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Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

Doc# 2206840056 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 03/09/2022 04:09 PM PG: 1 OF 21

The property identified as: **PIN:** 32-21-411-005-0000

Address:

Street: 400 E. LINCOLN HIGHWAY

Street line 2:

City: CHICAGO HEIGHTS

State: IL

ZIP Code: 60411

Lender: CORTLAND CAPITAL MARKET SERVICES LLC

Borrower: REAL ALLOY RECYCLING, LLC

Loan / Mortgage Amount: \$110,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7770 et seq. because it is commercial property.

Certificate number: CE8FB76B-C82E-4859-BC8C-2CC15CD65871

Execution date: 4/2/2020

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**PREPARED BY AND WHEN RECORDED
RETURN TO**
 LATHAM & WATKINS LLP
 330 North Wabash Avenue, Suite 2800
 Chicago, Illinois 60611
 Attention: John Jefferson
 Re: Real Alloy

Location: 400 East Lincoln Highway

Municipality: Chicago Heights

County: Cook

State: Illinois

Zip Code: 60411

Space above this line for recorder's use only

NOTE TO RECORDER: THIS MORTGAGE CONSTITUTES A FIXTURE FILING AND COVERS AS-EXTRACTED COLLATERAL UNDER THE UCC (AS DEFINED HEREIN) AND IS TO BE CROSS-REFERENCED IN THE UCC RECORDS.

THE SECURED PARTY (MORTGAGEE) DESIRES THIS FIXTURE FILING AND FINANCING STATEMENT COVERING AS EXTRACTED COLLATERAL TO BE INDEXED AGAINST THE RECORD OWNER OF THE REAL ESTATE DESCRIBED HEREIN.

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MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

This **MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** dated as of April 2, 2020 (as it may be amended, supplemented or otherwise modified from time to time, this "Mortgage"), by and from **REAL ALLOY RECYCLING, LLC**, a Delaware limited liability company, with an address at 3700 Park East Drive, Suite 300, Beachwood, Ohio 44122, Attention: Cathryn D. Griffin ("Mortgagor"), to **CORTLAND CAPITAL MARKET SERVICES LLC**, with an address at 225 W. Washington Street, 9th Floor, Chicago, Illinois 60606, in its capacity as administrative agent and collateral agent for the Holders (as such term is defined in the Note Purchase Agreement (defined below)) (in such capacity, together with its successors and permitted assigns, "Mortgagee").

RECITALS

WHEREAS, reference is made to that certain Senior Secured Note Purchase Agreement dated as of May 31, 2018 (the "Original Note Purchase Agreement"), by and among RA Intermediate, Inc., a Delaware corporation ("Holdings"), RA Acquisition Purchaser LLC, a Delaware limited liability company (the "Purchaser"), Real Alloy Recycling, LLC, a Delaware limited liability company ("RA Recycling"), RA Specialty Products, LLC, a Delaware limited liability company ("RA Specialty"), RA Specification, LLC, a Delaware limited liability company ("RA Specification"), RA ETS Schaefer, LLC, a Delaware limited liability company ("ETS"), the purchasers party thereto (as "Purchasers") and Mortgagee, in its capacity as administrative agent and collateral agent for the Holders, which was amended pursuant to that certain Amendment No. 1 to Senior Secured Note Purchase Agreement dated as of December 17, 2018 (the Original Note Purchase Agreement, as amended by the foregoing amendment, and as may be further amended, restated, supplemented, or otherwise modified from time to time, the "Note Purchase Agreement");

WHEREAS, reference is made to that certain Guaranty and Security Agreement dated as of May 31, 2018 (as amended, restated, supplemented, or otherwise modified from time to time, the "Security Agreement") by and among Holdings, Purchaser, Mortgagor, RA Specialty, RA Specification, and ETS, as Guarantors, and Mortgagee, in its capacity as administrative agent and collateral agent for the Holders;

WHEREAS, Mortgagor, pursuant to the terms of the Note Purchase Agreement, and in order to induce the Purchasers (as defined therein) to purchase the Notes (as defined therein) has agreed to grant this Mortgage to secure, among other things, the due and punctual payment and performance of all of the Secured Obligations (as defined in the Security Agreement); and

WHEREAS, pursuant to the requirements of the Security Agreement, Mortgagor is granting this Mortgage to create a lien on and a security interest in the Mortgaged Property (as hereinafter defined) to secure the performance and payment by the Mortgagor of the Secured Obligations. The Security Agreement also requires the granting by Mortgagor and certain other Guarantors of mortgages, deeds of trust and/or deeds to secure debt (the "Other Mortgages") that

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create liens on and security interests in certain real and personal property other than the Mortgaged Property to secure the performance and payment of the Secured Obligations.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1 Definitions. Capitalized terms used herein (including the recitals hereto) not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement. In addition, as used herein, the following terms shall have the following meanings:

“Intercreditor Agreement” means that certain Intercreditor Agreement dated as of May 31, 2018 (as amended, restated, supplemented or otherwise modified from time to time) among Wells Fargo Bank, National Association, in its capacity as First Lien Agent (as defined therein) for the First Lien Secured Parties (as defined therein), the Beneficiary, as Second Lien Agent (as defined therein) for the Second Lien Secured Parties (as defined therein), and the Grantors party thereto.

“State” shall mean the state or commonwealth in which the Mortgaged Property is located.

“Mortgaged Property” means all of Mortgagor’s interest in (i) the real property described in Exhibit A, together with any greater or additional estate therein as hereafter may be acquired by Mortgagor (the **“Land”**); (ii) all improvements now owned or hereafter acquired by Mortgagor, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**); the Land and Improvements are collectively referred to as the **“Premises”**); (iii) all fixtures as defined in Article 9 of the UCC, including, without limitation, materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **“Fixtures”**); (iv) all right, title and interest of Mortgagor in and to all goods, accounts, inventory, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC (defined below), now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises (the **“Personalty”**); (v) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person (other than Mortgagor) a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits subject to depositors rights and requirements of law (the **“Leases”**); (vi) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits subject to depositors rights and requirements of law, and other benefits paid or payable by parties to the Leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the **“Rents”**), (vii) to the extent mortgageable or assignable all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service

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contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the “**Property Agreements**”); (viii) to the extent mortgageable or assignable all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing; (ix) to the extent mortgageable or assignable all property tax refunds payable to Mortgagor with respect to the Mortgaged Property (the “**Tax Refunds**”); (x) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the “**Proceeds**”); (xi) to the extent mortgageable or assignable all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the “**Insurance**”); and (xii) all of Mortgagor’s right, title and interest in and to any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to any condemnation or other taking, temporary or permanent, of all or any portion of the Land, Improvements, Fixtures or Personalty (the “**Condemnation Awards**”), in each case excluding Excluded Assets. As used in this Mortgage, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein (excluding, in each case, Excluded Assets).

“**UCC**” means the Uniform Commercial Code as in effect in the state of New York from time to time; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the creation, perfection, enforcement or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “**UCC**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such creation, perfection, enforcement, priority or remedies.

1.2 Interpretation. References to “Sections” shall be to Sections of this Mortgage unless otherwise specifically provided. Section headings in this Mortgage are included herein for convenience of reference only and shall not constitute a part of this Mortgage for any other purpose or be given any substantive effect. The rules of construction set forth in Section 1(b) of the Security Agreement shall be applicable to this Mortgage mutatis mutandis. If any conflict or inconsistency exists between this Mortgage and the Security Agreement, the Security Agreement shall govern.

SECTION 2. GRANT

To secure the full and timely payment and performance of the Secured Obligations (which includes, among other things, the original principal sum of One Hundred Ten Million and 00/100 Dollars (\$110,000,000) with interest and other amounts due thereon, including any interest due thereunder that is capitalized or otherwise paid in kind and subsequently added to the principal amount thereof), and in consideration of Ten and 00/100 Dollars (\$10.00) in hand paid by Mortgagee to Mortgagor, the Recitals above stated, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS and CONVEYS, WITH POWER OF SALE (to the extent available under State law), to Mortgagee (for its benefit and the benefit of the Holders), the Mortgaged Property, and grants to Mortgagee (for its benefit and the benefit

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of the Holders), forever a continuing security interest in and to the Mortgaged Property, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee (for its benefit and the benefit of the Holders), and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee for so long as any of the Secured Obligations remain outstanding, upon the trust, terms and conditions contained herein, in each case subject to Permitted Liens.

SECTION 3. WARRANTIES, REPRESENTATIONS AND COVENANTS

3.1 Title. Mortgagor represents and warrants to Mortgagee that except for the Permitted Liens, (a) Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, and (b) this Mortgage creates valid, enforceable first priority lien and security interests against the Mortgaged Property.

3.2 First Lien Status. Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Note Purchase Documents to the extent related to the Mortgaged Property, subject only to Permitted Liens. If any lien or security interest other than a Permitted Lien is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or, to the extent permitted under the Security Agreement and any other Security Documents, contest the same (provided, should Mortgagor contest, Mortgagor shall provide a bond or other security satisfactory to Mortgagee).

3.3 Payment and Performance. Mortgagor shall pay the Secured Obligations when due under the Note Purchase Agreement and shall perform the Secured Obligations, in full when they are required to be performed as required under the Security Agreement. The scheduled maturity date of the Notes is May 31, 2023.

3.4 Replacement of Fixtures and Personalty. Except as otherwise permitted in the Note Purchase Documents, Mortgagor shall not permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless (a) the removed item is removed temporarily for maintenance and repair, (b) the removal or alteration of such item will not materially detract from the operation of the Mortgagor's business, or, (c) if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Note Purchase Documents, and free and clear of any other lien or security interest except such as may be permitted under the Note Purchase Agreement (including Permitted Liens) or first approved in writing by Mortgagee.

3.5 Inspection. Mortgagor shall permit Mortgagee, and Mortgagee's agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and all books and records of Mortgagor located thereon, and to conduct such environmental and engineering studies as Mortgagee may reasonably require; provided, such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

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3.6 Covenants Running with the Land. This Mortgage and all Secured Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property. Subject to the terms of the Intercreditor Agreement, all Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Note Purchase Agreement and the other Note Purchase Documents. However, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee (unless, in each case, otherwise permitted by the Note Purchase Agreement or other Note Purchase Documents).

3.7 Condemnation Awards and Insurance Proceeds. Except as otherwise stated in the Note Purchase Agreement, Mortgagor assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, in each case, subject to the terms of the Note Purchase Agreement and the Intercreditor Agreement. Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property, in each case, subject to the terms of the Note Purchase Agreement and the Intercreditor Agreement. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly, in each case, subject to the terms of the Note Purchase Agreement and the Intercreditor Agreement.

3.8 Mortgage Tax. Mortgagor shall (a) pay when due any tax imposed upon it or upon Mortgagee pursuant to the tax law of the state in which the Mortgaged Property is located in connection with the execution, delivery and recordation of this Mortgage and any of the other Note Purchase Documents, and (b) prepare, execute and file any form required to be prepared, executed and filed in connection therewith.

3.9 Reduction of Secured Amount. In the event that the amount secured by the Mortgage is less than the Secured Obligations, then the amount secured shall be reduced only by the last and final sums that are paid with respect to the Secured Obligations and shall not be reduced by any intervening repayments of the Secured Obligations unless arising from the Mortgaged Property. So long as the balance of the Secured Obligations exceeds the amount secured, any payments of the Secured Obligations shall not be deemed to be applied against, or to reduce, the portion of the Secured Obligations secured by this Mortgage. Such payments shall instead be deemed to reduce only such portions of the Secured Obligations as are secured by other collateral located outside of the state in which the Mortgaged Property is located or as are unsecured.

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3.10 Prohibited Transfers. Except as expressly permitted by the Note Purchase Agreement or any other Note Purchase Documents, Mortgagor shall not, directly or indirectly, sell, lease, transfer or otherwise dispose of all or any part of the Mortgaged Property.

SECTION 4. DEFAULT AND FORECLOSURE

4.1 Remedies. If an Event of Default has occurred and is continuing, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses (subject to the applicable terms of the Intercreditor Agreement): (a) declare the Secured Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable; (b) enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor; (c) hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions hereof; (d) institute proceedings for the complete foreclosure of this Mortgage, either by judicial action or, if permitted under the laws of the State, by power of sale, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, if any, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee or any Secured Party may be a purchaser at such sale and if Mortgagee is the highest bidder, Mortgagee shall credit the portion of the purchase price that would be distributed to Mortgagee against the Secured Obligations in lieu of paying cash. In the event this Mortgage is foreclosed by judicial action, appraisal of the Mortgaged Property is waived; (e) make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Secured Obligations, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions hereof; and/or (f) exercise all other rights, remedies and recourses granted under the Note Purchase Agreement and the Note Purchase Documents or otherwise available at law or in equity.

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4.2 Separate Sales. If Power of Sale is available as a remedy under State law, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

4.3 Remedies Cumulative, Concurrent and Nonexclusive. Subject to the applicable terms of the Intercreditor Agreement, Mortgagee shall have all rights, remedies and recourses granted in the Note Purchase Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Note Purchase Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Note Purchase Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

4.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Note Purchase Documents or their status as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Secured Obligations, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

4.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of any Event of Default or of Mortgagee's election to exercise or the actual exercise of any right, remedy or recourse except to the extent otherwise provided for under the Note Purchase Documents; and (c) any right to a marshalling of assets or a sale in inverse order of alienation. With respect to the Mortgaged Property, Mortgagor waives the statutory right of redemption and equity of redemption under applicable state law.

4.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Note Purchase Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Secured Obligations, the Note Purchase Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee

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thereafter to exercise any right, remedy or recourse under the Note Purchase Documents for such Event of Default.

4.7 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in accordance with the terms of the Note Purchase Agreement.

4.8 Occupancy After Foreclosure. Any sale of the Mortgaged Property or any part thereof in accordance with Section 4.1(d) will divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

4.9 Additional Advances and Disbursements; Costs of Enforcement. If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor in accordance with the Note Purchase Agreement. All sums advanced and expenses incurred at any time by Mortgagee under this Section, or otherwise under this Mortgage or any of the other Note Purchase Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred if not repaid within five (5) business days after demand therefor, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Secured Obligations, and all such sums, together with interest thereon, shall be secured by this Mortgage. Mortgagor shall pay all reasonable expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Note Purchase Documents, or the enforcement, compromise or settlement of the Secured Obligations under the Note Purchase Agreement or any claim under this Mortgage and the other Note Purchase Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise, all subject to and to the extent set forth in the Note Purchase Documents.

4.10 No Mortgagee in Possession. Except as otherwise provided by law, neither the enforcement of any of the remedies under this Section, the assignment of the Rents and Leases under Section 5, the security interests under Section 6, nor any other remedies afforded to Mortgagee, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

SECTION 5. ASSIGNMENT OF RENTS AND LEASES

5.1 Assignment. In furtherance of and in addition to the assignment made by Mortgagor herein, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and

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conveys to Mortgagee all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into or modified, extended, renewed or replaced, and all of its right, title and interest in and to all Rents. To the extent permitted under applicable law, this assignment is an absolute assignment and not merely an assignment for additional security. So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Secured Obligations and to otherwise use the same. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Secured Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate.

5.2 Perfection Upon Recordation. Mortgagor acknowledges that it has taken all reasonable actions necessary to obtain, and that upon recordation of this Mortgage, Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases subject to the Permitted Liens and in the case of security deposits, rights of depositors and requirements of law. Mortgagor acknowledges and agrees that upon recordation of this Mortgage, Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and, to the extent permitted under applicable law, all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "**Bankruptcy Code**"), without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

5.3 Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 551(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents, and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

SECTION 6. SECURITY AGREEMENT

6.1 Security Interest. This Mortgage constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Leases, Rents, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards (in each case, excluding any Excluded Assets). To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Personalty, Fixtures, Leases, Rents, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Mortgaged Property which is personal property (in each case, excluding any Excluded Assets) to secure the payment and performance of the Secured Obligations subject to the Permitted Liens, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Leases, Rents, Property Agreements, Tax

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Refunds, Proceeds, Insurance and Condemnation Awards sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor. In the event the terms of this Mortgage conflict with or are inconsistent with the express terms of the Security Agreement with respect to the collateral covered both therein and herein, the terms of the Security Agreement shall be controlling and govern to the extent of any such conflict or inconsistency.

6.2 Financing Statements. Mortgagor shall cause to be filed with the applicable offices all financing statements reasonably considered necessary to create, perfect and preserve Mortgagee's security interest hereunder. Without limiting the foregoing, Mortgagee is hereby authorized to prepare and file and, in furtherance of the foregoing, Mortgagor shall execute and file, in form and substance reasonably satisfactory to Mortgagee, such financing statements (which may be in the form of "all assets" filings) and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

6.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures upon recording of this Mortgage in the real estate records of the proper office. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage. The Mortgagor shall cause to be recorded in the County in which the Premises are located, as well as with the applicable offices of the State, such financing statements and fixture filings (which may be in the form of an "all assets" filing) as shall be necessary in order to perfect and preserve the priority of Mortgagee's lien upon the Mortgaged Property.

SECTION 7. ATTORNEY-IN-FACT

Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) business days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Fixtures, Personalty, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards (excluding, in each case, any Excluded Assets) in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; provided, (w) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (x) any sums advanced by Mortgagee in such performance shall be added to and included in the Secured Obligations and shall bear interest at

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the rate or rates at which interest is then computed on the Secured Obligations provided that from the date incurred said advance is not repaid within five (5) business days of demand; (y) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (z) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

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SECTION 8. MORTGAGEE AS AGENT

8.1 Mortgagee has been appointed to act as Agent by the Holders pursuant to the Note Purchase Agreement. Mortgagee shall be obligated and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including the release or substitution of Mortgaged Property), solely in accordance with this Mortgage, the Note Purchase Agreement, the other Note Purchase Documents and the Intercreditor Agreement. In furtherance of the foregoing provisions of this Section, each Secured Party, other than Mortgagee, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Mortgaged Property, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by Mortgagee for the benefit of the Holders in accordance with the terms of this Section. Mortgagee shall at all times be the same Person that is Agent under the Note Purchase Agreement. Written notice of resignation by Agent pursuant to terms of the Note Purchase Agreement shall also constitute notice of resignation as Mortgagee under this Mortgage; removal of Agent pursuant to the terms of the Note Purchase Agreement shall also constitute removal as Mortgagee under this Mortgage; and appointment of a successor Agent pursuant to the terms of the Note Purchase Agreement shall also constitute appointment of a successor Mortgagee under this Mortgage. Upon the acceptance of any appointment as Agent under the terms of the Note Purchase Agreement by a successor Agent, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Mortgagee under this Mortgage, and the retiring or removed Mortgagee under this Mortgage shall promptly (a) transfer to such successor Mortgagee all sums, securities and other items of Mortgaged Property held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Mortgagee under this Mortgage, and (b) execute and deliver to such successor Mortgagee such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Mortgagee of the security interests created hereunder, whereupon such retiring or removed Mortgagee shall be discharged from its duties and obligations under this Mortgage thereafter accruing. After any retiring or removed Agent's resignation or removal hereunder as Mortgagee, the provisions of this Mortgage and the Note Purchase Agreement shall continue to inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was Mortgagee hereunder.

8.2 Notwithstanding anything herein to the contrary, the lien and security interest granted to the Mortgagee pursuant to this Mortgage is granted to the Mortgagee solely in its capacity as Agent and the exercise of any right or remedy or the taking of any action by such Mortgagee hereunder are subject to the provisions of the Note Purchase Agreement, including for the avoidance of doubt provisions conferring rights, powers, benefits and indemnities upon the Mortgagee in its capacity as Agent.

8.3 No amendment or waiver of any provision of this Mortgage shall be effective unless such amendment or waiver is made in compliance with the Note Purchase Agreement. This Mortgage shall be automatically amended or waived without further action under the conditions set forth in the Note Purchase Agreement. In the event of any such amendment, Mortgagor and Mortgagee will enter into an instrument confirming such amendment or waiver.

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The lien and security interests granted to the Mortgagee are subject to the provisions of the Note Purchase Agreement, as therein provided.

SECTION 9. TERMINATION AND RELEASE

9.1 Conditions to Release. Upon the payment in full of all Secured Obligations (other than unmatured contingent obligations), this Mortgage and the security interest granted hereby shall automatically terminate hereunder and of record without further action by any party and, subject to the Intercreditor Agreement, all rights to the Mortgaged Property shall revert to the Mortgagor. Upon any such termination, the Mortgagee shall, at the Mortgagor's expense, execute and deliver to the Mortgagor or otherwise authorize the filing of such documents and instruments as the Mortgagor shall reasonably request to evidence such release and termination, and shall assign and transfer to Mortgagor such of the Mortgaged Property that may be in the possession of the Mortgagee and has not theretofore been sold or otherwise applied or released pursuant to this Mortgage.

9.2 Release Pursuant to the Note Purchase Agreement and Intercreditor Agreement. Mortgagor will be entitled to the release of property and other assets included in the Mortgaged Property from the liens securing the Notes as provided in the Note Purchase Agreement and the Intercreditor Agreement. Upon any such release of Mortgaged Property, the Mortgagee shall, at the Mortgagor's expense, and as promptly as practicable (x) execute and deliver or otherwise authorize the filing of (i) such instruments or releases to evidence such release and (ii) such documents as Mortgagor shall reasonably request to evidence such release and (y) perform or cause to be performed all acts as are reasonably necessary to effectuate such release.

9.3 Release Upon Disposition. Upon any disposition of the Mortgaged Property permitted by the Note Purchase Agreement, the liens granted herein, to the extent of such disposition, shall be deemed to be automatically released with no further action on the part of any Person and upon the consummation of any transaction permitted by the Note Purchase Agreement as a result of which Mortgagor ceases to be a Subsidiary of Holdings and is released from its Guarantee of the Secured Obligations, Mortgagor shall automatically be released from its obligations hereunder and the liens granted herein in the Mortgaged Property shall be deemed to be automatically released, in each case, with no further action on the part of any Person. Without limiting the foregoing, the Mortgagee shall, at the Mortgagor's expense, (x) execute and deliver or otherwise authorize the filing of (i) such instruments or releases to evidence such release and (ii) such documents as Mortgagor shall reasonably request to evidence such release and (y) perform or cause to be performed all acts as are reasonably necessary to effectuate such release.

SECTION 10. LOCAL LAW PROVISIONS

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10.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article 10 and the other provisions of this Mortgage, the terms and conditions of this Article 10 shall control and be binding.

10.2 Maximum Principal Sum. The Obligations are to be secured by other mortgages and deeds of trust on other real estate in other counties and other states. Each and all of such mortgages and deeds of trust are intended to and shall constitute security for the entire Obligations without allocation. Notwithstanding anything herein to the contrary, it is agreed that the maximum amount of indebtedness secured by this Mortgage, including all advancements, at any one time shall not exceed \$220,000,000.00 plus interest and protective advances.

10.3 In Rem Proceedings. Supplementing Section 4.1 hereof, mortgage foreclosures and other *In Rem* proceedings against Mortgagor may be brought in the county where the Mortgaged Property is located or any federal court of competent jurisdiction in Illinois.

10.4 Illinois Mortgage Foreclosure Law. It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "*Act*"), 735 ILCS 5/15-1101, et seq., and with respect to such Act Mortgagor agrees and covenants that:

(a) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(b) Wherever provision is made in this Mortgage or the Note Purchase Documents for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale;

(c) All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or the Note Purchase Documents or by the Act (collectively "*Protective Advances*"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note Purchase Documents. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act;

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(d) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the Act; and

(e) Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601(b) of the Act, Mortgagor hereby waives any and all right of redemption.

SECTION 11. MULTI-SITE REAL ESTATE TRANSACTIONS

Mortgagor acknowledges that this Mortgage and certain Other Mortgages secure the Secured Obligations. Mortgagor agrees that, subject to the terms of Section 9 hereof, the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee, and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by Mortgagee of any security for or guarantees of the Secured Obligations, or by any failure, neglect or omission on the part of Mortgagee to realize upon or protect any Obligation or any collateral security therefor including the Other Mortgages. Subject to the terms of Section 9 hereof, the lien of this Mortgage shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Secured Obligations or of any of the collateral security therefor, including the Other Mortgages or any guarantee thereof, and, to the fullest extent permitted by applicable law, Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Mortgages without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Mortgagee's rights and remedies under any or all of the Other Mortgages shall not in any manner impair the indebtedness hereby secured or the lien of this Mortgage and any exercise of the rights and remedies of Mortgagee hereunder shall not impair the lien of any of the Other Mortgages or any of Mortgagee's rights and remedies thereunder. To the fullest extent permitted by applicable law, Mortgagor specifically consents and agrees that Mortgagee may exercise its rights and remedies hereunder and under the Other Mortgages separately or concurrently and in any order that it may deem appropriate and waives any right of subrogation.

SECTION 12. MISCELLANEOUS

12.1 Notices. Any notice and other communication required or permitted to be given under this Mortgage shall be given in accordance with the notice provisions of the Note Purchase Agreement to the address set forth therein.

12.2 Severability. In case any provision in or obligation under this Mortgage shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the

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remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

12.3 Governing Law. THE PROVISIONS OF THIS MORTGAGE REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS MORTGAGE AND THE RIGHTS AND OBLIGATIONS OF MORTGAGOR AND MORTGAGEE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

12.4 Note Purchase Agreement. In the event of any conflict or inconsistency between the terms of this Mortgage and the terms of the Note Purchase Agreement, the Note Purchase Agreement shall control.

12.5 Time of Essence. Time is of the essence of this Mortgage.

12.6 WAIVER OF JURY TRIAL. Section 25 of the Security Agreement is hereby incorporated *mutatis mutandis*.

12.7 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

12.8 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of this Mortgage shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

12.9 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

12.10 Entire Agreement. This Mortgage and the other Note Purchase Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and

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supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Mortgage and the Note Purchase Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Mortgage may be amended only with the written consent of the Mortgagor and Mortgagee, or their respective heirs, successors and assigns.

12.11 Counterparts. This Mortgage may be executed in several counterparts, all of which are identical, except that to facilitate recordation, if the Mortgaged Property is situated offshore or in more than one county, descriptions of only those portions of the Mortgaged Property located in the county in which a particular counterpart is recorded shall be attached as Exhibit A thereto. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

12.12 Intercreditor Agreement. Notwithstanding anything herein to the contrary, the lien and security interest granted to Mortgagee pursuant to this Mortgage and the exercise of any right or remedy by Mortgagee hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the Intercreditor Agreement and this Mortgage, such provisions set forth in the Intercreditor Agreement shall govern and be controlling.

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EXHIBIT A TO MORTGAGE

Legal Description of Premises

Lot 6 (except that part conveyed to the County of Cook by deed recorded as document 26337737) and all of Lot 7, in Block 238 of Chicago Heights, a Subdivision of that part of the Southeast 1/4 of Section 21, Township 35 North, Range 14, East of the Third Principal Meridian, lying East of a line drawn parallel to and 541 feet West from the East Line of said Section (except the South 729.40 feet thereof), in Cook County, Illinois.

Address: 400 East Lincoln Highway, Chicago Heights, Cook County, IL

PIN: 32-21-411-005-0000 and 32-21-411-006-0000