

This Instrument Prepared by: and mailed to
Francis J. Wirtz
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611
Common Address:
115th Street and Homan Avenue
Merrionette Park, IL 60655
P.I.N.: 24-23-409-045

WHEREAS, such loan is made pursuant to an amended and Restated Financing Agreement (the "Financing Agreement")

WHEREAS, such funds have been or will be utilized to pay the cost of the acquisition of the real property described in Exhibit A attached hereto (the "Real Estate") and the construction and equipping of a building to be located thereon; and

WHEREAS, this mortgage is made in consideration of the principal sum of five million one hundred ninety-three thousand five hundred and no/100 dollars (\$5,193,500) loaned by Lender from the proceeds derived from the sale of Lender's Industrial Project Revenue Bonds (Reglarz Project) 1986 Series A, B, C and F (the "Bonds"), and

W I T N E S S E T H :

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made as of August 8, 1989, by Skokie Fashion Square Associates, an Illinois limited partnership ("Mortgagor"), whose address is 9933 North Lawler Avenue, Skokie, Illinois 60077, in favor of the Village of Merrionette Park, Illinois, a municipal corporation organized and existing under the constitution and the laws of the State of Illinois, whose address is 3165 W. 115th Street, Merrionette Park, Illinois 60695, Attention: Village Clerk ("Lender"); and Marine Midland Bank, N.A., whose address is One Marine Midland Center, Buffalo, New York 14240, and any provider of an Alternate Credit Facility, as such term is defined in the hereinafter defined Indenture (Marine Midland Bank, N.A. and any such provider of an Alternate Credit Facility are hereinafter referred to collectively as the "Credit Entity"). Lender and Credit Entity are hereinafter collectively referred to as "Mortgagee."

MORTGAGE AND SECURITY AGREEMENT

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The Real Estate and all buildings and improvements of every kind and description (the "Improvements") now or

GRANTING CLAUSE I

NOW, THEREFORE, the Mortgagor, to secure the payment of the principal of and interest on the Note, the performance of all obligations of the Mortgagor under the Financing Agreement and the payment and performance of all obligations of the Mortgagor under any agreement or agreements (collectively, the "Reimbursement Agreement") pursuant to which the Credit Facility is to be reimbursed for payments made under the Credit Facility Agreement, as such term is defined in the Indenture, and otherwise compensated for entering into the Credit Facility Agreement, which obligations as of the date hereof are set forth in that certain Letter of Credit Reimbursement Agreement dated as of July 1, 1989 by and between the Mortgagor and Marine Midland Bank, N.A., all in accordance with the terms and provisions thereof, and the payment of any other sums in any such document provided for and the observance and performance of the covenants and agreements contained herein or in the Note, the Financing Agreement, the Bonds, the Indenture, the Reimbursement Agreement or in any other instrument or document securing the Note or the Bonds with respect to the loan (the "Loan") evidenced by the Note and the other indebtedness which this Mortgage by its terms secures, and also in consideration of the sum of Ten Dollars in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are 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, interests and privileges described in granting clauses I, II, III and IV below, all of same being collectively referred to herein as the "Mortgaged Property":

dated as of July 1, 1989 between Lender and the Mortgagor, and to evidence its obligation to repay such loan, the Mortgagor has delivered a promissory note dated as of the date hereof payable to the Lender, in the principal amount of Five Million One Hundred Ninety-three Thousand Five Hundred and No/100 Dollars (\$5,193,500) (the "Note"), which together with the Lender's rights in and to the Financing Agreement, and this Mortgage have been assigned by the Lender to Lasalle National Bank (the "Trustee") under an Amended and Restated Indenture of Trust dated as of July 1, 1989 (the "Indenture") between the Lender and the Trustee;

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(b) All rents, income, profits, revenues, royalties, bonuses, rights, accounts, contract rights, general intangibles and benefits under any and all leases or tenancies now existing or hereafter created in all or any portions of the premises or any part

(a) All leases and use agreements of machinery, equipment and other personal property of Mortgagor in the categories hereinabove or hereinafter set forth, under which Mortgagor is the lessee of, or entitled to use, such items, and Mortgagor agrees to execute and deliver to Mortgagee specific separate assignments to Mortgagee of such leases and agreements when requested by Mortgagee; but nothing herein constitutes Mortgagee's consent to any financing of any fixtures or personal property, and nothing herein shall obligate Mortgagee to perform any obligations of Mortgagor under any such leases, or agreements unless it so chooses, which obligations Mortgagor hereby covenants and agrees to well and punctually perform; and

All right, title and interest of Mortgagor now owned or hereafter acquired in and to any and all of the following:

GRANTING CLAUSE III

All materials intended for construction, reconstruction, alteration and repair of the improvements, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Real Estate, and all fixtures of every kind and nature whatsoever now or hereafter owned by Mortgagor and attached to the premises, including, but not limited to, all radiators, awnings, shades, screens, floor coverings, 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 additions to, changes in, renewals or replacements of any of the foregoing or articles in substitution thereof; subject, however, to the Permitted Encumbrances.

GRANTING CLAUSE II

hereafter erected or placed on the Real Estate (the "Real Estate and improvements are hereinafter sometimes referred to collectively as the "Premises"); subject, however, to the Permitted Encumbrances (as hereafter defined).

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thereof, or arising out of the construction, use or operation of the Premises or any parts thereof, and any other equitable or contract rights pertaining to the Premises, with the right to receive and apply the same to said indebtedness, and Mortgagee may demand, sue for and recover such payments but shall not be required to do so, provided, that by acceptance of this Mortgage, Mortgagee agrees, nor as a limitation or condition thereof, but as a personal covenant available only to Mortgagee, that until an Event of Default shall occur, giving Mortgagee the right to foreclose this Mortgage, Mortgagee may collect, receive and enjoy such rents; and

(c) All judgments, awards of damages and settlements hereafter made as a result or in lieu of any taking of the Premises or any part thereof or interest therein under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the improvements thereon or any part thereof or interest therein, including any award for change of grade of streets, including insurance proceeds pursuant to the insurance provisions hereof; and (d) The abstract of title covering the Premises; all insurance policies covering all or any portion of the Premises; and all blueprints, plans, maps, documents, books and records relating to the Premises; and (e) All rights, title and interest of Mortgagee in and to the minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Premises or under or above the same, or any part or parcel thereof; and (f) All water, sanitary and storm sewer systems now or hereafter owned by Mortgagee, its successors or assigns, which are now or hereafter located on, over or upon the Premises or any part thereof including, but not limited to all water mains, service laterals, valves and appurtenances, sanitary sewer lines, sanitary sewer mains, sanitary sewer laterals, sanitary sewer manholes and sanitary sewer appurtenances; and (g) All of Mortgagee's rights to any fictitious, trade, or other names used in connection with the Premises; and (h) All materials and work in process located on the Premises; and

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

1. Definitions. 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:

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

TO HAVE AND TO HOLD the Mortgaged Property and the property, 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 Mortgagee 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, this Mortgage and in every other instrument or document securing the Note and the obligations of the Mortgagor under the Reimbursement Agreement, and every other instrument or document securing its obligations thereunder, expressed to be kept, performed and observed by the 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 upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

All equipment and other tangible personal property now or hereafter owned by the Mortgagor and which is now or at any time hereafter located on the Real Estate.

GRANTING CLAUSE IV

(j) Any and all other estates, tenements, hereditaments, privileges, rights, easements, franchises and appurtenances belonging or in any wise appertaining to the Premises and the reversions, rents, issues, revenues and profits thereof.

(i) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims; and

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(a) Title to Mortgaged Property. The Mortgagor has good and marketable title to an indefeasible fee simple estate in the Premises, subject to no liens, charges or encumbrances except the Permitted Encumbrances, that Mortgagor has good right and lawful authority to mortgage the Premises in the manner and form herein provided or hereafter to be done; that this Mortgage is and shall remain a valid and enforceable

gages as follows:

2. Representations and Covenants of Mortgagor. The Mortgagor represents, covenants and agrees with Mort-

"Real Estate" shall have the meaning provided for in the Recitals hereto.

"Premises" shall have the meaning provided in Granting Clause I hereto.

"Permitted Encumbrances" means, as of any particular time, the liens, claims and encumbrances listed on Exhibit B attached hereto.

"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 attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such gross proceeds.

"Lease" means collectively the lease agreements between Mortgagor as landlord, and certain tenants, for the leasing of space in the Improvements.

"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 Mortgagee or the Mortgagor and who is acceptable to the Mortgagee.

"Improvements" shall have the meaning provided therefor in Granting Clause I hereto.

"Authorized Owner Representative" shall have the meaning provided therefor in the Indenture.

"Advance Rate" means from time to time the rate then equal to that authorized by the State of Illinois to municipalities to levy on overdue tax payments if advanced by the Lender or the Trustee or at the rate set forth in the Reimbursement Agreement for such advances if the credit Entity makes the advance.

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first lien on the Premises subject only to the Permitted Encumbrances; that Mortgagor and its successors and assigns shall warrant and defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the land.

(b) No further Encumbrances. The Mortgagor has and shall maintain title to the Mortgaged Property including any additions or replacements thereto free of all security interests, liens and encumbrances, other than the Permitted Encumbrances, the security interest hereunder and other than as disclosed to and approved by Mortgagor in writing, and Mortgagor has good right to subject such collateral to the security interest hereunder.

(c) Further Assurances. The Mortgagor shall, at the cost of the Mortgagor, and without expense to the Mortgagor, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as the Mortgagor shall from time to time reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagor the Mortgaged Property, and the rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagor, or for carrying out the intention of facilitating the performance of the terms of this mortgage, or for filing, registering or recording this Mortgage and, on demand, shall execute and deliver, and hereby authorizes the Mortgagor to execute in the name of the Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property.

(d) Filings. The Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter from time to time, shall cause this Mortgage and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of the Mortgagor in the Mortgaged Property.

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(h) Repair, Waste, Alterations, etc. Mortgagor agrees that during the term of this mortgage it will at its own expense (i) keep the mortgaged property in safe condition, (ii) keep the improvements and all other improvements, fixtures, and personal property forming part of the mortgaged property 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 complete and restore promptly and in good workmanlike manner any such property which is damaged or destroyed, and pay when due all costs incurred therefor and shall not commit or permit any waste thereof, and (iii) keep the mortgaged property free from all charges, liens and encumbrances not expressly subordinated to the lien hereof, except the permitted encumbrances. Mortgagor may, also at its own expense, make from time to time any additions or alterations to the improvements, with the prior express written approval of Mortgagee in the case of additions or alterations in excess of \$100,000, it may deem

(g) Compliance with Covenants and Restrictions Affecting Premises. The Mortgagor shall abide by any and all covenants and restrictions affecting the premises, and pay when due any assessments pursuant thereto.

(f) Existence of Mortgagor. The Mortgagor, so long as it is owner of the premises, shall do all things necessary to preserve and keep in full force and effect its existence, its franchises, rights and privileges as a legal entity under the laws of the state of its formation, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the mortgaged property or any part thereof.

(e) Payment of Fees and Expenses Related to this Mortgage. The Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this mortgage, any mortgage supplemental hereto, any security instrument with respect to the mortgaged property, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this mortgage, any mortgage supplemental hereto, any security instrument with respect to the collateral or any instrument of further assurance.

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desirable for its business purposes that do not adversely affect the structural integrity of the improvements or substantially reduce their value. Mortgages shall permit the Mortgagee or its agents the opportunity to inspect the Premises, including the interior of any structures, at any reasonable time upon reasonable notice. All such Additions or Alterations so made by the Mortgagee shall become a part of the Mortgaged Property and shall be subject to the lien of this Mortgage. Mortgagee will do or cause to be done everything necessary so that the first lien priority of this Mortgage shall be fully preserved, at the cost of the Mortgagee, without expense to the Mortgagee. The Mortgagee will not permit any mechanics' lien, security interest or other encumbrance to remain against the Premises for labor or materials furnished in connection with any Additions or Alterations so made by it or for any other reason unless payment for such labor or materials is not yet due and payable under the contract in question; provided, however, that the Mortgagee may in good faith contest any mechanics' or other lien filed or established against the Mortgaged Property, 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 Mortgaged Property or the revenues therefrom, and that neither the Mortgaged Property 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 Mortgagee shall deposit with the Mortgagee an amount of cash or letter of credit acceptable to the Mortgagee and equal to at least one hundred fifty per cent (150%) of the contested amount. The Mortgagee will, at the expense of the Mortgagee, including reasonable attorney's fees incurred by Mortgagee, cooperate fully with the Mortgagee in any such contest. In the event that Mortgagee shall fail to pay any of the foregoing items required by this paragraph to be paid by Mortgagee, or perform any of the foregoing obligations required by this paragraph to be performed by Mortgagee, the Mortgagee may (but shall be under no obligation to) pay or perform the same and any amounts so advanced or incurred therefor by the Mortgagee, including reasonable attorney's fees, shall become an additional obligation of Mortgagee to the one making the advancement, which amounts, together with interest thereon at the Advance Rate from the date of such advance, Mortgagee agrees to pay.

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Mortgagee 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 effectually 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 premises or the revenues or receipts therefrom and that neither the premises 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 Mortgagee shall deposit with the Mortgagee an amount of cash or letter of credit acceptable to the Mortgagee and equal to at least one hundred fifty per cent (150%) of the contested amount. In the event that Mortgagee shall fail to pay any of the foregoing items required by this paragraph to be paid by Mortgagee, the Mortgagee may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by the Mortgagee, including reasonable attorney's fees, shall become an additional obligation of Mortgagee to the one making the advancement, which amounts, together with interest

(1) Payment of Taxes, Assessments and other Charges. Mortgagee 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 premises or any interest therein or any equipment or other property installed or brought by the Mortgagee 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 Mortgagee from the premises which, if not paid, will become a lien on the premises 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 Indenture, 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 premises and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the premises.

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(iii) The Mortgagee will, out of the tax and insurance deposits or the pledged account, upon the presentation to the Mortgagee by the Mortgagee of the bills therefor, pay the taxes and premiums or will, upon the presentation of receipted bills therefor, reimburse the Mortgagee for such payments made by the Mortgagee. 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 Mortgagee shall pay to the Mortgagee on demand the amount necessary to make up the deficiency. If the total of the sums deposited hereunder shall exceed the amount of payments actually applied by

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

(i) The Mortgagee shall, at the written request of Mortgagee, 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 Premises and 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 (1) month prior to the date when they are due and payable. The amounts of such deposits shall be based upon the Mortgagee's reasonable estimates as to the amounts of taxes and premiums. Such payments are to be held in an interest bearing trust account. The Mortgagee 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 amount of the taxes and premiums.

(j) Tax and Insurance Escrow. 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:

thereon at the rate of the Advance Rate from the date of such advance Mortgagee agrees to pay.

(iii) Mortgagor shall carry and maintain comprehensive public liability and workmen's compensation insurance and the amount of coverage shall not be less than five Million and No/100 Dollars (\$5,000,000.00) single limit.

(ii) Mortgagor shall keep the mortgaged property now existing or hereinafter erected insured under a one hundred percent (100%) replacement cost form of comprehensive "all risk" insurance policy (containing an agreed upon amount of replacement cost endorsement), including coverage for rent loss or business interruption in an amount at least sufficient to cover debt service and property expenses for a period of twelve (12) months, and flood and earthquake insurance whenever in the opinion of the Mortgagee such protection is necessary. All such insurance shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the then existing policies.

(i) During construction, Mortgagor shall furnish Mortgagee a completed value comprehensive builders risk form of insurance, including a provision insuring against any loss by reason of the theft of building materials.

(k) Insurance. The Mortgagor shall at all times keep the premises, including fixtures and all personal property used or useful in the operation of the premises, continuously insured against such risks as may be reasonably acquired by Mortgagee, paying as the same become due all premiums in respect thereto, including but not limited to the following:

(iv) The sums deposited as provided hereunder are solely for the added protection of Mortgagee and entail no responsibility on Mortgagee's part beyond the allowing of due credit, with interest, for the sums actually received by it. Upon assignment of the Mortgage by the Mortgagee, any such sums on hand shall be turned over to the assignee and any responsibility of the Mortgagee with respect thereto shall terminate.

Mortgagee, such excess may be credited by Mortgagee on subsequent payments to be made by Mortgagee or, at the option of Mortgagee, refunded to Mortgagee or its successors in interest as may appear on the records of Mortgagee.

The Mortgagee shall not take out separate insurance concurrent in form or contributing in the

Mortgagee is hereby irrevocably appointed by the Mortgagee as attorney of the Mortgagee to assign any policy in the event of the foreclosure of this Mortgage or other extinguishment of the indebtedness secured hereby, and Mortgagee shall have no right of reimbursement for premiums unearned at the time of any such assignment.

All insurance required by this paragraph 2(k) shall be effected with generally recognized responsible insurance companies authorized to do business in Illinois selected by the Mortgagee with the prior express written consent of Mortgagee having a Best's Policyholders' Rating of at least "A" and may be by blanket insurance policy or policies. Nothing in this paragraph 2(k) shall diminish Mortgagee's obligation to repair or rebuild to the extent provided in paragraph 2(h). The Mortgagee shall promptly notify Mortgagee of any loss whether covered by insurance or not. The Mortgagee 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 Bonds remain outstanding and unpaid, no settlement of claim in excess of \$100,000 shall be effected without the written consent of the Mortgagee, which consent shall not be unreasonably withheld.

Policies of insurance provided for in this paragraph shall name the Mortgagee as an additional insured; provided, however, that the Mortgagee shall also be named as a party insured pursuant to a standard mortgage clause as its interests may appear and provided further that while the Bonds remain outstanding all casualty insurance proceeds shall be payable as provided in paragraph 2(m) hereof.

The originals of the insurance policies required by this paragraph bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Mortgagee of such payment shall be delivered by the Mortgagee to the Mortgagee, and, in the case of policies expiring throughout the term of this Mortgage, any new or renewal policies shall be delivered by the Mortgagee to the Mortgagee bearing such notation or accompanied by such other evidence. All such policies shall contain provisions requiring that coverage will not be terminated, canceled, amended or materially modified without at least thirty (30) days' prior written notice to the Mortgagee.

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(1) Condemnation. Unless the Mortgagor shall then or thereafter exercise its option to prepay the Note in whole pursuant to the Financing Agreement, or shall be obligated to prepay the Note pursuant to the Financing Agreement, it prior to full payment of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) title to, or the temporary use of, the Premises 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 Financing Agreement, the Note, this Mortgage and the Reimbursement Agreement. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of the Premises or any portion thereof, shall notify Mortgagor of the pendency thereof. The Mortgagor hereby assigns, transfers and sets over unto the Mortgagor all compensation, rights of action, the entire proceeds of any award and any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation or by sale in lieu thereof. Mortgagor may, at its option, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such condemnation,

Unless the Mortgagor shall have then or thereafter exercised its option to prepay the Note in whole pursuant to the Financing Agreement, or shall be obligated to prepay the Note pursuant to the Financing Agreement, it prior to full payment of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) the Mortgagor shall promptly give written notice thereof to the Mortgagor. Mortgagor hereby assigns to Trustee all amounts recoverable under any policy of insurance required hereunder.

event of loss with that required to be maintained hereunder unless Mortgage is included thereon under a standard mortgage clause acceptable to Mortgagor. Mortgagor shall immediately notify Trustee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagor the policy or policies of such insurance. In the event of a foreclosure or other transfer of title of the Premises in lieu of foreclosure, or by purchase of the foreclosure sale, all interest in any insurance policies in force shall pass to Mortgagor, transferee or purchaser as the case may be.

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(B) Deposited in the Bond Fund for the prepayment of the Bonds; provided, that no part of any such Net Proceeds may be applied for such prepayment unless (1) such Net Proceeds are sufficient, together with the other moneys on deposit in the Bond Fund, as such term is defined in the Indenture, and available therefor, for the prepayments, at the earliest date on which the Bonds may thereafter be redeemed, of all of the outstanding Bonds in accordance with the Indenture, or (2) in the event that less than the entire principal amount outstanding of Bonds is to be redeemed, the Mortgagee shall furnish to the Mortgagee and the Trustee a certificate of an independent engineer acceptable to the Mortgagee stating (1) that the property forming a part of the Premises which was damaged by such fire or other casualty is not essential to the Mortgagee's use or occupancy of the Premises, or (ii) that the Premises has been restored to a condition substantially equivalent as to both value and utility to its condition

(A) The restoration of the Premises to substantially the same condition as it existed prior to such destruction or damage or prior to the exercise of such power of eminent domain, or

(m) Proceeds and Awards. All Net Proceeds of insurance and condemnation awards shall be paid to and held by Mortgagee in a separate trust account, to be applied in one or more of the following ways as shall be directed in writing by Mortgagee, with the prior written consent of the Mortgagee, provided however that the Mortgagee shall not be required to apply any such Net Proceeds for the purposes set forth in (A) below (1) so long as any default or event of default shall have occurred and be continuing under the financing Agreement, the Note, this Mortgage, the Indenture or the Reimbursement Agreement, or (ii) unless it is economically feasible to restore the Premises to substantially the same condition as it existed prior to such destruction or damage or to the exercise of such power of eminent domain and the Mortgagee shall have deposited into such trust account moneys sufficient, together with such Net Proceeds, for the restoration as required by (A) below:

to be applied as provided in paragraph 2(m). From any award made in such eminent domain proceedings cause the Net Proceeds received by them or any of them lieu thereof. The Mortgagee and the Mortgagee will taking under the power of eminent domain or sale in

or to the damage by such fire or other casualty prior to the taking by such condemnation proceedings.

Unless the Mortgagee shall have exercised its option to prepay the Note in whole pursuant to the Financing Agreement, or shall be obligated to prepay the Note pursuant to the Financing Agreement, within one hundred twenty days from the date of such fire or other casualty or entry of the final order in any eminent domain proceeding granting condemnation, the Mortgagee shall direct the Mortgagee in writing as to which of the ways specified in this paragraph 2(m) the Mortgagee elects to have the Net Proceeds applied; provided, however, that it within said one hundred twenty days, the Mortgagee shall not have elected to apply the Net Proceeds pursuant to (A) above or shall have failed to comply with the requirements thereof, the balance of the Net Proceeds shall be paid above. Any balance of the Net Proceeds shall be paid to the Credit Entity to the extent of any outstanding balance owed to it under the Reimbursement Agreement and then to the Mortgagee.

In the event it is economically feasible to restore the Improvements and the Mortgagee shall restore the Improvements, the Mortgagee will pay into such trust account monies sufficient together with such Net Proceeds of Insurance to pay the cost of repair, rebuilding or restoration of the Premises and will proceed promptly to repair, rebuild or restore the property damaged or destroyed or 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 Mortgagee and as will not impair the value, operating unity or productive capacity or the character of the Premises and at Mortgagee's written direction, the Trustee 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 the Financing Agreement, the Note, this Mortgage, the Indenture or the Reimbursement Agreement. Each such direction of the Mortgagee shall be accompanied by a certificate of an architect or engineer or other qualified person (who shall be selected by the Mortgagee and be satisfactory to the Mortgagee) in charge of the rebuilding, repairing or

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restoring, dated not more than thirty days prior to such direction, setting forth in substance that (1) the sum then directed to be applied has been paid by the Mortgagee to, is justly due to, or is required as a deposit by, contractors, subcontractors, materialmen, engineers, architects or other persons who shall have rendered services or furnished materials 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 paragraph 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 (2) that, except for the amount, if any, stated (pursuant to (1) 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, supplied 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 paragraph 2(h) hereof), upon the premises or any part thereof. In the event said Net Proceeds are not sufficient to pay that portion of the costs thereof in excess of the amount of said Net Proceeds, Mortgagee 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 Owner Representative, be invested or reinvested by the Mortgagee in the Permitted Investments, as defined in the Indenture. The Mortgagee 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 applied in the same order of

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3. Mortgagee's Right to Perform and Right to Reimbursement. In the event Mortgagor shall fail (i) to keep the Mortgaged Property in safe condition, (ii) to keep the Improvements and all other improvements, fixtures and personal property forming part of the Mortgaged Property in good repair and in good operating condition, and otherwise fulfill the requirements of paragraph 2(h) hereof, (iii) to pay or cause to be satisfied and discharged any mechanics' or other liens filed or established against the premises (other than Permitted Encumbrances) not expressly subordinated to the lien of this Mortgage as required by paragraph 2(h) hereof, (iv) to pay all taxes or their equivalent, assessments or other governmental or utility charges as required by paragraph 2(i) hereof, or (v) to maintain the insurance required by paragraph 2(k) 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 after first giving five (5) days' notice in writing to Mortgagor, and all amounts so advanced therefor by the Mortgagee shall become an

(c) Regulation G. Mortgagor represents and agrees that the proceeds of the Note will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(n) Binding Obligation. The Note, this Mortgage, the Indenture, the Financing Agreement, the Reimbursement Agreement and all other instruments securing the Note or relating to the loan evidenced by the Note are valid, binding and enforceable in accordance with their terms, and the execution and delivery of said instruments and the performance by Mortgagor of its obligations thereunder do not and will not contravene any law or regulation, nor shall they violate or contravene the provisions of any real estate contract, mortgage, deed of trust, joint venture or partnership agreement, banking agreement, credit agreement nor any other agreement, nor any judgment, order or decree affecting Mortgagor or the premises or to which Mortgagor may be bound.

The Mortgagor shall not, by reason of the payment of such excess costs whether by direct payment thereof or advances to the Mortgagee therefore, be entitled to any reimbursement from the Mortgagee, or any abatement or diminution of the amounts payable under this Mortgage, the Note, the Financing Agreement or the Indenture.

priority as would govern in the event of a sale of the Mortgaged Property under paragraph 5(f)).

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(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, provided, that a failure to cure within such 30-day period shall not constitute an Event of Default if Mortgagor shall have commenced to effect such cure and diligently proceeds to cure such default; or

(b) Foreclosure proceedings or other 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);

(a) Default in the due and punctual payment of any installment of principal, premium, if any, or interest under the Note or any amount due and payable under the Reimbursement Agreement, which has not been cured within any applicable cure or grace period;

4. Events of Default. The Mortgagor agrees that time is of the essence hereof in connection with all obligations of the Mortgagor herein or under any other instrument constituting additional security. Mortgagor shall pay when due each item of indebtedness herein mentioned. Without notice to the Mortgagor, all unpaid indebtedness secured hereby, including any prepayment penalty, shall, at the option of Mortgagee, subject to the terms of the Note, the Financing Agreement, the Indenture, the Reimbursement Agreement and this Mortgage, become due and payable, anything in any security document or in this Mortgage to the contrary notwithstanding, upon the occurrence of any one or more of the following events, any one of which shall constitute an Event of Default hereunder:

additional obligation of Mortgagor to the one making the advance, which amounts, together with interest thereon at the rate from time to time payable on the Bonds, 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.

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(b) Enforcement of Mortgage. 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 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 paragraph 4 hereof) has occurred, by the foreclosure of this mortgage, or for the enforcement of any other legal or equitable remedy or otherwise as the mortgagee shall elect.

(a) Property Governed by Uniform Commercial Code. Mortgagee, shall, with respect to any part of the mortgaged property 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, and the right to sell, or otherwise dispose of, the property, or any part thereof. Any requirement of said code for reasonable notification shall be met by mailing written notice to the mortgagor/debtor 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 incurred by mortgagee in connection therewith. If any deficiency shall result after such application, then mortgagee shall be and remain liable therefor and shall immediately pay the same to mortgagee. Mortgagee may, at its option, proceed as if all of such property were real property in accordance herewith. In addition, any sale of the property may be made without having the property present at the sale.

5. Remedies of Mortgagee. Upon any "Event of Default," or when the indebtedness hereby secured shall become due, whether by acceleration or otherwise, Mortgagee, with or without entry, by its agents or attorneys, shall have the following rights and remedies:

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

(f) Assignment of Rents, Possession of Mortgaged Property. Mortgagor in furtherance of, and not by way

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

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

(c) [INTENTIONALLY OMITTED]

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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 Premises, provided, that by acceptance of this Mortgage, Mortgagee agrees, not as a limitation or condition thereof, but as a personal covenant available only to Mortgagee, that until an Event of Default shall occur, giving Mortgagee the right to foreclose this Mortgage, Mortgagee may collect, receive and enjoy such rents. For the purpose aforesaid, Mortgagee 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 by its agents or attorneys may enter and take possession of the Premises and may exclude the Mortgagee, its agents and servants wholly therefrom and manage, operate and control the same and conduct the business thereof either personally or by its superintendents, managers, agents, servants, attorneys or receivers and take any action at Mortgagee's expense which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Premises, including without limitation, by purchase, repairs or construction, the maintenance and restoration of the Premises, the completion of construction of any improvements and in the course of such construction Mortgagee may make such changes in the contemplated improvements as it may deem desirable, and to make all necessary repairs, removals, and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as it may deem advisable. Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Premises and used by the Mortgagee in the rental or leasing thereof or any part thereof. The right to enter and take possession of the Premises 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 as well as just and reasonable compensation for the services of the Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly employed and engaged shall be secured hereby, shall be immediately due and payable and shall accrue interest at the Advance Rate from the date of expenditure until

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(h) Deed in Foreclosure. Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Mortgage, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagee is hereby appointed the true and irrevocable lawful attorney of the Mortgagee, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the mortgaged property and rights so sold and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, the Mortgagee hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. This power of attorney shall be deemed to be a power coupled with an interest and not subject to revocation. Nevertheless, the Mortgagee, if so requested by the Mortgagee, shall rately and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for that purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagee in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity

(g) Termination of Proceedings. In case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case Mortgagee and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee herein provided or arising or existing otherwise than herein set forth shall continue as if no such proceeding had been taken.

Mortgagee shall not be liable to account to Mortgagee for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee.

against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

(j) Acceleration. In the event of any sale made under or by virtue of this, all sums required to be paid by the Mortgagor pursuant to the Note, the Financing Agreement, this Mortgage or the Reimbursement Agreement, immediately thereupon shall, anything therein to the contrary notwithstanding, become due and payable.

(k) Use of Proceeds. The purchase money, proceeds or avals or any sale made by virtue of this section, together with any other sums which then may be held by the Mortgagor under the provisions of this section or otherwise, shall be applied as follows:

(1) First, to the expenses of sale, including reasonable compensation to Mortgagor and its agents and counsel and any costs of any judicial proceedings and all costs incurred by Mortgagor to protect the Mortgaged Property.

(2) Second, to pay the obligations due by the Mortgagor to Lender under the Note and Financing Agreement in an amount equal to principal and interest on the Bonds; provided, that to the extent the credit entity has made any payments pursuant to the credit facility agreement, the credit entity shall be treated as having paid principal and interest on the Bonds and shall be subrogated to all rights of the Lender or its assigns to a prorata share of such proceeds.

(3) Third, to Lender under the Note and Financing Agreement as to any additional amounts remaining due by the Mortgagor to Lender under the Note and Financing Agreement as to any additional amounts remaining due by the Mortgagor to the credit entity.

(4) Next, to the credit entity as to any additional amounts remaining due by Mortgagor or the Mortgagor to the credit entity.

(v) Any remaining amount shall be paid to Mortgagor.

(k) Mortgagor's Right to Purchase. Upon any sale made under or by virtue of this Mortgage, the Mortgagor may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this

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8. Remedies Cumulative, Concurrent and Nonexclusive. No remedy or right of Mortgagee shall be exclusive

7. Right to Inspect. Mortgagee or its agents shall have the right to inspect the Premises, including all interior areas, at all reasonable times and access thereto shall be permitted for that purpose.

6. Waiver of Redemption Rights. Mortgagee shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension, exemption or redemption laws, or any so-called "Mortatorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the sale of the Mortgaged Property, but hereby waives the benefit of such laws, and it Mortgagee does any of the foregoing, such action shall constitute an event of default hereunder. Mortgagee for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety, and waives all rights to require Mortgagee, upon a foreclosure, to first resort to the sale of any portion of the Mortgaged Property which might have been retained by Mortgagee before foreclosing upon and selling any other portion as may be conveyed by Mortgagee subject to this Mortgage. Mortgagee hereby waives any and all rights or redemption from sale to which it may be entitled under the laws of the State of Illinois on behalf of Mortgagee and each and every person acquiring any interest in, or title to, the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by law.

(1) Rights of Tenants. Mortgagee, at Mortgagee's option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be asserted by Mortgagee as a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby.

Mortgagee the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage. The Mortgagee, upon so acquiring the Mortgaged Property, or any part thereof shall be entitled to hold, lease, rent, operate, manage and sell the same in any manner provided by applicable laws.

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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.

9. Reimbursement of Expenditure. 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 Mortgage or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured, Mortgagee shall be reimbursed by Mortgagee, 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, and shall accrue interest at the advance rate from the date of expenditure until paid.

10. Severability. 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 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.

11. Successors and Assigns. Whenever the Mortgagee, or the Mortgagee is referred to herein, 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 Mortgagee, 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; provided, however, that the Lender shall have no further obligation hereunder when its right, title and interest have been assigned to the Trustee pursuant to the Indenture.

12. Amendment and Waiver. This Mortgage and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the Mortgagee, and by any other party, if any, against which

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(c) In the event ownership of the mortgaged property, or any part thereof, becomes vested in a person or persons other than the mortgagor, without the prior written approval of the mortgagee, the mortgagee may, without notice to the mortgagor, waive such default and deal with such successor or successors in interest with reference to this mortgage in the same manner as with the mortgagor, without in any way releasing, discharging or otherwise affecting the liability of the mortgagor hereunder, or the indebtedness hereby secured. No sale of the mortgaged property, no foreclosure on the part of the mortgagee, no extension of the time for the payment of the indebtedness or any change in the terms thereof consented to by the mortgagee shall in any way whatsoever operate to release, discharge, modify, change or affect the original liability of the mortgagor herein, either in whole or in part, nor shall the full force and effect of this lien be altered thereby. Any deed conveying the premises, or any part thereof, shall, at the mortgagee's option, provide that the grantee thereunder assumes all of the grantor's obligations under this mortgage, the Note, the Financing Agreement and the Reimbursement Agreement and all other instruments or

(b) A change in the legal or equitable title of the mortgaged property, or any part thereof, or in the beneficial ownership of the mortgaged property whether or not of record and whether or not for consideration or sale or other disposition of partnership interests, shall be deemed a transfer.

(a) If the mortgaged property or any part thereof or interest therein is sold, assigned, transferred, conveyed, further mortgaged, encumbered, or otherwise alienated (including by contract for deed or installment sale) by the mortgagor (hereinafter "Transferee"), whether voluntarily, or involuntarily or by operation of law, or if the management of the premises is changed, in either or any case without the prior written consent of the mortgagee, except as otherwise permitted under the Reimbursement Agreement, the mortgagee, at its option, may, declare an Event of Default hereunder.

14. Change in Ownership. Mortgagor covenants, acknowledges and agrees to and for the benefit of mortgagee:

13. Assignment of Mortgage. This mortgage may be assigned only pursuant to the written consent of the mortgagee.

enforcement of the change, waiver, discharge or termination is sought.

16. Notices. All notices, certificates and other communications hereunder shall be sufficiently given and shall be effective when delivered personally or sent by overnight delivery service to the, or 3 days after being mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows: If to the Lender, at 3165 W. 115th St., Merrionette Park, Illinois 60695, Attention: Village Clerk; If to the Credit Entity, One Marine Midland Center, Buffalo, New York, 14240, Attention: Richard A. Rickli, Vice President; If to the Mortgagor, 9933 North Lawler Avenue, Skokie, Illinois 60077; If to the

15. Governing Law. 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 of the State of Illinois. The Mortgagor 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.

(d) Mortgagor shall not voluntarily, involuntarily or by operation of law sell, assign, transfer or otherwise dispose of the Mortgaged Property or any interest therein except as expressly permitted above and shall not otherwise do or permit anything to be done or occur that may impair the Mortgaged Property as security hereunder except so long as this Mortgage is not in default, Mortgagor shall be permitted to sell or otherwise dispose of the Mortgaged Property when worn out, inadequate, unserviceable or unnecessary for use in the operation of the Mortgaged Property in the conduct of the business of Mortgagor, upon replacing the same or substituting for the same other Mortgaged Property at least equal in value to the initial value of that disposed of and in such a manner so that said Mortgaged Property shall be subject to the security interest created hereby and so that the security interest of the Mortgagee hereunder shall be a first priority security interest in said Mortgaged Property.

agreements evidencing or securing the repayment of the indebtedness secured hereby. In the event such deed shall not contain such assumption language, the grantee under such deed shall nevertheless be deemed to have assumed such obligations by acquiring the Mortgaged Property or any portion thereof, encumbered by this Mortgage.

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19. Taxes on Mortgage. If at any time before the debt hereby secured is fully paid, any law be enacted, deducting from the value of said real estate, for the purposes of taxation, any lien thereon, or revising or changing in any way the laws now in force for the taxation of mortgages or notes, or the debts secured thereby, for state or

interest and shall not be revocable by Mortgagor. Mortgagor to Mortgagee shall be deemed to be coupled with an power and authority hereby given and granted by the Mortgage. The limitations or limitations established by this Mortgage. The in fee simple of the Premises free and clear of any conditions or such leases had been made by the Mortgagor as the owner deemed desirable to such Mortgage and with like effect as for the rents and upon the terms, conditions and provisions entering into leases of parts or portions of the Premises in fact of the Mortgagor for the purpose of making and Mortgagee shall be deemed to be and shall be the attorney-or decree entered in such judicial proceedings, such mortgage in possession of the Premises pursuant to an order the intention of the Mortgagor that while the Mortgage is a to a decree rendered in such judicial proceedings; it being extend beyond the date of any sale of the Premises pursuant acknowledges and agrees that the term of any such lease may possession may deem desirable, and Mortgagor expressly upon such conditions and provisions as such mortgage in thereof for such rents and for such periods of occupancy and make and enter into leases of the Premises or the portions grants to the Mortgagee, the right, power and authority to proceedings, shall have, and the Mortgagor hereby gives and pursuant to an order or decree entered in such judicial as it shall be mortgage in possession of the Premises possession of the Premises, the Mortgagee during such time the lien hereof, and shall be appointed as a mortgagee in Mortgagee shall institute judicial proceedings to foreclose 18. Mortgagee in Possession. In the event the

17. Time is of the Essence. Time is of the essence of the Financing Agreement, the Note, the Reimbursement Agreement and this Mortgage.

before provided. the mail or with an overnight delivery service as herein- earlier of receipt or the date such notice is deposited in the giving of any notice hereunder shall commence on the communications shall be sent. Any time period provided in es to which subsequent notices, certificates or further given hereunder, designate any further or different address- Trustee and the Credit Entity. The above may, by notice the Mortgagee or the Mortgagor shall also be given to the each notice, certificate or communication given hereunder by Attention: Corporate Trust Department. A duplicate copy of Trustee, at 135 South LaSalle Street, Chicago, Illinois 60690,

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22. Right to Perform. Should Mortgagor fail to make any payment or fail to perform any covenant as herein provided, Mortgagor (but without obligation so to do and without releasing Mortgagor from any obligation hereof) may: make or do the same in the manner and to such extent as Mortgagor may deem necessary to protect the security hereof, Mortgagor being authorized to enter upon the premises for

21. No Waiver. By accepting payment of any sum secured hereby after its due date or altered performance of any obligation secured hereby, Mortgagor shall not waive its right against any person obligated directly or indirectly hereunder or with respect to any indebtedness hereby secured, either to require prompt payment when due of all other sums so secured or to take remedy for failure to make such prompt payment or full performance. No exercise of any right or remedy by Mortgagor hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No delay or omission of the Mortgagor in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. Receipt of rents, awards, and any other monies or evidences thereof, pursuant to the provisions of this Mortgage and any disposition of the same by Mortgagor shall not constitute a waiver of the right of foreclosure by Mortgagor in the event of default or failure of performance by Mortgagor of any covenant or agreement contained herein or in any note secured hereby.

20. Partial Release of Lien, Extension, etc. Without affecting the liability of any other person for the payment of any indebtedness herein mentioned (including Mortgagor should it convey said Mortgaged Property) and without affecting the priority of the lien hereof upon any property not released, Mortgagor may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Mortgaged Property described herein, take or release any other security or make compositions or other arrangements with debtors. Mortgagor may also accept additional security, either concurrently herewith or hereafter, and sell same or otherwise realize thereon either before, concurrently with, or after sale hereunder.

so as to affect adversely this Mortgage or the debt hereby secured, or the owner and holder thereof in respect thereto, then this Mortgage hereby secured shall at the option of said Mortgagor without notice to any party, become immediately due and payable.

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25. Use of Terms. Whenever used in this Mortgage and unless expressly provided otherwise: (i) use of the singular includes the plural, and vice versa; (ii) use of gender includes all genders; (iii) use of the term "include" is always without limitation; (iv) use of the words "should," "must," and "will" have the same legal effect as the use of the word "shall"; (v) the term "days" means consecutive calendar days except that, if the expiration of any time period measured in days occurs on a Saturday, Sunday, or legal holiday, such expiration automatically will be extended to the next day that is not a Saturday, Sunday or legal holiday; (vi) "person" means any natural person or artificial entity having legal capacity; (vii) the term "Mortgage" includes any and all amendments, modifications, extensions, renewals, replacements, substitutions and consolidations now or hereafter made, individually and collectively; (viii) the term "loan documents" means written documents which secure the payment or other performance of the obligations from time evidenced by the Note, the Financing Agreement, the Reimbursement Agreement or this Mortgage; and (ix) "dollars" or "\$" means the currency of the United States of America. All payments to Mortgagee pursuant to any provision of this Mortgage must be made by legal tender of the United States of America. For purposes of determining the accrual of interest pursuant to any

24. Business Purpose. Mortgagee covenants and agrees that the indebtedness secured by this Mortgage, and the proceeds of such indebtedness, are for business purposes only.

23. Limitation on Remedies of Mortgagee. Whenever by the terms of this Mortgage, the Mortgagee has covered to act reasonably, the remedies of the Mortgagee in the event any of the actions of the Mortgagee are deemed to be unreasonable, shall be limited to an injunction or declaratory judgment only and in no case shall a money judgment be demanded or granted.

such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of Mortgagee is prior or superior hereto and, in exercising any such power, incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title and reasonable counsel fee. Any expenditures in connection herewith shall constitute an advance hereunder and shall bear interest at the Advance Rate. Notwithstanding anything herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to Twenty Million and No/100 Dollars (\$20,000,000.00).

56249368

provision of this Mortgage, interest shall be based on a 360-day year, actual number of days elapsed. Mortgage, at any time by reasonable prior notice, may require that any payment will be deemed "made," "paid," or "received" to or by Mortgagee only when reduced to immediately available funds in such bank account as Mortgagee reasonably may designate for such purpose within the United States of America or, if made by legal tender, on the next succeeding banking day following receipt, unless sooner utilized by, or deposited to the credit of, Mortgagee. Part and paragraph headings and subheadings are for indexing purposes only and are not to be used to interpret, construe, apply, or enforce the substantive provisions of this Mortgage.

26. Limitation on Interest. No provision of this Mortgage or other loan documents issued in conjunction herewith shall be deemed to require payment or permit the collection of interest in excess of the maximum permitted by the applicable law. If any excess of interest in such respect is provided in this Mortgage, or in any other such loan documents, the provisions of this Section shall govern and no party obligated to pay the amount of such interest to the extent that it is in excess of the amount permitted by law.

27. Concerning Lender and Mortgagee; Subordination; Priority. Except as otherwise provided in this paragraph, all actions, decisions, and approvals required of or delegated to Mortgagee hereunder shall be taken, made, and given jointly by Lender and the Credit Entity. Notwithstanding the foregoing, so long as the Credit Entity has paid all amounts due to Lender under the Credit Facility Agreement or no amounts are currently due and payable thereunder, any action, decision, or approval required of or delegated to Mortgagee may be taken, made, or given by the Credit Entity alone, and such action, decision or approval shall be binding upon Lender, whether or not Lender joins therein. Lender or its assigns shall not exercise any rights under this Mortgage unless the Credit Entity shall have failed to make timely payment to Lender in the amounts and in the manner prescribed in the Credit Facility Agreement.

28. Limitation on Recourse. Notwithstanding any other provision of this Mortgage, it is understood and agreed that Mortgagee's recourse against Mortgagee with respect to any obligation of Mortgagee under this Mortgage, the Note, or any other document securing the Note shall be limited to the Mortgaged Property.

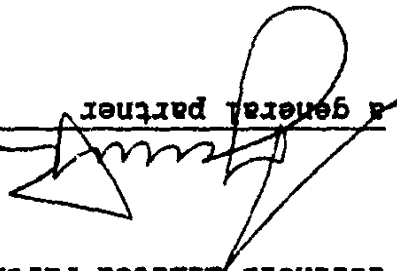
UNOFFICIAL COPY

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Property of Cook County Clerk's Office

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By  a general partner
SKOKIE FASHION SQUARE ASSOCIATES,
an Illinois Limited Partnership

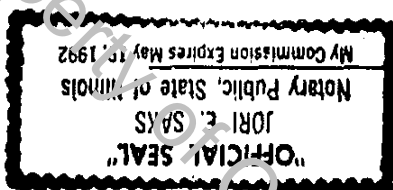
IN WITNESS WHEREOF, Mortgagor has caused this
Mortgage to be executed and sealed, all as of the day and
year first above written.

89364795

FTW9739A

My commission expires:

(S E A L)



Notary Public in and for Cook County, Illinois

Jori E. Saks

August, 1989.

GIVEN under my hand and notarial seal this day of ^{8th}

I, Jori E. Saks, a Notary Public in and for the said county in the state aforesaid, do hereby certify that Seymour Taxman personally known to me to be the same person whose name is subscribed to the foregoing instrument as a general partner of Skokie Fashion Associates, an Illinois limited partnership, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said partnership as aforesaid, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

ACKNOWLEDGEMENT

UNOFFICIAL COPY

8 9 3 0 4 7 9 5

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Property of Cook County Clerk's Office

FTW9739A

THE SOUTH 548.0 FEET OF THE NORTH 588.0 FEET OF THE EAST 1/2 OF THE SOUTHEAST 1/4 LYING NORTH OF THE EAST AND WEST CENTER LINE, EXCEPT THE EAST 693 FEET AND EXCEPT THE WEST 33 FEET IN SECTION 23, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Legal Description

EXHIBIT A

UNOFFICIAL COPY

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Property of Cook County Clerk's Office

FW9812E

1. Real Estate Taxes for 1989 and subsequent years.
2. Easements for Public Utilities as shown on the Plat recorded September 3, 1986 as Document Number 65-390909.
3. Easements for Public Utilities to Illinois Bell recorded as Document Number 89-064425.

PERMITTED ENCUMBRANCES

EXHIBIT B

UNOFFICIAL COPY

8 9 3 6 4 7 9 5

89364795

FJW9739A

Francis J. Wirtz
JENNER & BLOCK
One IBM Plaza Chicago,
Illinois 60611

Prepared by:

Philip M. M...
Village Clerk

ATTEST:

(S E A L)

Dated: Aug 8, 1980

By: *William J. ...*
Village President

VILLAGE OF MERRIONETTE PARK,
ILLINOIS

FOR VALUE RECEIVED the undersigned hereby sells,
assigns and transfers unto Lasalle National Bank, as Trustee
under an Amended and Restated Indenture of Trust dated as of
July 1, 1989 between Lasalle National Bank and the Village
of Merrionette Park, Illinois (the "Village"), without
recourse, all of its right, title and interest in and to
that certain Mortgage and Security Agreement dated as of
Aug 8, 1989, from Skokie Fashion Square Associates, an
Illinois limited partnership, to the Village and Marine
Midland Bank, N.A.

ASSIGNMENT

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3 0 4 7 9 5

80361795

88-364795

DEPT-01 RECORDING

750000 TRAN 2181 08/08/89 16:23:00

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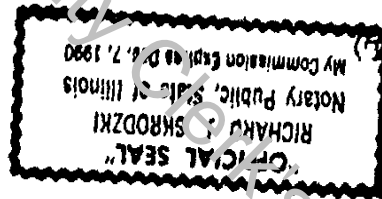
COOK COUNTY RECORDER

[Handwritten signature]

Property of Cook County

FTW9739A

Richard Skrodzki
My commission expires:



Notary Public in and for Cook County, Illinois

[Handwritten signature]

The foregoing instrument was acknowledged before me this 8th day of August, 1989, by Madeline Kocowicki and Shirley Ann who are, respectively, Village President and Village Clerk of the Village of Merrionette Park, Illinois, an Illinois municipal corporation, on behalf of said municipal corporation.

GIVEN under my hand and notarial seal this 8th day of August, 1989.

STATE OF ILLINOIS)
COUNTY OF COOK)