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Eugene "Gene" Moore Fee: \$82.00  
Cook County Recorder of Deeds  
Date: 07/01/2003 04:51 PM Pg: 1 of 20

02-11919, 4 of 5

OPEN-END MORTGAGE AND SECURITY AGREEMENT

ADDRESS OF PROPERTY:

VACANT LAND

NE CORNER WOODS DRIVE (P/K/A LONG AVENUE)

AND GOLF ROAD, SKOKIE, IL

PINS:

10-09-313-001

10-09-313-002

10-09-313-003

10-09-313-004

10-09-313-005

10-09-313-006

10-09-313-007

10-09-313-008

10-09-313-009

10-09-313-010

10-09-313-011

10-09-313-012

10-09-313-013

10-09-313-014

10-09-313-032

PREPARED BY AND

AFTER RECORDING RETURN TO:

HOWARD SWIBEL, ESQ.

ARNSTEIN & LEHR

120 SOUTH RIVERSIDE PLAZA

SUITE 1200

CHICAGO, IL 60606

Lawyers Title Insurance Corporation

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## OPEN-END MORTGAGE AND SECURITY AGREEMENT

THIS OPEN-END MORTGAGE AND SECURITY AGREEMENT ("Mortgage") made as of 12<sup>th</sup>, June, 2003, by VILLAGE OF SKOKIE (the "Mortgagor"), having its mailing address 5127 Oakton Street, Skokie, Illinois 60077, in favor of HOLOCAUST MEMORIAL FOUNDATION OF ILLINOIS, INC. (the "Mortgagee"), having its address at 4255 Main Street, Skokie, Illinois 60076:

### WITNESSETH:

WHEREAS, Mortgagor is the owner in fee simple of certain real property (the "Premises") located in the Village of Skokie, Illinois, Cook County, as more particularly described on Exhibit A attached, as improved on the date hereof;

WHEREAS, Mortgagor has applied to Mortgagee for a loan in the amount of Six Hundred Thousand and no/100 Dollars U.S. (\$600,000.00) (the "Loan Amount") and Mortgagor has executed and delivered a certain Promissory Note of even date herewith, in the principal sum of Six Hundred Thousand and no/100 Dollars U.S. (\$600,000.00) made payable to the order of Mortgagee (the "Note"); and

WHEREAS, Mortgagor is required to execute and deliver this Mortgage as a covenant and condition to obtaining the loan;

NOW, THEREFORE, Mortgagor does hereby give, grant, bargain, sell, assign, convey, warrant, mortgage and pledge to Mortgagee, its successors and assigns, the Premises, and all of Mortgagor's estate, right, title and interest therein;

TOGETHER with all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the ways, easements, streets, alleys, passages, water, water courses, riparian rights, oil, gas and other mineral rights, gaps, gores, rights, hereditaments, liberties and privileges thereof, if any, and in any way appertaining to the Premises;

TOGETHER with all rents, royalties, issues, proceeds and profits accruing and to accrue from the Premises;

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed on the Premises including, without limitation, all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property (as hereinafter defined) immediately upon the delivery thereof to the Premises, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the Premises, including, without limitation, all furniture, apparatus, machinery, equipment, motors, elevators, fittings, radiators, furnaces, stoves, microwave ovens, awnings, shades, screens, blinds, office equipment, trash and garbage removal equipment, carpeting and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air-conditioning, conveyor, security, sprinkler and other equipment, and all fixtures and appurtenances

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thereof; and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to such improvements in any manner; it being intended that all the above-described property owned by Mortgagor and placed by Mortgagor on the Premises shall, so far as permitted by law, be deemed to be fixtures and a part of the realty, and security for the indebtedness of Mortgagor to Mortgagee hereinafter described and secured by this Mortgage, and as to the balance of the above-described property, this Mortgage is hereby deemed to be as well a Security Agreement for the purpose of creating hereby a security interest in such property, securing such indebtedness, for the benefit of Mortgagee; all of the property described in this paragraph is hereinafter sometimes collectively called the "Improvements";

TOGETHER with any and all warranty claims, maintenance contracts and other contract rights, instruments, documents, chattel papers and general intangibles with respect to or arising from the Premises, the Improvements and the balance of the Mortgaged Property, and all cash and non-cash proceeds and products thereof; and

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Mortgaged Property for any taking by eminent domain, either permanent or temporary (a "Taking"), of all or any part of the Mortgaged Property or any easement or other appurtenance thereof, including severance and consequential damage and change in grade of streets (collectively, "Taking Proceeds"), and any and all refunds of impositions or other charges relating to the Mortgaged Property or the indebtedness secured by this Mortgage.

The property described above is hereafter called the "Premises" to the extent that such property is realty, and the "Collateral" to the extent that such property is personalty. The Premises and the Collateral are hereafter collectively called the "Mortgaged Property."

TO HAVE AND TO HOLD, all and singular, the Mortgaged Property, whether now owned or held or hereafter acquired by Mortgagor, with the appurtenances thereunto belonging, unto Mortgagee, its successors and assigns, forever. Mortgagor does hereby covenant with Mortgagee, its successors and assigns, that at and until the ensembling of these presents, Mortgagor is well seized of the Premises as a good and indefeasible estate in fee simple and is the sole owner of the Collateral, and has good right to bargain, sell and convey the Mortgaged Property in manner and form as above written; that title to the Mortgaged Property is free and clear of all defects, liens and encumbrances except for real estate taxes and assessments not yet due or payable and the matters described on Exhibit B (the "Permitted Exceptions") and that Mortgagor will warrant and defend the Premises, with the appurtenances thereunto belonging, and the Collateral to Mortgagee, its successors and assigns, forever, against all liens, security interests, encumbrances, defects, claims and demands whatsoever.

Mortgagor has executed and delivered this Mortgage to secure the following:

(a) Payment of principal, interest and all other charges under the Note, as the

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same may be amended, extended, supplemented, modified and/or renewed, and all replacements and substitutions therefor (alternatively and collectively, the "Note"), together with interest thereon at the rate specified in the Note, with principal and interest payable in accordance with the terms of the Note, and all accrued but unpaid interest and the entire unpaid principal amount being due and payable on June 1, 2053, all in accordance with the terms of the Note; the Note also contains an option in Mortgagee to declare the unpaid balance under the Note due and payable forthwith upon the occurrence of an Event of Default (as hereinafter defined);

(b) Payment of any and all amounts or charges required to be paid by Mortgagor pursuant to this Mortgage or any of the other Loan Documents (as hereinafter defined);

(c) Payment by Mortgagor to Mortgagee of all sums expended or advanced by Mortgagee pursuant to this Mortgage or any of the other Loan Documents;

(d) Payment of any and all amounts advanced by Mortgagee with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums or costs incurred in the protection of the Mortgaged Property, if any;

(e) Performance and observance of each covenant and agreement of Mortgagor contained herein or in any of the other Loan Documents; and

(f) Payment by Mortgagor to Mortgagee of any and all other liabilities and indebtedness of Mortgagor to Mortgagee, direct or contingent, now or hereafter owing by Mortgagor to Mortgagee, other than as provided in subparagraphs (a) through (e) above.

PROVIDED, HOWEVER, that if Mortgagor shall pay or cause to be paid to Mortgagee the principal, interest and all other charges under the Note on or before the date on which the outstanding principal balance of the Note is due and payable in full in accordance with the terms of the Note, and in the manner stipulated therein and herein, all without deduction or credit for taxes or other charges paid by Mortgagor, and if Mortgagor shall have kept, performed and observed all of the covenants and conditions contained in this Mortgage and all of the other Loan Documents, then this Mortgage shall cease, determine and be void, but otherwise shall remain in full force and effect.

Mortgagor further covenants and agrees as follows:

1. Payment of Indebtedness. Mortgagor shall pay promptly the indebtedness evidenced by the Note at the time and in the manner provided herein and in the Note, and all other sums and charges payable when due by Mortgagor and pursuant to the Note, this Mortgage and any of the other Loan Documents.

2. Tax and Insurance Obligations. Mortgagee shall have the right to make any and all payments of annual real estate taxes, and general and special assessments, notwithstanding that at that time any such tax, assessment or premium is then being protested or

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contested by Mortgagor, unless Mortgagor shall have notified Mortgagee in writing not less than thirty (30) days prior to the due date of such protest or contest of such tax, assessment or premium, in which event, Mortgagee shall make such payment under protest in the manner prescribed by Mortgagor. In the event such protest or contest shall or might result in a penalty or other charges, Mortgagor shall deposit with Mortgagee monthly pro-rata the amount of any such penalty or additional charge. If, upon receipt by Mortgagee of any refunds of impositions or other charges relating to the Mortgaged Property or the indebtedness secured hereby, Mortgagor is not in default hereunder, then Mortgagee shall promptly pay such refund to Mortgagor; if Mortgagor is in default hereunder beyond any applicable grace period, Mortgagee shall have the right to apply such refund to reduce the indebtedness secured hereby.

3. Protection Against Charges. Except for the Permitted Exceptions and as otherwise provided in the Agreement to Lease and Develop Property between Mortgagor and Mortgagee dated June \_\_\_\_\_, 2003 ("Lease"), Mortgagor shall keep the Mortgaged Property free from liens of every kind, except only for real estate taxes and general and special assessments which are not yet due and payable.

4. Hazardous Materials and Wetlands. (a) Mortgagor shall immediately advise Mortgagee in writing of: (i) any notices (whether such notices are received from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of violation or potential violation which are received by Mortgagor of any applicable federal, state or local laws, ordinances, or regulations relating to any Environmental Law or any Wetlands Law; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Law or Wetlands Law; (iii) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Environmental Law or Wetlands Law (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "Environmental or Wetlands Claims"); and (iv) discovery by Mortgagor of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be classified as in violation of any Environmental Law or Wetlands Law or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Environmental Law or Wetlands Law.

(b) Mortgagee shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental or Wetlands Claims.

(c) Mortgagor shall have no responsibility for any Environmental or Wetlands Claims arising out of or created by Mortgagee's use of the Premises pursuant to the Lease.

5. Taking. (a) In the event all or any part of the Mortgaged Property shall be damaged or taken as a result of a Taking, either temporarily or permanently, Mortgagor shall assign,



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transfer and set over unto Mortgagee the Taking Proceeds or any claim for damages for any of the Premises taken or damaged under the power of eminent domain, and agrees that in the event the whole or any part of the Premises is taken by eminent domain proceedings, then all sums awarded as damages for the Taking shall be applied in reduction of the indebtedness secured by this Mortgage, but without imposition of the prepayment premium to such application. Any and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses incurred by Mortgagee by reason of any condemnation, threatened condemnation, or proceedings thereunder shall be secured by this Mortgage and Mortgagor shall reimburse Mortgagee therefor immediately, or Mortgagee shall have the right, at its option, to deduct such costs and expenses from any Taking Proceeds paid to Mortgagee hereunder. In the event that the Premises is wholly condemned, Mortgagee shall receive from Mortgagor and/or from the Taking Proceeds payment of the entire amount of the indebtedness secured by this Mortgage.

(b) Subject to paragraph (a) of this Section, Mortgagor will immediately notify Mortgagee of the actual or threatened commencement of any Taking proceedings affecting all or any part of the Premises, including any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, from time to time upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments or other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning the Taking Proceeds and all other awards and compensation heretofore and hereafter to be made to Mortgagor, including the assignment of any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof, for any Taking, either permanent or temporary, under any such proceedings. In the event of a Taking, Mortgagee shall not be limited to the rate of interest paid on the award by the condemning authority but shall be entitled to receive out of the Taking Proceeds interest on the entire unpaid principal sum under the Note and the other Loan Documents at the applicable rate(s) provided therein. Mortgagor hereby assigns to Mortgagee so much of the balance of the Taking Proceeds payable by the condemning authority as is required to pay such interest.

6. Estoppel Certificate. Within ten (10) business days after request by Mortgagee or Mortgagor, Mortgagor or Mortgagee, as the case may be, shall furnish to the other party a written statement, duly acknowledged, of the aggregate amount of indebtedness secured by this Mortgage, confirming (to the extent true) that no right of offset exists under the Loan Documents or otherwise, and stating either that no defenses exist against the indebtedness secured hereby, or, if such defenses are alleged to exist, the nature thereof, and any other information which Mortgagee or Mortgagor may reasonably request.

7. Mortgagee's Reliance. Mortgagee, in advancing any payment relating to taxes, assessments and other governmental or municipal charges, fines, impositions or liens asserted against the Mortgaged Property, shall have the right to do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy or validity thereof. Mortgagee shall have the right to make any such payment whenever Mortgagee, in its

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reasonable discretion, shall deem such payment to be necessary or desirable to protect the security intended to be created by this Mortgage. In connection with any such advance, Mortgagee, in its reasonable discretion, shall have the right, and is hereby authorized, to obtain, at Mortgagor's sole cost and expense, a date down or continuation endorsement to the loan policy of title insurance insuring this Mortgage prepared by the title insurance company of Mortgagee's choice that initially prepared the loan policy.

8. Default. Each of the following events shall be deemed to be an "Event of Default" hereunder:

(a) Mortgagor shall fail to make payment of any sum of money due and payable under this Mortgage within fourteen (14) days after the date such payment is due as provided in this Mortgage and such sum is not paid within ten (10) days following receipt of written notice from Mortgagee (i) advising Mortgagor of such breach, and (ii) demanding payment; or

(b) Mortgagor shall file a voluntary petition in bankruptcy or under any bankruptcy act or similar law, state or federal, whether now or hereafter existing, or make an assignment for the benefit of creditors or file an answer admitting insolvency or inability to pay its or their debts generally as they become due, or shall fail to obtain a vacation or stay of any such proceedings which are involuntary within sixty (60) days after the institution of such proceedings, as hereinafter provided; or

(c) Any plan of liquidation or reorganization is filed by or on behalf of Mortgagor or either in any bankruptcy, insolvency or other judicial proceeding, or a trustee or a receiver shall be appointed for the Mortgaged Property in any involuntary proceeding and such trustee or receiver shall not be discharged or such jurisdiction relinquished, vacated or stayed on appeal or otherwise within sixty (60) days after the appointment thereof, or

(d) Any sale or transfer of the Mortgaged Property in violation of Paragraph 13 of this Mortgage; or

(e) The occurrence of an involuntary transfer under subsection 21(d) of this Mortgage; or

(f) Default shall be made in the due observance or performance of any of the other covenants, agreements or conditions required to be kept, performed or observed by Mortgagor under this Mortgage, and such default is not cured within thirty (30) days after written notice thereof has been delivered to Mortgagor by Mortgagee; provided, however if such default cannot reasonably be cured within the thirty (30)-day period, and Mortgagor promptly commences such cure within the thirty (30)-day period, then within such additional period during which Mortgagor diligently pursues and prosecutes such cure to completion and so long as the value

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of the Mortgaged Property is not impaired; or

(g) Default shall be made in the due observance or performance of any of the covenants, agreements or conditions required to be kept, performed or observed by Mortgagor or any other party under the Note, or any of the other Loan Documents, and such default is not cured within the applicable grace period, if any, expressly provided for therein;

then and upon any such Event of Default, the entire amount of the indebtedness hereby secured, shall, at the option of Mortgagee, become immediately due and payable, without execution or other process and without further notice or demand, all of which are hereby expressly waived. Upon and after any such Event of Default, the indebtedness hereby secured shall, at the option of Mortgagee, bear interest at the Default Interest Rate (as defined in the Note), payable on demand. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, nor extend or affect the grace period, if any.

9. Additional Rights upon Default. Without limiting the generality of the foregoing, Mortgagee shall have the following additional rights during the continuance of any Event of Default:

(a) Mortgagee shall have the immediate right to collect, as the same becomes due, any and all unearned insurance premiums or refunds of insurance premiums, due or to become due, and all proceeds and other benefits to be received under insurance policies of every nature affecting or covering the Mortgaged Property, any and all refunds of taxes, assessments and other charges heretofore or hereafter paid on or with respect to the Mortgaged Property, together with all rents and profits of the Mortgaged Property, all of which having been hereby assigned to Mortgagee. In addition, Mortgagee shall have the right, but shall not be obligated, without notice or demand, to enter immediately upon and take possession of the Mortgaged Property, together with all documents, books, records, papers and accounts of Mortgagor relating to the Mortgaged Property or any portion thereof without further consent or assignment by Mortgagor and shall have the right to cause to be conducted environmental investigations and analyses, to operate, manage, lease and control the Mortgaged Property and conduct the business thereof, if any, either personally or by its agents, and terminate any management agreements, contracts, agents or managers responsible for the management of the Mortgaged Property, and with full power to use such measures, legal or equitable, as Mortgagee may deem proper or necessary to enforce the payment or security of the rents, issues and profits of the Mortgaged Property.

(b) Mortgagor hereby grants full power and authority to Mortgagee as follows: to exercise each and every one of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor; to make all alterations, additions, improvements, renovations, replacements and repairs as Mortgagee may deem proper; to demolish any part or all of the Improvements which, in the judgment of Mortgagee, may be in unsafe condition and dangerous to life or property; to remodel any or all of the Improvements so as



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to make the same available in whole or in part for business, commercial, retail, multiple dwelling or other purposes; to lease the Mortgaged Property, or any part thereof to Mortgagor or any other person or persons, on such terms and for such periods of time as Mortgagee may deem proper, and the provisions of any lease made by Mortgagee pursuant hereto shall be valid and binding upon Mortgagor, notwithstanding the fact that Mortgagee's right of possession may terminate or this Mortgage may be satisfied of record prior to the expiration of the term of such lease; and to collect and receive all of the rents, issues, profits and all other amounts past due or to become due to Mortgagor and to apply the same in such order of priority as Mortgagee may determine to all necessary charges and expenses in connection with the Mortgaged Property, or for interest, principal, whether matured or not, taxes, water charges and assessments, insurance premiums and any advances made by Mortgagee for improvements, alterations or repairs for the account of Mortgagor or on account of the indebtedness hereby secured. Neither the taking of possession, nor the collection of rents by Mortgagee as described above shall be construed to be an affirmation of any lease of the Mortgaged Property or any part thereof, and Mortgagee or any other purchaser at any foreclosure sale shall have the right to exercise the right to terminate any such lease as though such taking of possession and collection of rents had not occurred, subject, however, to the terms of any subordination, nondisturbance and attornment agreement which may be in effect from time to time with respect to any part of the Mortgaged Property.

(c) Without limiting the foregoing, Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact, coupled with an interest, upon an Event of Default, to institute summary proceedings against any lessee of the Mortgaged Property who fails to comply with the provisions of his or its lease. If Mortgagor is occupying all or any part of the Mortgaged Property upon an Event of Default, it is hereby agreed that Mortgagor will either (i) immediately surrender possession of the Mortgaged Property to Mortgagee and vacate the Mortgaged Property so occupied by Mortgagor, or (ii) pay a reasonable rental, determined by Mortgagee, for the use thereof, monthly in advance, to Mortgagee, and, in default of so doing, may be dispossessed by summary proceedings or otherwise.

(d) To the extent permitted by law, Mortgagee is hereby authorized and empowered to sell or cause the Mortgaged Property to be sold at public or private auction, and to convey same by execution and delivery to the purchaser at such sale a good and sufficient deed of conveyance, to retain out of the proceeds of such sale the amounts due under the terms of this Mortgage and the other Loan Documents, the reasonable and customary costs and charges of such sale, the reasonable attorneys' fees and expenses, the reasonable amounts due to any other person asserting a lien or otherwise claiming an interest in the Mortgaged Property, and to deliver the surplus moneys, if any, to Mortgagor.

(e) To the extent permitted by law, Mortgagee shall be entitled to the appointment of a receiver of the Mortgaged Property as a matter of right and without notice, which is hereby expressly waived, with power to collect the rents, issues and profits of the Mortgaged Property, due and to become due without regard to the value of the Mortgaged Property and regardless of whether Mortgagee has an adequate remedy at law. Mortgagor, for itself and its successors and assigns, hereby waives any and all defenses to the application for a receiver as set forth above and hereby specifically consents to such appointment without notice, but nothing herein

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contained is to be construed to deprive Mortgagee of any other right, remedy or privilege it may now have, or may hereafter obtain, to have a receiver appointed. From such rents, issues and profits collected by the receiver or by Mortgagee prior to a foreclosure sale, there shall be deducted the reasonable and customary costs of collection thereof, including, without limitation, real estate commissions, if any, for new leases, if any, receiver's fees, reasonable attorney's fees and expenses, and any court costs; the remainder shall be applied against the indebtedness hereby secured.

(f) Mortgagee shall have the right to bring foreclosure proceedings hereunder and whether or not any order or decree shall have been entered therein and to the fullest extent not prohibited by applicable law, a reasonable sum shall be allowed for Mortgagees' attorneys' fees and expenses in such proceeding. There shall be included in any judgment or decree foreclosing this Mortgage and be paid out of any rents, issues and profits or out of the proceeds of any sale made in pursuance of any such judgment or decree: (i) all reasonable and customary costs and expenses of such suit or suits, advertising, sale and conveyance, including reasonable attorneys' fees and expenses, costs of documentary evidence, and costs of any abstract, examination of title, and title insurance; (ii) all moneys advanced by Mortgagee, if any, for any purpose authorized in this Mortgage with interest as herein provided; (iii) all accrued interest remaining unpaid on the indebtedness hereby secured; and (iv) the principal balance of the indebtedness hereby secured. The surplus proceeds, if any, shall be paid to Mortgagor or as the court may direct.

10. Waiver. Mortgagor shall not, and anyone claiming through or under Mortgagor shall not, set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the final and absolute sale of the Mortgaged Property, or the final and absolute placing into possession thereof, immediately after such sale, of the purchaser or purchasers thereof, and Mortgagor, for itself and all who may claim through or under it, waive, if and to the fullest extent not prohibited by applicable law, all benefits and protections under such appraisalment, valuation, stay, extension and redemption laws.

11. Intentionally Deleted.

12. Subrogation. If the indebtedness hereby secured or any part thereof, including any amounts advanced by Mortgagee, are used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Mortgagee shall be subrogated to such other liens or encumbrances and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same, whether or not any such lien, encumbrance or additional security is canceled of record upon such payment or advancement or otherwise, and in addition to the security afforded by this Mortgage and the other Loan Documents.

13. Sale or Transfer. Mortgagor, without the prior written consent of Mortgagee, which consent shall not be unreasonably delayed or withheld, shall not create, effect, consent to, attempt, contract for, agree to make, suffer or permit any conveyance, sale, assignments, transfer, lien, pledge, encumbrance, mortgage, security interest or alienation of all or

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any portion of, or any interest in, the Mortgaged Property or the Mortgagor, whether effected directly, indirectly, voluntarily, involuntarily, by operation of law or otherwise; provided, however, if Mortgagee does not exercise its Right of First Refusal as set forth in Section 23.A of the Lease, Mortgagor shall have the right to sell or lease the Mortgaged Property without the consent of Mortgagee. If any of the foregoing shall occur without Mortgagee's prior written consent, then the same shall conclusively be deemed to increase the risk to Mortgagee and immediately constitute an Event of Default hereunder.

14. Mortgagee's Cost of Collection or Performance. If any action or proceeding is commenced by or against Mortgagee, including, without limitation, condemnation proceedings, proceedings involving the foreclosure of this Mortgage or of any other liens or encumbrances, the enforcement or interpretation of contracts, leases or other documents relating to the Mortgaged Property, or any other proceeding of any nature, legal or otherwise, affecting the Mortgage Property or any part thereof, or the title thereto, or the validity or priority of the lien of this Mortgage, Mortgagee shall have the right to appear, defend, prosecute, retain counsel, and take such action as Mortgagee shall determine. In addition, upon an Event of Default hereunder, Mortgagee is authorized, but not obligated, to discharge Mortgagor's obligations hereunder. Mortgagor shall pay to Mortgagee, promptly upon demand, all reasonable and customary costs, including, without limitation, "late charges" payable under the Note, out-of-pocket expenses and reasonable attorneys' fees and expenses, the reasonable costs of any environmental examination and analysis, and title examination, supplemental examination of title or title insurance, that may be incurred by Mortgagee in connection with any proceedings affecting the Mortgaged Property, or any part thereof, to cause the enforcement of the covenants or agreements of Mortgagor contained herein or in the any of other Loan Documents, or with or without the institution of an action or proceeding, or that may otherwise be incurred by Mortgagee in the performance of any other action by Mortgagee authorized by this Mortgage. All such costs, expenses and attorneys' fees and expenses, and any other moneys advanced by Mortgagee to protect the Mortgaged Property shall, to the fullest extent not prohibited by applicable law, bear interest from the date of payment thereof at the Default Rate until repaid by Mortgagor, and shall be repaid by Mortgagor to Mortgagee immediately upon demand. Mortgagor hereby agrees that if a default is made in the payment of the indebtedness secured hereby when due, pursuant to the terms hereof, even if the indebtedness secured hereby shall not have been declared due and payable upon any Event of Default, Mortgagee shall be entitled to receive interest thereon at the Default Rate, to be computed from the due date through actual receipt and collection of the amount then in default. The preceding sentence shall not be construed as an agreement or privilege to extend the time for performance of any obligation under the Mortgage or any of the other Loan Documents, nor as a waiver of any other right or remedy accruing to Mortgagee by reason of any such default.

15. Partial Release. Mortgagee, without notice, and without regard to any consideration paid therefor, and notwithstanding the existence at the time of any inferior liens thereon, shall have the right to release (a) any part of the security for the indebtedness secured hereby, including, without limitation, the interest under this Mortgage in and to any of the Mortgaged Property, or (b) any person liable for any indebtedness secured hereby, without affecting the priority of any part of the security and the obligations of any person not expressly released, and shall have the right to agree with any party remaining liable for such indebtedness or having any

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interest therein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against all parties having any interest in such security.

16. Non-Waiver. In the event Mortgagee (a) releases, as aforesaid, any part of such security or any person liable for any indebtedness secured hereby; (b) grants an extension of time for any payments of the indebtedness secured hereby; (c) takes other or additional security for the payment thereof; (d) accepts partial payments; or (e) otherwise exercises or waives or fails to exercise any right granted herein or in any of the other Loan Documents, no such act or omission shall constitute a waiver of any default, or extend or affect the grace period, if any, release Mortgagor, subsequent owners of the Mortgaged Property or any part thereof, or makers or guarantors of the Note, this Mortgage, or any of the other Loan Documents, or preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted for any Event of Default.

17. No Merger of Estates. There shall be no merger of the lien, security interest or other estate or interest created by this Mortgage with the fee estate in the Mortgaged Property by reason that any such interest created by this Mortgage may be held, directly or indirectly, by or for the account of any person who shall own the fee estate or any other interest in the Mortgaged Property. No such merger shall occur unless and until all persons at the time having such concurrent interests shall join in a written instrument effecting such merger, and such instrument shall be duly recorded.

18. Intentionally Deleted.

19. Application of Proceeds. All payments made by Mortgagor under the Note, this Mortgage or any of the other Loan Documents and received by Mortgagee shall be applied by Mortgagee to the following items and in such order as Mortgagee may determine in its sole discretion: (a) advances by Mortgagee for payment of taxes, assessments, insurance premiums and other costs and expenses, as set forth in this Mortgage, the Note or any of the other Loan Documents; (b) any amounts which may be overdue under the Note, this Mortgage or any of the other Loan Documents; (c) interest on the indebtedness secured hereby; and (d) outstanding principal under the Note.

20. Mortgagee's Subordination Right. At the option of Mortgagee, this Mortgage shall become subject and subordinate, but not with respect to the priority of entitlement to Proceeds of a Casualty or any Taking Proceeds, to any and all leases of all or any part of the Mortgaged Property, upon the execution by Mortgagee and recording of a unilateral declaration to that effect at any time hereafter, in the Office of the Recorder of the County in which Mortgaged Property is located.

21. Intentionally Deleted.

22. Management. Mortgagee shall have the right to give or withhold its prior



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consent to any contract or other arrangement for the management of all or any part of the Mortgaged Property, which consent shall not be unreasonably delayed, conditioned, or withheld. Mortgagee shall have the right, exercisable at its option upon an Event of Default or an event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default, to terminate the rights of any party engaged to manage the Mortgaged Property and any and all other agreements or contracts relating to the operation or management of the Mortgaged Property, if, in Mortgagee's sole discretion, the management and/or operation of the Mortgaged Property is unsatisfactory.

23. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (i) if hand delivered, or if sent by telecopy, effective upon receipt, or (ii) if delivered by overnight courier service, effective on the day following delivery to such courier service or (iii) if mailed by United States registered or certified mail, postage prepaid, return receipt requested, effective two (2) business days after deposit in the United States mails addressed as follows:

If to Mortgagor:

Village of Skokie  
5127 Oakton Street  
Skokie, Illinois 60077  
Attn: Village Manager

With a copy to:

Village of Skokie  
5127 Oakton Street  
Skokie, IL 60077  
Attn: Corporation Counsel

If to Mortgagee:

Holocaust Memorial Foundation of Illinois, Inc.  
4255 Main Street  
Skokie, Illinois 60076

or at such other address or to such other addressee as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

24. Loan Documents. The term "Loan Documents" as used herein collectively refers to (a) the Note, (b) this Mortgage, (c) all Uniform Commercial Code Financing Statements naming Mortgagor, as debtor, in favor of Mortgagee, as secured party, in connection with the Mortgaged Property, and (d) any and all other documents and/or agreements evidencing, securing or relating to the loan described herein.



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25. Waiver of Right of Redemption. Mortgagor acknowledges and represents and warrants that the Mortgaged Property does not include "agricultural real estate" or "residential real estate" as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b), Mortgagor waives any and all rights of redemption from sale under any order of foreclosure of this Mortgage, or other rights of redemption which may run to Mortgagor or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. Mortgagor waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by law.

26. Advances. (a) This Mortgage shall secure the indebtedness of Mortgagor to Mortgagee that is evidenced, permitted or secured by the Loan Documents, including future advances made by Mortgagee to the Mortgagor. All of such indebtedness, including future advances, shall be a lien from the time that this Mortgage is recorded with the Recorder of the County in which the Mortgaged Property is located as provided in 735 ILCS 5/15-1302(b).

(b) The maximum amount of indebtedness secured by this Mortgage shall not exceed three (3) times the Loan Amount.

(c) In addition to the loan advances referred to in subsection (a) above, Mortgagee shall have the right, but not the obligation, to make protective advances with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, repairs, maintenance and other costs incurred in the protection of the Mortgaged Property, and such protective advances, together with interest thereon at the Default Rate from the date of each such advance until it is repaid in full, shall be secured by this Mortgage with priority running from the time of the recording of this Mortgage with the Recorder of the County in which the Mortgaged Property is located pursuant to 735 ILCS 5/15-1302(b)(5).

27. Survival and Conflicts. The execution and delivery of this Mortgage and the other Loan Documents shall in no way merge or extinguish the Loan Commitment or the terms and conditions set forth therein, which shall survive the closing of the loan and delivery of this Mortgage. In the event of any inconsistency or conflict between any provisions of the Loan Commitment and the other Loan Documents, the provisions of the other Loan Documents shall prevail and apply. In the event of any inconsistency or conflict between any provisions of the Loan Documents and the Lease, the provisions of the Lease shall prevail and apply.

28. Anti-Forfeiture. Mortgagor hereby further expressly represents and warrants to Mortgagee that to the best of Mortgagor's knowledge there has not been committed by Mortgagor or any other person involved with the Mortgaged Property or the Mortgagor any act or omission affording the federal government or any state or local government the right and/or remedy of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of its obligations under the Note or under any of the other Loan Documents, and Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right and/or remedy of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any

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loss, damage, or other injury, including without limitation, reasonable attorneys' fees and expenses, and all other reasonable and customary costs and expenses incurred by Mortgagee in preserving its lien, security interest, and other rights and interests in the Mortgaged Property and any additional collateral under any of the Loan Documents in any proceeding or other governmental action asserting forfeiture thereof, by reason of, or in any manner resulting from, the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, Mortgagee, any guarantor, any additional collateral under any of the Loan Documents or all or any part of the Mortgaged Property under any federal or state law in respect of which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result shall, at the election of the Mortgagee in its absolute discretion, constitute an Event of Default hereunder without notice or opportunity to cure.

29. Miscellaneous. The Mortgaged Property is located in the State of Illinois, and this Mortgage and the rights and indebtedness secured hereby shall, without regard to the place of contract or payment, be construed and enforced according to the laws of Illinois. Nothing herein contained nor any transaction related hereto shall be construed or so operate as to require Mortgagor to do any act contrary to law, and if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Mortgage, in whole or in part, or any of the Mortgagor's obligations hereunder, such clauses and provisions only shall be held void and of no force or effect as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. All of the obligations, rights and covenants herein contained shall run with the land, and shall bind and inure to the benefit of Mortgagor, its successors and permitted assigns, and Mortgagee and any subsequent holder of the Note. Whenever used, the singular number shall include the plural and the plural numbers shall include the singular, and the use of any gender shall include all genders, all as the context may reasonably require.

If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-101, *et seq.* (the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but the Act shall not invalidate or render unenforceable any other provision of this Mortgage that can be fairly construed in a manner consistent with the Act. Without in any way limiting any of the Mortgagee's rights, remedies, powers and authorities provided in this Mortgage or otherwise, and in addition to all of such rights, remedies, powers and authorities, Mortgagee shall also have all rights, remedies, powers and authorities permitted to the holder of a mortgage under the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Mortgagee any rights, remedies, powers or authorities upon default of the Mortgagor which are more limited than what would be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall have such rights, remedies, powers and authorities that would be otherwise vested in it under the Act. Without limitation, all expenses (including reasonable attorneys' fees and costs) incurred by Mortgagee to the extent reimbursable under 735 ILCS 5/15-1510 and 5/15-1512, or any other provision of the Act, whether incurred before or after any judgment of foreclosure, shall be added to the indebtedness secured by this Mortgage and included in the judgment of foreclosure.

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30. Satisfaction of Mortgage. Mortgagee, at its sole cost, shall record a Satisfaction of Mortgage with the Cook County Recorder's Office upon payment in full of the indebtedness evidenced by this Mortgage.

31. Non-Assignability. This Mortgage shall not be assigned or transferred, in whole or in part, by Mortgagee.

IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be executed as of the day and year first above written.

ATTEST:

VILLAGE OF SKOKIE

By: *[Signature]*

By: *[Signature]*

*[Signature]* Its: Village Clerk

Its: ~~Mayor~~ VILLAGE MANAGER

**THIS DOCUMENT PREPARED BY:**

Howard Swibel, Esq.  
Arnstein & Lehr  
120 South Riverside Plaza  
Suite 1200  
Chicago, IL 60606-3910

**AFTER RECORDING RETURN TO:**

Howard Swibel, Esq.  
Arnstein & Lehr  
120 South Riverside Plaza  
Suite 1200  
Chicago, IL 60606-3910

STATE OF ILLINOIS           )  
  ) SS  
COUNTY OF COOK           )

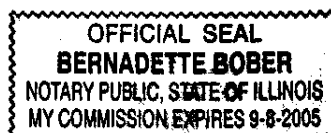
I, BERNADETTE BOBER a Notary Public in and for said county and state, do hereby certify that personally known to me to be the same person(s) whose name(s) are/is subscribed to the foregoing instrument as such Mayor and Village Clerk of the Village of Skokie, appeared before me this day in person, and acknowledge that they signed and delivered the said instrument as such Mayor and Village Clerk for and on behalf of the Village of Skokie, and that they executed the same as their free voluntary act and deed and as the free act and deed of the Village of Skokie, for the uses and purposes therein set forth.

Given under my hand and official seal this 12 day of JUNE, 2003.

*[Signature]*  
Notary Public

My Commission expires: 9/8/2005

CHO1 #1277474 v4



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## PARCEL 1

That part of Lots 6 through 10 in Block 3 in Wittbold's Rapid Transit Terrace No. 3, being a subdivision in the Southwest 1/4 of Section 9, Township 41 North, Range 13, East of the Third Principal Meridian, recorded as Document 9206445, described as follows:

Beginning at the Southwest corner of said Lot 10; thence North 00 degrees 15 minutes 00 seconds along the West line of said Lot 10, a distance of 60.00 feet to a line that is parallel with and 60.00 feet Northerly of, as measured at right angles to, the South line of said Lot 10; thence North 89 Degrees 58 minutes 50 seconds East along said parallel line, 25.00 feet to a line parallel with and 25.00 feet Easterly of, as measured at right angles to, the West line of said Lot 10; thence North 00 degrees 15 minutes 00 seconds East along said parallel line, 65.00 feet to the North line of said Lot 10; thence North 89 degrees 58 minutes 50 seconds East along the North line of said Lots 6 through 10, a distance of 99.09 feet; thence Southwesterly along a curve concave Southeasterly, concentric with the center line of the Edens Expressway, per Document Number 17469167, having a radius of 3731.10 feet, a chord bearing of South 27 degrees 33 minutes 01 seconds West, a chord length of 141.0 feet, an arc length of 141.02 feet to the South line of Block 3 in said Wittbold's Rapid Transit Terrace No. 3; thence South 89 degrees 58 minutes 50 seconds West along said South line, 59.42 feet to the point of beginning in Cook County, Illinois.

## PARCEL 2

That part of Block 3 in Wittbold's Rapid Transit Terrace No. 3, being a subdivision in the Southwest 1/4 of Section 9, Township 41 North, Range 13, East of the Third Principal Meridian, recorded as Document 9206445, described as follows:

Beginning at the Southwest corner of Lot 28 in said Block 3; thence North 43 degrees 25 minutes 10 seconds East, 181.79 feet to the Northeast corner of Lot 25 in said Block 3; thence South 00 degrees 12 minutes 30 seconds West along the East line of said Lot 25, a distance of 11.81 feet; thence South 28 degrees 22 minutes 10 seconds West, 18.223 feet; thence South 33 degrees 33 minutes 58 seconds West, 210.76 feet to the West line of Lot 30 in said Block 3; thence North 00 degrees 13 minutes 34 seconds East along said West line and the West line of Lot 29 in said Block 3, a distance of 71.43 feet to the point of beginning, in Cook County, Illinois.

## PARCEL 3

That part of Lorel Avenue per Wittbold's Rapid Transit Terrace No. 3, being a subdivision in the Southwest 1/4 of Section 9, Township 41 North, Range 13, East of the Third Principal Meridian recorded as Document No. 9206445, described as follows:

Beginning at the Northeast corner of Lot 21 in Block 3 in said Wittbold's Rapid Terrace No. 3; thence North 90 degrees 00 minutes 00 seconds East, along the North line of said Lorel Avenue, 66.00 feet to the Northwest corner of Lot 20 in Block 2 in said Wittbold's Rapid Transit Terrace No. 3; thence South 00 degrees 12 minutes 30 seconds West along the West line of said Lot 20, a

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distance of 20.77 feet; thence South 28 degrees 22 minutes 10 seconds West, 139.84 feet to a point to the West line of said Lorel Avenue, said point being 11.81 feet South of the Northeast corner of Lot 25 in said Block 3; thence North 00 degrees 12 minutes 30 seconds East, along the West line of said Lorel Avenue, 143.82 feet to the point of beginning; in Cook County, Illinois.

## PARCEL 4

Lots 11 through 24 inclusive (except the West 25.00 feet of said Lots 11 through 20, inclusive) and also that part of Lots 25 through 28 inclusive lying Northwesterly of a line drawn from the Northeast corner of said Lot 25 to the Southwest corner of said Lot 28 all in Block 3 in Wittbold's Rapid Transit Terrace No. 3, being a subdivision in the Southwest 1/4 of Section 9, Township 41 North, Range 13, East of the Third Principal Meridian recorded as Document Number 9206445 in Cook County, Illinois.

## PARCEL 5

The North-South alley, together with that part of the East-West alley lying Westerly of the Southerly extension of the Westerly line of Lot 30, except the Westerly 25.00 feet of said East-West alley, all in Block 3 in Wittbold's Rapid Transit Terrace No. 3, being a subdivision in the Southwest 1/4 of Section 9, Township 41 North, Range 13, East of the Third Principal Meridian, recorded as Document Number 9206445, in Cook County, Illinois.

## PARCEL 6

The East 1/2 of the South 60.00 feet of Long Avenue as dedicated by Wittbold's Rapid Transit Terrace No. 3, being a subdivision in the Southwest 1/4 of Section 9, Township 41 North, Range 13, East of the Third Principal Meridian, recorded as Document 9206445, in Cook County, Illinois.

CHI1 #218630 v1



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EXHIBIT A

LEGAL DESCRIPTION

Common Address: \_\_\_\_\_

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## EXHIBIT B

### PERMITTED EXCEPTIONS

Property of Cook County Clerk's Office

Two large, irregular blacked-out redacted areas are present on the page. The first redaction is located in the upper right quadrant, and the second is located in the lower right quadrant, partially overlapping the diagonal watermark text.