

7. 7. 89 Documents

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SECOND MORTGAGE AND SECURITY AGREEMENT

THIS SECOND MORTGAGE AND SECURITY AGREEMENT, made as of December 1, 1985, among WEBSTER-WAYNE SHOPPING CENTER LTD., an Illinois Limited Partnership, having an address at 730 North Franklin Street, Suite 301, Chicago, Illinois 60610 (the "Beneficiary"), CHICAGO TITLE & TRUST COMPANY, as Trustee under Trust Agreement Number 1087670 dated October 25, 1985 and not individually (the "Land Trust") (the Beneficiary and the Land Trust collectively referred to as the "Mortgagor") and PATHWAY FINANCIAL, A FEDERAL ASSOCIATION, with a principal office located at 100 North State Street, Chicago, Illinois 60602 (the "Mortgagee"),

W I T N E S S E T H:

WHEREAS, contemporaneously with this Mortgage, the Mortgagor has obtained a certain loan (the "Loan") from the Illinois Development Finance Authority (the "Authority") in conjunction with an industrial project revenue bond transaction (the "Bond Transaction") involving the issuance of certain industrial project revenue bonds (the "Bonds") by the Authority under a Trust Indenture (the "Indenture") with American National Bank and Trust Company of Chicago, Chicago, Illinois, as trustee (the "Trustee"), the repayment and other terms and conditions of such Loan being set forth in the following "Loan Documents" all dated as of the date of this Mortgage: a loan agreement between the Mortgagor and the Authority (the "Loan Agreement"); a promissory note from the Mortgagor to the Authority (the "Note"); a mortgage and security agreement and an assignment of leases and rents by the Mortgagor to the Authority covering certain property of the Mortgagor described on Schedule I attached hereto (collectively, the "First Mortgage") and to which First Mortgage this Second Mortgage and Security Agreement is subordinate; and

This Instrument Prepared by:

Alan R. Blank
 Popkin, Stern, Heifetz, Lurie, Sheehan, Reby & Chervitz
 7733 Forsyth Boulevard, 22nd Floor
 St. Louis, Missouri 63105

When Recorded Return By Mail to:

Hazel Bowman, Vice President
 Pathway Financial
 100 North State Street
 Chicago, Illinois 60602

Permanent Index Number: 14-32-125-001 14-32-125-002

Common Address: 1315-1325 Webster
Chicago, Illinois

LAND TITLE CO. OF AMERICA, INC. L-42850-C5 (Garden)

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WHEREAS, the Loan Documents have been assigned by the Authority to the Trustee in conjunction with the Bond Transaction; and

WHEREAS, in order to induce the Authority to make the Loan to the Mortgagor and to facilitate the rating and sale of the Bonds, thereby resulting in an interest rate on the Loan below currently prevailing conventional loan rates of interest, Mortgagee has, contemporaneously with this Mortgage, established a certain "Collateralized Letter of Credit" in favor of the Trustee, consisting of a letter of credit (the "Letter of Credit") under which Mortgagee agrees to make payments to or upon the order of the Trustee upon the occurrence of certain events as specified therein and in the Loan Agreement and a certain collateral agreement (the "Collateral Agreement") under which Mortgagee has assigned and agrees to maintain certain collateral as security for performance of its obligations under the Letter of Credit and the Collateral Agreement; and

WHEREAS, in consideration for Mortgagee establishing the Collateralized Letter of Credit in favor of the Trustee, the Mortgagor has agreed to pay certain fees to Mortgagee and to reimburse Mortgagee for certain sums paid to or derived by the Trustee under the Collateralized Letter of Credit, and to perform certain other obligations and cause various conditions to be satisfied, all as set forth in certain "Reimbursement Documents" of even date herewith, consisting of this Mortgage, a reimbursement agreement (the "Reimbursement Agreement") and a Second Assignment of Leases and Rents;

NOW, THEREFORE, the Mortgagor, to secure the performance of the Mortgagor's obligations under the Reimbursement Agreement and the other Reimbursement Documents in accordance with the terms and provisions thereof, and the payment of any other sums therein provided for (provided, however, that notwithstanding anything else in this Mortgage to the contrary, the total indebtedness secured hereby shall not exceed \$7,704,000.00), and the observance and performance of the covenants and agreements contained herein or in the Reimbursement Agreement and the other Reimbursement Documents and the other indebtedness which this Mortgage by its terms secures, and also in consideration of the sum of Ten Dollars in hand paid, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, mortgage, assign and pledge unto the Mortgagee, its successors and assigns (and does hereby grant a security interest to the Mortgagee and its successors and assigns in) all and singular the properties, rights, interest and privileges described in Granting Clauses I, II and III below, all of same being collectively referred to herein as the "Mortgaged Property":

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GRANTING CLAUSE I

That certain real estate (the "Real Estate") lying in the City of Chicago, County of Cook and State of Illinois, more particularly described in Schedule I attached hereto and made a part hereof; subject, however, to Permitted Encumbrances (as hereinafter defined).

GRANTING CLAUSE II

All buildings and improvements of every kind and description (collectively referred to herein as the "Buildings") now or hereafter erected or placed on the property described in Granting Clause I and 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 immediately upon the delivery thereon to the Real Estate, and all fixtures of every kind and nature whatsoever now or hereafter owned by Mortgagor and attached to the Real Estate or Buildings, including, but not limited to, all radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and all appurtenances thereto; and all renewals or replacements of any of the foregoing or articles in substitution therefor; subject, however, to Permitted Encumbrances. The address of Mortgagor (debtor) and the Mortgagee (secured party) appear at the beginning of this Mortgage.

GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, franchises and appurtenances belonging or in any wise appertaining to the Real Estate and the Buildings and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof of said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale) together with the right, but not the obligation, to collect, receive and receipt for all such rents and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable, provided that the assignments made hereby shall not impair or diminish the obligations

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of Mortgagor under the provisions of such leases nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees, not as a limitation or condition thereof, but as a personal covenant available only to Mortgagor, that until an event of default shall occur giving Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive and enjoy such rents.

TO HAVE AND TO HOLD the Mortgaged Property and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, assigned, pledged and in which a security interest is granted, or intended to be granted to Mortgagee, its successors and assigns, forever; provided, however, that this Mortgage is upon the express condition that if Mortgagor shall pay or cause to be paid all indebtedness hereby secured and shall keep, perform and observe all and singular the covenants and promises in the Note, or in this Mortgage or in any other instrument or document securing the Note or in the Loan Agreement expressed to be kept, performed and observed by Mortgagor, and if the principal of and interest on the Bonds shall have been paid in full or provision made for such payment pursuant to the Indenture, then this Mortgage and the estate and rights hereby granted shall cease, determine and be void and this Mortgage shall be released by Mortgagee at no expense of Mortgagee.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. In addition to the words and terms elsewhere defined in this Mortgage, the following words and terms as used in this Mortgage shall have the following meanings, unless the context or use indicates another or different meaning or intent:

"Additions or Alterations" means improvements, replacement, alterations, additions, enlargements or expansions in, on or to the Buildings.

"Advance Rate" shall have the meaning provided therefor in the Loan Agreement.

"Authorized Borrower Representative" shall have the meaning provided therefor in the Loan Agreement.

"Buildings" shall have the meaning provided therefor in Granting Clause II hereof.

"Independent Counsel" means an attorney duly admitted to practice law before the highest court of any state and not regularly employed on a substantial basis by the Mortgagor and who is acceptable to the Mortgagee.

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"Independent Engineer" means an engineer or engineering firm registered and qualified to practice the profession of engineering under the laws of Illinois and who or which is not a full time employee of the Mortgagor and who or which is acceptable to the Mortgagee.

"Lease" means collectively, the Lease Agreements between the Mortgagor, as Landlord, and certain Tenants for the leasing of the commercial retail space comprising the Project.

"Net Proceeds," when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such gross proceeds.

"Permitted Encumbrances" shall have the meaning set forth in Schedule II attached hereto.

"Project" means the Real Estate, together with all buildings, structures and other improvements, fixtures, equipment, appliances and goods which are owned by the Mortgagor and are to become fixtures, and other real and personal property, and includes the Mortgaged Property.

"Real Estate" shall have the meaning provided therefor in Granting Clause I hereof.

2. Mortgagor agrees that during the term of this Mortgage it will at its own expense (i) keep the Project in safe condition, (ii) keep the Buildings and all other improvements forming part of the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof and (iii) keep the Project free from all charges, liens and encumbrances not expressly subordinated to the lien hereof except Permitted Encumbrances. Mortgagor may, also at its own expense, make from time to time any Additions or Alterations to the Buildings it may deem desirable for its business purposes that do not adversely affect the structural integrity of the Buildings or substantially reduce their value; provided that all such Additions or Alterations to the Buildings shall be located wholly within the boundary lines of the Real Estate and provided further that if the cost of such Additions or Alterations shall exceed \$50,000 the Mortgagee shall have consented thereto in writing, which consent shall not unreasonably be withheld. All such Additions or Alterations so made by the Mortgagor shall become a part of the Mortgaged Property and shall be subject to the lien of this

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Mortgage. The Mortgagor will not permit any mechanics' lien, security interest or other encumbrance to remain against the Project for labor or materials furnished in connection with any Additions or Alterations so made by it unless payment for such labor or materials is not yet due and payable under the contract in question; provided, however, that the Mortgagor may in good faith contest any mechanics' or other lien filed or established against the Buildings, and in such event may permit the item so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that nonpayment of any such item will not materially endanger the lien of this Mortgage as to any material part of the Project or the revenues therefrom, and that neither the Project nor any material part thereof will be subject to loss or forfeiture as a result of the nonpayment of any such item during such period and prior to the commencement of any such contest the Mortgagor shall deposit with the Trustee an amount of cash or letter of credit acceptable to the Trustee sufficient to pay the contested amount. The Mortgagee will, at the expense of the Mortgagor, cooperate fully with the Mortgagor in any such contest.

No work in connection with repairs or construction of the Project shall be undertaken until all required municipal and other governmental permits and authorizations have been procured.

3. Mortgagor will promptly pay as the same become due and certify annually to the Mortgagee upon request received from the Mortgagee that such payment has been made, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any interest therein or any equipment or other property installed or brought by the Mortgagor therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the revenues, income or profits of the Mortgagor from the Project which, if not paid, will become a lien on the Project prior to or on a parity with the lien of this Mortgage or a charge on the revenues and receipts therefrom prior to or on a parity with the charge thereon and the pledge or assignment thereof to be created and made in the Reimbursement Agreement and the other Reimbursement Documents, and including all ad valorem taxes lawfully assessed upon the Real Estate), all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project or on the Real Estate; provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Mortgagor shall be obligated to pay only such installments as are required to be paid during the term of this Mortgage as they become due.

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Mortgagor may, at its expense and in its own name and behalf, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided during such period enforcement of any such contested item shall be effectively stayed and further provided that nonpayment of any such item will not materially endanger the lien or security interest afforded by this Mortgage as to any material part of the Project or the revenues or receipts therefrom and that neither the Project nor any material part thereof will be subject to loss or forfeiture as a result of the nonpayment of any such item during such period, and prior to the commencement of any such contest Mortgagor shall deposit with Mortgagee an amount of cash in an amount equal to one and one-half times the value of the amount so contested or other security in an amount equal to one and one-half times the amount so contested and approved by Mortgagee; provided, however, that the amount of cash to be so deposited hereunder shall be reduced, on a dollar-for-dollar basis, by the amount deposited pursuant to paragraph (a), below. In the event that Mortgagor shall fail to pay any of the foregoing items required by this Section to be paid by Mortgagor, the Mortgagee may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by the Mortgagee shall become an additional obligation of Mortgagor to the one making the advancement, which amounts, together with interest thereon at the rate set forth in the Reimbursement Agreement from the date of such advance Mortgagor agrees to pay.

In order to assure the payments of taxes and premiums payable with respect to all insurance policies as and when the same shall become due and payable:

(a) Unless so deposited with the Trustee, the Mortgagor shall deposit with the Mortgagee on the first business day of each and every month, an amount equal to one-twelfth (1/12) of the taxes and premiums to become due upon the Project between one (1) and thirteen (13) months after the date of such deposit; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to taxes and premiums to become due and payable within thirteen (13) months after such first deposit, will provide (without interest) a sufficient fund to pay such taxes and premiums, one month prior to the date when they are due and payable. The amounts of such deposits shall be based upon the Mortgagee's reasonable estimate as to the amounts of taxes and premiums. The

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Mortgagor shall promptly upon the demand of the Mortgagee make additional tax and insurance deposits as the Mortgagee may from time to time require due to underestimation of the amounts of the taxes and premiums. Any amounts deposited with the Trustee pursuant to this paragraph (a) shall bear interest at the highest passbook savings account interest rate being offered, from time to time, to the general public by the Mortgagee for which such amounts qualify (including meeting any minimum balance requirements).

(b) In lieu of the deposit provided in the previous paragraph, the Mortgagor may provide a pledged account to the Mortgagee in the amount of 125% of the estimated taxes and premiums.

(c) The Mortgagee will, out of the tax and insurance deposits or the pledged account, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the taxes and premiums or will, upon the presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor. If the total tax and insurance deposits or pledged account on hand shall not be sufficient to pay all of the taxes and premiums when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand the amount necessary to make up the deficiency.

4. The Mortgagor shall at all times keep or cause the Project to be continuously insured against such risks and in such amounts, with such deductible provisions, as are customary, in connection with the operation of facilities of the type and size comparable to the Project. Subject to the provisions of Section 3 hereof, Mortgagor shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid in a timely manner the premiums for, at least the following insurance with respect to the Project and the Mortgagor:

(a) Direct damage "all risks" casualty insurance covering without limitation loss, including, but not limited to, the following:

- (1) Fire,
- (2) Extended Coverage Perils,
- (3) Vandalism and Malicious Mischief, and
- (4) Boiler and Explosion (but only if steam boilers are present),

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on a replacement cost basis in an amount equal to 100% of the full insurable value thereof. "Full insurable value" shall include the actual replacement cost of the Project, including engineering, legal and administrative fees without deduction or depreciation. Coverage on any portion of the Project during construction thereof shall be maintained on a completed value basis during the course of construction.

(b) General liability insurance against liability for (i) claims for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Project or any part thereof, in amounts not less than \$1,000,000 for death of, or bodily injury to, any one person and not less than \$3,000,000 for all personal injuries and deaths resulting from any one accident, and \$2,000,000 for property damage in any one accident, with an endorsement for contractual liability insurance covering the Mortgagor's indemnity obligations to the Issuer, and (ii) liability with respect to the Project under the workers' compensation laws of the State of Illinois to the extent required by law.

(c) Builder's risk insurance in form and substance satisfactory to the Mortgagee.

Copies or certificates of the insurance policies required by this Section shall be delivered by the Mortgagor to the Mortgagee, and, in the case of policies expiring throughout the term of this Mortgage, copies or certificates of any new or renewal policies shall be delivered by the Mortgagor to the Mortgagee.

Policies of insurance provided for in this Section shall name the Mortgagee, the Trustee and the Mortgagor as insureds as their respective interests may appear; provided, however, that the Mortgagee shall also be named as a party insured pursuant to a standard mortgagee clause as its interest may appear and provided further that while the Bonds remain outstanding all casualty insurance proceeds shall be payable as provided in Section 6 hereof.

All insurance required by this Section 4 shall be effected with generally recognized responsible insurance companies authorized to do business in Illinois selected by the Mortgagor and may be by blanket insurance policy or policies. Mortgagor shall cause appropriate provisions to be inserted in each insurance

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policy providing that such policy cannot be terminated or modified, without at least thirty (30) days' prior written notice to the Mortgagee, Mortgagor and Trustee. No claim shall be made and no suit or action at law or in equity shall be brought by the Mortgagee or by anyone claiming by, through or under the Mortgagee, against Mortgagor for any damage to the Project covered by the insurance provided for by this Section 4, however caused, but nothing in this subsection shall diminish Mortgagor's obligation to repair or rebuild to the extent provided in Section 6. The Mortgagor shall have the sole right and responsibility to adjust any loss with the insurer involved and to conduct any negotiations in connection therewith, provided that so long as the Bond remains outstanding and unpaid no settlement of claim in excess of \$100,000 shall be effected without the written consent of the Trustee and the Mortgagee, which consent shall not be unreasonably withheld.

5. The Net Proceeds of the insurance carried pursuant to the provisions of Sections 4(a) and 4(c) hereof shall be received by the Mortgagor (or the Mortgagee in accordance with Section 6 hereof) and the Net Proceeds of insurance carried pursuant to the provisions of Section 4(b) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid.

6. As long as no Event of Default, as set forth in Section 9 hereof, exists, unless the Mortgagor shall have then or theretofore exercised its option to prepay the Note in whole pursuant to the terms of the Loan Agreement, or unless the Mortgagor shall be obligated to prepay the Note pursuant to the terms of the Loan Agreement, if prior to the fulfillment of Mortgagor's obligations under this Mortgage, the Reimbursement Agreement and the other Reimbursement Documents, the Project is destroyed (in whole or in part) or is damaged by fire or other casualty to such extent that the claim for loss under the insurance required to be carried pursuant to Sections 4(a) and 4(c) hereof resulting from such destruction or damage is not greater than \$25,000, the Mortgagor (i) will promptly repair, rebuild or restore the property damaged or destroyed to substantially the same condition as it existed prior to the event causing such damage or destruction; with such changes, alterations and modifications (including the substitution and addition of other property which shall become subject to the lien of this Mortgage) as may be desired by the Mortgagor and as will not impair the value or the character of the Project as a commercial building and (ii) will apply for such purpose so much as may be necessary of any Net Proceeds of insurance

resulting from such claims for losses, as well as any additional moneys of the Mortgagor necessary therefor. All Net proceeds of insurance resulting from such claims for losses not in excess of \$25,000 shall be paid to the Mortgagor.

As long as no Event of Default, as set forth in Section 9 hereof, exists, unless the Mortgagor shall have then or theretofore exercised its option to prepay the Note in whole pursuant to the terms of the Loan Agreement, or unless the Mortgagor shall be obligated to prepay the Note pursuant to the terms of the Loan Agreement, if prior to the fulfillment of Mortgagor's obligations under this Mortgage, the Reimbursement Agreement and the other Reimbursement Documents, the Project is destroyed (in whole or in part) or is damaged by fire or other casualty to such extent that the claim for loss under the insurance required to be carried pursuant to Section 4(a) and Section 4(c) hereof resulting from such destruction or damage is in excess of \$25,000, the Mortgagor shall promptly give written notice thereof to the Trustee and the Mortgagee. All Net Proceeds of insurance resulting from such claims (for losses in excess of \$25,000), to the extent not paid to the Trustee pursuant to the terms of the First Mortgage shall be paid to and held by the Mortgagee in a separate trust account, whereupon (i) the Mortgagor will pay in advance of commencement of any work into such trust account moneys sufficient together with such Net Proceeds of insurance to pay the cost of repair, rebuilding or restoration of the Project and will proceed promptly to repair, rebuild or restore the property damaged or destroyed to substantially the same condition as it existed prior to the event causing such damage or destruction with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Mortgagor and as will not impair the value or the character of the Project as a commercial building and (ii) at the Mortgagor's written direction, the Mortgagee will apply so much as may be necessary of the Net Proceeds of such insurance to payment of the costs of such repair, rebuilding or restoration, on completion thereof, as the work progresses or as a necessary deposit therefor, provided however that the Mortgagee shall not be required to apply any such Net Proceeds for such repair, rebuilding or restoration so long as any default or event of default shall have occurred and be continuing under this Mortgage, the Reimbursement Agreement and the other Reimbursement Documents and may deposit such Net Proceeds into the Bond Fund to prepay the Bonds on the next succeeding prepayment date for which timely notice may be given. Each such direction of the Mortgagor shall be accompanied by a certificate of an architect or engineer or other qualified person (who shall be selected by the Mortgagor and be satisfactory to the Mortgagee) in charge of the rebuilding, repairing or restoring, dated not more than

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thirty days prior to such direction, setting forth in substance that (a) the sum then directed to be applied has been paid by the Mortgagor to, is justly due to, or is required as a deposit by, contractors, subcontractors, materialmen, engineers, architects or other person who shall have rendered services or furnished materials or improvements for the rebuilding, repairing or restoring therein specified; the names of such persons, a brief description of such services or materials or improvements and the several amounts so paid or due to each of such persons; and a statement that none of the costs of the services or materials or improvements described in such certificate has been or is being made the basis of any previous or then pending direction for payment under this Section and that the sum then directed to be applied does not exceed the value of the services or materials or improvements described in the certificate, and (b) that, except for the amount, if any, stated (pursuant to (a) preceding) in such certificate to be due for services or materials or improvements, there is not outstanding any indebtedness known to the persons signing such certificate which is then due for labor, wages, materials, supplies or services in connection with the repairing, rebuilding, or restoring which, if unpaid might become the basis of vendors', mechanics', laborers' or materialmen's liens (other than those being contested as provided in Section 2 hereof), upon the Project or any part thereof. In the event said Net Proceeds are not sufficient to pay in full the costs of such repair, rebuilding or restoration, the Mortgagor will nonetheless complete the work thereof and will pay that portion of the costs thereof in excess of the amount of said Net Proceeds or will advance to the Mortgagee the moneys necessary to complete said work, in which case the Mortgagee will proceed so to complete said work.

Any moneys held by the Mortgagee in the separate trust account under the provisions of the preceding paragraph may, at the written request of the Authorized Borrower Representative, be invested or reinvested by the Mortgagee in the investments enumerated in Section 3.8 of the Loan Agreement. The Mortgagor shall forthwith pay to the Mortgagee for deposit into the trust account the amount of any losses on such investments.

Except as herein otherwise provided, any balance of such Net Proceeds remaining after payment of all the costs of such repair, rebuilding or restoration shall be paid into the Bond Fund. If the Bonds have been fully paid (or provision for the payment thereof has been made in accordance with the Indenture) all Net Proceeds will be paid to the Mortgagor.

The Mortgagor shall not, by reason of the payment of such excess costs whether by direct payment thereof or advances

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to the Mortgagee or Trustee therefor, be entitled to any reimbursement from the Mortgagee, the Trustee, or the holders or owners of the Bonds or any abatement or diminution of the amounts payable under this Mortgage, the Reimbursement Agreement, the other Reimbursement Documents, the Note or the Loan Agreement.

7. Unless the Mortgagor shall then or theretofore exercise its option to prepay the Note in whole pursuant to the terms of the Loan Agreement, or unless the Mortgagor shall be obligated to prepay the Note pursuant to the terms of the Loan Agreement, if prior to the fulfillment of Mortgagor's obligations under this Mortgage, the Reimbursement Agreement and the other Reimbursement Documents, title to, or the temporary use of, the Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Mortgagor shall be obligated to continue to make the payments under the Reimbursement Agreement and the other Reimbursement Documents. To the extent not held by the Trustee in a separate trust account pursuant to the terms of the Indenture, the Mortgagee, the Mortgagor and the Trustee will cause the Net Proceeds received by them or any of them from any award made in such eminent domain proceedings to be paid to and held by the Mortgagee in a separate trust account, to be applied in one or more of the following ways as shall be directed in writing by Mortgagor, provided however that the Mortgagee shall not be required to apply any such Net Proceeds for the purposes set forth in (a) or (b) below (i) so long as any default or event of default shall have occurred and be continuing under this Mortgage, the Reimbursement Agreement, the other Reimbursement Documents, the Loan Agreement or under the Indenture, or (ii) unless the Mortgagor shall have deposited into such trust account moneys sufficient, together with such Net Proceeds, for the restoration or acquisition of other improvements as required by (a) or (b) below:

(a) The restoration of the improvements located on the Real Estate to substantially the same condition as they existed prior to the exercise of the said power of eminent domain, or

(b) The acquisition, by purchase, construction or otherwise, by the Mortgagor of other improvements of equal value and utility suitable for the Mortgagor's operations on or adjacent to the Real Estate (which improvements shall be deemed a part of the Mortgaged Property and subject to the lien of this Mortgage) and available for use and occupancy by the Mortgagor without the payment of any amounts other than as

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provided in the Loan Agreement, the Note and this Mortgage, provided, that such improvements shall be acquired by the Mortgagor subject to no liens or encumbrances not expressly subordinated to the lien of this Mortgage, other than Permitted Encumbrances. The funds shall be disbursed in the same manner set forth in the second paragraph of Section 6 hereof, or

(c) Deposited in the Bond Fund for the redemption of the Bonds; provided that no part of any such condemnation award may be applied for such redemption unless (1) such Net Proceeds are sufficient, together with the other moneys on deposit in the Bond Fund and available therefor, for the redemption, at the earliest date on which the Bonds may thereafter be redeemed, of the outstanding Bonds in accordance with the Indenture, or (2) in the event that less than the entire Bond is to be redeemed, the Mortgagor shall furnish to the Mortgagee and the Trustee a certificate of an Independent Engineer acceptable to the Mortgagee and the Trustee stating (i) that the property forming a part of the Project which was taken by such condemnation proceedings is not essential to the Mortgagor's use or occupancy of the Project, or (ii) that the Buildings have been restored to a condition substantially equivalent as to both value and utility to their condition prior to the taking by such condemnation proceedings or (iii) that improvements have been acquired which are suitable for the Mortgagor's operations at the Project as contemplated by the foregoing subsection (b) of this Section.

Unless the Mortgagor shall have exercised its option to prepay the Note in whole pursuant to the terms of the Loan Agreement, or unless the Mortgagor shall be obligated to prepay the Note pursuant to the terms of the Loan Agreement, within ninety days from the date of entry of a final order in any eminent domain proceedings granting condemnation, the Mortgagor shall direct the Mortgagee and the Trustee in writing as to which of the ways specified in this Section the Mortgagor elects to have the condemnation award applied; provided, however, that if within sixty days of receipt of such Net Proceeds, Mortgagor shall not have elected to apply the Net Proceeds pursuant to (a) or (b) above or shall have failed to comply with the requirements thereof, the Net Proceeds shall be applied as set forth in (c) above. Any balance of the Net Proceeds of the award in such eminent domain proceedings shall be paid into the Bond Fund. If the Bonds has been fully paid (or provision for payment thereof has been made in accordance with the provisions of the Indenture), all Net Proceeds will be

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paid to the Mortgagee to the extent of any outstanding balance owed by the Mortgagor under the Reimbursement Agreement, and then to the Mortgagor.

8. In the event Mortgagor shall fail (i) to keep the Project in safe condition, (ii) to keep the Buildings and all other improvements forming part of the Project in good repair and in good operating condition, and otherwise fulfill the requirements of Section 2(ii) hereof, (iii) to pay or cause to be satisfied and discharged any mechanics' or other liens filed or established against the Project (other than Permitted Encumbrances) not expressly subordinated to the lien of this Mortgage as required by Section 2 hereof, (iv) to pay all taxes or their equivalent, assessments or other governmental or utility charges as required by Section 3 hereof or (v) to maintain the insurance required by Section 4 hereof, the Mortgagee may (but shall be under no obligation to) take such action, including the advancement of amounts of money, as may be necessary to cure such failure, and all amounts so advanced therefor by the Mortgagee shall become an additional obligation of Mortgagor to the Mortgagee, which amounts, together with interest thereon at the rate set forth in the Reimbursement Agreement, Mortgagor agrees to pay on demand. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default hereunder on the part of the Mortgagor. The Mortgagee, in making any payment here authorized, may do so according to any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

9. Mortgagor shall pay when due each item of indebtedness herein mentioned, including the principal of, premium and interest on the Note, Reimbursement Agreement and other Reimbursement Documents according to the terms hereof and thereof. Without notice to Mortgagor, all unpaid indebtedness secured hereby shall, subject to the terms of the Note, the Loan Agreement, the Indenture, the Reimbursement Agreement, the other Reimbursement Documents and this Mortgage, become due and payable upon the occurrence of any one or more of the following events, any one of which shall constitute an Event of Default hereunder:

(a) Default in the due and punctual payment of any installment of principal, premium, if any, or interest under the Note if such default is not cured within 5 Business Days (as defined in the Loan Agreement) following the mailing or delivery to the Mortgagor of notice thereof;

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(b) Foreclosure proceedings or their judicial equivalent shall have been commenced with respect to any lien or subordinate mortgage on the Mortgaged Property (regardless of whether or not a Permitted Encumbrance);

(c) Default in the performance or observance of any of the other covenants, agreements or conditions on the part of the Mortgagor contained in this Mortgage if such default is not cured within 30 days following the mailing or delivery to the Mortgagor of notice thereof; or

(d) An "Event of Default" as defined in the Reimbursement Agreement shall occur.

10. When the indebtedness hereby secured shall become due, whether by acceleration or otherwise, Mortgagee shall have the following rights and remedies:

(a) Mortgagee shall, with respect to any part of the Project constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code of Illinois, including without limitation the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to the Mortgagor at its address above set forth at least 10 days prior to the sale or other event for which such notice is required. The proceeds of any sale or realization upon any such property shall be applied to the payment of the indebtedness hereby secured, after first deducting therefrom any expenses for retaking, selling and otherwise disposing of said property, including reasonable attorneys' fees and legal expenses incurred by Mortgagee in connection therewith. If any deficiency shall result after such application, then Mortgagor shall be and remain liable therefor and shall immediately pay the same to Mortgagee.

(b) Mortgagee may proceed to protect and enforce its rights hereunder by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained

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herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or, if and only if an "Event of Default" (as set forth in Section 9 hereof) has occurred, by the foreclosure of this Mortgage.

(c) Upon the bringing of any suit to foreclose this Mortgage, Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Project, to the extent permitted by applicable law, be entitled to have itself appointed and become mortgagee in possession for all or any part of the Project and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of the Mortgagee as such mortgagee in possession and shall not oppose any such appointment. Any such mortgagee in possession may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Project or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom and income, rents, issues and profits accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(d) In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examinations, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Project, all of which expenditures shall become so much additional indebtedness hereby secured and be immediately due and payable with interest thereon at a rate of interest equal, as of any time, to the rate set forth in the Reimbursement Agreement from the date of expenditure until paid.

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(e) If at any foreclosure proceeding the Project shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, Mortgagee, as judgment creditor, shall be entitled to the entry of a deficiency decree against Mortgagor and against the property of Mortgagor for the amount of such deficiency.

(f) Upon the happening of any "Event of Default" (as set forth in Section 9 hereof), Mortgagor in furtherance of, and not by way of limitation of, the granting clauses of this Mortgage, hereby bargains, sells, assigns and sets over to Mortgagee all rents, issues and profits of the Project, which, whether before or after foreclosure or during the period of redemption, until the full and complete payment of said indebtedness and performance of all obligations, covenants or agreements hereunder, shall accrue and be owing for the use and occupation of the Project, or of any part thereof. For the purpose aforesaid, Mortgagor does hereby constitute and appoint Mortgagee its attorney in fact irrevocably in its name to receive, collect and receipt for all sums due or owing for such use, rents and occupation, as the same may accrue; and out of the amount so collected to pay and discharge all unpaid indebtedness hereby secured. For the purpose aforesaid, Mortgagee may enter and take possession of the Project and manage and operate the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Project. Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Project and used by the Mortgagor in the rental or leasing thereof or any part thereof. The right to enter and take possession of the Project and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expense (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee.

11. Mortgagor shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension, exemption or redemption laws, or any so-called "Moratorium

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Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the sale of the Project, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Project marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Project sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale to which it may be entitled under the laws of the State of Illinois on behalf of Mortgagor and each and every person acquiring any interest in, or title to, the Project described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by law.

12. Mortgagee or its agents shall have the right to inspect the Project at all reasonable times, upon Mortgagee giving reasonable notice of such inspection, and access thereto shall be permitted for that purpose.

13. No remedy or right of Mortgagee shall be exclusive of, but shall be cumulative and in addition to, every other remedy or right now or hereafter existing at law or in equity or by statute or otherwise. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

14. If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Property or the title thereto or the interest of Mortgagee under this Mortgaged Property or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured, Mortgagee shall be reimbursed by Mortgagor, immediately and without demand, for all reasonable costs, charges, expenses and attorneys' fees incurred by it in any such case, and the same shall be secured hereby as a further charge and lien upon the Mortgaged Property.

15. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any

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term of this Mortgage shall be determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the other terms of this Mortgage shall in no way be affected thereby.

16. Whenever any of the Mortgagee, Trustee or the Mortgagor is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of the Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

17. This Mortgage and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the Trustee and by any other party, if any, against which enforcement of the change, waiver, discharge or termination is sought.

18. This Mortgage may not be assigned by the Mortgagor, in whole or in part, to any person or entity in any manner whatsoever (other than by reason of death, legal incapacity or liquidation or by reason of gifts or transfers to members of immediate families or trusts for the benefit of members of immediate families of any transferor or by reason of the transfer of 50% or less of the ownership in the aggregate of CKWA Corporation) except pursuant to the terms imposed by the Mortgagee in the Reimbursement Agreement and with the prior written consent of the Trustee. Any sale, conveyance or transfer of any right, title or interest, legal or equitable, in the Project or any portion thereof or assignment hereof without such prior written consents, shall constitute a default hereunder. The parties hereby acknowledge that it is their intent to amend this Mortgage each time additional parcels of real property described in Exhibit C to the Loan Agreement are acquired by the Mortgagor so that such newly acquired parcels become subject to the lien of this Mortgage, it being the ultimate intention of the parties that on or before April 1, 1986, this Mortgage constitute a second lien on all of the parcels of real property described in Exhibit C to the Loan Agreement; and all parties hereby consent to such amendment.

19. This Mortgage shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects, by the statutes, laws and decisions

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of the State of Illinois. The Mortgagor in order to induce the Mortgagee to accept this Mortgage agrees that all actions on proceedings arising directly, indirectly or otherwise in connection with, out of, related to, or from this Mortgage shall be litigated at the Mortgagee's discretion, only in courts located in the State of Illinois. The Mortgagor hereby consents and submits to the jurisdiction of any state or federal court located within the State of Illinois and waives any right to transfer or change the venue of litigation brought against the Mortgagor hereunder.

20. The Mortgagor shall not obtain secondary financing for the Project except with the prior written consent of the Trustee and the Mortgagee.

21. All notices, certificates and other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows: If to the Mortgagee at 100 North State Street, Room 780, Chicago, Illinois 60602; if to the Mortgagor at 730 North Franklin Street, Suite 301, Chicago, Illinois 60610; and if to the Trustee at 33 North LaSalle Street, Chicago, Illinois 60690, Attention: Corporate Trust Department. A duplicate copy of each notice, certificate or other communication given hereunder by the Mortgagee or the Mortgagor to the other shall also be given to the Trustee. Any party may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

22. Time is of the essence as to the Reimbursement Agreement, the other Reimbursement Documents and this Mortgage.

23. Notwithstanding anything to the contrary set forth in this Mortgage, the Loan Agreement, the Note, the Bonds, the Indenture, the Assignment of Leases or in any other document evidencing or securing the indebtedness and obligations evidenced by the Bonds and the Note (such indebtedness and obligations being herein referred to as the "Indebtedness"), the Mortgagor (except to the extent provided in the Guaranty and except for the obligations set forth in Section 5.5 of the Loan Agreement) shall not be personally liable for payment of any Indebtedness, it being agreed that in the event of default in the payment or performance of any Indebtedness, the Trustee or owner or holder of the Indebtedness shall look solely to the Mortgagor's interest in the Project for the payment of such Indebtedness, and no deficiency judgments shall be taken

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against the Mortgagor, even if the security encumbered by this Mortgage and the Assignment of Leases is insufficient to pay the Indebtedness.

This Mortgage is executed by Chicago Title & Trust Company not personally but as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such trustee (and Chicago Title & Trust Company, hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on the Chicago Title & Trust Company personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained all such liability, if any being expressly waived by every person now or hereafter claiming any right or security hereunder, and that so far as Chicago Title & Trust Company personally is concerned, the legal holder or holders of said Note shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and said Note, provided.

WITNESSETH the signature of Mortgagor the day and year first above written.

WESTER-WAYNE SHOPPING CENTER LTD.,
an Illinois Limited Partnership

CKWA Corporation, General Partner

Attest:

By

[Signature]
Secretary

By

[Signature]
President

CHICAGO TITLE & TRUST COMPANY,
as Trustee under Trust Number
1087670 dated October 25, 1985
and not individually

IN WITNESS WHEREOF, Chicago Title and Trust Company, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Assistant Vice-President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

CHICAGO TITLE AND TRUST COMPANY, As Trustee as aforesaid and not personally,

By

[Signature] ASSISTANT VICE-PRESIDENT

Attest

[Signature] ASSISTANT SECRETARY

Corporate Seal

STATE OF ILLINOIS,
COUNTY OF COOK

SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that the above named Assistant Vice President and Assistant Secretary of the CHICAGO TITLE AND TRUST COMPANY, Grantor, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that said Assistant Secretary, as custodian of the corporate seal of said Company, caused the corporate seal of said Company to be affixed to said instrument as said Assistant Secretary's own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 20 day of DEC 20 1985

[Signature]
Notary Public

Notarial Seal

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SCHEDULE I

LEGAL DESCRIPTION

Lots 32 to 47 both inclusive, in sub-block 11, in the subdivision of Block 13, in Sheffield's Addition to Chicago, also Lot 16 in said sub-block 11 aforesaid except that part thereof lying East of the center-line of North and South alley in said sub-block 11 produced thru said Lot 16, also that part of Lots 11, 12, and 15, in Block 11 of subdivision of said Block 13 of Sheffield's Addition to Chicago which lies West of a North and South line drawn thru the center of said Block 11, said line being equidistant from the East and West line of said Block 11, also that strip of land situated within said sub-block 11, in subdivision of Block 13 in said Sheffield's Addition to Chicago which lies West of the center-line of the alley running North and South thru said sub-block 11 aforesaid, which said alley has been vacated, also that strip of land originally platted as an alley, but since vacated lying between Lots 16 and 47 in said sub-block 11 and lying West of a line produced by extending the center-line of the strip of land originally platted as an alley running North and South through sub-block 11 which has been hereinbefore described, in Cook County, Illinois.

(Excepting therefrom the North 40 feet)

Containing 51,766 Square Feet

In Sec. 32, T.40 N. R.14 E. of the 3rd P.M.; in Cook County, Illinois

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SCHEDULE II

PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, as of any particular time, (i) liens for ad valorem taxes not then delinquent, (ii) utility, access and other easements and rights-of-way, restrictions and exceptions that will not interfere with or impair the operations being conducted or to be conducted with the Mortgaged Property, (iii) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to properties similar in character to the Mortgaged Property and as do not, in the opinion of an independent counsel, materially impair the property affected thereby for the purpose for which it was acquired or is held by the Mortgagor, (iv) municipal ordinances, zoning ordinances and laws that do not, in the opinion of an independent counsel, materially impair the property affected thereby for the purpose for which it was acquired or is held by the Mortgagor, (v) construction liens, undetermined or inchoate liens and charges that have not at the time been filed and perfected in the manner prescribed by law, (vi) any other liens or encumbrances in effect and of record as of the date of recordation of this Mortgage that are subordinated to this Mortgage and the rights and interests of the Mortgagee, the Trustee and the Credit Facility Issuer hereunder, (vii) the Indenture, the Assignment, the Assignment of Leases and this Mortgage, (viii) any Mortgage and Assignment of Leases subordinate to the lien of this Mortgage and the Assignment of Leases, given to secure obligations of the Borrower under its Reimbursement Agreement with the Credit Facility Issuer, and (ix) any Mortgage subordinate to the lien of this Mortgage with respect to which the Credit Facility Issuer gives its written consent.

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