

93892490

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

DOCUMENT # CHICAGO (0420602181-2) (334) 6 DATE: 10/29/93 TIME: 14:13

COOK COUNTY, ILLINOIS
FILED FOR RECORD

NOV -3 PM 3:51

93892490

89

Jr

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FIRST MORTGAGE, ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT

BETWEEN

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
not personally but as Trustee under Trust Agreement
dated August 17, 1993 and known as Trust Number 117325-00,
Borrower

AND

HELLER FINANCIAL, INC., Lender

THIS DOCUMENT WAS PREPARED BY AND
AFTER RECORDING SHOULD BE MAILED TO:

Katten Muchin & Zavis
525 West Monroe Street
Suite 1600
Chicago, Illinois 60661-3693
Attention: Barry A. Comin, Esq.

93892490

BVA 333

(2)

74-62-55A A

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0 3 8 9 0 4 9 1

Table of Contents

	Page
Recitals	
1. Payment of Indebtedness; Performance of Obligations	6
2. Taxes and Other Obligations	7
3. Reserves for Taxes	7
4. Use of Property	7
5. Insurance and Condemnation	8
6. Preservation and Maintenance of Property	9
7. Protection of Lender's Security	10
8. Inspection	10
9. Books and Records	10
10. Financial Statements	11
11. Environmental Matters	11
12. Covenants	13
13. Lease	14
14. Estoppel Certificate	15
15. Transfers of the Property or Beneficial Interest in Borrower; Assumption	15
16. No Additional Liens, Encumbrances or Indebtedness	15
17. Single Asset Entity	16
18. Borrower and Lien Not Released	16
19. Uniform Commercial Code Security Agreement	16

UNOFFICIAL COPY

9 2 3 9 2 4 9 0

20.	Events of Default; Acceleration of Indebtedness	17
21.	Entry; Foreclosure	18
22.	Expenditures and Expenses	19
23.	Application of Proceeds of Foreclosure Sale	19
24.	Appointment of Receiver or Mortgagee in Possession	19
25.	After - Acquired Property	20
26.	Future Advances	20
27.	Forbearance by Lender Not a Waiver	20
28.	Waiver of Statute of Limitations	20
29.	Waiver of Homestead and Redemption	21
30.	Jury Trial Waiver	21
31.	Venue	21
32.	Governing Law; Severability	22
33.	Notice	22
34.	Successors and Assigns Bound; Joint and Several Liability; Agents; Captions	23
35.	Release	24
36.	Terms	24
37.	Loss of Note	24
38.	Exculpation	24

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

Loan No. 93-102C

FIRST MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS FIRST MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Mortgage") is made as of this 1st day of November, 1993, between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust Agreement dated August 17, 1993 and known as Trust Number 117325-00 ("Borrower"), whose address is 33 North LaSalle Street, Chicago, Illinois 60690 and HELLER FINANCIAL, INC., a Delaware corporation ("Lender"), whose address is 500 West Monroe Street, 15th Floor, Chicago, Illinois 60661.

RECITALS

A. Lender has agreed, subject to the terms and conditions of that certain Second Amended and Restated Mortgage Loan Commitment dated October 13, 1993, executed by and between R.J. Klarchek ("Klarchek") and Lender, and assigned by Klarchek to Borrower by Assignment and Assumption Agreement of even date herewith (the "Commitment"), to make a loan (the "Loan") to Borrower. The Loan is evidenced by (i) that certain Promissory Note of even date herewith in the original principal amount of Eight Million Two Hundred Fifty Thousand and 00/100 Dollars (\$8,250,000.00) (which note, together with all notes issued in substitution or exchange therefor and all amendments thereto, is hereinafter referred to as the "Senior Note"), providing for monthly payments as set forth in the Senior Note, with the balance thereof, due and payable on November 30, 2000 (said date, or any earlier date on which the entire unpaid principal amount shall be paid or required to be paid in full, whether by prepayment, acceleration or otherwise is hereinafter called the "Maturity Date") and (ii) that certain Promissory Note of even date herewith in the original principal amount of Three Million One Hundred Ninety Thousand and 00/100 Dollars (\$3,190,000.00) (which note, together with all notes issued in substitution or exchange thereto, is hereinafter referred to as the "Junior Note", and the Senior Note and the Junior Note are hereinafter collectively referred to as the "Notes"), providing for monthly payments as set forth in the Junior Note, with the balance thereof due and payable on the Maturity Date. The terms and provisions of the Commitment and Notes are hereby incorporated by reference in this Mortgage.

B. Lender wishes to secure (i) the prompt payment of the Notes, together with all interest, premiums, all "Excess Cash Flow Consideration" and "Participation" (as defined in the Junior Note), and other amounts, if any, due in accordance with the terms of the Notes, as well as the prompt payment of any additional indebtedness accruing to Lender on account of any future payments, advances or expenditures made by Lender pursuant to the Notes, the Commitment, this Mortgage, that certain

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

First Leasehold Mortgage, Assignment of Rents and Security Agreement of even date herewith, executed by Borrower (the "Leasehold Mortgage"), that certain Junior Mortgage, Assignment of Rents and Security Agreement of even date herewith, executed by Borrower (the "Junior Mortgage") and that certain Junior Leasehold Mortgage, Assignment of Rents and Security Agreement of even date herewith, executed by Borrower (the "Junior Leasehold Mortgage", and the Leasehold Mortgage, the Junior Mortgage and the Junior Leasehold Mortgage are hereinafter collectively referred to as the "Other Mortgages") or any other agreement, document, or instrument securing the payment of the indebtedness evidenced by the Notes (such documents, together with any modifications, renewals, extensions or replacements thereof, are hereinafter collectively referred to as the "Loan Documents") and (ii) the prompt performance of each and every covenant, condition, and agreement contained in the Loan Documents of Borrower or any "Principal" (as defined in the Commitment). All payment obligations of Borrower or any Principal to Lender with respect to the indebtedness evidenced by the Notes are hereinafter sometimes collectively referred to as the "Indebtedness," and all other obligations of Borrower or any Principal to Lender under the Loan Documents are hereinafter sometimes collectively referred to as the "Obligations".

NOW, THEREFORE, TO SECURE the repayment of the Indebtedness and the performance of the Obligations, Borrower has executed this Mortgage and does hereby mortgage, convey, assign, warrant, transfer, pledge and grant to Lender a security interest in the following described property and all proceeds thereof (which property is hereinafter sometimes collectively referred to as the "Property"):

A. The real estate described on Exhibit A hereto (the "Land");

B. All of the following (collectively, the "Improvements"): all buildings, improvements and fixtures of every kind or nature situated on the Land; to the extent not owned by tenants of the Property, all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or to be used in connection with the Land, buildings, structures, improvements or fixtures; all building materials and goods procured for use or in connection with the foregoing; and all additions, substitutions and replacements to any of the foregoing;

C. To the extent assignable, all plans, specifications, architectural renderings, drawings, soil test reports, other reports of examination or analysis of the Land or the Improvements;

D. All easements, rights-of-way, water courses, water rights and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto ("Appurtenances");

UNOFFICIAL COPY

0 0 0 0 0 0 0 0

E. All agreements affecting the use, enjoyment or occupancy of the Land and/or Improvements now or hereafter entered into, including, but not limited to, that certain Master Lease (the "Master Lease") dated October 27, 1993 by and between Borrower, as lessor, and Cook County Mobile Homes, Inc., as lessee (the "Leases") and all rents, royalties, profits, issues and revenues from the Land and/or Improvements from time to time accruing under the Leases (the "Rents"), reserving to Borrower, however, so long as no "Event of Default" (hereinafter defined) has occurred hereunder, a revocable license to receive and apply the Rents in accordance with the terms and conditions of Section 13 of this Mortgage;

F. All claims, demands, judgments, insurance proceeds, rights of action, awards of damages, compensation, and settlements hereafter made resulting from the taking of the Land and/or the Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking, by casualty or otherwise) to the Land, Improvements or Appurtenances or any part thereof;

G. To the extent assignable, all management contracts, permits, certificates, licenses, approvals, contracts, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation and use of the Land, Improvements and/or Leases, including building permits, environmental certificates, licenses, certificates of operation, warranties and guaranties;

H. All accounts, contract rights, general intangibles, chattel paper, documents, instruments, inventory, equipment and all books and records relating to the foregoing;

I. Any monies on deposit with or for the benefit of Lender, including deposits for the payment of real estate taxes;

J. All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements or Appurtenances; and

K. Any and all after-acquired right, title or interest of Borrower in and to any property of the types described in the preceding granting clauses.

TO HAVE AND TO HOLD the Property and all parts thereof unto Lender to its own proper use, benefit, and advantage forever, subject, however, to the terms, covenants, and conditions herein.

Borrower covenants and agrees with Lender as follows:

1. Payment of Indebtedness; Performance of Obligations.

Borrower shall promptly pay when due the Indebtedness and shall promptly perform all Obligations.

2. Taxes and Other Obligations.

Borrower shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions and other charges and obligations, which may become a lien on or charge against the Property prior to this Mortgage, subject, however, to Borrower's right to contest, in good faith by appropriate proceedings, such lien or charge upon the posting of security reasonably satisfactory to Lender so long as such contest stays the enforcement or collection of such lien or charge. Lender hereby acknowledges that (i) the deposit with Lender by Borrower of a bond or other security satisfactory to Lender in the amount of 150% of the amount of such tax or assessment or (ii) the delivery to Lender of an endorsement, in form and substance satisfactory to Lender, to the loan policy of title insurance issued to Lender insuring over such tax or assessment, shall be deemed adequate security.

Should Borrower fail to make any of such payments, Lender may, at its option and at the expense of Borrower, pay the amounts due for the account of Borrower. Upon the request of Lender, Borrower shall immediately furnish to Lender all notices of amounts due and receipts evidencing payment. Borrower shall promptly notify Lender of any lien on all or any part of the Property and shall promptly discharge any unpermitted lien or encumbrance.

3. Reserves for Taxes.

At the time of and in addition to the monthly installments of principal and interest due under the Notes, Borrower shall pay to Lender a sum equal to one-twelfth (1/12) of the amount estimated by Lender to be sufficient to pay at least thirty (30) days before they become due and payable, all taxes, assessments and other similar charges levied against the Property (collectively, the "Taxes") which amounts shall be held by Lender in an interest bearing account and may be commingled with other funds of Lender. So long as no Event of Default exists hereunder, Lender shall apply the sums to pay the Taxes. If Lender at any time determines that such amount on deposit is insufficient to fully pay such taxes, Borrower shall, within ten (10) days following notice from Lender, deposit such additional sum as may be required by Lender. On the Maturity Date, the moneys then remaining on deposit with Lender or its agent, including any interest earned thereon, shall, at Lender's option, be applied against the Indebtedness. The obligation of Borrower to pay the Taxes is not affected or modified by the provisions of this paragraph.

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

4. Use of Property.

Unless required by applicable law, Borrower shall not permit changes in the use of any part of the Property from the use existing at the time this Mortgage was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent. Notwithstanding the foregoing, Borrower shall have the right to reconfigure the design of the mobile home pads (the "Pads") on the Property and the "Leasehold Property" (as hereinafter defined), including a reduction in the number of Pads, provided such reconfiguration shall not result in a net reduction of more than six (6) Pads.

5. Insurance and Condemnation.

(a) insurance.

(i) Borrower shall keep the Improvements insured, and shall maintain general liability coverage and such other coverages requested by Lender, by carrier(s), in amounts and in form at all times satisfactory to Lender, which carrier(s), amounts and form shall not be changed without the prior written consent of Lender.

(ii) In case of loss or damage by fire or other casualty, Borrower shall give immediate written notice thereof to the insurance carrier(s) and to Lender. Lender is authorized and empowered, and Borrower hereby irrevocably appoints Lender as its attorney-in-fact (such appointment is coupled with an interest), at its option, to make or file proofs of loss or damage and to settle and adjust any claim under insurance policies which insure against such risks, or to direct Borrower, in writing, to agree with the insurance carrier(s) on the amount to be paid in regard to such loss.

(iii) *Provided no Event of Default then exists and* Borrower certifies as to same, the net insurance proceeds (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) shall be made available for the restoration or repair of the Property if, in Lender's reasonable judgment: (a) the casualty loss is \$1,000,000.00 or less; (b) the loss does not occur in the six (6) month period preceding the stated Maturity Date and Lender's independent consultant certifies that the restoration of the Property can be completed at least ninety (90) days prior to the Maturity Date; and (c) Borrower deposits with Lender from time-to-time an amount, in cash, which Lender, in its sole discretion, determines is necessary, in addition to the net insurance proceeds to pay in full the cost of the restoration or repair (Borrower's deposit shall be disbursed prior to any disbursement of insurance proceeds held by Lender). Any excess proceeds remaining after completion of such repair shall be distributed first to Borrower to the extent Borrower has deposited funds with Lender for such repair with the balance applied against the Indebtedness. Notwithstanding the foregoing, it shall be a condition precedent to any disbursement

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

of insurance proceeds held by Lender hereunder that Lender shall have approved (x) all plans and specifications for any proposed repair or restoration, (y) the construction schedule and (z) the architect's and general contractor's contract for all restoration that exceeds \$50,000 in the aggregate. Lender may establish other conditions it deems reasonably necessary to assure the work is fully completed in a good and workmanlike manner free of all liens or claims by reason thereof, and in compliance with all applicable laws, rules and regulations. At Lender's option, the net insurance proceeds shall be disbursed pursuant to a construction escrow acceptable to Lender. If an Event of Default then exists, or any of the conditions set forth in subparagraphs (a) through (d) of this Paragraph 5 (a)(iii) have not been met or satisfied, the net insurance proceeds shall be applied to the Indebtedness in such order and manner as Lender may elect, whether or not due and payable, with any excess paid to Borrower.

(b) Condemnation.

(i) Borrower shall within three (3) business days of its receipt of notice thereof, notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall, after consultation with and subject to Lender's approval, appear in and prosecute any such action or proceeding. Upon Borrower's failure to act in accordance with Lender's prior approval, Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower (such appointment as attorney-in-fact is coupled with an interest), to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender and in accordance with the provisions of Paragraph 5 (b)(ii) below.

(ii) Lender may, in its sole discretion, elect to (y) apply the net proceeds of any condemnation award (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Indebtedness in such order and manner as Lender may elect, whether due or not or (z) make the proceeds available to Borrower for the restoration or repair of the Property. If the net proceeds of the condemnation award are made available to Borrower for restoration or repair, the net proceeds of the condemnation award shall be disbursed upon satisfaction of and in accordance with the terms and conditions set forth in the Paragraph 5 (a) (iii) above.

6. Preservation and Maintenance of Property.

93892490

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

Borrower shall: (a) not commit waste or permit impairment or deterioration of the Property; (b) not abandon the Property; (c) keep the Property in good repair and restore or repair promptly, in a good and workmanlike manner, all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, upon any damage or loss thereto; (d) comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; (e) provide for management of the Property by a property manager reasonably satisfactory to Lender pursuant to a contract in form and substance reasonably satisfactory to Lender (Lender acknowledges that compliance with this subparagraph (e) shall be deemed accepted by Lender so long as Capital Development Corporation ("Manager") is the manager of the Property pursuant to that certain Management Agreement dated September 1, 1993 between Manager and Borrower); and (f) give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security granted by the Loan Documents or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any Improvement on the Land except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind; provided, however, that if such action is committed by a tenant of the Property, Borrower shall have sixty (60) days to replace such Improvement.

7. Protection of Lender's Security.

If (a) Borrower fails to pay the Indebtedness or to perform the Obligations, (b) any action or proceeding is commenced which affects or could affect the Property or Lender's interest therein, including any loss, damage, cost, expense or liability incurred by Lender with respect to (i) any environmental matters relating to the Property or (ii) the preparation of the commencement or defense of any action or proceeding or any threatened action or proceeding affecting the Loan Documents or the Property, then Lender, at Lender's option, may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect the Property or Lender's interest therein, including entry upon the Property to take such actions Lender determines appropriate to preserve, protect or restore the Property. Any amounts disbursed by Lender pursuant to this Section 7 (including attorneys' fees, costs and expenses), together with interest thereon at the "Default Rate" (defined in the Notes) from the date of disbursement, shall become additional Indebtedness of Borrower secured by the lien of this Mortgage and the other Loan Documents and shall be due and payable on demand. Nothing contained in this Section 7 shall require Lender to incur any expense or take any action hereunder.

UNOFFICIAL COPY

9 3 8 9 2 4 9 11

8. Inspection.

Lender and its authorized agents may make or cause to be made reasonable entries upon and inspections of the Property at all reasonable times upon reasonable advance notice, which notice may be given in writing or orally.

9. Books and Records.

Borrower shall keep and maintain at all times at Borrower's address stated above, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, correspondence, Leases and other documents affecting the Property. Lender and its designated agents shall have the right to inspect Borrower's books, records, contracts, correspondence, Leases and other documents affecting the Property at all reasonable times. In the event of a foreclosure of this Mortgage, all of Borrower's books, records, contracts, correspondence, Leases and other documents maintained in connection with the Property shall be made available to the successful bidder at the foreclosure sale for inspection and copying for a period of not less than three (3) years following said sale.

10. Financial Statements.

Borrower shall furnish to Lender, within thirty (30) days after the end of each fiscal quarter of the operation of the business of Borrower, a balance sheet, a statement of income and expenses of Borrower and a statement of cash flows, each in reasonable detail and certified as true and complete by the Chief Financial Officer of Manager. Borrower shall also furnish to Lender, and shall cause Principal to furnish to Lender, within sixty (60) days after the end of each fiscal year of Borrower and Principal, without relieving Borrower of its obligation to provide its quarterly reports for the last fiscal quarter of Borrower in any given year pursuant to the first sentence of this Section 10, a balance sheet, a statement of income and expenses and a statement of cash flows for Borrower and Principal, each in reasonable detail and certified as true and complete by the Chief Financial Officer of Manager. All financial statements shall be prepared in accordance with generally accepted accounting principals prepared on a consistent basis. Borrower shall furnish, together with the foregoing financial statements and at any other time upon Lender's request, a rent schedule for the Property, certified as true and complete by Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable, the rent paid to date, and the security deposit being held for such tenant. In addition, Borrower shall furnish to Lender, within fifteen (15) days of completion, a copy of the schedule relating to the Property which appears on Principal's final annual federal tax return. In the event Borrower or Principal, as the case may be, fails to comply with the requirements set forth above, Lender shall have

93892490

UNOFFICIAL COPY

0 3 3 9 2 4 7 11

the right to cause the books and records of Borrower or such Principal audited by an independent certified public accountant at Borrower's expense.

11. Environmental Matters.

(a) Borrower represents and warrants to the best of its knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of Borrower's Indebtedness remains outstanding, any "Hazardous Materials" (as hereinafter defined) generated, released, stored, buried or deposited over, beneath, in or upon the Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor. For purposes of this Mortgage, "Hazardous Materials" shall mean and include, except to the extent that propane gas may be sold and used on the Property as such sale and use is presently conducted, any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including, substances defined as or included in the definition of toxic or hazardous substances, wastes, or materials under any federal, state or local laws, ordinances, regulations or guidances which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."

(b) Borrower shall, and Borrower shall cause all employees, agents, tenants, contractors and subcontractors of Borrower and any other persons from time to time present on or occupying the Property to, keep and maintain the Property in compliance with, and not cause or knowingly permit the Property to be in violation of, any applicable Hazardous Materials Laws. Neither Borrower nor any employees, agents, tenants, contractors or subcontractors of Borrower or any other persons occupying or present on the Property shall use, generate, manufacture, store or dispose of on, under or about the Property or transport to or from the Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(c) Borrower shall immediately advise Lender in writing of: (i) any notices received by Borrower (whether such notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation of any applicable Hazardous Materials Laws occurring on or about the Property; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

threatened pursuant to any Hazardous Materials Laws; (iii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iv) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any Hazardous Materials Claims. Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and Borrower shall pay to Lender, upon demand, all attorneys' and consultants' fees incurred by Lender in connection therewith.

(d) Borrower shall be solely responsible for, and shall indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence (whether prior to or during the term of the Loan or otherwise and regardless of by whom caused, whether by Borrower or any predecessor in title or any owner of land adjacent to the Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Borrower or any predecessor in title or any such adjacent land owner or any third person) of Hazardous Materials on, under or about the Property including, without limitation: (i) claims of third parties (including governmental agencies) for damages, penalties, losses, costs, fees, expenses, injunctive or other relief; (ii) response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; and (iii) any and all expenses or obligations, including attorneys' fees, costs, and other expenses.

(e) Borrower hereby represents, warrants and certifies that: (i) the execution and delivery of the Loan Documents is not a transfer of "real property", as "real property" is defined in the Illinois Responsible Property Transfer Act (Ill. Rev. Stat. Ann. Ch. 30 § 903), as amended from time to time ("RPTA"); (ii) there are no underground storage tanks located on, under or about the Property that are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as now or hereafter amended (42 U.S.C. § 6991); and (iii) there is no facility located on or at the Property that is subject to the reporting requirements of Section 312 of the Federal Emergency Planning and Community Right to Know Act of 1986 and the Federal regulations promulgated thereunder (42 U.S.C. § 11022), as "facility" is defined in RPTA.

(f) Lender may, in its sole discretion not more than once per calendar year and in its reasonable discretion at any time if it reasonably believes there may be a problem with the environmental status of the Property, require Borrower, at its sole

UNOFFICIAL COPY

9 3 8 9 2 4 9 11

cost and expense, to perform or cause to be performed, such studies or assessments of the Property, as Lender may deem necessary or appropriate or desirable, to determine the status of environmental conditions on and about the Property, which such studies and assessments shall be for the benefit of Lender and be prepared in accordance with the specifications established by Lender.

12. Covenants.

Borrower covenants with Lender:

(a) to warrant and defend title to the Property against all claims and demands, subject to easements and restrictions listed on Exhibit B attached hereto;

(b) to provide Lender with notice of any litigation, arbitration, or other proceeding or governmental investigation pending or, to Borrower's knowledge, threatened against or relating to Borrower, any Principal, or the Property;

(c) to use the proceeds evidenced by the Notes solely and exclusively for proper business purposes and not for the purchase or carrying of registered equity securities within the purview and operation of any regulation issued by the Board of Governors of the Federal Reserve System or for the purpose of releasing or retiring any indebtedness which was originally incurred for any such purpose; and

(d) not to terminate alter, amend or modify Borrower's Trust Agreement without Lender's consent.

13. LEASE.

Borrower shall not, without Lender's prior written consent, (a) execute, modify, amend, surrender or terminate any non-residential Lease other than in the ordinary course of business, or (b) modify, amend, surrender or terminate the Master Lease. All non-residential Leases executed or renewed after the date hereof must be approved by Lender prior to the execution thereof by Borrower. If Lender consents to any new non-residential Lease or the renewal of any existing non-residential Lease, at Lender's request, Borrower shall cause the tenant thereunder to execute a subordination and attornment agreement in form and substance satisfactory to Lender. At Lender's request, Borrower shall cause the tenant under the Master Lease to execute a subordination and attornment agreement in form and substance satisfactory to Lender.

All residential Leases shall be on the form of lease previously approved by Lender. For purposes of this Mortgage, leases of mobile home pads shall be deemed to be residential leases.

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

Borrower shall not be authorized to enter into any ground lease of the Property without Lender's prior written approval.

Borrower shall comply with and observe Borrower's obligations as landlord under all Leases. Borrower shall furnish Lender with executed copies of all non-residential Leases.

So long as there shall not have occurred an Event of Default, Borrower shall have the right to collect all Rents, and shall hold the same, in trust, to be applied first to the payment of all impositions, levies, taxes, assessments and other charges upon the Property, second to maintenance of insurance policies upon the Property required hereby, third to the expenses of Property operations, including maintenance and repairs required hereby, fourth to the payment of that portion of the Indebtedness then due and payable, and fifth, the balance, if any, to or as directed by Borrower. Borrower has executed and delivered to Lender an Assignment of Leases and Rents of even date herewith, and, to the extent the provisions of this Section 13 are inconsistent with the provisions of said Assignment of Leases and Rents, the provisions of said Assignment of Leases and Rents shall control.

14. Estoppel Certificate.

Borrower shall within ten (10) days after Lender's request, furnish Lender with a written statement, duly acknowledged, setting forth the sums, according to Borrower's books and records, secured by the Loan Documents and any right of set-off, counterclaim or other defense which exists against such sums and the Obligations.

15. Transfers of the Property or Beneficial Interest in Borrower; Assumption.

Borrower shall not (a) create any new ownership interest in Borrower or any Principal (b) transfer (i) all or any part of the Property, or any interest therein, or (ii) any ownership interest in Borrower or any Principal (including any interest in the profits, losses or cash distributions in any way relating to the Property or Borrower). In addition, if Principal fails to continue to control, directly or indirectly, the day to day management and operation of Borrower's business, then Lender may, at Lender's option, declare all of the Indebtedness to be immediately due and payable, and Lender may invoke any remedies permitted by the Loan Documents. Intestate transfers or transfers by devise shall not constitute a transfer for the purposes of the foregoing provisions.

16. No Additional Liens, Encumbrances or Indebtedness.

Borrower covenants not to execute any mortgage, security agreement, assignment of leases and rents or other agreement granting a lien (except the liens granted to Lender by the Other Mortgages and the other Loan Documents) against or

encumbrance on the Property or take or fail to take any other action which would result in a lien against the Property or the interest of Borrower (or any Principal) in the Property without the prior written consent of Lender; provided, however, Borrower may in good faith, by appropriate proceeding, contest the validity or amount of any asserted lien and, pending such contest, Borrower shall not be deemed to be in default hereunder if Borrower shall first obtain an endorsement, in form and substance satisfactory to Lender, to the loan policy of title insurance issued to Lender insuring over such lien, or, if no such loan policy shall have been issued, then Borrower shall deposit with Lender a bond or other security satisfactory to Lender in the amount of 150% of the amount of such lien to assure payment of the same as and when due.

Borrower may incur up to \$600,000 of unsecured indebtedness outstanding at any one time in favor of Klarchek or any of his subsidiaries or affiliates or any entity affiliated with Klarchek or any of his subsidiaries or affiliates (the "Borrower Loan Funds") to perform the "Work" (as said term is defined in Section 1.11 of the Commitment). The Borrower Loan Funds, and the terms relating thereto, shall be subject to the terms and conditions set for in Section 1.11 of the Commitment.

17. Single Asset Entity.

Borrower shall not: (i) hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the Property and the property that is defined as the "Property" in the Leasehold Mortgage (the "Leasehold Property"); (ii) become a shareholder or partner of any entity which acquires or holds any property other than the Property or the Leasehold Property; or (iii) conduct any business other than the ownership of the Property and the Leasehold Property.

18. Borrower and Lien Not Released.

From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, its successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and without regard to Borrower's breach of any covenant or agreement in any Loan Document: (i) extend or otherwise modify the terms or the time for payment of the Indebtedness or any part thereof, including the interest rate, amortization period, or payment amount; (ii) release anyone liable on any of said Indebtedness; (iii) accept replacement note or notes therefor; (iv) release from the lien of any Loan Document any part of the Property or take or release other security; (v) consent to any map or plan of the Property; (vi) consent to the granting of any easement; (vii) join in any extension or subordination agreement; and/or (viii) waive or modify any of the Obligations. Any actions taken by Lender pursuant to the terms of this Section 18 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the Indebtedness and to perform the Obligations, shall not affect the guaranty of any person,

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

corporation, partnership or other entity for payment of the Indebtedness and shall not affect the lien or priority of this Mortgage.

19. Uniform Commercial Code Security Agreement.

(a) This Mortgage shall constitute a security agreement pursuant to the Uniform Commercial Code for any portion of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said Property. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Lender may require to perfect a security interest with respect to said items. Borrower hereby authorizes and empowers Lender and irrevocably appoints Lender its agent and attorney-in-fact to execute and file, on Borrower's behalf, all financing statements and refillings and continuations thereof as Lender deems necessary or advisable to create, preserve and protect such lien. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without limitation of the foregoing, if an Event of Default occurs, Lender shall be entitled immediately to exercise all remedies available to it under the Uniform Commercial Code.

(b) Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Lender without the necessity of any further notice or action by Borrower. Lender shall not by reason of this Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Borrower with respect to any portion of the personal property nor shall Lender be responsible for any act committed by Borrower, or any breach or failure to perform by Borrower with respect to any portion of the personal property.

20. Events of Default: Acceleration of Indebtedness.

The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(a) failure of Borrower to pay, within five (5) days of the due date, any of the Indebtedness, including any payment due under the Notes; or

(b) failure of Borrower to strictly comply with Paragraphs 5 (a)(i) (insurance), 8 (inspection), 11 (environmental matters), 15 (prohibition on transfers), 16 (prevention of liens) and 17 (single asset entity) of this Mortgage; or

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

(c) a petition under any Chapter of Title 11 of the United States Code or any similar law or regulation is filed by or against Borrower or Principal (and in the case of an involuntary petition in bankruptcy, such petition is not discharged within sixty (60) days of its filing), or a custodian, receiver or trustee for any of the Property is appointed, or Borrower or Principal makes an assignment for the benefit of creditors, or any of them are adjudged insolvent by any state or federal court of competent jurisdiction, or any of them admit their insolvency or inability to pay their debts as they become due or an attachment or execution is levied against any of the Property; or

(d) the occurrence of an "Event of Default" under and as defined in the Other Mortgages or any other Loan Document; or

(e) the occurrence of a default under the Master Lease or the "Ground Lease" (as said term is defined in the Leasehold Mortgage), which default is not cured within the time, if any, specified therefor in the Master Lease or Ground Lease, as the case may be; or

(f) Borrower shall default in the payment of any indebtedness (other than the Indebtedness) and such default is declared and is not cured within the time, if any, specified therefor in any agreement governing the same; or

(g) any statement, report or certificate made or delivered to Lender by Borrower or any Principal is not materially true and complete at any time; or

(h) failure of Borrower, within thirty (30) days after notice and demand, to satisfy each and every Obligation not set forth in the subsections above; provided, however, if such Obligation cannot by its nature be cured within thirty (30) days, and if Borrower commences to cure such failure promptly after written notice thereof and thereafter diligently pursues the curing thereof (and then in all events cures such failure within sixty (60) days after the original notice thereof), Borrower shall not be in default hereunder during such period of diligent curing.

Upon the occurrence of an Event of Default, at the option of Lender, the indebtedness shall become immediately due and payable without notice to Borrower, and Lender shall be entitled to all of the rights and remedies provided in the Loan Documents or at law or in equity. Each remedy provided in the Loan Documents is distinct and cumulative to all other rights or remedies under the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

21. Entry: Foreclosure.

Upon the occurrence of an Event of Default, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Property, or to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Property, and may exclude Borrower and its agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers and accounts of Borrower. If Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring the delivery to Lender of the Property, and Borrower specifically consents to the entry of such judgment or decree. Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Property and conduct the business thereof. Lender shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it or its representatives which was taken or omitted in good faith.

When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Lender may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (a) enforce payment of the Notes or the performance of any term, covenant, condition or agreement of Borrower under any of the Loan Documents; (b) foreclose the lien hereof for the Indebtedness or part thereof and sell the Property as an entirety or otherwise, as Lender may determine; and/or (c) pursue any other right or remedy available to it under or by the law and decisions of the State in which the Land is located. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect (a) the Indebtedness, or any part thereof or (b) any deficiency remaining unpaid after foreclosure and sale of the Property.

Upon any foreclosure sale, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

22. Expenditures and Expenses.

In any action to foreclose the lien hereof or otherwise enforce Lender's rights and remedies hereunder, there shall be allowed and included as additional Indebtedness all expenditures and expenses which may be paid or incurred by or on behalf of Lender including repair costs, payments to remove or protect against liens, attorneys' fees, costs and expenses, receivers' fees, costs and expenses, appraisers'

UNOFFICIAL COPY

2 0 1 1 0 4 9 11

fees, engineers' fees, accountants' fees, outlays for documentary and expert evidence, stenographers' charges, stamp taxes, publication costs, and costs (which may be estimates as to items to be expended after entry of an order or judgment) for procuring all such abstracts of title, title searches and examination, title insurance policies, Torrens' Certificates and similar data and assurances with respect to title as Lender may deem reasonably necessary either to prosecute any action or to evidence to bidders at any sale which may be had pursuant to an order or judgment the true condition of the title to, or the value of, the Property.

23. Application of Proceeds of Foreclosure Sale.

The proceeds of any foreclosure sale of the Property shall be distributed and applied in the order of priority set forth in the Notes with the excess, if any, being applied, to any party entitled thereto as their rights may appear.

24. Appointment of Receiver or Mortgagee in Possession.

If an Event of Default is continuing or if Lender shall have accelerated the Indebtedness, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the Indebtedness or the insolvency of any party bound for its payment, to the appointment, at its option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Property, and to collect and apply the Rents.

25. After - Acquired Property.

To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under the granting clauses of this Mortgage and Section 19, shall automatically attach, without further act, to all property hereafter acquired by Borrower located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Property or any part thereof.

26. Future Advances.

This Mortgage is given to secure not only the existing Indebtedness, but also future advances (whether such advances are obligatory or are made at the option of Lender, or otherwise) made by Lender under the Notes or this Mortgage, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all Indebtedness secured hereby shall in no event exceed two (2) times the aggregate face amount of the Senior Note.

27. Forbearance by Lender Not a Waiver.

Any forbearance by Lender in exercising any right or remedy under any of the Loan Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. Lender's acceptance of payment of any sum secured by any of the Loan Documents after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness, nor shall Lender's receipt of any awards, proceeds or damages under Section 5 hereof operate to cure or waive Borrower's default in payment or sums secured by any of the Loan Documents. With respect to all Loan Documents, only waivers made in writing by Lender shall be effective against Lender.

28. Waiver of Statute of Limitations.

Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Notes or any other obligation secured by any of the Loan Documents.

29. Waiver of Homestead and Redemption.

Borrower hereby waives all right of homestead exemption in the Property. Borrower hereby waives all right of redemption on behalf of Borrower and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Mortgage, except decree or judgment creditors of Borrower.

30. Jury Trial Waiver.

BORROWER AND LENDER HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BORROWER, AND BORROWER ACKNOWLEDGES THAT NEITHER LENDER NOR ANY PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO THE BORROWER TO INDUCE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTION THAT MAY IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THE LOAN DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL. BORROWER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

31. Venue.

BORROWER AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO OR FROM THIS AGREEMENT, SHALL BE LITIGATED, AT LENDER'S SOLE DISCRETION AND ELECTION, ONLY IN COURTS HAVING A SITUS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE. BORROWER HEREBY IRREVOCABLY APPOINTS AND DESIGNATES WOLIN & ROSEN, WHOSE ADDRESS IS TWO NORTH LASALLE STREET, SUITE 1776, CHICAGO, ILLINOIS 60602, AS ITS DULY AUTHORIZED AGENT FOR SERVICE OF LEGAL PROCESS AND AGREES THAT SERVICE OF SUCH PROCESS UPON SUCH PARTY SHALL CONSTITUTE PERSONAL SERVICE OF PROCESS UPON BORROWER. IN THE EVENT SERVICE IS UNDELIVERABLE BECAUSE SUCH AGENT MOVES OR CEASES TO DO BUSINESS IN CHICAGO, ILLINOIS, BORROWER SHALL, WITHIN TEN (10) DAYS AFTER LENDER'S REQUEST, APPOINT A SUBSTITUTE AGENT (IN CHICAGO, ILLINOIS) ON ITS BEHALF AND WITHIN SUCH PERIOD NOTIFY LENDER OF SUCH APPOINTMENT. IF SUCH SUBSTITUTE AGENT IS NOT TIMELY APPOINTED, LENDER SHALL, IN ITS SOLE DISCRETION, HAVE THE RIGHT TO DESIGNATE A SUBSTITUTE AGENT UPON FIVE (5) DAYS NOTICE TO BORROWER. BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT BY LENDER ON THE LOAN DOCUMENTS IN ACCORDANCE WITH THIS PARAGRAPH.

32. Governing Law; Severability.

This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois except that the provisions of the laws of the jurisdiction in which the Land is located shall be applicable to the creation, perfection and enforcement of the lien created by this Mortgage. The invalidity, illegality or unenforceability of any provision of this Mortgage shall not affect or impair the validity, legality or enforceability of the remainder of this Mortgage, and to this end, the provisions of this Mortgage are declared to be severable.

33. Notice.

Any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier or U.S. Mail and shall be deemed given: (a) if served in person, when served; (b) if telecopied, on the date of transmission if before 3:00 p.m. (Chicago time); provided that a hard copy of such notice is also sent pursuant to clause (c) or (d) below; (c) if by overnight courier, on the first business day after delivery to the courier; or (d) if by U.S. Mail, on the fourth

UNOFFICIAL COPY

9 3 3 9 2 4 9 0

(4th) day after deposit in the mail, postage prepaid, certified mail, return receipt requested.

Notices to Borrower:

American National Bank and Trust Company,
not personally but as Trustee under Trust
Agreement dated August 17, 1993 and known
as Trust Number 117325-00
33 North LaSalle Street
Chicago, Illinois 60690
Attention: Land Trust Department
Telecopy No.: (312) 661-5373

with a copy to:

R.J. Klarchek
c/o Capital Development Corporation
225 East Deerpath Road
Lake Forest, Illinois 60045
Telecopy No.: (708) 615-2616

with a copy to:

Wolin & Rosen
Two North LaSalle Street
Suite 1776
Chicago, Illinois 60602
Attention: Philip Wolin
Telecopy No.: (312) 346-0464

Notices to Lender:

Heller Financial, Inc.
Real Estate Financial Services
500 West Monroe Street, 15th Floor
Chicago, Illinois 60661
Attention: Manager, Asset Management
Telecopy: (312) 441-7119

with a copy to:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9 3 9 9 2 4 9 0

Heller Financial, Inc.
Real Estate Financial Services
500 West Monroe Street, 15th Floor
Chicago, Illinois 60661
Attention: Deputy General Counsel
Telecopy: (312) 441-7872

34. Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.

The covenants and agreements contained in the Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Section 15 hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights under the Loan Documents or taking any actions provided for therein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

35. Release.

Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage. Borrower shall pay Lender's reasonable costs incurred in releasing this Mortgage and any financing statements related hereto.

36. Terms.

As used in the Loan Documents, (i) "business day" means a day when banks are not required to be open or are authorized to be closed in Chicago, Illinois; and (ii) the phrase "including" shall mean "including but not limited to" unless specifically set forth to the contrary.

37. Loss of Notes.

Upon notice from Lender of the loss, theft, or destruction of the Notes and upon receipt of indemnity reasonably satisfactory to Borrower from Lender, or in the case of mutilation of the Notes, upon surrender of the mutilated Notes, Borrower shall make and deliver a new note of like tenor in lieu of the then to be superseded Notes.

38. Exculpation.

This Mortgage and other Loan Documents and all of Borrower's obligations hereunder and thereunder are subject to the provisions of the Notes entitled Exculpation, which are incorporated herein by this reference.

UNOFFICIAL COPY

9 3 8 9 2 4 3 0

This Mortgage is executed by American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said American National Bank and Trust Company of Chicago hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in the Notes contained shall be construed as creating any liability on American National Bank and Trust Company of Chicago personally to pay the Notes or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder, and that so far as American National Bank and Trust Company of Chicago personally is concerned, the legal holder or holders of the Notes and the owner or owners of any indebtedness accruing hereunder shall look solely to the Property and any other security given for the payment thereof, by the enforcement of the lien hereby created and any other security given therefor.

IN WITNESS WHEREOF, Borrower has executed this Mortgage or has caused the same to be executed by its representatives thereunto duly authorized.


BORROWER

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, not personally but as
Trustee under Trust Agreement dated August 17,
1993 and known as Trust Number 117325-00

By: _____

Name: _____

Its: _____


V.M. Winters
VP

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, L. M. SOVIENSKI, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that J. MICHAEL WHELAN, who is personally known to me to be the VICE President of American National Bank and Trust Company of Chicago, a national banking association, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as VICE President of said company, pursuant to authority given by the Board of Directors of said company, as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 2nd day of November, 1993.

L. M. Sovieniski
Notary Public

My Commission Expires:



Notary of Cook County Clerk's Office

93892490

UNOFFICIAL COPY

9 3 9 9 2 4 9 11

EXHIBIT A

LEGAL DESCRIPTION

Common Address:
2450 Waukegan Road
Glenview, Illinois 60026

P.I.N.:
04-23-300-004 and 04-23-302-004

Property of Cook County Clerk's Office

93892490

UNOFFICIAL COPY

LEGAL DESCRIPTION 2 4 9 0
(Fee Property)

PARCEL 1:

THAT PART OF THE SOUTH 1/2 OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS::

BEGINNING AT A POINT IN THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH 1/2 OF SECTION 23, 1320 FEET EAST OF THE WEST LINE OF SAID SECTION 23; THENCE EAST 8.91 FEET, THENCE NORTH 65 FEET MORE OR LESS, TO THE CENTER LINE OF RIVER; THENCE NORTHWESTERLY ALONG THE CENTER LINE OF SAID RIVER TO A POINT IN THE SOUTH LINE OF JOHN STOLL'S LAND 2045.20 FEET WEST OF THE CENTER LINE OF WAUKEGAN ROAD, AS MEASURED ALONG SAID SOUTH LINE OF JOHN STOLL'S LAND; THENCE EAST ALONG SAID SOUTH LINE OF JOHN STOLL'S LAND 2045.20 FEET TO SAID CENTER LINE OF WAUKEGAN ROAD; THENCE SOUTHERLY ALONG SAID CENTER LINE OF WAUKEGAN ROAD 431 FEET; THENCE WEST IN A STRAIGHT LINE, 1837.63 FEET, MORE OR LESS, TO A POINT 82.84 FEET SOUTH OF THE PLACE OF BEGINNING, AND 1320 FEET EAST OF SAID WEST LINE OF SAID SECTION 23; THENCE NORTH 82.84 FEET TO THE PLACE OF BEGINNING, EXCEPT THAT PART LYING EASTERLY OF THE WESTERLY LINE OF WAUKEGAN ROAD SHOWN AS DOCUMENT NUMBER 88178434, EXCEPTING THAT PART THEREOF DESCRIBED AS FOLLOWS:

THAT PART OF LOTS 30 AND 31 IN COUNTY CLERK'S DIVISION OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF A LINE DRAWN PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 30 AND PASSING THROUGH A POINT ON SAID SOUTH LINE 255.46 FEET WEST OF THE INTERSECTION OF THE CENTER LINE OF WAUKEGAN ROAD WITH SAID SOUTH LINE AND LYING NORTH OF THE NORTH LINE OF THE SOUTH 408.91 FEET OF SAID LOT 30, EXCEPT THAT PART LYING EASTERLY OF THE WESTERLY LINE OF WAUKEGAN ROAD AS WIDENED PER DOCUMENT NO. 88178434, IN COOK COUNTY, ILLINOIS, AND EXCEPTING FROM THE FIRST ABOVE DESCRIBED PREMISES, THAT PART THEREOF, IF ANY, FALLING WITHIN THE SOUTH 293.16 FEET OF LOT 30 IN COUNTY CLERK'S DIVISION OF SECTION 23 AFORESAID, IN COOK COUNTY, ILLINOIS

SALES LOT

THAT PART OF LOTS 30 AND 31 IN COUNTY CLERK'S DIVISION OF SECTION 23, TOWNSHIP 42, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF A LINE DRAWN PERPENDICULAR TO THE SOUTH LINE OF LOT 30 IN SAID COUNTY CLERK'S DIVISION AND PASSING THROUGH A POINT ON SAID SOUTH LINE 255.46 FEET WEST OF THE INTERSECTION OF THE CENTER LINE OF WAUKEGAN ROAD WITH SAID SOUTH LINE AND LYING NORTH OF A LINE 408.91 FEET NORTH OF THE SAID SOUTH LINE OF LOT 30 EXCEPT THAT PART LYING EASTERLY OF THE WESTERLY LINE OF WAUKEGAN ROAD AS WIDENED PER DOCUMENT NO. 88178434 IN COOK COUNTY, ILLINOIS.

RONNIES RESTAURANT

THAT PART OF LOT 30 IN COUNTY CLERK'S DIVISION OF SECTION 23, TOWNSHIP 42, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SAID LOT 30 WITH THE CENTER LINE OF WAUKEGAN ROAD THENCE WEST ALONG SAID SOUTH LINE 300 FEET THENCE NORTH PERPENDICULAR TO SAID SOUTH LINE 92 FEET THENCE EAST ALONG A LINE PARALLEL WITH SAID SOUTH LINE TO THE CENTER LINE OF WAUKEGAN ROAD THENCE SOUTHEASTERLY ALONG SAID CENTER LINE TO THE POINT OF BEGINNING, EXCEPT THAT PART LYING EASTERLY OF THE WESTERLY LINE OF WAUKEGAN ROAD AS WIDENED PER DOCUMENT NO. 88178434 IN COOK COUNTY, ILLINOIS.

93892490

UNOFFICIAL COPY

EXHIBIT B

PERMITTED EXCEPTIONS

Property of Cook County Clerk's Office

93892490

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

Real Estate Taxes not yet due and payable:

8. TERMS, PROVISIONS, CONDITIONS AND LIMITATIONS OF THE ORDINANCE PERTAINING TO THE RECAPTURE OF THE COST FOR EXTENSION OF WATER FACILITIES RECORDED JULY 15, 1992 AS DOCUMENT 92516195

10. MORTGAGE DATED FEBRUARY 26, 1981 AND RECORDED MARCH 11, 1981 AS DOCUMENT 25201471 MADE BY GRACE E. MARINO TO FIRST NATIONAL BANK OF SKOKIE, A NATIONAL BANKING ASSOCIATION, TO SECURE A NOTE FOR \$35,000.00.

11. ASSIGNMENT OF RENTS MADE BY GRACE E. MARINO ALSO KNOWN AS GRACE ETHEL MARINO TO FIRST NATIONAL BANK OF SKOKIE RECORDED MAY 11, 1976 AS DOCUMENT 23481120.

(AFFECTS PARCEL 2)

17. RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, LAY, MAINTAIN, RELOCATE, RENEW AND REMOVE EQUIPMENT CONSISTING OF POLES, POLE STRUCTURE, ANCHORS, GUYS, STUBS, WIRES AND UNDERGROUND CONDUITS, CABLES, CABLE POLES AND OTHER NECESSARY ELECTRICAL FACILITIES AND TO TRANSMIT AND DISTRIBUTE BY MEANS OF SAID EQUIPMENT, ELECTRICITY TO BE USED FOR HEAT, LIGHT, POWER, TELEPHONE AND OTHER PURPOSES WITH RIGHT OF ACCESS TO THE SAME FOR THE MAINTENANCE THEREOF IN, UPON, UNDER AND ALONG THE FOLLOWING DESCRIBED PROPERTY DESCRIBED AS FOLLOWS::

THE NORTH 45 FEET OF THE SOUTH 293.16 FEET OF THE EAST 277.44 FEET (AS MEASURED ON THE NORTH LINE OF THE SOUTH 293.16 FEET) OF LOT 30; THE NORTH 243 FEET OF THE SOUTH 293.16 FEET OF THE WEST 10 FEET OF THE EAST 310 FEET (AS MEASURED ON THE SOUTH LINE) OF LOT 30, THE NORTH 10 FEET OF THE SOUTH 42 FEET OF THE WEST 1416.98 FEET (AS MEASURED ON THE SOUTH LINE) OF LOT 30, AND ALSO THE NORTH 320 FEET OF THE SOUTH 400 FEET OF THE EAST 10 FEET OF THE WEST 17 FEET (AS MEASURED ON THE SOUTH LINE) OF LOT 30 ALL IN LOT 30 IN QUIT CLAIM DEED OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 12 EAST ETC AS CONTAINED IN GRANT FROM TONY MARINO AND GRACE F. MARINO, HIS WIFE DATED NOVEMBER 22, 1957 AND RECORDED JANUARY 6, 1958 AS DOCUMENT 17103668

93892490

UNOFFICIAL COPY

9 3 3 9 2 4 9 11

J 13. EASEMENTS FOR THE PURPOSE OF CONSTRUCTING, LAYING, MAINTAINING, RELOCATING, RENEWING AND REMOVING EQUIPMENT CONSISTING OF POLES, POLE STRUCTURES, ANCHORS, GUYS, STUBS, WIRES AND UNDERGROUND CONDUITS, CABLES, CABLE POLES AND OTHER NECESSARY ELECTRICAL FACILITIES AND TO TRANSMIT AND DISTRIBUTE BY MEANS OF SAID EQUIPMENT, ELECTRICITY TO BE USED FOR HEAT, LIGHT, POWER, TELEPHONE AND OTHER PURPOSES; WITH RIGHT OF ACCESS TO SAME FOR THE MAINTENANCE THEREOF; ALSO TO TRIM OR CUT DOWN AND REMOVE FROM TIME TO TIME SUCH TREES, BUSHES AND SAPLINGS AS MAY BE REASONABLY REQUIRED INCIDENT TO THE INSTALLATION AND MAINTENANCE OF SUCH FACILITIES IN, UPON, UNDER AND ALONG THAT PART OF THE LAND AS SHOWN ON EXHIBIT 'A' ATTACHED TO GRANT OF EASEMENT DATED MAY 21, 1960 AND RECORDED JUNE 9, 1960 AS DOCUMENT 17877261 MADE BY TONY MARINO AND GRACE F. MARINO, HIS WIFE AND COOY. COUNTY MOBILE HOMES INC., A CORPORATION OF ILLINOIS TO THE COMMONWEALTH EDISON COMPANY, AND THE ILLINOIS BELL TELEPHONE COMPANY. THIS EASEMENT SHALL AUTOMATICALLY CEASE AND DETERMINE IF AND WHEN THE FOREGOING PREMISES SHALL NO LONGER BE USED FOR THE PURPOSE OF A TRAILER PARK. IN SUCH EVENT GRANTORS SHALL HAVE THE RIGHT TO REMOVE THEREFROM WHATEVER FACILITIES MAY HAVE BEEN INSTALLED BY THE GRANTEES IN AND UPON THE SAID EASEMENT

K 14. GRANT OF EASEMENT OVER THE FOLLOWING DESCRIBED PROPERTY AS CREATED BY GRANT DATED AUGUST 6, 1963 AND RECORDED SEPTEMBER 9, 1963 AS DOCUMENT 18906315 MADE BY COOK COUNTY MOBILE HOMES INC., A CORPORATION OF ILLINOIS TO THE ILLINOIS BELL TELEPHONE COMPANY, AND THE COMMONWEALTH EDISON COMPANY THEIR LESSEES, SUCCESSORS AND ASSIGNS THE RIGHT TO CONSTRUCT, OPERATE MAINTAIN AND REMOVE TELEPHONE AND ELECTRIC LINES, CONDUITS, MANHOLES, WIRES, CABLES AND ASSOCIATED EQUIPMENT, TOGETHER WITH RIGHT OF ACCESS TO SAME INCLUDING THE RIGHT TO CLEAR AND KEEP CLEARED SUCH TREES, ROOTS, BUSHES AND OTHER OBSTRUCTIONS FROM THE SURFACE AND SUB-SURFACE AS MAY BE REQUIRED UPON, OVER, UNDER, ALONG AND ACROSS THAT PART OF THE LAND DESCRIBED AS FOLLOWS: THE NORTH 5 FEET OF THE SOUTH 270 FEET OF THE WEST 100 FEET; ALSO THE NORTH 5 FEET OF THE WEST 190 FEET; ALSO THE EAST 5 FEET OF THE WEST 35 FEET OF THE SOUTH 270 FEET ALL IN THE SOUTH 293.16 FEET OF LOT 30 IN COUNTY CLERK'S DIVISION OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS (EXCEPT THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER LINE OF WAUKEGAN ROAD AND THE SOUTH LINE OF SAID LOT 30, RUNNING THENCE WEST 300 FEET, THENCE NORTH AT RIGHT ANGLES TO SAID SOUTH LINE OF LOT 30 TO A POINT ON THE NORTH LINE OF THE SOUTH 293.16 FEET OF LOT 30 THENCE EAST ALONG SAID NORTH LINE TO A POINT IN THE CENTER LINE OF WAUKEGAN ROAD, THENCE SOUTHEASTERLY TO THE POINT OF BEGINNING ALL IN COOK COUNTY, ILLINOIS

L 15. EASEMENT IN, UPON, UNDER AND ALONG THE FOLLOWING DESCRIBED PROPERTY TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE, TOGETHER WITH RIGHT OF ACCESS THERETO AS CREATED BY GRANT TO THE COMMONWEALTH EDISON COMPANY AND THE ILLINOIS BELL TELEPHONE COMPANY RECORDED SEPTEMBER 10, 1964 AS DOCUMENT

93892490

UNOFFICIAL COPY

0 3 0 2 4 9 0

19239970:

THE SOUTH 293.16 FEET OF LOT 30 IN COUNTY CLERKS'S DIVISION OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART DESCRIBED AS FOLLOWS: : BEGINNING AT THE CENTER LINE OF WAUKEGAN ROAD AND THE SOUTH LINE OF SAID LOT 30, RUNNING THENCE WEST 300 FEET, THENCE NORTH 92 FEET THENCE EAST PARALLEL TO THE SOUTH LINE OF LOT 30 TO THE CENTER LINE OF WAUKEGAN ROAD, THENCE SOUTHERLY IN THE CENTER OF THE ROAD TO POINT OF BEGINNING; AND ALSO EXCEPT THAT PART OF SAID LOT 30 DESCRIBED AS FOLLOWS: : BEGINNING AT A POINT IN THE CENTER LINE OF WAUKEGAN ROAD 167 FEET NORTH OF THE SOUTH LINE OF SAID LOT 30 (AS MEASURED AT RIGHT ANGLES THEREOF) THENCE WEST PARALLEL WITH THE SAID SOUTH LINE OF SAID LOT 30, 245 FEET; THENCE SOUTH 75 FEET, THENCE EAST PARALLEL TO THE SOUTH LINE OF SAID LOT 30 TO THE CENTER LINE OF WAUKEGAN ROAD; THENCE EASTERLY IN THE CENTER OF THE ROAD TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS

- M 16. GRANT MADE BY COOK COUNTY MOBILE HOMES TO THE COMMONWEALTH EDISON COMPANY AND THE ILLINOIS BELL TELEPHONE COMPANY DATED JANUARY 27, 1958 AND RECORDED AUGUST 6, 1958 AS DOCUMENT 17281657 GRANTING RIGHT TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE, WITH RIGHT OF ACCESS THERETO IN, UPON, UNDER AND ALONG CERTAIN STRIPS OF LAND SHOWN BY DOTTED LINES AND MARKED EASEMENTS ON THE PLAT ATTACHED TO SAID DOCUMENT 17281657.

(AFFECTS APPROXIMATELY THE SAME LAND AS THAT SHOWN IN LETTER J).

- N 17. EASEMENT UPON, OVER, UNDER, ALONG AND ACROSS THE SOUTH 10 FEET OF THE NORTH 320 FEET OF THE WEST 135 FEET (AS MEASURED EAST FROM THE CENTER LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER) OF THE LAND TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE, TOGETHER WITH RIGHT OF ACCESS THERETO, AS CREATED BY GRANT FROM COOK COUNTY MOBILE HOMES, INC., A CORPORATION OF ILLINOIS TO THE COMMONWEALTH EDISON COMPANY AND THE ILLINOIS BELL TELEPHONE COMPANY RECORDED MAY 31, 1963 AS DOCUMENT 18811752

- O 18. EASEMENT IN, UPON, UNDER AND ALONG THE WEST 10 FEET OF THE EAST 350 FEET, AS MEASURED AT RIGHT ANGLES AND ALONG THE NORTH LINE OF THE LAND; AND OVER THE WEST 10 FEET OF THE EAST 500 FEET, AS MEASURED ALONG AND AT RIGHT ANGLES TO THE NORTH LINE OF THE LAND; TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE, TOGETHER WITH RIGHT OF ACCESS THERETO, AS CREATED BY GRANT FROM COOK COUNTY MOBILE HOMES, INC., A CORPORATION OF ILLINOIS, TO THE COMMONWEALTH EDISON COMPANY AND THE ILLINOIS BELL TELEPHONE COMPANY, RECORDED NOVEMBER 14, 1963 AS DOCUMENT 18971460; WHICH GRANT PROVIDES THAT THE EASEMENT WILL CEASE AND DETERMINE IF AND WHEN LAND IS NO LONGER USED FOR PURPOSES OF A TRAILER PARK

93892490

UNOFFICIAL COPY

19 3 3 9 2 4 9 11

19. EASEMENT IN, UPON, UNDER AND ALONG A 10 FOOT STRIP OF LAND, THE CENTER LINE BEING 234 FEET WEST OF THE CENTER LINE OF WAUKEGAN ROAD, COMMENCING AT THE SOUTH LINE OF JOHN STOLL'S LAND, THENCE EXTENDING SOUTH AT RIGHT ANGLES TO SAID SOUTH LINE OF JOHN STOLL'S LAND, 300 FEET; SAID STRIP OF LAND BEING PART OF THE LAND, AS DESCRIBED IN THAT CAPTION HEREIN; TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE, TOGETHER WITH RIGHT OF ACCESS THERETO, AS CREATED BY GRANT FROM COOK COUNTY MOBILE HOMES INC., CORPORATION OF ILLINOIS TO THE COMMONWEALTH EDISON COMPANY AND THE ILLINOIS BELL TELEPHONE COMPANY RECORDED JANUARY 25, 1965 AS DOCUMENT 19365076
20. EASEMENT IN, UPON, UNDER AND ALONG THAT PART OF THE LAND LYING SOUTHWESTERLY OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF THE LAND, SAID POINT BEING 50 FEET EAST OF THE NORTHWEST CORNER THEREOF; THENCE EXTENDING IN A STRAIGHT LINE SOUTHEASTERLY TO A POINT WHICH IS 400 FEET NORTH OF THE SOUTH LINE OF LOT 30 IN COUNTY CLERKS DIVISION OF SAID SECTION 23 (AS MEASURED AT RIGHT ANGLES THEREOF), AND 87.46 FEET EAST OF THE WEST LINE OF THE LAND (AS MEASURED AT RIGHT ANGLES THEREOF) TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE, TOGETHER WITH RIGHT OF ACCESS THERETO AND FURTHER RESERVING UNTO GRANTOR THE RIGHT TO LOCATE TRAILER OR MOBILE HOMES, AS NECESSARY WITHIN THE AVAILABLE EASEMENT AREA, AS CREATED BY GRANT FROM COOK COUNTY MOBILE HOMES, INC., A CORPORATION OF ILLINOIS, TO THE COMMONWEALTH EDISON COMPANY AND THE ILLINOIS BELL TELEPHONE COMPANY RECORDED OCTOBER 16, 1962 AS DOCUMENT 18618401
21. EASEMENT UPON, OVER, UNDER, ALONG AND ACROSS THE SOUTH 10 FEET OF THE NORTH 160 FEET OF THE WEST 250 FEET (AS MEASURED EAST FROM THE CENTER LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER) OF THE LAND TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE, TOGETHER WITH RIGHT OF ACCESS THERETO, AS CREATED BY GRANT FROM COOK COUNTY MOBILE HOMES, INC., A CORPORATION OF ILLINOIS, TO THE COMMONWEALTH EDISON COMPANY AND THE ILLINOIS BELL TELEPHONE COMPANY RECORDED MAY 31, 1963 AS DOCUMENT 18811751
- (AFFECTS PART OF PARCEL 1)
22. GRANT OF EASEMENT MADE BY COOK COUNTY MOBILE HOMES, INC., AN ILLINOIS CORPORATION TO THE COMMONWEALTH EDISON COMPANY, AN ILLINOIS CORPORATION, ITS SUCCESSORS AND ASSIGNS AND RECORDED JULY 28, 1981 AS DOCUMENT 25951760 TO CONSTRUCT, OPERATE, MAINTAIN, RENEW, RELOCATE AND REMOVE, FROM TIME TO TIME, WIRES, CABLES, CONDUITS, MANHOLES, TRANSFORMERS, PEDESTALS AND OTHER FACILITIES USED IN CONNECTION WITH UNDERGROUND TRANSMISSION AND DISTRIBUTION OF ELECTRICITY, TOGETHER WITH RIGHT OF ACCESS TO THE SAME AND THE RIGHT, FROM TIME TO TIME, TO TRIM OR REMOVE TREES, BUSHES AND SAPLINGS AND TO CLEAR OBSTRUCTIONS FROM THE SURFACE AND SUBSURFACE AS MAY BE REASONABLY REQUIRED INCIDENT IN, OVER, UNDER, ACROSS, ALONG AND UPON THE LAND.

93892490

UNOFFICIAL COPY

9 3 8 9 2 4 9 0

- T 23. RIGHTS OF THE UNITED STATES OF AMERICA, STATE OF ILLINOIS, MUNICIPALITY, THE SANITARY DISTRICT AND PUBLIC IN AND TO THAT PART OF THE LAND FALLING IN THE BED OF THE WEST FORK OF THE NORTH BRANCH OF THE CHICAGO RIVER; ALSO RIGHTS OF THE ADJOINING PROPERTY OWNERS IN AND TO THE FREE AND UNOBSTRUCTED FLOW OF THE WATERS OF SAID RIVER
- U 24. RIGHTS OF WAY FOR DRAINAGE DITCHES, FEEDERS AND LATERALS, IF ANY.
- W 26. RIGHTS AND CLAIMS OF TENANTS IN POSSESSION UNDER LEASES CONTAINING NO OPTIONS OR RIGHTS OF FIRST REFUSAL TO PURCHASE.
- AA 30. ORDER ENTERED OCTOBER 2, 1989 IN CASE NUMBER 88L50389 CONFIRMING TEMPORARY EASEMENTS TO ACCOMMODATE THE RECONSTRUCTION OF EXISTING DRIVEWAYS.
- AB 31. ANY CLAIM TO A LIEN WHICH MAY BE MADE BY LESSOR UNDER THE TERMS OF PARAGRAPH (B) IN THE LEASE RECORDED AS DOCUMENT 17036721. SUBORDINATION OF LESSORS LIEN RIGHTS TO THE MORTGAGE INSURED HEREIN RECORDED AS DOCUMENT 89476807.
- AD 32. EXISTING UNRECORDED LEASES AND ALL RIGHTS THEREUNDER OF THE LESSEES AND OF ANY PERSON OR PARTY CLAIMING BY, THROUGH OR UNDER THE LESSEES.
- AI 37. LEASE MADE BY TONY MARINO AND GRACE MARINO TO COOK COUNTY MOBILE HOMES, CORPORATION OF ILLINOIS DATED SEPTEMBER 14, 1957 RECORDED OCTOBER 11, 1957 AS DOCUMENT NO. 17086321 AND AMENDED BY INSTRUMENT RECORDED OCTOBER 9, 1958 AS DOCUMENT 17341867, DEMISING THE LAND FOR A TERM OF YEARS BEGINNING SEPTEMBER 1, 1957 AND ENDING AUGUST 31, 2007, AND ALL RIGHTS THEREUNDER OF, AND ALL ACTS DONE OR SUFFERED THEREUNDER BY, SAID LESSEE OR BY ANY PARTY CLAIMING BY, THROUGH, OR UNDER SAID LESSEE.
- AJ 38. LEASE MADE BY TONY MARINO AND GRACE MARINO, HIS WIFE TO COOK COUNTY MOBILE

93892490

UNOFFICIAL COPY

9 3 1 9 2 4 9 11

- BA 41. RIGHTS OF THE PUBLIC, THE MUNICIPALITY AND THE STATE OF ILLINOIS IN AND TO THAT PART OF THE LAND TAKEN AND USED FOR WAUKEGAN ROAD.
- BN 42. LEASE EXECUTED BY: FIRST BANK OF OAK PARK, AS TRUSTER UNDER TRUST AGREEMENT DATED JANUARY 19, 1967 AND KNOWN AS TRUST NUMBER 7781, AS LESSOR, AND RONNIES INC., AN ILLINOIS CORPORATION, A WHOLLY OWNED SUBSIDIARY OF COOK COUNTY MOBILE HOMES INC., AS LESSEE, AS DISCLOSED BY ALTA STATEMENT.
- BX 43. POSSIBLE ENCROACHMENT OF BUILDING ON THE PROPERTY SOUTH AND ADJOINING THE STAGING AREA OVER AND ONTO THE STAGING AREA BY APPROXIMATELY 25 FEET AS DISCLOSED BY SURVEY DATED JULY 20, 1989.
- BY 44. EASEMENT IN, UPON, OVER AND ALONG THE FOLLOWING DESCRIBED PROPERTY TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE, TOGETHER WITH RIGHT OF ACCESS THERETO AS CREATED BY GRANT TO THE COMMONWEALTH EDISON COMPANY AND THE ILLINOIS BELL TELEPHONE COMPANY RECORDED SEPTEMBER 10, 1964 AS DOCUMENT 19239940:
- BZ 45. PLAN FOR PROPOSED HIGHWAYS RECORDED BY STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION AS DOCUMENT 88178434.
- CC 48. TERMS CONDITIONS AND PROVISIONS OF TEMPORARY EASEMENT CREATED IN CASE 87LS:495.

93892490