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Doc#: 2032008079 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 11/17/2020 10:06 AM Pg: 1 of 16

**THIS DOCUMENT WAS PREPARED
BY AND AFTER RECORDING
SHOULD BE RETURNED TO:**

Jay R. Goldberg
Field and Goldberg, LLC
10 South LaSalle Street
Suite 2910
Chicago, IL 60603

ADDRESS OF PROPERTY:

11111 Franklin Avenue
Franklin Park, IL 60131

PERMANENT INDEX NO.:

12-20-300-079-0000

LOAN MODIFICATION AGREEMENT

THIS LOAN MODIFICATION AGREEMENT (the "Agreement") is made and entered into as of the 6th day of September, 2020 by and among **FIFTH THIRD BANK, NATIONAL ASSOCIATION**, formerly known as **FIFTH THIRD BANK**, successor in interest to **MB FINANCIAL BANK, N.A.** (herein called "Lender"), **SHOW SAGE LLC**, an Illinois limited liability company (herein called "Show Sage"), and **TLR MANAGEMENT LLC**, an Illinois limited liability company (herein called "TLR" and, together with Show Sage, herein individually and collectively called "Original Borrowers") **JAMES V. TESTA** (herein called "Testa"), and **TERRI L. RUDD** (herein called "Rudd" and, together with Testa, individually and collectively called "Guarantors").

WITNESSETH:

WHEREAS, MB Financial Bank, N.A. merged with and into Fifth Third Bank on May 3, 2019, with Fifth Third Bank as the surviving bank. As a result of such merger, Fifth Third Bank became the successor in interest to all rights and obligations of MB Financial Bank, N.A. as Lender for all purposes hereof; and

WHEREAS, Fifth Third Bank converted from an Ohio state-chartered bank to a national bank on November 14, 2019. This document is effective as of the date identified herein but was executed and delivered by the parties after the conversion of Fifth Third Bank to a national bank, known as Fifth Third Bank, National Association; and

WHEREAS, TLR is the owner of certain real estate commonly known as 11111 Franklin Avenue, which is located in the Village of Franklin Park, County of Cook, State of Illinois and more particularly described on Exhibit A attached hereto and made a part hereof (the "Premises"); and

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WHEREAS, Lender has heretofore made (i) a first mortgage revolving line of credit loan (the "RLOC Loan") to Original Borrowers in the stated principal sum of One Hundred Thousand Dollars and No Cents (\$100,000.00), (ii) a term loan (the "Secured Term Loan") to Original Borrowers in the stated principal sum of Two Hundred Ninety Eight Thousand Five Hundred Seven Dollars and Forty Five Cents (\$298,507.45), and (iii) a term loan (the "Term Loan") to Original Borrowers in the stated principal sum of Three Hundred Seventeen Thousand Seven Hundred Forty Eight Dollars and Forty Nine Cents (\$317,748.49); and

WHEREAS, the RLOC Loan is evidenced and secured by the following documents in favor of Lender (hereinafter, together with all other documents evidencing, securing or otherwise governing the Loan, collectively referred to as the "RLOC Loan Documents"):

(a) Revolving Credit Note (the "RLOC Note") dated May 10, 2019 made by Original Borrowers to Lender in the stated principal sum of One Hundred Thousand Dollars and No Cents (\$100,000.00);

(b) Guaranty (the "Testa Guaranty") dated May 10, 2019 made by Testa in favor of Lender;

(c) Guaranty (the "Rudd Guaranty" and, together with the Testa Guaranty, individually and collectively called "Guaranty") dated May 10, 2019 made by Rudd in favor of Lender;

(d) Real Estate Mortgage dated May 8, 2015 made by TLR to Lender encumbering the Premises and the improvements thereon and all other property, assets and collateral therein described, which was recorded in the Office of the Recorder of Deeds of Cook County, Illinois (herein called the "Recorder's Office") on May 20, 2015 as Document No. 1514049157, as amended by First Modification to Real Estate Mortgage and Assignment of Leases and Rents by and between TLR and Lender dated May 10, 2019, which was recorded in the Recorder's Office on July 9, 2019 as Document No. 1919049043 (herein individually and collectively called the "Mortgage");

(e) Assignment of Leases and Rents (the "Assignment") dated May 8, 2015 made by TLR, as assignor, to Lender, as assignee, which was recorded in the Recorder's Office on May 20, 2015 as Document No. 1514049158;

(f) Credit Agreement dated May 8, 2015 by and between Original Borrowers, Guarantors and Lender, as amended by First Modification to Credit Agreement dated May 10, 2017 by and between Original Borrowers, Guarantors and Lender, and further amended by Second Modification to

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Credit Agreement dated May 10, 2019 by and between Original Borrowers, Guarantors and Lender (herein individually and collectively called the "Credit Agreement");

(g) Environmental Indemnity (the "Indemnity") dated May 8, 2015 made by TLR, Testa and Rudd in favor of Lender;

(h) Security Agreement (the "Security Agreement") dated May 8, 2015 made by Original Borrower's in favor of Lender;

(i) Undated Uniform Commercial Code Financing Statements made by TLR, as debtor, to Lender, as secured party, (herein collectively called the "TLR UCCs") which was recorded in the Recorder's Office on May 20, 2015 as Document No. 1514049160 and filed with the Illinois Secretary of State on May 11, 2015 as Document No. 20306610; and

(j) Undated Uniform Commercial Code Financing Statement made by Show Sage, as debtor, to Lender, as secured party, (the "Show Sage UCC") which was filed with the Illinois Secretary of State on May 11, 2015 as Document No. 20306637; and

WHEREAS, the Secured Term Loan is evidenced and secured by the following documents in favor of Lender (hereinafter, together with all other documents evidencing, securing or otherwise governing the Loan, collectively referred to as the "Secured Term Loan Documents"):

(a) Secured Promissory Note (the "Secured Promissory Note") dated May 10, 2019 made by Original Borrowers to Lender in the stated principal sum of Two Hundred Ninety Eight Thousand Five Hundred Seven Dollars and Forty Five Cents (\$298,507.45);

(b) Testa Guaranty;

(c) Rudd Guaranty;

(d) Mortgage;

(e) Assignment;

(f) Credit Agreement;

(g) Indemnity;

(h) Security Agreement;

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- (i) TLR UCCs; and
- (j) Show Sage UCC; and

WHEREAS, Term Loan is evidenced and secured by the following documents in favor of Lender (hereinafter, together with all other documents evidencing, securing or otherwise governing the Loan, collectively referred to as the "Term Loan Documents" and, together with the RLOC Loan Documents and Secured Term Loan Documents, collectively called the "Loan Documents"):

(a) Term Credit Note (the "Term Note") dated May 10, 2019 made by Original Borrowers to Lender in the stated principal sum of Three Hundred Seventeen Thousand Seven Hundred Forty Eight Dollars and Forty Nine Cents (\$317,748.49);

- (b) Testa Guaranty;
- (c) Rudd Guaranty;
- (d) Mortgage;
- (e) Assignment;
- (f) Credit Agreement;
- (g) Indemnity;
- (h) Security Agreement;

(i) Pledge Agreement dated May 8, 2015 made by Testa in favor of Lender, as modified by First Modification of Pledge Agreement dated May 10, 2019 by and among Testa and Lender (collectively, the "Pledge Agreement");

(j) Account Control Agreement dated May 8, 2015 by and among Testa, Lender and Wells Fargo Advisors;

(k) TLR UCCs;

(l) Undated Uniform Commercial Code Financing Statement made by Testa, as debtor, to Lender, as secured party, (the "Testa UCC") which was filed with the Illinois Secretary of State on May 11, 2015 as Document No. 20306629; and

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(m) Show Sage UCC; and

WHEREAS, Guarantors have agreed to become additional borrowers of the RLOC Loan, the Secured Term Loan and the Term Loan; and

WHEREAS, Lender has agreed to allow Testa to close Testa's account at Wells Fargo (the "Wells Fargo Account") which is collateral for the Pledge Agreement and transfer the funds in the Wells Fargo Account to Merrill Lynch account no. 626-19354 Collateral Account F/B/O James V. Testa (the "Merrill Lynch Account"), after which Lender shall release its security interest in the Wells Fargo Account; and

WHEREAS, Testa has agreed to pledge the Merrill Lynch Account as additional collateral for the Secured Term Loan and the Term Loan; and

WHEREAS, Lender and Borrower have agreed to certain other modifications to the Loan Documents; and

WHEREAS, the agreements of the parties are set forth herein and limited to this Agreement.

AGREEMENT

NOW, THEREFORE, for valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed, as of the date hereof, as follows:

1. **Preambles.** The preambles hereto are incorporated herein by reference as fully and with the same force and effect as if each and every term, provision and condition thereof was specifically recited herein at length.

2. **Definitions.** All capitalized terms herein not otherwise defined shall have the same meanings as in the RLOC Note, the Secured Promissory Note, the Term Note, and in the other Loan Documents.

3. **Notice to Lender.** Notwithstanding anything to the contrary contained in the Loan Documents, the notice address for Lender shall be as follows:

Fifth Third Bank, National Association
 222 South Riverside Plaza
 Suite 3100
 Chicago, IL 60606
 Attention: Jonathan Rothstein

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with a copy to:

Jay R. Goldberg
Field and Goldberg, LLC
10 South LaSalle Street, Suite 2910
Chicago, IL 60603

4. **Auto Debit.** Notwithstanding anything to the contrary contained in the Loan Documents, scheduled payments shall be initiated by Lender in accordance with the terms of the RLOC Note from Borrower's account through Auto BillPayer. Borrower hereby authorizes Lender to initiate such payments from Borrower's account located at **Fifth Third Bank, National Association**, routing number **071923909** account number **1520004391**. Borrower acknowledges and agrees that use of Auto BillPayer shall be governed by the Auto BillPayer Terms and Conditions, a copy of which Borrower acknowledges receipt. Borrower further acknowledges and agrees to maintain payments hereunder through Auto BillPayer throughout the term of the RLOC Note.

5. **Acceptance as Additional Borrowers.** In consideration for Lender modifying the Loan Documents as set forth in this Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Guarantors, Testa and Rudd hereby accept all of the liabilities, responsibilities and obligations of Original Borrowers under the RLOC Loan, Secured Term Loan and Term Loan and the Loan Documents as additional borrowers of the RLOC Loan, Secured Term Loan and Term Loan. All references in the Loan Documents to Borrower shall mean and refer to Original Borrowers, Testa and Rudd (herein individually and collectively called "Borrower") and the Loan Documents shall be deemed amended to conform to the terms and provisions hereof. Testa and Rudd's execution of this Agreement shall be deemed as Testa and Rudd's execution of each of the Loan Documents originally executed by Original Borrowers.

6. **Covenant Waiver.** Notwithstanding anything to the contrary contained in the Loan Documents, Lender hereby waives Original Borrowers' violation of the requirement to maintain debt service coverage ratio greater than 1.2:1.0 throughout the term of the Loan as tested on December 31, 2019. This waiver is a waiver of the existing violation as of December 31, 2019 only and shall not act as a waiver of any future covenant violations.

7. **Additional Collateral.** Concurrent with the execution of this Agreement by Borrower, and delivery of the executed Agreement to Lender, Testa shall sign and deliver to Lender a Pledge Agreement (the "Merrill Lynch Pledge Agreement") pledging the Merrill Lynch Account as collateral for the RLOC Loan, Secured Term Loan and Term Loan. In addition, Testa shall sign and deliver to Lender a Pledged Collateral Account Control Agreement (the "Merrill Lynch Account

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Control Agreement"), which Merrill Lynch Account Control Agreement shall be signed by Merrill Lynch, Pierce, Fenner, & Smith Incorporated. Lender may, in its sole discretion, file a Uniform Commercial Code Financing Statement with the Illinois Secretary of State evidencing the pledge of the Merrill Lynch Account. Upon receipt of the fully executed Merrill Lynch Pledge Agreement and the fully executed Merrill Lynch Account Control Agreement, Lender shall cancel the Pledge Agreement and Control Agreement and said Pledge Agreement and Control Agreement shall no longer be of any further force and effect.

8. **Amendment to RLOC Note.** The terms of the RLOC Note are amended as follows:

- (a) The Maturity Date is extended to August 10, 2021.
- (b) The interest rate on the Loan shall be the **greater of:** (i) the Index, or (ii) Three Percent (3.00%) per annum.

9. **Amendment to Credit Agreement.** In addition to any other modifications contained in this Agreement and notwithstanding anything to the contrary contained in the Credit Agreement, the terms of the Credit Agreement are hereby amended as follows:

- (a) The RLOC Loan Maturity Date is extended to August 10, 2021.
- (b) The interest rate on the RLOC Loan shall be the **greater of:** (i) the Index, or (ii) Three Percent (3.00%) per annum.
- (c) Subsections 7.3(b)(iii) and (iv) are deleted in their entirety and are hereby replaced with the following:
 - (iii) on a yearly basis, and in any event within one hundred twenty (120) days of the end of each calendar year during the term of the Loan, a copy of a personal financial statement for the preceding year for James and Terri, jointly, prepared by James and Terri on Bank's prepared form; and
 - (iv) on a yearly basis, and in any event within one hundred twenty (120) days of the end of each calendar year during the term of the Loan, a copy of James and Terri's joint federal and state tax returns; and
- (d) The following language is hereby added to the end of Section 7.14:

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"Debt Service Coverage Ratio" shall mean the ratio of (a) EBITDA plus surplus personal income, less unfunded capital expenditures to (b) all required principal and interest payments.

(e) The following paragraph is hereby added to Section 7 of the Credit Agreement:

7.19 Borrower shall not make any distribution which (i) would cause a violation of the DSCR Ratio requirement, or (ii) exceeds net income.

(f) The Credit Agreement is modified to secure the RLOC Note, Secured Promissory Note and Term Note as hereby modified and is deemed amended to conform to the terms and provisions hereof and the amendments and modifications to the RLOC Loan, Secured Term Loan and Term Loan and Loan Documents effected hereby.

10. **Amendment to Loan Documents.** The Loan Documents are modified to secure the RLOC Note, Secured Promissory Note and Term Note as hereby modified and are deemed amended to conform to the terms and provisions hereof and the amendments and modifications to the RLOC Loan, Secured Term Loan and Term Loan and Loan Documents effected hereby.

11. **Lender Expenses.** Borrower agrees to pay all costs, fees and expenses (including but not limited to legal fees) incurred by Lender in connection with the preparation of this Agreement. Such of the foregoing as are incurred prior to the execution and delivery of this Agreement shall be paid concurrent with such execution and delivery. All other fees, costs and expenses shall be paid within five (5) business days after notice from Lender of the amount due and the reason therefore.

12. **Continued Priority.** In the event that, by virtue of any of the terms, conditions and provisions of this Agreement, a lien otherwise junior in priority to the liens created by the Loan Documents shall gain superiority over the liens created by the Loan Documents, this Agreement shall, nunc pro tunc, be null and void without further action of the parties hereto to the fullest extent as if it had never been executed, to the end that the priority of the Loan Documents shall not be impaired.

13. **Ratification.** The Loan Documents are hereby ratified, confirmed and approved and are and shall remain in full force and effect pursuant to the terms and conditions set forth therein, except to the extent otherwise expressly modified hereby. Each of the Loan Documents is hereby modified and amended so that all reference to such documents shall be deemed to be a reference to the Loan Documents as hereby modified and amended.

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14. **Joinder of Testa.** Notwithstanding anything to the contrary contained herein, Testa has entered into this Agreement for the purpose of ratifying and confirming Testa's obligations under the Loan Documents, as amended hereby, and to acknowledge that the RLOC Note, Secured Promissory Note, Term Note and the other Loan Documents, as amended hereby, remain in full force and effect.

15. **Joinder of Rudd.** Notwithstanding anything to the contrary contained herein, Rudd has entered into this Agreement for the purpose of ratifying and confirming Rudd's obligations under the Loan Documents, as amended hereby, and to acknowledge that the RLOC Note, Secured Promissory Note, Term Note and the other Loan Documents, as amended hereby, remain in full force and effect.

16. **Release.** Borrower and any other obligor under the Loan, on behalf of themselves and their respective successors and assigns (collectively and individually, the "Mortgagor Parties"), hereby fully, finally and completely release, remise, acquit and forever discharge, and agree to hold harmless Lender and its respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, fiduciaries, attorneys, agents and properties, past, present and future, and their respective heirs, successors and assigns (collectively and individually, the "Mortgagee Parties"), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, liens, actions, and causes of action of any and every nature whatsoever, known claims and controversies, direct or indirect, whether at law, by statute or in equity, in contract or in tort, under state or federal jurisdiction (collectively, the "claims"), which the Mortgagor Parties have as of the date of this Agreement or may claim to have against the Mortgagee Parties, including but not limited to any claims arising out of or with respect to any and all transactions relating to the Loan or the Loan Documents occurring on or before the date of this Agreement, including but not limited to, any loss, cost or damage of any kind or character arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of the Mortgagee Parties occurring on or before the date of this Agreement. The foregoing release is intended to be, and is, a full, complete and general release in favor of the Mortgagee Parties with respect to all known claims, demands, actions, causes of action and other matters described therein, or any other theory, cause of action, occurrence, matter or thing which might result in liability upon the Mortgagee Parties arising or occurring on or before the date of this Agreement. The Mortgagor Parties understand and agree that the foregoing general release is in consideration for the agreements of Lender contained herein and that they will receive no further consideration for such release. Furthermore, each of the Mortgagor Parties represents and warrants to Lender that she, he or it: (i) read this agreement, including without limitation, the release set forth in this section (the "Release Provision"), and understands all of the terms and conditions hereof, and (ii) executes

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this Agreement voluntarily with full knowledge of the significance of this Release Provision and the releases contained herein and execution hereof.

17. **Counterparts**. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement.

[Remainder of page intentionally left blank; signature page follows.]

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

LENDER:

BORROWER:

FIFTH THIRD BANK, NATIONAL ASSOCIATION, formerly known as FIFTH THIRD BANK, successor-in-interest to MB FINANCIAL BANK, N.A.

SHOW SAGE LLC, an Illinois limited liability company

By: *James V. Testa*
Name: *James V. Testa*
Its: *Vice President*

By: _____
James V. Testa, Manager

TLR MANAGEMENT LLC, an Illinois limited liability company

By: _____
Terri L. Rudd, Manager

JAMES V. TESTA

TERRI L. RUDD

PROPERTY of Cook County Clerk's Office

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

LENDER:

FIFTH THIRD BANK, NATIONAL ASSOCIATION, formerly known as FIFTH THIRD BANK, successor-in-interest to MB FINANCIAL BANK, N.A.

By: _____
Name: _____
Its: _____

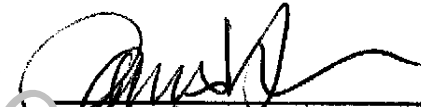

BORROWER:

SHOW SAGE LLC, an Illinois limited liability company

By: 
James V. Testa, Manager

TLR MANAGEMENT LLC, an Illinois limited liability company

By: 
Terri L. Rudd, Manager


JAMES V. TESTA

TERRI L. RUDD

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STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that JONATHAN ROYASTEN, the VP of **FIFTH THIRD BANK, NATIONAL ASSOCIATION, formerly known as Fifth Third Bank, successor-in-interest to MB FINANCIAL BANK, N.A.**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of **FIFTH THIRD BANK, NATIONAL ASSOCIATION**, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of September, 2020.



Joyce Anne Polivka
 Notary Public

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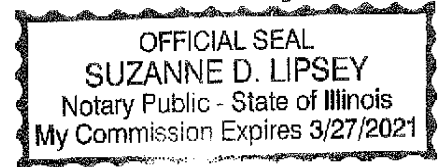
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that **James V. Testa**, the Manager of **SHOW SAGE LLC**, an **Illinois limited liability company**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me in person and acknowledged that he signed, sealed and delivered the 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 6th day of September, 2020.

Suzanne D. Lipsey
Notary Public

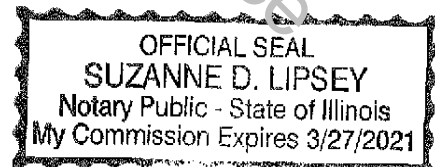


STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **James V. Testa**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he delivered the 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 6th day of September, 2020.

Suzanne D. Lipsey
Notary Public



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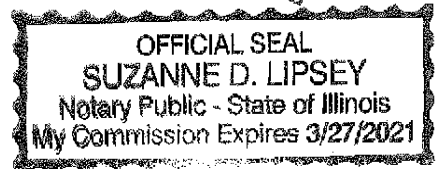
STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that **Terri L. Rudd**, the Manager of **TLR MANAGEMENT LLC**, an **Illinois limited liability company**, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me in person and acknowledged that she signed, sealed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of September, 2020.

Suzanne D. Lipsey

 Notary Public



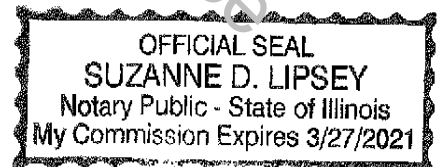
STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Terri L. Rudd**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that she delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of September, 2020.

Suzanne D. Lipsey

 Notary Public



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EXHIBIT A

Legal Description

Lot 5 in Latoria Brothers Construction, Inc., Subdivision Unit 2, being a subdivision of part of the West half of Section 20, Township 40 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

Address of Property: 11111 Franklin Avenue
Franklin Park, IL 60131

Permanent Index No.: 12-20-300-079-0000

Property of Cook County Clerk's Office