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Cook County Recorder of Deeds
Date: 06/11/2007 01:37 PM Pg: 1 of 28

This instrument was prepared by and after recording should be returned to:

Andrew F. Lampert
Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603

SPACE ABOVE THIS LINE FOR RECORDER'S USE.

83 71421028K ③

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

by

PHWD REALTY, LLC, as mortgagor

to

**MERRILL LYNCH CAPITAL, a
Division of Merrill Lynch Business Financial Services Inc., as mortgagee**

Dated: As of June 5, 2007
Location: 3500 South Giles Avenue
Chicago, Illinois
County: Cook County

Box 400-CTCC

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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Security Document**") is made as of this 5th day of June, 2007, by PHWD Realty, LLC, an Illinois limited liability company, having its principal place of business at 3500 South Giles Avenue, Chicago, Illinois 60653, as mortgagor ("**Borrower**"), for the benefit of **MERRILL LYNCH CAPITAL, a Division of Merrill Lynch Business Financial Services Inc.**, a Delaware corporation, its successors and assigns (in its individual capacity as a lender, "**Merrill Lynch**"), having an address at 222 N. LaSalle Street, 16th Floor, Chicago, Illinois 60601, as mortgagee, in its capacity as agent (and in such capacity, "**Agent**" for Lender (as defined below). All capitalized terms not defined herein shall have the respective meanings set forth in the Credit Agreement (defined below).

RECITALS:

A. This Security Document is given to secure a loan (the "**Loan**") in the principal sum of Ten Million Seven Hundred Fifty Thousand and No/100 Dollars (\$10,750,000.00) advanced pursuant to that certain Credit and Security Agreement dated as of the date hereof (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Borrower, Agent, Merrill Lynch, and the other financial institutions who are or hereafter become parties to the Credit Agreement (together with Merrill Lynch, collectively or individually, as the context may require, referred to herein as "**Lender**"); and evidenced by that certain Term Note, dated the date hereof, made by Borrower in favor of Lender (such Term Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the "**Note**").

B. Borrower desires to secure the (1) payment of the Note together with all interest, premiums, the Exit Fee (as defined in the Credit Agreement) and other amounts, if any, due from Borrower and any Guarantor in accordance with the terms of the Credit Agreement and the Note, as well as the payment of any additional indebtedness accruing to Agent and Lender on account of any future payments, advances or expenditures made by Agent and Lender pursuant to the Note, the Credit Agreement or this Security Document or any of the other Financing Documents or otherwise in connection with the Loan (all payment obligations are hereinafter referred to as the "**Indebtedness**"), and (2) the performance of all obligations under the Note, the Credit Agreement and the other Financing Documents by Borrower and any Guarantor.

C. This Security Document is given pursuant to the Credit Agreement, and payment, fulfillment, and performance by Borrower of obligations thereunder and under the other Financing Documents are secured hereby.

ARTICLE I - GRANTS OF SECURITY

1.1 Property Mortgaged. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Agent, for the benefit of Agent and Lender with power of sale and with right of entry and possession, in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

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(a) Land. The real property described in Exhibit A attached hereto and made a part hereof together with all existing and future easements and rights affording access to it (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Document;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) Easements. All existing and future easements, rights-of-way or use, franchises and tenements, rights, including all minerals rights, oil, gas, and associated substances, and other commercially valuable substances which may be in, under or produced from any part of the Land, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, (whether riparian, appropriative or otherwise, and whether or not appurtenant), air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All goods, materials, supplies, work in process, chattels, machinery, equipment, appliances, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furniture and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State of Illinois (the "**UCC**"), and all proceeds and products of the above;

(f) Leases and Rents. All existing and future leases, subleases, subtenancies, lettings, licenses, occupancy agreements, service agreements which include an occupancy agreement, concessions or other agreements (whether written or oral, nor or at any

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time, in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, or other agreements entered into in connection with such leases, subleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, prepayments, tax, insurance and replacement reserve deposits, receipts, termination, cancellation, and option payments, service reimbursements, fees, accounts receivables, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness;

(g) Insurance Proceeds. All Insurance Proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(h) Condemnation Awards. All awards and any compensation, including interest thereon, which may heretofore and hereafter be made or paid with respect to the Property by reason of Taking, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Agent and Lender in the Property as well as all claims, demands, judgments, refunds, reserves, accounts receivable, cost savings, deposits, rights of action, awards of damages, compensation, settlements and other rights to the payment of money hereafter made resulting from or relating to (i) any damage (whether caused by such taking, by casualty or otherwise) to the Land, Improvements or appurtenances thereto or any part thereof, or (ii) the ownership or operation of the Property;

(k) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, purchase and sale agreements, purchase options, entitlements, soil test reports, other reports of examination or analysis of the Land or the Improvements, development rights and authorizations, however

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characterized, now or hereafter issued, furnished or entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including building permits, environmental certificates, certificates of operation, warranties and guaranties; and including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(l) Intangibles. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(m) UCC. All of the following types of collateral, as defined in the UCC: accounts, general intangibles, chattel paper, documents, instruments, inventory, goods, equipment, investment property, deposit accounts, letter of credit rights, commercial tort claims, health-care-insurance receivables and all books and records relating to the foregoing; *provided, however,* that Borrower will cooperate with Agent in obtaining "control" as defined in the Code with respect to collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper;

(n) Accounts and Deposits. All of Borrower's interest in and to all operating accounts, the Loan funds, whether disbursed or not and all reserves, escrows and deposit accounts maintained by Borrower with respect to the Property including, without limitation, the Deposit Account and any accounts established pursuant to the Credit Agreement together with all deposits or wire transfers made to any Deposit Account and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof and any other monies on deposit with or for the benefit of Agent or Lender, including deposits for the payment of real estate taxes, insurance premiums or capital expenditures and any cash collateral account, and bank accounts of Borrower;

(o) Books and Records. All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory;

(p) Proceeds. All proceeds and products and renewals of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above, including, without limitation, all proceeds of the conversion, voluntary or involuntary, of any of the foregoing items set forth in subsections (a) through (m) including, without limitation, Insurance Proceeds and Awards, into cash or liquidation claims;

(q) After-Acquired Property. Any and all after-acquired right, title or interest of Borrower in and to any property of the types described in the preceding granting clauses; and

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(r) Other Rights. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (q) above.

1.2 Assignment of Rents. Borrower hereby absolutely and unconditionally assigns to Agent, for the benefit of Agent and Lender, all of Borrower's right, title and interest in and to all current and future Leases and Rents and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Borrower hereby gives Agent the right to collect the Rents and apply them in payment of the principal, interest and all other sums payable under the Financing Documents. Nevertheless, subject to the terms of the Credit Agreement and Section 8.1(h), Agent grants to Borrower a revocable license to collect, receive, use and enjoy the Rents (excluding, however, any Lease termination, cancellation, option or similar payments, which Borrower agrees shall be held in trust and turned over to Agent for the benefit of Agent and Lender for credit to principal under the loan) so long as no Event of Default (as defined in Section 7.1 below) shall exist and be continuing and Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness, for use in the payment of such sums as such sums become due.

1.3 Collection and Application of Rents. Subject to the license granted to Borrower under Section 1.2 above, Agent has the right, power and authority to collect any and all Rents. Borrower hereby appoints Agent its attorney-in-fact to perform any and all of the following acts, if and at the times when Agent in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Demand, receive and enforce payment of any and all Rents; or
- (c) Sue either in the name of Borrower or in the name of Agent, on behalf of Agent and Lender, for any and all Rents.

Agent and Borrower agree that the mere recordation of the assignment granted herein entitles Agent immediately to collect and receive rents upon the occurrence of an Event of Default, as defined in Section 7.1, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Borrower, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Agent's right to the Rents does not depend on whether or not Agent takes possession of the Property as permitted under Section 8.1(h). In Agent's sole discretion, Agent may choose to collect Rents either with or without taking possession of the Property. If an Event of Default occurs while Agent is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Security Document, Agent and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Security Document and at law or in equity. If an Event of Default has occurred and is continuing, Agent shall have the right, which it may choose to exercise in its sole discretion and which it may exercise without taking possession of the Property, to terminate this license without notice to or demand upon Borrower, and without regard to the adequacy of Lender's security under this Security Document.

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1.4 Security Agreement. This Security Document is both a real property mortgage and a “security agreement” within the meaning of the UCC. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Document, Borrower hereby grants to Agent, for the benefit of Agent and Lender, as security for the Obligations (hereinafter defined), a security interest in the Property to the full extent that the Property may be subject to the UCC.

1.5 Fixture Filing. Certain of the Property is or will become “fixtures” (as that term is defined in the UCC) on the Land, and this Security Document, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said UCC upon such of the Property that is or may become fixtures. For this purpose, the respective addresses of Borrower, as debtor, and Agent, for the benefit of Agent and Lender, as secured party, are as set forth in the preambles of this Security Document.

1.6 Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Agent and Lender and their respective successors and assigns, forever; *provided, however*, these presents are upon the express condition that, if Borrower shall well and truly pay to Agent the Indebtedness at the time and in the manner provided in the Note, the Credit Agreement, this Security Document and the other Financing Documents, shall well and truly perform the Other Obligations (as defined in Section 2.2 below) as set forth in this Security Document and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Credit Agreement and the other Financing Documents, these presents and the estate hereby granted shall cease, terminate and be void; *provided, however*, that Borrower’s obligation to indemnify and hold harmless Agent and Lender pursuant to the provisions hereof and the other Financing Documents shall survive any such payment or release.

ARTICLE II - INDEBTEDNESS AND OBLIGATIONS SECURED

2.1 Indebtedness. This Security Document and the grants, assignments and transfers made in Article I are given for the purpose of securing the Indebtedness.

2.2 Other Obligations. This Security Document and the grants, assignments and transfers made in Article I are also given for the purpose of securing the payment and performance of the following (the “**Other Obligations**”): (a) all other obligations of Borrower contained herein; (b) each obligation of Borrower and Guarantor contained in the Credit Agreement and any other Financing Document; (c) each obligation of each Borrower and Guarantor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Credit Agreement or any other Financing Document; (d) all future advances and other obligations that Borrower or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Agent, on behalf of Agent and Lender, when a writing evidences the parties’ agreement that the advance or obligation be secured by this Security Document; and (e) payment of any and all loan commissions, service charges,

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liquidated damages, expenses per Section 12.1 in the Credit Agreement and advances due to or incurred by Agent and Lender regardless of whether any Loan proceeds have been disbursed.

2.3 Indebtedness and Other Obligations. Borrower's and Guarantor's obligations for the payment of the Indebtedness and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations.**"

2.4 Payment of Indebtedness. Borrower will pay the Indebtedness at the time and in the manner provided in the Credit Agreement, the Note, this Security Document and the other Financing Documents, as applicable.

2.5 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Credit Agreement, (b) the Note and (c) all and any of the other Financing Documents, are hereby made a part of this Security Document to the same extent and with the same force as if fully set forth herein.

ARTICLE III- PROPERTY REPRESENTATION, WARRANTIES AND COVENANTS

Borrower represents, warrants, covenants and agrees that:

3.1 Warranty of Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear of all Liens whatsoever except the Permitted Liens, such other Liens as are permitted pursuant to the Financing Documents and the Liens created by the Financing Documents. This Security Document, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority Lien on the Property, subject only to Permitted Liens, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Liens, such other Liens as are permitted pursuant to the Financing Documents and the Liens created by the Financing Documents. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the Lien of this Security Document and shall forever warrant and defend the same to Agent and Lender against the claims of all Persons whomsoever.

3.2 Payment for Labor and Materials. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any Lien or security interest, even though inferior to the Liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests hereof except for the Permitted Liens.

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ARTICLE IV - FURTHER ASSURANCES

4.1 Compliance With Credit Agreement. Borrower shall comply with the covenants set forth in of the Credit Agreement in order to protect and perfect the Lien or security interest hereof upon, and in the interest of Agent and Lender in, the Property.

4.2 Authorization to File Financing Statements; Power of Attorney. Borrower hereby authorizes Agent at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the Property. For purposes of such filings, Borrower agrees to furnish any information requested by Agent promptly upon request by Agent. Borrower also ratifies its authorization for Agent to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of this Security Document. Borrower hereby irrevocably constitutes and appoints Agent, on behalf of Agent and Lender, and any officer or agent of Agent, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any such documents and otherwise to carry out the purposes of this Section 4.2, to the extent that Borrower's authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of this Section 4.2. This power of attorney is a power coupled with an interest and shall be irrevocable.

4.3 Compensation; Indemnification.

(a) Borrower agrees to pay reasonable fees as may be charged by Agent and Lender, for any services that Agent and Lender may render in connection with this Security Document, as more particularly set forth in the Credit Agreement. Borrower further agrees to pay or reimburse Agent and Lender for all costs, expenses and other advances which may be incurred or made by Agent and Lender in any efforts to enforce any terms of this Security Document or to protect the rights under this Security Document or the other Financing Documents, including any rights or remedies afforded to Agent and Lender under Section 8.1, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Security Document, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Section 8.2 below) and any cost of evidence of title. If Agent chooses to dispose of Property through more than one Foreclosure Sale, Borrower shall pay all costs, expenses or other advances that may be incurred or made by Agent and Lender in each of such Foreclosure Sales.

(b) Neither Agent nor Lender shall be directly or indirectly liable to Borrower or any other person as a consequence of any of the following:

(i) Agent's or Lender's exercise of or failure to exercise any rights, remedies or powers granted to Agent or Lender in this Security Document;

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(ii) Agent's or Lender's failure or refusal to perform or discharge any obligation or liability of Borrower under any agreement related to the Property or under this Security Document; or

(iii) Any loss sustained by Borrower or any third party resulting from Agent's failure to lease the Property, or from any other act or omission of Agent in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence or bad faith of Agent.

Borrower hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Agent or Lender.

(c) Borrower agrees to indemnify, defend and hold Agent and Lender harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

(i) In performing any act required or permitted by this Security Document or any of the other Financing Documents or by law upon the occurrence and continuance of an Event of Default;

(ii) Because of any failure of Borrower to perform any of its obligations; or

(iii) Because of any alleged obligation of or undertaking by Agent or Lender to perform or discharge any of the representations, warranties, conditions, covenants or other obligations of Borrower in any document relating to the Property other than the Financing Documents.

This agreement by Borrower to indemnify Agent and Lender shall survive the release and cancellation of any or all of the Obligations and the full or partial release of this Security Document.

(d) Borrower shall pay all obligations to pay money arising under this Section 4.3 within five (5) days upon demand by Agent. Each such obligation, if not timely paid, shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the default rate of interest set forth in Section 11.4 of the Credit Agreement (the "**Default Rate**").

ARTICLE V - DUE ON SALE/ENCUMBRANCE

5.1 No Sale/Encumbrance. Borrower shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property or any part thereof, Borrower or any

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Affiliate thereof other than in accordance with the Credit Agreement, without the prior written consent of Agent.

ARTICLE VI - PREPAYMENT

6.1 Prepayment. The Indebtedness may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note and the Credit Agreement, which terms and conditions may include payment of a prepayment premium.

ARTICLE VII - DEFAULT

7.1 Event of Default. The term "Event of Default" as used in this Security Document shall have the meaning assigned to such term in the Credit Agreement.

ARTICLE VIII - RIGHTS AND REMEDIES UPON DEFAULT

8.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Agent, on behalf of Agent and Lender may take such action, without notice or demand, as it seems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Agent, on behalf of Agent and Lender, may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Agent, on behalf of Agent and Lender:

- (a) declare the entire unpaid indebtedness to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Document under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Document for the portion of the Indebtedness then due and payable, subject to the continuing lien and security interest of this Security Document for the balance of the Indebtedness not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof, including any Property that constitutes personal property, and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Credit Agreement or in the other Financing Documents;

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(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Document or the other Financing Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, without notice and without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of any Borrower, Guarantor or any other Person liable for the payment of the Indebtedness (and Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment) and such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Agent would have, upon entering and taking possession of the Property under Section 8.1(h) below;

(h) if an Event of Default exists, Agent may revoke the license granted to Borrower under Section 1.2 hereof and Agent may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and may also do any and all other things in connection with those actions that Agent, on behalf of Agent and Lender may in its sole discretion consider necessary and appropriate to protect the security of this Security Document and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Agent upon demand, and thereupon Agent may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Agent and Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Agent, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Agent or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; (vii) apply the receipts from the Property to the payment of the Indebtedness, in such order, priority and proportions as Agent shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, all ground rent, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof (collectively, "**Other Charges**"), insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Agent, its counsel, agents and employees and (viii) if Agent so requests, Borrower shall assemble all of the Property that has been removed from the Land and make all of it available to

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Agent at the site of the Land and in furtherance thereof, Borrower hereby irrevocably constitutes and appoints Agent as Borrower's attorney-in-fact to perform such acts and execute such documents as Agent in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Borrower's name on any instruments;

(i) exercise any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing: (i) the right to take possession of the personal property constituting part of the Property, or any part thereof, and to take such other measures as Agent and Lender may deem necessary for the care, protection and preservation of such personal property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Agent at a convenient place acceptable to Agent. Any notice of sale, disposition or other intended action by Agent with respect to such personal property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Agent and Lender in accordance with the terms of the Credit Agreement, this Security Document or any other Financing Document to the payment of the following items in any order in its uncontrolled discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, the Credit Agreement, this Security Document and the other Financing Documents, including without limitation advances made by Lender pursuant to the terms of this Security Document;

(k) surrender the insurance policies maintained pursuant to the Credit Agreement, collect the unearned insurance premiums for the Policies and apply such sums as a credit on the Indebtedness in such priority and proportion as Agent in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Agent, on behalf of Agent and Lender, as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such insurance premiums;

(l) pursue such other remedies as Agent and Lender may have under applicable law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Document shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Article 11 of the Credit Agreement shall occur, the entire unpaid Indebtedness shall be automatically due and payable, without any further notice, demand or other action by Agent.

8.2 Foreclosures.

(a) Lawsuits. Agent, on behalf of Agent and Lender, shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Obligations, or any part thereof, by any proceedings

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appropriate under applicable law. Agent, on behalf of Agent and Lender or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Agent's successful bid shall be credited on the Obligations. Without limiting the foregoing, Agent may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect (i) the Indebtedness, or any part thereof or (ii) any deficiency remaining unpaid after foreclosure and sale of the Property. To the extent a notice of sale shall be required by law for the sale or disposition of the Personal Property, a reasonable authenticated notification of disposition shall be notification given at least ten (10) days' prior to any such sale, *provided however*, that no notification need be given to Borrower if it has authenticated after default a statement renouncing or modifying any right to notification of sale or other intended disposition.

(b) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Agent may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Agent may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale**"; and any two or more, "**Foreclosure Sales**").

If Agent chooses to have more than one Foreclosure Sale, Agent at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Agent may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Security Document on any part of the Property which has not been sold, until all of the Obligations have been paid in full.

Agent and any receiver, or any of their agents or representatives, shall have no liability for any loss, damage, injury, cost or expenses resulting from any action or omission that was taken or omitted in good faith.

(c) Credit Bids. At any Foreclosure Sale, any person, including Borrower or Agent, on behalf of Agent and Lender, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Agent may settle for the purchase price by crediting the sales price of the property against the following obligations:

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(i) First, the portion of the Obligations attributable to the expenses of sale, costs of any action and any other sums for which Borrower is obligated to pay or reimburse Agent under Section 4.3; and

(ii) Second, all other Obligations in any order and proportions as Agent in its sole discretion may choose.

8.3 Sale of Personal Property.

(a) For purposes of power of sale described in Section 8.1(d) above, Agent may elect to treat as personal property any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Agent may dispose of any personal property, in any manner permitted by Article 9 of the UCC, including any public or private sale, or in any manner permitted by any other applicable law.

(b) In connection with any sale or other disposition of such Property, Borrower agrees that the following procedures constitute a commercially reasonable sale: Agent shall mail written notice of the sale to Borrower not later than thirty (30) days prior to such sale. Agent will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Agent will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Agent shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

8.4 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Agent and Lender pursuant to the Note, this Security Document or the other Financing Documents, may be applied by Agent to the payment of the Indebtedness in such priority and proportions as Agent in its discretion shall deem proper.

8.5 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Agent may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Agent may deem necessary to protect the security hereof. Agent is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Document or collect the Indebtedness, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.5, shall constitute a portion of the Indebtedness and shall be due and payable to Agent upon demand. All such costs and expenses incurred by Agent in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Agent that such cost or expense was incurred to the date of payment to Agent. All such costs and expenses incurred by Agent together with interest thereon

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calculated at the Default Rate shall be deemed to constitute a portion of the Indebtedness and be secured by this Security Document and the other Financing Documents and shall be immediately due and payable upon demand by Agent therefor.

8.6 Actions and Proceedings. Agent has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Agent, in its discretion, decides should be brought to protect its interest in the Property.

8.7 Recovery of Sums Required To Be Paid. Upon the occurrence and continuance of an Event of Default, Agent shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as the same become due, without regard to whether or not the balance of the Indebtedness shall be due, and without prejudice to the right of Agent thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

8.8 Other Rights Etc.

(a) The failure of Agent to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Document. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Agent to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Document or otherwise enforce any of the provisions hereof or of the Note or the other Financing Documents, (ii) the release, alteration or substitution, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Indebtedness or any portion thereof, (iii) any agreement or stipulation by Agent extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Document or the other Financing Documents, (iv) the acceptance by Agent of additional real or personal property of any kind as security for any Obligation, whether evidenced by mortgages, deeds of trust, Security Documents, security agreements or any other instruments of security, (v) the consent by Agent to the making of any plat or map of the Property or any part of it, (vi) Agent joining in granting any easement or creating any restriction affecting the Property, and (vii) Agent joining in any subordination or other agreement affecting this Security Document or the lien of it.

(b) It is agreed that prior to the actual taking of possession by Agent of the Property, the risk of loss or damage to the Property is on Borrower, and Agent shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Agent shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Agent's possession.

(c) Agent's may resort for the payment of the Indebtedness to any other security held by Agent in such order and manner as Agent, in its discretion, may elect. Agent may take action to recover the Indebtedness, or any portion thereof, or to enforce any

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covenant hereof without prejudice to the right of Agent thereafter to foreclose this Security Document. The rights of Agent under this Security Document shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Agent shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Agent shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

8.9 Right to Release Any Portion of the Property. Agent may release any portion of the Property for such consideration as Agent may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Document, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Agent for such release, and may accept by assignment, pledge or otherwise any other property in place hereof as Agent may require without being accountable for so doing to any other lienholder. This Security Document shall continue as a lien and security interest in the remaining portion of the Property.

8.10 Right of Entry. Upon reasonable notice to Borrower, Agent and its agents shall have the right to enter and inspect the Property at all reasonable times upon twenty-four (24) hours prior notice to Borrower.

8.11 Bankruptcy.

(a) Upon or at any time after the occurrence of an Event of Default, Agent shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Agent not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Agent shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Agent demands that Borrower assume and assign the Lease to Agent pursuant to Section 365 of the Bankruptcy Code and (ii) Agent covenants to cure or provide adequate assurance of future performance under the Lease. If Agent serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Agent of the covenant provided for in clause (ii) of the preceding sentence.

8.12 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Agent, for the benefit of Agent and Lender, shall be subrogated

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to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Agent, for the benefit of Agent and Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness, the performance and discharge of Borrower's obligations hereunder, under the Credit Agreement, the Note and the other Financing Documents and the performance and discharge of the Other Obligations.

ARTICLE IX- ENVIRONMENTAL HAZARDS

9.1 Environmental Covenants. Borrower has provided representations and warranties regarding environmental matters set forth in Section 3.18 of the Credit Agreement and shall comply with the covenants regarding environmental matters set forth in Section 4.10 of the Credit Agreement.

9.2 Lender's Rights. Agent and any other person or entity designated by Lender, including but not limited to any representative of a Governmental Authority, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Agent's sole discretion); provided that the taking of samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing shall be performed after consultation with Borrower. Borrower shall cooperate with and provide access to Agent and any such person or entity designated by Agent.

ARTICLE X - WAIVERS

10.1 Marshalling and Other Matters. Borrower hereby waives, to the extent permitted by law, the benefit of all Laws now or hereafter in force regarding appraisal, valuation, stay, extension, reinstatement, any so-called "Moratorium Laws," and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Document on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Document and on behalf of all persons to the extent permitted by Legal Requirements.

10.2 Waiver of Homestead and Redemption. Borrower hereby waives all right of homestead exemption in the Property. Borrower hereby waives all right of redemption on behalf of Borrower and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Security Document, except decree or judgment creditors of Borrower.

10.3 Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Agent except with respect to matters for which this Security Document

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or the Credit Agreement specifically and expressly provides for the giving of notice by Agent to Borrower and except with respect to matters for which Borrower is not permitted by Legal Requirements to waive its right to receive notice, and Borrower hereby expressly waives the right to receive any notice from Agent with respect to any matter for which this Security Document does not specifically and expressly provide for the giving of notice by Lender to Borrower.

10.4 Waiver of Statute of Limitations. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Indebtedness or performance of its Other Obligations.

10.5 Sole Discretion of Agent. Whenever pursuant to this Security Document Agent exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Agent, the decision of Agent to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Agent and shall be final and conclusive.

10.6 WAIVER OF TRIAL BY JURY. BORROWER, AGENT AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE FINANCING DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AGENT AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF AGENT, LENDER AND BORROWER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER, AGENT AND LENDER.

10.7 Waiver of Foreclosure Defense. Borrower hereby waives any defense Borrower might assert or have by reason of Agent's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Agent.

ARTICLE XI- NOTICES

11.1 Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 13.3 of the Credit Agreement.

ARTICLE XII - APPLICABLE LAW

12.1 Governing Law. The creation, perfection and enforcement of the lien of this Security Document shall be governed by the law of the State in which the property is located. Subject to the foregoing, in all other respects, this Security Document shall be governed

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by the substantive laws of the State of Illinois and applicable laws of the United States of America.

12.2 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Document may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Document invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Document or any application thereof shall be invalid or unenforceable, the remainder of this Security Document and any other application of the term shall not be affected thereby.

ARTICLE XIII - DEFINITIONS

13.1 Defined Terms. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Document may be used interchangeably in singular or plural form and the word "Borrower" shall mean "Borrower and any subsequent permitted owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Document," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Agent in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.1 No Oral Change. This Security Document, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Agent, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

14.2 Successors and Assigns. This Security Document shall be binding upon and inure to the benefit of Borrower and Agent and their respective successors and assigns forever.

14.3 Inapplicable Provisions. If any term, covenant or condition of the Credit Agreement, the Note or this Security Document is held to be invalid, illegal or unenforceable in any respect, the Credit Agreement, the Note and this Security Document shall be construed without such provision.

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14.4 Headings, etc. The headings and captions of various Sections of this Security Document 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.

14.5 Number and Gender. 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.

14.6 Entire Agreement. This Security Document and the other Financing Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Borrower and Agent are superseded by the terms of this Security Document and the other Financing Documents.

14.7 Limitation on Agent's Responsibility. Absent the actual taking of possession of the Property by Agent, no provision of this Security Document shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Agent, nor shall it operate to make Agent responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Agent a "mortgagee in possession," absent the actual taking of possession by Agent.

14.8 Joint and Several Liability. If Borrower consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Borrower's obligations under this Security Document and the other Financing Documents.

14.9 Merger. No merger shall occur as a result of Agent or Lender's acquiring any other estate in or any other lien on the Property unless Agent or Lender consents to a merger in writing.

14.10 Future Advances. This Security Document is given to secure not only the existing Indebtedness, but also future advances (whether such advances are obligatory or are made at the option of Agent, or otherwise) made by Agent under the Note or this Security Document, to the same extent as if such future advances were made on the date of the execution of this Security Document. The total amount of Indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Agent may, but shall not be obligated to, make under this Security Document, the Financing Documents or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed five (5) times the aggregate face amount of the Note. This Security Document shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

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ARTICLE XV - STATE SPECIFIC PROVISIONS

15.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this ARTICLE XV and the terms and conditions of this Security Document, the terms and conditions of this ARTICLE XV shall control and be binding.

15.2 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Borrower agrees, to the full extent permitted by law, that in case of an Event of Default, neither Borrower nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisal, valuation, stay or extension laws now or hereafter in force, or take any other action that would prevent or hinder the enforcement or foreclosure of this Security Document or the absolute sale of the Property, or the final and absolute delivery of possession thereof, immediately after such foreclosure sale, of the purchaser thereat. Borrower, for itself and all who may, at any time, claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Property marshaled upon any foreclosure of the lien hereof, and agrees that Agent or any court having jurisdiction to foreclose such lien may sell the Property in part or as an entirety. Borrower acknowledges that the transaction of which this Security Document is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.; the "Foreclosure Act") or residential real estate (as defined in Section 15-1219 of the Foreclosure Act). On behalf of Borrower, and each and every person acquiring any interest in, or title to, the Property subsequent to the date of this Security Document, and on behalf of all other persons, to the maximum extent permitted by applicable law, Borrower hereby waives any and all rights: (a) of redemption from any foreclosure, or other disposition of any kind or nature, of the Property, or any part thereof, or interest therein, under or pursuant to rights herein granted to Agent; and (b) to reinstatement of the Indebtedness, including, without limitation, any right to reverse any acceleration of the Indebtedness pursuant to 735 ILCS 5/15-1602. All waivers by Borrower in this Security Document have been made voluntarily, intelligently and knowingly by Borrower, after Borrower has been afforded an opportunity to be informed by counsel of Borrower's choice as to possible alternative rights. Borrower's execution of this Security Document shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

15.3 Receiver. If an Event of Default shall have occurred and be continuing, Agent, upon application to a court of competent jurisdiction, shall be entitled, as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Indebtedness, or the insolvency of any party bound for its payment, to the appointment of a receiver to take possession of, and to operate, the Property, and to collect and apply the Rents and other benefits thereof. The receiver shall have all rights and powers to the fullest extent permitted by law. Borrower shall pay to Agent, upon demand, all of Agent's costs and expenses, including, without limitation, receiver's fees and expenses and attorneys' fees and expenses, incurred pursuant to this Section, plus interest thereon at the Default Rate, and all such amounts shall be additional Indebtedness.

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15.4 Use of Proceeds. Borrower hereby represents and agrees that the proceeds of the Note secured by this Security Document will be used for the purposes specified in the Illinois Interest Act, 815 ILCS §205/4(1), and the Indebtedness constitutes a business loan which comes within the purview of said Section 205/4(c).

15.5 Illinois Mortgage Foreclosure Law.

(a) In the event any provision in this Security Document shall be inconsistent with any provision of the Foreclosure Act, the provisions of the Foreclosure Act shall take precedence over the provisions of this Security Document, but shall not invalidate or render unenforceable any other provision of this Security Document that can be construed in a manner consistent with the Foreclosure Act.

(b) If any provision of this Security Document shall grant to Agent any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Agent under the Foreclosure Act in the absence of said provision, Agent shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Agent to the extent reimbursable under Sections 15-1510 and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Security Document, shall be added to the indebtedness secured by this Security Document or by the judgment of foreclosure.

15.6 Illinois Collateral Protection Act. Unless Borrower provides Agent with evidence of the insurance coverage required by this Security Document, if any, Agent may purchase insurance at Borrower's expense to protect Agent's interests in the Property. This insurance may, but need not, protect Borrower's interest. The coverage that Agent purchases may not pay any claim that Borrower may make or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained insurance as required by this Security Document. If Agent purchases insurance for the Property, Borrower will be responsible for the costs of such insurance, including interest and any other charges that may be imposed in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Security Document or any other Financing Document, the cost of such insurance shall be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

15.7 Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to Twenty One Million Five Hundred Thousand Dollars and No/100ths (\$21,500,000.00); provided, however, in no event shall Lender be obligated to advance funds in excess of the face amount of the Note.

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15.8 Maturity Date. The Loan has a Commitment Expiry Date of June 5, 2009, which date may be extended for two (2) additional twelve (12) month periods pursuant to Section 2.1(b) of the Loan Agreement until June 5, 2011.


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IN WITNESS WHEREOF, this Security Document has been executed by Borrower as of the day and year first above written.

PHWD REALTY, LLC

By: 
Name: Benjamin M. Klein
Title: Manager

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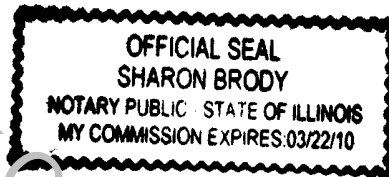
Mortgage Signature Page

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledged before me this 7 day of June, 2007, by Benjamin M. Klein, Manager of PHWD Realty, LLC, an Illinois limited liability company, on behalf of the company.

Sharon Brody
Notary Public



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EXHIBIT A

(Legal Description)

Common Address:
P.I.N.:

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LEGAL DESCRIPTION

PARCEL 1:

LOTS 1, 2, 3 AND 4, ALL INCLUSIVE, IN COUNTY CLERK'S DIVISION OF THE EAST 1/2 OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS (EXCEPTING THAT PART THEREOF TAKEN AND USED FOR PUBLIC ALLEY PURPOSES).

PARCEL 2:

LOTS 1 AND 2 IN DALES SUBDIVISION OF THE WEST 1/2 OF THE EAST 1/2 OF THE NORTH 10 ACRES OF NELSON'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 3 AND 4 IN DALES SUBDIVISION OF THE WEST 1/2 OF THE EAST 1/2 OF THE NORTH 10 ACRES OF NELSON'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINS:: 17-34-310-002-0000; 17-34-310-003-0000; 17-34-310-004-0000; 17-34-310-055-0000; 17-34-310-056-0000; 17-34-310-057-0000; 17-34-310-058-0000.

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