
20100309000068360 1/11 \$2246.00
Shelby Cnty Judge of Probate, AL
03/09/2010 12:27:53 PM FILED/CERT

**MODIFICATION OF MORTGAGE, SECURITY AGREEMENT AND FIXTURE
FILING**

INLAND AMERICAN BIRMINGHAM SOUTHGATE, L.L.C.,
a Delaware limited liability company,
as mortgagor
(Borrower)

for the benefit of

RBS CITIZENS, N.A. D/B/A CHARTER ONE,
a national banking association,
as mortgagee
(Lender)

Borrower's Organizational No.: 4633196

Dated: As of MARCH 2, 2010
Location: Pelham, Alabama
County: Shelby County, Alabama

PREPARED BY AND UPON
RECORDATION RETURN TO:

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022-2585
Attention: Victoria Shusterman, Esq.

MODIFICATION OF MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

This **MODIFICATION OF MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Modification Agreement**") is entered into as of the 2nd day of MARCH, 2010, between **RBS CITIZENS, N.A. D/B/A CHARTER ONE**, a national banking association, having an address at 1215 Superior Avenue, OH43215, Cleveland, Ohio 44114 ("**Lender**"), and **INLAND AMERICAN BIRMINGHAM SOUTHGATE, L.L.C.**, a Delaware limited liability company, having an address at 2901 Butterfield Road, Oak Brook, Illinois 60523 ("**Borrower**").

WITNESSETH:

WHEREAS, pursuant to that certain Loan and Security Agreement dated as of September 29, 2009 among Borrower, **INLAND AMERICAN COLUMBIA ROSEWOOD, L.L.C.**, a Delaware limited liability company ("**Rosewood**"), **INLAND AMERICAN WOODSTOCK ROSE CREEK, L.L.C.**, a Delaware limited liability company ("**Rose Creek**"), **INLAND AMERICAN TACOMA JAMES, L.L.C.**, a Delaware limited liability company ("**Tacoma James**"), **INLAND AMERICAN PORT CHARLOTTE PEACHLAND, L.L.C.**, a Delaware limited liability company ("**Peachland**"), **INLAND AMERICAN RALEIGH BENT TREE, L.L.C.**, a Delaware limited liability company ("**Bent Tree**") and **INLAND AMERICAN NEWNAN THOMAS, L.L.C.**, a Delaware limited liability company ("**Newnan Thomas**") (Rosewood, Rose Creek, Tacoma James, Peachland, Bent Tree, and Newnan Thomas, are hereinafter referred to collectively as the "**Other Borrowers**"), and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Original Loan Agreement**"), Borrower and Other Borrowers agreed to borrow from Lender the sum of Thirty-Nine Million Ninety-Two Thousand and 00/100 Dollars (\$39,092,000.00) (the "**Original Loan**") as evidenced by that certain Promissory Note dated as of September 29, 2009 made by Borrower and Other Borrowers to Lender (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the "**Original Note**").

WHEREAS, the Original Note is secured by, among other things, that certain Mortgage, Security Agreement and Fixture Filing made by Borrower to Lender dated September 29, 2009 and filed for record on October 5, 2009 and recorded with the Office of the Judge of Probate for Shelby County, Alabama as Document No. 20091005000376760 (the "**Mortgage**"), which Mortgage covers the real property described in Exhibit A attached hereto and made a part hereof (the "**Land**").

WHEREAS, Borrower and Other Borrowers have requested and Lender has agreed to upsize the Original Loan to, among other things, increase the amount of the Original Loan, add additional collateral and additional obligors to the facility (the "**Upsize**").

WHEREAS, in connection with the Upsize, Borrower, Other Borrowers and Lender have agreed to amend and restate the Original Loan Agreement to reflect, among other things, that the Original Loan is simultaneously herewith being increased by an amount equal to \$17,610,000 such that the total loan being advanced by Lender is equal to \$56,702,000.00 (the "**Loan**") pursuant to that certain Amended and Restated Loan and Security Agreement dated as of even date herewith (the "**Loan Agreement**") by and among Lender, Borrower, Other Borrowers, Inland American Erlanger Silverlake, L.L.C., a Delaware limited liability company, Inland American Colorado Springs Cheyenne, L.L.C., a Delaware limited liability company, and Inland American San Pedro Garden, L.L.C., a Delaware limited liability company (collectively, the "**Additional Borrowers**", and together with Borrower and the Other Borrowers, the "**Borrowers**" or individually, each, as a "**Borrower**"), as evidenced by that certain Amended and Restated Promissory Note, dated as of even date herewith (the "**Note**").

WHEREAS, the Mortgage is cross-collateralized and cross-defaulted with the Cheyenne Mortgage (as defined in the Loan Agreement), Silverlake Mortgage (as defined in the Loan Agreement), the San Pedro Mortgage (as defined in the Loan Agreement), the Rosewood Mortgage (as defined in the Loan Agreement), the Peachland Mortgage (as defined in the Loan Agreement), the Rose Creek Mortgage (as defined in the Loan Agreement), the Tacoma James Mortgage (as defined in the Loan Agreement), the Bent Tree Mortgage (as defined in the Loan Agreement) and the Newnan Thomas Mortgage (as defined in the Loan Agreement) and Borrower, Additional Borrowers and the Other Borrowers are Affiliates.

WHEREAS, in order to reflect the Upsize, Borrower and Lender have agreed to modify certain provisions of the Mortgage pursuant to this Modification Agreement.

WHEREAS, any defined terms contained in this Modification Agreement not otherwise defined herein shall have the meanings as set forth in the Mortgage.

NOW, THEREFORE, for and in consideration of the covenant and agreements hereinafter set forth, and also in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration in hand paid to Lender by Borrower, the parties hereto agree as follows:

1. **Incorporation of Recitals**. The recitals to this Modification Agreement are hereby incorporated into and made a part of this Modification Agreement, and shall constitute covenants and representations of Borrower and shall be binding upon and enforceable against Borrower.

2. **Global Amendments to Loan Documents**. The term "Mortgage" as used in the Loan Documents shall now also include this Modification Agreement.

3. **Amendments to Mortgage**. The Mortgage is amended as follows:

(a) **Section 2.2(e)** shall be amended and restated in its entirety as follows:

"(e) the payment and performance of each obligation of the Other Borrowers pursuant to the Other Borrowers' Loan Documents, including, but not limited to, that certain Note executed in connection therewith in the principal amount of \$56,702,000.00."

(b) Section 15.9 shall be amended and restated in its entirety as follows:

“(a) With respect to Borrower and the Property, nothing contained herein or in the Cheyenne Mortgage, the Silverlake Mortgage, the San Pedro Mortgage, the Rosewood Mortgage, the Tacoma James Mortgage, the Rose Creek Mortgage, the Peachland Mortgage, the Bent Tree Mortgage or the Newnan James Mortgage (hereinafter referred to as “**Other Mortgages**”), shall be construed as requiring Lender to resort to the Property for the satisfaction of the Obligations in preference or priority to the Cheyenne Property, the Silverlake Property, the San Pedro Property, the Rosewood Property, the Peachland Property, the Rose Creek Property, the Tacoma James Property, the Bent Tree Property or the Newnan James Property, in whole or in part, in its absolute discretion in respect of the Obligations. In addition, if Lender is entitled to foreclose this Mortgage, then Lender shall have the right from time to time to partially foreclose this Mortgage and/or the Other Mortgages in any manner and for any amounts secured by this Mortgage and/or the Other Mortgages then due and payable as determined by Lender in its sole discretion. Notwithstanding one or more partial foreclosures, the Property shall remain subject to this Mortgage to secure payment of sums secured by this Mortgage and not previously recovered.

(b) Borrower acknowledges that Lender has made the Loan to Borrower and the Other Borrowers upon the security of their collective interest in the Properties and in reliance upon the aggregate of the Properties taken together being of greater value as collateral security than the sum of each Individual Property taken separately. Borrower agrees that this Mortgage is cross-collateralized and cross-defaulted with the Other Mortgages so that (i) an Event of Default under this Mortgage shall constitute an Event of Default under each of the Bent Tree Mortgage, the Rosewood Mortgage, the Newnan James Mortgage, the Tacoma James Mortgage, the Peachland Mortgage, the Cheyenne Mortgage, the Silverlake Mortgage, the San Pedro Mortgage and the Rose Creek Mortgage which secure the Note; (ii) an Event of Default under the Other Mortgages which secure the Note shall constitute an Event of Default under this Security Deed; (iii) an Event of Default under the Note or the Loan Agreement shall constitute an Event of Default under this Mortgage and on each of the Bent Tree Mortgage, the Rosewood Mortgage, the Newnan James Mortgage, the Tacoma James Mortgage, the Peachland Mortgage, the Cheyenne Mortgage, the Silverlake Mortgage, the San Pedro Mortgage and the Rosewood Mortgage; (iv) this Mortgage shall constitute security for the Note as if a single blanket lien were placed on all of the Properties, as security for the Note; and (v) such cross-collateralization shall in no event be deemed to constitute a fraudulent conveyance.”

4. **Agreements Continue; Ratification.** All the terms, provisions, stipulations, powers, and covenants in the Loan Documents shall remain unchanged and unmodified, except as expressly set forth in this Modification Agreement, and the Mortgage, as so changed or modified, is hereby ratified and confirmed and shall remain in full force and effect and shall be binding upon all parties thereto.

5. **No Waiver.** Notwithstanding anything contained in this Modification Agreement or any of the other Loan Documents to the contrary or any prior act of Lender or any procedure established by Lender with regard to the Loan, Borrower acknowledges and agrees that Lender has not heretofore waived any of its rights or remedies under the Loan Documents nor has Lender waived any of the duties or obligations of Borrower thereunder. No waiver by Lender of any covenant or condition under the Loan Documents shall be deemed a subsequent waiver of

the same or any other covenant or condition. No covenant, term or condition of the Loan Documents shall be deemed waived by Lender unless waived in writing.

6. **Governing Law.** THIS MODIFICATION AGREEMENT SHALL BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES, AND BORROWER AGREES THAT THE PROPER VENUE FOR ANY MATTERS IN CONNECTION HERewith SHALL BE IN THE STATE OR FEDERAL COURTS LOCATED IN CHICAGO, ILLINOIS AS LENDER MAY ELECT AND BORROWER HEREBY SUBMITS ITSELF TO THE JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF ADJUDICATING ANY MATTERS RELATED TO THE LOAN, PROVIDED, HOWEVER, THAT TO THE EXTENT THE MANDATORY PROVISIONS OF THE LAWS OF ANOTHER JURISDICTION RELATING TO (i) THE PERFECTION OR THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTERESTS IN ANY OF THE PROPERTY, (ii) THE LIEN, ENCUMBRANCE OR OTHER INTEREST IN THE PROPERTY GRANTED OR CONVEYED BY THIS MODIFICATION AGREEMENT, OR (iii) THE AVAILABILITY OF AND PROCEDURES RELATING TO ANY REMEDY HEREUNDER OR RELATED TO THIS MODIFICATION AGREEMENT ARE REQUIRED TO BE GOVERNED BY SUCH OTHER JURISDICTION'S LAWS, SUCH OTHER LAWS SHALL BE DEEMED TO GOVERN AND CONTROL. THE INVALIDITY, ILLEGALITY OR UNENFORCEABILITY OF ANY PROVISION OF THIS MODIFICATION AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL NOT AFFECT OR IMPAIR THE VALIDITY, LEGALITY OR ENFORCEABILITY OF THE REMAINDER OF THIS MODIFICATION AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND TO THIS END, THE PROVISIONS OF THIS MODIFICATION AGREEMENT AND THE OTHER LOAN DOCUMENTS ARE DECLARED TO BE SEVERABLE.

7. **Miscellaneous.**

- (a) This Modification Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument.
- (b) The terms, covenants and conditions of the Mortgage shall remain unchanged and unmodified, except as expressly set forth in this Modification Agreement, and the terms, covenants and conditions of the Mortgage, as so modified, are hereby ratified and confirmed.
- (c) None of the covenants, terms or conditions of this Modification Agreement shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto.
- (d) This Modification Agreement contains the entire agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind.

- (e) In the event of any inconsistency between the terms of the Loan Documents and the terms of this Modification Agreement, the terms of this Modification Agreement control.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



20100309000068360 7/11 \$2246.00
Shelby Cnty Judge of Probate, AL
03/09/2010 12:27:53 PM FILED/CERT

IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

BORROWER:

**INLAND AMERICAN BIRMINGHAM
SOUTHGATE, L.L.C.**, a Delaware limited
liability company

By: Inland American MAC Corporation, a Delaware
corporation, its sole member

By: *Mary J. Pechous*
Name: **Mary J. Pechous**
Title: **Assistant Secretary**

Address of Borrower:
2901 Butterfield Road
Oak Brook, Illinois 60523

LENDER:

RBS CITIZENS, N.A., d/b/a CHARTER ONE,
a national banking association

By: _____
Name: Andrew Romanosky
Title: Vice President

Address of Lender:
1215 Superior Avenue
OH 44114
Cleveland, Ohio 44114



20100309000068360 8/11 \$2246.00
Shelby Cnty Judge of Probate, AL
03/09/2010 12:27:53 PM FILED/CERT

IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

BORROWER:

**INLAND AMERICAN BIRMINGHAM
SOUTHGATE, L.L.C.**, a Delaware limited
liability company

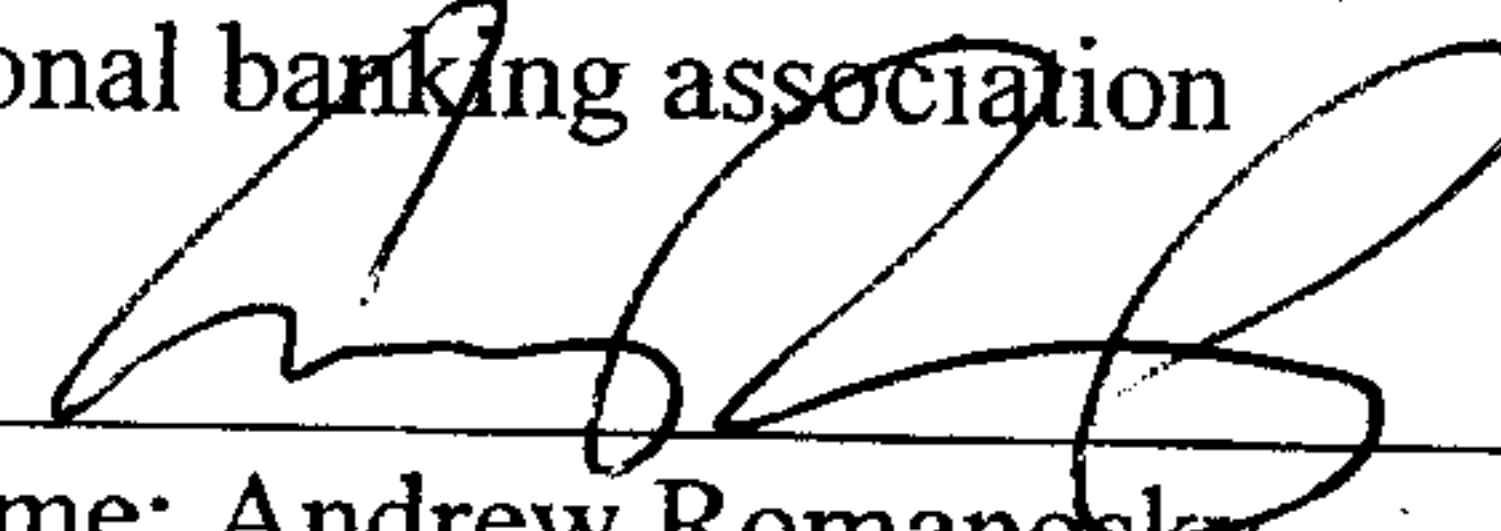
By: Inland American MAC Corporation, a Delaware
corporation, its sole member

By: _____
Name: _____
Title: _____

Address of Borrower:
2901 Butterfield Road
Oak Brook, Illinois 60523

LENDER:

RBS CITIZENS, N.A., d/b/a CHARTER ONE,
a national banking association

By: 
Name: Andrew Romanosky
Title: Vice President

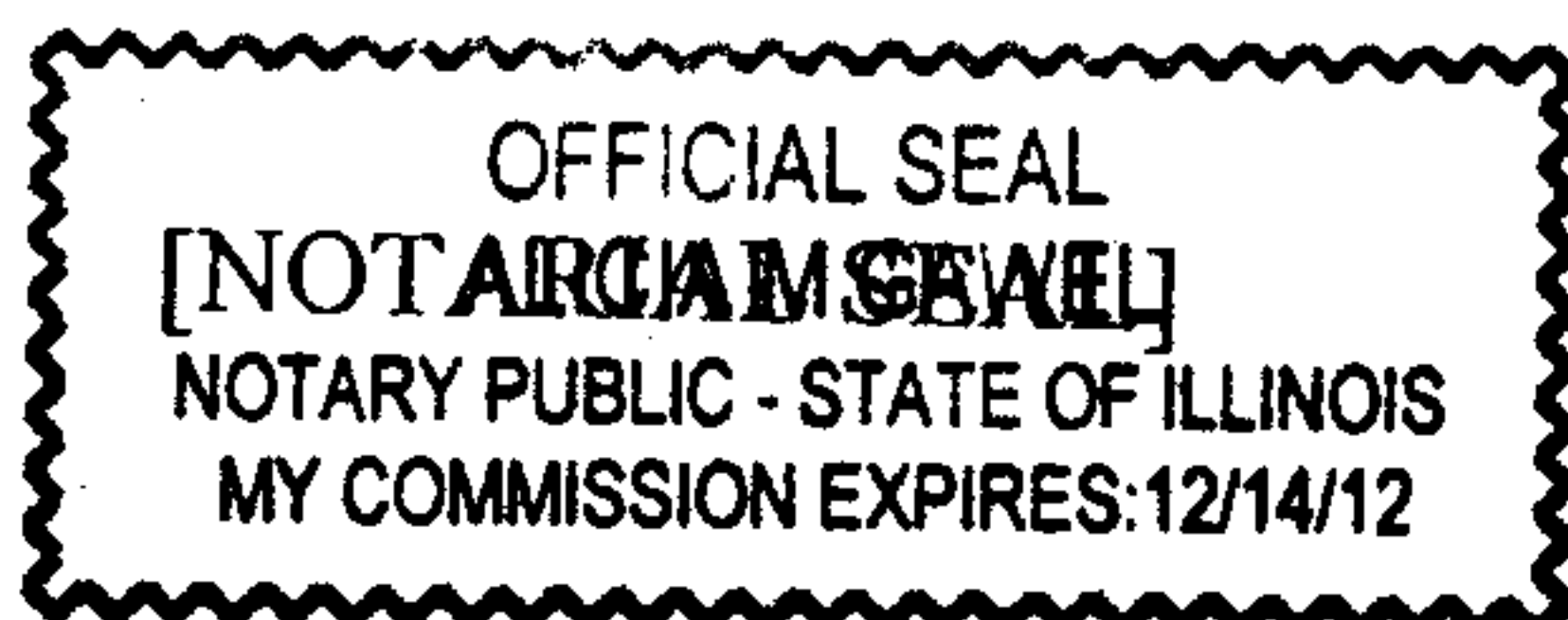
Address of Lender:
1215 Superior Avenue
OHS675
Cleveland, Ohio 44114

STATE OF Illinois)
COUNTY OF DuPage)

20100309000068360 9/11 \$2246.00
Shelby Cnty Judge of Probate, AL
03/09/2010 12:27:53 PM FILED/CERT

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Mary J. Penous whose name as Assistant Secretary of Inland American MAC Corporation, a Delaware corporation, the sole member of Inland American Birmingham Southgate, L.L.C., a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she/he, as such Assistant Secretary and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 25th day of February, 2010.



Alicia M. Howell
Notary Public
My Commission Expires: 12/14/12

20100309000068360 10/11 \$2246.00
Shelby Cnty Judge of Probate, AL
03/09/2010 12:27:53 PM FILED/CERT

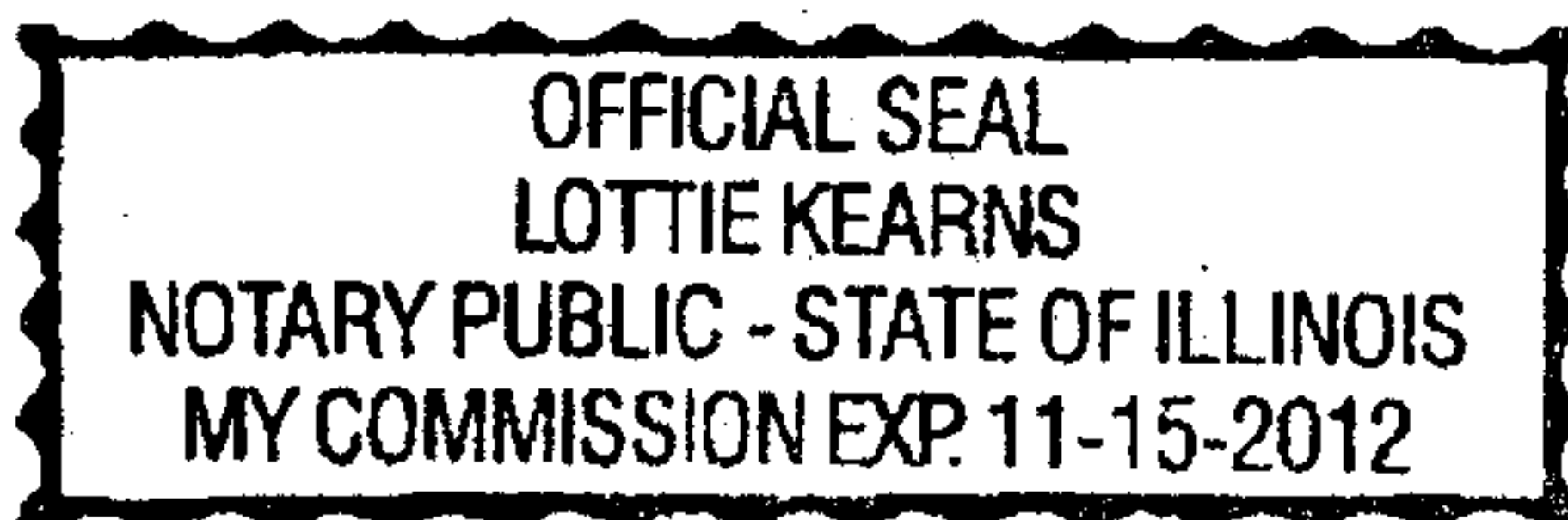
STATE OF Illinois)
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Andrew Romanosky, whose name as Vice President of RBS CITIZENS, N.A., d/b/a CHARTER ONE, a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Senior Vice President and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 26 day of FEBRUARY 2010.

[NOTARIAL SEAL]

Lottie Kearns
Notary Public
My Commission Expires: 11-15-2012



20100309000068360 11/11 \$2246.00
Shelby Cnty Judge of Probate, AL
03/09/2010 12:27:53 PM FILED/CERT

EXHIBIT A

Legal Description

A tract of land situated in the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 25, Township 19 South, Range 3 West, Shelby County, Alabama, and more particularly described as follows:

Commence at the Northeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section and run North $87^{\circ}18'38''$ West, along the North line thereof a distance of 422.06 feet; thence run South $01^{\circ}17'56''$ West, for a distance of 412.83 feet to the Point of Beginning; thence run South $87^{\circ}17'54''$ East, for a distance of 417.36 feet to a point on the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence run South $01^{\circ}57'45''$ West, along said East line a distance of 189.93 feet; thence run South $88^{\circ}02'15''$ East, for a distance of 3.83 feet to a point on the West right of way line of U.S. Highway No. 31; thence run along said right of way South $10^{\circ}40'00''$ West, a distance of 434.26 feet; thence run South $32^{\circ}01'05''$ West, a distance of 188.80 feet to a point on the Northwest right of way line of Alabama Highway No. 261; thence run South $61^{\circ}31'05''$ West, along said right of way a distance of 122.50 feet; thence run North $32^{\circ}30'55''$ West, along the Northeast boundary of Riverchase Animal Clinic property a distance of 141.48 feet; thence run South $57^{\circ}29'05''$ West, along the Northwest line of said property a distance of 100.00 feet to the Northeast right of way line of Valleydale Terrace; thence run North $32^{\circ}30'55''$ West, along right of way line a distance of 25.60 feet to the beginning of a curve to the right, said curve having a radius of 419.64 feet and subtending a central angle of $13^{\circ}13'21''$; thence run Northwest along the arc of said curve a distance of 96.84 feet; thence on a line tangent to curve, continue North $19^{\circ}17'34''$ West, along right of way line a distance of 166.06 feet; thence run North $58^{\circ}04'35''$ East, along right of way a distance of 13.01 feet; thence an angle to the left to tangent of a curve to the left of $77^{\circ}07'41''$, said curve having a radius of 174.25 feet and subtending a central angle of $30^{\circ}07'58''$; thence run along the arc of said curve a distance of 91.61 feet; thence on a line tangent to curve, continue along right of way line North $49^{\circ}11'04''$ West, a distance of 67.40 feet; thence run North $40^{\circ}48'56''$ East, a distance of 147.17 feet; thence run North $50^{\circ}36'35''$ East, a distance of 175.89 feet; thence run North $01^{\circ}17'56''$ East, for a distance of 175.35 feet to the Point of Beginning.

TOGETHER WITH all of owner's right, title and interest in and to that certain Easement dated November 18, 1987, and recorded in Book 161, page 3, in the Probate Office of Shelby County, Alabama.