



Doc#: 1300810054 Fee: \$58.00
Karen A. Yarbrough RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 01/08/2013 12:17 PM Pg: 1 of 11

AC01996659 - JN - Sales

PREPARED BY AND WHEN
RECORDED MAIL TO:

WELLS FARGO BANK, NATIONAL ASSOCIATION
Real Estate Managed Assets Group (AU # 4233)
123 N Wacker Dr, 19th Floor, Suite 1900
Chicago, IL 60606-1743
Attn: Ari Rotenberg
Loan No.: WB10469

(Space Above For Recorder's Use)

SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMEN AND NON-DISTURBANCE AGREEMENT
(Lease to Security Instrument)

THIS SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL, ATTORNMEN AND NON-DISTURBANCE AGREEMENT ("**Agreement**") is made effective as of this 19 day of December, 2012 by and among 4220 KILDARE LLC, an Illinois limited liability company, which is the fee owner of the real property hereinafter described ("**Owner**"), AMITY PACKING COMPANY, INC., an Illinois corporation ("**Tenant**") and WELLS FARGO BANK, NATIONAL ASSOCIATION (collectively, with its successors and/or assigns, "**Lender**").

RECITALS

- A. Pursuant to the terms and provisions of that certain Lease Agreement dated December 19, 2012 ("**Lease**"), Owner granted to Tenant a leasehold estate in and to a portion of the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "**Property**").

Box 400-CTCC

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- B. Said Lease contains provisions and terms granting Tenant a right of first offer to purchase the Property (the "**ROFO**").
- C. Owner has heretofore executed, without limitation, that certain Open-End Mortgage and Security Agreement and Financing Statement dated as of June 28, 2006 and recorded on July 7, 2006 with the Cook County, Illinois Recorder's Office as Document No. 0618843187 (as amended, restated, supplemented or otherwise modified from time to time, hereinafter referred to as "**Security Instrument**") securing, among other things, those certain promissory notes as more particularly described in the Security Instrument (as amended, restated, supplemented or otherwise modified from time to time, collectively, the "**Notes**") in favor of Lender (collectively, the "**Loan**"). The Security Instrument has been recorded in the real property records where the Property is located.
- D. As a condition to Lender making the Loan secured by the Security Instrument, Lender required that the Security Instrument be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Tenant under the Lease (including, without limitation, the ROFO) and that Tenant specifically and unconditionally subordinate the Lease (including, without limitation, the ROFO) to the lien of the Security Instrument.
- E. Owner and Tenant have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for good and valuable consideration already received, and to further induce Lender to administer the Loan as Owner has requested, Owner and Tenant each hereby agree for the benefit of Lender as follows:

1. **SUBORDINATION.** Owner and Tenant each hereby agree that:
- 1.1 **Prior Lien.** The Security Instrument securing the Notes in favor of Lender, and any modifications, renewals or extensions thereof, shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease and the ROFO;
- 1.2 **Subordination.** Lender would not have made the Loan, and will not administer the Loan as Owner has requested, without this agreement to subordinate the Lease and the ROFO to the lien of the Security Instrument; and
- 1.3 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease and the ROFO to the lien of the Security Instrument, and shall supersede and cancel, but only insofar as would affect the priority between the Security Instrument and the Lease (and the ROFO), any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease and the ROFO to one or more deeds of trust or mortgages.

AND FURTHER, Tenant individually declares, agrees and acknowledges for the benefit of Lender, that:

- 1.4 **Use of Proceeds.** Lender, in making disbursements pursuant to the Notes, the Security Instrument, or any loan or other agreements between Lender and Owner with respect to the Loan and/or the Property (as amended, restated, supplemented or otherwise modified from time to time, collectively, the "**Loan Documents**"), is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such Loan Documents shall not defeat this agreement to subordinate the Lease and the ROFO to the lien of the Security Instrument, in whole or in part; and

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- 1.5 **Waiver, Relinquishment and Subordination.** Tenant hereby intentionally and unconditionally waives, relinquishes and subordinates all of Tenant's right, title and interest in and to the Property pursuant to the Lease (including, without limitation, the ROFO) to the lien of the Security Instrument, and understands that in reliance upon and in consideration of this waiver, relinquishment and subordination, specific loans and/or advances were made and may be made by Lender (in its sole and absolute discretion, subject to the applicable terms and conditions of the Loan Documents), and, as part and parcel thereof, specific monetary and other obligations were and may be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.
2. **ASSIGNMENT.** Tenant hereby acknowledges and consents to the collateral assignment of the Lease by Owner in favor of Lender pursuant to the Loan Documents.
3. **ESTOPPEL.** Owner and Tenant each hereby acknowledges and represents for and respecting itself (as applicable) that as of the date of this Agreement:
- 3.1 **Entire Agreement.** The Lease constitutes the entire agreement between Owner and Tenant with respect to the Property and Tenant claims no rights with respect to the Property other than as set forth in the Lease;
- 3.2 **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except as follows (if none, state "None"): None, except for the Security Deposit and the first month's Rent that were heretofore due and payable to Owner, and duly paid by Tenant, all pursuant to the Lease;
- 3.3 **No Default.** To the Tenant's and Owner's respective actual knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets of Tenant against rental due or to become due under the Lease;
- 3.4 **Lease Effective.** The Lease has been duly executed and delivered by Tenant and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Tenant thereunder are valid and binding and there have been no amendments, modifications or additions to the Lease, written or oral; and
- 3.5 **No Broker Liens.** Neither Tenant nor Owner has itself incurred any fee or commission with any real estate broker which would give rise to any lien right under state or local law, except as follows (if none, state "None"): None.
4. **ADDITIONAL AGREEMENTS.** Owner and Tenant each hereby covenants and agrees for and respecting itself (as applicable) that, during all such times as Lender is the mortgagee under the Security Instrument:
- 4.1 **Modification, Termination and Cancellation.** Neither Tenant nor Owner will consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent, nor will Tenant make any payment to Owner (nor will Owner accept any payment from Tenant) in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent;
- 4.2 **Notice of Default.** Tenant will notify Lender in writing concurrently with any notice given to Owner of any default by Owner under the Lease, and Tenant agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Tenant will not declare a default of the Lease, as to Lender, if Lender cures such default within thirty (30) days from and after the expiration of

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the time period provided in the Lease for the cure thereof by Owner; provided, however, that if such default cannot with diligence be cured by Lender within such thirty (30) day period, the commencement of action by Lender within such thirty (30) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence;

- 4.3 **No Advance Rents.** Tenant will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease; and
- 4.4 **Assignment of Rents.** Upon receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Owner to collect rents, as provided in the Security Instrument, and directing the payment of rents by Tenant to Lender, Tenant shall comply with such direction to pay and shall not be required to determine whether Owner is in default under the Loan and/or the Security Instrument, and Owner hereby consents to Tenant acting accordingly pursuant to any such notice from Lender without any obligation to Owner respecting any such payments thereafter made by Tenant to Lender.
- 4.5 **Insurance.** Within ten (10) days of written request by Lender (including for this purpose any transferee of Lender), Tenant shall deliver to Lender written evidence reasonably satisfactory to Lender that (i) Tenant maintains all insurance required to be maintained by Tenant under the Lease and (ii) Lender is designated as an additional insured party and as a certificate holder under all such insurance policies.
- 4.6 **Security Deposit.** Within ten (10) days of written request by Lender (including for this purpose any transferee of Lender) following a foreclosure under the Security Instrument or deed in lieu of foreclosure, Owner and Tenant shall cause (i) the Letter of Credit (as defined in the Lease) to be amended or re-issued to make Lender or any transferee of Lender the sole beneficiary thereof and (ii) the original of such amended or re-issued Letter of Credit to be delivered to Lender or such transferee, which amended or re-issued Letter of Credit shall be in accordance with the applicable provisions of the Lease and otherwise in form and content reasonably satisfactory to Lender or such transferee.
5. **ATTORNMEN T.** In the event of a foreclosure under the Security Instrument or deed in lieu of foreclosure, Tenant agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Owner's title in and to the Property by Lender's exercise of the remedies of either sale by foreclosure or deed in lieu of foreclosure, or otherwise as may be provided for under the Security Instrument) as follows:
- 5.1 **Payment of Rent.** Tenant shall pay to Lender all rental payments required to be made by Tenant pursuant to the terms of the Lease for the duration of the term of the Lease;
- 5.2 **Continuation of Performance.** Tenant shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Tenant hereby attorns to Lender as its landlord, such attornment to be automatically effective and self-operative without the execution of any further instrument upon Lender succeeding to Owner's interest in the Lease and giving written notice thereof to Tenant;
- 5.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Tenant may have by reason of any act or omission of Owner under the Lease, nor for the return of any sums which Tenant may have paid to Owner under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Owner to Lender; and
- 5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Owner under the Lease, should become obligated to perform the covenants of Owner thereunder, then, upon any further transfer of Owner's interest by Lender, all of such obligations arising after such

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transfer shall automatically terminate as to Lender effective as of the date of Lender's transfer of such interests.

6. **NON-DISTURBANCE.** In the event of a foreclosure under the Security Instrument or any deed in lieu of foreclosure, so long as there shall then exist no breach, default, or event of default on the part of Tenant under the Lease, Lender agrees for itself and its transferees, successors and assigns that the leasehold interest of Tenant under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Tenant as tenant under the Lease subject to the terms and provisions of the Lease except as modified by this Agreement; provided, however, that Tenant and Lender agree that the following provisions of the Lease (if any) shall not be binding on Lender: any option to purchase with respect to the Property; any right of first refusal with respect to the Property, including the ROFO provisions; any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Security Instrument. Without limiting the foregoing: (i) in no event shall Lender have any obligation to construct, cause to be constructed or to pay for any of the Phase I Work (as defined in the Lease), any of the Phase II Work (as defined in the Lease), or any work relating to the Phase III Premises (as defined in the Lease); (ii) Tenant's ROFO shall not apply to or be exercised in the event of a foreclosure under the Security Instrument or deed in lieu of foreclosure; and (iii) in the event of a foreclosure under the Security Instrument or deed in lieu of foreclosure, Lender (including for this purpose any transferee of Lender or any transferee of Owner's title in and to the Property by Lender's exercise of the remedies of either sale by foreclosure or deed in lieu of foreclosure, or otherwise as may be provided for under the Security Instrument) shall not be bound by the ROFO.

7. **MISCELLANEOUS.**

- 7.1 **NOTICES.** All notices, demands, or other communications under this Agreement shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Owner:	4220 Kildare LLC 2340 River Road, Suite 310 Des Plaines, IL 60018 Attention: John M. Daley
Tenant:	Amity Packing Company, Inc. 210 North Green Street Chicago, IL 60607 Attention: President
With a copy to:	Abrams & Chapman LLP 321 South Plymouth Court, #1200 Chicago, Illinois 60604-3990
Lender:	Wells Fargo Bank, National Association Real Estate Managed Assets Group (AU # 4239) 123 N Wacker Dr, 19th Floor, Suite 1900 Chicago, IL 60606-1743

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	Attn: David Arreola Loan No. WB10469
With a copy to:	Wells Fargo Bank, National Association Real Estate Managed Assets Group 123 N Wacker Dr, 11th Floor, Suite 1150 Chicago, IL 60606 Attn: Ari J. Rotenberg Loan No. WB10469

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove.

- 7.2 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Owner under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law, at equity, and by other agreements between Lender and Owner or others.
- 7.3 **HEIRS, SUCCESSORS AND ASSIGNS.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Agreement shall bind and inure to the benefit of the heirs, executors, administrators, nominees, transferees, successors and assigns of the parties hereto.
- 7.4 **HEADINGS.** All article, section or other headings appearing in this Agreement are for convenience of reference only and shall be disregarded in construing this Agreement.
- 7.5 **COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 7.6 **ATTORNEYS; GOVERNING LAW.** Lender, Owner and Tenant have each had the opportunity for representation by their own respective independent legal counsel respecting the matters set forth herein, and each party hereto hereby assumes the risk of any mistake in fact or unknown facts, and agrees that this Agreement shall not be construed against any party by virtue of the fact that any party hereto or its attorney drafted this Agreement. Interpretation of this Agreement shall be in accordance with and governed by the applicable laws of the State of Illinois, and the parties hereto agree that any action, suit, claim or other proceeding of any type which may be prosecuted, initiated or attempted in connection with this Agreement shall be brought in the State of Illinois, County of Cook.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE AND NOTARY COUNTERPARTS FOLLOW ON NEXT PAGES.]

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

"OWNER":

4220 KILDARE LLC,
an Illinois limited liability company

By: *J. Daley*
Print Name: JOHN M DALEY
Title: MANAGER

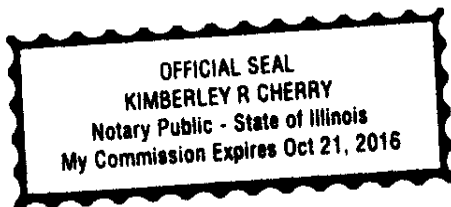
STATE OF ILLINOIS)
) SS
Cook COUNTY)

I, Kimberley Cherry, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT John Daley, who is personally known to me and known by me to be the MANAGER of the aforesaid signing entity, in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that s/he signed and delivered this said instrument as his/her free and voluntary act and as the free and voluntary act of said signing entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 19th day of December, 2012.

Kimberley Cherry
Notary Public

Commission Expires: 6/21/16



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"TENANT":

AMITY PACKING COMPANY, INC.,
an Illinois corporation

By: Brian Tyler

Print Name: BRIAN TYLER

Title: PRESIDENT

STATE OF ILLINOIS)
Code) SS
COUNTY)

I, TERRY G. CHAPMAN, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Brian Tyler, who is personally known to me and known by me to be the President of the aforesaid signing entity, in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that s/he signed and delivered this said instrument as his/her free and voluntary act and as the free and voluntary act of said signing entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 19th day of December, 2012.

Terry G. Chapman
Notary Public.

Commission Expires: _____



Proprietor's Office

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"LENDER":

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: David Arreola

Print Name: David Arreola

Title: Vice President

STATE OF ILLINOIS)

) SS

COOK COUNTY)

I, Emily A. Smith, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT David Arreola, who is personally known to me and known by me to be a Vice President of the aforesaid signing entity, in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that he signed and delivered this said instrument as his free and voluntary act and as the free and voluntary act of said signing entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18th day of December, 2012.

Emily A. Smith
Notary Public

Commission Expires: 1/25/2015

OFFICIAL SEAL
EMILY A. SMITH
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 01/25/2015

Cook County Clerk's Office

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EXHIBIT A – LEGAL DESCRIPTION OF PROPERTY

A TRACT OF LAND BEING A PART OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF DISTRICT BOULEVARD, AND THE WESTERLY RIGHT OF WAY OF KILDARE BOULEVARD, THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID WESTERLY RIGHT OF WAY, A DISTANCE OF 667.66 FEET TO THE NORTHERLY RIGHT OF WAY OF 44TH STREET; THENCE NORTH 89 DEGREES, 39 MINUTES, 35 SECONDS WEST, ALONG SAID NORTHERLY RIGHT OF WAY, A DISTANCE OF 1607.26 FEET TO THE WESTERLY LINE OF THE LANDS CONVEYED BY THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY TO THE CRAWFORD REAL ESTATE DEVELOPMENT COMPANY, PER DOCUMENT NUMBER 17307420; THENCE NORTH 10 DEGREES 12 MINUTES, 59 SECONDS WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 678.43 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF DISTRICT BOULEVARD; THENCE SOUTH 89 DEGREES, 40 MINUTES, 59 SECONDS EAST, ALONG SAID SOUTHERLY RIGHT OF WAY, A DISTANCE OF 24.41 FEET; THENCE SOUTH 10 DEGREES, 12 MINUTES, 59 SECONDS EAST A DISTANCE OF 132.76 FEET TO THE BEGINNING OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 309.62 FEET AND A CHORD BEARING SOUTH 35 DEGREES 17 MINUTES, 35 SECONDS EAST; THENCE SOUTHEASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 59.17 FEET TO A POINT ON A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 302.00 FEET AND A CHORD BEARING SOUTH 54 DEGREES 57 MINUTES 01 SECONDS EAST; THENCE SOUTHEASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 151.27 FEET; THENCE SOUTH 67 DEGREES, 59 MINUTES, 30 SECONDS EAST, A DISTANCE OF 49.29 FEET TO THE BEGINNING OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 310.00 FEET AND A CHORD BEARING 79 DEGREES 02 MINUTES 55 SECONDS EAST, THENCE SOUTHEASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 111.83 FEET; THENCE SOUTH 89 DEGREES, 39 MINUTES, 35 SECONDS EAST A DISTANCE OF 93.50 FEET TO THE BEGINNING OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 556.00 FEET AND A CHORD BEARING NORTH 86 DEGREES, 43 MINUTES, 18 SECONDS EAST; THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 74.53 FEET; THENCE NORTH 81 DEGREES 42 MINUTES 03 SECONDS EAST A DISTANCE OF 70.83 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 287.37 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF DISTRICT BOULEVARD; THENCE SOUTH 89 DEGREES 40 MINUTES 59 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY A DISTANCE OF 1130.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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PARCEL IDENTIFYING NUMBERS:

19-03-101-009-0000
19-03-200-019-0000
19-03-400-091-0000
19-03-400-121-0000
19-03-400-151-0000
19-03-400-154-0000
19-03-400-189-0000
19-03-400-190-0000

Address 4220 S. KILDARE
CHICAGO, IL 60632

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