

# UNOFFICIAL COPY

R&S 161700-208  
DAR 44-929  
DOC. #5  
12/26/89-3

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## ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT 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. 1385

(Herein, whether one or more, and if more than one, jointly and severally, called the "Assignor") to

General Electric Capital Corporation, a New York corporation, whose address is Two Galleria Tower, 13455 Noel Road, Suite 1750, L.B. 24, Dallas, Texas 75240, Attn: Investment Manager, Construction Lending Department

(herein called the "Assignee").

BOOK OF RECORDING 120.00  
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COUNTY CLERK  
COUNTY CLERK

88-322736 WITNESSETH, THAT:

FOR VALUE RECEIVED, Assignor hereby grants, transfers, assigns and sets over to Assignee all of the right, title and interest of Assignor (i) in and to all of the rents, issues and profits of and from the Premises described in Exhibit A attached hereto and made a part hereof (herein called the "Premises") and (ii) in and to all leases (herein generally called "Leases") now or hereafter existing on all or any part of the Premises.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IT IS AGREED AS FOLLOWS:

1) Assignor hereby grants, transfers and assigns to Assignee all of the right, title and interest of Assignor in and to the said Leases and in and to the right to the use and possession of the Premises, including any and all of the rents, issues, profits, payments and avails now due or which may hereafter become due under and by virtue of any Lease whether written or oral, or any letting of or any agreement for the use or occupancy of any part of the Premises which may have been heretofore or may be hereafter made or agreed to between Assignor or any other present, prior or subsequent owner of the Premises or any interest therein or which may be made or agreed to by the Assignee, its successors or assigns under the powers herein granted, and any tenant or occupant of all or any part of the Premises for the purpose of securing:

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a) Payment of the indebtedness evidenced by that certain revolving note (herein called the "Note") in the principal sum of TEN MILLION SIX HUNDRED THIRTY THREE THOUSAND DOLLARS (\$10,633,000.00) and any extensions, modifications or renewals thereof, executed by Assignor, and dated December 15, 1989, payable to the order of Assignee, and secured by a Mortgage and/or Deed of Trust (herein generally called the "Mortgage") of the same date, to Assignee and/or the Trustee therein named upon the Premises, and filed for record in the proper office of the county and state where the Premises are located on \_\_\_\_\_ as Document No. 890622736, or in Book \_\_\_\_\_, Page \_\_\_\_\_, which Mortgage and Note are held by or for the benefit of the Assignee.

b) Payment of all other sums with interest thereon becoming due and payable to the Assignee herein and in the Note and Mortgage contained.

c) Performance and discharge of each and every term, provision, condition, obligation, covenant and agreement of Assignor herein and in the Note and Mortgage contained.

2) Assignor represents and agrees that (a) Assignor is the lessor under the Leases, in each case either directly or as successor in interest to the named lessor thereunder; (b) the Leases are not in default; (c) Assignor is entitled to receive all of the rents, issues and profits and to enjoy all the other rights and benefits mentioned herein and assigned hereby; (d) the same have not been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time during the life of these presents be sold, assigned, transferred or set over by the Assignor or by any person or persons whomsoever except subject to this Assignment; and (e) that the Assignor has good right to sell, assign, transfer and set over the same and to grant to and confer upon the Assignee the rights, interest, powers and/or authorities herein granted and conferred.

3) Assignor will, from time to time, execute upon request of the Assignee, any and all instruments requested by the Assignee to carry this instrument into effect or to accomplish any other purposes deemed by the Assignee to be necessary or appropriate in connection with this Assignment or the Premises, including, without limitation, specific assignments of any lease or agreement relating to the use or

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occupancy of the Premises or any part thereof now or hereafter in effect as may be necessary or desirable, in the opinion of Assignee.

4) This Assignment shall in no way operate to restrict or prevent the Assignee from pursuing any remedy which it now or hereafter may have because of any present or future breach of the terms or conditions of the Mortgage and/or the Note.

5) The Assignee shall not in any way be responsible for failure to do any or all of the things for which rights, interests, power and/or authority are herein granted it; and the Assignee shall not be responsible for or liable upon any of the agreements, undertakings or obligations imposed upon the lessor under said Leases or other agreement with respect to the Premises.

6) The Assignee shall be accountable only for such cash as it actually receives under the terms hereof.

7) Failure of the Assignee to do any of the things or exercise any of the rights, interests, powers and/or authorities hereunder shall not be construed to be a waiver of any of the rights, interests, powers or authorities hereby assigned and granted to the Assignee.

8) The Assignee shall assign this Assignment of Rents and Leases and any and all rights accruing thereunder to any subsequent assignee and holder of the Note and Mortgage for which this Assignment of Rents and Leases is given as additional security.

9) It is understood that the assignment of said Leases and of the rents, issues and profits of and from the Premises as effected hereby is an absolute assignment which is effective as at the date hereof and, upon demand by Assignee to the lessee under any said Leases or to any person liable for any of the rents issues, profits and other payments of and from the Premises or any part thereof, such lessee or person liable for any of such rents, issues, payments and profits shall, and is hereby authorized and directed to, pay to or upon the order of Assignee, and without inquiry of any nature, all rents then owing or thereafter accruing, or other payments required to be made, under said Leases or any other instrument or agreement, oral or written, giving rise to an obligation to pay rents, issues, profits or other payments in connection with the Premises.

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10) So long as there shall exist no defaults by Assignor in the payment of any indebtedness secured hereby, or in the performance of any obligation, covenant or agreement herein or in the Note or Mortgage contained, Assignee shall not demand from lessees under said Leases or other persons liable therefor, any of the rents, issues, payments and profits hereby assigned but shall permit the Assignor to collect, upon but not prior to accrual, all such rents, issues, payments and profits from the Premises and the said Leases and to retain and enjoy the same; provided that notwithstanding the provisions of this Section 10, all lessees under said Leases and all other persons liable for rents, issues, payments and profits of and from the Premises shall comply with any demands for rents made by Assignee pursuant to the provisions of this Assignment of Rents and Leases without regard to whether or not the same is made in compliance with this Section 10.

11) Upon or at any time after default in the payment of any indebtedness evidenced by the Note or secured hereby or by the Mortgage, or in the performance of any term, provision, condition, obligation, covenant or agreement herein or in the Note or Mortgage contained, and the expiration of any period of grace, if any, with respect to any such default as provided for in the Note or Mortgage contained, the Assignee may declare all sums secured hereby immediately due and payable and may, at Assignee's option, without notice, either in person or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, and manage and operate the Premises and each and every part and parcel thereof; and in connection therewith, in its own name or the name of Assignor, the Assignee may make, cancel, enforce or modify Leases, fix or modify rents, repair, maintain and improve the Premises, employ contractors, subcontractors and workmen in and about the Premises, obtain and evict tenants, sue for or otherwise collect or reserve any and all rents, issues, payments and profits, including those past due and unpaid, employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of Assignee's rights hereunder and pay the reasonable fees and expenses thereof, and otherwise do and perform any and all acts and things which Assignee may deem necessary or appropriate in and about the Premises for the protection thereof or the enforcement of Assignee's rights hereunder or under the Note or Mortgage; and any and all amounts expended by Assignee in connection with the foregoing shall constitute so much additional indebtedness secured hereby. Assignee shall apply any monies collected by Assignee, as aforesaid, less costs and expenses incurred,

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as aforesaid, upon any indebtedness secured hereby in such order and manner as Assignee may determine. The entering upon and taking possession of the Premises, the collection of rents, issues, payments and profits, the exercise of any of the rights hereinabove specified and the application of collections, as aforesaid, shall not cure, waive, modify or affect any default hereunder or under the Note or Mortgage.

12) Any tenants or occupants of any part of the Premises are hereby authorized to recognize the claims and demands of Assignee hereunder without investigating the reason for any action taken by the Assignee or the validity or the amount of indebtedness owing to the Assignee or the existence of any default hereunder or under the Note or Mortgage or the application to be made by the Assignee of any amounts to be paid to the Assignee. The sole signature of the Assignee shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of the Assignee for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Premises. Checks for all or any part of the rentals or other payments collected under this Assignment of Rents and Leases shall be drawn to the exclusive order of the Assignee.

13) The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty or liability under the said Leases, nor shall this Assignment operate to place upon Assignee responsibility for the control, care, management or repair of the Premises or the carrying out of any of the terms and conditions of the said Leases, nor shall it operate to make the Assignee responsible or liable for any waste committed on the Premises by a lessee or any other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, invitee, employee or stranger.

14) The Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur under said Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases. Should the Assignee incur any such liability, loss or damage under said Leases or under or by reason of this Assignment, or in the defense of any such

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claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse the Assignee therefor immediately upon demand, and upon the failure of Assignor so to do the Assignee may declare all sums secured hereby immediately due and payable.

15) The Assignee has not received nor been transferred any security deposited by any lessee with the lessor under the terms of the Leases and the Assignee assumes no responsibility or liability for any security so deposited.

16) Assignor will not modify, change, alter, supplement, amend, surrender or accept surrender of any said Leases without Assignee's prior written consent.

17) Assignor has not, and will not, accept rent in advance under any Leases or other agreement of all or any part of the Premises excepting only monthly rents for current months which may be paid in advance.

18) Assignor shall cause this Assignment, at Assignor's sole cost and expense, to be recorded and filed and rerecorded and refiled in each and every public office in which such filing and recording may be necessary to constitute record notice of this Assignment and the terms and provisions hereof as applicable to the Premises.

19) Upon payment in full of all indebtedness secured hereby, this Assignment of Rents and Leases shall be and become void and of no effect.

20) This Assignment applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. Wherever the term "Assignor" is used herein, such reference shall be deemed to mean each Assignor whose name appears below, severally (and in the case of a blind trust assignor, the trust beneficiaries), and all such Assignors, jointly and severally, and their respective heirs, legatees, devisees, executors, successors and assigns. Wherever the term "Assignee" is used herein, such term shall include all successors and assigns, including each and every from time to time owner and holder of the Note, of the Assignee named herein who shall have, hold and enjoy all of the rights, powers and benefits hereby afforded and conferred upon Assignee as fully and with the same effect as if such successors and assigns of Assignee were herein by name designated as Assignee.

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21) In the event that Assignor is a trustee, then:

a) As further security for the payment and performance of the Assignor more fully set forth in paragraph 1 hereof, the beneficiaries of the Assignor, by directing Assignor to execute the within and foregoing Assignment, do thereby subject to the lien of this Assignment all of their right, title and interest in and to the rents, issues, leases, profits and avails now due and which may hereafter become due under and by virtue of any Lease, whether written or oral, or any letting of any part of the Premises which may have been heretofore or may be hereafter made or agreed to between the beneficiaries, or any of them, or which may be made or agreed to by the Assignee or assigns under the powers herein granted with any tenant or occupant of any part of the Premises. The execution hereof by Assignor shall constitute conclusive evidence that such beneficiaries have directed the Assignor and have agreed as aforesaid, and by virtue of such direction have agreed to be bound by the provisions of this paragraph.

b) 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 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 said trustee under said Trust Agreement, 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, either expressed or implied, all such personal liability, if any, being expressly waived and released.

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IN WITNESS WHEREOF, the Assignor has executed this Assignment of Rents and Leases as of the day, month and year first above written.

Charter Bank and Trust of Illinois, not personally but solely as Trustee as aforesaid

By: Robert L. Tarnowski  
Its: ASST. TRUST OFFICER

ATTEST:

Deborah A. Martin ACP

This Instrument prepared by and return to:

DONALD A. ROBINSON  
Rosenthal and Schanfield  
55 East Monroe Street  
Suite 4620  
Chicago, Illinois 60606



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## JOINDER

The undersigned, being the owner of One Hundred Percent (100%) of the beneficial interest in the trust which is the Assignor under the foregoing Assignment of Rents and Leases, hereby consents to and joins in the foregoing Assignment of Rents and Leases, intending hereby to bind any interest which he and his heirs, executors, administrators, successors or assigns may have in the Premises described in the foregoing Assignment of Rents and Leases, or any Leases or other agreements relating thereto, as fully and with the same effect as if the undersigned were named as the Assignor in said Assignment of Rents and Leases; provided, however, that by virtue of this paragraph the undersigned shall not be or become personally liable for payment of the indebtedness evidenced by the Note.

Dated: December 15, 1989

Donogh Homes, Inc., a Washington corporation

By   
\_\_\_\_\_  
Its: 

ATTEST   
Its: 

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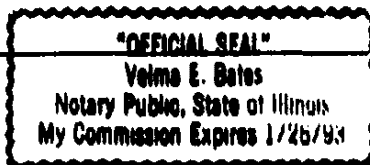
STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF DUPAGE    )

I, Velma E. Bates, a Notary Public in and for the County and State aforesaid, do hereby certify that Robert L. Tarnowski, Asst. Trust Officer Vice President of Charter Bank and Trust of Illinois ("Bank"), a banking corporation, and Rosemary N. Martin Assistant Secretary of said \*V. P. Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, respectively, appeared before me in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and the said Assistant Secretary did also then and there \*V. P. acknowledge that he, as custodian for the corporate seal of said Bank, did affix the 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 15th day of December, 1982.

Velma E. Bates  
Notary Public

My Commission Expires:



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STATE OF Illinois  
COUNTY OF Cook } SS

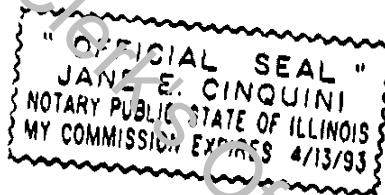
I, Jane E. Cinquini, a Notary Public in and for the County and State aforesaid, do hereby certify that Patrick G. Taylor and Mary Taylor, respectively, the (Vice) President and (Assistant) Secretary of Donogh Homes, Inc., a Washington corporation, who are personally known to me to be the same persons 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 corporation for the uses and purposes therein set forth, and the said (Assistant) Secretary of said corporation then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix such corporate seal to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15<sup>th</sup> day of December, 1942.

Jane E. Cinquini  
Notary Public

My Commission Expires:

April 13, 1943



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DAR #20-032

## EXHIBIT A

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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