

UNOFFICIAL COPY

STN 41989

COOK COUNTY CLERK'S OFFICE  
100 North Dearborn Street  
Chicago, Illinois 60610-4000

5 of 6  
971876PT

971876PT

SECOND MORTGAGE AND SECURITY AGREEMENT

from

MIDWAY ASSOCIATES, LLC,

Mortgagor

to

UNITED INDUSTRIAL CORPORATION

Mortgagee

Property of Cook County Clerk's Office

Dated August 27, 1997

Prepared by:  
Record and Return to:  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Ted S. Waksman, Esq.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

SECOND MORTGAGE AND SECURITY AGREEMENT

TABLE OF CONTENTS

<u>Article</u>	<u>Page</u>
1. Warranty of Title . . . . .	5
2. Payment of Indebtedness . . . . .	6
3. Requirements; Proper Care and Use . . . . .	6
4. Taxes on Mortgaged Property or Mortgagee . . . . .	8
5. Payment of Impositions . . . . .	10
6. [Intentionally Omitted] . . . . .	11
7. Insurance . . . . .	11
8. Condemnation/Eminent Domain . . . . .	17
9. Sale and Lease of Mortgaged Property . . . . .	19
10. Discharge of Liens . . . . .	19
11. Right of Contest . . . . .	19
12. Leases . . . . .	21
13. Estoppel Certificates . . . . .	22
14. Loan Document Expenses . . . . .	23
15. Mortgagee's Right to Perform . . . . .	23
16. Mortgagor's Existence . . . . .	23
17. Mortgagee's Costs and Expenses . . . . .	23
18. Defaults . . . . .	24
19. Remedies . . . . .	25
20. Security Agreement under Uniform Commercial Code . . . . .	28
21. Additional Representations and Warranties . . . . .	29

97044500

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97041969

<u>Article</u>	<u>Page</u>
22. No Waivers, Etc . . . . .	30
23. Trust Funds . . . . .	31
24. Additional Rights . . . . .	31
25. Waivers by Mortgagor . . . . .	31
26. Failure to Consent . . . . .	32
27. Not Joint Venture or Partnership . . . . .	33
28. Notices . . . . .	33
29. Inconsistency with the Loan Documents . . . . .	34
30. No Modification; Binding Obligations . . . . .	34
31. Miscellaneous . . . . .	34
32. Enforceability . . . . .	35
33. Receipt of Copy . . . . .	36
34. Guaranty . . . . .	36
35. Second Mortgage . . . . .	36
36. Local Law Provisions . . . . .	36

Exhibits

- Exhibit A - Description of the Land
- Exhibit B - Permitted Leases

y

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0000410000

SECOND MORTGAGE AND SECURITY AGREEMENT

THIS SECOND MORTGAGE AND SECURITY AGREEMENT, made the 27th day of August, 1997, by MIDWAY ASSOCIATES, LLC, a Maryland limited liability company, having an office c/o R.B. Johnson Associates, 3706 Silverwood Drive, York, Pennsylvania 17402 ("Mortgagor"), to UNITED INDUSTRIAL CORPORATION, a Delaware corporation, having an office at P.O. Box 126, Hunt Valley, MD 21030 ("Mortgagee").

W I T N E S S E T H :

To secure the following obligations and liabilities:

(a) the payment of (i) the principal sum of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000) in the aggregate to be paid plus all accrued interest thereon to be paid pursuant to the provisions of that certain Promissory Note by Neo Acquisition Co. to Mortgagee (the "Note"), (ii) any and all other sums due or to become due under the Note, this Mortgage or any other Loan Document (hereinafter defined), and (iii) any extensions, renewals, replacements or modifications of the Note or any other Loan Document (the items set forth in clauses (i) through (iii) hereof being hereinafter collectively referred to as the "Indebtedness"), and

(b) the performance of all of the terms, covenants, conditions, agreements, obligations and liabilities of Mortgagor (collectively the "Obligations") under (i) this Mortgage the Note, including, without limitation, the guaranty by Mortgagor set forth in Section 34 of this Mortgage, (ii) the obligations of Borrower under the Note, (iii) all chattel mortgages, pledges, powers of attorney, consents, assignments, notices, leases and financing statements heretofore, now or hereafter executed by or

UNOFFICIAL COPY

Property of Cook County Clerk's Office



S779110705

on behalf of Mortgagor or any other Person (hereinafter defined) and/or delivered to Mortgagee in connection with the transactions contemplated thereby, and (iv) any extensions, renewals, replacements or modifications of any of the foregoing (this Mortgage, the Note, and any other supplemental agreements, undertakings, instruments, documents, or other writings executed in connection with any of the foregoing, together with (x) the foregoing powers of attorney, consents, assignments, notices, leases and financing statements, (y) any guarantees of the Indebtedness and the Obligations and (z) any deeds of trust, mortgages, security agreements or assignments now or hereafter made to secure the Indebtedness and the Obligations (all of the foregoing documents being hereinafter collectively referred to as the "Loan Documents"),

and in consideration of Ten Dollars (\$10.00), in hand paid, the receipt and legal sufficiency of which are hereby acknowledged, Mortgagor does hereby mortgage, give, grant, bargain, sell, warrant, alienate, remise, release, convey, assign, transfer, hypothecate, deposit, pledge, set over and confirm unto Mortgagee the following described real and other property and all substitutions for and all replacements, reversions and remainders of such property, whether now owned or held or hereafter acquired by Mortgagor (collectively the "Mortgaged Property"):

All those plots, pieces or parcels of land more particularly described in Exhibit A annexed hereto and made a part hereof, together with the right, title and interest of Mortgagor, if any, in and to the streets and in and to land lying in the bed of any streets, roads or avenues, open or proposed, public or private, in front of, adjoining or abutting said land to the center line thereof, the air space and development rights pertaining to said land and the right to use such air space and development rights, all rights of way, privileges, liberties, tenements, hereditaments and appurtenances belonging to, or in any way appertaining to, said land, all easements now or hereafter benefitting said land and all royalties and rights appertaining to the use and enjoyment of said land, including, but without limiting the generality of the foregoing, all alley, vault, drainage,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

mineral, water, oil, coal, gas, timber and other similar rights (collectively the "Land");

TOGETHER with the buildings and other improvements now or hereafter erected on the Land (the buildings and other improvements being hereinafter collectively referred to as the "Buildings," and the Land together with the Buildings and the Fixtures (hereinafter defined), (being hereinafter collectively referred to as the "Real Estate");

TOGETHER with all and singular the reversion or reversions, remainder or remainders, rents, issues, profits and revenues of the Real Estate and all of the estate, right, title, interest, dower and right of dower, curtesy and right of curtesy, property, possession, claim and demand whatsoever, both in law and at equity, of Mortgagor of, in and to the Real Estate and of, in and to every part and parcel thereof, with the appurtenances, at any time belonging or in any way appertaining thereto;

TOGETHER with all of the fixtures, systems, machinery, apparatus, equipment and fittings of every kind and nature whatsoever and all appurtenances and additions thereto and substitutions or replacements thereof now owned or hereafter acquired by Mortgagor and now or hereafter attached or affixed to, or constituting a part of, the Real Estate or any portion thereof (collectively the "Fixtures"), including, but without limiting the generality of the foregoing, all heating, electrical, mechanical, lighting, lifting, plumbing, ventilating, air conditioning and air-cooling fixtures, systems, machinery, apparatus and equipment, refrigerating, incinerating and power fixtures, systems, machinery, apparatus and equipment, loading and unloading fixtures, systems, machinery, apparatus and equipment, escalators, elevators, boilers, communication systems, switchboards, sprinkler systems and other fire prevention and extinguishing fixtures, systems, machinery, apparatus and equipment, and all engines, motors, dynamos, machinery, wiring, pipes, pumps, tanks, conduits and ducts constituting a part of any of the foregoing, it being understood and agreed that all of the Fixtures are appropriated to the use of the Real Estate and, for the purposes of this Mortgage, shall be deemed conclusively to be Real Estate and mortgaged hereby;

TOGETHER with all drainage, mineral, water, oil, gas, timber and sewer pipes, conduits and wires, and other facilities furnishing utility or other services and other

UNOFFICIAL COPY

Property of Cook County Clerk's Office

similar rights now or hereafter benefitting the Real Estate or any portion thereof or appertaining thereto;

TOGETHER with Mortgagor's right, title and interest in, to and under all leases, subleases, underlettings, concession agreements, licenses and other occupancy agreements which now or hereafter may affect the Real Estate or any portion thereof and under any and all guarantees, modifications, renewals and extensions thereof (collectively the "Leases"), and in and to any and all deposits made or hereafter made as security under the Leases, subject to the prior legal rights under the Leases of the lessees making such deposits, together with any and all of the benefits, revenues, income, rents, issues and profits due or to become due or to which Mortgagor is now or hereafter may become entitled arising out of the Leases or the Real Estate or any portion thereof (collectively the "Rents");

TOGETHER with (a) all unearned premiums accrued, accruing or to accrue under any insurance policies now or hereafter obtained by Mortgagor and Mortgagor's interest in and to all proceeds which now or hereafter may be paid in connection with the conversion of the Mortgaged Property or any portion thereof into cash or liquidated claims, together with the interest payable thereon and the right to collect and receive the same, including, but without limiting the generality of the foregoing, proceeds of casualty insurance, title insurance and any other insurance now or hereafter maintained by Mortgagor with respect to the Real Estate or in connection with the use or operation thereof (collectively the "Insurance Proceeds"), and (b) all awards, payments and/or other compensation, together with the interest payable thereon and the right to collect and receive the same, which now or hereafter may be made with respect to the Mortgaged Property as a result of (i) a taking by eminent domain, condemnation or otherwise, (ii) the change of grade of any street, road or avenue or the widening of any streets, roads or avenues adjoining or abutting the Land, or (iii) any other injury to, or decrease in the value of, the Mortgaged Property or any portion thereof (collectively the "Awards"), in any of the foregoing circumstances described in clauses (a) or (b) above to the extent of the entire amount of the Indebtedness outstanding as of the date of Mortgagee's receipt of any such Insurance Proceeds or Awards, notwithstanding that the entire amount of the Indebtedness may not then be due and payable, and also to the extent of reasonable attorneys' fees, costs and disbursements incurred by Mortgagee in connection with the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

collection of any such Insurance Proceeds or Awards. Mortgagor hereby assigns to Mortgagee, and Mortgagee is hereby authorized to collect and receive, all Insurance Proceeds and Awards and to give proper receipts and acquittances therefor and to apply the same toward the Indebtedness as herein set forth notwithstanding that the entire amount of the Indebtedness may not then be due and payable. Mortgagor hereby agrees to make, execute and deliver, from time to time, upon demand, such further documents, instruments or assurances as may be requested by Mortgagee to confirm the assignment of the Insurance Proceeds and the Awards to Mortgagee, free and clear of any interest of Mortgagor whatsoever therein and free and clear of any other liens, claims or encumbrances of any kind or nature whatsoever;

TOGETHER with all right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Real Estate, and in each such case, the foregoing shall be deemed a part of the Real Estate and shall become subject to the lien of this Mortgage as fully and completely, and with the same priority and effect, as though now owned by Mortgagor and specifically described herein, without any further mortgage, conveyance, assignment or other act by Mortgagor;

TOGETHER with all of Mortgagor's rights to further encumber the Mortgaged Property for debt.

TO HAVE AND TO HOLD the Mortgaged Property and the rights and privileges hereby mortgaged or intended so to be unto Mortgagee and its successors and assigns for the uses and purposes herein set forth, until the Indebtedness is fully paid and the Obligations are fully performed in accordance with the provisions set forth herein and in the other Loan Documents.

Mortgagor, for itself and its successors and assigns, further represents, warrants, covenants and agrees with Mortgagee as follows:

1. Warranty of Title. Mortgagor warrants that it has good and marketable fee simple absolute title to the Real Estate and Fixtures and has the right to mortgage the same in accordance with the provisions set forth in this Mortgage and that this Mortgage is a valid and enforceable first lien on the Mortgaged Property, subject only to the

UNOFFICIAL COPY

Property of Cook County Clerk's Office



9741969

exceptions to title more particularly described in Title Insurance Policy or Commitment for Title No. 971876, issued by Premier Title Company as agent for Chicago Title Insurance Company to Mortgagee (collectively the "Permitted Encumbrances"). Mortgagor shall (a) preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same unto Mortgagee against the claims of all and every person or persons, corporation or corporations and parties whomsoever, and (b) make, execute, acknowledge and deliver all such further or other deeds, documents, instruments or assurances and cause to be done all such further acts and things as may at any time hereafter be required by Mortgagee to confirm and fully protect the lien and priority of this Mortgage.

2. Payment of Indebtedness. Mortgagor shall pay or cause to be paid the Indebtedness at the times and places and in the manner specified in the Loan Documents and shall perform or cause to be performed all of the Obligations in accordance with the provisions set forth herein and in the other Loan Documents.

3. Requirements, Proper Care and Use. (a) Subject to the right of Mortgagor to contest a Legal Requirement (hereinafter defined) as provided in Article 11 hereof, Mortgagor promptly shall comply with, or cause to be complied with, all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, restrictions and requirements (collectively "Legal Requirements") of every Governmental Authority (hereinafter defined) having jurisdiction over Mortgagor or the Mortgaged Property (and in no case later than twenty (20) days after an order or other form of notice has been issued by such Governmental Authority) or the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or Restoration (hereinafter defined) of the Real Estate, without regard to the nature of the work to be done or the cost of performing the same, ordinary or extraordinary, and shall perform, or cause to be performed, all obligations, agreements, covenants, restrictions and conditions now or hereafter of record which may be applicable to Mortgagor or to the Mortgaged Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or Restoration of the Real Estate.

(b) Mortgagor shall (i) not abandon the Real Estate or any portion thereof, (ii) maintain the Real Estate

UNOFFICIAL COPY

Property of Cook County Clerk's Office

and Fixtures in good repair, order and condition, (iii) promptly make all necessary repairs, renewals, replacements, additions and improvements to the Real Estate and Fixtures, (iv) not commit or suffer waste with respect to the Real Estate and Fixtures, (v) refrain from impairing or diminishing the value or integrity of the Mortgaged Property or the priority or security of the lien of this Mortgage, (vi) not remove, demolish or materially alter any of the Real Estate and Fixtures without the prior written consent of Mortgagee in each instance, except that Mortgagor shall have the right to remove and dispose of, free of the lien of this Mortgage, such Fixtures as may, from time to time, become worn out or obsolete, provided that, simultaneously with or prior to such removal, any such Fixtures shall be replaced with other Fixtures which shall have a value and utility at least equal to that of the replaced Fixtures and which shall be free of any security agreements or other liens or encumbrances of any kind or nature whatsoever, and by such removal and replacement, Mortgagor shall be deemed to have subjected such replacement Fixtures to the lien and priority of this Mortgage, (vii) not make, install or permit to be made or installed, any alterations or additions to the Real Estate if doing so would, in the sole opinion of Mortgagee, impair to any extent the value of the Mortgaged Property, (viii) not make, suffer or permit any nuisance to exist on the Real Estate or any portion thereof, and (ix) permit Mortgagee and its agents, at all reasonable times and without prior notice, to enter upon the Real Estate for the purpose of inspecting and appraising the Real Estate or any portion thereof.

(c) Mortgagor shall not by any act or omission permit any building or other improvement located on any property which is not subject to the lien of this Mortgage to rely upon the Real Estate or any portion thereof or any interest therein to fulfill any Legal Requirement and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Real Estate or any interest therein to be so used. The Real Estate is zoned as one or more lots separate and apart from all other premises and Mortgagor shall not, by any act or omission, impair the integrity of the Real Estate as such lot or lots or initiate or join in any zoning change, private easement or any other modification of the zoning regulating the Real Estate. Mortgagor shall not (i) impose any restrictive covenants or encumbrances upon the Real Estate, execute or file any subdivision plot affecting the Real Estate or consent to the annexation of the Real Estate to any municipi-

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97641969

pality or (ii) permit or suffer the Real Estate to be used by the public or any Person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Article 3 shall be null and void.

4. Taxes on Mortgaged Property or Mortgagee. (a) If the United States of America, the State in which the Real Estate is located or any political subdivision thereof or any city, town, county or municipality in which the Real Estate is located or any agency, department, bureau, board, commission or instrumentality of any of the foregoing now existing or hereafter created (collectively "Governmental Authorities") shall levy, assess or charge any tax, assessment, fee or imposition upon this Mortgage or any other Loan Document, the Indebtedness, the interest of Mortgagee in the Mortgaged Property, or Mortgagee by reason of this Mortgage or any other Loan Document, the Indebtedness or Mortgagee's interest in the Mortgaged Property (individually a "Tax", and collectively "Taxes") (excepting therefrom any income tax on payments of interest made under the Note), Mortgagor shall pay all such Taxes to, for, or on account of, Mortgagee as they become due and payable and, on demand, shall furnish proof of such payment to Mortgagee. If Mortgagor shall fail to pay any such Tax, then, Mortgagee, at its option and without notice, may pay any such Tax and, in such event, the amount so paid (i) shall be deemed to be Indebtedness, (ii) shall be a lien on the Mortgaged Property prior to any right or title to, interest in, or claim upon, the Mortgaged Property subordinate to the lien of this Mortgage, and (iii) immediately shall be due and payable, on demand, together with interest thereon at the rate of interest then payable under the Note, including, in calculating such rate of interest, any additional interest which may be imposed under the Note by reason of any default thereunder (such rate of interest being hereinafter referred to as the "Interest Rate"), from the date of any such payment by Mortgagee to the date of repayment to Mortgagee. In the event of the passage of any law or regulation permitting, authorizing or requiring any such Tax to be levied, assessed or charged, which law or regulation, in the sole opinion of Mortgagee, may prohibit Mortgagor from paying any Taxes to, for or on account of, Mortgagee or which may make such payment by Mortgagor result in the imposition of interest exceeding the maximum rate of interest then permitted by law, then, Mortgagee may declare the entire amount of the Indebtedness immediately due and payable.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(b) If any Governmental Authority shall at any time require revenue, documentary or similar stamps to be affixed to this Mortgage or any other Loan Document or shall require the payment of any Taxes with respect to the ownership or recording of this Mortgage or any other Loan Document, Mortgagor, upon demand, shall pay for such stamps in the required amount and shall deliver the same to Mortgagee, together with a copy of the receipted bill therefor. If Mortgagor shall fail to pay for any such stamps, then, Mortgagee, at its option and without notice, may pay for the same and, in such event, the amount so paid (i) shall be deemed to be Indebtedness, (ii) shall be a lien on the Mortgaged Property prior to any right or title to, or interest in, or claim upon, the Mortgaged Property subordinate to the lien of this Mortgage, and (iii) immediately shall be due and payable, on demand, together with interest thereon at the Interest Rate, from the date of any such payment by Mortgagee to the date of repayment to Mortgagee. Mortgagor shall indemnify Mortgagee for, and shall hold Mortgagee harmless from and against, any and all liability which Mortgagee may incur on account of such revenue, documentary or other similar stamps or by reason of any Taxes referred to in Paragraphs 4(a) and 4(c) hereof whether such liability arises before or after payment of the Indebtedness and whether or not the lien of this Mortgage shall have been released.

(c) In the event of the passage, after the date of this Mortgage, of any law of the jurisdiction in which the Real Estate is located which shall deduct from the value of the Mortgaged Property, for purposes of taxation, any lien thereon or shall change in any way the laws for the taxation of mortgages or debts secured by mortgages for State or local purposes or the manner of the collection of any such Taxes and shall impose any Tax, either directly or indirectly, on this Mortgage or any other Loan Document, then, Mortgagee may declare the entire amount of the Indebtedness immediately due and payable; provided, however, that such election shall be ineffective if Mortgagor is exempt from payment of such Tax or, if not exempt from payment of such Tax or, if Mortgagor shall be permitted by law to pay the whole of such Tax in addition to all other payments required hereunder and if Mortgagor shall pay such Tax when the same shall be due and payable and shall agree in writing to pay such Taxes when thereafter levied or assessed against the Mortgaged Property.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



5. Payment of Impositions. (a) Subject to the provisions of Article 11 hereof, not later than the date on which payment of the same shall be due, that is, the day before the date on which any fine, penalty, interest, late charge or loss may be added thereto or imposed by reason of the non-payment thereof, Mortgagor shall pay and discharge all Taxes (including, but without limiting the generality of the foregoing, all real property taxes and assessments, personal property taxes, income, franchise, withholding, profits and gross receipts taxes), charges for any easement or agreement maintained for the benefit of the Mortgaged Property or any portion thereof, general and special assessments and levies, permit, inspection and license fees, water and sewer rents and charges and any other charges of every kind and nature whatsoever, ordinary or extraordinary, public or private, which, at any time, are imposed upon or levied or assessed against Mortgagor or the Mortgaged Property or any portion thereof, or which arise with respect to, or in connection with, the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or Restoration of the Real Estate or any portion thereof, together with any penalties, interest or late charges which may be imposed in connection with any of the foregoing (all of the foregoing taxes, assessments, levies and other charges, together with such interest, penalties and late charges, being hereinafter collectively referred to as "Impositions"). If, however any Legal Requirement shall allow that any Imposition may, at Mortgagor's option, be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Mortgagor may exercise the option to pay such Imposition in such installments, and, in such event, Mortgagor shall be responsible for the payment of all such installments, together with the interest, if any, thereon, in accordance with the provisions of the applicable Legal Requirement. Not later than the date on which each Imposition is due and payable, Mortgagor shall deliver to Mortgagee evidence acceptable to Mortgagee showing the payment of such Imposition. Mortgagor also shall deliver to Mortgagee, within ten (10) days after receipt thereof, copies of all settlements and notices pertaining to any Imposition which may be issued by any Governmental Authority.

(b) Nothing contained in this Mortgage shall affect any right or remedy of Mortgagee under this Mortgage or otherwise to pay, without notice or demand to Mortgagor, any Imposition from and after the date on which such Imposition shall have become due and payable and, in such event,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

9  
7  
6  
4  
1  
9  
6  
9

the amount so paid (i) shall be deemed to be Indebtedness, (ii) shall be a lien on the Mortgaged Property prior to any right or title to, interest in, or claim upon, the Mortgaged Property subordinate to the lien of this Mortgage, and (iii) shall be immediately due and payable, on demand, together with interest thereon at the Interest Rate, from the date of any such payment by Mortgagee to the date of repayment to Mortgagee.

6. [Intentionally Omitted]

7. Insurance. (a) Mortgagor shall provide and keep in full force and effect, or require to be provided and kept in full force and effect, for the benefit of Mortgagee, as hereinafter provided:

(1) insurance for the Buildings and the Fixtures (v) against loss or damage by fire, lightning, windstorm, tornado, hail and such other further and additional hazards of whatever kind or nature as are now or hereafter may be covered by standard extended coverage "all risk" endorsements (including, but without limiting the generality of the foregoing, and specifically, vandalism, malicious mischief and damage by water) of whatsoever kind, (w) against war risks as, when and to the extent such insurance is obtainable from the United States of America or an agency thereof, (x) against flood disaster pursuant to the Flood Disaster Protection Act of 1973, 84 Stat. 572, 42 U.S.C. 4001 if the Real Estate is located in an area identified by the United States Department of Housing and Urban Development as a flood hazard area, (y) against loss of rentals and business interruption due to any of the foregoing causes, and (z) when and to the extent required by Mortgagee, against any other risk insured against by persons operating properties similar to the Real Estate and located in the vicinity of the Real Estate or operations similar to the operations conducted at the Real Estate;

(ii) insurance for demolition and increased cost of construction coverage;

(iii) if a sprinkler system shall be located in the Buildings, sprinkler leakage insurance;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97641969

(iv) comprehensive public liability insurance with respect to the Real Estate and the operations related thereto, whether conducted on or off the Real Estate, against liability for personal injury, including bodily injury and death, and property damage. Such comprehensive public liability insurance shall be on an occurrence basis and shall specifically include, but not be limited to, sprinkler leakage legal liability (if a sprinkler shall be located in the Buildings), water damage legal liability, products liability, motor vehicle liability for all owned and non-owned vehicles, including rented and leased vehicles, and contractual indemnification; and

(v) such other insurance in such amounts as may from time to time be required by Mortgagee against such other insurable hazards as at the time are commonly insured against in the case of properties similar to the Real Estate and located in the vicinity of the Real Estate or operations similar to the operations conducted at the Real Estate.

All insurance provided hereunder shall be in such form and in such amounts as, from time to time, shall be acceptable to Mortgagee, in its sole discretion, shall name Mortgagee as a named insured under a standard "non-contributory mortgagee" endorsement or its equivalent, which shall be acceptable to Mortgagee, shall provide for loss payable to Mortgagee, shall be provided by insurance companies which have a Best's rating of at least "AXII" and otherwise shall be acceptable to Mortgagee in its sole discretion. Anything contained herein to the contrary notwithstanding, in no event shall the insurance provided under clause (v) of Paragraph 7(a)(i) hereof or under Paragraph 7(a)(ii) hereof be in an amount which is less than One Hundred Percent (100%) of the full replacement cost of the Buildings and the Fixtures, including the cost of debris removal, but excluding the value of foundations and excavations, as determined from time to time by Mortgagee. Every policy of insurance referred to in this Paragraph 7(a) shall contain an agreement by the insurer that it will not cancel such policy except after thirty (30) days prior written notice to Mortgagee and that any loss payable thereunder shall be payable notwithstanding any act or negligence of Mortgagor or Mortgagee which might, absent such agreement, result in a

UNOFFICIAL COPY

Property of Cook County Clerk's Office

forfeiture of all or a part of such insurance payment and notwithstanding (A) occupancy or use of the Mortgaged Property for purposes more hazardous than permitted by the terms of such policy, (B) any foreclosure or other action or proceeding taken by Mortgagee pursuant to this Mortgage upon the happening of a Default (hereinafter defined) or (C) any change in title or ownership of the Mortgaged Property. Mortgagor shall assign and deliver to Mortgagee all such policies of insurance, or duplicate originals thereof and a certificate of insurance certified to Mortgagee by the insurer as being true copies, as collateral and further security for payment of the Indebtedness and performance of the Obligations. If any insurance required to be provided hereunder shall expire, be withdrawn, become void by breach of any condition thereof by Mortgagor or by any lessee of the Real Estate or any portion thereof, or become void or questionable by reason of the failure or impairment of the capital of any insurer, or if for any other reason whatsoever any such insurance shall become unsatisfactory to Mortgagee, Mortgagor immediately shall obtain new or additional insurance which shall be satisfactory to Mortgagee in its sole discretion. Mortgagor shall not take out any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to Mortgagee in all respects.

(b) Mortgagor shall (i) pay as they become due all premiums for the insurance required hereunder, and (ii) not later than thirty (30) days prior to the expiration of each such policy, deliver a renewal policy or a duplicate original thereof and a certificate of insurance certified to Mortgagee by the insurer as being a true copy evidencing the insurance required to be provided hereunder, marked "premium paid", or accompanied by such other evidence of payment as shall be satisfactory to Mortgagee in its sole discretion.

(c) If Mortgagor shall be in default of its obligation to so insure or deliver any such prepaid policy or policies of insurance to Mortgagee in accordance with the provisions hereof, Mortgagee, at its option and without notice, may effect such insurance from year to year, and pay the premium or premiums therefor, and, in such event, the amount of all such premium or premiums (i) shall be deemed to be Indebtedness, (ii) shall be a lien on the Mortgaged Property prior to any right or title to, or interest in, or claim upon, the Mortgaged Property subordinate to the lien of this Mortgage, and (iii) shall be immediately due and payable, on demand, together with interest thereon at the

UNOFFICIAL COPY

Property of Cook County Clerk's Office



97641969

Interest Rate, from the date of any such payment by Mortgagee to the date of repayment to Mortgagee.

(d) Mortgagor shall increase the amount of insurance required to be provided pursuant to the provisions of clause (v) of Paragraph 7(a)(i) hereof and Paragraph 7(a)(ii) hereof at the time that each such policy of insurance is renewed (but, in no event, less frequently than once during each twelve (12) month period) by using the F.W. Dodge Building Index to determine whether there shall have been an increase in the replacement cost of the Buildings and the Fixtures since the most recent adjustment to any such policy and, if there shall have been any such increase, the amount of insurance required to be provided hereunder shall be adjusted accordingly.

(e) Mortgagor promptly shall comply with, and shall cause the Buildings and the Fixtures to comply with, (i) all of the provisions of each such insurance policy, and (ii) all of the requirements of the insurers thereunder applicable to Mortgagor or to any of the Buildings or the Fixtures or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or Restoration of (any of the Buildings or the Fixtures, even if such compliance would necessitate structural changes or improvements or would result in interference with the use or enjoyment of the Real Estate or any portion thereof. If Mortgagor shall use the Real Estate or any portion thereof in any manner which would permit the insurer to cancel any insurance required to be provided hereunder, Mortgagor immediately shall obtain a substitute policy which shall be satisfactory to Mortgagee and which shall be effective on or prior to the date on which any such other insurance policy shall be cancelled.

(f) If the Buildings or the Fixtures or any portion thereof shall be damaged, destroyed or injured by fire or any other casualty (whether insured or uninsured), Mortgagor shall give immediate notice thereof to Mortgagee and, provided that Mortgagee shall have notified Mortgagor of Mortgagee's election to apply the Insurance Proceeds (if any) or any portion thereof paid on account thereof to Mortgagor toward the Restoration of the Buildings or the Fixtures in accordance with the provisions of Paragraph 7(g) hereof, then, Mortgagor promptly shall commence and diligently shall continue and complete the repair, restoration, replacement or rebuilding (hereinafter referred to as "Restoration") of the Buildings and the Fixtures so damaged,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

9  
7  
6  
4  
1  
9  
6  
9

destroyed or injured substantially to their value, condition and character immediately prior to such damage, destruction or injury, in accordance with plans and specifications (bearing the signed approval of an architect satisfactory to Mortgagee) which shall have been approved by Mortgagee prior to the commencement of such Restoration. Mortgagor diligently shall complete, and pay for the cost of, the Restoration of the Buildings and the Fixtures located on the Land which are at any time in the process of construction, alteration or Restoration. Notwithstanding any damage to, or destruction of, or injury to, the Buildings or the Fixtures or any portion thereof by fire or other casualty, Mortgagor shall continue to make or cause to be made all payments due under this Mortgage, the Note and the other Loan Documents in accordance with the provisions of this Mortgage, the Note and the applicable provisions of the other Loan Documents. Any Insurance Proceeds remaining after completion of such Restoration shall be retained by Mortgagee and shall be applied to the payment of the Indebtedness then outstanding, in such proportion and priority as Mortgagee, in its sole discretion, may elect.

(g) All Insurance Proceeds which are payable in connection with any damage to, or destruction of, or injury to, the Buildings or the Fixtures shall be paid to Mortgagee, and Mortgagee is hereby authorized to adjust, collect and compromise, in its sole discretion, all claims under all policies of insurance and to execute and deliver on behalf of Mortgagor all necessary proofs of loss, receipts, vouchers and releases required by the insurers. Mortgagor agrees to execute, upon demand by Mortgagee, all such proofs of loss, receipts, vouchers and releases and to cooperate with Mortgagee in connection therewith. Each insurer is hereby authorized and directed to make payment of any Insurance Proceeds under any policies of insurance, including the return of unearned premiums, directly to Mortgagee instead of to Mortgagor and Mortgagee jointly and Mortgagee is hereby authorized to endorse any draft therefor as Mortgagor's attorney-in-fact. Anything contained in any Legal Requirement or in this Mortgage to the contrary notwithstanding, Mortgagee, in its sole discretion, either may (i) retain and apply all such Insurance Proceeds paid by reason of any damage to, or destruction of, or injury to, the Buildings or the Fixtures to the payment of the Indebtedness then outstanding, in such proportion and priority as Mortgagee, in its sole discretion, may elect, or (ii) pay the Insurance Proceeds or any portion thereof (after deducting therefrom all costs and expenses, including, but without

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97641969

limiting the generality of the foregoing, reasonable attorneys' fees, costs and disbursements, incurred by Mortgagee in connection with the collection thereof) to Mortgagor, on such terms and conditions as Mortgagee, in its sole discretion, may specify, for the sole purpose of Mortgagor's Restoration of the Buildings and the Fixtures so damaged, destroyed or injured, it being understood and agreed, however, that Mortgagee shall have no obligation whatsoever to see to the proper application of any Insurance Proceeds so paid to Mortgagor. Reduction of the outstanding amount of the Indebtedness resulting from the application of any such Insurance Proceeds to such Indebtedness by Mortgagee shall be deemed to take effect only on the date of Mortgagee's receipt of such Insurance Proceeds and its election to apply the same against the Indebtedness then outstanding hereunder. If, prior to the receipt by Mortgagee of any Insurance Proceeds, the Mortgaged Property or any portion thereof shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive the Insurance Proceeds to the extent of any deficiency found to be due upon such sale, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, together with interest thereon at the Interest Rate, and the reasonable attorneys' fees, costs and disbursements incurred by Mortgagee in connection with the collection of the Insurance Proceeds. Anything contained in any Legal Requirement or in this Mortgage to the contrary notwithstanding, Mortgagee shall not be deemed to be a trustee or other fiduciary with respect to its receipt of any Insurance Proceeds.

(h) The insurance required by this Mortgage may, at the option of Mortgagor, be effected by blanket and/or umbrella policies issued to Mortgagor covering the Buildings and the Fixtures as well as other properties (real and personal) which are owned or leased by Mortgagor, provided that, in each case, the policies otherwise comply with the provisions of this Mortgage and allocate to the Buildings and the Fixtures, from time to time, the coverage specified by Mortgagee, without possibility of reduction or coinsurance by reason of, or damage to, any other property (real or personal) named therein. If the insurance required by this Mortgage shall be effected by any such blanket or umbrella policies, Mortgagor shall furnish to Mortgagee original policies or duplicate originals thereof, with schedules attached thereto showing the amount of the insurance provided under such policies which is applicable to the Buildings and the Fixtures.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(i) Any transfer of the Mortgaged Property, in accordance with the provisions hereof, including a transfer by foreclosure or deed in lieu of foreclosure, shall transfer therewith all of Mortgagor's interest in all insurance policies then covering the Buildings and the Fixtures or the operations conducted at the Real Estate, including, but without limiting the generality of the foregoing, any unearned premiums.

8. Condemnation/Eminent Domain. (a) Notwithstanding (i) any taking by eminent domain, condemnation or otherwise of all or any portion of the Mortgaged Property, or (ii) the change of grade of any street, road or avenue or the widening of streets, roads or avenues adjoining or abutting the Land, or (iii) any other injury to, or decrease in value of, the Mortgaged Property caused in any manner by any Governmental Authority (any of the foregoing events being hereinafter referred to as a "Taking"), Mortgagor shall continue to make or cause to be made all payments due under this Mortgage and under the Note and the other Loan Documents in accordance with the provisions of this Mortgage, the Note and the applicable provisions of the other Loan Documents. Mortgagor shall notify Mortgagee immediately upon obtaining knowledge of the institution of any proceedings for any Taking or of any contemplated Taking. All Awards made in connection with any Taking shall be paid to Mortgagee free and clear of all liens and encumbrances. Mortgagee shall not be limited to the interest paid on any such Award or proceeds thereof for such Taking but shall be entitled to payment by Mortgagee at the Interest Rate thereon. Mortgagee is hereby authorized to collect any Award and to negotiate and settle, in its sole discretion, any such proceedings with respect to a Taking and the amount of any Award to be made in connection therewith and to execute and deliver on behalf of Mortgagor all necessary proofs of loss, receipts, vouchers and releases required in connection with any Taking. Mortgagor agrees to execute, upon demand by Mortgagee, all such proofs of loss, receipts, vouchers and releases and to cooperate with Mortgagee in connection therewith. Each Governmental Authority is hereby authorized and directed to make payment of any Award made in connection with any Taking directly to Mortgagee instead of to Mortgagor and Mortgagee jointly and Mortgagee is hereby authorized to endorse any draft therefor as Mortgagor's attorney-in-fact. Anything contained in any Legal Requirement or in this Mortgage to the contrary notwithstanding, Mortgagee, in its sole discretion, either may (i) retain and apply any Award made in connection with any

UNOFFICIAL COPY

Property of Cook County Clerk's Office



95-01-115-55

Taking to the payment of the Indebtedness then outstanding in such proportion and priority as Mortgagee, in its sole discretion, may elect, or (ii) pay the Award or any portion thereof (after deducting therefrom all costs and expenses, including, but without limiting the generality of the foregoing, reasonable attorneys' fees, costs and disbursements, incurred by Mortgagee in connection with the collection thereof), to Mortgagor, on such terms and conditions as Mortgagee, in its sole discretion, may specify, for the sole purpose of Mortgagor's Restoration of the Buildings and the Fixtures remaining after any such Taking, it being understood and agreed, however, that Mortgagee shall have no obligation whatsoever to see to the proper application of any Award so paid to Mortgagor. Reduction of the outstanding amount of the Indebtedness resulting from the application of any such Award by Mortgagee shall be deemed to take effect only on the date of Mortgagee's receipt of such Award and its election to apply the same against the Indebtedness then outstanding hereunder. If, prior to the receipt by Mortgagee of any Award, the Mortgaged Property or any portion thereof shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive the Award to the extent of any deficiency found to be due upon such sale, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, together with interest thereon at the Interest Rate, and the reasonable attorneys' fees, costs and disbursements incurred by Mortgagee in connection with the collection of the Award.

(b) If there shall be any Taking, then, provided that Mortgagee shall have notified Mortgagor of Mortgagee's election to apply the Award or any portion thereof paid on account thereof to Mortgagor toward the Restoration of the Buildings and the Fixtures remaining after the Taking in accordance with the provisions of Paragraph 8(a) hereof, then, Mortgagor promptly shall commence and diligently shall continue and complete the Restoration of the Buildings and the Fixtures remaining after such Taking substantially to their value, condition and character immediately prior to such Taking, in accordance with plans and specifications which shall have been approved by Mortgagee prior to the commencement of such Restoration. Mortgagor diligently shall complete, and pay for the cost of, the Restoration of any Buildings or Fixtures located on the Land which are at any time in the process of construction, alteration or Restoration. Any Award remaining after completion of such Restoration shall

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97641989

be retained by Mortgagee and shall be applied to the payment of the Indebtedness then outstanding, in such proportion and priority as Mortgagee, in its sole discretion, may elect.

9. Sale and Lease of Mortgaged Property. Mortgagor shall not, at any time, without the prior written consent of Mortgagee in each instance,

(a) sell, assign, transfer or convey all or any part of the Mortgaged Property or any interest therein; or

(b) lease or sublease the Real Estate or any portion thereof except in accordance with the terms hereof; or

(c) (i) make any new or additional mortgage, deed of trust or other loan which is secured by the Mortgaged Property or any portion thereof (whether superior or junior to the lien of this Mortgage and whether recourse or non-recourse) unless such loan is made by Mortgagee, or (ii) except for the Permitted Encumbrances and subject to the provisions of Articles 10 and 11 hereof, otherwise create, grant, permit or suffer any lien, security interest, claim, charge or encumbrance of any kind or nature whatsoever, whether recorded or unrecorded, against the Mortgaged Property or any portion thereof.

10. Discharge of Liens. Subject to the provisions of Article 11 hereof, Mortgagor at all times shall keep the Mortgaged Property free from the liens of mechanics, laborers, contractors, subcontractors and materialmen and, except for the Permitted Encumbrances and any new or additional mortgages which may be made to Mortgagee, free from any and all other liens, claims, charges or encumbrances of any kind or nature whatsoever. If any such liens, claims, charges or encumbrances shall be recorded, Mortgagor shall forthwith deliver copies thereof to Mortgagee and, within ten (10) days after such recording, Mortgagor shall cause the same to be discharged of record by payment, bonding or in such other manner as shall be satisfactory to Mortgagee, in its sole discretion, and shall exhibit to Mortgagee, upon demand, evidence satisfactory to Mortgagee, in its sole discretion, of such discharge.

11. Right of Contest. Mortgagor, at its sole cost and expense, may, in good faith, contest, by proper legal actions or proceedings, the validity of any Legal

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Requirement or the application thereof to Mortgagor or the Mortgaged Property, or the validity or amount of any Imposition or the validity of the claims of any mechanics, laborers, subcontractors, contractors or materialmen (hereinafter referred to as "Contractor's Claims"). During the pendency of any such action or proceeding, compliance with such contested Legal Requirement or payment of such contested Imposition or payment of such contested Contractor's Claim may be deferred provided that, in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (a) no Default shall exist hereunder and no other event shall have occurred which, with the giving of notice or lapse of time, or both, would constitute a Default hereunder, (b) adequate reserves with respect thereto are maintained on Mortgagor's books in accordance with generally accepted accounting principles, (c) such contest operates to suspend enforcement of compliance with the contested Legal Requirement or collection of the contested Imposition or collection or enforcement of such contested Contractor's Claim and such contest is maintained and prosecuted continuously and with diligence, (d) during such contest, Mortgagor shall at Mortgagee's option provide security reasonably satisfactory to Mortgagee assuring the discharge of Mortgagor's obligations being contested and of any additional interest charge, penalty or expense arising from such contest, and (e) Mortgagee has not advised Mortgagor that Mortgagee believes that non-compliance with the contested Legal Requirement or non-payment of the contested Imposition or non-payment of such contested Contractor's Claim would have a material adverse effect upon the business of Mortgagor or the Mortgaged Property. Notwithstanding any such reserves or the furnishing of any bond or other security, Mortgagor promptly shall comply with any contested Legal Requirement or shall pay any contested Imposition or Contractor's Claim, and compliance therewith or payment thereof shall not be deferred, if, at any time, the Mortgaged Property or any portion thereof shall be, in Mortgagee's sole judgment, in danger of being forfeited or lost by reason of any such contest or Mortgagor's non-compliance with any such Legal Requirement or non-payment of any such Imposition or Contractor's Claim. If such action or proceeding is terminated or discontinued adversely to Mortgagor, Mortgagor, upon demand, shall deliver to Mortgagee evidence satisfactory to Mortgagee, in its sole discretion, of Mortgagor's compliance with such contested Legal Requirement or payment of such contested Imposition or Contractor's Claim, as the case may be.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

9774699

12. Leases. (a) Mortgagor has no right or power, as against Mortgagee, without the prior written consent of Mortgagee in each case (i) to enter into any Leases or to modify, amend, cancel, extend, renew, accept for surrender or otherwise change in any manner any of the terms, covenants or conditions of any Leases, (ii) to consent to any assignment of any Lease or any subletting of the portion of the Real Estate subject to any Lease, or (iii) to assign, mortgage or otherwise encumber any of the Leases or any of the Rents due or to become due thereunder or to which Mortgagee may now or hereafter become entitled, or (iv) to accept prepayments of installments of rent for more than thirty (30) days in advance of the time when the same shall become due or to anticipate the rents thereunder, except for security deposits not in excess of one (1) month's rent. Mortgagor shall notify Mortgagee not later than six (6) months prior to the date of the expiration of the term of any Lease of its intention either to renew or not renew any such Lease and if Mortgagor shall intend to renew the Lease, the terms and conditions of any such renewal Lease.

(b) In addition to containing such other terms and conditions as Mortgagee shall approve, each Lease which shall be entered into in accordance with the provisions hereof shall (i) not permit the lessee thereunder to terminate or invalidate the terms of its Lease as a result of any action taken by Mortgagee to enforce this Mortgage either by foreclosure, or acceptance of a deed in lieu of foreclosure, or by resort to any other rights or remedies available to Mortgagee hereunder or at law or in equity, (ii) include a subordination clause providing that the Lease and the interest of the lessee thereunder in the Mortgaged Property are in all respects subject and subordinate to this Mortgage, (iii) provide that, at the option of Mortgagee or the purchaser at a foreclosure sale or the grantee in a voluntary conveyance in lieu of foreclosure, the lessee thereunder shall attorn to Mortgagee or to such purchaser or grantee under all of the terms of the Lease and recognize such entity as the lessor under the Lease for the balance of the term of the Lease, and (iv) provide that, in the event of the enforcement by Mortgagee of the rights and remedies provided by law or in equity or by this Mortgage, any person succeeding to the interest of Mortgagee as a result of such enforcement shall not be bound by any prepayment of installments of rent for more than thirty (30) days in advance of the time when the same shall become due or any amendment, modification, extension, cancellation or renewal

UNOFFICIAL COPY

Property of Cook County Clerk's Office



## UNOFFICIAL COPY

of the Lease made without the prior written consent of Mortgagee.

(c) As to any Leases, Mortgagor shall

- (i) promptly perform all of the provisions of the Leases on the part of the lessor thereunder to be performed,
- (ii) promptly enforce all of the provisions of the Leases on the part of the lessees thereunder to be performed, (iii) refrain from taking any action which would result in the termination of the Lease by any lessee thereunder or the diminution of the Rents thereunder, (iv) appear in and prosecute or defend any action or proceeding arising under, growing out of, or in any manner connected with, the Leases or the obligations of the lessor or the lessees thereunder, as the case may be, (v) exercise, within five (5) days after demand by Mortgagee, any right to request from the lessee under any Lease a certificate with respect to the status thereof, (vi) deliver to Mortgagee, within five (5) days after demand by Mortgagee, a written statement containing the names of all lessees, the terms of all Leases and the spaces occupied and rentals payable thereunder and a statement of all Leases which are then in default, including the nature and magnitude of any such default, (vii) provide Mortgagee with a copy of each notice of default received by Mortgagor under any Lease immediately upon receipt thereof and deliver to Mortgagee a copy of each notice of default sent by Mortgagor under any Lease simultaneously with its delivery of such notice under such Lease, and (viii) promptly deliver to Mortgagee a fully executed counterpart of each Lease upon the execution of the same. All Leases, if any, shall be subject and subordinate to this Mortgage.

(d) Mortgagor hereby assigns to Mortgagee, from and after the date hereof (including any period allowed by law for redemption after any foreclosure or other sale), primarily, on a parity with the Mortgaged Property, and not secondarily, as further security for the payment of the Indebtedness and the performance of the Obligations, the Leases and the Rents in accordance with the terms and provisions set forth in that certain Assignment of Leases and Rents delivered by Mortgagor to Mortgagee in connection with this Mortgage.

13. Estoppel Certificates. Mortgagor, within five (5) business days after request by Mortgagee, shall deliver, in form satisfactory to Mortgagee, in its sole discretion, a written statement, duly executed and acknowledged, setting forth the amount of the Indebtedness then

UNOFFICIAL COPY

Property of Cook County Clerk's Office

outstanding and whether any offsets, claims, counterclaims or defenses exist against the Indebtedness secured by this Mortgage, and if any are alleged to exist, the nature thereof shall be set forth in detail.

14. Loan Document Expenses. Mortgagor shall pay, together with any interest or penalties imposed in connection therewith, all expenses of Mortgagee incident to the recording of this Mortgage and the other Loan Documents, including, but without limiting the generality of the foregoing, all filing, registration and recording fees and charges, documentary stamps, intangible taxes and all Federal, State, county and municipal taxes, duties, imposts, assessments and charges now or hereafter required by reason of, or in connection with, this Mortgage or any other Loan Document and, in any event, otherwise shall comply with the provisions set forth in Article 4 hereof.

15. Mortgagee's Right to Perform. In the event of any Default hereunder, Mortgagee may (but shall be under no obligation to), at any time perform the Obligations, without waiving or releasing Mortgagor from any Obligations or any Default under this Mortgage, and, in such event, the cost thereof, including, but without limiting the generality of the foregoing, reasonable attorneys' fees, costs and disbursements incurred in connection therewith (a) shall be deemed to be Indebtedness, (b) shall be a lien on the Mortgaged Property prior to any right or title to, interest in, or claim upon, the Mortgaged Property subordinate to the lien of this Mortgage, and (c) shall be payable, on demand, together with interest thereon at the Interest Rate, from the date of any such payment by Mortgagee to the date of repayment to Mortgagee. No payment or advance of money by Mortgagee pursuant to the provisions of this Article 15 shall cure, or shall be deemed or construed to cure, any such Default by Mortgagor hereunder or waive any rights or remedies of Mortgagee hereunder or at law or in equity by reason of any such Default.

16. Mortgagor's Existence. Mortgagor shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the State in which the Mortgaged Property is located and its right to own property and transact business in such State.

17. Mortgagee's Costs and Expenses. If (a) Mortgagor shall fail to make any payment of Indebtedness when

UNOFFICIAL COPY

Property of Cook County Clerk's Office

the same shall be due and payable, or shall fail to perform any of the Obligations under this Mortgage or any other Loan Document, or (b) Mortgagee shall exercise any of its rights or remedies hereunder, or (c) any action or proceeding is commenced in which it becomes necessary to defend or uphold the lien or priority of this Mortgage or any action or proceeding is commenced to which Mortgagee is or becomes a party, or (d) the taking, holding or servicing of this Mortgage by Mortgagee is alleged to subject Mortgagee to any civil or criminal fine or penalty, or (e) Mortgagee's review and approval of any document, including, but without limiting the generality of the foregoing, any Lease, is requested by Mortgagor or required by Mortgagee, then, in any such event, all such reasonable costs, expenses and fees incurred by Mortgagee in connection therewith (including, but without limiting the generality of the foregoing, any civil or criminal fines or penalties and reasonable attorneys' fees, costs and disbursements) (i) shall be deemed to be Indebtedness, (ii) shall be a lien on the Mortgaged Property prior to any right or title to, interest in, or claim upon, the Mortgaged Property subordinate to the lien of this Mortgage, and (iii) shall be payable, on demand, together with interest thereon at the Interest Rate, from the date of any such payment by Mortgagee to the date of repayment to Mortgagee. In any action to foreclose this Mortgage or to recover or collect the Indebtedness or any portion thereof, the provisions of this Article 17 with respect to the recovery of costs, expenses, disbursements and penalties shall prevail unaffected by the provisions of any Legal Requirement with respect to the same to the extent that the provisions of this Article 17 are not inconsistent therewith or violative thereof.

18. Defaults. (a) The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute a default ("Default") hereunder:

(i) the failure of Mortgagor to make any payment of principal or interest or any other amount owing under the Note when due and payable or declared due and payable and which remains unpaid for a period of five (5) days after such payment is due or the occurrence of any other Event of Default under the Note; or

(ii) the failure of Mortgagor to make any other payment required to be paid under this Mortgage or under any other Loan Document when due

UNOFFICIAL COPY

Property of Cook County Clerk's Office

and payable or declared due and payable and which remains unpaid for a period of five (5) days after such payment is due; or

(iii) if any representation or warranty, statement, report, financial statement or certificate made or delivered by Mortgagor or any of its officers, employees or agents to Mortgagee shall not be true and correct in any respect as of the date when made or in any material respect when reaffirmed; or

(iv) if Mortgagor shall fail or neglect to comply with or otherwise perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in any mortgage which is subordinate to this Mortgage and to which Mortgagee shall have consented in accordance with Article 9 hereof or if for any reason whatsoever a default shall occur under such subordinate mortgage or deed of trust; or

(v) if Mortgagor shall fail or neglect to comply with or otherwise perform, keep or observe any other term, provision, condition, covenant, warranty or representation contained in this Mortgage or in any other Loan Document that is required to be complied with or otherwise performed, kept or observed by Mortgagor or if for any reason whatsoever a default shall occur under this Mortgage or in any other Loan Document (other than this Mortgage) which remains uncured for a period of fifteen days after receipt of notice thereof from Mortgagee.

19. Remedies. (a) Upon the occurrence of any Default hereunder, Mortgagee may, without notice, presentment, demand or protest, all of which are hereby expressly waived by Mortgagor to the extent permitted by applicable law, take such action as Mortgagee deems advisable, in its sole discretion, to protect and enforce its rights in and to the Mortgaged Property, including, but without limiting the generality of the foregoing, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee hereunder or at law or in equity:

UNOFFICIAL COPY

Property of Cook County Clerk's Office



9  
7  
4  
1  
9  
6  
9

(i) Mortgagee may declare the entire amount of the Indebtedness immediately due and payable. Thereupon, all of the other Obligations also shall become immediately due and payable.

(ii) Mortgagee may, without releasing Mortgagor from any Obligation under this Mortgage or any other Loan Document and without waiving any Default, exercise any of its rights and remedies under Article 15 hereof.

(iii) Mortgagee may (w) institute and maintain an action of mortgage foreclosure against any of the Mortgaged Property, (x) institute and maintain an action with respect to the Mortgaged Property under any other Loan Document, or (y) take such other action as may be allowed at law or in equity for the enforcement of this Mortgage, and the other Loan Documents. Mortgagee may proceed in any such action to final judgment and execution thereon for the whole of the Indebtedness, together with interest thereon at the Interest Rate, from the date on which Mortgagee shall declare the same to be due and payable to the date of repayment to Mortgagee, and all costs of any such action, including, but without limiting the generality of the foregoing, reasonable attorneys' fees, costs and disbursements.

(iv) Mortgagee may, without releasing Mortgagor from any Obligation under this Mortgage, and without waiving any Default, enter upon and take possession of the Real Estate or any portion thereof, either personally or by its agents, nominees or attorneys, and dispossess Mortgagor and its agents and servants therefrom and, thereupon, Mortgagee may (x) use, manage and operate the Real Estate and the business conducted upon the Real Estate, and (y) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, either in the name of Mortgagor or otherwise, including, but without limiting the generality of the foregoing, the right to make, cancel, enforce or modify Leases, obtain and evict lessees, establish or change the amount of any Rents and the manner of collection thereof and perform any acts which Mortgagee deems proper, in its sole discretion, to protect the security of this Mortgage. After deduction of all costs and expenses of operating and managing the Real Estate, including, but without

UNOFFICIAL COPY

Property of Cook County Clerk's Office

limiting the generality of the foregoing, reasonable attorneys' fees, costs and disbursements, administration expenses, management fees and brokers' commissions, satisfaction of liens on any of the Mortgaged Property, payment of Impositions, claims and Insurance Premiums, invoices of persons who may have supplied goods and services to or for the benefit of any of the Mortgaged Property and all costs and expenses of the maintenance, repair, Restoration, alteration or improvement of any of the Mortgaged Property, Mortgagee shall apply the Rents received by Mortgagee to payment of the Indebtedness or performance of the Obligations. Mortgagee may apply the Rents received by Mortgagee to the payment of any or all of the foregoing in such order and amounts as Mortgagee, in its sole discretion, may elect. Mortgagee may, in its sole discretion, determine the method by which, and extent to which, the Rents will be collected and the obligations of the lessees under the Leases enforced and Mortgagee may waive or fail to enforce any right or remedy of the lessor under any Lease.

(v) Mortgagee may disaffirm and cancel any Lease affecting the Real Estate or any portion thereof at any time during the period that it is exercising its remedies under this Article 19, even though Mortgagee shall have enforced such Lease, collected Rents thereunder or taken any action that might be deemed by law to constitute an affirmation of such Lease. Such disaffirmance shall be made by notice addressed to the lessee at the Real Estate or, at Mortgagee's option, such other address of the lessee as may be set forth in such Lease.

(b) Mortgagee, in any action to foreclose this Mortgage, shall be entitled to the appointment of a receiver. In the case of a sale pursuant to an order, decree or judgment of foreclosure, the Real Estate may, at Mortgagee's election, be sold in one (1) parcel. Mortgagee shall receive the proceeds of any such sale and shall apply the proceeds of such sale as follows, in the following order:

(i) to all costs, fees, charges and expenses incurred by Mortgagee in connection with any Default hereunder, the exercise of any of the rights and remedies of Mortgagee hereunder and any such sale, including, but without limiting the generality of the forego-

UNOFFICIAL COPY

Property of Cook County Clerk's Office

07641969

ing, reasonable attorneys' fees, costs and disbursements, receiver's fees, all expenses of such sale, including publication costs, stenographic charges, title searches and surveys, guarantee policies, Torrens certificates and documentary stamps and transfer taxes and recording fees and charges; and

(ii) to payment of outstanding Impositions; and

(iii) to payment of the amount of the Indebtedness then outstanding, and performance of all of the other Obligations, in such manner and order of priority or preference as Mortgagee may, in its sole discretion, determine; and

(iv) the balance, if any, to the persons legally entitled thereto.

(c) Mortgagor shall bear all expenses, including without limitation reasonable attorneys' fees, costs and disbursements, of or incidental to, enforcement of any provision of this Mortgage or the Indebtedness and for the compromise, curing, defending or asserting any provision, right or claim with respect thereto, by litigation or otherwise.

(d) The remedies and rights granted to Mortgagee hereunder are cumulative and are not in lieu of, but are in addition to, and shall not be affected by the exercise of, any other remedy or right available to Mortgagee whether now or hereafter existing either at law or in equity or under this Mortgage or any other Loan Document.

(e) Mortgagor shall indemnify and hold Mortgagee harmless and defend it from any loss, liability, cost and expense (including without limitation attorneys' fees and disbursements) and all claims, actions, proceedings and suits arising out of, or in connection with, any lawful action by Mortgagee to enforce this Mortgage or any Loan Document, whether or not any action, proceeding or suit is filed.

20. Security Agreement under Uniform Commercial Code. It is the intention of Mortgagor and Mortgagee that this Mortgage shall constitute a Security Agreement within the meaning of Section 9-402 of the Illinois Uniform Commercial Code with respect to the collateral described

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97641969

herein which is or may become fixtures relating to the Real Estate, and: (1) the address of Mortgagor (Debtor) and Mortgagee (Secured party) are set forth in Article 28 of this Mortgage (2) this Mortgage shall be filed or recorded with the Recorder of Deeds of Cook County, Illinois; (3) Mortgagor is the record owner of the Premises. Notwithstanding the filing of a financing statement covering any of the Mortgaged Property in the records normally pertaining to personal property, all of the Mortgaged Property, for all purposes and in all proceedings, legal or equitable, shall be regarded, at Mortgagee's option (to the extent permitted by law), as part of the Real Estate whether or not any such item is physically attached to the Real Estate or serial numbers are used for the better identification of certain items. The mention in any such financing statement of any of the Mortgaged Property shall never be construed in any way as derogating from or impairing this declaration and hereby stated intention of Mortgagor and Mortgagee that such mention in the financing statement is hereby declared to be for the protection of Mortgagee in the event any court shall at any time hold that notice of Mortgagee's priority of interest, to be effective against any third party, including the Federal government or any authority or agency thereof, must be filed in the Uniform Commercial Code records. Pursuant to the provisions of the Uniform Commercial Code, Mortgagor hereby authorizes Mortgagee, without the signature of Mortgagor, to execute and file financing and continuation statements if Mortgagee shall determine, in its sole discretion, that such financing or continuation statements are necessary or advisable in order to preserve or perfect its security interest in the Fixtures covered by this Mortgage, and Mortgagor shall pay to Mortgagee, on demand, any expenses incurred by Mortgagee in connection with the preparation, execution and filing of such statements that may be filed by Mortgagee.

21. Additional Representations and Warranties.

Mortgagor represents and warrants that: (a) Mortgagor is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Maryland; (b) Mortgagor has the requisite power and lawful authority to execute and deliver this Mortgage, the Note and the other Loan Documents executed and delivered by it and to perform the Obligations; (c) the execution and delivery of this Mortgage, the Note and the other Loan Documents by Mortgagor and performance of its obligations under this Mortgage, the Note and the other Loan Documents will not result in the Mortgagor being in default under any provision

UNOFFICIAL COPY

Property of Cook County Clerk's Office



97641969

of its operating agreement or of any mortgage, document, instrument, credit or other agreement to which it is a party or by which its assets are bound; (d) Mortgagor has the requisite power and lawful authority to mortgage the Mortgaged Property in the manner herein set forth; (e) on the date hereof, no portion of the Buildings or the Fixtures have been damaged, destroyed or injured by fire or other casualty which is not now fully restored; (f) Mortgagor has all necessary licenses, authorizations, registrations and approvals to own, use, occupy and operate the Real Estate and has full power and authority to carry on its business at the Real Estate as currently conducted and has not received any notice of any violation of any Legal Requirement; (g) as of the date hereof, Mortgagor has not received any notice of any Taking of the Mortgaged Property or any portion thereof and Mortgagor has no knowledge that any such Taking is contemplated; (h) Mortgagor is a business and commercial organization, and the transaction reflected in, and effectuated by, the Loan Documents is made solely to acquire or to carry on business and commercial enterprise and this Mortgage is exempt from limitations upon lawful interest, pursuant to the terms of 815 ILCS 205/4; and (i) there are no Leases affecting the Real Estate or any portion thereof except for those Leases referred to in Exhibit B hereof.

22. No Waivers, Etc. A failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage shall not be deemed to be a waiver of any of the terms, covenants, conditions and provisions hereof and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms, covenants, conditions and provisions of this Mortgage to be performed by Mortgagor. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the security held for payment of the Indebtedness or any portion thereof or for the performance of the Obligations secured by this Mortgage without, as to the remainder of the security, in any manner whatsoever, impairing or affecting the lien of this Mortgage or the priority of the lien of this Mortgage over any subordinate lien. Mortgagee may resort for the payment of the Indebtedness secured by this Mortgage to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

23. Trust Funds. (a) Mortgagor shall receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvements before using any part of such advances for any other purpose.

(b) All deposits made as security under any Leases shall be treated as trust funds, shall not be commingled with any other funds of Mortgagor and shall be held in accordance with the provisions of any other applicable Legal Requirements. Within ten (10) days after request by Mortgagee, Mortgagor shall furnish Mortgagee with evidence, satisfactory to Mortgagee, in its sole discretion, of compliance with this Paragraph 23(b), together with a certified statement of the amount of all of the security deposited by lessees and copies of all Leases not theretofore delivered to Mortgagee.

24. Additional Rights. (a) Upon confirmation of a sale pursuant to any order, decree or judgment of foreclosure of this Mortgage, the appropriate governmental officer making such sale, or his successor in office, shall be and is hereby authorized immediately to execute and deliver to the purchaser at such sale, a deed, assignment or appropriate document conveying the Mortgaged Property to such purchaser. Upon the execution of such deed, assignment or appropriate document, the recitals therein of facts such as the terms of the sale, the sale, the purchase, payment of purchase money and other facts affecting the regularity or validity of such sale shall be conclusive proof of the truthfulness thereof, that such sale was regularly and validly made, and any such deed, assignment or appropriate document shall be conclusive against all persons as to all matters and facts recited therein.

(b) The holder of any subordinate lien on the Mortgaged Property shall have no right to terminate any Lease whether or not such Lease is subordinate to this Mortgage.

25. Waivers by Mortgagor. (a) Mortgagor hereby waives all errors and imperfections in any proceedings instituted by Mortgagee under this Mortgage, the Note or any other Loan Document and all benefit of any present or future statute of limitations or any other present or future statute, law, stay, moratorium, appraisal or valuation law, regulation or judicial decision which, nor shall Mortgagor

UNOFFICIAL COPY

Property of Cook County Clerk's Office

at any time insist upon or plead, or in any manner whatsoever, claim or take any benefit or advantage of any such statute, law, stay, moratorium, regulation or judicial decision which (i) provides for the valuation or appraisal of the Mortgaged Property prior to any sale or sales thereof which may be made pursuant to any provision herein or pursuant to any decree, judgment or order of any court of competent jurisdiction, (ii) exempts any of the Mortgaged Property or any other property, real or personal, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale under execution, (iii) provides for any stay of execution, moratorium, marshalling of assets, exemption from civil process, redemption or extension of time for payment, (iv) requires Mortgagee to institute proceedings in mortgage foreclosure against the Mortgaged Property before exercising any other remedy afforded Mortgagee hereunder in the event of a Default, (v) affects any of the terms, covenants, conditions or provisions of this Mortgage, or (vi) conflicts with or may affect, in a manner which may be adverse to Mortgagee, any provision, covenant, condition or term of this Mortgage, the Note or any other Loan Document, nor shall Mortgagor at any time after any sale or sales of the Mortgaged Property pursuant to any provision herein, including, but without limiting the generality of the foregoing after any sale pursuant to a judgment of foreclosure, claim or exercise any right under any present or future statute, law, stay, moratorium, regulation or judicial decision to redeem the Mortgaged Property or the portion thereof so sold.

(b) Mortgagor hereby waives the right, if any, to require any sale to be made in parcels, or the right, if any, to select parcels to be sold, and there shall be no requirement for marshalling of assets.

(c) MORTGAGOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY.

26. Failure to Consent. If Mortgagor shall seek the approval by, or the consent of, Mortgagee hereunder or under any other Loan Document, and Mortgagee shall fail or refuse to give such consent or approval, Mortgagor shall not be entitled to any damages for any withholding or delay of such consent by Mortgagee, it being intended that Mortgagor's sole remedy shall be to bring an action for an injunction or specific performance, which remedy of an injunction or specific performance shall be available only in those cases in which Mortgagee has expressly agreed

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97641969

hereunder or under any other Loan Documents not to unreasonably withhold or delay its consent or approval.

27. Not Joint Venture or Partnership. Mortgagor and Mortgagee intend that the relationship created hereunder be solely that of mortgagor and mortgagee or borrower and lender, as the case may be. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Mortgagor and Mortgagee nor to grant Mortgagee any interest in the Mortgaged Property other than that of mortgagee or lender.

28. Notices. Whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon either Mortgagor or Mortgagee, or whenever either Mortgagor or Mortgagee shall desire to give or serve upon the other any such communication with respect to this Mortgage or the Mortgaged Property, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and either shall be delivered in person with receipt acknowledged or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) If to Mortgagor, to:

MIDWAY Associates, LLC  
c/o R.B. Johnson Properties  
3706 Silverwood Drive  
York, Pennsylvania 17402  
Attn: Roy B. Johnson  
Telecopier: (717) 757-1371

with a copy to:

Stephen J. Melnyk  
112 W. Pennsylvania Avenue  
Bel Air, Maryland 21014  
Telecopier: (410) 893-9701

UNOFFICIAL COPY

Property of Cook County Clerk's Office



97641969

(b) If to Mortgagee, to:

United Industrial Corporation  
P.O. Box 126  
Hunt Valley, MD 21030-0126  
(York Road & Industry Lane  
Cockeysville, MD 21030)  
Attn: Vice President and  
General Counsel  
Telecopier: (410) 683-6498

or to such other address as Mortgagor or Mortgagee may substitute by notice given as herein provided. Every notice, demand, request, consent, approval, declaration or other communication hereunder shall be deemed to have been duly given if delivered in the manner set forth in Section 5 of the Note.

29. Inconsistency with the Loan Documents. If there shall be any inconsistencies between the terms, covenants, conditions and provisions set forth in this Mortgage and the terms, covenants, conditions and provisions set forth in the Note, then, unless this Mortgage expressly provides otherwise, the terms, covenants, conditions and provisions of the Note shall prevail.

30. No Modification; Binding Obligations. This Mortgage may not be modified, amended, discharged or waived in whole or in part except by an agreement in writing signed by Mortgagor and Mortgagee. The covenants of this Mortgage shall run with the Land and shall bind Mortgagor and the heirs, distributees, personal representatives, successors and assigns of Mortgagor and all present and subsequent encumbrancers, lessees and sublessees of any of the Mortgaged Property and shall inure to the benefit of Mortgagee and its respective successors, assigns and endorsees.

31. Miscellaneous. The Article headings in this Mortgage are used only for convenience and are not part of this Mortgage and are not to be used in determining the intent of the parties or otherwise in interpreting this Mortgage. As used in this Mortgage, the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (a) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (b) "lien" shall mean "lien, charge, encumbrance, security interest, mortgage and/or deed of trust";

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97841969

(c) "obligation" shall mean "obligation, duty, covenant and/or condition"; (d) "any of the Mortgaged Property" shall mean "the Mortgaged Property or any portion thereof or interest there in"; and (e) "Person" shall mean "any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including, but without limiting the generality of the foregoing, any instrumentality division, agency, body or department thereof)". Any act which Mortgagee is permitted to perform under this Mortgage or any other Loan Document may be performed at any time and from time to time by Mortgagee or by any person or entity designated by Mortgagee. Any act which is prohibited to Mortgagor under this Mortgage or any other Loan Document is also prohibited to all lessees of any of the Mortgaged Property. Each appointment of Mortgagee as attorney-in-fact for Mortgagor under this Mortgage or any other Loan Document shall be irrevocable and coupled with an interest. Mortgagee shall have the right to refuse to grant its consent, approval or acceptance or to indicate its satisfaction whenever such consent, approval, acceptance or satisfaction shall be required under any of the Loan Documents.

32. Enforceability. This Mortgage shall be governed by, and construed in accordance with, the laws of the State in which the Mortgaged Property is located without regard to principles of conflicts of laws, except that the laws of the State of New York (without regard to principles of conflicts of laws) shall govern the resolution of issues arising under the Note to the extent that such resolution is necessary to the interpretation of this Mortgage. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Mortgage. Nothing in this Mortgage or in any other Loan Documents shall require Mortgagor to pay, or Mortgagee to accept, interest in an amount which would subject Mortgagee to penalty under applicable law. In the event that the payment of any interest due hereunder or under any of the other Loan Documents or a payment which is deemed interest, exceeds the maximum amount payable as interest under the applicable usury laws, such excess amount shall be applied to the reduction of the Indebtedness, and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

upon payment in full of the Indebtedness, shall be applied to the performance of the Obligations, and upon performance in full of the Obligations, shall be deemed to be a payment made by mistake and shall be refunded to Mortgagor.

33. Receipt of Copy. Mortgagor acknowledges that it has received a true copy of this Mortgage.

34. Guaranty. Mortgagor hereby unconditionally and irrevocably guaranties to Mortgagee the due and punctual payment of all principal and interest payable under the Note when the same shall become due and payable, whether at maturity, by acceleration or otherwise, provided, however, this guaranty by Mortgagor shall be limited to a maximum aggregate amount equal to the largest sum that would not render Mortgagor's obligations hereunder subject to avoidance as a fraudulent conveyance under Section 548 of Title 11 of the United States Code or any comparable state law fraudulent conveyance statutes (collectively, the "Fraudulent Conveyance Laws"), in each case after giving effect to all other liabilities of Mortgagor that are permitted to be incurred in accordance with this Mortgage prior to a Default and are relevant under the Fraudulent Conveyance Laws (excluding intercompany indebtedness and other intercompany liabilities) and after giving effect to all assets of Mortgagor, contingent or otherwise, including without limitation, all rights of subrogation, contribution and similar or comparable rights. This Section 34 shall be construed with the goal of maximizing the amount of indebtedness secured hereunder without rendering Mortgagor insolvent, leaving it with unreasonably small capital or unable to pay its debts as they become due (if and to the extent limited or prohibited by the Fraudulent Conveyance Laws).

35. Second Mortgage. This Mortgage is subject and subordinate to that certain First Mortgage and Security Agreement, dated as of the date hereof and entered into by Mortgagor for the benefit of Mortgagee.

36. Local Law Provisions.

(a) In addition to, and not in lieu of, any other provision of this Mortgage, Mortgagor hereby expressly waives any and all statutory right of redemption on its own behalf, on behalf of all person claiming or having an interest (direct or indirect) by, through or under Mortgagor, and on behalf of each and every person acquiring

UNOFFICIAL COPY

Property of Cook County Clerk's Office

97641969

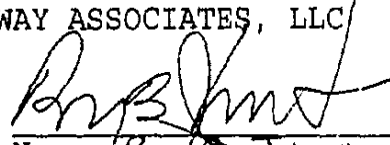
any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent of Mortgagor hereby that any and all such statutory rights of redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law.

(b) Notwithstanding anything to the contrary in this Mortgage, the indebtedness secured hereby shall in no event exceed two hundred percent (200%) of the original principal amount of the Note; provided, however, that the foregoing shall not be deemed to limit the amounts which may be owed from time to time by Mortgagor to Mortgagee pursuant to the Note or any other of the Loan Documents.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and acknowledged under seal the day and year first above written.

MIDWAY ASSOCIATES, LLC/

By:



Name: Roy A. Johnson

Title: Member

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office



UNOFFICIAL COPY 97841969

07-90115-05

STATE OF Maryland )  
 ) : ss:  
COUNTY OF Baltimore )

The undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that this instrument was acknowledged before me on August 27 1997, by Roy B. Johnson, personally known to me to be same person whose name is subscribed to the foregoing instrument as a member of MIDWAY ASSOCIATES, LLC, a Maryland limited liability company, who further acknowledges that he signed and delivered the said instrument as his own free voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes set forth herein.

( S E A L )

*Darlene Hastings*  
Notary Public in and for  
the State of Maryland

My Commission Expires:  
12/27/97

Print Name of Notary:  
\_\_\_\_\_

DARLENE J. HASTINGS  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires December 27, 1997

UNOFFICIAL COPY

Property of Cook County Clerk's Office

8741969

EXHIBIT A

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE INDIANA HARBOR BELT RAILROAD AND THE WEST RIGHT-OF-WAY LINE OF SOUTH KILBOURN AVENUE; THENCE SOUTH ALONG THE WEST RIGHT-OF-WAY LINE OF SOUTH KILBOURN AVENUE, (259.05 FEET DEED, MEASURES 263.11 FEET) TO THE NORTH LINE OF THE EAST AND WEST 16 FOOT ALLEY LYING NORTH OF LOT 2 IN W.F. KAISER AND COMPANY'S ARDALE SUBDIVISION; THENCE NORTH 89 DEGREES 33 MINUTES 27 SECONDS WEST, ALONG THE EAST-WEST LINE 242.07 FEET TO A POINT ON THE WEST LINE OF THE NORTH AND SOUTH 16 FOOT ALLEY; THENCE SOUTH ALONG THE WEST LINE 204 FEET; THENCE WEST 191.72 FEET TO THE WEST LINE OF THE NORTH-SOUTH ALLEY LYING WEST OF LOT 24 EXTENDED NORTH; THENCE NORTH ALONG SAID ALLEY LINE EXTENDED 20.00 FEET; THENCE WEST 141.58 FEET TO A LINE PERPENDICULAR TO WEST 55TH STREET AND 125 FEET EAST OF THE INTERSECTION OF THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE I.H.B.R.R. AND NORTH RIGHT-OF-WAY LINE OF WEST 55TH STREET, AS MEASURED ALONG SAID NORTH RIGHT-OF-WAY LINE; THENCE NORTH 00 DEGREES, 26 MINUTES, 33 SECONDS EAST ALONG THE PERPENDICULAR LINE, 16.13 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF I.H.B.R.R.; THENCE NORTHEAST ALONG SAID RIGHT-OF-WAY, BEING A CURVE HAVING A RADIUS OF 1096.0 FEET, A CHORD THAT BEARS NORTH 47 DEGREES 09 MINUTES 18 SECONDS EAST, 62.90 FEET, AN ARC LENGTH OF 621.18 FEET TO A POINT OF TANGENT; THENCE NORTH 63 DEGREES 23 MINUTES 30 SECONDS EAST, 25.6 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVE HAVING A RADIUS OF 716.78 FEET AND TANGENT TO THE LAST COURSE 3.33 FEET TO THE POINT OF BEGINNING, ALL IN LOT 1 OF BLOCK 28 IN W.F. KAISER AND COMPANY'S ARDALE SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL, ALL IN COOK COUNTY, ILLINOIS.

Pins: 19-10-323-030, 19-10-323-033, 19-10-323-034

PA: 5400 S. Kilbourn Ave., Chicago IL 60632

UNOFFICIAL COPY

Property of Cook County Clerk's Office

07/04/09

EXHIBIT B

Permitted Leases

None.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office