collateral Assignment and Security Agreement in Respect of Contracts, Licenses and Permits, executed by Borrower in favor of Lender, dated July, 2006

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6. Officer's Certificate to Security Agreement, executed by Borrower, dated July, 2006.

7. Environmental Compliance and Indemnity Agreement given by Borrower and Guarantor in favor of Lender, dated July 20, 2006.

8. First Amendment to Facility Letter between Lender and Borrower, dated January 1, 2008.

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19. Loan Policy No. AC 0401511 issued by Chicago Title Insurance Company, with an effective date of July 31, 2006.

20. Date Down Endorsement attached to Policy No. N01080780 issued by Near North National Title as issuing agent for Chicago Title Insurance Company, extending the effect date of the Loan Policy to September 11, 2008.

NOTE: Guarantor executed a Guaranty and a separate Non-Recourse Carveout Guaranty each dated as of July 20, 2006 (collectively, the "Guarantees"). The Guarantees are not being assigned as part of the Agreement and Purchaser shall acquire no right, title or interest in the Guarantees, it being agreed and acknowledged that all rights in the Guarantees shall remain with Seller.

Bid Instructions

October 3, 2017~~April 15, 2013~~

Re: Bid Instructions – $92.8MM Matured Senior Loan Sale Secured by a 2.18-acre development site located at 400 North Lake Shore Drive in Chicago, Illinois (the "**Project Light Loan**")

Ladies and Gentlemen:

The National Asset Management Agency ("**Seller**"), is pleased to invite you to bid on the purchase of the Project Light Loan.

To be considered, your bid must be received electronically before 5:00 pm EDT on the following dates: (i) for your initial bid (an "**Initial Bid**"), Tuesday, April 23, 2013, and (ii) only if invited in writing by Seller to submit a best and final bid (a "**Best and Final Bid**"), with respect to such Best and Final Bid, Thursday, May 9, 2013. No consideration will be given to bids received after this time.

Please e-mail your bid to Peter Nicoletti at peter.nicoletti@am.jll.com, Thomas Kirschbraun at thomas.kirschbraun@am.jll.com and Maggie Coleman at maggie.coleman@am.jll.com. Seller reserves the right to accept or reject any bid for any reason whatsoever or for no reason, in its sole and absolute discretion.

Each bid must be a firm and unconditional bid expressed in U.S. dollars, subject to the terms and conditions of this invitation and in a form acceptable to Seller. Each Best and Final Bid must acknowledge acceptance of the following terms and conditions of the sale transaction:

1. The Project Light Loan will be purchased "AS IS", "WHERE IS", "WITH ALL FAULTS" and without representations or warranties, express or implied, of any type, kind, character or nature, and without recourse, express or implied, of any kind, character or nature by Seller.

2. You should provide proof of funds in conjunction with your bid.

3. Bidders are permitted to bid on a JV arrangement.

4. The purchase price will be due to Seller in an expeditious timeframe following Seller's delivery of written notice to the successful bidder that its bid has been accepted by Seller. The Seller anticipates the signature of a Loan Sale Agreement and closing within 10 calendar days of acceptance of a bid. The Loan will trade and settle flat.

5. The Seller will prepare the transaction documents required in connection with the sale of the Project Light Loan. The purchaser will be responsible for all fees, costs and expenses incurred on its own behalf in connection with the sale of the Project Light Loan.

6. Your Best and Final Bid shall constitute a binding offer by you to purchase the Project Light Loan for the price submitted to, and accepted by, Seller. Nevertheless, Seller shall not be obligated to sell to you the Project Light Loan, regardless of whether Seller has approved your bid. Seller reserves the right to modify any of the procedures set forth herein or in the offering materials, accept or reject any or all bids, regardless of bid price, or withdraw the Project Light Loan from sale, all in its sole and absolute discretion, for any reason or no reason at all.

7. You shall have signed a non-disclosure agreement with Seller prior to being provided the offering materials. You are encouraged to review the files in the Jones Lang LaSalle secure data room and to conduct all necessary due diligence in advance of the submission of your bid. The purchaser's bid shall be based on its independent review of all information it deems necessary to make its own credit analysis

and decision and is made without reliance on the Seller or any other person. Neither any Initial Bid nor any Best and Final Bid may contain any contingencies for additional due diligence.

8. You will include in your Initial Bid a warranty and disclosure (attached as Exhibit A) in compliance with the Seller's policy on sales to connected parties. In this regard, please note that any such disclosures will be considered by the Seller on a case by case basis.

9. No site inspections will be available. No contact of any sort is permissible with the Borrower(s), or, without limitation, their agents, affiliates, employees, consultants, vendors, tenants or landlord.

Thank you in advance for your participation.

Yours sincerely,

Peter Nicoletti
Head of Global Loan Sales
Jones Lang LaSalle
Tel: +1 212 812 5754
E-mail: peter.nicoletti@am.jll.com

Appendix A

Save and except for the items that are disclosed in Section (c) below[1], the Bidder hereby warrants and confirms that it is:

(a) not a person connected to Mr. Garrett Kelleher (the "**Sponsor**") where "person connected to the Sponsor" means any of the following:

(i) a subsidiary company or related company (as defined in the Irish Companies Act and each or both being referred to as "**a Relevant Company**") of the Sponsor;

(ii) a company of which the Sponsor is the sole shareholder ("**an Owned Company**");

(iii) a company controlled by the Sponsor that is to say the Sponsor has an interest (either alone or together with (a) a Relevant Company, (b) a nominee (as defined in (iv) below) of the Sponsor, (c) a trustee of the Sponsor, (d) a person in partnership with the Sponsor in connection with any credit facility or security or (e) an Owned Company) in 25% or more of the equity share capital or entitled to exercise or control the exercise of 25% or more of the voting powers at any general meeting;

(iv) a nominee, or person who may or does in fact act at the direction, of the Sponsor or any of the parties referred to at (i) to (iii) above;

(v) a trustee (whether or not declared) where the beneficiaries include, directly or indirectly, the Sponsor or any of the parties referred to at (i) to (iv) above.

(b) **Save and except the items that are disclosed in Section (c) below,** the Bidder further warrants and confirms that:

(i) the consideration to be paid pursuant to the Sale and Purchase Agreement comprises the entire consideration being paid or passing in any form from the Bidder in respect of the purchase of the said loans;

(ii) that neither the Sponsor nor any person connected with such persons (as set out in section (a) above) will receive, either directly or indirectly, any equity or profit share deriving from any equity position in the loans, or the assets (or their proceeds) which are secured by those loans, or any shareholding or interest or any other form of equity or profit share deriving from any equity position in either the entity acquiring the loans or in any entity having control of such acquiring entity;

(iii) the Bidder does not intend to retain the Sponsor and/or certain members of the management team as an asset manager and/or developer.

(c) **The Bidder makes known the following matters by way of disclosure as against the warranties and statements made in paragraphs (a) and (b) above:**

[1] Such disclosures shall be considered by NAMA on a case-by-case basis.

CONFIDENTIALITY AGREEMENT

$69,500,000 MILLION LOAN ACQUISITION OPPORTUNITY - SHELBOURNE NORTH WATER STREET, L.P. **MARCH 2013**

Jones Lang LaSalle has been retained on an exclusive basis by the National Asset Management Agency ("NAMA") to act as financial advisor with respect to the solicitation of offers in connection with the sale of a certain loan (the "Loan") secured by a mortgage encumbering a development site located at 400 E. North Water Street in Chicago, Illinois (the "Property"), which Property was formerly proposed to be used as the development site for the Chicago "Spire" (the "Proposed Transaction").

In this agreement, "Informational Materials" means all information regarding the Loan, the Property and the Proposed Transaction, including (without limitation) all information contained in any Information Memorandum which is issued to you, the undersigned (the "Potential Purchaser") in respect of the Proposed Transaction, all financial, technical, operational, commercial and management data, know-how, marketing materials (along with any photographs, maps and artwork contained therein) and all legal documentation pertaining to the title to the Property and the security underlying the loan, which is directly or indirectly disclosed in whatever form (including, without limitation, in written, oral, visual or electronic form, or on tape or disk) by or on behalf of (a) NAMA and/or Jones Lang LaSalle or any of their officers, employees or professional advisors; (b) any obligor under the Loan or any of their officers, employees or professional advisors; or (c) any Participating Institution (as that term is defined in the National Asset Management Agency Act 2009) or any of their officers, employees or professional advisors, to the Potential Purchaser, and includes the fact that the prospered Transaction is under consideration, the fact that such information has been disclosed to you and that discussions or negotiations have or will occur regarding the Proposed Transaction (together with the status of any such discussion or negotiations).

Informational Materials will not include information or documents that (a) the Potential Purchaser can demonstrate were known by Potential Purchaser prior to the disclosure thereof by NAMA or Jones Lang LaSalle; (b) came into the possession of the Potential Purchaser from a third party which is not under any obligation to maintain the confidentiality of such information; (c) has become part of the public domain through no act or fault of the Potential Purchaser in violation hereof; or (d) the Potential Purchaser can demonstrate were independently developed by or for the Potential Purchaser without the use of the Informational Materials or any of them.

NAMA will not permit the disclosure of any Informational Materials to a Potential Purchaser unless and until Potential Purchaser has executed this agreement. Upon Jones Lang LaSalle's receipt of this executed agreement, the Informational Materials will be provided for the Potential Purchaser's consideration in connection with the possible purchase of the Loan, subject to the conditions set forth herein.

1. All Informational Materials shall be held in the strictest confidence and shall be used solely for the purpose of Potential Purchaser's consideration of a purchase of the Loan and shall not be copied or reproduced except as necessary for the consideration of the purchase of the Loan. Within three days of NAMA's or Jones Lang LaSalle's request, Potential Purchaser shall either (a) return all Informational Materials and copies thereof (whether made in physical or digitalized form, and including any notes made from such Informational Materials) to Jones Lang LaSalle, or (b) destroy all Informational Materials and copies thereof (whether made in physical or digitalized form, and including any notes made from such Informational Materials) and provide Jones Lang LaSalle with written certification of such destruction.

2. The Informational Materials may be disclosed to the Potential Purchaser's employees, legal counsel and institutional lenders ("Related Parties") only on a "need-to-know" basis for the purpose of evaluating the potential purchase of the Loan; provided, however, that Potential Purchaser shall (a) inform such Related Parties of the confidential nature of the Informational Materials; (b) ensure that each such Related Party shall comply with the terms of this Agreement; and (c) shall be responsible for a breach of this agreement caused by such Related Parties.

3. The Potential Purchaser and the Related Parties shall ensure that all Informational Materials are at all times protected with security measures and a degree of care that apply to their own confidential information, and shall keep the Informational Materials separate and under their respective control and in their possession.

4. If any court or governmental authority requires the Potential Purchaser to disclose any portion of the Informational Materials, the Potential Purchaser shall, to the extent permitted by law and legal process, (a) provide NAMA with prompt written notice of such requirement and (b) cooperate with NAMA in a commercially reasonable manner in obtaining any protective order or other remedy sought by NAMA with respect to such requirement. If no such protective order or other remedy is obtained, then the Potential Purchaser may disclose only that portion of the Informational Materials that in the reasonable opinion of the Potential Purchaser's legal counsel is legally required to be disclosed, and shall exercise all commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Informational Materials.

5. The Potential Purchaser understands that (a) this agreement is made for the benefit of NAMA and Jones Lang LaSalle and that either party may enforce its provisions, and (b) all inquiries and communications with respect to the contemplated sale of the Loan must be directed only to Jones Lang LaSalle.

6. The Potential Purchaser shall not, without the written consent of NAMA or Jones Lang LaSalle (a) disclose (other than to Related Parties) the fact that discussions or negotiations are taking place concerning the possible acquisition of the Loan or any of the terms thereof; (b) contact any obligor or guarantor under the Loan with respect to the subject matter hereof; or (c) contact any entity or individual representing

an entity regarding the status of the foreclosure case for the Property that is currently pending in the Circuit Court of Cook County as Case No. 10-CH-27970.

7. For the avoidance of doubt, all information and documentation contained in the electronic data room for the Proposed Transaction shall constitute Informational Materials. It may be a condition of gaining access to such data room that the Potential Purchaser and the Related Parties accept and comply with data room rules, and the Potential Purchaser hereby undertakes to comply with any such data room rules.

8. The Informational Materials do not purport to be all-inclusive or to contain all information that a prospective purchaser may desire. The Potential Purchaser understands and acknowledges that neither NAMA nor Jones Lang LaSalle, nor any of their employees or agents, make any representations or warranties as to the accuracy or completeness of the Informational Materials and that the information has not been independently verified by NAMA or Jones Lang LaSalle. The Informational Materials are not guaranteed as to completeness or accuracy nor are they intended as a substitute for independent due diligence and analysis by the Potential Purchaser. Potential Purchaser acknowledges that neither NAMA nor Jones Lang LaSalle has any responsibility to update the Informational Materials.

9. The Potential Purchaser acknowledges it is acting as a Principal or an Investment Advisor with respect to the proposed purchase of the Loan, and not as a broker, and will not look to NAMA or Jones Lang LaSalle for any fees or commissions.

10. The Potential Purchaser hereby agrees to indemnify and keep indemnified NAMA and its respective affiliates, shareholders, directors, officers, employees, agents and successors and assigns against and from any loss, damage, claim, liability or expense, including attorney's fees, arising out of any breach of any of the terms of this agreement or arising from any broker, agent or finder claiming by or through the Potential Purchaser.

11. The Potential Purchaser acknowledges that the Loan is offered subject to withdrawal from the market, change in offering price, prior sale or rejection of any offer because of the terms thereof, lack of satisfactory credit references of any prospective purchaser, or for any other reason whatsoever, without notice. The Potential Purchaser acknowledges that the Loan is being offered without regard to race, creed, sex, religion, or national origin.

12. The Potential Purchaser represents and warrants that (i) it is duly organized and validly existing under the laws of the jurisdiction in which it is incorporated or formed; (ii) it has the power and authority to enter into this agreement, and (iii) its obligations under and in connection with this agreement constitute its legal, valid, binding and enforceable obligations.

13. Money damages may not be a sufficient remedy for the breach of this agreement, and NAMA is entitled to seek specific performance and injunctive relief or other available equitable relief as a remedy for any such breach. In any action to enforce the terms of this agreement, the non-prevailing party shall be responsible for payment of the prevailing party's reasonable attorneys' fees and expenses incurred in any such action. Upon execution of this agreement, this will become a binding agreement and will be construed in accordance with Illinois law, without regard to conflict of law principles. The obligations in this agreement shall remain binding and in effect for a period of three (3) years from the date hereof.

If you are in agreement with the foregoing, please return one original signed copy of this agreement to leslev.fan@am.jll.com or by fax (312-938-1193).

POTENTIAL PURCHASER: _____

Accepted and Agreed To This _____ Day of _____, 2012

SIGNING PARTY *(Party Authorized to Execute)*	**DEAL LEADER/RECIPIENT OF DILIGENCE AND MARKETING MATERIALS** *(If Different Than Signing Party; If the Same Write "Same")*
Company: _____	Name: _____
By: _____	Address: _____
Name: _____	Phone: _____
Title: _____	Fax: _____
Date: _____	E-mail: _____

PLAINTIFF'S EXHIBIT 14

tabbies

CHICAGO

WATERFRONT PROPERTY

JONES LANG LASALLE

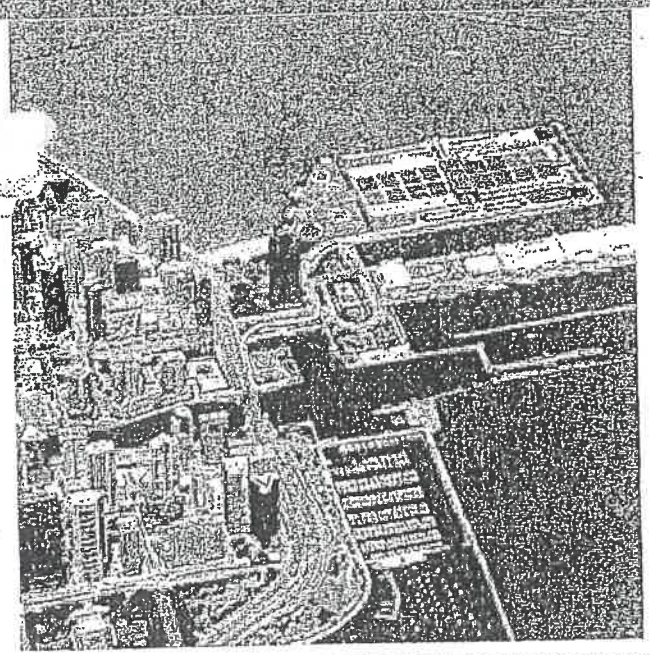
FORMER CHICAGO SPIRE SITE

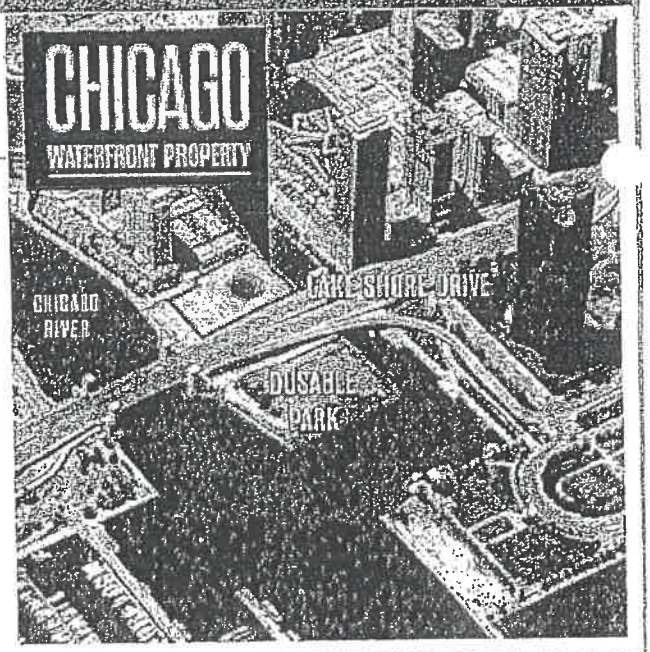
A $92.8 MILLION MATURED LOAN

Jones Lang LaSalle ("JLL"), as exclusive advisor to the National Asset Management Agency (the "Seller"), is pleased to present the opportunity to acquire a matured $92.8 million* senior loan (the "Loan") collateralized by a 2.18-acre development site located at 400 North Lake Shore Drive in Chicago, Illinois (the "Property"). The Property was originally intended to be the site for the Chicago Spire skyscraper.

Indicative bids for the Loan will be taken on April 23, 2013.

HIGHLIGHTS OF THE PROPOSED INVESTMENT OPPORTUNITY INCLUDE:





Premier location

The Property is located in downtown Chicago near the mouth of the Chicago River as it connects to Lake Michigan. It is in the Streeterville neighborhood, an established submarket that is one of the most affluent and desirable in Chicago. At almost $100,000, the median household income in Streeterville is more than double that of the city and over 90% greater than that of the United States. The Property is surrounded by Chicago's most famous attractions, including Navy Pier, Millennium Park and the Michigan Avenue shopping district.

Extraordinary views

Positioned as it is with frontage along the Chicago River, Lake Shore Drive and Ogden Slip, building(s) on the site will offer perpetually unobstructed views of Lake Michigan, which drive the highest residential prices in the city. Additional view corridors down the Chicago River, towards the celebrated downtown skyline and along Chicago's ...front, present the opportunity to build a new landmark as iconic as the John Hancock Building or Willis Tower.

Outstanding access

The Property benefits from a prestigious Lake Shore Drive address and outstanding accessibility. It is the only site in Chicago that has dedicated access directly from Lake Shore Drive. The Property enjoys excellent pedestrian access and connectivity to downtown Chicago. The site is walking distance to the "Loop" (Chicago's Central Business District), the Michigan Avenue shopping district and the other amenities and attractions the city has to offer.

High density development

The Property is currently entitled for a 150-story residential condominium project containing 1,200 residential units. As originally designed, the Chicago Spire would have been the tallest building in the world. Approved entitlements for the Spire's planned development agreement provide for a Floor Area Ratio (FAR) of 25; allowing construction of more than 2.3 million square feet.

...minishing supply of competing sites

Opportunities for substantial future competition in Streeterville have dwindled considerably as the few remaining parcels have been developed. Today, only a handful of inferior development pads remain, surrounded by other high-rises. The Property is the last Streeterville pad along Lake Shore Drive, the only remaining site that can provide protected views, and the only site providing a direct off-ramp from the Drive.

Residential market recovery

In the past few years, virtually all new residential construction in Chicago has been multifamily rental product. The previous oversupply of condominium product has been absorbed in Streeterville. The developer of the Property will be positioned to deliver new construction condominiums to meet a resurgent demand for ownership housing.

Foreclosure process substantially complete

A loan purchaser has the potential to benefit from substantial work completed by the Seller to bring the foreclosure process to completion. The Seller's motion for summary judgment against the borrower was granted in October 2011.

*Includes accrued interest and fees.

FOR MORE INFORMATION, PLEASE CONTACT:

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917.723.4845

For questions related to the Confidentiality Agreement, please contact:

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Analyst
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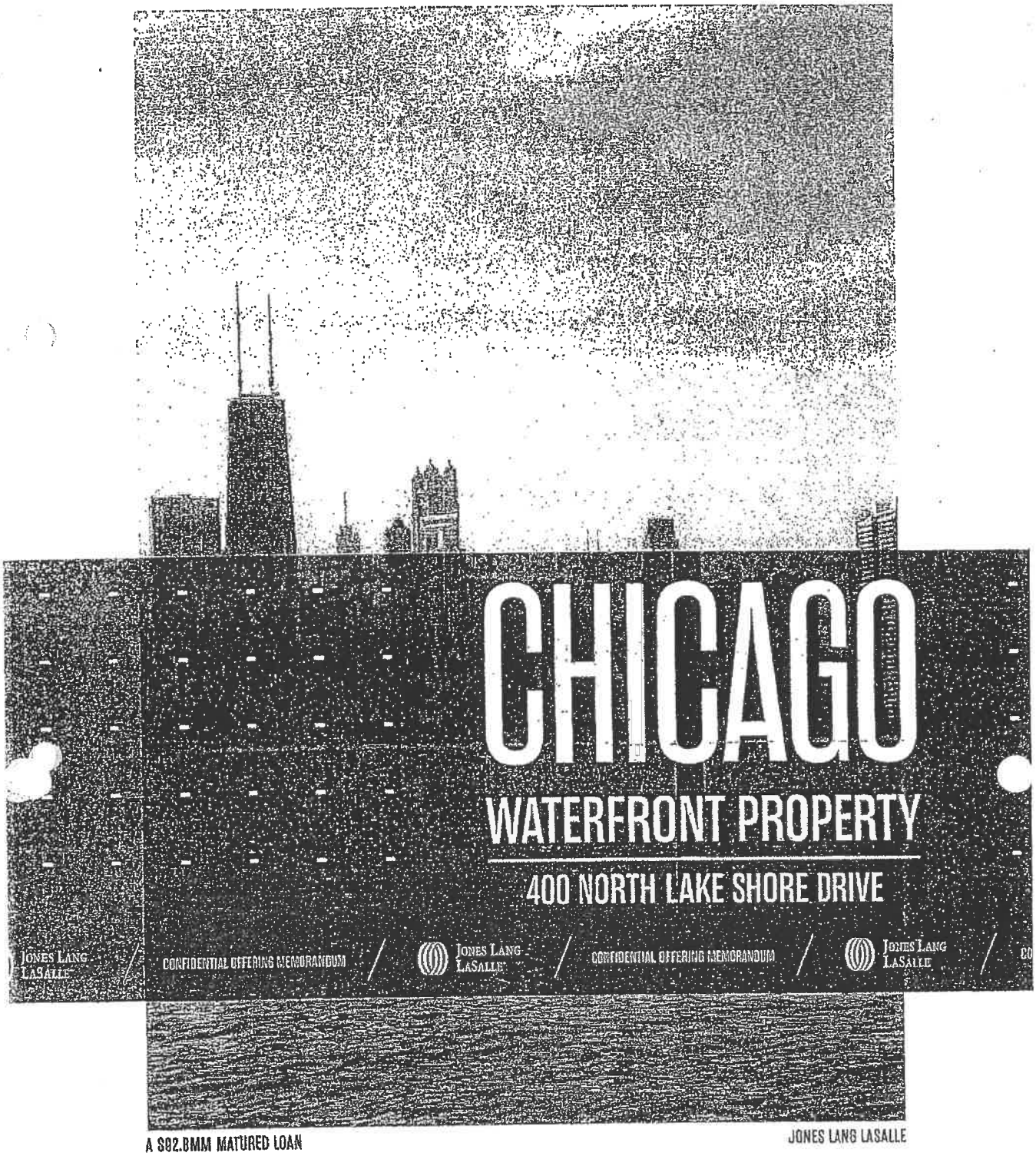
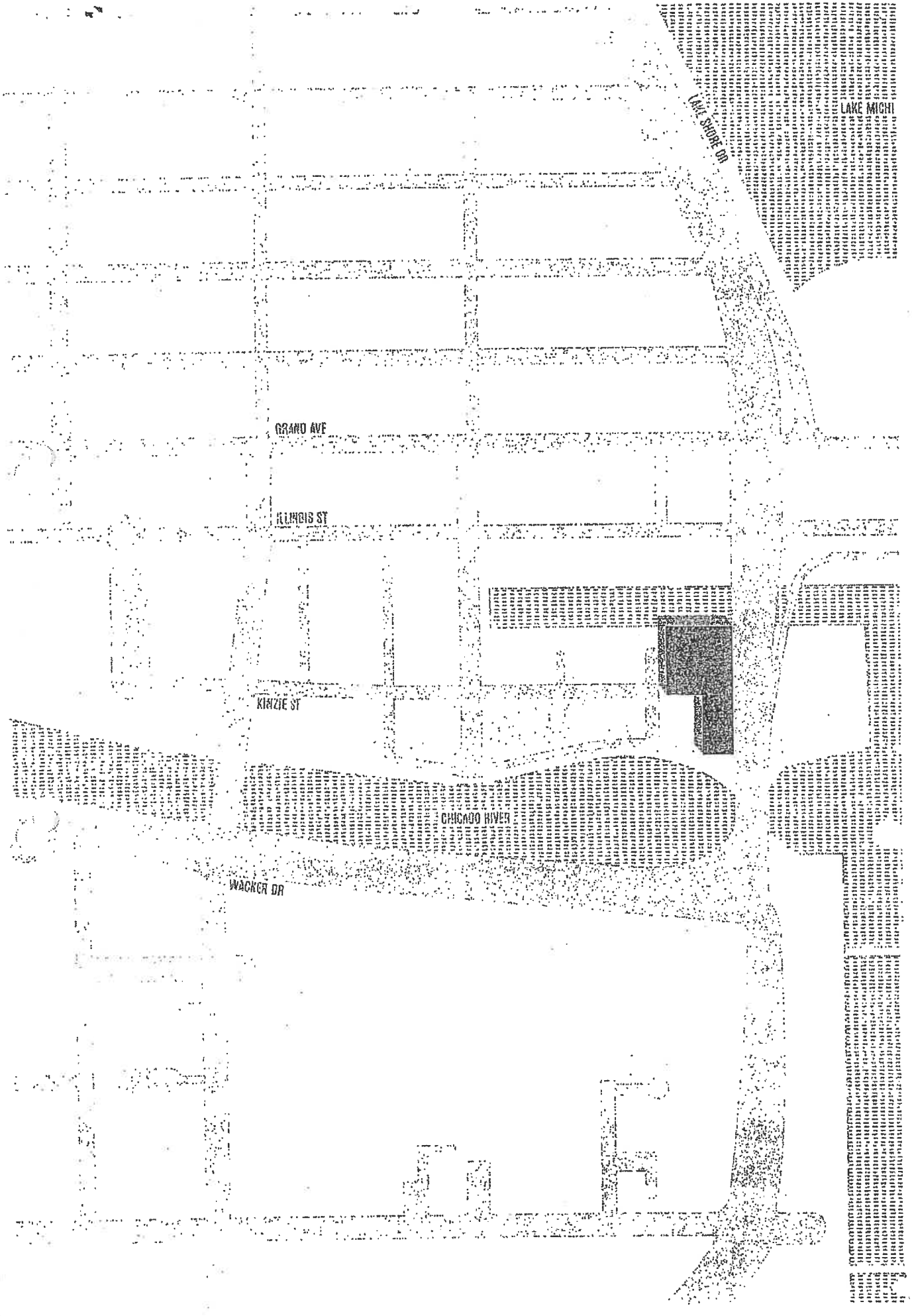
+1 212.812.6447



A $82.8MM MATURED LOAN

JONES LANG LASALLE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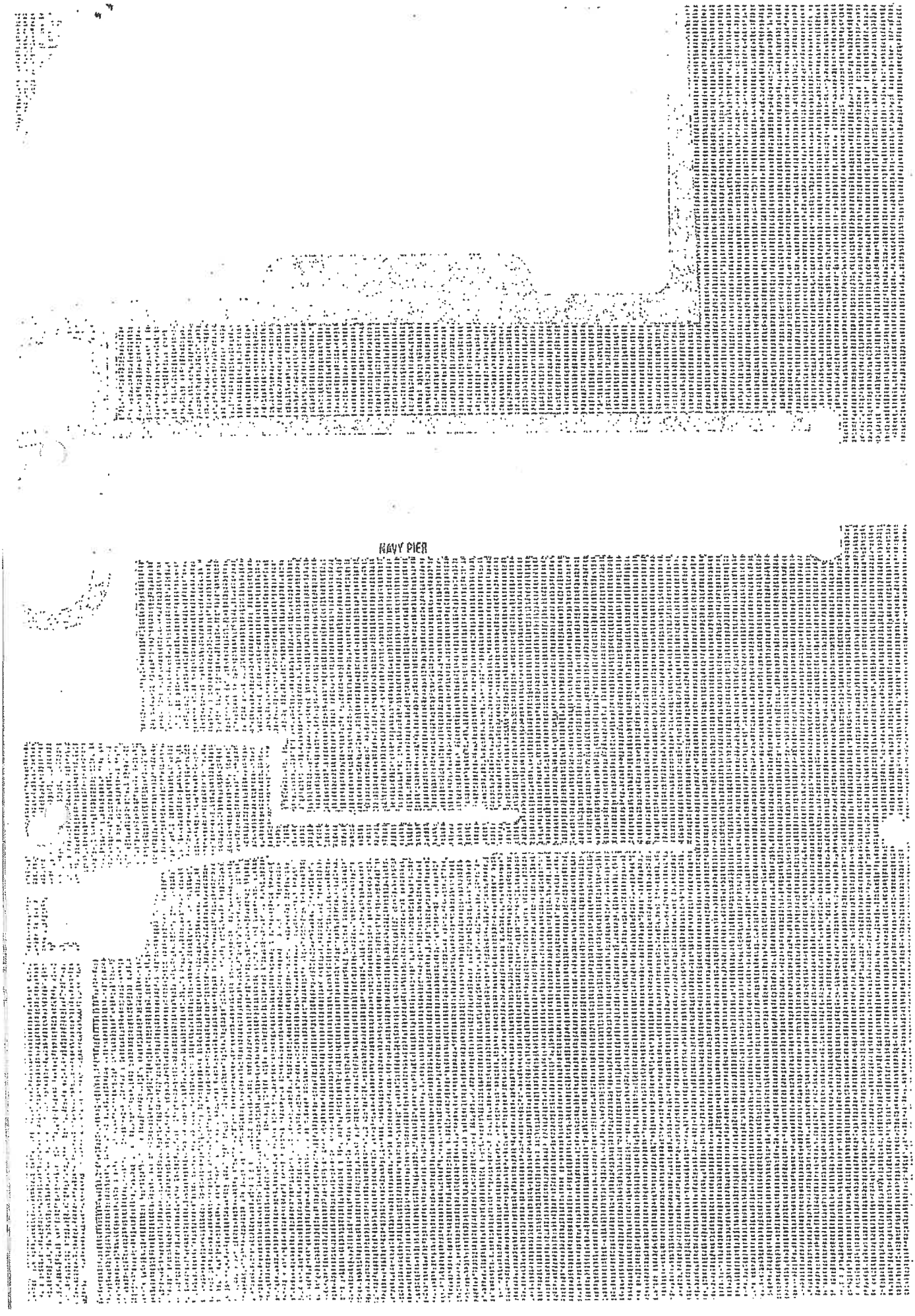
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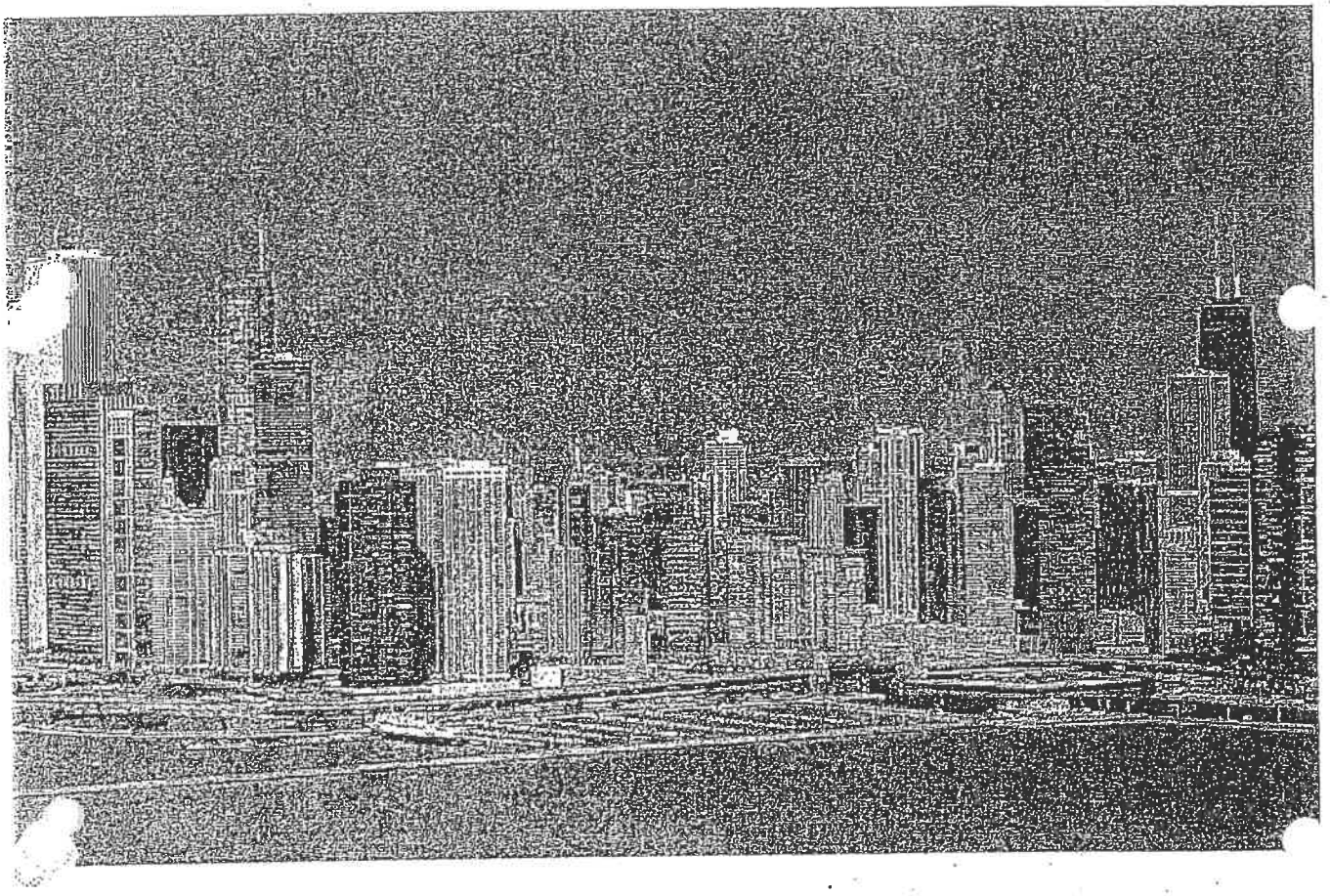


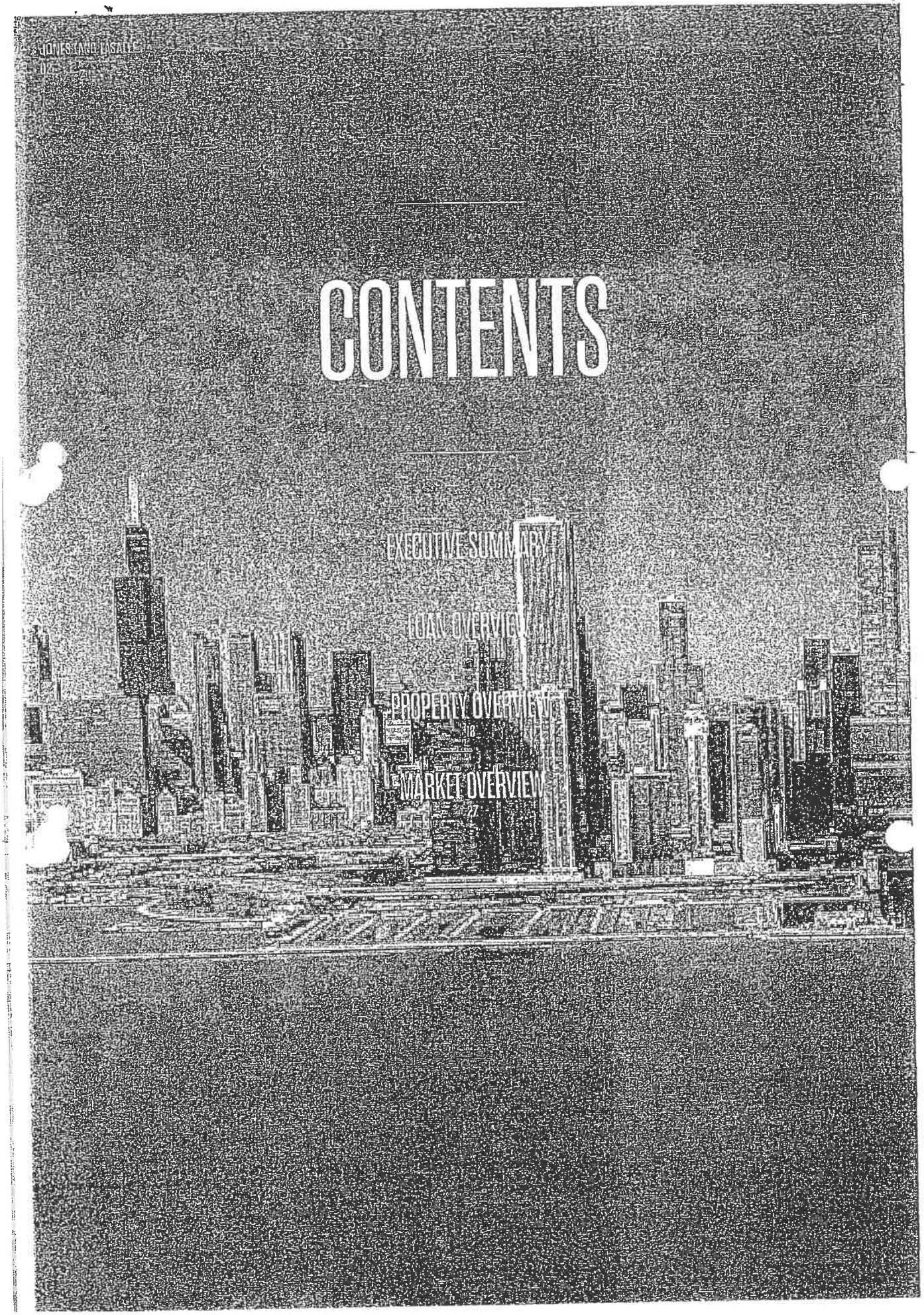
DISCLAIMER

This Confidential Loan Offering Memorandum (the "Memorandum") is being provided solely for informational purposes and solely for the use of certain identified recipients in connection with the possible acquisition of a $92.8 million matured senior loan (including accrued default interest and penalties) (the "Loan") described herein, and is not to be used for any other purpose or made available to any other party without the prior written consent of National Asset Management Agency (the "Seller"), Irish Bank Resolution Corporation (In Special Liquidation) (f/k/a Anglo Irish Bank Corporation plc) (the "Lender") or the Seller's exclusive agent, Jones Lang LaSalle ("JLL"). This Memorandum is subject to the Confidentiality Agreement you signed in connection with your potential purchase of the Loan.

This Memorandum does not constitute an offer to sell (including, without limitation, an offer to sell securities) or a solicitation of an offer to purchase (including, without limitation, an offer to purchase securities) by any person.

This Memorandum was prepared by JLL based on select information supplied by the Seller, identified third party sources and information developed by JLL through third party reports and sources. It contains select information about the Loan, but does not contain all the information necessary to evaluate the acquisition of the Loan or any other transaction. The financial projections contained herein (or in any other evaluation material, including any JLL due diligence websites) are for general reference only. They are based on assumptions relating to the overall economy and local competition, among other factors. Accordingly, actual results may vary materially from such projections. While the information contained in this Memorandum and any other evaluation material is believed to be reliable, none of JLL, Seller, Lender or any of their respective officers, directors, agents, employees or independent contractors (collectively, the "Providers") guarantees its accuracy or completeness or makes any other representation or warranty with respect to such information. The Providers disclaim all liability for any use or misuse of this Memorandum, for any errors or omissions in this Memorandum, or for any resulting loss or damage, whether direct, indirect or consequential or otherwise suffered by the recipient of this Memorandum or any other person. The Providers have no obligation to update any information in this Memorandum. Past performance or any prediction, projection or forecast on any matter, including without limitation, the Loan or any economic trends, is not necessarily indicative of any future or likely performance.

Accordingly, a prospective buyer (or other party authorized by the prospective buyer to use such material solely to facilitate the prospective buyer's investigation and subject to the Confidentiality Agreement) must make its own independent investigations, projections and conclusions regarding the acquisition of the Loan without reliance on this Memorandum or any other evaluation material. This Memorandum is not intended to be relied on to make any investment decision and does not constitute investment advice or a recommendation for the purchase of the Loan. This Memorandum was prepared without regard to the specific objectives, financial situation or needs of any particular person who may receive it. All recipients of this Memorandum should seek advice from their own attorneys, accountants, engineers and environmental experts as applicable and subject to the Confidentiality Agreement.



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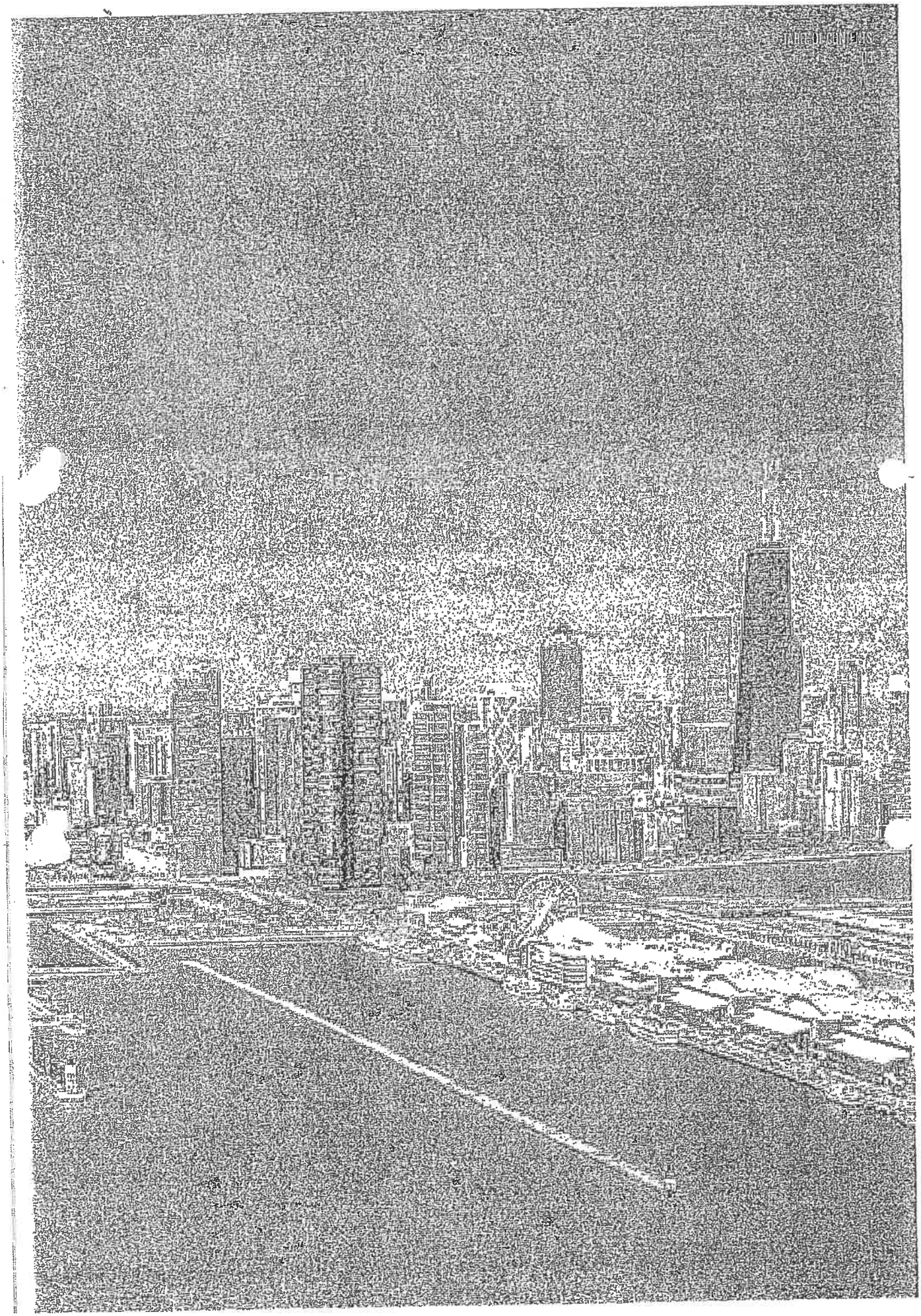
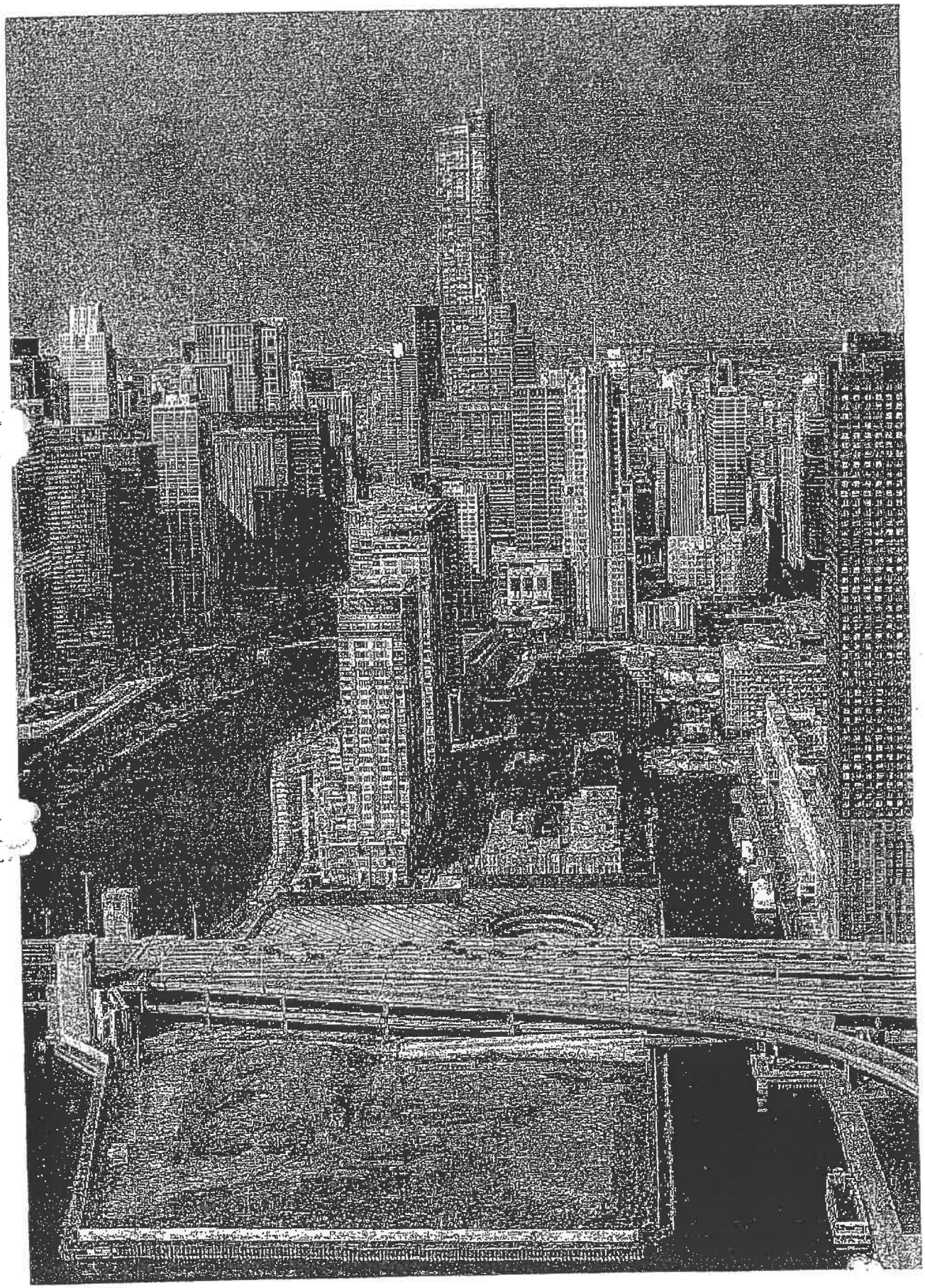




EXECUTIVE SUMMARY

THE OFFERING

Jones Lang LaSalle ("JLL"), as exclusive advisor to National Asset Management Agency ("NAMA" or "Seller"), is pleased to present the opportunity to qualified investors to acquire a matured $92.8 million senior loan* (the "Loan") collateralized by a 2.18 acre development site located at 400 North Lakeshore Drive in Chicago, Illinois (the "Property"). This offering represents a rare opportunity to control one of the last premier waterfront development sites in North America.

Located in the prestigious Streeterville neighborhood of downtown Chicago, the Property was originally acquired as the site of the "Chicago Spire." As contemplated, the Chicago Spire would have totaled 1,200 residential units and soared to a height of 2,000 feet, thereby making it one of the tallest buildings in the world. Currently zoned for downtown mixed use development (which permits as of right development of office, hotel, for-sale residential, multifamily rental and restaurant space), the site provides the unique opportunity to develop a high density project with unobstructed views in perpetuity of Lake Michigan, Navy Pier and the celebrated Chicago skyline.

The Loan is comprised of five facilities, which were drawn between July 2006 and December 2008 for the purpose of acquiring and improving the Property. Currently, the Loan has an outstanding principal balance of $82.8 million and accrued default interest and penalties of $10.0 million. Foreclosure proceedings against the Borrower are in progress. In October 2011, the Seller's motion for summary judgment against the Borrower was granted.

The Property was originally purchased for the proposed "Fordham Spire" by the Chicago developer, Fordham Company. The development plan included both a hospitality and residential component, in addition to a tall broadcast antenna mast. In July 2006, the Property was acquired by Shelbourne Development Group (the "Borrower"), who renamed the development the "Chicago Spire." The new development plan removed the hospitality component and antenna, and contemplated a total height of 2,000 feet, thereby making the Chicago Spire the tallest building in the world. There has been no construction at the Property since 2008.

*Including accrued default interest and penalties

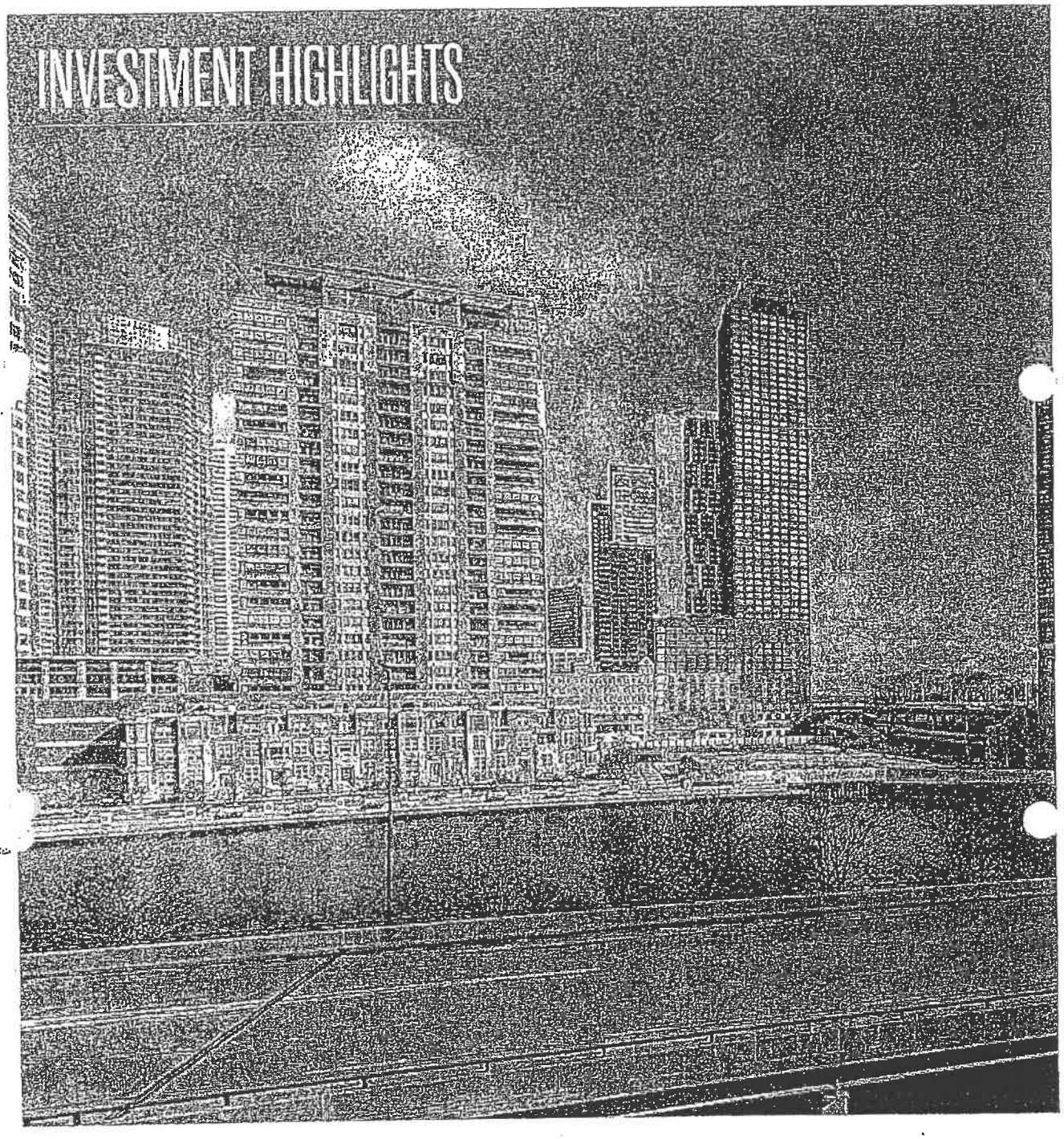
PROPERTY SUMMARY

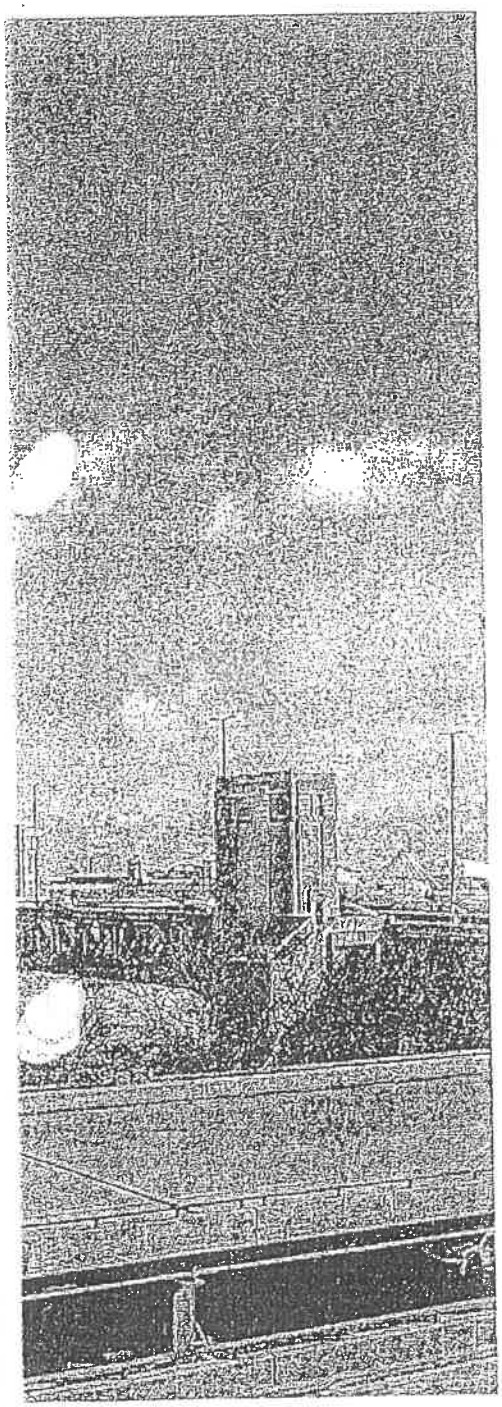
Property:	Chicago Spire Site
Location:	400 North Lake Shore Drive, Chicago, Illinois
Neighborhood:	Streeterville
Size:	2.18 Acres
Zoning:	Downtown Mixed Use (DX) – allows for wide range of uses, including, but not limited to, residential, hotel and restaurant uses
Boundaries:	Chicago River to the south; Ogden slip to the north; Lake Shore Drive to the east; East North Water Street to the west

FACILITY SUMMARY

Facility	Date drawn	Original commitment	Outstanding principal balance	Accrued default interest + fees	OPB + default interest + fees	Loan balance per acre	Coupon	Default rate	Maturity
A	7/20/2006	$50,000,000	$68,580,233	$7,191,775	$68,772,008	$42,574,812	LIBOR + 2.65%	Coupon + 4.00%	10/2/2009
B	7/20/2006	$4,600,000	$6,352,221	$647,260	$6,009,481	$42,574,812	LIBOR + 3.50%	Coupon + 4.00%	10/2/2009
C	6/30/2008	$5,000,000	$5,958,023	$719,177	$6,677,201	$42,574,812	LIBOR + 4.50%	Coupon + 4.00%	10/2/2009
D	7/28/2008	$5,000,000	$5,958,023	$719,177	$6,677,201	$42,574,812	LIBOR + 4.50%	Coupon + 4.00%	10/2/2009
E	12/31/2008	$5,000,000	$5,958,023	$719,177	$6,677,201	$42,574,812	LIBOR + 4.50%	Coupon + 4.00%	10/2/2009
		$69,600,000	$82,816,524	$9,996,567	$92,813,091	$42,574,812			

JONES LANG LASALLE
08





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In the past few years, virtually all new residential construction in Chicago has been multifamily rental product. The previous oversupply of condominium product has been absorbed in Streeterville. The developer of the Property will be positioned to deliver new construction condominiums to meet a resurgent demand for ownership housing.

Foreclosure process substantially complete

A loan purchaser has the potential to benefit from substantial work completed by the Seller to bring the foreclosure process to completion. The Seller's motion for summary judgment against the borrower was granted in October 2011.


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TRANSACTION GUIDELINES

The offering for the Loan is being distributed exclusively by JLL to a select group of qualified investors. The prospective purchaser(s) will be selected by the Seller in consultation with JLL on the basis of price, the bidder's financial strength, level of discretion to invest funds, experience in closing similar transactions, due diligence and industry reputation. Please note that the Seller will consider varying JV structures. All prospective investors have been required to sign a Confidentiality Agreement prior to receiving this Offering Memorandum, loan documents, and other due diligence materials. Indicative bids will be taken on April 23, 2013.

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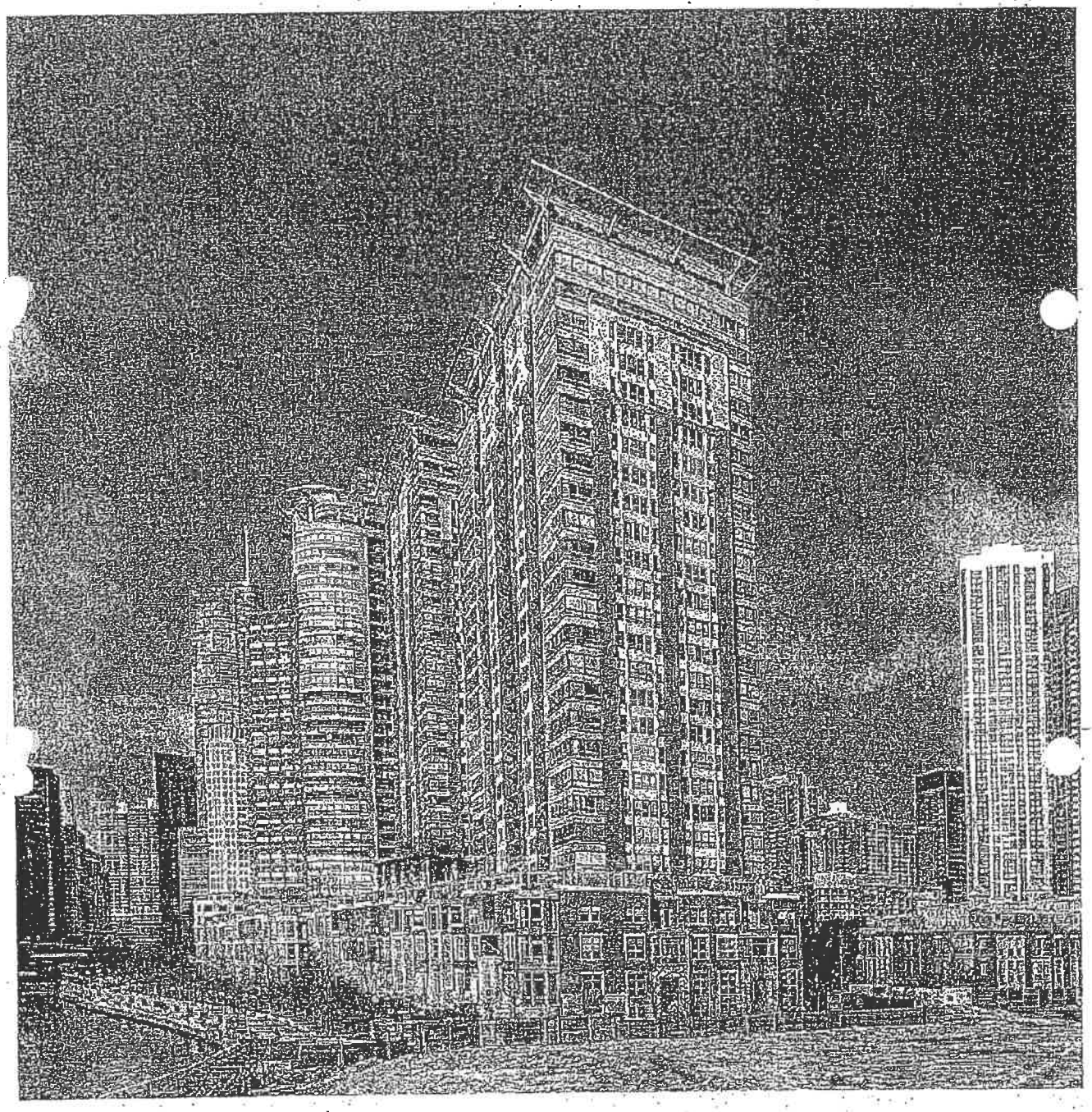
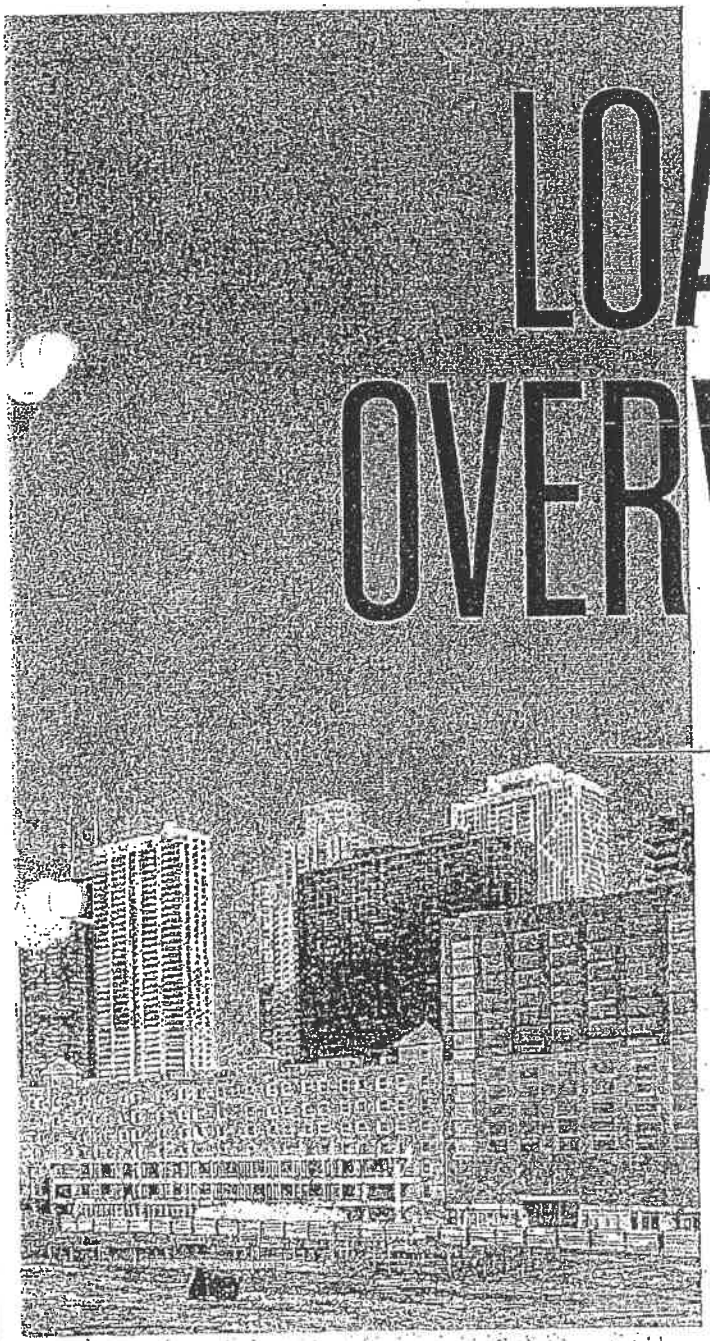


LOAN OVERVIEW



LOAN OVERVIEW

In July 2006, Anglo Irish Bank Corporation (the "Lender") made a $54.5 million loan to Shelbourne North Water Street L.P. (the "Borrower") for the purpose of acquiring a 2.18-acre development site located at 400 North Lake Shore Drive in Chicago, Illinois (the "Property"). The loan consisted of a $50.0 million loan with an interest rate of LIBOR + 2.65% ("Facility A") and a $4.5 million loan with an interest rate of LIBOR + 3.50% ("Facility B" collectively with Facility A, the "Facility"). The Facility had an initial maturity date of December 31, 2007.

The Facility was secured by, among other things, a First Legal Mortgage over the Property and improvements relating thereto; and a Full Principal Repayment Guarantee, a Full Interest & Carry Guarantee and an Exculpatory Guarantee (the "Guarantees") for standard carve-outs from Garrett Kelleher (the "Guarantor"). Conditions precedent to the drawdown included a minimum net worth of €350.0 million and a minimum "as-is" value of the Property not less than $64.0 million. Furthermore, a loan-to-value covenant of 85% was established. The Guarantees are not included as part of this offering.

On January 1, 2008, the Facility was amended to extend the maturity date to December 31, 2008. The Borrower paid an arrangement fee of $272,500. Additionally, the interest rate margin was adjusted to 2.72%.

On September 11, 2008, the Facility was amended for the second time. The Second Amendment detailed the following disbursement schedule, which includes $15.0 million of additional advances under the Facility:

- $50.0 million ("Facility A") was disbursed on or about July 20, 2006;
- $4.5 million ("Facility B") was disbursed on or about July 20, 2006;
- $5.0 million ("Facility C") was disbursed on or about June 30, 2008;
- $5.0 million ("Facility D") was disbursed on or about July 28, 2008; and
- $5.0 million ("Facility E") was to be disbursed on or about December 31, 2008.

The interest rate margins for Facility A and Facility B were adjusted to 2.65% and 3.50%, respectively. The interest rates for Facility C, Facility D and Facility E were set to LIBOR + 4.50%. Further the maturity date for Facility A, Facility B and Facility E was set to June 30, 2009; and the maturity for Facility C and Facility D was set to March 31, 2009.

On April 27, 2009, the Facility was amended for a third time extending the maturity date to October 2, 2009. The Third Amendment stated that the aggregate amount owed as of March 31, 2009 was $70.5 million, including unpaid interest and fees.

LOAN OVERVIEW (CONTINUED)

On April 24, 2010, the Borrower and the Lender entered into a Forbearance Agreement through which the Lender agreed to forbear from taking any legal action to enforce the Loan Documents against the Borrower and/or Guarantor through September 30, 2010. At the time of the Forbearance Agreement, the total outstanding amount, including accrued default interest and fees, was $74.5 million.

Currently, the Loan has an outstanding principal balance of $82.8 million and accrued default interest and penalties of $10.0 million. In addition to the lien of the mortgage, there are mechanic's lien claims against the Property.

Illinois employs a judicial foreclosure process. The current lender has initiated foreclosure proceedings against the Borrower. In October 2011, the Lender filed a motion for summary judgment against the Borrower, which was granted. The Lender also filed a motion for summary judgment against certain of the mechanic's lien-claimants. For more information on the mechanics liens and status of enforcement please visit the virtual data site.

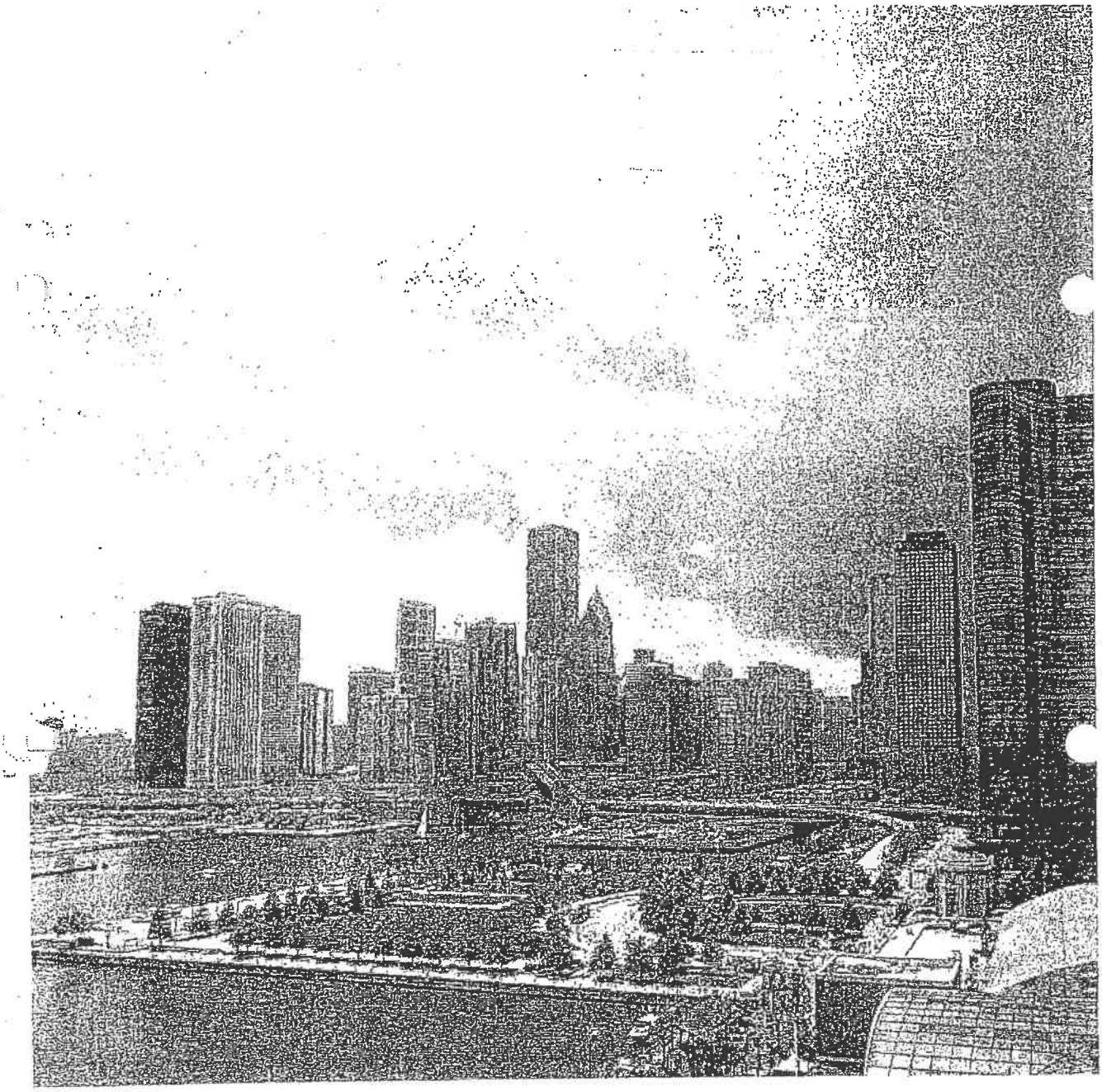
SPONSOR OVERVIEW

Founded in 1987, Shelbourne Development is a development and real estate firm based in Chicago. Shelbourne develops office, residential, retail and mixed use properties and has projects in continental Europe and the United States with the majority of their development centered in Ireland.

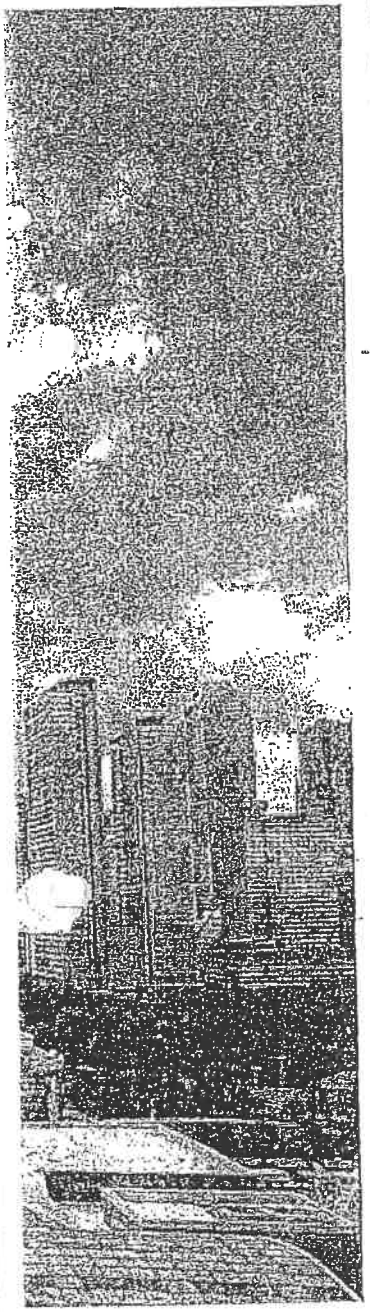
Over the last several years, Shelbourne has had receivers appointed over its assets in the United States. The Chicago Spire represents Shelbourne Development's last project in the United States.

FACILITY SUMMARY

Facility	Date drawn	Original commitment	Outstanding principal balance	Accrued default interest + fees	OPB + default interest + fees	Loan balance per acre	Coupon	Default rate	Maturity
A	7/20/2006	$50,000,000	$69,580,233	$7,191,776	$88,772,008	$42,574,812	LIBOR + 2.65%	Coupon + 4.00%	10/2/2008
B	7/20/2006	$4,500,000	$6,362,221	$647,260	$8,009,481	$42,574,812	LIBOR + 3.50%	Coupon + 4.00%	10/2/2008
C	6/30/2008	$5,000,000	$5,958,023	$719,177	$6,877,201	$42,574,812	LIBOR + 4.50%	Coupon + 4.00%	10/2/2009
D	7/29/2008	$5,000,000	$5,958,023	$719,177	$6,877,201	$42,574,812	LIBOR + 4.50%	Coupon + 4.00%	10/2/2009
E	12/31/2008	$5,000,000	$5,958,023	$719,177	$6,877,201	$42,574,812	LIBOR + 4.50%	Coupon + 4.00%	10/2/2009
		$69,500,000	$82,816,524	$9,996,567	$92,013,091	$42,574,812			

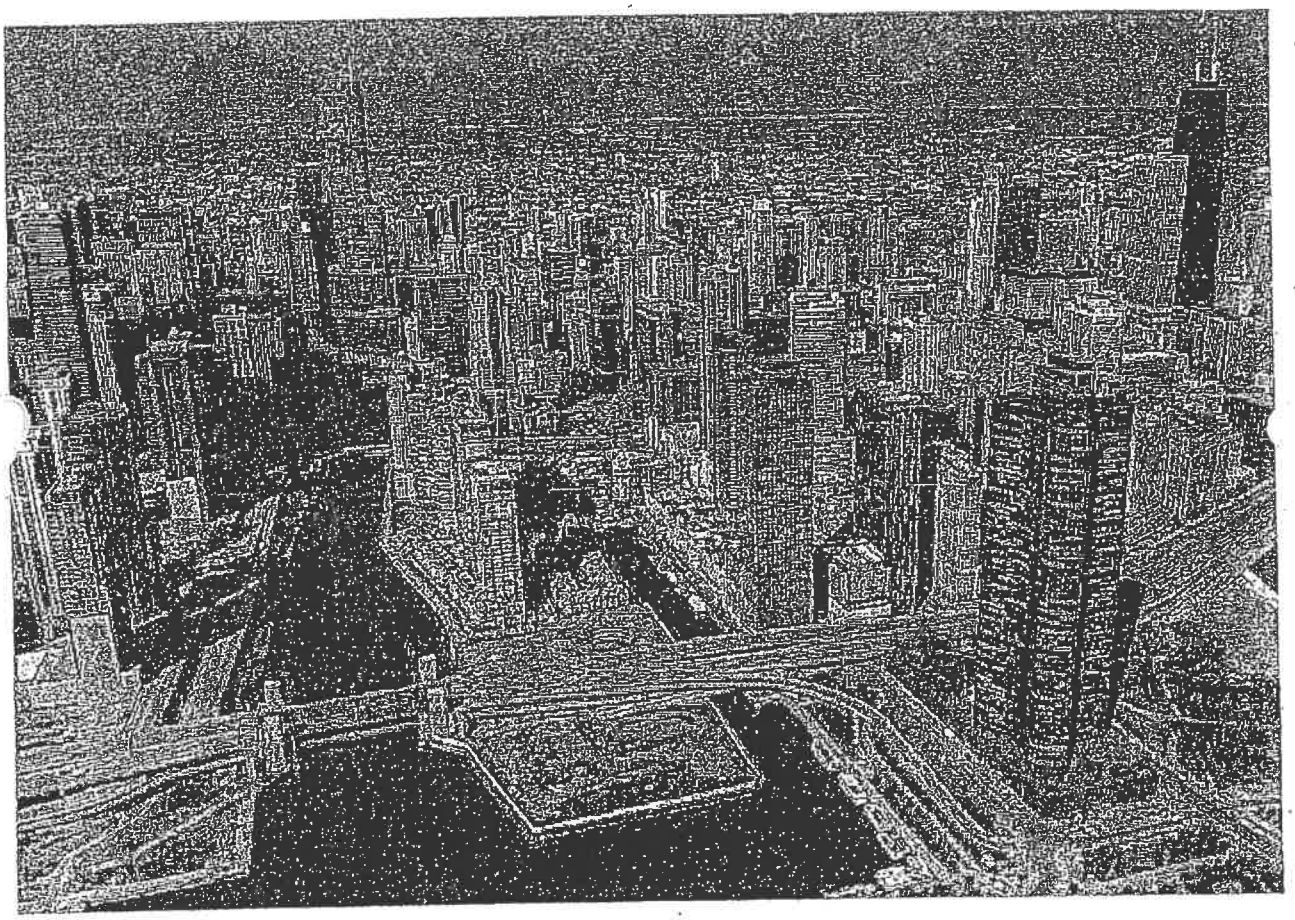


KEY LOAN TERMS



Borrower	Shelbourne North Water Street, L.P.
Sponsor(s)	Garrett Kelleher
Loan Type	Senior mortgage loan
Loan Status	Non-performing
Collateral Type	Fee
Origination Date	7/18/2006
Draw Date	Facility A: 7/20/2006 Facility B: 7/20/2006 Facility C: 6/30/2008 Facility D: 7/28/2008 Facility E: 12/31/2008
Maturity Date	10/2/2009
Extension Options	None
Accrual Status	None
Coupon	Facility A: LIBOR + 2.65% Facility B: LIBOR + 3.50% Facility C: LIBOR + 4.50% Facility D: LIBOR + 4.50% Facility E: LIBOR + 4.50%
Default Rate	Coupon + 4.00%

PROPERTY OVERVIEW



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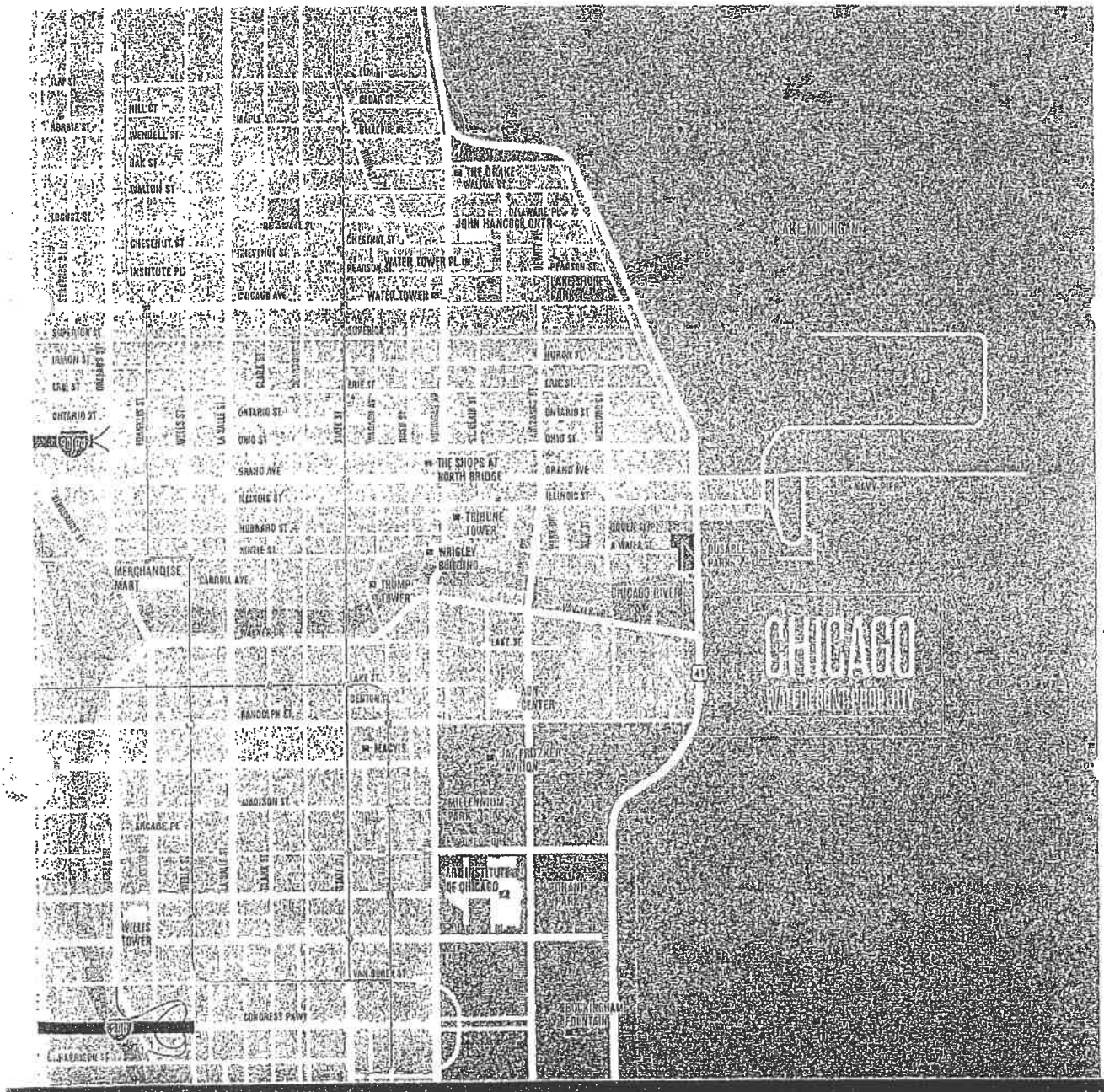
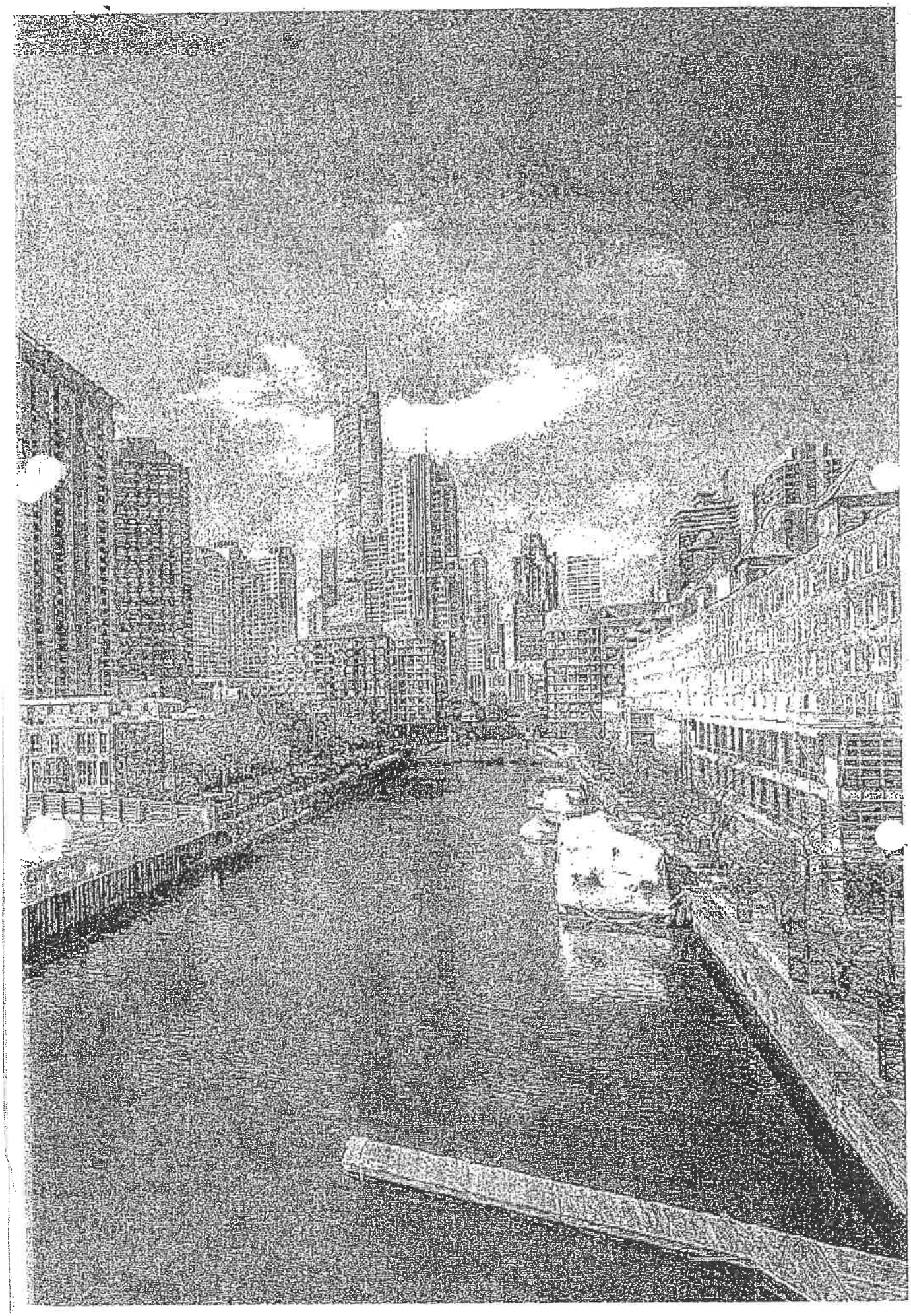
LOCAL MAP





AERIAL MAP

KEY

Luxury hotels

1 The Drake
2 The Westin
3 Four Seasons
4 Sofitel
5 Ritz-Carlton
6 Park Hyatt
7 The Peninsula
8 W Hotel
9 Marriott
10 The Conrad
11 Intercontinental
12 Sheraton
13 Trump International
14 Hyatt
15 Swissotel
16 Fairmont

Attractions

A Oak Street Beach
B John Hancock Center
C Lake Shore Park
D Navy Pier
E Tribune Tower
F Wrigley Building
G Millennium Park
H Dusable Park

PROPERTY DESCRIPTION

Preeminent location

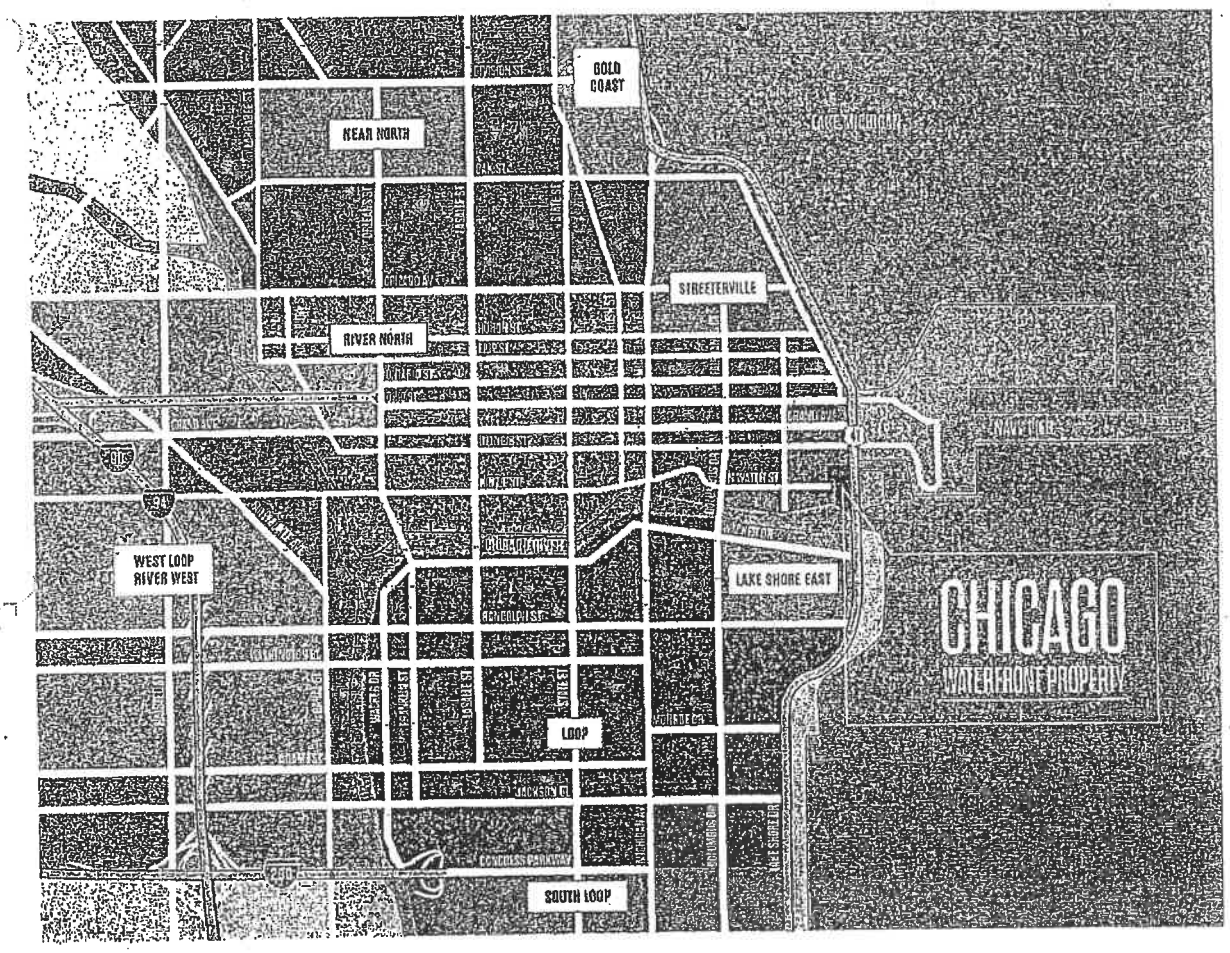
The Property is located in Streeterville, one of the premier neighborhoods in Chicago with celebrated architecture, high-end retail, luxury four-star hotels and world-renowned restaurants. Streeterville is bounded by the Chicago River to the south, Michigan Avenue to the west and Lake Michigan to the north and east. Residents are within walking distance from the Loop (Chicago's Central Business District) to the south and the premier shopping destination of Michigan Avenue to the west.

eterville's incomparable location drives both its affluence and growth. The neighborhood population has increased nearly 15% from 2000, and today there are approximately 18,000 residents within Streeterville's area of less than one square mile. This population growth is expected to continue until the few remaining development sites are finally built out. Streeterville is one of the wealthiest areas in Chicago, with average household incomes of more than $100,000. Streeterville's concentration of wealth has driven significant new development in the neighborhood over the past decade, and will continue to do so as the economy continues to recover.

The Streeterville submarket is also home to world-class medical institutions, including Northwestern Memorial Hospital, Lurie Children's Hospital and the Rehabilitation Institute of Chicago.

Situated just east of the Property is Navy Pier, the most visited tourist attraction in Chicago. Navy Pier extends three-quarters of a mile into Lake Michigan and is home to the Chicago Children's Museum and the Chicago Shakespeare Theatre. More than eight mil- visitors come to Navy Pier every year for sightseeing tours and cruises, in addition dining, entertainment and expositions. James Corner Field Operations, responsible for such remarkable public projects as Santa Monica Civic Center Parks and New York's High Line, was recently engaged to carry out an extensive redesign of Navy Pier.

NEIGHBORHOOD MAP



PROPERTY DESCRIPTION

Exceptional Site

The Property is truly irreplaceable. Situated in the Streeterville market, the Property is bound by the Chicago River to the south and Ogden Slip to the north. Immediately west of the Property is an exclusive residential enclave of three-story townhouses and thirty-story condo towers. DuSable Park, a 3.24-acre urban park situated on Lake Michigan, is located across Lake Shore Drive beyond the site's eastern boundary. This remarkable location provides seclusion and exclusivity within the heart of a 24-hour metropolitan downtown.

Bound by water and parks at three of its four borders, the Property offers guaranteed obstructed sight lines in almost every direction, making it one of the most exceptional development opportunities in North America.

Access

With access from both the eastern and western boundaries of the site, the Property enjoys strong linkages to downtown Chicago. The western edge of the site is accessible from East North Water Street, a two-lane, tree-lined residential street which ends at the Property. The eastern boundary of the site is adjacent to Lake Shore Drive with two dedicated ramps, affording the site direct access to and from this major thoroughfare.

ZONING

The underlying zoning of Downtown Mixed Use (DX) allows for wide range of uses, including, but not limited to, residential, hotel and restaurant uses. This flexibility of uses combined with the significant approved density provides for multiple development opportunities.

The Property is fully entitled as part of the Planned Development ("PD") No. 368. This PD was originally created in 1985 on land referred to as the Chicago Dock and Canal Property, a 61-acre assemblage running east from Michigan Avenue to the lakefront. The PD created to convert a former industrial area into the dense mixed-use community existing there today. Each parcel within PD 368 must go through a separate negotiation to define massing and final design features. The development plan approved in 2007 for the "Chicago Spire" on the Property allowed for construction of 1,200 residential units and a Floor Area Ratio (FAR) of 25. As such, that agreement allowed for over 2.3 million square feet of development. The Chicago Spire's development agreement expires in May 2013. The new owner of the Property will likely need to negotiate a new development agreement.

In fact it was extended to 2015

The following sample represents the most recent notable developments in Chicago and their approved development plans. They are indicative of densities allowed in downtown Chicago:

RECENTLY APPROVED DENSITIES

1. Trump Hotel and Tower

Completed in January of 2008, this 92-floor skyscraper is the second tallest building in the Western hemisphere. The project includes a 339-room hotel and 486 residential condominium units, and was approved for an FAR of 26.0.

2. Wolf Point

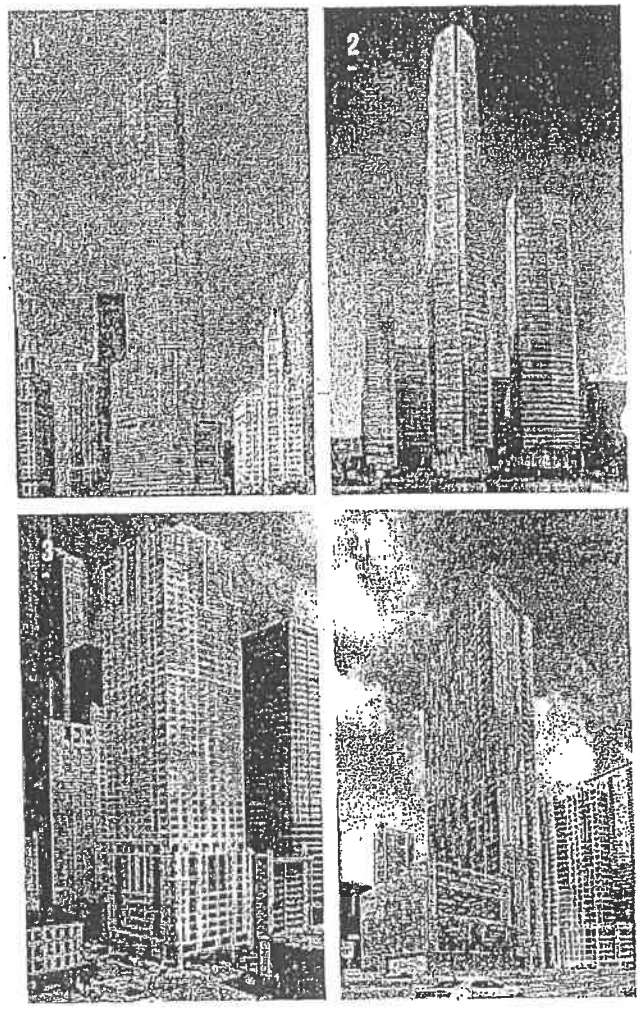
The most recent large development proposed in the City of Chicago, Wolf Point is a $1 billion development, jointly sponsored by The Hines Organization and the Kennedy family. Plans call for a maximum of 450 hotel rooms and 1,410 residential units in three towers with an approved maximum FAR of 22.6. This project is pending final approval; however Wolf Point has received support from the Alderman and was approved by the City of Chicago Planning Commission.

3. 500 North Lakeshore Drive

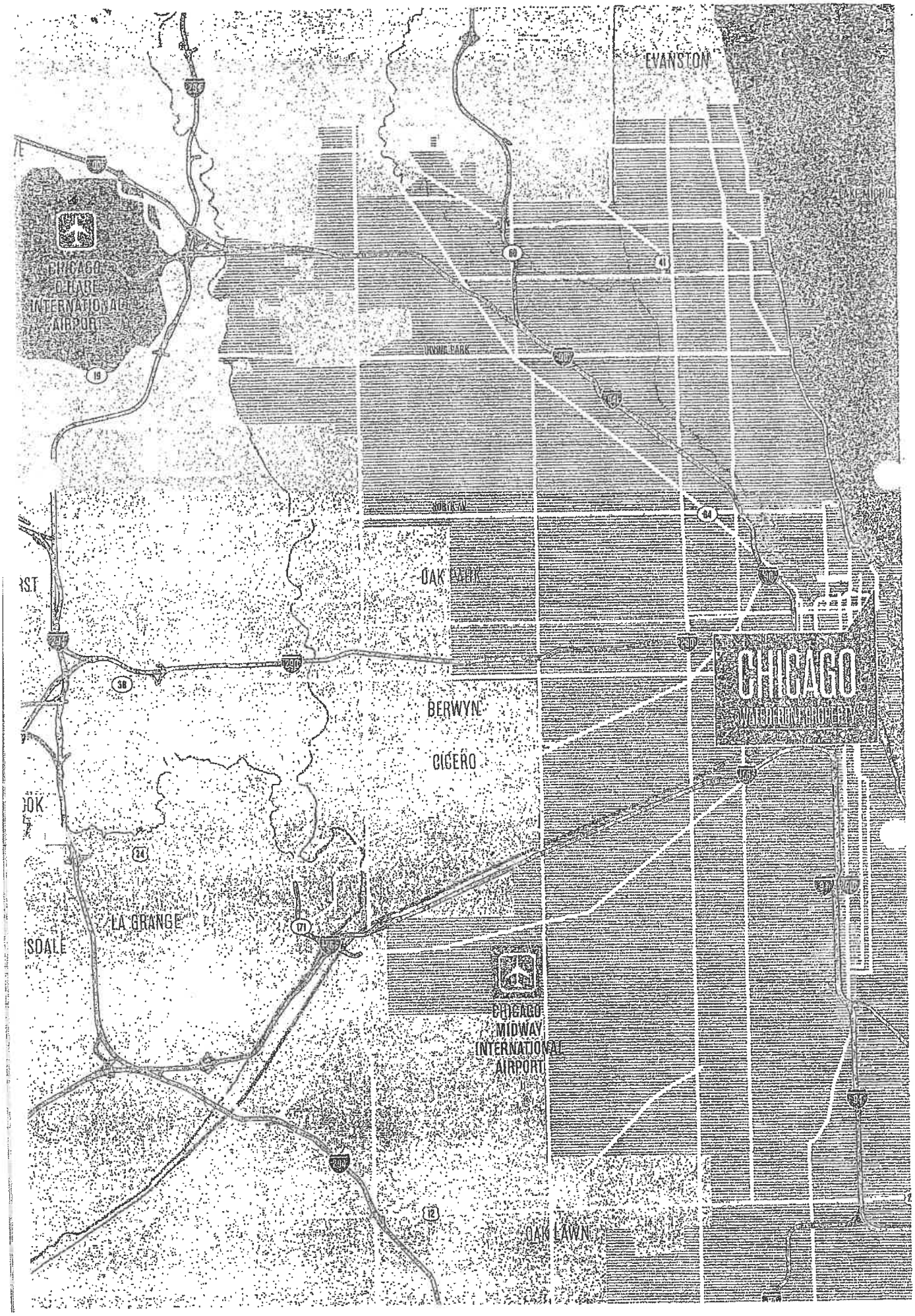
This 47-story development project, sponsored by the Related Companies, is currently under construction. This development secured an FAR of 18.0 and upon completion in 2013, the project will contain 500 luxury rental units.

4. AMLI River North

Currently under construction, this 50-story residential tower will have 409 rental units. The project is slated for completion in July 2013 and was approved for a FAR of 16.6.



MARKET OVERVIEW


EVANSTON
CHICAGO O'HARE INTERNATIONAL AIRPORT
OAK PARK
BERWYN
CICERO
LA GRANGE
CHICAGO MIDWAY INTERNATIONAL AIRPORT
OAK LAWN
CHICAGO

CHICAGO LOCATION OVERVIEW

With the second largest labor pool in the United States and a gross regional product of over $500 billion, Chicago has one of the world's largest economies. Chicago is a leader in key industries, including business and financial services, manufacturing, and transportation and distribution, and has been named the most balanced economy in the United States by Moody's due to its economic diversification. As a global gateway city, Chicago is home to more than 1,500 foreign-based companies and benefits from over $40 billion in foreign investments. Chicago is also a global leader in the financial markets, with five major financial exchanges.

As one of the top tourist destinations in the United States, Chicago drew 43.6 million visitors in 2011, a 14% increase over the previous year. Chicago's tourism industry generated over $12 billion in direct spending in 2011, supporting more than 128,000 jobs. Approximately one-quarter of Chicago's visitors are business travelers. Chicago's main convention center, McCormick Place, is the largest convention center in the country, and Chicago ranks third nationally in the number of conventions hosted.

Prospering Economy

As the "capitol" of the Midwest, Chicago features the second largest central business district in the United States and over 260,000 businesses. In addition, Chicago is home to the Federal Reserve Bank of Chicago, representing the Seventh District of the Federal Reserve. Chicago has several notable financial and futures exchanges, including the Chicago Stock Exchange, the Chicago Board Options Exchange (CBOE), and the Chicago Mercantile Exchange (the "Merc"), which is owned, along with the Chicago Board of Trade (CBOT) by Chicago's CME Group. Virtually every global financial institution has an established and significant presence in the Chicago market. Chicago accounts for 16% of the global derivatives trading market, almost as much as all the European exchanges combined.

More than 400 major corporations are headquartered in the Chicago metropolitan area, including 32 Fortune 500 companies, 17 Financial Times 500 companies and three Dow-30 companies. The highly-educated labor force, market access, and infrastructure of the city continue to attract domestic and international corporations.

CHICAGO AT A GLANCE

[illegible]	2,730,657
[illegible]	9,543,029
[illegible]	0.29%
[illegible]	5,779,301
[illegible]	$547.8 billion
[illegible]	$41,404
[illegible]	21.2%
[illegible]	235,143,000
[illegible]	43,600,000

Sources: ESRI, JLL Research, U.S. Bureau of Labor Statistics, U.S. Department of Commerce

FORTUNE 500 COMPANIES (CHICAGO, ILLINOIS)

	Fortune 500 rank	Revenues*
Boeing	38	$68,735,000
United Continental Holdings	76	$37,110,000
Exelon	145	$18,924,000
Aon	235	$11,287,000
R.R. Donnelley & Sons	249	$10,511,000
Telephone & Data Systems	468	$5,180,500
Total number of Fortune 500 headquarters		32

*Revenues in thousands

Currently, within the metropolitan area, there is a trend of suburban companies relocating into downtown Chicago, as employers seek greater access to the entire metropolitan area's labor force through proximity to downtown Chicago's commuter rail hub. Moreover, recent college graduates coveted by employers have exhibited a strong preference to live and work close to the center of the city. Most recently, having acquired suburban Motorola Mobility, Google announced that it would be relocating their 3,000 employees from Libertyville, Illinois, to the Merchandise Mart building in order to capitalize on the educated workforce that is concentrated downtown.

Chicago's global leadership in higher education and research drives much of its economic success. Among the many academic institutions in Chicago, four elite universities are at the top echelon of global academia: the University of Chicago, Northwestern University, University of Illinois-Chicago and DePaul University. These universities have a substantial presence in downtown, attracting top-tier students from around the world. Some 50,000 students attend classes in downtown Chicago. Upon graduation, a considerable percentage of these students stay in Chicago to take advantage of the many professional opportunities and urban lifestyle that Chicago offers.

Outstanding Accessibility

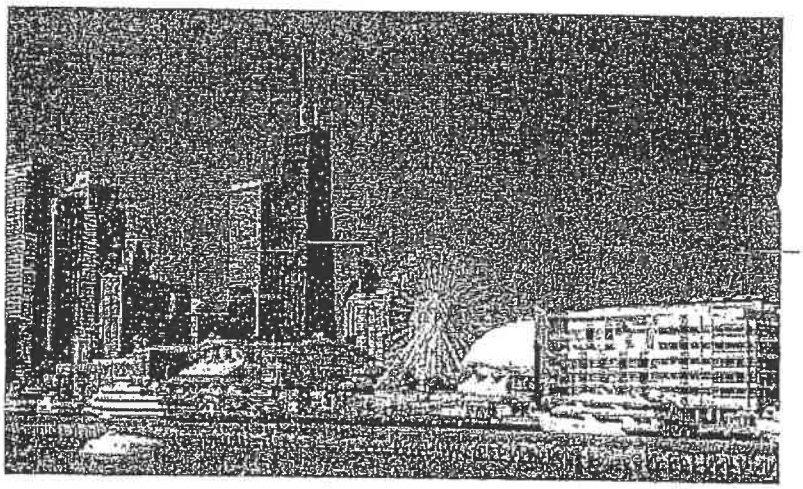
Chicago's prominence, both nationally and internationally, is due in part to its exceptional accessibility. Visitors and residents benefit from two major international airports, O'Hare International Airport and Midway International Airport, which offer 2,900 non-stop daily flights to more than 200 cities worldwide. O'Hare is the second busiest airport in the United States, logging nearly one million flights per year. Both United Airlines and American Airlines have major hubs at O'Hare Airport, guaranteeing nonstop flights to virtually every important business center in the world. The O'Hare Modernization Program, a $6 billion construction project, is currently underway. When completed, it will increase the airport's capacity by 60% by reconfiguring existing runways, as well as adding four new runways and new terminal space.

TOURISM

Chicago is a premier tourist destination and hosts over 43 million visitors each year. Visitors to Chicago enjoy the rich history, distinctive architecture, and wide array of attractions the city has to offer, including world-class museums, shopping and entertainment. Many of these popular tourist destinations are within a short walk of the Property.

Passengers through O'Hare International Airport (2012)	66,834,931
Increase from previous year	0.1%
Passengers through Midway International Airport (2012)	19,516,127
Increase from previous year	3.4%
'L' Train Annual Ridership (2011)	221,600,000
Average Weekday Riders (Sept. 2012)	788,415
Average Saturday Riders (Sept. 2012)	519,859
Average Sunday Riders (Sept. 2012)	377,308

Sources: Chicago Department of Aviation, Chicago Transit Authority



Midway International Airport is the second busiest airport in Illinois and is a vital hub for Southwest Airlines, providing nonstop service to nearly every metropolitan area in the United States. Both airports are readily accessible by car and public transit.

Chicago is home to the second largest public transportation system in the United States, providing rail and bus services throughout the city. The "L" trains provide rapid transit service around the clock and accommodate more than 650,000 riders per day. Metra, the nation's second-busiest passenger regional rail network, operates an 11-line commuter rail service connecting downtown Chicago and its suburbs.

Navy Pier

Rebuilt in the 1990s as a public gathering place, Navy Pier covers over 50 acres and extends three-quarters of a mile into Lake Michigan. Featured attractions include a 150 foot tall Ferris wheel, an IMAX theatre, the Chicago Shakespeare Theater, the Chicago Children's Museum and over 250,000 square feet of meeting and exhibition space. Navy Pier is currently being redesigned by James Corner Field Operations (JCFO).

Michigan Avenue

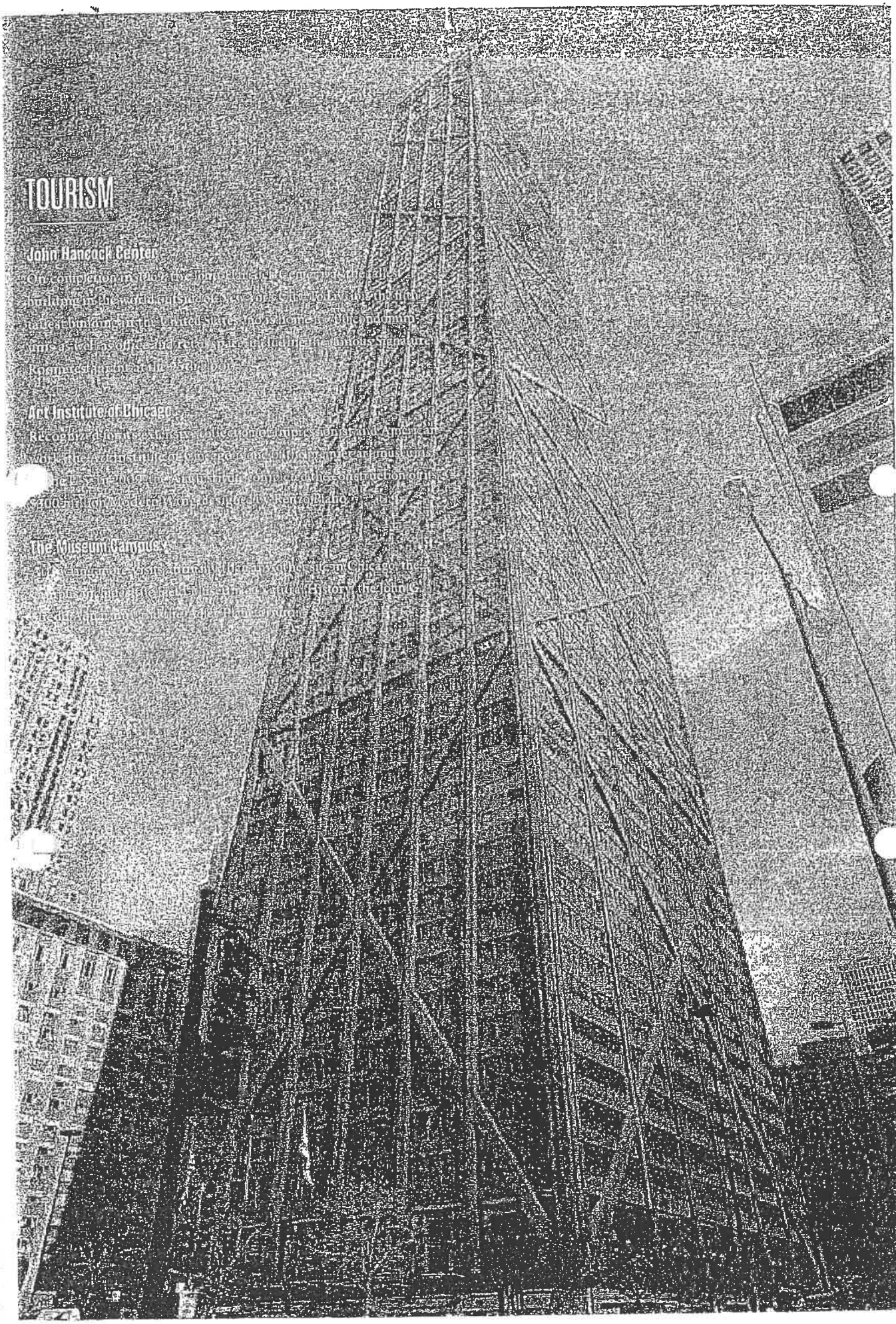
The Magnificent Mile section of Michigan Avenue is a world-renowned shopping destination, home to upscale retailers and restaurants such as Neiman Marcus, Saks Fifth Avenue, Chanel, Gucci and Louis Vuitton. Michigan Avenue's offerings are on par with the high-end retail districts of New York's Fifth Avenue and Beverly Hills' Rodeo Drive.

Millennium Park

Millennium Park is a 24.5 acre public park prominently located along Chicago's lakefront. Since opening in 2004, it has become one of the city's most visited tourist attractions. The park features a variety of large scale artwork and other attractions, including Cloud Gate (the "Bean"), Crown Fountain, Lurie Garden and the Jay Pritzker Pavilion.

Willis (Sears) Tower

Since 1973 the Willis Tower, formerly the Sears Tower, has held the title of tallest building in North America, standing over 1,400 feet tall with 110 floors. The Skydeck, located on the 103rd floor, offers breathtaking views of the city, suburbs and neighboring states, including Indiana, Wisconsin and Michigan.


TOURISM
John Hancock Center
Art Institute of Chicago
The Museum Campus

CHICAGO HOUSING MARKET OVERVIEW

It is likely that the ultimate development of the Property will feature a substantial residential component. The party developing this site will be marketing into an environment characterized by a number of favorable demographic trends.

While Chicago's population of 2.71 million experienced a slight decline since the year 2000 the metropolitan area continued to grow. During this time, the city actually experienced a net increase in wealthier households as the educated and affluent continued to concentrate in the city, especially in and around the "greater Loop". This trend is projected to continue, attributable to both the inward migration of empty nesters and the arrival of recent graduates and young professionals as both cohorts are attracted to the urban lifestyle and rich culture in Chicago. A virtuous cycle has emerged over the past 20 years as more affluent households arrive, driving demand for high-end housing and drawing more similarly affluent neighbors.

Chicago is the 12th wealthiest city in the world and has the second highest number of millionaire households in the United States. It is expected that the number of millionaire households in Chicago will continue to increase. Deloitte projects that by 2020, the area will have over 800,000 millionaire households, representing one of the largest concentrations of wealth in the United States.

The number of total residential units in downtown Chicago has more than doubled since 1990, as the revitalization of "city life" and beautification efforts have attracted new residents to the city center. Chicago's "inversion" of population and employment back to the City has been the strongest in the nation. Chicago's downtown population grew 36% from 2000 to 2010, far surpassing growth in the downtown areas of Washington DC (14%), New York (9%) and San Francisco (6%). Also during this period, the number of households downtown with an annual income of more than $200,000 grew 113%. From the mid-1990s through 2008, the residential market in downtown Chicago was dominated by new condominium developments. At its peak, central Chicago was absorbing over 3,000 new condo units each year. The financial meltdown and its attendant job losses undermined demand for ownership housing and was exacerbated by much more restrictive mortgage underwriting by the banks. As a result, demand for ownership housing came to an abrupt halt. However, demand for housing in downtown Chicago was replaced by an equally impressive volume of new multifamily rental developments.

Rental residential product has dominated new construction over the past five years, satisfying the continuing demand for new housing as the economic downturn kept many potential buyers on the sidelines. Further plaguing the ownership housing market had been the uncertainty as to when pricing would reach bottom and the lack of readily available financing for home buyers. Recently, however, the market has shown meaningful signs of improvement. Velocity of sales has steadily increased, thereby reducing inventory and establishing pricing stability.

Furthermore, the cost of rental housing in Chicago is now 31% higher than the average cost of homeownership as a result of skyrocketing rental rates. The ongoing recovery in the economy and labor markets will improve consumer confidence for homebuyers, and the low cost of home ownership relative to rental housing will eventually drive demand for new condominium product as current inventory levels continue to dwindle.

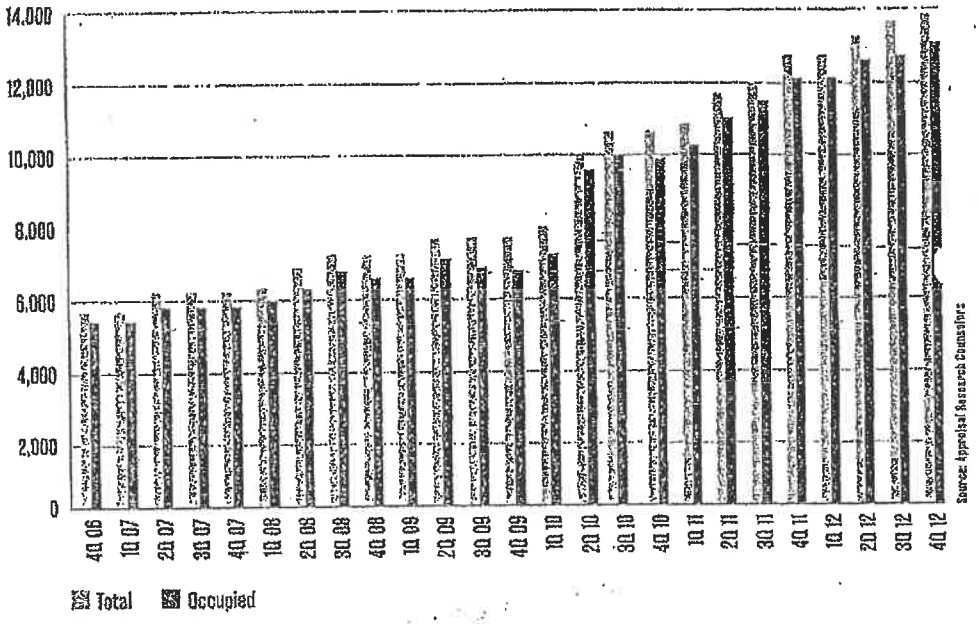
CHICAGO APARTMENT MARKET OVERVIEW

The apartment market is experiencing tremendous growth and is the leading performer among commercial real estate investments, both in Chicago and nationwide. The rise in the rental apartment market came directly after the downturn in the for-sale market. This shift in residential demand has fueled new apartment development throughout downtown Chicago with approximately 3,500 units currently under construction.

Occupancy

The economic downturn and restrictive mortgage underwriting drove housing demand into the rental sector. This has led to high occupancy rates and upward pressures on rents. Thus far, demand for apartment product in downtown Chicago has continued to outpace supply. Over the past three years, nearly 8,800 new apartment units have been absorbed downtown. Stabilized Class A apartment buildings in downtown Chicago are currently exhibiting a 96% occupancy rate and are expected to remain at high levels.

CHICAGO LUXURY RENTAL OCCUPIED VS. TOTAL UNITS



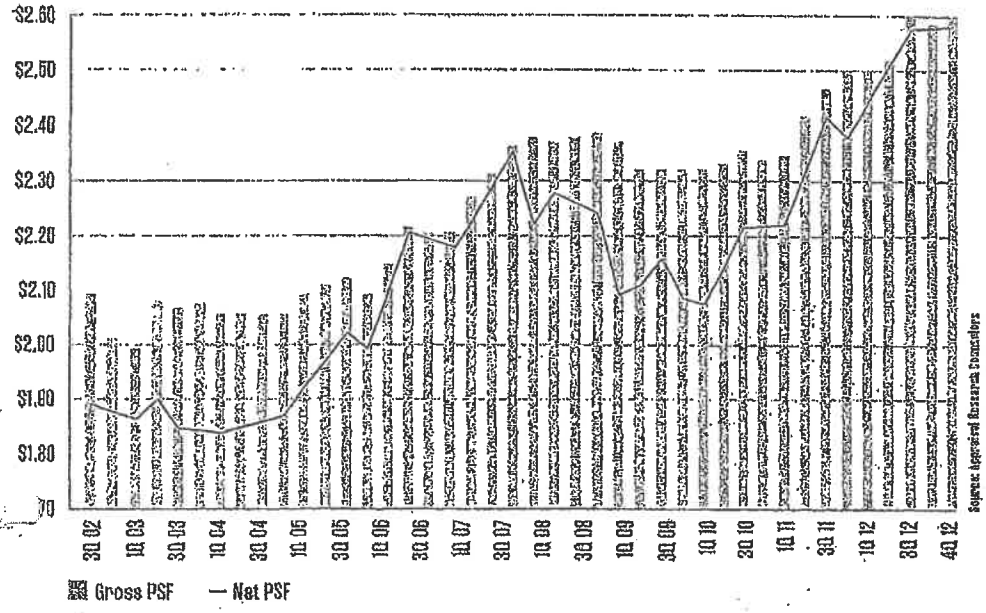

APARTMENT DEVELOPMENT MAP
CHICAGO
WATERFRONT PROPERTY
KEY
1. Summit on Lake
73 E Lake Street / 332 units
Loop
2. Coast at Lake Shore East
375 E Wacker Drive / 499 units
New East Side
3. Waterview Tower
121 W Wacker Drive / 500 units
Streeterville
4. 435 North Park
436 North Park / 398 units
Streeterville
5. Optima Center
E Illinois & N St Clair / 332 units
Streeterville
6. 590 N Lake Shore Dr
590 N Lake Shore Dr / 500 units
Streeterville
7. AMLI River North
401 N Clark St / 409 units
River North
8. Hubbard Place
360 W Hubbard / 450 units
River North
9. Residences at Wolf Point
350 W Mart Center Dr / 500 units (proposed)
River North

CHICAGO APARTMENT MARKET OVERVIEW

Rental Rates

Rental rates have risen to record levels; with Class A rents having increased 24% since 2009. Robust demand for Class A downtown apartments has resulted in a year-over-year net effective rent increase of 7.5% to $2.58 per square foot as of the third quarter of 2012. Newly built luxury apartment buildings are setting records, achieving effective rental rates in excess of $3.00 per square foot. Concessions have declined significantly and are almost at 2007 levels, with buildings offering only half of a month to one month of free rent to new tenants. Rent increases are expected to continue through 2013 and concessions are expected to decrease further.

HICAGO CLASS A RENTAL GROSS PSF VS. NET PSF



CHICAGO APARTMENT MARKET OVERVIEW

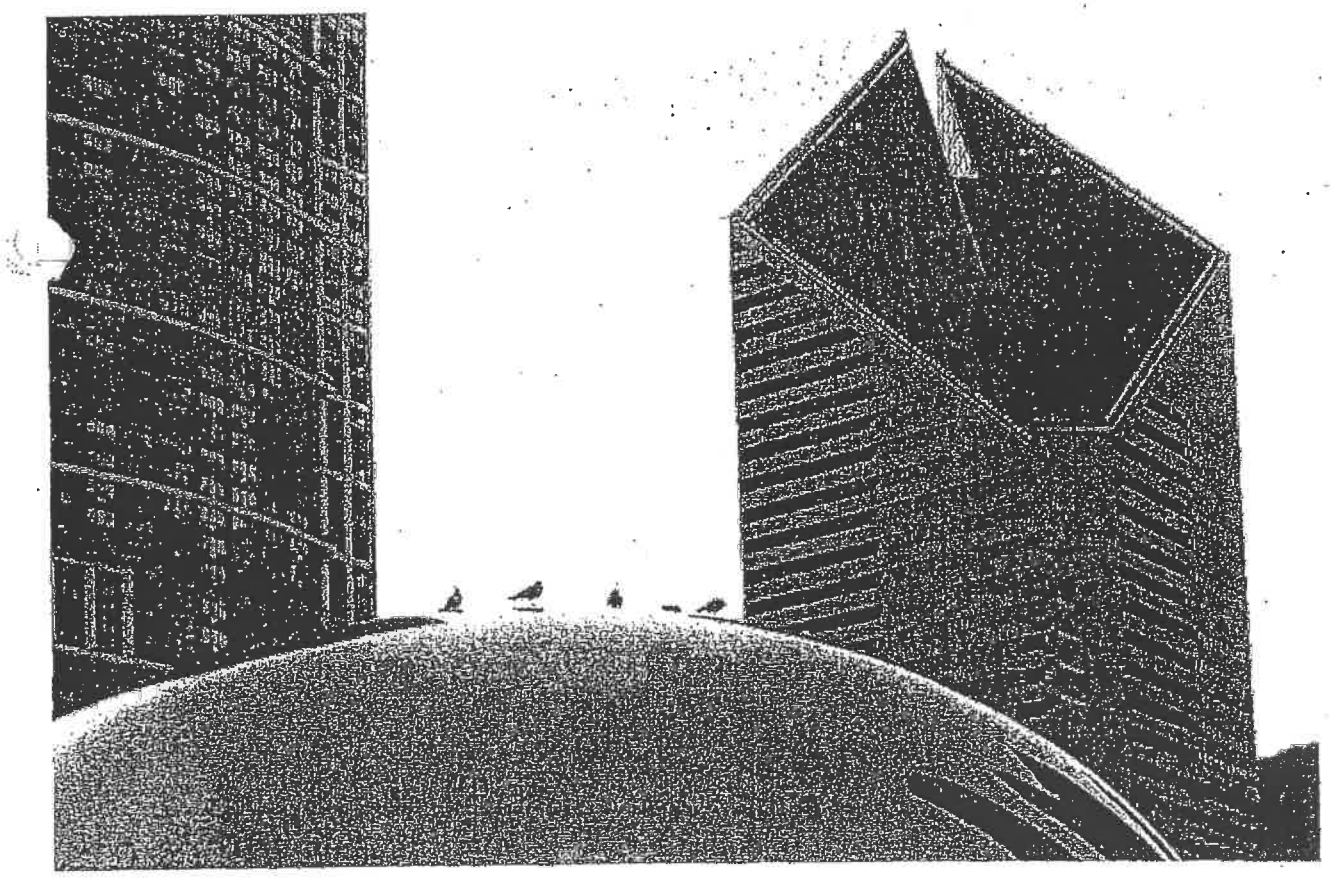
Long Term Value

Apartments have been the favored sector for investors over the preceding two years with the investment market responding to strong market fundamentals and availability of attractive debt relative to other property sectors. In 2012, sales of multi-family projects in Chicago set a record high of over $1.9 billion. Cap rates for well-located, stabilized properties have compressed and in some instances have fallen below 5%. Recent transactions of Class A product have ranged from $350,000 per unit up to $500,000 per unit, far exceeding the cost of new development.

CLASS A APARTMENT SALES 2012

	Property	Year built	Purchase price	Price per unit	Units
1	Alta At K Station	2010	$302,000,000	$356,132	848
2	ENV	2010	$122,000,000	$489,960	249
3	Flair	2010	$85,000,000	$429,293	198
4	Parc Huron	2010	$110,000,000	$497,738	221

Source: Real Capital Analytics



CHICAGO CONDOMINIUM MARKET OVERVIEW

Supply and Demand

Over 40,000 new condominium units were delivered to the downtown Chicago market over the last fifteen years, representing an average of 2,666 units per year. In 2011, however, no new units were added to the downtown market, and only 24 units were delivered in 2012. Currently, no significant new condominium projects are in the pipeline, but a handful of small-scale, high-end projects targeting ...e markets are under development.

Today, the inventory of unsold units has reached historic lows with only 1,507 unsold condominium units in downtown Chicago. Of these, only 936 are currently being marketed for sale and are not rented or under contract. This supply represents only six months of inventory, which has historically been indicative of a stabilized market. When factoring into consideration the 571 units that are unsold and not actively being marketed, approximately nine months of total supply exists in the market.

The vast majority of remaining unsold inventory is located in the West and South Loop, submarkets which experienced significant speculative development prior to the downturn and, as a result, have had the largest oversupply problem. Currently, no unsold new construction condominium product exists in the Streeterville submarket, and only 28 unsold units are available in the Gold Coast market, representing the lowest inventory of all downtown submarkets. The downtown Chicago condo market is anticipated to face a supply shortage in the next few years due to the lack of new construction and the dwindling supply of new product.

Throughout the downturn, the Streeterville market continued to capture tremendous sales velocity relative to other downtown submarkets. While the total sales volume of condo product in Chicago dwindled, three projects in Streeterville captured a significant proportion of those sales and were able to close out their remaining inventory.

NEW CONSTRUCTION CONDO INVENTORY Q4 2012

Submarket	Total units	Sold or under contract	Unsold units	Total closed sales 4Q	Unsold %	Total unclosed units
West Loop/River West	252	206	46	2	18.3%	62
South Loop	1,176	655	521	9	44.3%	526
Streeterville	0	0	0	0	0.0%	0
River North	575	477	98	10	17.0%	188
Loop/New East Side	1,331	1,060	271	31	20.4%	425
Gold Coast/Near North	200	200	0	9	0.0%	0
Projects currently renting units	306	0	306	0	100.0%	306
Total Marketing:	3,840	2,598	1,242	61	32.3%	1,507

Source: Appraisal Research Counselors

CHICAGO CONDOMINIUM MARKET OVERVIEW

Pricing

The cost of renting now far outpaces the cost of homeownership. Prior to the downturn in the economy, the cost of renting equated to 58.5% of the cost of homeownership. This ratio peaked in the first quarter of 2012 at 148.9%, indicating that the relative cost of renting is more than double what it was prior to the downturn. This discrepancy is driving many potential buyers into the market, attributing to the declining inventory levels.

While a significant portion of the unsold condo product is concentrated in the luxury market, this product is also enjoying greater sales velocities as compared with product at lower price points. On average, luxury units in Chicago are trading at $854 per square foot.

Residential towers with unblocked lake views and those located in premier submarkets command a premium over average prices achieved across the metro area. Historically these pricing premiums have been in excess of 30% above units without comparable views or location. Further, this product has continued to outperform the market through the downturn with sales velocities at these ultraluxury projects outpacing market averages.

SELECT CLASS A CONDO PRICING Q4 2012

Project	Submarket	List price per SF	Percent sold
Trump International Tower	River North	$790	90%
Ritz Carlton Residences	River North	$1,200	47%
1 E Delaware	Gold Coast	$692	97%
40 E Chestnut	Gold Coast	$787	100%
Lincoln Park 2660	Lincoln Park	$800	67%
Average		$854	

Source: Appraisal Research Counselors

JONES LANG LASALLE
40 .

CHICAGO HOTEL MARKET OVERVIEW

Chicago is a top destination for tourists, attracting more than 43 million visitors each year. Upscale shopping on the famed Magnificent Mile, thousands of restaurants, including more than 40 award-winning establishments, and Chicago's world renowned architecture continue to entice tourists to this global city.

Much of Chicago's tourism is driven by conventions and trade shows, an $8 billion industry. The city is the United States' third-largest convention destination, attracting more than nine million convention attendees and visitors annually. Chicago's McCormick Place is the ...gest convention center in the United States, with four interconnected buildings located near Lake Michigan.

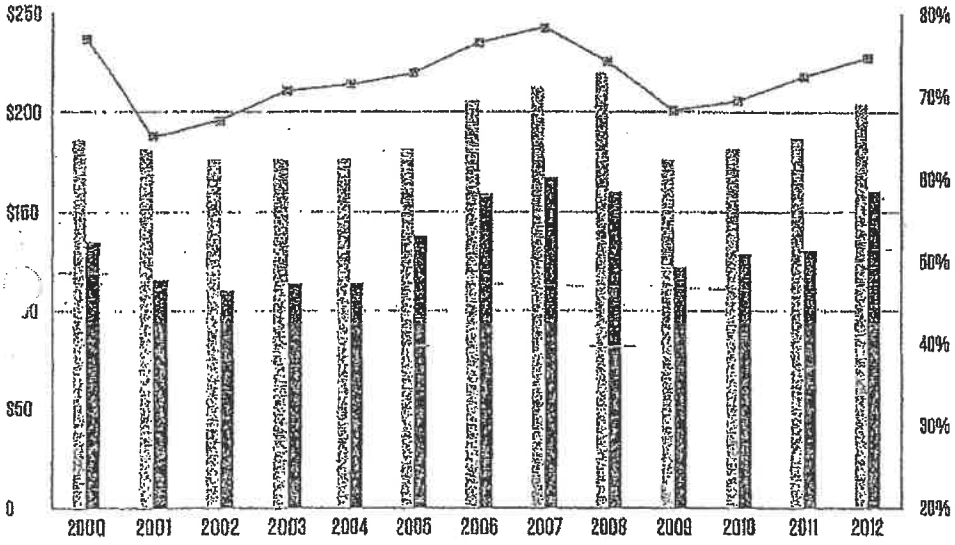
Market fundamentals are improving, with hotels enjoying increasing occupancy and rising average daily rates (ADR). Revenue per available room (RevPar), a key metric in evaluating the market, was up 11% in December 2012 as compared with the previous year, and Chicago outperformed the top 25 markets (who saw an average increase in RevPar of only 7.6%). This increase in RevPar to $141.06 is quickly approaching the previous peak in the market, achieved in 2007 at $145.32.

This resurgence in strong market fundamentals has enticed hoteliers to the market. More than 2,300 rooms are currently under construction, representing a 6.2% increase in supply. This supply is expected to be met by increasing demand as tourism and business travel in Chicago continues to grow. In 2011, tourism was up 11% as compared ...h 2010.

The Streeterville market and the adjacent River North markets are the destinations of choice for visitors to Chicago and consistently outperform the broader market. The complementary infrastructure of shopping, restaurants and entertainment in these two areas reinforce their market dominance. Of the over 2,300 rooms planned, majority are in the Streeterville and River North markets.

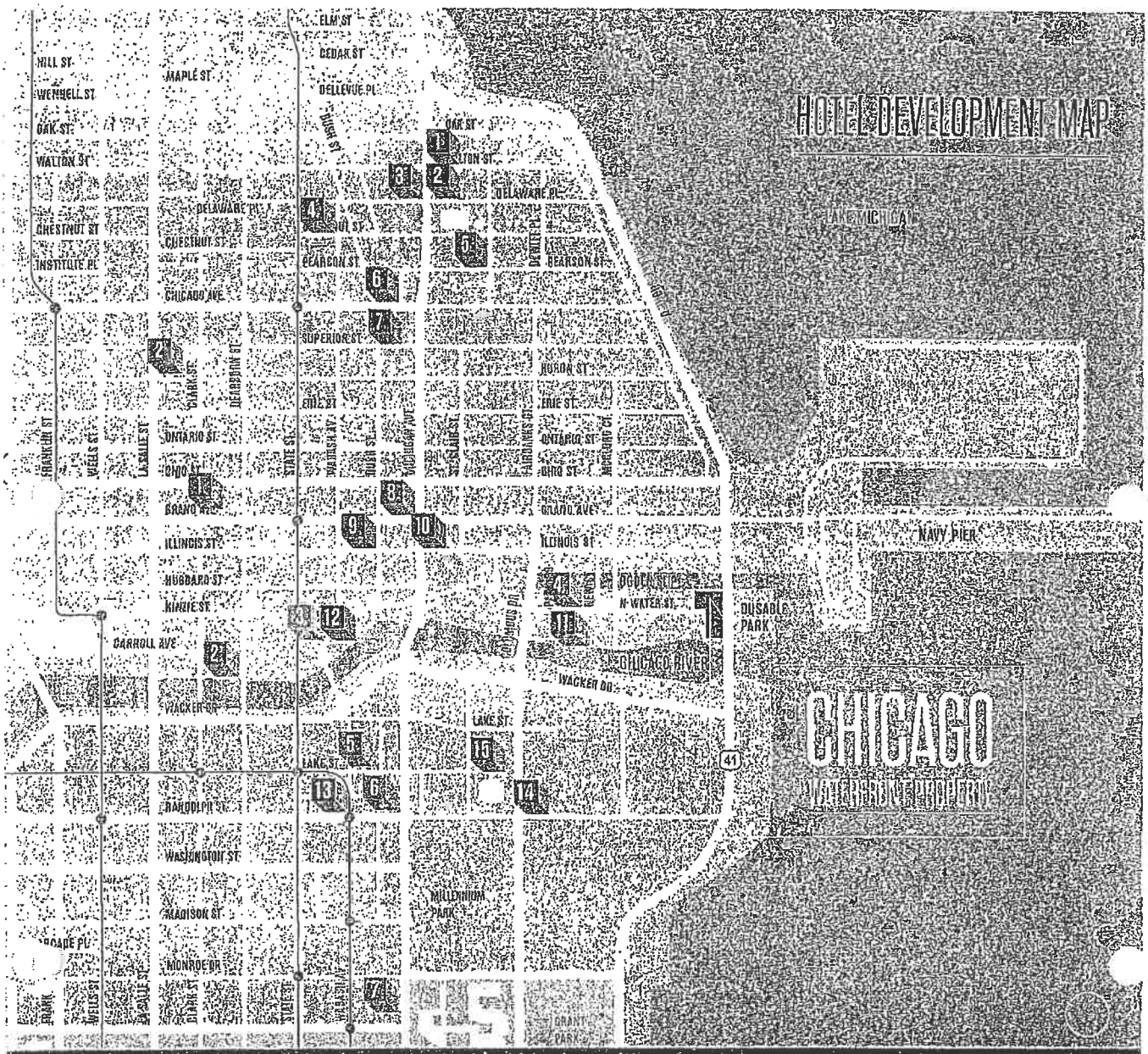
CHICAGO HOTEL MARKET OVERVIEW

CHICAGO DOWNTOWN LUXURY UPPER-TIER LODGING PERFORMANCE 2000-2012



ADR	185.02	178.83	168.90	168.15	168.75	182.46	206.42	214.62	218.62	191.09	187.50	195.29	205.42
RevPAR	138.41	118.10	111.78	118.11	118.83	133.22	157.63	165.82	160.93	123.83	130.98	148.62	154.48
Occ	74.8	66.0	66.2	70.8	71.3	73.0	76.5	77.2	73.8	68.4	69.9	72.1	75.2

Source: Smith Travel Research



KEY

DEVELOPMENT

1. **Tri-Hotel-Aloft/Hyatt Place/ Fairfield Inn**
   501 N Clark St / 657 rooms
   (Under construction)
2. **Godfrey Hotel**
   127 W Huron St / 221 rooms
   (Under construction)
3. **Langham Hotel**
   330 N Wabash / 316 rooms
   (Under construction)
4. **Loews**
   435 N Park Dr / 400 rooms
   (Under construction)
5. **Virgin Hotel**
   203 N Wabash / 250 rooms
   (Under construction)
6. **Hotel Indigo**
   168 N Michigan Ave / 166 rooms
   (Planned)
7. **Chicago Athletic Association**
   125 Michigan Ave / 260 rooms
   (Planned)

EXISTING

1. The Drake
2. The Westin
3. Four Seasons
4. Sofitel
5. Ritz-Carlton
6. Park Hyatt
7. The Peninsula
8. Marriott
9. The Conrad
10. Intercontinental
11. Sheraton
12. Trump International
13. Hyatt
14. Swissotel
15. Fairmont

TRANSACTION GUIDELINES

The offering for the Loan is being distributed exclusively by JLL to a select group of qualified investors. The prospective purchaser(s) will be selected by the Seller in consultation with JLL on the basis of price, the bidder's financial strength, level of discretion to invest funds, experience in closing similar transactions, due diligence and industry reputation. Please note that the Seller will consider varying JV structures. All prospective investors have been required to sign a Confidentiality Agreement prior to receiving this Offering Memorandum, loan documents, and other due diligence materials. Indicative bids will be taken on April 23, 2013.

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For questions related to the Due Diligence Site, please contact:

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Analyst
lesley.fan@am.jll.com
+1 212 812 6447

Bainton, J. Joseph

From: Garrett Kelleher <garrett.kelleher@shelbournedevelopment.com>
Sent: Thursday, August 17, 2017 1:07 PM
To: Bainton, J. Joseph; paul.brennan@mac.com
Subject: FW: Redemption/Shelbourne
Attachments: LETTERHEAD[1].doc

-----Original Message-----
From: Thomas Murphy [mailto:tjm@tjmurphylaw.com]
Sent: 24 April 2013 19:43
To: Shifflett, Leonard S. <Leonard.Shifflett@quarles.com>
Cc: Garrett Kelleher <garrett.kelleher@shelbournedevelopment.com>; 'andy@ruhan.com' <andy@ruhan.com>
Subject: Redemption/Shelbourne

Dear Len,

Enclosed is a letter relative a redemption of your client's notes. I will mail you a hard copy.

Yours truly,

Tom Murphy
111 W. Washington St.
Suite 1920
Chicago, Illinois 60602
312-750-9260 phone
312-848-4498 cell

THOMAS J. MURPHY, P.C.
ATTORNEY AT LAW
111 WEST WASHINGTON STREET
SUITE 1920
CHICAGO, ILLINOIS 60602
TELEPHONE 312-750-9260
FACSIMILE 312-750-9273

Leonard S. Shifflet
Quarles & Brady
300 N LaSalle St.
Chicago, IL 60654

Re: 400 N. Lake Shore Drive

Dear Len,

This letter is to put in writing what I mentioned to you in Court this morning. That is that Garrett Kelleher on behalf of my client, Shelbourne North Water Street LP, met today in Dublin with Dave Bennett and Peter Malbasha of NAMA, relative your client, IBRC.

The purpose of the meeting was to inform NAMA that Bridgehouse Capital Ltd will redeem the notes, for Shelbourne, held by your client on the above captioned property. Bridgehouse was represented at the meeting by Andy Ruhan, its Chairman. Mr. Ruhan confirmed that he is ready to act immediately and would like to do so in a cooperative manner with your client. Mr. Bennett said he would revert shortly. Messrs. Kelleher and Ruhan await your client's response.

I look forward to resolving any issues that may arise in the litigation over this property precipitated by this development.

Yours truly,

cc: Garrett Kelleher
cc: Andy Ruhan

Bainton, J. Joseph

From: Garrett Kelleher <garrett.kelleher@shelbournedevelopment.com>
Sent: Monday, February 26, 2018 11:10 AM
To: Bainton, J. Joseph
Subject: FW: Chicago Spire

-----Original Message-----
From: Garrett Kelleher
Sent: 05 June 2013 09:49
To: 'dbennett@nama.ie' <dbennett@nama.ie>
Cc: 'pmalbasha@nama.ie' <pmalbasha@nama.ie>; 'mmoriarty@nama.ie' <mmoriarty@nama.ie>
Subject: Re: Chicago Spire

David,
The below is my recollection of our meeting with Andy Ruhan and subsequent communications :
A. You would consider whether he could access the data room via your lawyers - ie circumventing the JLL process. This was subsequently declined by NAMA as you indicated that that would prejudice NAMA with others OR B. He could sign up - at the then late stage - to the terms of NDA or CA that JLL had issued. Given that he was introduced by me and that the basis of him being prepared to redeem the loans was that he had my cooperation before, during and subsequently this was completely impossible.
Following the NAMA meeting, Andy Ruhan met with me in Chicago. He brought his team from NY along. The receiver for the site, Mr Steve Bell, gave us all access to the site. We met with a number of those parties who had previously been involved.
Andy Ruhan's view is that he will wait until the current sales process is complete and then look to deal with the purchaser. He expressed to you in the meeting that from his perspective it made no sense for NAMA to be selling the loans, whilst in the middle of litigation and excluding me and my associates from the process. Also, as I am sure you are aware my lawyer in Chicago, Tom Murphy, has written to NAMA's lawyer Quarles and Brady indicating that Andy Ruhan wishes to fund my redemption of the Spire loans.
In any event, the purpose of me wishing to meet this week is to discuss the EB5 certification.
Regards
Garrett

----- Original Message -----
From: David Bennett <DBennett@nama.ie>
To: Garrett Kelleher
Cc: Peter Malbasha <PMalbasha@nama.ie>; Michael Moriarty <MMoriarty@nama.ie>
Sent: Wed Jun 05 09:00:24 2013
Subject: RE: Chicago Spire

Garrett,

Thanks - see you then.

For the avoidance of doubt we should clarify one point you raise below: -

Mr Ruhan's request for access to the JLL dataroom was never declined by NAMA - quite the contrary, Mr Ruhan was encouraged to engage with JLL but instead choose not to sign up to the terms and conditions associated with the sale and under which other interested parties had previously signed up to.

Regards
Dave

David Bennett
Senior Manager – Asset Recovery

National Asset Management Agency | Treasury Building, Grand Canal Street, Dublin 2, Ireland
E: dbennett@nama.ie | D: +353 1 522 4304 | M: +353 87 1675 183 | F: +353 1 665 0001

-----Original Message-----
From: Garrett Kelleher [mailto:Garrett.Kelleher@shelbournedevelopment.com]
Sent: 05 June 2013 08:56
To: Michael Moriarty
Cc: Peter Malbasha; David Bennett
Subject: Re: Chicago Spire

Michael,
Will see you then.
Regards
Garrett

----- Original Message -----
From: Michael Moriarty <MMoriarty@nama.ie>
To: Garrett Kelleher
Cc: David Bennett <DBennett@nama.ie>; Peter Malbasha <PMalbasha@nama.ie>
Sent: Wed Jun 05 08:10:24 2013
Subject: RE: Chicago Spire

Garrett,
David Bennett, Peter Malbasha and I are available to meet you here tomorrow , Thursday, at 12 o clock if that suits you.
Regards,
Michael Moriarty

-----Original Message-----
From: Garrett Kelleher [mailto:Garrett.Kelleher@shelbournedevelopment.com]
Sent: 04 June 2013 11:58
To: Michael Moriarty
Subject: Fw: Chicago Spire

Michael,
I hope you're well.
I wonder when might you might be free to meet to discuss my email below ?
Many Thanks
Regards

Garrett

----- Original Message -----
From: John Mulcahy <JMulcahy@nama.ie>
To: Garrett Kelleher
Cc: David Bennett <DBennett@nama.ie>; Peter Malbasha <PMalbasha@nama.ie>; Michael Moriarty <MMoriarty@nama.ie>
Sent: Tue Jun 04 10:18:39 2013
Subject: RE: Chicago Spire

Thanks you Garrett for this information. As you know I am not involved in this project and the colleagues who have that task are David , Peter and Michael Moriarty

Regards
John

-----Original Message-----
From: Garrett Kelleher [mailto:Garrett.Kelleher@shelbournedevelopment.com]
Sent: 31 May 2013 22:52
To: John Mulcahy
Cc: David Bennett; Peter Malbasha
Subject: Chicago Spire

John,
After three years I have managed to have the Chicago Spire site certified as an EB5 Regional Center.
Our application has been a joint venture with NYCMRC - New York City Metro Regional Center.
EB5 is a US Government program whereby foreign nationals, by investing a minimium of $500,000 (typically $1m) can ultimately attain a Green Card - $6bn of equity has been raised in the last year for similiar programs however none with the profile of the Chicago Spire.
This program, as you might imagine, is very popular in China and most of the equity raised for similiar projects has emanated from China.
The Chicago Spire project is now the only project certified in downtown Chicago.
I have spent extensive time in China since 2007 working on various sources of debt in particular trade finance debt from China EXIM for circa $460m of material with China State Construction.
We were very successful selling condominiums in H1 of 2008 in HK, Beijing and Shanghai - the deposits on these sales was returned with the appointment of CBRE as Receiver.
With the announcement in the last few days I have now been engaged with China to source senior debt to stabilze the site, resurrect the discussions regarding trade finance and commence the EB5 equity discussions.
I have in recent weeks brought a UK investor to meet with Peter Malbasha and David Bennett with a view to redeeming the loans (this is someone I sourced after I learned of NAMA's decision to sell the loans but before learning of the EB5 certification). The investor wished to have access to the data room which was declined by NAMA - he has indicated that he may endeavour to deal with the purchaser of the loans being offered by JLL subsequent to the sale - yesterday I spoke with David Bennett who asked me about the investor, Andy Ruhan, and I indicated I have not spoken with him for a couple of weeks. I will not now require a third party investor with EB5.
The EB5 certification is a gamechanger for the project and the site particularily because of the profile of the Chicago Spire in China and the axis between Shanghai/Beijing and Chicago.
It would make a lot more sense for NAMA to arrest the current process where they are progressing the sale of the loans at less than 50c in the $1 and explore how they could be repaid at par as opposed to having some other

party benefit. I have been advised that I will still be able to redeem the loans at par post the sale through Cook County if the buyer does not engage.
The profits on the project at current exit values are a multiple of my exposure to NAMA through my personal guarantees.
Can we meet next week to discuss ?
Regards
Garrett

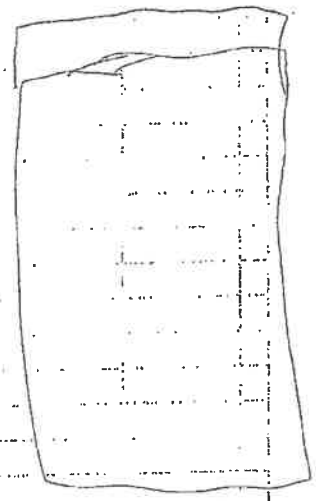
PLAINTIFF'S EXHIBIT 17

0.7.134.118913

24/4/2013

0057

GARRETT & ANDI RUHAN & DB & DM.



- REDEMPTION -

- No Prior Large Schemes in USA Land Bank with [redacted] Not Relevant / Commercial Sensitivity

HISTORY THISTLES UK
NAMSTE USA

UK -> BAE Portfolio - December 2012
£25M Land.
PVE Company

USA -> DMG Bought in Kevin Maloney

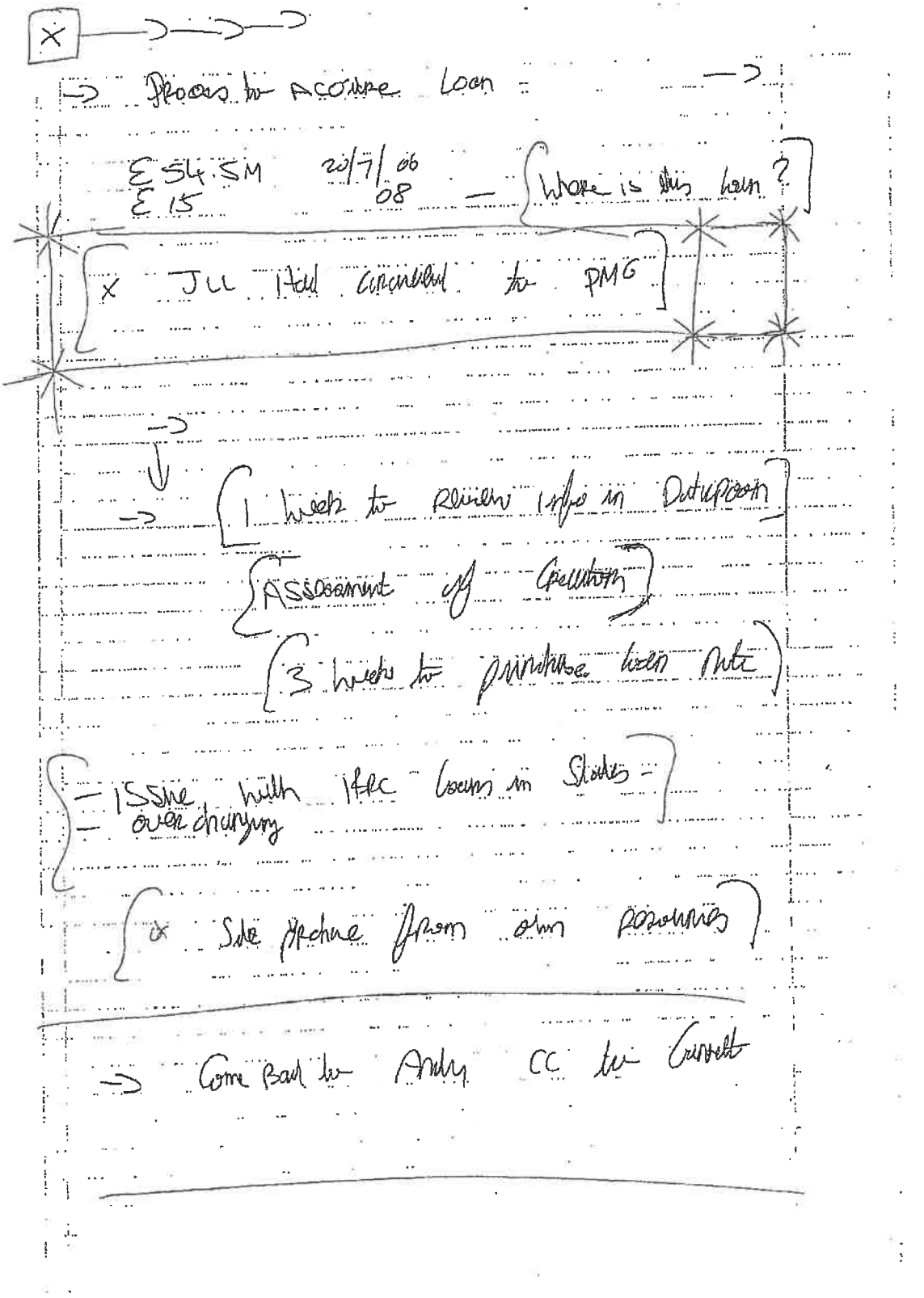
USA -> 285M Bought from Receivership
Stanhead

Walker Tower
36th & 1st another Site 64 Storeys
Start on Site in May
another Site 39 & 1st
New York

also in MIAMI

- Did not Bid as felt Did not Comply
No Housing - Just a Project Mgt. Role.

0.7.134.118913



0.7.134.8103

From: Peter Malbasha
Sent: 30 May 2013 11:55
To: David Bennett
Subject: RE: GK / Andy Ruhan
Attachments: Meeting with Garrett Kelleher and Andy Ruhan.doc

Feel free to amend

regards

Peter

Peter Malbasha
Asset Recovery Manager
National Asset Management Agency
Grand Canal Street
Dublin2,Ireland
D: +353 1 2384530
M: 087 989 3469
T: +353 1 6640800
F: +353 1 6640890
E: pmalbasha@nama.ie

From: David Bennett
Sent: 29 May 2013 08:46
To: Peter Malbasha
Subject: RE: GK / Andy Ruhan

Peter

Not sure you came back to me on this?

Thanks
Dave

From: David Bennett
Sent: 22 May 2013 18:40
To: Peter Malbasha
Subject: GK / Andy Ruhan

Peter

Did you ever complete minutes for the GK / Andy Ruhan meeting?

Obviously important to have something on file for this.

Thanks
Dave

0.7.134.8103

David Bennett
Senior Manager – Asset Recovery

National Asset Management Agency | Treasury Building, Grand Canal Street, Dublin 2, Ireland
E: dbennett@nama.ie | D: +353 1 522 4304 | M: +353 87 1675 183 | F: +353 1 665 0001

0.7.134.8103-000001

National Asset Management Agency

Meeting Minutes

Date:	24.4.2013	Location:	Treasury Building
Borrower:	Garrett Kelleher	Connection ID:	0051
Purpose of meeting:	Garrett Kelleher to introduce a potential investor Andy Ruhan who has interest in purchasing the Spire Loan notes		
Attendees (NAMA):	Peter Malbasha, David Bennett ("DB")		
Attendees (Debtor):	Garrett Kelleher ("GK"), Andy Ruhan		
Apologies:			

Topic	Discussion	Action
	Andy Ruhan ("AR") provided some background on himself. Involvement with large property schemes in the USA and UK. He mentioned 1) BAE portfolio, a December 2012 transaction for land in the amount of £250m 2) A 285m portfolio purchased recently from Starwood 3) His involvement with a large property group in the USA called PMG 4) Walker Tower on 30th and 1st a 64 storey building 5) Another site on 39th and 1st 6) A large site in Miami AR's exact involvement with PMG and these developments was not clarified AR stated that he did not bid for the Spire as he felt that he could not comply with the terms of the NDA. The NDA excluded investors having discussions with GK pre purchase of the note. He felt that GK was vital to the development and if he did end up purchasing the note, he would employ GK as a project Manager with no equity. AR said that he really wanted to know about the status of the loan process. We explained that we were waiting for first round bids and that no decision had been made by NAMA at this time. We informed him that he could still enter the process but he needed to contact JLL. [this was subsequently clarified in an e mail from DB to AR] He said that he required 1 week to review the information in the data room and to assess the creditor situation and 3 weeks to close. A discussion followed loan balances. GK stated that it was not clear cut. There was an issue with IBRC over-charging that needed to be cleared up. At the end of the meeting, we agreed that we would revert to AR with a cc to GK.	

PLAINTIFF'S EXHIBIT 19

From: David Bennett
Sent: 05 June 2013 09:00
To: 'Garrett Kelleher'
Cc: Peter Malbasha; Michael Moriarty
Subject: RE: Chicago Spire

Garrett,

Thanks - see you then.

For the avoidance of doubt we should clarify one point you raise below: -

Mr Ruhan's request for access to the JLL dataroom was never declined by NAMA - quite the contrary, Mr Ruhan was encouraged to engage with JLL but instead choose not to sign up to the terms and conditions associated with the sale and under which other interested parties had previously signed up to.

Regards
Dave

David Bennett
Senior Manager – Asset Recovery

National Asset Management Agency | Treasury Building, Grand Canal Street, Dublin 2, Ireland
E: dbennett@nama.ie | D: +353 1 522 4304 | M: +353 87 1675 183 | F: +353 1 665 0001

-----Original Message-----
From: Garrett Kelleher [mailto:Garrett.Kelleher@shelbournedevelopment.com]
Sent: 05 June 2013 08:56
To: Michael Moriarty
Cc: Peter Malbasha; David Bennett
Subject: Re: Chicago Spire

Michael,
Will see you then.
Regards
Garrett

----- Original Message -----
From: Michael Moriarty <MMoriarty@nama.ie>
To: Garrett Kelleher
Cc: David Bennett <DBennett@nama.ie>; Peter Malbasha <PMalbasha@nama.ie>
Sent: Wed Jun 05 08:10:24 2013
Subject: RE: Chicago Spire

Garrett,
David Bennett, Peter Malbasha and I are available to meet you here tomorrow , Thursday, at 12 o clock if that suits you.

Judgment

Title: Middleview Limited & Companies Acts

Neutral Citation: [2015] IEHC 860

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Court: High Court

Judgment by: Cregan J.

Status: Approved

[2016] IEHC 860

THE HIGH COURT

[2015 No. 59 COS]

IN THE MATTER OF MIDDLEVIEW LIMITED (DISSOLVED)

AND

IN THE MATTER OF THE COMPANIES ACTS 1963 TO 2013

AND

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 12 (B) OF THE COMPANIES (AMENDMENT) ACT 1982 AS INSERTED BY SECTION 46 OF THE COMPANIES AMENDMENT (NO. 2) ACT 1999

JUDGMENT of Mr Justice Cregan delivered on 21st day of December, 2015

Introduction

1. The issue which arises in this case is who should bear the costs of preparing and finalising company accounts to bring them up to date when an order has been made restoring a company to the register. It raises a question of interpretation, and application, of section 12B (3) of the Companies (Amendment) Act 1982 as inserted by section 46 of

the Companies Amendment (No. 2) Act 1999.

2. In order to understand the context to this application it is necessary to set out the background facts leading to this application.

Background

3. The company, Middleview Ltd, was incorporated on 14th October, 1993. It was an investment property company. As part of its business the company purchased certain lands and properties, and entered into loan agreements with Anglo Irish Bank Corporation, under which the bank agreed to advance loans totalling approximately €300,000,000 to the company. As security for its obligations the company executed a debenture dated 19th December, 2007 granting fixed and floating charges over its properties.

4. On 1st November, 2010 pursuant to Part 6 of the NAMA Act 2009 (the "2009 Act") NAMA acquired all of the rights of the bank in the loan agreements and the debenture.

5. By letter dated 27th March, 2014 the Petitioner in this case (a NAMA group entity within the meaning of the 2009 Act), informed the company that an event of default had taken place and demanded repayment of the monies then due. Despite that demand, the company failed to discharge its liability.

6. NALM then appointed Simon Coyle and Tom O'Brien of Mazars as joint receivers over the assets and property of the company on 28th March, 2014.

7. The company was struck off the Register of Companies on 28th March, 2014 for its failure to file annual returns in the Companies Registration Office.

8. NALM wanted the company to be restored to the Register of Companies so that its receivers could take steps to realise the company's assets, in order to recover amounts due by the company under the agreement.

9. In the circumstances, on 6th February, 2015 NALM brought an application before the High Court seeking an order that the company should be restored to the Register of Companies. This order was in fact made on the 2nd day of March, 2015.

Application to restore

10. The application to restore the company came before the court on 2nd March, 2015. The application was grounded upon an affidavit of Margaret Magee of NALM who set out all the above matters.

11. On 13th March, 2015 Garrett Kelleher, one of the directors of Middleview, and a notice party in the application to restore the company to the register, swore an affidavit, stating that he had no objection to the company being restored to the Register of Companies. He also indicated that he had no objection to cooperating in any way or executing such documents as might be required to bring the returns up to date. However he stated:

"However it is entirely and solely the fault of the

petitioner that the company was struck off the register and I believe that they should pay all of the costs associated with having a company restored to the register".

4. As is set out below, for the years concerned the entire income and revenue of the company was appropriated by the petitioner who had instructed KPMG to prepare the returns. The petitioner ultimately did not pay KPMG and the returns did not get filed. This occurred when they had sole control of the income of the company and, following the appointment of Simon Coyle of Mazars as the receiver and manager on the 27th of March 2014, (sic) they had control of the books and records of the company.

5. I am resident in the U.S. and I do not have the records of the company since the petitioner assumed full control.

6. The company is part of a group of companies and there are a number of other companies which I suspect are now in the same position. I am concerned about the costs of this application and the costs of restoring companies to the register in circumstances where I have very limited funds.

7. Insofar as the petitioner had the benefit of all of the company's income it was incumbent upon them to fund the filing of the returns which they did in respect of some of the other companies in the group.

8. The background to this matter is that on 8th November 2010 NAMA took over my loans under the heading of the "Shelbourne connection". I cooperated with them from that date and indeed had met them in advance of that date in 2009. There was an interim support letter issued in 2011 and a further forbearance letter issued 5th February 2013. I cooperated fully for a number of years and as is the subject of the Commercial Court proceedings, NAMA simply dispensed with that cooperation and moved to enforcement once most of the assets for which they required me had been disposed of.

9. During the course of this period NAMA took the income from all of the companies including Middleview Ltd. Rental income went into dedicated bank accounts and NAMA made withdrawals. Insofar as there were any expenses which we required to be discharged, we sought to have same discharged by way of a 'Form A' request to NAMA. That included the accountancy fees and everything down to the wages of people working for the companies. In this regard I beg to refer to the Form As sent in in respect of the accountancy returns for the group of companies upon which I have marked with the letters 'GK1F I have signed my name prior to the swearing hereof.

10. As is evident therefrom we had asked NALM to allow KPMG update the accounts of the group of companies.

This had been agreed and the work was underway until March of 2014. My understanding is that a lot of the work had been done by KPMG and that NALM simply pulled the plug and declined to pay them to complete it. However once the receivers and managers took control of the company in March 2014 I did not know what happened subsequently or why returns were not filed."

12. Mr. Kelleher also stated at para. 11 that he believed that prior to the dissolution of the company, NALM had been in contact with the CRO in order to ensure that the companies were not dissolved; he also stated that he believed the residential rental income which accrued to Middleview is approximately €40,000 per annum and that there were therefore ample funds for the company to discharge its obligations under the Companies Acts.

13. Mr. Peter Malbasha swore a replying affidavit on behalf of NALM. Mr. Malbasha disagreed with the assertion that it was entirely the fault of the Petitioner that the company was struck off the register; he stated that it was and remained the duty of the directors, including Mr. Kelleher, to comply with the statutory duties to file all outstanding returns; He also stated that it was incorrect to say that the petitioner NALM instructed KPMG to prepare the outstanding returns. He said the preparation of the outstanding returns was entirely a matter for the directors and this responsibility was never taken on by NALM and that NALM never had any direct dealings with KPMG in relation to this matter. However he accepted that an employee of Shelbourne Developments Group, (of which the company was a member), Mr. Wayne O'Dwyer, was responsible for any instruction to KPMG and Mr. O'Dwyer provided updates to NALM in relation to its dealings with KPMG and the progression of the preparation of the outstanding returns. Mr. Malbasha also stated that although the rental income which accrued to the company was paid to the Petitioner that was because of the security in the Petitioner's favour and the existence of such a security could not create an obligation on the part of the Petitioner to fund an auditor's costs.

14. However significantly Mr. Malbasha stated at para. 9 of his affidavit:

"Notwithstanding and without prejudice to the foregoing, I say that contrary to the averments in Mr. Kelleher's affidavit, the Petitioner did in fact approve the company's request to making of substantial monies available to fund both the company's costs of preparing the accounts and KPMG's fees for the sole purpose of preserving the Petitioner's security position. This funding was made available on the basis of the director's cooperation with the petitioner which cooperation has since ceased."

15. Even more significantly Mr. Malbasha stated at para. 10:

"At para. 10 of Mr. Kelleher's affidavit he states that 'we had asked NALM to allow KPMG update the accounts of the group of companies."

I have already referred to this in passing above. The true

position is that the Petitioner had no objection to the accounts being brought up to date and in fact repeatedly requested that the group bring its accounts up to date and even approved the necessary funding for this to be done for the sole purpose of preserving the value of its security. The accounts of the company were ultimately never brought up to date and the company was struck off the register of companies for failure to file its annual returns for the period 2010 - 2013 arising from the failure by the directors to comply with their statutory obligations."

16. Mr. Malbasha also exhibits a chain of emails between Mr. Wayne O'Dwyer and NALM in respect of Mr. O'Dwyer's attempts to finalise the statutory accounts with KPMG. On 16th February 2014 Wayne O'Dwyer sent an email to Claire Harding of NAMA stating that the statutory accounts were with KPMG for signing, that he (Mr. O'Dwyer) had called them last week with a view to getting the various audit reports signed off and that they had reverted with some additional queries. It appears that although KPMG had prepared draft statutory accounts they were unwilling to sign off on the accounts pending the resolution of a VAT issue which still had not been resolved with the Revenue Commissioners.

17. I also note in this chain of emails an email from Peter Malbasha dated 9th October, 2013 to Wayne O'Dwyer stated as follows

"Wayne,

I'm not sure what we can do to assist. We note that we approved €20,000 additional fees for you last September 2012 with a condition that the accounts are submitted within four months. We stated at our last meeting that there was one item remaining to be sorted which related to Cratloe VAT and how it is to be disclosed in the accounts. Can you please advise that this is now sorted and if so when the accounts will be submitted.

Thanks, regards, Peter."

18. There is one issue about Mr. Malbasha's affidavit which is of concern to me. In the grounding affidavit of Ms. Margaret Magee sworn on behalf of NALM, she refers to para. 12 of the petition. Paragraph 12 of the petition states that

"the Petitioner is desirous of taking steps to recover the amounts due and to this end by deed of appointment dated [22nd March 2014] [sic] the petitioner appointed Mr. Simon Coyle and Mr. Tom O'Brien of Mazars, Block 3, Harcourt Centre, Harcourt Road, Dublin 2 as joint receivers" ("the receivers") over the assets of inter alia the company.

13. The company was struck off the Register of Companies on 2nd April 2014 for its failure to file annual returns in the Companies Registration Office."

19. In her affidavit Ms. Magee exhibits the deed of appointment of the receivers. This deed is dated 28th March, 2014. Moreover this deed of appointment is signed by Mr. Coyle and by Mr. O'Brien as receivers and dated 28th March, 2014.

20. However Mr. Malbasha in his affidavit stated:

> *"At para. 4 of Mr. Kelleher's affidavit Mr. Kelleher avers that the company was in receivership at the time of strike off. Again this is simply incorrect. The Petitioner attempted to appoint receivers to the company in March 2014. However the company was stuck off the Register of Companies immediately before it could do so and the appointment could not proceed. In that regard Mr. Kelleher's averments in relation to any purported action or inaction taken on the part of receivers are entirely mistaken. The Petitioner only appointed receivers to the company when it was recently restored pursuant to a deed of appointment dated 12th March 2015."*

21. Again at para. 10 of his affidavit he states:

> *"As explained at para. 7 above receivers were not appointed to the company before it was struck off."*

22. These averments are simply incorrect. It is clear on any view of the matter that NALM appointed receivers on 28th March, 2014. NALM itself exhibited the deed of appointment of the two receivers. The deed of appointment is signed by both receivers and dated. It is also witnessed. The deed is also stated to be given under the common seal of National Asset Loan Management Ltd and delivered as a deed in the presence of certain persons and those persons have signed their signatures as authorised signatories.

23. Thus it appears that Mr. Kelleher's averments that the company was in receivership at the time of strike off are correct and that Mr. Malbasha's averments are not only incorrect but positively misleading. The true position, insofar as I can ascertain from the documents, is that the receivers were appointed on 28th March, 2014.

24. Mr. Garrett Kelleher swore a replying affidavit on 24th April, 2015. He stated that in his view it would be entirely unjust and unequitable for the Petitioner to be able to visit the costs of bringing the company accounts up to date on him personally. It was, he said, obviously a company expense and the company had income, but that the Petitioner would not now allow that income to be used to bring the accounts up to date. Moreover he stated it was not disputed that NAMA had sole control of the income of the company at all times. Moreover he stated:

> *"Furthermore Mr. Malbasha does not dispute that it was intended that they would discharge the fees of KPMG in making up the accounts before the strike off."*

25. In relation to the appointment of the receivers, Mr. Kelleher exhibited an email dated 31st March, 2014 which had been sent to him by Tom O'Brien, one of the receivers, confirming that he had

been appointed as receiver and requesting that Mr. Kelleher take no further action in relation to the assets of the companies. Given this email, it is surprising that Mr. Malbasha should have made the averments he did.

26. Moreover Mr. Kelleher stated at para. 4 of his affidavit:

> *"As is set out below, for the years concerned the entire income and remedy of the company was appropriated by the Petitioner who had instructed KPMG to prepare the returns. The Petitioner ultimately did not pay KPMG and the returns did not get filed. This occurred when they had sole control of the income of the company and following the appointment of Simon Coyle of Mazars as the receiver and manager on 27th March 2014 they have had control of the books and records of the company."*

27. Again, significantly, Mr. Malbasha in his replying affidavit sworn on 7th May 2015 states at para. 4:

> *"As I outlined in my affidavit sworn 9th April 2015 the Petitioner repeatedly requested that the company bring their accounts up to date and even agreed to provide funding to facilitate this. The funding was made available notwithstanding that no legal obligation arose on the part of the Petitioner to fund such costs and the sole motivation for doing so was to preserve its security position and to facilitate a sale of the underlying securities. I beg to refer to the Petitioner's notification of decision form upon which marked PM1 I have signed my name prior to the swearing hereof which illustrates that substantial funds in the amount of €346,000 were made available to cover the group's auditing and CRO filing costs. This document shows that NAMA made a decision to approve payment of KPMG's fees amounting to €34,000. It also shows that NAMA made a decision to approve total fees required to their audit and CRO filing fees of €232,000 on or about 20th August 2012 and that this was to cover audit fees for 2010 and 2011. It also showed that NAMA made a decision to approve the payment of Wayne O'Dwyer to complete the 2010 and 2011 accounts for all NAMA group entities in relation to the borrower Shelbourne Properties Ltd. It also stated that Wayne O'Dwyer was to confirm once all the accounts have been signed off and if there were any issues with same. On 19th October 2012 NAMA made a decision to approve payment of KPMG tax compliance fees of €30,000 in connection with corporation tax deadlines of 21st December 2012. Likewise on 20th November 2013 NAMA made a decision to approve the payment of KPMG tax fees of €30,000 in connection with the forthcoming corporation tax deadline of 20th December 2013.*

28. Therefore it is clear, even on NAMA's own evidence, that NAMA or NALM made funding available to the company to pay the accountancy fees of KPMG to bring the company accounts up to date. It did this of course to preserve its security position and to facilitate the sale of the

underlying security. It is however clear that there was an arrangement in place at the time – before the company was struck off - whereby NAMA/NALM agreed to pay Wayne O'Dwyer's costs and to ensure that he did the underlying work to assist KPMG in bringing the company's accounts up to date and also that they agreed to pay KPMG's costs of bringing the accounts up to date.

29. Mr. Malbasha sought to clarify what happened in relation to the receivers by saying that the receivers were appointed on 28th March, 2014 but that the company was struck off the Register of Companies on 29th March, 2014 with a notice of this appearing in the CRO Gazette on 2nd April, 2014. He also said that the email dated 31st March, 2014 was sent by Mr. O'Brien before he became aware that the company had been struck off. That may be so. However it is clear from the emails which have been exhibited in the various affidavits that there was a real risk that the company might be struck off and that this was a live issue in people's minds. Therefore it did not come as a bolt out of the blue.

30. Mr. Malbasha and indeed counsel for NALM in submissions strongly rejected any proposition that NAMA should be responsible for the costs of paying for the company's accountancy bills to bring the outstanding returns up to date in circumstances where it had already incurred substantial losses arising from the company's indebtedness.

31. That may well be so but that is not the issue I have to address. The issue I have to address is how "the court may by the order give such directions and make such provisions as seem just replacing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off".

32. I have also had regard to the further affidavit of Peter Malbasha sworn on the 19th May, 2015. Mr. Malbasha stated at para. 4 of his affidavit that he does not accept that there was any agreement whereby NAMA/NALM would fund all costs arising in relation to the preparation audit and filing of the companies statutory accounts. He does accept however, at para. 4.3, that the Form A which was submitted by the group seeking consent for payment of KPMG in respect of audit and late filing fees for the accounts for the group to include the company for the years ended 31st March, 2010 and 2011 was approved by NAMA on 20th August, 2012 (subject to a number of conditions.)

33. In my view this again shows that NAMA/NALM had made an arrangement whereby they were prepared to agree to the payment of KPMG fees in respect of audit fees for the accounts for the group which included the Middleview company.

34. It is clear therefore that the position which existed before the company was struck off was that NAMA had approved the payment of KPMG fees in respect of the preparation of accounts for the company for the years ended 31st March, 2010 and 2011.

35. I also note that Mr. Malbasha in this affidavit at 4.7 stated:

> *"The relevance of these matters is that NAMA/the petitioner, acting in good faith approved specific requests*

> *for the release of charged funds to pay for the preparation of statutory accounts for 2010 and 2011. In granting such approval, NAMA/the petitioner relied on the company's representations (in particular those of Mr. Wayne O'Dwyer) that the accounts were being prepared (indeed the sum of €20,000 was specifically authorised in order to pay Mr. O'Dwyer to prepare the accounts) and that they were with KPMG."*

36. I note that Mr. Malbasha seeks to contend that the petitioner was misled because Mr. Wayne O'Dwyer states that "the stat [sic] accounts are with KPMG for signing". However in my view the evidence does not go that far and as there is no affidavit from Mr. Wayne O'Dwyer before the Court, it is not entirely clear what the exact position is. However in my view that is not entirely necessary for me to decide the net question in this matter.

37. Mr. Malbasha also states that the position at the date of dissolution is that the audit accounts for 2010, 2011, 2012 and 2013 are outstanding.

38. I have also considered the affidavit of Tom O'Brien dated 17th May, 2015. At para. 2 of this affidavit Mr. O'Brien states that Simon Coyle and he were appointed as joint receivers and managers of the assets of the company by deed of appointment dated 12th March 2015. Extraordinarily, he makes no reference to the fact that he was also appointed as receiver and manager to the assets of Middleview Ltd on the 28th of March, 2014. This is a troubling omission from his affidavit. He also makes no attempt to explain what happened after his appointment on 28th March, 2014 which is less than satisfactory.

The legal issues

The statutory section

39. Section 12B of the Companies (Amendment) Act 1982 (as inserted by s. 46 of the Companies Amendment (No. 2) Act 1999) provides as follows:

> *"12B. (1) The liability, if any, of every director, officer and member of a company the name of which has been struck off the register under section 12(3) or 12A(3) of this Act shall continue and may be enforced as if the company had not been dissolved.*
>
> *(2) Nothing in subsection (1) of this section or section 12(3) or 12A(3) of this Act shall affect the power of the court to wind up a company the name of which has been struck off the register.*
>
> *(3) If any member, officer or creditor of a company is aggrieved by the fact of the company's having been struck off the register under section 12(3) or 12A(3) of this Act, the court, on an application made (on notice to the registrar of companies, the Revenue Commissioners and the Minister for Finance) by the member, officer or creditor, before the expiration of 20 years from the publication in Iris Oifigiúil of the notice referred to in*

section 12(3) or, as the case may be, 12A(3) of this Act, may, if satisfied that it is just that the company be restored to the register, order that the name of the company be restored to the register, and, subject to subsection (4) of this section, upon an office copy of the order being delivered to the registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off or make such other order as seems just (and such other order is referred to in subsection (4) of this section as an 'alternative order').

(4) An alternative order may, if the court considers it appropriate that it should do so, include a provision that, as respects a debt or liability incurred by, or on behalf of, the company during the period when it stood struck off the register, the officers of the company or such one or more of them as is or are specified in the order shall be liable for the whole or a part (as the court thinks just) of the debt or liability.

(5) The court shall, unless cause is shown to the contrary, include in an order under subsection (3) of this section, being an order made on the application of a member or officer of the company, a provision that the order shall not have effect unless, within 1 month from the date of the court's order—

(a) if the order relates to a company that has been struck off the register under section 12(3) of this Act, all outstanding annual returns required by section 125 or 126 of the Principal Act are delivered to the registrar of companies,

(b) if the order relates to a company that has been struck off the register under section 12A(3) of this Act, all outstanding statements required by section 882 of the Taxes Consolidation Act, 1997 , are delivered to the Revenue Commissioners.

(6) The court shall, in making an order under subsection (3) of this section, being an order that is made on the application of a creditor of the company, direct that one or more specified members or officers of the company shall, within a specified period—

(a) if the order relates to a company that has been struck off the register under section 12(3) of this Act, deliver all outstanding annual returns required by section 125 or 126 of the Principal Act to the registrar of companies,

> *(b) if the order relates to a company that has been struck off the register under section 12A(3) of this Act, deliver all outstanding statements required by section 882 of the Taxes Consolidation Act, 1997 , to the Revenue Commissioners."*

40. The key provision of this statutory section which applies to the fact of this case is the second part of s. 12B:

> *"and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off or make such other order as seems just (and such other order is referred to in subsection (4) of this section as an 'alternative order')."*
>
> (Emphasis added).

Case Law

41. A number of cases have been opened by the parties in this matter. *In Richmond Building Products Ltd v. Soundgables Ltd* [2005] 3 I.R. 321 the plaintiffs sought judgment against the defendants of a sum in respect of goods sold to the first defendant, a limited company, in a period during which it was struck off the Register of Companies. The High Court (Finnegan P.) held in refusing the order sought by the plaintiff that the effect of the restoration of the company to the register was that the personal liability which might otherwise have been attached to the directors was extinguished.

42. In the course of his judgment Finnegan P. considered the meaning of s. 12B(3) of the Act and also considered the judgment of O'Neill J. in respect of this section in *Re Amantiss Enterprises Ltd* [2000] 2 ILRM 177.

43. As Finnegan P. stated at page 324 of his judgment:

> *"The effect of such an order pursuant to the Companies (Amendment) Act 1982 was considered in re Amantiss Enterprises Ltd. [2000] 2 I.L.R.M. 177. For the petitioner in that case it was argued that the effect of the statutory provision was to validate all acts done by the company between its dissolution and its restoration. For the notice parties, it was submitted that the effect of the section was merely to restore the status of incorporation to the company as to its identity but did not have the effect of validating retrospectively acts done between dissolution and restoration to the register. The court held in favour of the petitioner. In his judgment O'Neill J. relied upon Tyman's Ltd. v. Craven [1952] 2 Q.B. 100, the majority decision in which was relied upon by the petitioner. He cited with approval a passage from the judgment of Lord Evershed M.R. at p. 111:-*

> *'In my judgment, the final words of the subsection can properly and usefully be regarded as intended to give to the court, where justice requires and the general words would or might not themselves suffice, the power to put both company and third parties in the same position as they would have occupied in such cases if the dissolution of the company had not intervened. More generally the final words of the section seem to me designed, not by way of exposition, to qualify the generality of that which precedes them but rather as a complement to the general words so as to enable the court (consistently with justice) to achieve to the fullest extent the "as-you-were" position which, according to the ordinary sense of those general words, is prima facie their consequence'."*
> *(Emphasis added.)*

44. In *Re Lindsay Bowman Ltd* [1969] 1 WLR 1443 Megarry J. considered a similar provision in the UK companies legislation. In that case a creditor claiming one debt incurred before the dissolution and another incurred afterwards supported the petition to restore the company to the register on condition that the court order should be expressed to be without prejudice to any remedy which a creditor who became such after dissolution might otherwise have against anyone prior to the date of the order. (the so called "Rugby Auto Electric clause"). Megarry J. however rejected this claim holding that the power of the court was available only to give effect to the statutory fiction that the company had not been struck off whereas the effect of granting the plaintiff his order would be to negative that statutory provision. As he stated at page 1446:

> *"In the present case the position seems to me to be very different. What is sought is a provision that will preserve to the creditor the rights that he acquired while the company was defunct. The statutory fiction that results from an order under the subsection is that the company continued in existence throughout; and this, with all that flows from it, is the necessary consequence of the order. One of the consequences is that any liabilities properly incurred by a director in the name of the company would be liabilities of the company and not of the director. What the concluding limb of the subsection empowers me to do is to give directions or make provisions for placing the company and others in the same position as nearly as may be as if the name of the company had not been struck off. What Mr. Hamilton seeks is a direction or provision putting him in the same position as if the company had been struck off, as in fact it was. In other words he seeks a direction or provision which will negative the statutory fiction whereas all that the subsection empowers me to do is to give a direction or make a provision which supports or carries out the statutory fiction as nearly as may be. I do not see what power I have to include such a direction or provision in the order."*

> *"In saying this, I am conscious of differing from a judge of great experience. Unfortunately In Re Rugby Auto Electric Services Ltd was not reported and there is nothing in the file of that case which has suggested to me the reasoning which Roxburgh J. may have had in mind when inserting the clause. In those circumstances all that I can do is to apply the language of the statute to the best of my ability. I cannot see any escape from the conclusion that the power of the court is limited to giving directions and making provisions for the sole purpose of effectuating the statutory fiction, namely that the name of the company has not been struck off. Such a power cannot in my judgment be used for the purpose of negativing the statutory fiction. The words governing the exercise of the power are "for placing the company and all other persons in the same position as nearly as may be as if" and it is for this purpose and this alone that the court may give such directions and make such provisions "as seem just". If the section had ended with the words "as seem just" thus omitting the purpose of words "replacing ..." and all that follow or if the final "not" had been omitted the position might have been very different. Again the subsection might have been qualified by authorising the order to be made "subject to such modifications as the court thinks fit". But I must take the subsection as I find it and not as it might have been; and in my judgment it does not authorise the insertion of the Rugby Auto Electric clause in the order. It may be that there are grounds for widening the discretionary powers of the court under the subsection but that is for the legislature and not for me.*

45. I have also considered *Davy v. Pickering and Others* a decision of the UK High Court Chancery Division dated 19th February 2015 of Judge Keyser Q.C. sitting as a judge of the High Court.

46. As he stated at para. 43 of his judgment:

> *"Consideration of what is required to place persons in the same position, as nearly as may be, as if the Company had not been dissolved or struck off the register is made more difficult, particularly in a case such as the present, by the unavoidable element of the counterfactual that is involved. It does seem to me, however, that Mr Oram is correct to say that there was a window of opportunity, if only a small one, in which Mr Davy might have established the merits of his claim to the satisfaction of the FOS[Financial Ombudsman Service] and been able to present the petition that he now seeks to present and bring the claim that would underpin such a petition. It is quite impossible to know whether he would have achieved those steps; that impossibility, however, arises out of the conduct of Mr and Mrs Pickering in bringing about the dissolution of the Company. If justice requires that the effects of the striking-off of the Company be undone by restoring to Mr Davy his lost opportunity, the risk that his position will be improved over what it might*

have been—perhaps because he is better able to take advantage of the opportunity—seems to me to be the price of seeking the best attainable equation of positions under section 1032(3).”

Assessment

47. The issue which therefore arises in this application is what directions or what provisions should be made which seem just in order to place the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

48. In my view the court can not avail of the second option (i.e. to make such other order as seem just) because such order is referred to in subsection 4 as an alternative order and under subsection 4 an “alternative order” only appears to deal with debts or liabilities incurred by or on behalf of the company during the period when it was struck off the register. However the debts and liabilities which arise in this case were not incurred by or on behalf of the company during the period when it was struck off the register but are instead liabilities which arose before the company was struck off.

49. Therefore the issue which the court has to consider is what provisions or directions are just in order to place the company and all other persons in the same position as nearly as may be as if the company had not been struck off.

50. It should be noted that the statutory subsection refers to “all other persons”. On the facts of this case that refers to both NAMA/NALM and indeed the directors and Mr. Kelleher.

51. I would also observe that the statutory section only provides that the court should make such provision as seem “just” to place all other persons in the same position “as nearly as may be”. In other words, it does not say in “exactly the same position as they were” before the company had been struck off.

52. It is clear from the affidavit evidence that the issue between the parties is who should bear the costs of carrying out the company audit for the years 2010, 2011, 2012 and 2013.

53. I am satisfied that the affidavit evidence establishes that NAMA/NALM had agreed to pay the accounting fees of KPMG to carry out the preparation of audited accounts for the company for the year ended March 2010 and the year ended March 2011. There is ample evidence to show that this is so and indeed this matter is explicitly accepted in the affidavits of Mr. Malbasha. I would therefore conclude that the costs of preparing the audited accounts for the year ended 2010 and the year ended 2011 should be borne by NAMA/NALM. Such an order places the company and all other persons in the same position as nearly as may be as if the company had not been struck off.

54. However the position is slightly different for the costs of preparing the audited accounts for the following two years. Counsel for NAMA/NALM argued that, whatever about the position for the first two

years, there was absolutely no agreement and no evidence of any agreement that NAMA would pay the costs of the audited accounts. Whilst that is true, the issue which then arises is what would have been a more likely outcome if that question had arisen. One possibility is that NAMA would have said to the directors that it was no longer going to pay for the accountancy costs of preparing the accounts for the company; a second possibility is that NAMA would have agreed to continue funding the accountancy costs for preparing the accounts for the company. Having considered the affidavit evidence in this matter and having considered the underlying commercial logic as to why NAMA agreed to pay for the accountancy costs for the first two years of accounts (i.e. that NAMA wished to ensure that the company continued to be maintained on the Register of Companies in order to protect its security) – I am of the view that it is more likely than not that NAMA would have continued the arrangement of funding the KPMG fees to prepare the accounts for the final two years.

55. However given that this might not have turned out to be the situation, in my view it would not be entirely just and fair to impose the full financial obligation on NAMA for this and the directors and Mr. Kelleher certainly have some legal responsibility for ensuring the company has the means by which it should discharge its auditor's fees to prepare the audited accounts of the company.

56. I am of the view therefore that a fair and just order in this case would be to direct that NAMA and Mr. Kelleher/the directors should bear the costs of preparing the last two sets of accounts equally. This does not mean that Mr. Kelleher should bear the costs of one year and NAMA should bear the costs of another year. Instead NAMA and Mr. Kelleher should each bear the costs of both years on a 50/50 basis.

57. The Petitioner sought to argue that the jurisdiction of the court under s. 12 (B) (3) is not engaged. The essence of its argument was that it was only if the dissolution of the company had altered Mr Kelleher's position in a manner which is not remedied by the general restoration order made by the court that the jurisdiction is engaged. In my view that argument is not correct as a matter of principle. Moreover I can find no language in the statutory section to limit the operation of s. 12 (B) (3) in this way.

58. It is also argued by the Petitioner that the effect of the order sought by Mr Kelleher is to obtain an order for specific performance of a disputed agreement. However in my view, that is an overstatement. Firstly, the effect of the order which I am proposing to make is to put the parties back "as nearly as may be" into the position they were (as far as I can glean from the evidence) for the 2010 and 2011 accounts; secondly I am not proposing to make any order for specific performance of any agreement for the 2011 and 2012 accounts but rather to consider the counterfactual situation of what might have occurred had the company not been struck off.

59. The Petitioner also sought to argue that a refusal to make the order sought by Mr Kelleher does not preclude Mr Kelleher from pursuing the funding agreement with the Petitioner by separate proceedings in the ordinary way. However that is to ignore the manner in which this application came before the court. NAMA

appointed receivers the day before the company was struck off the register; NAMA brought the application to restore the company to the register so that it could protect its security and recover part of its debt; the company was restored to the register by order of the Court but this issue of dispute was held over for further argument. It would, in my view, be entirely wasteful of costs and court time that separate proceedings should be issued to resolve this very net issue in circumstances where the legislation specifically grants a jurisdiction to the High Court to decide such matters as part of a restoration application.

Conclusion

60. I would therefore conclude:

1. That NAMA/NALM should bear the costs of preparing the audit of accounts for the year ended 2010 and 2011.

2. That NAMA/NALM and the directors/Mr. Kelleher should bear the costs of preparing the accounts for the year ended 2012 and 2013 on a 50/50 basis.

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Judgment

Title: Middleview Limited & Companies Acts (No.2)

Neutral Citation: [2016] IEHC 143

High Court Record Number: 2015 59 COS

Date of Delivery: 01/29/2016

Court: High Court

Judgment by: Cregan J.

Status: Approved

[2016] IEHC 143

THE HIGH COURT

[2015 No. 59 COS]

IN THE MATTER OF MIDDLEVIEW LIMITED

AND

IN THE MATTER OF THE COMPANIES ACTS 1963 TO 2013

AND

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 12(B) OF THE COMPANIES (AMENDMENT) ACT 1982 AS INSERTED BY SECTION 46 OF THE COMPANIES AMENDMENT (NO. 2) ACT 1999

(NO. 2)

JUDGMENT (No. 2) of Mr Justice Cregan delivered on 29th day of January, 2016.

Introduction

1. On 21st December, 2015, I delivered my judgment in the above matter and I adjourned the matter on that date until 15th January, 2016 to permit the parties to consider the judgment.

2. On 15th January, 2016, counsel on behalf of the Petitioner – NAMA/NALM - made an application to me to review and revise my judgment in one particular matter.

Issue in this Application

3. The issue in this application is that in certain parts of my first judgment, I found that certain paragraphs of Mr. Malbasha's affidavit were incorrect and misleading. (Mr. Malbasha is an asset recovery manager within NAMA/NALM.) It was submitted by counsel for NAMA/NALM that these findings by the court were based on an erroneous understanding of the situation and that Mr. Malbasha had suffered some "reputational damage" as a result of these findings. The court was invited to reconsider this issue.

4. The issue which arose is that which is set out at paras. 18-23 of my judgment. For ease of reference, I set these out below:

> *"18. There is one issue about Mr. Malbasha's affidavit which is of concern to me. In the grounding affidavit of Ms. Margaret Magee sworn on behalf of NALM she refers to para. 12 of the petition. Paragraph 12 of the petition states that:*
>
> > *"The Petitioner is desirous of taking steps to recover the amounts due and to this end by deed of appointment dated [22nd March 2014] [sic] the Petitioner appointed Mr. Simon Coyle and Mr. Tom O'Brien of Mazars, Block 3, Harcourt Centre, Harcourt Road, Dublin 2 as joint receivers" ("the receivers") over the assets of inter alia the company.*
> >
> > *13. The company was struck off the Register of Companies on 2nd April 2014 for its failure to file annual returns in the Companies Registration Office. (Emphasis added.)*
>
> *19. In her affidavit Ms. Magee exhibits the deed of appointment of the receivers. This deed is dated 28th March, 2014. Moreover this deed of appointment is signed by Mr. Coyle and by Mr. O'Brien as receivers and dated 28th March 2014.*
>
> *20. However Mr. Malbasha in his affidavit stated:*
>
> *"At para. 4 of Mr. Kelleher's affidavit Mr. Kelleher avers that the company was in receivership at the time of strike off. Again this is simply incorrect. The Petitioner attempted to appoint receivers to the company in March 2014. However the company was stuck off the Register of Companies immediately before it could do so and the appointment could not proceed. In that regard Mr.*

> *Kelleher's averments in relation to any purported action or inaction taken on the part of receivers are entirely mistaken. The Petitioner only appointed receivers to the company when it was recently restored pursuant to a deed of appointment dated 12th March 2015."*
>
> *21. Again at para. 10 of his affidavit he states:*
>
> *"As explained at para. 7 above receivers were not appointed to the company before it was struck off."*
>
> *22. These averments are simply incorrect. It is clear on any view of the matter that NALM appointed receivers on 28th March 2014. NALM itself exhibited the deed of appointment of the two receivers. The deed of appointment is signed by both receivers and dated. It is also witnessed. The deed is also stated to be given under the common seal of National Asset Loan Management Ltd and delivered as a deed in the presence of certain persons and those persons have signed their signatures as authorised signatories.*
>
> *23. Thus it appears that Mr. Kelleher's averments that the company was in receivership at the time of strike off are correct and that Mr. Malbasha's averments are not only incorrect but positively misleading. The true position, insofar as I can ascertain from the documents, is that the receivers were appointed on 28th March 2014.*

Jurisdiction

5. A number of authorities have been opened to me by counsel for the Petitioner and I have considered these. They include *Silverstone Designs Ltd. v. Ryan* (Unrep. High Court, 28th February 2000, Smyth J.) *Bellville Holdings v. Revenue Commissioners* [1984] 1 ILRM 29 (Supreme Court) and *Re; L and B* [2013] UKSC 8 (a decision of the UK Supreme Court). These decisions establish that a judge is entitled to reverse his decision at any time before his order is drawn up and perfected if he believes he is wrong.

6. I should indicate that although I am of the view that courts should be reluctant to engage in such a process, it is more important that justice be done (and be seen to be done) and it was to ensure that no injustice had been done to Mr. Malbasha that I have considered again the Petition and the affidavit evidence in its totality.

Submissions of NAMA/NALM

7. Paragraph 4 of the written submissions made by NAMA/NALM in respect of this issue states as follows:

> *"In the present case, and as already indicated above, the Petitioner does not ask the Court to revisit the decision ultimately reached by the Court and referred to at para. 60 of the written judgment viz. that NAMA/NALM should bear the costs of preparing the audit of accounts for the year ended 2010 and 2011 and that NAMA/NALM and the*

Directors/Mr. Kelleher should bear the costs of preparing the accounts for the year ended 2012 and 2013 on a 50/50 basis. Rather what is proposed is that the court be asked to consider paras. 18-23 of the written judgment on the basis that the conclusions reached by the court at para. 23 are premised on an error as to the evidence actually before the Court. The issue is also touched upon in paras. 25, 38 and 59 of the judgment."

The correct position about the dissolution and strike off of the company

8. This submission by counsel in turn is based on the situation of when exactly the company was struck off and when it was dissolved. The CRO published in its Gazette a notice on Wednesday 2nd April, 2014. This notice stated as follows:

> *"Notice is hereby given pursuant to s. 12(3) of the Companies (Amendment) Act, 1982 as amended by section 46 of the Companies Amendment (No. 2) Act, 1999 that the names of the following companies were struck off the register on the date set out on the attached list and the companies are hereby dissolved."*

9. The company Middleview Ltd. was stated to be struck off on 28th March, 2014.

10. The company Middleview Ltd. is deemed to be dissolved on the date of the publication i.e. 2nd April, 2014 (see section 12(3) of the Companies Amendment Act 1982).

11. Counsel for NAMA/NALM submits therefore that, as a matter of fact, the company was struck off on 28th March, 2014 and was, in fact, dissolved on 2nd April, 2014. In my view, this is correct.

The Petition and Affidavit Evidence before the Court

12. I turn now to consider the Petition and affidavit evidence before the Court. The Petition of NAMA/NALM grounding the application to restore the company to the register stated as follows:

> *13. The company was struck off the Register of Companies on 2nd April 2014 for its failure to file annual returns in the Companies Registration Office." (Emphasis added).*

13. It is clear in the light of the above facts that this statement in the Petition is incorrect. The company was in fact struck off the Register of Companies on 28th March, 2014 and it was dissolved on 2nd April, 2014. This was the first error.

14. In addition the Petition states at para. 12:

> *"In circumstances where the monies due and owing by the company under the Modillion Agreement have not been repaid in accordance with its terms, the Petitioner is desirous of taking steps to recover the amounts due and to this end by Deed of Appointment dated 22nd March,*

> *2014, the Petitioner appointed Mr. Simon Coyle and Mr. Tom O'Brien of Mazars as joint receivers over the assets of, inter alia, the company."*

15. The Petitioner accepts that this date is incorrect and the Deed of Appointment is in fact dated 28th March, 2014. This was a second error in the Petition.

Affidavit of Margaret Magee

16. Ms. Margaret Magee, an employee of NAMA, swore the grounding affidavit for the Petition to restore the company to the register. At para. 2 of her affidavit she states as follows:

> *"I beg to refer to the Petition presented herein and confirm that I have read same and I believe the matters set out therein are true and accurate."*

She makes this averment, even though paragraphs 12 and 13 of the Petition are inaccurate. This is a third error.

17. At para. 6 of her affidavit Ms. Magee states as follows:

> *"I say that the company was dissolved on 3rd April, 2014 having been struck off involuntarily pursuant to section 12 of the Companies Amendment Act 1982 for failure to file the necessary annual returns to the CRO in respect of the years 2010 to 2013. I beg to refer to the Companies Office search dated 4th February, 2015 upon which marked with the letters MM3 I have signed my name prior to the swearing hereof."*

18. This is clearly a fourth error as the company was not dissolved on 3rd April, 2014. It was in fact dissolved on 2nd April, 2014 (and the exhibit refers to 2nd April, 2014).

19. At para. 11 of Ms. Magee's affidavit she exhibits a copy of the Deed of Appointment executed by the Petitioner appointing the receivers. As I pointed out in my first judgment, this Deed of Appointment is dated 28th March, 2014. It is signed by the receivers and by persons on behalf of the Petitioner. This Deed of Appointment is clearly dated the 28th March, 2014 and not the 22nd March, 2014 as stated by Ms. Magee earlier in her affidavit.

20. At Paragraph 12 of her affidavit she says:

> *"In relation to para. 13 of the petition I beg to refer to:*
>
> *'12.1 A photocopy of a notice upon which marked with the letters MM9, I have signed my name prior to the swearing hereof from the Companies Registration Office dated 2nd April, 2014 giving notice inter alia that the company is struck off the Register of Companies and dissolved."*

21. Thus there are a number of errors in Ms. Magee's affidavit which gives varying dates for the Deed of Appointment of the receivers and the date of strike off/and dissolution of the company.

Affidavit of Gareth Kelleher

22. The first affidavit of Gareth Kelleher sworn on the 13th March, 2015 states at para. 4:

> *"The Petitioner ultimately did not pay KPMG and the returns did not get filed. This occurred when they had sole control of the income of the company and following the appointment of Simon Coyle of Mazars as the receiver and manager on 27th March, 2014 they have had control of the books and records of the company [sic].*

23. This date - 27th March, 2014 - as the date of appointment of receivers is also not correct. The deed of appointment of the receivers is 28th March, 2014.

24. Thus, the situation before Mr. Malbasha swore his affidavit was:

> (1) The company was struck off on 28th March, 2014 (at the start of the day);
>
> (2) The Petitioner appointed receivers to the company on 28th March, 2014 at 6.00pm;
>
> (3) As is clear from later averments, the receivers wrote to the directors of the company on 31st March, 2014 saying that they had been appointed as receivers, relieving the directors of their powers over the assets of the company and asking the directors to transmit to them all the books and records of the company;
>
> (4) The CRO published its Gazette on 2nd April, 2014 and the company was dissolved as and from that date;
>
> (5) As is clear from later averments, this fact only became known to the receivers when they sought to lodge their notification of appointment as receivers in the CRO and the CRO drew their attention to the fact that the company had been dissolved on the 2nd April, 2014 and struck off on 28th March, 2014.

25. All of these facts were or ought to have been known to Mr. Malbasha when he swore his affidavit.

First Affidavit of Mr. Malbasha

26. At para. 8 of Mr. Malbasha's affidavit he states as follows:

> *"At para. 4 of Mr. Kelleher's affidavit, Mr. Kelleher avers that the company was in receivership at the time of strike off. Again this is simply incorrect. The Petitioner attempted to appoint receivers to the company in March 2014, however the company was stuck off the Register of Companies immediately before it could do so and the appointment could not proceed. In that regard Mr. Kelleher's averments in relation to any purported action or inaction taken on the part of receivers are entirely mistaken. The Petitioner only appointed receivers to the company when it was recently restored pursuant to a*

deed of appointment dated 12th March 2015."

27. This is the central paragraph which was the subject of my comments in paras. 18 to 23 of my first judgment.

28. However, Mr. Malbasha's affidavit at para. 8 must be read in the light of the Petition at para. 13 which states that:

> *"The company was struck off the Register of Companies on 2nd April 2014 for its failure to file annual returns in the Companies Registration Office."*

29. This paragraph was set out by me at para. 18 of my judgment. Moreover as stated above, Ms. Magee in her affidavit at para. 2 expressly confirmed the accuracy of all matters set out in the Petition (including the fact that the company was struck off the Register of Companies on 2nd April, 2014). Ms. Magee also exhibited the Deed of Appointment which is clearly dated 28th March, 2014.

30. There was no attempt by Mr. Malbasha to clarify that in fact the company was struck off on 28th March, 2014 and dissolved on 2nd April, 2014. Moreover there was no attempt by Mr. Malbasha in his affidavit to correct the error in the Petition at para. 13 or indeed any of the other errors in Ms. Magee's affidavit including the date of appointment of the receivers.

31. In particular, at para. 8 of Mr. Malbasha's affidavit he states:

> *"At para. 4 of Mr. Kelleher's affidavit Mr. Kelleher avers that the company was in receivership at the time of strike off. Again this is simply incorrect"*

In my view this is not just "simply incorrect". A full and proper explanation of all these events should have been put before the court on this issue at this time if Mr. Malbasha wished to do so.

32. Mr. Malbasha then stated:

> *"The Petitioner attempted to appoint receivers to the company in March 2014. However the company was struck off the Register of Companies immediately before it could do so and the appointment could not proceed."*

In my view that sentence is misleading. It is misleading to say that the Petitioner "attempted" to appoint receivers to the company in March 2014. The Petitioner did in fact appoint receivers to the company on 28th March, 2014. Moreover these receivers acted on foot of their appointment and wrote to the directors some days later on 31st March, 2014. It was only after the receivers became aware that the company was struck off that they realised they could not proceed. In my view, the tenor of paragraph 8, when taken as a whole, in the light of the Petition and the affidavit evidence of Ms. Magee, can only be described as inaccurate and misleading.

33. In my view, para. 8 is a misleading averment because it conveys the impression that NAMA intended to appoint a receiver to the company but that, before it could actually do so, it discovered that

the company had been struck off and was dissolved. In fact, the true position is that NAMA did appoint receivers on 28th March, 2014, these receivers acted on foot of this appointment from the 28th March, 2014 until some subsequent date (which date is not given) and then they realised that they could no longer proceed because the company had been struck off and dissolved. Thus there is a significant difference between the true situation and the situation as set out by Mr. Malbasha at paragraph 8 of his affidavit. This discrepancy between these two situations is, in my view, misleading.

34. Moreover the misleading nature of paragraph 8 was reinforced by the final sentence of para. 10 of Mr. Malbasha's affidavit wherein he states:

> *"As explained at para. 7 above, receivers were not appointed to the company before it was struck off."*

35. However, in my view, receivers were in fact appointed to the company by the Petitioner on the same day that the company was struck off - although the Petitioner itself did not become aware of this fact until some time later.

36. The key point in my judgment at paragraph 22 was that it seemed clear from the documents and affidavit evidence which were before me that NAMA appointed receivers on 28th March, 2014 and that NAMA itself could only have become aware of the date of dissolution and date of strike off at the earliest on 2nd April, 2014. It is clear therefore that NAMA did appoint receivers to the company on 28th March, 2014. It is also clear that the receivers took steps in the receivership to communicate with the directors on 31st March, 2014. The fact is that the receivership could not proceed because at some subsequent date (which date is not provided) the receivers were informed by the CRO (when they sought to notify the CRO of their appointment) that the company had been dissolved and had been struck off. The fact remains however that, in my view, the statements made at paragraph 8 of Mr. Malbasha's first affidavit are incorrect and misleading. Whilst I accept that Mr. Malbasha may not have intended to mislead the court, nevertheless the combination of errors in the Petition, Ms. Magee's affidavit and paragraph 8 of Mr. Malbasha's affidavit meant that the court could not but be misled as to the true state of affairs.

Mr. Kelleher's Second Affidavit

37. It is also instructive that Mr. Kelleher in his second affidavit dated 24th April, 2015 states at para. 6:

> *"6. Mr. Malbasha now resiles from the appointment of Simon Coyle and Tom O'Brien of Mazars as receivers and managers in March 2014. Mr. O'Brien wrote to us stating that he had been appointed and former employees and I cooperated with him in respect of the group companies and gave him control of the books and records of the companies including Middleview Ltd. and were of assistance where we could be. I beg to refer to a true copy of the letter received from the Receiver upon which marked with the letters GK1 I have signed my name prior to the swearing hereof."*

7. Nobody suggested they had not been appointed as receivers over all of Middleview's assets and were not acting as receiver for nearly a year. The first I heard of this suggestion was Mr. Malbasha's replying affidavit on 9th April, 2015. We received no notice of the alleged 2015 appointment save by way of the replying affidavit.

38. Mr. Kelleher also exhibits a letter from Tom O'Brien of Mazars one of the receivers to Middleview, dated 31st March, 2014 which states as follows:

"Dear Garrett,

Further to our telephone conversation earlier this morning I confirm that by Deed of Appointment dated 28th March, 2015 Simon Coyle and I were Appointed by NAMA as receivers and managers to the following companies

- Middleview Ltd.

... I understand that you are a director of each of the above companies. Please note that your powers over the assets which are the subject of our appointment have ceased as of the day of our appointment and you should take no further action in relation to the assets without our prior consent.

I would be obliged if you would forward to us any records, documents or property of the company you may have in your possessions."

Regards

Tom O'Brien, Mazars"

Mr. Malbasha's Second Affidavit

39. It was only after these documents had been revealed that Mr. Malbasha then sought to clarify the position in his second affidavit sworn on 7th May, 2015. In this affidavit he states:

"5. I beg to refer to paras. 6 and 7 of Mr. Kelleher's affidavit. By way of clarification, the Petitioner attempted to appoint receivers to the company on 28th March, 2014 and a deed of appointment was executed in this regard. However, the company was struck off the Register of Companies on 29th March, 2014 with notice of this appearing in the CRO Gazette for 2nd April, 2014, immediately after that deed of appointment was executed but prior to the filing of the statutory notification of the appointment of a receiver in the Companies Registration Office. As such the appointment could not proceed. The Petitioner only became aware that the appointment could not proceed when an attempt was made to lodge the statutory notification in the CRO at which point CRO informed the Petitioner that the appointment was void as

the company had been struck off prior to the filing of the statutory notification. The email dated 31st March, 2014 was sent by Mr. Tom O'Brien of Mazars prior to this and no steps were taken in the purported receivership. The Petitioner only appointed receivers to the company when it was recently restored pursuant to a deed of appointment dated 12th March, 2015." (Emphasis added).

40. Again I note that there is an error in paragraph 5 of this affidavit in that it states that the company was struck off the Register on 29th March, 2014 when in fact it was the 28th March, 2014. I also note that Mr. Malbasha does not provide any date as to when an attempt was made to lodge the statutory notification of the receivership in the CRO which is a critical date as to when the Petitioner became aware that the receivership could not proceed. However, more importantly, this belated clarification only came after Mr. Kelleher had taken issue with Mr. Malbasha's earlier affidavit and had in fact exhibited correspondence which established that the receivers were not only appointed but confirmed their appointment by writing to the directors relieving the directors of their responsibilities over the assets of the companies.

Conclusion

41. Having considered again the Petition and all of the affidavit evidence in this matter, having considered the relevant paragraphs of my judgment and the submissions of counsel for the Petitioner, I remain of the view that paragraphs 8 and 10 of Mr. Malbasha's first affidavit (particularly in the light of the errors in the Petition and Ms. Magee's affidavit) all combined to leave the court with a misleading impression of what had happened. Whilst I accept that Mr. Malbasha did not intend to mislead, nevertheless a misleading impression was given to the court by his affidavit evidence in the light of the Petition and the affidavit evidence of Ms. Magee.

42. In the circumstances I do not believe it is necessary or appropriate for me to review this part of the judgment as requested by the Petitioner.

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Judgment

Title:	National Asset Loan Management Limited -v- Kelleher
Neutral Citation:	[2016] IECA 118
Court of Appeal Record Number:	2015 172
Date of Delivery:	04/15/2016
Court:	Court of Appeal
Composition of Court:	Finlay Geoghegan J., Peart J., Irvine J.
Judgment by:	Finlay Geoghegan J.
Status:	Approved
Result:	Dismiss

Judgments by	Link to Judgment	Concurring
Finlay Geoghegan J.	Link	Peart J., Irvine J.
Peart J.	Link	Finlay Geoghegan J., Irvine J.

THE COURT OF APPEAL

CIVIL

Finlay Geoghegan J.
Peart J.
Irvine J.

Appeal No. 2015/172
NATIONAL ASSET LOAN MANAGEMENT LIMITED
PLAINTIFF/RESPONDENT

AND

GARRETT KELLEHER

DEFENDANT/APPELLANT

JUDGMENT delivered on the 15th day of April 2016 by Ms. Justice Finlay Geoghegan

1. This appeal raises an important point of procedure which does not appear previously to have been the subject of a written judgment. Further it is agreed between the parties that the point was not expressly adverted to in submission to the trial judge before judgment.

2. The point is as follows. Where, on an application by a plaintiff for summary judgment the defendant seeks leave to defend upon two grounds: (i) a pure defence and (ii) a defence by way of set off of a counterclaim for damages and the judge determines that the pure defence meets the arguable threshold, but the defence in reliance on the counterclaim does not, has the court in remitting the matter to plenary hearing with leave to defend upon the pure defence jurisdiction to preclude the defendant raising the counterclaim and if so, what are the criteria according to which such a decision should be made.

3. The issue arises in this appeal, upon the following facts. The plaintiff issued a summary summons seeking judgment for €46,834,472.35 pursuant to guarantees given by the defendant originally to Irish Bank Resolution Corporation Limited of facilities advanced to companies of which the defendant was the ultimate beneficiary.

4. The plaintiff brought a motion seeking entry to the Commercial List and summary judgment against the defendant in the usual way. The proceedings were entered in the Commercial List and a significant number of affidavits were exchanged on the application for summary judgment.

5. The defendant does not dispute the guarantees entered into nor the amounts owing on the guaranteed facilities. He asserted two defences to the claim against him:

> (i) the plaintiff is estopped from enforcing the guarantees by reason of representations made that if the defendant cooperated with the plaintiff, which he maintains he did, that it would not enforce the guarantees. This defence was referred to as the estoppel defence.
>
> (ii) the defendant as the ultimate beneficiary of companies collectively referred to by the plaintiff as the "Shelbourne Connection" has a counterclaim against the plaintiff for damages by reason of certain actions of the plaintiff which diminished the

> value of assets held by companies within the Shelbourne Connection such that the companies were unable to discharge the amounts due on the facilities and also the defendant as ultimate beneficiary is unable to discharge the amounts due under the guarantees. Alternatively it was contended that the amount of the damages recoverable on the counterclaim exceeded the value of the claim against which it might be set off.

High Court hearing and judgment

6. The summary judgment application was heard over two days in the High Court by Fullam J. upon significant affidavit evidence and exhibits. It was not in dispute that the defences sought to be raised had to meet the threshold of arguability or a *bona fide* defence in accordance with cases such as *Aer Rianta v. Ryanair* [2001] 4 I.R. 607.

7. Fullam J. delivered a written judgment on the 24th February, 2015, in which he identified the two defences raised and having analysed the estoppel defence, concluded that the defendant had an arguable defence on that ground. That finding was not in dispute before this Court.

8. The position in relation to the second ground of defence in reliance upon the counterclaim relating to the Chicago Spire is more complex.

9. The trial judge at paras. 42 and 43 of his judgment set out the defence being advanced and his initial analysis of same in the following terms.

> "42. The defendant's case is that the plaintiff recklessly sold the Spire loan at a gross undervalue for a price of $35 million when the face value of the loan was in excess of $90 million. He says that had the matter been handled properly the site would have realised the sum of $350 million which would have enabled him to clear his indebtedness in respect of the Spire loan and also his liabilities under the Cratloe and Modillion guarantees. Instead, as a result of the sale of the Spire loan in June, 2013, he has been deprived of the opportunity to clear his indebtedness under the Spire loan and the Cratloe and Modillion guarantees.
>
> 43. The effect of the plaintiff's contention is that he has a counterclaim for damages which is more than sufficient to offset against any liability under the guarantees in these proceedings. To succeed with such a counterclaim, the defendant acknowledges that he has to establish that ss.10, 11 and 12 of the Act of 2009 impose obligations on

> NAMA which are more onerous than the normal duties of a mortgagee as set out in *Silven Properties Limited v. RBS plc* [2004] 1 WLR 997 and approved by the Supreme Court (*sic*) in *Dellway*."

It was common case on appeal that the trial judge intended to refer to the High Court judgment of the Divisional Court in *Dellway Investments Limited v. NAMA* [2011] 4 I.R. 1 and in particular pp. 76 to 77 rather than the Supreme Court. Nothing turns on this.

10. The trial judge appears to have treated the second defence as one dependent on a counterclaim. He first considered the counterclaim asserted in reliance upon ss. 10, 11 and 12 of the National Assets Management Agency Act 2009 and at para. 49 of his judgment stated:-

> "In my view, these provisions do not impose additional duties on NAMA towards debtors, guarantors or mortgagors over and above the duties of an ordinary mortgagee in respect of the management and realisation of bank assets."

11. A question has arisen as to whether in the light of the above conclusion that issue is or is not to be considered *res judicata* between the plaintiff and the defendant herein. This was referred to rather than argued before this Court and it is not necessary to express any view on it for the purposes of the appeal. I only wish to indicate that for the purposes of deciding the appeal I am treating the decision of the trial judge as being that the defendant did not reach the *Aer Rianta* threshold of arguability on the issue as to whether ss.10, 11 and 12 of the Act of 2009 impose obligations on NAMA (or the plaintiff) which are more onerous than the normal duties of a mortgagee as set out in *Silven Properties Limited.*

12. Notwithstanding his conclusion on the 2009 Act, the trial judge then continued to consider the affidavit evidence in relation to the alleged sale of the Spire loan at an undervalue. Having done so at para. 56 of his judgment, he concluded:-

> ". . . It is clear from the evidence that, even if the Court accepted the defendant's submission, that the Act imposed additional obligations on the plaintiff, the sale of the Spire loan in June, 2013 could not have generated sufficient monies to enable the defendant clear his indebtedness arising from the guarantees subject of these proceedings.

In the circumstances, there is no reality in this defence."

13. The final conclusion of the trial judge was:-

> "57. Using the test prescribed by Hardiman J. in *Aer Rianta v. Ryanair Ltd.* [2001] 4 I.R. 607:

'Is it very clear the defendant has no case?"

> 58. I answer that in the negative in respect of the estoppel defence and in the affirmative in respect of the counter claim for damage to assets.

I will remit the case for plenary hearing on the first issue, namely that of estoppel."

14. The defendant on the 25th March, 2015, sought clarification, from the trial judge as to his entitlement to pursue in the plenary proceeding the counterclaim seeking damages for the alleged wrongful actions of the plaintiff. Counsel on his behalf informed this Court, as is apparent from the transcript of a hearing before the trial judge of the 25th March, 2015, that clarification was sought because they did not want to appear to be going behind his judgment on the summary judgment application in pleading a counterclaim. The submission made on behalf of the defendant was that the counterclaim was a claim which he was entitled to pursue pursuant to his constitutional right of access to the courts and that he could pursue it by a separate writ issued but wished to do so by way of counterclaim in the proceedings remitted for plenary hearing. On behalf of the plaintiff it was contended that the second defence advanced was always dependent on the counterclaim; hence even if the defendant were now permitted to pursue the counterclaim the plaintiff would be pleading that it was *res judicata*. The plaintiff further submitted that the only live issue permitted to remain in the proceedings was the defence of estoppel.

15. The trial judge agreed with the latter submission of counsel for the plaintiff that "on the basis of the judgment given on the 24th February, the only matter that can be pleaded either in defence or by way of counterclaim . . . is the question of estoppel".

16. It appears that following that hearing on the 25th March, the order of the 24th February, 2015, was perfected and provides:-

> "It is ordered that this action insofar as the point of estoppel is concerned do stand adjourned for plenary hearing as if these proceedings had been commenced by plenary summons."

Appeal

17. The defendant in the notice of appeal and in the written submissions contended that the High Court does not have jurisdiction to limit the defences which may be raised by a defendant once the court has made an order remitting the entire of the claim to plenary hearing. He did so primarily in reliance upon a judgment of Charleton J. in the High Court in

Galvin v. Souter Enterprises Limited [2010] IEHC 215, in which at para. 19, he stated that he was "not entitled to confine the defendants to particular defences". Nevertheless in doing so Counsel for the defendant recognised that a different view had been taken by Clarke J. in the High Court *in G.E. Capital Woodchester Limited v. Aktiv Kapital, Asset Investment Limited and Aktiv Kapital ASA* [2009] IEHC 512 and by me in the High Court in *Bussoleno Limited v. Kelly* [2011] IEHC 220; [2012] 1 ILRM 81 and by Cooke J. in *IBRC v. Halpin* [2013] IEHC 492.

18. The point, whilst not pressed was not abandoned at the oral hearing and I have therefore reconsidered the issue having regard in particular to the view expressed by Charleton J. in *Galvin v. Souter Enterprises* which I think may not have been drawn to my attention when I decided *Busoleno Limited v. Kelly* [2011] IEHC 220; [2012] 1 ILRM 81, in the High Court.

19. Having reconsidered the matter I remain of the view that where on an application for summary judgment the court decides that the defendant has raised an arguable defence to the entire claim such that the court decides to adjourn the full claim for plenary hearing the court may also limit the defences which may be pleaded to those which have met the threshold identified by the Supreme Court in *Aer Rianta v. Ryanair* and the judgments referred to therein. This conclusion stems from the nature of summary proceedings and the provisions of O. 37, of the Rules of the Superior Courts.

20. The summary summons procedure, in general, may be used where a plaintiff seeks to recover a debt or liquidated demand. As stated by Lavery J. in *Prendergast v. Biddle* (Unreported, Supreme Court, 31st July, 1957) the procedure "is provided in order to enable speedy justice to be done in particular cases where there is either no issue to be tried or the issues involved are simple and capable of being easily determined". Peart J. more recently has explained the procedure in *Motor Insurers Bureau of Ireland v. Hanley* [2006] IEHC 405, [2007] 2 I.R. 591, as being one which provides "a simple, informal, expeditious and inexpensive method of obtaining a final judgment". Whilst the procedure in Order 37 and case law relating thereto provides for such speedy justice or expeditious method of obtaining a final judgment in those cases where there is no issue to be tried, they also set out a procedure which permits a plenary hearing in relation at least to certain issues where a defendant, in the initial procedure raises a *bona fide* or arguable defence to part or all of the claim. The motion for liberty to enter final judgment or for summary judgment is the filter mechanism through which such balance is achieved.

21. Order 37, r. 1, requires the motion for summary judgment to be supported by "an affidavit sworn by the plaintiff or by another person who can swear positively to the facts showing that the plaintiff is entitled to the relief claimed and stating

that in the belief of the deponent there is no defence to the action". A defendant who wishes to show cause against such motion is required to do so pursuant to rule 3 by affidavit and such affidavit must state "whether the defence alleged goes to the whole or part only, and (if so) to what part, of the plaintiffs claim".

22. Order 37, r. 7 and 10, are most relevant to the Court's general jurisdiction on hearing the motion for summary judgment. These provide:

> "7. Upon the hearing of any such motion by the Court, the Court may give judgement for the relief to which the plaintiff may appear to be entitled or may dismiss the action or may adjourn the case for plenary hearing as if the proceedings had been originated by plenary summons, with such directions as to pleadings or discovery or settlement of issues or otherwise as may be appropriate, and generally may make such order for determination of the questions in issue in the action as may seem just.
>
> . . .
>
> 10. Leave to defend may be given unconditionally or subject to such terms as to give security, or time and mode of trial or otherwise as the Court may think fit."

23. Rule 8 makes express provision for the granting of judgment for part of a claim and permitting a defendant to defend only as to the residue of the plaintiff's claim. Rule 9 expressly permits judgment to be given against one defendant only and to remit a claim against other defendants who set up a good defence. Notwithstanding that rules 8 and 9 make express provision for those two situations it appears to me that the general jurisdiction given to the Court to give directions under rule 7 and under rule 10 to grant leave to defend "subject to such terms as to . . . or otherwise as the court may think fit" gives the Court discretion to grant leave to defend subject to terms which provide for a fair and efficient hearing for all parties of the issues in dispute having regard to the claim in the summary summons and any *bona fide* defence raised by the affidavits. Such an approach is in the interests of the good and fair administration of justice. Where a defendant in the affidavit sworn pursuant to O. 37, r. 3, purports to "show cause" in the sense to indicating the availability of two or more arguable or *bona fide* defences and upon the hearing of the motion the Court decides that only one defence is arguable or *bona fide*, then it is consistent with Order 37 and the filter procedure envisaged for claims permitted to be commenced by summary summons and the fair, efficient and cost effective administration of justice that the Court may impose terms restricting the defence to that which meets the *bona fide* or arguable threshold. They are the issues which

have been determined to be in dispute in the proceedings and which require a plenary hearing. To conclude otherwise would undermine the balance sought to be achieved by the procedure of Order 37.

24. Accordingly, in my view the trial judge herein was entitled on adjourning the plaintiff's claim to plenary hearing to impose a term as a condition of the leave to defend, that the defendant might only plead the defence which he decided met the *bona fide* threshold.

25. The further question is where, as in this instance, leave to defend in relation to one defence which is a pure defence is granted but a second defence in reliance upon an alleged entitlement to set off a counterclaim is not considered to meet the *bona fide* threshold may the Court not only preclude the second defence being pleaded but also impose a term precluding the defendant from raising the counterclaim as a pure counterclaim?

26. Counsel for the defendant submitted that even if the Court on hearing the motion for summary judgment may in remitting a summary claim for plenary hearing restrict the defences to a single defence it had no jurisdiction to preclude the bringing of the counterclaim by the defendant. He submits that pursuant to Order 37 the plaintiff's claim has now been remitted for plenary hearing "as if it had been commenced by plenary summons". Accordingly, he contends that the defendant may pursuant to O. 19, r. 2, plead with his defence a counterclaim. O. 19, r. 2 provides:

> "A defendant in an action may set-off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgement in the same action, both on the original and on the cross claim. But the Court may, on the application of the plaintiff before trial, if in the opinion of the Court such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof."

27. Counsel for the defendant acknowledges that the Court would have jurisdiction pursuant to O. 10, r. 2, to preclude the pursuit of the counterclaim in the present proceedings but submits that any such decision would have to be made subsequent to the delivery of the counterclaim and different considerations apply. Further he recognises that an application could be made by the plaintiff to strike out the counterclaim on the grounds that it discloses no reasonable cause of action pursuant to O. 19, r. 28 or the inherent jurisdiction of the court, but again it is submitted that different principles apply.

28. The real question appears to me to be whether the jurisdiction given to the court upon the hearing of an application for summary judgment pursuant to O. 37, r. 10 is sufficiently wide to permit it to make an order, as a condition of leave to defend, precluding a defendant setting up a counterclaim. My conclusion is that the court does have such a jurisdiction.

29. Order 19, sets out the rules which apply, in general, to pleadings. Order 37 applies specifically to summary proceedings. Further, O. 37, r. 7, whilst providing that the court may adjourn the case for plenary hearing "as if the proceedings had been originated by plenary summons" also expressly gives the court jurisdiction to make "such directions as to pleadings . . . as may be appropriate" and also more generally to make "such order for determination of the questions in issue in the action as may seem just".

30. In my judgment O. 37, rules 7 and 10, together give the Court a wide discretion to make orders in relation to pleadings including orders which both restrict defences which may be raised and also restrict the pursuit of a counterclaim where this appears appropriate for the fair determination of the plaintiff's claim having regard to the real or *bona fide* issues in dispute as determined by the claim in the summons and the decision made by the court at the time of the motion for summary judgment on the affidavit evidence in relation to the claim and any defence and counterclaim sought to be advanced by the defendant. In particular, where as in this instance the defendant has sought to advance a defence which is dependent upon an asserted entitlement to set off of a counterclaim and on the motion for summary judgment the High Court judge has determined that the substance of the counterclaim does not meet the *Aer Rianta* threshold then the Court has jurisdiction and is properly entitled to conclude that the plaintiff is entitled to have its claim against the defendant determined in proceedings where the only issues in the proceedings should be those which are required to be determined by reason of a *bona fide* defence which has met the requisite *Aer Rianta* threshold. Such an approach is consistent with the general powers given to the court pursuant to O. 37, r. 7 and 10 which appear aimed at ensuring that a claim which is of a type which may be brought by summary summons proceeds to final determination in an efficient and cost effective manner whilst having regard to the right of a defendant to pursue in a full plenary hearing either a defence which meets the *bona fide* threshold or in certain circumstances a counterclaim which also meets the same threshold both as to its substance and as to its entitlement to be set off against the plaintiff's claim.

31. The Court was referred to applicable principles set out by Clarke J. in the High Court in *Moohan v. S. & R. Motors (Donegal) Limited* [2007] IEHC 435, [2008] 3 I.R. 650 at p.656 where on an application for summary judgment the single defence advanced is one to set off a counterclaim or

cross claim. Whilst those principles do not determine the questions at issue on this appeal nevertheless the judgment is of assistance. It indicates, I would respectfully say correctly, that when as in these proceedings a defendant contends for a *bona fide* defence which is to set off a counterclaim or cross claim there are two separate questions which the court must address in considering whether the defence meets the *Aer Rianta* threshold. A court must consider both whether the connection between the plaintiff's claim and the counterclaim or cross claim of the defendant is such as to establish a *prima facie* entitlement of the defendant to set off in equity the amount recoverable on the counterclaim and also whether or not the substance of the counterclaim itself reaches the arguable or *bona fide* threshold. Both questions must be answered in favour of the defendant to establish a *bona fide* defence. Unless the counterclaim or cross claim itself meets the *Aer Rianta* threshold irrespective of the position in relation to set off it cannot constitute a *prima facie* defence.

32. In his judgment Fullam J. considered the substance of the counterclaim and concluded (at minimum) that it did not meet the *Aer Rianta* or *bona fide* threshold. In those circumstances it was unnecessary for him to consider in any detail the entitlement to set off any amount which might be recoverable pursuant to the alleged counterclaim.

33. The parties accept that they did not make submissions to the trial judge as to the consequences of his finding that the estoppel defence met the *Aer Rianta* threshold, but concluding that the defence reliant upon the counterclaim did not. Obviously, it would have been preferable that the parties had considered and made submissions on such an outcome at the first hearing. If that had been done the trial judge would have had the opportunity of considering explicitly what is undoubtedly a separate and distinct question as to whether in addition to restricting the defences to the single estoppel defence he should also make an order precluding the defendant from making any counterclaim in the proceedings and in particular the counterclaim which he had rejected as meeting the *Aer Rianta* threshold.

34. The parties indicated to this Court, that if it found that there was jurisdiction to make an order pursuant to O. 37, preventing the defendant raising a counterclaim in the proceedings, that the question of whether such a restriction should be imposed on the facts herein should not be remitted to the High Court but that this Court should now determine the issue on this appeal.

35. In summary the defendant submits that the facts upon which he proposes relying for the estoppel defence includes facts relating to the sale of the Chicago Spire loan and that there is therefore a significant potential overlap between the factual basis of the defence he is permitted to pursue and the counterclaim in respect of which he submits he has a constitutional right of access to the courts and which he could

now pursue in separate proceedings. The plaintiff disputes this and refers not only to the issues raised by the 2009 Act and the position of the plaintiff but also to further objections it made in the High court to the counterclaim being sought to be advanced by the defendant. These include that the assets which it is alleged were diminished in value are not assets personally owned by the defendant but by companies which are separate legal persons and in whom any such alleged claim vests.

36. In my judgment, the counterclaim which the defendant seeks to pursue raises a significant number of issues both legal and factual which do not arise on the estoppel defence as pleaded and the Reply delivered thereto. It appears probable that if the defendant were permitted to pursue the counterclaim in the proceedings it would greatly increase the issues, both legal and factual and hence increase the costs and time required to hear and decide the proceedings. In circumstances where the trial judge concluded, at minimum, that the substance of the counterclaim did not meet the *Aer Rianta* threshold and having regard to the nature of the counterclaim and the nature of the plaintiff's claim and the fact neither the guarantees nor the amounts are in dispute I have concluded that it is in the interest of justice that the plaintiff's claim be determined in proceedings where the only issues which may be pursued are those pursuant to the estoppel defence which is considered to have met the *Aer Rianta* threshold.

37. Accordingly, I would dismiss the appeal.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	
IRISH BANK RESOLUTION CORPORATION LIMITED (IN SPECIAL LIQUIDATION),	Chapter 15
Debtor in a foreign proceeding.	Case No. 13-12159 (__)

VERIFIED PETITION UNDER CHAPTER 15 FOR RECOGNITION OF A FOREIGN MAIN PROCEEDING

Kieran Wallace and Eamonn Richardson, the duly appointed and authorized foreign representatives (together, the "**Foreign Representatives**" or "**Special Liquidators**," each a "**Foreign Representative**" or "**Special Liquidator**") of Irish Bank Resolution Corporation Limited ("**IBRC**" or the "**Debtor**"), which is subject to a liquidation proceeding in Ireland (the "**Irish Proceeding**"), by and through their undersigned counsel, respectfully submit this verified petition (the "**Petition for Recognition**") together with the form chapter 15 petition of the Debtor filed contemporaneously herewith (the "**Chapter 15 Petition**") for recognition as "foreign representatives" of IBRC and for recognition of the Irish Proceeding as a "foreign main proceeding" under chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**").

PRELIMINARY STATEMENT

1. IBRC, a state-owned banking entity, was created on July 1, 2011 under the Credit Institutions (Stabilisation) Act 2010 (the "**Credit Stabilisation Act**") as the successor to Anglo Irish Bank Corporation Limited ("**Anglo**") and Irish Nationwide Building Society ("**INBS**"), which was merged into Anglo on the same day. IBRC's registered office was, prior to, and has been since, the commencement of the Irish Proceeding, located in Ireland.

2. On February 7, 2013, the Irish Minister for Finance (the "**Finance Minister**") issued the Special Liquidation Order (the "**Special Liquidation Order**") pursuant to section 4 of the Irish Bank Resolution Act, 2013 (the "**Bank Resolution Act**"), which appointed Kieran Wallace and Eamonn Richardson as the joint Special Liquidators for IBRC and authorized them to liquidate and wind up IBRC in an orderly manner. Under section 231(2)(i) of the Irish Companies Act 1963, the Special Liquidators have the authority to do all things that may be necessary for winding up the affairs of IBRC and distributing its assets. The Special Liquidators have determined that the relief requested in the Petition for Recognition is necessary for an orderly winding-up of IBRC, to bind IBRC's U.S. creditors to the Irish Proceeding and to protect IBRC's U.S. assets from any enforcement actions by individual creditors.

3. In this Petition for Recognition, the Foreign Representatives seek recognition of themselves as the "foreign representatives" and of the Irish Proceeding as a "foreign main proceeding" under section 1515 of the Bankruptcy Code.

BACKGROUND

A. IBRC's Business

4. IBRC is the successor of Anglo and INBS. Anglo was established in Dublin in 1964 and was at one time the third largest financial institution in Ireland. Anglo provided business banking, treasury and wealth management services to retail, corporate and institutional customers. It had more than 1,000 employees and operated in various jurisdictions, including Ireland, the Czech Republic, Luxembourg, Jersey, Germany, the United States, the United Kingdom, the Isle of Man and Belgium.

5. INBS was headquartered in Dublin, Ireland and was founded in 1873. It was originally a mutual building society that focused historically on residential real estate lending.

However, in the early 2000s, INBS became more involved in commercial real estate lending. Its business operations mainly targeted customers in Ireland and the United Kingdom.

6. The businesses of Anglo and INBS were heavily exposed to the property market, primarily in Ireland. As a result of the steep decline in property prices combined with the liquidity crisis suffered in the Irish and global financial markets in 2008–2009, both the financial positions of Anglo and INBS deteriorated significantly.

7. Despite various measures taken by the Irish government, market confidence in Anglo and INBS continued to decline and the banks continued to experience hemorrhaging of funds and rating downgrades. As a result, the Irish government decided that it was necessary to nationalize Anglo and INBS. The Anglo Irish Bank Corporation Act 2009 was signed into law on January 21, 2009, under which all of the shares in Anglo were transferred to the Finance Minister. Similarly, in 2010, the Irish government injected €2.7 billion in INBS in exchange for a 100% ownership interest in INBS.

8. In December 2010, the Irish legislature enacted the Credit Stabilisation Act to provide a legal basis for the restructuring and stabilization of the Irish banking system as agreed in the joint European Union/International Monetary Fund Programme of Financial Support for Ireland. This legislation granted the Finance Minister an extensive range of restructuring powers with respect to each of the Irish national banks that received financial support from the Irish state, including Anglo and INBS.

9. In February 2011, the Finance Minister used his powers under the Credit Stabilisation Act to begin the process of merging Anglo and INBS into a new entity, the Irish Bank Resolution Corporation Limited. Anglo and INBS were merged into IBRC on July 1, 2011, and all assets and liabilities transferred to IBRC.

10. At the time of its formation, IBRC's primary objectives as a wind-down and asset recovery organization were, among other things, to maximize the recovery of the commercial loan book, work out the residential mortgage book which it acquired from INBS and sell the portfolio of properties that comprised the former INBS branch network, in an effort to maximize returns for the Irish taxpayer and minimize capital losses suffered by the Irish government as its sole shareholder. In accordance with commitments made by IBRC and the Irish government to the European Commission, IBRC is prohibited from participating in the new lending or deposit markets.

B. IBRC's Assets and Liabilities

11. IBRC's principal asset consists of its loan book, which was valued at approximately at €25 billion as of June 2012. Approximately 70% of IBRC's loans were made to Irish borrowers, governed by Irish law and managed and held in Ireland.

12. IBRC's loan book, the vast majority of which are loans governed by Irish law, comprised commercial development loans, residential development loans, business banking loans and residential mortgages. In contrast, less than 5% by value of the loan book is governed by U.S. law. In the United States, commercial lending to investment and development properties constituted approximately two-thirds of the U.S. loan book. The other one-third of the U.S. loan book consisted of loans made to residential developers. There were no significant loans made in the business banking or residential mortgage sectors of IBRC's U.S. loan book.

13. As of June 30, 2012, IBRC had total liabilities of approximately €50 billion, over 90% of which was owed to the Central Bank of Ireland (the "**CBI Debt**"). In March 2013, the Central Bank of Ireland ("**Central Bank**") sold and assigned its interest in the CBI Debt to National Asset Resolution Limited, which is a subsidiary of the National Asset Management Agency ("**NAMA**"). Currently, approximately 70% of IBRC's other creditors, parties-in-interest

and those who would be most affected by the Irish Proceeding are located in Ireland. Currently, as the Irish Proceeding progresses, professionals assisting in the wind up of IBRC have become one of its largest categories of creditors.

14. In addition, IBRC issued the following outstanding debt:

Outstanding Senior Bonds

Debt Instrument	Principal	Maturity Date	Currency
6th Supplemental Trust Deed dated May 24, 2007	25,000,000	11/29/2013	Bulgarian Lev
6th Supplemental Trust Deed dated May 24, 2007	100,000,000	6/13/2017	Hong Kong Dollar
6th Supplemental Trust Deed dated May 24, 2007	2,000,000	4/23/2018	Euros
7th Supplemental Trust Deed dated May 23, 2008	25,000,000	7/22/2013	Euros
2nd Supplemental Trust Deed dated July 15, 2005	20,000,000	11/10/2015	Euros
7th Supplemental Trust Deed dated May 23, 2008	50,000,000	7/4/2013	Euros
6th Supplemental Trust Deed dated May 24, 2007	4,000,000	2/15/2016	Euros

Outstanding Subordinated Notes

Debt Instrument	Principal	Maturity Date	Currency
1st Supplemental Trust Deed dated August 15, 2002	18,010,000	6/25/2014	Euros
Private Placement Agreements and the Note Purchase	165,000,000	9/29/2015	U.S. Dollars

Agreement dated September 28, 2005[1]			
Private Placement Agreements and the Note Purchase Agreement dated September 28, 2005	35,000,000	9/29/2017	U.S. Dollars
3rd Supplemental Trust Deed dated May 26, 2006	40,552,000	6/21/2016	Euros
6th Supplemental Trust deed dated May 24, 2007	59,780,000	6/19/2017	Euros

C. IBRC's Capital Structure

15. IBRC is the parent company to more than 100 directly and indirectly wholly-owned subsidiaries organized under the laws of various jurisdictions, including the United States. A simplified corporate organization chart is attached as Exhibit A to the Declaration of Kieran Wallace in Support of Verified Petition Under Chapter 15 For Recognition of a Foreign Proceeding (the "**Wallace Declaration**").

16. IBRC owns directly and indirectly more than 30 subsidiaries organized under the laws of various jurisdictions in the United States. Pagnol Limited, one of IBRC's wholly-owned subsidiaries, owns IBRC Boston Corporation, IBRC New York Corporation, and IBRC Chicago Corporation. Each of those entities owned and operated a representative office of Anglo in Boston, New York and Chicago, respectively. Other than certain intercompany loans and transactions, no loans were made by any of these three entities. IBRC at all times issued loans,

[1] The Note Purchase Agreement dated 28 September 2005 (the "**Note Purchase Agreement**") is governed by New York law pursuant to which Anglo issued $165 million of Series A Subordinated Notes due 29 September 2015, and $35 million of Series B Subordinated Notes due 29 September 2017 (collectively, the "**Notes**"). The Notes are unsecured and subordinated in right of payment to ordinary creditors, including depositors of IBRC. Interest payments on the Notes were due on 29 March 2013, and 29 June 2013, subject to a seven-day grace period for payment not made on those dates. As of the date hereof, the interest payments for the last two quarters have not been made to the holders of the Notes. No holder of the Notes has commenced litigation against IBRC for failure to make such interest payments or taken other steps to recover unpaid amounts.

while IBRC Boston Corporation, IBRC New York Corporation and IBRC Chicago Corporation provided marketing, loan administration and other support services in relation to the making of loans by IBRC in the United States.

17. As of the date hereof, IBRC Chicago Corporation, IBRC New York Corporation and IBRC Boston Corporation do not hold any assets. The Chicago office was closed in December 2009, the New York office was closed in January 2012 and the Boston office was closed in September 2012 in conjunction with the sale of substantially all of IBRC's U.S. loan portfolio. However, certain of the loans in the U.S. loan portfolio (the "**Remaining U.S. Loans**") were not sold because the applicable loan documents required the consent of the borrower for loan assignment. IBRC was unable to obtain such consent at that time. The Remaining U.S. Loans were transferred to IBRC's Dublin and London offices for management when the Boston office closed in 2012.

D. The Irish Proceeding

18. The Irish legislature passed the Bank Resolution Act in the early hours of February 7, 2013, and it was signed into law by the Irish President shortly afterward. The purposes of the Bank Resolution Act include winding up IBRC in an orderly and efficient manner to benefit the public interest and seeking to end the exposure of Ireland and the Central Bank to IBRC. Later that day, the Finance Minister issued the Special Liquidation Order in accordance with section 4 of the Bank Resolution Act, under which IBRC was placed into special liquidation and the Foreign Representatives were appointed as IBRC's joint Special Liquidators.

19. The Special Liquidation Order placed an immediate stay on all proceedings against IBRC. Currently, no further actions or proceedings can be issued against IBRC without the consent of the High Court of Ireland, but the terms and conditions of mortgages, loans and

other products provided to IBRC customers remain intact and unaffected by the Special Liquidation Order. Following the commencement of the Irish Proceeding, IBRC is no longer a licensed bank. Instead, IBRC has been granted permission by the Central Bank to carry out certain banking operations that are appropriate to an orderly winding up of a credit institution.

20. Following their appointment, the Special Liquidators were tasked with conducting an orderly winding up of IBRC in accordance with the Bank Resolution Act, the Ministerial Instructions issued on February 7, 2013, May 10, 2013 and July 20, 2013 by the Finance Minister pursuant to section 9 of the Bank Resolution Act (the "**Ministerial Instructions**") and applicable Irish law. Shortly after the commencement of the Irish Proceeding, the Special Liquidators sent a letter to all of IBRC's known creditors notifying them of the issuance of the Special Liquidation Order and prescribing the manner by which they should file claims against IBRC. The Special Liquidators are obliged to continue to keep all creditors informed of the progress of the Irish Proceeding as required under the European Communities (Reorganisation and Winding Up of Credit Institutions) Regulations, 2011.

21. As part of the Irish Proceeding, the Special Liquidators are responsible for overseeing the sales and valuation process in respect of IBRC's loan book. Specifically, the Special Liquidators have been directed to appoint independent appraisers to complete a valuation of IBRC's assets and liabilities. Subsequently, all assets will be offered for sale to the highest bidder whose bid equals or exceeds the value as determined by the independent appraisers (the "**Valued Price**"). If bids received do not at least match the Valued Price, the assets will be sold to NAMA at the Valued Price.

22. Since their appointment, the Special Liquidators have taken significant steps towards preparing for the sale of IBRC's assets, including its loan book. In this regard, the

Special Liquidators have engaged the services of independent professional appraisers for the purpose of valuing IBRC's loan book and assets. The Special Liquidators have also engaged, among others, legal and property advisors to conduct due diligence of IBRC's loan book and collateral securing the loans. The Special Liquidators are currently in the process of developing a framework strategy for the marketing and sale of IBRC's assets.

23. This Chapter 15 Petition is being filed to assist in an orderly winding-up of IBRC and to maximize recoveries to, and provide for an equitable distribution of value among, all creditors. Please refer to the Wallace Declaration and the Declaration of Mary Traynor in Support of Verified Petition Under Chapter 15 For Recognition of a Foreign Proceeding (the "**Traynor Declaration**"), which are incorporated and made a part of this Petition for Recognition as if restated herein.

24. There are no other foreign proceedings that have been filed by, regarding or against IBRC and which are pending.

JURISDICTION AND VENUE

25. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1334.

26. Venue is proper in this district pursuant to 28 U.S.C. § 1410.

27. The statutory predicates for the relief sought herein are sections 105, 1504, 1507, 1515, 1517, 1520 and 1521 of the Bankruptcy Code.

RELIEF REQUESTED

28. The Special Liquidators hereby seek an order, substantially in the form attached hereto as **Exhibit A**, granting recognition and protection pursuant to sections 105, 1504, 1515, 1517 and 1520 of the Bankruptcy Code to the effect that:

(a) The Special Liquidators are each a duly appointed "foreign representative" of IBRC, as that term is defined in section 101(24) of the Bankruptcy Code.

(b) The Irish Proceeding is granted recognition as a "foreign main proceeding," as defined in section 1502(4) of the Bankruptcy Code.

(c) Upon recognition, IBRC shall be entitled to the protections of section 1520(a) of the Bankruptcy Code and such other and further relief as is appropriate under the circumstances pursuant to sections 105(a) and 1507 of the Bankruptcy Code.

GROUNDS FOR SUCH RELIEF

29. For the reasons more fully discussed in the Memorandum of Law in Support of IBRC's Verified Petition under Chapter 15 For Recognition of a Foreign Main Proceeding filed contemporaneously herewith, the Irish Proceeding is entitled to recognition as a "foreign main proceeding" under section 1517 of the Bankruptcy Code because:

(a) the Irish Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code;

(b) the Irish Proceeding is a "foreign main proceeding" within the meaning of section 1502(4) of the Bankruptcy Code because the Irish Proceeding is pending in the location of the center of main interests for IBRC;

(c) each of the Special Liquidators is a "person" within the meaning of section 101(41) of the Bankruptcy Code and a "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code;

(d) the Chapter 15 Petition meets the requirements of sections 1504 and 1515 of the Bankruptcy Code; and

(e) recognizing the Irish Proceeding would not be manifestly contrary to the public policy of the United States, as contemplated by section 1506 of the Bankruptcy Code.

NOTICE

30. Notice to the parties in accordance with Bankruptcy Rule 1011(b), 2002(q)(1) and 9007 will be provided pursuant to the accompanying Application Scheduling Recognition Hearing and Specifying Form and Manner of Notice.

31. The Foreign Representatives believe that such notice and service constitutes reasonable and proper notice under the circumstances and that no other or further notice is necessary or appropriate.

NO PRIOR REQUEST

32. No previous request for relief requested herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the Foreign Representatives respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: August 26, 2013
Wilmington, Delaware

Respectfully submitted,

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Attorneys for the Foreign Representatives of Irish Bank Resolution Corporation Limited

VERIFICATION OF PETITION

Kieran Wallace, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury under the laws of the United States of America as follows:

I am the foreign representative of Irish Bank Resolution Corporation Limited, and have full authority to verify the foregoing Petition for Recognition.

I have read the foregoing Petition for Recognition, and I am informed and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 26 day of August, 2013
in Dublin, Ireland

Kieran Wallace

Foreign Representative of the
Irish Bank Resolution Corporation Limited

National Asset Management Agency

NAMA BOARD MEETING

12th March 2015

AGENDA ITEM: 18

RECORDS MANAGEMENT UPDATE

PRESENTER: Martin Whelan

FOR BOARD DECISION

NAMA is committed to managing all records created and held by the Agency (including records created by members of the Board, Board committees and by NAMA officers) in accordance with best practice in records management. The NAMA Records Management Policy provides a statement of intent and overall guidance regarding NAMA's approach to records management.

In accordance with this Policy, NAMA is in the process of carrying out a review of the management of its electronic records (email and file). As part of this review, it is necessary to consider email records created by officers of NAMA. It should be noted that current policy stipulates that emails of long-term value be filed in the appropriate corporate document repository.

In that context, it is recommended that the Board resolves to approve the proposal that email records of NAMA officers be deleted one year after their departure from the Agency. Approval is also sought to apply this proposal retrospectively to the email records of former NAMA officers.

The rationale for retention of email records for one year is for the purpose of ensuring business continuity. The proposed policy is in line with the approach adopted by similar organisations in the public and private sector.

Appendix 1: Records Classification and Retention Scheme

As set out under Section 5 of this Policy, a key element of records management is an organisational records classification scheme which provides for the categorisation of records by reference to their importance, stipulates appropriate retention periods and facilitates an efficient and effective disposal process.

During its meeting of 12 December 2013, the NAMA Board approved a Records Management Framework which includes the Records Classification Scheme set out below.

For the purposes of records retention, NAMA will classify its records into one or other of the following four categories:

A. Retain for archival purposes
B. Retain (at minimum) until dissolution of NAMA[1]
C. Retain for a set number of years prior to destruction
D. Short-term retention prior to destruction

Examples of records falling into Categories A and B above include:

- All final versions of papers submitted to Board, Board committees and formal Executive meetings, in addition to the minutes of such meetings
- Significant items of NAMA correspondence with Ministers, with Government Departments and with other State bodies
- All NAMA publications, including Section 53, 54 and 55 reports, press statements and major public addresses
- Key documents relating to the establishment of NAMA that were created prior to December 2009

[1] At some stage prior to the dissolution of NAMA, the NAMA Board will decide whether records which fall into this category should be transferred to the National Archives.

- Key records acquired by NAMA from the Participating Institutions as part of its loan acquisition process
- Key documents relating to debtors, including business plans, IBR reviews, Strategic Credit Reviews, credit applications and important items of correspondence
- Key records relating to completed property or loan sale transactions

Examples of records falling into Category C above include:

- Records supporting NAMA's financial statements
- Records relating to procurement
- Records relating to the performance of Participating Institutions and service providers in the provision of services to NAMA
- Constituency related correspondence from Oireachtas members through oir@nama.ie

Examples of records falling into Category D above include:

Internal correspondence or correspondence with external parties which is of no long-term business, operational, legal or historical value. Examples of such records include correspondence through NAMA's dedicated email address for members of the public, info@nama.ie; routine internal and external correspondence of no long term or business value, draft or preliminary versions used in the preparation of final records[2] etc.

[2] Where drafts record significant policy changes, they will be retained.

Appendix 3: Records Disposal Procedure

1. Purpose

The purpose of the following is to provide guidance on the routine destruction of records which are not considered to have long-term business, operational, legal or historical value, i.e. records which are not required to be retained for archival purposes or until the dissolution of NAMA.

2. Scope

This document relates to all such records created and used by the NAMA, regardless of format or medium.

3. Background

The large volume of records created and received by NAMA on a daily basis fall into one or other of the following two categories:

- Records of on-going value, created in response to a business, operational or legal requirement (records outlined in Appendix 1, Category A (retain for archival purposes) and Category B (retain (at minimum) until dissolution of NAMA). These should be retained as per the Records Retention Schedule.

- Records created and received in the course of business activities, which have a short-term or facilitative significance, and which are not considered to have long-term value (records outlined in Appendix 1, Category C (retain for a set number of years prior to destruction) or Category D (short-term retention prior to destruction). This procedure deals with these types of records.

4. Examples of Records

Examples of records for destruction include records prepared without an expectation that they will serve as formal or final records. They are not required to meet statutory obligations or to support operational or administrative functions and can be destroyed once they have served their purpose or been superseded by later versions. Listed below are examples of such records. This list is not prescriptive or exhaustive. Users should assess each record on an individual basis, considering the use and context in each case. If there is any doubt as to whether the item constitutes a record, it should be included in the formal record keeping system.

Examples Include:

- Routine internal and external correspondence (electronic and paper) of no long term or business value.
- Draft documents (other than those which record significant policy changes)
  - Working Papers which are no longer required as evidence to document business activities as they have been superseded by subsequent or final versions.
  - Duplicate copies.
  - Information notices – to be retained only by the originating unit
- Transmission documents e.g. cover letters.
- Superseded address and distribution lists.
- Published material received from external sources

5. Secure Destruction:

As is the case with all business-related information, records falling under the scope of this procedure should be destroyed in a secure and confidential manner. There is no requirement to maintain a list of such records that have been destroyed.

NATIONAL ASSET MANAGEMENT AGENCY ACT 2009

(the "**Act**")

Certificate under Section 108 of the Act

This certificate is given pursuant to Section 108 of the Act. Terms used in this certificate will bear the same meaning as in the Act unless the context otherwise so admits or requires.

Pursuant to Section 108 of the Act, National Asset Loan Management Limited ("**NALM**") (a NAMA group entity under the Act) hereby certifies that the bank assets consisting of the following (the "**Bank Assets**");

i. The loan accounts referred to in the Schedule to this Certificate;

ii. Facility Agreement dated 16 June 2005 and made between Anglo Irish Bank Corporation plc of the one part and CWD Properties Limited of the other part;

iii. Deed of Guarantee and Indemnity dated on or about 16 June 2005 and made between Anglo Irish Bank Corporation plc of the one part and Garrett Kelleher of the other part;

iv. Senior Facilities Agreement dated 19 December 2007 as amended and/or restated on 22 April 2008, 4 June 2008, 10 July 2008 and 10 November 2009 and made between Anglo Irish Bank Corporation plc of the one part and Knights Properties Limited, Riband Investments Limited, Middleview Limited, Shamrock Building Company Limited, Shelbourne Properties Limited, Cuprum Properties Limited, Dirstil Limited, Warbler Limited, Turson Limited and Modillion Limited of the other part; and

v. Deed of Guarantee and Indemnity dated 19 December 2007 and made between Anglo Irish Bank Corporation plc and Garrett Kelleher

were transferred to NALM in accordance with Part 6 of the Act on or about 1 November 2010 and that accordingly the Bank Assets are held by NALM as at the date hereof.

Dated: 16 July 2014

PRESENT when the **COMMON SEAL** of **NATIONAL ASSET LOAN MANAGEMENT LIMITED** was affixed hereto:

PAULA FLINTER
Authorised Signatory

APPROVED FOR SEALING

SARAH CLARKE
Company Secretary

SCHEDULE

Cuprum Properties Limited	Anglo Irish Bank Corporation	06004713 02494900 1402/506039/08
Cuprum Properties Limited	Anglo Irish Bank Corporation	06004711 02494897 1402/506039/07
Cuprum Properties Limited	Anglo Irish Bank Corporation	06004735 02511365 1402/506039/09
Shelbourne Properties Limited	Anglo Irish Bank Corporation	06004710 02494828 1402/408201/02
Shelbourne Properties Limited	Anglo Irish Bank Corporation	06004709 02494825 1402/408201/01
Turson Limited	Anglo Irish Bank Corporation	06004712 02494899 1402/504321/07 and 06
Knights Property Limited	Anglo Irish Bank Corporation	06004706 02494815 1402/408203/01
Knights Property Limited	Anglo Irish Bank Corporation	06004728 02502443 1402/408203/02
Modillion Limited	Anglo Irish Bank Corporation	06004703 02494227 1402/512867/02
Modillion Limited	Anglo Irish Bank Corporation	06004704 02494664

		1402/512867/03
Modillion Limited	Anglo Irish Bank Corporation	06004416 02973114 n/a
Dirstil Limited	Anglo Irish Bank Corporation	06004714 02494924 1402/503627/03
Dirstil Limited	Anglo Irish Bank Corporation	06004727 02502441 1402/503627/04
Warbler Limited	Anglo Irish Bank Corporation	06004707 02494816 1402/408202/01
Warbler Limited	Anglo Irish Bank Corporation	06004708 02494819 1402/408202/02
CWD Properties Limited	Anglo Irish Bank Corporation	06004490 02283733 1402/217389/01