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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1109518030

Doc#: 1109518030 Fee: \$84.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/05/2011 02:51 PM Pg: 1 of 25

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 19-02-100-027-0000**

Address:

Street: 3900 W.43rd Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60632

Lender: U.S. Bank National Association

Borrower: BagcraftPapercon I, LLC

Loan / Mortgage Amount: \$425,000,000.00

This property is located within the program area and is exempt from the requirements of 705 ILCS 77/70 et seq. because it is commercial property.

Certificate number: FF7D91B9-9212-4587-B03F-FD6D0C4DF12C

Execution date: 03/25/2011

REC'D

/ of 3

Property of Cook County Clerk's Office

UNOFFICIAL COPY**RECORDING
REQUESTED BY:
AND WHEN RECORDED
MAIL TO:**

1063
Cahill Gordon &
Reindel LLP
80 Pine Street
New York, New York 10005
Attn: Athy A. Mobilia, Esq.
1111779/1607

Re:
**BAGCRAFTPAPERCON
I, LLC (f/k/a Bagcraft Pack-
aging, L.L.C., f/k/a Bagcraft
Acquisitions, L.L.C.)**

Location:
3900 W. 43rd Street, Chica-
go, Illinois 60632

County: Cook

State: Illinois

Space above this line for recorder's use only

**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 March 25, 2011 (as it may be amended, supplemented or otherwise modified, this "Mortgage"), by and from BAGCRAFTPAPERCON I, LLC, a Delaware limited liability (f/k/a Bagcraft Packaging, L.L.C., f/k/a Bagcraft Acquisitions, L.L.C.), with an address at 3900 W. 43rd Street, Chicago, Illinois 60632 ("Mortgagor") to U.S. BANK NATIONAL ASSOCIATION, with an address at 209 South LaSalle Street, Suite 300, Chicago, IL 60604, as Secured Notes Collateral Agent for the ratable benefit of the Secured

This Instrument Prepared by:

Athy A. Mobilia, Esq.
Cahill Gordon & Reindel llp
80 Pine Street
New York, New York 10005

Stewart Title NTS - Chicago
2 N. LaSalle Street, Suite 1400
Chicago, IL 60602
PH: 312-849-4400
File No: 1003542

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Notes Secured Parties (as herein defined) (in such capacity, together with its successors and assigns, "**Mortgagee**").

RECITALS:

WHEREAS, pursuant to (i) the Indenture dated as of February 1, 2011 (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture"), among Packaging Dynamics Corporation (the "Company"), a Delaware corporation, the Guarantors from time to time party thereto, and U.S. Bank National Association, as notes collateral agent ("Secured Notes Collateral Agent") and trustee (in such capacity, the "Trustee") and (ii) the Purchase Agreement dated January 25, 2011 (as amended, restated, supplemented or otherwise modified from time to time, the "Purchase Agreement") among the Company, the Guarantors (as defined therein), the several parties named in Schedule I thereto (the "Initial Purchasers") and Goldman, Sachs & Co. and Deutsche Bank Securities Inc., as Representative (as defined therein) of the Initial Purchasers, the Company has issued \$425,000,000.00 aggregate principal amount of its 8.750% Senior Secured Notes due 2016 (such notes, together with any Additional Notes issued from time to time under the Indenture, the "Notes") upon the terms and subject to the conditions set forth therein. Capitalized terms used herein shall have meanings assigned to such terms in Section 1.1 herein;

WHEREAS, each of the Guarantors, including, without limitation, the Mortgagor, has, pursuant to the Indenture, unconditionally and irrevocably guaranteed, as primary obligor and not merely as surety, to the Trustee, for the benefit of the Secured Notes Secured Parties the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations;

WHEREAS, U.S. Bank National Association has been appointed to serve as Secured Notes Collateral Agent under the Indenture and, in such capacity, to enter into this Mortgage;

WHEREAS, following the date hereof, if not prohibited by the Indenture, the Company may incur Pari Passu Lien Indebtedness which is secured equally and ratably with the Grantors' obligations in respect of the Notes in accordance with Section 15 of the Notes Pledge and Security Agreement;

WHEREAS, Mortgagor will receive substantial benefits from the execution, delivery and performance of the obligations under the Indenture, the Notes Obligations and any Pari Passu Lien Indebtedness and is, therefore, willing to enter into this Mortgage;

WHEREAS, this Mortgage is made by the Mortgagor in favor of the Secured Notes Collateral Agent for the benefit of the Secured Notes Secured Parties to secure the payment and performance in full when due of the Secured Obligations; and

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

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SECTION 1. DEFINITIONS

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

“Additional Pari Passu Agreement” shall mean the indenture, credit agreement or other agreement under which any Pari Passu Lien Indebtedness (other than Additional Notes) are incurred and any notes or other instruments representing such Pari Passu Lien Indebtedness.

“Additional Pari Passu Agent” shall mean the Person appointed to act as trustee, agent or representative for the holders of Pari Passu Lien Indebtedness pursuant to any Additional Pari Passu Agreement.

“Additional Pari Passu Debt Documents” shall mean any document or instrument executed and delivered with respect to any Pari Passu Lien Indebtedness.

“Additional Pari Passu Joinder Agreement” shall mean an agreement substantially in the form of Exhibit G to the Notes Pledge and Security Agreement.

“Applicable Authorized Representative” shall mean the Trustee or Additional Pari Passu Agent representing the series of Indebtedness secured hereby with the greatest outstanding aggregate principal amount.

“Discharge of Notes Obligations” shall have the meaning given to such term in the Intercreditor Agreement.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order (including consent orders) or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

“Environmental Laws” means any and all foreign or domestic, federal or state (or any subdivision of either of them) or local statutes, ordinances, orders (including consent orders), rules, regulations, judgments, treaties, Governmental Authorizations, or any other requirements of Governmental Authorities relating to or imposing standards of conduct concerning: (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the Release, generation, use, storage, transportation or disposal of, or exposure to, Hazardous Materials; (iii) industrial hygiene, occupational safety and health; (iv) natural resources or natural resource damages; (v) land use; or (vi) the protection of human, plant or animal health or welfare, in any manner applicable to Holdings or any of its Subsidiaries or any Facility.

“Governmental Authority” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial,

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regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

“Hazardous Materials” means any chemical, compound, constituent, material, waste or substance, which is prohibited, limited or regulated by any Governmental Authority or pursuant to any Environmental Law or which may or could pose a hazard to the health and safety of any Persons or to the indoor or outdoor environment.

“Hazardous Materials Activity” means any past, current, future, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

“Insolvency Proceeding” shall have the meaning given to such term in the Intercreditor Agreement.

“Intercreditor Agreement” shall mean that certain Intercreditor Agreement, dated as of February 1, 2011, by and among the Revolving Collateral Agent (as defined therein), the Secured Notes Collateral Agent and the Grantors (as defined in the Notes Pledge and Security Agreement) and to the extent there is any Pari Passu Lien Indebtedness outstanding the Additional Pari Passu Agent.

“Mortgaged Property” means all of Mortgagor’s right, title and interest in (i) the real property described in Exhibit A attached hereto, 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 materials, supplies, equipment, fixtures, 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 goods, accounts, 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 reserves, escrows or impounds required under the Indenture and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property (the **“Deposit Accounts”**); (vi) 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”**); (vii) 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,

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leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the “**Rents**”), (viii) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service 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**”); (ix) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing; (x) all property tax refunds payable to Mortgagor (the “**Tax Refunds**”); (xi) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the “**Proceeds**”); (xii) 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 (xiii) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty (the “**Condemnation Awards**”). 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.

“**Notes Documents**” shall have the meaning ascribed to such term in the Intercreditor Agreement.

“**Permitted Encumbrances**” shall mean Liens of the type permitted by clauses (1), (8), (9), (10), (11), (12), (13), (20) and (27) of the definition of “Permitted Liens” as set forth in the Indenture and the matters set forth on the Mortgage Policy delivered to Mortgagee in connection with this Mortgage.

“**Release**” means any release, spill, emission, leaking, pumping, pouring, injection, seepage, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“**Revolving Priority Collateral**” shall have the meaning ascribed to such term in the Intercreditor Agreement.

“**Secured Obligations**” shall have the meaning ascribed to such term in the Notes Pledge and Security Agreement.

“**Secured Notes Secured Parties**” shall have the meaning ascribed to such term in the Notes Pledge and Security Agreement.

“**UCC**” means the Uniform Commercial Code of the state where the Land is located or if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the state where the Land is located, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

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

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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 1.4 of the Indenture shall be applicable to this Mortgage mutatis mutandis. If any conflict or inconsistency exists between this Mortgage and the Indenture, the Indenture shall govern.

SECTION 2. GRANT

To secure the full and timely payment and performance of the Secured Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS, TRANSFERS, PLEDGES and CONVEYS to Mortgagee, as Secured Notes Collateral Agent for the ratable benefit of the Secured Notes Secured Parties, the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee, and, subject to the Permitted Encumbrances, 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.

SECTION 3. WARRANTIES, REPRESENTATIONS AND COVENANTS

3.1 Title. Mortgagor represents and warrants to Mortgagee that except for the Permitted Encumbrances, (a) Mortgagor owns in fee simple the Mortgaged Property free and clear of any liens, claims or interests, and (b) this Mortgage creates a valid and enforceable first priority Lien against the Mortgaged Property or to the extent any portion thereof constitutes Revolving Priority Collateral, a second priority lien.

3.2 First Lien Status. Mortgagor shall preserve and protect the first priority Lien status of this Mortgage, the other Notes Documents and any Additional Pari Passu Debt Documents to the extent related to the Mortgaged Property. If any lien or security interest (other than a Permitted Encumbrance and the Lien securing the Secured Obligations) 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.

3.3 Payment and Performance. Mortgagor shall pay and perform the Secured Obligations in full when they are required to be performed as required under the Notes Documents and any Additional Pari Passu Debt Documents.

3.4 Replacement of Fixtures and Personalty. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, 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, the other Notes Documents and any Additional Pari Passu Debt Documents, and free and clear of any other lien or security interest except Permitted Encumbrances, the Lien securing the Secured Obligations or except as 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 located thereon provided, that such inspections shall not ma-

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terially interfere with the use and operation of the Mortgaged Property. In addition, if an Event of Default exists or, if at any time, in Mortgagee's reasonable opinion, a reasonable basis exists to believe an Environmental Claim or any condition which could reasonably be expected to result in an Environmental Claim exists, Mortgagor shall permit Mortgagee, and Mortgagee's agents, representatives and employees to conduct such environmental studies as Mortgagee may reasonably require; provided, such studies shall not materially interfere with the use and operation of the Mortgaged Property.

3.6 Covenants Running with the Land. All 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, its successors and assigns and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged Property or Mortgagor shall be deemed to have notice of, and be bound by, the terms of this Mortgage, the Indenture, the other Notes Documents and any Additional Pari Passu Debt Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee. In addition, all of the covenants of Mortgagor in any Notes Document or any Additional Pari Passu Debt Document party thereto are incorporated herein by reference and, together with covenants in this Section, shall be covenants running with the Mortgaged Property.

3.7 Condemnation Awards and Insurance Proceeds. Any Net Award or Net Insurance Proceeds shall be applied as set forth in Sections 3.5 and 11.8(b) of the Indenture.

3.8 Change in Tax Law. Upon the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (i) deducting or allowing Mortgagor to deduct from the value of the Mortgaged Property for the purpose of taxation any lien or security interest thereon or (ii) subjecting Mortgagee or any of the Secured Notes Secured Parties to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Mortgage, the Secured Obligations or Mortgagee, and the result is to increase the taxes imposed upon or the cost to Mortgagee of maintaining the Secured Obligations, or to reduce the amount of any payments receivable hereunder, then, and in any such event, Mortgagor shall, on demand, pay to each Secured Notes Secured Party additional amounts to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful, or taxable to any Secured Notes Secured Party, or would constitute usury or render the Secured Obligations wholly or partially usurious under applicable law, then Mortgagor shall pay or reimburse the Secured Notes Secured Parties for payment of the lawful and non-usurious portion thereof.

3.9 Mortgage Tax. Mortgagor shall (i) pay when due any tax imposed upon it or upon Mortgagee and any Secured Notes Secured Party pursuant to the tax law of the state in which the Mortgaged Property is located in connection with the execution, delivery, recordation and enforcement of this Mortgage, any of the other Notes Document and any Additional Pari Passu Debt Documents, and (ii) prepare, execute and file any form required to be prepared, executed and filed in connection therewith.

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3.10 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 Mortgagor or Issuer repays 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.

3.11 Limitation of Liens; Transfer of the Mortgaged Property. Mortgagor shall not, except as and to the extent permitted in the Notes Documents or any Additional Pari Passu Debt Documents, sell, convey, alienate, mortgage, encumber or otherwise transfer the Mortgaged Property or permit to exist or grant any Lien on all or any part thereon, or permit the Mortgaged Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered or otherwise transferred.

3.12 Future Advances. This Mortgage shall secure all Secured Obligations, including, without limitation, future advances relating to the Secured Obligations whenever hereafter made with respect to or under the Notes Documents or any Additional Pari Passu Debt Documents and shall secure not only Secured Obligations with respect to presently existing indebtedness evidencing or representing any of the Secured Obligations, but also any and all other indebtedness evidencing or representing any of the Secured Obligations which may hereafter be owing by Mortgagor or Issuer to the Secured Notes Secured Parties under the Notes Documents or any Additional Pari Passu Agreement, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances relating to the Secured Obligations pursuant to the Notes Documents or any Additional Pari Passu Debt Documents, whether such advances are obligatory or to be made at the option of the Secured Notes Secured Parties, or otherwise, and any extensions, refinancings, modifications or renewals of all such Secured Obligations whether or not Mortgagor or Issuer executes any extension agreement or renewal instrument and, in each case, to the same extent as if such future advances were made on the date of the execution of this Mortgage. Mortgagor and Mortgagee acknowledge that the reduction from time to time of the outstanding balance of the Secured Obligations shall not extinguish, release, subordinate or in any way affect the lien of this Mortgage.

SECTION 4. DEFAULT AND FORECLOSURE

4.1 Remedies. If an Event of Default has occurred and is continuing, Mortgagee may (but shall have no obligation to), at Mortgagee's election, exercise any or all of the following rights, remedies and recourses: (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 and without Mortgagee's prior written consent, Mortgagee may in-

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voke 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 by power of sale, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. To the extent required under applicable law, 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, 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. Any Secured Notes Secured Party, including but not limited to Mortgagee 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, to the extent permitted under applicable law, 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 Notes Documents or any Additional Pari Passu Debt Documents or otherwise available at law or in equity.

4.2 Separate Sales. 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. Mortgagee shall have all rights, remedies and recourses granted in any Additional Pari Passu Agreement and the other Notes 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 Notes Documents or any Additional Pari Passu Debt Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee or the Secured Notes Secured Parties, (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 any Secured Notes Secured Party, including but not limited to Mortgagee in the enforcement of any rights, remedies or recourses under

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the Notes Documents or any Additional Pari Passu Debt 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 Notes Documents or any Additional Pari Passu Debt Documents or their status as a first priority Lien 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 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 provided for under the Notes Documents or any Additional Pari Passu Debt Documents; and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

4.6 Discontinuance of Proceedings. If any Secured Notes Secured Party shall have proceeded to invoke any right, remedy or recourse permitted under the Notes Documents or any Additional Pari Passu Debt Documents and shall thereafter elect to discontinue or abandon it for any reason, the Secured Notes Secured Parties shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee and the Secured Notes Secured Parties shall be restored to their former positions with respect to the Secured Obligations, the Notes Documents, any Additional Pari Debt Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee or the Secured Notes Secured Parties 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 or the Secured Notes Secured Parties thereafter to exercise any right, remedy or recourse under the Notes Documents or any Additional Pari Passu Debt Documents for such Event of Default.

4.7 Application of Proceeds. Subject to the Intercreditor Agreement, whether or not any Insolvency Proceeding has been commenced by or against the Mortgagor, 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, or other realization upon all or any part of, the Mortgaged Property (whether or not expressly characterized as such), or in any Insolvency Proceeding, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law: first, to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (a) receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (b) court costs, (c) reasonable attorneys' and accountants' fees and expenses, and (d) costs of advertisement; and second, as set forth in Section 7.2 of the Notes Pledge and Security Agreement.

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4.8 Occupancy After Foreclosure. Any sale of the Mortgaged Property or any part thereof 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 and to the extent permitted by applicable law, 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 and each of the Secured Notes Secured Parties 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 Indenture. All sums advanced and expenses incurred at any time by Mortgagee or any Secured Notes Secured Party under this Section, or otherwise under this Mortgage, the Notes Documents, any Additional Pari Passu Debt Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred if not repaid within five (5) days after demand therefor, to and including the date of reimbursement, computed at the rate or rates at which default interest is then computed on the Secured Obligations in accordance with Section 2.14 of the Indenture, and all such sums, together with interest thereon, shall be secured by this Mortgage. Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage, the Notes Documents, any Additional Pari Passu Debt Documents, and the enforcement, compromise or settlement of the Indebtedness and any claim under this Mortgage, the Notes Documents or any Additional Pari Passu Debt Documents, and for the curing thereof, and for defending or asserting the rights and claims of Mortgagee and the Secured Notes Secured Parties in respect thereof, by litigation or otherwise, including appraisers' fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Mortgaged Property or for any other reasonable purpose.

4.10 No Mortgagee in Possession. To the extent permitted by applicable 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, the Secured Notes Secured Parties under the Notes Documents or any Additional Pari Passu Debt Documents, at law or in equity shall cause Mortgagee or any Secured Notes Secured Party to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee or any Secured Notes Secured Party 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 con-

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veys to Mortgagee all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. 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. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. 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, without notice by Mortgagee (any such notice being hereby expressly waived by Mortgagor).

5.2 Perfection Upon Recordation. Mortgagor acknowledges that Mortgagee 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 Lien, present assignment of the Rents arising out of the Leases and all security for such Leases subject to the Permitted Encumbrances 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 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 552(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, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Mortgagor grants to Mortgagee a security interest and first priority Lien (or, to the extent constituting Revolving Priority Collateral, a second priority Lien) in the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Mortgaged Property which is personal property to secure the payment and performance of the Secured Obligations subject to the Permitted Encumbrances, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. To the ex-

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tent permitted by applicable law, any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax 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.

6.2 Financing Statements. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements 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. Mortgagor's chief executive office is at the address set forth in Section 13.2 of the Indenture.

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. 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 record owner of the Land is Mortgagor. Mortgagor's organizational identification number is 2930400.

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 and with full power of substitution, (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) 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, Deposit Accounts, Fixtures, Personalty, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards 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, (d) upon the occurrence and during the continuance of any Event of Default, to obtain and adjust insurance required to be maintained by the Mortgagor or paid to the Secured Notes Collateral Agent pursuant to the Indenture; and (e) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; provided, (i) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (ii) any sums advanced by Mortgagee in such performance shall be added to and included in the Secured Obligations and shall bear interest at the rate or rates at which default interest is computed on the Notes Obligations as provided in Section 2.14 of the Indenture; (iii) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (iv) 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

Mortgagee has been appointed to act as Mortgagee hereunder by the Secured Notes Secured Parties. The Mortgagee 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, without limitation, the release or substitution of Mortgaged Property), solely in accordance with this Mortgage, the Indenture, the other Note Documents, any Additional Pari Passu Debt Documents and the Intercreditor Agreement. In furtherance of the foregoing provisions of this Section, each Secured Notes Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to enforce or seek to enforce this Mortgage or to realize upon any of the Mortgaged Property hereunder, it being understood and agreed by such Secured Notes Secured Party that all rights and remedies hereunder may be exercised solely by the Mortgagee for the benefit of Secured Notes Secured Parties in accordance with the terms of this Section and the Intercreditor Agreement. The Mortgagee shall not be responsible for the existence, condition, sufficiency, genuineness, or value of, or title to, any of the Mortgaged Property or for the validity, perfection, priority or enforceability of the lien of this Mortgage on any of the Mortgaged Property, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder. The Mortgagee shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Mortgage by the Mortgagor. For the avoidance of doubt, to the extent permitted under applicable law, the Mortgagee shall not be liable or responsible for any decrease in value of the Mortgaged Property by reason of availing itself of the rights granted by the Mortgage or by reason of the Mortgagee's compliance with any applicable environmental law, specifically including any reporting requirement under any such law. To the extent permitted under applicable law, the Mortgagee shall not be responsible for insuring the Mortgaged Property or for the payment of any impositions, taxes or liens on the Mortgaged Property or for the maintenance of the Mortgaged Property. The Mortgagee may resign as Secured Notes Collateral Agent at any time by giving thirty (30) days' prior written notice thereof to the Mortgagor. Upon any such notice of resignation, the Company shall have the right, upon five (5) Business Days' notice to the Mortgagee, to appoint a successor Secured Notes Collateral Agent. The Applicable Authorized Representative shall direct the Mortgagee in exercising any right, power, discretionary duty or other remedy available to the Mortgagee under this Mortgage or any Collateral Document and the other Secured Notes Secured Parties shall not have a right to take any actions with respect to the Mortgaged Property. If the Mortgagee shall not have received appropriate instruction within 10 days of a request therefor from the Applicable Authorized Representative (or such shorter period as reasonably may be specified in such notice or as may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action as it shall deem to be in the best interests of the Secured Notes Secured Parties and the Mortgagee shall have no liability to any Person for such action or inaction. The Secured Notes Collateral Agent shall be entitled to all of the rights, privileges, protections, immunities, indemnities and benefits given to the Secured Notes Collateral Agent under the Indenture, including, without limitation, its right to be indemnified against violations of applicable environmental laws on the terms set forth in the Indenture.

SECTION 9. LOCAL LAW PROVISIONS

9.1 Type of Property; Waiver of Redemption. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 15-1201 of

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the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (the "Act") or residential real estate (as defined in Section 15-1219 of the Act. To the extent permitted under applicable law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption and reinstatement of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law.

9.2 Business Loan. Mortgagor stipulates, represents, warrants, affirms, and agrees that the Secured Obligations constitute loans to a corporation within the meaning of 815 ILCS 205/4(1)(a), as amended, and/or other "business loans" within the meaning of 815 ILCS 205/4(1)(c), as amended.

9.3 No Property Manager's Lien. Any property management agreement for or relating to all or any part of the Mortgaged Property entered into hereafter by Mortgagor or on behalf of Mortgagor, shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Mortgage, the other Notes Documents and any Additional Pari Passu Debt Documents any and all mechanic's lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law, including, without limitation, 770 ILCS 60/1. Such property management agreement or a short form thereof, including such subordination, shall, at Mortgagee's request, be recorded with the office of the recorder of deeds for the county in which the Mortgaged Property is located. Mortgagor's failure to cause any of the foregoing to occur shall constitute a default under this Mortgage.

9.4 Maturity Date. The last stated maturity date of the Secured Obligations is February 1, 2016 and the Secured Obligations bear interest at the rates set forth in the Indenture.

9.5 Maximum Amount Secured. The maximum amount of the Secured Obligations which is secured hereby is \$850,000,000.00.

9.6 Accountant's Letter. If Mortgagee requests, Mortgagor shall use commercially reasonable efforts to deliver to Mortgagee a letter addressed to Mortgagee and signed by each accountant or firm of accountants who prepared, reviewed or certified any of the financial statements furnished to Mortgagee. Such letter shall affirm that such accountant or firm of accountants understands: (i) that Mortgagee will rely on such financial statements and all future financial statements prepared, reviewed or certified by such accountant or firm, and furnished to Mortgagee; and, (ii) that the liability and responsibility of such accountant or firm of accountants to Mortgagee with respect to such statements will not be eliminated, diminished or affected in any way by 225 ILCS 450/30.1 or any other similar law.

9.7 Compliance with Illinois Mortgage Foreclosure Law.

(a) If any provision of this Mortgage is inconsistent with any applicable provision of the Act (as defined above), the provisions of the Act shall take precedence over the

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provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

(b) Without in any way limiting or restricting any of Mortgagee's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, Mortgagee shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provision of the Act, as the same may be amended from time to time, except as otherwise expressly provided herein.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee, to the extent reimbursable under Section 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the Secured Obligations secured by this Mortgage and by the judgment of foreclosure.

(d) This Mortgage secures in part or in full a revolving credit arrangement as described in Section 5/15-1302(b)(3) of the Act.

9.8 Revolving Credit. This Mortgage secures the payment of future advances which may be made after the date hereof to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made on the date of the execution of this Mortgage, and although there may be no indebtedness outstanding at the time the advance is made. The total principal amount of the Notes secured by this Mortgage may decrease or increase from time to time but the total unpaid principal balance so secured at any one time shall not exceed \$850,000,000.00, plus interest thereon, and any and all disbursements made by the Mortgagee for the payment of taxes, special assessments or insurance on the Mortgaged Premises, with interest on such disbursements. The parties hereby acknowledge and intend that all advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded.

9.9 Collateral Protection. Unless Mortgagor provides Mortgagee with evidence satisfactory to Mortgagee of the insurance coverage required by the Notes Documents and any Additional Pari Passu Debt Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's and the Secured Notes Secured Parties' interest in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interest in the Mortgaged Property. The coverages that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence satisfactory to Mortgagee that Mortgagor has obtained insurance as required by the Notes Documents and any Additional Pari Passu Debt Documents. If Mortgagee purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including interest at the Defaulted Interest and any other charges imposed by Mortgagee in connection with the placement of insurance, until the effective date of the cancellation or expiration of such insurance. The costs of the insurance may, at Mortgagee's discretion, be added to Mortgagor's total principal obligation owing to Mortgagee and the Revolving Secured Parties, and in any event shall be secured by the liens on the Mortgaged Property created by this Mort-

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gage, the other Notes Documents and any Additional Pari Passu Debt Documents. It is understood and agreed that the costs of insurance obtained by Mortgagee may be more than the costs of insurance Mortgagor may be able to obtain on its own.

SECTION 10. MISCELLANEOUS

10.1 Notices, Etc. Any notice required or permitted to be given under this Mortgage shall be given in accordance with Section 13.2 of the Indenture; provided that any notice to any Additional Pari Passu Agent shall be addressed to it at the address set forth in the applicable Additional Pari Passu Joinder Agreement. No failure or delay on the part of Mortgagee or any Secured Notes Secured Party in the exercise of any power, right or privilege hereunder, under any Notes Document or under any Additional Pari Passu Debt Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Mortgage, the other Notes Documents and any Additional Pari Passu Debt Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. 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 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.

10.2 Choice of 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.

10.3 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 between the terms of the Intercreditor Agreement and this Mortgage, the terms of the Intercreditor Agreement shall govern

10.4 Termination or Release.

(a) This Mortgage shall terminate (other than provisions hereof providing for indemnities and similar contingent obligations) and the security interests granted hereby shall be automatically released upon the Discharge of Notes Obligations. The Liens securing the Secured Obligations will be released, in whole or in part, as provided in Section 11.6 of the Indenture.

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The Liens securing Additional Pari Passu Indebtedness of any series will be released, in whole or in part, as provided in Additional Pari Passu Agreement governing such obligations.

(b) Mortgagor immediately prior to the consummation of any transaction permitted by the Indenture and each Additional Pari Passu Agreement shall automatically be released from its obligations hereunder and the security interests in the Mortgaged Property granted under this Agreement of Mortgagor shall be automatically released upon the consummation of any such transaction permitted by the Indenture and each Additional Pari Passu Agreement as a result of which Mortgagor ceases to be a Guarantor in accordance therewith.

(c) Upon any sale or other transfer by Mortgagor of any Mortgaged Property that is permitted under the Indenture or any Additional Pari Passu Agreement, the security interest in such Mortgaged Property shall be automatically released.

(d) In connection with any termination or release pursuant to clause (a), (b) or (c) of this Section 10.4, the Mortgagee shall, execute and deliver to Mortgagor, at Mortgagor's expense (but without recourse or representation or warranty), all documents that Mortgagor shall reasonably request to evidence such termination or release.

10.5 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.

10.6 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Notes Documents or any Additional Pari Passu Debt Document 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.

10.7 Subrogation. To the extent proceeds of the Loans have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

10.8 Indenture. If any conflict or inconsistency exists between this Mortgage and the Indenture, the Indenture shall govern.

10.9 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 Secured Obligations secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

10.10 Entire Agreement. This Mortgage, the Intercreditor Agreement, the other Notes Documents and the Additional Pari Passu Debt Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and under-

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standings between such parties relating to the subject matter hereof and thereof. Accordingly, the Notes Documents and the Additional Pari Passu Debt 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.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, Mortgagor has on the date set forth in the acknowledgment hereto, effective as of the date first above written, caused this instrument to be duly executed and delivered by authority duly given.

MORTGAGOR:

BAGCRAFTPAPERCON I, LLC, a Delaware limited liability company

By: 
Name: Patricia L. Chantiss
Title: V.P. CFO

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State of Illinois)
County of Cook) ss.:

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that PATRICK CHAMBUSS personally known to me to be the VP & CFO of BAGCRAFTPAPERCON I, LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such PATRICK Chambliss, he/she signed and delivered the said instrument, pursuant to authority given by said limited liability company, as his/her free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

[Seal]  Suzette M. Martyka
Notary Public

My commission expires: 10-3-2011

Cook County Clerk's Office

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EXHIBIT A TO MORTGAGE

Legal Description of Premises:

PERMANENT TAX ID NOS.: 19-02-100-027-0000
19-02-100-028-0000
A part of 19-02-100-031-0000

PROPERTY ADDRESS: 3900 W. 43rd Street
Chicago, IL 60632

The land referred to is situated in the County of Cook, State of Illinois, is described as follows:

Parcel 1:

An irregular shaped parcel of land in the West Half of the Northwest Quarter of Section 2, Township 38 North, Range 13, East of the Third Principal Meridian, described as follows:

Beginning at the intersection of the North line of private West 43rd Street (a Private Street) said North line of private West 43rd Street being 33.0 feet North of and parallel to the South line of the West Half of the Northwest Quarter of said Section 2, and a line 299.07 feet (measured parallel to aforesaid South line of the West Half of the Northwest Quarter of Section 2), West of and parallel to the East line of said West Half of the Northwest Quarter of Section 2, said last described parallel line being the Easterly boundary line of the premises conveyed by the First National Bank of Chicago, to the then Trustees of the Central Manufacturing District by Deed dated April 9, 1957 and recorded in the Recorder's Office of Cook County, Illinois on May 27, 1957 in Book 54908, at Page 226 as Document No. 16915322; thence North along the last described parallel line, 308.29 feet to a point, said point being also the Northeast corner of the said premises as conveyed by Deed dated April 9, 1957 as aforementioned; thence Northeasterly along a curve convex to the Southeast, having a radius of 295.12 feet, an arc distance of 229.84 feet, more or less, to its intersection with a line 519.27 feet, by rectangular measurement, North of and parallel to said South line of the West Half of the Northwest Quarter of Section 2, said point of intersection being 160.16 feet (measured parallel to aforesaid South line of the West Half of the Northwest Quarter of Section 2), West of said East line of the West Half of the Northwest Quarter of Section 2; thence East along the last described parallel line to a point 158.0 feet, by rectangular measurement, West of and parallel to said East line of the West Half of the Northwest Quarter of Section 2; thence Southeasterly along a curved line convex to the Southeast, having a radius of 584.21 feet, an arc distance of 209.93 feet, more or less, to a point which is 314.32 feet, by rectangular measurement, North of said South line of the West Half of the Northwest Quarter of

This Instrument Prepared by:

Athy A. Mobilia, Esq.
Cahill Gordon & Reindel llp
80 Pine Street
New York, New York 10005

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Section 2 and 120.7 feet West of the East line of said West Half of the Northwest Quarter of Section 2, measured along a line parallel to the South line thereof; thence Southeasterly on a straight line to a point which is 212.9 feet, by rectangular measurement, North of the said South line of the West Half of the Northwest Quarter of Section 2, and 82.41 feet West of the East line of said West Half of the Northwest Quarter of Section 2, measured along a line parallel to the South line thereof; thence Southeasterly on a curve convex to the Northeast, having a radius of 562.19 feet, an arc distance of 19.0 feet, more or less, to a point which is 195.08 feet, by rectangular measurement, North of the South line of the West Half of the Northwest Quarter of Section 2 and 76.02 feet West of the East line of said West Half of the Northwest Quarter of Section 2, measured along a line parallel with the South line thereof; thence Southerly on a curve convex to the East, having a radius of 317.63 feet, an arc distance of 127.55 feet, more or less, to a point which is 69.58 feet, by rectangular measurement, North of said South line of the West Half of the Northwest Quarter of said Section 2, and 60.26 feet West of the East line of said West Half of the Northwest Quarter of Section 2, measured along a line parallel with the South line thereof; thence Southerly along a straight line to a point in the North line of West 43rd Street, aforementioned, said point being 33.05 feet West of the East line of said West Half of the Northwest Quarter of Section 2, measured along a line parallel with the South line thereof; thence West along said North line of West 43rd Street, a distance of 236.01 feet to the Point of Beginning, in Cook County, Illinois.

Parcel 2:

That part of the West Half of the Northwest Quarter of Section 2, Township 38 North, Range 13, East of the Third Principal Meridian, described as follows:

Beginning at the intersection of the North Line of West 43rd Street (a private street), said North line of West 43rd Street being 33.0 feet North of and parallel to the South line of the West Half of the Northwest Quarter of said Section 2, and a line 299.07 feet (measured parallel to aforesaid South line of the West Half of the Northwest Quarter of Section 2) West of and parallel to the East line of said West Half of the Northwest Quarter of Section 2, said last described parallel line being the Easterly boundary line of the premises conveyed by the First National Bank of Chicago, to the then Trustees of the Central Manufacturing District by Deed dated April 9, 1957 and recorded in the Recorder's Office of Cook County, Illinois, on May 27, 1957 in Book 54908, at Page 226 as Document No. 16915322; thence North along the last described parallel line, 182.0 feet; thence West along a line parallel to the North line of aforesaid West 43rd Street, 57.75 feet to an existing brick wall of a one story building; thence Southerly along the said brick wall and its Southerly extension, 182.0 feet to the North line of said West 43rd Street; thence East along said North line of said West 43rd Street, 60.05 feet to the Point of Beginning, in Cook County, Illinois.

Parcel 3:

That part lying West of a straight line parallel to and 299.07 feet (measured parallel to the South line of the West Half of the Northwest Quarter of Section 2, West of the East line of the West Half of the Northwest Quarter of Section 2, of the following described premises:

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An irregular shaped parcel of land in the West Half of Section 2, Township 38 North, Range 13, East of the Third Principal Meridian, described as follows:

Beginning at the intersection of the North line of private West 43rd Street (a private street), said North line of private West 43rd Street being 33 feet North of and parallel to the South line of the West Half of the Northwest Quarter of Section 2, and a line 784.07 feet, (measured parallel to aforesaid South line of the West Half of the Northwest Quarter of Section 2), West of and parallel to the East line of said West Half of the Northwest Quarter of said Section 2, said last described parallel line being the Easterly boundary line of the premises conveyed by the First National Bank of Chicago to the then Trustees of Central Manufacturing District by Deed dated July 18, 1951 and recorded in the Recorder's Office of Cook County, Illinois on July 26, 1951 in Book 47027, at Page 156 as Document No. 15132507; thence North along the last described parallel line, 248.02 feet to a point; thence Northeasterly on a straight line 131.28 feet, more or less, to its intersection with a line 301 feet, by rectangular measurement, North of and parallel to said South line of the West Half of the Northwest Quarter of said Section 2, said point of intersection being 654.07 feet (measured parallel to aforesaid South line of the West Half of the Northwest Quarter of said Section 2), West of said East line of the West Half of the Northwest Quarter of Section 2; thence East along the last described line to a point of curve, said point of curve being 447.89 feet (measured parallel to aforesaid South line of the West Half of the Northwest Quarter of said Section 2), West of the South East line of the West Half of the Northwest Quarter of said Section 2; thence Northeasterly along a curve, convex to the Southeast, having a radius of 295.12 feet, an arc distance of 385.82 feet, more or less, to its intersection with a line 519.27 feet, by rectangular measurement, North of and parallel to said South line of the West Half of the Northwest Quarter of Section 2, said point of intersection being 160.16 feet (measured parallel to aforesaid South line of the West Half of the Northwest Quarter of Section 2) West of said East line of the West Half of the Northwest Quarter of Section 2; thence East along the last described parallel line to its intersection with a line 158 feet, by rectangular measurement, West of and parallel to the said East line of the West Half of the Northwest Quarter of Section 2, said last described parallel line being the Easterly boundary line of the premises conveyed by the Chicago River and Indiana Railroad Company, to the First National Bank of Chicago by Deed dated May 23, 1951 and recorded in the Recorder's Office of Cook County, Illinois on June 7, 1951 in Book 46794, at Page 526 as Document No. 15094225; thence South along the last described parallel line to the said North line of private West 43rd Street; thence West along said North line of private West 43rd Street to the Point of Beginning, in Cook County, Illinois; EXCEPTING therefrom that part thereof described above as Parcel 2, all in Cook County, Illinois.