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**FIFTH AMENDMENT TO BUILDING LOAN AGREEMENT,  
CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND  
RENTS, SECURITY AGREEMENT AND FIXTURE FILING  
AND CERTAIN OTHER DOCUMENTS**

25

NAME OF MORTGAGOR(S): WD EXCHANGE LLC, an Illinois limited liability company  
NAME OF MORTGAGEE: WELLS FARGO BANK, NATIONAL ASSOCIATION  
COMMON ADDRESS OF PROPERTY: 1710 N. Kostner, Chicago, Illinois  
PARCEL NUMBER(S): 13-34-311-005, 13-34-311-006 and 13-34-311-007

1 of 2 NCS- 149159 L.L.

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Loan No. 102544

**FIFTH AMENDMENT TO BUILDING LOAN AGREEMENT,  
CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND  
RENTS, SECURITY AGREEMENT AND FIXTURE FILING  
AND CERTAIN OTHER DOCUMENTS**

THIS FIFTH AMENDMENT TO BUILDING LOAN AGREEMENT, CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING AND CERTAIN OTHER DOCUMENTS (this "Fifth Amendment") is made and entered into as of this 30th day of January, 2009 by and among WD EXCHANGE LLC, an Illinois limited liability company ("Mortgagor" or "Borrower"), LANCE CHODY, an Illinois resident ("Guarantor"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Mortgagee" or "Lender").

**RECITALS**

- A. Borrower and Lender have entered into a Building Loan Agreement dated as of October 27, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), pursuant to which Lender made a loan to Borrower in the maximum amount of Ten Million Nine Hundred Thousand and No/100 Dollars (\$10,900,000.00) (the "Original Loan Amount"), subject to the terms and conditions and for the purposes set forth in the Loan Agreement.
- B. As evidence of the Loan, Borrower executed and delivered to Lender that certain Promissory Note Secured by Mortgage (the "Original Note") of even date with the Loan Agreement in the principal Original Loan Amount.
- C. The Loan and the Original Note are secured by, among other documents, (i) a Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date with the Loan Agreement and recorded as Document No. 0530445141 on October 31, 2005 with the Cook County, Illinois Recorder of Deeds (as amended, restated, supplemented or otherwise modified from time to time, the "Mortgage") for the benefit of Lender, encumbering Borrower's fee simple estate, right and interest in certain real property located in Cook County, Illinois (such property as described on Exhibit A-1 hereto, the "Original Property Collateral") and the improvements located thereon as more fully described in the Mortgage, (ii) a Repayment Guaranty of even date with the Loan Agreement executed by the Guarantor in favor of Lender (as amended, restated, supplemented or otherwise modified from time to time, the "Repayment Guaranty"), (iii) a Completion Guaranty of even date with the Loan Agreement executed by the Guarantor in favor of Lender (as amended, restated, supplemented or otherwise modified from time to time, the "Completion Guaranty"), (iv) a Hazardous Materials Indemnity Agreement of even date with the Loan Agreement executed by Guarantor in favor of Lender (as amended, restated, supplemented or otherwise modified from time to time, the "Hazardous Materials Indemnity"), (v) an Assignment of Construction, Maintenance, Management and Service Agreements of even date with the Loan Agreement executed by Borrower in favor of Lender (as amended, restated, supplemented or otherwise modified from time to time, the "Assignment of Construction Agreements"), and (vi) an

# UNOFFICIAL COPY

Loan No. 102544

Assignment of Architectural Agreements and Plans and Specifications of even date with the Loan Agreement executed by Borrower in favor of Lender (as amended, restated, supplemented or otherwise modified from time to time, the "**Assignment of Architectural Agreements**"), as well as other security instruments described in the Loan Agreement.

D. Pursuant to that certain First Amendment to Building Loan Agreement dated April 28, 2006 by and between Borrower and Lender (the "**First Amendment**"), Borrower and Lender amended the Loan Agreement to (i) reduce the amount of the Loan from Ten Million Nine Hundred Thousand and no/100 Dollars (\$10,900,000.00) to Nine Million Eight Hundred Fifty Thousand and no/100 Dollars (\$9,850,000.00) (the "**First Amended Loan Amount**") and (ii) modify the Loan Agreement in certain other respects as set forth therein.

E. In connection with the First Amendment, Borrower executed and delivered to Lender that certain Amended and Restated Promissory Note Secured by Mortgage (the "**First Amended Note**") of even date with the First Amendment in the principal First Amended Loan Amount.

F. Pursuant to that certain Second Amendment to Building Loan Agreement dated February 23, 2007 by and between Borrower and Lender (the "**Second Amendment**"), Borrower and Lender amended the Loan Agreement to require Borrower to obtain business interruption insurance, as set forth more fully therein.

G. Pursuant to that certain Second Amendment to Building Loan Agreement dated November 16, 2007 by and between Borrower and Lender, Borrower and Lender amended the Loan Agreement to (i) reduce the amount of the Loan from Nine Million Eight Hundred Fifty Thousand and no/100 Dollars (\$9,850,000.00) to Eight Million Two Hundred Fifty Thousand and no/100 Dollars (\$8,250,000.00) (the "**Second Amended Loan Amount**"), (ii) extend the maturity date of the Loan available to Borrower under the Loan Agreement, and (iii) amend the Loan Agreement in certain other respects as set forth therein. The amendment referred to in the preceding sentence was inadvertently titled "Second Amendment to Building Loan Agreement" and, pursuant to the Fourth Amendment described below, retitled such document the "Third Amendment to Building Loan Agreement" (the "**Third Amendment**").

H. In connection with the Third Amendment, Borrower executed and delivered to Lender that certain Second Amended and Restated Promissory Note Secured by Mortgage of even date with the Third Amendment in the principal amount of the Second Amended Loan Amount.

I. Pursuant to that certain Fourth Amendment to Building Loan Agreement dated January 28, 2008 by and among Borrower, Lender and Guarantor, Borrower and Lender amended the Loan Agreement to (i) increase the maximum aggregate amount of the Loan available to Borrower under the Loan Agreement from Eight Million Two Hundred Fifty Thousand and no/100 Dollars (\$8,250,000.00) to Nine Million and no/100 Dollars (\$9,000,000.00) (the "**Third Amended Loan Amount**"), (ii) extend the maturity date of the Loan available to Borrower under the Loan Agreement, (iii) release the lien of Lender on certain

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Loan No. 102544

portions of the Original Property Collateral (the “**Released Outlots**”), and (iv) amend the Loan Agreement, Mortgage, Repayment Guaranty and certain other Loan Documents in certain other respects as set forth therein.

J. In connection with the Fourth Amendment, Borrower executed and delivered to Lender that certain Third Amended and Restated Promissory Note Secured by Mortgage (the “**Third Amended Note**”) of even date with the Fourth Amendment in the principal amount of the Third Amended Loan Amount.

K. Pursuant to the terms of this Fifth Amendment, Lender and Borrower have agreed to (i) amend the maximum aggregate amount of the Loan available to Borrower under the Loan Agreement, (ii) extend the maturity date of the Loan available to Borrower under the Loan Agreement, (iii) grant Lender a security interest in the Released Outlots and (iv) amend the Loan Agreement, Mortgage, Repayment Guaranty and certain other Loan Documents in certain other respects, all subject to, among other things, Guarantor reaffirming his obligations under the Repayment Guaranty, the Completion Guaranty, the Hazardous Materials Indemnity and any other document executed in connection therewith to which he is a party.

L. In connection with this Fifth Amendment, Borrower shall execute and deliver to Lender that certain Fourth Amended and Restated Promissory Note Secured by Mortgage (as amended, restated, supplemented or otherwise modified from time to time, the “**Fourth Amended Note**”) of even date with this Fifth Amendment in the principal amount of Eight Million Five Hundred Sixty Thousand and no/100 Dollars (\$8,560,000.00).

M. Defined terms used in this Fifth Amendment shall have the meanings attributed to them in the Loan Agreement, unless expressly provided otherwise in this Fifth Amendment.

## AGREEMENTS

NOW, THEREFORE, for and in consideration of the above RECITALS, which are hereby incorporated into this Fifth Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Guarantor and Lender hereby agree as follows:

1. **Loan Amount.** From and after the date of this Fifth Amendment, the amount of the Loan under the Loan Agreement, the other Loan Documents and the Other Related Documents shall be Eight Million Five Hundred Sixty Thousand and no/100 Dollars (\$8,560,000.00). All references to the “Loan” contained in the Repayment Guaranty, the Completion Guaranty, the Hazardous Materials Indemnity or any of the Loan Documents, from and after the date hereof, shall mean the Loan in the original principal amount of Eight Million Five Hundred Sixty Thousand and no/100 Dollars (\$8,560,000.00).

2. **Amendment of the Loan Agreement.** The Loan Agreement is hereby amended as follows:

# UNOFFICIAL COPY

Loan No. 102544

- (a) Amendment to Exhibit B. The list of documents set forth on Exhibit B to the Loan Agreement is hereby deleted in its entirety and replaced with the list of documents in Exhibit B attached hereto. From and after the date hereof, all references to the Loan Documents in the Loan Agreement and any other document executed in connection therewith shall refer to the documents designated as "Loan Documents" in Exhibit B attached hereto and all references to the Other Related Documents in the Loan Agreement and any other document executed in connection therewith shall refer to the documents designated as "Other Related Documents" in Exhibit B attached hereto.
- (b) Extension of Maturity Date. Section 1.4 of the Loan Agreement is hereby amended by deleting such section in its entirety and substituting the following therefor:
- 1.4 **MATURITY DATE.** The maturity date of the Loan shall be February 1, 2010 ("**Maturity Date**").
- (c) Extension Option. Article 1 of the Loan Agreement is hereby amended by adding the following Section 1.6 to the end thereof:
- 1.6 **OPTION TO EXTEND.** Borrower shall have the option to extend the term of the Loan (the "**Option to Extend**") from the Maturity Date to February 1, 2011 ("**Extended Maturity Date**"), upon receipt of written notice from Borrower of Borrower's request to exercise the Option to Extend, which notice shall be provided to Lender not more than 120 days but not less than 45 days prior to the Maturity Date, and upon satisfaction of each of the following conditions precedent:
- i. As of the date of Borrower's delivery of its notice of request to exercise the Option to Extend, and as of the Maturity Date, no Default (as hereinafter defined) shall have occurred and be continuing, and no event or condition which, with the giving of notice or the passage of time or both, would constitute a Default shall have occurred and be continuing, and Borrower shall so certify in writing;
  - ii. Borrower shall execute or cause the execution of all documents reasonably required by Lender to exercise the Option to Extend and shall deliver to Lender, at Borrower's sole cost and expense, such title insurance endorsements reasonably required by Lender;
  - iii. There shall have occurred no material adverse change, as determined by Lender in its sole discretion, in the financial condition of Borrower or Guarantor from that which existed as of the later of: (i) the Effective

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Loan No. 102544

Date; or (ii) the date upon which the financial condition of such party was first represented to Lender;

- iv. At Lender's request, Borrower shall provide Lender with an appraisal dated not more than ninety (90) days prior to the Maturity Date, which appraisal shall indicate that (i) the ratio of the outstanding balance of the Loan to the as-is value of the Property and Improvements shall be less than or equal to sixty-five percent (65%), (ii) the ratio of the outstanding balance of the Loan to the as-is value of that portion of the Property which consists of the parcel leased by Burlington and Improvements thereon shall be less than seventy percent (70%) and (iii) the ratio of the outstanding balance of the Loan to the as-is value of that portion of the Property *other than* the parcel leased by Burlington, and the Improvements thereon, shall be less than fifty percent (50%);
- v. As of the date of Borrower's delivery of notice of request to exercise the Option to Extend, and as of the Maturity Date, the Constant Carried (as hereinafter defined) shall be not less than nine and one-quarter percent (9.25%); and
- vi. On or before the Maturity Date, Borrower shall pay to Lender an extension fee in the amount of one half of one percent (0.5%) of the total commitment amount of the Loan (whether disbursed or undisbursed), as determined on the Maturity Date.

Except as modified by this Option to Extend, the terms and conditions of this Agreement and the other Loan Documents as modified and approved by Lender shall remain unmodified and in full force and effect.

- (d) Deletion of Obsolete Sections. Sections 2.7, 2.8, 2.9, 2.10 and 2.11 of the Loan Agreement are hereby deleted in their entirety.
- (e) Derivative Documents. Article 7 of the Loan Agreement is hereby amended by adding the following Section 7.9 at the end thereof:

7.9 **DERIVATIVE DOCUMENTS.** If Borrower purchases from Lender any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time in connection with the Loan, Borrower shall, upon receipt from Lender,



# UNOFFICIAL COPY

Loan No. 102544

execute promptly all documents evidencing such transaction, including without limitation, the ISDA Master Agreement, the Schedule to the ISDA Master Agreement, the Repayment Guarantee and the ISDA Confirmation.

(f) Burlington Coat Factory Lease. Subparagraph 9.1(m) of the Loan Agreement is hereby amended by deleting such subparagraph in its entirety and substituting the following therefor:

(i) Burlington Coat Factory Lease. (1) The default by either Borrower or Burlington Coat Factory of Illinois LLC ("**Burlington**") under that certain Lease Agreement between Borrower, as landlord, and Burlington, as tenant, dated February 6, 2007 (the "**Burlington Lease**"), (2) any amendment to the Burlington Lease without the prior written consent of Lender, (3) the failure by Burlington to (i) maintain 100% occupancy of its space, (ii) remain open for business, or (iii) pay rent per the terms of the Burlington Lease or (4) (i) The filing by Burlington of a petition for relief under the Bankruptcy Code, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; (ii) the filing against Burlington of an involuntary proceeding under the Bankruptcy Code or other debtor relief law and the failure of Burlington to effect a full dismissal of such proceeding within one hundred twenty (120) days after the date of filing such proceeding; (iii) a general assignment by Burlington for the benefit of creditors; or (iv) Burlington applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Burlington or any of its property; provided, however, that Lender shall not exercise any remedies with respect to any default occurring as a result of items 4(i), (iii) or (iv) for 120 days after the occurrence of each said item.

(g) Financial Information. Section 8.1 of the Loan Agreement is hereby amended by deleting such section in its entirety and substituting the following therefor:

8.1 **FINANCIAL INFORMATION**. Borrower shall deliver to Lender (a) as soon as available, but in no event later than ninety (90) days after Borrower's fiscal year end, Borrower's current financial statement (including without limitation, an income and expense statement and balance sheet), together with any other financial information including, without limitation, quarterly financial statements, annual financial statements, cash flow projections, and quarterly operating statements requested by Lender, (b) as soon as available, but in no event later than March 31<sup>st</sup> of each calendar year, Guarantor's current financial statement (including, without limitation, a balance sheet) for the previous calendar year, (c) as soon as available, but in no event later than ninety (90) days after the fiscal year end of One Wood Dale Place Apartments, LLC, an Illinois limited liability company ("**Wood Dale**"), Wood Dale's current financial statement

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Loan No. 102544

(including without limitation, an income and expense statement and balance sheet), together with any other financial information including, without limitation, quarterly financial statements, annual financial statements, cash flow projections and quarterly operating statements requested by Lender, (d) within thirty (30) days of Lender's request, Borrower's current tax return signed by Borrower, (e) within thirty (30) days of Lender's request, Guarantor's current tax return signed by Guarantor, (f) within thirty (30) days of Lender's request, Wood Dale's current tax return signed by Wood Dale and (g) within thirty (30) days of Lender's request, a liquidity update with respect to the Guarantor, in each case in form and substance acceptable to Lender.

Within fifteen (15) days of Lender's request, Borrower shall also deliver to Lender such quarterly and other financial information regarding any persons or entities in any way obligated on the Loan as Lender may specify. If audited financial information is prepared, Borrower shall deliver to Lender copies of that information within fifteen (15) days of its final preparation. Except as otherwise agreed to by Lender, all such financial information shall be prepared in accordance with generally accepted accounting principles consistently applied.

- (h) Leasing Reports and Operating Statements. Section 8.2 of the Loan Agreement is hereby amended by deleting such section in its entirety and substituting the following therefor:

8.2 **LEASING REPORTS AND OPERATING STATEMENTS.** Within thirty (30) days of the end of each fiscal quarter, Borrower shall deliver to Lender quarterly rent rolls, leasing schedules and reports, operating statements and/or such other leasing information as Lender shall request with respect to the Property and Improvements, each in form and substance satisfactory to Lender.

- (i) Financial Covenants. Article 8 of the Loan Agreement is hereby amended by adding the following Section 8.3 at the end thereof:

8.3 **FINANCIAL COVENANTS.** Borrower shall, at all times during the term of the Loan (including through the Extended Maturity Date, if applicable), maintain the Loan Constant (as defined below) at a level not less than nine and one-quarter percent (9.25%). Borrower shall deliver evidence satisfactory to Lender that as of each Determination Date (as defined below), the Loan Constant is not less than nine and one-quarter percent (9.25%). For purposes hereof, "Loan Constant" shall mean (a) Net Operating Income, divided by (b) the outstanding balance of the Loan as of the Determination Date. "Net Operating Income" shall mean, for the twelve (12) month period immediately preceding the Determination Date, (x) the actual gross revenues derived from the Property and paid to Borrower and (y) any expense reimbursements paid to Borrower ("Total Revenue"), minus, for the twelve (12) month period immediately preceding the



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Loan No. 102544

Determination Date, (i) actual expenses for the Property incurred and paid by Borrower, (ii) any rent concessions or rent relief benefitting any tenants of the Property, (iii) a five percent (5.0%) vacancy factor, (iv) a management fee equal to the higher of the actual management fee paid by Borrower or one percent (1.0%) of Total Revenue and (v) a capital expenditure reserve equal to the higher of the amount reserved by Borrower for capital expenditures or \$0.10 per square foot. "**Determination Date**" shall mean the last day of each fiscal quarter of Borrower during the term of the Loan (including through the Extended Maturity Date, if applicable).

- (j) Right of First Offer and Estoppel Delivery. Article 10 of the Loan Agreement is hereby amended by adding the following Sections 10.26 and 10.27 at the end thereof.

10.26 **RIGHT OF FIRST OFFER.** Lender and/or its successors, assigns and affiliates shall be given a right of first offer with respect to any refinancing of the Loan.

10.27 **BURLINGTON ESTOPPEL.** Borrower shall use its commercially reasonable efforts to cause Burlington to deliver an estoppel certificate to Lender within thirty (30) days of execution of the Fifth Amendment.

3. **Amendment of the Mortgage.** The Mortgage is hereby amended as follows:

- (a) **Obligations Secured.** Section 2.1 of the Mortgage is hereby amended and restated in its entirety as follows:

2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Mortgage for the purpose of securing: (a) the performance of the obligations contained herein and in that certain Building Loan Agreement dated of even date herewith to which Mortgagor and Mortgagee are parties (as amended, restated, supplemented or otherwise modified, the "**Loan Agreement**") which Loan Agreement provides for the construction of certain Improvements (as defined in the Loan Agreement) on the Property; (b) the payment of EIGHT MILLION FIVE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$8,560,000.00), with interest thereon, according to the terms of that certain Fourth Amended and Restated Promissory Note Secured by Mortgage (the "**Note**") dated January 30, 2009, executed by Mortgagor, payable to Mortgagee, as lender; (c) payment to Mortgagee of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into between Mortgagor and Mortgagee in connection with the Note; (d) any and all extensions, renewals, or modifications of the Note and Loan

# UNOFFICIAL COPY

Loan No. 102544

Agreement, whether the same be in greater or lesser amounts; and (e) payment and performance of any future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when such future advance or obligation is evidenced by a writing which recites that it is secured by the Mortgage (collectively the "**Secured Obligations**"). This Mortgage secures the payment of the entire indebtedness secured hereby; provided, however, that the total amount secured by this Mortgage (excluding interest, costs, expenses, charges, fees, protective advances and indemnification obligations, all of any type or nature) shall not exceed an amount equal to two hundred percent (200%) of the face amount of the Note. This Mortgage shall secure not only presently existing indebtedness under the Note, the Loan Agreement or any other Loan Documents, but also future advances, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise, as are made within 20 years from the date hereof to same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of the execution of this Mortgage and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all indebtedness including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which the real estate is located. The total amount of indebtedness may increase from time to time, as provided in the Note and the Loan Agreement, and any disbursements which Mortgagee may make under this Mortgage, the Note, the Loan Agreement or any other document with respect thereto (e.g., for payment of taxes, insurance premiums or other advances to protect Mortgagee's liens and security interests, as permitted hereby) shall be additional indebtedness secured hereby. This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

4. **Amendment of Note.** In connection with this Fifth Amendment, Borrower shall execute and deliver to Lender the Fourth Amended Note in the principal amount of Eight Million Five Hundred Sixty Thousand and no/100 Dollars (\$8,560,000.00). All references to the Note in the Repayment Guaranty, Completion Guaranty, Hazardous Materials Indemnity or any of the Loan Documents shall mean the Fourth Amended Note.

5. **Addition of Outlots.** The legal description set forth on Exhibit A to the Loan Agreement, Mortgage, Assignment of Architectural Agreements, Assignment of Construction Agreements and Hazardous Materials Indemnity is hereby deleted in its entirety and replaced with the legal description set forth on Exhibit A-2 hereto. From and after the date hereof, all references to the Property in the Loan Agreement, Mortgage, Assignment of Architectural Agreements, Assignment of Construction Agreements and Hazardous Materials Indemnity and any other Loan Document or Other Related Document shall refer to the legal description set forth on Exhibit A-2 attached hereto. For the purposes of and upon the terms and conditions in

# UNOFFICIAL COPY

Loan No. 102544

the Mortgage, Borrower irrevocably mortgages, warrants, grants, conveys and assigns to Lender all of that real property described on Exhibit A-2 attached to this Amendment.

6. **Security Interest Grant.** Borrower hereby reconfirms and ratifies all security interests for the Loan that it has previously granted to Lender under the Note, the Mortgage, the Assignment of Construction Agreements and the Assignment of Architectural Agreements, as well as under any of the other applicable Loan Documents.

7. **Reaffirmation by Guarantor.** Guarantor hereby reconfirms and reaffirms all of its obligations under the Repayment Guaranty, the Completion Guaranty, the Hazardous Materials Indemnity, and any other document executed in connection therewith to which he is a party.

8. **Amendments to Documents Executed by Guarantor.**

- (a) Guarantor hereby agrees that the Repayment Guaranty, the Completion Guaranty, the Hazardous Materials Indemnity, and any other document executed in connection therewith to which he is a party are hereby amended as follows: (i) the definition of "Loan" as set forth therein is amended and restated in its entirety to mean EIGHT MILLION FIVE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$8,560,000.00) and (ii) the defined terms "Loan Agreement", "Note", "Mortgage", "Repayment Guaranty", "Loan Documents" and "Other Related Documents" set forth therein are hereby amended such that such defined terms shall include any respective amendments or other modifications from time to time thereto.
- (b) Guarantor further agrees that Paragraph 1 of the Repayment Guaranty shall be amended by deleting such paragraph in its entirety and substituting the following therefor: "Guarantor hereby guarantees and promises to pay to Lender or order, on demand, in lawful money of the United States, in immediately available funds, the principal sum of EIGHT MILLION FIVE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$8,560,000.00) or so much thereof as may be due and owing under the Note or any of the other Loan Documents (the "**Principal Repayment Amount**"), together with interest and any other sums payable under the Note or any of the other Loan Documents."
- (c) Guarantor further agrees that the Repayment Guaranty, the Completion Guaranty, the Hazardous Materials Indemnity, and any other document executed in connection therewith to which he is a party shall remain in full force and effect following the execution and delivery of this Fifth Amendment. Except as expressly set forth herein, the Repayment Guaranty, the Completion Guaranty, the Hazardous Materials Indemnity, and any other document executed in connection therewith to which it is a party shall remain unmodified and in full force and effect.

# UNOFFICIAL COPY

Loan No. 102544

9. **Conditions Precedent to Effectiveness of Fifth Amendment.** The effectiveness of this Fifth Amendment shall be subject to satisfaction of each of the following conditions precedent:

(a) Lender shall have received fully executed originals of this Fifth Amendment and the Fourth Amended Note.

(b) There shall exist no Default under the Repayment Guaranty, Completion Guaranty, Hazardous Materials Indemnity, the Loan Agreement or any of the other Loan Documents or any event, omission or failure of condition which would constitute a Default after notice or lapse of time, or both.

(c) Borrower shall have furnished (or shall have caused to be furnished) to Lender the following, all in form and substance satisfactory to Lender in its sole discretion:

(1) such endorsements to the existing title policy issued by First American Title Insurance Company as Lender may reasonably require;

(2) evidence of insurance with respect to the Property;

(3) evidence (including certified resolutions and incumbency certificates) that the individuals executing this Fifth Amendment and the Fourth Amended Note on behalf of Borrower have been duly authorized by all appropriate action to execute and deliver this Fifth Amendment and the Fourth Amended Note on behalf of Borrower;

(4) a copy of (i) Borrower's articles of organization, certified by the Secretary of State of the State of Illinois; (ii) Borrower's operating agreement, certified by an authorized officer of Borrower; (iii) Wood Dale's articles of organization, certified by the Secretary of the State of Illinois; (iv) Wood Dale's operating agreement, certified by an authorized officer of Wood Dale, (v) a current certificate of existence for Borrower from the Secretary of State of the State of Illinois; and (vi) a current certificate of existence for Borrower from the Secretary of State of the State of Illinois; provided, however, in lieu of items (i) and (ii) Borrower may provide to Lender a certificate duly executed by the Borrower stating that all such documents previously delivered to Lender remain unmodified and in full force and effect and in lieu of items (iii) and (iv), Wood Dale may provide to Lender a certificate duly executed by Wood Dale stating that all such documents previously delivered to Lender remain unmodified and in full force and effect;

(5) current searches of all Uniform Commercial Code financing statements filed with the appropriate governmental offices in the State of Illinois against Borrower and Guarantor, as debtor, showing that no Uniform Commercial Code

# UNOFFICIAL COPY

Loan No. 102544

financing statements are filed or recorded against Borrower or Guarantor in which the collateral is described as personal property or fixtures located on the Property or Improvements or used in connection with the Property or Improvements, except for those financing statements in favor of Lender;

(6) payment of the Closing Fee (as defined below); and

(7) such other approvals, documents or materials as the Lender may reasonably request.

10. **References to Documents.** From and after the date hereof, all references to the Repayment Guaranty, Completion Guaranty, Hazardous Materials Indemnity, Mortgage, the Loan Agreement, or any of the other Loan Documents contained in any such documents or any other document executed in connection therewith shall be deemed to mean such documents as amended by this Fifth Amendment.

11. **Closing Fee.** Borrower shall pay to Lender, upon execution of this Fifth Amendment, a non-refundable closing fee in the amount of Forty Two Thousand Eight Hundred and no/100 Dollars (\$42,800.00) (the "Closing Fee").

12. **Expenses.** Borrower shall reimburse Lender (or pay directly) all out-of-pocket legal expenses and fees (whether such attorneys are employees of the Lender or separately engaged by the Lender) and all other costs incurred by the Lender in connection with the negotiation, documentation and closing of the transaction contemplated by this Fifth Amendment. All such expenses shall be paid promptly upon demand.

13. **Reaffirmation of Representations and Warranties.** Borrower (and Guarantor, to the extent applicable) hereby reaffirms as true and correct in all respects, as of the date hereof, any and all representations and warranties contained in the Repayment Guaranty, Completion Guaranty, Hazardous Materials Indemnity, Loan Agreement, Note, Mortgage or any of the other Loan Documents.

14. **Reaffirmation of Covenants.** Borrower (and Guarantor, to the extent applicable) hereby reaffirms and agrees to perform each and every covenant, condition, obligation and provision set forth in the Repayment Guaranty, Completion Guaranty, Hazardous Materials Indemnity, Loan Agreement, Note, Mortgage, and any of the other Loan Documents, as modified hereby.

15. **Effectiveness of Loan Documents.** Except as provided in this Fifth Amendment and such other documents as Lender may reasonably require with respect to this Fifth Amendment, the provisions of the Repayment Guaranty, Completion Guaranty, Hazardous Materials Indemnity, Loan Agreement, Note, Mortgage, and any of the other Loan Documents shall remain in full force and effect. In the event of a conflict between the provisions of the Repayment Guaranty, Completion Guaranty, Hazardous Materials Indemnity or any of the Loan Documents and this Fifth Amendment, the provisions of this Fifth Amendment shall prevail.



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Loan No. 102544

16. **Counterparts.** This Fifth Amendment may be executed in any number of counterparts each of which shall be deemed to be an original, but all of which when taken together shall constitute one agreement.

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IN WITNESS WHEREOF, Borrower, Lender and Guarantor have executed this Fifth Amendment as of the date first above written.

LENDER:

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
a national banking association

By: *Milda S Wszkiewicz*  
Name: MILDA S WSZKIEWICZ  
Title: SVP

BORROWER:

**WD EXCHANGE LLC,**  
an Illinois limited liability company

By: One Wood Dale Place Apartments LLC,  
an Illinois limited liability company

Its: Sole Member

By: \_\_\_\_\_  
Lance M Chody, Manager

By: \_\_\_\_\_  
Larry A. Nalezny, Manager

GUARANTOR:

\_\_\_\_\_  
**Lance M. Chody**

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower, Lender and Guarantor have executed this Fifth Amendment as of the date first above written.

LENDER:

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BORROWER:

**WD EXCHANGE LLC,**  
an Illinois limited liability company

By: One Wood Dale Place Apartments LLC,  
an Illinois limited liability company

Its: Sole Member

By:   
Lance M. Chody, Manager

By: \_\_\_\_\_  
Larry A. Nalezny, Manager

GUARANTOR:

  
\_\_\_\_\_  
Lance M. Chody

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower, Lender and Guarantor have executed this Fifth Amendment as of the date first above written.

LENDER:

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

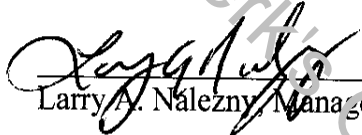
BORROWER:

**WD EXCHANGE LLC,**  
an Illinois limited liability company

By: One Wood Dale Place Apartments LLC,  
an Illinois limited liability company

Its: Sole Member

By: \_\_\_\_\_  
Lance M. Chody, Manager

By:   
Larry A. Nalezny, Manager

GUARANTOR:

\_\_\_\_\_  
**Lance M. Chody**

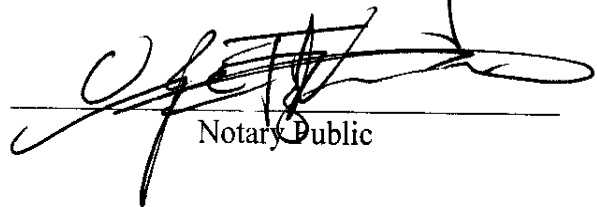
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, Francis Nzeribe, a Notary Public, do hereby certify that Milda Roszkiewicz, personally known to me to be the Senior Vice President of WELLS FARGO BANK, NATIONAL ASSOCIATION, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as Senior Vice President of said Wells Fargo Bank, National Association, pursuant to authority, as a free and voluntary act, and as the free and voluntary act and deed of Wells Fargo Bank, National Association for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 30<sup>th</sup> day of January, 2009.

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

My Commission Expires: 06/16/09



Property of Cook County Clerk's Office



# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF Cook        )

I, Karen Storc, a Notary Public, do hereby certify that Lance Chody, personally known to me to be the Manager of ONE WOOD DALE PLACE APARTMENTS LLC, the Sole Member of WD Exchange LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as manager of said limited liability company, as a free and voluntary act, and as the free and voluntary act and deed of said limited liability company as manager for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 30<sup>th</sup> day of January, 2009.

Karen Storc  
\_\_\_\_\_  
Notary Public

My Commission Expires:

11/07/11



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# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF Cook        )

I, Judy W. Meeks, a Notary Public, do hereby certify that LARRY AL. NADZNY, personally known to me to be the Manager of ONE WOOD DALE PLACE APARTMENTS LLC, the Sole Member of WD Exchange LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as manager of said limited liability company, as a free and voluntary act, and as the free and voluntary act and deed of said limited liability company as manager for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 29<sup>th</sup> day of JANUARY, 2009

Judy W. Meeks  
Notary Public

My Commission Expires:

July 22, 2009



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**UNOFFICIAL COPY**

Loan No. 102544

**EXHIBIT A-1****ORIGINAL LEGAL DESCRIPTION****PARCEL 1:**

THAT PART OF BLOCK 2 IN HAMILTON'S SUBDIVISION OF THE SOUTH 60 ACRES OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING IN THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 34, (EXCEPT THAT PART OF SAID PREMISES CONVEYED BY DAVID H. HAMILTON AND WIFE TO THE CITY OF CHICAGO BY DEED DATED JULY 31, 1891 AND RECORDED AUGUST 26, 1891 AS DOCUMENT NO. 1525724 IN BOOK 3691, PAGE 61, AND EXCEPT THE WEST 33 FEET THEREOF DEDICATED FOR PART OF WEST 45TH STREET (KILBOURN AVENUE) AND EXCEPT THAT PART OF SAID PREMISES CONVEYED TO CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD COMPANY BY DEED OF TRUST RECORDED OCTOBER 13, 1909 IN BOOK 10627, PAGE 178, AS DOCUMENT NO. 4451698 AND EXCEPT THAT PART OF SAID PREMISES DEDICATED FOR A PUBLIC STREET BY PLAT OF DEDICATION RECORDED IN BOOK 983 OF PLATS PAGE 8 AS DOCUMENT NO. 22547118 AND EXCEPT THAT PART OF SAID PREMISES LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE INTERSECTION OF THE EAST LINE OF 45TH STREET (KILBOURN AVENUE) AND THE NORTH LINE OF GRAND AVENUE; THENCE NORTHERLY, 330.31 FEET ALONG SAID EAST LINE FOR A POINT OF BEGINNING; THENCE EASTERLY, 289.45 FEET ALONG A LINE FORMING AN ANGLE OF 90 DEGREES 11 MINUTES 21 SECONDS WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, AS MEASURED CLOCKWISE THEREFROM; THENCE NORTHERLY, 14.05 FEET ALONG A LINE FORMING AN ANGLE OF 89 DEGREES 48 MINUTES 49 SECONDS WITH THE LAST DESCRIBED COURSE, AS MEASURED CLOCKWISE THEREFROM; THENCE EASTERLY, 309.88 FEET TO A POINT ON THE WEST LINE OF KOSTNER AVENUE FOR A POINT OF TERMINUS OF THE HEREON DESCRIBED LINE, SAID POINT BEING 676.45 FEET NORTHERLY, AS MEASURED ALONG SAID WEST LINE, OF THE SOUTHEAST CORNER OF BLOCK 2 IN HAMILTON'S SUBDIVISION AFORESAID, AND EXCEPT THAT PART OF SAID PREMISES LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE INTERSECTION OF THE EAST LINE OF 45TH STREET (KILBOURN AVENUE) AND THE NORTH LINE OF GRAND AVENUE; THENCE EASTERLY ALONG A LINE DRAWN PERPENDICULAR TO THE EAST LINE OF 45TH STREET AFORESAID, 599.29 FEET TO THE WEST LINE OF KOSTNER AVENUE FOR A POINT OF

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Loan No. 102544

TERMINUS OF THE HEREON DESCRIBED LINE AND EXCEPT THE EAST  
120.00 FEET OF THE PROPERTY DESCRIBED ABOVE, IN COOK COUNTY,  
ILLINOIS.

PIN: 13-34-311-005-0000

PROPERTY ADDRESS: 1710 N. KOSTNER, CHICAGO, IL

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Loan No. 102544

**EXHIBIT A-2****AMENDED LEGAL DESCRIPTION****PARCEL 1:**

THAT PART OF BLOCK 2 IN HAMILTON'S SUBDIVISION OF THE SOUTH 60 ACRES OF THE EAST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING IN THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 34 (EXCEPT THAT PART OF SAID PREMISES CONVEYED BY DAVID H. HAMILTON AND WIFE TO THE CITY OF CHICAGO BY DEED DATED JULY 31, 1891 AND RECORDED AUGUST 26, 1891 AS DOCUMENT NO. 1525724 IN BOOK 3691, PAGE 61, AND EXCEPT THE WEST 33 FEET THEREOF DEDICATED FOR PART OF WEST 45TH STREET (KILBOURN AVENUE) AND EXCEPT THAT PART OF SAID PREMISES CONVEYED TO CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD COMPANY BY DEED OF TRUST RECORDED OCTOBER 13, 1909 IN BOOK 10627, PAGE 178, AS DOCUMENT NO. 4451698 AND EXCEPT THAT PART OF SAID PREMISES DEDICATED FOR A PUBLIC STREET BY PLAT OF DEDICATION RECORDED IN BOOK 983 OF PLATS PAGE 8 AS DOCUMENT NO 22547118 AND EXCEPT THAT PART OF SAID PREMISES LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE INTERSECTION OF THE EAST LINE OF 45TH STREET (KILBOURN AVENUE) AND THE NORTH LINE OF GRAND AVENUE; THENCE NORTHERLY, 330.31 FEET ALONG SAID EAST LINE FOR A POINT OF BEGINNING; THENCE EASTERLY, 289.45 FEET ALONG A LINE FORMING AN ANGLE OF 90 DEGREES 11 MINUTES 21 SECONDS WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, AS MEASURED CLOCKWISE THEREFROM; THENCE NORTHERLY, 14.05 FEET ALONG A LINE FORMING AN ANGLE OF 89 DEGREES 48 MINUTES 49 SECONDS WITH THE LAST DESCRIBED COURSE, AS MEASURED CLOCKWISE THEREFROM; THENCE EASTERLY, 309.85 FEET TO A POINT ON THE WEST LINE OF KOSTNER AVENUE FOR A POINT OF TERMINUS OF THE HEREBY DESCRIBED LINE, SAID POINT BEING 676.45 FEET NORTHERLY, AS MEASURED ALONG SAID WEST LINE, OF THE SOUTHEAST CORNER OF BLOCK 2 IN HAMILTON'S SUBDIVISION AFORESAID) IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 CONTAINED IN THE DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS MADE DECEMBER 29, 1999 BY AND BETWEEN JETCO PROPERTIES, INC. AND KRC KOSTNER 853 INC., RECORDED JANUARY 11, 2000 AS DOCUMENT NUMBER 00036798 AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS MADE JANUARY 13, 2004 BY AND BETWEEN JETCO PROPERTIES, INC. AND SPIEGEL & TICKMAN III, LLC RECORDED JANUARY 20, 2004 AS DOCUMENT NUMBER 0402019101.

PARCEL NUMBER(S): 13-34-311-005, 13-34-311-006 and 13-34-311-007



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Loan No. 102544

## EXHIBIT B

### DOCUMENTS

- (1) LOAN DOCUMENTS. The documents listed below, numbered 1.1 through 1.11, inclusive, and amendments, modifications and supplements thereto which have received the prior written consent of Lender, together with any documents executed in the future that are approved by Lender and that recite that they are "Loan Documents" for purposes of this Agreement are collectively referred to herein as the "Loan Documents".
- 1.1 The Building Loan Agreement dated October 27, 2005 (as amended by (a) that certain First Amendment to Building Loan Agreement dated April 28, 2006 (the "**First Amendment**"), (b) that certain Second Amendment to Building Loan Agreement dated February 23, 2007 (the "**Second Amendment**"), (c) that certain Third Amendment to Building Loan Agreement dated November 16, 2007 (the "**Third Amendment**"), (d) that certain Fourth Amendment to Building Loan Agreement, Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing and Certain Other Documents dated January 28, 2008 (the "**Fourth Amendment**") and (e) that certain Fifth Amendment to Building Loan Agreement, Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing and Certain Other Documents dated January 30, 2009 (the "**Fifth Amendment**")) made by Borrower and Lender.
  - 1.2 The First Amendment.
  - 1.3 The Second Amendment.
  - 1.4 The Third Amendment.
  - 1.5 The Fourth Amendment.
  - 1.6 The Fifth Amendment.
  - 1.7 The Fourth Amended and Restated Promissory Note Secured by Mortgage dated as of the date of the Fifth Amendment in the original principal amount of \$8,560,000 made by Borrower payable to the order of Lender.
  - 1.8 The Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated October 27, 2005 (as amended) made by Borrower, as Mortgagor, in favor of Lender.
  - 1.9 Uniform Commercial Code – National Financing Statement – form UCC-1 (for Secretary of State and Cook County filings), as amended.
  - 1.10 Assignment of Construction, Maintenance, Management and Service Agreements dated October 27, 2005 (as amended), executed by Borrower in favor of Lender.

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Loan No. 102544

1.11 Assignment of Architectural Agreements and Plans and Specifications executed October 27, 2005 (as amended) by Borrower in favor of Lender.

(2) OTHER RELATED DOCUMENTS (WHICH ARE NOT LOAN DOCUMENTS)

- 2.1 Opinion of Borrower's Legal Counsel dated October 27, 2005, executed by Dan Dallner as legal counsel to the Borrower.
- 2.2 Funds Transfer Agreement for Disbursement of Loan Proceeds dated October 27, 2005, executed by and between Borrower and Wells Fargo Bank, National Association.
- 2.3 Unsecured Hazardous Materials Indemnity Agreement dated October 27, 2005 (as amended) executed by Guarantor, as Indemnitor, in favor of Lender, as amended, restated, supplemented or otherwise modified from time to time.
- 2.4 Repayment Guaranty dated October 27, 2005 by Guarantor in favor of Lender, as amended, restated, supplemented or otherwise modified from time to time.
- 2.5 Completion Guaranty dated October 27, 2005 by Guarantor in favor of Lender, as amended, restated, supplemented or otherwise modified from time to time.
- 2.6 Evidence satisfactory to Lender (including certified resolutions and incumbency certificates) that the individuals executing this Agreement, each of the various amendments thereto, and the other Loan Documents on behalf of Borrower have been duly authorized by all appropriate action to execute and deliver this Agreement, each of the amendments thereto, and the other Loan Documents on behalf of Borrower.
- 2.7 Organizational Documents, including: (i) Borrower's and Wood Dale's articles of organization, certified by the Secretary of State of the State of Illinois; (ii) FAE's certificate of formation, certified by the Secretary of State of the State of Delaware; (iii) copies of Borrower's, Wood Dale's and FAE's Operating Agreements, certified by their respective authorized officers; (iv) current Certificates of Existence for the State of Illinois for Borrower and Wood Dale and (v) current Certificate of Existence for FAE in the State of Illinois and a current Good Standing Certificate for FAE in the State of Delaware.
- 2.8 Acknowledgement of Lease Assignment, Subordination Attornment and Non-Disturbance Agreement dated February 23, 2007 between Burlington Coat Factory of Illinois LLC and Lender.