

**FIRST MORTGAGE**

Dated as of July 15, 1991

in the amount of \$16,175,500.00

from AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but solely as trustee under trust agreement dated January 18, 1990 and known as Trust No. 110232-07, and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but solely as trustee under trust agreement dated July 9, 1991 and known as Trust No. 114177-06

(the "Mortgagor")

to GENERAL ELECTRIC CAPITAL CORPORATION

(the "Mortgagee")

**LOCATION OF PREMISES:**

Woodfield Green Executive Center  
Schaumburg, Illinois

Glendale Heights Office Park  
Glendale Heights, Illinois

91399281

DEPT-01 RECORDING \$66.00  
TR#222 TRAN 5415 08/07/91 10:15:00  
#2489 # B \*--71-399281  
COOK COUNTY RECORDER



After recording, please return to:  
Rosenthal and Schanfield  
55 East Monroe Street  
Suite 4620  
Chicago, Illinois 60603  
Att: Martin K. Blonder

This instrument was prepared by the above named attorney.

91399281

65<sup>th</sup> Mail

ELI 11776 / N910902 (RJM)

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11/21/2011

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## FIRST MORTGAGE

THIS MORTGAGE, made this 15th day of July, 1991 by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but solely as trustee under trust agreement dated January 18, 1990 and known as Trust No. 110232-07, and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but solely as trustee under trust agreement dated July 9, 1991 and known as Trust No. 114177-06, having its principal office at c/o Golub Woodfield Corporation, 625 North Michigan Avenue, Suite 2000, Chicago, Illinois 60611 (collectively referred to herein as the "Mortgagor") to GENERAL ELECTRIC CAPITAL CORPORATION, a corporation having an office at 209 West Jackson Boulevard, Suite 600, Chicago, Illinois 60606, Attention: Region Manager (the "Mortgagee").

**WITNESSETH**, that to secure the payment of an indebtedness in the principal sum of Sixteen Million One Hundred Seventy-Five Thousand Five Hundred Dollars (\$16,175,500.00) in 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, with a maturity date as set forth therein, as said note may be hereinafter amended or extended (the "Note"), 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 including Base Interest, Deferred Interest, Participation Interest and Cash Flow 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, 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 rights, 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, alleys, 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 therein, 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.

91301281

ARTICLE I
Covenants of the Mortgage

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

except for tenants' property

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.

represents

Section 1.02. Title to the Mortgaged Property. The Mortgagor represents 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 therefor. 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.

except tenant finish work required by leases approved by Mortgagee:

(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) certificate 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 Mortgagor 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;

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; **Event of Default**

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. **Event of Default**

(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 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 (with or 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 \$5,000,000 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-VI" 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 234 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.

**Section 1.06. Taxes and Other Charges.** (a) 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 requested 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 shall 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 advanced 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 equal to the Post Default 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) hereby waives trial by jury; (b) 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.

**Section 1.13. Mortgage Taxes.** The Mortgagor shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon the Mortgagee by reason of its ownership of the Note or this Mortgage or any mortgage supplemental 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 Mortgagor ~~may require that~~ shall 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 deposit is 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/or 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. Notwithstanding the foregoing, escrow deposits for insurance premiums are not required.

**Section 1.15. Late Charges.** Mortgagor shall pay late charges as provided for in the Note.

**Section 1.16. Financial Statements.** The Mortgagor shall furnish to the Mortgagee annual and monthly operating statements (including statements of cash receipts and disbursements) of the Premises, including income from all sources, a rent roll and leasing status report, together with annual financial statements and balance sheets of Mortgagor's beneficiary, in scope and detail satisfactory to Mortgagee. All monthly statements and rent rolls shall be prepared and certified by the chief financial officer of Golub & Co.; and all annual statements shall be prepared and reviewed pursuant to audit by a certified public accountant acceptable to Mortgagee in accordance with a tax-based method of accounting and shall in all events include a statement of cash receipts and disbursements. The monthly statements and rent rolls shall be furnished within twenty (20) days after the end of each period covered by monthly statements, and the annual statements shall be furnished by March 31 of each year for the immediately preceding calendar year. Mortgagor shall also furnish such additional reports as shall be requested by Mortgagee from time to time.

**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 except for occupancy by the lessee thereunder; (b) modify any lease affecting the Premises resulting in terms less favorable than those existing as of the date hereof; (c) discount any rents or collect the same for a period of more than one month in advance; (d) cancel any lease affecting the Premises except upon the default of the tenant thereunder; reference is made to Section 291-f of the Real Property 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 to establish for the Mortgagee the rights and benefits provided therein; (e) execute any conditional bill of sale, chattel mortgage or other security instrument covering any furniture, furnishings, fixtures and equipment, intended to be incorporated in the Premises or the appurtenance 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; (f) further assign the leases and rents affecting the Premises; (g) sell, transfer, convey or assign any interest in the Mortgaged Property or any part thereof; or (h) further encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Mortgaged Property, the beneficial interest of the Mortgagor and/or any general partner.

**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. Trust Funds.** (a) The Mortgagor will receive the advances secured hereby, and will hold the right to receive such advances, as a trust fund to be applied first for the purpose of paying the cost of the improvements before using any part of such advances for any other purpose. The covenants of subparagraph (a) of this Section 1.19 are made subject to and in compliance with the trust fund provisions of Section 13 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.

(b) All lease securities of tenants of the Premises shall be treated as trust funds not to be commingled with any other funds of the Mortgagor. Within ten (10) days after request by the Mortgagee, the Mortgagor shall furnish to the Mortgagee satisfactory evidence of compliance with this subparagraph (b) of this Section 1.19 together with a statement of all lease securities deposited by the tenants and copies of all leases not theretofore delivered to the Mortgagee, certified by the Mortgagor.

interest of the beneficiary of Mortgagor, in the effect thereof shall be to transfer, directly or indirectly, all or any portion of the ownership of or right to profits and/or equity in the Mortgaged Property.

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

(b) The Mortgagee 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) the date the lease was entered into, (iii) the date of each modification, (iv) the date of each renewal, and (v) the date of each expiration of the lease.

(c) 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 defined thereby, the Mortgagee shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease.

(d) It is hereby agreed that the fee title and the leasehold estate in the property defined 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 Mortgagee, or a third party, whether by purchase or otherwise. If the Mortgagee acquires the fee title or any other estate, title or interest in the property defined 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 shall thereupon be and become a part of the Mortgaged Property with the same force and effect as if specifically encumbered herein. The Mortgagee agrees to execute all instruments and documents which the Mortgagee may reasonably require to raise, confirm and further evidence the Mortgagee's lien on the acquired estate, title or interest. Furthermore, the Mortgagee 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 Mortgagee. This power, being coupled with an interest, shall be irrevocable as long as the indebtedness remains unpaid.

(e) The Mortgagee 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 term to exercise such option under the terms thereof. If the Mortgagee 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 Mortgagee 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 Mortgagee. In any event, the Mortgagee hereby appoints the Mortgagee its attorney-in-fact to execute and deliver, for and in the name of the Mortgagee, 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.

(f) The Mortgagee 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 term to exercise such option under the terms thereof. If the Mortgagee 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 Mortgagee 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 Mortgagee. In any event, the Mortgagee hereby appoints the Mortgagee its attorney-in-fact to execute and deliver, for and in the name of the Mortgagee, 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.

(g) In the event of any default by the Mortgagee 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 Mortgagee thereunder in the name of and on behalf of the Mortgagee. The Mortgagee shall, without limitation, any default in the payment of rent and other charges and impositions made payable by the tenant thereunder, 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 default (including, without limitation, reasonable attorneys' 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.

(h) Further, with respect to the Lease, the Mortgagee covenants and agrees as follows: (i) to promptly and faithfully observe, perform and comply with all the terms, covenants and provisions thereof on its part to be observed, performed and complied with, at the times set forth therein, without any allowance 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 or the termination 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 Mortgagee in connection herewith; (v) to furnish to the Mortgagee copies such information and evidence as the Mortgagee may reasonably require concerning the Mortgagee'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.

(i) Section 1.21. Indemnity. The Mortgagee will indemnify and hold the Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgment, 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 Mortgagee or the Mortgagee of any section of Article 3-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.

(j) Section 1.20. Assignment of Rent. The Mortgagee hereby assigns to the Mortgagee, as further security for the payment of rent, 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 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 Mortgagee hereby further grants to the Mortgagee the right to enter upon and take possession of the Premises for the purpose of collecting the said rent, issues and profits, (ii) to dispose of 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 rent, 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 Mortgagee 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 Mortgagee shall be entitled to collect and receive said rent, issues and profits. The Mortgagee agrees to use said rent, 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 rent, 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.

(k) Section 1.21. Indemnity. The Mortgagee will indemnify and hold the Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgment, 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 Mortgagee or the Mortgagee of any section of Article 3-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.

or copy certified by the chief financial officer of Gold & Co.

upon an Event of Default



~~modification), (iii) the basic rent payable under the Lease, (iv) the date to which all rental charges have been paid by the tenant under the Lease, and (v) whether there are any alleged defaults of the tenant under the Lease and, if there are, setting forth 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 promoting 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 any initial period of time which the Mortgagee is in possession of the Premises or has acquired, by foreclosure or otherwise, and is holding all of the Mortgagee's rights, title and interest therein.~~

## ARTICLE II Default and Remedies

**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 five 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 the Mortgagor enters into any agreement either written or oral, which has the effect of deferring the payment of any taxes or other charges which are or can be assessed, levied, confirmed, imposed or become a lien on 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 or 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, for (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 any 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 as 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 mortgagee 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, as such time and in such order as the Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee: (1) 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 dispossess the Mortgagor and its agents 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, repairs 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:

and shall not be dismissed or discharged in sixty (60) days, provided that if such appointment is made at the request of Mortgagor or its beneficiary such sixty (60) day period shall not be applicable;

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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 court 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 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 Mortgagee.

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

(i) 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 *in fact* the obligations of the Mortgagor to make such payment shall be reduced to the highest rate authorized under applicable law.

**Section 3.11A. Additional Event of Default.** Except as provided for in Section 3.11B hereof, it shall be an additional Event of Default under Section 2.01 hereof, without notice or period of grace, if there shall be a conveyance, assignment, sale or attempted sale, or other disposition for collateral purposes or otherwise, of all or any portion of (a) the beneficial interest in Mortgagor, (b) partnership interests in the beneficiary of Mortgagor, or (c) corporate stock of any corporate partner of the beneficiary of Mortgagor.

**Section 3.11B. Limitation.** The provisions of Section 2.01(h) and Section 3.11A shall not apply to:

(a) Any contract of sale pursuant to which the Note shall be paid in full at the closing and, prior to closing, the purchaser is not directly nor indirectly granted any possessory, leasing or management rights, or rights in any equity, income, cash flow and/or losses with respect to the Premises;

(b) Any transfer of the 9 1/2% interest in the beneficiary of Mortgagor (herein called the "Unrestricted Interest") not held at the date hereof by Eugene Golub;

(c) Any transfer of the 9 1/2% interest in the beneficiary of Mortgagor (herein called the "Golub Interest") held at the date hereof by Eugene Golub and any transfers of corporate stock (herein called the "Golub Stock") of any corporate partner of the beneficiary of Mortgagor, provided that (i) any such transfer shall be made solely for estate planning purposes of Eugene Golub, and (ii) after giving effect to such transfer Eugene Golub or a person referred to in Subsection 3.11B(d) below shall retain in a manner satisfactory to Mortgagee sole power to direct the business, affairs and policies of Mortgagor, such beneficiary and such corporation;

(d) Any transfer of the Golub Interest or the Golub Stock occasioned by the death of Eugene Golub to the estate of Eugene Golub provided that after giving effect to such transfer an executor or other person satisfactory to Mortgagee shall have sole power to direct the business affairs and policies of Mortgagor, such beneficiary and such corporation.

**Section 3.12. 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 Post 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 3.13. 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 retained or alleged to have been retained by or on behalf of Mortgagor or its beneficiary.

**Section 3.14. Additional Remedies.** Without limiting the provisions of Article II hereof but in addition thereto and in amplification thereof, it is agreed as follows:

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(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 Mortgaged Property. 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 Mortgaged Property 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 Mortgaged Property, 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 Post 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 Mortgaged Property. 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 Mortgaged Property 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 Mortgaged Property during the pendency of such foreclosure suit and 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 Mortgaged Property during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Mortgaged Property 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 3.15. Waiver.** The Mortgagor hereby expressly waives any and all rights of redemption under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any interest or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by the provisions of applicable law.

**Section 3.16. Environmental Matters.** The beneficiary of Mortgagor has executed and delivered to Mortgagee a separate Hazardous Substances Indemnity Agreement, the terms, conditions and provisions of which are incorporated herein by reference as fully and with the same effect as if recited herein at length. A default under said agreement

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and the passage of any applicable grace period shall constitute an immediate Event of Default hereunder without additional notice or period of grace.

**Section 3.17. Subordination.** This Mortgage may be subordinated upon the terms and conditions more fully provided in the Note.

**Section 3.18. Obligations Due Upon Foreclosure.** In the event that Mortgagee shall file suit against the Mortgaged Property to foreclose the lien hereof, and a decree of foreclosure shall be issued, it is hereby agreed that the amount of Mortgagee's Cash Flow Interest due under the Note and secured by this Mortgage shall be deemed to be Zero Dollars (\$0.00), and the amount of Mortgagee's Participation Interest due under the Note and secured by this Mortgage shall be deemed to be Two Million Dollars (\$2,000,000.00). Said stipulated amounts shall not apply to calculating the actual amounts due Mortgagee under the Note but not secured by this Mortgage, nor shall said stipulated amounts affect the calculation of the amounts of Cash Flow Interest and Participation Interest due under the Note and secured by this Mortgage in the absence of a decree of foreclosure.

In the event that the maturity of the Note is accelerated by virtue of an Event of Default, the Mortgagor's redemption price shall be equal to the sum of the following secured hereby:

- (a) The unpaid principal balance;
- (b) Unpaid Deferred Interest, whether or not capitalized;
- (c) Late charges and interest at the Post-Default Rate;
- (d) Participation Interest in the amount stipulated above that would be due and owing if a decree of foreclosure had been issued; and
- (e) Expenses incurred by Mortgagee which, pursuant to the provisions hereof, the Mortgagor is obligated to pay or reimburse the Mortgagee.

**Section 3.19. Right of First Offer.** In the event Mortgagor shall intend to sell the Mortgaged Property, Mortgagor shall first offer the Mortgaged Property for cash to Mortgagee at the selling price (the "Gross Sale Price") and upon such other terms (the "Other Terms") at which Mortgagor intends to sell the Mortgaged Property. Mortgagee shall have thirty (30) days after actual receipt of Mortgagor's offer to sell within which to notify Mortgagor whether it shall purchase the Mortgaged Property. If Mortgagee elects to purchase the Mortgaged Property, the closing of such sale shall take place within ninety (90) days after the exercise of the election to purchase on the part of Mortgagee at the Gross Sale Price and upon the Other Terms contained in Mortgagor's notice of first offer to Mortgagee, or upon such other price and terms upon which Mortgagor and Mortgagee shall mutually agree; provided in any event that (a) title to the Mortgaged Property shall be subject only to current real estate taxes not due or payable, current leases approved by Mortgagee and other exceptions to title that appeared as exceptions on Mortgagee's policy of title insurance that was issued as of the Initial Disbursement Date; and (b) customary prorations and adjustments, including prorations of rentals, real estate taxes, utility expenses and other items of income and expenses for the Mortgaged Property will be made as of the date of closing. The Gross Sale Price shall be reduced by any and all current amounts owed at the closing to Mortgagee under the Note, this Mortgage or the other Loan Documents, including, without limitation, the Base Interest, Deferred Base Interest, current Cash Flow Interest, and Participation Interest (it being the intent of the Mortgagor and Mortgagee that any sale to Mortgagee in accordance with this paragraph be treated as if it were a sale to a third person with Mortgagor being obligated to pay to Mortgagee, in addition to all other amounts owed Mortgagee hereunder or under the Note, any Deferred Base Interest, Cash Flow Interest and Participation Interest which would have been due Mortgagee in the event of a sale to such third person). If Mortgagee shall fail to so notify

Mortgagor within the above-described thirty (30) day period it shall be deemed that Mortgagee shall have declined to purchase the Mortgaged Property. In the event Mortgagee shall decline, or be deemed to have declined, to purchase the Mortgaged Property, Mortgagor shall be permitted to close the sale of the Mortgaged Property within one hundred eighty (180) days after the last to occur of (i) receipt by Mortgagor of Mortgagee's notice declining to purchase the Mortgaged Property, or (ii) expiration of the aforesaid thirty (30) day period, to a bona fide third party for a cash price which is at least Ninety-Five Percent (95%) of the Gross Sale Price and upon substantially the same Other Terms as those offered to Mortgagee. If Mortgagor shall fail to so close said transaction within said one hundred eighty (180) day period, the Mortgagee's right to receive the first offer to purchase the Mortgaged Property as set forth in this paragraph shall be automatically reinstated.

If during the aforesaid one hundred eighty (180) day period, Mortgagor shall desire to sell the Mortgaged Property for a price less than Ninety-Five Percent (95%) of the Gross Sale Price, or upon terms which are not substantially the same as the Other Terms, offered to Mortgagee, or if the terms and provisions of the foregoing paragraph shall for any reason be deemed insufficient to constitute an enforceable contract, the following Subsections (a) through (g) of this Section 3.19 shall be applicable:

(a) Without limiting the terms of this Mortgage, Mortgagor shall effect a bona fide sale of the Mortgaged Property to a third person only by complying with the terms and provisions of this Section 3.19.

(b) Mortgagor may, at any time, effect or procure a bona fide offer (a "Bona Fide Offer") from a third person to purchase all, but not less than all, of the Mortgaged Property, provided in any event that Mortgagor shall not accept said offer or otherwise agree to sell the Mortgaged Property to such third person unless and until Mortgagee shall first have elected (or shall be deemed to have elected) not to purchase the Mortgaged Property as set forth in Subsection (c)(ii) of this Section 3.19.

(c) Promptly upon receipt of a Bona Fide Offer [except a Bona Fide Offer allowed after Mortgagee has elected, or shall be deemed to have elected, not to purchase the Mortgaged Property as set forth in Subsection (c)(ii) of this Section 3.19, and then subject to the reinstatement provisions of Subsection (e), hereof], Mortgagor shall give Mortgagee written notice of said Bona Fide Offer. Such notice shall include the identity of the third person offeror and a copy of the written Bona Fide Offer submitted by the Offeror, or if no such writing exists the terms of the contemplated sale. Mortgagee shall have thirty (30) days after its receipt of any such notice to give written notice to Mortgagor of its election either:

(i) Purchase of Mortgaged Property. To purchase the Mortgaged Property on the terms of the Bona Fide Offer but for a purchase price equal to the purchase price set forth in the Bona Fide Offer less (1) an amount equal to the real estate brokerage commission payable by Mortgagor in the event of a Sale to the third person offeror in accordance with the terms of the Note, (2) an amount representing customary closing costs Mortgagor would otherwise have incurred in connection with the Sale to said third person in accordance with the terms of the Note, and (3) any and all current amounts owed at the closing to Mortgagee under the Note, this Mortgage and the other Loan Documents, including, without limitation, the Base Interest, Deferred Base Interest, current Cash Flow Interest, and Participation Interest (it being the intent of the Mortgagor and Mortgagee that any sale to Mortgagee in accordance with this Subsection (c)(i) be treated as if it were a Sale, as defined in the Note, to a third person, subject to the same commission, fee and closing cost provisions applicable to a Sale, subject to Mortgagor's obligation to pay to Mortgagee, in addition to all other amounts owed Mortgagee hereunder or under the Note, any Deferred Base Interest, Cash Flow

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Interest and Participation Interest which would have been due Mortgagee in the event of a sale to such third person); or

(ii) No Purchase of Mortgaged Property. Not to purchase the Mortgaged Property and to accept a prepayment in full, in cash, of the Loan, including, without limitation, the Base Interest, Deferred Base Interest, Cash Flow Interest and Participation Interest, if, as and when the transaction is closed.

(d) Mortgagee shall be deemed to have elected its alternative under Subsection (c)(ii) upon its failure to give to Mortgagor written notice of its election under Subsection (c)(i) within such thirty (30) day period provided for in Subsection (c) above.

(e) In the event Mortgagee shall elect or be deemed to have elected the consequences of Subsection (c)(ii) above, Mortgagor shall have the right to accept the Bona Fide Offer and to sell the Mortgaged Property to the third person offeror; provided that if such sale shall not be closed in accordance with the terms of the Bona Fide Offer within one hundred eighty (180) days of the receipt by Mortgagee of written notice thereof, the rights of Mortgagee under this Section 3.19 shall be automatically reinstated. If the Bona Fide Offer contains a condition that the offeror be allowed an inspection period as a condition precedent to its obligation to close, and if Mortgagee shall have elected to purchase the Mortgaged Property as provided for in Subsection (c)(i) above, then the Mortgagee shall be allowed the same inspection period as a condition precedent to its obligation to close; provided, however, if Mortgagee is presented with more than one (1) offer during any consecutive twelve (12) month period, Mortgagee's inspection period with respect to all such offers after the first one shall be limited to twenty (20) days.

(f) In the event the terms of any contract to purchase the Mortgaged Property pursuant to a contract formed by accepting a Bona Fide Offer as provided for in Subsection (e) above shall be amended to be less favorable to Mortgagor in any material respect (all as determined by Mortgagee), or if any new Bona Fide Offer is received by Mortgagor prior to the acceptance of the Bona Fide Offer previously provided to Mortgagee and Mortgagor intends to accept such new Bona Fide Offer, then Mortgagor shall give Mortgagee written notice of the terms of such amendment and/or new Bona Fide Offer in accordance with Subsection (c) above and Mortgagee shall have a right of first refusal with respect to the amended Bona Fide Offer or new Bona Fide Offer, as the case may be.

(g) If Mortgagee shall have elected to purchase the Mortgaged Property in accordance with Subsection (c)(i) above, the closing of such sale shall take place within ninety (90) days after the exercise of the election to purchase on the part of Mortgagee. Title to the Mortgaged Property shall be subject only to current real estate taxes not due or payable, current leases approved by Mortgagee and other exceptions to title (other than the Loan Documents) that appeared as exceptions on Mortgagee's policy of title insurance that was issued as of the Initial Disbursement Date. The sale to Mortgagee shall be for all cash. Customary prorations and adjustments, including prorations of rentals, real estate taxes, utility expenses and other items of income and expenses for the Mortgaged Property will be made as of the date of closing. The Loan shall be retired by Mortgagor at the closing. The terms "Loan" and "Loan Documents" shall be defined as set forth in the Note.

Mortgagee shall not be charged with any real estate broker commission as a result of the purchase of the Mortgaged Property by Mortgagee in accordance with this Section 3.19.

This Section 3.19 shall not apply to condemnations or sales in lieu of condemnation, nor to any foreclosure sale or any sale in lieu of foreclosure, nor shall this Section 3.19 survive any foreclosure sale or any sale in lieu of foreclosure, nor shall this Section be applicable to sale transactions entered into after all sums evidenced

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by the Note and/or secured hereby (including but not limited to Participation Interest) are paid in full.

In the event Mortgagee shall not purchase the Mortgaged Property as herein provided, the Note shall be prepaid in accordance with its terms and subject to Mortgagee's right to receive only Loan Amount B.

**Section 3.20. Letter of Credit.** As additional security for payment of the indebtedness secured by this Mortgage, the Mortgagor shall deliver to the Mortgagee letters of credit (collectively, the "GECC Letters of Credit") in the aggregate amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00). The GECC Letters of Credit shall be in the amounts of Four Hundred Fifty Thousand Dollars (\$450,000.00) (herein called the "\$450,000.00 Letter of Credit"), Two Hundred Fifty Thousand Dollars (\$250,000.00) (herein called the "\$250,000.00 Letter of Credit") and One Hundred Fifty Thousand Dollars (\$150,000.00) (herein called the "\$150,000.00 Letter of Credit"), respectively; and in connection therewith:

(a) The Mortgagee shall have the right to draw upon the GECC Letters of Credit or any renewal or extension thereof, in whole or in part, upon the exercise by Mortgagee of any of the remedies provided to it in Section 2.02 (a) hereof following the occurrence of an Event of Default under this Mortgage or upon the occurrence of any one or more of the following events, each of which shall be deemed an additional Event of Default under this Mortgage, without notice or period of grace:

(i) The Mortgagor's failure to deliver to the Mortgagee, not less than thirty (30) days prior to the expiration date of the GECC Letters of Credit, or any renewal or extension thereof, a further renewal or extension for a period of not less than one (1) year; or

(ii) Any action by or affecting the Mortgagor or the bank issuing the GECC Letters of Credit (including, but not limited to, any change in the financial condition or rating of the issuing bank) which, in Mortgagee's discretion reasonably exercised, may jeopardize the right of Mortgagee to draw upon or collect forthwith upon presentation the proceeds of the GECC Letters of Credit.

(b) All letters of credit, including renewals thereof, are subject to Mortgagee's approval as to form, content and the issuing bank. A letter of credit shall not be deemed as having been delivered to Mortgagee until it has been approved as aforesaid.

(c) The proceeds of any draw upon the GECC Letters of Credit may be applied by the Mortgagee to the payment of accrued interest (including any accrued interest the payment of which was otherwise deferred), late charges, principal (including any prepayment penalty occasioned by a principal payment), or any other obligation arising out of the Mortgagor's obligations to the Mortgagee under this Mortgage or the Note, in such manner as the Mortgagee, in its sole discretion, deems appropriate.

(d) At the request of the Mortgagor, Mortgagee will draw upon the \$150,000.00 Letter of Credit, and when the \$150,000.00 Letter of Credit is exhausted, upon the \$250,000.00 Letter of Credit (or in such other order as Mortgagee may elect) to pay Operating Deficits (as defined in the Note) and amounts referred to in Subsection (c) above to the extent Net Operating Income is insufficient for the purpose.

(e) Notwithstanding the foregoing, if the GECC Letters of Credit are presented for payment solely on account of Section 3.20(b) hereof, Mortgagee shall not apply the proceeds in the manner aforesaid but instead shall retain and apply the proceeds in substitution for the GECC Letters of Credit. Thereafter, Mortgagor reserves the right to provide a replacement for the letter of credit drawn upon provided it satisfies the standards required for letters of credit under this

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Section 3.20. Upon a receipt of a replacement letter of credit, Mortgagee shall release the cash received, without interest, to Mortgagor or as Mortgagor shall direct in writing.

(f) Mortgagee shall release its rights in the GECC Letters of Credit and surrender the GECC Letters of Credit to the issuer upon the payment in full of all sums due under the Note and this Mortgage. In addition:

(i) The One Hundred Fifty Thousand Dollar (\$150,000.00) letter of credit will be released on the first Business Day of the third (3rd) Loan Year ("Release Date") provided that there is strict compliance with the following conditions:

(A) All debt service obligations payable under the Note at the Applicable Base Percentage Rate have been duly and punctually paid within any applicable periods of grace during the first two (2) Loan Years, either from Net Operating Income or equity funds (excluding proceeds of the GECC Letters of Credit) of the beneficiary ("Beneficiary") of Mortgagor;

(B) As of the Release Date the Net Operating Income from the Premises is sufficient, in GECC's estimation, to pay the debt service obligations under the Note at the Applicable Base Percentage Rate for the next Loan Year. Such estimation shall be determined by Mortgagee pursuant to audit, the cost of which shall be borne by the Beneficiary and payable upon demand, and shall have been paid; provided that such costs shall be deemed Operating Expenses as defined in the Note; and

(C) There is no Event of Default hereunder nor under the Note, nor shall any state of facts exist which, with the giving of notice or passage of a grace period, shall constitute an Event of Default.

(g) All the GECC Letters of Credit shall be released at such time as there is strict compliance with the following conditions:

(i) Following release of one (1) of the properties comprising the Premises, the Net Operating Income from that portion of the Premises remaining subject to this Mortgage is deemed by Mortgagee, in its sole and absolute discretion, to be sufficient to generate an Eleven Percent (11%) return for the next succeeding six (6) month period on the then outstanding principal balance, including all accrued interest (whether or not then capitalized). Such determination shall be pursuant to audit as provided for in Section 3.20(f)(ii)(B) aforesaid; and

(ii) There is no Event of Default hereunder nor under the Note, nor shall any state of facts exist which, with the giving of notice or passage of a grace period, shall constitute an Event of Default;

provided that nothing in this subsection (g) shall be deemed to imply that Mortgagee shall be obligated to release either of the properties comprising the Premises from the lien of this Mortgage.

Section 3.21. Not Joint Venture or Partnership. The Mortgagor and the Mortgagee intend that the relationship created hereunder, under the Note and all other Loan Documents be solely that of mortgagor and mortgagee or borrower and lender, as the case may be. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between the Mortgagor and the Mortgagee, nor to grant the Mortgagee any interest in the Mortgaged Property other than that of mortgagee or lender; it being the intent of the parties hereto that Mortgagee shall not share in any losses whatsoever generated by the Mortgaged Property and that Mortgagee shall have no control over the day-to-day management and operation of the Mortgaged



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Page 1

Property. Accordingly, Mortgagor hereby indemnifies and holds harmless Mortgagee for any claim, loss, liability, damage, cost or expense (including reasonable attorneys' fees through all appellate proceedings) to Mortgagee arising out of any claim, suit or allegation that the transactions contemplated by the Note and this Mortgage or otherwise created by the Loan Documents or contemplated thereby establish a joint venture, tenancy-in-common, or partnership arrangement between Mortgagee and Mortgagor, and arising out of a claim, assertion or litigation directly or indirectly brought by or on behalf of Borrower, its partners or their partners.

**Section 3.22. Leases.** All leases and rental arrangements with tenants of the Mortgaged Property from time to time shall be subject to Mortgagee's approval as to form and content and, once approved, such form and content shall not be modified without Mortgagee's prior written approval. Prior to submitting the proposed lease to Mortgagee, the Mortgagor shall have conducted usual and customary inquiries as to such tenant's creditworthiness and shall be satisfied with respect thereto. No approval by Mortgagee shall be deemed to constitute a subordination of the lien of this Mortgage to any lease. At a commercially reasonable time, considering usual and customary factors including, but not limited to, the requirements for necessary cash flow from the Mortgaged Property, Mortgagee agrees to cooperate with Mortgagor so as to approve a standard lease form and a program of leasing standards which are mutually acceptable to Mortgagor and Mortgagee. Mortgagor shall not modify or amend any lease, nor shall it cancel or terminate any lease (other than upon the default of the tenant), except in the ordinary and prudent course of business.

**Section 3.23. Management Contracts.** Mortgagor agrees that neither it nor its beneficiary shall enter into any agreement for the management, leasing and/or operation of the Mortgaged Property without Mortgagee's prior written consent, which consent shall not be unreasonably withheld and, once so approved, said agreement shall not be modified without Mortgagee's further consent.

**Section 3.24. After-Acquired Property.** All right, title, and interest of 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, Mortgagor or constructed, assembled, or placed by Mortgagor on the Land, 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 Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurance, mortgages, conveyances, or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

**Section 3.25. Prepayment.** The Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note, but not otherwise.

**Section 3.26. Additional Notices.** Additional copies of all notices shall be delivered or sent by United States certified or registered mail, postage prepaid:

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## Notices to Mortgagee:

Rosenthal and Schanfield  
55 East Monroe  
Suite 4620  
Chicago, Illinois 60603  
Attention: Mr. Martin K. Blonder.

and to

General Electric Capital Corporation  
260 Long Ridge Road  
Stamford, Connecticut 06902  
Attention: CRE Legal Operations - 6035

## Notices to Mortgagor:

c/o Golub Woodfield Corporation  
625 North Michigan Avenue  
Suite 2000  
Chicago, Illinois 60611

and to

Greenberger, Krauss & Jacobs  
180 North LaSalle Street  
Chicago, Illinois 60601  
Attention: Mr. David Glickstein

**Section 3.27. Contest of Liens.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any real estate taxes and assessments imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

(a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;

(b) Mortgagor shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

(c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand);

(d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so

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much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

**Section 3.28. Insurance and Condemnation Proceeds.** Notwithstanding the provisions of Section 1.04(b) hereof, in each event that an insured loss or casualty shall occur to improvements upon any one of the properties comprising the Premises which costs Seventy-Five Thousand Dollars (\$75,000.00) or less to repair, and provided that no Event of Default then exists, Mortgagee shall, upon the written request of Mortgagor, make the insurance proceeds received with respect to such loss or casualty, available to Mortgagor for restoring such improvements in accordance with all the terms and provisions of Sections 1.04(c) to 1.04(g) of this Mortgage. Notwithstanding the provisions of Section 1.08 hereof, if there is a condemnation proceeding and the damage to any one of the properties comprising the Premises costs Seventy-Five Thousand Dollars (\$75,000.00) or less to restore, Mortgagee shall make the condemnation award proceeds available to the Mortgagor to replace or restore taken portions of the Premises, provided that (i) no Event of Default then exists, (ii) access to the Premises is not impaired, (iii) no building, or any portions thereof, upon the Premises has been taken, and (iv) operation of the business of the tenants upon the Premises have not been substantially impaired by such taking.

**Section 3.29. Non-Monetary Default.** Mortgagor shall have a thirty (30) day period of grace after notice to cure any default hereunder for which no other grace period is specifically provided herein; provided, however, that: (a) if such default is not susceptible of cure within such thirty (30) day period, such thirty (30) day period shall be extended to a ninety (90) day period, but only if (i) Mortgagor shall commence such cure within such thirty (30) day period and shall thereafter prosecute such cure to completion, diligently and without delay, and (ii) no other Event of Default shall have occurred; and (b) the grace period provided in this Section 3.29 shall in no event apply to any default relating to (i) payment of taxes, (ii) insuring the Premises as required herein, (iii) the payment of money, and/or (iv) any other Event of Default for which this Mortgage specifically provides that no period of grace shall be applicable.

**Section 3.30. Holdback Agreement.** Contemporaneously with the execution and delivery hereof, Mortgagor has executed and delivered to and with Mortgagee a separate Holdback Agreement (herein called the "Holdback Agreement") relating to the retention and disbursement of Three Million Eight Hundred Two Thousand Four Hundred Twenty-Three Dollars (\$3,802,423.00) to pay for certain renovations (herein called "Renovations") to the Mortgaged Property. The terms, provisions and conditions of the Holdback Agreement are incorporated herein by reference as fully and with the same force and effect as if set forth herein at length. It shall be an immediate Event of Default hereunder without notice or grace, if a default shall occur under the Holdback Agreement or the Renovations shall not be completed within the time periods set forth therein.

**Section 3.31. Maximum Indebtedness.** The maximum amount secured by this Mortgage is One Hundred Million Dollars (\$100,000,000.00).

**Section 3.32. Limitation of Liability.** 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

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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, either expressed or implied, all such personal liability, if any, being expressly waived and released.

Neither the beneficiary ("Beneficiary") of the Mortgagor nor any of the general partners of (i) the Beneficiary or (ii) any general partner of Beneficiary or Mr. Eugene Golub (collectively called the "Obligated Parties") shall under any circumstances be personally liable for the repayment of any of the principal of, interest (including Base Interest, Deferred Base Interest, Cash Flow Interest and Participation Interest) or, or prepayment fees or late charges, or other charges or fees, including, without limitation, attorneys' fees, due in connection with, the Loan or any other amounts due hereunder or for any deficiency judgment which mortgagee may obtain after foreclosure of this Mortgage after default by Mortgagor (all such sums are hereinafter collectively called the "Loan Debt"); provided, however, that the Obligated Parties shall be personally liable for any liability, loss or damage (including, without limitation, reasonable attorneys' fees and disbursements, but excluding principal and interest payable hereon):

- (a) Arising out of any fraud;
- (b) Arising out of a material misrepresentation under, or a breach of any agreement contained in, that certain Closing Affidavit delivered by Eugene Golub in connection with the disbursement of the Indebtedness;
- (c) Arising out of any misapplication of insurance proceeds, condemnation awards, security deposits or trust funds in violation of applicable law or the provisions of this Mortgage;
- (d) Arising out of the failure of Mortgagor or other person to comply with the provisions of this Mortgage prohibiting the sale or further encumbrance of the Premises;
- (e) Arising out of the willful and wrongful attempt by the Obligated Parties or any Affiliated Entity (as defined in the Note) to interfere with Mortgagee's rights under the Assignment of Rents or Letter of Credit requirements set forth in the Loan Documents;
- (f) Arising out of the failure of Mortgagor to perform its obligations under the Loan Documents to preserve, protect and maintain the Premises to the extent that the proceeds of rents and other income of the Collateral are sufficient;
- (g) Arising out of the failure to apply the proceeds of rents and other income of the Collateral toward the cost of maintenance and operation of the Premises, debt service and other Indebtedness;
- (h) Arising out of willful destruction and/or willful damage by the Obligated Parties or any Affiliated Entity, or any one or more of them, to the Premises or to the electrical, plumbing, heating, air-conditioning systems or elevators of the Premises;
- (i) Arising under the Hazardous Substance Indemnity Agreement delivered by the Obligated Parties in connection with disbursement of the Indebtedness, but in any event such obligations and liabilities of the Obligated Parties shall be limited as set forth therein;
- (j) Arising out of Mortgagor's collection of rentals for periods of more than one (1) month in advance or termination fees under leases of the Premises to the extent such rents or fees are not applied



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directly to the maintenance and operation of the Premises;


(k) Arising out of the receipt by Mortgagor of monies in connection with the modification of any existing or future lease or the entering into of a new lease in violation of the applicable provisions of this Mortgage; or

(l) Resulting from any claim, demand, determination, judgment, verdict or holding (other than claims by third parties as described in Section 17(d) of the Note) that the relationship of Mortgagor and Mortgagee created by the Loan Documents or actions contemplated thereby is that of joint venturers, partners, tenants in common, joint tenants or any relationship other than that of debtor and creditor and arising out of a claim, assertion or litigation directly or indirectly brought by or on behalf of Mortgagor, its beneficiary, its partners or their partners;

and provided, further, that the foregoing limitations on personal liability with respect to the Loan Debt shall not impair the validity of the indebtedness secured by Mortgagee's collateral or the lien on or security interest in the collateral or the right of Mortgagee as mortgagee or secured party to foreclose and/or enforce the mortgage lien or security interest or other interest in the collateral or any part thereof after default. In the event any person, whether or not a partner of Mortgagor, or the Mortgagor itself, shall have indemnified all or part of any aspect of the Loan or shall have indemnified Mortgagee, by separate written guarantee or indemnification agreement, none of the foregoing limitations on the personal liability of Mortgagor or the Obligated Parties for payment of the Loan Debt shall modify, diminish or discharge the personal liability of any such guarantee or indemnification agreement. 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 Act of 1978 or any successor thereto or similar provisions under applicable state law to file a claim for the full amount of the debt owing to Mortgagee by Mortgagor or to require that all collateral shall continue to secure all of the indebtedness owing to Mortgagee in accordance with the Loan Documents.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but solely as trustees as aforesaid

Attest:

  
\_\_\_\_\_  
Ray B. ...

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

Office

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7/10/2017

JOINDER

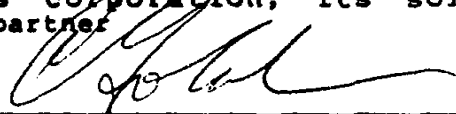
The undersigned is the Beneficiary described in Section 3.32 aforesaid, and is substantially financially or otherwise interested in the disbursement of the loan ("Loan") secured by this Mortgage.

As a material inducement for Mortgagee to make and disburse the Loan, or any portion thereof, the undersigned hereby join in the within and foregoing Mortgage and, jointly and severally with each other and with the Mortgagor, agree to duly and punctually perform and agree to be bound by all obligations and covenants of the Obligated Parties described in Section 3.32 hereof.

GOLUB WOODFIELD LIMITED PARTNERSHIP, an Illinois limited partnership

By: GOLUB WOODFIELD CORPORATION, an Illinois corporation, its sole general partner

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



President



EUGENE GOLUB

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STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I, L. M. SOVIENSKI, a Notary Public in and for the County and State aforesaid, do hereby certify that J. MICHAEL WHELAN Vice President of American National Bank and Trust Company of Chicago ("Bank"), a national banking association, and Peter H. Johansen Assistant Secretary of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument and 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 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.

AUG 5 1991

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

L. M. Sovieniski  
Notary Public

My Commission Expires:  
\_\_\_\_\_



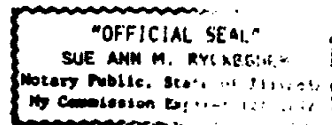
STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I, Sue Ann M. Ryckeghen a Notary Public in and for the County and State aforesaid, do hereby certify that Eugene Golub, the (Vice) President of Golub Woodfield Corporation, an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer of said corporation, appeared before me in person and acknowledged that he signed and delivered the 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 22 day of August, 1991.

Sue Ann M. Ryckeghen  
Notary Public

My Commission Expires:  
Dec 22, 1992



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STATE OF ILLINOIS )  
COUNTY OF COOK ) ss

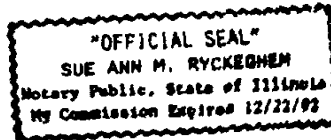
I, Sue Ann M Ryckeghem a Notary Public in and for the County and State aforesaid, do hereby certify that Eugene Golub, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 2nd day of August, 1991.

Sue Ann M Ryckeghem  
Notary Public

My Commission Expires:

Dec 22, 1992



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2025/03/28

PROMISSORY NOTE

\$16,175,500.00

July 15, 1991

FOR VALUE RECEIVED, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but solely as trustee under trust agreement dated January 18, 1990 and known as Trust No. 110232-07, and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but solely as trustee under trust agreement dated July 9, 1991 and known as Trust No. 114177-06 (collectively referred to herein as "Borrower"), having an office at c/o Golub and Company, 625 North Michigan Avenue, Chicago, Illinois 60611, jointly and severally promise to pay to the order of GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation ("GECC"), having an office at 260 Long Ridge Road, Stamford, Connecticut 06902, Attention: CRE Legal Operations - 6035, or any subsequent holder of this Note, the principal sum of Sixteen Million One Hundred Seventy-Five Thousand Five Hundred Dollars (\$16,175,500.00), or so much thereof as may be advanced from time to time, with interest on the unpaid balance of such amount from the date of such advance at the rates of interest specified herein.

1. Certain Defined Terms. In addition to the terms defined elsewhere in this Note, as used herein, the following terms shall have the following meanings:

"Advance" shall mean any advance of proceeds of the Loan made by GECC pursuant to this Note or the GECC Mortgage.

"Affiliated Entities" shall mean, collectively, Borrower, or any of the partners or shareholders of any partnership or corporation which directly or indirectly through corporations or partnerships controlled by them is a limited or general partner of the Beneficiary, or any entity of which any of such partners or shareholders alone or in any combination is a general partner or a controlling director, managing officer or majority shareholder or has or have more than a Ten Percent (10%) beneficial interest therein. Any of the foregoing Affiliated Entities is individually called an "Affiliated Entity". The term Affiliated Entities shall specifically include Eugene Golub, his spouse, blood relatives, ancestors and descendants.

"Alternative Mortgage" shall mean the first mortgage loan in respect of the Premises replacing or repaying all or a part of the Loan.

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2/13/2017

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"Alternative Mortgage Indebtedness" shall mean the outstanding principal indebtedness, accrued and unpaid interest, and prepayment penalties, if any, on the Alternative Mortgage, as of the date on which such calculation is made.

"Alternative Mortgage Proceeds" shall mean with respect to the Alternative Mortgage, the maximum principal amount of the Alternative Mortgage less (i) usual and customary closing costs and (ii) usual and customary commitment fees approved by GECC actually incurred and paid to parties other than Affiliated Entities.

"Applicable Base Percentage Rate" shall mean the rate of interest to be paid hereunder prior to the Maturity Date which, during each respective Loan Year, shall be the following:

<u>Loan Year</u>	<u>Interest Rate Per Annum</u>
1 and 2	6.5%
3	8.5%
4	9.0%
5	9.5%

"Assignment" shall mean the Assignment of Rents and Leases dated as of even date herewith made by Borrower in favor of GECC.

"Base Interest" as such term is defined in Section 3(a) hereof.

"Beneficiary" shall mean Golub Woodfield Limited Partnership, an Illinois limited partnership, which is the owner of the beneficial interest of Borrower, or such successor as shall have been approved by GECC.

"Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

"Cash Flow" shall mean the amount of Net Operating Income for the specified period after payment of any Base Interest paid under this Note or, in lieu of this Note, the Alternative Mortgage for such period.

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"Cash Flow Interest" as such term is defined in Section 3(a) herein.

"Closing Costs" shall mean, unless specifically provided herein to the contrary, the usual and customary bona fide costs and expenses paid for services actually rendered in order to effectuate the closing. The term Closing Costs shall include, but shall not be limited to, reasonable attorney fees, title, escrow, recording and survey fees, but shall specifically exclude (i) proration items or closing credits, and (ii) in the case of the funding of an Alternative Mortgage, holdbacks for capital improvements, tenant improvements, lease up, deferred maintenance and/or other holdback items unless they are approved by Lender, which consent shall not be unreasonably withheld.

"Contract Index Rate" (sometimes referred to as the "Base Interest Rate") shall mean the rate of interest per annum which is Three Percent (3.00%) in excess of the GECC Composite Commercial Paper Rate.

"Deferred Interest" as such term is defined in Section 3(b) hereof.

"Due Date" as such term is defined in Section 3(a) hereof.

"Economic Value" shall mean the value, as of the Scheduled Maturity Date or such earlier date when such terms shall become applicable of the Premises as if sold to a bona fide third party in an arms length transaction as though unencumbered by the GECC Mortgage or any other financings and without consideration of any costs, expenses, or taxes which would be incurred in connection with a Sale, less (i) the Principal Sum calculated prior to any prepayment and immediately prior to the initial funding of the Alternative Mortgage, if any, and specifically including in the amount of the Principal Sum all Deferred Interest, whether or not capitalized, together with such amount of the Loan not theretofore disbursed, (ii) an imputed brokerage commission and costs of sale collectively equal to the lesser of Two Percent (2%) of the Economic Value as determined prior to such deductions or the prevailing market rate, and (iii) capital expenditures made with the written approval of GECC, such approval not to be unreasonably withheld, and amounts paid by Borrower to cover Operating Deficits, in each case made out of Borrower's own funds or out of the proceeds of the GECC Letters of Credit, as

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provided for herein and in the GECC Mortgage and not from the proceeds of the Loan nor from Cash Flow and (iv) the amount of any management fees payable to Golub & Co. (not to exceed \$150,000) and deferred as provided for in the Holdback Agreement. The Property's Economic Value, prior to said deductions, shall be determined by three (3) independent appraisers who shall be members of The Appraisal Institute, one (1) appointed by GECC and one (1) appointed by Borrower (such appraisers to be appointed within ten (10) days after a request by either GECC or Borrower). The third (3rd) appraiser shall be selected by the appointed appraisers. If either GECC or Borrower shall fail to timely appoint an appraiser, the appointed appraiser shall select the second (2nd) appraiser within ten (10) days after GECC or Borrower's failure to appoint. If the two (2) appraisers so determined shall be unable to agree on the selection of a third (3rd) appraiser within fifteen (15) days after the last appraiser shall have been appointed, then either appraiser, on behalf of both, may request such appointment by the presiding Judge of any United States District Court for the Northern District of Illinois. The Property's "Economic Value" (prior to the aforesaid deductions) shall be the average of the valuations of such Property as determined by such appraisers, provided, however, if any such appraiser's valuation deviates more than Ten Percent (10%) from the average of the other two (2) valuations, the Property's Economic Value (prior to the aforesaid deductions) shall be the average of the other two (2) appraisers' valuations. The cost of such appraisals shall be borne equally by GECC and Borrower, except that if, at the time the appraisal is requested and continuing through the date on which the appraisal report is delivered as herein provided, there is an Event of Default under the GECC Mortgage or there is any fact or circumstance which, with the giving of notice or passage of a grace period, shall constitute an Event of Default, Borrower shall pay the entire cost of such appraisal. The appraisal shall be submitted to GECC and Borrower within thirty (30) days after the panel of three (3) appraisers is constituted.

"GECC Composite Commercial Paper Rate" shall mean the "Average Interest Expense" as hereinafter defined on the actual principal amount of the GECC Composite Commercial Paper outstanding for GECC's full fiscal month preceding the interest billing month. "GECC Composite Commercial Paper" shall mean GECC's outstanding commercial paper for terms of twelve (12) months or less from sources within the United States but excluding the current portion of GECC's long term debt and GECC Financial Corporation's borrowing and interest expense.



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"Average Interest Expense" shall mean the percentage obtained by dividing the interest expense on GECC Composite Commercial Paper for such fiscal month by the average daily principal amount of GECC Composite Commercial Paper outstanding during such fiscal month, divided by the actual number of days in such fiscal month and multiplied by the actual number of days in the calendar year. The GECC Composite Commercial Paper Rate shall be determined by GECC and evidenced by a certificate issued by an authorized GECC employee.

"GECC Mortgage" shall mean the First Mortgage of even date herewith mortgaging certain real and personal property described therein situated in Glendale Heights, DuPage County, Illinois, and Schaumburg, Cook County, Illinois, upon which office buildings are constructed.

"Gross Revenues" shall mean the sum of the gross rental receipts and all other receipts and revenues generated by and from the use and operation of the Premises in respect of all or any part thereof, including, but not limited to, base rental income, percentage rental income, vending machine income, any non-refundable security deposits, charges for space occupancy, and the proceeds of any insurance proceeds specifically paid to reimburse Borrower for loss of business or rental income and not applied by Lender in reduction of the unpaid principal balance. Gross Revenues shall be determined in accordance with the cash basis method of accounting. There shall be excluded from the determination of Gross Revenues (i) the proceeds of the Loan, (ii) proceeds of casualty insurance or condemnation which are applied to reduce the Principal Sum or the outstanding principal indebtedness under the Alternative Mortgage, and (iii) expense pass through charges unless the expense is included as an Operating Cost, in which case such income shall be included in Gross Revenues.

"Gross Sales Price" with respect to the Premises shall mean the total sales price directly or indirectly paid (prior to adjustment for taxes, rents, expenses, or customary proration) by a purchaser to Borrower for the purchase of the Premises (or direct or indirect substitute for the Premises, such as partnership interests or corporate stock in the Beneficiary or any entity which is a partner of the Beneficiary), including, without limitation, cash, notes and all other property and consideration, and further including, without limitation, any and all payments and other consideration made, paid or given to Borrower or any Affiliated Entities in

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connection with such sale for non-competition agreements, termination of management agreements and similar payments.

"Initial Disbursement Date" shall mean the date on which proceeds of the Loan shall be initially disbursed.

"Loan" shall mean the loan evidenced by this Note, including without limitation, all principal, interest and other payments which shall become due and payable hereunder.

"Loan Amount A" shall mean the first Eighty-Five Thousand Dollars (\$85,000.00) of the Loan disbursed hereunder.

"Loan Amount B" shall mean the remainder of the Loan from time to time disbursed and remaining unpaid.

"Loan Documents" shall mean this Note, the GECC Mortgage, the Assignment and all other documents, agreements and instruments evidencing, securing or in any way relating to the Loan, together with all amendments thereto which may hereafter exist.

"Loan Year" shall mean each twelve (12) month period between August 1 and July 31, except that the first Loan Year shall commence on the Initial Disbursement Date and continue through July 31, 1992 and the last Loan Year shall commence on August 1, 1995 and end on the Scheduled Maturity Date.

"Maturity Date" shall mean the earliest to occur of (i) the Scheduled Maturity Date, or (ii) the date to which GECC accelerates the payment of the Loan pursuant to the provisions of this Note or the GECC Mortgage.

"Maximum Amount" as such term is defined in Section 14 hereof.

"Net Alternative Mortgage Proceeds" as such term is defined in this Note.

"Net Operating Income" shall mean the amount, if any, by which Gross Revenues exceed Operating Costs.

"Net Sales Proceeds" shall mean, with respect to a Permitted Sale of the Premises (or substitute therefor) the sales proceeds which the seller is directly or indirectly entitled to receive after deducting from the Gross Sales Price

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the following which are actually paid (i) reasonable and customary Closing Costs and sales commissions or finder's fees, which Closing Costs, commissions and fees shall not exceed in the aggregate an amount which is equal to the lesser of Two Percent (2%) of the Gross Sale Price or the prevailing market rate (provided that, in no event, shall the finder's fees or commissions paid to an Affiliated Entity exceed an amount which is equal to One Percent (1%) of the Gross Sale Price, and no commission or finder's fee shall be allowed unless it is for services actually rendered) incurred by Borrower and actually paid in connection with such Permitted Sale (excluding capital gains and other income-related taxes and any closing costs which are not usual and customary), (ii) the Principal Sum calculated prior to the funding of the Alternative Mortgage, if any, and specifically including in the amount of the Principal Sum all Deferred Interest, whether or not capitalized, (iii) the amount specified in clause (iii) in the definition of Economic Value set forth above, (iv) cash proration credits actually given to a purchaser for which Borrower has not or will not receive reimbursement either on account of escrows or otherwise and (v) payment to Golub & Co. of any amount of management fees deferred as provided in the Holdback Agreement of even date hereof, not to exceed \$150,000.

"Note" shall mean this Promissory Note which evidences the Loan, together with all amendments thereto from time to time.

"Operating Costs" shall mean the normal and customary operating costs (including reserves acceptable to Lender) of the Premises incurred and paid after the Initial Disbursement Date by or for the account of Borrower (except for those costs for which Borrower or Beneficiary received payment in advance or reimbursement from a tenant), all as determined in accordance with the cash basis method of accounting; provided, however, if the charges are not usual and customary then, to constitute an allowable Operating Cost, such items must be approved (not to be unreasonably withheld) by Lender as being permitted Operating Costs for purposes of calculating Net Operating Income. Operating Costs shall include, among other things, bona fide management fees in direct conjunction with services actually rendered not in excess of Three Percent (3%) of actual gross rental collections in connection with the Woodfield Center and 4% of actual gross rental collections in connection with the Glendale Center as defined in the Holdback Agreement referred to in the Mortgage, all or part of which may be paid to an Affiliated Entity. Operating Costs shall not

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include (i) any principal, interest or other amounts paid under any notes or deeds of trust relating to the Premises, including but not limited to this Note, (ii) non-recurring capital items unless approved by GECC, (iii) income taxes, (iv) non-cash items such as depreciation or amortization and (v) amounts paid out of reserves. For the purpose of computing Operating Costs, except as heretofore specified, no fees, commissions, charges, expenses or other amounts paid to any Affiliated Entity shall constitute an Operating Cost unless such fees, commissions or other amounts are bona fide costs and are approved by Lender as a permitted Operating Cost. Specifically, but without limitation, the term Operating Costs shall not include without the express written approval of Lender (i) salaries or other compensation directly or indirectly paid to Affiliated Entities other than expressly provided hereinabove, (ii) any allocation of expenses of employees, agents or independent contractors that render services to or with respect to properties other than the Premises, nor (iii) any expense that is paid for from proceeds of the Loan.

"Operating Deficits" for any period shall mean the amount if any by which Operating Costs for such period exceed Gross Revenue for such period.

"Participation Interest" as such term is defined herein.

"Permitted Sale" shall mean a bona fide, arms length Sale to a party other than an Affiliated Entity.

"Post Default Rate" shall mean the Contract Index Rate plus Five Percent (5%), each change in the Post Default Rate resulting from a change in the Contract Index Rate for such period to be effective and calculated in accordance with the terms hereof respecting the definitions of the GECC Composite Commercial Paper Rate, respectively; provided, however, in no event shall the Post Default Rate exceed the highest rate authorized by applicable law.

"Premises" or "Property" shall have the meaning assigned in the GECC Mortgage to the term "Mortgaged Property."

"Principal Sum" shall mean the entire outstanding principal balance of this Note as of the date upon which such calculation or determination shall be made (including but not limited to Deferred Interest, whether or not capitalized except as otherwise provided herein).



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"Sale" shall mean any sale, transfer, conveyance, assignment or other disposition (as a result of condemnation or otherwise) of (i) the Premises, or (ii) such of the foregoing as are prohibited pursuant to the provisions of Section 1.17 of the GECC Mortgage, whether directly or indirectly, by operation of law or otherwise; provided, however, a "Sale" shall not include any condemnation which is less than a Complete Taking (as defined in the GECC Mortgage) or a transfer permitted under the GECC Mortgage.

"Scheduled Maturity Date" shall mean the date which is the earlier to occur of (i) five (5) years after the Initial Disbursement Date, or (ii) August 5, 1996.

2. Computation of Interest. Subject to the terms and conditions hereof, interest on the amounts so advanced hereunder, from time to time, shall be computed from and after the date of each Advance until the date of payment in full at the Contract Index Rate unless the Post Default Rate shall be applicable.

3. Payment and Calculation of Interest and Payment of Principal Balance:

(a) Base Interest. Borrower shall pay to GECC monthly in arrears commencing on the first day of the month immediately following the Initial Disbursement Date, and on the first day of each and every calendar month thereafter (such date for any particular month being hereinafter referred to as the "Due Date") through and including the day on which this Note is paid in full, interest accrued for the preceding month on the Principal Sum, and on all Deferred Interest capitalized pursuant to Section 3(c) below, at the Contract Index Rate. The interest payable in accordance with this Section 3(a) is hereinafter called the "Base Interest". Base Interest shall first be paid from Net Operating Income and thereafter from (i) Borrower's own equity or (ii) first from the One Hundred Fifty Thousand Dollar (\$150,000.00) Letter of Credit referred to in Section 3.20 of the GECC Mortgage and then from the Two Hundred Fifty Thousand Dollar (\$250,000.00) letter of credit referred to in Section 3.20 of the GECC Mortgage.

(b) Deferral of Interest. If the Borrower is not in default beyond any applicable grace or cure period of any of its obligations hereunder or under any of the Loan Documents, then the Borrower may defer payment of that portion

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of Base Interest due and payable for any such month which is in excess of the amount of interest which would have accrued during such month at the Applicable Base Percentage Rate (such excess amount is hereinafter called the "Deferred Base Interest" and sometimes referred to as "Deferred Interest") so long as the aggregate amount of interest deferred under this Section 3(b) does not at any time exceed the lesser of (i) Ten Percent (10%) of the then Principal Sum (reduced by the amount included therein of Deferred Base Interest), or (ii) One Million Six Hundred Seventeen Thousand Five Hundred Fifty Dollars (\$1,617,550.00).

(c) Capitalization of Deferred Interest. At the election of Borrower, exercised by written notice actually received by GECC at least ten (10) days prior to the expiration of each month during the term of the Loan, the unpaid Deferred Interest for that month may be (i) paid in full, or (ii) added to the principal balance of the Loan as of the first (1st) day of the next succeeding month to accrue interest thereafter at the Contract Index Rate and payable at the Applicable Base Percentage Rate. In the absence of any written notice to GECC within the time set forth, Borrower will be deemed to have elected (ii) of this Subsection (c).

(d) Payment of Deferred Interest. Borrower shall pay to GECC monthly on the first day of each calendar month any outstanding Deferred Base Interest, whether or not previously capitalized, to the extent, if any, by which the interest calculated at the Applicable Base Percentage Rate during the preceding calendar month exceeds the Base Interest for such month charged at the Contract Index Rate.

In addition to the foregoing, on the twentieth (20th) day of September, 1991 and on the twentieth (20th) day of each month thereafter through and including the date on which this Note is paid in full (including but not limited to Participation Interest) Borrower shall pay all Deferred Interest which is unpaid as of the end of the immediately preceding month and whether or not then added to the principal balance to the extent of Cash Flow for the month (or part thereof) which immediately precedes the date on which payment is due. In furtherance thereof, on the twentieth (20th) day of each month commencing September 20, 1991, Borrower shall deliver to GECC a detailed statement of Cash Flow for the immediately preceding month, in form and substance acceptable to GECC and certified by the chief finan-

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cial officer of Golub & Co. GECC shall have the right at any time and from time to time to audit such statements. The cost of such audits shall be borne by Borrower, shall constitute Operating Costs and shall be payable to GECC upon demand. In the event that any such audit shall reflect a discrepancy in the amount of Cash Flow due, the Borrower and GECC shall account to the other, either for payment of the additional Cash Flow determined to be due or for refund of any overpayment, which amount will be paid within five (5) days after notice from the party to whom the payment is due. All sums due from the Borrower shall bear interest at the Contract Index Rate from the original due date therefor.

The entire unpaid balance of Deferred Interest, whether or not previously capitalized, shall be due and payable on the Maturity Date, or on such earlier date when the entire Principal Sum shall be payable (whether by reason of prepayment or otherwise). Borrower may at any time, and from time to time, pay all or any portion of the outstanding Deferred Interest without premium or penalty.

(e) Cash Flow Interest. In addition to all other sums payable hereunder, as additional interest due hereunder Borrower shall pay to GECC on October 20, 1991 and on the twentieth (20th) day of each January, April, July and October thereafter through and including the date this Note is paid in full (inclusive of all then accrued Base Interest, all then accrued Cash Flow Interest and Participation Interest), an amount equal to Fifty Percent (50%) of the Cash Flow, if any, for the three month period (or for such portion thereof as this obligation is in effect) immediately preceding the month in which payment is due. For purposes of calculating Cash Flow Interest pursuant to this subsection (e), the amount of Deferred Interest paid from Cash Flow pursuant to subsection (d) of this Section 3 shall be deducted from the calculation of Cash Flow. The aforesaid sum shall be paid to GECC as additional interest (the "Cash Flow Interest") on Loan Amount A. From time to time, Borrower and GECC shall promptly make an appropriate adjustment in the amount of Cash Flow and Cash Flow Interest paid to GECC if such adjustment is necessary after delivery of the financial statements delivered to GECC pursuant to the terms of the GECC Mortgage by GECC refunding any overpayment and Borrower paying to GECC any deficiency. All calculations of Cash Flow and Cash Flow Interest and its components shall be subject to audit and review by GECC, and any additional Cash Flow and Cash Flow Interest calculated

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by GECC to be payable by Borrower as a result of any such audit or review, together with the cost of the audit (which costs shall constitute Operating Costs), shall be due and payable to GECC on demand. In the event such audit discloses a deficiency, the entire deficiency shall be paid with interest at the Contract Index Rate from the date such Cash Flow and Cash Flow Interest should have been paid.

(f) Participation Interest. In addition to all other sums payable under this Note, Borrower shall pay to GECC Participation Interest as follows:

(i) Participation interest shall be payable upon the first to occur of (A) the Maturity Date, (B) Sale, or (C) payment in full of the Loan; and Participation Interest shall be paid on account in the event of refinancing, as more fully hereinafter provided.

(ii) The amount of Participation Interest shall be determined as follows:

(A) If the obligation to pay Participation Interest is in conjunction with a Permitted Sale, an amount equal to Fifty Percent (50%) of the Net Sale Proceeds;

(B) If the obligation to pay Participation Interest is not in conjunction with a Permitted Sale, an amount equal to Fifty Percent (50%) of the Economic Value.

(iii) If Participation Interest is required to be determined on the basis of the Economic Value, but the Economic Value has not been finally determined in accordance with the terms and conditions hereof, and, in the absence of an Event of Default Borrower desires a release of the GECC Mortgage and the other Loan Documents as security for the Participation Interest, GECC shall release the GECC Mortgage and the other Loan Documents as security for Participation Interest, provided Borrower shall either, at the option of GECC (A) pay to GECC the Participation Interest due to GECC as estimated by GECC within the reasonable exercise of its discretion or (B) provide to GECC collateral satisfactory to GECC securing the payment to GECC of the Participation Interest due to GECC as estimated by GECC within the reasonable exercise of its discretion.



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(iv) Promptly following the final determination of the Participation Interest due to GECC, if Borrower shall have paid to GECC the amount of estimated Participation Interest pursuant to clause (iii)(A) above, Borrower and GECC shall promptly make an appropriate adjustment, if such an adjustment is necessary, by GECC refunding any overpayment and Borrower paying to GECC any deficiency.

(v) If a Sale shall result in any portion of the purchase price being deferred in the form of a purchase money deed of trust or other form of deferral acceptable to GECC, the Participation Interest due to GECC in such case shall be paid on a pro rata basis as and when the purchase price is paid, provided GECC shall receive cash or other form of collateral reasonably satisfactory to GECC securing the payment to GECC of the total Participation Interest due to GECC hereunder.

(vi) Notwithstanding anything to the contrary contained in this Note, and as more particularly set forth below, in the event Borrower shall desire to refinance the Loan with an Alternative Mortgage, Borrower shall give GECC notice thereof not less than thirty (30) nor more than sixty (60) days prior to refinancing, and GECC shall, at its sole option and in its sole discretion, elect either (A) to allow Borrower to prepay only Loan Amount B and replace it with an Alternative Mortgage, or (B) to require the Borrower to prepay the entire outstanding amount of this Loan (including but not limited to Participation Interest) in full in order to effect the refinance with the Alternative Mortgage, and GECC shall notify Borrower of its election within fifteen (15) days after its receipt of Borrower's notice of intent to refinance; provided that if GECC shall not affirmatively make such election it shall be deemed to have elected alternative (A) above.

(vii) In the event that GECC shall elect to require Borrower to prepay the entire outstanding amount of this Loan pursuant to Clause (vi)(B) above, then and in any such event the date of the refinancing of the Loan shall be and become the Maturity Date hereof.

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(viii) In the event that GECC shall elect to allow Borrower to prepay only Loan Amount B pursuant to the provisions of this Note, then and in any such event:

(A) All provisions of this Note, the GECC Mortgage, and of the recorded Loan Documents, including without limitation the Cash Flow Interest, Participation Interest and First Offer provisions hereof and thereof, shall continue to apply and to be of full force and effect;

(B) Borrower shall prepay Loan Amount B in accordance with the prepayment requirements set forth in this Note;

(C) If an Alternative Mortgage is obtained by Borrower either prior to, simultaneous with or subsequent to any prepayment permitted hereunder, in addition to Base Interest, Cash Flow Interest, Participation Interest and all other sums payable under this Note, and provided the Alternative Mortgage Proceeds exceeds Loan Amount B (the difference between the Alternative Mortgage Proceeds and Loan Amount B being sometimes referred to herein as the "Net Alternative Mortgage Proceeds"), Borrower shall pay to GECC on the dates of any funding of any portion of the Alternative Mortgage an amount equal to Fifty Percent (50%) of Net Alternative Mortgage Proceeds (the amount payable under this Clause (C) is called the "Participation Credit Amount"); provided that (i) for the purpose of calculating the Participation Credit Amount, Participation Interest shall be excluded from Loan Amount B, (ii) at such later date as Participation Interest shall be due and payable pursuant to this Note, the Participation Credit Amount shall be credited toward the Participation Interest then calculated to be due and payable hereunder; and (iii) in consideration of GECC agreeing to permit the Alternative Mortgage and to the extent not precluded by applicable law, the amount of said credit shall in no event be greater than the amount of Participation Interest which is due and payable; and

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(D) GECC shall have the right to consent to the terms and provisions of the Alternative Mortgage and the Alternative Mortgage Indebtedness, and in the event GECC consents thereto, GECC shall subordinate the GECC Mortgage and the other recorded Loan Documents to the Alternative Mortgage;

(g) First Offer. In addition to Base Interest, Cash Flow Interest and Participation Interest, and as an additional and material consideration and inducement to GECC to make and disburse the Loan, Borrower concurrently herewith conveys to GECC in the Mortgage herein referred to the right to receive the first offer to purchase the Premises (the "First Offer") as more particularly set forth in Section 3.19 of the GECC Mortgage;

(h) It is the understanding of the parties that the payment of Cash Flow Interest and Participation Interest and the First Offer are material considerations and inducements to GECC to make and disburse the Loan and shall continue to be secured by the GECC Mortgage and the other recorded Loan Documents until such time as such obligations shall have been paid in full;

(i) Maturity. The entire Principal Sum and all Deferred Interest, together with all accrued but unpaid interest thereon, including Base Interest, Cash Flow Interest and Participation Interest, and also together with any and all unpaid late charges and interest due at the applicable Post-default Rate, shall be due and payable to GECC on the Maturity Date, whether occurring by lapse of time or acceleration.

4. Survival of Payment of Obligations. The obligations respecting Participation Interest shall survive the repayment in full of Loan Amount B (or any component thereof), and shall be secured by the GECC Mortgage and the other recorded Loan Documents. GECC shall be under no obligation to satisfy or otherwise release the GECC Mortgage and the other recorded Loan Documents until the payment in full of the Principal Sum, Base Interest, Deferred Interest, Cash Flow Interest, Participation Interest (unless alternative security is provided therefor as set forth in this Note), and all other amounts payable to GECC under this Note.

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5. Payments and Computations. All payments on account of the Loan or this Note:

(a) Shall be made not later than noon (New York time) on the day when due in lawful money of the United States in same day or other immediately available funds;

(b) are payable at GECC's office at 260 Long Ridge Road, Post Office Box 8308, Stamford, Connecticut 06904-8308, or at such other place as GECC shall notify the Borrower in writing; and

all computations of interest on a day-to-day basis shall be made by GECC on the basis of a year of three hundred sixty (360) days for the actual number of days elapsed in the period for which such interest is payable (i.e., interest for each day any principal is outstanding shall be computed at the annual interest rate divided by three hundred sixty (360)).

6. Prepayment. Borrower shall be entitled to the following right of prepayment and none other, in each case subject to the following provisions, conditions and limitations:

(a) Loan Amount A may not be prepaid prior to the Scheduled Maturity Date except in connection with a Permitted Sale, provided that GECC may require Loan Amount A to be prepaid at such time, if at all, that Loan Amount B is prepaid if Borrower shall refinance the Loan and GECC shall elect to require prepayment of the entire Loan as more particularly set forth herein and such prepayment shall not require premium or penalty;

(b) Loan Amount B may be prepaid in whole but not in part without premium or penalty.

(c) No prepayment permitted hereunder shall affect, reduce or terminate Borrower's obligations in respect of payment to GECC of the Participation Credit Amount, Cash Flow Interest and Participation Interest.

(d) Any permitted prepayment shall be preceded by not less than thirty (30) days' prior written notice from Borrower to GECC.

(e) Any prepayment shall terminate GECC's obligation to make any further Advances under this Note.



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(f) The payment of (i) Deferred Interest, (ii) sums deemed to be principal by virtue of the application of Section 15 hereof, and (iii) prepayment resulting from the application of insurance or condemnation proceeds, may be made at any time without notice.

## 7. Application of Payments:

(a) All payments received by GECC under this Note shall be applied by GECC as follows: first, to the payment of fees and other charges then due or payable under the applicable provisions of this Note or GECC Mortgage; second, to the payment of any delinquency, Post Default Rate or "late" charges, if any; third, to accrued and unpaid Base Interest; fourth, to the Deferred Interest, if any; fifth, to Cash Flow Interest, if any; sixth, to the payment of Participation Interest; seventh, to the payment of Loan Amount B; and finally, to the reduction of Loan Amount A.

(b) Notwithstanding anything to the contrary herein contained, in the event that there shall have occurred an Event of Default under the GECC Mortgage, GECC, in its discretion, may apply any payment under this Note in accordance with the provisions of the GECC Mortgage.

8. Late Payment. In the event Borrower fails to make any payment due under this Note, within five (5) days after the same shall become due, whether by acceleration of prepayment or otherwise, GECC, in addition to its rights set forth in Section 9 hereof, may at its option impose a late charge on Borrower, payable upon demand, equal to the greater of:

(a) The amount resulting from applying an interest rate equal to the applicable Post Default Rate to the unpaid payment, computed from the date such payment was due and payable to the date of receipt of such payment by GECC in good and immediately available funds, or

(b) An amount equal to Five Percent (5%) of the amount of such past due payment notwithstanding the date on which such payment is actually paid to GECC;

provided, however, that if any such delinquency charge under Subsections (a) or (b) of this Section 8 is not recognized as liquidated damages for such delinquency (as contemplated by Borrower and GECC), and is deemed to be interest in excess of the Maximum Amount, the amount actually collected by GECC in

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excess of such lawful amount shall be applied in accordance with the provisions of Section 15 hereof.

9. Acceleration of Indebtedness.

(a) In the event Borrower fails to pay any installment of principal and/or interest (including, without limitation, Base Interest, Deferred Interest, Cash Flow Interest and Participation Interest) on this Note, within five (5) days of the due date thereof (which five (5) day period shall be concurrent with and not in addition to the five (5) day grace period described in Section 2.01(a) of the GECC Mortgage), or upon the happening of any "Event of Default" as defined in any of the Loan Documents, then and in any such event, the Principal Sum (or, at GECC's option, only Loan Amount B) and all interest accrued thereon and all charges and fees which are part of the Loan and any other sums advanced by GECC under this Note and the other Loan Documents shall, at the option of GECC, and without notice, demand or presentment for payment to Borrower or any other person or entity, at once become due and payable and may be collected forthwith, regardless of the stipulated date of maturity, anything herein or in the other Loan Documents to the contrary notwithstanding, all without any relief whatever from any valuation or appraisal laws and payment thereof may be enforced and recovered in whole or in part at any time by one or more of the remedies provided to GECC in this Note, the GECC Mortgage, in any of the other Loan Documents, or by such other rights and remedies which GECC may have at law, equity or otherwise.

(b) Interest shall accrue on the Principal Sum from the date of any default hereunder (so long as such default shall continue), regardless of whether or not there shall have been an acceleration of the payment of principal as set forth herein, at the Post Default Rate.

10. Collateral Security. The payment of this Note is secured by the GECC Mortgage and other Loan Documents.

11. Expenses and Costs of Collection:

(a) Borrower shall pay for all costs and expenses (including without limitation, documentary taxes, intangible taxes, mortgage taxes, recording charges, title insurance premiums and reasonable attorneys' fees and disbursements) incurred by Borrower and GECC in connection with the prepa-

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ration, modification, consolidation and recordation of the Loan Documents and any additional principal advanced under the Loan Documents in excess of the principal amount of this Note (including, without limitation, any Deferred Interest).

(b) Borrower shall also pay all costs and expenses of collection incurred by GECC, in addition to principal, interest and late or delinquency charges (including, without limitation, court costs and reasonable attorneys' fees and disbursements through and including any appellate proceedings and any special proceedings) and including all costs and expenses incurred in connection with the pursuit by GECC of any of its rights or remedies referred to herein or the protection of or realization of collateral or in connection with any of GECC's collection efforts, whether or not suit on this Note, on any of the other Loan Documents or any foreclosure proceeding is filed, and all such costs and expenses shall be payable on demand and also shall be secured by the GECC Mortgage and all other collateral at any time held by GECC as security for Borrower's obligations to GECC.

12. No Waiver or Oral Modification.

(a) No failure on the part of GECC to exercise any right or remedy hereunder, whether before or after the happening of a default, shall constitute a waiver of such default, any future default or of any other default;

(b) No failure 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 or to impose late or delinquency charges thereafter or to impose such charges retroactively, nor shall it be deemed to be a novation by GECC of this Note or as a reinstatement by GECC of the debt evidenced hereby or as a waiver of such right of acceleration or any other right, nor 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 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;

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(c) 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.

13. Waiver of Certain Notices. To the fullest extent permitted under applicable law, Borrower, for itself and its successors and assigns, and each endorser, if any, of this Note, for its heirs, successors and assigns, hereby waives presentment, protest, notice of 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 any federal or state bankruptcy or insolvency laws, both as to itself and as to all of its property 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.

14. Interest Not To Exceed Maximum Permitted By Law. It is the intention of the parties to conform strictly to the usury and other laws relating to interest from time to time in force, and 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 collected by GECC or 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, in the GECC Mortgage or in the Assignment, in any other Loan Documents or in any other security agreement given to secure the 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 usury or such other laws (the "Maximum Amount"); provided that:

(a) If under any circumstances whatsoever fulfillment of any provision hereof or of the GECC Mortgage, or any of the other Loan Documents, at the time performance of such provision shall be due, shall involve transcending the Maximum Amount, then ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Amount;



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(b) For the purposes of calculating the actual amount of interest paid and/or payable hereunder, in respect of laws pertaining to usury or such other laws, all sums paid or agreed to be paid to the holder hereof for the use, forbearance or detention of the indebtedness of Borrower evidenced hereby, outstanding from time to time shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread from the date of disbursement of the proceeds of this Note until payment in full of all of such indebtedness, so that the actual rate of interest on account of such indebtedness is uniform through the term hereof;

(c) The terms and provisions of this Section 14 and Section 15 hereof shall control and supersede every other provision of all agreements between Borrower or any endorser and GECC.

15. Payment in Excess of Maximum Amount. If under any circumstances GECC shall ever receive an amount deemed interest by applicable law, which would exceed the Maximum Amount, such amount that would be excessive interest under applicable usury laws or such other laws shall be deemed a payment in reduction of the Principal Sum and shall be so applied or shall be applied to the principal amount of other indebtedness secured by the GECC Mortgage and not the payment of interest, or if such excessive interest exceeds the Principal Sum, and any other indebtedness of Borrower in favor of GECC, 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.

16. Governing Law and Consent to Jurisdiction.

(a) Borrower and GECC agree that, in all respects, including all matters of construction and performance, the obligations arising under this Note shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) Borrower does hereby irrevocably and unconditionally submit to the personal jurisdiction of the courts of the State of Illinois and does further irrevocably and unconditionally stipulate and agree that the Federal Courts in the State of Illinois shall (in addition to any jurisdiction of courts of which GECC may elect to avail itself) have jurisdiction to hear and finally determine any dispute,

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claim, controversy or action arising out of or connected (directly or indirectly) with the Loan and the Loan Documents.

(c) Borrower does hereby agree that final judgments in any action or proceedings shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

(d) Nothing in this Note shall affect the right of GECC to bring an action or proceeding against the undersigned or its property in the courts of any other jurisdiction.

(e) To the extent that Borrower has or hereafter may acquire any immunity from jurisdiction of any court from legal process (whether through service or notice, attachment prior to judgment, attachment and aid of execution, execution or otherwise), with respect to the Borrower's property, Borrower hereby unconditionally and irrevocably waives such immunity in respect of its obligations under the Loan and the Loan Documents.

(f) The foregoing consent, in advance, to the jurisdiction of the above-mentioned courts is a material inducement for GECC to make the Loan.

17. No Joint Venture; Indemnity. The provisions of this Note and the Loan Documents giving GECC rights in respect of Cash Flow Interest, Participation Interest and the First Offer, in addition to the right to receive repayment of the Loan in full, are additional considerations and inducements for GECC agreeing to furnish the financing requested, desired, and required by Borrower and Beneficiary; and in connection therewith:

(a) Borrower and GECC intend that the relationship created under this Note, the GECC Mortgage and all other Loan Documents be solely that of debtor and creditor or mortgagor and mortgagee, as the case may be. Nothing herein or in the GECC Mortgage is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship among Borrower and/or Beneficiary and GECC, nor to grant GECC any interest in the Premises other than that of creditor or mortgagee, it being the intent of the parties hereto that GECC shall have no liability whatsoever for any losses generated by or incurred with respect to the Premises

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nor shall GECC have any control over the day to day management for operations of the Premises;

(b) Borrower further acknowledges and agrees that the value of the Cash Flow Interest payable to GECC hereunder substantially depends upon the success of the enterprise in which the proceeds of the Loan shall be utilized;

(c) The terms and provisions of this Section shall control and supersede over every other provision and all other agreements among Borrower, Beneficiary and GECC;

(d) Borrower hereby agrees to indemnify and hold harmless and defend GECC against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements) and against any and all claims, counterclaims, actions, proceedings and suits arising out of or in connection with any construction or claimed, asserted or alleged construction or allegation (however or wherever made) by parties other than Borrower, Beneficiary, its partners or their partners, or any Affiliated Entity, that the relationship of Borrower and GECC created by this Note or the Mortgage, or otherwise created by the Loan Documents or contemplated thereby, is that of joint venturers, partners, tenants in common, joint tenants or any relationship other than that of debtor and creditor;

(e) Borrower hereby agrees to indemnify and hold harmless and defend GECC against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements) and against any and all claims, counterclaims, actions, proceedings and suits arising out of or in connection with any construction or claimed, asserted or alleged construction or allegation (however or wherever made) directly or indirectly by Borrower, Beneficiary, its partners or their partners, or any Affiliated Entity, that the relationship of Borrower and GECC created by this Note or the Mortgage, or otherwise created by the Loan Documents or contemplated thereby, is that of joint venturers, partners, tenants in common, joint tenants or any relationship other than that of debtor and creditor;

18. Time of Essence. Time is of the essence of this Note and of each provision in which time is an element.

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19. Waiver of Jury Trial. BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY: THIS WAIVER BEING A MATERIAL INDUCEMENT FOR GECC TO ACCEPT THIS NOTE.

20. Date of Performance. If the date for the performance of any term, provision or condition (monetary or otherwise) under this Note shall happen to fall on a Saturday, Sunday or non-Business Day, the date for the performance of such term, provision or condition shall, at the option of Borrower or GECC, be extended to the next succeeding Business Day immediately thereafter occurring, with interest on the Principal Sum at the Base Interest Rate provided in this Note to such next succeeding Business Day if such term, provision or condition shall result in the extension of any monetary payment due to GECC.

21. Effect of Disbursement of Monies. Base Interest under this Note shall commence to accrue as of the date of disbursement or wire transfer by GECC, notwithstanding whether Borrower shall receive the benefit of such monies as of such date and even if such monies are held in escrow pursuant to the terms of any escrow arrangement or agreement. If so requested by Borrower in writing, all Advances under this Note which are made to Borrower (and not to GECC or directly to any third (3rd) party) shall be made by wire transfer pursuant to such written wire transfer instructions as may be provided by Borrower to GECC, for which instructions Borrower shall have sole responsibility. When monies are disbursed by wire transfer, then such monies shall be considered advanced at the time of the transmission of the wire, rather than the time of receipt thereof by the receiving bank. With regard to the repayment of the Loan, Base Interest shall continue to accrue on any amount repaid until such time as the repayment has been received and cleared by GECC. Any payment which is made by wire transfer or other immediately available funds and which is actually received by GECC prior to noon shall be deemed to have been received and cleared by GECC on the date of receipt.

22. Binding upon Successors and Assigns. The provisions of this Note shall bind Borrower and its successors and assigns; provided, however, that nothing herein shall be



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construed as permitting Borrower to take any action in violation of the GECC Mortgage.

23. Disclaimer. The Loan Documents are intended solely for the benefit of Borrower and GECC and no third party shall have any rights or interest in any provision of the Loan Documents or as a result of any action or inaction of GECC in connection therewith. Without limiting the generality of the foregoing, any and all obligations to make advances are imposed solely and exclusively for the benefit of Borrower and no other person (including, but not limited to, Borrower's successors, assigns or successors in title to the Premises, any creditor of Borrower or any representative of Borrower) shall have standing to require satisfaction and compliance with such obligations. Any actions taken by GECC or any representative of GECC (to review plans and specifications, to inspect the Premises or otherwise) are solely for GECC's protection and neither the Borrower nor any other person shall be entitled to rely upon any such action.

24. Participations. At no cost to Borrower, GECC may sell participations in the Loan, or the entire Loan, and the Borrower authorizes GECC to disclose to any purchaser or prospective purchaser of any interest in the Loan any financial or other information pertaining to the Borrower or the Premises. In that regard, the following provisions shall be applicable:

(a) GECC shall have the right from time to time to inspect and to permit its designees (including appraisers contemplated in subsection (c) below and persons to whom GECC proposes to sell and assign this Note or any part thereof or participation therein) to inspect the Premises at all reasonable times;

(b) GECC shall have the right at its own expense to audit and to permit its designees (including appraisers contemplated in subsection (c) below and persons to whom GECC proposes to sell and assign this Note or any part thereof or participation therein) to audit the books and records of Borrower relating to the Premises at all reasonable times; and Borrower hereby agrees to make available all such books and records when requested by GECC; and

(c) GECC may, at its own expense, obtain appraisals of the Premises and the various parts thereof, and Borrower

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will cooperate and make available to such appraiser such information books and records as he or GECC may request.

25. Prior Agreements. The Loan Documents supersede and cancel all prior loan applications, commitments, agreements and understandings, whether oral or written, with respect to the Loan, and all prior agreements and understandings are merged into the Loan Documents.

26. Survival of Note. Notwithstanding anything contained in or inferable from this Note or any other Loan Documents, the terms and provisions of this Note shall survive the release of the lien of the GECC Mortgage or any other collateral granted by Borrower as security for the Note until the payment in full to GECC of all outstanding principal of this Note, Base Interest, Deferred Interest, Cash Flow Interest and Participation Interest.

27. Headings. The headings used in this Note are for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Note.

28. Severability. Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

29. Number and Gender. Whenever the singular or plural number, or the masculine, feminine or neuter gender is used herein, it shall legally include the other.

30. Consent to Extensions and Releases of Collateral. The Borrower and any endorsers, sureties, guarantors and all others who are or may become liable for the payment hereof (a) expressly consent to all extensions of time, renewals, postponements of time of payment of this Note or other modifications hereof from time to time (other than modifications which increase the amount of the Loan or cause Borrower to incur expenditures) prior to or after the Maturity Date without notice, consent or consideration to any of the foregoing, (b) expressly agree to any substitution, exchange, addition or release of any party or person primarily or secondarily liable hereon, and (c) expressly agree that GECC shall not be required

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first to institute any suit, or to exhaust its remedies against the undersigned or any other person or party to become liable hereunder or against the other Loan Documents in order to enforce the payment of this Note.

31. Words Hereunder, Hereof, etc. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Note as a whole and not to any particular section of this Note unless specifically stated otherwise in this Note.

32. Resolution of Disputes. In the event there shall be a dispute between GECC and the Borrower as to the calculation of the allocation of the Loan in the determination of Net Sale Proceeds, Cash Flow, Participation Interest or any other matter, and provision for resolving such dispute is not established herein, such dispute shall be determined by GECC in good faith and, as determined, shall be binding upon Borrower and all other parties. Such determinations may be made by GECC pursuant to audit. Borrower agrees to pay the cost of said audit within ten (10) days after notice from GECC of the amount due.

33. Effect of Loan Documents. Reference is hereby made to the provisions of the other Loan Documents for a description of the further rights of GECC. The GECC Mortgage, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain stated events (which events shall include, among other things, a default by Borrower in any obligation of Borrower obligatory upon it under the terms of this Note). The terms, provisions and conditions of the Loan Documents are incorporated herein by reference as fully and with the same force and effect as if specifically recited herein at length.

34. Notices. Notices shall be given as provided for in the GECC Mortgage.

35. Limitation of Liability. The undersigned has executed this instrument solely in its capacity as trustee, and not personally. No personal liability shall be asserted against the trustee, personally, arising out of this instrument, it being understood and agreed that all such liability shall be limited to GECC's rights against (i) the Beneficiary to the extent herein provided, (ii) the Promises, including the Assignment, and/or (iii) any other security given for repayment of the Loan. Neither Beneficiary nor any of the general partners of Beneficiary (collectively called the "Obligated Par-

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ties") shall under any circumstances be personally liable for the repayment of any of the principal of, interest (including Base Interest, Deferred Interest, Cash Flow Interest and Participation Interest) on, or prepayment fees or late charges, or other charges or fees, including, without limitation, attorneys' fees, due in connection with, the Loan (all such sums are hereinafter collectively called the "Loan Debt") or for any deficiency judgment which GECC may obtain after foreclosure of the GECC Mortgage after default by Borrower; provided, however, that the Obligated Parties shall be personally liable to the extent more fully provided in the GECC Mortgage. 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 Act of 1978 or any successor thereto or similar provisions under applicable state law to file a claim for the full amount of the debt owing to GECC by Borrower or to require that all collateral shall continue to secure all of the indebtedness owing to GECC in accordance with the Loan Documents.

IN WITNESS WHEREOF, Borrower has executed this instrument by its duly authorized signatories on the date first above written.

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, not personally  
but solely as trustees as aforesaid

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

Attest:

\_\_\_\_\_



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**PARCEL 1 (WOODFIELD GREEN EXECUTIVE CENTER):**

Tract 1

Lots 4 and 5 in Walden International, being a subdivision of part of fractional Section 1 and part of the North 1/2 of Section 12, both in Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

Tract 2

Perpetual easements for storm water drainage and detention, ingress and egress and utilities, as established by Declaration of Protective Covenants dated March 17, 1980 and recorded March 28, 1980 as Document 25406331.

Tract 3

Perpetual easement over, across and upon the land for the purpose of pedestrian and vehicular ingress and egress and general utility purposes created by grant recorded June 13, 1983 as Document 26640290.

Address of Property: 1920-1930 North Thoreau Drive  
Schaumburg, Illinois

Permanent Index Nos. : 07-12-101-017  
07-12-101-018

**PARCEL 2 (GLENDALE OFFICE PARK):**

Tract 1: Lot 1 in Glendale Office Park, being a subdivision of part of the West 1/2 of Section 22, Township 40 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded August 1, 1980 and Document R80-44115, in DuPage County, Illinois.

Tract 2: The South 246.00 feet, as measured along and perpendicular to the West line of Lot 2 in Glendale Office Park, being a subdivision of part of the West 1/2 of Section 22, Township 40 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded August 1, 1980 as Document R80-44115, in DuPage County, Illinois.

Tract 3: The North 246.00 feet of the South 492.00 feet, as measured along and perpendicular to the West line of Lot 2 in Glendale Office Park, being a subdivision of part of the West 1/2 of Section 22, Township 40 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded August 1, 1980 as Document R80-44115, in DuPage County, Illinois.

Tract 4: Cross easement for the benefit of Tract 3 recorded November 22, 1983 as Document R83-85841 over and across the following described property: Lot 2 (except the South 492.00 feet as measured along and perpendicular to the West line thereof) in Glendale Office Park, being a subdivision of part of the West 1/2 of Section 22, Township 40 North, Range 10, East of the Third Principal Meridian, in DuPage County, Illinois.

Address of Property: 2166-2200 Gladstone  
Glendale Heights, Illinois

Permanent Index Nos.: 02-22-301-011  
02-22-301-014  
02-22-110-026

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