

UNOFFICIAL COPY

89540665 5 4 0 6 6 5

2900

MORTGAGE

THIS INDENTURE is made as of October 23, 1989, by MICHAEL-JOHN GENERAL CONTRACTORS, INC., an Illinois corporation ("Mortgagor") to Borg-Warner Equities Corporation ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor and Mortgagee are parties to a certain Agreement for Purchase and Sale of Vacant Land, dated November 16, 1988, (the "Agreement") pursuant to which Mortgagee, as seller, granted to Mortgagor, as purchaser, an option to purchase certain real property including the "premises" (hereinafter defined); and

WHEREAS, Mortgagor has concurrently herewith executed and delivered a Purchase Money Note bearing even date herewith ("Note") in the principal sum of Seven Thousand Seven Hundred Eighty Two and 36/100 (\$7,782.36) Dollars, made payable to the order of the Mortgagee in and by which the Mortgagor promises to pay the principal sum and interest thereon at the rate and at the times and amounts as provided in the Note, all payments to be applied first to advances hereunder, then to default interest, then to late charges, then to interest, and the balance to principal until the indebtedness is paid in full. The indebtedness is payable at such place as the holder of the Note may, from time to time, in writing appoint, and in absence of such appointment, then at the office of Mortgagee in Chicago, Illinois.

NOW, THEREFORE, the Mortgagor, to secure the payment of all sums payable under the Note and all sums payable in accordance with the terms, provisions and limitations of this Mortgage and the performance of the covenants and agreements herein contained by the Mortgagor to be performed, and also in consideration of the sum of ONE AND NO/100 (\$1.00) DOLLAR in hand paid, the receipt of which is hereby acknowledged, does, by these presents MORTGAGE, WARRANT, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee, its successors and assigns, the following described real estate and all of its estate, right, title and interest therein, situate, lying and being in the Village of Richton Park, County of Cook, State of Illinois, to-wit:

(SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF)

which, with the property hereinafter described, is referred to herein as the "premises",

44548-7327358 d6 m(2)

89540665

5 4 0 6 6 5

59904537

TOGETHER WITH ALL BUILDINGS, IMPROVEMENTS, TENEMENTS, EASEMENTS, FIXTURES, AND APPURTENANCES THERETO BELONGING, AND ALL RENTS, ISSUES AND PROFITS THEREOF FOR SO LONG AND DURING ALL SUCH TIMES AS MORTGAGOR MAY BE ENTITLED THERETO (WHICH ARE PLEDGED PRIMARILY AND ON A PARITY WITH SAID REAL ESTATE AND NOT SECONDARILY), AND ALL SHADES, SWINGS, VENETIAN BLINDS, SCREENS, SCREEN DOORS, STORM DOORS AND WINDOWS, STOVES AND RANGES, CURTAIN FIXTURES, PARTITIONS, ATTACHED FLOOR COVERING, NOW OR HEREAFTER THEREIN OR ATTACHED THEREON AND ALL FIXTURES, APPARATUS, EQUIPMENT OR ARTICLES NOW OR HEREAFTER THEREIN OR THEREON USED TO SUPPLY HEAT, GAS, AIR CONDITIONING, WATER, LIGHT, POWER, SPRINKLER PROTECTION, WASTE REMOVAL, REFRIGERATION (WHETHER SINGLE UNIT OR CENTRALLY CONTROLLED), AND VENTILATION, INCLUDING WITHOUT RESTRICTION THE FOREGOING); ALL WASHING MACHINES, CLOTHES DRYERS, WASTE DISPOSAL UNITS, ATTACHED FANS, DUCTS, AUTOMATIC DISH WASHERS, AND RADIO AND TELEVISION SETS, AND IT BEING UNDERSTOOD THAT THE ENUMERATION OF ANY SPECIFIC ARTICLES OF PROPERTY SHALL IN NO WISE EXCLUDE OR BE HELD TO EXCLUDE ANY ITEMS OF PROPERTY NOT SPECIFICALLY MENTIONED. ALL OF THE LAND, ESTATE AND PROPERTY HERINAPOVE DESCRIBED, REAL, PERSONAL AND MIXED, WHETHER OR NOT ATTACHED OR ANNEXED (EXCEPT WHERE OTHERWISE HERINAPOVE SPECIFIED) AND ALL RIGHTS HEREBY CONVEYED AND MORTGAGED ARE INTENDED SO TO BE AS A UNIT AND ARE HEREBY UNDERSTOOD, AGREED AND DECLARED TO FORM A PART AND PARCEL OF THE PREMISES AND TO BE APPROPRIATED TO THE USE OF THE PREMISES, AND SHALL FOR THE PURPOSES OF THIS MORTGAGE BE DEEMED TO BE PART OF THE PREMISES AND CONVEYED AND MORTGAGED HEREBY.

TO HAVE AND TO HOLD THE PREMISES UNTO THE SAID MORTGAGOR, ITS SUCCESSORS AND ASSIGNS, FOREVER, FOR THE PURPOSES AND USES HEREIN SET FORTH, FREE AND ALL RIGHTS AND BENEFITS UNDER ANY STATUTE OF LIMITATION AND UNDER THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS, WHICH SAID RIGHTS AND BENEFITS THE MORTGAGOR DOES HEREBY RELEASE AND WAIVE.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Maintenance, Repair and Restoration of Improvements, Payment of Rent, Etc. Mortgagor shall promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed; (b) keep said premises in good condition and repair, without waste, and free from mechanics, liens or other liens or claims for lien not expressly subordinated to the lien hereof; (c) pay when due any indebtedness or charge which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagor; (d) complete within a reasonable time any building or buildings now or at any

59900566

5. Tax and Insurance Deposits. If such taxes, assessments or insurance premiums are not so paid, then in order to more fully protect the security of this Mortgage

4. Insurance. Mortgagor shall maintain and pay in a timely manner the premiums for all insurance coverage required under the Agreement.

3. Payment of Taxes. Mortgagor shall pay before any penalty attaches, all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall, upon written request, furnish to Mortgagor duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

2. Sale or Transfer of Premises or Interest Therein. Mortgagor agrees and understands that it shall constitute an event of default under this Mortgage, the Note and the Agreement entitling Mortgagee to exercise the remedies herein and in the Note and Agreement if, except as provided in the Agreement (a) the Mortgagor shall transfer, sell, or convey title to, or otherwise enter or permit any equitable or beneficial interest in the premises to become vested in any person or persons, firm or corporation or other entity recognized in law or equity other than the Mortgagor or (b) any articles of agreement for deed or other installment contract for deed, title or beneficial interest in the premises are entered into.

Agreement. condition, agreement or obligation of Mortgagor under the (k) comply with and abide by each and every covenant, participate in any capacity by reason of this Mortgage; and Mortgagee in any proceeding in which Mortgagee may expenses and attorneys' fees incurred or paid by the expressly provided in the Agreement, pay all costs, the Mortgagee affects its security hereunder, and except as appear in and defend any proceeding which in the opinion of the terms hereof or of the Note and the Sale Agreement; (j) indebtedness secured by this Mortgage when due according to without Mortgagee's written consent; (i) pay each item of initiate or acquiesce in no zoning reclassification, for such use without Mortgagee's written consent; (h) purpose other than single family occupancy, or as a model (g) not use or suffer or permit use of the premises for any premises except as required by law or municipal ordinance; use thereof; (f) make no material alterations in said restrictions of record with respect to the premises and the with all requirements of law, municipal ordinances, or time in process of erection upon said premises; (e) comply

599040665

6. Mortgagee's Right to Act; Advances. If Mortgagor fails to perform any monetary or other obligation hereunder, or shall commit or permit waste on or about the premises, or if there be commenced any action or proceeding affecting the premises or the title thereto, then Mortgagor, at its option, may perform such obligation, with right or subrogation thereunder, may procure such abstracts or other evidence of title as it deems necessary, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any of such purposes Mortgagee may advance such sums of money as it deems necessary. Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or

Upon an assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of such deposits in its possession to the assignee and Mortgagee shall thereupon be completely released from all liability with respect to such deposits and Mortgagor shall look solely to the assignee or transferee with respect thereto.

It is understood and agreed (a) that said deposits shall bear no interest and (b) that Mortgagee at its option may, if Mortgagor fails to make any deposit required hereunder, use deposits for one item for the payment of another item then due and payable. All such deposits shall be held in escrow by Mortgagee and shall be applied by Mortgagee to the payment of said taxes, assessments and premiums when and as the same become due and payable. Failure to pay any of the aforesaid deposits for ten (10) days after demand therefor shall be an event of default under this Mortgage and under the Note and Agreement in which event all remedies under this Mortgage, the Note and the Agreement may be immediately exercised by the Mortgagee and, further, all moneys on hand in the deposit fund may, at the option of Mortgagee, be applied in reduction of the indebtedness under the Note secured by this Mortgage. Mortgagee shall not be required to make payments for which insufficient funds are on deposit with the Mortgagee.

and to provide security to the Mortgagee for payment of such taxes, assessments and premiums, Mortgagor agrees to pay on demand to Mortgagee, at such place as Mortgagee may from time to time in writing appoint and in the absence of such appointment, then at the office of the Mortgagee in Chicago, Illinois, payment in an amount reasonably estimated by Mortgagee so as to provide for the payment of such taxes, assessments, and premiums.

8. Prepayment privilege. Mortgagee may prepay all or any part of the sums payable under the Note at any time at

same or as the court may direct. equity of redemption if he shall then be entitled to the and the balance, if any, shall be paid to the owner of the foreclosure that may be entered in any such proceedings, pay the amount due in accordance with any decree of or policies, if not applied as aforesaid, shall be used to been instituted, the proceeds of any such insurance policy In the case of loss after foreclosure proceedings have

him by the companies. Mortgagee, all receipts, vouchers and releases required of the Note. Mortgagee agrees to sign, upon demand by insurance money up to the total amount then payable under Mortgagee is authorized to collect and receipt for any such on the amount to be paid upon the loss. In either case Mortgagee to agree with the insurance company or companies policies without consent of Mortgagee, or (b) to allow adjust, in its discretion any claim under such insurance authorized either (a) to settle, collect, compromise and sale, or the decree creditor, as the case may be) is hereby after entry of decree of foreclosure, purchaser at the Agreement and an insured loss occurs, the Mortgagee (or any of its obligations hereunder or under the Note or of Proceeds of Insurance. If Mortgagee is in default of

7. Adjustment of losses with insurer and Application of Proceeds of Insurance. Mortgagee in making any payment hereby authorized may do so according to any bill, statement or estimate procured from the appropriate public office or vendor without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, insurance premiums, sale, forfeiture, tax lien or title or claim thereof and may purchase, discharge, compromise or settle any other lien, without inquiry as to the validity or amount of any claim for lien which may be asserted.

Mortgagee in making any payment hereby authorized may do so according to any bill, statement or estimate procured from the appropriate public office or vendor without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, insurance premiums, sale, forfeiture, tax lien or title or claim thereof and may purchase, discharge, compromise or settle any other lien, without inquiry as to the validity or amount of any claim for lien which may be asserted. shall not incur any liability for omitting to do so. or perform any of Mortgagee's obligations and the Mortgagee be construed as requiring the Mortgagee to advance monies Note. Mortgagee agrees that nothing herein contained shall rate of Default Interest as that term is defined in the due and payable upon demand with interest thereon at the indebtedness secured hereby, and shall become immediately premises and the lien hereof, shall be so much additional other moneys advanced by Mortgagee to protect the mortgaged connection therewith, including attorneys' fees, and any therein authorized and all expenses paid or incurred in assessment. All moneys paid for any of the purposes foreclosure affecting said premises or contest any tax or

89540665

89540665

11. Acceleration of indebtedness in case of default. If (a) Mortgagor shall default in any of its obligations hereunder, under the Note, under the Agreement or under any other note, mortgage, guaranty or collateral or security instrument executed pursuant to or as contemplated by the Agreement, and such default shall continue for five (5) days; or (b) the Mortgagor or any owner of the Mortgagor, or any guarantor of the obligation secured hereby shall file a petition in voluntary bankruptcy or under Title 11 of the United States Code or any other similar law, statute or regulation, state or federal, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within thirty (30) days as hereinafter provided; or (c) the Mortgagor or any owner of the Mortgagor or any guarantor of the obligation secured hereby shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgagor, such owner or guarantor or for all of its (their) property or the major part thereof in any involuntary proceeding, or any court shall have taken jurisdiction of the property of the Mortgagor, any owner of the Mortgagor or any guarantor of

unlawful to require Mortgagor to make such payment. In the opinion of counsel for the Mortgage, it might be assessments, or reimburse the Mortgage therefor, unless, upon demand by the Mortgagee shall pay such taxes or holder thereof, then, and in any such event, the Mortgagee to affect this Mortgage or the debt secured hereby or the debts secured by mortgages or the mortgages interest in the property, or the manner of collection of taxes, so as in any way relating to the taxation of mortgages or liens herein required to be paid by Mortgagor, or changing whole or any part of the taxes or assessments or charges or hereon, or imposing upon the Mortgagee the payment of the value of land for the purpose of taxation any lien the state in which the premises are located deducting from the event of the enactment after this date of any law of 10 Effect of Changes in Law Regarding Taxation. In

9. Effect of Extensions of Time. If the payment of said indebtedness or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in said premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.

such time as the Mortgagor is not in default under the terms of the Note, the Agreement and this Mortgage.

89540665

the obligation secured hereby or the major part thereof in any involuntary proceedings for the reorganization, dissolution, liquidation or winding up of the Mortgagee, such owner or guarantor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days; or (d) the Mortgagee, any owner of the Mortgagee or any guarantor of the indebtedness secured hereby shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of the Mortgagee, become immediately due and payable, together with accrued interest thereon, late charges, advances and other indebtedness secured hereby, without notice to Mortgagee.

12. Forfeiture; Expense of Litigation. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of said premises and the maintenance of the lien of this Mortgagee, including the fees of an attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgagee, the Note or said premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceedings, whether or not actually commenced, shall be immediately due and payable by Mortgagee, with interest thereon at the rate applicable to the indebtedness secured by this Mortgagee and the same shall be secured by this Mortgagee.

# UNOFFICIAL COPY

-8-

89540665

15. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this mortgage the mortgagee has the right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of mortgagee, mortgagor shall surrender to mortgagee

of a sale and deficiency. prior to foreclosure sale; and (b) the deficiency in case hereof or of such decree, provided such application is made or other lien which may be or become superior to the lien foreclosing this mortgage, or any tax, special assessment (a) the indebtedness secured hereby, or by any decree net income in his hands in payment in whole or in part of from time to time may authorize the receiver to apply the of the premises during the whole of said period. The court protection, possession, control, management and operation may be necessary or are usual in such cases for the such rents, issues and profits, and all other powers which intervention of such receiver, would be entitled to collect during any further times when mortgagor, except for the redemption, whether there be redemption or not, as well as a deficiency, during the full statutory period of pendency of such foreclosure suit and in case of a sale and the rents, issues and profits of said premises during the such receiver. Such receiver shall have power to collect hereunder or any holder of the Note may be appointed as then occupied as a homestead or not and the mortgagee then value of the premises or whether the same shall be application for such receiver and without regard to the to the solvency or insolvency of mortgagor at the time of either before or after sale, without notice, without regard receiver of said premises. Such appointment may be made the court in which such complaint is filed may appoint a after the filing of a complaint to foreclose this mortgage, Appointment of Receiver. Upon, or at any time

appear. mortgagor, its successors or assigns, as their rights may remaining unpaid on the Note; fourth, any overplus to provided; third, all principal, interest and charges evidenced by the Note, with interest thereon as herein constituted secured indebtedness additional to that second, all other items which under the terms hereof items as are mentioned in the preceding paragraph hereof; incident to the foreclosure proceedings, including all such priority; first, on account of all costs and expenses distributed and applied in the following order of proceeds of any foreclosure sale of the premises shall be 13. Application of Proceeds of Foreclosure Sale. The



59907565

The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, and the Mortgagee shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said contracts or leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said contracts or leases. Should the Mortgagee incur any such liability, loss or damage, under said contracts or leases or under or by reason of the assignment thereof, including costs, expenses and reasonable attorneys' fees, shall be secured

and Mortgagee shall be entitled to take actual possession of the premises or any part thereof personally, or by its agents or attorneys, as for condition broken, and Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers and accounts of the Mortgagee or then owner of the premises relating thereto, and may exclude the Mortgagee, its agents or servants, wholly therefrom and may as attorney in fact or agent of the Mortgagee, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avals, rents, issues, and profits of the premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any time hereafter, without notice to the Mortgagee, and with full power to cancel or terminate any contract, lease or sublease for any cause or on any ground which would entitle the Mortgagee to cancel the same, to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, to make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements to the premises as to it may seem judicious, insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof and to receive all of such avals, rents, issues and profits.

89540665

18. Condemnation. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the mortgaged property taken or damaged under the power of eminent domain or by condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or to require Mortgagee to restore or rebuild, in which event the proceeds shall be held by Mortgagee and used to reimburse Mortgagee for the cost of the rebuilding or restoring of buildings or improvements on said premises, in accordance

17. Mortgagee's Right of Inspection. Mortgagee shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said premises, including the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing said property in such condition as will, in the judgment of the Mortgagee, make it readily salable or rentable;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on said premises;

(a) to the payment of the operating expenses of said property, including cost of management, sale and leasing thereof, which shall include reasonable compensation to the Mortgagee and its agent or agents, its management be delegated to an agent or agents, and shall also include sale and lease commissions and other compensation and expenses of seeking and procuring tenants and entering into contracts or leases, established claims for damages, if any, and premiums on insurance hereinabove authorized;

16. Application of Income Received by Mortgagee. The Mortgagee in the exercise of the rights and powers hereinabove conferred upon it by Paragraph 15 hereof shall have full power to use and apply the avails, rents, issues and profits of the premises to the payment of or on account of the following, in such order as the Mortgagee may determine:

hereby, and the Mortgagor shall reimburse the Mortgagee therefor immediately upon demand.

59904565

Michael-John General Contractors, Inc.  
P.O. Box 571  
Richton Park, Illinois 60443  
Attn: John Hryn

Katz, Randall & Weinberg  
200 North LaSalle Street  
Suite 2300  
Chicago, Illinois 60601  
Attn: Kevin P. Breslin

Borg-Warner Equities Corporation  
Attn: Paula J. Berggren  
200 South Michigan Avenue  
Chicago, Illinois 60604

20. Notices. All notices, requests, demands and other communications under or in connection with this Agreement shall be in writing and shall be deemed to have been given when the same are deposited in the United States mail, postage prepaid, registered or certified with return receipt requested, addressed as follows:

19. Release. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Mortgagee for the preparation and execution of such release.

with plans and specifications to be submitted to and approved by Mortgagee. In the event Mortgagee is authorized, by Mortgagee's election, as aforesaid, to rebuild or restore, the proceeds of the award shall be paid out in the same manner as is provided in Paragraph 7 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagee shall pay the cost in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto. In applying the proceeds of any award on account of the indebtedness secured hereby, Mortgagee shall be entitled to collect, out of the proceeds of the award, a premium on the amount prepaid, at the same rate as though Mortgagee had elected at the time of such application of proceeds (or if Mortgagee then has no such election, at the first succeeding date on which Mortgagee could so elect) to repay the indebtedness in accordance with the terms of the Note secured hereby.

# UNOFFICIAL COPY

9 5 1 1 6 6

-12-

89540665

25. Validity of Loan Instruments. Mortgagor warrants to Mortgagee that: (a) the execution, delivery and performance by Mortgagor of the note secured hereby, this Mortgage, and all additional security documents, and the borrowing evidenced by the note secured hereby (1) are

24. Captions. The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

23. Mortgagee's Lien for Service Charges and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby, all in accordance with this transaction.

22. Waiver of Statutory Rights. Mortgagor shall not and will not apply for or await itself of any appraisal, valuation, stay, extension or exemption laws, or any enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for Mortgagor and all who may claim through or under Mortgagor waives any and all right to have the property and estates comprising the mortgaged property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the mortgaged property sold as an entirety. Mortgagor hereby waives and releases all rights AND BENEFITS UNDER AND BY VIRTUE OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS. THE MORTGAGOR ALSO HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE ON ITS BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT DECREE OR JUDGMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

21. Waiver of Defense. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

Niew & Zitzka  
1010 Jorie Boulevard  
Suite 234  
Oak Brook, Illinois  
Attn: Stanley Niew, Esq.

With a copy to:

89540665

28. Certificates. Mortgagor shall within fifteen (15) days after a written request by Mortgagee furnish from time to time a signed statement setting forth the amount of the obligation secured hereby and whether or not any default, offset or defense then is alleged to exist against the same and, if so, specify the nature thereof.

27. Compliance with laws. Mortgagor will at all times fully comply with and cause the premises and the use and condition thereof, to fully comply with all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate thereto, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights, use, noise and pollution) which are applicable to the Mortgagor or the premises.

26. Maintenance of Mortgagor's Existence. So long as any part of the note hereby secured remains unpaid, the Mortgagor shall maintain its existence and shall not merge into or consolidate with any other corporation, firm, joint venture or association; nor convey, transfer, lease or otherwise dispose of all or substantially all of its property, assets or business; nor assume, guarantee or become primarily or contingently liable on any indebtedness or obligation of any other person, firm, joint venture or corporation, without prior written consent from the Mortgagor.

within the powers of Mortgagor; (2) have been duly authorized by all requisite actions; (3) have received all necessary governmental approval; and (4) do not violate any provision of any law, any order of any court or agency or government or any indenture, agreement or other instrument to which Mortgagor is a party, or by which it or any portion of the mortgaged premises is bound, or be in conflict with, result in breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of its property or assets, except as contemplated by the provisions of this Mortgage and any additional documents securing the note secured hereby; and (b) the note secured hereby, this Mortgage, and all additional documents securing the aforesaid note, when executed and delivered by Mortgagor, will constitute the legal, valid and binding obligations of Mortgagor, and other obligors named therein, if any, in accordance with their respective terms.

89540665

33. E.P.A. Compliance. Mortgagor covenants that the buildings and other improvements constructed on, under or above the subject real estate will be used and maintained of the state where the premises are located.

32. Severability. In the event any of the provisions contained in this Mortgage or in any documents secured hereby or in any collateral or security documents executed in connection herewith shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such option of the Mortgage, not affect any other provision of this Mortgage, the obligations secured hereby or any other such document and same shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and therein. This Mortgage has been executed and delivered at Chicago, Illinois and shall be construed in accordance therewith and governed by the laws of the state where the premises are located.

31. Binding on Successors and Assigns; Gender. This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor, its successors, vendees and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the note or this Mortgage. The word "Mortgagee" when used herein shall include the successors, vendees and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the note secured hereby. Wherever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders.

30. Business Loan. Mortgagor represents and agrees that the proceeds of the note secured by this Mortgage will be used for the purpose specified in Paragraph 6404 of Chapter 17 of the Illinois Revised Statutes, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph.

29. Satisfy Obligations. Mortgagor will, for the benefit of the Mortgagee, fully and promptly perform each obligation and satisfy each condition imposed on it under any contract relating to the premises, or other agreement relating thereto, so that there will be no default thereunder and so that the persons (other than Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of Mortgagee; and Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such person to avoid such performance.

599045665

36. Security Agreement. This Mortgage shall be deemed a Security Agreement as defined in the Illinois Commercial Code. This Mortgage creates a security interest in favor of Mortgagee in all property including all personal property, fixtures and goods affecting property either referred to or described herein or in anyway connected with the use or enjoyment of the premises. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (1) as prescribed

35. Mortgagee's Right to Exercise Remedies. The rights and remedies of Mortgagee as provided in the note secured hereby, in this Mortgage, in any other agreement further securing the obligations secured hereby or available under applicable law, shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagee or against other obligors or against the mortgaged premises, or against any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. No delay or omission of Mortgagee to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. Nothing in this Mortgage or in the note secured hereby shall affect the obligation of Mortgagee to pay the principal of, and interest on, said note in the manner and at the time and place therein respectively expressed.

34. Flood Insurance. If the mortgaged premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the Act), the Mortgagee will keep the mortgaged premises covered for the term of said note by flood insurance up to the maximum limit of coverage available under the Act.

in accordance with the applicable E.P.A. regulations and the use of said buildings by Mortgagee, or Mortgagee's lessees, will not unduly or unreasonably pollute the atmosphere with smoke, fumes, noxious gases or particulate pollutants in violation of any such regulations; and in case Mortgagee (or said lessees) are served with notice of violation by any such E.P.A. Agency or other municipal body, that it will immediately cure such violations and abate whatever nuisance or violation is claimed or alleged to exist.

Notwithstanding the aforesaid, the Mortgagor covenants and agrees that so long as any balance remains unpaid on the note secured hereby, it will execute (or cause to be executed) and deliver to Mortgagee, such renewal certificates, affidavits, extension statements or other documentation in proper form, so as to keep perfected the lien created by any Security Agreement and Financing Statement given to Mortgagee by Mortgagor, and to keep and maintain the same in full force and effect until the entire

herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in any financing statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such a financing statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and the hereby stated intention of the parties hereto, that everything used in connection with the production of income from the mortgaged premises and/or adapted for use therein and/or which is described or reflected in this Mortgage is, both legal or equitable shall be, regarded as part of the real estate irrespective of whether (1) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee, (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) the rights in or the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property mortgaged hereby, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal government and any subdivisions or entity of the Federal government, must be filed in the Commercial Code records.

89540665



# UNOFFICIAL COPY

principal indebtedness and all interest to accrue thereunder has been paid in full; with the proviso that the failure of the undersigned Mortgagor to so do shall constitute a default hereunder and under the note secured hereby.

37. Default of Guarantor. The Note has been partially or wholly guarantied, by separate Guaranty, by John Hryn and Michael Hryn and it is a covenant hereof that in case either of said guarantors shall be declared a bankrupt, or shall file a petition in voluntary bankruptcy, or under Title 11 of the United States Code, or any other similar state or federal law, or should either of said guarantors file any declaration, answer or pleading admitting his insolvency or inability to pay his debts or discharge his liabilities, or if a trustee or receiver is appointed for said guarantor or for the property or estate of said guarantor, or should any court take jurisdiction of a guarantor's property, or estate, or should either of guarantors make an assignment for the benefit of his creditors, then upon the occurrence or happening of any such event, Mortgagee may declare that this Mortgage is in default, and may at its option declare the entire remaining principal balance to be immediately due, or said Mortgagee may immediately institute foreclosure proceedings, and/or avail itself of any right or remedy herein reserved, and/or any right or remedy allowed by law in such case made and provided.

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage, the day and year first above written.

MICHAEL-JOHN GENERAL  
CONTRACTORS, INC.

ATTEST:

By: Michael Hryn  
Its: Secretary

By: John Hryn  
Its: President

UNOFFICIAL COPY

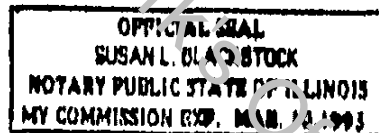
89 95 51 2 66-6 5

STATE OF Illinois  
COUNTY OF Cook

I, Susan L. Blackstock, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael J. [unclear], as President of MICHAEL-JOHN GENERAL CONTRACTORS, INC. and [unclear], as Secretary of said Corporation, who are personally know to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary of said Corporation, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth; and said [unclear] Secretary did then and there acknowledge that he, as custodian of the corporate seal of said Corporation, did affix the corporate seal of said Corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23rd day of Oct, 1989.

Susan L. Blackstock  
Notary Public



COOK COUNTY, ILLINOIS  
FILED FOR RECORD

SEP 14 PM 2:42

89540665

89540665

# UNOFFICIAL COPY

89540665

## EXHIBIT A

### [LEGAL DESCRIPTION OF REAL ESTATE]

Lot 127 in Richton Crossings Unit No. 2, being a subdivision of part of the North West 1/4 of Section 34, Township 35 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. No. 31-34-109-010

Cross Section of Harlem Avenue and Sauk Trail, Richton Park, Illinois.

Prep By Mail To:  
Aurelia Buggier  
Berg Warner  
260 So. Michigan Ave  
Chicago 60604

Box 115

Cook County Clerk's Office

89540665