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Doc#. 2334806390 Fee: \$107.00
Karen A. Yarbrough
Cook County Clerk
Date: 12/14/2023 02:46 PM Pg: 1 of 10

SCRIVENER'S AFFIDAVIT

Prepared By: (Name & Address)

Maria Kumis

200 W Madison Ste 800
Chicago IL 60606

Property Identification Number:

12-09-200-072-0000 & 12-09-200-073-0000

Document Number to Correct:

2333541022

Attach complete legal description

I, Maria Kumis, the affiant and preparer of this Scrivener's Affidavit, whose relationship to the above-referenced document number is (ex. drafting attorney, closing title company, grantor/grantee, etc.): underwriting counsel with closing title company, do hereby swear and affirm that Document Number: 233541022 included the following mistake: the document was dated effective as of November 11, 2023

which is hereby corrected as follows: (use additional pages as needed), or attach an exhibit which includes the correction—but **DO NOT ATTACH** the original/certified copy of the originally recorded document: the document should have been and is hereby dated effective as of November 22, 2023

Finally, I Maria Kumis, the affiant, do hereby swear to the above correction, and believe it to be the true and accurate intention(s) of the parties who drafted and recorded the referenced document.

Maria Kumis

12/11/2023

Affiant's Signature Above

Date Affidavit Executed

State of Illinois)
County of Cook)

NOTARY SECTION:

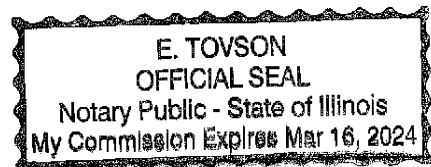
I, E TOVSON, a Notary Public for the above-referenced jurisdiction do hereby swear and affirm that the above-referenced affiant did appear before me on the below indicated date and affix her/his signature or marking to the foregoing Scrivener's Affidavit after providing me with a government issued identification, and appearing to be of sound mind and free from any undue coercion or influence. **AFFIX NOTARY STAMP BELOW**

Notary Public Signature Below

Date Notarized Below

E. Tovson

12/22/2023



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Prepared by:

Meredith A. Webster
 Illinois Bar No. 6305145
 Kutak Rock LLP
 2300 Main Street, Suite 800
 Kansas City, Missouri 64108

After recording, please return to:

Academy Bank, N.A.
 1201 Walnut, Suite 1100
 Kansas City, Missouri 64106
 Attention: Brent Parsons

Parcel ID No. 12-09-200-072-0000 Vol. 63 & 12-09-200-073-0000 Vol. 63

(Reserved for recording information)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT (Rosemont, Cook County, Illinois)

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT dated effective as of November **22** 2023 ("**Agreement**"), is made by and among **5505 Pearl Street LLC**, an Illinois limited liability company, having its principal place of business at c/o Janko Group LLC, 2610 Lake Cook Road, Suite 100, Riverwoods, Illinois 60015 ("**Borrower**"); **Academy Bank, N.A.**, having an address of 1201 Walnut, Suite 1100, Kansas City, Missouri 64106 (together with its successors and assigns, "**Lender**"); and **Lakeshore Recycling Systems, LLC**, a Delaware limited liability company, having an address of 5505 Pearl Street, Rosemont, Illinois 60018 ("**Tenant**").

RECITALS:

- A.** Borrower owns all right, title and interest in certain real property located in Rosemont, Cook County, Illinois, more particularly described as set forth on **Exhibit A**, attached hereto and incorporated herein by reference (the "**Property**"); and
- B.** Tenant is the owner and holder of a leasehold interest under that certain Lease Agreement dated April 27, 2022, as amended by that certain First Amendment to Lease dated September 22, 2022, by and between Borrower, as lessor, and Tenant, as lessee (together with all amendments to such lease, the "**Lease**"), whereby Tenant has agreed to lease a portion of the Property from Borrower (the "**Leased Premises**"); and
- C.** A Mortgage and Fixture Filing has been given by Borrower to Lender as a first lien against the Property (the "**Mortgage**") for the purpose of securing a loan by Lender to Borrower (the "**Loan**"); and
- D.** It is the desire and intention of the parties hereto to subordinate the operation of the Lease to the lien and operation of the Mortgage, so that the Mortgage shall and will become a first and prior lien upon the Property and the Lease will be unconditionally subordinated thereto in accordance with the terms and conditions of this Agreement.

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NOW, THEREFORE, the parties hereto intending to be legally bound hereby, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. Recitals. All of the above Recitals are hereby incorporated herein by reference, are fully binding upon the parties, and are incorporated herein by reference.

2. Subordination. The Lease, together with all rights, purchase options, rights of first refusal, liens and charges in favor of Tenant contained therein, is and shall be junior, inferior, subject and unconditionally subordinate in each and every respect to the liens, terms, operation, effect, provisions, and conditions of the Mortgage (and all other documents executed in conjunction with the Loan transaction evidenced thereby) and to any and all advances made thereunder and to all renewals, modifications, consolidations, replacements, additional advances, future advances and extensions thereof. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Property shall be subject and subordinate to Lender's right, title and interest in and to such proceeds and awards. To the extent any of the terms, provisions, or conditions contained in Lease conflict with or are inconsistent with those contained in the Mortgage, the terms contained in the Mortgage shall control. Notwithstanding that the Lease shall be subject to the Mortgage, in no event shall the lien of the Mortgage affect or constitute a lien or charge on any fixtures, equipment or personal property owned by Tenant.

3. Non-Disturbance. Lender does hereby agree with Tenant that, so long as Tenant complies with the terms, conditions and covenants of the Lease and performs its obligations when and as required under the Lease, **a)** Lender will take no action which will interfere with or disturb Tenant's possession or lawful use of the Leased Premises or other rights under the Lease; and **b)** in the event Lender or a third party becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise (any such owner being referred to herein as the "**Successor Owner**"), the Leased Premises shall be subject to the Lease and Successor Owner shall recognize Tenant as a tenant on the Leased Premises for the remainder of the term of the Lease in accordance with the provisions thereof; provided, however, that Successor Owner shall not be **i)** liable for any act or omission of Borrower or any other lessor of the Property; **ii)** subject to any offsets, claims, deductions or defenses which Tenant might have against Borrower or any other lessor of the Property, provided that the foregoing shall not limit any express remedies of the Tenant against Borrower, any other lessor, or the rent payable as set forth in the Lease; **iii)** bound by any rent or additional rent which Tenant might have paid for more than the current month to Borrower or any other lessor of the Property, except for Lender's actual receipt of any payments made by Tenant of estimated charges of operating expenses, real estate taxes and utilities paid in accordance with the terms of the Lease, unless the same shall be actually received by Lender; **iv)** liable for any security deposit delivered to Borrower or any other lessor of the Property, unless the same shall be actually received by Lender; nor **v)** bound by any material amendment, assignment, or modification of the Lease, or any release of Tenant from any of its material liabilities under the Lease (whether by affirmative act, inaction, or operation of the terms of the Lease), made without Lender's written consent; provided that no consent shall be required for amendments reflecting the exercise of any renewal rights or options by Tenant expressly set forth in the Lease. For purposes of this paragraph, the term "material" refers to changes that would increase the landlord's obligations under the Lease or decrease Tenant's obligations under the Lease, whether financial or otherwise. Lender further agrees not to name or join Tenant in any foreclosure action or other action or proceeding initiated by Lender pursuant to the Mortgage or other Loan-related document except to the extent necessary under applicable law for Lender to complete the foreclosure or other remedy against Borrower. Notwithstanding the foregoing, nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Tenant to pursue claims under the Lease against any prior landlord (including Borrower) in the event of any default by prior landlord, regardless of whether such claim is barred against Successor Owner.

4. Attornment. Tenant does hereby agree with Lender that Tenant shall attorn to and recognize any Successor Owner as the Borrower under the Lease for the remainder of the term thereof, and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of said Lease. Tenant further covenants and agrees to execute and deliver to any such Successor Owner upon request

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of Lender, or its successors or assigns, an appropriate agreement of attornment in form and substance reasonably acceptable to Tenant.

5. Notices and Right to Cure under Lease. So long as the Mortgage remains unreleased and the Loan is unsatisfied, Tenant shall deliver to Lender, at the address and in the manner set forth below, duplicate copies of all notices of default permitted or required to be given to Borrower by Tenant under and pursuant to the terms and provisions of the Lease at the same time as such is given to Borrower. Within ten (10) days after the date the rights of Borrower to cure any landlord-related default under the Lease shall have expired, Lender may, but shall have no obligation to, **a)** pay any insurance premiums, taxes and assessments required to be paid by Borrower under the Lease; **b)** make any repairs and improvements, or perform any maintenance, to the Premises required to be performed by Borrower under the Lease; **c)** make any deposits in connection with the ownership or operation of the Premises required of Borrower under the Lease; and **d)** do any other act or thing required of Borrower by the terms of the Lease to cure such default by Borrower. All such payments made and actions performed by Lender shall be as effective to prevent the rights of Borrower from being forfeited or adversely affected because of any default under the Lease as the same would have been if done and performed by Borrower.

6. Assignment of Lease. Tenant acknowledges that Borrower has executed or will execute an assignment of the Lease and any guaranty thereof ("**Assignment**") as security for the Loan, and Tenant hereby expressly consents to any such assignment and agrees to pay all rents under the Lease directly to Lender or its designee upon Lender's written notice to Tenant. Borrower hereby unconditionally authorizes and directs Tenant (upon written direction to Tenant by Lender) to pay the above sums directly to Lender or its designee, and Borrower agrees to hold Tenant harmless for any monies so paid. Tenant agrees to honor and comply with any and all written directions received from Lender with respect to payment of rents and other sums under the Lease. Tenant agrees that neither Lender's demand for or receipt of any such payments, nor Lender's exercise of any other right, remedy, privilege, power, or immunity granted by the Mortgage (or other documents executed in conjunction therewith), will operate to impose any liability upon Lender for performance of any obligation of Borrower under the Lease unless and until Lender becomes a Successor Owner, and then such liability shall be limited to the extent provided in this Agreement.

7. Liens. Tenant shall not do or suffer anything to be done whereby the Property, Leased Premises, or any part thereof, may be encumbered by a mechanic's, materialman's, or other lien for work or labor done, services performed, materials, appliances, or power contributed, used, or furnished in or to the Premises or in connection with any operations or any other activity of Tenant (collectively, "**Tenant's Liens**"). In addition to all indemnities Tenant has provided Borrower under the Lease, Tenant hereby agrees to indemnify and hold harmless Lender, its successors and assigns, from and against all liabilities, losses, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects' fees, attorneys' fees, paralegal fees, and legal costs and expenses incurred by Lender, whether or not judicial proceedings are filed, and including on appeal and in any bankruptcy proceedings, which may be imposed upon or asserted against or incurred by Lender, that arise out of, or relate to, any one or more Tenant's Liens. Notwithstanding the foregoing, Tenant shall not be liable for, or obligated to indemnify Lender against, any Tenant's Lien that is caused by Borrower's failure, in violation of the Lease, to pay for work or labor resulting in such lien.

8. Exculpation. Anything in the Lease to the contrary notwithstanding, Borrower and Tenant agree acknowledge and agree that Borrower and Tenant shall look solely to the estate and equity interest of Lender in the Leased Premises for the collection of any judgment (or other judicial process) requiring the payment of money by Lender for any matter arising out of or related to the Loan or this Agreement, and no other assets of Lender shall be subject to levy, execution or other procedures for the satisfaction of Lender's liabilities.

9. Notices. Any and all notices, elections or demand permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election or demand and will be deemed delivered or made upon the earlier of actual receipt if sent by overnight courier or hand-delivered or three (3) days after same is mailed by registered or certified mail, return receipt requested, with sufficient postage affixed, and addressed to the parties as follows:

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Lender:

Academy Bank, N.A.
1201 Walnut Street, Suite 1100
Kansas City, Missouri 64106
Attn: Director of National
Commercial Real Estate Lending

with a copy to:

Kutak Rock LLP
Attn: John M. Keller
2300 Main Street, Suite 800
Kansas City, Missouri 64108

Borrower:

5505 Pearl Street LLC
c/o Janko Group LLC
2610 Lake Cook Road, Suite 100
Riverwood, Illinois 60015
Attn: Gary R. Janko

with a copy to:

Janko Group LLC
2610 Lake Cook Road, Suite 100
Riverwoods, Illinois 60015
Attn: Pamela S. Johnson

Tenant:

Lakeshore Recycling Systems, LLC
5505 Pearl Street
Rosemont, Illinois 60018
Attention: Matt Spencer

Such addresses may be changed by notice pursuant to this paragraph, but notice of change of address is effective only upon receipt.

10. Binding Effect. This Agreement shall be binding upon all the parties hereto, their heirs, successors and assigns and all of those holding title under any of them, and the pronouns herein shall include, where appropriate, either gender or both, singular or plural.

11. Non-Waiver. No indulgence, waiver, election or non-election by Lender under the Mortgage or any other Loan-related documents associated with the Mortgage shall affect this Agreement.

12. Modification of Agreement. The parties hereby agree that this document contains the entire agreement between the parties, and this Agreement shall not be modified, changed, altered or amended in any way except through written amendments signed by all of the parties hereto.

13. Governing Law. It is agreed that the laws of the State in which the Property is located shall govern the construction and interpretation of this Agreement and the rights and obligations set forth herein.

14. Attorneys' Fees. In the event of any legal or equitable action, including any appeals or bankruptcy proceedings, which may arise hereunder between or among the parties hereto, the prevailing party shall be entitled to recover its costs and its reasonable attorneys' fees and paralegal fees.

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15. Severance. The invalidity or unenforceability of any portion of this Agreement shall not affect the remaining provisions and portions hereof.

16. Prevailing Clause. Tenant agrees that any and all purchase options, rights of first refusal, and other rights, if any, to purchase all or any portion of the Property granted to it under the Lease are in all manners and respects unconditionally subordinate and inferior to the Mortgage and other Loan-related documents in favor of Lender, and such options and rights shall not survive foreclosure of the Mortgage notwithstanding the non-disturbance provisions and other terms of this Agreement.

17. Waiver of Jury Trial. All parties to this Agreement hereby irrevocably and severally: a) waive the right to a trial by jury in any action or proceeding brought by any party in connection with this Agreement, the Lease, Mortgage, Assignment, or other Loan-related document; b) have made this waiver knowingly, intentionally, and voluntarily; c) acknowledge no reliance upon any oral or written statements made by Lender or on Lender's behalf, other than those contained herein, either to induce this waiver of trial by jury or to modify or nullify its effect; d) acknowledge reading and understanding the meaning and ramifications of this waiver provision; and e) agree to take all such actions as may be required by applicable law to allow this waiver to be enforceable.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. The Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

[Remainder of page intentionally left blank.]

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IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly executed on or about the day and year first written above.

TENANT:

Lakeshore Recycling Systems, LLC,
a Delaware limited liability company

By: [Signature]
Print Name: Matt Spencer
Title: CEO

ACKNOWLEDGEMENT

STATE OF Illinois)
) ss.
COUNTY OF Cook)

On this 21 day of November, 2023, before me, the undersigned officer, personally appeared Nicole Hess Matt Spencer, who acknowledged himself/herself to be the CEO of Lakeshore Recycling Systems, LLC, a Delaware limited liability company, and that such individual, as such CEO, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing his/her name on behalf of such limited liability company.

In witness whereof, I hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires: 08/17/2026




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BORROWER:

**5505 Pearl Street LLC,
an Illinois limited liability company**

**By: Interstate Hotel Group, LLC,
an Illinois limited liability company,
its Manager**

By: 
Gary R. Janko,
its Manager

ACKNOWLEDGEMENT

STATE OF ILLINOIS)

COUNTY OF COOK Lake) ss

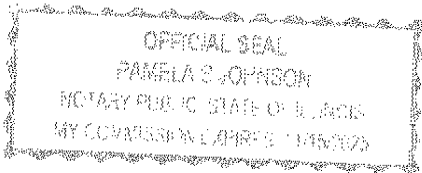
On this 21st day of November, 2023, before me personally appeared Gary R. Janko, as manager of Interstate Hotel Group, LLC, an Illinois limited liability company, as manager of 5505 Pearl Street LLC, an Illinois limited liability company, and executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability companies, and that said individual is authorized to execute said instrument on behalf of said limited liability companies.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.



Notary Public for the State of Illinois

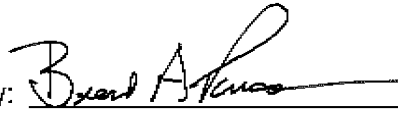
My Commission Expires: 11/16/2025



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LENDER:

Academy Bank, N.A.

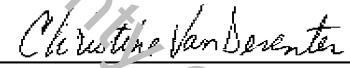
By: 
Print Name: Brent A. Parsons
Title: Senior Vice President

ACKNOWLEDGEMENT

STATE OF MISSOURI)
)ss.
COUNTY OF JACKSON)

On this 21st day of November 2023, before me, the undersigned officer, personally appeared Brent A. Parsons, who acknowledged himself to be the Senior Vice President of **Academy Bank, N.A.**, and that he, as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of such bank by himself as such officer.

In witness whereof, I hereunto set my hand and official seal.


Notary Public

My Commission Expires: August 25, 2026

CHRISTINE VANDEVENTER
Notary Public - Notary Seal
STATE OF MISSOURI
Ray County
My Commission Expires: Aug, 25, 2026
Commission #14010442

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EXHIBIT A

Property

LOT 1 IN ROSEMONT CROSSINGS II, BEING A RESUBDIVISION OF LOT 1 AND LOT 2 IN ROSEMONT CROSSINGS I, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO PLAT OF RESUBDIVISION THEREOF RECORDED JANUARY 21, 2010 AS DOCUMENT 1002144041, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office