

Doc#: 0403439068 Eugene "Gene" Moore Fee: \$62.00 Cook County Recorder of Deeds Date: 02/03/2004 01:39 PM Pg: 1 of 20

PREPARED BY AND AFTER **RECORDING RETURN TO:**

King & Spalding LLP 191 Peachtree Street, NE, Suite 4800 Atlanta, Georgia 30303-1763 Attention, Joshua M. Kamin, Esq.

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is executed this 28th day of January 2004, by JRC BURBANK STATION LIMITED PARTNERSHIP, an Illinois limited partnership, having an organizational file number of S020251 assigned by the Secretary of State of the State of Illinois ("Mortgagor"), whose address for notice hereunder is c/o Jupiter Realty Corporation, 919 North Michigan Avenue, Suite 1500, Chicago, Illinois 60611, Attention: Mr. Michael Pompizzi, for the benefit of GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation ("Mortgagee"), whose address for notice is c/o GE Capital Real Estate, 1000 Windward Concourse, Agracaetta, Georgia 30005, Attention: Asset Manager/Jupiter-Burbank Station Shopping Center. WITNESSETH: Drumm

WHEREAS, Mortgagor has requested that Mortgagee make a loan (the "Loan") to Mortgagor with respect to the Mortgage Property (as defined herein);

WHEREAS, Mortgagee has agreed to make the Loan pursuant to the terms and provisions of that certain Loan Agreement, dated as of even date herewith, between Mortgagor and Mortgagee (the "Loan Agreement");

WHEREAS, in order to secure Mortgagor's obligations to Mortgagee under the Loan Agreement, Mortgagee requires that Mortgagor execute this Mortgage; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

NOW THEREFORE, FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the full and timely payment of the Indebtedness

> Mortgage Burbank Station)

(as defined herein) and the full and timely performance of the Obligations (as defined herein), Mortgagor does hereby agree as follows:

ARTICLE I

INCORPORATION OF WHEREAS CLAUSES AND DEFINITIONS

Section 1.01. Incorporation of "Whereas Clauses." Each and all of the definitions set forth in the foregoing introduction and "whereas clauses" are hereby incorporated into this Mortgage for all purposes.

Section 1.02. Definitions. As used herein, the following terms shall have the following meanings:

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

"Indebtedness" means the sum of (a) any and all agreements, covenants, conditions, warranties, representations and other obligations for the payment or reimbursement of money contained in or represented by the Lean Agreement, including, without limitation, the principal, interest, and other amounts due under or recured by the Loan Documents; (b) any and all agreements, covenants, conditions, warranties, 12 presentations and other obligations for the payment or reimbursement of money contained in or represented by the Note; (c) any and all additional advances made by or on behalf of Mortgagee to protect or preserve the Mortgage Property or the lien hereof on the Mortgage Property, or to pay taxes, to pay premiums on insurance on the Mortgage Property or to repair or maintain the Mortgage Property, or to complete improvements on the Mortgage Property (whether or not the original Mortgagor remains the owner of the Mortgage Property at the time of such advances and whether or not the original Mortgagee remains the owner of the Indebtedness and this Mortgage); (d) any and all expenses incident to the collection of the other Indebtedness secure? hereby and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained; and (e) the full and prompt payment and performance of any and all obligations or covenants of Mortgagor to Mortgagee under the terms of any other agreements, assignments or other instruments now or hereafter evidencing, securing or otherwise relating to the Indebtedness, all modifications, restatements and extensions of the foregoing.

Items (a) through (e) below, which include future advances are hereinafter added to, and are hereinafter made a part of, the defined term "Indebtedness":

- (a) Mortgagor's performance of, observance of and compliance with all terms, covenants, conditions, stipulations and agreements contained in the Loan Agreement, this Mortgage and/or any of the Loan Documents and in any and all renewals, modifications, consolidations and extensions thereof;
- (b) All costs, expenses, charges, liabilities, commissions, and fees now or hereafter chargeable to, incurred by, or disbursed by Mortgagee pursuant to any provision

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of the Loan Agreement, this Mortgage, and/or any of the other Loan Documents or any applicable law, rule or regulation, together with interest thereon as provided in the Loan Agreement, this Mortgage and/or any of the other Loan Documents or any applicable law, rule or regulation;

- (c) Any and all other sums of money and indebtednesses which are due or hereafter become due Mortgagee under the Loan Agreement, this Mortgage and/or any of the other Loan Documents;
- (d) Any and all additional advances made by Mortgagee to protect or preserve the Mortgage Property or the security interest created hereby on the Mortgage Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Mortgagor's obligations hereunder or for any other purpose provided herein (whether or not the original Mortgagor remains the owner of the Mortgage Property at the time of such advances); and
- (e) Any and all other indebtedness now owing or which may hereafter be owing by Mortgagor to Mortgagee, now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations and extensions the reof.

"Loan Documents" means the (a) Loan Agreement, dated of even date herewith, between Mortgagor and Mortgagee, (b) this Mortgage, (c) the Assignment of Rents and Leases, dated as of even date herewith, made by Mortgagor in favor of Mortgagee, (d) Assignment of Service Contracts, Warranties and Guaranties, dated as of even date herewith, made by Mortgagor in favor of Mortgagee, (f) Assignment and Subordination of Management Agreement by and among Mortgagor, Mortgagee and Jupiter Communities, Inc., an Illinois corporation, dated as of even date herewith, (g) all other documents now or hereafter executed by Mortgagor, or any other person or entity to evidence or secure the payment of the Inachtedness or the performance of the Obligations, and (h) all modifications, restatements, extensions, renewals and replacements of the foregoing.

"Mortgage Property" means that certain parcel of real property described in Exhibit A, attached hereto and by this referenced incorporated herein, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "Land"), (b) all buildings, strectures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements"), (c) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "Fixtures"), (d) all right, title and interest of Mortgagor in and to all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Mortgage Property or which may be used in or relating to the planning, development, financing or operation of the

Mortgage (Burbank Station)

Mortgage Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, trademarks, goodwill, chattel paper. documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs (the "Personalty"), (e) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts maintained by Mortgagor with respect to the Mortgage Property, (f) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"). (g) all leases, sucleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of inc Mortgage Property, together with all related security and other deposits (the "Leases"), (h) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgage Property (the "Ret ts"), (i) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgage Property (the "Property Agreements"), (j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagee in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (k) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (1) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired or Mortgagor, (m) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgage Property, and (n) all of Mortgagor's right, title and interest in and to an awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term "Mortgage Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

"Note" means that certain Promissory Note, dated January 28, 2004, made by Mortgagor in favor of Mortgagee in the original principal amount of \$26,550,000.

"Obligations" means all of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor or any other person or entity to Mortgagee or others as set forth in the Loan Documents.

"Permitted Encumbrances" means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of

this Mortgage, together with the liens and security interests in favor of Mortgagee created by the Loan Documents, none of which, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by this Mortgage, materially and adversely affects the value of the Mortgage Property, impairs the use or operations of the Mortgage Property or impairs Mortgagor's ability to pay its obligations in a timely manner.

"UCC" means the Uniform Commercial Code of Illinois or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than Illinois, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE II

GRANT

Section 2.01. Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, SELLS and CONVEYS the Mortgage Property to Mortgagee (subject, however, to the Permitted Encumbrances), TO HAVE AND TO HOLD the Mortgaged Property, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgage Property unto Mortgagee.

Section 2.02. Revolving Loan. This Mortgage is given to secure a revolving credit loan and shall secure not only presently existing indocedness under the Note, the Loan Agreement or any other Loan Documents but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within 20 years from the date hereof to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no Indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which the real estate is located. This Mortgage secures, among other Indebtedness, a "evolving credit" arrangement within the meaning of 815 ILCS 205/4.1 and 205 ILCS 5/5d. Th: total amount of Indebtedness may increase or decrease from time to time, as provided in the Note, and any disbursements which Mortgagee may make under this Mortgage, the Note or the Lean Agreement or any other document with respect hereto (e.g., for payment of taxes, it are rance premiums or other advances to protect Mortgagee's liens and security interests, as permitted hereby) shall be additional Indebtedness secured hereby. This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

ARTICLE III

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.01. Title to Mortgage Property and Lien of this Mortgage. Mortgagor owns the Mortgage Property free and clear of any liens, claims or interests, except the Permitted Encumbrances and has the right and the power to transfer each item of the Mortgaged Property. This Mortgage creates a valid, enforceable first priority liens and security interests against the Mortgage Property subject only to the Permitted Encumbrances.

Mortgagor will preserve such title, and will forever warrant and defend the same to Mortgagee, and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever, subject to the Permitted Encumbrances.

Section 3.02. Lien Status. Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgage Property, Mortgagor shall promptly, and at Mortgagor's expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Mortgagee).

Section 3.03. Payment and Performance. Mor gagor shall pay the Indebtedness when due and shall perform the Obligations in full when they are required to be performed.

Section 3.04. Replacement of Fixtures and Personalty. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest (other than Permitted Encumbrances) except such as may be first approved in writing by Mortgagee.

Section 3.05. Maintenance of Rights of Way, Easements and Licenses. Mortgagor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements, and franchises necessary for the use of the Mortgage Property and will not, without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgage Property. Mortgagor shall comply with all restrictive covenants affecting the Mortgage Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgage Property.

Section 3.06. Inspection. Mortgagor shall permit Mortgagee, and its agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgage Property and conduct such environmental and engineering studies as Mortgagee may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgage Property.

Section 3.07. Other Covenants. All of the covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this Article III shall be covenants running with the land.

Section 3.08. Due on Sale or Encumbrance. Mortgagor hereby acknowledges to Mortgagee and the identity and expertise of Mortgagor were and continue to be material circumstance, upon which the Mortgagee has relied in connection with, and which constitute valuable consideration to Mortgagee for the making of the Loan by Mortgagee. Mortgagor therefore covenants and agrees with Mortgagee that the entire Indebtedness secured by this Mortgage shall, at the absolute option of Mortgagee, be and become immediately due and payable should the Mortgagor, without the prior written consent of Mortgagee (which consent may be given or withheld in the sole and absolute discretion of Mortgagee), sell, assign, transfer, convey, lease with option to pur has e, enter into a contract for sale (other than making provisions with payoff of the Obligations), grant an option to purchase (other than making provisions with payoff of the Obligations), or further encumber any or all of Mortgagor's interest in the Mortgage Property or the Personal Property, or any portion thereof, or permit the same to be sold, assigned, transferred, conveyed, contracted for or further encumbered except in all such cases as may be permitted in the Loan Agreem and

Section 3.09. Condemnation Awards and Insurance Proceeds.

- (a) **Condemnation** Awards. Mortgagor issigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement.
- (b) Insurance Proceeds. Mortgagor assigns to Mortgagee ull proceeds of any insurance policies insuring against loss or damage to the Mortgage Property. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly.
- Section 3.10. Status of Mortgagor. Mortgagor's exact legal name is correctly set forth at the beginning of this Mortgage. Mortgagor is an organization of the type specified in the first paragraph of this Mortgage. Mortgagor is formed or incorporated in or organized under the laws of the state specified in the first paragraph of this Mortgage. Mortgagor will not cause or permit any change to be made in its name, identity or partnership structure unless Mortgagor shall have first notified Mortgagee in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by Mortgagee for the purpose of perfecting or protecting the lien and security interest of Mortgagee. Mortgagor's principal place of business and chief executive office, and the place where Mortgagor keeps its books and

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records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Mortgagor) and will continue to be the address of Mortgagor set forth at the beginning of the Mortgage (unless Mortgagor notifies Mortgagee in writing at least 30 days prior to the date of such change). Mortgagor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Mortgage. The Mortgagor shall promptly notify the Mortgagee of any change in its organizational identification number.

ARTICLE IV

DEFAULT AND FORECLOSURE

Section 4.01. Remedies. If an Event of Default exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

- (a) Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Morigogor), whereupon the same shall become immediately due and payable.
- (b) Entry on Mortgage P operty. Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent. Mortgagee may invoke any legal remedies to dispossess Mortgagor.
- (c) Operation of Mortgage Property. Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such epairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.07 hereof.
- of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Mortgagor agrees that five (5) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under

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Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash. In connection with any foreclosure sale: (i) Mortgagee shall have no obligation to clean up, repair or otherwise prepare the Mortgaged Property for sale; (ii) Mortgagor waives any right it may have to require Mortgagee to pursue any third party for any of the Indebtedness; (iii) Mortgagee may comply with any applicable state or federal law requirements in connection with a disposition of the Mortgaged Property; (iv) Mortgagee may specifically disclaim any warranties of title or the like; (v) if Mortgagee sells any of the Mortgaged Property on credit, Mortgagor will be credited only with payments actually made by purchaser, received by Mortgagee and applied to the indebtedness of the purchaser; and (vi) Mortgagee may apply any noncash proceeds of a disposition of the Mortgaged Property in any commercially reasonable manner selected by Mortgagee. Compliance by Mortgages with the standards set forth in the foregoing sentence shall not be deemed to adversely affect the commercial reasonableness of any sale of the Mortgaged Property or portion thereof.

- (e) Receiver. Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Ary 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 Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.07.
- (f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Mortgage).
- **Section 4.02. Separate Sales**. To the extent allowed by applicable law, the Mortgage Property may be sold in one or more parcels and in such manner and order as Mortgagee, in its sole discretion, may elect; the right of sale arising out of any Event of Default still not be exhausted by any one or more sales.
- Section 4.03. Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Note and the other Loan Documents, or against the Mortgage Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies

or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.04. Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to a consent by the holder of any subordinate lien on the Mortgage Property, any part of the Mortgage Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgage Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 4.05. Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent of mitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all 'lenefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or radicial decision exempting the Mortgage Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption (both statutory and equity of redemption) or extension of time for payment, (b) except as other wise specifically provided in Section 4.01(d), all notices of any Event of Default or of Mortgage 3's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation

Section 4.06. Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgager and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgage Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Cocuments for such Event of Default.

Section 4.07. Application of Proceeds. The proceeds of any sale or, ar i the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgage Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgage Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (i) receiver's fees and expenses, (ii) court costs, (iii) attorneys' and accountants' fees and expenses, (iv) costs of advertisement, and (v) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments, or other charges subject to which the Mortgage Property shall have been sold;

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- (b) to the payment of all amounts (including interest), other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due to Mortgagee under the Loan Documents;
- (c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and
 - (d) the balance, if any, to the payment of the persons legally entitled thereto.

Section 4.08. Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to Section 4.01(d) shall become the legal owner of the Mortgage Property. All occupants of the Mortgage Property shall, at the option of such purchaser, become tenants of the purchaser at the rojeclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgage Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgage Property.

Section 4.09. Additional Advances and Disbursements; Costs of Enforcement.

- (a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 4.09, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Mortgage.
- (b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.
- Section 4.10. No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article IV, the assignment of the Rents and Leases under Article V, the security interests under Article VI, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a Mortgagee in possession of the Mortgage Property, to obligate Mortgagee to lease the Mortgage Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise, except to the extent that Mortgagee takes actual physical possession and operational control of the Mortgage Property.

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ARTICLE V

ASSIGNMENT OF RENTS AND LEASES

Section 5.01. Assignment. Mortgagor acknowledges and confirms that it has executed and delivered to Mortgagee an Assignment of Rents and Leases dated as of even date herewith (the "Assignment of Rents and Leases"), intending that such instrument create a present, absolute assignment to Mortgagee of the Leases and Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Rents and Leases, Mortgagor hereby assigns to Mortgagee, as further security for the Indebtedness and the Obligations, the Leases and Rents. While any Event of Default exists, Mortgagee shall be entitled to exercise any or all of the remedies provided in the Assignment of Rents and Leases and in Article IV hereof, including the right to have a receiver appointed. If any conflict or inconsistency exists between the assignment of the Rents and the Leases in the Assignment of Rents and the absolute assignment of the Rents and the Leases shall control.

Section 5.02. No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and any leasehold estates to the Mortgage Property shall not merge, but shall remain separate and distinct, notwithstanding the union of any such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

ARTICLE VI

SECURITY AGREEMENT

Section 6.01. Security Interest. This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and other Mortgage Property. To this end, Mortgagor grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgage Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remactics of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Lease, Rents and Property Agreements and other Mortgage Property sent to Mortgagor at least 5 days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.02. Authorization to File Financing Statements. Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to time to file any financing statements, amendments thereto and continuation statements without the signature of Mortgagor as authorized by applicable law, as applicable to all or part of the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property. For purposes of such filings, Mortgagor agrees to furnish any information requested by Mortgagee promptly upon request by Mortgagee. Mortgagor also ratifies its authorization for Mortgagee to have filed any financing statements, amendments thereto and continuation

Mortgage (Burbank Station)

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statements, if filed prior to the date of this Mortgage. Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to execute in Mortgagor's name any documents and otherwise to carry out the purposes of this Section 6.02, to the extent that Mortgagor's authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent, subject to Mortgagor's rights under Section 9-509(d)(2) of the UCC.

Section 6.93. Financing Statements. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor's chief executive office is in the State of Illinois at the address set forth in the first paragraph of this Mortgage.

Section 6.04. Debtor and Secured Party Information. Mortgagor covenants and agrees that Mortgagor will furnish Mortgagee vith notice of any change in Mortgagor's name, state or organization, identity or corporate structure or the location of any of the Mortgage Property within 30 days of the effective date of any such change, and Mortgagor will promptly execute any financing statements or other instruments defined necessary by Mortgagee to prevent any filed financing statement from becoming misled ding or losing its perfected status.

Section 6.05. Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgage Property, which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first par igraph of this Mortgage.

ARTICLE VII

INTENTIONALLY OMITTED

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Future Advances. It is the intent of the parties that this Mortgage shall secure the payment of the obligations of Mortgagor to Mortgagee under the Loan Agreement and the other Loan Documents and any future and/or additional advances made from time to time otherwise, all of said indebtedness being equally secured hereby and having the same priority as

any amounts advanced as of the date of this Mortgage. It is agreed that any additional sum or sums advanced by Mortgagee shall be equally secured with, and have the same priority as, the original Indebtedness and shall be subject to all of the terms, provisions and conditions of this Mortgage, whether or not such additional loans or advances are evidenced by other promissory notes of Mortgagor and whether or not identified by a recital that it or they are secured by this Mortgage.

Section 8.02. Notices. Any notice required or permitted to be given under this Mortgage shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, personal delivery or otherwise as provided in this Section 8.02). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth on the first page of this Mortgage. Any communication so addressed and mailed shall be deemed to be given on the earliest of (a) when actually delivered or when delivery is refused, (b) on the first Business Day after deposit with an overnight air courier service, or (c) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deer led to be given when receipted for by, or actually received by, Mortgagee or Mortgagor, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is ransmitted to the party's telecopy number specified in the Loan Agreement and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 8.02. Any party may designate a change of address by written notice to the other by giving at least ten (10) days' prior written notice of such change of address.

Section 8.03. Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgage Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgage Property (without in any way implying that Mortgagee has consented or will consent to any such conveyance or transfer of the Mortgage Property). All persons or exactises who may have or acquire an interest in the Mortgage Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; howev at, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 8.04. Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within 10 days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements and all other Mortgage Property in favor of

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the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (i) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (ii) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (iii) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (iv) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

- Section 3.05. Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.
- **Section 8.06.** No Warter. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee sna'i i ave the right at any time to insist upon strict performance of all of such terms, provisions and conditions.
- **Section 8.07. Subrogation.** To the extent Mortgagee shall expend any moneys to extinguish, extend or renew any indebtedness against the Mortgage Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgage Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.
- **Section 8.08. Loan Agreement**. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern
- Section 8.09. Release. Upon payment in full of the Indebtedness and performance in full of the Obligations, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage.
- Section 8.10. Waiver of Stay, Moratorium and Similar Rights. Mortgager agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.
- Section 8.11. Limitation on Liability. Mortgagor's liability hereunder is subject to the limitation on liability provisions of Section 12.1 of the Loan Agreement.
- Section 8.12. Obligations of Mortgagor, Joint and Several. If this Mortgage has been executed by more than one party as Mortgagor, the liability of such Mortgagor parties hereunder

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is joint and several, and when used in this Mortgage, the term "Mortgagor" or "Mortgagors" means all of the Mortgagors, collectively and each or any of the Mortgagors, individually, in every instance. In addition, Mortgagor's obligations hereunder shall be joint and several with any other person now or hereafter obligated under this Mortgage, and a separate action or actions may be brought and prosecuted against each Mortgagor, whether or not action is brought against any other person or whether or not any other person is joined in such action or actions.

Section 8.13. Governing Law. This Mortgage shall be governed by the laws of the State of Illinois.

Section 8.14. Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 8.15. Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporane ous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 8.16. Savings Clause. Notwithstanding anything herein or in any of the other Loan Documents to the contrary, no provision contained in the Note, herein or in any of the other Loan Documents which purports to obligate Mongagor to pay any amount of interest or any fees, costs or expenses which are in excess of the maximum permitted by applicable law, shall be effective to the extent that it calls for the payment of any interest or other sums in excess of such maximum. Any such excess shall, at the option of the Mortgagee, either be paid to Mortgagor or be credited to the obligations of Mortgagor to Mortgagee under the Note and the Loan Agreement. All arrangements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no event, whether by reason of demand for payment or acceleration of the maturity hereof or otherwise, shall the interest contracted for, charged or received by Mortgagee exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Mortgagee in excess of the maximum lawful amount. In interest payable to Mortgagee shall be reduced to the maximum amount permitted under explicable law; and if from any circumstance Mortgagee shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the amounts owing by Mortgagor to Mortgagee under the Note and the Loan Agreement and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance of amount owing by Mortgagor to Mortgagee under the Note and the Loan Agreement, such excess shall be refunded to Mortgagor. This paragraph shall control all agreements between Mortgagor and Mortgagee.

Section 8.17. WAIVER OF TRIAL BY JURY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN - 16 -

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CONNECTION WITH THIS MORTGAGE OR ANY OTHER OF THE LOAN DOCUMENTS, OR IN RESPECT OF ANY COURSE OF CONDUCT, COURSE OF DEALING. STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY SUCH PARTY, OR ARISING OUT OF ANY EXERCISE BY ANY SUCH PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE INDEBTEDNESS OR THE PROJECT (INCLUDING. WITHOUT LIMITATION, WITH RESPECT TO ANY ACTION TO RESCIND OR CANCEL THIS MORTGAGE, AND WITH RESPECT TO ANY CLAIM OR DEFENSE ASSERTING THAT THIS MORTGAGE WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID JE, JAGEL

OR COOK COUNTY CLOTH'S OFFICE OR VOIDABLE). THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE MOP I GAGEE TO ENTER INTO THE LOAN DOCUMENTS.

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IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage under seal as of the day and year first above written.

MORTGAGOR:

JRC BURBANK STATION LIMITED PARTNERSHIP, an Illinois limited partnership

By JRC Burbank, Inc., an Illinois corporation, its general partner

Donald A. Smith Chairman

STATE OF Illian

COUNTY OF Code

Proposition of Colling bis This instrument was acknowledged being me on January 28, Donald A. Smith , the Chairman of JRC Burbank, Inc., an Illinois corporation, the general partner of JRC Burbank Station Limited Partnership, an Illinois limited partnership, on behalf of said corporation and limited partnership.

"DFFIGIAL SEAL" FRANK J. EIGHENLAUB IV

Notary Public, State of

[Signature page to Mortgage and Security Agreement]

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL A:

THAT PART OF THE SOUTH 6/12 OF THE NORTH 8/12 OF THE SOUTH 60 ACRES OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE NORTH RIGHT OF WAY LINE OF 78TH STREET, (EXCEPTING THEREFROM THE WEST 33.00 FEET TAKEN FOR LAVENUE) AND (EXCEPT THE EAST 60.00 FEET TAKEN FOR CICERO AVENUE), IN COOK COUNTY, ILLINOIS.

LESS AND EXCEPT THE FOLLOWING OUTLOT:

THAT PART OF THE SOUTH 1/7 OF THE NORTH 7/12 AND THE SOUTH 1/8 OF THE NORTH 8/12 OF THE SOUTH 60 ACRES OF THE EAST ½ OF THE SOUTHEAST ¼ OF 7 SECTION 28, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT CF INTERSECTION OF THE NORTH LINE OF 78TH STREET, (BEING 33.00 FEET NORTH OF THE CENTER LINE) AND THE WEST LINE OF CICERO AVENUE, (BEING 60.00 FEET WEST OF THE CENTER LINE); THENCE NORTH 89 DEGREES, 54 MINUTES, 56 SECONDS WEST ALONG SAID NORTH LINE OF 78TH STREET, A DISTANCE OF 212.00 FEET; THENCE NORTH 00 DEGREES, 08 MINUTES, 56 SECONDS WEST PARALLEL TO THE WEST LINE OF CICERO AVENUE, A DISTANCE OF 180.00 FEET; THENCE SOUTH 89 DEGREES, 54 MINUTES, 56 SECONDS EAST, A DISTANCE OF 212.00 FEET TO THE WEST LINE OF CICERO AVENUE; THENCE SOUTH 00 DEGREE, 08 MINUTES, 56 SECONDS EAST, A DISTANCE OF 180.00 FEET TO THE POINT OF BEGINNING, ALL IN SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN. BEING SPECIFICALLY DESCRIBED AS:

LOT 1 IN BURBANK STATION, A SUBDIVISION OF THE EAST 12 OF THE SOUTHEAST 14 OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED RECORDED JULY 29, 1994 AS DOCUMENT 94672782, IN COOK COUNTY, ILLINOIS;

LESS AND EXCEPT

THAT PORTION CONVEYED TO THE ILLINOIS DEPARTMENT OF TRANSPORTATION BY DEED FROM BURBANK JOINT VENTURE, A MICHIGAN GENERAL PARTNERSHIP DATED SEPTEMBER 29, 1998 AND RECORDED NOVEMBER 17, 1989 AS DOCUMENT 08036669, IN COOK COUNTY, ILLINOIS.

LESS AND EXCEPT

THE NORTH 120.00 FEET OF THE SOUTH 1/3 OF THE NORTH 3/12 OF THE SOUTH 60 ACRES OF THE EAST OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38

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NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, **ILLINOIS**

PARCEL B 2:

JDRESS OF PROPERTY: 77.
AVEN.

TAX PARCELS: 19-28-401-055-0.
19-28-412-037-000.
19-28-412-039-0000
19-28-412-040-0000 THE NORTH 33 FEET OF THE WEST 130 FEET (EXCEPT THE WEST 33 FEET THEREOF) OF THE SOUTH 1/3 OF THE NORTH 3/12 OF THE SOUTH 60 ACRES OF THE EAST HALF

2