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COOK COUNTY, ILLINOIS
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**CONSTRUCTION
FIRST MORTGAGE**

Dated as of December 15, 1989

in the amount of \$26,710,000.00

from CHARTER BANK AND TRUST OF ILLINOIS, not personally but solely
as trustee under trust agreement dated October 12, 1989 and known
as Trust No. 1386

(the "Mortgagor")

to GENERAL ELECTRIC CAPITAL CORPORATION

(the "Mortgagee")

LOCATION OF PREMISES:

Essex, Ill
Schaumburg, Illinois

THIS INSTRUMENT WAS PREPARED BY

After recording, please return to:
ROSENTHAL AND SCHANFIELD
55 East Monroe Street
Suite 4620
Chicago, IL 60603

Att: Donald A. Robinson
(Signature)

This instrument was prepared by the above named attorney.

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DISPOSITION

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COOK COUNTY
CLERK'S OFFICE

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CONSTRUCTION
FIRST MORTGAGE

THIS MORTGAGE, made this 15th day of December, 1989 by CHARTER BANK AND TRUST OF ILLINOIS, not personally but solely as trustee under trust agreement dated October 12, 1989 and known as Trust No. 1386, having an office at c/o Dartmoor Construction Company, 2500 West Higgins, Suite 1160, Hoffman Estates, Illinois 60195 (the "Mortgagor") to GENERAL ELECTRIC CAPITAL CORPORATION, a corporation having an office at Two Galleria Tower, 13455 Noel Road, Suite 1750, L.B. 24, Dallas, Texas 75240 (the "Mortgagee").

WITNESSETH, that to secure the payment of principal indebtedness in the sum of Twenty Six Million Seven Hundred Ten Thousand Dollars (\$26,710,000.00) lawful money of the United States, to be paid according to a certain Note bearing even date herewith in the form of Exhibit A attached hereto and by this reference incorporated in and made a part hereof, as said Note may be hereinafter amended or extended (the "Note"), the Deferred Commitment Fee provided for in the Loan Agreement described in Section 1.11 hereof, all other obligations and liabilities due or to become due the Mortgagee, all amounts sums and expenses paid hereunder by the Mortgagee according to the terms hereof and all other obligations and liabilities of the Mortgagor under this Mortgage and the Note, together with all interest on the said indebtedness, obligations, liabilities, amounts, sums and expenses (all of the aforesaid are hereinafter collectively referred to as the "Indebtedness"), the Mortgagor hereby mortgages, grants, bargains, sells, warrants, conveys, aliens, remises, releases, assigns, sets over and confirms to the Mortgagee:

All that certain lot, piece or parcel of land more particularly described in Exhibit B attached hereto and by this reference made a part hereof:

TOGETHER with the buildings and improvements now or hereafter located on said land and all right, title and interest, if any, of the Mortgagor in and to the streets and roads abutting said land to the center lines thereof, and strips and gores within or adjoining said land; the air space and right to use said air space above said land; all rights of ingress and egress by motor vehicles to parking facilities on or within said land; all easements now or hereafter affecting said land; royalties and all rights appertaining to the use and enjoyment of said land, including, without limitation, alley, drainage, mineral, water, oil and gas rights (said land and/or leasehold estate, together with said building and improvements, the property and other rights, privileges and interests encumbered or conveyed hereby, are hereinafter collectively referred to as the "Premises");

TOGETHER with all fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements thereof, owned by the Mortgagor and now or hereafter attached to, contained in, or used in connection with the Premises or placed on any part thereof, though not attached thereto, including, but not limited to, all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator plants, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings and fixtures, and the trade name, good will and books and records relating to the business operated on the Premises. Without limiting the foregoing, the Mortgagor hereby grants to the Mortgagee a security interest in all of the Mortgagor's present and future "equipment" and "general intangibles" (as said quoted terms are defined in the Uniform Commercial Code of the State wherein the Premises is located) (the Premises and said fixtures and articles of personal property and said "equipment" and "general intangibles" encumbered and conveyed hereby are hereinafter sometimes called the "Mortgaged Property") and the Mortgagee shall have, in addition to all rights and remedies provided herein, and in any other agreements, commitments and undertakings made by the Mortgagor to the Mortgagee, all of the rights and remedies of a "secured party" under the said Uniform Commercial Code. To the extent permitted under applicable law, this Mortgage shall be deemed to be a "security agreement" (as defined in the aforesaid Uniform Commercial Code). If the lien of this Mortgage is subject to a security interest covering any such personal property, then all of the right, title and interest of the Mortgagor in and to any and all such property is hereby assigned to the Mortgagee, together with the benefits of all deposits and payments now or hereafter made thereon by the Mortgagor;

TOGETHER with all leases, lettings and licenses of the Premises or any part thereof now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, including, without limitation, cash and securities deposited thereunder and the right to receive and collect the rents, issues and profits payable thereunder;

TOGETHER with all unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by the Mortgagor and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Property or any part thereof into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Mortgaged Property by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Mortgaged Property or any easement thereon, including awards for any change of grade of streets;

TOGETHER with all right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, the Mortgagor or constructed, assembled or placed by the Mortgagor on the Mortgaged Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described herein.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee and its successors and assigns until the Indebtedness is paid in full.

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ARTICLE I

Covenants of the Mortgagor

AND the Mortgagor covenants and agrees with the Mortgagee as follows:

Section 1.01. Payment of the Indebtedness. The Mortgagor will punctually pay the Indebtedness in immediately available funds as provided herein and in the Note, all in the coin and currency of the United States of America which is legal tender for the payment of public and private debts;

Section 1.02. Title to the Mortgaged Property. The Mortgagor warrants that: (i) it has title to the Mortgaged Property subject only to those exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage; (ii) it has full power and lawful authority to encumber the Mortgaged Property in the manner and form herein set forth; (iii) it will own all fixtures and articles of personal property now or hereafter affixed and/or used in connection with the Premises, including any substitutions or replacements thereof, free and clear of liens and claims; (iv) this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property; and (v) it will preserve such title and will forever warrant and defend the same to the Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

Section 1.03. Maintenance of the Mortgaged Property. The Mortgagor shall maintain the Mortgaged Property in good repair, shall comply with the requirements of any governmental authority claiming jurisdiction over the Mortgaged Property within thirty (30) days after an order containing such requirement has been issued by any such authority and shall permit the Mortgagee to enter upon the Premises and inspect the Mortgaged Property at all reasonable hours and without prior notice. The Mortgagor shall not, without the prior written consent of the Mortgagee, threaten, commit, permit or suffer to occur any waste, material alteration, demolition or removal of the Mortgaged Property or any part thereof; provided, however, that fixtures and articles of personal property may be removed from the Premises if the Mortgagor concurrently therewith replaces same with similar items of equal or greater value, free of any lien, charge or claim of superior title.

Section 1.04. Insurance Restoration. (a) The Mortgagor shall keep the buildings and improvements now or hereafter located within the Premises insured against damage by fire and the other hazards covered by a standard extended coverage insurance policy for the full insurable value thereof (which, unless the Mortgagee shall otherwise agree in writing, shall mean the full repair and replacement value thereof without reduction for depreciation or co-insurance). In addition, the Mortgagee may require the Mortgagor to carry such other insurance on the buildings and improvements now or hereafter located within the Premises, in such amounts as may from time to time be reasonably required by institutional lenders, against insurable casualties (including risks of war and nuclear explosion) which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the site and the type of the building, the construction, location, utilities and occupancy or any replacements or substitutions thereof. The Mortgagor shall additionally keep the buildings, improvements and equipment located therein and thereon now or hereafter located on the Premises insured against loss by flood if the Premises are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount at least equal to the outstanding Indebtedness or the maximum limit of coverage available with respect to the buildings under said Act, whichever is less, and will assign and deliver the policy or policies of such insurance to the Mortgagee, which policy or policies shall have endorsed thereon the standard New York (or local equivalent) mortgagee clause in the name of the Mortgagee, so and in such manner and form that the Mortgagee and its successors and assigns shall at all times have and hold the said policy or policies as collateral and further security for the payment of the Indebtedness until the full payment of the Indebtedness. In addition, from time to time, upon the occurrence of any change in the use, operation or value of the Premises, or in the availability of insurance in the area in which the Premises are located, the Mortgagor shall, within five (5) days after demand by the Mortgagee, take out such additional amounts and/or such other kinds of insurance as the Mortgagee may reasonably require. Otherwise, the Mortgagor shall not take out any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to the Mortgagee in all respects. The proceeds of insurance paid on account of any damage or destruction to the Premises or any part thereof shall be paid over to the Mortgagee to be applied as hereinafter provided.

(b) The Mortgagee shall have the option in its sole discretion to apply any insurance proceeds it may receive pursuant to this Section 1.04 to the payment of the Indebtedness or to allow all or a portion of such proceeds to be used for the restoration of the Premises. In the event that the Mortgagee elects to allow the use of such proceeds for the restoration of the Premises, then such use of the proceeds shall be governed as hereinafter provided.

(c) In the event of damage or destruction to the Premises, the Mortgagor shall give prompt written notice thereof to the Mortgagee and shall promptly commence and diligently continue to perform repair, restoration and rebuilding of the Premises so damaged or destroyed (hereinafter referred to as the "work") to restore the Premises in full compliance with all legal requirements and so that the Premises shall be at least equal in value and general utility as they were prior to the damage or destruction, and if the work to be done is structural or if the cost of the work as estimated by the Mortgagee shall exceed Fifty Thousand Dollars (\$50,000) (hereinafter referred to as "major work"), then the Mortgagor shall, prior to the commencement of the work, furnish to the Mortgagee: (1) complete plans and specifications for the work (approved by all governmental authorities whose approval is required), for the Mortgagee's approval, which approval shall not be unreasonably withheld. Said plans and specifications shall bear the signed approval thereof by an architect satisfactory to the Mortgagee (hereinafter referred to as the "Architect") and shall be accompanied by the Architect's signed estimate bearing the Architect's seal, of the entire cost of completing the work; (2) certified or photostatic copies of all permits and approvals required by law in connection with the commencement and conduct of the work; and (3) a surety bond for and/or guaranty of the payment for and completion of the work, which bond or guaranty shall be in form satisfactory to the Mortgagee and shall be signed by a surety or sureties or guarantor or guarantors, as the case may be, who are acceptable to the Mortgagee, and in an amount not less than the Architect's estimate of the entire cost of completing the work, less the amount of insurance proceeds, if any, then held by the Mortgagee for application toward the cost of the work.

(d) The Mortgagor shall not commence any of the work until the Mortgagee shall have complied with the applicable requirements referred to in subparagraph (c) above, and after commencing the work the Mortgagor shall perform the work diligently and in good faith in accordance with the plans and specifications referred to in subparagraph (c) (1) above, if applicable.

(e) All insurance proceeds recovered by the Mortgagee on account of damage or destruction to the Premises less the cost, if any, to the Mortgagee of such recovery and of paying out such proceeds (including attorneys' fees and costs allocable to inspecting the work and the plans and specifications therefor), shall, upon the written request of the Mortgagor, be applied by the Mortgagee to the payment of the cost of the work referred to in subparagraph (c) above and shall be paid out from time to time to the Mortgagor and/or, at the Mortgagee's option exercised from time to time, directly to the contractor, subcontractors, materialmen, laborers, engineers, architects and other persons rendering services or materials for the work, as said work progresses except as otherwise hereinafter provided, but subject to the following conditions, any of which the Mortgagee may waive:

1. If the work to be done is structural or if it is major work, as determined by the Mortgagee, the Architect shall be in charge of the work;

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2. Each request for payment shall be made on seven (7) days' prior notice to the Mortgagee and shall be accompanied by a certificate of the Architect, if one be required under subparagraph (c) above, otherwise by an executive or fiscal officer of the Mortgagor, stating (i) that all of the work completed has been done in compliance with the approved plans and specifications, if any, be required under said subparagraph (c), and in accordance with all provisions of law; (ii) the sum requested is justly required to reimburse the Mortgagor for payments by the Mortgagor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums, if any, previously paid out by the Mortgagee does not exceed the value of the work done to the date of such certificate; and (iii) that the amount of such proceeds remaining in the hands of the Mortgagee will be sufficient on completion of the work to pay for the same in full (giving in such reasonable detail as the Mortgagee may require an estimate of the cost of such completion);

3. Each request shall be accompanied by waivers of liens satisfactory to the Mortgagee covering that part of the work previously paid for, if any, and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Mortgagee that there has not been filed with respect to the Premises any mechanic's lien or other lien or instrument for the retention of title in respect of any part of the work not discharged of record and that there exist no encumbrances on or affecting the Premises other than encumbrances, if any, which are set forth in the title policy issued to the Mortgagee insuring the lien of this Mortgage;

4. No lease affecting the Premises immediately prior to the damage or destruction shall have been cancelled, nor contain any still exercisable right to cancel, due to such damage or destruction;

5. There shall be no default on the part of the Mortgagor under this Mortgage or the Note or any other instrument securing the same; and

6. The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the Premises legal.

Upon completion of the work and payment in full therefor, or upon failure on the part of the Mortgagor promptly to commence or diligently to continue the work, or at any time upon request by the Mortgagee, the Mortgagee may apply the amount of any such proceeds then or thereafter in the hands of the Mortgagee to the payment of the indebtedness, provided, however, that nothing herein contained shall prevent the Mortgagee from applying at any time the whole or any part of such proceeds to the curing of any default under this Mortgage or the Note.

(f) In the event the work to be done is not structural or it is not major work as determined by the Mortgagee, then the net insurance proceeds held by the Mortgagee for application thereto shall be paid to the Mortgagor by the Mortgagee upon completion of the work, subject to the provisions of the foregoing subparagraphs (c), (d) and (e) except those which are applicable only if the work to be done is structural or it is major work as determined by the Mortgagee.

(g) If within one hundred twenty (120) days after the occurrence of any damage or destruction to the Premises requiring structural work or major work in order to restore the Premises, the Mortgagor shall not have submitted to the Mortgagee and received the Mortgagee's approval of plans and specifications for the repair, restoration and rebuilding of the Premises so damaged or destroyed (approved by the Architect and by all governmental authorities whose approval is required), or if, after such plans and specifications are approved by all such governmental authorities and the Mortgagee, the Mortgagor shall fail to commence promptly such repair, restoration and rebuilding, or if thereafter the Mortgagor fails diligently to continue such repair, restoration and rebuilding or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with such work, or, in the case of any damage or destruction requiring neither structural work nor major work, as determined by the Mortgagee in order to restore the Premises, if the Mortgagor shall fail to repair, restore and rebuild promptly the Premises so damaged or destroyed then, in addition to all other rights herein set forth, and after giving the Mortgagor ten (10) days' written notice of the nonfulfillment of one or more of the foregoing conditions, the Mortgagee, or any lawfully appointed receiver of the Premises, may at their respective options, perform or cause to be performed such repair, restoration and rebuilding, and may take such other steps as they deem advisable to perform such repair, restoration and rebuilding, and upon twenty-four (24) hours' prior notice to the extent reasonably necessary for any of the foregoing purposes, and the Mortgagor hereby waives, for the Mortgagor and all others holding under the Mortgage, any claim against the Mortgagee and such receiver arising out of anything done by the Mortgagee or such receiver pursuant hereto; and the Mortgagee may apply insurance proceeds (without the need to fulfill any other requirements of this Section 1.04) to reimburse the Mortgagee, and/or such receiver, for all amounts expended or incurred by them, respectively, in connection with the performance of such work, and any excess costs shall be paid by the Mortgagor to the Mortgagee upon demand.

(h) The Mortgagor shall (i) provide public liability insurance with respect to the Premises providing for limits of liability of not less than \$1,000,000 for both injury to or death of a person and for property damage, and (ii) unless the Mortgagee agrees otherwise in writing, provide rent insurance in an amount at least equal at all times to the annual rent roll of the Premises.

(i) All insurance policies required pursuant to this Section 1.04 shall be endorsed to name the Mortgagee as an insured thereunder, as its interest may appear, with loss payable to the Mortgagee, without contribution, under a standard New York (or local equivalent) mortgagee clause. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State where the Premises are located, with a rating of "A-IX" or better as established by Best's Rating Guide or an equivalent rating with such other publication of a similar nature as shall be in current use, as shall be approved by the Mortgagee. Without limiting the foregoing, each policy shall provide that such policy may not be cancelled or materially changed except upon thirty (30) days' prior written notice of intention of non-renewal, cancellation or material change to the Mortgagee (ten (10) days in event of cancellation or non-renewal resulting solely from non-payment of premium) and that no act or thing done by the Mortgagor shall invalidate the policy as against the Mortgagee. In the event the Mortgagor fails to maintain insurance in compliance with this Section 1.04, the Mortgagee may, but shall not be obligated to, obtain such insurance and pay the premium therefor and the Mortgagor shall, on demand, reimburse the Mortgagee for all sums, advances and expenses incurred in connection therewith. The Mortgagor shall deliver copies of all original policies, certified by the insurance company or authorized agent as being true copies to the Mortgagee together with the endorsements thereto required hereunder. Notwithstanding anything to the contrary contained herein or in Section 254 of the Real Property Law of the State of New York (if the Premises are located in the State of New York) or any other provision of applicable law of any other State, the proceeds of insurance policies coming into the possession on the Mortgagee shall not be deemed trust funds and the Mortgagee shall be entitled to dispose of such proceeds as herein provided.

Section 1.05. Maintenance of Existence. The Mortgagor will, so long as it is owner of the Mortgaged Property, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its incorporation or formation, as the case may be, and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Mortgaged Property or any part thereof.

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In the event Mortgagee shall elect to allow the use of such awards for the restoration of the Premises, then such awards shall be disbursed in the same manner as insurance proceeds pursuant to Section 1.04.

Section 1.06. Taxes and Other Charges. The Mortgagor shall pay and discharge when due all taxes of every kind and nature, water rates, sewer rents and assessments, levies, permits, inspection and license fees and all other charges imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Premises or arising in respect of the occupancy, uses or possession thereof and, unless the Mortgagor is making monthly deposits with the Mortgagee in accordance with Section 1.14 hereof, the Mortgagor shall exhibit to the Mortgagee within five (5) days after the same shall have become due, validated receipts showing the payment of such taxes, assessments, water rates, sewer rents, levies, fees and other charges which may be or become a prior lien on the Mortgaged Property. Should the Mortgagor default in the payment of any of the foregoing taxes, assessments, water rates, sewer rents, or other charges, the Mortgagee may, but shall not be obligated to, pay the same or any part thereof and the Mortgagor shall, on demand, reimburse the Mortgagee for all amounts so paid.

(b) Nothing in this Section 1.06 shall require the payment or discharge of any obligation imposed upon the Mortgagor by subparagraph (a) of this Section 1.06 so long as the Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which proceedings must operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional interest charge, penalty or expense arising from or incurred as a result of such contest; and provided further, that if at any time payment of any obligation imposed upon the Mortgagor by subsection (a) of this Section 1.06 shall become necessary to prevent the delivery of a tax deed conveying the Mortgaged Property or any portion thereof because of non-payment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed.

Section 1.07. Mechanics and Other Liens. The Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income or profits arising therefrom and, in general, the Mortgagor shall do, or cause to be done, at the cost of the Mortgagor and without expense to the Mortgagee, everything necessary to fully preserve the lien of this Mortgage. In the event the Mortgagor fails to make payment of such claims and demands, the Mortgagee may, but shall not be obligated to, make payment thereof, and the Mortgagor shall, on demand, reimburse the Mortgagee for all sums so expended.

Section 1.08. Condemnation Awards. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings and the Mortgagor from time to time will deliver to the Mortgagee all instruments required by it to permit such participation. All awards and compensation or other taking or purchase in lieu thereof, of the Premises or any part thereof, are hereby assigned to and shall be paid to the Mortgagee. The Mortgagor hereby authorizes the Mortgagee to collect and receive such awards and compensation, to give proper receipts and acquittances therefor and in the Mortgagee's sole discretion to apply the same toward the payment of the indebtedness, notwithstanding the fact that the indebtedness may not then be due and payable, or to the restoration of the Premises. In the event that any portion of the condemnation awards or compensation shall be used to reduce the indebtedness, same shall be applied to the then unpaid installments of principal due under the Note in the inverse order of their maturity, such that the regular payments under the Note will not be reduced or altered in any manner. The Mortgagor, upon request by the Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to the Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. The Mortgagee shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment by the Mortgagor of interest at the applicable rate provided for herein or in the Note.

Section 1.09. Mortgage Authorized. The Mortgagor hereby warrants and represents that the execution and delivery of this Mortgage and the Note has been duly authorized and that there is no provision in its certificate of incorporation or by-laws (if the Mortgagor is a corporation) or its partnership agreement (if the Mortgagor is a partnership), as same may have been amended, requiring further consent for such action by any other entity or person; it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or formation, as the case may be, and has (a) all necessary licenses, authorizations, registrations and approvals and (b) full power and authority to own its properties and carry on its business as presently conducted; and the execution and delivery by and performance of its obligations under this Mortgage and the Note will not result in the Mortgagor being in default under any provision of its certificate of incorporation or by-laws (if the Mortgagor is a corporation) or of its partnership agreement (if the Mortgagor is a partnership), as the same may have been amended, or of any mortgage, credit or other agreement to which it is a party.

Section 1.10. Costs of Defending and Upholding the Lien. If any action or proceeding is commenced to which action or proceeding the Mortgagee is made a party or in which it becomes necessary to defend or uphold the lien of this Mortgage, the Mortgagor shall, on demand, reimburse the Mortgagee for all expenses (including, without limitation, reasonable attorneys' fees and appellate attorneys' fees) incurred by the Mortgagee in any such action or proceeding, in any action or proceeding to foreclose this Mortgage or to recover or collect the indebtedness; the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 1.11. Additional Advances and Disbursements. The Mortgagor shall pay when due all payments and charges on all liens, encumbrances, ground and other leases, and security interests which may be or become superior or inferior to the lien of this Mortgage, and in default thereof, the Mortgagee shall have the right, but shall not be obligated, to pay, without notice to the Mortgagor, such payments and charges and the Mortgagor shall, on demand, reimburse the Mortgagee for amounts so paid. In addition, upon default of the Mortgagor in the performance of any other terms, covenants, conditions or obligations by it to be performed under any such prior or subordinate lien, encumbrance, lease or security interest, the Mortgagee shall have the right, but shall not be obligated, to cure such default in the name and on behalf of the Mortgagor. All sums advances and reasonable expenses incurred at any time by the Mortgagee pursuant to this Section 1.11 or as otherwise provided under the terms and provisions of this Mortgage or under 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 an interest rate ("Default Rate") equal to Five Percent (5%) per annum in excess of the applicable Prime Rate, as defined in the Note.

Section 1.12. Costs of Enforcement. The Mortgagor agrees to bear and pay all expenses (including reasonable attorneys' fees and appellate attorneys' fees) of or incidental to the enforcement of any provision hereof, or the enforcement, compromise or settlement of this Mortgage or the indebtedness, and for the curing thereof, or for defending or asserting the rights and claims of the Mortgagee in respect thereof, by litigation or otherwise. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently. Notwithstanding anything herein contained to the contrary, the Mortgagor: (a) will not (i) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor (ii) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction, nor (iii) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof; (c) hereby expressly waives all benefit or advantage of any such law or laws, and (d) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.

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Section 1.13. **Mortgage Taxes.** The Mortgagee shall pay all taxes, including, registration and recording fees, excises and levies imposed upon the Mortgage by such bills of lading or the Note or this Mortgage or any mortgage supplement hereto, any security instrument with respect to any fixtures or personal property owned by the Mortgagor at the Premises and any instrument of further assurance, other than income, franchise and doing business taxes, and shall pay all stamp taxes and other taxes required to be paid on the Note. In the event the Mortgagor fails to make such payment within five (5) days after written notice thereof from the Mortgagee, then the Mortgagee shall have the right, but shall not be obligated, to pay the amount due, and the Mortgagor shall, on demand, reimburse the Mortgagee for said amount.

Section 1.14. **Escrow Deposits.** The Mortgagee, at its option, may require that the Mortgagor deposit with the Mortgagee, monthly, one-twelfth (1/12th) of the annual charges for ground or other rent, if any, insurance premiums and real estate taxes, assessments, water, sewer and other charges which might become a lien upon the Mortgaged Property and the Mortgagor shall, accordingly, make such deposits. In addition, if required by the Mortgagee, the Mortgagor shall simultaneously therewith deposit with the Mortgagee a sum of money which together with the monthly installments aforementioned will be sufficient to make each of the payments aforementioned at least thirty (30) days prior to the date such payments are due. Should said charges not be ascertainable at the time any deposits are required to be made with the Mortgagee, the deposit shall be made on the basis of the charges for the prior year, and when the charges are fixed for the then current year, the Mortgagor shall deposit any deficiency with the Mortgagee. All funds so deposited with the Mortgagee shall be held by it without interest, may be commingled by the Mortgagee with its general funds and, provided that no Event of Default shall have occurred, shall be applied in payment of the charges aforementioned when and as payable, to the extent the Mortgagee shall have such funds on hand. Should an Event of Default occur, the funds deposited with the Mortgagee, as aforementioned, may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the indebtedness or any other charges affecting the security of the Mortgagee, as the Mortgagee sees fit, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by the Mortgagee as herein provided. If deposits are being made with the Mortgagee, the Mortgagor shall furnish the Mortgagee with bills for the charges for which such deposits are required to be made hereunder and for such other documents necessary for the payment of same, at least fifteen (15) days prior to the date on which the charges first become payable. In the event the Mortgagor fails to pay any such amount, the Mortgagee may, but shall not be obligated to, make payment thereof, and the Mortgagor shall, on demand, reimburse the Mortgagee for all sums so expended.

Section 1.15. **Late Charges.** In the event any payment provided for herein or in the Note shall become overdue for a period in excess of ten (10) days (which ten (10) day period shall run concurrent with and not in addition to the ten (10) day period provided in the Note for the imposition of late charges), a late charge computed as set forth in the Note on the payments so overdue shall become immediately due to the Mortgagee, at the Mortgagee's option, as liquidated damages for failure to make prompt payment. Late charges shall be payable with the next installment of principal and/or interest due under the Note.

Section 1.16. **Financial Statements.** The Mortgagor shall furnish and shall cause any guarantor of the Indebtedness (the "Guarantor") and its beneficiary of the Mortgagor (the "Beneficiary") to furnish the Mortgagee, within ninety (90) days after the end of each fiscal year of the Mortgagor's operation of the Premises, a balance sheet and statement of profit and loss prepared by an independent certified public accountant of recognized standing and satisfactory to the Mortgagee in accordance with generally accepted accounting principles consistently applied. In addition, contemporaneously therewith, the Mortgagor shall furnish and shall cause Beneficiary and any Guarantor to furnish an audited annual report of the Mortgagor and such Beneficiary and Guarantor certified by an independent certified public accountant of recognized standing and satisfactory to the Mortgagee in all respects and prepared in accordance with generally accepted accounting principles consistently applied. In addition, the Mortgagor shall, from time to time within fifteen (15) days after request by the Mortgagee, furnish and shall cause Beneficiary and any Guarantor to furnish balance sheets and statements of profit and loss as at such other dates and for such other periods as the Mortgagee shall require, all certified by a financial officer of the Mortgagor or the relevant Beneficiary or Guarantor, as the case may be, and shall permit or cause Beneficiary and any Guarantor to permit the Mortgagee to examine in the city where the Mortgagor's (or such Beneficiary's or Guarantor's) main office is located or at the Premises (at the option of the Mortgagee) such records, books and papers of the Mortgagor, Beneficiary or such Guarantor which reflect upon its financial condition and the income and expense relative to the Premises, and the business conducted thereat. All financial statements of the Mortgagor and Beneficiary and each Guarantor shall be delivered in duplicate, and in the case of the Mortgagor, shall be accompanied by the certificate of a principal financial or accounting officer of the Mortgagor, dated within five (5) days of such statements to the Mortgagee, stating that he knows of no Event of Default, nor of any event which after notice or lapse of time or both would constitute an Event of Default, which has occurred and is continuing, or, if such event or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action the Mortgagor has taken or proposes to take with respect thereto, and, except as otherwise specified, stating that the Mortgagor has fulfilled all its obligations under this Mortgage which are required to be fulfilled on or prior to the date of such certificate.

Section 1.17. **Restrictive Covenants.** Without the prior written consent of the Mortgagee, the Mortgagor shall not: (a) execute or permit to exist any lease of all or a substantial portion of the Premises; (b) execute or permit to exist any conditional bill of sale, chattel mortgage or other security instruments covering any furniture, furnishings, fixtures and equipment intended to be incorporated in the Premises or the appurtenances thereto, or covering articles of personal property placed in the Premises or purchase any of such furniture, furnishings, fixtures and equipment so that ownership of the same will not vest unconditionally in the Mortgagor, free from encumbrances on delivery to the Premises; (c) further assign the leases and rents affecting the Premises; (d) sell, transfer, convey or assign any interest in the Mortgaged Property or any part thereof; or (e) further encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Mortgaged Property or any part thereof.

Section 1.18. **Estoppel Certificates.** The Mortgagor within three (3) days upon request in person or within five (5) days upon request by mail, shall furnish to the Mortgagee a written statement, duly acknowledged, setting forth the amount due on this Mortgage, the terms of payment, and maturity date of the Note, the date to which interest has been paid, whether any offsets or defenses exist against the indebtedness and, if any are alleged to exist, the nature thereof shall be set forth in detail.

Section 1.19. **Force Majeure.** The Mortgagor shall not be liable for non-performance of its obligations hereunder in the event of a fire, flood, earthquake, war, riot, insurrection, pestilence, or other event beyond its control which renders the Premises or any part thereof unusable for a period of more than thirty (30) days.

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Section 1.20. Assignment of Rents. The Mortgagor hereby assigns to the Mortgagee, as further security for the payment of the indebtedness, the rents, issues and profits of the Premises, together with all leases and other documents evidencing such rents, issues and profits now or hereafter in effect and any and all deposits held as security under said leases, and shall, upon demand, deliver to the Mortgagee an executed counterpart of each such lease or other document. Nothing contained in the foregoing sentence shall be construed to bind the Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such lease or other document or otherwise to impose any obligation on the Mortgagee (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease or in any law of any applicable state in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises), except that the Mortgagee shall be accountable for any money actually received pursuant to such assignment. The Mortgagor hereby further grants to the Mortgagee the right (i) to enter upon and take possession of the Premises for the purpose of collecting the said rents, issues and profits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to the Mortgagee, (iii) to let the Premises or any part thereof, and (iv) to apply said rents, issues and profits, after payment of all necessary charges and expenses, on account of said indebtedness. Such assignment and grant shall continue in effect until the indebtedness is paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of the Mortgagor to the entry upon and taking possession of the Premises by the Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver. Until the occurrence of an Event of Default the Mortgagor shall be entitled to collect and receive said rents, issues and profits. The Mortgagor agrees to use said rents, issues and profits in payment of principal and interest becoming due on this Mortgage and in payment of taxes, assessments, water rates, sewer rents and carrying charges becoming due against the Premises. Such right of the Mortgagee to collect and receive said rents, issues and profits may be revoked by the Mortgagee upon the occurrence of an Event of Default by giving not less than five (5) days' written notice of such revocation, served personally upon or sent by registered or certified mail to the record owner of the Premises.

Section 1.21. Indemnity. The Mortgagor will indemnify and hold the Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, attorney's fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by the Mortgagor or the Mortgagee of any section of Article J-A of the Lien Law of the State of New York (if the Premises are located in the State of New York) or other applicable laws of other states.

Section 1.22. Leasehold Mortgage. ~~(a) With respect to the leasehold mortgage described in Schedule B annexed hereto (the "Lease"), the Mortgagor hereby warrants and represents as follows: (i) it is in full force and effect, unmodified by any writing or otherwise, except as specifically set forth in Schedule B; (ii) all rent, additional rent and other charges reserved therein have been paid to the extent they are payable to the date hereof; (iii) the Mortgagor enjoys the quiet and peaceful possession of the property demised hereby; (iv) the Mortgagor is not in default under any of the terms thereof and, to the best of his knowledge, there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder; (v) to the best of his knowledge the landlord under the Lease is not in default under any of the terms or provisions thereof on the part of the landlord to be observed or performed.~~

~~(b) Further, with respect to the Lease, the Mortgagor covenants and agrees as follows: (i) to promptly and faithfully observe, perform and comply with all the terms, conditions and provisions thereof on its part to be observed, performed and complied with, at the times set forth therein, without any abatement for grace periods, if any; (ii) not to do, permit, suffer or refrain from doing anything, as a result of which, there could be a default under or breach of any of the terms thereof; (iii) not to cancel, surrender, modify, amend or in any way alter or permit the alteration of any of the terms thereof; (iv) to give the Mortgagee immediate notice of any default by anyone thereunder and to promptly deliver to the Mortgagee of each notice of default and all other notices, communications, plans, specifications and other similar instruments received or delivered by the Mortgagor in connection herewith; (v) to furnish to the Mortgagee copies such information and evidence as the Mortgagee may reasonably require concerning the Mortgagor's due observance, performance and compliance with the terms, covenants and provisions thereof; (vi) that any default of the tenant thereunder shall constitute a default under this Mortgage.~~

~~(c) In the event of any default by the Mortgagor in the performance of any of its obligations under the Lease, including, without limitation, any default in the payment of rent and other charges and impositions made payable by the tenant thereunder, then, in each and every case, the Mortgagee may, at its option and without notice, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of the Mortgagor thereunder in the name of and on behalf of the Mortgagor. The Mortgagor shall, on demand, reimburse the Mortgagee for all advances made and expenses incurred by the Mortgagee in curing any such default (including, without limitation, reasonable attorney's fees), together with interest thereon computed at the rate provided for in Section 1.11 hereof from the date that an advance is made or expense is incurred, to and including the date the same is paid.~~

~~(d) The Mortgagor shall give the Mortgagee notice of its intention to exercise each and every option to extend the term of the Lease, at least twenty (20) but not more than sixty (60) days prior to the expiration of the time to exercise such option under the terms thereof. If the Mortgagor intends to extend the term of the Lease, it shall deliver to the Mortgagee with the notice of such decision, a copy of the notice of extension delivered to the landlord thereunder. If the Mortgagor does not intend to extend the term of the Lease, the Mortgagee may, at its option, exercise the option to extend in the name and on behalf of the Mortgagor. In any event, the Mortgagee hereby appoints the Mortgagee its attorney-in-fact to execute and deliver, for and in the name of the Mortgagor, all instruments and agreements necessary under the Lease or otherwise to cause any extension of the term thereof. This power, being coupled with an interest, shall be irrevocable as long as the indebtedness remains unpaid.~~

~~(e) It is hereby agreed that the fee title and the leasehold estate in the property demised by the Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either the landlord thereunder, the Mortgagor or a third party, whether by purchase or otherwise. If the Mortgagor acquires the fee title or any other estate, title or interest in the property demised by the Lease, or any part thereof, the lien of this Mortgage shall attach to, cover and be a lien upon such acquired estate, title or interest and same shall thereupon be and become a part of the Mortgaged Property with the same force and effect as if specifically encumbered herein. The Mortgagor agrees to execute all instruments and documents which the Mortgagee may reasonably require to ratify, confirm and further evidence the Mortgagee's lien on the acquired estate, title or interest. Furthermore, the Mortgagor hereby appoints the Mortgagee its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of the Mortgagor. This power, being coupled with an interest, shall be irrevocable as long as the indebtedness remains unpaid.~~

~~(f) If the Lease is cancelled or terminated and if the Mortgagee or its nominee shall acquire an interest in any new lease of the property demised thereby, the Mortgagor shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease.~~

~~(g) The Mortgagor shall use its best efforts to obtain and deliver to the Mortgagee within twenty (20) days after written demand by the Mortgagee, an estoppel certificate from the landlord under the Lease setting forth (i) the name of the tenant thereunder, (ii)~~

* Include Section 1.22 if the Mortgage encumbers a leasehold estate.
Delete Section 1.22 if the Mortgage does not encumber a leasehold estate.

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under the Lease, and (v) whether there are any alleged defaults of the tenant under the Lease and, if there are, the nature thereof in reasonable detail.

(h) Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an assignment of the Lease within the meaning of any provision thereof prohibiting its assignment and the Mortgagee shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage. The Mortgagee shall be liable for the obligations of the tenant arising under the Lease for only that period of time which the Mortgagee is in possession of the Premises or has acquired, by foreclosure or other-

ARTICLE II
Default and Remedies

to run concurrently with any grace period contained in the Note

in the Loan Agreement

Section 2.01. Events of Default. The following shall constitute Events of Default under this Mortgage: (a) default when and as the same shall become due and payable in payment of amounts required to be paid hereunder or a default in the payment of principal or interest on the Note whether by maturity or acceleration, which default has continued for a period of ten (10) days; or (b) default beyond any applicable grace period in the due observance or performance of any of the terms, covenants or conditions contained herein relating to other than the payment of money; or (c) should any representation made herein or any other document given in connection herewith prove to be untrue in any material respect; or (d) default beyond any applicable grace period under any obligation set forth in the Note other than for the payment of principal or interest; or (e) the further assignment or encumbrance by the Mortgagor of the leases or rents of the Premises or any part thereof without prior written consent of the Mortgagee; or (f) the lease by the Mortgagor of all or part of the Premises for purposes other than the actual occupancy by the lessee; or (g) the failure of the Mortgagor to pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto all franchise taxes and charges, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including, but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed or become a lien upon the Mortgaged Property or become payable during the term of the Note or this Mortgage; or (h) the conveyance, assignment, sale or attempted sale, or other disposition of the Premises, the further mortgage, pledge or other encumbrance by the Mortgagor of the Mortgaged Property or any part thereof or any interest therein without the prior written consent of the Mortgagee; or (i) if a receiver, liquidator or trustee of the Mortgagor or any Guarantor or of any of its properties, shall be appointed; or (j) if a petition in bankruptcy, an insolvency proceeding or a petition for reorganization, shall have been filed against the Mortgagor or any Guarantor and same is not withdrawn, dismissed, cancelled or terminated within sixty (60) days; or (k) if the Mortgagor or any Guarantor is adjudicated bankrupt or insolvent or a petition for reorganization is granted (without regard for any grace period provided for herein); or (l) if there is an attachment or sequestration of any of the property of the Mortgagor or any Guarantor and same is not promptly discharged or bonded; or (m) if the Mortgagor or any Guarantor files or consents to the filing of any petition in bankruptcy or commences or consents to the commencement of an proceeding under the Federal Bankruptcy Act or any other law, now or hereafter in effect, relating to the reorganization of the Mortgagor or such Guarantor or the arrangement or readjustment of the debts of the Mortgagor or such Guarantor; or (n) if the Mortgagor or any Guarantor shall make an assignment for the benefit of its creditors or shall admit in writing the inability to pay its debts generally as they become due or shall consent to the appointment of a receiver, trustee or liquidator of the Mortgagor or such Guarantor or of all or any part of its or his property; or (o) if default shall occur under, or any attempted withdrawal, cancellation or disclaimer of liability under any guaranty which guarantees payment of the indebtedness or under any agreement giving security for said guaranty shall occur; or (p) if the Mortgagor or any Guarantor shall cause or institute any proceeding for the dissolution or termination of the Mortgagor or such Guarantor; or (q) if the Mortgagor or any Guarantor ceases to do business or terminates its business or presently conducted for any reason whatsoever; or (r) if the Mortgagor or any Guarantor defaults under any other agreement that it has with the Mortgagee; or (s) if a default shall occur under any mortgage which is subordinate to the lien of this Mortgage or the mortgage under any subordinate mortgage shall commence a foreclosure action in connection with said Mortgage, provided that this provision shall not be deemed to be a waiver of the provisions of Section 1.17 (h) or any other section of this Mortgage.

Section 2.02. Remedies. (a) Upon the occurrence of any Event of Default, the Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against the Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee may determine in its sole discretion, without impairment or otherwise affecting the other rights and remedies of the Mortgagee: (i) declare the entire unpaid indebtedness to be immediately due and payable; or (2) enter into or upon the Premises, either personally or by its agents, nominees or attorneys and disposes of the Mortgaged Property and its assets and servants therefrom, and thereupon the Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; (ii) complete any construction on the Premises in such manner and form as the Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of the Mortgagor with respect to the Premises, whether in the name of the Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof; and (v) apply the receipts from the Premises to the payment of the indebtedness after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of the Mortgagee, its counsel, agents and employees; or (3) institute proceedings for the complete foreclosure of this Mortgage in which case the Mortgaged Property may be sold for cash or upon credit in one or more parcels, or (4) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the indebtedness then due and payable, subject to the continuing lien of this Mortgage for the balance of the indebtedness not then due; or (5) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property; or (6) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note; or (7) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage, or (8) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without regard for the adequacy of the security for the indebtedness and without regard for the solvency of the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the indebtedness; or (9) pursue such other remedies as the Mortgagee may have under applicable law.

(b) The purchase money, proceeds or avails of any sale made under or by virtue of this Article II, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Article II or otherwise, shall be applied as follows:

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First: To the payment of the costs and expenses of any such sale, including reasonable compensation to the Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest as provided herein on all advances made by the Mortgagee and all taxes or assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal, together with any and all applicable interest and late charges.

Third: To the payment of any other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage or of the Note.

Fourth: To the payment of the surplus, if any, to whosoever may be lawfully entitled to receive the same.

The Mortgagee and any receiver of the Mortgaged Property, or any part thereof, shall be liable to account for only those rents, issues and profits actually received by it.

(c) The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Article II, the Mortgagee, or an officer of any bank empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or good and sufficient instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights so sold. The Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power; the Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the property and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

(e) In the event of any sale made under or by virtue of this Article II (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) the entire indebtedness, if not previously due and payable, immediately thereupon shall, anything in the Note or in this Mortgage to the contrary notwithstanding, become due and payable.

(f) Upon any sale made under or by virtue of this Article II (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage.

(g) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before.

Section 2.03. Payment of Indebtedness After Default. Upon the occurrence of any Event of Default and the acceleration of the maturity hereof, if, at any time prior to foreclosure sale, the Mortgagor or any other person tenders payment of the amount necessary to satisfy the indebtedness, the same shall constitute an evasion of the payment terms hereof and shall be deemed to be a voluntary prepayment hereunder, in which case such payment must include the premium required under the prepayment provision, if any, contained herein or in the Note; or if at that time there is no privilege of prepayment, then the payment will include a premium of five (5%) percent of the then unpaid indebtedness. This provision shall be of no force or effect if at the time that such tender of payment is made the Mortgagor has the right under this Mortgage or the Note to prepay the indebtedness without penalty or premium.

Section 2.04. Possession of the Premises. Upon the occurrence of any Event of Default hereunder, it is agreed that the then owner of the Premises, if it is the occupant of the Premises or any part thereof, shall immediately surrender possession of the Premises so occupied to the Mortgagee, and if such occupant is permitted to remain in possession, the possession shall be as tenant of the Mortgagee and, on demand, such occupant (a) shall pay to the Mortgagee monthly, in advance, a reasonable rental for the space so occupied and in default thereof, (b) may be dispossessed by the usual summary proceedings. The covenants herein contained may be enforced by a receiver of the Mortgaged Property or any part thereof. Nothing in this Section 2.04 shall be deemed to be a waiver of the provisions of this Mortgage prohibiting the sale or other disposition of the Premises without the Mortgagee's consent.

Section 2.05. Interest After Default. If any payment due hereunder or under the Note is not paid when due, either as stated or accelerated maturity or pursuant to any of the terms hereof, then and in such event, the Mortgagor shall pay interest thereon from and after the date on which such payment first becomes due at the interest rate provided for in Section 1.11 hereof and such interest shall be due and payable on demand at such rate until the entire amount due is paid to the Mortgagee, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclosure this Mortgage. Nothing in this Section 2.05 or in any other provision of this Mortgage shall constitute an extension of the time of payment of the indebtedness.

Section 2.06. Mortgagor's Actions After Default. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by the Mortgagee to obtain judgment for the indebtedness, or of any other nature in aid of the enforcement of the Note or of this Mortgage, the Mortgagor will (a) waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding, and (b) if required by the Mortgagee, consent to the appointment of a receiver or receivers of the Mortgaged Property and of all the earnings, revenues, rents, issues, profits and income thereof.

Section 2.07. Control by Mortgagee After Default. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, the Mortgagee shall be entitled to retain possession and control of all property now and hereafter covered by this Mortgage.

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ARTICLE III Miscellaneous

Section 3.01. Credits Waived. The Mortgagor will not claim nor demand nor be entitled to any credit or credits against the indebtedness for so much of the taxes assessed against the Mortgaged Property or any part thereof as is equal to the tax rate applied to the amount due on this Mortgage or any part thereof, and no deductions shall otherwise be made or claimed from the taxable value of the Mortgaged Property or any part thereof by reason of this Mortgage or the Indebtedness.

Section 3.02. No Release. The Mortgagor agrees, that in the event the Mortgaged Property is sold and the Mortgagee enters into any agreement with the then owner of the Mortgaged Property extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof, the Mortgagor shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by the Mortgagee.

Section 3.03. Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when delivered in person or sent by certified mail, return receipt requested, to any party hereto at its address above stated (in the case of the Mortgagee, to the attention of Manager—Real Estate Financing) or at such other address of which it shall have notified the party giving such notice in writing as aforesaid.

Section 3.04. Binding Obligations. The provisions and covenants of this Mortgage shall run with the land, shall be binding upon the Mortgagor and shall inure to the benefit of the Mortgagee, subsequent holders of this Mortgage and their respective successors and assigns. For the purpose of this Mortgage, the term "Mortgagor" shall mean the Mortgagor named herein, any subsequent owner of the Mortgaged Property, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be deemed joint and several.

Section 3.05. Captions. The captions of the Sections of this Mortgage are for the purpose of convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

Section 3.06. Further Assurances. The Mortgagor shall do, execute, acknowledge and deliver, at the sole cost and expense of the Mortgagor, all and every such further acts, deeds, conveyances, mortgages, assignments, estoppel certificates, notices of assignment, transfers and assurances as the Mortgagee may reasonably require from time to time in order to better assure, convey, assign, transfer and confirm unto the Mortgagee, the rights now or hereafter intended to be granted to the Mortgagee under this Mortgage, any other instrument executed in connection with this Mortgage or any other instrument under which the Mortgagor may be or may hereafter become bound to convey mortgage or assign to the Mortgagee for carrying out the intention of facilitating the performance of the terms of this Mortgage. The Mortgagor hereby appoints the Mortgagee its attorney-in-fact to execute, acknowledge and deliver for and in the name of the Mortgagor any and all of the instruments mentioned in this Section 3.06 and this power, being coupled with an interest, shall be irrevocable as long as any part of the Indebtedness remains unpaid.

Section 3.07. Severability. Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

Section 3.08. General Conditions. (a) All covenants hereof shall be construed as affording to the Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of Sections 254, 271, 272 of the Real Property Law of the State of New York (if the Premises are located in the State of New York), or any other applicable law of any other state.

(b) This Mortgage cannot be altered, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment or discharge is sought.

(c) No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee in exercising any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default, or any acquiescence therein. Acceptance of any payment after the occurrence of an Event of Default shall not be deemed to waive or cure such Event of Default; and every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee. Nothing in this Mortgage or in the Note shall affect the obligation of the Mortgagor to pay the Indebtedness in the manner and at the time and place therein respectively expressed.

(d) No waiver by the Mortgagee will be effective unless it is in writing and then only to the extent specifically stated. Without limiting the generality of the foregoing, any payment made by the Mortgagee for insurance premiums, taxes, assessments, water rates, sewer rentals or any other charges affecting the Mortgaged Property, shall not constitute a waiver of the Mortgagor's default in making such payments and shall not obligate the Mortgagee to make any further payments.

(e) The Mortgagee shall have the right to appear in and defend any action or proceeding, in the name and on behalf of the Mortgagor which the Mortgagee, in its discretion, feels may adversely affect the Mortgaged Property or this Mortgage. The Mortgagee shall also have the right to institute any action or proceeding which the Mortgagee, in its discretion, feels should be brought to protect its interest in the Mortgaged Property or its rights hereunder. All costs and expenses incurred by the Mortgagee in connection with such actions or proceedings, including, without limitation, reasonable attorneys' fees and appellate attorneys' fees, shall be paid by the Mortgagor, on demand.

(f) In the event of the passage after the date of this Mortgage of any law of any governmental authority having jurisdiction, deducting from the value of land for the purpose of taxation, affecting any lien thereon or changing in any way the laws of the taxation or mortgages or debts secured by mortgages for federal, state or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage, the Mortgagor shall promptly pay to the Mortgagee, on demand, all taxes, costs and charges for which the Mortgagee is or may be liable as a result thereof, provided said payment shall not be prohibited by law or render the Note usurious, in which event the Mortgagee may declare the Indebtedness to be immediately due and payable.

(g) The Mortgagor hereby appoints the Mortgagee as its attorney-in-fact in connection with the personal property and fixtures covered by this Mortgage, where permitted by law, to file on its behalf any financing statements or other statements in connection therewith with the appropriate public office signed only by the Mortgagee, as secured party. This power, being coupled with an interest, shall be irrevocable so long as any part of the Indebtedness remains unpaid.

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(b) The information set forth on the cover hereof is hereby incorporated herein.

(l) The Mortgagor acknowledges that it has received a true copy of this Mortgage.

(j) For the purposes of this Mortgage, all defined terms contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular shall be construed as the plural and so that the masculine shall be construed as the feminine.

Section 3.09. Promotional Material. The Mortgagor authorizes the Mortgagee to issue press releases, advertisements and other promotional materials in connection with the Mortgagee's own business promotional and marketing activities, describing the loan referred to in this Mortgage and the matters giving rise to such loan.

Section 3.10. Legal Construction. The enforcement of this Mortgage shall be governed, construed and interpreted by the laws of the State of Illinois. Nothing in this Mortgage, the Note or in any other agreement between the Mortgagor and the Mortgagee shall require the Mortgagor to pay, or the Mortgagee to accept, interest in an amount which would subject the Mortgagee to any penalty under applicable law. In the event that the payment of any interest due hereunder or under the Note or any such other agreement would subject the Mortgagee to any penalty under applicable law, then *ipso facto* the obligations of the Mortgagor to make such payment shall be reduced to the highest rate authorized under applicable law.

Section 3.11. Construction Loan Agreement. The Mortgagor and its beneficiary have executed and delivered to and with the Mortgagee a construction loan agreement (herein called "Loan Agreement") dated as of the date hereof, in connection with the construction and erection of certain improvements upon the Premises and the disbursement of all or any part of the Indebtedness for the purpose of financing the costs thereof a portion of which loan shall be disbursed on a revolving basis. The Loan Agreement is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length. This Mortgage secures all funds advanced pursuant to the Loan Agreement (which advances shall constitute part of the Indebtedness whether more or less than the principal amount stated in the Note) and the due and punctual performance, observance and payment of all of the terms, conditions, provisions and agreements provided in the Loan Agreement to be performed, observed or paid by any party thereto other than Mortgagee. Mortgagor hereby agrees to duly and punctually perform, observe and pay or cause to be duly performed, observed and paid all of the terms, conditions, provisions and payments provided for in the Loan Agreement to be performed, observed or paid by any party thereto other than Mortgagee.

It is further agreed as follows with respect to the Loan Agreement:

(a) If there is a conflict between the terms, provisions and/or conditions of the Loan Agreement and of this instrument, the Loan Agreement shall control.

(b) It shall be an immediate Event of Default hereunder, without notice or period of grace, if there shall be an Event of Default under the Loan Agreement.

(c) If the Loan Agreement provides for grace periods, the passage of which shall constitute an Event of Default thereunder, and any such grace periods differ in duration from those provided in this Mortgage, the shorter grace period shall be applicable. All grace periods provided for in the Loan Agreement shall run concurrent with and not in addition to those provided for in this Mortgage but, except as specifically provided in this paragraph 3.11 to the contrary, the terms, provisions and conditions of the Loan Agreement shall not otherwise supersede, affect, abrogate, suspend, alter or amend the occurrence of an Event of Default nor the passage of a grace period hereunder.

Section 3.12. Indemnification. Mortgagor hereby indemnifies and holds harmless Mortgagee against, and agrees to pay on demand, any brokerage commission or finder's fee claimed by any broker or other party in connection with the loan transaction contemplated by this Mortgage and the Note.

Section 3.13. Additional Covenants. In the event that Mortgagee shall advance any sums to cure a default of the Mortgagor hereunder, the amount of such advance shall bear interest at the Default Rate and shall be due and payable by the Mortgagor within five (5) days after notice from the Mortgagee and shall be deemed an additional indebtedness secured hereby.

Section 3.14. Additional Default. It shall be a default hereunder if, without the prior written consent of Mortgagee, there is any voluntary or involuntary actual or attempted installment contract with respect to, or conveyance, pledge, hypothecation, mortgage, trust deed or other transfer of all or any portion of the beneficial interest in the Mortgagor or the corporate stock of Donogh Homes, Inc., a Washington corporation. The transfer of a decedent's interest to his heirs or legatees pursuant to his Last Will and Testament or the laws of intestacy shall not constitute a default hereunder.

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Section 3.15. Financial Statements. Notwithstanding Section 1.16 of this Mortgage, Mortgagor shall be required to provide financial statements to Mortgagee as required of Borrower under the Loan Agreement.

Section 3.16. Additional Remedies. Without limiting the provisions of Section 2.01 hereof but in addition thereto and in amplification thereof, it is agreed as follows:

(a) When the Indebtedness, or any part thereof, shall become due, whether by acceleration or otherwise, and shall not be paid, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit or proceeding 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 the Mortgagee for reasonable attorneys' fees, appraisers' 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 a decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature in this subsection mentioned, and such expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in the preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with accrued interest thereon at the Default Rate.

(b) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits; and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

(i) The Indebtedness, or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or

(ii) The deficiency in case of a sale and deficiency.

Section 3.17. Waiver. The Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all rights of redemption are and shall be deemed to be hereby waived to the fullest extent permitted by the provisions of applicable law.

Section 3.18. Environmental Matters. (a) The Mortgagor represents and covenants that (i) the Mortgagor has not caused or suffered to occur and the Mortgagor will not hereafter cause or suffer to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids,

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liquid or gaseous products or hazardous waste (a "spill"), or hazardous substance as those terms are used in applicable state or local statutes, ordinances, laws or regulations or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may be amended from time to time (collectively the "Act"), at, upon, under or within the Premises or any contiguous real estate which has been included in the property description of the Premises within the preceding three (3) years; (ii) neither the Mortgagor nor, to the knowledge of its beneficiary, any other party has been, is or will be involved in operations at or near the Premises which could lead to the imposition on the Mortgagor or any other owner of the Premises of liability or the creation of a lien on the Premises, under the Act or under any similar applicable laws or regulations; and (iii) the Mortgagor has not permitted and will not permit any tenant or occupant of the Premises to engage in any activity that could lead to the imposition of liability on such tenant or occupant, the Mortgagor or any other owner of any of the Premises, or the creation of a lien on the Premises, under the Act or any similar applicable laws or regulations.

(b) The Mortgagor shall comply strictly and in all respects with the requirements of the Act and related regulations and with all similar applicable laws and regulations and shall notify the Mortgagee promptly in the event of any spill or hazardous substance upon the Premises, and shall promptly forward to the Mortgagee copies of all orders, notices, permits, applications or other communications and reports in connection with any such spill or any other matters relating to the Act or related regulations, or any similar applicable laws or regulations, as they may affect the Premises.

(c) The Mortgagor, promptly upon the written request of the Mortgagee from time to time, shall provide the Mortgagee with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content satisfactory to the Mortgagee.

(d) The Mortgagor shall indemnify the Mortgagee and hold the Mortgagee harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the Mortgagee, whether as holder of this Mortgage, as mortgagee in possession or as successor in interest to the Mortgagor as owner of the Premises by virtue of foreclosure or acceptance of a deed in lieu of foreclosure not caused by or resulting from the actions (but not the inactions or failure to act) of Mortgagee, its agents and their successors and assigns (i) under or on account of the Act or related regulations or any similar applicable laws or regulations, including the assertion of any lien thereunder; (ii) with respect to any spill or hazardous substance affecting the Premises whether or not the same originates or emanates from the Premises or any such contiguous real estate, including any loss of value of the Premises as a result of a spill or hazardous substance; and (iii) with respect to any other matter affecting the Premises within the jurisdiction of the EPT or the DEP, it being understood that in the event a separate indemnification document is executed in connection herewith, and to the extent of a conflict with this Mortgage, the terms of such separate indemnity shall govern, and the indemnity provisions herein and such separate indemnity shall survive the release of this Mortgage, the transfer of the Premises and the repayment of the Indebtedness.

(e) In the event of any spill or hazardous substance affecting the Premises, whether or not the same originates or emanates from the Premises or any such contiguous real estate, and/or if the Mortgagor shall fail to comply with any of the requirements of the Act or related regulations or any other environmental law or regulation, the Mortgagee may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Premises and/or take any and all other actions as the Mortgagee shall deem necessary or advisable in order to remedy said spill or hazardous substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Interest Rate from the date of payment by the Mortgagee, shall be immediately due and payable by the Mortgagor to the Mortgagee and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof.

Section 3.19. Miscellaneous. Nothing in Section 1.07 shall require the payment or discharge of any obligation imposed upon the Mortgagor by Section 1.07 so long as the Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings, which proceedings must operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided that during such contest the Mortgagor shall, at the option of the Mort-

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gagee, provide security satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional interest charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon the Mortgagor by Section 1.07 shall become necessary to prevent the delivery of a deed conveying the Mortgaged Property or any portion thereof because of non-payment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such deed.

Section 3.20. Maximum Indebtedness. The maximum amount secured by this Mortgage is One Hundred Million Dollars (\$100,000,000.00).

Section 3.21. Permitted Transfers. Notwithstanding anything to the contrary herein contained so long as no Event of Default shall have occurred, (a) Mortgagor may sell, transfer, convey or assign portions of the Mortgaged Property improved with Homes as defined in the Loan Agreement; and (b) Mortgagee agrees to release the lien of this Mortgage from the portions of the Mortgaged Premises being sold, transferred, conveyed or assigned pursuant to Subsection 3.22(a).

Section 3.22. Cross Default, Cross Collateralization. Trusts, the beneficiaries of which are the Beneficiary and/or entities affiliated with the Beneficiary, have heretofore borrowed certain sums from Mortgagor as follows:

(a) A revolving loan (herein called the "Barclay Pointe Loan") in the principal amount of \$7,100,000.00, evidenced by an Amended and Restated Promissory Note, dated November 1, 1989 herein called the "Barclay Pointe Note") of Charter Bank and Trust of Illinois, not personally but solely as trustee under Trust No. 1331 ("herein called the "Barclay Pointe Borrower") payable to the order of Mortgagee and secured by, inter alia, a mortgage dated October 15, 1988 and recorded on November 1, 1988 in the Office of the Recorder of Deeds of Cook County, Illinois as document no. 88502415 (herein, as amended by the Amendatory Agreement dated as of November 1, 1988 entered into by and between Beneficiary, the Barclay Pointe Borrower and Lender, and to be recorded in the Office of the Recorder of Deeds of Cook County, Illinois called the "Barclay Pointe Mortgage", and together with all other documents securing the Barclay Pointe Note, called the "Barclay Pointe Documents");

(b) A revolving loan (herein called the "Glenmoor Loan") in the principal amount of \$4,900,000.00, dated April 25, 1989, evidenced by a promissory note, dated April 25, 1989 (herein called the "Glenmoor Note") of Charter Bank and Trust of Illinois, not personally but solely as trustee under Trust No. 1358 ("herein called the "Glenmoor Borrower") payable to the order of Mortgagee and secured by, inter alia, a mortgage of even date with the Glenmoor Note and recorded on June 5, 1989 in the Office of the Recorder of Deeds of McHenry County, Illinois as document no. 89R017252 and recorded (herein called the "Glenmoor Mortgage", and together with all other documents securing the Glenmoor Note, called the "Glenmoor Documents"); and

(c) a revolving loan (herein called the "Silver Lakes Loan") in the principal amount of \$10,633,000.00, evidenced by a promissory note dated December 15, 1989 (herein called the "Silver Lakes Note") of Charter Bank and Trust of Illinois, not personally, but solely as trustee under Trust No. 1385 (herein called the "Silver Lakes Borrower") payable to the order of Mortgagee and secured by inter alia a mortgage encumbering the real estate described on Exhibit C attached hereto and made a part hereof of even date with the Silver Lakes Note and to be recorded in the office of the Recorder of Deeds of Cook County, Illinois (herein called the "Silver Lakes Mortgage" and together with all other documents securing the Silver Lakes Note, called the "Silver Lakes Documents").

In connection therewith, (A) The term "Indebtedness" shall include the indebtedness evidenced by (i) the Barclay Pointe Note and secured by the Barclay Pointe Documents, (ii) the Glenmoor Note and secured by the Glenmoor Documents, and (iii) the Silver Lakes Note and secured by the Silver Lakes Documents; (B) the Premises are hereby pledged as additional security for the Barclay Pointe Loan, the Glenmoor Loan and Silver Lakes Loan; and (C) an Event of Default under either the Barclay Pointe Documents, the Glenmoor Documents or the Silver Lakes Documents shall be an Event of Default hereunder.

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It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Trustee on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained; provided, however, this clause shall not impair the enforceability, or adversely affect the obligations of the signatories under, any separate instrument of guaranty; and provided further, that the foregoing limitations on personal liability with respect to principal and interest shall not impair the validity of the indebtedness secured by Mortgagee's collateral or the lien of or security interest of the collateral or the right of Mortgagee as Mortgagee or secured party to foreclose and or enforce the collateral after default by the Mortgagor. Nothing herein shall be deemed to be a waiver of any right which Mortgagee may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Reform of 1978, as at any time amended or reinstated, to file a claim for the full amount of the debt owing to Mortgagee in the event Mortgagor or its beneficiary should become the subject of a petition for bankruptcy or reorganization or to require that all collateral shall continue to secure all of the indebtedness owing to Mortgagee in accordance with the loan documents.

IN WITNESS WHEREOF, CHARTER BANK AND TRUST COMPANY OF ILLINOIS, not personally but as Trustee as aforesaid has caused these presents to be signed by one of its Vice Presidents or Assistant Vice Presidents and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, all as of the day, month and year first above written.

CHARTER BANK AND TRUST COMPANY OF ILLINOIS, not personally but solely as trustee as aforesaid

By: Robert K. Tarnowski
ASST. TRUST OFFICER

Attest:

Kathleen M. Skolnik

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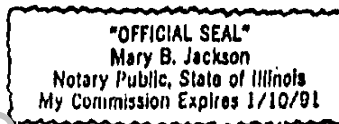
STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, Mary B. Jackson, a Notary Public in and for the county and state aforesaid, do hereby certify that Robert L. Tarnawski A.T.C. (Vice) President of CHARTER BANK AND TRUST COMPANY OF ILLINOIS ("Bank"), a corporation, and Kathleen M. Shali (Assistant) Secretary Cashier of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers of said corporation, respectively, appeared before me 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 Bank for the uses and purposes therein set forth, and the said (Assistant) Secretary of said Bank then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix such corporate seal to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of December, 1988?

Mary B. Jackson
Notary Public

My Commission Expires:
1-10-91

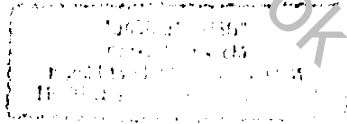


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EXHIBIT A

PROMISSORY NOTE

(Construction Loan)

\$26,710,000.00

December 15, 1989

FOR VALUE RECEIVED, the undersigned, CHARTER BANK AND TRUST OF ILLINOIS, not personally but solely as trustee under trust agreement dated October 12, 1989 and known as Trust No. 1386 ("Borrower") promises to pay to the order of GENERAL ELECTRIC CAPITAL CORPORATION ("GECC") the principal sum of TWENTY SIX MILLION SEVEN HUNDRED TEN THOUSAND DOLLARS (\$26,710,000.00) or so much thereof as may be advanced by GECC hereon and remain unpaid from time to time, with interest on the unpaid balance of such principal sum from time to time outstanding from the date ("Disbursement Date") of the first disbursement of the loan evidenced hereby, at the rate ("Contract Rate") equal to ONE AND ONE-HALF PERCENT (1-1/2%) per annum in excess of the Prime Rate in effect from time to time.

The term "Prime Rate" is defined as the prime rate (or base rate) reported in the Money Rates Column or section of The Wall Street Journal published on the second (2nd) business day of the month preceding the month in which a payment of interest and/or principal is due on the loan, as having been the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) as of the first (1st) calendar day of such month for which such rate is published.

In the event The Wall Street Journal ceases publication of the Prime Rate, then "Prime Rate" shall mean the "prime rate" or "base rate" announced by BANKERS TRUST COMPANY, New York, New York (whether or not such rate has actually been charged by such bank). In the event such bank discontinues the practice of announcing the Prime Rate, the term "Prime Rate" shall mean the highest rate charged by such bank on short term, unsecured loans to its most credit-worthy large corporate borrowers. In the event, The Wall Street Journal (a) publishes more than one (1) Prime Rate, the highest of such rates shall apply, or (b) publishes a retraction or correction of any such rate, the rate reported in such retraction or correction shall apply.

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This Note evidences a loan made or to be made by GECC to Borrower for the purpose of financing (i) Borrower's acquisition of certain real estate located in the Village of Schaumburg, Cook County, Illinois ("Real Estate"), (ii) Borrower's subdivision of the Real Estate into one hundred three (103) detached single family legal lots ("Lots") and construction of on-site and off-site improvements, and (iii) Borrower's construction upon the Lots of one hundred three (103) detached single family houses (each of which is herein referred to as a "House" and collectively the "Houses"). For purposes of convenience only, funds advanced hereunder for acquisition of the Real Estate, subdivision thereof and the construction of on-site and off-site improvements shall hereinafter be referred to as the "A&D Loan", and funds advanced for the construction of Houses shall hereinafter be referred to as the "Construction Loan". The A&D Loan and the Construction Loan are collectively referred to herein as the "Loan."

The Loan is made pursuant to the terms and conditions of that certain Construction Loan Agreement (the "Loan Agreement") of even date herewith by and between Borrower, the beneficiary of Borrower and GECC. The Loan is secured, among other things, by a Mortgage (the "Mortgage") of even date herewith encumbering the Real Estate and improvements constructed or to be constructed thereon and other rights and interests therein described (the "Premises") as more fully described therein. Reference is hereby made to the Loan Agreement and Mortgage for a description of the property described therein and the rights and powers of the holder of this Note in respect of such security and all other matters therein contained. The terms, provisions and conditions of the Loan Agreement and the Mortgage, and all other documents securing repayment of this Note (collectively referred to as the "GECC Security Documents") are incorporated herein by reference as fully and with the same force and effect as if set forth herein at length. The Construction Loan is intended to be disbursed on a revolving basis, the outstanding principal amount thereof to increase and decrease from time to time by reason of payments and advances. As more fully provided in the Loan Agreement, in no event shall GECC be obligated to disburse additional principal sums of the Loan if, after giving effect to such disbursement, the outstanding principal balance hereof will exceed the sum of TWELVE MILLION DOLLARS (\$12,000,000.00).

Interest on the outstanding balance of principal of this Note (including both the A&D Loan and the Construction Loan) shall be payable monthly on the first day of each month, beginning on the first day of the month immediately

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following the date of initial disbursement of the A&D Loan and the Construction Loan, respectively. Interest shall be computed on the basis of a fraction, the denominator of which is three hundred sixty (360) and the numerator is the actual number of days elapsed from the Disbursement Date or the date of the preceding interest due date, to the date of the next interest due date.

As provided for in the Loan Agreement, a reserve (the "A&D Interest Reserve") is established to provide funds for payment of interest upon the A&D Loan and the Construction Loan, subject to the conditions and limitations therein and herein set forth. To the extent of funds available in the A&D Interest Reserve, and upon compliance with the conditions of the disbursement thereof interest upon the A&D Loan shall be paid from the A&D Interest Reserve. In no event shall GECC be obligated to disburse funds from the A&D Interest Reserve at a time when there shall have occurred any uncured default hereunder or any uncured Event of Default under the GECC Security Documents or when there shall exist any fact or circumstance which, with the giving of notice or passage of a grace period, would constitute such default or Event of Default.

Except for payments of interest upon the A&D Loan out of the A&D Interest Reserve, all interest upon the Loan shall be payable by Borrower from Borrower's Funds other than proceeds of the Loan ("Borrower's Funds"); and without limiting the generality of the foregoing, interest hereon shall be payable solely out of Borrower's Funds (a) upon the A&D Loan at any time when the A&D Interest Reserve shall be depleted or otherwise not available for disbursement, (b) upon the Construction Loan, and (c) in all events at any time when there shall have occurred any uncured default hereunder or any uncured Event of Default under the GECC Security Documents or when there shall exist any fact or circumstance which, with the giving of notice or passage of a grace period, shall constitute such default or Event of Default.

In addition to all other sums payable hereunder, Borrower agrees to pay to Lender a deferred commitment fee (the "Deferred Commitment Fee") at the time and in the amount set forth in the Loan Agreement.

Borrower shall pay to Lender for application upon the principal amount of the A&D Loan and the Construction Loan certain sums at the time of sale of Houses, all at the times, in the amounts and otherwise as provided for in the Loan Agreement. GECC shall not be required to redispurse repayments of principal made upon the A&D Loan and may be

required to redisburse repayments of principal made upon the Construction Loan only at the time and subject to the provision, conditions and limitations for such redisbursement set forth in the Loan Agreement.

The A&D Loan shall in all events be due and payable 24 months after the initial disbursement of the A&D Loan but not later than January 1, 1992, provided that Borrower shall have the right, subject to GECC's approval, to extend the Maturity Date of the A&D Loan for a period of one year under the following circumstances:

(a) Borrower shall exercise its right to extend by written notice to GECC not more than 180 days nor less than 60 days prior to the then prevailing A&D Maturity Date;

(b) On the date of exercise no Event of Default shall be in existence hereunder or under any of the GECC Security Documents nor shall there exist any fact or circumstance which, with the giving of notice or passage of a grace period, would constitute such a default or Event of Default;

(c) On the date of exercise, construction of the improvements and development of the Lots are in a manner in all respects satisfactory to GECC in its sole discretion, and GECC shall have so advised Borrower; and

(d) Within 3 days after GECC's advice to Borrower, as provided for in subparagraph (c) above, Borrower shall pay to GECC an extension fee equal to 1% of \$13,000,000.00 less principal reductions theretofore made upon the A&D Loan.

The Maturity Date of the A&D Loan determined in accordance with the foregoing procedures is herein called the "A&D Maturity Date".

The Construction Loan shall be due and payable upon the earliest of (1) the A&D Maturity Date or (2) as to funds disbursed for the construction of each House a date calculated as follows:

a) Funds disbursed for the construction of each House (as defined in the Loan Agreement) shall be due and payable on the first day of the month which occurs 12 months following the date funds for such House are first disbursed to Borrower or to an escrow for the benefit of Borrower; provided that

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b) Borrower shall have the right, subject to GECC's approval, to extend the Construction Loan Maturity Date for the portion of the Construction Loan with respect to a specific House for a period of six (6) months under the following circumstances:

(i) Borrower shall exercise its right to extend for such extension period by written notice to GECC not less than 30 days prior to the then current Construction Loan Maturity Date for such House;

(ii) On the date of exercise and on the effective date of such extension, no Event of Default hereunder or under any of the GECC Security Documents shall be in existence nor shall there exist any fact or circumstance which with the giving of notice or the passage of time would constitute such a default or Event of Default;

(iii) Construction of the House for which such funds are being disbursed in a manner in all respects satisfactory to GECC in its sole discretion and GECC shall have so advised Borrower in writing;

(iv) In no event shall the Construction Loan Maturity Date be extended past the A&D Maturity Date; and

(v) Within 3 days after GECC's advice to Borrower, as provided for in subparagraph (iii) above, Borrower shall pay to GECC an extension fee with respect to such extension equal to one-half of one percent (.5%) of the amount requested for such extension.

The Maturity Date of the Construction Loan determined in accordance with the foregoing procedures is herein called the "Construction Loan Maturity Date." The later to occur of the A&D Maturity Date or Construction Loan Maturity Date shall be called the "Maturity Date".

At the election of GECC and without notice, the entire outstanding principal balance hereof, together with all accrued and unpaid interest thereon, together with the Deferred Commitment Fee and together with all other sums evidenced hereby and/or secured by the GECC Security Documents, shall be and become at once due and payable subject to the provisions for notice and cure, if any, contained in the GECC Security Documents:

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(a) If there shall occur any default in the due and punctual payment of principal or interest hereon when the same becomes due and payable which default shall continue for a period of ten days; or

(b) Upon the occurrence of any Event of Default under the Loan Agreement, Mortgage or any other of the GECC Security Documents.

The Loan (including both the A&D Loan and the Construction Loan) may be prepaid in whole at any time or in part from time to time, in each case without premium or penalty; provided that:

(a) Prior to the occurrence of any default hereunder or any Event of Default under the Loan Agreement, Mortgage or other Security Documents, prepayments shall be applied to the A&D Loan or the Construction Loan as designated by the Borrower; provided that prepayments made after such default or Event of Default shall be applied as designated by GECC;

(b) Any prepayment shall include all Deferred Commitment Fees, extension fees, interest, reconveyance fees and other costs or charges due and payable in connection with the portion of the A&D Loan and/or Construction Loan being prepaid as provided for herein and in the Loan Agreement and other GECC Security Documents.

Except as otherwise provided in the Loan Agreement with respect to the payment of principal and other sums concurrent with the closing of the sale of Houses, all payments on account of the indebtedness evidenced by this Note shall first be applied to the payment of any delinquency or "late" charges and attendant costs, fees and charges, if any, second to any unpaid Deferred Commitment Fees, if any, third to accrued and unpaid interest and fourth to the reduction of principal. Notwithstanding the foregoing, any such payments received during the period of time that Borrower is in default hereunder shall be applied in such manner as GECC shall determine.

All payments on this Note are payable at GECC's office at such place as GECC or other holder hereof shall notify Borrower in writing, and in the absence of such direction then at the following address:

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GENERAL ELECTRIC CREDIT CORPORATION
Two Galleria Tower
13455 Noel Road
Suite 1750, L.B. 24
Dallas, Texas 75240

Attention: Investment Manager, Construction
Lending Department

The final payment of this Note (and GECC may require that any other payment on this Note) must be by wired federal funds or other immediately available funds. In the event GECC shall receive partial prepayments, or in the event that GECC shall receive proceeds of condemnation or insurance proceeds for application against the Loan, such prepayments and proceeds shall be applied against the outstanding principal balance.

In the event Borrower fails to pay any amount of principal and/or interest on this Note for ten (10) days after such payment becomes due, whether by acceleration or otherwise, GECC may, at its option whether immediately or at the time of final payment of the amounts evidenced by this Note (or secured by the Mortgage) impose a delinquency or "late" charge equal to the greater of (i) FIVE PERCENT (5%) per annum in excess of the regular rate of interest on this Note computed from the original due date of such payment to the date of receipt of such payment by GECC in good funds, or (ii) FIVE PERCENT (5%) of the amount of each and every such past due payment notwithstanding the date on which such payment is actually paid to GECC; provided, however, that if any such delinquency or late charge is in excess of the amount permitted to be charged to Borrower under applicable federal or state law, GECC shall be entitled to collect a delinquency charge at the highest rate permitted by such law. Until any and all delinquency charges are paid in full, the amount thereof shall be added to the indebtedness secured by the Mortgage and by any other collateral held by GECC to secure such indebtedness. Borrower agrees that any such delinquency charges shall not be deemed to be additional interest or a penalty, but shall be deemed to be liquidated damages because of the difficulty in computing the actual amount of damages in advance. Nothing contained in this paragraph shall be deemed to be a waiver of or limitation on the right of the holder of this Note from declaring a default because of failure to make any payment hereon when such payment was due.

In the event that this Note and/or the Loan becomes due and payable, by acceleration, declaration, passage of

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time or otherwise and is not paid in full, GECC may proceed to exercise any rights or remedies that it may have under this Note, the Loan Agreement, the Mortgage, or any other of the GECC Security Documents or such other rights and remedies GECC may have at law, equity or otherwise. In the event of such declaration, acceleration, or other maturity, Borrower may discharge its obligations to GECC by paying all sums evidenced hereby, including but not limited to the Deferred Commitment Fee and late charges computed in the manner set forth above.

After default, in addition to principal, interest and late charges, GECC shall be entitled to collect all Deferred Commitment Fees, costs, including, but not limited to, all costs of collection and reasonable attorneys' fees incurred in connection with the protection or realization of collateral or in connection with any of GECC's collection efforts, whether or not suit on this Note or any foreclosure proceeding is filed, and all such costs and expenses shall be payable on demand and until paid shall also be secured by the Mortgage and by all other collateral held by GECC as security for Borrower's obligations to GECC.

No failure on the part of GECC or other holder hereof to exercise any right or remedy hereunder or under the Loan Agreement or Mortgage or other GECC Security Document, whether before or after the happening of a default, shall constitute a waiver thereof, and no waiver of any past default shall constitute waiver of any future default or of any other default. No failure to accelerate the debt evidenced hereby by reason of default hereunder, or to accelerate the debt evidenced hereby by reason of default hereunder, or acceptance of a past due installment, or indulgence granted from time to time shall be construed to be a waiver of the right to insist upon prompt payment thereafter or to impose late charges retroactively or retrospectively, or shall be deemed to be a novation of this Note or as a reinstatement of the debt evidenced hereby or as a waiver of such right of acceleration or any other right, or be construed so as to preclude the exercise of any right which GECC may have, whether by the laws of the state governing this Note, by agreement or otherwise; and Borrower and each endorser or guarantor hereby expressly waives the benefit of any statute or rule of law or equity which would produce a result contrary to or in conflict with the foregoing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom such agreement is sought to be enforced.

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Borrower, and each endorser or guarantor of this Note, if any, hereby waives presentment, protest, demand, diligence, notice of dishonor and of nonpayment, and waives and renounces all rights to the benefits of any statute of limitations and any moratorium, appraisement, exemption and homestead now provided or which may hereafter be provided by any federal or state statute, including but not limited to exemptions provided by or allowed under the Bankruptcy Code of the United States or under any amendment thereof or under any successor whether real or personal, against the enforcement and collection of the obligations evidenced by this Note and any and all extensions, renewals and modifications hereof.

It is the intention of the parties to conform strictly to the usury laws from time to time in force, whether state or federal, that are applicable to this Note. All agreements between Borrower and GECC, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever, whether by acceleration of maturity hereof or otherwise, shall the amount paid or agreed to be paid to GECC or the holder hereof, or collected by GECC or such holder, for the use, forbearance or detention of the money to be loaned hereunder or otherwise, or for the payment or performance of any covenant or obligation contained herein or in the Loan Agreement, Mortgage or in any assignment of rent or other security agreement given to secure indebtedness of Borrower to GECC, or in any other document evidencing, securing or pertaining to the indebtedness evidenced hereby, exceed the maximum amount permissible under applicable federal or state usury laws. If under any circumstances whatsoever fulfillment of any provision hereof or of the Loan Agreement or the Mortgage or any other documents, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if under any circumstances GECC or other holder hereof shall ever receive an amount deemed interest by applicable law, which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing hereunder or to other indebtedness secured by the Mortgage and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and such other indebtedness, the excess shall be deemed to have been a payment made by mistake and shall be refunded to Borrower or to any other person making such payment on Borrower's behalf. All sums paid or agreed to be paid to the holder hereof for the use,

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forbearance or detention of the indebtedness of Borrower evidenced hereby, outstanding from time to time shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the date of disbursement of the proceeds of this Note until payment in full of the loan evidenced hereby so that the actual rate of interest on account of such indebtedness is uniform throughout the term hereof. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Borrower, and endorser or guarantor and GECC.

This note shall be governed by and construed under the laws of the State of Illinois, except for federal usury laws intended to take precedence over state usury laws. Borrower and each endorser or guarantor hereby submits to personal jurisdiction in said State for the enforcement of Borrower's obligations hereunder and under the Mortgage, and waives any and all personal rights under the law of any other state to object to jurisdiction within such State for the purposes of litigation to enforce such obligations of Borrower. In the event such litigation is commenced, Borrower agrees that service of process may be made and personal jurisdiction over Borrower obtained, by service of a copy of the summons, complaint and other pleadings required to commence such litigation upon Borrower's appointed Agent for Service of Process in such State, which Agent Borrower hereby designates to be:

Richard Wexler, Esq.
Sachnoff & Weaver, Ltd.
30 South Wacker Drive
Chicago, Illinois 60606

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right,

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but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Trustee on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained. The foregoing is not intended to impair the enforceability, or adversely affect the obligations of any party (other than Trustee) under any separate instrument of Guaranty, the Loan Agreement or any other written instrument, or the lien of or security interest of the collateral or the right of GECC as mortgaged or secured party to foreclose and/or enforce the collateral after default by the Borrower. Nothing herein shall be deemed to be a waiver of any right which GECC may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Reform of 1978, as at any time amended or reinstated, to file a claim for the full amount of the debt owing to GECC in the event Borrower or its beneficiary should become the subject of a petition for bankruptcy or reorganization or to require that all collateral shall continue to secure all of the indebtedness owing to GECC in accordance with the loan documents.

Dated as of the day and year first above written.

CHARTER BANK AND TRUST OF
ILLINOIS, not personally but
solely as trustee aforesaid

Attest:

By:

J. H. W. Krause
Vice President

Robert H. Kunkowski
Asst. Land Trust Officer

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6/12/2016

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EXHIBIT B

10 Acre Legal Description

PARCEL 1:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SAID NORTHEAST 1/4 WITH A LINE 564.00 FEET, AS MEASURED AT RIGHT ANGLES, SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST 1/4; THENCE NORTH 86 DEGREES 37 MINUTES 14 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 736.41 FEET; THENCE SOUTH 03 DEGREES 22 MINUTES 46 SECONDS EAST AT RIGHT ANGLES TO SAID LAST DESCRIBED NORTH LINE, 620.93 FEET; THENCE NORTH 89 DEGREES 15 MINUTES 29 SECONDS WEST AT RIGHT ANGLES TO THE WEST LINE OF SAID NORTHEAST 1/4, 729.14 FEET TO AN INTERSECTION WITH A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHEAST 1/4; THENCE NORTH 00 DEGREES 44 MINUTES 31 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 273.60 FEET TO THE NORTH LINE OF LAND CONVEYED TO THE COUNTY OF COOK BY WARRANTY DEED RECORDED JUNE 29, 1977 AS DOCUMENT NO. 24045390; THENCE NORTH 89 DEGREES 15 MINUTES 29 SECONDS WEST ALONG SAID LAST DESCRIBED NORTH LINE, 50.00 FEET TO THE WEST LINE OF SAID NORTHEAST 1/4; THENCE NORTH 00 DEGREES 44 MINUTES 31 SECONDS EAST ALONG SAID LAST DESCRIBED WEST LINE, 292.79 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

GRANT OF TEMPORARY ACCESS UTILITY AND CONSTRUCTION EASEMENT (VERDE DRIVE) DATED NOVEMBER 21, 1989 AND RECORDED NOVEMBER 22, 1989 AS DOCUMENT 89558639 MADE BY AMERICAN NATIONAL BANK & TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 9, 1989 AND KNOWN AS TRUST NUMBER 108303-05, GRANTOR AND CHARTER BANK & TRUST OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 12, 1989 AND KNOWN AS TRUST NUMBER 1386, AND CHARTER BANK AND TRUST COMPANY OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 12, 1989 AND KNOWN AS TRUST NUMBER 1390, GRANTEES, GRANTED TO GRANTEES, ITS SUCCESSORS AND ASSIGNS AS AN EASEMENT APPURTENANT TO THE ESSEX PARCEL. A NON-EXCLUSIVE TEMPORARY EASEMENT FOR CONSTRUCTION, EXTENSION OF UTILITIES AND INGRESS AND EGRESS ON, OVER AND ACROSS THE LAND DESCRIBED AS "EASEMENT PARCEL" ON EXHIBIT "A" ATTACHED TO SAID GRANT OF TEMPORARY ACCESS, UTILITY AND CONSTRUCTION EASEMENT, TO PROVIDE TEMPORARY ACCESS FROM THACKER ROAD TO THE ESSEX PARCEL, AND TO CONSTRUCT THE EXTENSION OF VERDE DRIVE AND TO EXTEND UTILITIES FROM THACKER ROAD UNTIL SUCH TIME AS GRANTOR DEDICATES THE EXTENSION OF VERDE DRIVE STREET BY GRANTOR.

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(TERM OF EASEMENT TO CONTINUE UNTIL THE DEDICATION BY GRANTOR OF THE EASEMENT PARCEL AS A PUBLIC STREET TO THE VILLAGE OF SCHAUMBURG, GRANT PROVIDES FOR USE, REPAIR, INDEMNITY, BENEFITS AND BURDENS RUNNING WITH THE LAND, CERTIFICATE OF INSURANCE, COUNTERPARTS, REASONABLE CONSTRUCTION, INJUNCTIVE RELIEF AND ATTORNEY'S FEES, DISCLAIMER OF JOINT VENTURE, RELOCATION OF EASEMENT PARCEL AND EXCULPATION). (FOR FURTHER PARTICULARS, SEE DOCUMENT)

PARCEL 3:

NON-EXCLUSIVE TEMPORARY EASEMENT FOR THE BENEFIT OF PARCEL 1, CREATED BY GRANT OF TEMPORARY EASEMENT DATED NOVEMBER 21, 1989 AND RECORDED NOVEMBER 22, 1989 AS DOCUMENT 89558637 MADE BY AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 9, 1989 AND KNOWN AS TRUST NUMBER 108303-05 AND CHARTER BANK & TRUST OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 12, 1989 AND KNOWN AS TRUST NUMBER 1386 AND CHARTER BANK & TRUST OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 12, 1989 AND KNOWN AS TRUST NUMBER 1390, FOR THE PURPOSE OF ACCESS FOR MAINTENANCE AND UPKEEP OF THE WETLANDS MITIGATION, COMPENSATORY FLOOD PLAIN STORAGE, AND DETENTION/RETENTION FACILITIES AND FOR DISCHARGE OF STORM WATER AND RUNOFF INTO SAID FACILITIES ON, OVER, UNDER, AND ACROSS LAND DESCRIBED AS "EASEMENT PARCEL" ON EXHIBIT "A" ATTACHED TO SAID GRANT OF TEMPORARY EASEMENT.

Permanent Index Number:

07-23-200-002

07-23-200-003

07-23-201-001

Common Address:

Vacant
Lakeland Drive and
Plum Grove Road
Schaumburg, Illinois

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52260/90614

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COOK COUNTY CLERK'S OFFICE
100 N. LAUREL ST. CHICAGO, IL 60602
TEL: 312.603.1000 FAX: 312.603.1001

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11/15/00

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DAR #20-032

EXHIBIT B

The East Half of the Southwest Quarter of the Northeast Quarter of Section 10, Township 42 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. Nos.: 02-10-201-004
02-10-201-005

1300 and 1310 North Smith Road, Palatine, Illinois

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