

UNOFFICIAL COPY



Doc#: 0733811211 Fee: \$68.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/04/2007 04:02 PM Pg: 1 of 23

SECOND MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING

This Second Mortgage, Security Agreement, Assignment of Rents and Fixture Filing ("Second Mortgage") made this 31st day of October, 2007 by 3FJ CONSTRUCTION COMPANY, INC., an Illinois corporation, whose address is 2554 Jade Avenue, Arlington Heights, Illinois 60004 ("Mortgagor") to DAVID CRAWFORD, whose address is 701 S. Wells Street, Chicago, Illinois 60607 (hereinafter referred to as "Mortgagee").

WHEREAS, Mortgagee has made a loan to Mortgagor in the original principal amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) ("Loan"), which Loan is evidenced by a Note dated of even date herewith executed by Mortgagor to and for the benefit of Mortgagee ("Note"); and

Mortgagor hereby agrees that Mortgagee is justly indebted to Mortgagee in the principal sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), plus interest as evidenced by the Note whereby Mortgagor promises to pay the said principal sum, together with interest thereon, from the date and at the rate set forth therein, at the office of Mortgagee, or at such other place as may be designated in writing by the legal holders thereof until the entire principal balance remaining unpaid plus accrued interest shall be due and payable as required therein.

FIRST AMERICAN
File # *Collateral*
1683735
1683747
Mortgage

This Instrument Prepared by and Mail to:

Andrew M. Sachs, Esq.
Robbins, Salomon & Patt, Ltd.
25 East Washington Street, Suite 1000
Chicago, Illinois 60602

Address: 2423 & 2425 N. Janssen
Chicago, Illinois 606014

PINS: 14-29-320-014-0000 Vol. 0489
14-29-320-015-0000 Vol. 0489

J&P

UNOFFICIAL COPY

NOW, THEREFORE, in order to secure Mortgagor's obligations as set forth in the Note entered into by and between Mortgagor and Mortgagee as of an even date herewith and all extensions, modifications, renewals or replacements thereof and the performance of Mortgagor's covenants and agreements herein contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, including as set forth in the recitals, Mortgagor does by these presents grant, bargain, warrant, sell, convey, and mortgage unto Mortgagee, its successors and assigns forever, the real estate and all of its estate, right, title, and interest therein situated in the City of Chicago, County of Cook and State of Illinois, as more particularly described in Exhibit "A" attached hereto and made a part hereof (sometimes herein referred to as the "real estate"), which real estate, together with the following described property, is collectively referred to as the "premises";

TOGETHER WITH:

- (1) All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, vaults, and alleys adjoining the premises,
- (2) All and singular the tenements, hereditaments, easements, minerals, appurtenances, passages, waters, water courses, riparian, irrigation, and drainage rights, and other rights, liberties, and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders thereof,
- (3) All rents, issues, proceeds, and profits accruing and to accrue from the premises (which are pledged primarily and on a parity with the real estate, and not secondarily), and
- (4) All buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the premises, and all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the premises, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning, and sprinkler equipment and fixtures and appurtenances thereto, and all items of furniture, furnishings, equipment, and personal property owned by the Mortgagor used or useful in the operation of the said real estate, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed, intended, and declared that all the aforesaid property owned by said Mortgagor and placed by it on the premises or used in connection with the operation or maintenance of the premises shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Second Mortgage to be real estate, and covered by this Second Mortgage, and as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code), this Second Mortgage is hereby deemed to be, as well, a Security

UNOFFICIAL COPY

Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code), it being further understood and agreed that the provisions of this subparagraph (4) shall not apply or attach to any trade fixtures or personal property of any tenant of the premises;

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth;

PROVIDED, HOWEVER, that if the Mortgagor shall pay the liabilities as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Second Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

MORTGAGOR FURTHER COVENANTS and agrees as follows:

1. **Recitals/Defined Terms.** The foregoing recitals are incorporated into this Second Mortgage as if fully set forth herein. Except as specifically defined herein, all defined terms used herein and in the foregoing recitals shall have the meanings ascribed therefore in the Note.
2. **Payment of Amounts Due** This Second Mortgage is given for the purpose of securing the payment, performance and observance by Mortgagor of each covenant, condition, provision and agreement contained herein and in the Note and of all monies expended or advanced by Mortgagor pursuant to the terms hereof and in the Note, or to preserve any right of Mortgagee hereunder, or to protect or preserve the premises or any part thereof.
3. **Taxes.** Mortgagor shall immediately pay, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other charges of whatever kind, ordinary or extraordinary, which may be levied or imposed against the premises, and to furnish to Mortgagee, upon Mortgagee's request, official receipts therefor within thirty (30) days after payment thereof.
4. **Insurance**
 - (a) **Casualty.** Mortgagor shall keep the improvements now existing or hereafter erected on the premises constantly insured against loss or damage under such types and forms of insurance policies and in the minimum amount of the outstanding balance of the principal sum from time to time and for such periods as Mortgagee may from time to time require, and Mortgagor shall pay promptly, when due, any premiums on such insurance. Unless Mortgagee otherwise agrees, all such insurance shall provide "all risk" full insurable value replacement cost coverage and shall be carried with companies having a Best's rating of A+ or A acceptable to the Mortgagee and the policies and renewals (or certificates evidencing same), marked by the insurer "PAID", shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the old policies and shall have attached thereto

UNOFFICIAL COPY

standard noncontributing mortgage clauses in favor of and entitling the Mortgagee alone to collect any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation endorsements, and shall contain provision for ten (10) days notice to Mortgagee prior to any cancellation or amendment thereof. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of a change in ownership or of occupancy of the premises (if approved in writing by Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. In the event of any loss covered by such insurance, Mortgagor shall immediately notify Mortgagee in writing, and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to Mortgagee (who may, but need not, make proof of loss) and Mortgagee is hereby authorized to adjust, collect, and compromise in its discretion all claims under all policies, and Mortgagor shall sign, upon demand by Mortgagee, all receipts, vouchers, and releases required by such insurance companies. After deducting any costs of collection, Mortgagee may use or apply the proceeds, at its option, (i) as a credit upon any portion of the indebtedness secured hereby, or (ii) to repairing and restoring the improvements, in which event the Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the indebtedness secured hereby, or (iii) to deliver same to the Mortgagor. In the event Mortgagee shall elect to apply such proceeds to restoring the improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, Mortgagor shall furnish Mortgagee with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. In the event of foreclosure of this Second Mortgage, or other transfer of title to the premises in the extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor, in and to any insurance policies then in force, and any claims or proceeds thereunder shall pass to Mortgagee or any purchaser or grantee. In the event Mortgagee, in its reasonable discretion, determines that any insurance provided by Mortgagor, does not comply with the insurance requirements set forth herein, then Mortgagee may, at any time and at its own discretion, procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amount and carried in such company as it may determine, the cost of which shall be repaid to Mortgagee by Mortgagor upon demand. Mortgagor shall furnish to Mortgagee, upon its request, estimates or appraisals of insurable value, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building or buildings and improvements on the premises.

UNOFFICIAL COPY

(b) Liability. Mortgagor shall carry and maintain comprehensive public liability insurance as may be required from time to time by Mortgagee in forms, amounts, and with companies having a Best's rating of A+ or A or satisfactory to Mortgagee, and Mortgagor will apply all insurance proceeds under such policies to the payment and discharge of the liabilities in respect of which such proceeds are collected. It is understood and agreed that policy shall name Mortgagee as an additional insured party thereunder. Certificates of such insurance, premiums prepaid, shall be deposited with Mortgagee and shall contain provision for ten (10) days' notice to Mortgagee prior to any cancellation or amendment thereof.

5. Preservation, Restoration and Use of Premises. No building or other improvement on the premises shall (except as required by law) be altered, removed, or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the prior written consent of Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. Mortgagor shall promptly repair, restore, or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. Mortgagor shall not permit, commit, or suffer any waste, impairment, or deterioration of the premises or any part or improvement thereof, and shall keep and maintain the premises and every part thereof in good repair and condition and effect such repairs as Mortgagee may reasonably require, and, from time to time, make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery, and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Mortgagor shall not suffer or permit the premises to be abandoned or to be used for a purpose other than that for which the premises are presently used, or represented to Mortgagee to be used. Mortgagor shall not subject the premises to any use covenants or restrictions and shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance, or other public or private restriction limiting or defining the uses which may be made of or the kind of improvements which can be constructed or placed on the premises or any part thereof, and shall promptly notify Mortgagee of, and appear in and defend, at its sole cost and expense, any such proceedings seeking to effect any of the foregoing. Mortgagor shall not subdivide the real estate and shall not subject the premises to the provisions of the condominium laws of the state in which the premises are situated.

6. Compliance with Governmental, Insurance and Other Requirements. Mortgagor shall comply with all statutes, ordinances, orders, requirements, or decrees relating to the premises or the use thereof of any federal, state, or municipal authority, and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required under paragraph 4 hereof and to preserve and extend any and all rights, licenses, permits (including, but

UNOFFICIAL COPY

not limited to, zoning variances, special exceptions, and nonconforming uses) privileges, franchises, and concessions which are applicable to the premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the premises. In the event that any building or other improvement on the premises must be altered or removed to enable Mortgagor to comply with the foregoing provisions of this paragraph 6, Mortgagor shall not commence any such alterations or removals without Mortgagee's prior approval of the need therefor and the plans and specifications pertaining thereto. After such approval, which shall not be unreasonably withheld or delayed, Mortgagor, at its sole cost and expense, shall effect the alterations or removal so required and approved by Mortgagee. Mortgagor shall not by act or omission permit any building or other improvement on land not subject to the lien of this Second Mortgage to rely on the premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the premises or any interest therein to be so used. Similarly, no building or other improvement on the premises shall rely on any land not subject to the lien of this Second Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void. Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the premises.

7. **Liens and Encumbrances.** Except for the First Mortgage (as hereinafter defined), Mortgagor shall keep the premises free from liens of mechanics and materialmen and from all other liens, charges, and encumbrances of whatever nature, regardless of (i) whether the same arise voluntarily or involuntarily on the part of Mortgagor and (ii) whether the same are subordinate to, prior to, or on a parity with the lien of this Second Mortgage, and shall furnish to Mortgagee satisfactory evidence of the payment and discharge of any such liens, charges, and encumbrances, asserted or claimed to exist against the premises, excepting, however, any lien or encumbrance expressly consented to by Mortgagee with respect to which Mortgagor shall pay, when due, the indebtedness secured thereby and upon Mortgagee's request, furnish to Mortgagee satisfactory evidence of such payment or payments. In the event Mortgagor shall suffer or permit any superior or junior lien to be attached to the premises, Mortgagee, at its option, has the unqualified right to cause the liabilities of Mortgagor under the Note to be immediately due and payable without notice to Mortgagor.

8. **Sale, Conveyance or Other Transfers.** In the event Mortgagor shall, without the prior written consent of Mortgagee, which consent Mortgagee may, in its absolute discretion, withhold, sell, transfer, convey, encumber, lease, or assign the title to all or any portion of the premises, or the rents, issues, or profits therefrom, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing, then any of the foregoing acts, omissions, or occurrences shall constitute an event of default hereunder and Mortgagee, at its option, shall then have the unqualified right to accelerate the maturity of the Note, causing the full principal balance and accrued interest, to be immediately due and payable without notice of Mortgagor, and, in

UNOFFICIAL COPY

addition, Mortgagee shall be entitled to pursue any and all rights and remedies granted hereunder, in the Note, or otherwise available to it, at law or in equity.

9. **Stamp Tax.** If at any time the United States government or any state, or municipal government shall require Internal Revenue or other documentary stamps hereon or on the payments due under the Note secured hereby, or shall otherwise impose a tax or impose an assessment on this Second Mortgage or on the Note or shall require payment of an interest equalization tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagor, provided, however, said election shall be unavailing and this Second Mortgage and the Note shall be and remain in effect, if Mortgagor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

10. **Effect of Change in Laws Regarding Taxation.** In the event of the enactment, after the date of this Second Mortgage, of any law of the state in which the premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Second Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee, (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable within thirty (30) days from the giving of such notice. Notwithstanding the foregoing, Mortgagor shall not be obligated to pay any portion of Mortgagee's federal or state income tax.

11. **Mortgagee's Performance of Defaulted Acts.** In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. Mortgagee is hereby authorized to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any

UNOFFICIAL COPY

payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this paragraph, and may do so whenever, in its judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and in connection with any such advance, Mortgagee, at its option, may and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the default interest rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

12. **Eminent Domain.** Any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, the whole or any part of the premises or any improvement located thereon or any easement therein or appurtenant thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which award Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittance therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the said premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning to Mortgagee all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. The proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all of its expenses in connection with such proceedings, including reasonable costs and attorneys' fees, to the reduction of the indebtedness secured hereby or to restoring the improvements, in which event the same shall be paid out in the same manner as is provided, with respect to insurance proceeds, in paragraph 4(a) hereof.

13. **Acknowledgment of Debt.** Mortgagor shall furnish from time to time within seven (7) days after Mortgagee's request, a written statement, duly acknowledged, verifying the amount due under this Second Mortgage (as reflected on the books and records of Mortgagee) and whether any alleged offsets or defenses exist against the indebtedness secured by this Second Mortgage.

14. **Assignment of Rents.**

UNOFFICIAL COPY

(a) To facilitate payment and performance of the amounts due hereunder, Mortgagor hereby absolutely, presently and unconditionally transfers and assigns to Mortgagee all right, title and interest of Mortgagor in and to (i) all existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any part of the premises, whether written or oral and whether for a definite term or month to month, together with all guaranties of the lessee's obligations thereunder and together with all extensions, modifications and renewals thereof (hereinafter called the "Leases"), and (ii) all income, receipts, revenues, rents, issues and profits now or hereafter arising from or out of the Leases or from or out of the premises or any part thereof, including without limitation room rents, minimum rents, additional rents, percentage rents, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, cancellation premiums, claims for damages arising from any breach of the Leases, proceeds from any sale or other disposition of all or any portion of the premises, and all other benefits arising from the use or enjoyment of, or the lease, sale or other disposition of, all or any portion of the premises, together with the immediate and continuing right to receive all of the foregoing (hereinafter called the "Rents"). This assignment is an absolute assignment and not an assignment for security purposes. Mortgagor agrees that, during the term of this Second Mortgage, the Rents shall not constitute property of Mortgagor (or of any estate of Mortgagor) within the meaning of 11 U.S.C. §541, as amended from time to time. In furtherance of this Assignment, and not in lieu hereof, Mortgagee may require a separate assignment of lessor's interest in the leases and/or separate specific assignments of rents and leases covering one or more of the Leases; the terms of all such assignments are incorporated herein by reference.

(b) Mortgagor hereby authorizes and directs the lessees and tenants under the Leases that, upon written notice from Mortgagee, all Rents shall be paid directly to Mortgagee as they become due. Nevertheless, Mortgagee grants a license to Mortgagor entitling Mortgagor to collect the Rents until Mortgagee notifies the lessees and tenants in writing to pay the Rents to Mortgagee. Mortgagee is hereby authorized to give such notification only upon the occurrence of an Event of Default and at any time thereafter while such Event of Default is continuing. Receipt and application of the Rents by Mortgagee shall not constitute a waiver of any right of Mortgagee under this Second Mortgage or applicable law, shall not cure any Event of Default hereunder, and shall not invalidate or affect any act done in connection with such Event of Default, including, without limitation, any trustee's sale or foreclosure proceeding.

(c) All Rents collected by Mortgagor shall be applied pursuant to the terms of paragraph 22(e) hereof:

(d) Mortgagor represents and warrants that: (i) the Leases are in full force and effect and have not been modified or amended; (ii) the Rents have not been waived, discounted, compromised, setoff or paid more than one month in advance; (iii) there are no other assignments, transfers, pledges or encumbrances of any Leases or Rents; and (iv)

UNOFFICIAL COPY

neither Mortgagor nor the lessees and tenants are in default under the Leases, except as disclosed to Mortgagee.

(e) Mortgagor shall: (i) fulfill or perform each and every term, covenant and provision of the Leases to be fulfilled or performed by the lessor thereunder, (ii) give prompt notice to Mortgagee of any notice received by Mortgagor of default thereunder or of any alleged default or failure of performance that could become a default thereunder, together with a complete copy of any such notice; and (iii) enforce, short of termination thereof, the performance or observance of each and every term, covenant and provision of each Lease to be performed or observed by the lessees and tenants thereunder.

(f) Mortgagor, without the prior written consent of Mortgagee, shall not: (i) assign, transfer, pledge or encumber, the whole or any part of the Leases and Rents to anyone other than Mortgagee; (ii) accept any Rents more than one month in advance of the accrual thereof; or (iii) do or permit anything to be done, the doing of which, or omit or refrain from doing anything, the omission of which, could be a breach or default under the terms of any Lease or a basis for termination thereof.

(g) Mortgagee does not assume and shall not be liable for any obligation of the lessor under any of the Leases and all such obligations shall continue to rest upon Mortgagor as though this assignment had not been made. Mortgagee shall not be liable for the failure or inability to collect any Rents.

(h) Neither the Assignment of Rents and Leases contained herein or in any separate assignment nor the exercise by Mortgagee of any of its rights or remedies thereunder or in connection therewith, prior to Mortgagee obtaining actual possession of the Premises, shall constitute Mortgagee a "mortgagee in possession" or otherwise make Mortgagee responsible or liable in any manner with respect to the Premises or the occupancy, operation or use thereof. In the event Mortgagee obtains actual possession of the Premises, Mortgagee shall have the rights, and Mortgagee's liability shall be limited, as provided in that Paragraph.

15. **Inspection of Premises.** Mortgagor shall permit Mortgagee or its agents to inspect the premises at all reasonable times, and access thereto shall be permitted for such purpose.

16. **Partial Invalidity.** Mortgagor and Mortgagee intend and believe that each provision in this Second Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Second Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Second Mortgage or the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder

UNOFFICIAL COPY

of this Second Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Second Mortgage and the Note shall continue in full force and effect. If, under the circumstances, interest in excess of the limit allowable by law shall have been paid by Mortgagor in connection with the Note, such excess shall be applied by Mortgagee to the current or future payments due under the Lease or refunded in the manner to be determined by Mortgagee and if any such excess interest has accrued, Mortgagee shall eliminate such excess interest so that under no circumstances shall interest due under the Note exceed the maximum rate allowed by law.

17. **Subrogation.** In the event any amount paid out or advanced by Mortgagee, is used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the premises or any part thereof, then Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

18. **Mortgagee's Right to Deal With Transferee.** In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from Mortgagor's covenants and/or undertakings hereunder, including, without limitation, paragraph 8 hereof, and without Mortgagee waiving its right to accelerate the Note as set forth in said paragraph 8.

19. **Releases.** Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the premises or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note and this Second Mortgage and without in any way affecting the priority of the lien of this Second Mortgage, and may agree with any party obligated on said indebtedness herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Second Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Second Mortgage.

20. **Execution of Security Agreement and Financing Statement.** Mortgagor, within ten (10) days after request by mail, shall execute, acknowledge, and deliver to Mortgagee a Security Agreement, Financing Statement, or other similar security instrument, in form satisfactory to Mortgagee, covering all property, of any kind whatsoever owned by Mortgagor, which, in the sole opinion of the Mortgagee, is essential to the operation of the premises and concerning which there may be any doubt as to whether the title to same has been conveyed by or a security interest therein perfected by this Second Mortgage under the laws of the State of Illinois and shall further execute,

UNOFFICIAL COPY

acknowledge, and deliver any financing statement affidavit, continuation statement, or certificate or other documents as Mortgagee may request in order to perfect, preserve, maintain, continue, and extend the security instrument. Mortgagor further agrees to pay to Mortgagee, on demand, all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing, and refiling of any such document. To the extent that this instrument may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a Secured Party (as said term is defined in the Uniform Commercial Code).

21. **Expenses Incurred by Mortgagee.** Any costs, damages, expenses or fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (i) sustaining the lien of this Second Mortgage or its priority, (ii) obtaining any commitment for title insurance or title insurance policy, (iii) protecting the premises, (iv) protecting or enforcing any of Mortgagee's rights hereunder, (v) recovering any indebtedness secured hereby, (vi) any litigation or proceedings (including, but not limited to, bankruptcy, probate and administrative law proceedings) affecting this Second Mortgage, the Note, or the premises, or (vii) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated in paragraph 22(c) hereof, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Mortgagor, without notice, with interest thereon at the default interest rate described in the Note.

22. **Remedies on Default.**

(a) **Events of Default.** It shall constitute a default under this Second Mortgage when and if (i) any Event of Default occurs under the Note, or (ii) any default occurs in the due and punctual performance of or compliance with any other term, covenant or condition in this Second Mortgage.

(b) **Remedies.** In addition to any other remedy herein specified, if any default under this Second Mortgage shall occur, Mortgagee may, at its option, (i) declare the entire indebtedness secured hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by Mortgagor) whereupon the same shall become immediately due and payable, (ii) institute proceedings for the complete foreclosure of this Second Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the indebtedness secured hereby without accelerating the due date of the entire indebtedness by proceeding with foreclosure of this Second Mortgage with respect to any delinquent installment or installments of such indebtedness only and any sale of the premises under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the indebtedness and this Second Mortgage shall be and continue as a lien on the premises securing the unmatured indebtedness, (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Second Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or

UNOFFICIAL COPY

otherwise as Mortgagee shall elect, or (v) enforce this Second Mortgage in any other manner permitted under the laws of the state in which the premises are situated.

(c) **Expense of Litigation.** In any suit to foreclose the lien of this Second Mortgage or enforce any other remedy of Mortgagee under this Second Mortgage or the Note there shall be allowed and included, as additional indebtedness in the judgment or decree, all expenditures and expenses which may reasonably be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title insurance policies and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to provide to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the premises.

(d) **Mortgagee's Right of Possession in Case of Default.** In any case in which, under the provisions of this Second Mortgage, Mortgagee has a right to institute foreclosure proceedings whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises, or any part thereof, personally or by its agent or attorneys, as for condition broken and Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers, and accounts of Mortgagor or the then manager of the premises relating thereto, and may exclude Mortgagor, its agents, or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted: (i) hold, operate, manage, and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor, (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, (iii) elect to disaffirm any lease or sublease made subsequent to this Second Mortgage or subordinated to the lien hereof, (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof

UNOFFICIAL COPY

and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the premises as to Mortgagee may seem judicious, (vi) insure and reinsure the premises and all risks incidental to Mortgagee's possession, operation, and management thereof, and (vii) receive all avails, rents, issues and profits.

(e) **Application of Rental Proceeds.** Any avails, rents, issues and profits of the premises received by Mortgagee after having possession of the premises, or pursuant to any assignment thereof to Mortgagee under the provisions of this Second Mortgage or of any separate Assignment of Rents or Assignment of Leases, shall be applied in payment of or on account of the following, in such order as Mortgagee (or in case of a receivership, as the court) may determine: (i) to the payment of the operating expenses of the premises, including reasonable compensation to Mortgagee or the receiver and its agent or agents, if management of the premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases and the payment of premiums on insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, and water taxes now due or which may hereafter become due on the premises, or which may become a lien prior to the lien of this Second Mortgage, (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the premises, and of placing said property in such condition as will, in the judgment of Mortgagee or receiver, make the premises readily rentable, (iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any overplus or remaining funds, to the Mortgagor, its successors, or assigns, as their rights may appear.

(f) **Appointment of Receiver.** Upon or at any time after the filing of any complaint to foreclose this Second Mortgage, Mortgagor consents upon application by Mortgagee to the appointment of a receiver of the premises, such appointment may be made either before or after sale without notice and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the premises and to collect the rents, issues, and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by Mortgagor), as well as during any further times when Mortgagor, its heirs, administrators, executors, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may

UNOFFICIAL COPY

be necessary or are useful in such cases for the protection, possession, control, management, and operation of the premises, during the whole of said period. To the extent permitted by law, said receiver may be authorized by the court to extend or modify any then existing leases and to make new leases, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder it being understood and agreed that any such leases and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

(g) **Sale of Premises.** Any real estate or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to the Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the laws of the state in which the premises are situated. At any such sale, Mortgagee may bid for and acquire, as Purchaser, the premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

(h) **Application of Proceeds From Foreclosure Sale.** The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in paragraph 22(c) hereof; (ii) all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon, at the default interest rate; and (iii) any overplus to Mortgagor, its successors or assigns, as their rights may appear.

(i) **Waiver of Statutory Rights.** Mortgagor shall not apply for or avail themselves of any appraisal, valuation, redemption, stay, extension, or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Second Mortgage, but hereby waives, to the extent permitted by law, the benefit of such laws. Mortgagor, for themselves and all who may claim through or under it, waive any and all right to have the property and estates comprising the premises marshaled upon any foreclosure of the lien hereof and agree that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety.

(j) **Waiver of Defenses.** No action for the enforcement of the lien of this Second Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action of law upon the Note.

(k) **Partial Payments.** Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not

UNOFFICIAL COPY

constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of Mortgagee without its express consent except and to the extent otherwise provided by law.

(l) **Tender of Payment After Acceleration.** Upon default by Mortgagor and following the acceleration of maturity as aforesaid, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale by Mortgagor, its successors or assigns shall constitute an evasion of the prepayment privilege and shall be deemed to be a voluntary prepayment hereunder. In case, after legal proceedings are instituted to foreclose the lien of this Second Mortgage, tender is made of the entire indebtedness due hereunder, Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be so much additional indebtedness secured by this Second Mortgage, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses and charges shall have been paid in full.

(m) **Delays and Omissions.** No delay in the exercise of or failure to exercise any remedy or right accruing or any default under this Second Mortgage shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or of a different nature.

(n) **Rescission of Election.** Acceleration of maturity, once made by Mortgagee may, at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed, whereupon, in either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and power of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

(o) **Remedies Cumulative and Concurrent.** The rights and remedies of Mortgagee as provided in the Note and this Second Mortgage shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, any guarantor or the premises, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by the laws of the state in which the premises are situated. If Mortgagee elects to proceed under one right or remedy under this Second Mortgage or the Note, Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Second Mortgage, or the Note.

23. **Giving of Notice.** All notices to Mortgagor that are either required or contemplated in connection with this Second Mortgage shall be in writing, and shall be deemed given upon the

UNOFFICIAL COPY

earlier of the actual receipt thereof by Mortgagor and forty-eight (48) hours after mailing the same to Mortgagor at Mortgagor's address first above written with postage prepaid via certified first class mail. By notice complying with the foregoing provisions of this section, Mortgagor may from time to time change its address for notice purposes, except that any such notice shall not be deemed delivered until actually received. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagee herein, or in the Note secured hereby, is not required to be given.

24. Compliance with Environmental Laws.

(a) Mortgagor represents, warrants, covenants and agrees that the premises is in compliance with all "Environmental Laws" (as hereinafter defined); that there are no conditions existing currently or likely to exist during the term of the Note that require or are likely to require cleanup, removal or other remedial action pursuant to any Environmental Laws; that Mortgagor is not a party to any litigation or administrative proceeding, nor, to the best of Mortgagor's knowledge, is there any litigation or administrative proceeding contemplated or threatened which would assert or allege any violation of any Environmental Laws; that neither the premises nor Mortgagor is subject to any judgment, decree, order or citation related to or arising out of any Environmental Laws; and that no permits or licenses are required under any Environmental Laws regarding the Mortgaged Property. The term "Environmental Laws" shall mean any and all federal, state and local laws, statutes, regulations, ordinances, codes, rules and other governmental restrictions or requirements relating to the environment or hazardous substances, including, without limitation, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976 and the Federal Comprehensive Environmental Responsibility, Cleanup and Liability Act of 1980, as well as all regulations of the Environmental Protection Agency, the Nuclear Regulatory Agency and any state department of natural resources or state environmental protection agency now or at any time hereafter in effect. Mortgagor covenants and agrees to: (i) comply with all applicable Environmental Laws; (ii) provide to Mortgagee immediately upon receipt copies of any correspondence, notice, pleading, citation, indictment, complaint, order or other document received by Mortgagor asserting or alleging a circumstance or condition that requires or may require a cleanup, removal or other remedial action under any Environmental Laws, or that seeks criminal or punitive penalties for an alleged violation of any Environmental Laws; and (iii) advise Mortgagee in writing as soon as Mortgagor becomes aware of any condition or circumstance which makes any of the representations or statements contained in this Paragraph 24(a) incomplete or inaccurate. In the event Mortgagee determines in its sole and absolute discretion that there is any evidence that any such circumstance might exist, whether or not described in any communication or notice to either Mortgagor or Mortgagee, Mortgagor agrees, at its own expense and at the request of Mortgagee, to permit an environmental audit to be conducted by Mortgagee or an independent agent reasonably selected by Mortgagee. This provision shall not relieve Mortgagor from conducting its own environmental audits or taking any other steps necessary to comply with any Environmental Laws. If, in the opinion of Mortgagee, there exists any

UNOFFICIAL COPY

uncorrected violation by Mortgagor of an Environmental Law or any condition which requires or may require any cleanup, removal or other remedial action under any Environmental Laws, and such cleanup, removal or other remedial action is not completed within the time required by the applicable Environmental Law, the same shall, at the option of Mortgagee, constitute a default hereunder, without further notice or cure period.

(b) Mortgagor hereby represents, warrants and certifies to Mortgagee that: (i) there are no underground storage tanks located on, under or about the Mortgaged Property which are subject to the notification requirements under §9002 of the Solid Waste Disposal Act, as amended (42 U.S.C. §6991); and (ii) there is no "facility" located on or at the Mortgaged property which is subject to the reporting requirements of §312 of the Federal Emergency Planning and Community Right to Know Act of 1986, as amended, and the federal regulations promulgated thereunder (42 U.S.C. §11022).

(c) Mortgagor agrees to indemnify, defend and hold Mortgagee and its officers, directors, employees and agents harmless from and against any and all losses, damages, liabilities, obligations, claims, costs and expenses, whether prior to or after the date hereof and whether direct, indirect or consequential, as a result of or arising from any suit, investigation, action or proceeding, whether threatened or initiated, asserting a claim for any legal or equitable remedy under any Environmental Law. Any and all amounts owed by Mortgagor to Mortgagee under this Paragraph 24(c) shall constitute additional indebtedness secured by this Second Mortgage. Any provisions of this Second Mortgage to the contrary withstanding, the representations, warranties, covenants, agreements and indemnification obligations contained in this Paragraph 24 shall survive all indicia of termination of the relationship between Mortgagor and Mortgagee, including, without limitation, the repayment of all amounts due under the Loan, the cancellation of the Note, and the release of this Second Mortgage.

25. **Time is of the Essence.** It is specifically agreed that time is of the essence of this Second Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights.

26. **Mortgagee's Lien for Service Charge and Expenses.** At all times, regardless of whether any proceeds have been disbursed, this Second Mortgage secures the payment of any and all service charges, liquidated damages, expenses, and advances due to or incurred by the Mortgagee in connection with this transaction.

27. **Modifications.** This Second Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

28. **Covenants to Run with the Land.** All the covenants hereof shall run with the land.

UNOFFICIAL COPY

29. **Captions.** The captions and headings of various paragraphs are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.
30. **Counterparts.** This Second Mortgage may be executed in counterparts and any party may execute any counterpart, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one and the same document.
31. **Construction.** This Second Mortgage and the rights and indebtedness hereby secured shall be construed and enforced according to the laws of the State of Illinois.
32. **Binding on Successors and Assigns, etc.** This Second Mortgage and all provisions hereof shall extend and be binding upon Mortgagor's successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include and refer to (in addition to Mortgagor) all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Second Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
33. **Further Assurances.** Mortgagor shall execute, acknowledge and deliver to Mortgagee and to any subsequent holder from time to time upon demand (and pay the costs of preparation and recording thereof) any further instrument or instruments, including, but not limited to, mortgages, security instruments, financing statements, assignments and renewal and, so as to reaffirm, to correct and to perfect the evidence of the obligation hereby secured and the lien of Mortgagee to all or any part of the premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Second Mortgage and extensions or modifications thereof, and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Second Mortgage. Provided the foregoing to the contrary notwithstanding, nothing in this paragraph contained shall be so construed so as to increase the obligations of the Mortgagor beyond those which might arise pursuant to this Second Mortgage and the Note secured hereby.
34. **Recording and Filing.** Mortgagor, at its expense, will cause this Second Mortgage and all supplements thereto for which constructive notice must be given to protect Mortgagee, at all times to be recorded and filed, and re-recorded and refiled, in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing re-recording, re-filing taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the premises are situated.
35. Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured herein exceed an amount equal to FIVE HUNDRED THOUSAND DOLLARS

UNOFFICIAL COPY

(\$500,000.00); provided, however, in no event shall Mortgagee be obligated to advance funds in excess of the face amount of the Note.

36. **Waiver of Jury Trial.** MORTGAGOR AND MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS SECOND MORTGAGE OR ANY RELATED AGREEMENT OF UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS SECOND MORTGAGE AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS SECOND MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL OR PUNITIVE DAMAGES.

37. **First Mortgage.** This Second Mortgage and the rights of Mortgagor hereunder are and at all times shall be and remain subject and subordinate in right, claim and lien to the rights, claims and liens afforded to (i) The Private Bank for the property located at 2425 North Janssen Avenue, Chicago, Illinois pursuant to a mortgage dated as of an even date herewith; and (ii) The Private Bank for the property located at 2425 North Janssen Avenue, Chicago, Illinois pursuant to a mortgage dated as of an even date herewith (hereinafter collectively referred to as "First Mortgage").

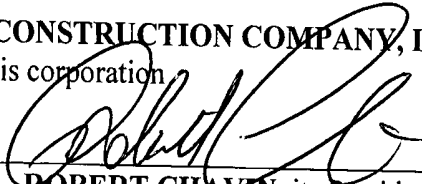
[Remainder of page intentionally left blank. Signature page to follow.]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed the day and year first written above.

3FJ CONSTRUCTION COMPANY, INC., an
Illinois corporation

By:



ROBERT CHAVIN, its President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, Winna Faye Reaves, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Robert Chavin, personally known to me to be the president of 3FJ CONSTRUCTION COMPANY, INC, an Illinois corporation and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such individual, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument as his own free and voluntary act of the corporation, for the use and purposes therein set forth.

Given under my hand and Notarial Seal this 30 day of OCT, 2007.

Winna Faye Reaves
 Notary Public

My commission expires: 9/17/09



UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

LOT 34 IN BLOCK 1 IN THE SUBDIVISION OF THE SOUTH EAST 1/4 OF THE SOUTH WEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 2425 North Janssen Avenue, Chicago, Illinois 60614

PIN: 14-29-320-014-0000 Vol. 0489

LOT 33 IN BLOCK 1 IN WILLIAM HAENE'S SUBDIVISION OF THE SOUTH EAST QUARTER OF THE SOUTH WEST QUARTER OF THE SOUTH WEST QUARTER OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common address: 2423 N. Janssen, Chicago, Illinois 60614

P.I.N.: 14-29-320-015-0000 Vol. 0489