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Cook County Recorder

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Loan No. 10583-001

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**REAL ESTATE MORTGAGE,
SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS,
AND FIXTURE FILING**

THIS REAL ESTATE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING (herein "Instrument") is made as of December 19, 2002, by the Mortgagor, **SOUTH HOLLAND TRUST AND SAVINGS BANK TRUST NO. 12408**, an Illinois trust, whose address is 1400 Torrence Avenue, Suite 203, Calumet City, Illinois 60409 (herein "Borrower"), in favor of the Mortgagee, **GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION**, a Delaware corporation, whose address is Franchise Finance Department, 10900 Northeast Fourth Street, Suite 500, Bellevue, Washington, 98004 (herein "GE CAPITAL").

Borrower, in consideration of the indebtedness herein recited, irrevocably mortgages to GE CAPITAL all of Borrower's right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest in the real property located in the City of Dolton, County of Cook, State of Illinois, commonly known as 1200 East Sibley Boulevard, and more particularly described on Exhibit A attached hereto and incorporated herein including all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, wafer, water rights, and water stock appurtenant to the property (collectively "Premises");

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TOGETHER with all of Borrower's estate, right, title and interest, now owned or hereafter acquired, in:

a. all buildings, structures, improvements, parking areas, landscaping, equipment, fixtures and articles of property now or hereafter erected on, attached to, or used or adapted for use in the operation of the Premises; including but without being limited to, all heating, air conditioning and incinerating apparatus and equipment; all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, water heaters, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, freezers, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, floor coverings, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, draperies, screens, storm sash, awnings, signs, furnishings of public spaces, halls and lobbies, and shrubbery and plants, and including also all interest of any owner of the Premises in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this clause (a) shall be deemed part of the realty covered by this Instrument and not severable wholly or in part without material injury to the freehold of the Premises (all of the foregoing together with replacements and additions thereto are referred to herein as "Improvements"); and

b. all compensation, awards, damages, rights of action and proceeds, including interest thereon and/or the proceeds of any policies of insurance therefor, arising out of or relating to a (i) taking or damaging of the Premises or Improvements thereon by reason of any public or private improvement, condemnation proceeding (including change of grade), sale or transfer in lieu of condemnation, or fire, earthquake or other casualty, or (ii) any injury to or decrease in the value of the Premises or the Improvements for any reason whatsoever;

c. return premiums or other payments upon any insurance any time provided with respect to the Premises, Improvements, and other collateral described herein for the benefit of or naming GE CAPITAL, and refunds or rebates of taxes or assessments on the Premises;

d. all the right, title and interest of Borrower in, to and under all written and oral leases and rental agreements (including extensions, renewals and subleases) all of the foregoing shall be referred to collectively herein as the "Leases") now or hereafter affecting the Premises including, without limitation, all rents, issues, income, profits and other revenues and income therefrom and from the renting, leasing or bailment of Improvements and equipment (collectively, "Rents"), all guaranties of tenants' performance under the Leases, and all rights and claims of any kind that Borrower may have against any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding;

e. plans, specifications, contracts and agreements relating to the design or construction of the Improvements; Borrower's rights under any payment, performance, or other bond in connection with the design or construction of the Improvements; all landscaping and construction materials, supplies, and equipment used or to be used or consumed in connection with construction of the Improvements, whether stored on the Premises or at some other location; and contracts, agreements, and purchase orders with contractors, subcontractors, suppliers, and materialmen incidental to the design or construction of the Improvements;

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f. all contracts, deposit accounts, accounts (including health-care-insurance receivables), instruments (including promissory notes), chattel paper (whether tangible or intangible), letter of credit rights, commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software), rights, claims or causes of action pertaining to or affecting the Premises or the Improvements, including, without limitation, all supporting obligations and any and all proceeds thereof, all options or contracts to acquire other property for use in connection with operation or development of the Premises or Improvements, management contracts, service or supply contracts, deposits, bank accounts, general intangibles (including without limitation trademarks, trade names and symbols), permits, licenses, franchises and certificates, and all commitments or agreements, now or hereafter in existence, intended by the obligor thereof to provide Borrower with proceeds to satisfy the Loan (hereinafter defined) or improve the Premises or Improvements, and the right to receive all proceeds due under such commitments or agreements including refundable deposits and fees;

g. all books, records, surveys, reports and other documents related to the Premises, the Improvements, the Leases, or other items of collateral described herein; and

h. all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein.

All of the foregoing described collateral is exclusive of any equipment, inventory, furniture, furnishings or trade fixtures owned and supplied by tenants of the Premises. The Premises, the Improvements, the Leases and all of the rest of the foregoing property are herein referred to as the "Property."

TO SECURE TO GE CAPITAL (a) the repayment of the indebtedness evidenced by Borrower's note dated of even date herewith in the maximum principal sum of **Eight Hundred Fifty Thousand Dollars (\$850,000.00)**, with interest thereon as set forth in the note, and all renewals, extensions and modifications thereof (herein the "Note") and with a final maturity date of January 1, 2018; (b) the repayment of any future advances, with interest thereon, made by GE CAPITAL to Borrower pursuant to Section 29 hereof (herein "Future Advances"); (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument or to fulfill any of Borrower's obligations hereunder or under any of the Loan Documents (as defined below); (d) the performance of the covenants and agreements of Borrower contained herein or in the other Loan Documents; and (e) the payment of all indebtedness and other sums, with interest thereon, which may be owed under, and the performance of all other obligations and covenants contained in any Other Agreements (hereafter defined), together with any other instrument given to evidence or further secure the payment and performance of any obligation secured thereby. As used in this Instrument the term "Other Agreements" means, collectively, all agreements and instruments between, among or by (i) Borrower or any guarantors of the Loan (hereafter defined) including, in each case, any predecessors-in-interest (collectively, "Borrower Parties"), and (ii) GE CAPITAL or any entity which directly or indirectly controls, is under common control with, or is controlled by GE CAPITAL (collectively, "Lender Entities"), including without limitation promissory notes and guaranties; provided, however, the term "Other Agreements" shall not include the agreements and instruments defined herein as the Loan Documents. The indebtedness and obligations described in clauses (a)-(e) above are collectively referred to herein as the "Indebtedness." The Note, this Instrument, and all other documents evidencing, securing or guarantying the Indebtedness (except any Environmental Indemnity

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Agreement), as the same may be modified or amended from time to time, are referred to herein as the "Loan Documents," and the loan secured by this Instrument is referred to herein as the "Loan." The terms of the Note secured hereby may provide that the interest rate or payment terms or balance due may be indexed, adjusted, renewed, or renegotiated from time to time, and this Instrument shall continue to secure the Note notwithstanding any such indexing, adjustment, renewal or renegotiation. It is the intention of the parties hereto that the Property shall secure all of the Indebtedness presently or hereafter owed, and that the priority of the security interest created by this Instrument for all such Indebtedness shall be controlled by the time of proper recording of this Instrument. This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Property subsequent to the date of recording of this Instrument, that until this Instrument is released, any debt owed GE CAPITAL by Borrower, including advances made subsequent to the recording of this Instrument, shall be secured with the priority afforded this Instrument as recorded.

Notwithstanding the foregoing or any other provisions of this Instrument to the contrary, in the event that: (a) the Loan becomes the subject of a Securitization (hereafter defined), Participation (hereafter defined) or Transfer (hereafter defined), this Instrument shall only secure indebtedness and obligations relating to the Loan and any other loans between any of the Borrower Parties and any of the Lender Entities which are part of the same Loan Pool (hereafter defined) as the Loan; or (b) any loans (other than the Loan) between any of the Borrower Parties and any of the Lender Entities become the subject of a Securitization, Participation or Transfer, this Instrument shall not secure any indebtedness and obligations relating to such loans unless the Loan is part of the same Loan Pool as such loans. As used in this Instrument, the term "Securitization" means one or more sales, dispositions, transfers or assignments by any of the Lender Entities to a special purpose corporation, trust or other entity identified by any of the Lender Entities of notes evidencing obligations to repay secured or unsecured loans owned by any of the Lender Entities (and, to the extent applicable, the subsequent sale, transfer or assignment of such notes to another special purpose corporation, trust or other entity identified by any of the Lender Entities), and the issuance of bonds, certificates, notes or other instruments evidencing interests in pools of such loans, whether in connection with a permanent asset securitization or a sale of loans in anticipation of a permanent asset securitization. Each Securitization shall be undertaken in accordance with all requirements which may be imposed by the investors or the rating agencies involved in each such sale, disposition, transfer or assignment or which may be imposed by applicable securities, tax or other laws or regulations. As used in this Instrument, the term "Participation" means one or more grants by any of the Lender Entities to a third party of a participating interest in notes evidencing obligations to repay secured or unsecured loans owned by any of the Lender Entities or any or all servicing rights with respect thereto. As used in this Instrument, the term "Transfer" means one or more sales, transfers or assignments by any of the Lender Entities to a third party of notes evidencing obligations to repay secured or unsecured loans owned by any of the Lender Entities or any or all servicing rights with respect thereto. As used in this Instrument, the term "Loan Pool" means: (i) in the context of a Securitization, any pool or group of loans that are a part of such Securitization; (ii) in the context of a Transfer, all loans which are sold, transferred or assigned to the same transferee; and (iii) in the context of a Participation, all loans as to which participating interests are granted to the same participant.

Borrower represents and warrants that Borrower has good, marketable and insurable title to, and has the right to grant, convey and assign an indefeasible fee simple estate in, the

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Premises, Improvements, Rents and Leases, and the right to convey the other Property, that the Property is unencumbered except as disclosed in writing to and approved by GE CAPITAL prior to the date hereof, and that Borrower will warrant and forever defend the title to the Property against all claims and demands, subject only to the permitted exceptions set forth on Exhibit B attached hereto.

Borrower represents, warrants, covenants and agrees for the benefit of GE CAPITAL as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the Indebtedness, any prepayment and other charges provided in the Loan Documents and all other sums secured by this Instrument.

2. IMPOUNDS FOR TAXES, INSURANCE AND OTHER CHARGES. Except as is hereinafter provided with respect to the impounding of such payments by GE CAPITAL following the occurrence of an Event of Default (hereinafter defined), Borrower shall pay or cause to be paid when due, prior to delinquency, all annual real estate taxes, insurance premiums, assessments, water and sewer rates, ground rents and other charges (herein "Impositions") payable with respect to the Property. Upon the occurrence of an Event of Default, and at GE CAPITAL'S sole option at any time thereafter, Borrower shall pay in addition to each monthly payment on the Note, one-twelfth of the annual Impositions (as estimated by GE CAPITAL in its sole discretion), to be held by GE CAPITAL without interest to Borrower, for the payment of such Impositions (such payments being referred to herein as "Impounds").

Annually during the term of this Instrument GE CAPITAL shall compare the Impounds collected to the Impositions paid or to be paid.

If the amount of such Impounds held by GE CAPITAL at such time shall exceed the amount deemed necessary by GE CAPITAL to provide for the payment of Impositions as they fall due, if no Event of Default shall have occurred and be continuing, such excess shall be at Borrower's option, either repaid to Borrower or credited to Borrower on the next monthly installment or installments of Impounds due. If at any time the amount of the Impounds held by GE CAPITAL shall be less than the amount deemed necessary by GE CAPITAL to pay Impositions as they fall due, Borrower shall pay to GE CAPITAL any amount necessary to make up the deficiency within thirty (30) days after notice from GE CAPITAL to Borrower requesting payment thereof.

Upon the occurrence of an Event of Default hereunder, GE CAPITAL may apply, in any amount and in any order as GE CAPITAL shall determine in GE CAPITAL'S sole discretion, any Impounds held by GE CAPITAL at the time of application (i) to pay Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, GE CAPITAL shall refund to Borrower any Impounds then held by GE CAPITAL. If requested by GE CAPITAL, Borrower shall promptly furnish to GE CAPITAL all notices of Impositions which become due, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to GE CAPITAL receipts evidencing such payments.

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3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, each complete installment payment received by GE CAPITAL from Borrower under the Note or this Instrument shall be applied by GE CAPITAL first in payment of amounts payable to GE CAPITAL by Borrower under Section 2 hereof, then to interest payable on the Note, then to principal of the Note, and then to interest and principal on any Future Advances in such order as GE CAPITAL, at GE CAPITAL'S sole discretion, shall determine. Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, GE CAPITAL may apply, in any amount and in any order as GE CAPITAL shall determine in GE CAPITAL'S sole discretion, any payments received by GE CAPITAL under the Note or this Instrument. Any partial payment received by GE CAPITAL shall, at GE CAPITAL'S option, be held in a non-interest bearing account until GE CAPITAL receives funds sufficient to equal a complete installment payment.

4. CHARGES, LIENS. Borrower shall promptly discharge or bond off any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without GE CAPITAL'S prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property. If any lien inferior to this Instrument is filed against the Property without GE CAPITAL'S prior written permission and without the consent of Borrower, Borrower shall, within thirty (30) days after receiving notice of the filing of such lien, cause such lien to be released of record or bonded off and deliver evidence of such release or bonding off to GE CAPITAL. Borrower may contest any such lien by appropriate proceedings in good faith, timely filed, provided that enforcement of the lien is stayed pending such contest. GE CAPITAL may require that Borrower post security of such lien.

5. INSURANCE. Borrower shall obtain and maintain the following types of insurance upon and relating to the Property:

a. "All Risk" property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism) in an amount not less than the full replacement value of the Property (with a deductible not to exceed **Five Thousand Dollars (\$5,000.00)**), naming GE CAPITAL under a lender's loss payable endorsement (form 438LEU or equivalent) naming GE CAPITAL as mortgagee and loss payee and including agreed amount, inflation guard, replacement cost and waiver of subrogation endorsements;

b. Commercial general liability insurance in an amount not less than **Two Million Dollars (\$2,000,000.00)** per occurrence and on an occurrence basis, insuring against personal injury, death and property damage and naming GE CAPITAL as additional insured;

c. Business interruption insurance or rent-loss insurance, as applicable, covering loss of rental or other income (including all expenses payable by tenants) for up to twelve (12) months;

d. Boiler and machinery coverage for mechanical and electrical failure;

e. Flood hazard insurance with respect to the Property in amounts not less than the maximum limit of coverage then available with respect to the Property or the amount of the Indebtedness, whichever is less, if the Property is located in an area designated by the Federal Emergency Management Act or is hereafter designated or identified as an area having special flood hazards by the Department of Housing and Urban Development or such other official as

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shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance;

- f. Earthquake insurance, if the Premises are located in an earthquake zone;
- g. Environmental liability insurance in the amount of **One Million Dollars (\$1,000,000.00)**; and
- h. Such other types of insurance or endorsements to existing insurance as may be required from time to time by GE CAPITAL in accordance with its standard commercial lending practices.

Upon the request of GE CAPITAL, Borrower shall increase the coverages under any of the insurance policies required to be maintained hereunder or otherwise modify such policies in accordance with GE CAPITAL'S standard commercial lending practices. All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the state in which the Property is located and rated A:X or better by A.M. Best Company, and shall be in form acceptable to GE CAPITAL. Certificates of all insurance required to be maintained hereunder shall be delivered to GE CAPITAL, along with evidence of payment in full of all premiums required thereunder, contemporaneously with Borrower's execution of this Instrument. All such certificates shall be in form acceptable to GE CAPITAL and shall require the insurance company to give to GE CAPITAL at least thirty (30) days' prior written notice before canceling the policy for any reason or materially amending it. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to GE CAPITAL, along with evidence of the payment in full of all premiums required thereunder, at least fifteen (15) days before termination of the policies being renewed or substituted. If any loss shall occur at any time when Borrower shall be in default hereunder, GE CAPITAL shall be entitled to the benefit of all insurance policies held or maintained by Borrower, to the same extent as if same had been made payable to GE CAPITAL, and upon foreclosure hereunder, GE CAPITAL shall become the owner thereof. GE CAPITAL shall have the right, but not the obligation, to make premium payments, at Borrower's expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Borrower, and such payments shall be accepted by the insurer to prevent same.

If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or destruction of the Property (such event being called a "Loss"), Borrower will give prompt written notice thereof to GE CAPITAL. All insurance proceeds paid or payable in connection with any Loss shall be paid to GE CAPITAL. If (i) no Event of Default has occurred and is continuing hereunder, (ii) Borrower provides evidence satisfactory to GE CAPITAL of (A) its ability to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property (which evidence may include reference to rent-loss or business-interruption insurance), and (B) its ability under applicable zoning requirements (including applicable variances and non-conforming use permits) fully and completely to restore, repair, or replace the Property to its value, condition, and character prior to such Loss, (iii) the available insurance proceeds (together with any deposit posted by Borrower to augment any deficiency in such proceeds) are, in GE CAPITAL'S judgment, sufficient fully and completely to restore, repair or replace the Property, and (iv) Borrower provides evidence satisfactory to GE CAPITAL that none of the tenants of the Property will terminate their Leases as a result of either the Loss or the repairs to or replacement of the Property, Borrower

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shall have the right to apply all insurance proceeds received in connection with such Loss either (A) to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such Loss, or (B) to the payment of the Indebtedness in such order as GE CAPITAL may elect. If an Event of Default has occurred and is continuing hereunder at the time of such Loss, if GE CAPITAL determines that Borrower will be unable to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property, if the available insurance proceeds (together with any deposit posted by Borrower in order to augment any deficiency in such proceeds) are insufficient, in GE CAPITAL'S judgment, to fully and completely restore, repair or replace the Property or if GE CAPITAL has reason to believe that one or more tenants of the Property will terminate its Lease as a result of either the Loss or the repairs to or replacement of the Property, or if less than six (6) months remain until the maturity of the Note, then all of the insurance proceeds payable with respect to such Loss will be applied to the payment of the Indebtedness, or at the option of GE CAPITAL, such insurance proceeds shall be made available to Borrower, and Borrower shall promptly, at Borrower's sole cost and expense and regardless of whether the insurance proceeds shall be sufficient, commence to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition, and character immediately prior to such Loss. Borrower shall diligently prosecute any restoration, repairs or replacement of the Property undertaken by or on behalf of Borrower pursuant to this Section 5. All such work shall be conducted pursuant to written contracts approved by GE CAPITAL in writing, which approval shall not be unreasonably withheld. Notwithstanding anything contained herein to the contrary, in the event the insurance proceeds received by GE CAPITAL following any Loss are insufficient in GE CAPITAL'S judgment to fully and completely restore, repair or replace the Property, and if Borrower has complied with all of the other conditions described in this Section 5, Borrower may elect to restore, repair or replace the Property if it first deposits with GE CAPITAL such additional sums as GE CAPITAL determines are necessary in order to fully and completely restore, repair or replace the Property. In the event any insurance proceeds remain following the restoration, repair or replacement of the Property, such proceeds shall be disbursed to Borrower, to the extent that no Event of Default shall have occurred and be continuing and to the extent any deposit was required to augment a shortfall in proceeds, and thereafter shall be applied to the Indebtedness in such order as GE CAPITAL may elect.

In the event that insurance proceeds shall be made available for the repair, replacement, and/or reconstruction of the Property, GE CAPITAL may require that such proceeds be disbursed through an escrow with a title insurance company acceptable to GE CAPITAL, against Borrower's furnishing to GE CAPITAL such construction contracts, plans, building permits, lien waivers, contractor's affidavits, endorsements to GE CAPITAL'S policy of title insurance, builder's risk insurance, and other documents, instruments, and information as GE CAPITAL may reasonably require in accordance with standard construction-lending practices.

Borrower waives any and all right to claim or recover against GE CAPITAL or its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against under this Section 5.

6. PRESERVATION AND MAINTENANCE OF PROPERTY; FRANCHISES. Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner

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all or any part of the Property to the equivalent of its original condition, or such other condition as GE CAPITAL may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including all Improvements thereon, in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) if all or part of the Property is for rent or lease, then GE CAPITAL, at its option after the occurrence of an Event of Default, may require Borrower to provide for professional management of the Property by a property manager satisfactory to GE CAPITAL pursuant to a contract approved by GE CAPITAL in writing, unless such requirement shall be waived by GE CAPITAL in writing, and (g) shall give notice in writing to GE CAPITAL of and, unless otherwise directed in writing by GE CAPITAL, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of GE CAPITAL hereunder. Neither Borrower nor any tenant or other person, without the written approval of GE CAPITAL, shall remove, demolish or alter any Improvement now existing or hereafter erected on the Premises or any Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

Borrower represents, warrants and covenants that the Property is and shall be in substantial compliance with the Americans with Disabilities Act of 1990 and all of the regulations promulgated thereunder, as the same may be amended from time to time.

Borrower represents and warrants that the Franchise Agreement (the "Franchise Agreement"), between Royce-Bernard Food Group, Inc., an Illinois corporation (the "Operating Company") and Wendy's International, Inc., an Ohio corporation ("Wendy's"), is in effect with respect to the Property, and that Borrower shall ensure that the Operating Company has performed all of its obligations under the Franchise Agreement and is not in default of any of its covenants, agreements, obligations, representations or warranties under the Franchise Agreement. So long as the Indebtedness remains outstanding, it shall be an Event of Default if at any time the Operating Company (a) does not duly and punctually pay and perform all of its obligations, agreements, covenants, representations and warranties under the Franchise Agreement, (b) terminates, amends or modifies the Franchise Agreement without GE CAPITAL'S prior written consent, which shall not be unreasonably withheld, (c) does not deliver to GE CAPITAL, within two (2) business days after Borrower's knowledge thereof, written notification of the nonrenewal of the Franchise Agreement and (d) does not deliver to GE CAPITAL, within two (2) business days after the Operating Company's receipt thereof, complete copies of any notices or other correspondence received by the Operating Company from Wendy's or otherwise with respect to the Franchise Agreement. Borrower acknowledges and agrees that GE CAPITAL shall have the right, but not the duty or obligation, to perform on behalf of the Operating Company all of the covenants, agreements or obligations which the Operating Company, fails to perform under the Franchise Agreement.

7. USE OF PROPERTY. Unless required by applicable law or unless GE CAPITAL has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not, without GE CAPITAL'S prior written consent, (i) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the

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Property), (ii) permit the use of the Property to become a non-conforming use under applicable zoning ordinances, (iii) file any subdivision or parcel map affecting the Property, or (iv) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Property.

8. PROTECTION OF GE CAPITAL'S SECURITY. If an Event of Default shall have occurred and be continuing, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of GE CAPITAL therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then GE CAPITAL at GE CAPITAL'S option may make such appearances, disburse such sums and take such action as GE CAPITAL deems necessary, in its sole discretion, to protect GE CAPITAL'S interest, including, but not limited to, (i) disbursement of attorneys' fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance as provided in Section 5 hereof.

Any amounts disbursed by GE CAPITAL pursuant to this Section 8, with interest thereon, shall become additional Indebtedness of Borrower secured by this Instrument. Unless Borrower and GE CAPITAL agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the highest rate which may be collected from Borrower under applicable law or, at GE CAPITAL'S option, the rate stated in the Note. Borrower hereby covenants and agrees that GE CAPITAL shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Indebtedness. Nothing contained in this Section 8 shall require GE CAPITAL to incur any expense or take any action hereunder.

9. INSPECTION. GE CAPITAL may make or cause to be made reasonable entries upon the Property to inspect the interior and exterior thereof. Except in case of emergency, such inspection shall be with reasonable prior notice and shall in any case be with due regard to rights of tenants.

10. FINANCIAL DATA. Borrower will furnish to GE CAPITAL, and will cause each guarantor of the Indebtedness to furnish to GE CAPITAL on request, within ninety (90) days after the close of each calendar year, (i) balance sheet and profit and loss statements for the immediately preceding calendar year prepared in accordance with generally accepted accounting principles and practices consistently applied and, if GE CAPITAL so requires, accompanied by the annual audit report of an independent certified public accountant reasonably acceptable to GE CAPITAL, (ii) an operating statement for the immediately preceding calendar year together with a complete rent roll and other supporting data reflecting all material information with respect to the operation of the Property and Improvements during the period covered thereby, and (iii) all other financial information and reports that GE CAPITAL may from time to time reasonably request, including, if GE CAPITAL so requires, income tax returns of Borrower and any guarantor of the Indebtedness, and financial statements of any tenant of the Property designated by GE CAPITAL.

11. CONDEMNATION. If the Property, or any part thereof, shall be condemned for any reason, including without limitation fire or earthquake damage, or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Property shall be paid to GE CAPITAL who shall have the right, in its sole and absolute discretion, to apply the amounts so received

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against (a) the costs and expenses of GE CAPITAL, including reasonable attorneys' fees incurred in connection with collection of such amounts, and (b) the balance against the Indebtedness; provided, however, that if (i) no Event of Default shall have occurred and be continuing hereunder, (ii) Borrower provides evidence satisfactory to GE CAPITAL of its ability to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property, (iii) GE CAPITAL determines, in its sole discretion, that the proceeds of such award are sufficient to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such taking (or, if the proceeds of such award are insufficient for such purpose, if Borrower provides additional sums to GE CAPITAL'S satisfaction so that the aggregate of such sums and the proceeds of such award will be sufficient for such purpose), and (iv) Borrower provides evidence satisfactory to GE CAPITAL that none of the tenants of the Property will terminate their lease agreements as a result of either the condemnation or taking or the repairs to or replacement of the Property, the proceeds of such award, together with additional sums provided by Borrower, shall be placed in a separate account for the benefit of GE CAPITAL and Borrower to be used to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such taking. All work to be performed in connection therewith shall be pursuant to a written contract therefor, which contract shall be subject to the prior approval of GE CAPITAL. To the extent that any funds remain after the Property has been so restored and repaired, the same shall be applied against the Indebtedness in such order as GE CAPITAL may elect. To enforce its rights hereunder, GE CAPITAL shall be entitled to participate in and control any condemnation proceedings and to be represented therein by counsel of its own choice, and Borrower will deliver, or cause to be delivered to GE CAPITAL such instruments as may be requested by it from time to time to permit such participation. In the event GE CAPITAL, as a result of any such judgment, decree or award, has reason to believe that the payment or performance of any of the Indebtedness is impaired, GE CAPITAL may declare all of the Indebtedness immediately due and payable.

12. BORROWER AND LIEN NOT RELEASED. From time to time, GE CAPITAL may, at GE CAPITAL'S option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on GE CAPITAL'S part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of the Indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of the Indebtedness, accept an extension or modification or renewal note or notes therefor, modify the terms and time of payment of the Indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or decrease the amount of the monthly installments payable thereunder. Any actions taken by GE CAPITAL pursuant to the terms of this Section 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness, and shall not affect the lien or priority of the lien hereof on the Property. Borrower shall pay GE CAPITAL a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at GE CAPITAL'S option, for any such action if taken at Borrower's request.

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13. FORBEARANCE BY GE CAPITAL NOT A WAIVER. Any forbearance by GE CAPITAL in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by GE CAPITAL of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of GE CAPITAL'S right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by GE CAPITAL shall not be a waiver of GE CAPITAL'S right to accelerate the maturity of the Indebtedness secured by this Instrument, nor shall GE CAPITAL'S receipt of any awards, proceeds or damages under Sections 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

14. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants and conveys to GE CAPITAL a first and prior security interest in all of the Property that constitutes personalty ("Collateral," for purposes of this Section 14), whether now owned or hereafter acquired. Borrower agrees that GE CAPITAL may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Collateral. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower shall execute and deliver to GE CAPITAL, upon GE CAPITAL'S request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as GE CAPITAL may require to perfect a security interest with respect to the foregoing items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements GE CAPITAL may require.

Borrower expressly warrants and covenants:

a. Except for the security interest granted hereby, Borrower is the owner of the Collateral free from any lien, security interest or encumbrance. Borrower understands that any further encumbrance of the Collateral is prohibited. Borrower shall defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

b. The Collateral is used or bought primarily for use in the business of Borrower and not for consumer purposes.

c. Borrower's business address is as stated above. The Collateral is located at or on or is used or owned for or in connection with the Premises and other Property.

d. Borrower shall promptly notify GE CAPITAL of any change in the location of the Collateral or any change in Borrower's principal place of business.

e. Borrower shall pay when due, prior to delinquency, all taxes and assessments of every nature which may be levied or assessed against the Collateral.

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f. Except for liens in favor of GE CAPITAL, without GE CAPITAL'S prior written consent, Borrower shall not permit or allow any lien, security interest or encumbrance whatsoever upon the Collateral and shall not permit the Collateral to be attached or replevied. GE CAPITAL'S consent to a junior lien by an entity owned by, or under common control with, GE CAPITAL shall not be unreasonably withheld.

g. The Collateral is in good condition and Borrower shall keep the Collateral in good condition (reasonable wear and tear excepted) and from time to time, forthwith, replace and repair all such parts of the Collateral as may be broken, worn out, or damaged without allowing any lien to be created upon the Collateral on account of such replacement or repairs. GE CAPITAL may examine and inspect the Collateral at any time, wherever located, subject to reasonable prior notice.

h. Borrower will not use the Collateral in violation of any applicable statutes, regulations or ordinances.

i. Notwithstanding anything else contained herein to the contrary, if any personal property for use on the Property will be leased to Borrower, GE CAPITAL'S interest therein shall be subordinate to lessor's interest therein.

Until the occurrence of an Event of Default, Borrower may have possession of the Collateral and use it in any lawful manner, and upon the occurrence of an Event of Default GE CAPITAL shall have the immediate right to the possession of the Collateral.

Upon the occurrence of an Event of Default, GE CAPITAL shall have the remedies of a secured party under the Uniform Commercial Code, and GE CAPITAL may also invoke the remedies provided in Section 26 of this Instrument as to such items. In exercising any of said remedies GE CAPITAL may proceed against the items of real property and any items of Collateral specified above separately or together and in any order whatsoever, without in any way affecting the availability of GE CAPITAL'S remedies under the Uniform Commercial Code or of the remedies provided in Section 26 of this Instrument. Within ten (10) days following any request therefor by GE CAPITAL, Borrower shall prepare and deliver to GE CAPITAL a written inventory specifically listing all of the Collateral covered by the security interest herein granted, which inventory shall be certified by Borrower as being true, correct, and complete.

15. LEASES OF THE PROPERTY. Borrower shall comply with and observe Borrower's obligations as landlord under all Leases of the Property or any part thereof. All Leases now or hereafter entered into will be in form and substance subject to the approval of GE CAPITAL. Borrower shall pay all attorneys' fees incurred by GE CAPITAL in reviewing any Lease or proposed Lease. All Leases of the Property shall specifically provide that such Leases are subordinate to this Instrument; that the tenant attorns to GE CAPITAL, such attornment to be effective upon GE CAPITAL'S acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as GE CAPITAL may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that GE CAPITAL may, at GE CAPITAL'S option, accept or reject such attornments (except as to third-party credit tenants unrelated to Borrower, as to which GE CAPITAL shall grant a non-disturbance provision. Borrower shall not, without GE CAPITAL'S written consent, request or consent to the subordination of any Lease of all or any part of the Property to any lien subordinate to this Instrument. If Borrower

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becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) immediately notify GE CAPITAL thereof in writing and of the amount of said set-offs, and (iii) within ten (10) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such setoff and as shall assure that Rents thereafter due shall continue to be payable without set-off or deduction. Upon GE CAPITAL'S receipt of notice of the occurrence of any default or violation by Borrower of any of its obligations under the Leases, GE CAPITAL shall have the immediate right, but not the duty or obligation, without prior written notice to Borrower or to any third party, to enter upon the Property and to take such actions as GE CAPITAL may deem necessary to cure the default or violation by Borrower under the Leases. The costs incurred by GE CAPITAL in taking any such actions pursuant to this paragraph shall become part of the Indebtedness, shall bear interest at the rate provided in the Note, and shall be payable by Borrower to GE CAPITAL on demand. GE CAPITAL shall have no liability to Borrower or to any third party for any actions taken by GE CAPITAL or not taken pursuant to this paragraph.

16. REMEDIES CUMULATIVE. Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

17. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; ASSUMPTION. GE CAPITAL may, at its option, declare all sums secured by this Instrument to be immediately due and payable, and GE CAPITAL may invoke any remedies permitted by Section 26 of this Instrument, if title to the Property is changed without the prior written consent of GE CAPITAL, which consent shall be at GE CAPITAL'S sole discretion. Any transfer of any interest in the Property or in the income therefrom, by sale, lease (except for Leases to tenants in the ordinary course of managing income property which are approved by GE CAPITAL pursuant to Section 15 of this Instrument), contract, mortgage, deed of trust, further encumbrance or otherwise (including any such transfers as security for additional financing of the Property), and any change in the ownership interests in Borrower (including any transfer, pledge, assignment, or hypothecation of, or other change in, the ownership interests in Borrower or any legal entities which comprise or control Borrower), shall be considered a change of title, except transfers and changes in ownership by devise or descent. Leasehold mortgages and collateral assignments of any Lease of the Property given by tenants of the Property are prohibited without the prior written consent of GE CAPITAL, which consent may be withheld in GE CAPITAL'S sole discretion. Notwithstanding the foregoing, additional but subordinate mortgages may be granted to GE CAPITAL and, subject to the prior written consent of GE CAPITAL, which consent may be withheld in GE CAPITAL'S sole discretion, may be granted to entities owned by or under common control with GE CAPITAL.

GE CAPITAL shall have the right to condition its consent to any proposed sale or transfer described in this Section 17 upon, among other things, GE CAPITAL'S approval of the transferee's creditworthiness and management ability and the transferee's execution, prior to the sale or transfer, of a written assumption agreement containing such terms as GE CAPITAL may require, including, if required by GE CAPITAL, the imposition of an assumption fee of one percent (1%) of the then outstanding balance of the Indebtedness. Consent by GE CAPITAL to one transfer of the Property shall not constitute consent to subsequent transfers or waiver of the provisions of

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this Section 17. No transfer by Borrower shall relieve Borrower of liability for payment of the Indebtedness, unless GE CAPITAL shall otherwise agree in writing at the time of such transfer.

Borrower shall pay any recording tax, recording cost, title insurance premium, attorneys' fees, or other third-party expenses incurred by GE CAPITAL in connection with any transfer, whether or not consent is required.

The transfer to and assumption by an approved transferee of the Borrower's obligations under the Loan shall not constitute a "prepayment" of the Loan requiring payment of a "Prepayment Premium" (as defined in the Note).

18. NOTICE. Except for any notice required under applicable law to be given in another manner, any and all notices, elections, demands, or requests permitted or required to be made under this instrument or under the Note shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar nationally recognized delivery service requiring a receipt, to the other party at the address stated above, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) business days after the date of mailing by registered or certified mail, (iii) one (1) business day after the date of sending via overnight delivery by Express Mail, Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal by or on behalf of the addressee upon presentation for delivery of a properly addressed notice).

19. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, successors and assigns of GE CAPITAL and Borrower, subject to the provisions of Section 17 hereof. If Borrower is comprised of more than one person or entity, whether as individuals, partners, partnerships, limited liability companies, or corporations, each such person or entity shall be jointly and severally liable for Borrower's obligations hereunder, subject to the limitations on recourse set forth in the Note. In exercising any rights hereunder or taking any actions provided for herein, GE CAPITAL may act through its employees, agents or independent contractors as authorized by GE CAPITAL. The captions and headings of the sections of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

20. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

21. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Property held by GE CAPITAL or by any other party, GE CAPITAL shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. GE CAPITAL shall have the right to determine the order in which any or all portions of the Indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual

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or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

22. HAZARDOUS WASTE. GE CAPITAL has obtained and Borrower has reviewed a Phase I Environmental Assessment dated December 4, 2002, prepared by Environmental Data Resources, Inc., and Borrower has furnished to GE CAPITAL an Environmental Questionnaire dated August 20, 2002 (collectively, the "Report"). Except as disclosed to GE CAPITAL in the Report, Borrower has received no notification of any kind suggesting that the Property or any adjacent property is or may be contaminated with any hazardous waste or materials or is or may be required to be cleaned up in accordance with any applicable law or regulation; and Borrower further represents and warrants that, except as previously disclosed to GE CAPITAL in writing, to the best of its knowledge as of the date hereof, there are no hazardous waste or materials located in, on or under the Property or any adjacent property, or incorporated in any Improvements, nor has the Property or any adjacent property ever been used as a landfill or a waste disposal site, or a manufacturing, handling, storage, distribution or disposal facility for hazardous waste or materials, except for reasonable quantities of ordinary office supplies, cleaning supplies, insecticides, pesticides, and paint used in the normal operation and maintenance of the Property, provided that the same are used, stored, handled, and disposed of in accordance with applicable laws ("Permitted Substances"). As used herein, the term "hazardous waste or materials" includes any substance or material defined in or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any federal, state or local statute, regulation or ordinance now or hereafter in effect. Borrower shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the Property or any adjacent property, or incorporated in any Improvements, at Borrower's expense. In the event that GE CAPITAL at any time has reason to believe that the Property is not free of all hazardous waste or materials (other than Permitted Substances) or that Borrower has violated any applicable environmental law with respect to the Property, then immediately upon request by GE CAPITAL, Borrower shall promptly order, diligently pursue obtaining, and furnish to GE CAPITAL, at Borrower's sole cost and expense, an environmental audit and inspection of the Property from an expert satisfactory to GE CAPITAL. In the event that Borrower fails to immediately obtain such audit or inspection, GE CAPITAL or its agents may perform or obtain such audit or inspection at Borrower's sole cost and expense. GE CAPITAL may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Property, and whether or not Borrower has actual knowledge of the existence of hazardous waste or materials on the Property or any adjacent property as of the date hereof, Borrower shall reimburse GE CAPITAL as provided in Section 23 below for the full amount of all costs and expenses incurred by GE CAPITAL prior to GE CAPITAL acquiring title to the Property through foreclosure or acceptance of a deed in lieu of foreclosure, in connection with such compliance activities. Neither this provision nor any of the other Loan Documents shall operate to put GE CAPITAL in the position of an owner of the Property prior to any acquisition of the Property by GE CAPITAL. The rights granted to GE CAPITAL herein and in the other Loan Documents are granted solely for the protection of GE CAPITAL'S lien and security interest covering the Property, and do not grant to GE CAPITAL the right to control Borrower's actions, decisions or policies regarding hazardous waste or materials.

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23. ADVANCES, COSTS AND EXPENSES. Borrower shall pay within ten (10) days after written demand from GE CAPITAL all sums advanced by GE CAPITAL and all costs and expenses incurred by GE CAPITAL in taking any actions pursuant to the Loan Documents including attorneys' fees and disbursements, accountants' fees, appraisal and inspection fees and the costs for title reports and guaranties, together with interest thereon at the rate applicable under the Note after an Event of Default from the date such costs were advanced or incurred. All such costs and expenses incurred by GE CAPITAL, and advances made, shall constitute advances under this Instrument to protect the Property and shall be secured by and have the same priority as the lien of this Instrument. If Borrower fails to pay any such advances, costs and expenses and interest thereon, GE CAPITAL may apply any undisbursed Loan proceeds to pay the same, and, without foreclosing the lien of this Instrument, may at its option commence an independent action against Borrower for the recovery of the costs, expenses and/or advances, with interest, together with costs of suit, costs of title reports and guaranty of title, disbursements of counsel and reasonable attorneys' fees incurred therein or in any appeal therefrom.

24. ASSIGNMENT OF LEASES AND RENTS. Borrower, for good and valuable consideration, the receipt of which is hereby acknowledged, to secure the Indebtedness, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto GE CAPITAL all right, title and interest of Borrower in, to and under the Leases of the Property, whether now in existence or hereafter entered into, and all guaranties, amendments, extensions and renewals of said Leases and any of them, and all Rents which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Property.

Borrower represents, warrants, covenants and agrees with GE CAPITAL as follows:

a. The sole ownership of the entire lessor's interest in the Leases is vested in Borrower, and Borrower has not, and shall not, perform any acts or execute any other instruments which might prevent GE CAPITAL from fully exercising its rights with respect to the Leases under any of the terms, covenants and conditions of this Instrument.

b. The Leases are and shall be valid and enforceable in accordance with their terms and have not been and shall not be altered, modified, amended, terminated, canceled, renewed or surrendered except as approved in writing by GE CAPITAL, which approval shall not be unreasonably withheld. The terms and conditions of the Leases have not been and shall not be waived in any manner whatsoever except as approved in writing by GE CAPITAL, which approval shall not be unreasonably withheld.

c. Borrower shall not decrease the term or the amount of rent payable under any Lease without prior written notice to GE CAPITAL and GE CAPITAL'S consent.

d. There are no defaults now existing under any of the Leases and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.

e. Borrower shall give prompt written notice to GE CAPITAL of any notice received by Borrower claiming that a default has occurred under any of the Leases on the part of Borrower, together with a complete copy of any such notice.

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f. Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the Leases.

g. Borrower will not permit any Lease to become subordinate to any lien other than the lien of this Instrument.

The assignment made hereunder is an absolute, present assignment from Borrower to GE CAPITAL, effective immediately, and is not merely an assignment for security purposes but is irrevocable by Borrower so long as the Indebtedness remains outstanding. Notwithstanding the foregoing, until a notice is sent to the Borrower in writing that an Event of Default (as defined below) has occurred under the terms and conditions of the Note or any instrument constituting security for the Note (which notice is hereafter called a "Notice"), Borrower is granted a license to receive, collect and enjoy the Rents accruing from the Property.

If an Event of Default shall occur, GE CAPITAL may, at its option, after service of a Notice, receive and collect all such Rents as they become due, from the Property. GE CAPITAL shall thereafter continue to receive and collect all such Rents, until GE CAPITAL shall otherwise agree in writing. All sums received by Borrower after service of such Notice shall be deemed received in trust and shall be immediately turned over to GE CAPITAL.

Borrower hereby irrevocably appoints GE CAPITAL its true and lawful attorney-in-fact with power of substitution and with full power for GE CAPITAL in its own name and capacity or in the name and capacity of Borrower, from and after service of Notice, to demand, collect, receive and give complete acquittances for any and all Rents accruing from the Property, either in its own name or in the name of Borrower or otherwise which GE CAPITAL may deem necessary or desirable in order to collect and enforce the payment of the Rents and to demand, correct, receive, endorse, and deposit all checks, drafts, money orders or notes given in payment of such Rents. Such appointment is coupled with an interest and is irrevocable. GE CAPITAL shall not be liable for or prejudiced by any loss of any note, checks, drafts, etc., unless such loss shall have been found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of GE CAPITAL.

GE CAPITAL shall apply the Rents received from Borrower's lessees, to accrued interest and principal under the Note. If no Event of Default remains uncured, amounts received in excess of the aggregate monthly payment due under the Note shall be remitted to Borrower in a timely manner. Nothing contained herein shall be construed to constitute GE CAPITAL as a mortgagee-in-possession in absence of its physically taking possession of the Property.

Borrower also hereby irrevocably appoints GE CAPITAL as its true and lawful attorney-in-fact to appear in any state or federal bankruptcy, insolvency, or reorganization proceeding in any state or federal court involving any of the tenants of the Leases. Lessees of the Property are hereby expressly authorized and directed, from and after service of a Notice to pay any and all amounts due Borrower pursuant to the Leases to GE CAPITAL or such nominee as GE CAPITAL may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

If an Event of Default shall occur, GE CAPITAL is hereby vested with full power from and after service of a Notice to use all measures, legal and equitable, deemed by it necessary or

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proper to enforce the assignment granted hereunder and to collect the Rents assigned hereunder, including the right of GE CAPITAL or its designee, to enter upon the Property, or any part thereof, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Borrower relating thereto, and may exclude the Borrower, its agents and servants, wholly therefrom. Borrower hereby grants full power and authority to GE CAPITAL to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, with full power to use and apply all of the Rents and other income herein assigned to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Borrower to GE CAPITAL, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the Improvements on the Premises or of making the same rentable, reasonable attorneys' fees incurred in connection with the enforcement of the assignment granted hereunder, and of principal and interest payments due from Borrower to GE CAPITAL on the Note and this Instrument, all in such order as GE CAPITAL may determine. GE CAPITAL shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Borrower in the leases. It is further understood that the assignment granted hereunder shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon GE CAPITAL, nor shall it operate to make GE CAPITAL liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger, unless the same shall have been found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of GE CAPITAL.

25. DEFAULT. The following shall each constitute an event of default ("Event of Default"):

- a. The occurrence of an "Event of Default" under the Note; or
- b. Failure of Borrower within the time required by this Instrument to make any payment for taxes, insurance or for reserves for such payments, or any other payment necessary to prevent filing of or discharge of any lien, and such failure shall continue for a period of ten (10) days after written notice is given to Borrower by GE CAPITAL specifying such failure; or
- c. Failure by any of the Borrower Parties to observe or perform any of the obligations to any of the Lender Entities on or with respect to any of the Other Agreements, following the giving of any notice required thereunder and/or the expiration of any applicable period of grace provided thereby; or
- d. Failure of Borrower to make any payment or perform any obligation under any superior liens or encumbrances on the Property, within the time required thereunder, or commencement of any suit or other action to foreclose any superior liens or encumbrances; or

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e. Failure by Borrower to observe or perform any of its obligations under any of the Leases, following the giving of any notice required thereunder and/or the expiration of any applicable period of grace provided thereby; or

f. The Property is transferred or any agreement to transfer any part or interest in the Property in any manner whatsoever is made or entered into without the prior written consent of GE CAPITAL, except as specifically allowed under this Instrument, including without limitation creating or allowing any liens on the Property or leasing any portion of the Property; or

g. Filing by Borrower of a voluntary petition in bankruptcy or filing by Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking, consenting to, or acquiescing by Borrower in the appointment of any trustee, receiver, custodian, conservator or liquidator for Borrower, any part of the Property, or any of the Rents of the Property, or the making by Borrower of any general assignment for the benefit of creditors, or the inability of or failure by Borrower to pay its debts generally as they become due, or the insolvency on a balance sheet basis or business failure of Borrower, or the making or suffering of a preference within the meaning of federal bankruptcy law or the making of a fraudulent transfer under applicable federal or state law, or concealment by Borrower of any of its property in fraud of creditors, or the imposition of a lien upon any of the property of Borrower which is not discharged in the manner permitted by Section 4 of this Instrument, or the giving of notice by Borrower to any governmental body of insolvency or suspension of operations; or

h. Filing of a petition against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debts, or the appointment of any trustee, receiver, custodian, conservator or liquidator of Borrower, of any part of the Property or of any of the Rents of the Property, unless such petition shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition; or

i. The institution of any proceeding for the dissolution or termination of Borrower voluntarily, involuntarily, or by operation of law, unless such proceedings shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment, or decree for relief, or the death or incompetence of Borrower; or

j. A material adverse change occurs in the assets, liabilities or net worth of Borrower from the assets, liabilities or net worth of Borrower previously disclosed to GE CAPITAL; or

k. Any warranty, representation or statement furnished to GE CAPITAL by or on behalf of Borrower under the Note, this Instrument, any of the other Loan Documents or the Environmental Indemnity Agreement, shall prove to have been false or misleading in any material respect when made; or

l. Failure of Borrower to observe or perform any other covenant or condition contained in this Instrument, which default shall continue for thirty (30) days after notice is given to Borrower specifying the nature of the failure, or if the default cannot be cured within such cure

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period, Borrower fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions. No notice of default and no opportunity to cure shall be required with respect to defaults under Section 17 of this Instrument or if during the prior twelve (12) months GE CAPITAL has already sent a notice to Borrower concerning default in performance of the same obligation; or

m. Failure of Borrower to observe or perform any other obligation under any Loan Document (other than the Note or this Instrument) or the Environmental Indemnity Agreement when such observance or performance is due, and such failure shall continue beyond the applicable cure period set forth in such Loan Document, or if the default cannot be cured within such applicable cure period, Borrower fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions. No notice of default and no opportunity to cure shall be required if during the prior twelve (12) months GE CAPITAL has already sent a notice to Borrower concerning default in performance of the same obligation; or

n. Borrower's abandonment of the Property, or the termination before the end of the stated term of that certain Lease between Borrower and the Operating Company dated November 28, 2002; or

o. Any of the events specified in (g) - (j) above shall occur with respect to any tenant of the Property, with respect to any guarantor of any of Borrower's obligations in connection with the Indebtedness or with respect to any guarantor of any tenant's obligations relating to the Property, or such guarantor dies or becomes incompetent; or

p. The termination or nonrenewal of the Franchise Agreement.

26. RIGHTS AND REMEDIES ON DEFAULT.

Upon the occurrence of any Event of Default and at any time thereafter, GE CAPITAL may exercise any one or more of the following rights and remedies:

a. GE CAPITAL may declare the entire Indebtedness, including the then unpaid principal balance on the Note, the accrued but unpaid interest thereon, court costs and attorney's fees hereunder immediately due and payable, without notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Borrower), whereupon the same shall become immediately due and payable. Additionally, GE CAPITAL shall not be required to make any further advances on the Note or other Loan Documents upon the occurrence of an Event of Default or an event which, with the giving of notice or passing of time, would constitute an Event of Default.

b. GE CAPITAL may enter upon the Property and take exclusive possession thereof and of all books, records and accounts relating thereto without notice and without being guilty of trespass, and hold, lease, manage, operate or otherwise use or permit the use of the Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as GE CAPITAL may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other

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action with reference thereto, from time to time, as GE CAPITAL shall deem necessary or desirable), and apply all rents and other amounts collected by GE CAPITAL in connection therewith in accordance with the provisions of subsection (h) of this Section 26. Borrower hereby irrevocably appoints GE CAPITAL as the agent and attorney-in-fact of Borrower, with full power of substitution, and in the name of Borrower, if GE CAPITAL elects to do so, to (i) endorse the name of Borrower on any checks or drafts representing proceeds of the insurance policies, or other checks or instruments payable to Borrower with respect to the Property, (ii) prosecute or defend any action or proceeding incident to the Property, and (iii) take any action with respect to the Property that GE CAPITAL may at any time and from time to time deem necessary or appropriate. GE CAPITAL shall have no obligation to undertake any of the foregoing actions, and if GE CAPITAL should do so, it shall have no liability to Borrower for the sufficiency or adequacy of any such actions taken by GE CAPITAL.

c. GE CAPITAL may, institute an action to foreclose on all or any part of the Property in accordance with 735 Ill. Comp. Stat. 5/15-1101, et seq., as amended, or may take such other action as other law may allow, at law or in equity, for the enforcement hereof and the realization of the Property or any other security which is herein or elsewhere provided for, and may proceed thereon to final judgment and execution thereon for all Indebtedness, with interest, at the rates specified in the Note, together with all other sums secured by this Instrument. Upon the commencement of any foreclosure proceeding hereunder, the court in which such complaint is filed may, at any time, either before or after sale, and without notice to Borrower, or any party claiming under Borrower, and without regard to the then value of the Property, or the solvency of Borrower, or whether the Property shall then be occupied by the owner of the equity of redemption as a homestead, appoint a receiver, who may be GE CAPITAL or its agent, with power to manage and rent and to collect the rents, issues, and profits of the Property during the pendency of such foreclosure suit and the statutory period of redemption, and such rents, issues, and profits, when collected, may be applied to the extent permitted by law, before as well as after the judicial sale, towards the payment of the indebtedness, costs, taxes, insurance or other items necessary for the protection and preservation of the Property, including the expenses of such receivership, or any deficiency decree whether there be a decree therefor in personam or not; and upon foreclosure and sale of the Property to the extent permitted by law there shall be first paid out of the proceeds of such sale a reasonable sum for attorneys' fees, and also all expenses of advertising, selling, and conveying the Property, and all monies advanced for insurance, taxes or other liens or assessments, outlays for documentary evidence, stenographers' charges, all court costs, sheriff's fees, and the cost, either actual or estimated, of procuring or completing an abstract of title or guarantee policy showing the whole title to the Property, and including the foreclosure decree and the Certificate of Sale, and there shall then be paid the principal indebtedness, whether due or payable by the terms hereof or not, and the interest due thereon up to the time of such sale and the surplus, if any, shall be paid unto Borrower, and it shall not be the duty of GE CAPITAL to see to the application of the purchase money; and to the extent permitted by law in case of payment of said indebtedness, after the filing of any complaint to foreclose the MORTGAGE, and prior to the entry of a decree of sale, a reasonable sum for legal services rendered to the time of such payment shall be allowed as attorneys' fees, which, together with any sum paid for continuation of abstract, court costs, and stenographer's charges and expenses of such proceeding, shall be additional indebtedness hereby secured. In the event of foreclosure and any sale thereunder, any abstract or title insurance policy of the Property deposited with GE CAPITAL shall become the property of GE CAPITAL.

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d. After sale of the Property, or any portion thereof, Borrower will be divested of any and all interest and claim thereto, including any interest or claim to all insurance policies, bonds, loan commitments and other intangible property covered hereby. Additionally, Borrower will be considered a tenant at sufferance of the purchaser of the Property, and said purchaser shall be entitled to immediate possession thereof, and if Borrower shall fail to vacate the Property immediately, the purchaser may and shall have the right, without further notice to Borrower, to go into any justice court in any precinct or county in which the Property is located and file an action in forcible entry and detainer, which action shall lie against Borrower or its assigns or legal representatives, as a tenant at sufferance. This remedy is cumulative of any and all remedies the purchaser may have hereunder or otherwise.

e. (i) Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, GE CAPITAL may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Borrower or regard to the adequacy of the Property for the repayment of the Indebtedness, for appointment of a receiver of the Property, and Borrower does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of subsection (h) of this Section 26.

(ii) GE CAPITAL may exercise any and all other rights, remedies and recourses granted under the Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

f. GE CAPITAL shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity and the same (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Borrower, any guarantor of the Indebtedness or others obligated under the Note, or against the Property, or against any one or more of them at the sole discretion of GE CAPITAL; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (iv) are intended to be, and shall be, nonexclusive.

g. To the fullest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases (i) all benefits that might accrue to Borrower by any present or future laws exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (ii) all notices of any Event of Default (except as may be specifically provided for under the terms hereof), presentment, demand, notice of intent to accelerate, notice of acceleration and any other notice of GE CAPITAL's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents; (iii) any right to appraisal or marshalling of assets or a sale in inverse order of alienation; (iv) the exemption of homestead; (v) all rights of reinstatement and redemption in accordance with 735 Ill. Comp. Stat. 5/15-1601, as amended; and (vi) the administration of estates of decedents, or other matter to defeat, reduce or affect the right of GE CAPITAL under the terms of this Instrument to sell the Property for the collection of the Indebtedness secured hereby (without any prior or different resort for collection) or the right of GE CAPITAL, under the terms of this Instrument, to receive the payment of the

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Indebtedness out of the proceeds of sale of the Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted).

h. The rents, profits and other income generated by the holding, leasing, operating or other use of the Property, shall be applied by GE CAPITAL (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following orders of priority: (i) first, to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, maintaining, repairing, improving and selling the same, including, without limitation, (A) receiver's fees; (B) costs of advertisement; (C) attorneys' and accountants' fees; and (D) court costs; if any; (ii) second, to the payment of all amounts, other than the principal amount and accrued but unpaid interest on the Note which may be due to GE CAPITAL under the Loan Documents, including all Indebtedness, together with interest thereon as provided therein, in such order and manner as GE CAPITAL may determine; (iii) third, to the payment of the principal amount outstanding on the Note in such order and manner as GE CAPITAL may determine and all other Indebtedness; (iv) fourth, to the payment of all accrued but unpaid interest due on the Note in such order and manner as GE CAPITAL may determine; and (v) fifth, to Borrower. Borrower, any guarantor of the Indebtedness and any other party liable on the Indebtedness shall be liable for any deficiency remaining in the Indebtedness subsequent to any sale referenced in this subsection (h).

i. GE CAPITAL shall have the right to become the purchaser at any sale of the Property hereunder and shall have the right to be credited on the amount of its bid therefor all of the Indebtedness due and owing as of the date of such sale.

j. If GE CAPITAL shall accelerate the Indebtedness following the occurrence of an Event of Default, any payments received by GE CAPITAL following such acceleration, whether as the result of voluntary payments made by Borrower or as a result of the sale of the Property by GE CAPITAL, shall be deemed voluntary prepayments of the Note and accordingly, the prepayment fee required under the Note shall also be payable, subject to the terms of the Note.

k. The purchaser at any sale hereunder may disaffirm any easement granted, or rental, lease or other contract made in violation of any provisions of this Instrument and may take immediate possession of the Property free from, and despite the terms of, any such grant of easement, rental, lease or other contract.

27. RECONVEYANCE. Upon payment of all sums secured by this Instrument, GE CAPITAL shall reconvey the Property without warranty and shall surrender this Instrument and all notes evidencing Indebtedness secured by this Instrument to the person or persons legally entitled thereto. Such person or persons shall pay GE CAPITAL'S costs incurred in so reconveying the Property.

28. COMMERCIAL USE. The Property is not currently used for agricultural, farming, timber or grazing purposes. Borrower warrants that this Instrument is and will at all times constitute a commercial real estate mortgage, as defined under appropriate state law.

29. FUTURE ADVANCES. Upon request of Borrower, GE CAPITAL, at GE CAPITAL'S option so long as this Instrument secures Indebtedness held by GE CAPITAL, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this

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Instrument when evidenced by promissory notes stating that said notes are secured hereby. The maximum amount of principal indebtedness secured by this Instrument shall not exceed Three Million Dollars (\$3,000,000.00) at any one time outstanding, plus interest thereon, plus any disbursements made for the payment of taxes, special assessments or insurance on the Property, with interest on such disbursements.

30. IMPOSITION OF TAX BY STATE.

A. State Taxes Covered. The following constitute state taxes to which this Section applies:

(i) A specific tax upon mortgages or upon all or any part of the indebtedness secured by a mortgage.

(ii) A specific tax on a grantor which the taxpayer is authorized or required to deduct from payments on the indebtedness secured by a mortgage.

(iii) A tax on a mortgage chargeable against the beneficiary or the holder of the note secured.

(iv) A specific tax on all or any portion of the indebtedness or on payments of principal and interest made by a grantor.

B. Remedies. If any state tax to which this Section applies is enacted subsequent to the date of this Instrument, this shall have the same effect as an Event of Default, and GE CAPITAL may exercise any or all of the remedies available to it unless the following conditions are met:

(i) Borrower may lawfully pay the tax or charge imposed by state tax, and

(ii) Borrower pays the tax or charge within thirty (30) days after notice from GE CAPITAL that the tax law has been levied.

31. ATTORNEYS' FEES. In the event suit or action is instituted to enforce or interpret any of the terms of this Instrument (including without limitation efforts to modify or vacate any automatic stay or injunction), the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs, or in any bankruptcy proceeding including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses. Whether or not any court action is involved, all reasonable expenses, including but not limited to the costs of searching records, obtaining title reports, surveyor reports, title insurance, trustee fees, and other attorney fees, incurred by GE CAPITAL that are necessary at any time in GE CAPITAL'S opinion for the protection of its interest or enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the interest rate as provided in the Note. The term "attorneys' fees" as used in the Loan Documents shall be deemed to mean such fees as are reasonable and are actually incurred.

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32. GOVERNING LAW; SEVERABILITY. This Instrument shall be governed by the law of the State of Illinois applicable to contracts made and to be performed therein (excluding choice-of-law principles). In the event that any provision or clause of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Instrument and the Note are declared to be severable.

33. TIME OF ESSENCE. Time is of the essence of this Instrument.

34. CHANGES IN WRITING. This Instrument and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Borrower or GE CAPITAL relating to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

35. NO OFFSET. Borrower's obligation to make payments and perform all obligations, covenants and warranties under this Instrument and under the Note shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or other right that Borrower or any guarantor may have or claim against GE CAPITAL or any entity participating in making the Loan. The foregoing provisions of this Section, however, do not constitute a waiver of any claim or demand which Borrower or any guarantor may have in damages or otherwise against GE CAPITAL or any other person, or preclude Borrower from maintaining a separate action thereon; provided, however, that Borrower waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by GE CAPITAL.

36. AUTHORIZATION TO INSERT. Borrower authorizes GE CAPITAL or its agent to insert in the spaces provided herein the amount of the Note, the mortgagee's loan policy number, the title company issuing such policy, the total amounts of the obligations secured, and the last payment due dates, if any of the foregoing information is not typed in on this document.

37. WAIVER OF JURY TRIAL. **THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVES ANY AND ALL RIGHTS THAT EACH PARTY TO THIS INSTRUMENT MAY NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR THE STATE OF ILLINOIS, TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT, THE LOAN DOCUMENTS OR ANY TRANSACTIONS CONTEMPLATED THEREBY OR RELATED THERETO. IT IS INTENDED THAT THIS WAIVER SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, CLAIMS AND/OR COUNTERCLAIMS IN ANY SUCH ACTION OR PROCEEDING.**

BORROWER UNDERSTANDS THAT THIS WAIVER IS A WAIVER OF A CONSTITUTIONAL SAFEGUARD, AND EACH PARTY INDIVIDUALLY BELIEVES THAT THERE ARE SUFFICIENT ALTERNATE PROCEDURAL AND SUBSTANTIVE SAFEGUARDS, INCLUDING, A TRIAL BY AN IMPARTIAL JUDGE, THAT ADEQUATELY OFFSET THE WAIVER CONTAINED HEREIN.

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38. MAXIMUM INTEREST CHARGES. Notwithstanding anything contained herein or in any of the Loan Documents to the contrary, in no event shall GE CAPITAL be entitled to receive interest on the Loan in amounts which, when added to all of the other interest charged, paid to or received by GE CAPITAL on the Loan, causes the rate of interest on the Loan to exceed the highest lawful rate. Borrower and GE CAPITAL intend to comply with the applicable law governing the highest lawful rate and the maximum amount of interest payable on or in connection with the Loan. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Loan Documents, or contracted for, charged, taken, reserved or received with respect to the Loan, or if acceleration of the final maturity date of the Loan or if any prepayment by Borrower results in Borrower having paid or demand having been made on Borrower to pay, any interest in excess of the amount permitted by applicable law, then all excess amounts theretofore collected by GE CAPITAL shall be credited on the principal balance of the Note (or, if the Note has been or would thereby be paid in full, such excess amounts shall be refunded to Borrower), and the provisions of the Note, this Instrument and any demand on Borrower shall immediately be deemed reformed and the amounts thereafter collectible thereunder and hereunder shall be reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder and hereunder. The right to accelerate the final maturity date of the Loan does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and GE CAPITAL does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to GE CAPITAL for the use, forbearance or detention of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread through the full term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the applicable usury ceiling. By execution of this Instrument, Borrower acknowledges that it believes the Loan to be nonusurious and agrees that if, at any time, Borrower should have reason to believe that the Loan is in fact usurious, it will give GE CAPITAL written notice of its belief and the reasons why Borrower believes the Loan to be usurious, and Borrower agrees that GE CAPITAL shall have ninety (90) days following its receipt of such written notice in which to make appropriate refund or other adjustment in order to correct such condition if it in fact exists.

39. ADDRESSES AND OTHER INFORMATION FOR FUTURE FILING. The following information is provided in order that this Instrument shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Illinois, for instruments to be filed as financing statements and with other requirements of applicable law:

- | | | |
|-----|------------------------------------|--|
| (a) | Name of Borrower (Debtor): | SOUTH HOLLAND TRUST AND SAVINGS BANK TRUST NO. 12408 |
| | Address of Borrower: | 1400 Torrence Avenue, Suite 203
Calumet City, Illinois 60409 |
| (b) | Name of Mortgagee (Secured Party): | GENERAL ELECTRIC CAPITAL BUSINESS BUSINESS ASSET FUNDING CORPORATION |
| | Address of GE CAPITAL: | 10900 Northeast Fourth Street, Suite 500
Bellevue, Washington 98004 |

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Attention: Franchise Finance Department

- (c) Record Owner of Real Estate
Described on Exhibit A hereto: Borrower
- (d) Borrower's Jurisdiction of
Organization or Incorporation: Illinois
- (e) Organization ID No.: None

(Continued on the Following Page)

Property of Cook County Clerk's Office

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IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives thereunto duly authorized.

WITNESS/ATTEST:

BORROWER:

Notwithstanding any terms or provisions of this instrument, the South Holland Trust & Savings Bank, as Trustee, Trust No. 12408, assumes no personal liability of any kind or nature, but executes this instrument solely as Trustee covering trust property above referred to.

SOUTH HOLLAND TRUST AND SAVINGS BANK
TRUST NO. 12408,
An Illinois Trust,
Created under the Trust Agreement
dated October 1, 2002

By: South Holland Trust And Savings Bank, as
Trustee

Attest:

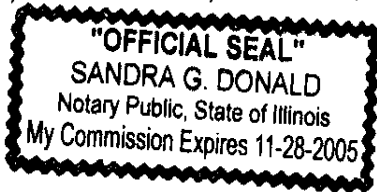
Michael L. Nysten
Asst. Secretary - Michael L. Nysten

By: Jeanine T. Berkowitch (SEAL)
Name: Jeanine T. Berkowitch
Title: Trust Officer

ACKNOWLEDGMENT

STATE OF ILLINOIS, COUNTY OF Cook

The foregoing instrument was acknowledged before me this 19th day of December, 2002, by Trust Officer and _____, the Assistant Secretary of South Holland Trust And Savings Bank, which is the Trustee of SOUTH HOLLAND TRUST AND SAVINGS BANK TRUST NO. 12408, an Illinois trust, on behalf of the trust.



Sandra G. Donald
Notary Public

My Commission Expires: _____

Sandra G. Donald
Print Name of Notary

30073767

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Loan No. 10583-001

EXHIBIT A

LEGAL DESCRIPTION

That certain real property in the County of Cook, State of Illinois, described as follows:

The West ½ of the South 222 feet of the West ½ of the West ½ of the West ½ of the Northeast 1/4 of Section 11, Township 36 North, Range 14 East of the third principal meridian, South of the center line of Michigan City Road, and which was recorded November 3, 1927 as Document 9830630, in Cook County, Illinois.

*29-11-225-039
1200 E. SIBLEY, DOLTON, ILL.*

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Loan No. 10583-001

EXHIBIT B

PERMITTED EXCEPTIONS

1. Covenants and restrictions (but omitting any such covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons), relating to construction and maintenance of the land contained in the Deed recorded October 2, 1975 as Document No. 23241913, which does not contain a reversionary or forfeiture clause.

This Real Estate Mortgage, Security Agreement, Assignment Of Leases And Rents, And Fixture Filing was prepared by Mark A. Gaspar, Esq., Gebhardt & Smith LLP, Ninth Floor - The World Trade Center, 401 East Pratt Street, Baltimore, Maryland 21202.

WHEN RECORDED MAIL TO:

**General Electric Capital Business
Asset Funding Corporation
Real Estate Department
10900 N.E. 4th Street, Suite 500
Bellevue, Washington 98004
Loan No. 10583-001**

30073767