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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/10/2016 01:25 PM Pg: 1 of 15

Prepared by and After
Recording Return To:

Jeffrey A. Burger
The Law Office of Jeffrey A. Burger, LLC
105 West Madison Street
Suite 1500
Chicago, Illinois 60602

Property of Cook County Clerk's Office

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INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT is dated as of April 21, 2016 (this "Agreement") by and among the COUNTY OF COOK, a body politic and corporate, doing business as the COOK COUNTY LAND BANK AUTHORITY (the "County"), THE PRIVATEBANK AND TRUST COMPANY, an Illinois banking corporation (the "Bank"), and STONE FOX CAPITAL, LLC, an Illinois limited liability company (the "Borrower").

RECITALS

A. The County has agreed to sell, the real property and improvements thereon having a common address of 1748 East 83rd Place, Chicago, Illinois 60617 and legally described in Exhibit A attached hereto (collectively, the "Real Estate") to the Borrower. The Real Estate has been conveyed, or will be conveyed, to the Borrower pursuant to a special warranty deed (the "County Deed") which County Deed contains, or will contain, certain covenants relating to, among other things, (i) the obligation of the Borrower to bring the Real Estate in compliance with all Federal, State and local building and housing codes, rules, regulations and laws applicable to the Real Estate and (ii) the obligation of the Borrower to obtain a certificate of occupancy or equivalent certificate from the Village or City having jurisdiction over the Real Estate (collectively, the "Deed Covenants").

B. The County has agreed to lend to the Borrower a portion of the purchase price of the Real Property in the principal amount equal to Twenty Thousand Dollars (\$20,000.00) (the "County Loan"). The County Loan is evidenced by that certain Forgivable Loan Agreement and Promissory Note dated as of April 11, 2016 (the "County Loan Agreement") between the County and the Borrower. The County Loan, the other obligations of the Borrower contained in the County

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Loan Agreement and the performance of the Deed Covenants by the Borrower are secured by that certain Mortgage dated as of April 21, 2016 (the "*County Mortgage*") from the Borrower, as mortgagor thereunder, to the County, as mortgagee thereunder, creating a mortgage lien against the Real Estate. The County Loan Agreement, the County Mortgage, the Deed Covenants and all other documents evidencing and/or securing the County Loan are herein collectively referred to as the "*County Loan Documents*."

C. The Bank has agreed to make a construction loan to the Borrower in the principal amount equal to One Hundred Twenty-Five Thousand Eight Hundred Dollars (\$125,800.00) for the purpose of financing the acquisition, rehabilitation, renovation and repair of the Property (the "*Bank Loan*"). The Bank Loan is evidenced by (i) that certain Note dated April 21, 2016 (the "*Bank Note*") from the Borrower for the benefit of the Bank in the principal amount of \$125,800.00; and (ii) that certain Construction Loan Agreement dated as of April 21, 2016 (the "*Construction Loan Agreement*") between the Borrower and the Bank.

D. The Bank Loan and the other obligations of the Borrower contained in the hereinafter defined "*Bank Loan Documents*" are secured by (i) that certain Mortgage dated as of April 21, 2016 (the "*Bank Mortgage*") from the Borrower, as mortgagor thereunder, to the Bank, as mortgagee thereunder, creating a mortgage lien against the Real Estate, (ii) that certain Mechanics Lien Indemnity Agreement dated as of April 21, 2016 (the "*Indemnity Agreement*") from the Borrower and Joseph Alan Miller, as indemnitors thereunder, for the benefit of the Bank and Chicago Title Insurance Company, and (iii) that certain Guaranty Agreement dated as of April 21, 2016 (the "*Guaranty*") from Joseph Alan Miller (the "*Guarantor*") for the benefit of the Bank. The Bank Note, the Construction Loan Agreement, the Bank Mortgage, the Indemnity Agreement and the Guaranty are herein collectively referred to as the "*Bank Loan Documents*."

E. Pursuant to the terms and provisions of this Agreement, the County has agreed, among other things, (i) to subordinate the indebtedness and other obligations of the Borrower contained in the County Loan Documents (collectively, the "*Subordinate Deb*") to the indebtedness and other obligations of the Borrower contained in the Bank Loan Documents (collectively, the "*Senior Debt*"), (ii) to subordinate the lien of the County Mortgage to the lien of the Bank Mortgage and (iii) to forebear from foreclosing upon the County Mortgage upon the Borrower's default on the Subordinate Debt or under the County Loan Documents, without the prior written consent of the Bank.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. **Priority of Liens.** Notwithstanding the date, time, manner or order of filing of the Bank Mortgage, the Deed and the Deed Covenants and the County Mortgage, and notwithstanding the usual application of the priority provisions in effect or any other applicable law or judicial decision, the Bank Mortgage shall be a first, senior and prior lien on the Real Estate, superior in all respects to the County Mortgage and the Deed Covenants, and the County Mortgage and the Deed Covenants shall be a junior and subordinate lien on the Real Estate, inferior in all respects to the Bank Mortgage.

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2. Subordination of Subordinate Debt.

(a) The County hereby subordinates any and all claims now or hereafter owing to on the Subordinate Debt to any and all claims now or hereafter owing to the Bank by the Borrower on the Senior Debt, and the County agrees that all claims of the Bank shall be paid in full in cash or otherwise satisfied (as evidenced by the release of the Bank Mortgage and the cancellation of the other Bank Loan Documents) before any payment may be made on the Subordinate Debt, whether of principal or interest, except that so long as the County has not received written notice from the Bank that a default exists on the Senior Debt or under any of the Bank Loan Documents (the "Default Notice"), the County may receive payments on the Subordinate Debt. Subsequent to receipt of the Default Notice, and so long as the default on the Senior Debt or under any of the Bank Loan Documents is continuing, the County may not receive payments on the Subordinate Debt.

(b) The County agrees not to accept any payment in respect of the Subordinate Debt, except as expressly provided herein, and (subject to the last sentence of Subsection 2(a) the County agrees to pay over to the Bank any funds that may be received from the Borrower as a payment on account of the Subordinate Debt at any time after the County has received a Default Notice, but not otherwise. In case any funds shall be paid or delivered to the County under the circumstances described in the preceding sentence, such funds shall be held in trust by the County for, and immediately paid and delivered to, the Bank (in the form received endorsed over to the Bank).

(c) The County further agrees not to sell, assign, transfer or endorse any claim or claims against the Borrower or any guarantor of the Subordinate Debt to anyone, except subject to the terms and conditions of this Agreement.

(d) The County agrees that the priority of the Senior Debt set forth above shall continue during any insolvency, receivership, bankruptcy, dissolution, liquidation, or reorganization proceeding, or in any other proceeding, whether voluntary or involuntary, by or against the Borrower or the Guarantor or any other person or entity under any bankruptcy or insolvency law or laws relating to the relief of debtors of any jurisdiction, whether now or hereafter in effect, and in any out-of-court composition, assignment for the benefit of creditors or other arrangement of any kind.

(e) The County and the Borrower hereby agree that so long as the Senior Debt remains outstanding that the County and the Borrower will not amend or modify any of the County Loan Documents.

(f) The County agrees that the subordination provided in Section 1 above and in this Section 2 shall automatically extend to all restatements, replacements, supplements, extensions, renewals, amendments, and modifications whatsoever of any of the Bank Loan Documents.

(g) No release or waiver by the Bank of any of its rights against the Borrower or any other person or entity under the Bank Loan Documents shall require notice to, or the consent of, the County or any other party, nor shall any release or waiver by the

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Bank under any of the Bank Loan Documents operate as a defense to or release of any of the rights of the Bank under this Agreement. Without limiting the generality of the foregoing, the County consents and agrees to any increase in the amount of the Senior Debt.

3. Forbearance from Exercise of Remedies. As long as the Senior Debt has not been paid in full, the County agrees that it shall not, (a) take any action or exercise any remedy against the Borrower or any other party or person to enforce the Subordinate Debt, or (b) take any action or exercise any remedy under the County Mortgage as a result of any default under the Subordinate Debt, without the prior written consent of the Bank. The County understands and agrees that the Bank shall have the right, but shall have no obligation, to cure any default under the Subordinate Debt.

4. Proceeds. The order of priority of liens set forth in Section 1 hereof shall apply to all rents, profits and proceeds relating to the Real Estate, including, without limitation, any insurance proceeds payable in the event of loss of, or damage to, the physical improvements on the Real Estate.

5. Voided Payments. To the extent that the Borrower or any other person makes any payment on the Senior Debt that, within two (2) years of the date of such payment, is subsequently invalidated, declared to be fraudulent or preferential, set aside or is required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or Federal law, common law or equitable cause (such payment being hereinafter referred to as a "Voided Payment"), then to the extent of such Voided Payment that portion of the Senior Debt which had been previously satisfied by such Voided Payment shall be revived and continue in full force and effect as if such Voided Payment had never been made. In the event that a Voided Payment is disgorged or recovered from the Bank, an event of default (as defined in the Construction Loan Agreement) shall be deemed to have occurred and to be continuing from the date of such recovery from the Bank of such Voided Payment until the full amount of such Voided Payment is fully and finally restored to the Bank and until such time the provisions of this Agreement shall be in full force and effect.

6. No Termination of Leases. So long as the Senior Debt remains unpaid, the County agrees that no tenant of the Real Estate will be made a party defendant in the foreclosure of the County Mortgage, nor will any action be taken which would have the effect of terminating the rights of any tenant under any such lease.

7. County Not to Collect Rents. So long as the Senior Debt remains unpaid, the County agrees that it will not collect any rents derived from the Real Estate and to the extent any rents are collected, that the County will pay them over to the Bank for application against the Senior Debt.

8. County to Deliver Releases. So long as the Bank Mortgage remains in effect or any portion of the Senior Debt remains unpaid, (i) the County shall not be entitled to receive any condemnation awards or insurance proceeds with respect to the Real Estate, the County agrees to promptly (i.e., within ten (10) days of such request) deliver instruments reasonably requested by the Bank releasing any interest of the County in such condemnation awards and/or insurance proceeds and the County agrees that such condemnation awards or insurance proceeds

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shall be applied as directed by the Bank pursuant to the terms and provisions of the Bank Loan Documents, and (ii) the County shall execute and deliver such subordination agreements reasonably required by the Bank upon the recording of any easements or other encumbrances approved by the Bank with respect to the Real Estate.

9. **Further Assurances.** The County agrees, within ten (10) days of any request, to execute and deliver any documents or instruments reasonably requested by the Bank, for better assuring and evidencing the terms and provisions of this Agreement.

10. **County Agrees to Cooperate with Bank in any Proceeding.** The County hereby undertakes and agrees, upon the request of the Bank, to execute, deliver, verify, and file in a timely manner any proofs of claim, consents, assignments, or other action necessary with respect to the Subordinate Debt or the County Loan Documents. The County agrees that in any bankruptcy proceeding to vote any claims at any meeting of creditors for any reorganization or other plan supported by the Bank. The County also agrees that in connection with the enforcement of the Bank Mortgage or any of the other Bank Loan Documents to cooperate with the Bank in the Bank's exercise of its remedies against the Borrower or any other party. The County also agrees that in any foreclosure proceeding brought by the Bank, not to object to, or otherwise oppose, any motion filed by the Bank for the appointment of a receiver for the Real Estate, for summary judgment, or any other motions brought by the Bank in a foreclosure proceeding relating to the Bank Mortgage.

11. **County Agrees to Release County Mortgage and Deed Covenants.** Upon (i) the completion of foreclosure proceedings by the Bank under the Bank Mortgage, unless the Bank is satisfied that by operation of law the County Mortgage and/or the Deed Covenants have been terminated as encumbrances against the real Estate, or (ii) the Bank's agreement with the Borrower to accept a deed of conveyance of the Real Estate, in lieu of foreclosure, from the Borrower, upon the request of the Bank, the County agrees to promptly deliver to the Bank (i.e., within ten (10) days on any request) an unconditional written release of the County Mortgage and an unconditional release of the Deed Covenants, both in recordable form.

12. **Violation of Agreement by the Borrower.** The Borrower agrees to make no payment whatsoever on the Subordinate Debt nor consent to or participate in any act which is in violation of the provisions of this Agreement.

13. **Immediate Effect.** This Agreement shall be effective immediately upon its execution by each of the parties hereto, and there are no conditions precedent or subsequent to the effectiveness of this Agreement.

14. **Successors and Assigns; Continuing Effect Etc.** This Agreement is being entered into for the benefit of, and shall be binding upon, each of the Bank, the County, the Borrower, and their respective permitted successors, assigns, heirs and personal representatives, as applicable. The Bank may participate out to other parties any portion of its interest under the Senior Debt and the rights of the Bank under this Agreement shall inure to such participant without such participant being required to become a signatory hereto. Any assignee or transferee shall execute and deliver to the other parties hereto an agreement pursuant to which they become parties hereto as fully as if they were signatories hereto and providing for the effectiveness of this Agreement as to such transferee or assignee and other parties, and the lien and debt priority of such

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party shall be that of such party's assignor and transferor. This Agreement shall be a continuing agreement, shall be irrevocable and shall remain in full force and effect so long as any of the Senior Debt or the Subordinate Debt is outstanding and so long as the Bank Loan Documents have not been terminated.

15. Notification of Default. The Bank and the County shall give written notice to the other of an Event of Default by the Borrower under Senior Debt or a breach or default by the Borrower under the Subordinate Debt, respectively; provided, however, that the failure to give such notice absent gross negligence shall not be deemed to be a breach of this Agreement and shall not affect the effectiveness or any declaration of such breach, default or Event of Default, as the case may be. The County understands that, subject to any grace or cure period under its agreements with the Borrower, any default by the Borrower under the County Debt is, automatically, an Event of Default of the Borrower under the Senior Debt. Nothing in this Agreement shall be interpreted to limit or restrict the right of the Bank and the County to waive any default under their respective documents, and the Bank, and the County agree that any waiver will be in writing and will be promptly provided to the other parties hereto.

16. Notices. Except as otherwise provided herein, all notices, requests and demands to or upon a party hereto to be effective shall be in writing and shall be sent by certified or registered mail, return receipt requested, personal delivery against receipt, delivery service against receipt, overnight courier service against receipt, or by facsimile and, unless otherwise expressly provided herein, shall be deemed to have been validly serviced, given or delivered when delivered against receipt, or one (1) Business Day after deposit in the mail, postage prepaid, or, in case of facsimile notice, when sent, answer back received, addressed as follows:

If to Bank:

The PrivateBank and Trust Company
120 South LaSalle Street
Chicago, Illinois 60603
Attention: Cheryl Wilson
Telephone: (312) 564-1303

With a copy to:

The PrivateBank and Trust Company
120 South LaSalle Street
Chicago, Illinois 60603
Attention: Damon Dicastri
Telephone: (312) 564-6036

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If to County:

Robert Rose
Executive Director
Cook County Land Bank Authority
69 West Washington Street, Suite 2938
Chicago, Illinois 60602
Telephone: (312) 603-8015

With a copy to:

Kathleen J. McKee
Assistant State's Attorney
Cook County State's Attorney's Office
500 Daley Center, Room 513
Chicago, Illinois 60602
Telephone: (312) _____

If to Borrower:

Stone Fox Capital, LLC
1941 North Kenmore, 2R
Chicago, Illinois 60614
Telephone: _____

The parties hereto may designate such other address or fax number by written notice in the aforesaid manner.

17. Amendments; Modifications. This Agreement may not be modified, altered or amended except by an agreement in writing executed by all of the parties hereto.

18. FORUM; AGENT; VENUE; JURY TRIAL WAIVER. TO INDUCE THE BANK TO ACCEPT THIS AGREEMENT, EACH OF THE BORROWER AND THE COUNTY IRREVOCABLY AGREES THAT, SUBJECT TO THE BANK'S SOLE AND ABSOLUTE DISCRETION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM, OR RELATED TO, THIS AGREEMENT SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN CHICAGO, ILLINOIS. EACH OF THE BORROWER AND THE COUNTY HEREBY CONSENTS AND AGREES THAT THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR, AT THE BANK'S OPTION, THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE PARTIES HERETO PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF, OR RELATED TO, THIS AGREEMENT. EACH OF THE BORROWER AND THE BANK HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH IT IS A PARTY.

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19. Governing Law. This Agreement shall be governed and controlled by the laws of the State of Illinois without regard to principles of conflict of laws.

20. Severability. In the event any one or more of the provisions contained herein shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed one original and all of which taken together shall constitute one and the same instrument.

22. Definitions. All capitalized terms used in this Agreement which are not specifically defined herein shall have the meaning set forth in the Loan Agreements.

23. The Borrower Acknowledgment. The Borrower hereby consents to this Agreement and agrees to abide by the terms hereof.

24. County's Agreement to Subordinate to Future Loans and Liens Against the Property. The County agrees that if the Borrower refinances the Senior Debt with a bank or other lender (a "*Refinance Lender*") that the County will subordinate (i) the Subordinate Debt, (ii) the County Loan Documents, and (iii) the liens and covenants contained in, or created by, any of the County Loan Documents, to the loan and loan documents of, and liens created against the Property securing such loan and loan documents in favor of, any Refinance Lender pursuant to an intercreditor and subordination agreement in substance and form similar in all material respects to this Agreement.

25. Borrower's Ability to Lease the Property. The County agrees that notwithstanding the terms and provisions of the Deed Covenants and the other County Loan Documents, that the Borrower will be permitted to lease the property to a tenant or tenants that are using the Property as their primary residence without such lease to constitute a default under the Subordinate Debt or any of the County Loan Documents.

26. Borrower's Ability to Sell the Property to Another Investor. The County agrees that notwithstanding the terms and provisions of the Deed Covenants and the other County Loan Documents, that the Borrower will be permitted to sell the Property to another developer or investor who does not intend to use the Property as his or hers primary residence (a "*Third Party*") provided that the County shall have the right to approve the Third Party which approval shall not be unreasonably withheld or delayed.

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IN WITNESS WHEREOF the parties hereto have executed this Intercreditor and Subordination Agreement the day and year first above written.

BANK:

THE PRIVATEBANK AND TRUST
COMPANY

By: 
Name: Cheryl Wilson
Title: Managing Director

COUNTY:

COUNTY OF COOK, ILLINOIS, a body
politic and corporate, doing business as Cook
County Land Bank Authority

By: _____
Name: Robert Rose
Title: Executive Director

BOREOWER:

STONE FOX CAPITAL, LLC, an Illinois
limited liability company

By: _____
Name: Joseph Alan Miller
Title: Sole Member

Property of Cook County Clerk's Office

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Name: Cheryl Wilson

Title: Managing Director

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County Land Bank Authority

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Title: Executive Director

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limited liability company

By: _____

Name: Joseph Alan Miller

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By: _____

Name: Cheryl Wilson

Title: Managing Director

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By: _____

Name: Robert Rose

Title: Executive Director

BORROWER:

STONE FOX CAPITAL, LLC, an Illinois limited liability company

By:  _____

Name: Joseph Alan Miller

Title: Sole Member

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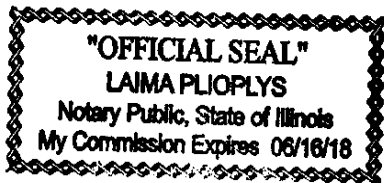
ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

On April 20th, 2016, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Cheryl Wilson personally known to me (or proved to me on the basis of satisfactory evidence) to be a Managing Director of The PrivateBank and Trust Company and to be the person who executed the within Agreement and acknowledged to me that the execution thereof was her free and voluntary act and the free and voluntary act of The PrivateBank and Trust Company, for the uses and purposes therein mentioned .

WITNESS my hand and official seal.

(SEAL)



LAIMA Plioplys
 Notary Public in and for the County of Cook
 State of Illinois
 My commission expires: 06/16/18

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On April 12, 2016, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Robert Rose personally known to me (or proved to me on the basis of satisfactory evidence) to be the Executive Director of the County of Cook, a body politic and corporate, doing business as Cook County Land Bank Authority, the person who executed the within Agreement and acknowledged to me that the execution thereof was his free and voluntary act and the free and voluntary act of the County of Cook, for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

(SEAL)



Suzanne E. Brown

Notary Public in and for the County of Cook
State of Illinois

My commission expires: Feb. 4 2017

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STATE OF ILLINOIS)
)
 COUNTY OF COOK)

SS

The foregoing instrument was acknowledged before me this 18 day of April, 2016 by Joseph Alan Miller, the sole member of Stone Fox Capital, LLC, that he signed the foregoing instrument as his free and voluntary act and as the free and voluntary act of Stone Fox Capital, LLC, for the purposes set forth in the foregoing instrument.



[Handwritten Signature]

Printed Name: _____
 Notary Public

(Seal)

MY COMMISSION EXPIRES: 8/18/16

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EXHIBIT A LEGAL DESCRIPTION

LOT 33 IN BLOCK 8 IN SOUTHLAWN HIGHLANDS BEING M.C. MYERS SUBDIVISION OF THE NORTHWEST QUARTER (1/4) OF THE SOUTHWEST QUARTER (1/4) OF SECTION 36, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART TAKEN FOR STONEY ISLAND AVENUE) IN COOK COUNTY, ILLINOIS.

PIN: 20-36-301-031-0000.

Address of the Property:

1748 East 83rd Place
Chicago, Illinois 60617

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