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Doc#: 0420929201
Eugene "Gene" Moore Fee: \$38.00
Cook County Recorder of Deeds
Date: 07/27/2004 11:26 AM Pg: 1 of 8

THIS DOCUMENT WAS
PREPARED BY AND AFTER
RECORDING, MAIL TO:

Jeffrey A. Zaluda, Esq.
Horwood, Marcus & Berk Chartered
Suite 3700
180 North LaSalle Street
Chicago, Illinois 60601

MORTGAGE

THIS MORTGAGE is made as of July 14, 2004, between Mark Labkon, not individually, but as Trustee of the Adam Trust, dated August 4, 1995, ("Mortgagor") and General Iron Industries, Inc., an Illinois corporation ("Mortgagee"), of 1909 North Clifton Avenue, Chicago, Illinois 60614.

A. The Mortgagor hereby GRANTS, ALIENS, REMISES, RELEASES, MORTGAGES, CONVEYS AND WARRANTS to the Mortgagee, together with MORTGAGE COVENANTS, the real property commonly known as 1321 W. Roscoe, Chicago, Illinois, legally described on EXHIBIT A attached hereto and incorporated herein by this reference, together with all the improvements and proceeds from such improvements thereon (collectively, "Premises").

B. This Mortgage secures the following Demand Note and Mortgage Note and all of the Indebtedness (each as hereinafter defined):

1. The term "Mortgage Note" means the Mortgage Note dated as of even date hereof, in the principal amount of \$900,000.00 executed and delivered by Mortgagor.
2. The term "Demand Note" means that certain Demand Note dated as of even date hereof, in the principal amount of \$490,122.71 executed and delivered by Mortgagor.
2. The term "Indebtedness" means and includes the unpaid principal sum evidenced by the Mortgage Note and Demand Note (collectively, the "Note"), together with all interest and late charges, costs and all other sums at any time as provided in the Note and the Agreement, each secured by this Mortgage.

Box 333

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D. Notwithstanding anything to the contrary contained in this Mortgage, the amount secured by this Mortgage, including all other present and future, direct and indirect obligations and liabilities of the Mortgagor, may not exceed the aggregate principal sum of \$2,320,000.00 any one time outstanding.

E. The Mortgagor promises and agrees as follows:

1. **Taxes.** The Mortgagor will pay, when due, and before any interest, collection fees or penalties accrues, all taxes, assessments, fines, impositions, and other charges which may become a lien prior to this Mortgage. Should the Mortgagor fail to make those payments, the Mortgagee may, at its option and at the expense of the Mortgagor, pay the amounts due for the account of the Mortgagor. Upon the request of the Mortgagee, the Mortgagor will immediately furnish to the Mortgagee all notices of amounts due and receipts evidencing payment. The Mortgagor must promptly notify the Mortgagee of any lien on all or any part of the Premises and must promptly discharge any unpermitted lien or encumbrance.
2. **Change in Taxes.** In the event of the passage of any law or regulation, state, federal or municipal, subsequent to the date of this Mortgage, which changes or modifies the laws now in force governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting those taxes, the Indebtedness will become due and payable immediately at the option of the Mortgagee.
3. **Insurance.** Until the Indebtedness is fully paid, the Mortgagor must keep the Premises constantly insured for the benefit of the Mortgagee against fire and such other hazards and risks customarily covered by the standard form of extended coverage endorsement in Illinois, including risks of vandalism and malicious mischief, and must provide flood insurance (if the Premises are situated in an area designated as a flood risk area by the Director of the Federal Emergency Management Agency or as otherwise required by the Flood Disaster Protection Act of 1973 and regulations issued under it), and such other appropriate insurance as the Mortgagee may require from time to time. All insurance policies and renewals must be acceptable to the Mortgagee, must provide for payment to the Mortgagee in the event of loss, must require 30 days notice to the Mortgagee in the event of nonrenewal or cancellation, and must be delivered to the Mortgagee within 30 days prior to their respective effective dates.
 - 3.1 Should the Mortgagor fail to insure, pay the premiums on any insurance, or deliver the policies, certificates or renewals to the Mortgagee, then the Mortgagee, at its option, may have the insurance written or renewed and pay the premiums for the account of the Mortgagor. In the event of loss or damage, the proceeds of the insurance must be paid to the Mortgagee alone. No loss or damage may itself reduce the Indebtedness.
 - 3.2 The Mortgagee is authorized to adjust and compromise a loss without the consent of the Mortgagor, to collect and receive any proceeds in the name of the Mortgagee and the Mortgagor and to endorse the Mortgagor's name

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upon any check in payment of proceeds. The proceeds must be applied first toward reimbursement of all costs and expenses of the Mortgagee in collecting the proceeds and then toward payment of the Indebtedness or any portion of it, whether or not then due or payable, or the Mortgagee at its option may apply the proceeds, or any part, to the repair or rebuilding of the Premises provided that the Mortgagor is not then or at any time during the course of restoration of the Premises in default under this Mortgage and has complied with all requirements for application of the proceeds to restoration of the Premises as Mortgagee, in its sole discretion may establish.

4. **Waste.** The Mortgagor may not commit or permit waste on the Premises nor do any other act causing the Premises to become less valuable. The Mortgagor will keep the Premises in good order and repair and in compliance in all material respects with any law, regulation, ordinance or contract affecting the Premises and, from time to time, make all needful and proper replacements so that fixtures, improvements and equipment will at all times be in good condition, fit and proper for its respective purposes. Should the Mortgagor fail to effect any necessary repairs, the Mortgagee may at its option and at the expense of the Mortgagor make the repairs for the account of the Mortgagor. The Mortgagor must use the Premises in compliance with all applicable laws, ordinances and regulations. The Mortgagee or its authorized agent have the right to enter upon and inspect the Premises at all reasonable times. The Mortgagor unconditionally agrees to timely pay all fees with respect to inspections of the Premises.
5. **Payment of Other Obligations.** The Mortgagor must also pay all other obligations which may become liens or charges against the Premises for any present or future repairs or improvements made on the Premises, or for any other goods, services, or utilities furnished to the Premises and may not permit any lien or charge of any kind securing the repayment of borrowed funds to accrue and remain outstanding against the Premises.
6. **Reimbursement of Advances.** If the Mortgagor fails to perform any of its obligations under this Mortgage, or if any action or proceeding is commenced which materially affects the Mortgagee's interest in the Premises, including but not limited to, a lien priority dispute, a taking by eminent domain, insolvency, bankruptcy or probate proceedings, then the Mortgagee, at its sole option, may make appearances, disburse sums and take any action it deems necessary to protect its interest, including but not limited to disbursement of reasonable attorneys' and paralegals' fees and entry upon the Premises to make repairs. Any amounts disbursed will become additional Indebtedness, will be immediately due and payable upon notice from the Mortgagee to the Mortgagor, and will bear interest at the highest rate permitted under any of the instruments evidencing any of the Indebtedness.
7. **Due on Transfer.** If all or any part of the Premises or any interest in the Premises is transferred without the Mortgagee's prior written consent, Mortgagee

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may, at its sole option, declare the Indebtedness to be immediately due and payable.

8. **Eminent Domain.** Notwithstanding any taking under the power of eminent domain, in the event of the alteration of the grade of any road, alley, or the like, or other injury or damage to or decrease in the value of the Premises by any public or quasi-public authority or corporation, the Mortgagor must continue to pay the Indebtedness in accordance with the terms of the underlying loan documents until any award or payment have been received by the Mortgagee. By executing this Mortgage, Mortgagor assigns the entire proceeds of any award or payment and any interest to the Mortgagee. The proceeds must be applied first toward reimbursement of all costs and expenses of the Mortgagee in collecting the proceeds, including reasonable attorneys' and paralegals' fees, and then toward payment of the Indebtedness whether or not then due or payable. Alternatively, the Mortgagee may, at its option, apply all or part of the proceeds to the alteration, restoration or rebuilding of the Premises.
9. **Events of Default/Acceleration.** Upon the occurrence of any of the following, the Mortgagee is entitled to exercise its remedies under this Mortgage or as otherwise provided by law: (a) An Event of Default under the Note; (b) the Mortgagor fails to observe or perform any other term of this Mortgage; (c) the Mortgagor makes any materially incorrect or misleading representation in any financial statement or other information delivered to the Mortgagee; (d) there is a default under the terms of this Mortgage or any other document executed as part of the Indebtedness transaction; or (e) the Mortgagor sells or transfers any part of the Premises except as provided in this Mortgage without the prior written consent of the Mortgagee.
10. **Remedies on Default.** Upon the occurrence of any event of default, the Mortgagee may exercise all of the rights, powers and remedies expressly or impliedly conferred on or reserved to it under this Mortgage or any other related document, now or later existing at law or in equity, including without limitation, to declare the Indebtedness to be immediately due, proceed at law or in equity to collect the Indebtedness and proceed to foreclose this Mortgage, or otherwise pursue any of its rights or remedies.
11. **Representations by Mortgagor.** Mortgagor represents that: (a) the execution and delivery of this Mortgage and the performance of the obligations it imposes do not violate any law, conflict with any agreement by which it is bound, or require the consent or approval of any governmental authority or other third party; and (b) this Mortgage is a valid and binding agreement enforceable according to its terms.
12. **Notices.** Notice from one party to another relating to this Mortgage are effective if made in writing and delivered to the recipient's address as set forth above, by any of the following means: (a) hand delivery, (b) registered or certified mail, postage prepaid, with return receipt requested, or (c) overnight mail by a

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nationally recognized courier service. Notice made in accordance with this paragraph will be deemed delivered upon receipt if delivered by hand, 3 business days after mailing if mailed by first class registered or certified mail or one business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier. This notice provision is inapplicable to any judicial or non-judicial proceeding where state law governs the manner and timing of notices in foreclosure or receivership proceedings.

13. **Further Assurances.** The Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Mortgagee may reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired.
14. **Miscellaneous.** If any provision of this Mortgage is in conflict with any statute or rule of law or is otherwise unenforceable for any reason whatsoever, then that provision is void to the extent of the conflict or unenforceability, and severed from but does not invalidate any other provision of this Mortgage. No waiver by the Mortgagee of any right or remedy granted or failure to insist on strict performance by the Mortgagor waives any right or remedy of the Mortgagee, nor does the subsequent exercise of the same right or remedy of the Mortgagee for any subsequent default by the Mortgagor. All rights and remedies of the Mortgagee are cumulative. These promises and agreements bind and these rights benefit the parties and their respective successors, and assigns. This Mortgage is governed by Illinois law except to the extent it is preempted by Federal law or regulations.
15. **Waiver of Jury Trial.** **THE MORTGAGEE AND THE MORTGAGOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS MORTGAGE OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS MORTGAGE, OR ANY COURSE OR CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER OF THEM. NEITHER THE MORTGAGEE NOR THE MORTGAGOR SHALL SEEK TO CONSOLIDATE, BY COUNTER-CLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY EITHER THE MORTGAGEE OR THE MORTGAGOR EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY BOTH OF THEM.**

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IN WITNESS WHEREOF, the Mortgagor has signed this Mortgage as of the 14th day of July, 2004.

MORTGAGOR:

Mark Labkon, by Cary R. Catner under property power of attorney dtd July 12,

Mark Labkon, not individually, but as Trustee of the Adam Trust, dated August 4, 1995 *204*

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State of Illinois

County of *Cook*

I, the undersigned, a notary of public in and for said county and state aforesaid, do hereby certify that *Cary R. Jitman*, who is personally known to me to be the same person who executed the within instrument as the Attorney in Fact of *Mark Labbe*, appeared before me this day in person and acknowledged that *he* signed, sealed, and delivered the said instrument, as the attorney in fact, as the free and voluntary act of *him* self and of said *Mark Labbe*.

Given under my hand and notarial seal, this *14* day of *July* *2008*

My commission expires:

Nancy M Wasily

Notary Public



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EXHIBIT A

LOT 37 IN BLOCK 1 IN WM. J. GOUDY'S SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/3 OF THE SOUTHWEST ¼ OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE RIGHT OF WAY OF THE CHICAGO, EVANSTON AND LAKE SUPERIOR RAILROAD, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 14-20-318-016-0000

Commonly Known As: 1321 W. Roscoe, Chicago, Illinois

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