

UNOFFICIAL COPY

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2541/0174 18 001 Page 1 of 12  
1998-10-26 15:48:58  
Cook County Recorder 43.50

THIS INSTRUMENT  
PREPARED BY  
AND UPON RECORDING  
SHOULD BE RETURNED TO:

Kelly M. Wrenn, Esq.  
Ballard Spahr Andrews &  
Ingersoll  
601 13<sup>th</sup> Street, NW, Suite 1000  
South  
Washington, DC 20005-3807



STATE OF ILLINOIS  
COUNTY OF COOK

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), dated as of the 23<sup>RD</sup> day of October, 1998, is made by Olympia Fields Senior Housing, L.L.C., a Delaware limited liability company (hereinafter called the "Assignor"), whose address is c/o Senior Lifestyle Corporation, 111 East Wacker, Suite 2400, Chicago, Illinois 60601, and GMAC COMMERCIAL MORTGAGE CORPORATION, a California corporation (hereinafter called the "Assignee"), whose address is 650 Dresher Road, P.O. Box 1015, Horsham, Pennsylvania 10944-8015.

I. RECITALS

This Assignment is made as additional security for a loan by Assignee to Assignor in the principal amount of TWENTY THREE MILLION, FIVE HUNDRED TEN THOUSAND AND NO/100 DOLLARS (\$23,510,000.00) (the "Loan") made pursuant to a Loan Agreement by and among Assignor and Assignee, as the same may hereafter be amended (as so amended, the "Loan Agreement"; all defined terms used herein without definition shall have the meanings ascribed to

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them in the Loan Agreement) and as security for certain other Loan Obligations (as defined in the Loan Agreement). The Loan is evidenced by a Promissory Note of even date herewith executed and delivered by Assignor to Assignee in said amount (as the same may hereafter be extended, renewed, modified or amended, the "Note"). The Loan is secured in part by the real property more particularly described on Exhibit "A" attached hereto and the improvements located thereat (collectively, the "Property").

## II. GRANTING CLAUSES

In consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration and to secure the payment of the Note and any and all renewals, extensions, modifications, and replacements thereof, and to assure performance of the agreements contained herein and in the Loan Documents, Assignor hereby collaterally assigns to Assignee (to the fullest extent assignable), Assignor's right, title and interest (if any) in:

a. Any oral and written leases and other agreements for the use or occupancy of the Property or any portion thereof (including, without limitation, agreements entered into with residents of the Property (the "Resident Leases")) made or agreed to by, any person or entity (including, without limitation of the foregoing, Assignor and Assignee under the powers granted herein) and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to all or any part of the Property, whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "Leases");

b. The rents, issues and profits and any other payments by any and all lessees under the Leases in addition to rent (collectively the "Rents") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property; and

c. Any and all moneys, awards or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages (all such moneys, awards or payments, including, but not limited to, damages, are collectively referred to herein as the "Damages") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

d. All rights, powers, privileges, options and other benefits (collectively the "Rights") of Assignor under the Leases, including without limitation of the foregoing:

(i) the immediate and continuing right to receive and collect all insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions thereof, whether as rents or otherwise (except sums payable directly to any person other than the lessor thereunder);

- (ii) the right to make all waivers and agreements, including waivers of obligations of lessees;
- (iii) the right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;
- (iv) the right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;
- (v) the right to do any and all other things whatsoever which Assignor is or may become entitled to under the Leases; and
- (vi) the right to exercise any option required or permitted under the Leases;

and Assignor authorizes Assignee:

- (vii) to manage the Property and let and relet the Property, or any part thereof according to Assignee's own discretion;
- (viii) to prosecute or defend any suits in connection with the Property in the name of any or all of Assignee or Assignor as it may consider desirable;
- (ix) to enforce or take any other action in connection with the Leases in the name of any or all of Assignee or Assignor;
- (x) to make such repairs to the Property as Assignee may deem reasonably advisable; and
- (xi) to do anything in or about the Property that Assignee may deem reasonably advisable or that the Assignor has the right or power to do.

**TO HAVE AND TO HOLD** unto Assignee, its successors and assigns, forever, subject to and upon the terms set forth herein.

Although this instrument constitutes a present collateral assignment of the foregoing Leases, Rights, Rents, Damages, interests and privileges, Assignor shall have the right and license to take all actions and exercise all rights of landlord under the Leases and to collect and use all rentals due under the Leases, and, subject to the covenants and restrictions on Assignor contained in Section III and the other paragraphs of this instrument, to exercise the rights and privileges therein, provided, herein, that such license shall be revoked during the continuance of an Event of Default (as herein defined).

## III. COVENANTS

3.1 No Other Assignment. Assignor warrants, represents, and covenants that it is the sole owner of the entire lessor's interest in the Leases existing as of the date hereof and has full right to assign such Leases and the rents due or to become due thereunder, that there has been no previous and, without Assignee's prior written consent as to form and substance, Assignor will permit no future assignment (as collateral or otherwise) of the Assignor's right, title, and interest in any of the Leases, that the Leases existing as of the date hereof are in full force and effect in accordance with their terms and have not been altered, modified, or amended in any manner whatsoever, except as otherwise disclosed to Assignee, that, to the best of Assignor's knowledge, the lessees are not in default under the Leases existing as of the date hereof and to the best of Assignor's knowledge as of the date hereof, have no defenses, setoffs, or counterclaims against the lessor under such Leases, that no rent reserved in the Leases has been assigned or anticipated, and that no rent for any period subsequent to the date hereof has been collected for more than one (1) month in advance of the time when the said rent becomes or would become due under the terms of the Leases except for security deposits and except as otherwise disclosed in writing to Assignee by Assignor.

3.2 Management. At all times until this Assignment is released, or until the assignment granted hereby is exercised by Assignee, and at all times thereafter during which Assignee is not in actual or constructive possession of the Property, Assignor shall use all reasonable effort to cause the Property to be managed in accordance with sound business practices and cause to be performed all material obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof. Assignor shall not, within the exercise of all reasonable effort, permit any of the Rents to be collected in advance, except that monthly rent due and payable under the Leases may be collected for each current month in advance. Assignor shall not terminate or alter, modify, amend, change or in any material manner any of the terms of any of the Leases (other than Resident Leases or Leases entered into in the ordinary course of business and for annual rent of not more than \$25,000 (the "Ordinary Leases")), or give any consent, concession, or waiver under any of the Leases (other than Resident Leases and Ordinary Leases), or exercise any option available to the lessor under the Leases (other than Ordinary Leases and Resident Leases) in the event of casualty damage or condemnation affecting the Property, or accept the surrender thereof or consent to any assignment or subletting under any of the Leases (other than Ordinary Leases and Resident Leases), or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any or all of the Leases (other than Ordinary Leases and Resident Leases) or of any interest therein so as to effect directly or indirectly, promptly or remotely, a merger of the estates and rights of, or a termination or elimination of, the obligations of lessees thereunder, without the prior written consent of the Assignee, which consent will not be unreasonably withheld or delayed. Assignor shall not make any other assignment of any interest in the Leases or the Rents accruing from such Leases or from the Property, or subordinate any of the Leases to any deed of trust, mortgage, or other encumbrance, or permit, consent, or agree to such subordination without

the prior written consent of the Assignee, which consent will not be unreasonably withheld. Subject to Assignor's sound business judgment exercised in good faith, Assignor shall cause prompt action, including legal proceedings, for enforcement of any of the Leases and all other remedies available to lessor thereunder to be commenced against any delinquent or defaulting lessee as soon as reasonably necessary to protect such lessor's interest or immediately upon written request from Assignee, and in the event Assignee reasonably requests that such a specific action be taken, to use all reasonable efforts to cause such action to be taken promptly. Assignor shall, but only at the discretion of Assignee, give any consent of lessor under any of the Leases (other than Ordinary Leases and Resident Leases), or exercise any option available to lessor under any of the Leases in the event of casualty or condemnation affecting the Property. Assignor shall execute and deliver, at the reasonable written request of Assignee, all such further assurances and assignments as Assignee from time to time shall require.

3.3 Execution of Leases. Except as expressly provided in the Loan Agreement, Assignor shall not permit any Leases Other than Resident Leases and the Ordinary Leases) to be made hereafter of all or any portion of the Property except with Assignee's prior written consent.

3.4 Notice of Lessor's Default. Assignor shall cause notice to be given to Assignee of any notice of default by the lessee under any of the Leases, which default is of a nature which would permit such lessee to terminate such lessee's Lease, promptly upon the receipt of notice of such default, but in all events in sufficient time to afford to Assignee an opportunity to cure any such default prior to the lessee under the subject Lease having any right to terminate such Lease by reason of such default.

3.5 Assignee to be Creditor of Lessee. To the extent permitted by law, Assignee shall be deemed to be the creditor of each lessee in the Leases in respect of any and all claims for Damages, assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such lessee (without obligation on the part of Assignee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein). Assignor hereby assigns to Assignee (any and all Damages and any and all money received in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution or receivership proceedings, with Assignee to have the right to receive such Damages and monies immediately upon the occurrence of an Event of Default, and hold them in escrow for the purposes of applying Damages or any money received by Assignee as such creditor in payment of the principal and interest installments secured by or to be paid under the Loan next falling due.

## IV. DEFAULTS AND REMEDIES

4.1 Defaults. The occurrence of an Event of Default under the Loan Agreement or any of the other Loan Documents shall constitute an Event of Default hereunder.



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## 4.2 Exercise of This Assignment of Leases and Rents.

a. Upon the occurrence and during the continuation of any Event of Default, Assignee may exercise the assignment hereby granted and pursue its rights to collect the Rents or manage the Property, or both, and otherwise exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Assignee and without waiving such Event of Default.

b. In the event Assignee elects to invoke any of its rights hereunder, and thereafter for any reason relinquishes to the Assignor such rights, this Assignment shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Note is paid in full, it being the intent of the parties that Assignee, from time to time upon the occurrence of any Event of Default under this Assignment, which such Event of Default is continuing shall have all the rights granted hereby.

4.3 Nature of Remedies. No delay or omission on the part of Assignee in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to Assignee under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the other Loan Documents. The said remedies shall be cumulative and concurrent, may be pursued separately, successively or together against Assignor or the Property, or either of them, at the sole discretion of Assignee and may be exercised as often as occasion therefor shall arise.

4.4 Application of Rents. Upon the occurrence and during the continuation of an Event of Default, Assignee shall have the power to apply the Rents and Damages, in such order as Assignee may reasonably determine, to the payment of the indebtedness (in the inverse order of maturity) represented by the Note and the other Loan Documents, including, without limitation, the payment of all advances and reasonable expenses incurred by Assignee under the Mortgage and all reasonable expenses for the care and management of the Property, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collecting rents, and the reasonable expenses and fees of all attorneys, agents, and servants, which expenses Assignee may reasonably deem to be necessary to exercise the powers granted to the Assignee hereunder. The receipt by Assignee of any Rents pursuant to this Assignment following an Event of Default and the exercise of any remedies provided for in the Note or the other Loan Documents shall not cure such Event of Default or affect or prejudice the exercise of such remedies.

4.5 Limitation of Assignee's Obligations. Assignee's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment. Assignee shall not be liable for uncollected rents or for any claim for damages or set-offs arising out of Assignee's management of the Property other than for damages arising from Assignee's gross negligence or willful misconduct. Assignee shall not be liable to any lessee under the Leases for the return of any security deposit made under any lease of any portion of the Property unless Assignee shall have received such security deposit from the lessor or such

lessee. Assignee shall not by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the lessor under any of the Leases, nor shall Assignee be responsible for any act committed by the lessor or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Assignee a mortgagee in possession of the Property or any part thereof.

4.6 Reimbursement. Assignor shall reimburse, indemnify, and hold Assignee harmless for and from any and all reasonable expenses, losses, damages, and liabilities which Assignee may incur (except for any such reasonable expenses, losses, damages and liabilities caused by Assignee's gross negligence or willful misconduct) by reason of this Assignment, or by reason of any of the Leases, or incurred in connection with exercising any of the rights granted in this Assignment. Any and all amounts due to Assignee under this Section 4.6 shall be immediately due and payable following written notice to Assignor, and shall be added to the principal amount of the Note and secured by this Assignment and the other Loan Documents.

4.7 Authorization to Lessees. Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Assignee upon written demand from Assignee stating that an Event of Default has occurred and is continuing under this Assignment without inquiry as to whether any such Event of Default has occurred or whether Assignee is rightfully entitled to such rent.

## V. MISCELLANEOUS

5.1 Modification of Loan Terms. If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, or if the Loan is renewed, modified, or replaced, or if any security for the Loan is released, Assignor and any other parties now or hereafter liable therefor or interested in the Property shall be held to consent to such extensions, renewals, modifications, replacements, and releases, and their liability and the lien hereof and of the other Loan Documents shall not be released and the rights created hereby and thereby shall continue in full force and effect, the right of recourse against all such parties being reserved by Assignee.

5.2 Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon the respective successors and permitted assigns of Assignor and Assignee and all persons and entities (including owners and lessees) which may hereafter obtain any interest in the Property.

5.3 Notices. Whenever notice may appropriately be given under this Assignment, such notice shall be given in accordance with the provisions for notice as set forth in the Loan Agreement.

5.4 Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

5.5 Severability. If any term, restriction or covenant of this Assignment is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction, or covenant to any other persons or circumstances shall remain unaffected to the extent permitted by law.

5.6 Termination. Assignee shall, within ten (10) days after the underlying obligations of the Loan Documents have been paid and satisfied in full, provide to Assignor, in form acceptable for recordation, an executed and acknowledged certificate of satisfaction or deed of release for the lien of the mortgage of record for the purpose of terminating this Assignment. The recording of such satisfaction of the Mortgage executed by Assignor to Assignee as security for the Loan by Assignee shall terminate this Assignment.

5.7 Waiver of Jury Trial. EACH OF ASSIGNOR AND ASSIGNEE HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT OR THE LOAN OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF ASSIGNEE AND/OR ASSIGNOR WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS ASSIGNMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS ASSIGNMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ASSIGNOR AND ASSIGNEE ARE AUTHORIZED TO SUBMIT A COPY OF THIS ASSIGNMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF ASSIGNOR IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF ASSIGNEE TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN ASSIGNOR AND ASSIGNEE SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

5.8 Waiver of Automatic Stay. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ASSIGNOR HEREBY AGREES THAT, IN CONSIDERATION OF ASSIGNEE'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR ASSIGNEE TO MAKE THE LOAN, IN THE EVENT THAT ASSIGNOR SHALL (I) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION OR CHAPTER OF TITLE 11 OF THE UNITED STATES



CODE, AS AMENDED ("BANKRUPTCY CODE"), OR SIMILAR LAW OR STATUTE; (II) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE; (III) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF FOR DEBTORS; (IV) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR; OR (V) BE THE SUBJECT OF AN ORDER, JUDGEMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST ASSIGNOR FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS, THEN, SUBJECT TO COURT APPROVAL, ASSIGNEE SHALL THEREUPON BE ENTITLED AND ASSIGNOR HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES OTHERWISE AVAILABLE TO ASSIGNEE AS PROVIDED IN THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND ASSIGNOR HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO OBJECT TO SUCH RELIEF.

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IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized representative on the day and year first above written.

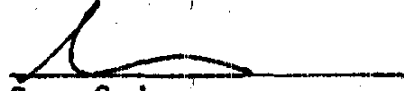
**ASSIGNOR:**

Olympia Fields Senior Housing, L.L.C.,  
a Delaware limited liability company

By: WHSLC Realty, L.L.C.,  
a Delaware limited liability company,  
Member

By: WHSLH Realty, L.L.C.,  
a Delaware limited liability company,  
Member

By:

  
Susan Sack  
Vice President

Property of Cook County Clerk's Office

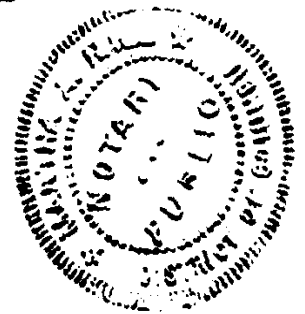
DISTRICT of COLUMBIA:

I, MARTHA A. HALL, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY that Susan Sack personally known to me to be a Vice President of WHSLH Realty, L.L.C., a Delaware limited liability company, a Member of WHSLC Realty, L.L.C., a Delaware limited liability company, a Member of Olympia Fields Senior Housing, L.L.C., a Delaware limited liability company, and 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 as such Vice President, she signed and delivered the said instrument as the free and voluntary act and deed of said WHSLH Realty, L.L.C., a Delaware limited liability company, a Member of WHSLC Realty, L.L.C., a Delaware limited liability company, a Member of Olympia Fields Senior Housing, L.L.C., a Delaware limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 23rd day of OCTOBER, 1998.

Martha A. Hall  
Notary Public

My commission expires: My Commission Expires January 14, 2003



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## EXHIBIT "A"

### LEGAL DESCRIPTION

LOT 2 (EXCEPT THE NORTH 325.00 FEET OF THE WEST 66.00 FEET AND EXCEPT THE NORTH 25.00 FEET OF THE EAST 10.00 FEET OF THE WEST 76.00 FEET) IN GOVERNORS OFFICE PARK PHASE II, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 14 AND PART OF LOTS 15 AND 16 IN GOVERNORS COMMERCIAL PARK 3RD ADDITION, A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 14, IN TOWNSHIP 35NORTH, RANGE 23, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1997 AS DOCUMENT NUMBER 97444523, IN COOK COUNTY, ILLINOIS.

COMMONLY . THE BREAKERS @ OLYMPIA FIELDS  
KNOWN AS SW CORNER OF VOLLMER ROAD  
AND PARK DRIVE  
OLYMPIA FIELDS, ILL.

P.I.N. 31.14.101.004.0000