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Cook County Recorder of Deeds  
Date: 09/05/2006 03:09 PM Pg: 1 of 11

Property of Cook County Clerk's Office

### Recording Cover Page

- DEED
- MORTGAGE
- RELEASE
- ASSIGNMENT
- OTHER
- RECORD
- RE-RECORD

*Warranty & Indemnity*

REMARKS

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Mail To  
Law Title Oak Brook  
500 Enterprise Dr.  
Ste. 205  
Oak Brook, IL 60523

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102331K  
**LAW TITLE**  
16-28-408-0111

**AFFIDAVIT AND INDEMNITY OF BORROWER  
REGARDING HAZARDOUS AND TOXIC MATERIALS**

STATE OF ILLINOIS

COUNTY OF DUPAGE

DATE:

August 4, 2006

**BEFORE ME**, the undersigned authority, Lauro Hernandez, a Married Man and Marcelo Hernandez, a Single Man, ("Borrower") who, being first duly sworn by me under oath, depose, state, warrant, represent and covenant as follows

1. The following definitions shall apply for the purposes of this Affidavit and Indemnity:

A. "Hazardous or Toxic Materials" includes but is not limited to any hazardous, toxic or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, radon, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents) or any of the substances, and/or materials which are included under or regulated by any local, state, or federal laws rules or regulations pertaining to environmental regulation, contamination or clean up (said laws, rules and regulations collectively referred to herein as "Environmental Laws"), including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 USC 9601 et seq. and 40 CFR 302.1 et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.); the Federal Waste Pollution Control Act (33 USC 1251 et seq. and 40 CFR 116.1 et seq.), and the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.).

B. The "Property" includes the land as more fully described on *Exhibit "A"* attached hereto and by reference made a part hereof, including all buildings and other improvements now or hereafter located thereon, and any real property hereinafter encumbered by the lien of the Security Instrument described below.

2. Borrower is the fee simple title holder of the Property.

3. Borrower is borrowing the sum of Two Hundred Fourteen Thousand Five Hundred and No/100 Dollars (\$214,500.00) (the "Loan") from InterBay Funding, LLC, a Delaware Limited Liability Company ("Lender") evidenced by a Promissory Note in the amount of the Loan (the "Note") secured by a Mortgage and Security Agreement executed simultaneously herewith and to be recorded among the Public Records in the County, Parish or Judicial District of the Commonwealth or State where the Property is located ("Security Instrument"). The Note, Security Instrument and other documents as defined in the Note and/or Security Agreement are hereafter called the "Loan Documents". As a condition to making the Loan, the Lender requires Borrower to provide certain full recourse indemnities concerning Hazardous or Toxic Materials, as hereinafter set forth. Borrower acknowledges Lender's reliance hereon.

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4. Borrower has undertaken such inquiry into the previous ownership and uses of the Property as is consistent with good commercial practice in an effort to minimize liability with respect to any Hazardous or Toxic Materials.

5. Borrower represents and warrants that:

(a) The Property is presently free from contamination by or the presence of Hazardous or Toxic Materials, and the Property and the activities conducted thereon do not pose any significant hazard to human health or the environment or violate any Environmental Laws.

(b) The Property and any improvements now or hereafter located thereon have not in the past been used, are not presently being used, and will not be used in the future for such time as any indebtedness is owned by Borrower to Lender (or its assigns) for the generation, release, treatment, discharge, emission, handling, storage, transportation, or disposal of Hazardous or Toxic Materials in excess of any acceptable levels imposed by any applicable governmental authority or Environmental Laws.

(c) There has been no release, discharge, spillage, emanation, uncontrolled loss or seepage of any Hazardous Substance to the air, ground or water attributable to or in any way related to the Borrower, or the Property. Any and all discharges and releases or any substances to the air, ground and water, attributable to or in any way related to the Borrower or the Property have, at all times, been within all applicable limits and restrictions set by applicable laws, statutes, ordinances, regulations or similar standards or by applicable permits, licenses or similar grants of governmental permission or approval (collectively the "Permit").

(d) There are no underground or aboveground storage tanks or storage tanks having ten percent or more of their volume below ground located on the Property.

(e) No substances containing Polychlorinated Biphenyls (PCBs) are used or stored on the Property.

(f) There is no asbestos on any part of the Property or in any of the building or other improvements located thereon.

(g) There are no lagoons, waste piles, surface impoundments, dry wells or similar items on the Property. Such items have not existed on such Property at any time during which the Borrower owned or operated such Property, or to the best knowledge of the Borrower, at any other time.

(h) There are no currently outstanding orders or notices of violations from the Department of Environment Protection (the "DEP"), the United States Environmental Protection Agency (the "EPA") or any similar state or other organization pertaining to the Borrower, the Property or any occupant of such Property, and no such order or notices have been issued in the past.

(i) There are no actions pending or threatened by any party seeking to enforce any law, statute, ordinance, regulation or similar standard, including, but not limited to, those relating to environmental protection, pollution control, hazardous waste, and any other waste (collectively the "Environmental Laws"), or seeking damages or other relief based on the Borrower's alleged violation of any such Environmental Law or any pollution or contamination caused by the Borrower or located on or emanating from the Property.

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(j) The Property was never utilized as nor did it ever abut a dump, landfill or other waste treatment storage or disposal facility.

(k) The Borrower and the Property are and, to the best knowledge of the Borrower, at all times have been in compliance with all Environmental Laws.

6. The Borrower shall immediately notify the Lender in writing of the occurrence of any of the following:

(a) Any release, discharge, spillage, emanation, uncontrolled loss or seepage of any Hazardous Substance on or from the Property.

(b) Any order, notice of violation or other action by the DEP, the EPA or any similar entity pertaining to any alleged violation of any Environmental Law by the Borrower or any alleged violation of any Environmental Law occurring on the Property.

(c) Any action by any party seeking to enforce any Environmental Law or seeking damages or other relief based on the Borrower's alleged violation of any Environmental Law or any pollution or contamination caused by the Borrower or located on or emanating from the Property.

7. The Borrower shall provide the Lender with copies of all notices, orders, summonses, correspondence and other similar items delivered to or served upon the Borrower pertaining to any of the foregoing.

8. Borrower hereby indemnifies and agree to defend and save and hold Lender and its directors, officers, employees, agents, successors and assigns harmless from and against any and all losses, liabilities (including, without limitation, strict liability and common law liability), obligations, damages (including, without limitation, all foreseeable and unforeseeable consequential damages to any person or entity including third parties), injuries (including, without limitation, injuries to the environment), defenses, charges, penalties, interest, expenses, fees (including attorneys' fees at all pretrial, administrative and judicial hearings, trial and appellate levels), costs (including, without limitations, costs of any settlement), judgements, administrative or judicial proceedings and orders, remedial action requirements, enforcement actions, claims and demands of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Lender by any person or entity or governmental agency or body for, with respect to, related to, arising out of, or as a direct or indirect result of, in whole or in part, the violation of any Environmental Laws applicable to the Property or any activity conducted thereon, or the past, present and future use, generation, release, treatment, discharge, emission, escape, seepage, leakage, spillage, handling, storage, transportation, disposal, clean-up or presence at, on or under the Property or adjacent property, or to the soil, air or to surface or ground water thereat, of any Hazardous or Toxic Materials. All sums paid and costs incurred by Lender with respect to the foregoing matters shall bear interest at the highest applicable legal rate and shall be secured by the lien of the Security Instrument, and the lien of the Security Instrument shall also further secure this indemnity and any liabilities hereunder. This indemnification shall remain in full force and effect until Lender's satisfaction or release of the Note and Security Instrument, or the Lender's acceptance of a deed in lieu of foreclosure.

9. In addition to any environmental audit which may have been required by Lender as a precedent to the closing of the Loan, at any time it sees fit, Lender, at its sole option, upon its notification of an Environmental Complaint (as hereinafter defined), may obtain, at Borrower's

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expense, an environmental audit prepared by an independent engineer or other qualified environmental consultant of the Lender's choice, which evaluates (i) whether any Hazardous or Toxic Materials are present in the soil or surface or ground water at the site of the Property or in the soil or surface or ground water adjacent to such site; (ii) whether Hazardous or Toxic Materials are now or have been previously used, generated, released, treated, discharged, emitted, escaped, seeped, leaked, spilled, handled, stored, transported or disposed of at the site of the Property; and (iii) whether activities presently being conducted at the site of the Property are in compliance with all applicable Environmental Laws. The consultant shall prepare a written report detailing its findings and conclusions.

The Borrower agrees that in the event Lender requests such an audit or an audit pursuant to subparagraph 10 below, and either of said audits indicates such past or present use, generation, release, treatment, discharge, emission, escape, seepage, leakage, spillage, handling, storage, transportation, disposal, clean-up or presence, Lender may, in its sole discretion, require that Borrower take, and Borrower shall in fact take, all steps necessary to further define the nature of the Hazardous or Toxic Materials, any risks related to or resulting therefrom and possible remedial measures; and thereafter may also require that all violations of law with respect to Hazardous or Toxic Materials be corrected and/or cleaned up by Borrower and that Borrower obtain all necessary environmental permits and approvals associated therewith.

If Borrower receives any notice of (i) the happening of any material event involving the use, generation, release, treatment, discharge, emission, escape, seepage, leakage, spillage, handling, storage, transportation, disposal or clean-up of any Hazardous or Toxic Materials on or at the site of the Property or adjacent thereto, or in connection with Borrower's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health or safety matter affecting Borrower or the Property (an "Environmental Complaint") from any person or entity or governmental agency or body (including, without limitation, the EPA), then Borrower shall immediately notify Lender orally and in writing of said notice.

10. Lender shall have the right, in its sole, reasonable discretion, to require Borrower to periodically (but not more frequently than annually unless an Environmental Complaint is then outstanding) perform, at Borrower's expense, an environmental audit and, if reasonably deemed necessary by Lender, an environmental risk assessment, each of which must be satisfactory to Lender, of the Property, and/or of Borrower's hazardous waste management practices and/or of the hazardous waste disposal sites used by Borrower, if any, and of compliance with all permits, consent orders, licenses, approvals, permissions or any of the like required for the operation of the Property or any business, process or activity thereon. Said audit and/or risk assessment must be by an environmental consultant satisfactory to Lender. Should Borrower fail to perform said environmental audit or risk assessment within (30) days of the Lender's written request, Lender shall have the right but not the obligation to retain, at Borrower's sole cost payable in demand and to be secured by the Security Instrument, an environmental consultant to perform said environmental audit or risk assessment.

11. Any breach of any warranty, representation, covenant or agreement contained herein shall also be an Event of Default under the Note and Security Instrument and shall entitle Lender to exercise any and all remedies provided in the Security Instrument or otherwise permitted by law. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served as provided in the Security Instrument.



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12. This Affidavit and Indemnity may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each of the undersigned individually as fully and completely as if all had signed but one instrument so that the joint and several liability of each of the undersigned hereunder shall be unaffected by the failure of any of the undersigned to execute any or all of said counterparts. Any one or more of Borrower, or any other party liable upon or in respect of this Indemnity or the Loan, may be released without affecting the liability of any party not so released. This Indemnity shall be binding upon and inure to the benefit of Borrower, Lender and their respective heirs, personal representatives, successors and assigns.

13. All of the terms and provisions of this Agreement are recourse obligations of Borrower and notwithstanding the fact all of the objectives and costs of Borrower created hereby are served by the Security Instrument, the Borrower's obligations created hereby are and not restricted by any limitation on personal liability.

14. This Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the payment of the indebtedness evidenced and secured by the Loan Documents and the exercise of any remedy by Lender under the Security Instrument or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof, even if, as a part of such remedy, the Loan is paid or satisfied in full.

15. Notwithstanding the satisfaction by Borrower of any liability hereunder, Borrower shall not have any right of subrogation, contribution, reimbursement or indemnity whatsoever or any right of recourse to or with respect to any collateral for the Loan. In connection with the foregoing, Borrower expressly waives any and all rights of subrogation to Lender against Borrower and Borrower hereby waives any rights to enforce any remedy which Lender may have against Borrower and any right to participate in any collateral for the Loan. In addition to and without in any way limiting the foregoing, Borrower hereby subordinates any and all indebtedness of any owner of the Property now or hereafter owed to Borrower to all indebtedness to Lender arising out of the Property, and agrees with Lender that Borrower shall not demand or accept any payment of principal or interest from any owner of the Property, shall not claim any offset or other reduction of any of Borrower's obligations hereunder because of any such indebtedness and shall not take any action to obtain any of the collateral from the Loan. Further, Borrower shall have no right of recourse against Lender by reason of any action Lender may take or omit to take under the provisions of this Agreement or under the provisions of any of the Loan Documents.

16. Nothing contained in this Agreement shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which Lender may have against Borrower or any other party under any Environmental Laws, as they may be amended from time to time.

17. Lender's rights under this Agreement shall be in addition to all rights of Lender under the Note, the Security Instrument and the other Loan Documents. **FURTHER, PAYMENTS MADE BY BORROWER UNDER THIS AGREEMENT SHALL NOT REDUCE IN ANY RESPECT BORROWER'S OBLIGATIONS AND LIABILITIES UNDER THE NOTE, THE SECURITY INSTRUMENT, ANY GUARANTY (IF ANY) AND THE OTHER LOAN DOCUMENTS.**

18. Borrower hereby consents and agrees that Lender may, at any time and from time to time without further consent, do any of the following events, and the liability of Borrower under this

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Agreement shall be unconditional and absolute and shall in no way be impaired or limited by any of the following events, whether occurring with or without notice to Borrower or with or without consideration: (i) any extensions of time for performance required by any of the Loan Documents or extension or renewal of the Note; (ii) any sale, assignment or foreclosure of the Note, the Security Instrument or any of the other Loan Documents or any sale or transfer of the Property; (iii) any change in the ownership of the Property, including, without limitation, the withdrawal or removal of Borrower from any current or future position of ownership, management or control of the Property; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower herein or in any of the Loan Documents; (v) the release of Borrower or any other person or entity from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Lender's voluntary act or otherwise; (vi) the release or substitution in whole or in part of any security for the Loan; (vii) Lender's failure to record the Security Instrument or to file any financing statement (or Lender's improper recording or filing thereof) or to otherwise perfect, protect, secure or insure any lien or security interest given as security for the Loan; (viii) the modification of the terms of any one or more of the Loan Documents; or (ix) the taking or failure to take any action of any type whatsoever. No such action which Lender shall take or fail to take in connection with the Loan Documents or any collateral for the Loan, nor any course or dealing with Borrower or any other person, shall limit, impair or release the obligations of Borrower hereunder, affect this Agreement in any way or afford Borrower any recourse against Lender. Nothing contained in this Section shall be construed to require Lender to take or refrain from taking any action referred to herein.

19. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes (except as to the Security Instrument and other Loan Documents) all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Agreement is unenforceable or invalid as to one person shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

20. This Agreement shall be governed by and construed in accordance with the laws of the State where the Property is located, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling. This Agreement shall bind Borrower and their heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender and the officers, directors, shareholders, agents and employees of Lender and their respective heirs, successors and assigns.

21. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery to the intended addressee at its address set forth in the Security Instrument, the respective Guaranty(ies) or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective in accordance with the requirements for notice as set forth in the Security Instrument.

22. The failure of any party hereto to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This

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Agreement is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof.

23. In the event it is necessary for Lender to retain the services of an attorney or any other consultants in order to enforce this Agreement, or any portion thereof, Borrower agrees to pay to Lender any and all costs and expenses, including, without limitation, attorneys' fees, incurred by Lender whether incurred at pretrial, trial or appellate trials.

24. A separate right of action hereunder shall arise each time Lender acquires knowledge of any matter indemnified by Borrower under this Agreement. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Borrower hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments.

25. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and agreements made by Borrowers herein, and the liability hereunder, is joint and several.

26. Lender would not make the Loan without this Agreement. Accordingly, Borrower, intentionally and unconditionally enter into the covenants and agreements as set forth above and understand that, in reliance upon and in consideration of such covenants and agreements, the Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

27. BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OR COMMONWEALTH WHERE THE PROPERTY IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OR COMPETENT JURISDICTION SITTING IN THE COUNTY, PARISH OR JUDICIAL DISTRICT WHERE THE PROPERTY IS LOCATED OR IN MIAMI-DADE COUNTY, FLORIDA (C) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (D) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT BORROWER WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE BORROWER AT THE ADDRESS(ES) FOR NOTICES DESCRIBED IN THE SECURITY INSTRUMENT, AND CONSENT AND AGREE THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

28. BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE



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RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF LENDER, BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

Borrower covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower or any owner of the Property, they shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. ? 105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender by virtue of this Agreement or otherwise.

AFFIANT:

Lauro Hernandez  
Lauro Hernandez

Marcelo Hernandez  
Marcelo Hernandez

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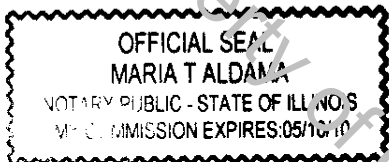
## ACKNOWLEDGMENT

STATE OF ILLINOIS )  
 ) SS:  
 COUNTY OF DUPAGE )

The foregoing instrument was acknowledged before me on August 4, 2006 by Lauro Hernandez, a Married Man and Marcelo Hernandez, a Single Man. They are personally known to me or produced \_\_\_\_\_ as identification, and did/did not take an oath.

[Official Notary Seal]

*Maria T. Aldama*  
 Print Name: MARIA T. Aldama  
 Notary Public, State of Illinois  
 My Commission Expires: 5/16/10



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Law Title Insurance Agency Inc-Oakbrook  
Oakbrook Title Department: 800 Enterprise Drive, Suite 205, Oakbrook, IL 60523  
Phone (630) 571-1007 Fax (630) 571-1062  
Authorized Agent For: Lawyers Title Insurance Corporation

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## SCHEDULE C - PROPERTY DESCRIPTION

Commitment Number: OAK-102331K

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*The land referred to in this Commitment is described as follows:*

LOTS 1 AND 2 IN BLOCK 1 IN H.W. FISCHER'S ADDITION TO MORTON PARK IN THE SOUTH EAST 1/4 OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN SAID COOK COUNTY AND STATE OF ILLINOIS.

FOR INFORMATION ONLY: 16-28-408-014

4901 WEST OGDEN AVENUE, CICERO IL 60804

PLEASE NOTE: THE PROPERTY ADDRESS AND ZIP CODE ARE PROVIDED FOR CONVENIENCE ONLY.

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