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Document prepared by and after  
recording to be returned to:

Lawrence M. Gritton  
400 West Huron  
Chicago, IL 60610

Doc#: 0728509050 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/12/2007 03:07 PM Pg: 1 of 17

NO 071142 JL

## MORTGAGE

THIS MORTGAGE (this "Mortgage") is made as of September 26, 2007, by SMITHFIELD PROPERTIES XXVII, L.L.C., an Illinois limited liability company ("Borrower"), with a mailing address c/o Smithfield Properties, 400 West Huron Street, Chicago, Illinois 60610, Attention: William Harris Smith, to SMITHFIELD PROPERTIES FINANCING GROUP LLC, an Illinois limited liability company, its successors and its assigns ("Lender"), with a mailing address of 400 West Huron Street, Chicago, Illinois 60610, Attention: Robert Buono, and pertains to the real estate described in Exhibit A attached hereto and made a part hereof (the "Premises").

## I RECITALS

A. Borrower has executed and delivered to Lender a Promissory Note of even date herewith (together with all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, the "Note"), wherein Borrower promises to pay to the order of Lender the principal amount of Two Million and No/100 Dollars (\$2,000,000.00) in repayment of a land loan from Lender in like amount (the "Loan"), together with interest thereon, at variable rates of interest and otherwise as set forth in the Note, which Note is due and payable on or before June 30, 2008, as it may be accelerated following any Default (as hereinafter defined in **Paragraph 4.1** hereof) in accordance with the terms thereof.

B. In consideration of advances, credits and other financial accommodations heretofore or hereinafter made to Borrower by Lender, Lender has required Borrower hereby to deliver, pledge, assign, transfer, mortgage and warrant to Lender the Mortgaged Property (as that term is hereinafter defined) as security for repayment of the Loan as well as any and all other amounts owed to Lender under the terms of the Note and this Mortgage (collectively, the "Loan Documents").

## II THE GRANT

**NOW, THEREFORE**, to secure the payment of the principal amount of the Note and interest thereon (at variable rates and as otherwise provided therein) and all fees and premiums, if any, thereon, and all other sums due thereunder or advanced by Lender in accordance with the Loan Documents and all costs and expenses incurred by Lender in connection with any of the

Near North National Title  
222 N. LaSalle  
Chicago, IL 60601

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Loan Documents (all such obligations and payments are sometimes referred to herein as the “**indebtedness secured hereby**”) and to secure the observance and performance of the agreements contained herein and in the other Loan Documents, Borrower hereby **GRANTS, BARGAINS, CONVEYS, and MORTGAGES** to Lender, its successors and assigns, forever all of Borrower’s estate, right, title and interest, whether now or hereafter acquired, in and to the Premises, together with the following described property, whether now or hereafter acquired (the Premises, together with a security interest in and a lien on the following described property being hereinafter referred to collectively as the “**Mortgaged Property**”), all of which other property is hereby pledged on a parity with the Premises and not secondarily:

(a) All buildings and other improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Premises;

(b) All right, title and interest of Borrower, if any, including, without limitation, any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks and alleys adjoining the Premises;

(c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights and any and all other rights, liberties and privileges of the Premises or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license and the reversions and remainders thereof;

(d) All leases now or hereafter on or affecting the Premises, whether written or oral, and all agreements for use of the Premises, together with all rents, issues, deposits, profits and other benefits now or hereafter arising from or in respect of the Premises accruing and to accrue from the Premises and the avails thereof;

(e) All fixtures and personal property now or hereafter owned by Borrower and attached to, contained in or used in connection with the Premises or the aforesaid improvements thereon, including, without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, inventory, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, it being agreed that all such property owned by Borrower and placed on the Premises or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage;

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(f) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Premises and the other Mortgaged Property, or any part thereof, or to any rights appurtenant thereto;

(g) All compensation, awards, damages, claims, rights of actions and proceeds of or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the Premises and the other Mortgaged Property or any part thereof, (ii) damage to all or any portion of the Premises and the other Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Premises and the other Mortgaged Property or of other property, or (iii) the alteration of the grade of any street or highway on or about the Premises and the other Mortgaged Property or any part thereof, and except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and to apply the same toward the payment of the indebtedness and other sums secured hereby;

(h) All contract rights, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Premises or the other Mortgaged Property or any part thereof;

(i) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Premises or the other Mortgaged Property;

(j) All building materials and goods which are procured or to be procured for use on or in connection with the Mortgaged Property, whether or not such materials and goods have been delivered to the Premises;

(k) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses, contracts for services to be rendered to Borrower, or otherwise in connection with the Mortgaged Property and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way relating to the Premises or the other Mortgaged Property or construction of additional improvements thereto; and

(l) The proceeds from any sale, transfer, pledge or other disposition of any or all of the foregoing described Mortgaged Property;

To have and to hold the same unto Lender and its successors and assigns forever, for the purposes and uses herein set forth together with all right to possession of the Premises after the occurrence of any Default hereunder subject only to the schedule of exceptions, if any, listed in the title insurance policy insuring Lender's interest in the Premises (collectively, "**Permitted Encumbrances**"); the Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the state where the Premises are located (the "**State**").

**BORROWER REPRESENTS, WARRANTS AND COVENANTS**, to Lender that Borrower is lawfully seized of the Premises, that the same is unencumbered except by the Permitted Encumbrances, and that it has good right, full power and lawful authority to convey

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and mortgage the same, and that Borrower will warrant and forever defend said parcels and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever. The covenants and warranties of this paragraph shall survive foreclosure of this Mortgage and shall run with the Premises.

If and when the principal amount of the Note and all interest as provided thereunder has been paid, and Borrower has satisfied all obligations thereunder and under the other Loan Documents, then this Mortgage shall be released at the cost of Borrower, but otherwise shall remain in full force and effect.

### III GENERAL AGREEMENTS

**Section 3.1 Principal and Interest.** Borrower shall pay or cause to be paid promptly when due the principal and interest on the indebtedness evidenced by the Note at the times, at the variable rates and in the manner provided in the Note and this Mortgage. Any amount not paid when due hereunder shall accrue interest at the applicable Default Interest Rate (as defined in each of the Note).

**Section 3.2 Property Taxes.** Borrower shall, prior to the applicable due date, pay all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and furnish to Lender duplicate receipts therefor within thirty (30) days after payment thereof. Borrower may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Mortgaged Property or any part thereof or interest therein to satisfy the same.

**Section 3.3 Payments by Lender.** In the event of a Default hereunder, Lender is hereby authorized to make or advance, in the place and stead of Borrower, any payment relating to taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions or liens that may be asserted against the Mortgaged Property or any part thereof, and may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture or title or claim relating thereto. In the event of a Default hereunder, Lender is further authorized to make or advance, in the place and stead of Borrower, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge or payment, as well as take any and all actions which Lender deems necessary or appropriate on Borrower's behalf whenever, in Lender's sole and absolute judgment, such payments or actions seem necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Lender is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Lender's choosing. All payments, costs and other expenses incurred by Lender pursuant to this **Paragraph 3.4**, including without limitation reasonable attorneys' fees, expenses and court costs, shall constitute additional indebtedness secured hereby and shall be repayable by Borrower upon demand with interest at the applicable Default Interest Rate.

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## Section 3.4 Insurance.

(a) Hazard.

(i) Borrower agrees to maintain insurance against loss or damage to the building and all improvements and betterments on the Mortgaged Property ("Loss"), in such amounts and with such limits as Lender may require from time to time. All such policies and renewals thereof (or binders evidencing the same) shall be delivered to Lender at least thirty (30) days before the expiration of the existing policies and shall have attached thereto a standard mortgagee clause entitling Lender to collect any and all proceeds payable under such insurance. The policy shall contain a waiver of subrogation in favor of the Lender.

(ii) In case of any Loss, Borrower shall immediately give the insurance companies that have insured against such risks, notice of such Loss, and Borrower is authorized to settle and adjust any claim under insurance policies which insure against such risks.

The insurance proceeds shall be made available to Borrower to repair and restore the Mortgaged Property.

Notwithstanding anything herein to the contrary, in case of any Loss after foreclosure proceedings have been instituted, all insurance proceeds shall, at Lender's option, be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if said owner shall then be entitled to the same, or as the court may otherwise direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor. Any foreclosure decree may further provide that in case of any one or more redemptions made under said decree, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Lender may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

Nothing contained in this Mortgage shall create any responsibility or obligation on Lender to collect any amount owing on any insurance policy, to rebuild, repair or replace any damaged or destroyed portion of the Mortgaged Property, or to perform any act hereunder.

(b) Liability. Borrower shall carry and maintain commercial general liability insurance against bodily injury and property damage written with companies having a

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Best's rating of A or better. Coverage shall be written on an occurrence form equivalent or better than the occurrence form (CG0001) as published by the ISO with minimum limits of One Million and No/100 Dollars (\$1,000,000.00) each occurrence and One Million and No/100 Dollars (\$1,000,000.00) general aggregate. The policy shall name Lender as an additional insured with respect to liability arising out of the Mortgaged Property. Certificates of insurance showing Lender as additional insured, premiums prepaid, shall be deposited with Lender and shall contain provision for thirty (30) days notice to Lender prior to any cancellation or non-renewal except for ten (10) days notice for non-payment of premium.

(c) **Builder's Risk.** Borrower shall obtain or shall cause to be obtained builder's risk insurance on a special perils basis for one hundred percent (100%) of the insurable value of all construction work in place or in progress from time to time insuring the Mortgaged Property and materials in storage and while in transit. Insurance shall include Replacement Cost, Agreed Amount coverage.

(d) **Flood Area.** If the Premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the "Act"), Borrower, at its sole cost and expense shall keep the Premises insured by flood insurance in an amount not less than the maximum limit of coverage available under the Act.

**Section 3.5 Condemnation and Eminent Domain.** Any and all awards heretofore or hereafter made or to be made to the present or any subsequent owner of the Mortgaged Property by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by Borrower to Lender. Borrower agrees to make, execute and deliver to Lender, free and clear of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning all awards and other compensation heretofore, now and hereafter made to Borrower for any taking, either permanent or temporary, under any such proceeding. Any such award shall be applied toward the indebtedness secured by this Mortgage or applied toward restoring the Mortgaged Property in accordance with the provisions of and in the same manner as is provided for insurance proceeds in **Paragraph 3.4(a)** hereof.

**Section 3.6 Maintenance of Property.** Borrower agrees not to permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, to keep and maintain the Mortgaged Property and every part thereof in good repair and condition, to effect such repairs and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that the Premises and such buildings, other improvements, fixtures, chattels and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

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**Section 3.7 Compliance with Laws.** Borrower shall: (i) comply with, all statutes, ordinances, regulations, rules, orders, decrees and other requirements relating to the Mortgaged Property, or any part thereof, by any federal, state or local authority, including, without limitation, the Americans with Disabilities Act of 1990, and (ii) observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions, and nonconforming uses), privileges, franchises and concessions that are applicable to the Mortgaged Property or that have been granted to or contracted for by Borrower in connection with any existing or presently contemplated use of the Mortgaged Property or any part thereof.

**Section 3.8 Liens.** Borrower shall not, directly or indirectly, create, suffer or permit to be created or filed or to remain against the Mortgaged Property, or any part thereof, hereafter any mortgage lien or other lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to the Mortgaged Property, whether superior or inferior to the lien of this Mortgage; provided, however, that Borrower may, contest in good faith by appropriate legal or administrative proceedings any lien claim arising from any work performed, material furnished or obligation incurred by Borrower upon furnishing Lender an endorsement to Lender's title insurance policy insuring Lender's interest in the Premises insuring over said lien claim, or such other security and indemnification satisfactory to Lender, in its reasonable discretion, for the final payment and discharge thereof.

**Section 3.9 Other Amounts Secured; Maximum Indebtedness.** Borrower acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part and future advances made at a later date, as well as any other amounts owed to Lender and all litigation and other expenses pursuant to the provisions hereof and any other amounts as provided herein or in any of the other Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed Five Million and No/100 Dollars (\$5,000,000.00).

**Section 3.10 Declaration of Subordination.** At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Mortgaged Property upon the execution by Lender and recording thereof, at any time hereafter, in the appropriate official records of the county wherein the Premises are situated, of a unilateral declaration to that effect.

**Section 3.11 Borrower's Representations.** Borrower hereby represents and covenants to Lender that:

(a) Borrower is lawfully seized of the Mortgaged Property hereby mortgaged, granted and conveyed and has the right to mortgage, grant and convey the Mortgaged Property, that the Mortgaged Property is unencumbered except by the Permitted Encumbrances, if any, and that Borrower will represent, warrant and defend generally the title to the Mortgaged Property, or any portion thereof, against any and all claims and demands, subject only to the Permitted Encumbrances, if any.

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(b) Borrower (i) is an Illinois limited liability company, duly organized and validly existing under the laws of the State of Illinois and is in good standing in the State of Illinois; (ii) has the power and authority to own its properties and to carry on its business as now being conducted; and (iii) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(c) The execution, delivery and performance of the Note, this Mortgage and the other Loan Documents: (i) have received all necessary trust, partnership, governmental, company, and corporate approval; (ii) do not violate any provision of any law, any order of any court or agency of government or any indenture, agreement or other instrument to which Borrower is a party, or by which it or any portion of the Mortgaged Property is bound; and (iii) are not in conflict with, nor will result in breach of, or constitute (with due notice or lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of its property or assets, except as contemplated by the provisions of this Mortgage.

(d) The Note, this Mortgage and the other Loan Documents, when executed and delivered by Borrower will constitute the legal, valid and binding obligations of Borrower and all other obligors named therein, if any, in accordance with their respective terms.

**Section 3.12 Utilities.** Borrower will pay all utility charges incurred in connection with the Premises and all improvements thereon, and shall maintain all utility services now or hereafter available for use at the Premises.

**Section 3.13 Assignment of Rents.** (a) As further security for the repayment of the Note, and any amounts due pursuant to this Mortgage, Borrower does hereby sell, assign and transfer to Lender all rents, leases, issues, deposits and profits now due and which may hereinafter become due under or by reason of any lease or any letting of, or any agreement for the use, sale, or occupancy of the Premises or any portion thereof (whether written or verbal), which may have been heretofore or may hereafter be made or agreed to or which may be made or agreed to by Lender under the powers herein granted, including without limitation sale contracts, leases escrow and other agreements, it being Borrower's intention hereby to establish an absolute transfer and assignment of all such leases, contracts, escrows and agreements pertaining thereto (such leases, contracts, escrows and agreements being collectively referred to hereinbelow as "**agreements**" and any such individual lease, contract, escrow or other agreement being referred to hereinbelow as an "**agreement**"), and all the avails thereof, to Lender.

(b) **Security Agreement.** This Mortgage shall be deemed a "Security Agreement" as defined in revised Article 9 of the Uniform Commercial Code, as approved by the State of Illinois on July 1, 2001, and codified at 810 Ill. Comp. Stat. 5/9-101 et. seq. (West 2001) (the "**Illinois Uniform Commercial Code**") and creates a security interest in favor of Lender in all property including, without limitation, all personal property, fixtures and goods affecting property either referred to or described herein or in any way connected with the use or enjoyment of the Mortgaged Property. The remedies for any violation of the covenants, terms and conditions of the agreements



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herein contained shall be as prescribed herein or by general law or, as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such a Financing Statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing the intention of the parties hereto that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Mortgaged Property whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender under this Mortgage or impugning the priority of the Lender's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Lender in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Lender's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the Illinois Uniform Commercial Code records.

**Section 3.14 Fixture Financing Statement.** From the date of its recording, this Mortgage shall be effective as a fixture financing statement with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

- (a) Name and Address of Debtor:

Smithfield Properties XXVII, L.L.C.  
c/o Smithfield Properties  
400 West Huron Street  
Chicago, Illinois 60610

- (b) Name and Address of Secured Party:

Smithfield Properties Financing Group LLC  
c/o Smithfield Properties  
400 West Huron Street  
Chicago, Illinois 60610

- (c) This document covers goods which are or are to become fixtures.

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**Section 3.15 Partial Release of Townhomes.** Provided that there is not then existing any uncured default or any condition or circumstance which, with the passage of time and/or giving of notice, would constitute a default under any of the Loan Documents, Lender agrees to release individual Townhomes (as defined in the Note) from the lien of this Mortgage pursuant to the following terms and provisions:

(a) That at the time of such partial release, there shall be no default under the Note, this Mortgage or any of the other Loan Documents which shall not have been cured within any applicable grace or cure period;

(b) Borrower shall deliver to Lender a payment in the amount of the Net Sales Proceeds (as defined in the Note) for each Townhome as the release price for each such Townhome to be so released, which amounts shall be applied against the outstanding principal balance of the Note. Notwithstanding anything to the contrary contained herein, in the event the aforesaid amount exceeds the then outstanding principal balance of the Loan, such overage shall be disbursed to Borrower.

## IV DEFAULTS AND REMEDIES

**Section 4.1 Events Constituting Defaults.** Each of the following events shall constitute a default (a "Default") under this Mortgage:

(a) Any Event of Default under the Note;

(b) Failure of Borrower to perform or observe any other covenant, warranty or other provision contained in this Mortgage; provided if such default is capable of being cured, Borrower shall have a period of thirty (30) days after the date on which written notice of the nature of such failure is given by Lender to Borrower to cure such default.

**Section 4.2 Acceleration of Maturity.** Upon the occurrence of any Default, at the election of Lender, the entire principal balance then outstanding under the Note, together with all unpaid interest accrued thereon and all other sums due from Borrower thereunder, under this Mortgage or any other Loan Document shall become immediately due and payable with interest thereon at the applicable Default Interest Rate.

**Section 4.3 Foreclosure of Mortgage.** Upon the occurrence of any Default, or at any time thereafter, Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Premises are located and to exercise any other remedies of Lender provided herein or in the other Loan Documents, or which Lender may have at law or in equity. Any failure by Lender to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

**Section 4.4 Lender's Continuing Options.** The failure of Lender to declare a Default or exercise any one or more of its options to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Default as aforesaid, or to exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments of such indebtedness, shall neither constitute a waiver of any such

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Default or of Lender's options hereunder nor establish, extend or affect any grace period for payments due under the Note, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender, may, at Lender's option, be rescinded by written acknowledgment to that effect by Lender and shall not affect Lender's right to accelerate maturity upon or after any future Default.

**Section 4.5 Litigation Expenses.** In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Lender under the Note, this Mortgage, the other Loan Documents or in any other proceeding whatsoever in connection with the Mortgaged Property in which Lender is named as a party, there shall be allowed and included, as additional indebtedness secured hereby in the judgment or decree resulting therefrom, all reasonable expenses paid or incurred in connection with such proceeding by or on behalf of Lender, including, without limitation, reasonable attorney's fees and expenses and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies and any similar data and assurances with respect to title to the Premises as Lender may deem reasonably necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the applicable law to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Premises or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including, without limitation, the reasonable fees and expenses of, and court costs incurred by, any attorney employed by Lender in any litigation affecting the Note, this Mortgage or any of the other Loan Documents or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Borrower with interest thereon at the applicable Default Interest Rate.

**Section 4.6 Foreclosure Sale.** In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Lender may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

**Section 4.7 Application of Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the applicable Default Interest Rate; (c) all principal and interest, together with any prepayment charge, remaining unpaid under the Note, in the order of priority specified by Lender in its sole and absolute discretion; and (d) the balance, if any, to Borrower or its successors or assigns, as their interests and rights may appear.

**Section 4.8 Waiver of Right of Redemption and Other Rights.** To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so called

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“Moratorium Law” now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption under applicable law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower acknowledges that the Premises do not constitute agricultural real estate or residential real estate as defined in applicable law.

v

## MISCELLANEOUS

**Section 5.1 Notices.** Any notice that Lender or Borrower may desire or be required to give to the other hereunder shall be deemed given (i) upon receipt when delivered or if sent by nationally recognized overnight air courier, or (ii) two (2) business days after being deposited in the United States certified mail, return receipt requested, properly addressed to the party, at the address of such party set forth below, or at such other address, as the party to whom notice is to be given has specified by notice hereunder to the party seeking to give such notice:

To the Borrower:      Smithfield Properties XXVII, L.L.C.  
                                  400 West Huron Street  
                                  Chicago, Illinois 60610  
                                  Attention: William Harris Smith

with a copy to:      Lawrence M. Gritton, Esq.  
                                  Smithfield Properties  
                                  400 West Huron Street  
                                  Chicago, Illinois 60610

To Lender:              Smithfield Properties Financing Group LLC.  
                                  400 West Huron Street  
                                  Chicago, Illinois 60610

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Attention: Robert Buono

Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Mortgage is not required to be given.

**Section 5.2 Time of Essence.** It is specifically agreed that time is of the essence of this Mortgage.

**Section 5.3 Covenants Run with Land.** All of the covenants of this Mortgage shall run with the land constituting the Premises.

**Section 5.4 Governing Law; Litigation.** The place of the location of the Mortgaged Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State. To the extent that this Mortgage may operate as a security agreement under the Uniform Commercial Code, Lender shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH 5.4.**

**Section 5.5 Rights and Remedies Cumulative.** All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

**Section 5.6 Severability.** If any provision of this Mortgage or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

**Section 5.7 Non-Waiver.** Unless expressly provided in this Mortgage to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein to or of any breach or default by any other interested party referred to herein regarding the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

**Section 5.8 Headings.** The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

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**Section 5.9 Grammar.** As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words “including”, “include” or “includes” are used in this Mortgage, they should be interpreted in a non-exclusive manner as though the words “, without limitation,” immediately followed the same.

**Section 5.10 Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon Borrower, its successors, assigns, legal representatives and all other persons or entities claiming under or through Borrower, and the word “Borrower,” when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Mortgage. The word “Lender,” when used herein, shall include Lender’s successors, assigns and legal representatives, including all other holders, from time to time, of the Note.

**Section 5.11 No Joint Venture.** Borrower and Lender acknowledge and agree that under no circumstances shall Lender be deemed to be a partner or joint venturer with Borrower, including, without limitation, by virtue of its becoming a mortgagee in possession or exercising any of its rights pursuant to this Mortgage or pursuant to any of the other Loan Documents, or otherwise.

**Section 5.12 Recapture.** To the extent Lender receives any payment by or on behalf of Borrower, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Borrower or its respective estate, trustee, receiver, custodian or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the indebtedness hereby secured as of the date such initial payment, reduction or satisfaction occurred.


(signature on following page)

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IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the date and year first above written.

**SMITHFIELD PROPERTIES XXVII, L.L.C.,**  
an Illinois limited liability company

By: Harris Management, Ltd.,  
an Illinois corporation, a manager

By:   
Its: \_\_\_\_\_

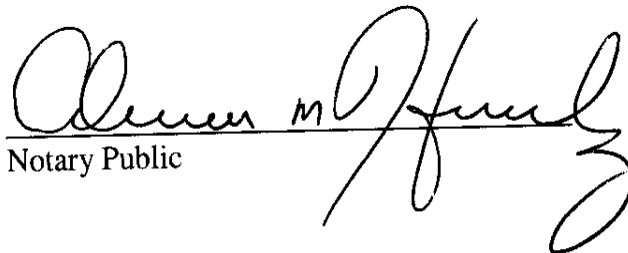
Property of Cook County Clerk's Office

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STATE OF ILLINOIS        )  
   ) SS.  
 COUNTY OF COOK         )

I, Adriana M. Hernandez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that W. Harris Smith, personally known to me to be the President of Harris Management, Ltd., an Illinois corporation, the manager of **SMITHFIELD PROPERTIES XXVII, L.L.C.**, an Illinois limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid in his capacity as President of the corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26th day of September, 2007.

  
 \_\_\_\_\_  
 Notary Public

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## EXHIBIT A

### LEGAL DESCRIPTION

Parcel 1:

That part of Lots 1 and 2 (except the South 90.00 feet thereof) taken as a tract, lying above a horizontal plane of 14.01 feet Chicago City Datum, in the Subdivision of Block 16 in Bushnell's Addition to Chicago in the East Half of the Southeast Quarter of Section 4, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Non-exclusive easements for the benefit of Parcel 1 as created by Easement Agreement, recorded October 18<sup>th</sup>, 2006 as document number 0629110005, and amended by Amended and Restated Easement Agreement recorded June 15, 2007 as document number 0716609095 for ingress and egress, maintenance and structural support, over the land described therein and according to the terms more particularly described therein. (Said burdened land commonly referred to in said Agreement as the "Condo Property" and "Condo Garage".)

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**PINS:** 17-04-424-009 and 17-04-424-010

**COMMON ADDRESSES:** 1003-1021 North Dearborn Street, Chicago, Illinois 60610