



Doc#: 1425819071 Fee: \$64.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/15/2014 11:22 AM Pg: 1 of 14

Prepared By And Upon  
Recordation Return To:

Ginsberg Jacobs LLC  
300 South Wacker Drive  
Suite 2750  
Chicago, Illinois 60606  
Attention: Darryl P. Jacobs

(Space above this line reserved for Recorder's use.)

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") made as of this 12th day of September, 2014, by **GOTHAM GREENS PULLMAN, LLC**, an Illinois limited liability company, having an office at 810 Humboldt Street, Brooklyn, New York 11222 ("**Tenant**"); **BROWNFIELD REVITALIZATION XXXIV, LLC**, a Delaware limited liability company, or its assignee ("**Brownfield XXXIV**"), having an office at 111 East Hargett Street, Suite 300, Raleigh, North Carolina 27601, **CDF SUBALLOCATEE XXIV, LLC**, an Illinois limited liability company ("**CDF XXIV**"), having an office at c/o Chicago Development Fund, c/o Department of Planning and Development, City of Chicago 121 North LaSalle Street, Room 1000 Chicago, Illinois 60602, and **ILLINOIS FINANCE AUTHORITY DEVELOPMENT FUND NFP**, an Illinois not-for profit corporation ("**IFA**"), having an office at 180 North Stetson Avenue, Suite 2555, Chicago, Illinois 60601 (Brownfield XXXIV, CDF XXIV and IFA XXX are referred to herein collectively as "**Lender**") and **PEOPLE AGAINST DIRTY PROPERTY MANAGEMENT, LLC**, a Delaware limited liability company having an office at 720 E. 111<sup>th</sup> Street, Chicago, Illinois 60628 ("**Landlord**").

A. Lender is the owner and holder of a mortgage or other similar security instrument (either, the "**Security Instrument**"), covering, among other things, a fee simple interest in the real property commonly known and described as 720 E. 111<sup>th</sup> Street, Chicago, IL 60628 and further described on EXHIBIT A attached hereto and made a part hereof for all purposes, and the building and improvements thereon (collectively, the "**Property**").

B. Tenant is the lessee under that certain lease agreement between Landlord and Tenant dated as of August 1, 2014, ("**Lease**"), demising a portion of the Property described more particularly in the Lease ("**Leased Premises**").

C. Tenant and Lender desire to enter into the following agreements with respect to the priority of the Lease and Security Instrument.

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument, as if the Security Instrument had been executed and recorded prior to the Lease. Tenant covenants and agrees with Lender, that Tenant shall execute and deliver such further or other instruments subordinating the Lease, and all renewals and extensions thereof, to the lien of any mortgage or deed of trust that replaces the Security Agreement described above and that the right, title, interest and claim of Tenant shall be and remain at all times

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subject and subordinate to the lien of the mortgage or deed of trust that replaces the above described Security Instrument for all advances made and to be made under the provisions of said replacement mortgage or deed of trust or the loan agreement, note or notes secured thereby for all other purposes specified therein, subject, however, to the holder of the replacement mortgage or deed of trust executing a non-disturbance agreement in substantially the same form as hereinafter provided.

2. Nondisturbance. Subject to the provisions of Section 3(b) hereof with respect to the limitations of liability applicable to a Successor Owner (as defined in Section 3(a)), Lender hereby agrees to be bound by all of the terms and conditions of the Lease, including, but limited to Article 15 therein, in the event Lender becomes the owner of Landlord's reversionary fee interest in the Premises by reason of foreclosure, deed in lieu of foreclosure or otherwise. Lender agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan shall operate to terminate the Lease or Tenant's rights thereunder to possess and use the leased space provided, however, that the following conditions are satisfied: (a) the term of the Lease has commenced, (b) Tenant is in possession of the premises demised pursuant to the Lease, and (c) the Lease is in full force and effect and no uncured default on the part of Tenant exists under the Lease. In addition, notwithstanding such subordination, so long as a default on Tenant's part (beyond any applicable notice, grace or cure period) does not exist under the Lease, Lender will not join Tenant as a party defendant, unless required by law, in any foreclosure action or other proceeding for the purpose of terminating Tenant's interest and estate under the Lease or for any other purpose.

3. Attornment.

(a) Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan, including Lender ("**Successor Owner**").

(b) Provided that the conditions set forth in Section 2 above are met at the time Successor Owner becomes owner of the Property, Successor Owner shall perform all obligations of the Landlord under the Lease arising from and after the date title to the Property was transferred to Successor Owner. In no event, however, will any Successor Owner be:

(i) liable for any default, act or omission of any prior landlord under the Lease, except that Successor Owner shall not be relieved from the obligation to cure any defaults which are continuing in nature; provided:

(A) Successor Owner received notice and opportunity to cure such defaults, and such that Successor Owner's failure to cure would constitute a continuing default under the Lease; and,

(B) if any such defaults (excluding defaults which may be cured by the payment of money) are personal to the Landlord or are otherwise impossible for the Successor Owner to remedy even with the exercise of good faith efforts, and regardless of the amount of time provided for such purpose, then any such default shall be deemed waived by Tenant solely for the benefit of the Successor Owner;

(ii) subject to any offset or defense which Tenant may have against any prior landlord under the Lease accruing prior to Successor Owner's succession to title;

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(iii) bound by any payment of rent or additional rent made by Tenant to Landlord more than one (1) month in advance, except to the extent such payment is expressly required by the Lease;

(iv) bound by any modification or supplement to the Lease, or waiver of Lease terms, made without Lender's written consent thereto;

(v) liable for the return of any security deposit or other prepaid charge (including Tenant's share of construction costs) paid by Tenant under the Lease, except to the extent such amounts were actually received by Lender;

(vi) liable or bound by any right of first refusal or option to purchase all or any portion of the Property;

(vii) liable for construction or completion of any improvements to the Leased Premises, the Property, or as required under the Lease for Tenant's use and occupancy (whenever arising); or

(viii) liable for any representation or warranty made by Landlord in the Lease.

(c) Subject to the provisions and limitations set forth in Section 3(b) Tenant reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages and against the successor landlord for all losses or damages arising from and after the date that such Successor Owner takes title to the Property.

(d) Although the foregoing provisions of this Agreement are self-operative, subject to the terms of this Agreement, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner does arise pursuant to this Agreement, such liability shall be limited to Successor Owner's interest in the Property.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance. After notice is given to Tenant by Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and all other amounts due or to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on Lender's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with Lender's written instructions.

5. Lender Opportunity to Cure Landlord Defaults.

(a) Tenant agrees that, until the Security Instrument is released by Lender, it will not exercise any remedies under the Lease following a Landlord default without having first given to Lender written notice of the alleged Landlord default and the opportunity to cure such default within the time periods provided for cure by Landlord (but not less than thirty (30) days for any non-monetary default), measured from the time notice is given to Lender; provided:

(i) in a case of default which, although curable, cannot through the exercise of good faith efforts be remedied by the Lender, or the remedy of which cannot be commenced,

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within the time period provided for cure, then the Lender shall have such additional period as reasonably may be necessary to remedy such default with the exercise of good faith efforts; or

(ii) if such default shall be a default which can only be remedied by the Lender upon obtaining possession of the Property and access to the Property, the Lender shall exercise good faith efforts to obtain possession through a receiver or otherwise and shall remedy such default within sixty (60) days after obtaining such possession, provided that in the case of a default which, although curable, cannot through the exercise of good faith efforts be remedied by the Lender, or the remedy of which cannot be commenced by the Lender within such period of sixty (60) days, then the Lender shall have such additional period as reasonably may be necessary to remedy such default with the exercise of good faith efforts and diligence; or

(iii) if such default (excluding defaults which may be cured by the payment of money) is personal to the Landlord or is otherwise impossible for the Lender to remedy even with the exercise of good faith efforts, and regardless of the amount of time provided for such purpose, then any such default shall be deemed waived by Tenant solely for the benefit of the Lender; or

(iv) the Lender is proceeding to foreclose the lien of the Security Instrument or otherwise obtain title to the Property.

(b) Tenant acknowledges that Lender is not obligated to cure any Landlord default, but if Lender elects to do so, Tenant agrees to accept cure by Lender as that of Landlord under the Lease and will not exercise any right or remedy under the Lease for a Landlord default. Performance rendered by Lender on Landlord's behalf is without prejudice to Lender's rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Lender in connection with the Loan.

6. Lease Amendment. The Lease shall not be assigned, modified, amended or terminated by Tenant (except a termination, modification, amendment or assignment that is specifically permitted in the Lease without Lender's consent, or is specifically provided for in the Lease such as a renewal option), without Lender's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed.

7. Casualty and Condemnation Proceeds. Notwithstanding anything to the contrary contained herein, to the extent that the provisions of the Lease are inconsistent with the provisions of the Security Instrument with respect to Tenant's entitlement to any condemnation award for a taking of all or part of the Leased Premises, or Tenant's entitlement to any casualty proceeds with respect to Tenant's personal property or in connection with any of Tenant's moving costs, the provisions of the Lease shall have priority and shall control, and Lender waives any rights it may have under the Security Instrument to receive any condemnation award or casualty insurance proceeds to Tenant under the Lease or under applicable law.

8. Miscellaneous.

(a) Notices.

Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for hereunder shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

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If to Tenant  
Gotham Greens Pullman, LLC  
810 Humboldt Street  
Brooklyn, NY 11222

With a copy to:  
Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.  
666 Third Avenue  
New York, NY 10017  
Attention: Daniel DeWolf

If to Landlord  
People Against Dirty Property Management, LLC  
637 Commercial Street, Suite 300  
San Francisco, California 94111  
Attn: Paul Yee  
Facsimile: (415) 568-4692

with a copy to:  
Ginsberg Jacobs LLC  
300 South Wacker Drive, Suite 2450  
Chicago, Illinois 60606  
Attn: Darryl P. Jacobs  
Facsimile: (312) 660-9612

If to CDF XXIV:  
CDF Suballocatee XXII, 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  
Attn: 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 North LaSalle Street, 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) 324-9626

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

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With copy to: Dentons US LLP  
233 South Wacker Drive, Suite 7800  
Chicago, Illinois 60606-6404  
Attn: Scott Lindquist  
Fax: (312) 876-7934

If to IFA: Illinois Finance Authority  
P.O. Box 641187  
Chicago, Illinois 60601  
Attention: Rich Frampton

With copy to: Foley & Lardner LLP  
150 East Gilman Street, Suite 5000  
Madison, Wisconsin 53703  
Attention Wayman Lawrence  
Fax: (608) 258-4258

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(b) Entire Agreement, Modification. This Agreement is the entire agreement between the parties relating to the subordination and nondisturbance of the Lease, and supersedes and replaces all prior discussions, representations and agreements (oral and written) with respect to the subordination and nondisturbance of the Lease. This Agreement controls any conflict between the terms of this Agreement and the Lease. This Agreement may not be modified, supplemented or terminated, nor any provision hereof waived, unless by written agreement of Lender and Tenant, and then only to the extent expressly set forth in such writing.

(c) Binding Effect. This Agreement binds and inures to the benefit of each party hereto and their respective heirs, executors, legal representatives, successors and assigns, whether by voluntary action of the parties or by operation of law.

(d) Unenforceability. Any provision of this Agreement which is determined by a government body or court of competent jurisdiction to be invalid, unenforceable or illegal shall be ineffective only to the extent of such holding and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

(e) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns cover all genders. Unless otherwise provided herein, all days from performance shall be calendar days, and a "business day" is any day other than Saturday, Sunday and days on which Lender is closed for legal holidays, by government order or weather emergency.

(f) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their respective obligations hereunder.

8. Governing Law and Construction. This Agreement shall be deemed to be made under the internal laws of the State of Illinois and shall be construed in accordance with and governed by the laws of said State, without regard to the choice of law rules of that State, except to the extent that any of such laws may now

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or hereafter be preempted by Federal law. Whenever possible, each provision of this Agreement and any other statement, instrument or transaction contemplated hereby or relating hereto shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of this Agreement or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other statement, instrument or transaction contemplated hereby or thereby or relating hereto. The parties shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with a valid provision the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

9. Jurisdiction/Enforcement. The parties hereto acknowledge and agree that this Agreement and the duties and obligations of the parties hereto shall be enforceable against Landlord, Tenant or Lender in any of the following forums: the United States District Court for the Northern District of Illinois or the Circuit Court of Cook County, First Municipal District.

10. Lease Requirements. Tenant agrees that this Agreement satisfies any requirement of Landlord or Lender to provide Tenant with a non-disturbance agreement under the terms of the Lease. This Agreement constitutes a "Non-Disturbance Agreement" as such term is defined in Section 13.1 of the Lease.

[Signatures on the Following Page]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**LANDLORD:**

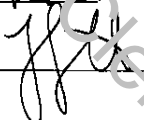
**PEOPLE AGAINST DIRTY PROPERTY MANAGEMENT, LLC,**  
A Delaware limited liability company

By:   
Name: PAUL YEE  
Title: MEMBER

STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that PAUL YEE, the Authorized Signatory of **PEOPLE AGAINST DIRTY PROPERTY MANAGEMENT, LLC**, personally known to me to be the same individual whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and official seal this 29 day of AUGUST, 2014.

 Lindsay Swancutt  
Notary Public  
Commission expires May 10, 2018








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**LENDERS:**

**CDF XXIV:**

**CDF SUBALLOCATEE XXIV, LLC,**  
an Illinois limited liability company

By: CDF Management LLC, an Illinois  
limited liability company, its Managing Member

By:   
\_\_\_\_\_  
Aarti Kotak, Vice President and  
Secretary-Treasurer

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENT

STATE OF )  
 ) ss:  
COUNTY OF )

On Sept 12, 2014, before me, PATRICIA Sulewski, a Notary Public, personally appeared AARTI KOTAK, SECRETARY-TREASURER of CDF Management LLC, an Illinois 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 she executed the same in her authorized capacity, and that by her 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 ILLINOIS that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Seal)

Patricia Sulewski  
Signature of Notary







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## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

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. 111<sup>TH</sup> STREET, CHICAGO, ILLINOIS 60628

25-14-300-018-0000

25-15-406-024-0000

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

Cook County Clerk's Office