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Doc#: 0718740043 Fee: \$38.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 07/06/2007 09:57 AM Pg: 1 of 8

Prepared by:
Robert W. Mouton
Locke Liddell & Sapp LLP
601 Poydras Street, Suite 2660
New Orleans, LA 70130
File: #590924.01497

Record and Return to:
Kathryn Thompson
Land America/Lawyers Title Insurance Company
LTIC/Commercial Secured Party Solutions
5600 Cox Road
Glen Allen, Virginia 23060
Phone: 1.804.267.2049
Fax: 1.804.267.2330
File: #10979932
Unison Site: #336680

BOX 162 O'Connor Title Services, Inc.

NON-DISTURBANCE
AND ATTORNMENT AGREEMENT AND
PARTIAL RELEASE OF ASSIGNMENT OF LEASES AND RENTS

7186-0039

THIS AGREEMENT (the "Agreement") is made as of the 29th day of June, 2007 ("Effective Date") by and among Phillip J. Luciani and Patricia Luciani, whose address is 1725 Galloway Circle, Inverness, Illinois 60010 (hereinafter collectively referred to as "Lender"), T2 Unison Site Management LLC, a Delaware limited liability company (hereinafter referred to as "Unison"), whose address is 92 Thomas Johnson Drive, Suite 130, Frederick, Maryland 21702, and Payel Corporation, an Illinois corporation, whose address is 1725 Galloway Circle, Inverness, Illinois 60010 (hereinafter referred to as "Site Owner").

WITNESSETH:

WHEREAS, Lender has made a loan to Site Owner (such loan and any renewal, substitution, extension or replacement thereof being hereinafter collectively called the "Loan") in the of amount Fifty Thousand and No/100 (\$50,000.00) Dollars, which is secured by, *inter alia*, that certain Mortgage by Payel Corporation in favor of First American Bank, to secure indebtedness in the amount of \$50,000.00, dated February 7, 2001 and recorded April 2, 2001, Official Records of Cook County, Illinois, in Instrument No. 0010260429, which mortgage was assigned by the Assignment of Mortgage to Phillip J. Luciani and Patricia Luciani, dated December 3, 2001 and recorded January 7, 2002, in Instrument No. 0020024157 (such Mortgage and any and all other security interests encumbering the Site Owner's Property, as hereafter defined, securing the Loan and any renewal, substitution, amendment, extension or replacement thereof being hereinafter collectively referred to as the "Mortgage"), upon the tract of land described in **Exhibit "A"** hereto (the "Site Owner's Property"); and

WHEREAS, a portion of the Site Owner's Property (the "Communication Site") is subject to an Easement and Assignment Agreement by and between Site Owner and Unison dated as of June 29th, 2007 (the "Communication Easement") in which said Communication Easement, the Site Owner has assigned to Unison all right, title and interest in and to the Leases set forth on **Exhibit "B"** hereto (the "Assigned Leases"); and

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WHEREAS, the parties hereto desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged by the parties hereto, Lender, Unison and Site Owner hereby agree as follows:

1. **Non-Disturbance.** So long as the Communication Easement is not terminated, Unison's use, possession or enjoyment of the Communication Site, including the collection of rents by Unison, pursuant to the Assigned Leases shall not be interfered with nor shall the easement granted by the Communication Easement be affected in any other manner, in any exercise of any power of sale in the Mortgage, or by foreclosure or any action or proceeding instituted under or in connection with the Mortgage, except that the person or entity acquiring the interest of the Site Owner under the Communication Easement as a result of any such action or proceeding, and the successors and assigns thereof (hereinafter referred to as the "Purchaser") shall not be (a) liable for any act or omission of any prior site owner under the Communication Easement; or (b) subject to any offsets of defenses which Unison under the Communication Easement might have against the prior site owner under the Communication Easement; or (c) bound by any amendment or modification to the Communication Easement made without Lender's prior written consent. **Lender and Site Owner specifically acknowledge that Unison shall have the exclusive right to collect any and all rents due by Tenant(s) under the Assigned Leases, said Assigned Leases being more fully described on Exhibit "B" hereof and, by execution of this instrument, any Assigned Leases are specifically released from that certain Mortgage by Payel Corporation in favor of First American Bank, to secure indebtedness in the amount of \$50,000.00, dated February 7, 2001 and recorded April 2, 2001, Official Records of Cook County, Illinois, in Instrument No. 0010266429, which mortgage was assigned by the Assignment of Mortgage to Phillip J. Luciani and Patricia Luciani, dated December 3, 2001 and recorded January 7, 2002, in Instrument No. 0020024157, and any and all other security interests executed in connection with the aforesaid or otherwise securing the Loan.**
2. **Unison Not To Be Joined In Foreclosure.** So long as the Communication Easement is not terminated, Lender will not join Unison as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Communication Easement and in such event Lender shall reimburse Unison for all reasonable expenses incurred by Unison in connection therewith.
3. **Attornment.** In the event the exercise of the power of sale in the Mortgage, or in the event of foreclosure of the Mortgage, or in event of a conveyance of the Site Owner's Property in lieu of foreclosure, Unison agrees to attorn to and accept the purchaser at the foreclosure sale or the grantee under the conveyance in lieu of foreclosure as the site owner for the balance then remaining of the term of the Communication Easement, subject to all terms and conditions of said Communication Easement and the terms of this Agreement. Said attornment shall be effective and self-operative without the execution of any further instruments upon the succession by Purchaser to the interest of Site Owner under the Communication Easement. The respective rights and obligations of Unison and Lender upon such attornment, shall be and are the same as now set forth in the Communication Easement.
4. **Unison's Tower, Building and Equipment.** Lender hereby acknowledges and agrees that the Mortgage and Assignment does not apply to Unison's Tower(s), Building(s) and Equipment and that removal of said Tower(s), Building(s) and Equipment is governed by the terms of the Communication Easement.
5. **As to Site Owner and Unison.** As between Site Owner and Unison, Site Owner and Unison covenant and agree that nothing contained herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Communication Easement.
6. **As to Site Owner and Lender.** As between Site Owner and Lender, Site Owner and Lender covenant and agree that nothing contained herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Deed of Trust.
7. **Successors and Assigns.** This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their respective heirs, administrators, representatives, successors and assigns, including without limitation each and every holder of the Communication Easement or any other person

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having an interest therein and any purchaser of the Site Owner's Property, including without limitation at or after a foreclosure sale or conveyance in lieu of foreclosure.

8. **Title of Paragraphs.** The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

9. **Provisions Binding.** The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Lender, Unison and Site Owner.

10. **Governing Law.** This Agreement shall be interpreted and governed by the laws of the State in which the Site Owner's Property is located.

11. **Notices.** All notices to be given pursuant to this Agreement shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the addressee addressed as set forth below. Notice so mailed shall be deemed effective upon its deposit. Notice given in any other manner shall be deemed effective only if and when delivered to the addressee.

For Lender:

Phillip J. Luciani and Patricia Luciani
1725 Galloway Circle
Inverness, Illinois 60010

For Site Owner:

Payel Corporation
1725 Galloway Circle
Inverness, Illinois 60010

For Unison:

T2 Unison Site Management LLC
92 Thomas Johnson Drive, Suite 130
Frederick, Maryland 21702

12. **Counterparts.** This Agreement may be signed in multiple counterparts, each of which is an original, but all of which comprise one Agreement.

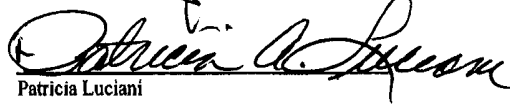
[SIGNATURE PAGES FOLLOW]

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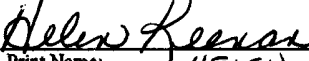
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

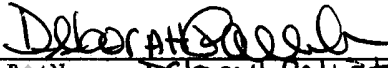
"LENDER":


Phillip J. Luciani


Patricia Luciani

WITNESSES:


Print Name: HELEN KEENAN


Print Name: DEBORAH PALLISTER


Address: 1725 Galloway Circle
City: Inverness
State: Illinois
Zip: 60010
Tel:
Fax:

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

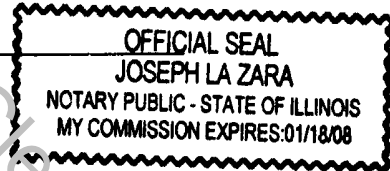
Before me, a notary public in and for said State, appeared Phillip J. Luciani and Patricia Luciani, known to me, or proven to me, who are duly authorized to act on behalf of the Lender in the foregoing Agreement, executed and acknowledged said instrument as their free act and deed on behalf of said Lender.

Given under my hand and seal this 27 day of JUNE, 2007.

My commission expires: _____


Notary Public

[SEAL]



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

WITNESSES:

Helen Keenan
Print Name: HELEN KEENAN

Deborah Palister
Print Name: Deborah PALISTER

"SITE OWNER":

PAYEL CORPORATION,
an Illinois corporation

By: [Signature]
Print Name: PHILIP LUCIANI
Title: PRESIDENT

Address: 2920 South 19th Avenue
City: Broadview
State: Illinois
Zip: 60155
Tel: 847-358-3910
Fax: 847-358-5304

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

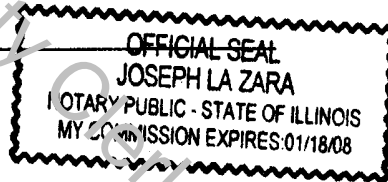
Before me, a notary public in and for said State, appeared PHILIP LUCIANI, known to me, or proven to me, who duly authorized to act on behalf of the Site Owner in the foregoing Agreement, executed and acknowledged said instrument as his/her free act and deed on behalf of said Site Owner.

Given under my hand and seal this 27 day of JUNE, 2007.

My commission expires: _____

[Signature]
Notary Public

[SEAL]

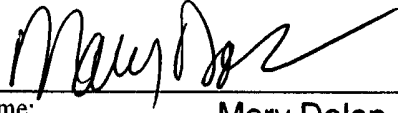


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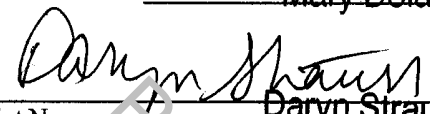
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

“UNISON”:

WITNESSES:

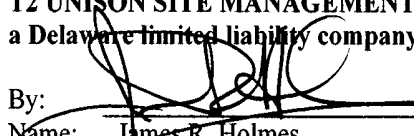


Print Name: Mary Dolan



Print Name: Daryn Strauss

**T2 UNISON SITE MANAGEMENT LLC,
a Delaware limited liability company**

By: 

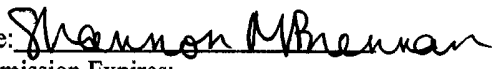
Name: James R. Holmes
Title: Vice President/Secretary

Address: 92 Thomas Johnson Drive, Suite 130,
City: Frederick
State: Maryland
Zip: 21702
Tel: (646) 452-5455
Fax: (301) 360-0635

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the 27th day of June, 2007, before me, the undersigned, a notary public in and for said state, personally appeared James R. Holmes, duly authorized Vice President/Secretary of T2 Unison Site Management LLC, a Delaware limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

WITNESS my hand and official seal.

Signature: 
My Commission Expires: _____
Commission Number: _____

Shannon M. Brennan
Notary Public, State of New York
No. 01BR6146659
Qualified in Orange County
Commission Expires May 22, 2010

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Exhibit "A"

Site Owner's Property

PARCEL 1: The North 340 feet of Block Six in Mares' White and Company's West 22nd Street and 17th Avenue Subdivision of the South East 1/4 of the South West 1/4 of Section 22, Township 39 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2: That part of Block 5 lying Northeasterly and Easterly of Addison Creek in Mares' White and Company's West 22nd Street and 17th Avenue Subdivision on the South East 1/4 of the South West 1/4 of Section 22, Township 39 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 3: The West 1/2 of vacated 20th Avenue, East and adjoining Parcel 2, all in Cook County, Illinois.

PARCEL 4: Lot 16 in Block 7 in Mares' White and Company's West 22nd Street and 17th Avenue Subdivision of the South East 1/4 of the South West 1/4 of Section 22, Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

AND BEING the same property conveyed to Payel Corporation, an Illinois corporation from Intercounty Judicial Sales Corporation, an Illinois corporation by Judicial Sale Deed dated as of May 26, 1999 and recorded June 16, 1999 in Instrument No. 99578190.

Tax Parcel Nos. 15-22-313-003, 15-22-312-002 and 15-22-311-002

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Exhibit "B"

Description of Assigned Leases

That certain PCS Site Agreement by and between M & M Warehouse, a proprietorship, as Owner, and PCS PrimeCo, L.P., a Delaware limited partnership, as Tenant, dated October 31, 1995.

Property of Cook County Clerk's Office