

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED,
AND AFTER RECORDING RETURN TO:

Dustin E. Neumark, Esq.
Sonnenschein Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60606

PERMANENT INDEX NUMBERS:
03-17-302-042
03-17-302-056

PROPERTY ADDRESS:
Southwest corner of Rand and
Arlington Heights Road
Arlington Heights, IL

99522571

5386/0086 04 001 Page 1 of 22
1999-06-01 10:48:29
Cook County Recorder 63.00



99522571

ABOVE SPACE RESERVED FOR COUNTY RECORDER

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

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DZ MS
This Mortgage, Security Agreement and Fixture Filing (this "Mortgage") is executed as of May 19, 1999 by ARLINGTON, LLC, an Illinois limited liability company ("Mortgagor"), whose address for notice hereunder is 180 North Michigan Avenue, Suite 200, Chicago, Illinois 60601, for the benefit of GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation ("Mortgagee"), whose address for notice is Suite 200, 209 West Jackson Boulevard, Chicago, Illinois 60606 Attention: Regional Manager, Portfolio Management Operations.

ARTICLE I

DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

(a) "Indebtedness": The sum of all (1) principal, interest and other amounts due under or secured by the Loan Documents, (2) principal, interest and other amounts which may hereafter be loaned by Mortgagee, its successors or assigns, to or for the benefit of the owner of the Mortgaged Property, when evidenced by a promissory note or other instrument which, by its terms, is secured hereby, and (3) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor to Mortgagee under documents which recite that they are intended to be secured by this Mortgage. In no event, however, shall the Indebtedness exceed \$5,600,000.

(b) "Loan Documents": The (1) Reimbursement Agreement dated December 15, 1997 (as amended from time to time, the "Reimbursement Agreement") between Mortgagee, Mortgagor, M&J Wilkow, Ltd. ("Wilkow"), Arlington Annex Limited Partnership

("Annex") (Wilkow and Annex being affiliates of Mortgagor and, with Mortgagor, sometimes collectively called "Borrower"), which Reimbursement Agreement evidences the obligation of Borrower to reimburse Mortgagee for draws made under a Letter of Credit in the amount of \$2,800,000 issued by Mortgagee to the Village of Arlington Heights, which will expire on December 15, 1999, (2) this Mortgage, (3) all other documents now or hereafter executed by Mortgagor, or any other person or entity to evidence or secure the payment of the Indebtedness or the performance of the Obligations and (4) all modifications, restatements, extensions, renewals and replacements of the foregoing. In no event shall the Loan Documents be deemed to include the Existing Loan Documents (as that term is defined in the Reimbursement Agreement).

(c) "Mortgaged Property": (1) the real property described in Exhibit A, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "Land"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements"), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "Fixtures"), (4) all right, title and interest of Mortgagor in and to all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, trademarks, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs (the "Personalty"), (5) all reserves, escrows or impounds required under the Reimbursement Agreement and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and

modifications thereof (the "Plans"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "Leases"), (8) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the "Rents"), (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Property Agreements"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (14) all of Mortgagor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

(d) "Obligations": All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor or any other person or entity to Mortgagee or others as set forth in the Loan Documents.

(e) "Permitted Encumbrances": The outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage, together with the liens and security interests in favor of Mortgagee created by the Loan Documents, none of which, individually or in the aggregate, materially interferes with the benefits intended to be provided by this Mortgage, materially and adversely affects

the value of the Mortgaged Property, impairs the use or operations of the Mortgaged Property, or impairs Mortgagor's ability to pay its obligations in a timely manner.

(f) "UCC": The Uniform Commercial Code of Illinois or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than Illinois, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE 2

GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, SELLS and CONVEYS, to Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

3.1 Title to Mortgaged Property and Lien of this Instrument. Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property.

3.2 First Lien Status. Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with such procedures as Mortgagee may reasonably require (including the requirement of providing a bond or other security satisfactory to Mortgagee).

3.3 Payment and Performance. Mortgagor shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

3.4 Replacement of Fixtures and Personalty. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Mortgagee.

3.5 Maintenance of Rights of Way, Easements and Licenses. Mortgagor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee (which shall not be unreasonably withheld), consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Mortgagor shall comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

3.6 Inspection. Mortgagor shall permit Mortgagee, and Mortgagee's agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Mortgagee may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

3.7 Insurance. Mortgagor shall maintain insurance as follows:

(a) Liability. Mortgagor shall maintain (i) commercial general liability insurance with respect to the Land providing for limits of liability of not less than \$5,000,000 for both injury to or death of a person and for property damage per occurrence, and (ii) other liability insurance as reasonably required by Mortgagee.

(b) Form and Quality. All insurance policies shall be endorsed in form and substance acceptable to Mortgagee to name Mortgagee as an additional insured, loss payee or mortgagee thereunder, as its interest may appear, with loss payable to Mortgagee, without contribution, under a standard New York (or local equivalent) mortgagee clause. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State, with

a rating of "A-IX" or better as established by Best's Rating Guide (or an equivalent rating approved in writing by Mortgagee). Each policy shall provide that such policy may not be cancelled or materially changed except upon thirty (30) days' prior written notice of intention of non-renewal, cancellation or material change to Mortgagee and that no act or thing done by Mortgagor shall invalidate any policy as against Mortgagee. If Mortgagor fails to maintain insurance in compliance with this Section 3.7, Mortgagee may obtain such insurance and pay the premium therefor and Mortgagor shall, on demand, reimburse Mortgagee for all expenses incurred in connection therewith. Mortgagor shall assign the policies or proofs of insurance to Mortgagee, in such manner and form that Mortgagee and its successors and assigns shall at all times have and hold the same as security for the payment of the Indebtedness. Mortgagor shall deliver copies of all original policies certified to Mortgagee by the insurance company or authorized agent as being true copies, together with the endorsements required hereunder. The proceeds of insurance policies coming into the possession of Mortgagee shall not be deemed trust funds, and Mortgagee shall be entitled to apply such proceeds as herein provided.

(c) **Adjustments.** Mortgagor shall give immediate written notice of any loss to the insurance carrier and to Mortgagee. Mortgagor hereby irrevocably authorizes and empowers Mortgagee, as attorney-in-fact for Mortgagor coupled with an interest, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds. Nothing contained in this Section 3.7(c), however, shall require Mortgagee to incur any expense or take any action hereunder.

3.8 **Condemnation Awards.** Mortgagor shall immediately notify Mortgagee of the institution of any proceeding for the condemnation or other taking of the Land or any portion thereof. Mortgagee may participate in any such proceeding and Mortgagor will deliver to Mortgagee all instruments necessary or required by Mortgagee to permit such participation. Without Mortgagee's prior consent, Mortgagor (1) shall not agree to any compensation or award, and (2) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or purchase in lieu of condemnation of the Land or any part thereof are hereby assigned to and shall be paid to Mortgagee. Mortgagor authorizes Mortgagee to collect and receive such awards and compensation, to give proper receipts and acquittances therefor, and in Mortgagee's sole discretion to apply the same toward the payment of the Indebtedness.

3.9 **Certain Definitions.** As used herein, the following terms have the meanings indicated:

(a) "Environmental Laws" means any federal, state or local law (whether imposed by statute, or administrative or judicial order, or common law), now or hereafter enacted, governing health, safety, industrial hygiene, the environment or natural resources, or Hazardous Materials, including, such laws governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, discharge of, or exposure to, Hazardous Materials.

(b) "Hazardous Materials" means (i) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by-product thereof, (ii) asbestos or asbestos-containing materials, (iii) polychlorinated biphenyls (pcbs), (iv) radon gas, (v) underground storage tanks, (vi) any explosive or radioactive substances, (vii) lead or lead-based paint, or (viii) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any governmental authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws.

3.10 Representations and Warranties on Environmental Matters.
To Mortgagor's knowledge, and except as may be expressly set forth in any environmental report pertaining to the Land which was obtained by Mortgagor and furnished to Mortgagee, (a) no Hazardous Material is now or was formerly used, stored, generated, manufactured, installed, disposed of or otherwise present at or about the Land, (b) all permits, licenses, approvals and filings required by Environmental Laws have been obtained, and the use, operation and condition of the Land does not, and did not previously, violate any Environmental Laws and (c) no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought or been threatened, nor have any settlements been reached by or with any parties or any liens imposed in connection with the Land concerning Hazardous Materials or Environmental Laws.

3.11 Covenants on Environmental Matters.

(a) Mortgagor shall (i) comply strictly and in all respects with applicable Environmental Laws; (ii) notify Mortgagee immediately upon Mortgagor's discovery of any spill, discharge, release or presence of any Hazardous Material at, upon, under, within, contiguous to or otherwise affecting the Land; (iii) promptly remove such Hazardous Materials and remediate the Land in full compliance with Environmental Laws and in accordance with the recommendations and specifications of an independent environmental consultant approved by Mortgagee; and (iv) promptly forward to Mortgagee copies of all orders, notices, permits, applications or other communications and reports in connection with any spill, discharge, release or the presence of any Hazardous Material or any other matters relating to the Environmental Laws or

any similar laws or regulations, as they may affect the Land or Mortgagor.

(b) Mortgagor shall not cause, shall prohibit any other person within the control of Mortgagor from causing, and shall use prudent, commercially reasonable efforts to prohibit other persons from (i) causing any spill, discharge or release, or the use, storage, generation, manufacture, installation, or disposal, of any Hazardous Materials at, upon, under, within or about the Land or the transportation of any Hazardous Materials to or from the Land, (ii) installing any underground storage tanks at the Land, or (iii) conducting any activity that requires a permit or other authorization under Environmental Laws.

(c) Mortgagor shall provide to Mortgagee, at Mortgagor's expense promptly upon the written request of Mortgagee from time to time, a site assessment or, if required by Mortgagee, an update to any existing site assessment, to assess the presence or absence of any Hazardous Materials and the potential costs in connection with abatement, cleanup or removal of any Hazardous Materials found on, under, at or within the Land. Mortgagor shall pay the cost of no more than one such site assessment or update in any twelve (12)-month period, unless Mortgagee's request for a site assessment is based on a reasonable suspicion of Hazardous Materials at or near the Land, a breach of representations under Section 3.10, or an Event of Default, in which case any such site assessment or update shall be at Mortgagor's expense.

3.12 Allocation of Risks and Indemnity. As between Mortgagor and Mortgagee, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Material at, upon, within, contiguous to or otherwise affecting the Land, shall lie solely with Mortgagor. Accordingly, Mortgagor shall bear all risks and costs associated with any loss (including any loss in value attributable to Hazardous Materials), damage or liability therefrom, including all costs of removal of Hazardous Materials or other remediation required by Mortgagee or by law. Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against all loss, liabilities, damages, claims, costs and expenses (including reasonable costs of defense) arising out of or associated, in any way, with the non-compliance with Environmental Laws, or the existence of Hazardous Materials in, on, or about the Land, or a breach of any representation, warranty or covenant contained in this Article 3, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, including those arising from the joint, concurrent, or comparative negligence of Mortgagee; however, Mortgagor shall not be liable under such indemnification to the extent such loss, liability, damage, claim, cost or expense results solely from Mortgagee's gross negligence or willful misconduct. Mortgagor's obligations under this Section 3.12 shall arise upon the discovery of the presence of any Hazardous Material, whether or not any governmental authority has taken or threatened any action in

connection with the presence of any Hazardous Material, and whether or not the existence of any such Hazardous Material or potential liability on account thereof is disclosed in a site assessment and shall continue notwithstanding the repayment of the Indebtedness or any transfer or sale of any right, title and interest in the Land (by foreclosure, deed in lieu of foreclosure or otherwise).

3.13 No Waiver. Notwithstanding any provision in this Article 3 or elsewhere in the Loan Documents, or any rights or remedies granted by the Loan Documents, Mortgagee does not waive and expressly reserves all rights and benefits now or hereafter accruing to Mortgagee under the "security interest" or "secured creditor" exception under applicable Environmental Laws, as the same may be amended. No action taken by Mortgagee pursuant to the Loan Documents shall be deemed or construed to be a waiver or relinquishment of any such rights or benefits under the "security interest exception."

3.14 Due on Sale and Encumbrance; Transfers of Interests. Without the prior written consent of Mortgagee,

(a) neither Mortgagor nor any other person having an ownership or beneficial interest in Mortgagor shall (i) directly or indirectly sell, transfer, convey, mortgage, pledge, or assign any interest in the Land or any part thereof (including any partnership or any other ownership interest in Mortgagor); (ii) further encumber, alienate, grant a lien or grant any other interest in the Land or any part thereof (including any partnership or other ownership interest in Mortgagor), whether voluntarily or involuntarily; or (iii) enter into any easement or other agreement granting rights in or restricting the use or development of the Land; and

(b) no new general partner, manager, member, or limited partner having the ability to control the affairs of Mortgagor shall be admitted to or created in Mortgagor (nor shall any existing general partner, manager or member or controlling limited partner withdraw from Mortgagor), and no change in Mortgagor's organizational documents relating to control over Mortgagor and/or the Land shall be effected.

As used in this Section 3.14, "transfer" shall include the sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of (a) the Land, (b) any partnership interest or membership interest in any general partner in Mortgagor that is a partnership or a limited liability company, and (c) any voting stock in any general partner in Mortgagor that is a corporation.

3.15 Taxes; Charges. Mortgagor shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any real estate taxes and assessments, franchise taxes and charges, and other governmental charges that

may become a lien upon the Land or become payable during the term of the Reimbursement Agreement, and will promptly furnish Mortgagee with evidence of such payment. Mortgagor shall not suffer or permit the joint assessment of the Land with any other real property constituting a separate tax lot or with any other real or personal property. Mortgagor shall pay when due all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in a lien on the Land; however, Mortgagor may contest the validity of such claims and demands so long as (a) Mortgagor notifies Mortgagee that it intends to contest such claim or demand, (b) Mortgagor provides Mortgagee with an indemnity bond or other security satisfactory to Mortgagee (including an endorsement to Mortgagee's title insurance policy insuring against such claim or demand) assuring the discharge of Mortgagor's obligations for such claims and demands, including interest and penalties, and (c) Mortgagor is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the tenth (10th) day preceding the earlier to occur of December 15, 1999 or the date on which the Land is scheduled to be sold for non-payment.

3.16 Operation; Maintenance; Inspection. Mortgagor shall observe and comply with all legal requirements applicable to the ownership, use and operation of the Land. Mortgagor shall maintain the Land in good condition and promptly repair any damage or casualty. Mortgagor shall permit Mortgagee and its agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Land and conduct such environmental and engineering studies as Mortgagee may require, provided such inspections and studies do not materially interfere with the use and operation of the Land.

3.17 Further Assurances. Mortgagor shall promptly (1) cure any defects in the execution and delivery of the Loan Documents, and (2) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Mortgagee may reasonably request to further evidence and more fully describe the collateral for the obligations under the Reimbursement Agreement, to correct any omissions in the Loan Documents, to perfect, protect or preserve any liens created under any of the Loan Documents, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith.

3.18 Indemnification. Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including the reasonable fees and actual expenses of Mortgagee's counsel, in connection with (1) any inspection, review or testing of or with respect to the Land, (2) any investigative, administrative, mediation, arbitration, or judicial proceeding, whether or not Mortgagee is designated a party

thereto, commenced or threatened at any time (including after the termination of the Reimbursement Agreement) in any way related to the execution, delivery or performance of any Loan Document or to the Land, and (3) any proceeding instituted by any person claiming a lien, including those arising from the joint, concurrent, or comparative negligence of Mortgagee, except to the extent any of the foregoing is caused by Mortgagee's gross negligence or willful misconduct.

ARTICLE 4

DEFAULT AND FORECLOSURE

Each of the following shall constitute an Event of Default under this Mortgage:

4.1 Payments. Mortgagor's failure to pay any amounts due Mortgagee under the Reimbursement Agreement.

4.2 Insurance. Mortgagor's failure to maintain insurance as required under this Mortgage.

4.3 Sale, Encumbrance, Etc. The sale, transfer, conveyance, pledge, mortgage or assignment of any part or all of the Land, or any interest therein, or of any interest in Mortgagor, in violation of this Mortgage.

4.4 Covenants. Mortgagor's failure to perform or observe any of the agreements and covenants contained in this Mortgage, the Mortgages dated August 11, 1998 and September 4, 1998 from Mortgagor to Mortgagee (which encumber property adjacent to the Land), or in any of the other Loan Documents (other than payments under Section 4.1, insurance requirements under Section 4.2, and transfers and encumbrances under Section 4.3), and the continuance of such failure for ten (10) days after notice by Mortgagee to Mortgagor; however, subject to any shorter period for curing any failure by Mortgagor as specified in any of the other Loan Documents, Mortgagor shall have an additional thirty (30) days to cure such failure if (1) such failure does not involve the failure to make payments on a monetary obligation; (2) such failure cannot reasonably be cured within ten (10) days; (3) Mortgagor is diligently undertaking to cure such default, and (4) Mortgagor has provided Mortgagee with security reasonably satisfactory to Mortgagee against any interruption of payment or impairment of collateral as a result of such continuing failure. The notice and cure provisions of this Section 4.4 do not apply to the Events of Default described in Section 4.5, Section 4.6, Section 4.7 and Section 4.8.

4.5 Representations and Warranties. Any representation or warranty made in any Loan Document proves to be untrue in any material respect when made or deemed made.

4.6 Other Encumbrances. Any default under any document or instrument, other than the Loan Documents, evidencing or creating a lien on the Land or any part thereof.

4.7 Involuntary Bankruptcy or Other Proceeding. Commencement of an involuntary case or other proceeding against Mortgagor, or any other person having an ownership or security interest in the Land (each, a "Bankruptcy Party") which seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of 60 days; or an order for relief against a Bankruptcy Party shall be entered in any such case under the Federal Bankruptcy Code.

4.8 Voluntary Petitions, etc. Commencement by a Bankruptcy Party of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts or other liabilities under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Bankruptcy Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party, or the admission by a Bankruptcy Party in writing of its inability, to pay its debts generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing.

4.9 Remedies. If an Event of Default exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Entry on Mortgaged Property. Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Mortgaged Property. Hold, lease, develop, manage, operate or otherwise use the Mortgaged

Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.15.

(d) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Mortgagor agrees that five (5) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.15.

(f) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Reimbursement Agreement either before, during or after any proceeding to enforce this Mortgage).

4.10 **Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of

any Event of Default shall not be exhausted by any one or more sales.

4.11 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Reimbursement Agreement and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

4.12 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to a consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

4.13 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

4.14 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or

recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

4.15 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses, (4) costs of advertisement, and (5) the payment of all real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold;

(b) to the payment of all amounts (including interest), other than the unpaid principal balance of amounts due under the Reimbursement Agreement and accrued but unpaid interest, which may be due to Mortgagee under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

4.16 Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to Section 4.9(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

4.17 Additional Advances and Disbursements; Costs of Enforcement.

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 4.17, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear

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interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate of 12% per annum("Default Rate"), and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

4.18 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 5

ASSIGNMENT OF RENTS AND LEASES

5.1 Assignment. Mortgagor hereby assigns to Mortgagee, as further security for the Indebtedness and the Obligations, the Leases and Rents. While any Event of Default exists, Mortgagee shall be entitled to exercise any or all of the remedies provided in Article 4 hereof, including the right to have a receiver appointed.

5.2 No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

ARTICLE 6

SECURITY AGREEMENT

6.1 Security Interest. This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures,

Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least five (5) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

6.2 Financing Statements. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor's chief executive office is in the State of Illinois at the address set forth in the first paragraph of this Mortgage.

6.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

ARTICLE 7

MISCELLANEOUS

7.1 Notices. Any notice required or permitted to be given under this Mortgage shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, personal delivery or otherwise as provided in this Section 7.1). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth on the first page of this Mortgage. Any communication so addressed and mailed shall be deemed to be given on the earliest of (a) when actually received (b) on the first business day after deposit with an overnight air courier service, or (c) on the third business day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be

deemed to be given when receipted for by, or actually received by, Mortgagee or Mortgagor, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to Mortgagor's telecopy number (312-726-0468) or to Mortgagee's telecopy number (312-663-0902) and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next business day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 7.1. Any party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

7.2 Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Reimbursement Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

7.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person

or entity for any failure to take any action which it is empowered to take under this Section.

7.4 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

7.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

7.6 Subrogation. To the extent Mortgagee advances funds which have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

7.7 Reimbursement Agreement. If any conflict or inconsistency exists between this Mortgage and the Reimbursement Agreement, the Reimbursement Agreement shall govern.

7.8 Release. Upon payment in full of the Indebtedness and performance in full of the Obligations, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage.

7.9 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

7.10 Obligations of Mortgagor, Joint and Several. If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

7.11 Governing Law. This Mortgage shall be governed by the laws of the State of Illinois.

7.12 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in

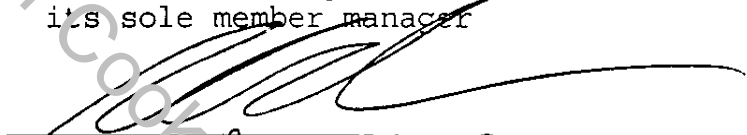
no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

7.13 **Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

EXECUTED as of the date first above written.

ARLINGTON, LLC
an Illinois limited liability company

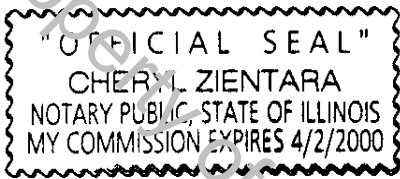
By: M&J Wilkow Properties, Inc.,
an Illinois corporation and
its sole member manager

By: 
Its- MARC P WILKOW- PRESIDENT

THE STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

This instrument was acknowledged before me on May 19, 1999 by MARC R. WILKOW, PRESIDENT of M&J Wilkow Properties, Inc., an Illinois corporation and sole member manager of the mortgagor, Arlington, LLC, an Illinois limited liability company, on behalf of said Arlington, LLC.

Cheryl Zientara
Notary Public, State of Illinois



Office of Cook County Clerk's Office

EXHIBIT "A"

LEGAL DESCRIPTIONS

Parcel 1:

THE ATTACHED SCHEMATIC OF THE PROPERTY IS ATTACHED TO THIS INSTRUMENT.
The North 100.00 feet of the South 750.53 feet of the East 375.00 feet of that part of the West half of the Southeast quarter of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, except that part which is described as follows, to wit: The North 88.00 feet of the South 738.53 feet of the East 155.00 feet (except that part thereof taken for the widening of Arlington Heights Road) of the West half of the Southwest quarter of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, all located in Cook County, Illinois.

Parcel 6:

SIGNATURE BY EITHER THE PRESIDENT, VICE PRESIDENT, THE SECRETARY, OR
THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 42 NORTH,
RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE CENTER LINE OF
RAND ROAD DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE CENTER LINE OF RAND
ROAD THAT IS 225 FEET NORTHWESTERLY OF THE INTERSECTION OF CENTER LINE OF SAID
ROAD WITH EAST LINE OF SAID WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17, SAID
INTERSECTION BEING 936.53 FEET NORTH OF THE SOUTH LINE OF SAID SECTION; THENCE
NORTHWESTERLY ALONG THE CENTER LINE OF SAID ROAD 150 FEET; THENCE SOUTHWESTERLY
551.58 FEET TO A POINT THAT IS 775 FEET NORTH OF THE SOUTH LINE AND 647.76 FEET
WEST OF THE EAST LINE OF SAID WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17; THENCE
EAST PARALLEL TO THE SOUTH LINE OF SAID SECTION, 201.13 FEET FEET; THENCE
NORTHEASTERLY 417.59 FEET MORE OR LESS TO POINT OF BEGINNING, EXCEPT THE
NORTHWESTERLY 25 FEET THEREOF, IN COOK COUNTY, ILLINOIS, (EXCEPT THAT PART TAKEN
FOR ROAD PURPOSES).