

# UNOFFICIAL COPY

**RECORDATION REQUESTED BY:**

American Enterprise Bank  
600 N. Buffalo Grove  
Buffalo Grove, IL 60089



Doc#: 0707157012 Fee: \$40.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/12/2007 09:29 AM Pg: 1 of 9

**WHEN RECORDED MAIL TO:**

American Enterprise Bank  
600 N. Buffalo Grove  
Buffalo Grove, IL 60089

**SEND TAX NOTICES TO:**

KAY TEE HOSPITALITY, INC.  
2850 W. 159TH ST  
MARKHAM, IL 60426

FOR RECORDER'S USE ONLY

4377904 (HID) GIT

**This Hazardous Substances Agreement prepared by:**

DIANA JIMENEZ, LOAN OPERATIONS  
American Enterprise Bank  
600 N. Buffalo Grove  
Buffalo Grove, IL 60089

## HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY AGREEMENT

THIS HAZARDOUS SUBSTANCES AGREEMENT dated February 28, 2007, is made and executed among KAY TEE HOSPITALITY, INC., whose address is 2850 W. 159TH ST, MARKHAM, IL 60426 (sometimes referred to below as "Borrower" and sometimes as "Indemnitor"); KISHOF CHAVDA, whose address is 2850 W. 159TH ST, MARKHAM, IL 60426 and KANAK CHAVDA, whose address is 2850 W. 159TH ST, MARKHAM, IL 60426 (sometimes referred to below as "Guarantor" and sometimes as "Indemnitor"); and American Enterprise Bank, 600 N. Buffalo Grove, Buffalo Grove, IL 60089 (referred to below as "Lender"). For good and valuable consideration and to induce Lender to make a loan to Borrower, each party executing this Agreement hereby represents and agrees with Lender as follows:

**PROPERTY DESCRIPTION.** The word "Property" as used in this Agreement means the following Real Property located in COOK County, State of Illinois:

SEE EXHIBIT A

The Real Property or its address is commonly known as 2850 W. 159TH ST, MARKHAM, IL 60426. The Real Property tax identification number is 28-13-330-008, 28-13-330-009, 28-13-330-010, 28-13-330-011, 28-13-330-012, 28-13-330-013, 28-13-330-014, 28-13-330-015, 28-13-330-023, 28-13-330-024, 28-13-330-025, 28-13-330-026, 28-13-330-027, 28-13-330-029 AND 28-13-330-030, + 28-13-330-043

**REPRESENTATIONS.** The following representations are made to Lender, subject to disclosures made and accepted by Lender in writing:

**Use of Property.** After due inquiry and investigation, Indemnitor has no knowledge, or reason to believe, that there has been any use, generation, manufacture, storage, treatment, refinement, transportation, disposal, release, or threatened release of any Hazardous Substances by any person on, under, or about the Property.

**Hazardous Substances.** After due inquiry and investigation, Indemnitor has no knowledge, or reason to believe, that the Property, whenever and whether owned by previous Occupants, has ever contained asbestos, PCBs, lead paints or other Hazardous Substances, whether used in construction or stored on the Property.

**No Notices.** Indemnitor has received no summons, citation, directive, letter or other communication, written or

# UNOFFICIAL COPY

## HAZARDOUS SUBSTANCES AGREEMENT

(Continued)

Page 2

oral, from any agency or department of any county or state or the U.S. Government concerning any intentional or unintentional action or omission on, under, or about the Property which has resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into any waters, ambient air or onto any lands or where damage may have resulted to the lands, waters, fish, shellfish, wildlife, biota, air or other natural resources.

**AFFIRMATIVE COVENANTS.** Subject to disclosures made and accepted by Lender in writing, Indemnitee covenants with Lender as follows:

**Use of Property.** Indemnitee will not use and does not intend to use the Property to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances, PCBs, lead paint or asbestos.

**Compliance with Environmental Laws.** Indemnitee shall cause the Property and the operations conducted on it to comply with any and all Environmental Laws and orders of any governmental authorities having jurisdiction under any Environmental Laws and shall obtain, keep in effect and comply with all governmental permits and authorizations required by Environmental Laws with respect to such Property or operations. Indemnitee shall furnish Lender with copies of all such permits and authorizations and any amendments or renewals of them and shall notify Lender of any expiration or revocation of such permits or authorizations.

**Preventive, Investigatory and Remedial Action.** Indemnitee shall exercise extreme care in handling Hazardous Substances if Indemnitee uses or encounters any. Indemnitee, at Indemnitee's expense, shall undertake any and all preventive, investigatory or remedial action (including emergency response, removal, containment and other remedial action) (a) required by any applicable Environmental Laws or orders by any governmental authority having jurisdiction under Environmental Laws, or (b) necessary to prevent or minimize property damage (including damage to Occupant's own property), personal injury or damage to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or operations of any Occupant on the Property. In the event Indemnitee fails to perform any of Indemnitee's obligations under this section of the Agreement, Lender may (but shall not be required to) perform such obligations at Indemnitee's expense. All such costs and expenses incurred by Lender under this section and otherwise under this Agreement shall be reimbursed by Indemnitee to Lender upon demand with interest at the Note default rate, or in the absence of a default rate, at the Note interest rate. Lender and Indemnitee intend that Lender shall have full recourse to Indemnitee for any sum at any time due to Lender under this Agreement. In performing any such obligations of Indemnitee, Lender shall at all times be deemed to be the agent of Indemnitee and shall not by reason of such performance be deemed to be assuming any responsibility of Indemnitee under any Environmental Law or to any third party. Indemnitee hereby irrevocably appoints Lender as Indemnitee's attorney-in-fact with full power to perform such of Indemnitee's obligations under this section of the Agreement as Lender deems necessary and appropriate.

**Notices.** Indemnitee shall immediately notify Lender upon becoming aware of any of the following:

- (1) Any spill, release or disposal of a Hazardous Substance on any of the Property, or in connection with any of its operations if such spill, release or disposal must be reported to any governmental authority under applicable Environmental Laws.
- (2) Any contamination, or imminent threat of contamination, of the Property by Hazardous Substances, or any violation of Environmental Laws in connection with the Property or the operations conducted on the Property.
- (3) Any order, notice of violation, fine or penalty or other similar action by any governmental authority relating to Hazardous Substances or Environmental Laws and the Property or the operations conducted on the Property.
- (4) Any judicial or administrative investigation or proceeding relating to Hazardous Substances or Environmental Laws and to the Property or the operations conducted on the Property.
- (5) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent Lender cause to be concerned that the value of Lender's security interest in the Property may be reduced or threatened or that may impair, or threaten to impair, Indemnitee's ability to perform any of its

# UNOFFICIAL COPY

## HAZARDOUS SUBSTANCES AGREEMENT

(Continued)

obligations under this Agreement when such performance is due.

**Access to Records.** Indemnitor shall deliver to Lender, at Lender's request, copies of any and all documents in Indemnitor's possession or to which it has access relating to Hazardous Substances or Environmental Laws and the Property and the operations conducted on the Property, including without limitation results of laboratory analyses, site assessments or studies, environmental audit reports and other consultants' studies and reports.

**Inspections.** Lender reserves the right to inspect and investigate the Property and operations on it at any time and from time to time, and Indemnitor shall cooperate fully with Lender in such inspection and investigations. If Lender at any time has reason to believe that Indemnitor or any Occupants of the Property are not complying with all applicable Environmental Laws or with the requirements of this Agreement or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, Lender may require Indemnitor to furnish Lender at Indemnitor's expense an environmental audit or a site assessment with respect to the matters of concern to Lender. Such audit or assessment shall be performed by a qualified consultant approved by Lender. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to any Indemnitor or to any other person.

**INDEMNITOR'S WAIVER AND INDEMNIFICATION.** Indemnitor hereby agrees to and shall indemnify, defend, and hold harmless Lender and Lender's officers, directors, employees and agents, and Lender's successors and assigns and their officers, directors, employees and agents from and against any and all claims, demands, losses, liabilities, costs, fines, penalties and expenses (including without limitation attorneys' fees at trial and on any appeal or petition for review, consultants' fees, remedial action costs, natural resource damages and diminution in value) incurred by such person (a) arising out of or relating to any investigatory or remedial action involving the Property, the operations conducted on the Property, or any other operations of Indemnitor or any Occupant and required by Environmental Laws or by orders of any governmental authority having jurisdiction under any Environmental Laws, including without limitation any natural resource damages, or (b) arising out of or related to any noncompliance with or violation of Environmental Laws or any applicable permits or approvals, or (c) on account of injury to Lender or any person whatsoever or damage to any property arising out of, in connection with, or in any way relating to (i) the breach of any covenant, representation or warranty contained in this Agreement, (ii) the violation of any Environmental Laws, permits, authorizations or approvals, (iii) the use, treatment, storage, generation, manufacture, transport, release, spill, disposal or other handling of Hazardous Substances on the Property, or (iv) the contamination of any of the Property by, or the presence, release or threatened release of, Hazardous Substances by any means whatsoever (explicitly including without limitation any presently existing contamination of the Property, whether or not previously disclosed to Lender), or (d) pursuant to this Agreement. Indemnitor's obligations under this section shall survive the termination of this Agreement and as set forth below in the **Survival** section. In addition to this indemnity, Indemnitor hereby releases and waives all present and future claims against Lender for indemnity or contribution in the event Indemnitor becomes liable for cleanup or other costs under any Environmental Laws.

**PAYMENT: FULL RECOURSE TO INDEMNITOR.** Indemnitor intends that Lender shall have full recourse to Indemnitor for Indemnitor's obligations under this Agreement as they become due to Lender. Such liabilities, losses, claims, damages and expenses shall be reimbursable to Lender as Lender's obligations to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Indemnitor shall pay such liability, losses, claims, damages and expenses to Lender as so incurred within thirty (30) days after written notice from Lender. Lender's notice shall contain a brief itemization of the amounts incurred to the date of such notice. In addition to any remedy available for failure to pay periodically such amounts, such amounts shall thereafter bear interest at the Note default rate, or in the absence of a default rate, at the Note interest rate.

**SURVIVAL.** The covenants contained in this Agreement shall survive (A) the repayment of the Indebtedness, (B) any foreclosure, whether judicial or nonjudicial, of the Property, and (C) any delivery of a deed in lieu of foreclosure to Lender or any successor of Lender. The covenants contained in this Agreement shall be for the benefit of Lender and any successor to Lender, as holder of any security interest in the Property or the indebtedness secured thereby, or as owner of the Property following foreclosure or the delivery of a deed in lieu of foreclosure.

# UNOFFICIAL COPY

## HAZARDOUS SUBSTANCES AGREEMENT

(Continued)

Page 4

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Indemnitor also will pay any court costs, in addition to all other sums provided by law.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Illinois without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Illinois.

**Joint and Several Liability.** All obligations of Indemnitor under this Agreement shall be joint and several, and all references to Indemnitor shall mean each and every Indemnitor. This means that each Indemnitor signing below is responsible for all obligations in this Agreement.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Indemnitor, shall constitute a waiver of any of Lender's rights or of any of Indemnitor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender. Indemnitor hereby waives notice of acceptance of this Agreement by Lender.

**Notices.** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Indemnitor agrees to keep Lender informed at all times of Indemnitor's current address. Unless otherwise provided or required by law, if there is more than one Indemnitor, any notice given by Lender to any Indemnitor is deemed to be notice given to all Indemnitors.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so

# UNOFFICIAL COPY

## HAZARDOUS SUBSTANCES AGREEMENT (Continued)

that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on transfer of Indemnitor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Indemnitor, Lender, without notice to Indemnitor, may deal with Indemnitor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Indemnitor from the obligations of this Agreement or liability under the Indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**Waive Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Agreement.** The word "Agreement" means this Hazardous Substances Agreement, as this Hazardous Substances Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Hazardous Substances Agreement from time to time.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Indemnitor's obligations or expenses incurred by Lender to enforce Indemnitor's obligations under this Agreement, together with interest on such amounts as provided in this Agreement.

**Lender.** The word "Lender" means American Enterprise Bank, its successors and assigns.

**Note.** The word "Note" means the Note executed by KAY TEE HOSPITALITY, INC. in the principal amount of \$1,998,700.00 dated February 28, 2007, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

**Occupant.** The word "Occupant" means individually and collectively all persons or entities occupying or utilizing the Property, whether as owner, tenant, operator or other occupant.

**Property.** The word "Property" means all of Indemnitor's right, title and interest in and to all the Property as

# UNOFFICIAL COPY

## HAZARDOUS SUBSTANCES AGREEMENT

(Continued)

described in the "Property Description" section of this Agreement.

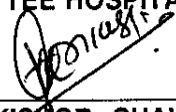
**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Agreement.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH AGREES TO ITS TERMS. NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS AGREEMENT EFFECTIVE. THIS AGREEMENT IS DATED FEBRUARY 28, 2007.**


**BORROWER:**

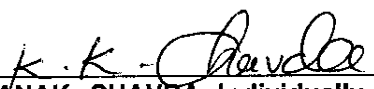
KAY TEE HOSPITALITY, INC.

By:   
KISHOR CHAVDA

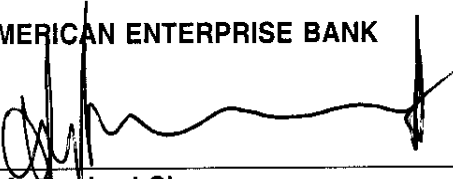
By:   
KANAK CHAVDA

**GUARANTOR:**

X   
KISHOR CHAVDA, Individually

X   
KANAK CHAVDA, Individually

**LENDER:**

AMERICAN ENTERPRISE BANK  
X   
Authorized Signer

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## HAZARDOUS SUBSTANCES AGREEMENT

(Continued)

### CORPORATE ACKNOWLEDGMENT

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

On this 28 day of February, 2007 before me, the undersigned Notary Public, personally appeared **KISHOR CHAVDA, and KANAK CHAVDA**, of **KAY TEE HOSPITALITY, INC.**, and known to me to be authorized agents of the corporation that executed the Hazardous Substances Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Agreement and in fact executed the Agreement on behalf of the corporation.

By AKC Residing at \_\_\_\_\_

Notary Public in and for the State of ILLINOIS

My commission expires 9/26/07

OFFICIAL SEAL  
 Anthony S. Chiong  
 Notary Public, State Of Illinois  
 My Commission Expires 9-26-2007

### INDIVIDUAL ACKNOWLEDGMENT

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

On this day before me, the undersigned Notary Public, personally appeared **KISHOR CHAVDA and KANAK CHAVDA**, to me known to be the individuals described in and who executed the Hazardous Substances Agreement, and acknowledged that they signed the Agreement as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 28 day of February, 20 07

By AKC Residing at \_\_\_\_\_

Notary Public in and for the State of ILLINOIS

My commission expires 9/26/07

OFFICIAL SEAL  
 Anthony S. Chiong  
 Notary Public, State Of Illinois  
 My Commission Expires 9-26-2007

# UNOFFICIAL COPY

## HAZARDOUS SUBSTANCES AGREEMENT

(Continued)

### LENDER ACKNOWLEDGMENT

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

On this 28 day of February, 2007 before me, the undersigned Notary Public, personally appeared AKASH V. BRAHMBHATT and known to me to be the VICE PRESIDENT, authorized agent for the Lender that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the said Lender, duly authorized by the Lender through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and that the seal affixed is the corporate seal of said Lender.

By AKL Residing at \_\_\_\_\_

Notary Public in and for the State of ILLINOIS

My commission expires 9/26/07

**OFFICIAL SEAL**  
**Anthony S. Chiong**  
 Notary Public, State Of Illinois  
 My Commission Expires 9-26-2007

Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT "A"

LOTS 8 THROUGH 15, BOTH INCLUSIVE, AND THE WEST 50 FEET OF LOTS 26 THROUGH 33, BOTH INCLUSIVE IN BLOCK 14, AND ALSO ALL OF THAT PART OF THE 20 FOOT WIDE PUBLIC ALLEY LYING SOUTH OF A LINE DRAWN FROM THE NORTHEAST CORNER OF LOT 8 IN BLOCK 14 TO THE NORTHWEST CORNER OF LOT 33 IN SAID BLOCK 14 AND LYING NORTH OF A LINE DRAWN FROM THE SOUTHEAST CORNER OF LOT 15 IN SAID BLOCK 14 TO THE SOUTHWEST CORNER OF LOT 26 IN SAID BLOCK 14, ALL IN CROISSANT PARK MARKHAM 8<sup>TH</sup> ADDITION, BEING A SUBDIVISION OF THE SOUTH ½ OF THE SOUTHWEST ¼ OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE INDIAN BOUNDARY LINE, IN COOK COUNTY, ILLINOIS.

PIN #28-13-330-008

28-13-330-009

28-13-330-010

28-13-330-011

28-13-330-012

28-13-330-013

28-13-330-014

28-13-330-015

28-13-330-023

28-13-330-024

28-13-330-025

28-13-330-026

28-13-330-027

28-13-330-028

28-13-330-029

28-13-330-030

28-13-330-043