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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1425819066 Fee: \$116.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/15/2014 11:21 AM Pg: 1 of 40

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 25-14-300-023-0000

Address:

Street: 720 E. 111 th Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60628

Lender: Brownfield Revitalization XXXIV, LLC, CDF Suballocatee XXIV, LLC & Illinois Finance Authority Development Fund NFP

Borrower: People Against Dirty Property Management, LLC

Loan / Mortgage Amount: \$15,240,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: B88A41DE-0148-4372-884C-DD6ED1EB133D

Execution date: 09/12/2014

ZoF 10 NCS-670198

Property of Cook County Clerk's Office

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herewith whereby Brownfield XXXIV has agreed to make one or more loans in the aggregate principal amount of \$7,350,000, CDF XXIV has agreed to make one or more loans in the aggregate principal amount of \$2,940,000 and IFA has agreed to make one or more loans in the aggregate principal amount of \$4,950,000, such loans totaling FIFTEEN MILLION TWO HUNDRED FORTY THOUSAND DOLLARS (\$15,240,000) (the “**Loan Amount**”) to Mortgagor as evidenced by the Note (defined below) obligating Mortgagor to repay the Loan Amount together with all interest accrued thereon. Capitalized terms not defined herein shall have those meanings ascribed to them in the Loan Agreement.

CERTAIN DEFINITIONS

Mortgagor and Mortgagee agree that the following terms shall have the meanings herein specified:

“**Bottling Lease**” means that certain Building Lease Agreement between Mortgagor, as lessor, and the Bottling Tenant as lessee, dated as of August 28, 2014, as amended, supplemented and otherwise modified from time to time.

“**Bottling Tenant**” means AMCOR RIGID PLASTICS USA, INC., a Delaware corporation.

“**Chattels**” means all supplies, furniture, fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and articles of personal property and replacements thereof owned by Mortgagor, now or at any time hereafter affixed to, attached to, placed upon, located within or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Premises or the Improvements, together with any proceeds realized from the sale, transfer or conversion of any of the above; *provided, however*, that for purposes of this Agreement, Chattels shall not include any property of the Mortgagor otherwise considered a Chattel, wherever located, if encumbered by a purchase money lien or other similar financing arrangement.

“**Environmental Law**” means (i) any and all applicable federal, state, regional, county or local laws, statutes, rules, regulations, ordinances, decrees or orders concerning public health, safety or the environment, whether now existing or hereafter enacted or promulgated, including, without limitation: (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC Section 9601, *et seq.*, (B) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 USC Section 6901, *et seq.*, (C) the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC Section 1251, *et seq.*, (D) the Toxic Substances Control Act of 1976, 15 USC Section 2601, *et seq.*, (E) the Emergency Planning and Community Right-to-Know Act of 1986, 42 USC Section 11001, *et seq.*, (F) the Clean Air Act of 1966, as amended, 42 USC Section 7401, *et seq.*, (G) the National Environmental Policy Act of 1975, 42 USC Section 4321, (H) the Rivers and Harbors Act of 1899, 33 USC Section 401, *et seq.*, (I) the Endangered Species Act of 1973, as amended, 16 USC Section 1531, *et seq.*, (J) the Occupational Safety and Health Act of 1970, as amended, 29 USC Section 651, *et seq.*, (K) the Safe Drinking Water Act of 1974, as amended, 42 USC Section

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300(f), *et seq.*, (L) all rules, regulations and guidance documents promulgated or published under the foregoing laws, and (M) any state, regional, county or local statute, law, rule, regulation, ordinance, decree or order relating to or imposing liability or standards of conduct concerning public health, safety or the environment; and (ii) includes, without limitation, those relating to (A) releases, discharges, emissions or disposals into air, water, land or groundwater; (B) the withdrawal or use of groundwater, (C) the use, handling or disposal of polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde, (D) the treatment, storage, disposal or management of hazardous substances (including petroleum, its derivatives, by-products or other hydrocarbons) and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated or may or could pose a hazard to the health and safety of the occupants of the Premises or the property adjacent to or surrounding the Premises, and (E) the exposure of persons to toxic, hazardous or other controlled, prohibited or regulated substances, or (vi) the transportation, storage, disposal, management or release of gaseous or liquid substances and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

“**Events of Default**” means the events and circumstances described as such in Section 4.01 hereof for which the applicable notice and cure period, if any, shall have expired.

“**Greenhouse Lease**” means that certain Lease between Mortgagor, as lessor, and the Greenhouse Tenant as lessee, dated as of August 1, 2014, as amended, supplemented and otherwise modified from time to time.

“**Greenhouse Tenant**” means GOTHAM GREENS PULLMAN, LLC, an Illinois limited liability company.

“**Hazardous Material**” means gasoline, petroleum products (including its derivatives, by-products or other hydrocarbons), flammable explosives, radioactive materials, mycotoxin, asbestos (including asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite) or any material containing asbestos, polychlorinated biphenyls, and any hazardous, toxic or dangerous waste, substance or material defined as such, or as a Hazardous Substance or any similar term, in the Environmental Laws, including, without limitation: (i) materials listed in Section 101(14) of CERCLA; (ii) any “hazardous substance” defined as such in (or for purposes of) CERCLA, 42 USC Section 9601(14), as amended from time to time, or any so-called “superfund” or “superlien” law, including the judicial interpretation thereof; (iii) any “pollutant or contaminant” as defined in 42 USC Section 9601(33); (iv) any material now defined as “hazardous waste” pursuant to 40 C.F.R. Part 260, (v) any petroleum, including crude oil or any fraction thereof; (vi) natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel; (vii) any “hazardous chemical” as defined pursuant to 29 C.F.R. Part 1910; and (viii) any other substance, regardless of physical form, that is subject to any other law or other past or present requirement of any governmental authority regulating, relating to or imposing obligations, liability or standards of conduct concerning the protection of human health, plant life, animal life, natural resources, property or the reasonable enjoyment of life or property from the presence in the environment of any solid, liquid, gas, odor, any form of energy, any form of contaminant or any other source.

“**Improvements**” means all improvements, and replacements and alterations thereof, to be constructed, expanded, renovated, remodeled and/or rehabilitated in accordance with the

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Plans and Specifications, as applicable, or now or hereafter located within the Premises, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said improvements, structures or buildings.

"Indemnity Agreement" means that certain Environmental and Hazardous Substances Indemnity Agreement of even date herewith.

"Lease" means the Bottling Lease, the Greenhouse Lease and the PAD Lease.

"Loan" means the loan advanced by Mortgagee to Mortgagor pursuant to the Loan Agreement, as evidenced by the Note and secured by the other Loan Documents and by this Mortgage.

"Loan Agreement" means that certain Loan Agreement of even date herewith between Mortgagor and Mortgagee.

"Loan Amount" has the meaning set forth in the Recitals hereto.

"Loan Documents" means this Mortgage, the Note, the Loan Agreement, the Indemnity Agreement, the Assignment of Construction Documents, financing statements, and all other documents, instruments and agreements which evidence, secure or are otherwise executed in connection with the Loan, including all amendments, modifications, renewals, extensions, restatements and replacements thereof, and all other documents required to perfect liens on the Security Property entered into on or after the date of this Mortgage.

"Mortgagee" means collectively, Brownfield Revitalization XXXIV, LLC, a Delaware limited liability company, its successors and assigns, CDF Suballocatee XXIV, LLC, an Illinois limited liability company, its successors and assigns and Illinois Finance Authority Development Fund NFP, an Illinois not-for-profit corporation, its successors and assigns.

"Mortgagor" means People Against Dirty Property Management, LLC, a Delaware limited liability company.

"Note" means, collectively, that certain Promissory Note A4 and Promissory Note B4 executed by Mortgagor in favor of Brownfield XXXIV, that certain Promissory Note A3a and Promissory Note B3a executed by Mortgagor in favor of CDF XXIV and that certain Promissory Note A2 and Promissory Note B2 executed by Mortgagor in favor of IFA, in the aggregate original principal amount equal to the Loan Amount.

"Note Rate" has the meaning given in the Note.

"Other Leases" means, other than the Lease, any leases, lettings or license arrangement affecting the Security Property or any part thereof, including any subleases of the Security Property, whether by Mortgagor or Mortgagor's lessees.

"PAD" means People Against Dirty Manufacturing, PBC, a Delaware public benefit corporation.

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“**PAD Lease**” means that certain Real Estate Lease between Mortgagor, as lessor, and PAD, as lessee, effective as of the date hereof, as amended, supplemented and otherwise modified from time to time.

“**Plans and Specifications**” means the plans and specifications for the construction of improvements to the Premises, as accepted by Mortgagee, which may include, but not be limited to, all architectural plans and details, exterior elevations, interior finish schedule, structural plans and details, plumbing plans, HVAC plans, electrical plans, grading plans and drainage, sewer, water, street and gas plans.

“**Premises**” means all right, title and interest in and to a fee simple interest in certain real property more particularly described in Exhibit A, including all of the easements, rights, privileges and appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor therein and in and to the strips and gores, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers adjacent thereto, either at law or in equity, in possession or expectancy, now or hereafter acquired.

“**Receivables**” means, in connection with the Premises, all of Mortgagor’s present and future accounts, contract rights, chattel paper, general intangibles, notes, drafts, acceptances, chattel mortgages, conditional sale contracts, bailment leases, security agreements and other forms of obligations now or hereafter arising out of or acquired in the course of or in connection with any business Mortgagor conducts, together with all liens, guaranties, securities, rights, remedies and privileges pertaining to any of the foregoing, whether now existing or hereafter created or arising, and all increases, substitutions, replacements and additions to the foregoing, and all proceeds of the foregoing of every type, including cash and non-cash proceeds, and all rights with respect to inventory and equipment.

“**Security Property**” means the property specified as such in the Granting Clause of this Mortgage.

“**Tenant**” means, collectively, the Bottling Tenant, the Greenhouse Tenant and PAD.

“**UCC**” means the Uniform Commercial Code as the same may from time to time be enacted and in effect in the State of Illinois; *provided* that to the extent the UCC is used to define any term in this Mortgage, and such term has different meanings in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 of the UCC shall govern and; *provided, further*, that if by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Mortgagee’s lien on any Security Property is governed by the UCC as enacted and in effect in a jurisdiction other than the State of Illinois, the term “**UCC**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, (a) words used in this Mortgage are used interchangeably in singular or plural

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form; (b) **"Mortgagor"** means "each Mortgagor and/or any subsequent holder of a fee simple interest of the Security Property or any part thereof or interest therein"; (c) **"Mortgagee"** means "Mortgagee or any subsequent holder of the Note"; (d) **"Note"** means "the Note or other evidence of indebtedness secured by this Mortgage"; (e) **"lease"** includes all leases, occupancy agreements, licenses and other arrangements by which a person may occupy a portion of the Premises, including, but not limited to the Lease and Other Leases, all guarantees of and security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto; (f) **"rent"** includes all impositions, assessments, occupancy charges, maintenance charges, flip taxes and any other fees and charges payable by a tenant of Mortgagor; (g) **"person"** includes an individual, corporation, partnership, trust, unincorporated association, government, governmental authority or other entity; (h) **"Security Property"** includes any portion of the Security Property or interest therein; and (i) **"include," "including"** and similar terms shall be construed as if followed by the phrase "without being limited to."

Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. All terms of this Mortgage which are not defined above have the meanings set forth in this Mortgage.

GRANTING CLAUSE

NOW, THEREFORE, Mortgagor, in order to secure the payment of the Secured Obligations (defined below), this Mortgage and/or the Loan Documents, and the performance and observance of all the provisions hereof and of the Note and the Loan Documents, including, without limitation, the payment of all sums advanced under the Note and any further sums advanced by Mortgagee pursuant to this Mortgage, does hereby mortgage, give, grant, bargain, sell, alien, convey, confirm, pledge, assign and hypothecate unto Mortgagee, its survivor and other successor or successors, with the power of sale and right of entry, a first priority lien in all of Mortgagor's estate, right, title and interest in, to and under any and all of the following described property (the **"Security Property"**), whether now owned or held or hereafter acquired:

- (a) the Premises;
- (b) the Improvements;
- (c) the Chattels;
- (d) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Mortgagor and real estate tax and assessment refunds and credits at any time accruing to the benefit of Mortgagor or the Security Property, even if relating to taxes and assessments payable for a period or periods prior to the date hereof;
- (e) all leases, including the Lease of the Premises or any part thereof now or hereafter entered into and all right, title and interest of Mortgagor thereunder; and including, without

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limitation, Mortgagor's right, if any, to cash or securities deposited thereunder, whether or not same was deposited to secure performance by the lessees of their obligations thereunder, including, further, the right upon the happening of an Event of Default, to receive and collect the rents and other charges thereunder;

(f) all Receivables;

(g) all utility or municipal deposits made by or on behalf of Mortgagor in connection with the Premises;

(h) all plans, drawings, specifications, site plans, sketches, samples, contracts and agreements, however characterized from time to time, prepared for use in connection with the construction, repair, renovation or maintenance of the Improvements, including all of Mortgagor's right, title and interest in, to and/or under the Plans and Specifications;

(i) all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, rendering of any services, supply of any materials or the conduct of operations in and the management of the Premises, including, without limitation, construction contracts, architect agreements, management agreements, options and other agreements, however characterized, affecting the Premises and/or Improvements;

(j) any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished, whether necessary or not, for the operation and use of the Premises and/or the Improvements and/or Chattels, including, without limitation, building permits, environmental certificates, certificates of operation, warranties and guarantees; and

(k) all Proceeds (as defined in the UCC), all proceeds of casualty insurance insuring the Premises, all awards arising out of any condemnation or taking of the Premises by exercise of the power of eminent domain, and all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, any of the foregoing hereafter acquired by or released to Mortgagor, or constructed, assembled or placed by Mortgagor on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assemblage, placement or conversion, as the case may be, and in each such case, without any further Mortgage, conveyance, assignment or other act by Mortgagor, the same shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described herein.

TO HAVE AND TO HOLD the above granted and described Security Property unto and to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that if Mortgagor shall well and truly pay to Mortgagee both the Loan Amount and the interest and any other sums payable under the Note, this Mortgage and/or the Loan Documents at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note in a timely manner, then this Mortgage and all assignments contained herein and liens created hereby shall cease and be null and void; otherwise to remain in full force and effect.

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ARTICLE I. OBLIGATIONS SECURED

Section 1.01 *Obligations Secured.* Mortgagor makes this Mortgage for the purpose of securing: (a) the performance of the obligations contained herein and in the Loan Agreement; (b) the payment of the Loan Amount, together with interest thereon at a rate per annum equal to 0.95074% calculated on the basis of a year of 360 days consisting of twelve 30-day months, according to the terms of the Note, which has a maturity date of September 30, 2044; (c) any and all extensions, renewals, or modifications of the Note and Loan Agreement, whether the same be in greater or lesser amounts; and (d) payment and performance of any future advances and other obligations that the then record owner of all or part of the Premises may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Mortgage (collectively, the “**Secured Obligations**”). This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby. Nothing herein contained shall limit the amount secured by this Mortgage, if such amount is increased by advances made by Mortgagee as herein elsewhere provided and authorized for the protection of the security of Mortgagee.

Section 1.02 *Incorporation.* The term “obligations” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations, together with all costs of collecting the Secured Obligations. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE II. ASSIGNMENT OF LEASES AND RENTS

Section 2.01 *Assignment.* Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases of the Premises or any portion thereof, all licenses and agreements relating to the management, leasing, occupancy or operation of the Premises, whether such leases, licenses and agreements are now existing or entered into after the date hereof; and (b) the rents, issues, revenues, receipts, deposits and profits of the Premises, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under leases (“**Payments**”). This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to leases and Payments is not contingent, upon and may be exercised without, possession of the Premises.

Section 2.02 *Grant of License.* Mortgagee confers upon Mortgagor a revocable license (“**License**”) to collect and retain the Payments as they become due and payable, until the occurrence of an Event of Default. Upon an Event of Default, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to the terms hereof without

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notice and without taking possession of the Premises. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Mortgagor hereby irrevocably authorizes and directs the tenants under leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rentals or other sums which may at any time become due under leases, or for the performance of any of the tenants' undertakings under leases, and the tenants shall have no duty to inquire as to whether any Event of Default has actually occurred or is then existing. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee may apply, in its sole discretion, any Payments so collected by Mortgagee against any Secured Obligation under the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee shall not cure or waive any Event of Default or notice of Event of Default or invalidate any acts done pursuant to such notice.

Section 2.03 *Effect of Assignment.* The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Premises or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of leases; (c) responsible or liable for any waste committed on the Premises by the tenants under any of leases or any other parties, for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; (d) responsible for or under any duty to produce rents or profits; or (e) directly or indirectly liable to Mortgagor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder or to perform or discharge any obligation, duty or liability of Mortgagor arising under leases.

ARTICLE III. PARTICULAR COVENANTS, WARRANTIES AND REPRESENTATIONS OF MORTGAGOR

Mortgagor covenants, warrants, represents and agrees as follows:

Section 3.01 *Title to Security Property.*

(a) Mortgagor warrants that it has good and indefeasible title in fee simple in the Premises, subject in all cases to no lien, charge or encumbrance except for this Mortgage, the Lease, and the items listed as exceptions to title in the title policy insuring the lien of this Mortgage. Mortgagor further warrants that it owns and will own the Chattels free and clear of all liens and claims other than liens expressly permitted by the Loan Agreement, purchase money security interests and those items consented to by Mortgagee in writing; and that this Mortgage is and will remain a valid and enforceable first priority lien on the Security Property, subject to the exceptions to title in the title policy insuring the lien of this Mortgage and the liens expressly permitted by the Loan Agreement to have senior priority. Mortgagor has full power and lawful authority to mortgage and encumber the Security Property in the manner and form herein done or intended hereafter to be done. Mortgagor shall preserve such title, and shall forever warrant and

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defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

(b) Mortgagor shall not, without the prior written consent of Mortgagee, (i) initiate or support any zoning reclassification of the Premises or use or permit the use of the Premises in a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or cause an Event of Default under the Loan Documents; (ii) impose or consent to the imposition of any restrictive covenants or encumbrances upon the Premises; (iii) execute, file or consent to any subdivision plat affecting the Premises or consent to the annexation of the Premises to any municipality; (iv) combine the tax lot or lots comprising the Premises with any tax lot or lots or any portion thereof which is not subject to the lien of this Mortgage; or (v) permit or suffer the Premises to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

Section 3.02 *Further Assurances.* Mortgagor shall, at the cost of Mortgagor, and without expense to Mortgagee, promptly correct any defect or error which may be discovered in any of the Loan Documents and shall do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to time reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed, mortgaged or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey, mortgage or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, and for filing, registering or recording this Mortgage and, on demand, shall execute and deliver, and hereby authorizes Mortgagee to execute in the name of Mortgagor to the extent it may lawfully do so, in the event of the failure or refusal of Mortgagor so to do, one or more financing statements, chattel-mortgages or comparable security instruments, and renewals thereof, to evidence more effectively the lien hereof upon the Chattels.

Section 3.03 *Use of Proceeds.* Mortgagor represents and warrants to Mortgagee that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Mortgage constitute (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

Section 3.04 *Recording Fees.*

(a) Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, shall cause this Mortgage and any security instrument creating a lien or evidencing the lien hereof upon the Chattels and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of Mortgagee in, the Security Property.

(b) Mortgagor shall pay all filing, registration and recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any amendment or

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Mortgage supplemental hereto, any security instrument with respect to the Chattels, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery and recording of the Note, this Mortgage, any amendment or Mortgage supplemental hereto, any security instrument with respect to the Chattels or any instrument of further assurance.

(c) If a recording or transfer tax is imposed on this Mortgage or any amendment or Mortgage supplemental hereto at any time, Mortgagor shall pay such tax. If applicable law prohibits Mortgagor from making any such payment, Mortgagee may, at its election, declare all sums outstanding under the Note, this Mortgage and/or any other Loan Document immediately due and payable. Mortgagee and/or its assigns shall have no obligation to either participate in any dispute of said tax or to make any payment with respect thereto and Mortgagor agrees to indemnify Mortgagee and its assigns and hold them harmless from any liability with respect thereto and to reimburse or pay upon demand for the same by Mortgagee and/or its assigns their reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred with respect thereto or in connection therewith.

Section 3.05 *Payment of Indebtedness.* Mortgagor shall punctually pay the principal and interest and all other sums to become due in respect of the Note at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof and without offset or counterclaim, all in any coin or currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

Section 3.06 *Good Standing of Mortgagor.* Mortgagor is a duly created and validly existing Delaware limited liability company in good standing under the laws of such jurisdiction, with full power and authority to execute and deliver the Loan Documents and consummate the transactions contemplated hereby. Mortgagor is not organized in any other jurisdiction. Mortgagor shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges, as a limited liability company under the laws of such jurisdiction and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court and applicable to the Security Property or any part thereof. Mortgagor shall not without the prior written consent of Mortgagee (which shall not be unreasonably withheld, conditioned or delayed), so long as any sums are owed pursuant to the Note or this Mortgage, (i) consolidate or merge Mortgagor into or with any corporation, partnership or other entity, effect any voluntary liquidation or reorganization, or effect any change in its capital structure, or (ii) amend in any material manner its certificate of formation or its operating agreement. Any request by Mortgagor for Mortgagee's approval of any amendments to the certificate of formation or operating agreement of Mortgagor shall not be unreasonably withheld or delayed by Mortgagee.

Section 3.07 *Lien on Improvements.* All rights, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Security Property hereafter acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagor within the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case,

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without any further Mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor shall execute and deliver to Mortgagee any and all such further assurances, deeds of trust, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

Section 3.08 *Impositions and Tax Deposits.*

(a) Mortgagor, from time to time when the same shall become due and payable, but without the benefit of any grace period therefor, whether or not a penalty or interest charge would be imposed in such grace period, shall pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against it or the Security Property or any part thereof or upon the revenues, rents, issues, income and profits of the Security Property or arising in respect of the occupancy, use or possession thereof (collectively, "**Impositions**"). Mortgagor shall, upon the request of Mortgagee, deliver to Mortgagee receipts evidencing the payment of all such Impositions imposed upon or assessed against it or the Security Property or the revenues, rents, issues, income or profits thereof.

(b) During the continuation of an Event of Default, Mortgagee may require that Mortgagor on the first (1st) day of each month deposit with Mortgagee or any service or financial institution designated for such purposes by Mortgagee (whichever of the foregoing is applicable being the "**Depository**") one-twelfth (1/12) of the annual real estate taxes ("**Taxes**") assessed against the Security Property (and, if Mortgagee shall so elect, any or all other Impositions), and Mortgagor shall accordingly make such deposits. In addition Mortgagor shall also deposit with Mortgagee a sum of money which, together with the aforesaid monthly installments will be sufficient to make payments of Taxes (and if Mortgagee has elected to collect deposits for other Impositions, such other Impositions) not less than forty-five (45) days before such payments are due. If the amount of any such payment is not ascertainable at the time any such deposit is required to be made, the deposit shall be made on the basis of Mortgagee's estimate thereof, and when such amount is fixed for the then-current year, Mortgagor shall promptly deposit any deficiency with the Depository. All funds so deposited, if any, until applied, shall constitute additional security for the Note and other indebtedness secured hereby, shall be held by the Depository without interest (except to the extent required under applicable laws), and may be commingled with other funds of the Depository. During the continuance of an Event of Default hereunder, Mortgagee may apply funds so deposited in the order determined by Mortgagee. Upon an assignment of this Mortgage by Mortgagee, Mortgagee shall have the right to pay over, or cause the Depository (if not Mortgagee) to pay over the unapplied balance of any amounts deposited pursuant to this Section 3.08, if any, to the assignee (or to a successor Depository designated by such assignee) and Mortgagee shall thereupon be completely released from all liability with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee (or a successor Depository). When the Loan Amount has been paid in full, and all other obligations of Mortgagor under the Loan Documents have been performed and observed in full, Mortgagee shall, and at any prior time, Mortgagee, at its election, may, pay over or cause

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the Depository (if not Mortgagee) to pay over the unapplied balance of the deposits, if any, to the record owner of the Security Property or its designee and no other person shall have any right or claim thereto.

(c) Mortgagor shall pay all taxes except income, franchise or other similar taxes, inheritance, estate and gift taxes, imposed on Mortgagee by reason of its ownership of the Note or this Mortgage.

(d) Nothing in this Section 3.08 shall require the payment or discharge of any obligation imposed upon Mortgagor by this Section so long as Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Premises or any part thereof to satisfy the same; *provided* that during such contest Mortgagor shall, at the option of Mortgagee, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest and; *provided, further*, that if at any time payment of any obligation imposed upon Mortgagor by Section 3.08(a) hereof shall become necessary to prevent the delivery of a tax deed or other similar instrument conveying the Security Property or any portion thereof because of non-payment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or other similar instrument.

Section 3.09 Mechanics' and Other Liens. Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a lien on the Security Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom, and in general shall do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of Mortgagor, without expense to Mortgagee. Notwithstanding the foregoing, in the event any lien, charge or order for the payment of money or other encumbrance is filed against the Security Property, Mortgagor shall cause the same to be discharged of record or bonded within thirty (30) days after the filing thereof. All costs and expenses incurred in posting the bond or other security and in defending any lien foreclosure action shall be borne exclusively by Mortgagor. Mortgagor further agrees to reimburse Mortgagee for all reasonable costs and expenses, including reasonable attorneys' fees and disbursements incurred by Mortgagee in connection with any such lien foreclosure action.

Section 3.10 Additional Advances and/or Disbursements. If Mortgagor, or any party other than Mortgagee, under any of the Loan Documents shall fail to perform any of the covenants contained in this Mortgage, the Note or the other Loan Documents, Mortgagee, after written notice to Mortgagor except in the event of an emergency in which case notice shall not be required, may make advances and/or disbursements to perform the same, and all sums so advanced and/or disbursed shall be a lien upon the Security Property and shall be secured hereby. Mortgagor shall repay on demand all sums so advanced and/or disbursed with interest at the Note Rate. The provisions of this Section 3.10 shall not prevent any default in the observance of any covenant contained in this Mortgage, the Note or the other Loan Documents from constituting a default or an Event of Default.

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Section 3.11 *Maintenance of Property; Compliance with Law.*

(a) Mortgagor shall not threaten, commit, permit or suffer any waste to occur on or to the Security Property, or any part thereof, or substantially alter the Security Property or any part thereof in any manner other than in the ordinary course of business, or make any change in its use which will in Mortgagee's reasonable determination, in any material way increase any risk of fire or other hazards arising out of construction or operation of the Security Property. Mortgagor shall, at all times, maintain the Security Property in good operating order and condition and shall promptly make, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end. The Improvements shall not be permanently removed, demolished or substantially altered, nor shall any Chattels be removed without the prior written consent of Mortgagee, other than in the ordinary course of business, except where appropriate replacements free of superior title, liens and claims are immediately made of value at least equal to the value of the Chattels removed.

(b) Mortgagor shall keep and maintain or cause to be kept and maintained the Security Property and the sidewalks and curbs abutting the same in good order and condition and in a rentable and tenantable state of repair, ordinary wear and tear and casualty excepted, and shall make or cause to be made, as and when the same shall become necessary, all structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen repairs, renewals and replacements necessary to that end. Except to the extent insurance or eminent domain proceeds are actually retained by Mortgagee and applied to the indebtedness of Mortgagor, in the event that the Security Property shall be damaged or destroyed, in whole or in part, by fire or any other casualty, or in the event of a taking of a portion of the Security Property as a result of any exercise of the power of eminent domain, Mortgagor shall promptly restore, replace, rebuild or alter the same as nearly as possible to the condition they were in immediately prior to such fire, other casualty or taking, and shall take such other additional actions and measures as shall be necessary to avoid any default or forfeiture under any lease or other applicable agreement. Subject to the foregoing, although damage to or destruction of the Security Property, or any portion thereof, shall not of itself constitute a default hereunder, the failure of Mortgagor to restore, replace, rebuild or alter the same, as hereinabove provided, shall constitute a default hereunder regardless of the availability of insurance proceeds or condemnation awards for such purpose.

(c) Mortgagor represents that to its knowledge, the Security Property is presently in compliance with all laws, ordinances, rules, regulations and other requirements of all governmental authorities whatsoever having jurisdiction of or with respect to the Security Property or any portion thereof or the use or occupation thereof. Mortgagor shall promptly comply, or cause compliance with, all existing and future laws, ordinances, rules, regulations and other requirements of all governmental authorities whatsoever having jurisdiction of or with respect to the Security Property or any portion thereof or the use or occupation thereof.

(d) Mortgagor shall not, without the prior written consent of Mortgagee, initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Premises or any part thereof.

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(e) All covenants hereof shall be construed as affording to Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of any other applicable law. If there is a conflict between any provision of this Mortgage and the provisions of any such applicable law, Mortgagor agrees that, to the extent permitted by applicable law, the applicable provision of this Mortgage shall control.

Section 3.12 *Leases.*

(a) Mortgagor shall not (i) execute an assignment of the rents from the Security Property or any part thereof in favor of any party other than Mortgagee; (ii) enter into Other Leases without Mortgagee's prior written approval; (iii) terminate or consent to the cancellation or surrender of the Lease or Other Leases hereafter approved by Mortgagee; (iv) modify or vary the Lease or Other Leases (or consent to the same with respect to any subleases), in any material respect; (v) accept prepayments of any installments of rents to become due under any leases more than one (1) month in advance, except prepayments in the nature of security for the performance of the leases thereunder; or (vi) in any other manner impair the value of the Security Property or the security of the Mortgage. Mortgagor agrees that any Other Lease entered into after the date hereof, or any sublease consented to, shall expressly by its terms be subject and subordinate in all respects to the lien of this Mortgage.

(b) Mortgagor shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in the Lease and all Other Leases now or hereafter existing, on the part of the lessor thereunder to be kept and performed, and shall do all things necessary to compel performance by the lessee under the Lease and any Other Leases of all obligations, covenants and agreements by such lessee to be performed thereunder. If any lease provides for the giving by the lessee of certificates with respect to the status of a lease, Mortgagor shall exercise its right to request such certificates within five (5) business days of any demand therefor by Mortgagee. Mortgagor shall promptly notify Mortgagee (and to the extent of its actual knowledge with respect to any sublessee under a sublease) of (i) the commencement of any action or proceeding by any lessee of a lease or sublessee under a sublease, the purpose of which shall be the cancellation of any lease or sublease or diminution or offset against the rent payable under any lease or sublease, or (ii) the interposition by any lessee or sublessee of any defense in any action or proceeding brought by Mortgagor against such lessee or by a sublessor against such sublessee, or (iii) a written notice received by Mortgagor from any lessee or sublessee claiming constructive eviction, and shall cause a copy of any process, pleading or notice received by Mortgagor in reference to any such action, defense or claim to be promptly delivered to Mortgagee.

Section 3.13 *Notices to Mortgagee.* Mortgagor shall give written notice to Mortgagee promptly (but in no event later than ten (10) business days after Mortgagor's discovery thereof) upon the occurrence of any of the following:

- (a) any default by Mortgagor under this Mortgage or any other Loan Document;
- (b) any pending or threatened litigation against Mortgagor, or any of its affiliates, or relating to any portion of the Security Property, which shall materially affect the Security Property or Mortgagor's ability to perform its obligations under the Loan Documents;

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(c) any claims, disputes, judgments or violations of law, or any breach by Mortgagor of any material agreement to which Mortgagor is a party; and

(d) any other facts and circumstances which might materially impact the Security Property, Mortgagor or the Loan.

Section 3.14 *Attornment*. To the extent not so provided by applicable law, each Other Lease shall provide that, in the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee thereunder shall, upon request of any person succeeding to the interest of Mortgagor as a result of such enforcement, automatically become the lessee of said successor in interest, without change in the terms or other provisions of the Other Leases, *provided, however*, that said successor in interest shall not be bound by (a) any payment of rent or additional rent for more than one (1) month in advance not actually received by Mortgagee, except prepayments in the nature of security for the performance by said lessee of its obligations under the Other Leases; (b) any amendment or modification of the Other Leases made without the consent of Mortgagee or such successor in interest; or (c) any work required to be done by Mortgagor pursuant to the terms of the Other Leases (excluding repair or maintenance obligations or obligations to restore in the event of casualty). Each Other Lease shall also provide that, upon request by said successor in interest, such lessee shall execute and deliver an instrument or instruments confirming such attornment.

Section 3.15 *Expenses of Mortgagee*. Mortgagor agrees that if any action or proceeding be commenced, excepting an action to foreclose this Mortgage or to collect the indebtedness hereby secured, to which action or proceeding any Mortgagee is a party by reason of the execution of this Mortgage or the Note which it secures, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all reasonable sums paid by Mortgagee for the expense of any litigation to prosecute or defend the transaction and the rights and lien created hereby (including, without limitation, reasonable attorneys' fees) shall be paid by Mortgagor together with interest thereon at the Note Rate from the date Mortgagor receives notice of the sums incurred by Mortgagee. All such sums paid and the interest thereon shall be a lien upon the Security Property, and shall be secured hereby.

Section 3.16 *Change in Law Affecting Mortgages*. Mortgagor agrees that in the event of the passage after the date of this Mortgage of any law deducting any lien from the value of land for the purpose of taxation, or changing in any way the laws now in force for the taxation of mortgages or debts secured by a mortgage, or the manner of the collection of any such taxes, so as to impose upon Mortgagee any tax that previously would have been payable by Mortgagor, the whole of the principal sum secured by this Mortgage, together with interest due thereon, shall at the option of Mortgagee, without notice to any party, become immediately due and payable.

Section 3.17 *Utilities*. The Security Property shall be provided with adequate water, sewer and other utility facilities at all times, in compliance with all applicable laws and regulations.

Section 3.18 *Restrictions on Transfer or Encumbrance; Due on Sale*. Except as provided herein or in the other Loan Documents, Mortgagor shall not, directly or indirectly, by transfer, mortgage, hypothecation, encumbrance or conveyance, do or suffer the assignment,

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transfer, sale, conveyance or encumbrance junior or senior hereto of the Security Property or any part thereof or any interest therein or in Mortgagor, other than as expressly permitted by the Loan Agreement and other than a pledge to U.S. Bank National Association, its successor and assigns and/or People Against Dirty Plant Holdings, PBC of the equity interests issued by the Mortgagor, without in each instance the prior written consent of Mortgagee and IF the Security Property or any part thereof or any interest therein or in Mortgagor is transferred in violation of this Section, THEN Mortgagee, in its sole discretion, may at any time thereafter declare all Secured Obligations immediately due and payable.

Section 3.19 *Hazardous Material.*

(a) Except for those matters identified in the Environmental Reports (as defined in the Indemnity Agreement), Mortgagor represents, warrants and covenants that (i) Mortgagor has not used and that, to Mortgagor's knowledge, no other person or entity has used Hazardous Material on, from or affecting the Security Property in any manner which violates any Environmental Laws and no prior owner of the Security Property or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Material on, from or affecting the Security Property in any manner which violates any Environmental Law; (ii) no actions, investigations or lawsuits have been commenced or threatened by any person claiming non-compliance by Mortgagor or the Security Property with any Environmental Law; and (iii) the Security Property is in material compliance with all Environmental Laws and that no asbestos or other Hazardous Material has been, or are at present at, incorporated in, stored on, treated on or disposed of on or from the Security Property.

(b) Mortgagor shall keep or cause the Security Property to be kept free of Hazardous Material. Without limiting the foregoing, Mortgagor shall not cause or permit the Security Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Material, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant or subtenant, a release or threatened release of Hazardous Material onto or from the Security Property. Mortgagor shall comply with and ensure compliance by all officers, employees, tenants and subtenants with all applicable Environmental Laws whenever and by whomever triggered, and shall obtain and comply with any and all approvals, registrations or permits required thereunder.

(c) Mortgagor shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Material not permitted hereunder on, from or affecting the Security Property (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of Mortgagee, (C) in accordance with the orders and directions of all federal, state and local governmental authorities, and (D) within six (6) months from the date of this Mortgage, or sooner if required by law; and (ii) defend, indemnify and hold harmless Mortgagee and its employees, agents, officers and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Material on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or other

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persons or things at the Security Property, (B) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material, (C) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material, and/or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of Mortgagee, which are based upon or in any way related to such Hazardous Material, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses.

(d) In addition to the requirements set forth in this Section 3.19, in the event the Environmental Reports (as defined in the Indemnity Agreement) recommend asbestos treatment, such treatment shall be certified to Mortgagee by an asbestos hygienist or engineer licensed by the State and local jurisdiction (where required) in which the Premises is located.

(e) Mortgagor shall promptly deposit with Mortgagee the estimated cost (as reasonably determined by Mortgagee from time to time) to effect the removal of the Hazardous Material or remedy any condition pertaining to the existence, release or threatened release of Hazardous Material on or affecting the Security Property. In the event of Mortgagor's failure to comply with the provisions of this Section 3.19, Mortgagee may apply any or all of such sums so deposited with Mortgagee to affect the removal or other remedy as required pursuant to this Section 3.19. So long as there is no occurrence and continuance of a default or Event of Default hereunder, any sums not so applied shall be returned to Mortgagor by Mortgagee promptly upon completion of the removal or other remedy required hereunder to the satisfaction of Mortgagee.

(f) In the event this Mortgage is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Security Property to Mortgagee free of any and all Hazardous Material so that the condition of the Security Property shall conform with all applicable federal, state and local laws, ordinances, rules and regulations affecting the Security Property. The provisions of this Section 3.19 shall be in addition to any and all obligations and liabilities Mortgagor may have to Mortgagee at common law and shall survive the foreclosure of this Mortgage or the giving of any deed in lieu thereof, and the transactions contemplated herein.

(g) Notwithstanding the foregoing, the obligations of Mortgagor in this Section 3.19 shall not apply with respect to any Hazardous Material which have been first introduced on or at the Security Property after Mortgagee or any third party claiming by, through or under Mortgagee acquires title or assumes control of the day-to-day operations at the Security Property.

Section 3.20 *Easements and Instruments of Record.* Mortgagor shall promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Security Property, noncompliance with which shall affect the security of this Mortgage, or shall impose any duty or obligation upon Mortgagor or any lessee or other occupant of the Security Property or any part thereof, and Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Security Property.

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Section 3.21 *Lien Law*. Mortgagor shall receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the Improvements, and shall apply the same first to the payment of the cost of the Improvements before using any part of the total of the same for any other purpose.

Section 3.22 *Right of Entry*. Mortgagee and its authorized representatives and designees shall have the right at all reasonable times and upon reasonable written notice during usual business hours, or as otherwise required in the event of an emergency, to enter upon and inspect all portions of the Security Property.

Section 3.23 *Flood Hazard*. Mortgagor hereby represents that the Premises do not comprise property identified by the Secretary of Housing and Urban Development as an area having special flood hazards. If the Premises at any time are so identified by the Secretary of Housing and Urban Development as having special flood hazards, Mortgagor shall keep the Premises insured against loss by flood hazards in an amount at least equal to the outstanding principal balance of the Note secured by this Mortgage, or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973, whichever is less.

Section 3.24 *Certain Representations and Warranties*. Mortgagor represents and warrants to Mortgagee that:

(a) the Loan Documents are all as of the date hereof, subject to principles of equity (whether applied at law or equity) and will be (subject to applicable bankruptcy, insolvency, and similar laws affecting rights of creditors generally, and principles of equity (whether applied at law or equity)) valid, binding and enforceable obligations of Mortgagor;

(b) except as previously disclosed in writing to Mortgagee, there is no action, suit or proceeding threatened against or affecting Mortgagor or the Security Property;

(c) all laws and governmental and private restrictions affecting Mortgagor or the Security Property have been complied with in all material respects, and all governmental and private consents necessary to Mortgagor's consummation of the Loan have been obtained;

(d) Mortgagor is not in violation of (i) any law, rule, regulation, order, writ, judgment, decree, determination or award applicable to it or (ii) any provision of any indenture, lease, loan or other agreement to which it is a party or by which it or its properties may be bound, which violation would have a materially adverse effect upon Mortgagor's ability to perform any of its obligations under the Loan Documents;

(e) the statements, information and reports furnished to Mortgagee in connection with the Loan, as updated from time to time, are accurate, correct and complete in all material respects;

(f) there are no delinquent taxes, ground rents, water charges, sewer rents, assessments (including assessments payable in future installments) or other outstanding charges affecting the Security Property;

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- (g) the Security Property is separately assessed for tax purposes;
- (h) Mortgagor has filed all federal, state, county and municipal tax returns and annual reports required to be filed by it, and has paid all taxes and fees which have become due pursuant to such returns and reports or pursuant to any assessments related thereto, and Mortgagor does not know of any basis for any additional assessment in respect thereof;
- (i) Mortgagor and any affiliated party to any of the Note, the Mortgage and the other Loan Documents has the legal capacity to enter into, execute and deliver the same, and the Note, Mortgage and all other Loan Documents have been duly and properly executed and delivered by such parties;
- (j) there are no mechanics' or similar liens or claims which have been filed for work, labor or material, or which relate to the existence or cleanup of any Hazardous Material affecting the Security Property which are or may be liens prior to, or equal or coordinate with, the lien of this Mortgage, other than as expressly permitted by the Loan Agreement;
- (k) all Improvements are wholly within the boundaries and building restriction lines of the Premises, except as described on the title policy and as shown on the survey(s) delivered to Mortgagee in connection herewith, and no improvements on adjoining properties encroach upon the Security Property, except as described in the title policy and as shown on the survey(s) delivered to Mortgagee in connection herewith, and no covenants, conditions and restrictions, if any, are violated by the Improvements, and no future violations could give rise to any rights of reverter or reentry;
- (l) Mortgagor has no knowledge of any circumstance or condition with respect to the Mortgage, the Security Property or use thereof, Mortgagor's credit standing, any lease or any tenant's credit standing that can reasonably be expected to cause private institutional investors to regard the Loan to be an unacceptable investment, cause the Loan to become delinquent, or materially adversely affect the value or marketability of the Loan;
- (m) all leases, licenses or other agreements pursuant to which any person or entity is entitled to use or occupy any portion of the Security Property are subject and subordinate to this Mortgage;
- (n) no person, party, firm or corporation has (i) any possessory interest in the Premises or right to occupy the same except under and pursuant to the provisions of the Lease, a full and accurate copy thereof having been previously provided to Mortgagee, or (ii) an option to purchase the Premises or an interest therein;
- (o) the Premises have not been damaged by fire, water, wind or other cause of loss or any previous damage to the Premises has been fully restored; and
- (p) Mortgagor is not currently (i) the subject of or a party to any completed or pending bankruptcy, reorganization or insolvency proceeding or (ii) the subject of any judgment unsatisfied of record or docketed in any court of the state in which the Premises is located or in any court located in the United States.

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Section 3.25 *Publicity*. Mortgagee may disclose Mortgagor's identity and the amount and purpose of the Loan, with Mortgagor's consent, which shall not be unreasonably withheld.

Section 3.26 *Lease*. In addition to making payment of all rent, additional rent, tax and other payments and charges required to be made by Mortgagor, Mortgagor, as landlord under and pursuant to the provisions of the Lease, covenants that it will:

(a) Diligently perform and observe all of the material terms, conditions and covenants of the Lease required to be performed and observed by Mortgagor, to the end that all things shall be done which are reasonably necessary to keep unimpaired Mortgagor's rights under the Lease, and Mortgagor covenants that no release or forbearance of any of the obligations of Mortgagor under the Lease, pursuant to the Lease or otherwise shall release Mortgagor from any of its obligations under this Mortgage, including, without limitation, Mortgagor's obligations under this Section 3.26(a).

(b) Upon having actual knowledge thereof, promptly notify Mortgagee in writing of any default by any party in the performance and observance of any of the terms, conditions or covenants to be performed or observed under the Lease;

(c) Promptly notify Mortgagee in writing of the giving of any notice under the Lease of any default of Mortgagor in the observance of any terms, covenants or conditions of the Lease and deliver to Mortgagee a true copy of each such notice; and

(d) Not commence any action for surrender the Premises nor terminate or cancel the Lease or enter into any agreement (whether oral or written) modifying, supplementing or amending the Lease without the prior written consent of Mortgagee, and as security for the repayment of the obligations secured hereby Mortgagor hereby assigns to Mortgagee all rights and options to extend, renew, terminate or modify the Lease in any manner whatsoever.

(e) Mortgagee shall have the right (but shall not be obligated) to take any action Mortgagee deems necessary or desirable to prevent or to cure any default by Mortgagor in the performance of or compliance with any of Mortgagor's obligations under the Lease. Upon receipt by Mortgagee of any written notice of default by Mortgagor under the Lease, Mortgagee may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof be questioned or denied by Mortgagor or by any party on behalf of Mortgagor. Mortgagor hereby expressly grants to Mortgagee, and agrees that Mortgagee shall have, the absolute and immediate right to enter in and upon the Security Property or any part thereof to such extent and as often as Mortgagee, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Mortgagor. Mortgagee may pay and expend such sums of money as Mortgagee in its sole discretion deems necessary for any such purpose, and Mortgagor hereby agrees to pay to Mortgagee, immediately and without demand, all such sums so paid and expended by Mortgagee, together with interest thereon from the date of each such payment at the Note Rate. All sums so paid and expended by Mortgagee, and the interest thereon, shall be added to and be secured by the lien of this Mortgage.

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(f) As further security for the repayment of the obligations secured hereby and for the performance of the covenants contained herein and in the Lease, Mortgagor hereby assigns to Mortgagee all of its rights, privileges and prerogatives as lessor under the Lease to terminate, cancel, modify, change, supplement, alter or amend the Lease, and any such termination, cancellation, modification, change, supplement, alteration or amendment by Mortgagor without the prior written consent thereto by Mortgagee shall be void and of no force and effect; provided, however, that so long as no Event of Default has occurred or is continuing under this Mortgage, Mortgagee shall have no right to terminate, cancel, modify, change, supplement, alter or amend the Lease. Mortgagor represents and warrants that it has delivered to Mortgagee a true and accurate copy of the Lease, together with all amendments thereto if any.

(g) Unless Mortgagee shall otherwise expressly consent in writing, Mortgagor shall not cause or consent to the fee title to the Premises merging with the leasehold estate in the Premises created by the Lease and during Mortgagor's ownership of the Premises shall endeavor to always keep such interests separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee under the Lease, or in a third party by purchase or otherwise.

(h) Mortgagor shall, from time to time, use commercially reasonable efforts to obtain from the lessee under the Lease such certificates of estoppel with respect to compliance by Mortgagor with the terms of the Leases as may be reasonably requested by Mortgagee.

Section 3.27 *Covenants Regarding Collateral.*

(a) Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (i) describe Security Property (A) as all assets of Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Security Property falls within the scope of Article 9 of the UCC in such jurisdiction, or (B) as being of an equal or lesser scope or with greater detail, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and (B) in the case of a financing statement filed as a fixture filing or indicating Security Property as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Security Property relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor also ratifies its authorization for Mortgagee to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(b) Without limiting the prohibitions on mergers involving Mortgagor contained in this Mortgage, Mortgagor shall not reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated as of the date hereof without the prior written consent of Mortgagee.

Section 3.28 *Financing Statement.* Mortgagor acknowledges that it is not authorized to file any amendment or termination statement with respect to any financing statement listing Mortgagee as secured party without the prior written consent of Mortgagee and agrees that it

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shall not do so without the prior written consent of Mortgagee, subject to Mortgagor's rights under Section 9-509(d)(2) of the UCC.

ARTICLE IV. EVENTS OF DEFAULT AND REMEDIES

Section 4.01 *Events of Default and Remedies.* The term “**Event of Default**” shall mean, whenever it is used herein, any one or more of the Events of Default outlined in Section 8.1 of the Loan Agreement executed in connection herewith.

Section 4.02 *Remedies.* The remedies available to Mortgagee hereunder upon an Event of Default shall mean any one or more of the remedies outlined in Section 8.2 of the Loan Agreement executed in connection herewith. Notwithstanding anything herein to the contrary, Mortgagor agrees and acknowledges that Mortgagee shall have any and all rights and remedies typically available by statute, at law, or in equity to a Mortgagee whose loan is secured by real property in the State of Illinois, including without limitation, the right to foreclose on the lien of this Mortgage, exercise its rights to power of sale granted hereunder and the right to appoint a receiver for the Security Property.

Section 4.03 *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) 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, to the full extent permitted by law 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. If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 4.02 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated specifically in this Mortgage, shall be added to the indebtedness secured hereby and/or by the judgment of foreclosure.

(b) Wherever provision is made in this Mortgage or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the

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settlement of losses under policies of insurance or to hold and disburse or otherwise control the 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) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Premises, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in the possession of the 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 and provisions for in Sections 15-1701 and 15-1703 of the Act.

(d) THE MORTGAGOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE EITHER AGRICULTURAL REAL ESTATE (AS DEFINED IN THE ACT), OR RESIDENTIAL REAL ESTATE (AS DEFINED IN THE ACT). EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, THE MORTGAGOR WAIVES THE BENEFIT OF ALL LAWS NOW EXISTING OR THAT MAY SUBSEQUENTLY BE ENACTED PROVIDING FOR (I) ANY APPRAISEMENT BEFORE SALE OF ANY PORTION OF THE MORTGAGED PROPERTY, (II) ANY EXTENSION OF THE TIME FOR THE ENFORCEMENT OF THE COLLECTION OF THE INDEBTEDNESS OR THE CREATION OR EXTENSION OF A PERIOD OF REDEMPTION FROM ANY SALE MADE IN COLLECTING SUCH DEBT OR (III) EXEMPTION OF THE MORTGAGED PROPERTY FROM ATTACHMENT, LEVY OR SALE UNDER EXECUTION OR EXEMPTION FROM CIVIL PROCESS. EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULL EXTENT THE MORTGAGOR MAY DO SO, THE MORTGAGOR AGREES THAT THE MORTGAGOR WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE PROVIDING FOR ANY APPRAISEMENT, VALUATION, STAY, EXEMPTION, EXTENSION, REINSTATEMENT OR REDEMPTION, OR REQUIRING FORECLOSURE OF THIS MORTGAGE BEFORE EXERCISING ANY OTHER REMEDY GRANTED HEREUNDER AND THE MORTGAGOR, FOR THE MORTGAGOR AND ITS SUCCESSORS AND ASSIGNS, AND FOR ANY AND ALL PERSONS EVER CLAIMING ANY INTEREST IN THE MORTGAGED PROPERTY, TO THE EXTENT PERMITTED BY LAW, HEREBY WAIVES AND RELEASES ALL RIGHTS OF REINSTATEMENT, REDEMPTION, VALUATION, APPRAISEMENT STAY OF EXECUTION, NOTICE OF ELECTION TO MATURE OR DECLARE DUE THE WHOLE OF THE SECURED INDEBTEDNESS AND MARSHALLING IN THE EVENT OF FORECLOSURE OF THE LIENS HEREBY CREATED.

(e) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Section 5/15-1601 of the Act or other applicable law or replacement statutes.

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(f) Notwithstanding provisions hereof relating to the assignment of rents, Mortgagee shall not exercise its right to receive such rents until it has taken possession, to the extent such possession is required by applicable law to exercise such right.

(g) Pursuant to the Illinois Collateral Protection Act and the Illinois Financial Institution Insurance Sales Law, Mortgagee hereby notifies Mortgagor as follows:

You may obtain insurance required in connection with your loan or extension of credit from any insurance agent, broker, or firm that sells such insurance, provided the insurance requirements in connection with your loan are otherwise complied with. Your choice of insurance provider will not affect our credit decision or your credit terms. Unless you provide us with evidence of the insurance coverage required by your agreements with us, we may purchase insurance at your expense to protect our interest in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreements. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

(h) This Mortgage is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed \$56,010,000.00 plus interest thereon, and any disbursements made for the payment of taxes, special assessments, or insurance on the property subject to this Mortgage, plus interest thereon. All provisions of this Mortgage shall apply to any future advances made pursuant to the provisions of this Section 4.03.

(i) Notwithstanding anything contained herein to the contrary, in no event shall the total amount secured by this Mortgage exceed \$37,500,000.00.

(j) Mortgagor certifies, represents and warrants to the Mortgagee that the indebtedness secured by this Mortgage is a "business purpose loan" as provided in 815 ILCS 4/1(c).

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ARTICLE V. WAIVER; SUBROGATION

Section 5.01 *Conditions to Exercise of Rights.* Mortgagor hereby waives any right it may now or hereafter have to require Mortgagee, as a condition to the exercise of any remedy or other right against Mortgagor hereunder or under any other document executed by Mortgagor in connection with any Secured Obligation: (a) to proceed against any Mortgagor or other person, or against any other collateral assigned to Mortgagee by Mortgagor or other person; (b) to pursue any other right or remedy in Mortgagee's power; (c) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Mortgagee by Mortgagor, or otherwise to comply with the UCC with respect to any such personal property collateral; or (d) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with any Secured Obligation or any collateral (other than the Property) for any Secured Obligation.

Section 5.02 *Defenses.* To the extent permitted by applicable law, Mortgagor hereby waives any defense it may now or hereafter have that relates to: (a) any disability or other defense of any Mortgagor or other person; (b) the cessation, from any cause other than full performance, of the obligations of Mortgagor or any other person; (c) the application of the proceeds of any Secured Obligation, by any Mortgagor or other person, for purposes other than the purposes represented to Mortgagor by any Mortgagor or otherwise intended or understood by Mortgagor; (d) any act or omission by Mortgagee which directly or indirectly results in or contributes to the release of any Mortgagor or other person or any collateral for any Secured Obligation; (e) the unenforceability or invalidity of any collateral assignment (other than this Mortgage) or guaranty with respect to any Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien hereof) which secures any Secured Obligation; (f) any failure of Mortgagee to marshal assets in favor of Mortgagor or any other person; (g) any modification of any Secured Obligation, including any renewal, extension, acceleration or increase in interest rate; (h) any and all rights and defenses arising out of an election of remedies by Mortgagee, even though that election of remedies, may have or has destroyed Mortgagor's rights of subrogation and reimbursement against the principal by the operation of law or otherwise; (i) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (j) any failure of Mortgagee to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (k) the election by Mortgagee, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (l) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (m) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (n) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Mortgagor further waives any and all rights and defenses that Mortgagor may have because Mortgagor's debt is secured by real property; this means, among other things, that: (1) Mortgagee may collect from Mortgagor without first foreclosing on any real or personal property collateral pledged by Mortgagor or any other pledgor; (2) if Mortgagee forecloses on any real property collateral pledged by Mortgagor, then (A) the amount of the debt may be reduced only by the price for

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which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Mortgagee may collect from Mortgagor even if Mortgagee, by foreclosing on the real property collateral, has destroyed any right any Mortgagor may have to collect from any other Mortgagor. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Mortgagor may have because Mortgagor's debt is secured by real property. Without limiting the generality of the foregoing or any other provision hereof, Mortgagor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Mortgagor under law.

Section 5.03 *Loan Documents*. Mortgagor warrants and agrees: (a) that Mortgagee would not make the Loan but for this Mortgage and (b) that Mortgagor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.

ARTICLE VI.

MISCELLANEOUS

Section 6.01 *Indemnification*. Mortgagor agrees to defend Mortgagee and all affiliates thereof (with counsel satisfactory to each), protect, indemnify and hold harmless Mortgagee and all affiliates thereof, each of their respective owners (both direct and indirect), and each of its and their agents and each of their respective officers, directors, managers, members, employees, attorneys and agents (each, an "**Indemnified Party**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and distributions of any kind or nature (including, without limitation, the disbursements and the reasonable fees of counsel for each Indemnified Party, which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including, without limitation, securities, environmental, and commercial laws and regulations, under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of (i) any transaction, act, omission, event or circumstance in any way connected with the Tenant, the Project (as defined in the Loan Agreement) or with this Agreement, the Loan Agreement or any other Loan Documents or any Event of Default hereunder, (ii) any breach of any representation or covenant of Mortgagor in any of the Loan Documents, (iii) the construction, reconstruction, alteration or use of the Project; (iv) the making or issuance and management of the Loan, the use or intended use of the proceeds of the Loan and the enforcement of the Mortgagee's rights and remedies under this Agreement, the Loan Agreement, the Note, the other Loan Documents, any other instruments and documents delivered hereunder or thereunder; (v) any fraud, negligence, misconduct of any tenant (including the Tenant), or any other occupant or invitee thereon or any of their respective agents, contractors, subcontractors, servants, directors, managers, officers, employees, licensees or invitees; (vi) any accident, injury, death or damage to any person or property occurring in, or on or about the Premises or the Improvements thereon or any street, drive, sidewalk, curb or passageway adjacent thereto; (vii) any claim by a tenant (including the Tenant) pursuant to the terms of its lease; or (viii) any physical waste, misappropriation of funds, voluntary bankruptcy filings, or any "engineering" of a bankruptcy filing; provided, however, that the Mortgagor shall not have any obligation hereunder to any specific Indemnified Party with respect to matters caused by or resulting from the gross negligence or willful misconduct of

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an Indemnified Party and/or the agents of such Indemnified Party. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it violates any law or public policy, the Mortgagor shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to such Indemnified Party on demand, and failing prompt payment, together with interest thereon at the Default Rate (as defined in the Loan Agreement) from the date incurred by such Indemnified Party until paid by the Mortgagor, shall be added to the obligations of the Mortgagor evidenced by the Note and secured by the collateral securing the Loan. This indemnity is not intended to excuse the Mortgagee or their agents from performing hereunder. The provisions of this section shall survive the closing of the Loan, the satisfaction and payment of the Note and any cancellation of this Agreement. The Mortgagor shall also pay and hold the Mortgagee and their agents harmless from, any and all claims of any brokers, finders or agents claiming a right to any fees in connection with arranging the Loan (unless retained by Mortgagee). The Mortgagor represents and warrants that no brokerage commissions or finder's fees are to be paid in connection with the Loan.

Section 6.02 Lawfulness and Reasonableness. Mortgagor warrants that all of the waivers in this Mortgage are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Mortgagor may destroy or impair rights which Mortgagor would otherwise have against Mortgagee, Lender and other persons, or against collateral. Mortgagor agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or similar laws effecting the enforcement of creditors' rights generally and subject to general principals of equity.

Section 6.03 Enforceability. Mortgagor hereby acknowledges that: (a) the obligations undertaken by Mortgagor in this Mortgage are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Mortgagee's consideration for entering into this transaction, Mortgagee has specifically bargained for the waiver and relinquishment by Mortgagor of all such defenses, and (d) Mortgagor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Mortgagor does hereby represent and confirm to Mortgagee that Mortgagor is fully informed regarding, and that Mortgagor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Mortgagor, and (iv) the legal consequences to Mortgagor of waiving such defenses. Mortgagor acknowledges that Mortgagor makes this Mortgage with the intent that this Mortgage and all of the informed waivers herein shall each and all be fully enforceable by Mortgagee, and that Mortgagee is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof. Notwithstanding anything to the contrary contained in this Section or elsewhere in this Mortgage, Mortgagor shall have the right to contest any assertion by Mortgagee that Mortgagor has not complied with the Secured Obligations.

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Section 6.04 *Binding Obligations*. All of the grants, covenants, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the successors and assigns of Mortgagor and the successors and assigns of Mortgagee. If there be more than one Mortgagor, the representations, covenants and warranties hereof shall be joint and several. As used herein, the singular shall include the plural as the context requires.

Section 6.05 *Severability*. In the event any one or more of the provisions contained in this Mortgage, in the Note or in any other Loan Document shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 6.06 *Notices*. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, sent via facsimile or email, or sent by registered or certified mail, return receipt requested, as follows:

If to Mortgagee: Brownfield Revitalization XXXIV, LLC
11 East Hargett Street, Suite 300
Raleigh, North Carolina 27601
Attention: Bret Batchelder
Facsimile: (919) 743-2501

With a copy to:

Dentons US LLP
233 S. Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attention: Scott Lindquist, Esq.
Facsimile: (312) 876-7934

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And: CDF Suballocatee XXIV, LLC
c/o Chicago Development Fund
c/o Department of Planning and Development
City of Chicago
121 North LaSalle Street, Room 1000
Chicago, Illinois 60602
Attention: Commissioner, Department of Planning and
Development
Facsimile: (312) 747-9207
Attention: Managing Deputy Commissioner for Bureau of
Economic Development, Department of Planning and
Development
Facsimile: (312) 747-2314

With a copy to:

S. B. Friedman & Company
221 N La Salle, Suite 820
Chicago, Illinois 60601
Attention: Tony Q. Smith
Facsimile: (312) 424-4262

And a copy to:

Perkins Coie LLP
131 South Dearborn, Suite 1700
Chicago, Illinois 60603
Attention: Robert D. Stephan
Facsimile: (312) 924-8626

And Illinois Finance Authority Development Fund NFP c/o
Illinois Finance Authority
P.O. Box 641187
Chicago, IL 60601
General Phone: 312.651.1300
Attention: President

With a copy to: Wayman C. Lawrence IV
Foley & Lardner LLP
Suite 5000
150 East Gilman Street
Madison, WI 53703-1482

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And: U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
St. Louis, Missouri 63103
Director of Asset Management NMTC/HTC/ITC
Project Reference #23115
Fax: (314) 335-2602

With a copies to: Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
Attn: Edward J. Lieberman
Fax: (314) 480-1505

U.S. Bank National Association
One California Street, Suite 2000
San Francisco, California 94111
Attention: Ronald S. Robinson
Fax: (415) 677-3763

If to Mortgagor: People Against Dirty Property Management, LLC
637 Commercial Street, Suite 300
San Francisco CA, 94111
Attention: Paul Yee

And: Facsimile: (415) 568-4592

Ginsberg Jacobs LLC
300 South Wacker Drive, Suite 2750
Chicago, Illinois 60606
Attention: Darryl P. Jacobs
Facsimile: (312) 660-9612

Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective. Any written notice shall be deemed to have been served (a) on the date delivered, if presented personally or sent via facsimile machine or email with confirmed read receipt, or (b) forty-eight (48) hours after the date it was mailed, if sent by registered or certified mail in accordance with the foregoing provisions.

Section 6.07 Waiver of Notice. Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee, except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

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Section 6.08 *Assignment*. This Mortgage, and any instruments made in connection herewith, may be assigned by Mortgagee without notice to or the consent of Mortgagor or any other party.

Section 6.09 *Incorporation of Information*. The information set forth on the cover hereof is hereby incorporated herein by this reference.

Section 6.10 *Applicable Law*. This Mortgage shall be governed by the laws of the State of Illinois, without giving effect to the principles of conflicts of law.

Section 6.11 *No Oral Modification*. Neither this Mortgage nor any provision hereof may be changed, waived, modified, discharged or terminated, except by an instrument in writing signed by Mortgagee.

Section 6.12 *Security Agreement*. This Mortgage constitutes both a real property Mortgage and a "security agreement," within the meaning of the UCC, and the Security Property includes both real and personal property and all other rights and interests of Mortgagor in the Security Property, whether tangible or intangible in nature. By executing and delivering this Mortgage, Mortgagor has granted to Mortgagee, as security for the Note, a security interest in the Receivables, Chattels and any other personal property described herein as being subject to a lien in favor of Mortgagee. If Mortgagor shall default under the Note or this Mortgage, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand any and all rights and remedies granted to a secured party upon default under the UCC, including, without limitation, the right to take possession of the Chattels or any part thereof and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Chattels. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Chattels and make them available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee within three (3) business days after written demand any and all expenses, including reasonable legal expenses and reasonable attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Chattels and in enforcing its rights hereunder with respect to the Chattels. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Chattels sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Chattels, or any part thereof, may be applied by Mortgagee to the payment of the Note and any other obligations of Mortgagor secured hereby in such priority and proportions as Mortgagee in its discretion shall deem proper.

Section 6.13 *Attorneys' Fees*. Wherever "attorneys' or counsel fees" or similar references are made herein, it shall include reasonable disbursements and such reasonable fees incurred out of court and in litigation, including, without limitation, pre-trial, appellate and bankruptcy proceedings.

Section 6.14 *Mortgagee Consent or Approval*. If Mortgagor shall request Mortgagee's consent or approval pursuant to any of the provisions of this Mortgage or otherwise, and Mortgagee shall fail or refuse to give, or shall delay in giving, such consent or approval, Mortgagor shall in no event make, or be entitled to make, any claim for damages (nor shall

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Mortgagor assert, or be entitled to assert, any such claim by way of defense, set-off or counterclaim) based upon any claim or assertion by Mortgagor that Mortgagee unreasonably withheld or delayed its consent or approval, and Mortgagor hereby waives any and all rights that it may have from whatever source derived to make or assert any such claim. Mortgagor's sole remedy for any such failure, refusal or delay shall be an action for a declaratory judgment, specific performance or injunction, and such remedies shall be available only in those instances where Mortgagee has expressly agreed in writing not to unreasonably withhold or delay its consent or approval or where, as a matter of law, Mortgagee may not unreasonably withhold or delay the same.

Section 6.15 Inclusion of Subtenants. Whenever reference is made in this Mortgage to a lease, lessee, tenancy or tenant, such reference shall be deemed to include a sublease, sublessee, subtenancy or subtenant, as the case may be.

Section 6.16 Counterparts. This Mortgage may be executed in any number of counterparts and 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 Mortgage.

Section 6.17 Security Cross-Default. If the payment of the indebtedness secured hereby is now or hereafter further secured by assignments of leases or rentals, security agreements, financing statements, deeds of trust, collateral assignments, pledges, contracts of guaranty or other additional security documents, any default under the provisions of any such further security documents shall constitute and be a default under this Mortgage, and Mortgagee may at its option exhaust any one or more of the said security documents and the security thereunder, as well as the Security Property covered by this Mortgage, either concurrently or independently and in such other and further manner as Mortgagee may elect, and Mortgagee may apply the proceeds received therefrom upon the secured indebtedness without waiving or affecting Mortgagee's rights and remedies under this Mortgage or any other Loan Document, whether exercised or not.

Section 6.18 Legal Interest Rate. Nothing herein, nor any transaction related hereto, shall be construed or operate so as to require Mortgagor to pay interest at a greater rate than shall be lawful. Should any interest or other charges paid by Mortgagor in connection with the Loan result in the computation or earning of interest in excess of the maximum legal rate of interest which is legally permitted under the laws of Illinois or other applicable law, after taking into account all provisions of the Note and the other Loan Documents, then any and all such excess shall be, and the same is hereby, waived by Mortgagee, and any and all such excess shall be automatically credited against and in reduction of the balance due under the indebtedness secured hereby, and any portion which exceeds the balance due under the Note and secured hereby shall be paid by Mortgagee to Mortgagor. At the maturity of the Note secured hereby (or prior thereto, in the event of any permitted prepayment, or if Mortgagee accelerates payment thereof), if the total amount of interest paid, including any service fee and any other charge upon the principal, exceeds the maximum legal contract rate permitted by law, such interest shall be recomputed and any such excess shall be credited to principal or returned to Mortgagor. It is the intent of the parties hereto that Mortgagor, under any circumstances, shall not be required to pay, nor shall Mortgagee be entitled to collect, any interest which is in excess of the maximum legal rate permitted under applicable laws.

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Section 6.19 *No Joint Venture*. Nothing contained herein shall create any joint venture, partnership, agency or trust arrangement between Mortgagor and Mortgagee.

Section 6.20 *Waiver of Jury Trial*. **MORTGAGOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING OUT OF THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, WHETHER NOW OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM MAY, AT MORTGAGEE'S ELECTION, BE DECIDED BY TRIAL WITHOUT A JURY AND THAT MORTGAGEE MAY FILE AN ORIGINAL COUNTERPART OR COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVER AND AGREEMENT CONTAINED HEREIN.**

Section 6.21 *Mortgagee Set-Off*. Mortgagor agrees that, to the fullest extent permitted by law, in addition to (and without limitation of) any right of set-off, bankers' lien or counterclaim Mortgagee may otherwise have, Mortgagee shall be entitled, at its option, to offset balances held by it for the account of Mortgagor in any of its offices, in lawful money of the United States of America or in any other currency, against any principal of or interest on the Note, or any other obligation of Mortgagor held by Mortgagee, which is not paid when due.

Section 6.22 *Partial Recovery of Sums Due*. To the fullest extent permitted by law, Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the indebtedness secured hereby as the same becomes due, without regard to whether or not the balance of such indebtedness shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

Section 6.23 *Marshalling of Assets*. Mortgagor waives and releases, to the fullest extent permitted by law and with awareness of the consequences thereof, any right to have the Security Property marshalled.

Section 6.24 *Headings and Captions*. The headings and captions of the various Articles and Sections of this Mortgage, and any table of contents, are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 6.25 *Fixture Filing*. This Mortgage shall be effective as a financing statement filed as a fixture filing in the Official Records of County Recorder of the county in which the Premises are located with respect to any all fixtures included within the term "Security Property" as used in this Mortgage and with respect to any goods or other personal property that may now be or hereafter become such fixtures. In connection therewith, the address of Mortgagor, as debtor ("**Debtor**"), and the address of Mortgagee, as secured party ("**Secured Party**"), are set forth below. The address of Mortgagee, as Secured Party, set forth below is also the address from which information concerning the security interest may be obtained by any interested party:

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- (a) Name and address of Debtor:

People Against Dirty Property Management, LLC
 637 Commercial Street, Suite 300
 San Francisco, CA 94111
 Attention: Paul Yee
 Facsimile: (415) 568-4692

- (b) Name and address of Secured Party:

Brownfield Revitalization XXXIV, LLC
 111 East Hargett Street, Suite 300
 Raleigh, North Carolina 27601
 Attention: Bret Batchelder
 Facsimile: (919) 743-2501

CDF Suballocatee XXIV, LLC
 c/o Chicago Development Fund
 c/o Department of Planning and Development
 City of Chicago
 121 North LaSalle Street, Room 1000
 Chicago, Illinois 60602
 Attention: Commissioner, Department of Planning and Development
 Facsimile: (312) 747-9207
 Attention: Managing Deputy Commissioner for Bureau of Economic
 Development, Department of Planning and Development
 Facsimile: (312) 747-2314

Illinois Finance Authority Development Fund NFP c/o
 Illinois Finance Authority
 P.O. Box 641187
 Chicago, IL 60601
 General Phone: 312.651.1300
 Attention: President

- (c) Description of the types (or items) of property covered by this fixture filing:

All property covered by the Granting Clause of this Mortgage set forth on pages 7-8 hereof.

- (d) Description of real property subject to this fixture filing, to which the collateral is attached or upon which it is located:

See Exhibit A attached hereto.

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Some of the above-described collateral is or is to become fixtures upon the above described real property, and this fixture filing is to be filed in the real property records of the County of Cook, Recorder's Office and indexed against Mortgagor, as Debtor, in favor of Mortgagee, as beneficiary and Secured Party.

This Mortgage is subject to the terms and conditions of the intercreditor provisions set forth in Section 11 of the Loan Agreement.

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Property of Cook County Clerk's Office

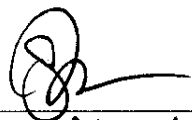
UNOFFICIAL COPY

IN WITNESS WHEREOF, this Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing has been duly executed by Mortgagor as of the day and year first above written.

MORTGAGOR:

**PEOPLE AGAINST DIRTY PROPERTY
MANAGEMENT, LLC**, a Delaware limited
liability company

By: _____
Name: _____
Title: _____


PAUL VIRE
MEMBER

Property of Cook County Clerk's Office

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ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On August 28, 2014, before me, Lindsay Swancutt, a Notary Public, personally appeared Paul Yee, Treasurer of People Against Dirty Property Management, LLC, a Delaware limited liability company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

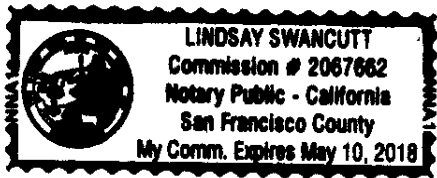
I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

(Notary Seal)

[Signature]

Signature of Notary



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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1: LOT 5 IN PULLMAN PARK – PHASE 2, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 14 AND THE SOUTHEAST QUARTER OF SECTION 15, ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED 12/6/2013 AS DOCUMENT 1334039070.

PARCEL 2: EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR ACCESS AS CREATED BY PLAT OF PULLMAN PARK – PHASE 2 RECORDED DECEMBER 6, 2013 AS DOCUMENT 1334039070 AND BY DECLARATION AND GRANT OF EASEMENT MADE BY CHICAGO NEIGHBORHOOD INITIATIVES, INC., RECORDED DECEMBER 11, 2013 AS DOCUMENT 1334510072.

COMMONLY KNOWN AS: 720 E. 111TH STREET, CHICAGO, ILLINOIS 60628

25-14-300-018-0000

25-15-406-024-0000

2013 Numbers : 25-14-300-023
25-15-406-052