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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1216733113

Doc#: 1216733113 Fee: \$74.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/15/2012 11:43 AM Pg: 1 of 19

Report Mortgage Fraud
800-532-8785

Property of Cook County Clerk's Office

The property identified as: PIN: 14-28-310-027-0000

Address:

Street: 2729 N. Pine Grove

Street line 2:

City: Chicago

State: IL

ZIP Code: 60614

Lender: The Prudential Insurance Company of America

Borrower: Lower Peel LLC

Loan / Mortgage Amount: \$14,300,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/70 et seq. because it is commercial property.

Box 400-CTCC

Certificate number: F106242B-302D-4BD2-9FFD-D44F249A49A9

Execution date: 05/30/2012

Ref 4

DEAR

#8886005

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INTC

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3074

LOWER PEEL LLC, as mortgagor
(Borrower)

to

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, as mortgagee
(Lender)

**MORTGAGE AND
SECURITY AGREEMENT - SECOND**

Dated: As of May 30th, 2012

Location: 2727 N. Pine Grove
Chicago, Illinois 60614

County: Cook County, Illinois

Loan Number: 706108821

**PREPARED BY AND UPON
RECORDATION RETURN TO:**

LOCKE LORD LLP
111 SOUTH WACKER DRIVE
CHICAGO, ILLINOIS 60606
ATTENTION: SAMUEL STEMPEL, ESQ.

#8886045 DRAT

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MORTGAGE AND SECURITY AGREEMENT – SECOND (Lower Peel LLC)

THIS MORTGAGE AND SECURITY AGREEMENT - SECOND (this “Instrument”) is made as of the 20 day of May, 2012, by LOWER PEEL LLC, an Illinois limited liability company, having its principal office and place of business at c/o Newcastle Limited LLC, 150 North Michigan Avenue, Suite 3610, Chicago, Illinois 60601, as mortgagor (“Borrower”), to THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, having an office at c/o Prudential Asset Resources, Inc., 2100 Ross Avenue, Suite 2500, Dallas, Texas 75201, Attention: Asset Management Department; Reference Loan No. 706108819, as mortgagee (“Lender”).

RECITALS:

1. Borrower, and one or more affiliates of Borrower (the “Other Borrowers”; and collectively with Borrower, the “Borrower”) have entered into that certain Loan Agreement with Lender dated as of the date hereof (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “Loan Agreement”) (capitalized terms used herein without definitions shall have the meanings ascribed to such terms in the Loan Agreement or in the Mortgage and Security Agreement – First made by Borrower to Lender as of the date of this Instrument with respect to the Property (the “First Priority Instrument”).
2. Lender has agreed to make on the date hereof certain Loans (as defined in the Loan Agreement) to each of Borrowers in the aggregate original principal amount of \$ 14,300,000.00, evidenced by the Notes (as defined in the Loan Agreement), and secured by, among other things (i) the Property (as hereinafter defined), and (ii) certain other properties, as identified from time to time on Exhibit B to the Loan Agreement, owned by one or more of Borrowers (collectively, the “Other Properties”). Certain of Borrowers (other than Borrower), by the terms of the other Notes are indebted to Lender in the aggregate original principal sum of Ten Million Seven Hundred Eighty Thousand and No/100 Dollars (\$10,780,000.00). Interest on the unpaid balance of the Notes shall accrue at the rate of three and eighty-nine hundredths percent (3.89%) per annum; provided that, upon an Event of Default or at Maturity, interest shall accrue at the Default Rate (i.e. the lesser of (i) the maximum rate allowed by law or (ii) five percent (5%) plus the greater of (A) 3.89% or (B) the prime rate (for corporate loans at large United States money center commercial banks) published in The Wall Street Journal on the first Business Day of the month in which the Event of Default or Maturity occurs and on the first Business Day of every month thereafter). The Notes bear a maturity date of June 5, 2022.
3. In connection with Borrowers’ obtaining the Loans from Lender, Borrower has guaranteed (or will guarantee), pursuant to that certain Supplemental Guaranty dated of even date herewith (as the same may be amended and restated, the “Supplemental Guaranty”), the payment of the Loan (defined below) and the payment and performance of the Pool Obligations (as defined in the Loan Agreement). As additional security for the Loans and the Pool Obligations, Borrower has agreed to grant Lender a second-priority mortgage lien on and security title to the Property pursuant to this Instrument. Borrower acknowledges that Lender would not have made the Loans unless Borrower executed and delivered this Instrument.
4. Lender has required, as a condition to making the Loans to Borrowers that Borrower execute and deliver this Instrument, and Borrower, in order to obtain the Other Loan (defined below) is willing to execute and deliver this Instrument.

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5. Borrower desires to further secure the payment of the Note and the Obligations (defined below).

IN CONSIDERATION of the foregoing recitals and the principal sum of each Note, the Supplemental Guaranty, the making of the Loans to each of the Other Borrowers and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby represents and warrants to and covenants and agrees with Lender as follows:

A. Borrower hereby grants, bargains, sells, assigns, transfers, pledges, mortgages, warrants, and conveys to Lender, and grants Lender a security interest in, the following property, rights, interests and estates owned by Borrower (collectively, the "Property"):

(i) The real property in Cook County, Illinois, and described in Exhibit A (the "Land");

(ii) All buildings, structures and improvements (including fixtures) now or later located in or on the Land (the "Improvements");

(iii) All easements, estates, and interests including hereditaments, servitudes, appurtenances, tenements, mineral and oil/gas rights, water rights, air rights, development power or rights, options, reversion and remainder rights, and any other rights owned by Borrower and relating to or usable in connection with or access to the Property;

(iv) All right, title, and interest owned by Borrower in and to all land lying within the rights-of-way, roads, or streets, open or proposed, adjoining the Land to the center line thereof, and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;

(v) All right, title, and interest of Borrower in, to, and under all plans, specifications, surveys, studies, reports, permits, licenses, agreements, contracts, instruments, books of account, insurance policies, and any other documents relating to the use, construction, occupancy, leasing, activity, or operation of the Property;

(vi) All of the fixtures and personal property described in Exhibit B owned by Borrower and replacements thereof; but excluding all personal property owned by any tenant (a "Tenant") of the Property;

(vii) All of Borrower's right, title and interest in the proceeds (including conversion to cash or liquidation claims) of (A) insurance relating to the Property and (B) all awards made for the taking by eminent domain (or by any proceeding or purchase in lieu thereof) of the Property, including awards resulting from a change of any streets (whether as to grade, access, or otherwise) and for severance damages;

(viii) All tax refunds, including interest thereon, tax rebates, tax credits, and tax abatements, and the right to receive the same, which may be payable or available with respect to the Property;

(ix) All leasehold estates, ground leases, leases, subleases, licenses, or other agreements affecting the use, enjoyment or occupancy of the Property now or later existing (including any use or occupancy arrangements created pursuant to Title 7 or 11 of the United States Code, as amended from time to time, or any similar federal or state laws now or later enacted for the relief of debtors (the

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“**Bankruptcy Code**”) and all extensions and amendments thereto (collectively, the “**Leases**”) and all of Borrower’s right, title and interest under the Leases, including all guaranties thereof;

(x) All rents, issues, profits, royalties, receivables, use and occupancy charges (including all oil, gas or other mineral royalties and bonuses), income and other benefits now or later derived from any portion or use of the Property (including any payments received with respect to any Tenant or the Property pursuant to the Bankruptcy Code) and all cash, security deposits, advance rentals, or similar payments relating thereto (collectively, the “**Rents**”) and all proceeds from the cancellation, termination, surrender, sale or other disposition of the Leases, and the right to receive and apply the Rents to the payment of the Obligations; and

(ii) All of Borrower’s rights and privileges heretofore or hereafter otherwise arising in connection with or pertaining to the Property, including, without limiting the generality of the foregoing, all water and/or sewer capacity, all water, sewer and/or other utility deposits or prepaid fees, and/or all water and/or sewer and/or other utility tap rights or other utility rights, any right or privilege of Borrower under any loan commitment, lease, contract, declaration of covenants, restrictions and easements or like instrument, developer’s agreement, or other agreement with any third party pertaining to the ownership, development, construction, operation, maintenance, marketing, sale or use of the Property.

B. Absolutely and unconditionally assigns, sets over, and transfers to Lender all of Borrower’s right, title, interest and estate in and to the Leases and the Rents, subject to the terms and license granted to Borrower under that certain Assignment of Leases and Rents - Second made by Borrower to Lender dated as of the date hereof (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Assignment**”), which document shall govern and control the provisions of this assignment.

TO HAVE AND TO HOLD the Property unto Lender and its successors and assigns forever, subject to the Permitted Encumbrances (as defined in the Loan Agreement) and the provisions, terms and conditions of this Instrument.

PROVIDED, HOWEVER, if Borrower (or the Other Borrowers) shall pay and perform the Obligations of the Other Borrowers as provided for in the Documents (defined below) and shall comply with all the provisions, terms and conditions in the Documents, these presents and the estates hereby granted (except for the obligations of Borrowers set forth in (i) Sections 3.11 and 3.12 and Article VIII of the Loan Agreement) shall cease, terminate and be void.

AND FURTHER PROVIDED, HOWEVER, that notwithstanding any other provision of this Instrument to the contrary, the Property, Leases, Rents and other collateral of every sort encumbered by this Instrument shall not include any tenant security deposits which are subject to any applicable law, ordinance, rule or regulation which prohibits Borrower from encumbering such security deposits.

IN FURTHERANCE of the foregoing, Borrower warrants, represents, covenants and agrees as follows:

ARTICLE I - OBLIGATIONS; DOCUMENTS; INCORPORATION; DEFINITIONS

Section 1.01 Obligations. This Instrument is executed, acknowledged, and delivered by Borrower to secure and enforce the Obligations of the Other Borrowers (collectively, the “**Other Borrowers’ Obligations**”).

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Section 1.02 Documents; Incorporation. The term “**Documents**” shall have the meaning ascribed to such term in the First Priority Instrument. All of the provisions of the Junior Documents executed and delivered by the Borrower are incorporated into this Instrument to the same extent and with the same force as if fully set forth in this Instrument.

Section 1.03 Definitions. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. The terms set forth below are defined in the following sections of this Instrument:

Assignment	Recitals, Section 3(B)
Bankruptcy Code	Recitals, Section 3(A)(ix)
Borrower	Preamble
Documents	Section 1.02
Improvements	Recitals, Section 3(A)(ii)
Instrument	Preamble
Land	Recitals, Section 3(A)(i)
Leases	Recitals, Section 3(A)(ix)
Lender	Preamble
Loan	Recitals, Section 1
Loan Agreement	Recitals, Section 2
Note	Recitals, Section 1
Notice	Section 5.02
Obligations	Section 1.01
Permitted Encumbrances	Recitals, Section 3(B)
Personal Property	Section 3.02(j)
Property	Recitals, Section 3(A)
Rents	Recitals, Section 3(A)(x)
Tenant	Recitals, Section 3(A)(vi)

ARTICLE II - SALE, TRANSFER, OR ENCUMBRANCE OF THE PROPERTY

Section 2.01 Due-on-Sale or Encumbrance. It shall be an Event of Default and, at the sole option of Lender, Lender may accelerate the Other Borrowers’ Obligations and the entire Pool Obligations (including any Prepayment Premium) shall become immediately due and payable, if, without Lender’s prior written consent (which consent may be given or withheld for any or for no reason or given conditionally, in Lender’s sole discretion), any of the events set forth in Section 5.01 of the Loan Agreement shall occur.

ARTICLE III - DEFAULTS AND REMEDIES

Section 3.01 Events of Default. The occurrence of an Event of Default (as such term is defined in Section 6.01 of the Loan Agreement) shall constitute, at Lender’s option, an Event of Default under this Instrument and the other Junior Documents.

Section 3.02 Remedies. If an Event of Default occurs, Lender or any person designated by Lender may (but shall not be obligated to) take any action (separately, concurrently, cumulatively, and at any time and in any order) permitted under any Laws, without notice, demand, presentment, or protest (all of which are hereby waived), to protect and enforce Lender’s rights under the Documents or Laws including the following actions:

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(a) accelerate and declare the entire unpaid Other Borrowers' Obligations immediately due and payable, except for defaults under Sections 6.01(f), 6.01(g), 6.01(h), or 6.01(i) of the Loan Agreement which shall automatically make the Other Borrowers' Obligations immediately due and payable;

(b) judicially or otherwise, (i) completely foreclose this Instrument or (ii) partially foreclose this Instrument for any portion of the Other Borrowers' Obligations due and the lien and security interest created by this Instrument shall continue unimpaired and without loss of priority as to the remaining Other Borrowers' Obligations not yet due;

(c) sell for cash or upon credit the Property and all right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale;

(d) recover judgment on the Note either before, during or after any proceedings for the enforcement of the Documents and without any requirement of any action being taken to (i) realize on the Property or (ii) otherwise enforce the Documents;

(e) seek specific performance of any provisions in the Documents;

(f) apply for the appointment of a receiver, custodian, trustee, liquidator, or conservator of the Property without (i) notice to any person, (ii) regard for (A) the adequacy of the security for the Other Borrowers' Obligations or (B) the solvency of Borrower or any person liable for the payment of the Other Borrowers' Obligations; and Borrower and any person so liable waives or shall be deemed to have waived the foregoing and any other objections to the fullest extent permitted by Laws and consents or shall be deemed to have consented to such appointment;

(g) with or without entering upon the Property, (i) exclude Borrower and any person from the Property without liability for trespass, damages, or otherwise; (ii) take possession of, and Borrower shall surrender on demand, all books, records, and accounts relating to the Property; (iii) give notice to Tenants or any person, make demand for, collect, receive, sue for, and recover in its own name all Rents and cash collateral derived from the Property; (iv) use, operate, manage, preserve, control, and otherwise deal with every aspect of the Property including (A) conducting its business, (B) insuring it, (C) making all repairs, renewals, replacements, alterations, additions, and improvements to or on it, (D) completing the construction of any Improvements in manner and form as Lender deems advisable, and (E) executing, modifying, enforcing, and terminating new and existing Leases on such terms as Lender deems advisable and evicting any Tenants in default; (v) apply the receipts from the Property to payment of the Other Borrowers' Obligations, in any order or priority determined by Lender, after first deducting all Costs, expenses, and liabilities incurred by Lender in connection with the foregoing operations and all amounts needed to pay the Impositions and other expenses of the Property, as well as just and reasonable compensation for the services of Lender and its attorneys, agents, and employees; and/or (vi) in every case in connection with the foregoing, exercise all rights and powers of Borrower or Lender with respect to the Property, either in Borrower's name or otherwise;

(h) release any portion of the Property for such consideration, if any, as Lender may require without, as to the remainder of the Property, impairing or affecting the lien or priority of this Instrument or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Other Borrowers' Obligations shall have been actually reduced, and Lender may accept by assignment, pledge, or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder;

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(i) apply any Deposits to the following items in any order and in Lender's sole discretion: (A) the Other Borrowers' Obligations, (B) Costs, (C) advances made by Lender under the Documents, and/or (D) Impositions;

(j) take all actions permitted under the U.C.C. of the Property State (as defined in the Loan Agreement) including (i) the right to take possession of all tangible and intangible personal property now or hereafter included within the Property (the "Personal Property") and take such actions as Lender deems advisable for the care, protection and preservation of the Personal Property and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower at least five (5) days prior to such action shall constitute commercially reasonable notice to Borrower; or

(k) take any other action permitted under any Laws.

If Lender exercises any of its rights under Section 3.02(g), Lender shall not (a) be deemed to have entered upon or taken possession of the Property except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose; (b) be deemed a beneficiary or mortgagee in possession by reason of such entry or taking possession; nor (c) be liable (i) to account for any action taken pursuant to such exercise other than for Rents actually received by Lender, (ii) for any loss sustained by Borrower resulting from any failure to lease the Property, or (iii) any other act or omission of Lender except for losses caused by Lender's willful misconduct or gross negligence. Borrower hereby consents to, ratifies, and confirms the exercise by Lender of its rights under this Instrument and appoints Lender as its attorney-in-fact, which appointment shall be deemed to be coupled with an interest and irrevocable, for such purposes.

Section 3.03 Expenses. All Costs, expenses, allocated or accrued fees, or other amounts paid or incurred by Lender in the exercise of its rights under the Documents, together with interest thereon at the applicable interest rate specified in the Loan Agreement, which shall be the Default Rate unless prohibited by Laws, shall be (a) part of the Other Borrowers' Obligations, (b) secured by this Instrument, and (c) allowed and included as part of the Other Borrowers' Obligations in any foreclosure, decree for sale, power of sale, or other judgment or decree enforcing Lender's rights under the Documents.

Section 3.04 Rights Pertaining to Sales. To the extent permitted under (and in accordance with) any Laws, the following provisions shall, as Lender may determine in its sole discretion, apply to any sales of the Property under this Article III, whether by judicial proceeding, judgment, decree, power of sale, foreclosure or otherwise: (a) Lender may conduct a single sale of the Property or multiple sales of any part of the Property in separate tracts or in its entirety or any other manner as Lender deems in its best interests and Borrower waives any right to require otherwise; (b) if Lender elects more than one sale of the Property, Lender may at its option cause the same to be conducted simultaneously or successively, on the same day or on such different days or times and in such order as Lender may deem to be in its best interests, no such sale shall terminate or otherwise affect the lien of this Instrument on any part of the Property not then sold, and Borrower shall pay the costs and expenses of each such sale; (c) any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice; or such sale may occur, without further notice, at the time fixed by the last postponement or a new notice of sale may be given; and (d) Lender may acquire the Property and, in lieu of paying cash, may pay by crediting against the Obligations the amount of its bid, after deducting therefrom any sums which Lender is authorized to deduct under the provisions of the Documents. After any such sale, Lender shall deliver to the purchaser at such sale a deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in any such deed of any matters or facts

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shall be conclusive proof of the truthfulness thereof. Any Person, including Borrower or Lender, may purchase at such sale.

Section 3.05 Application of Proceeds. Any proceeds received from any sale or disposition under this Article III or otherwise, together with any other sums held by Lender, shall, except as expressly provided to the contrary, be applied in the order determined by Lender to: (a) payment of all Costs and expenses of any enforcement action or foreclosure sale, transfer of title by power of sale, or otherwise, including interest thereon at the applicable interest rate specified in the Loan Agreement, which shall be the Default Rate unless prohibited by Laws, (b) all taxes, Assessments, and other charges unless the Property was sold subject to these items; (c) payment of the Other Borrowers' Obligations (including specifically, without limitation, the principal, interest, and attorneys' fees due and unpaid on the Other Notes and the amounts due and unpaid and owed to Lender under this Instrument) in such order as Lender may elect; (d) payment of any other sums secured or required to be paid by Borrower; and (e) payment of the surplus, if any, to Borrower or to such other person lawfully entitled to receive it. Borrower and Lender intend and agree that during any period of time between any foreclosure judgment that may be obtained and the actual foreclosure sale that the foreclosure judgment will not extinguish the Documents or any rights contained therein including the obligation of Borrower to pay all Costs and to pay interest at the applicable interest rate specified in the Loan Agreement which shall be the Default Rate unless prohibited by Laws.

Section 3.06 Additional Provisions as to Remedies. No failure, refusal, waiver, or delay by Lender to exercise any rights under the Documents upon any default or Event of Default shall impair Lender's rights or be construed as a waiver of, or acquiescence to, such or any subsequent default or Event of Default. No recovery of any judgment by Lender and no levy of an execution upon the Property or any other property of Borrower shall affect the lien and security interest created by this Instrument and such liens, rights, powers, and remedies shall continue unimpaired as before. Lender may resort to any security given by this Instrument or any other security now given or hereafter existing to secure the Other Borrowers' Obligations, in whole or in part, in such portions and in such order as Lender may deem advisable, and no such action shall be construed as a waiver of any of the liens, rights, or benefits granted hereunder. Acceptance of any payment after any Event of Default shall not be deemed a waiver or a cure of such Event of Default and such acceptance shall be deemed an acceptance on account only. If Lender has started enforcement of any right by foreclosure, sale, entry, or otherwise and such proceeding shall be discontinued, abandoned, or determined adversely for any reason, then Borrower and Lender shall be restored to their former positions and rights under the Documents with respect to the Property, subject to the lien and security interest hereof.

Section 3.07 Waiver of Rights and Defenses. To the fullest extent Borrower may do so under Laws, Borrower (a) will not at any time insist on, plead, claim, or take the benefit of any statute or rule of law now or later enacted providing for any appraisal, valuation, stay, extension, moratorium, redemption, or any statute of limitations; (b) for itself, its successors and assigns, and for any person ever claiming an interest in the Property (other than Lender), waives and releases all rights of redemption, reinstatement, valuation, appraisal, notice of intention to mature or declare due the whole of the Other Borrowers' Obligations, all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation, in the event of foreclosure (or extinguishment by transfer of title by power of sale) of the liens and security interests created under the Documents; (c) shall not be relieved of its obligation to pay the Other Borrowers' Obligations as required in the Documents nor shall the lien or priority of the Junior Documents be impaired by any agreement renewing, extending, or modifying the time of payment or the provisions of the Documents (including a modification of any interest rate), unless expressly released, discharged, or modified by such agreement. Regardless of consideration and without any notice to or consent by the holder of any subordinate lien, security interest, encumbrance, right, title, or interest in or to the Property, Lender may (a) release any person liable for payment of the Other Borrowers'

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Obligations or any portion thereof or any part of the security held for the Other Borrowers' Obligations or (b) modify any of the provisions of the Documents without impairing or affecting the Documents or the lien, security interest, or the priority of the modified Documents as security for the Other Borrowers' Obligations over any such subordinate lien, security interest, encumbrance, right, title, or interest.

Section 3.08 Additional Credit Bidding. In connection with any sale of the Property pursuant to Section 363 of the Bankruptcy Code or any plan under the Bankruptcy Code, Lender shall have the right to acquire the Property and, in lieu of paying cash, Lender shall have the right (at its option) to pay by crediting against the Other Borrowers' Obligations the amount of its bid, after deducting therefrom any sums which Lender is authorized to deduct under the provisions of the Documents.

ARTICLE IV - SECURITY AGREEMENT

Section 4.01 Security Agreement. This Instrument constitutes both a real property mortgage and a "security agreement" within the meaning of the U.C.C. The Property includes real and personal property and all tangible and intangible rights and interest of Borrower in the Property. Borrower grants to Lender, as security for the Other Borrowers' Obligations, a security interest in the Personal Property to the fullest extent that the Personal Property may be subject to the U.C.C. Borrower authorizes Lender to file any financing or continuation statements and amendments thereto relating to the Personal Property without the signature of Borrower if permitted by Laws.

ARTICLE V - ADDITIONAL PROVISIONS

Section 5.01 Usury Savings Clause. Without limiting Section 1.02 above, the provisions of Section 9.01 of the Loan Agreement are hereby incorporated by reference into this Instrument to the same extent and with the same force as if fully set forth herein.

Section 5.02 Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted under the Documents shall be in writing and shall be validly given if sent by a nationally-recognized courier that obtains receipts, delivered personally by a courier that obtains receipts, or mailed by United States certified mail (with return receipt requested and postage prepaid) addressed to the applicable person as follows:

If to Borrower:

c/o Newcastle Limited LLC
150 North Michigan Avenue, Suite 3610
Chicago, Illinois 60601
Attention: Michael R. Haney

With a copy of notices sent to Borrower to:

Seyfarth Shaw LLP
131 South Dearborn Street, Suite 2400
Chicago, Illinois 60603
Attention: Alvin L. Kruse

If to Lender:

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Prudential Asset Resources, Inc.
2100 Ross Avenue, Suite 2500
Dallas, Texas 75201
Attention: Asset Management Department
Reference Loan No. 706108821

With a copy of notices sent to Lender to:

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Prudential Asset Resources, Inc.
2100 Ross Avenue, Suite 2500
Dallas, Texas 75201
Attention: Legal Department
Reference Loan No. 706108821

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Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed receipt. Any party may periodically change its address for notice and specify up to two (2) additional addresses for copies by giving the other party at least ten (10) days' prior notice.

Section 5.03 Applicable Law and Submission to Jurisdiction. This Instrument shall be governed by and construed in accordance with the laws of the Property State and the applicable laws of the United States of America. Without limiting Lender's right to bring any Action (as defined in the Loan Agreement) in the courts of other jurisdictions, Borrower irrevocably (a) submits to the jurisdiction of any state or federal court in the Property State, (b) agrees that any Action may be heard and determined in such court, and (c) waives, to the fullest extent permitted by Laws, the defense of an inconvenient forum to the maintenance of any Action in such jurisdiction.

Section 5.04 Transfer of Loan.

(a) Lender may, at any time, (i) sell, transfer or assign the Documents and any servicing rights with respect thereto or (ii) grant participations therein or issue Securities (as defined in the Loan Agreement). Lender may forward to any Investors (as defined in the Loan Agreement), to any Rating Agency (as defined in the Loan Agreement) rating such Securities and to any prospective Investor, all documents and information which Lender now has or may later acquire relating to the Other Borrowers' Obligations, Borrower, any guarantor, any indemnitor(s), the Leases, and the Property, whether furnished by Borrower, any guarantor, any indemnitor(s) or otherwise, as Lender determines advisable. Borrower, any guarantor and any indemnitor agree to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Section 5.04 including the delivery of an estoppel certificate in accordance with Section 3.16 of the Loan Agreement and such other documents as may be reasonably requested by Lender. Borrower shall also furnish consent of any borrower, any guarantor and any indemnitor in order to permit Lender to furnish such Investors or such prospective Investors or such Rating Agency with any and all information concerning the Property, the Leases, the financial condition of Borrower, any guarantor and any indemnitor, as may be reasonably requested by Lender, any Investor, any prospective Investor or any Rating Agency and which may be complied with without undue expense.

(b) Borrower agrees that upon any assignment or transfer of the Documents by Lender to any third party, Borrower hereby waiving notice of any such transfer, Lender shall have no obligations or liabilities under the Documents, such third party shall be substituted as the lender under the Documents for all purposes, and Borrower shall look solely to such third party for the performance of any obligations under the Documents or with respect to the Loan.

(c) Upon an assignment or other transfer of the Documents, Lender may, at its discretion, pay over the Deposits in its possession and deliver all other collateral mortgaged, granted, pledged or assigned pursuant to the Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights herein or under applicable law given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred to Borrower or to the assignee or transferee of the Documents. If the Deposits are transferred or assigned to the assignee or transferee, then Borrower shall then look solely to such assignee or transferee with respect thereto. This provision shall apply to every transfer of the Deposits and any other collateral mortgaged, granted, pledged or assigned pursuant to the Documents, or any part thereof, to a new assignee or transferee. Subject to the provisions of Section 5.01 of the Loan Agreement, a transfer of title to the land shall automatically transfer to the new owner the beneficial interest in the Deposits.

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Section 5.05 Miscellaneous. If any provision of the Documents shall be held to be invalid, illegal, or unenforceable in any respect, this shall not affect any other provisions of the Documents and such provision shall be limited and construed as if it were not in the Documents. If title to the Property becomes vested in any person other than Borrower, then Lender may, without notice to Borrower, deal with such person regarding the Documents or the Obligations in the same manner as with Borrower without in any way vitiating or discharging Borrower's liability under the Documents or being deemed to have consented to the vesting. If both the lessor's and lessee's interest under any Lease ever becomes vested in any one person, this Instrument and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger, and Lender shall continue to have and enjoy all its rights and privileges as to each separate estate. Upon foreclosure (or transfer of title by power of sale) of this Instrument, none of the Leases shall be destroyed or terminated as a result of such foreclosure (or transfer of title by power of sale), by application of the doctrine of merger or as a matter of law, unless Lender takes all actions required by law to terminate the Leases as a result of foreclosure (or transfer of title by power of sale). All of Borrower's covenants and agreements under the Documents shall run with the land and time is of the essence. Borrower appoints Lender as its attorney-in-fact, which appointment is irrevocable and shall be deemed to be coupled with an interest, with respect to the execution, acknowledgment, delivery, filing or recording for and in the name of Borrower of any of the documents listed in Sections 3.04, 3.19, 4.01, and 6.02 of the Loan Agreement. The Documents cannot be amended, terminated, or discharged except in a writing signed by the party against whom enforcement is sought. No waiver, release, or other forbearance by Lender will be effective unless it is in a writing signed by Lender and then only to the extent expressly stated. The provisions of the Documents shall be binding upon Borrower and its heirs, devisees, representatives, successors, and assigns including successors in interest to the Property and inure to the benefit of Lender and its heirs, successors, substitutes, and assigns. Where two or more persons have executed the Documents, the obligations of such persons shall be joint and several, except to the extent the context clearly indicates otherwise. The Documents may be executed in any number of counterparts with the same effect as if all parties had executed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any Document which is not of public record, and, in the case of any mutilation, upon surrender and cancellation of the Document, Borrower will issue, in lieu thereof, a replacement Document, dated the date of the lost, stolen, destroyed or mutilated Document containing the same provisions. Any reviews, inspections, reports, approvals or similar items conducted, made or produced by or on behalf of Lender with respect to Borrower, the Property or the Loan are for loan underwriting and servicing purposes only, and shall not constitute an acknowledgment, representation or warranty of the accuracy thereof, or an assumption of liability with respect to Borrower, Borrower's contractors, architects, engineers, employees, agents or invitees, present or future tenants, occupants or owners of the Property, or any other party.

Section 5.06 Limited Recourse Liability. The terms and conditions of Sections 8.01 and 8.02 of the Loan Agreement are hereby incorporated herein by reference and this Instrument is subject to those terms and conditions.

Section 5.07 Entire Agreement. Except as provided in Section 3.17 of the Loan Agreement, (a) the Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the Loan and supersede all prior written or oral understandings and agreements with respect to the Loan including the Loan application, Loan commitment, and any confidentiality agreements, and (b) Borrower is not relying on any representations or warranties of Lender except as expressly set forth in the Documents.

Section 5.08 WAIVER OF TRIAL BY JURY. EACH OF BORROWER AND LENDER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN

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ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY EITHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE DOCUMENTS, OR ANY ALLEGED ACTS OR OMISSIONS OF LENDER OR BORROWER IN CONNECTION THEREWITH.

ARTICLE VI - LOCAL LAW PROVISIONS

In the event of any conflict or inconsistency between the provisions of this Article VI and the remainder of this Instrument, the provisions of this Article VI shall control.

Section 6.01 Additional Remedies. In addition to the remedies set forth in Article III hereof, Lender, at Lender's option, may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorneys' fees, costs of documentary evidence, abstracts and title reports.

Section 6.02 Illinois Mortgage Foreclosure Law. Lender shall be entitled to the following benefits, among others, pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101) (the "Act"):

(a) **Benefits to Act.** Borrower and Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) **Insurance.** Wherever provision is made in the Instrument for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of the Lender shall continue in the Lender as judgment creditor or mortgagee until confirmation of sale.

(c) **Protective Advances.** All advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings authorized by the Instrument or by the Act (collectively, "Protective Advances"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by the Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note. This Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Instrument is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (i) determination of the amount of indebtedness secured by this Instrument at any time;
- (ii) the indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any

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additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) if right of redemption has not been waived by the Borrower in the Instrument, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;

(iv) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(v) application of income in the hands of any receiver or Lender in possession; and

(vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

(d) **Lender in Possession.** In addition to any provision of the Instrument authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in the Instrument, all powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the Act.

Section 6.03 Release. Upon payment of all sums secured by this Instrument, Lender shall cancel this Instrument. Borrower shall pay Lender's reasonable costs incurred in canceling this Instrument.

Section 6.04 Attorneys' Fees. As used herein, "attorneys fees" shall mean "reasonable attorneys' fees".

Section 6.05 Future Advances. Upon request of Borrower, Lender, at Lender's sole option within twenty years from the date of this Instrument, may make future advances to Borrower ("**Future Advances**"). Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Instrument, not including sums advanced in accordance herewith to protect the security of this Instrument, exceed two hundred percent (200%) of the original amount of the Note plus interest thereon and any disbursements made for the payment of taxes, levies or insurance on the property encumbered by this Instrument with interest on such disbursements at the Default Rate.

Section 6.06 Waiver of Rights of Redemption and Reinstatement. Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement of any rights or remedies of Lender under this Instrument, but hereby waives the benefit of such laws and the benefit of any homestead or other exemptions which it may now or hereafter from time to time have with respect to the Property or the Obligations hereby secured. Borrower for itself and all creditors, mortgagees, trustees, lienholders and other persons or entities who may claim through or under it waives any and all right to have the property and estates comprising the Property, or any part thereof, marshalled upon any foreclosure or other disposition (whether or not the entire Property be sold as a unit, and whether or not any parcels thereof be sold as a unit or separately) of any kind or nature of the Property, or any part thereof, or interest therein, and agrees that any court having jurisdiction to foreclose or otherwise enforce the liens granted and security interests created by this Instrument may order the Property sold as an entirety. On behalf of Borrower, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Instrument, and on behalf of all other persons to the maximum extent

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permitted by applicable law, Borrower hereby waives any and all rights (x) of redemption from any foreclosure, or other disposition of any kind or nature of the Property, or any part thereof, or interest therein, under or pursuant to rights herein granted to Lender, and (y) to the extent permitted by the Act prior to default, if at all, to reinstatement of the indebtedness hereby secured, including, without limitation, any right to reverse any acceleration of such indebtedness pursuant to 735 ILCS 5/15-1602. Borrower further waives and releases (a) all errors, defects, and imperfections in any proceedings instituted by Lender under the Note, this Instrument or any of the Documents, (b) all benefits that might accrue to the Borrower by virtue of any present or future laws exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy, or sale under civil process, or extension, exemption from civil process, or extension of time for payment, and (c) all notices not specifically required by this Instrument of default, or of Lender's exercise, or election to exercise, any option under this Instrument. All waivers by Borrower in this Instrument have been made voluntarily, intelligently and knowingly by Borrower after Borrower has been afforded an opportunity to be informed by counsel of Borrower's choice as to possible alternative rights. Borrower's execution of this Instrument shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

Section 6.07 Leasing and Management Agreements. Borrower covenants and agrees that all agreements to pay leasing commissions (a) shall provide that the obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement, (b) shall be subordinate to the lien of this Instrument, and (c) shall not be enforceable against Lender. Borrower shall furnish Lender with evidence of the foregoing which is in all respects satisfactory to Lender. Borrower further covenants and agrees that any property management agreement and operating agreement for the Property, whether now in effect or entered into hereafter by Borrower, with a property manager or operator, shall contain a "no lien" provision whereby, to the maximum extent permitted by law, the property manager or operator waives and releases, and to the extent that the above is not permitted by applicable law, subordinates to the lien hereof, any and all mechanics' lien rights that it or anyone claiming through or under it may have pursuant to 770 ILCS 60/1. Such property management agreement or operating agreement or a short form thereof shall, at Lender's request, be recorded with the Office of the Recorder of Deeds for the county in which the Property is located. In addition, Borrower shall cause the property manager or operator to enter into a subordination agreement with Lender, in recordable form, whereby the property manager subordinates its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Instrument. Borrower's failure to require the "no lien" provision or the subordination agreement described herein shall constitute an Event of Default under this Instrument.

Section 6.08 Costs. In the event it should become necessary for Lender to employ legal counsel to collect the Obligations, or to enforce Lender's rights under this Instrument, Borrower agrees to pay all reasonable fees and expenses of Lender including, without limitation, reasonable attorneys' fees for the services of such counsel whether or not suit be brought.

Section 6.09 Business Loan. Mortgagor represents and warrants that the loans or other financial accommodations included as Liabilities secured by this Mortgage were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes, and will constitute a "business loan" within the purview of 815 ILCS 205/4

Section 6.10 Subordination of this Instrument. This Instrument shall be in all respects subject to the First Priority Instrument.

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Exhibit A

LEGAL DESCRIPTION OF LAND

LOTS 69, 70 AND THE NORTHERLY 1 FOOT 3 1/8 INCHES OF LOT 71 (EXCEPT THE EASTERLY 30 FEET THEREOF) IN ANDREWS SPOFFORD AND COLEHOURS SUBDIVISION OF BLOCKS 1 AND 2 OF OUTLOT 'A' IN WRIGHTWOOD, A SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

STREET ADDRESS: 2729 N. PINE GROVE

CITY: CHICAGO COUNTY: COOK IL 60614

TAX NUMBER: 14-28-310-027-0000

Property of Cook County Clerk's Office

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Exhibit B

DESCRIPTION OF PERSONAL PROPERTY SECURITY

All of Borrower's right, title and interest in, to and under the following, but excluding any tenant security deposits which are subject to any applicable law, ordinance, rule or regulation which prohibits Borrower from encumbering such security deposits:

1. All machinery, apparatus, goods, equipment, materials, fittings, fixtures, chattels, and tangible personal property, and all appurtenances and additions thereto and betterments, renewals, substitutions, and replacements thereof, owned by Borrower, wherever situate, and now or hereafter located on, attached to, contained in, or used or usable in connection with the real property described in Exhibit A attached hereto and incorporated herein (the "Land"), and all improvements located thereon (the "Improvements") or placed on any part thereof, though not attached thereto, including all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, electrical, lighting, plumbing, ventilating, air-conditioning, refrigerating, incinerating and/or compacting plants, systems, fixtures and equipment, elevators, hoists, stoves, ranges, vacuum and other cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, ducts, conduits, dynamos, engines, compressors, generators, boilers, stokers, furnaces, pumps, tanks, appliances, equipment, fittings, and fixtures.
2. All funds, accounts, deposits, instruments, documents, contract rights, general intangibles, notes, and chattel paper arising from or by virtue of any transaction related to the Land, the Improvements, or any of the personal property described in this Exhibit B.
3. All permits, licenses, franchises, certificates, and other rights and privileges now held or hereafter acquired by Borrower in connection with the Land, the Improvements, or any of the personal property described in this Exhibit B.
4. All right, title, and interest of Borrower in and to the name and style by which the Land and/or the Improvements is known, including trademarks and trade names relating thereto.
5. All right, title, and interest of Borrower in, to, and under all plans, specifications, maps, surveys, reports, permits, licenses, architectural, engineering and construction contracts, books of account, insurance policies, and other documents of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale, or operation of the Land and/or the Improvements.
6. All interests, estates, or other claims or demands, in law and in equity, which Borrower now has or may hereafter acquire in the Land, the Improvements, or the personal property described in this Exhibit B.
7. All right, title, and interest owned by Borrower in and to all options to purchase or lease the Land, the Improvements, or any other personal property described in this Exhibit B, or any portion thereof or interest therein, and in and to any greater estate in the Land, the Improvements, or any of the personal property described in this Exhibit B.
8. All of the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance relating thereto, which Borrower now has or may hereafter acquire in the Land, the Improvements, or any of the personal property described in this Exhibit B, or any portion thereof or interest therein, and any and all awards made for the taking by

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eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of such property, including without limitation, any award resulting from a change of any streets (whether as to grade, access, or otherwise) and any award for severance damages.

9. All right, title, and interest of Borrower in and to all contracts, permits, certificates, licenses, approvals, utility deposits, utility capacity, and utility rights issued, granted, agreed upon, or otherwise provided by any governmental or private authority, person or entity relating to the ownership, development, construction, operation, maintenance, marketing, sale, or use of the Land and/or the Improvements, including all of Borrower's rights and privileges hereto or hereafter otherwise arising in connection with or pertaining to the Land and/or the Improvements, including, without limiting the generality of the foregoing, all water and/or sewer capacity, all water, sewer and/or other utility deposits or prepaid fees, and/or all water and/or sewer and/or other utility tap rights or other utility rights, any right or privilege of Borrower under any loan commitment, lease, contract, declaration of covenants, restrictions and easements or like instrument, developer's agreement, or other agreement with any third party pertaining to the ownership, development, construction, operation, maintenance, marketing, sale, or use of the Land and/or the Improvements.

AND ALL PROCEEDS AND PRODUCTS OF THE FOREGOING PERSONAL PROPERTY DESCRIBED IN THIS EXHIBIT P.

A PORTION OF THE ABOVE DESCRIBED GOODS ARE OR ARE TO BE AFFIXED TO THE REAL PROPERTY DESCRIBED IN EXHIBIT A.

BORROWER IS THE RECORD TITLE HOLDER AND OWNER OF THE REAL PROPERTY DESCRIBED IN EXHIBIT A.

ALL TERMS USED IN THIS EXHIBIT B (AND NOT OTHERWISE DEFINED IN THIS EXHIBIT B) SHALL HAVE THE MEANING, IF ANY, ASCRIBED TO SUCH TERM UNDER THE UNIFORM COMMERCIAL CODE AS ADOPTED AND IN FORCE IN THE JURISDICTION IN WHICH THIS FINANCING STATEMENT HAS BEEN FILED/RECORDED (THE "U.C.C.").

WITH RESPECT TO ANY FINANCING STATEMENT TO WHICH THIS EXHIBIT B IS ATTACHED, THE TERM "BORROWER" SHALL MEAN "DEBTOR" AS SUCH TERM IS DEFINED IN THE U.C.C.