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Doc#: 0800939144 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/09/2008 02:28 PM Pg: 1 of 10

THIS DOCUMENT HAS
BEEN PREPARED BY:

Brent Burmood, Esq.
Kutak Rock LLP
1650 Farnam Street
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THIS DOCUMENT IS TO
BE RETURNED TO:

Kristin Brown
Land America Commercial Services
1850 N. Central Ave., Suite 300
Phoenix, AZ 85004

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT (this "Agreement"), is made as of December 26, 2007, by and among and WHEELING 101, L.L.C., a Washington limited liability company ("Tenant"), WHEELING LAND COMPANY, L.L.C., a Washington limited liability company ("Landlord"), and GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation ("Lender").

PRELIMINARY STATEMENT

Landlord and Tenant are parties to the Lease Agreement, dated on or about the date hereof (the "Lease"), pursuant to which Tenant leases from Landlord certain real property legally described on the attached Exhibit A and certain improvements located thereon (the "Premises"). The Premises is or will be encumbered by that certain Deed to Secure Debt, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing from Landlord in favor of Lender (the "Mortgage") securing that certain Promissory Note dated on or about the date of this Agreement payable to the order of Lender with respect to the Premises (the "Note"). Tenant has agreed to recognize the rights of Lender in accordance with the terms and provisions of this Agreement.

AGREEMENT

In consideration of the mutual covenants and provisions of this Agreement, the parties agree as follows:

1. **Subordination.** Notwithstanding anything to the contrary contained in the Lease, the Lease and the leasehold estate created thereby are hereby declared to be, and hereafter shall continue

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GECC Property No. 8002-8836
Wheeling, IL

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at all times to be, junior, subject and subordinate, in each and every respect, to the Mortgage, including, without limitation, (i) any and all increases, renewals, modifications, extensions, substitutions, replacements and or consolidations of the Note or the Mortgage and (ii) any future mortgage or encumbrance affecting the Premises held by or made for the benefit of Lender and/or its successors and assigns. The foregoing subordination is effective and self-operative without the necessity for execution of any further instruments. Tenant hereby covenants with Lender that Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender and/or its successors and assigns without prior written notice to and prior written consent of Lender. At any time at the election of Lender, Lender shall have the right to declare the Lease superior to the lien, provisions, operation and effect of the Mortgage.

2. **Attornment; Nondisturbance.** (a) Notwithstanding the foregoing subordination, if the interest of Landlord under the Lease shall be transferred by reason of foreclosure or other proceedings (judicial or non-judicial) for enforcement of the Mortgage or by reason of a deed in lieu of foreclosure, Tenant, at the election of the transferee and its successors and assigns (the "Purchaser") acquiring said interests, shall be bound to the Purchaser pursuant to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease then remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if the Purchaser were the original landlord under the Lease, and Tenant does hereby attorn to and agree to attorn to the Purchaser, as its landlord, said attornment to be effective and self-operative without the necessity for execution of any further instruments, upon Purchaser's election after succeeding to the interest of the Landlord under the Lease.

(b) Notwithstanding the provisions of Section 1 and provided that Tenant is not in default under the Lease, Purchaser shall be bound to Tenant and its successors and assigns pursuant to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease then remaining and any extensions or renewals thereof which may be effected in accordance with any option set forth in the Lease, with the same force and effect as if Purchaser were the original landlord under the Lease, and provided that Tenant is not in default under the Lease the Lease shall not be terminated, nor shall Tenant's use, possession or enjoyment of the Premises be interfered with, nor shall the leasehold estate granted by the Lease be affected in any other manner, in any foreclosure or any action or proceeding instituted under or in connection with the Mortgage.

3. **Further Acts.** Notwithstanding any provisions contained in Sections 1 and 2 above which state that the attornment and subordination by Tenant to Purchaser are effective and self-operative without the execution of any further instrument, Tenant agrees that, upon request of Lender and/or Purchaser, it will execute such written agreement to evidence and affirm any and all of Tenant's obligations under this Agreement, and further, Tenant agrees that it will execute from time to time such further assurances and estoppel certificates as may reasonably be requested by Lender and Purchaser.

4. **Limitation.** Neither Lender nor any Purchaser shall be (a) liable for any act or omission of Landlord or any prior landlord (including the loss or misappropriation of any rental payments or security deposits); (b) subject to any credits, claims, setoffs, offsets or defenses which Tenant may have against Landlord or any prior landlord; (c) bound by (or responsible for) any advance payment of rent or any other monetary obligations under the Lease to Landlord in excess of one month's prepayment thereof in the case of rent, or in excess of one periodic payment in advance in the case of any other monetary obligations under the Lease; (d) responsible for any security deposit not actually received by Lender or any Purchaser; (e) bound by any amendment, assignment (in whole or in part), subletting, extension, renewal or modification of the Lease to which Lender or Purchaser has not consented in writing, and any attempted amendment, assignment (in whole or in part), subletting, extension, renewal or modification of the Lease without said consent shall be null and void and of no force and effect; (f) liable for latent and/or patent defects in the construction of the Premises; (g) liable for any breach of any warranty in the Lease by Landlord or a prior landlord; (h) bound by any obligation to repair, replace, rebuild or restore the Premises, or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation, beyond such repair, replacement, rebuilding or restoration as may be required of the

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landlord under the Lease and as can reasonably be accomplished with the use of the net insurance proceeds or the net condemnation award actually received by or made available to Lender (as successor in interest to Landlord) or Purchaser; (i) required to remove any person occupying the Premises or any part thereof; or (j) bound by any right of first refusal or right of first offer set forth in the Lease. Neither Lender nor any Purchaser shall be liable for any reason for amounts in excess of the value of its interest in the Premises, or for consequential or punitive damages of any kind.

5. **Notice; Cure; Waivers.** Tenant agrees to give prompt written notice to Lender (and to any successor in interest to Lender of which Tenant has been notified in accordance with the notice requirements of Section 9 of this Agreement) of (a) any default of the Landlord under the Lease if such default is of such a nature as to give Tenant a right to terminate the Lease, reduce rent or to credit or offset any amounts against future rents; and (b) any attempt by the Landlord (including any successor or assignee of the Landlord) to amend, modify, terminate, or render void the Lease. If, within thirty (30) days after receipt of written notice from Tenant, Lender, at Lender's sole option, commences to cure a default of Landlord under the Lease that is capable of being cured by Lender, or commences to pursue any other of its remedies under the Mortgage and thereafter diligently pursues such cure to completion, Tenant agrees not to terminate the Lease, reduce rent, credit or offset against future rents, consent or acquiesce in the termination of the Lease or surrender the Premises and agrees to continue to be bound by the terms of the Lease and this Agreement. As against Lender and its successors in interest, Tenant hereby waives any default by Landlord which is not capable of being cured by Lender in the exercise of reasonable diligence.

6. **Payments of Rent to Lender.** Landlord absolutely assigns to Lender all payments of rent as the same are due under the Lease (the "Rent") and Tenant agrees that, from and after an Event of Default (as defined in the Mortgage) and until such time as all of Landlord's monetary obligations to Lender pursuant to the Note and the Loan Agreement dated as of the date of this Agreement between Lender and Landlord have been fully paid, Tenant will pay the Rent directly to Lender. All such rental payments received by Lender shall be credited against Landlord's obligations to Lender. Lender agrees to notify Landlord, in writing, of any failure of Tenant to pay Rent to Lender and Landlord immediately shall cure Tenant's failure to pay by paying such Rent to Lender. Landlord, by its execution hereof, agrees that this Agreement does not constitute a waiver by Lender of any of Lender's rights under the Mortgage and any assignment of leases or rents contained therein, or in a separate instrument or in any way release the Landlord from any of the terms, conditions, obligations, covenants and agreements of the Mortgage.

7. **Certification.** Tenant hereby certifies to and agrees with Lender as follows, with the understanding that Lender is relying on such certifications and agreements in the making of the loan evidenced by the Note and secured by the Mortgage: (a) the Lease is in full force and effect; (b) all requirements for the commencement and validity of the Lease have been satisfied; (c) Tenant is not in default under the Lease; to the best of Tenant's knowledge, information and belief, the Landlord is not in default under the Lease; no act, event or condition has occurred, which with notice or the lapse of time, or both, would constitute a default by Tenant or Landlord under the Lease; no claim by Tenant of any nature exists against Landlord under the Lease; and all obligations of Landlord have been fully performed; (d) there are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease; (e) none of the rent which Tenant is required to pay under the Lease has been prepaid, or will in the future be prepaid, more than one month in advance; (f) Tenant has no right or option contained in the Lease or in any other document to purchase all or any portion of the Premises; (g) the Lease has not been terminated, modified or amended. The Lease shall not hereafter be terminated, modified or amended without the prior written consent of Lender in each instance; and (h) Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Lease to any party and no other consents to the execution of this agreement by the Tenant are required from any other party.

8. **Governing Law.** Landlord and Tenant acknowledge that this Agreement was substantially negotiated in the State of Arizona, the Agreement was signed by Lender in the State of

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Arizona and delivered by the parties hereto in the State of Arizona, and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. For purposes of any action or proceeding arising out of this Agreement, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona and Landlord, Tenant and Lender consent that they may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, Landlord and Tenant waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. It is the intent of the parties hereto that the subordination of the Lease and the rights and remedies set forth in this Agreement shall be governed by the laws of the State in which the Premises is located. All other provisions of this Agreement shall be governed by and construed under the laws of the State of Arizona without giving effect to its conflicts of laws principles. Nothing contained in this paragraph shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the State in which the Premises are located to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under this Agreement.

9. **Notices.** All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Agreement shall be in writing and given by (i) hand delivery, (ii) express overnight delivery service or (iii) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) the next business day, if delivered by express overnight delivery service, or (c) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Landlord:

Wheeling Land Company, L.L.C.
10013 59th Street SW
Lakewood, WA 98499
Attention: [_____]
Telephone: [_____]

If to Tenant:

Wheeling 101, L.L.C.
10013 59th Street SW
Lakewood, WA 98499
Attention: [_____]
Telephone: [_____]

If to Lender:

General Electric Capital Corporation
8377 East Hartford Drive, Suite 200
Scottsdale, Arizona 85255,
Attention: Collateral Management
Telephone: (480) 585-4500
Telecopy: (480) 585-2226

or to such other address or such other person as any party may from time to time hereafter specify to the other parties hereto in a notice delivered in the manner provided above.

10. **Waiver and Amendment; Captions; Severability.** No provisions of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. Captions are used throughout this Agreement for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

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The provisions of this Agreement shall be deemed severable. If any part of this Agreement shall be held unenforceable, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

11. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** LANDLORD, TENANT AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST ANY OTHER PARTY HERETO OR ITS RESPECTIVE SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, LANDLORD, TENANT AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHERS OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES AGAINST ANY OF THE OTHERS OR ANY OF THEIR AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY LANDLORD, TENANT AND LENDER OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

12. **Authority; Successors.** Tenant, Landlord and Lender covenant and agree that the persons signing on their behalf have full power, authority and authorization to execute this Agreement, without the necessity of any consents, authorizations or approvals, or if such consents, authorizations or approvals are required they have been obtained prior to the execution hereof. All provisions, covenants and agreements contained in this Agreement shall bind, inure to the benefit of, and equally relate to, Tenant, and its successors and assigns, jointly and severally, Landlord, and its successors and assigns, jointly and severally, and Lender, and its successors and assigns, or other holder or holders of the Note, including an endorsee, assignee or pledgee of the Note receiving title thereto by or through Lender, or its successors or assigns.

13. **No Other Agreements; Counterparts.** This Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

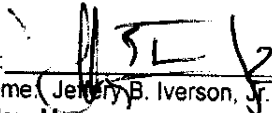
14. **Entry; Waiver.** Upon request by Lender, Tenant agrees that (i) upon no more than 10 days prior notice, Lender may enter upon the Premises and, during a period of at least 30 days, remove tangible collateral in exercise of the Lender's rights upon the occurrence of an event of default; and (ii) Tenant, with respect to any statutory landlord's lien or similar right in any of the collateral that may exist in Lender's favor, either waives such lien or other rights in favor of Lender or subordinates such lien or other rights to Lender's Mortgage in the collateral.

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date set forth above.


TENANT:

WHEELING 101, L.L.C.,
a Washington limited liability company

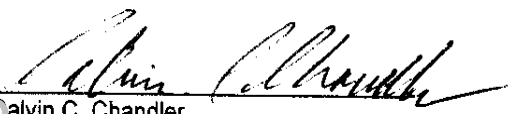
By: 
Name: Jeffrey B. Iverson, Jr.
Title: Manager

LANDLORD:

WHEELING LAND COMPANY, L.L.C.,
a Washington limited liability company

By: 
Name: Jeffrey B. Iverson, Sr.
Title: Manager

and

By: 
Name: Calvin C. Chandler
Title: Manager

LENDER:

GENERAL ELECTRIC CAPITAL CORPORATION,
a Delaware corporation

By: _____
Printed Name: _____
Its: Authorized Signatory

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date set forth above.

TENANT:

WHEELING 101, L.L.C.,
a Washington limited liability company

By: _____
Name: Jeffery B. Iverson, Jr.
Title: Manager

LANDLORD:

WHEELING LAND COMPANY, L.L.C.,
a Washington limited liability company

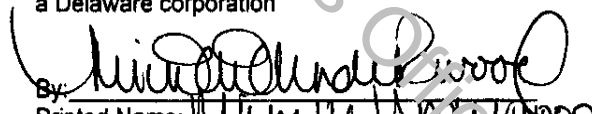
By: _____
Name: Jeffery B. Iverson, Sr.
Title: Manager

and

By: _____
Name: Calvin C. Chandler
Title: Manager

LENDER:

**GENERAL ELECTRIC CAPITAL
CORPORATION,**
a Delaware corporation

By: 
Printed Name: Michael D. Wood
Its: Authorized Signatory

Property of Cook County Clerk's Office

GECC Contract No. 14547001
GECC Property No. 8002-8836
Wheeling, IL

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STATE OF WASHINGTON)
) SS
COUNTY OF COUNTY)

On December 19, 2007, before me, the undersigned, a Notary Public in and for said State personally appeared Jeffery B. Iverson, Sr. known to me to be the Manager of New Land Holding Co., L.L.C., a Washington limited liability company, the sole member of Wheeling Land Company, L.L.C., a Washington limited liability company, and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal.

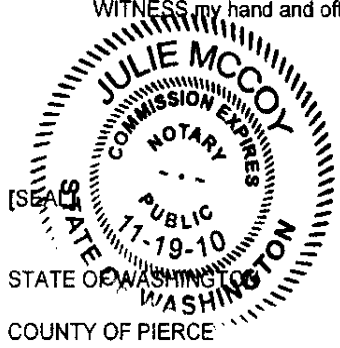


Julie McCoy
Julie McCoy
Notary Public in and for
said County and State

STATE OF WASHINGTON)
) SS
COUNTY OF PIERCE)

On December 19, 2007, before me, the undersigned, a Notary Public in and for said State personally appeared Jeffery B. Iverson, Sr. known to me to be the Manager of New Land Holding Co., L.L.C., a Washington limited liability company, the sole member of Wheeling Land Company, L.L.C., a Washington limited liability company, and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal.

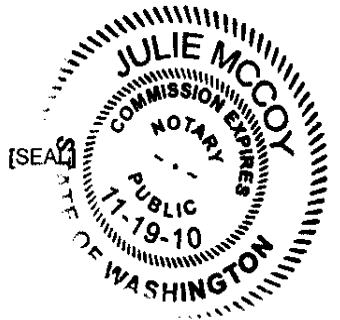


Julie McCoy
Julie McCoy
Notary Public in and for
said County and State

STATE OF WASHINGTON)
) SS
COUNTY OF PIERCE)

On December 19, 2007, before me, the undersigned, a Notary Public in and for said State personally appeared Jeffery B. Iverson, Jr. known to me to be the Manager of Wheeling 101, L.L.C., a Washington limited liability company, and acknowledged to me that such individual executed the within instrument on behalf of said limited liability company.

WITNESS my hand and official seal.



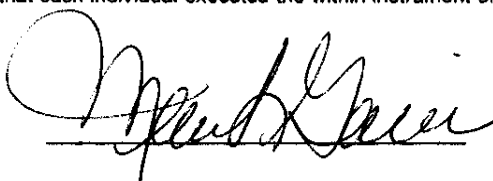
Julie McCoy
Julie McCoy
Notary Public in and for
said County and State

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STATE OF Arizona)
COUNTY OF Maricopa) SS

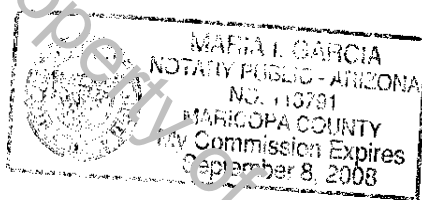
On December 26, 2007, before me, the undersigned, a Notary Public in and for said State personally appeared Michelle ~~Haroldson~~ known to me to be an Authorized Signatory of General Electric Capital Corporation, a Delaware corporation, and acknowledged to me that such individual executed the within instrument on behalf of said corporation.

WITNESS my hand and official seal.



Notary Public in and for
said County and State

[SEAL]



PROPERTY OF Cook County Clerk's Office

GECC Contract No. 14647001
GECC Property No. 8002-8836
Wheeling, IL

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EXHIBIT A LEGAL DESCRIPTION

That part of a tract of land in the Northeast 1/4 of Section 2 in Township 42 North, Range 11 East of the Third Principal Meridian, bounded and described as follows:

Commencing at the Northwest corner of said Northeast 1/4; thence East, on the North line thereof, 589.79 feet to the center line of Milwaukee Avenue; thence Southeasterly on said center line 1036.89 feet; thence Westerly 481.58 feet to the center line of Wolf Road, at a point being 986.10 feet Southwesterly of the point of beginning; thence Northeasterly to the point of beginning; except that part thereof taken or used for Milwaukee Road, Wolf Road and Lake-Cook Road; and except that part falling in the following described parcel of land: Beginning on the Westerly line of Milwaukee Avenue (said line being 50 feet Southwesterly of and parallel with the center line of said Milwaukee Avenue) and the South line of the aforescribed "tract of land"; thence continuing Westerly, on said South line, to a point 62 feet Southwesterly of said center line (as measured on a line drawn at right angles to said center line); thence Northwesterly to a point on the Westerly line of Milwaukee Avenue aforesaid, 255 feet Northwesterly of the point of beginning; thence Southeasterly, on said Westerly line, 255 feet to the point of beginning; also, excepting that land taken by the County of Cook in Condemnation Case No. 751-3002; also, excepting that part of the Northeast Quarter of Section 2, Township 42 North, Range 11 East of the Third Principal Meridian, bounded and described as follows: Commencing at the intersection of the North line of Lot 3 in the Subdivision of G. Heckinger's Farm, as recorded in the Recorder's Office of Cook County, Illinois, in Book 17 of Plats at page 13 as document number 3014370 and the Easterly Right-of-Way Line of a public road designated Wolf Road; thence North 88 degrees 06 minutes 28 seconds East along said North Line, a distance of 50.00 feet to the Point of Beginning of the hereinafter described tract of land; thence continuing North 88 degrees 06 minutes 28 seconds East along said North Line, a distance of 170.92 feet; thence North 21 degrees 37 minutes 21 seconds West, a Distance of 1.35 feet; thence North 89 degrees 47 minutes 05 seconds West, a distance of 16.17 feet; thence South 85 degrees 59 minutes 02 seconds West, a distance of 23.92 feet; thence South 88 degrees 35 minutes 43 seconds West, a distance of 34.70 feet; thence South 85 degrees 49 minutes 33 seconds West, a distance of 15.01 feet; thence South 87 degrees 47 minutes 27 seconds West, a distance of 17.60 feet; thence South 87 degrees 29 minutes 37 seconds West, a distance of 18.40 feet; thence South 88 degrees 22 minutes 28 seconds West, a distance of 22.20 feet; thence South 87 degrees 27 minutes 55 seconds West, a distance of 17.60 feet; thence North 89 degrees 16 minutes 52 seconds West a distance of 4.90 feet; thence South 1 degree 33 minutes 32 seconds East, a distance of 0.51 feet to the Point of Beginning; all situated in Cook County, Illinois.

which has the apparent address of 700 N Milwaukee Ave, Wheeling, IL

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GECC Property No. 8002-8836
Wheeling, IL