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Doc#: 0528403011 Fee: \$48.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/11/2005 09:59 AM Pg: 1 of 13

Execution Copy

Prepared by and, after recording, return to:  
David L. Dubrow, Esq.  
c/o Arent Fox PLLC  
1675 Broadway  
New York, NY 10019

## AMENDED AND RESTATED ASSIGNMENT OF LEASES AND RENTS

This Amended and Restated Assignment of Leases and Rents (as may be amended, restated, modified or supplemented from time to time, the "Assignment") is made as of October 3, 2005, by **OLYMPIA FIELDS SENIOR HOUSING, I.L.C.** (together with its successors and assigns, the "Assignor" or "Operator") to **FANNIE MAE**, a corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C. §1716 *et seq.*, as amended from time to time (together with its successors and assigns, the "Assignee"), and amends and restates in its entirety that certain Assignment of Leases and Rents (the "Original Assignment"), made as of February 6, 2004 by Assignor to Assignee.

### RECITALS:

A. Pursuant to the CNL Senior Lifestyle Master Agreement, Lender and Fannie Mae established a \$163,000,000 Credit Facility in favor of CNL Senior Lifestyle Borrower.

B. Pursuant to the CNL Horizon Bay Master Agreement, Lender and Fannie Mae established a credit facility of \$82,235,000 in favor of CNL Horizon Bay Borrower.

C. CNL Retirement HB2 A Pack, LP, a Delaware limited partnership (together with its successors and assigns, "Landlord" or "Borrower"), Lender, Fannie Mae and other signatories thereto are consolidating, amending and restating the CNL Horizon Bay Master Agreement and the CNL Senior Lifestyle Master Agreement by entering into that certain Second Amended and Restated Master Agreement, dated as of the date hereof, by and among Landlord, Lender, Fannie

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Mae, and certain other signatories thereto (as amended, restated, modified or supplemented from time to time, the "Master Agreement").

D. Landlord's obligations under the Master Agreement are secured by that certain Amended and Restated Multifamily Mortgage, Assignment of Rents and Security Agreement (as the same may be amended, restated, modified or supplemented from time to time, the "Security Instrument") on the Landlord's interest in the Seniors Housing Facility commonly known as The Park at Olympia Fields located in Olympia Fields, Illinois (the "Mortgaged Property"); and

E. Operator and Landlord entered into that certain Lease Agreement, dated as of February 6, 2004 (the "Operating Lease"), covering the Premises, which Premises are a part of the real property located at 3633 Breakers Drive, Olympia Fields, Illinois and described on Exhibit A attached hereto.

F. To induce Fannie Mae to enter into the Master Agreement, Operator has agreed to amend and restate (i) the Original Assignment, (ii) that certain Subordination Agreement, dated as of February 6, 2004, by and among Landlord, Operator and Fannie Mae, as amended and restated by that certain Amended and Restated Subordination Agreement, dated as of the date hereof, by and among Landlord, Operator and Fannie Mae (as may be amended, restated, modified or supplemented from time to time, the "Subordination Agreement"); (iii) that certain Assignment and Subordination of Management Agreement, dated as of February 6, 2004, by and among Operator, Fannie Mae and Horizon Bay Management, L.L.C. ("Manager"), as amended and restated by that certain Amended and Restated Assignment and Subordination of Management Agreement, dated as of the date hereof, by and among Operator, Fannie Mae and Manager (as may be amended, restated, supplemented or modified from time to time); and (iv) that certain Assignment of Contracts, dated as of February 6, 2004, as amended and restated by that certain Amended and Restated Assignment of Contracts and Accounts, dated as of the date hereof, by Operator for the benefit of Fannie Mae (as may be amended, restated, modified or supplemented from time to time, the "Assignment of Contracts and Accounts").

G. Pursuant to the Original Assignment, Fannie Mae has required and Operator has assigned its rights under the contracts so identified to Fannie Mae.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, promise, covenant and agree as follows:

1. **DEFINITIONS.** Capitalized terms used in this Assignment and not otherwise defined shall have the meanings assigned to them in the Subordination Agreement or, if not therein, in the Master Agreement. The following terms, when used in this Assignment, shall have the following meanings:

(a) "**Contracts**" has the meaning given such term in the Security Instrument.

(b) "**Event of Default**" means any Event of Default as such term is defined under the Master Agreement or any default by the Assignor under the Subordination Agreement.

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(c) **“Improvements”** means the buildings, structures, improvements and alternations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions which may now or hereafter constitute the Seniors Housing Facility commonly known as “Carrington Pointe”.

(d) **“Land”** means the land described in Exhibit A.

(e) **“Leases”** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Operator is a cooperative housing corporation), and all modifications, extensions or renewals thereof. The term “Leases” shall also include any occupancy, admission, and care agreements pertaining to residents of the Mortgaged Property and shall also specifically include, without limitation, the Operating Lease.

(f) **“Loan Documents”** has the meaning set forth in the Master Agreement.

(g) **“Mortgaged Property”** shall mean the Premises as defined in the Subordination Agreement, the Improvements and the Land.

(h) **“Property Jurisdiction”** shall have the meaning set forth in Section 5 of this Agreement.

(i) **“Rents”** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including but not limited to payments under any Housing Assistance Payments Contract related to the Mortgaged Property), parking fees, laundry and vending machine income and fees and charges for food, healthcare and other services provided at the Mortgaged Property, whether now due, past due, or to become due, resident and tenant security deposits and any forfeited deposits, together with and including all proceeds from any private insurance for residents to cover rental charges and charges for services at or in connection with the Mortgaged Property, and the right to Third Party Payments due for the rents of tenants or services of residents at the Mortgaged Property. Each of the foregoing shall be considered “Rents” for the purposes of the actions and rights set forth in Section 3 of this Assignment.

(j) **“Taxes”** shall have the meaning as defined in Section 1(dd) of the Security Instrument.

(k) **“Third Party Payments”** has the meaning given such term in the Security Instrument.

## 2. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; ASSIGNEE IN POSSESSION.

(a) As consideration for the material financial benefit to be derived by Assignor from Landlord’s leasing the Mortgaged Property to the Assignor pursuant to the Operating Lease, to the extent permitted by applicable law, Assignor absolutely and unconditionally assigns and transfers to Assignee all Rents. To the extent permitted by applicable law, it is the intention of

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Assignor to establish a present, absolute and irrevocable transfer and assignment to Assignee of all Rents and to authorize and empower Assignee to collect and receive all Rents without the necessity of further action on the part of Assignor. Promptly upon request by Assignee, Assignor agrees to execute and deliver such further assignments of Rents as Assignee may from time to time reasonably require. To the extent permitted by applicable law, Assignor and Assignee intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then it is the intention of the Assignor that in this circumstance this Assignment create and perfect a lien on Rents in favor of Assignee, as security for Assignor's obligations under the Subordination Agreement, which lien shall be effective as of the date of this Assignment.

(b) After the occurrence of an Event of Default, Assignor authorizes Assignee to collect, sue for and compromise Rents and directs each resident and tenant of the Mortgaged Property to pay all Rents to, or as directed by, Assignee. However, until the occurrence of an Event of Default, Assignee hereby grants to Assignor a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Assignee and to apply all Rents to pay the rent due under the Operating Lease including all the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, to pay and deposit all amounts required under the Operating Lease, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Assignor free and clear of, and released from, Assignee's rights with respect to Rents under this Assignment. From and after the occurrence of an Event of Default, and without the necessity of Assignee entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Assignor's license to collect Rents shall automatically terminate and Assignee shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Assignor shall pay to Assignee upon demand all Rents to which Assignee is entitled. At any time on or after the date of Assignee's demand for Rents pursuant to the terms of this Agreement, Assignee may give, and Assignor hereby irrevocably authorizes Assignee to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Assignee, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Assignor any amounts which are actually paid to Assignee in response to such a notice. Any such notice by Assignee shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Assignor shall not interfere with and shall cooperate with Assignee's collection of such Rents. After an Event of Default, Assignee is further authorized to give notice to all third party providers, including insurers, any governmental provider, or Medicare or Medicaid or any similar program or provider, at Assignee's option, instructing them to pay all Rents which would be otherwise paid to Assignor to Assignee, to the extent permitted by law.



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(c) Assignor represents and warrants to Assignee that Assignor has not executed any prior assignment of Rents other than to Assignee, that Assignor has not performed, and Assignor covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Assignee from exercising its rights under this Section 2, and that at the time of execution of this Assignment there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Assignor shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Assignee may, regardless of the adequacy of Assignee's security or the solvency of Assignor and even in the absence of waste, to the extent permitted by applicable law, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Assignee in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of Contracts and Leases providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 2(a), protecting the Mortgaged Property or the security of this Assignment, or for such other purposes as Assignee in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Assignee's security, without regard to Assignor's solvency and without the necessity of giving prior notice (oral or written) to Assignor, Assignee may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Assignee elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Assignor, by its execution of this Assignment, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Assignee or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Assignee's entering upon and taking possession and control of the Mortgaged Property, Assignor shall, to the extent permitted by applicable law, surrender possession of the Mortgaged Property to Assignee or the receiver, as the case may be, and shall deliver to Assignee or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Assignee takes possession and control of the Mortgaged Property, Assignee may exclude Assignor and its representatives from the Mortgaged Property. Assignor acknowledges and agrees that the exercise by Assignee of any of the rights conferred under this Section 2 shall not be construed to make Assignee a mortgagee-in-possession of the Mortgaged Property so long as Assignee has not itself entered into actual possession of the Land and Improvements.

(e) If Assignee enters the Mortgaged Property, Assignee shall be liable to account only to Assignor and only for those Rents actually received. Assignee shall not be liable to Assignor, anyone claiming under or through Assignor or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Assignee under this Section 2, and

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Assignor hereby releases and discharges Assignee from any such liability to the fullest extent permitted by law.

(f) Reserved.

(g) Any entering upon and taking of control of the Mortgaged Property by Assignee or the receiver, as the case may be, and any application of Rents as provided in this Assignment shall not cure or waive any Event of Default or invalidate any other right or remedy of Assignee under applicable law or provided for in this Assignment, in the Subordination Agreement or in the Assignment and Subordination of Operating Agreement.

### 3. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As consideration for the material financial benefit to be derived by Assignor from the assumption by Landlord of Assignor's obligations under the Master Agreement, the transfer of the Mortgaged Property to the Landlord and the Operating Lease, to the extent permitted by applicable law, Assignor absolutely and unconditionally assigns and transfers to Assignee all of Assignor's right, title and interest in, to and under the Leases, including Assignor's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. To the extent permitted by applicable law, it is the intention of Assignor to establish a present, absolute and irrevocable transfer and assignment to Assignee of all of Assignor's right, title and interest in, to and under the Leases. To the extent permitted by applicable law, Assignor and Assignee intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then it is the intention of the Assignor that in this circumstance this Assignment create and perfect a lien on the Leases in favor of Assignee, which lien shall be effective as of the date of this Assignment.

(b) Until Assignee gives notice to Assignor of Assignee's exercise of its rights under this Section 3, Assignor shall have all rights, power and authority granted to Assignor under any Lease (except as otherwise limited by this Section or any other provision of this Assignment), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Assignor pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Assignor shall comply with and observe Assignor's obligations under all Leases, including Assignor's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Assignor acknowledges and agrees that the exercise by Assignee, either directly or by a receiver, of any of the rights conferred under this Section 3 shall not be construed to make Assignee a mortgagee-in-possession of the Mortgaged Property so long as Assignee has not itself entered into actual possession of the Land and the Improvements. The acceptance by Assignee of the assignment of the Leases pursuant to Section 3(a) shall not at any time or in any event obligate Assignee to take any action under this Assignment or to expend any money or to

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incur any expenses. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Assignee's actual entry into and taking possession of the Mortgaged Property, Assignee shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Assignment by Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Assignor, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Assignee to Assignor of Assignee's exercise of Assignee's rights under this Section 3 at any time after the occurrence of an Event of Default, and without the necessity of Assignee entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Assignee immediately shall have, to the extent permitted by applicable law, all rights, powers and authority granted to Assignor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Assignor shall, promptly upon Assignee's request, deliver to Assignee an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Assignee, shall be on initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market or as may otherwise be required by applicable law, residential Leases with a month-to-month term or with terms of less than six months shall be permitted.

(f) Assignor shall not lease any portion of the Mortgaged Property for non-residential use except in accordance with the provisions of the Security Instrument, with the exception of the Operating Lease which has previously been approved by Assignee. Assignor shall not modify the terms of, or extend or terminate, any Lease (including, without limitation, the Operating Lease) for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Assignee. Assignor shall, without request by Assignee, deliver an executed copy of each non-residential Lease to Assignee promptly after such Lease is signed. All non-residential Leases (including, without limitation, the Operating Lease and renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Assignment (unless waived in writing by Assignee); (2) the tenant shall attorn to Assignee and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Assignee in any manner; (3) the tenant agrees to execute such further evidences of attornment as Assignee or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Assignee or any other purchaser at such foreclosure sale may, at Assignee's or such purchaser's option, accept or

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terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Assignee, pay all Rents payable under the Lease to Assignee.

## 4. ACKNOWLEDGMENT OF ASSIGNEE.

Assignee acknowledges notwithstanding anything to the contrary in any provision of this Assignment, by its acceptance of this Assignment, that (a) the exercise or enforcement of certain of Assignee's rights or remedies under this Assignment may be limited by applicable law relating to the operation of seniors housing facilities in the State of Illinois and (b) such exercise shall not be undertaken by Assignee to the extent that (i) it is not permitted under such applicable law or (ii) prior approval of any governmental agency is required (A) before such exercise or enforcement may be taken under the terms of the Leases or (B) by such applicable law, unless such approval has first been obtained.

## 5. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Assignment shall be governed by the laws of the jurisdiction in which the Land is located (the "Property Jurisdiction"), and applicable federal law.

(b) Assignor agrees that any controversy arising under or in relation to this Assignment shall be litigated exclusively in the Property Jurisdiction and Assignor irrevocably consents to service, jurisdiction, and venue of such course for any such litigation and waives any other venue to which Assignor might be entitled by virtue of domicile, habitual residence or otherwise.

6. **SUCCESSORS AND ASSIGNS.** This Assignment shall be binding upon Assignor and Assignee and their respective successors, transferees and assigns, and shall inure to the benefit of and may be enforced by Assignee, and its successors, transferees and assigns. Assignor shall not assign any of its rights and obligations under this Assignment without the prior written consent of Assignee.

7. **ENTIRE AGREEMENT; AMENDMENTS AND WAIVERS.** This Assignment contains the complete and entire understanding of the parties as to its subject matter. No amendment to this Assignment will be valid unless it is made in writing and executed by the parties to this Assignment. No specific waiver or forbearance for any breach of any of the terms of this Assignment shall be considered as a general waiver of that or any other term of this Assignment.

8. **RELATIONSHIP OF PARTIES.** Nothing contained in this Assignment shall constitute Assignee as a joint venturer, partner or agent of Assignor, or render Assignee liable for any debts, obligations, acts, omissions or representations of Assignor except as provided herein.

9. **ENFORCEABILITY.** The determination of invalidity, illegality, or unenforceability of any provision of this Assignment, pursuant to judicial decree, shall not affect the validity or enforceability of any other provision of this Assignment, each of which shall remain in full force and effect.



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**10. LIMITED RECOURSE.** Assignor and its partners, members or other persons owning any direct or indirect interests in such Assignor shall have no personal liability under this Assignment for the failure of the performance of any of its obligations under this Assignment, and Assignee's only recourse for the satisfaction and performance of the obligations under this Assignment shall be the Assignor's interest in the Leases and Rents.

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Property of Cook County Clerk's Office

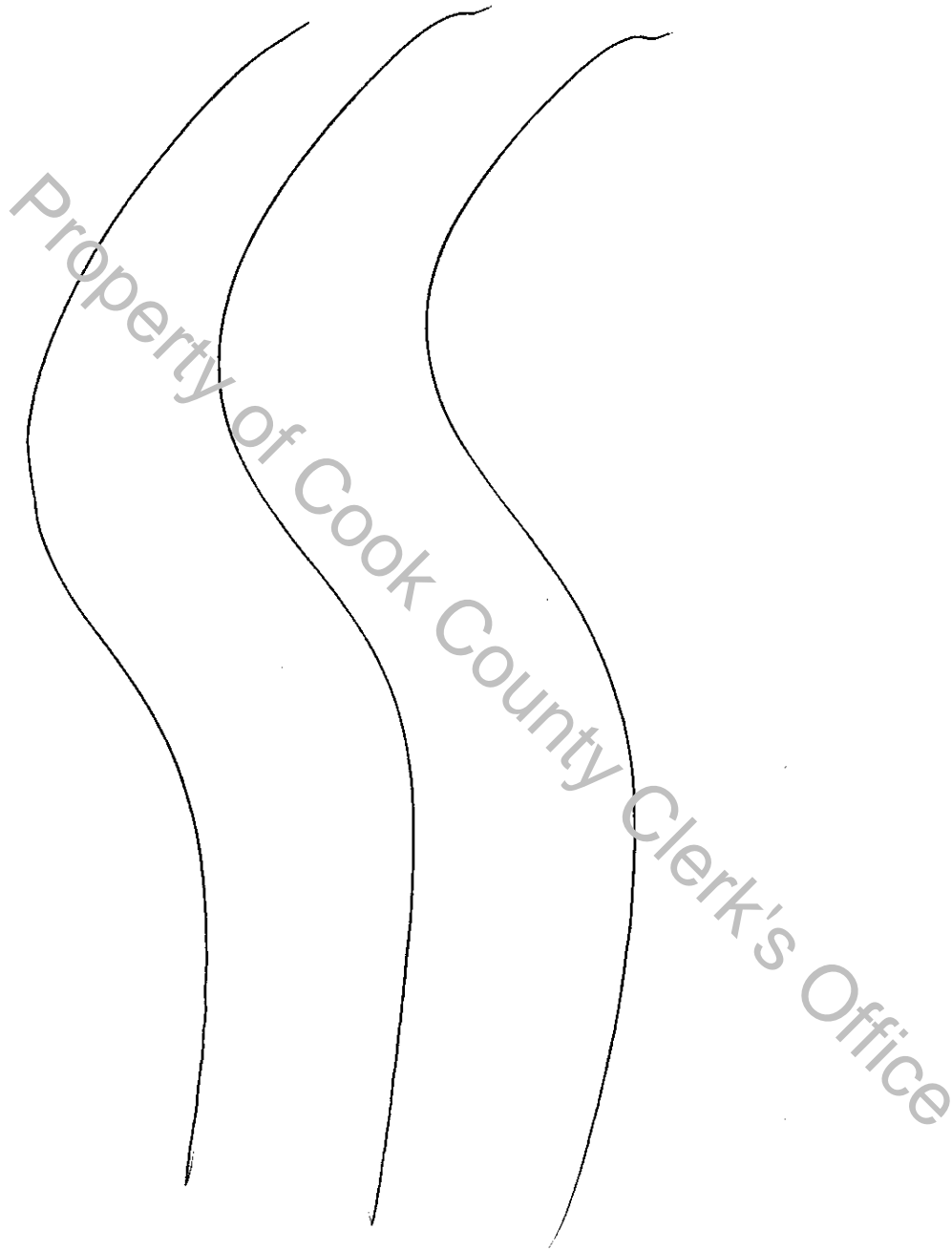




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## EXHIBIT A

See attached legal description.



**Common Address: 3633 Breakers Drive, Olympia Fields, Cook County, Illinois**  
**Property Identification Number: 31-14-103-001-0000**



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## EXHIBIT A

### Legal Description Olympia Fields

LOT 2 IN GOVERNORS OFFICE PARK PHASE II, BEING A SUBDIVISION OF PART OF THE NORTHWEST ¼ OF SECTION 14 AND PART OF LOTS 15 AND 16 IN GOVERNORS COMMERCIAL PARK 3RD ADDITION, A SUBDIVISION IN THE NORTHEAST ¼ OF SECTION 14, IN TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1997 AS DOCUMENT NUMBER 97444523, IN COOK COUNTY, ILLINOIS.

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