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UNOFFICIAL COPY

Mortgage
(Commercial)

OLD KENT BANK

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THIS MORTGAGE is made on the 19TH day of JANUARY, 19 94, between

ARTHUR S. ARRIAGA, JR. AND WIFE CYNTHIA S., AS JOINT TENANTS

as Mortgagor, and **OLD KENT BANK**, an Illinois banking corporation of 105 South York Street, Elmhurst, Illinois, as mortgagee ("Bank").

FOR VALUE RECEIVED Mortgagor mortgages and warrants to Bank lands located in the VILLAGE of HOFFMAN ESTATES County of COOK State of Illinois, described as follows:

LOT 61 IN BLOCK 4 IN MOON LAKE TRAILS UNIT NO. 2, BEING A SUBDIVISION OF PARTS OF THE SOUTH EAST 1/4 OF SECTION 7 AND THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. #07-07-400-037

COMMON ADDRESS: 2049 GREENS COURT
HOFFMAN ESTATES, IL 60194

COOK COUNTY CLERK
REC'D

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together with all buildings, structures, and other improvements now and hereafter located thereon and all easements, hereditaments, and appurtenances now or hereafter belonging thereto and the rents, income, and profits therefrom and all fixtures now or hereafter attached to or used in connection therewith, and all machinery, engines, boilers, elevators, and plumbing, heating, air-conditioning, and ventilating equipment now or hereafter located thereon, which shall be deemed to be fixtures and a part of the realty, all of the foregoing being collectively referred to herein as the "premises".

THIS MORTGAGE IS MADE AND GIVEN TO SECURE PAYMENT AND PERFORMANCE OF ALL INDEBTEDNESS AND OBLIGATIONS NOW AND HEREAFTER OWING BY MORTGAGOR TO BANK, including all obligations of Mortgagor under this Mortgage and all indebtedness and obligations now and hereafter owing to Bank that are evidenced by any instruments, documents and agreements that have been executed by another person or persons, including any and all extensions, renewals and modifications thereof. The indebtedness and obligations secured by this Mortgage are collectively referred to in this Mortgage as the "Indebtedness". If Mortgagor is more than one person, the Indebtedness includes all indebtedness and obligations now and hereafter owing to Bank by any one or more of such persons, regardless of whether the remaining person or persons are not liable for such indebtedness and obligations or whether one or more persons other than Mortgagor are also liable for such indebtedness and obligations. The indebtedness and obligations now owing by Mortgagor to Bank include, BUT ARE NOT NECESSARILY LIMITED TO, the indebtedness and obligations evidenced by any instruments, documents and agreements listed below:

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Instrument/ Document or Agreement	Date	Principal Amount	Interest Rate	Payment Schedule	Schedule Maturity	Maker (If other etc.)
Promissory Note/ Revolving Line of Credit	January 19, 1994	\$50,000.00	Index Rate + 1.50% (Floating)	Interest Only Due Monthly Commencing March 1, 1994	July 1, 1994	A and C Electric Company, Inc.

This Mortgage secures all present and future indebtedness and obligations owing to Bank by Mortgagor, regardless of whether any such indebtedness or obligation is (a) not listed above, (b) not presently intended or contemplated by Bank or Mortgagor, (c) indirect, contingent or secondary, (d) unrelated to the premises or to any financing of the premises by Bank, (e) of a kind or class that is different from any indebtedness or obligation now owing to Bank by Mortgagor, or (f) evidenced by a note or other document that does not refer to this Mortgage.

Mortgagor further warrants, represents, and agrees as follows:

1. **Payment of Indebtedness.** Mortgagor agrees to pay or perform all of the Indebtedness, including all interest thereon, in accordance with the terms of the instruments, documents, or agreements evidencing the same ("Instruments").

2. **Warranties.** Mortgagor warrants and represents to Bank that all financial statements and other information concerning Mortgagor, the premises, and any guarantor of the Indebtedness, heretofore or hereafter furnished to Bank, are and shall be true and correct in all material respects; that the execution, delivery, and performance of this Mortgage by Mortgagor will not violate any law, rule, judgment, order, agreement or instrument binding upon Mortgagor nor require the approval of any public authority or any third party; and that this Mortgage constitutes the valid and binding obligation of Mortgagor, enforceable in accordance with its terms. If Mortgagor is a corporation, partnership, association, trust or other entity, Mortgagor further represents and warrants to Bank that Mortgagor is duly organized and validly existing in good standing in the State of Illinois or other state of Incorporation, Registration, Formation or Location; that Mortgagor has full power and authority to carry on its business as presently conducted and to enter into and perform its obligations under this Mortgage; that the execution, delivery, and performance hereof by Mortgagor have been duly authorized by all necessary action of its board of directors, trustees or other governing body and will not violate Mortgagor's articles or certificate of incorporation, bylaws, partnership agreement, articles of association, trust agreement or other governing instrument, nor require the approval of its shareholders or members.

3. **Assignment of Interest as Lessee or Purchaser.** Mortgagor hereby assigns and mortgages to Bank, as additional security for the Indebtedness, all of Mortgagor's right, title, and interest in and to any and all leases, land contracts, or other agreements by which Mortgagor

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IN WITNESS WHEREOF, Mortgagee and Bank have executed this Mortgage as of the date first written above.

Witnesses:

Individual Mortgagor(s):

Arthur S. Arriaga, Jr.
Arthur S. Arriaga, Jr.
Cynthia S. Arriaga
Cynthia S. Arriaga
Non-individual Mortgagor:

By _____
Its _____
And by _____
Its _____

STATE OF ILLINOIS)
COUNTY OF) ss

The foregoing Mortgage was acknowledged before me this 19th day of January, 1994
by _____

Angela Jones
Notary Public, Cook County, Illinois.
" OFFICIAL SEAL "
My commission expires: JAN 15 1995
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES 1/15/95

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STATE OF ILLINOIS)
COUNTY OF) ss

The foregoing Mortgage was acknowledged before me this _____ day of _____, 19____
by _____ the _____ of _____
_____ it _____ on its behalf.
(type of entity)

This instrument prepared by:

OLD KENT BANK
CLIFFORD, SCOTT-RUDNICK
105 South York Street, Elmhurst, Illinois 60126

Notary Public, _____ County, Illinois.
My commission expires:

MORTGAGE

LOAN NO. _____

Return to: MARY BRUCKER
LOAN ADMINISTRATION
OLD KENT BANK
105 S. YORK ROAD
Elmhurst, Illinois 60126

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(f) If Mortgagee, without the written consent of Bank, shall be a creditor, or trustee, or any interest therein or any profits or proceeds therefrom or if any mortgage, lien or other encumbrance of any writ of attachment, garnishment, execution, or other legal process shall be issued against the premises or any interest therein, or if any part of the premises or any interest therein shall be transferred by operation of law, or if the mortgagee is a land trustee, the beneficial interest or any portion thereof, in the land trust, is assigned for any purpose or if any lien or encumbrance, or any writ of attachment, garnishment, execution or other legal process shall be issued or placed against said beneficial interest or any portion thereof;

(g) If all or any material part of the premises shall be damaged or destroyed by fire or other casualty, regardless of insurance coverage thereon or shall be taken by condemnation or power of eminent domain;

(h) If any law or government regulation shall hereafter impose any tax or assessment upon mortgages or debts secured by mortgages;

(i) If any guaranty that now or hereafter secures payment or performance of all or any part of the Indebtedness shall be terminated or limited for any reason without the written consent or agreement of Bank;

(j) If at any time Bank in good faith believes that the prospect of payment or performance of any part or all of the Indebtedness is impaired;

(k) If any lease, land contract, or other agreement by which Mortgagee is leasing or purchasing any interest in the premises shall be declared by the lessee or other thereunder to be frustrated or terminated or if any such or other action shall be necessary to be taken by any such lease, land contract, or other agreement for possession of all or any part of the premises by reason of any default or alleged default under any such lease, land contract, or other agreement;

(l) If a voluntary or involuntary bankruptcy or receivership shall be commenced by or against Mortgagee or any of Mortgagee's partners or if Mortgagee is a partnership or any Guarantor, then the entire Indebtedness shall automatically become immediately due and payable, without notice or demand. All or any part of the Indebtedness also may become, or may be declared to be, immediately due and payable under the terms and conditions contained in any Security Document, Instrument or other agreement heretofore or hereafter entered into between Bank and Mortgagee.

13 Remedies. Bank shall have all rights and remedies provided for in this Mortgage or otherwise permitted by law. In addition, if the Indebtedness shall not be paid upon maturity, Bank shall have the right, and is hereby authorized:

(a) To the extent permitted by law, to collect and receive all rents, profits, and other amounts that are due or shall hereafter become due under the terms of any leases, land contracts, or other agreements now or hereafter in effect by which the premises or any interest therein are then being sold or leased, and to exercise any other right or remedy of Mortgagee under any such lease, land contract, or other agreement, provided that Bank shall have no obligation to make any demand or inquiry as to the nature or sufficiency of any payment received or to present or file any claim or take any other action to collect or enforce the payment of any amounts to which Bank may be entitled hereunder, and shall Bank be liable for any of Mortgagee's obligations under any such lease, land contract, or other agreement;

(b) To obtain or apply for a writ of entry, writ of habere possession, writ of assistance, writ of restitution, and surveys with respect to the premises, and Mortgagee shall reimburse Bank for all costs thereof, together with interest at the Default Rate;

(c) To conduct or obtain an environmental investigation or audit of the premises, and Mortgagee shall reimburse Bank for all costs thereof, together with interest at the Default Rate;

(d) To take possession of the premises by a non-judicial foreclosure sale;

(e) To sell, lease, and convey the premises at public sale, and to enter on and deliver to the purchasers at such sale good and sufficient deeds of conveyance, tendering any such funds, after payment of the Indebtedness in full and the expenses of such sale, including attorney fees as provided by law, to Mortgagee, all in accordance with Illinois Mortgage Foreclosure Law, Chapter 110, Illinois Revised Statutes, Section 15-1101, et. sec., as the same may be amended from time to time, and any similar statutory provisions which may hereafter be enacted in addition thereto or in substitution therefor. In the event of public sale, the premises, at the option of Bank, may be sold in one parcel;

(f) To exercise any and all rights and options of Mortgagee under any lease, land contract, or other agreement by which Mortgagee is then leasing or purchasing any part or all of the premises, including any option to purchase the premises or to renew or extend the term of any such lease, land contract, or other agreement, and Bank shall have no obligation to exercise any such right or option;

All rights and remedies of Bank under this Mortgage, whether or not exercised, shall be cumulative and may be exercised from time to time, and the failure by Bank to exercise any right or remedy shall operate as a waiver thereof, and no single or partial exercise of any right or remedy shall preclude Bank from further exercise thereof or the exercise of any other right or remedy permitted to the extent otherwise provided by law. In this Mortgage, "remedy" means such term as the Indebtedness shall be or shall become due and payable, whether by the terms of the loan agreement or otherwise, as provided in paragraph (f) hereof or otherwise.

14 Security Interest in Fixtures. Mortgagee grants to Bank a security interest in all fixtures now or hereafter located on the premises. If the Indebtedness is not paid at maturity, Bank, at its option, may enforce this security interest in fixtures under the Illinois Uniform Commercial Code or other applicable law or may include the fixtures in any foreclosure of this Mortgage under paragraph 13 hereof. Any requirement of reasonable notice with respect to any sale or other disposition of fixtures shall be met if Bank sends the notice at least five (5) days prior to the date of sale or other disposition.

15 Indemnification. Mortgagee shall indemnify and hold the Bank harmless with respect to any and all claims, demands, causes of action, liabilities, damages, losses, judgments and expenses (including attorney fees) that shall be asserted against or incurred by Bank by reason of its any representation or warranty by Mortgagee in this Mortgage, or its any past, present or future condition or use of the premises (whether known or unknown, other than an excluded condition or use, including but not limited to, liabilities arising under any "environmental law" as defined in paragraph 11 of this Mortgage. An "excluded condition, use" is a condition or use that does not exist or occur to any extent, at any time before Mortgagee has permanently given up possession and control of the premises by reason of a foreclosure of this Mortgage or a conveyance of the premises to Bank in lieu of foreclosure and has not caused or permitted to exist, in whole or part, by any act or omission of Mortgagee. Indemnification by Mortgagee under this paragraph shall not limit any other right or remedy (including Bank's right to accelerate payment of the Indebtedness) that is available to Bank by reason of the circumstances in respect of which indemnity is made. Mortgagee's obligations under this paragraph shall survive foreclosure of this Mortgage at any time, regardless of the premises in lieu of Bank's home.

16 Waivers. (a) Mortgagee and any other person hereafter obtaining any mortgage or lien upon or any other interest in the premises waives, with respect to any loan made of this Mortgage, (i) any right to marshaling of the premises and any right to require a minimum bid in "open" process, and (ii) the benefit of any stay, extension, exemption or moratorium law, term, condition or benefit that is enacted.

(b) Bank may at any time release all or any part of the premises from the lien of this Mortgage or release the personal liability of any person for the Indebtedness, with or without consideration and without giving notice to or changing the consent of the holder of any mortgage or lien upon or other interest in the premises. Any such release shall not impair or affect the validity or priority of the Mortgage, regardless of the effect of such release upon any such mortgage, lien or other interest of the holder thereof, banking on the subparagraph constitutes consent by Bank to the placing of a mortgage, lien or other encumbrance on the premises.

(c) Mortgagee, in waiving notice of any advances or other extensions of credit included in the Indebtedness, waives any right to require Bank to sue upon or otherwise enforce payment of the Indebtedness or to enforce any security that the holder has, exercising its rights and remedies under this Mortgage, and (iii) agrees that the validity and enforceability of this Mortgage shall not be impaired or affected by any failure of Bank to obtain or perfect, or secure priority of, any other security at any time given, or agreed to be given, by any person for the Indebtedness.

(d) Bank is authorized from time to time and without notice to or consent of Mortgagee and with or without consideration, to give and make such extensions, renewals, modifications, waivers, settlements, and compromises, on such terms and conditions as Bank may see fit, with regard to any of the Indebtedness as to which Mortgagee is not the obligor or with regard to any security for the Indebtedness that is not owned by Mortgagee. Any such action shall not impair or affect the validity or enforceability of this Mortgage.

(e) Mortgagee hereby irrevocably releases, waives any and all applicable homestead right or exemption. 17 Expenses. Mortgagee shall pay to Bank on demand any and all expenses, including attorneys fees, parol fees, and legal expenses, filing fees, title insurance, real estate taxes, photocopies, recording fees, publication costs, witness fees and the like, paid or incurred by Bank in collecting or attempting to collect the Indebtedness or in protecting and enforcing the rights of and obligations to Bank under any provision of this Mortgage, including, without limitation, taking any action in any bankruptcy, insolvency, or reorganization proceedings concerning Mortgagee or hereafter this Mortgage by advertisement or by action. All such expenses shall be part of the Indebtedness and shall bear interest from the date paid or incurred by Bank, at the Default Rate.

18 Application of Proceeds. In the event of the payment to Bank, pursuant to the provisions hereof, of any rents or profits or any proceeds of insurance or proceeds of any condemnation or eminent domain award or proceeds from any sale of the premises at foreclosure, Bank shall have the right to apply such rents or profits or proceeds, in such amounts and proportions as Bank shall in its sole discretion determine, to the full or partial satisfaction of any or all of the indebtedness and obligations of Mortgagee secured hereby, including any contingent or secondary obligations, whether or not the same shall then be due and payable by the primary obligor. Mortgagee shall be obligated to the Bank for any deficiency, if the rents, profits, proceeds of insurance, condemnation or sale, are insufficient to satisfy the indebtedness in full.

19 Other. All notices to Mortgagee and to Bank shall be deemed to be duly given if and when mailed, with postage prepaid, to the respective addresses of Mortgagee and Bank appearing on the front page hereof, or if and when delivered personally. The provisions of this Mortgage shall be binding upon and inure to the benefit of Mortgagee and Bank and their respective successors, assigns, heirs and personal representatives. Any provision of this Mortgage prohibited or unenforceable by any applicable law shall be ineffective only to the extent and for the duration of such prohibition or unenforceability without invalidating the remaining provisions hereof. If Mortgagee is more than one person, their obligations under this Mortgage are joint and several, and the term "Mortgagee" refers to each of them and all of them.

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