

UNOFFICIAL COPY



Doc#: 0900233074 Fee: \$72.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/02/2009 01:40 PM Pg: 1 of 19

This instrument prepared by
and after recording return to

Rachel Kuipers Bates
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606

Hyves # 87-78-613-D1

THIRD MODIFICATION OF CONSOLIDATED AND RESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING AND OTHER LOAN DOCUMENTS

THIS THIRD MODIFICATION OF CONSOLIDATED AND RESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING AND OTHER LOAN DOCUMENTS (this "Agreement") is made to be effective as of the 27th day of December, 2008, by and among **AMALGAMATED PROPERTIES, LLC**, an Illinois limited liability company ("Amalgamated"), **MIDWAY HOLDINGS, L.L.C.**, an Illinois limited liability company ("Midway"; Amalgamated and Midway are individually referred to as a "Borrower" and collectively as the "Borrowers"), **STEVEN A. SCHULTZ** ("Guarantor") and **BANK OF AMERICA NATIONAL ASSOCIATION**, a national banking association, its successors and assigns ("Lender").

RECITALS:

A. On December 27, 1995, LaSalle Bank, N.I. ("Original Lender") made a mortgage loan to LaSalle Bank National Association, not personally but as Trustee ("Trustee") under Trust Agreement dated October 7, 1994 and known as Trust No. 119125 ("Trust") and CP Newport Beach Limited Partnership, an Illinois limited partnership ("CP Newport") in the original principal amount of Two Million Six Hundred Sixty Thousand and No/100 Dollars (\$2,660,000.00) (the "Loan"). The Loan was evidenced by that certain Mortgage Note dated as of December 27, 1995 (the "Note") made by Trust and CP Newport and payable to Original Lender in the principal amount of the Loan. The Note was secured by, among other things: (i) a Mortgage dated as of December 27, 1995 (the "Clark Mortgage") made by Trustee in favor of Original Lender and recorded in the Office of the Cook County Recorder of Deeds ("Recorder's Office") January 4, 1996 as Document No. 96009429 encumbering the real property described in Exhibit A attached to the Clark Mortgage (the "Clark Property"), (ii) a Mortgage dated as of December 27, 1995 (the "Addison Mortgage") made by David B. Dahl ("Family Trustee"), not individually but as Trustee of the Steven A. Schultz Family Trust I ("Family Trust") and CP Newport in favor of Original Lender and recorded in the Recorder's Office January 4, 1996 as Document No. 96009432 encumbering the real property described in Exhibit A attached to the Addison Mortgage (the "Addison Property"; the Clark Property and the Addison Property are collectively referred to as the "Original Premises") (the Clark Mortgage and the Addison Mortgage are collectively referred to as the "Senior Mortgage"), (iii) an Assignment of Rents

19
8

UNOFFICIAL COPY

and Leases (the "Clark Assignment") with respect to the Clark Property made by Trustee and Schultz to Original Lender dated as of December 27, 1995 and recorded in the Recorder's Office on January 4, 1996 as Document No. 96009430, (iv) an Assignment of Rents and Leases (the "Addison Assignment") with respect to the Addison Property made by Family Trust and CP Newport to Original Lender dated as of December 27, 1995 and recorded in the Recorder's Office January 4, 1996 as Document No. 96009433 (the Clark Assignment and the Addison Assignment are collectively referred to as the "Senior Assignment"), (vi) a Collateral Assignment of Beneficial Interest in the Trust, dated as of December 27, 1995 ("Senior Collateral ABI") made by Schultz to Original Lender, and (vi) Security Agreement dated as of December 27, 1995 made Trustee, CP Newport and Family Trust to and for the benefit of Original Lender ("Senior Security Agreement"; the Senior Mortgage, Senior Assignment, Senior Collateral ABI, Senior Security Agreement, First Loan Modification (as hereafter described), Second Loan Modification (as hereafter described), Third Loan Modification (as hereafter described), Restated Note (as hereafter described), Second Restated Note (as hereafter described), Fourth Loan Modification (as hereafter described), Fifth Loan Modification (as hereafter described), Sixth Loan Modification (as hereafter described), Seventh Loan Modification (as hereafter described) and all other instruments evidencing or securing the Loan, are referred to collectively herein as the "Senior Loan Documents").

B. Lender succeeded to all interests of Original Lender in, to and under the Note (as amended) and the other Senior Loan Documents pursuant to Assignment of Mortgages, Security Agreement and Assignment of Rents, dated October 25, 1996 and recorded in the Recorder's Office as Document No. 96828934.

C. By a Loan Modification Agreement dated as of October 29, 1996 and recorded in the Recorder's Office on October 30, 1996 as Document No. 96828935 (the "First Loan Modification"), Lender, CP Newport, Trustee and Family Trust modified the Senior Loan Documents to evidence an additional advance under the Mortgage, and Trust and CP Newport executed and delivered to Lender an Amended and Restated Mortgage Note dated October 29, 1996 in the principal amount of \$2,930,000 (the "Restated Note").

D. By a Second Loan Modification Agreement dated as of January 1, 1999 and recorded in the Recorder's Office on June 4, 1999 as Document No. 99531648 (the "Second Loan Modification"), CP Newport, Trustee, Family Trust and Lender further modified the Senior Loan Documents to, among other things: (i) extend the maturity date, (ii) modify the interest rate of the Loan in accordance with a Second Amended and Restated Mortgage Note dated as of January 1, 1999 (the "Second Restated Note"), and (iii) modify the Senior Loan Documents in accordance therewith.

E. By a Third Loan Modification Agreement dated as of January 1, 2001, and recorded in the Recorder's Office on June 18, 2001 as Document No. 0010528343 (the "Third Loan Modification"), CP Newport, Trustee, Family Trust and Lender further modified the Senior Loan Documents to, among other things: (i) extend the maturity date, (ii) modify the interest rate of the Loan, and (iii) modify the Senior Loan Documents in accordance therewith.

F. On August 9, 2001, Lender made an additional loan to Trust, CP Newport and Family Trust in the amount of One Million Four Hundred Thousand and No/100 Dollars

UNOFFICIAL COPY

(\$1,400,000.00) (the "Line of Credit Loan"). The Line of Credit Loan was evidenced by that certain Revolving Line of Credit Note dated August 9, 2001 (the "Line of Credit Note") made Trust, CP Newport and Family Trust and payable to Lender in the principal amount of the Line of Credit Loan. The Line of Credit Note was secured by: (i) a Junior Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Trust Junior Mortgage") dated August 9, 2001 and recorded in the Recorder's Office on August 20, 2001 as Document No. 0010762746, made by the Trustee to Lender creating a junior mortgage lien on the Original Premises, (ii) a Junior Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Family Trust and CP Newport Junior Mortgage") dated August 9, 2001 and recorded in the Recorder's Office on August 20, 2001 as Document No. 0010762748, made by the CP Newport and Family Trust to Lender creating a junior mortgage lien on the Original Premises (the Trust Junior Mortgage and the Family Trust and CP Newport Junior Mortgage are collectively referred to as the "Junior Mortgage"), (iii) a Junior Assignment of Rents and Leases (the "Trust Junior Assignment") dated August 9, 2001 and recorded in the Recorder's Office on August 20, 2001 as Document No. 0010762747, from the Trustee and Guarantor to Lender, (iv) a Junior Assignment of Rents and Leases (the "Family Trust and CP Newport Junior Assignment") dated August 9, 2001 and recorded in the Recorder's Office on August 20, 2001 as Document No. 0010762749, from the Family Trust and CP Newport to Lender (the Trust Junior Assignment and the Family Trust and CP Newport Junior Assignment are collectively referred to as the "Junior Assignment"), (v) a Security Agreement and Collateral Assignment Under Land Trust (the "ABI") dated August 9, 2001 given to Lender by Steven A. Schultz, as the sole beneficiary of the Trust, (vi) an Unlimited Guaranty (the "Guaranty") dated August 9, 2001, from Steven A. Schultz ("Guarantor") to Lender, (vii) an Environmental Indemnity Agreement (the "Indemnity Agreement") dated August 9, 2001 from Family Trust, CP Newport and Guarantor to Lender, (viii) UCC Financing Statements given by the CP Newport, Trustee, Family Trust and Guarantor (the "Financing Statements") (the Junior Mortgage, the Junior Assignment, the Guaranty, the ABI, the Indemnity Agreement, the Financing Statements, and any other document now or hereafter given to evidence or secure payment of the Line of Credit Note or delivered to induce Lender to disburse the proceeds of the Line of Credit Loan, as such documents may be amended, restated or replaced from time to time, are hereinafter collectively referred to as the "Junior Loan Documents").

G. By a Fourth Loan Modification Agreement dated as of August 9, 2001, and recorded in the Recorder's Office on August 20, 2001 as Document No. 0010762745 ("Fourth Loan Modification"), CP Newport, Trustee, Family Trust and Lender further modified the Senior Loan Documents to, among other things: (i) provide that the liens and collateral security interests granted Lender under the Senior Loan Documents are also granted to secure payment and performance of all covenants and obligations of CP Newport and Family Trust under the Line of Credit Note and the other Junior Loan Documents, (ii) to provide that a default or event of default under any of the Junior Loan Documents shall also constitute a default under the Senior Loan Documents and (ii) to modify the Senior Loan Documents in accordance therewith.

H. On December 18, 2001, Lender made a loan to Midway in the amount of Four Million and No/100 Dollars (\$4,000,000.00) (the "Acquisition Loan"). The Acquisition Loan was evidenced by a Promissory Note (the "Acquisition Note") made by Midway and payable to Lender in the principal amount of the Acquisition Loan. The Acquisition Note was secured by: (i) a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the

UNOFFICIAL COPY

“Acquisition Mortgage”) dated December 18, 2001 and recorded in the Recorder’s Office on December 28, 2001 as Document No. 0011238325, made by Midway and given to Lender creating a mortgage lien on those parcels of real property commonly known as 3535-39 North Clark Street, Chicago, Illinois, which are legally described on Exhibit A attached to the Acquisition Mortgage (the “Acquisition Premises”), (ii) an Assignment of Rents and Leases (the “Acquisition Assignment”) dated December 18, 2001 and recorded in the Recorder’s Office on December 28, 2001 as Document No. 0011238326, from Midway to Lender, (iii) an Unlimited Guaranty (the “Acquisition Guaranty”) dated December 18, 2001 from Guarantor to Lender, (iv) an Environmental Indemnity Agreement (the “Acquisition Indemnity Agreement”) dated December 18, 2001 from Midway and Guarantor to Lender, and (v) UCC Financing Statements given by Midway and Guarantor (the “Acquisition Financing Statements”; the Acquisition Note, the Acquisition Mortgage, the Acquisition Assignment, the Acquisition Guaranty, the Acquisition Indemnity Agreement and all other instruments evidencing or securing the Acquisition Loan, as such documents may be amended, restated or replaced from time to time, are hereinafter collectively referred to as the “Acquisition Loan Documents”).

I. By Fifth Loan Modification Agreement dated as of December 18, 2001, and recorded in the Recorder’s Office on January 9, 2002 as Document No. 0020031983 (the “Fifth Loan Modification”), CP Newport, Trustee, Family Trust and Lender further modified the Senior Loan Documents to, among other things: (i) provide that the liens and collateral security interests granted Lender under the Senior Loan Documents are also granted to secure payment and performance of all covenants and obligations of Midway under the Acquisition Note and other Acquisition Loan Documents, (ii) to provide that a default or event of default under any of the Acquisition Loan Documents shall also constitute a default under the Senior Loan Documents, and (iii) to modify the Senior Loan Documents in accordance therewith.

J. By First Loan Modification Agreement dated as of December 18, 2001, and recorded in the Recorder’s Office on January 9, 2002 as Document No. 0020031984 (the “First Junior Loan Modification”), CP Newport, Trustee, Family Trust, Guarantor and Lender modified the Junior Loan Documents to, among other things: (i) provide that the liens and collateral security interests granted Lender under the Junior Loan Documents were also granted to secure payment and performance of all covenants and obligations of Midway under the Acquisition Note and other Acquisition Loan Documents, (ii) to provide that a default or event of default under any of the Acquisition Loan Documents shall also constitute a default under the Junior Loan Documents, and (iii) to modify the Junior Loan Documents in accordance therewith.

K. By Second Loan Modification Agreement dated as of August 9, 2002, and recorded in the Recorder’s Office on March 21, 2003 as document number 0030390481 (the “Second Junior Modification”) CP Newport, Trustee, Family Trust, Guarantor and Lender modified the Junior Loan Documents to extend the Maturity date of the Line of Credit Loan to October 8, 2002.

L. By a Third Loan Modification Agreement dated as of October 8, 2002, and recorded in the Recorder’s Office on March 21, 2003 as document number 0030390482 (the “Third Junior Modification”) CP Newport, Trustee, Family Trust, Guarantor and Lender modified the Junior Loan Documents to (i) extend the Maturity date of the Line of Credit Loan

UNOFFICIAL COPY

to January 8, 2003 and (ii) to correct scrivener's errors contained in the First Junior Loan Modification.

M. The Acquisition Note was further secured by: (i) a Second Junior Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Family Trust and CP Newport Second Junior Mortgage") dated December 18, 2001 and recorded in the Recorder's Office on January 9, 2002 as document 0020031980, made by the CP Newport and Family Trust to Lender creating an additional junior mortgage lien on the Addison Properties, (ii) a Second Junior Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Trust Second Junior Mortgage") dated December 18, 2001 and recorded in the Recorder's Office on January 9, 2002 as document 0020031979, made by the Trustee to Lender creating a junior mortgage lien on the Clark Properties (the Trust Second Junior Mortgage and the Family Trust and CP Newport Second Junior Mortgage are collectively referred to as the "Second Junior Mortgage"), (iii) a Second Junior Assignment of Rents and Leases (the "Trust Second Junior Assignment") dated December 18, 2001 and recorded in the Recorder's Office on January 9, 2002 as document 0020031981, from the Trustee and Guarantor to Lender and recorded against the Clark Properties, (iv) a Second Junior Assignment of Rents and Leases (the "Family Trust and CP Newport Second Junior Assignment") dated December 18, 2001 and recorded in the Recorder's Office on January 9, 2002 as document 0020031982, from the Family Trust and CP Newport to Lender and recorded against the Addison Properties (the Trust Second Junior Assignment and the Family Trust and CP Newport Second Junior Assignment are collectively referred to as the "Second Junior Assignment"; the Second Junior Mortgage and the Second Junior Assignment are collectively referred to as the "Second Junior Loan Documents").

N. By a Sixth Loan Modification Agreement dated as of January 1, 2003, and recorded in the Recorder's Office on April 21, 2003 as Document No. 0311127062 ("Sixth Loan Modification"), CP Newport, Trustee, Family Trust, Guarantor and Lender further modified the Senior Loan Documents to, among other things: (i) increase the principal balance due on the Second Restated Note, (ii) modify the Interest Rate, Payment Terms and Prepayment provisions contained in the Second Restated Note, (iii) increase Guarantor's liability under the Guaranty, (iv) modify both the Addison Mortgage and the Clark Mortgage to, among other things, reflect the increase in the principal balance of the Second Restated Note and to add a Debt Service Ratio Provision, and (v) modify the Senior Loan Documents in accordance therewith.

O. By a Fourth Junior Loan Modification Agreement dated as of January 8, 2003, and recorded in the Recorder's Office on April 21, 2003 as Document No. 0311127063 ("Fourth Junior Loan Modification"), CP Newport, Trustee, Family Trust, Guarantor and Lender further modified the Junior Loan Documents to, among other things: (i) increase the principal balance available pursuant to the Line of Credit Loan, (ii) modify the Interest Rate on the Line of Credit Note, (iii) extend the Extended Maturity Date of the Line of Credit Loan, (iv) increase Guarantor's liability under the Guaranty, (v) modify the Junior Mortgage to, among other things, reflect the increase in the principal balance of the Line of Credit Loan and to add a Debt Service Ratio Provision, and (vi) modify the Junior Loan Documents in accordance therewith.

P. On December 28, 2003, Lender made a loan to Amalgamated in the principal sum of Four Million and No/100 Dollars (\$4,000,000.00) (the "Amalgamated Loan"). The Amalgamated Loan was evidenced by a Promissory Note (the "Amalgamated Note") made by

UNOFFICIAL COPY

Amalgamated and given to Lender in the principal amount of the Amalgamated Loan. The Amalgamated Note was secured by, among other things: (i) a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing ("Amalgamated Mortgage") dated as of December 28, 2003 and recorded with the Recorder's Office on January 27, 2004 as document 0402727191, made by Amalgamated and given to Mortgage creating a mortgage lien on those parcels of real property described in Exhibit A attached to the Amalgamated Mortgage (the "Amalgamated Premises", (ii) an Assignment of Rents and Leases (the "Amalgamated Assignment of Rents") dated as of December 28, 2003 and recorded with the Recorder's Office on January 27, 2004 as documents 0402727192, made by Amalgamated to Lender, (iii) a fifty percent (50%) guaranty of ("Amalgamated Guarantee") dated as of December 28, 2003 from Guarantor to Lender, (iv) an Environmental Indemnity Agreement ("Amalgamated Indemnity Agreement") dated as of December 28, 2003 from Amalgamated and Guarantor to Lender, and (v) UCC Financing Statements given by Amalgamated ("Amalgamated Financing Statements") (the Amalgamated Note, the Amalgamated Mortgage, Amalgamated Assignment of Rents, the Amalgamated Guarantee, the Amalgamated Indemnity Agreement and the Amalgamated Financing Statements are hereinafter collectively referred to as the "Amalgamated Loan Documents").

Q. By a Seventh Modification of Senior Loan Documents ("Seventh Loan Modification"), dated as of December 28, 2003 and recorded with the Recorder's Office on June 11, 2004 as document 0416339116, CP Newport, Trustee, Family Trust, Guarantor and Lender further modified the Senior Loan Documents to: (i) provide that the liens and collateral security interests granted Lender under the Senior Loan Documents are also granted to secure payment and performance of all covenants of Amalgamated under the Amalgamated Note and other Amalgamated Loan Documents and to provide that a default or event of default under any of the Amalgamated Loan Documents shall also constitute a default under the Senior Loan Documents, and (ii) to amend and restate the Guaranty and the Line of Credit Guaranty in accordance therewith.

R. By a Fifth Modification of Junior Loan Documents ("Fifth Junior Loan Modification"), dated as of December 28, 2003 and recorded with the Recorder's Office on June 11, 2004 as document 0416339117, CP Newport, Trustee, Family Trust, Guarantor and Lender modified the Junior Loan Documents to, among other things: (i) provide that the liens and collateral security interests granted Lender under the Junior Loan Documents are also granted to secure payment and performance of all covenants of Amalgamated under the Amalgamated Note and other Amalgamated Loan Documents and to provide that a default or event of default under any of the Amalgamated Loan Documents shall also constitute a default under the Junior Loan Documents, (ii) to the extend the Maturity Date of the Line of Credit Loan, (iii) to decrease the principal balance available pursuant to the Line of Credit Note, (iv) to amend and restate the Line of Credit Guaranty and (v) to modify the Junior Loan Documents in accordance therewith.

S. By a First Modification of Midway Loan Documents ("First Midway Modification") dated as of December 28, 2003 and recorded with the Recorder's Office on May 7, 2004 as document 0412832004, Midway, Guarantor and Lender modified the Acquisition Loan Documents to, among other things: (i) provide that the liens and collateral security interests granted Lender under the Acquisition Loan Documents are also granted to secure payment and performance of all covenants of Amalgamated under the Amalgamated Note and other

UNOFFICIAL COPY

Amalgamated Loan Documents and to provide that a default or event of default under any of the Amalgamated Loan Documents shall also constitute a default under the Acquisition Loan Documents, (ii) provide that the liens and collateral security interests granted Lender under the Acquisition Loan Documents are also granted to secure payment and performance of all covenants of CP Newport and Family Trust under the Line of Credit Note and other Junior Loan Documents and to provide that a default or event of default under any of the Junior Loan Documents shall also constitute a default under the Acquisition Loan Documents, (iii) to extend the Maturity Date of the Acquisition Loan, (iv) to modify the Interest Rate and payment provisions under that Acquisition Loan, (v) to amend and restate the Acquisition Guaranty and (vi) to modify the Acquisition Loan Documents in accordance therewith.

T. By a First Modification of Second Junior Loan Documents ("First Second Junior Loan Modification") dated as of December 28, 2003 and recorded with the Recorder's Office on May 5, 2004 as document 0412832004, CP Newport, Trustee, Family Trust, Guarantor and Lender modified the Second Junior Loan Documents to, among other things: (i) provide that the liens and collateral security interests granted Lender under the Second Junior Loan Documents are also granted to secure payment and performance of all covenants of Amalgamated under the Amalgamated Note and other Amalgamated Loan Documents and to provide that a default or event of default under any of the Amalgamated Loan Documents shall also constitute a default under the Second Junior Loan Documents, (ii) provide that the liens and collateral security interests granted Lender under the Second Junior Loan Documents are also granted to secure payment and performance of all covenants of CP Newport and Family Trust under the Line of Credit Note and other Junior Loan Documents and to provide that a default or event of default under any of the Second Junior Loan Documents shall also constitute a default under the Acquisition Loan Documents, (iii) to acknowledge the extension of the Maturity Date of the Acquisition Loan and the Line of Credit Loan, (iv) to acknowledge the modification of the Interest Rate and payment provisions under that Acquisition Loan, (v) to acknowledge the modification of the Acquisition Guaranty, and (vi) to modify the Second Junior Loan Documents in accordance therewith.

U. At the request of Amalgamated, Midway, CP Newport, Midway, Trust Family Trust, Trust (the "Consolidated Borrowers") and Guarantor, Lender (i) consolidated the Loan, the Line of Credit Loan, the Acquisition Loan and the Amalgamated Loan and increased the combined principal balance of those loans to Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (the "Consolidated Loan"), as evidenced by that certain Consolidated and Restated Promissory Note dated August 8, 2005 (the "Consolidated Note"), jointly and severally executed by the Consolidated Borrowers and made payable to the order of the Lender in the principal amount of the Consolidated Loan, (ii) extended the Extended Maturity Date of the Consolidated Loan, (iii) released the Trust Junior Mortgage, (iv) released the Family Trust and CP Newport Junior Mortgage, (v) released the Trust Second Junior Mortgage, and (vi) released the Family Trust and CP Newport Second Junior Mortgage.

V. The Consolidated Note is secured by, among other things: (i) a Consolidated and Restated Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing ("Consolidated Mortgage") dated as of August 8, 2005 and recorded with the Recorder's Office on August 24, 2005 as document 0523641120, made by Consolidated Borrowers and given to Lender creating a mortgage lien on those parcels of real property described in Exhibit A attached

UNOFFICIAL COPY

to the Consolidated Mortgage (the "Consolidated Premises"), (ii) a Consolidated and Restated Assignment of Rents and Leases (the "Consolidated Assignment of Rents") dated as of August 8, 2005 and recorded with the Recorder's Office on August 24, 2005 as document 0523641121, made by Consolidated Borrowers to Lender, (iii) a guaranty of payment ("Consolidated Guarantee") dated as of August 8, 2005 from Guarantor to Lender, (iv) a Restated Environmental Indemnity Agreement ("Consolidated Indemnity Agreement") dated as of August 8, 2005 from Consolidated Borrowers and Guarantor to Lender, and (v) UCC Financing Statements given by Consolidated Borrowers ("Consolidated Financing Statement").

W. By a First Modification of Consolidated and Restated Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing and Other Loan Documents dated as of November 20, 2006, and recorded in the Recorder's Office on March 16, 2007, as Document No. 0707545116 ("First Consolidated Loan Modification") made by Borrowers and Guarantor and given to Lender, the parties agreed to amend the Consolidated Loan Documents in order to (i) reflect a reduction in the principal balance of the Consolidated Loan, (ii) adjust the monthly principal and interest payments due under the Consolidated Note, (iii) reduce Guarantor's liability under the Consolidated Guarantee, (iv) remove all references to CP Newport, Family Trust, Trustee and Trust from the Consolidated Note and the other Consolidated Loan Documents, and (v) make such additional modifications to the Consolidated Loan Documents as were warranted.

X. By a Second Modification of Consolidated and Restated Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing and Other Loan Documents dated as of August 8, 2008 (the "Second Consolidated Loan Modification" which together with the First Consolidated Loan Modification, the Consolidated Note, the Consolidated Mortgage, Consolidated Assignment of Rents, the Consolidated Guarantee, the Consolidated Indemnity Agreement, the Consolidated Financing Statement, and all other documents evidencing or securing the Consolidated Loan, as hereby amended, are collectively referred to as the "Consolidated Loan Documents"), made by Borrowers and Guarantor and given to Lender, the parties agreed to (i) extend the Maturity Date of the Loan, and (ii) modify the Consolidated Mortgage to delete the Debt Service Ratio provision.

Y. Borrowers and Guarantor now desire to amend the Consolidated Loan Documents in order to (i) extend the Maturity Date of the Loan, (ii) modify the interest rate in the Note, (iii) make the Consolidated Guarantee full recourse, and (iv) make such additional modifications to the Consolidated Loan Documents as are warranted.

UNOFFICIAL COPY

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned parties hereby agree as follows:

1. Maturity Date. The Maturity Date of the Consolidated Note is extended from September 28, 2008 to February 1, 2009. Any reference in the Consolidated Note or any other Consolidated Loan Document to the Maturity Date shall mean February 1, 2009.

2. Interest Rate.

(a) Section 2.1 of the Consolidated Note is hereby deleted in its entirety and replaced with the following:

"BBA LIBOR Daily Floating Rate. The unpaid principal balance of this Note from day to day outstanding which is not past due, shall bear interest at a fluctuating rate of interest per annum equal to the BBA LIBOR Daily Floating Rate plus 400 basis points per annum (the "Interest Rate"). The "BBA LIBOR Daily Floating Rate" shall mean a fluctuating rate of interest per annum equal to the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by Lender from time to time) as determined for each Business Day at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in Lender's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternate method as reasonably selected by Lender. A "London Banking Day" is a day on which banks in London are open for business and dealing in offshore dollars. Interest shall be computed for the actual number of days which have elapsed, on the basis of a 360-day year."

(b) Default Interest. Default Interest shall accrue at the Interest Rate set forth above, plus five percent (5%).

3. Amendment of Consolidated Loan Documents Notice. Mortgagee's notice provisions in Section 26 of the Consolidated Mortgage and all other notices provisions in the Consolidated Loan Documents are amended to read as follows:

To Mortgagee: Bank of America
135 S. LaSalle Street
Chicago, Illinois 60603
Attention: Robert E. Goeckel

With a copy to: Mayer Brown LLP
71 South Wacker Drive

UNOFFICIAL COPY

Chicago, Illinois 60606
Attention: John Gearen/Rachel Bates

4. Consolidated Guarantee.

(a) Section 22 of the Consolidated Guarantee, as amended by the Consolidated First Modification, is hereby deleted in its entirety, thereby creating a full payment obligation of the Guarantor under the Consolidated Guarantee.

(b) Each of the three references to “subject to the limitations set forth in Section 22 below” in Section 1 of the Consolidated Guarantee, as amended by the Consolidated First Modification, is stricken from Section 1.

5. Amendment of Guarantee Notices. Section 17 of the Consolidated Guarantee is amended to read as follows:

To Mortgagee: Bank of America
135 S. LaSalle Street
Chicago, Illinois 60603
Attention: Robert E. Goeckel

With a copy to: Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
Attention: John Gearen/Rachel Bates

To Schultz: Mr. Steven A. Schultz
1025 W. Addison Street
Chicago, Illinois 60613

With a copy to: Much Shelist Denenberg Ament & Rubenstein, P.C.
191 North Wacker Drive
Chicago, Illinois 60606
Attention: Joel Resnick, Esq.

6. Reaffirmation of Consolidated Guarantee. Guarantor confirms that the Consolidated Guarantee, as amended herein, and resulting obligations expressed therein are in full force and effect as direct obligations of the Guarantor and that all references to the Consolidated Note and other Consolidated Loan Documents and the terms contained therein shall mean the Consolidated Note and Consolidated Loan Documents and terms as amended by this Agreement. Guarantor represents that each of the representations and warranties by the Guarantor in the Consolidated Guarantee remain true and correct in all material respects as of the date hereof.

7. Reaffirmation of Consolidated Indemnity Agreement. Guarantor and Borrowers confirm that the Consolidated Indemnity Agreement, as amended herein, remains in full force and effect as direct obligations of the Guarantor and the Borrowers and that all references to the

UNOFFICIAL COPY

Consolidated Note and other Consolidated Loan Documents and the terms contained therein shall mean the Consolidated Note and Consolidated Loan Documents and terms as amended by this Agreement. Guarantor and the Borrowers represent that each of the representations and warranties by the Guarantor and Borrowers in the Consolidated Indemnity Agreement remain true and correct in all material respects as of the date hereof.

8. Representations and Warranties of Borrowers. Each Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Consolidated Mortgage and the other Consolidated Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Consolidated Mortgage) under the Consolidated Note, the Consolidated Mortgage or the other Consolidated Loan Documents and Borrowers do not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Consolidated Note, the Consolidated Mortgage or the other Consolidated Loan Documents.

(c) The Consolidated Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrowers enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrowers, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Consolidated Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrowers have no claims, counterclaims, defenses, or set-offs with respect to the Consolidated Loan or the Consolidated Loan Documents as modified herein.

(f) Each Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Consolidated Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Consolidated Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrowers. This Agreement has been duly executed and delivered on behalf of Borrowers.

9. Conditions Precedent. This Agreement shall become effective upon Lender's receipt of the following:

(a) This Agreement executed by the Borrowers and the Guarantors.

(b) An opinion of Borrowers' counsel addressing such issues as Lender may request, including the following propositions and questions of law:

UNOFFICIAL COPY

- (1) that each Borrower is duly organized, validly existing and in good standing to do business in the state of its organization and in the State;
 - (2) that each Borrower has all necessary legal right, power and authority to conduct its business and to enter into and perform its obligations under this Agreement and the other Consolidated Loan Documents;
 - (3) that all necessary membership approvals, resolutions and directions have been obtained for the execution of this Agreement;
 - (4) that the execution and delivery of this Agreement and the performance thereunder by Borrowers will comply with all applicable law and will not violate or conflict with the instruments under which Borrower is organized or any applicable contracts or agreements; and
 - (5) that this Agreement has been duly and validly executed and delivered, are enforceable in accordance with their respective terms (subject to bankruptcy laws and laws pertaining to the exercise of creditors' rights generally) and are subject to no defenses of any kind.
- (c) The Borrowers have provided the Lender a satisfactory appraisal of the Property establishing a loan to value ratio of not more than 76%.
 - (d) The payment by Borrowers to Lender of an Extension Fee in the amount of Ten Thousand and No/100 Dollars (\$10,000.00).
 - (e) The payment by Borrowers to Lender of all Interest, at the rate stated in Section 2 above, due from November 8, 2008 through the date of this Agreement.
 - (f) The payment by Borrowers of all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including title charges, recording fees, appraisal fees, and attorneys' fees and expenses.
 - (g) Receipt by Lender of a current date down endorsement from a title company acceptable to Lender, showing no matters other than Permitted Exceptions.
 - (h) Such other documents, title endorsements, certificates, resolutions and/or opinions of counsel as Lender may reasonably request.

10. Miscellaneous.

- (a) This Agreement shall not be construed more strictly against Lender than against Borrowers or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrowers, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrowers, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has

UNOFFICIAL COPY

been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(b) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrowers or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(c) Borrowers, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrowers, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(d) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(e) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Consolidated Loan Documents shall be deemed to refer to the Consolidated Note, the Consolidated Mortgage and the other Consolidated Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(f) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(g) Time is of the essence of each of Borrowers' obligations under this Agreement.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

UNOFFICIAL COPY

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

LENDER:

BANK OF AMERICA NATIONAL ASSOCIATION, a national banking association

By: *Patrick E. Ahern*
Name: PATRICK E. AHERN
Title: S.V.P.

BORROWERS:

AMALGAMATED PROPERTIES, LLC, an Illinois limited liability company

By: *[Signature]*
Name: Steven A. Schultz
Title: Manager

MIDWAY HOLDINGS, L.L.C., an Illinois limited liability company

By: *[Signature]*
Name: Steven A. Schultz
Title: Manager

GUARANTOR:

By: *[Signature]*
Name: Steven A. Schultz

Property of Cook County Clerk's Office

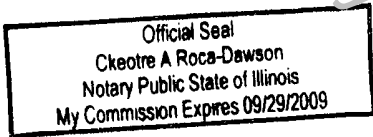
UNOFFICIAL COPY

STATE OF ILLINOIS)

COUNTY OF COOK)

I, Ckeotre A. Roca-Dawson, a notary public in and for said County, in the State aforesaid, do hereby certify that PATRICIA E. ATTEM personally know to me to be the SVP of Bank of America National Association, a national banking association, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such he/she signed and delivered the said instrument pursuant to proper authority given said national banking association, as the free and voluntary act, and as the free and voluntary act and deed of said national banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24th day of December, 2008.



[Signature]
Notary Public

[SEAL]

My commission expires:

9/29/09

PROPERTY OF COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY

STATE OF ILLINOIS)

COUNTY OF COOK)

I, Margaret Scott, a notary public in and for said County, in the State aforesaid, do hereby certify that Steven A. Schultz, personally know to me to be the Manager of Amalgamated Properties, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such he/she signed and delivered the said instrument pursuant to proper authority given said limited liability company, as the free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23rd day of December, 2008.

M. A. Scott
Notary Public

[SEAL]



My commission expires:

4/30/12

UNOFFICIAL COPY

STATE OF ILLINOIS)

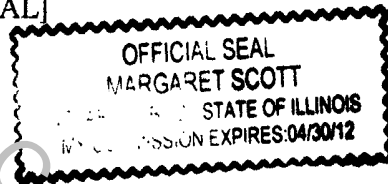
COUNTY OF COOK)

I, Margaret Scott, a notary public in and for said County, in the State aforesaid, do hereby certify that Steven A. Schultz, personally know to me to be the Manager of Midway Holdings, L.L.C., an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such he/she signed and delivered the said instrument pursuant to proper authority given said limited liability company, as the free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23RD day of December, 2008.

Margaret Scott
Notary Public

[SEAL]



My commission expires:

4/30/12

UNOFFICIAL COPY

STATE OF ILLINOIS)

COUNTY OF COOK)

I, Margaret Scott, a notary public in and for said County, in the State aforesaid, do hereby certify that Steven A. Schultz, personally known to be to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23RD day of December, 2008.

M. Scott
Notary Public

[SEAL]



My commission expires:

4/30/12

UNOFFICIAL COPY

EXHIBIT A

THE PROPERTY

PARCEL 1:

LOTS 8, 9, 10, 11 AND 12 (EXCEPT THAT PART LYING SOUTH OF A LINE 10 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOT 12) IN WEAGE AND HYDE'S SUBDIVISION OF LOT 1 IN THE ASSESSOR'S DIVISION OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOT 13 AND THAT PART OF LOT 12 LYING SOUTH OF A LINE DRAWN 10 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID OF SAID LOT 12 IN WEAGE AND HYDE'S SUBDIVISION OF LOT 1 IN THE ASSESSOR'S DIVISION OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 21, 22 AND 23 IN THE RESUBDIVISION OF LOT 2 IN ASSESSORS DIVISION OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THE STRIP OF LAND FALLING BETWEEN PARCEL 4 AND 5 LYING BETWEEN THE EASTERLY AND WESTERLY LINES OF PARCEL 5 EXTENDED NORTHERLY, ALL IN COOK COUNTY, ILLINOIS.

Permanent Index Nos:	Common Address:
14-20-403-005-0000;	3541 N. Clark St. Chicago, IL
14-20-403-007-0000; 14-20-403-008-0000;	3515 N. Clark St. Chicago, IL
14-20-403-064-0000; and 14-20-403-065-0000.	3525-3539 N. Clark St. Chicago, IL