



Doc#: 1018929053 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 07/08/2010 12:24 PM Pg: 1 of 14

**THIS DOCUMENT PREPARED
BY
AND AFTER RECORDING
RETURN TO:**

**Holland & Knight LLP
131 S. Dearborn Street
30th Floor
Chicago, Illinois 60603
Frank Keldermans, Esq.**

This space reserved for Recorder's use only

FIFTH MODIFICATION OF LOAN DOCUMENTS

THIS FIFTH MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of May 9, 2010 by and among **Countryside Healthcare Center, LLC**, an Illinois limited liability company ("CHCL"), **Countryside Healthcare Center, Inc.**, an Illinois corporation ("CHCI") and **Countryside Nursing and Rehabilitation Center, LLC**, an Illinois limited liability company ("CNRC") (hereinafter CHCL, CHCI and CNRC are collectively referred to as "Borrower") **Sherwin Ray** and **Helei Ray** (collectively "Ray") and **Jakob Bakst** ("Bakst") (Ray and Bakst each a "Guarantor" and jointly, severally and collectively, "Guarantors") and **Lake Forest Bank and Trust Company**, an Illinois banking corporation, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to CHCI and CHCL in the principal amount of Eight Million and no/100 Dollars (\$8,000,000.00) pursuant to the terms and conditions of a Loan Agreement dated as of February 9, 2006 between CHCI, CHCL and Lender (the "Original Loan Agreement")

B. The Loan is evidenced by a Promissory Note dated as of February 9, 2006 in the original principal amount of the Loan made payable by CHCI and CHCL to the order of Lender ("Original Note")

C. The Note (as defined below) is secured by, among other things, (i) that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of February 9, 2006 from CHCI and CHCL to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on February 10, 2006 as Document No. 0604104240 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A attached hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated as of February 9, 2006 from CHCI and CHCL to Lender and recorded in the

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Recorder's Office on February 10, 2006, as Document No. 0604104241 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated as of February 9, 2006 from CHCL, CHCI and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

D. The Loan is further secured by (i) that Guaranty dated as of February 9, 2006 from Sherwin L. Ray and Helen Ray to Lender; (ii) that Guaranty dated as of February 9, 2006 from Jakob Bakst to Lender (collectively, the "Original Guaranties").

E. On or about February 9, 2009, CHCI, CHCL, Lender and Guarantors entered into that First Modification of Loan Documents (the "First Modification") dated as of February 9, 2009. In connection with the First Modification, CHCI and CHCL executed and delivered to Lender its First Amended and Restated Promissory Note ("First Amended Note") dated as of February 9, 2009. Also in connection with the First Modification, the Guarantors executed and delivered (i) that First Amended, Restated and Reaffirmed Guaranty dated as of February 9, 2009 from Sherwin I. Ray and Helen Ray to Lender; and (ii) that First Amended, Restated and Reaffirmed Guaranty dated as of February 9, 2009 from Jakob Bakst to Lender (collectively, "First Amended Guaranties")

F. On or about May 9, 2009, CHCI, CHCL, Lender and Guarantors entered into that Second Modification of Loan Documents (the "Second Modification") dated as of May 9, 2009. In connection with the Second Modification, CHCI and CHCL executed and delivered to Lender its Second Amended and Restated Promissory Note ("Second Amended Note") dated as of May 9, 2009. Also in connection with the Second Modification, the Guarantors executed and delivered (i) that Second Amended, Restated and Reaffirmed Guaranty dated as of May 9, 2009 from Sherwin I. Ray and Helen Ray to Lender; and (ii) that Second Amended, Restated and Reaffirmed Guaranty dated as of May 9, 2009 from Jakob Bakst to Lender (collectively, "Second Amended Guaranties")

G. On or about November 9, 2009, CHCI, CHCL, Lender and Guarantors entered into that Third Modification of Loan Documents (the "Third Modification") dated as of November 9, 2009. In connection with the Third Modification, CHCI and CHCL executed and delivered to Lender its Third Amended and Restated Promissory Note ("Third Amended Note") dated as of November 9, 2009. Also in connection with the Third Modification, the Guarantors executed and delivered (i) that Third Amended, Restated and Reaffirmed Guaranty dated as of November 9, 2009 from Sherwin I. Ray and Helen Ray to Lender; and (ii) that Third Amended, Restated and Reaffirmed Guaranty dated as of November 9, 2009 from Jakob Bakst to Lender (collectively, "Third Amended Guaranties").

H. On or about February 9, 2010, Borrower, Guarantors and Lender entered into that Fourth Modification of Loan Documents (the "Fourth Modification") dated as of February 9, 2010. In connection with the Fourth Modification, Borrower executed and delivered to Lender that Fourth Amended and Restated Promissory Note ("Fourth Amended Note") dated as of February 9, 2010.

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I. Borrower desires to amend the Loan Documents in order to, among other things, extend the Maturity Date of the Loan to November 9, 2010. As a condition precedent to, and in consideration for Lender's agreeing to modify the Loan Documents and enter into this Agreement, Borrower agrees to execute and deliver to Lender that Fifth Amended and Restated Promissory Note (the "Fifth Amended Note") of even date herewith payable to Lender in the principal amount of the Loan.

J. The Original Loan Agreement, First Modification, Second Modification, the Third Modification, the Fourth Modification and this Agreement are referred to collectively as the "Loan Agreement". The Original Note, First Amended Note, Second Amended Note, Third Amended Note, Fourth Amended Note and Fifth Amended Note are referred to collectively as the "Note". The Original Guaranties, First Amended Guaranties, Second amended Guaranties and Third Reaffirmed Guaranties are referred to collectively as the "Guaranty". All terms not otherwise defined herein shall have the meaning as set forth in the Loan Agreement and the Guaranty.

AGREEMENTS:

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

1. **Maturity Date.** The Maturity Date of the Note is extended to November 9, 2010. Any reference in the Note, the Loan Agreement or any other Loan Document to the Maturity Date shall mean November 9, 2010.

2. **Principal and Interest.** Principal and interest shall be due and payable as set forth in the Note.

3. **Additional Covenants.** Borrower, Guarantors and Lender hereby agree and acknowledge as follows:

(a) **Financial Information.** Borrower will continue to promptly supply Lender with such information concerning Borrower's assets, liabilities and affairs, and the assets, liabilities and affairs of each Guarantor, as Lender may reasonably request from time to time hereafter; which in the case of CNRC, each shall include, without necessity of any request by Lender (i) as soon as available and in no event later than within 60 days after the end of each calendar quarter, financial statements, showing results of operations of the Health Care Facility and consisting of a balance sheet and statement of income and expense prepared in accordance with generally accepted accounting principles and certified by an officer of the applicable Borrower as being true and correct, (ii) as soon as available and in no event later than 120 days after each calendar year end, annual reviewed statements for CNRC; and (iii) as soon as available and in no event later than 30 days after filing, federal tax returns for CHCL and its members; and which, in the case

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of each Guarantor shall include (i) as soon as available and in no event later than 30 days after each calendar year end, personal financial statements of each Guarantor and (ii) as soon as available and in no event later than 30 days after filing, true and correct copies of the filed federal income tax returns of each Guarantor.

(b) **Survey.** As soon as available, and in no event later than thirty (30) days after publication, Borrower shall supply Lender with a true and correct copy of the survey of the Health Care Facility published by the Illinois Department of Public Health, which survey must be to Lender's sole satisfaction; and

(c) **Debt Service Ratio.** As of the date hereof, CNRC shall maintain at all times a minimum Debt Service Coverage Ratio (as defined below) of 1.40:1.00, tested on an annual basis. Debt Service Coverage Ratio shall be calculated as EBITDA (as defined below) plus all rent expenses divided by actual debt service costs. "EBITDA" means, for any computation period, net income plus interest expense, income taxes, depreciation and amortization expenses.

4. **Minimum Tangible Net Worth and Loan Fee.**

(a) As of the date hereof, Borrower and Guarantors agree and acknowledge that CNRC and CHCI have failed to maintain a minimum Tangible Net Worth of \$1,500,000.00 as required by the Fourth Modification. Tangible Net Worth shall be defined as the net book value (after deducting related depreciation, obsolescence, amortization, valuation) at which the assets of CNRC are shown on the balance sheet at such date in accordance with GAAP minus the aggregate amount, as shown on such balance sheet of CNRC's (i) liabilities, (ii) deferred assets, (iii) patents, copyrights, trademarks, trade names, non-compete agreements, franchises and other similar intangibles, (iv) goodwill, (v) unamortized debt discount and expense and (vi) note and other receivables due from any affiliates, shareholders or employees.

(b) In consideration for Lender's agreement to waive the Tangible Net Worth covenant violation, Borrower agrees to: (i) the distribution restriction described in Section 9 hereof; and (ii) pay Lender the principal amount of \$1,000,000 as a condition precedent to Lender's execution of this Agreement.

(c) To the extent that Lender may have acquiesced (whether intentionally or unintentionally) in the Borrower's failure to comply with and satisfy the Tangible Net Worth covenant, such acquiescence shall not constitute a waiver by Lender of any condition precedent set forth in the Loan Agreement or any other Loan Documents and Lender at any time thereafter may require the Borrower to comply with and satisfy all conditions and requirements of the Loan Agreement and the Loan Documents.

5. **Additional Fee.** In the event that the Loan is not repaid in full on or before the Maturity Date from an Independent Source (as hereinafter defined), Borrower agrees and acknowledges that it is obligated to pay to Lender an additional fee in the amount of \$25,000.00, (in addition to the outstanding principal balance, accrued interest, fees, costs, and other sums due under the Note and all of the other Loan Documents) which amount will be due and payable in

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full upon the Maturity Date ("Additional Fee"). "Independent Source" shall mean a financing arrangement between Borrower and any lender other than any affiliate or subsidiary of Lender or any financial institution that is affiliated with Wintrust Financial. The entire Additional Fee shall be deemed earned upon the execution and delivery of this Agreement.

6. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) Except as described in Section 4 hereof, there is currently no Event of Default (as defined in the Loan Agreement) under the Loan Agreement, the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Loan Agreement, the Note, the Mortgage or the other Loan Documents.

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

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

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

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

7. **Reaffirmation of Guaranty.**

(a) Ray ratifies and affirms its respective Guaranty and agrees that such Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Ray in its respective Guaranty are, as of the date hereof, true and correct and Ray does not know of any default thereunder. Notwithstanding anything hereinabove set forth or in the applicable Guaranty to the contrary, the Payment Obligations (as defined in the Guaranty) of Ray under the applicable Guaranty shall be limited to the payment \$5,200,000.00, plus Enforcement Costs (as defined in the Guaranty).

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(b) Bakst ratifies and affirms his Guaranty and agrees that such Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Bakst in his respective Guaranty are, as of the date hereof, true and correct and Bakst does not know of any default thereunder. Notwithstanding anything hereinabove set forth or in the applicable Guaranty to the contrary, the Payment Obligations (as defined in the Guaranty) of Bakst under the applicable Guaranty shall be limited to the payment \$2,200,000.00, plus Enforcement Costs (as defined in the Guaranty).

(c) The Guaranty continues to be the valid and binding obligation of each Guarantor, enforceable in accordance with its terms and no Guarantor has any claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in his or her Guaranty. In addition, each Guarantor hereby expressly and unconditionally waives, releases, and discharges any and all rights or claims under the Illinois Surety Act, 740 ILCS 155/0.01 et. seq. ("Illinois Surety Act"), and further acknowledges and agrees that Lender has no duty or obligation to Guarantor under the Illinois Surety Act.

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

9. **Distributions.** No Borrower shall make any distributions to its members or shareholders without Lender's express consent thereto.

10. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

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

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(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantors nor shall privity of contract be presumed to have been established with any third party.

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

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Loan Agreement", the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement, the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.


[Signature Page Follows]

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

LENDER:

Lake Forest Bank and Trust Company,
an Illinois banking corporation

By: 
Name: Carol Pumphrey
Title: Executive Vice President

BORROWER:

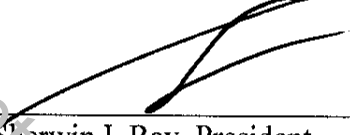
Countryside Healthcare Center, LLC
an Illinois limited liability company

By: 
Eric Rothner, Manager

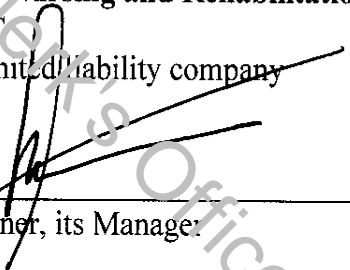
By: Central Street Management, LLC,
an Illinois limited liability company, its
Manager

By: 
David Aronin, Manager

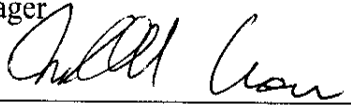
Countryside Healthcare Center, Inc.
an Illinois corporation

By: 
Sherwin I. Ray, President

**Countryside Nursing and Rehabilitation
Center, LLC**
an Illinois limited liability company

By: 
Eric Rothner, its Manager

By: Central Street Management, LLC,
an Illinois limited liability company, its
Manager

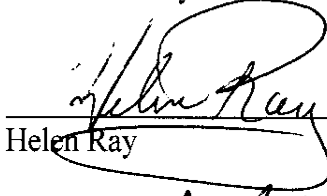
By: 
David Aronin, Manager

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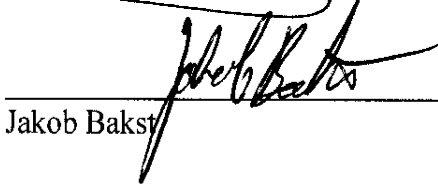
GUARANTORS:



Sherwin I. Ray



Helen Ray



Jakob Bakst

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STATE OF IL)
) .ss
COUNTY OF COOK)

I Steven Miretzky, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Eric Rothner, a Manager of **Countryside Healthcare Center LLC**, an Illinois limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of June, 2010.



Steven A. Miretzky
Notary Public

My Commission Expires: _____

STATE OF IL)
) .ss
COUNTY OF COOK)

I Steven Miretzky, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Sherwin Ray, President of **Countryside Healthcare Center Inc.**, an Illinois corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of June, 2010.



Steven A. Miretzky
Notary Public

My Commission Expires: _____

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STATE OF IL)
) .ss
COUNTY OF COOK)

I Steven Miretzky, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Eric Rothner, a Manager of **Countryside Nursing and Rehabilitation Center LLC**, an Illinois limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of June, 2010.



Steven A. Miretzky
Notary Public

My Commission Expires: _____

STATE OF IL)
) .ss
COUNTY OF COOK)

I Steven Miretzky, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David Aronin, a Manager of **Central Street Management, LLC**, an Illinois limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of June, 2010.



Steven A. Miretzky
Notary Public

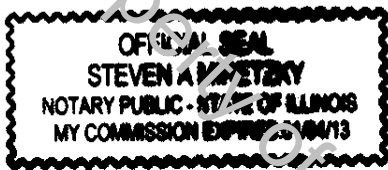
My Commission Expires: _____

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STATE OF IL)
) .ss
COUNTY OF COOK)

I Steven Miretzky, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Sherwin Ray** is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of June, 2010.



Steven A. Miretzky
Notary Public

My Commission Expires: _____

STATE OF IL)
) .ss
COUNTY OF COOK)

I Steven Miretzky, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Helen Ray** is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of June, 2010.



Steven A. Miretzky
Notary Public

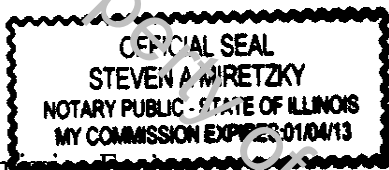
My Commission Expires: _____

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STATE OF IL)
) .ss
COUNTY OF COOK)

I Steven Miretzky, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Jakob Bakst** is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29 day of June, 2010.



Steven A. Miretzky
Notary Public

My Commission Expires: _____

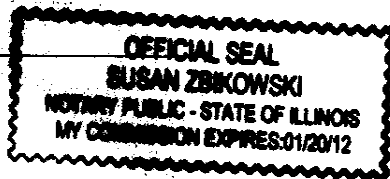
STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I Susan Zbkowski, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Carol Pumphrey, Executive Vice President of **Lake Forest Bank and Trust Company**, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29th day of June, 2010.

Susan Zbkowski
Notary Public

My Commission Expires: |



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EXHIBIT A

THE PROPERTY

THE EAST 459.992 FEET OF THE FOLLOWING LEGALLY DESCRIBED TRACT OF LAND:

THE NORTH 8.33 ACRES OF THE WEST 2/3 OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THEREFROM THAT PART OF 154TH STREET (PULASKI ROAD) ACQUIRED BY PURCHASE FOR HIGHWAY PURPOSES AS DOCUMENT 14965069; ALSO EXCEPTING THEREFROM THAT PART OF STONY ISLAND AVE., DEDICATED FOR PUBLIC HIGHWAY AS DOCUMENT 15479947), IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 29-13-100-001-0000

Property Address: 1635 E. 154th St., Dolton, Illinois 60419

9526438_v3

Property of Cook County Clerk's Office