

Pelham, AL

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RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:
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Chicago, Illinois 60603

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MORTGAGE, ASSIGNMENT OF LEASES AND
RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

Dated as of April 28, 1988

between

WICKES LUMBER COMPANY

and

GENERAL ELECTRIC CAPITAL CORPORATION

BOOK 197 PAGE 719

BOOK 184 PAGE 604

THIS INSTRUMENT IS A MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT OF BOTH REAL AND PERSONAL PROPERTY, INCLUDING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN, AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES OF REAL ESTATE ARE RECORDED. TO THE EXTENT THE COLLATERAL IS SITUATED IN THE STATE OF GEORGIA, THIS MORTGAGE SHALL BE DEEMED TO BE A DEED TO SECURE DEBT, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT AND, TO THE EXTENT THE COLLATERAL IS SITUATED IN THE STATE OF OHIO, THIS MORTGAGE SHALL BE DEEMED TO BE AN OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT. ADDITIONALLY, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE, BUT ALSO AS A FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE MORTGAGOR (DEBTOR) AND MORTGAGEE (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT. THIS INSTRUMENT SECURES PAYMENT OF FUTURE ADVANCES AND CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS.

THIS MORTGAGE IS BEING RE-RECORDED TO CORRECT THE LEGAL DESCRIPTION HEREIN.

Ad A

MORTGAGE, ASSIGNMENT OF LEASES
AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT (herein sometimes called "Mortgage") is made as of April 28, 1988 by and between: WICKES LUMBER COMPANY, a corporation duly organized and validly existing under the laws of the State of Delaware (herein, together with its successors and assigns, the "Mortgagor") and having its office at 706 Deerpath Drive, Vernon Hills, Illinois 60061, and GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation (herein, together with its successors and assigns, called the "Mortgagee") having an office at 1020 Marsh Road, Suite 200, Menlo Park, California 94025.

R E C I T A L S

A. Loan Agreement, Revolving Credit Notes, Term Notes and Fixed Rate Note. Pursuant to a certain Loan Agreement dated of even date herewith (herein, as the same may be amended, supplemented, revised or restated from time to time, called the "Loan Agreement") by and between the Mortgagor and the Mortgagee, the Mortgagor has executed and delivered to the Mortgagee the following notes, each payable in lawful money of the United States of America: (i) that certain Revolving Credit Note of even date herewith (herein, such Revolving Credit Note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof, shall be called the "Revolving Note"), made payable to the order of Mortgagee in the principal amount of \$185,000,000, which note is due and payable in full if not sooner paid on or before May 1, 1996, subject to acceleration as set forth in the Loan Agreement, bearing interest as provided in the Revolving Note on the principal amount thereof from time to time outstanding; (ii) that certain Term Note of even date herewith (herein, such Term Note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof, shall be called the "Term Note"), made payable to the order of Mortgagee in the principal amount of \$100,000,000, which note is due and payable in full if not sooner paid on or before May 1, 1996, subject to acceleration as provided in the Loan Agreement, bearing interest as provided in the Term Note on the principal amount thereof from time to time outstanding; and (iii) that certain Fixed Rate Note of even date herewith (herein, such Fixed Rate Note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or

extension thereof shall be called the "Fixed Rate Note"), made payable to the order of Mortgagee in the principal amount of \$20,000,000, due and payable in full if not sooner paid on or before May 1, 1996, subject to acceleration as provided in the Loan Agreement, bearing interest as provided in the Fixed Rate Note on the principal amount thereof from time to time outstanding. (The Revolving Credit Note, the Term Note and the Fixed Rate Note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof are herein sometimes collectively called the "Notes.") The Mortgagor is or will become justly indebted to Mortgagee in the amounts evidenced by the Notes (the "Loan Amounts") in accordance with the terms of the Notes and the Loan Agreement.

B. Related Documents. Any and all loan agreements (including, without limitation, the Loan Agreement), the Notes, the Security Agreement, the Non-Recourse Guaranty and Pledge Agreement, the Trademark Assignment and any other documents and instruments executed and delivered by or for the benefit of the Mortgagor, whether pursuant to the terms of the Loan Agreement or otherwise, in connection with the Notes or security therefor, or for the purpose of supplementing or amending all or any of the foregoing, all of which, as the same may be amended, modified or supplemented from time to time, are hereinafter referred to as the "Related Documents." (The capitalized terms used but not defined in this Recital B are defined in the Loan Agreement and shall have the same meanings herein as provided therein.)

C. The Liabilities. As used in this Mortgage, the term "Liabilities" means and includes all of the following: all obligations of the Mortgagor to the Mortgagee and its successors and assigns under or in connection with the Loan Agreement, any of the Notes, the Related Documents or any other agreement or instrument executed pursuant to the Loan Agreement, all of the covenants, obligations and agreements (and the truth of all representations and warranties by Mortgagor) in, under or pursuant to the Notes, the Loan Agreement, this Mortgage, and the Related Documents; all advances, costs or expenses paid or incurred by the Mortgagee to protect any or all of the Collateral (hereinafter defined) and other collateral under the Related Documents, or to perform any obligation of the Mortgagor hereunder and any obligation of the Mortgagor under the Loan Agreement or Related Documents or to collect any amount owing to the Mortgagee which is secured hereby or under the Related Documents; and all costs of enforcement and collection of this Mortgage, the Related Documents, and the Liabilities, provided, however, that in no event shall the Liabilities exceed \$610,000,000.

To the extent the applicable portion of the Premises (hereinafter defined) is situated in the State of Ohio, the term "Liabilities" includes, but is not limited to, taxes, assessments, insurance premiums or costs incurred for the protection of the Premises (hereinafter defined) as authorized by Ohio Revised Code Section 5301.233 and includes all advances or payments authorized by Ohio Revised Code Section 1311.14.

To the extent the applicable portion of the Premises (hereinafter defined) is situated in the State of Florida, and for purposes of this Mortgage in the State of Florida, the term "Liabilities" is limited to the obligations of Mortgagor and its successors and assigns for payment of all principal and interest due under the Term Note and the Fixed Rate Note, all other obligations pursuant to the Loan Agreement, this Mortgage and the Related Documents, other than payment of the Revolving Credit Note, and all future advances secured hereby pursuant to Section 4.18(d) hereof.

To the extent the applicable portion of the Premises (hereinafter defined) is situated in the State of Alabama and for purposes of this Mortgage in the State of Alabama, the term "Liabilities" is limited to the obligations of Mortgagor and its successors and assigns for payment of all principal and interest due under the Term Note and the Fixed Rate Note, all other obligations pursuant to the Loan Agreement, this Mortgage and the Related Documents, other than payment of the Revolving Credit Note, and all future advances secured hereby pursuant to Section 4.18(e) hereof.

D. The Collateral. For purposes of this Mortgage, the term "Collateral" means and includes all right, title and interest of the Mortgagor, in and to all of the following:

(i) Real Estate. All of the land described on Exhibit A attached hereto (the "Land"), together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest of the Mortgagor in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any

of the foregoing (all of the foregoing is herein referred to collectively as the "Real Estate");

(ii) Improvements and Fixtures. All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate and owned or purported to be owned by the Mortgagor, together with all building or construction materials, equipment, appliances, machinery, plant equipment, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate and owned or purported to be owned by the Mortgagor, including (without limitation) all motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment (all of the foregoing is herein referred to collectively as the "Improvements");

(iii) Personal Property. All furniture, furnishings, equipment (including, without limitation, telephone and other communications equipment, window cleaning, building cleaning, monitoring, garbage, air conditioning, pest control and other equipment) and all other tangible property of any kind or character now or hereafter owned or purported to be owned by the Mortgagor and used or useful in connection with the Real Estate, regardless of whether located on the Real Estate or located elsewhere including, without limitation, all rights of the Mortgagor under any Lease (hereinafter defined) to furniture, furnishings, fixtures and other items of personal property at any time during the term of such Lease, and all rights under and to all payments and deposits required by the provisions of Section 1.20 of Article I below (all of the foregoing is herein referred to collectively as the "Goods");

(iv) Intangibles. All goodwill, trademarks, trade names, option rights, purchase contracts, books and records and general intangibles of the Mortgagor relating to the Real Estate or the Improvements and all accounts, contract rights, instruments, chattel paper and other rights of the Mortgagor for payment of money to it for property sold or lent by it, for services rendered by it, for money lent by it, or for advances or deposits made by it, and any other intangible property of the Mortgagor related to the Real Estate or the Improvements and, if this is a leasehold mortgage, the Mortgagor's right of election under the Federal Bankruptcy Code, as amended from time to time, or any replacement therefor, in the event that the lessor or landlord under the Ground Lease (as defined in Exhibit A hereto if this is a leasehold Mortgage) is a debtor

thereunder and rejects this lease (all of the foregoing is herein referred to collectively as the "Intangibles");

(v) Rents. All rents, issues, profits, royalties, avails, income and other benefits derived or owned by the Mortgagor directly or indirectly from the Real Estate or the Improvements (all of the foregoing is herein collectively called the "Rents");

(vi) Leases. All rights of the Mortgagor under all leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money to the Mortgagor or any consideration for the use, possession or occupancy of, or any estate in, the Real Estate or the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing is herein referred to collectively as the "Leases");

(vii) Plans. All rights of the Mortgagor, if any, to plans and specifications, designs, drawings and other matters prepared in connection with the Real Estate (all of the foregoing is herein called the "Plans");

(viii) Contracts for Construction or Services. All rights of the Mortgagor, if any, under any contracts executed by the Mortgagor as owner with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Real Estate or the Improvements, including any architect's contract (all of the foregoing is herein referred to collectively as the "Contracts for Construction");

(ix) Contracts for Sale or Financing. All rights of the Mortgagor, if any, as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has, with the prior written consent of the Mortgagee, obtained the agreement of any person to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Collateral or any part thereof (all of the foregoing is herein referred to collectively as the "Contracts for Sale"); and

(x) Other Property. All other property or rights of the Mortgagor of any kind or character related to the Real Estate or the Improvements, and all proceeds (including insurance and condemnation proceeds) and products of any of

the foregoing. (All of the Real Estate and the Improvements, and any other property which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises".)

G R A N T

BOOK 197 PAGE 725
NOW THEREFORE, for and in consideration of the Mortgagee's making any loan, advance or other financial accommodation to or for the benefit of the Mortgagor, including sums advanced under the Notes, and in consideration of the various agreements contained herein, in the Notes, the Loan Agreement and any other Related Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, and in order to secure the full, timely and proper payment and performance of each and every one of the Liabilities,

BOOK 184 PAGE 610
THE MORTGAGOR HEREBY MORTGAGES, WARRANTS, CONVEYS, TRANSFERS AND ASSIGNS TO THE MORTGAGEE, AND GRANTS TO THE MORTGAGEE, AND ITS SUCCESSORS AND ASSIGNS FOREVER A CONTINUING SECURITY INTEREST IN AND TO, ALL OF THE COLLATERAL, AND TO THE EXTENT THE APPLICABLE PORTION OF THE COLLATERAL IS SITUATED IN THE STATE OF GEORGIA, THE MORTGAGOR HEREBY GRANTS, BARGAINS, SELLS, ALIENS, CONVEYS AND CONFIRMS UNTO THE MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER ALL OF THE COLLATERAL,

BOOK 184 PAGE 610
TO HAVE AND TO HOLD the Premises unto the Mortgagee, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the state or other jurisdiction in which the Real Estate is located providing for the exemption of homesteads from sale on execution or otherwise.

The Mortgagor hereby covenants with and warrants to the Mortgagee and with the purchaser at any foreclosure sale: that at the execution and delivery hereof it is well seized of the Premises, and of a good, indefeasible estate therein, in fee simple or leasehold, as indicated on Exhibit A; that the Collateral is free from all encumbrances whatsoever (and any claim of any other person thereto) other than the security interest granted to the Mortgagee herein and pursuant to the Related Documents and the encumbrances set forth in the title insurance policy insuring this Mortgage in favor of the Mortgagee (the "Permitted Exceptions"); that it has good and lawful right to sell, mortgage and convey the Collateral; and that it and its successors and assigns will forever warrant and defend the Collateral against all claims and demands whatsoever. If this

Mortgage is a leasehold mortgage, the Mortgagor further covenants and warrants that the Ground Lease is the valid, binding and legal obligation of the parties thereto, is enforceable in accordance with its terms, is in full force and effect and has not been amended or modified in any way (except for the amendments and modifications contained in the instruments included in the definition of "Ground Lease" as more particularly set forth in Exhibit A); that no material default has occurred under the Ground Lease and no event has occurred which with the passage of time or giving of notice or both could ripen into a material default; that the Mortgagor took possession of the Premises as contemplated by the Ground Lease and has since been in continuous, uninterrupted possession of the Premises; and that the Mortgagor and its successors and assigns will forever warrant and defend the same against all claims and demands whatsoever.

I. COVENANTS AND AGREEMENTS OF THE MORTGAGOR

Further to secure the payment and performance of the Liabilities, the Mortgagor hereby covenants, warrants and agrees with the Mortgagee as follows:

1.1. Payment of Liabilities. The Mortgagor agrees that it will pay, timely and in the manner required in the appropriate documents or instruments, all amounts due under the Notes and all other Liabilities (including fees and charges). All sums payable by the Mortgagor hereunder shall be paid without demand, counterclaim, offset, deduction or defense. The Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

1.2. Payment of Taxes. The Mortgagor will pay or cause to be paid before delinquent all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith, and will pay before due any tax or other charge on the interest or estate in lands created or represented by this Mortgage or by any of the Related Documents, whether levied against the Mortgagor or the Mortgagee or otherwise, and will submit to the Mortgagee all receipts showing payment of all of such taxes, assessments and charges; provided, however, that the Mortgagor shall not (unless otherwise required by law) be required to pay any such taxes, assessments, levies, claims, charges, expenses or liens which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established and are being maintained in accordance with generally accepted accounting

principles. The Mortgagor's making any payments and deposits required by the provisions of Section 1.20 of this Article I shall not relieve the Mortgagor of, or diminish in any way, its obligations as set out in this Section 1.2.

BOOK 197 PAGE 727
184 PAGE 612
BOOK 197 PAGE 727
1.3. Maintenance and Repair. Except as set forth in the Loan Agreement, the Mortgagor will: not abandon the Premises; not do or suffer anything to be done which would depreciate or impair the value of the Collateral or the security of this Mortgage; not remove or demolish any material portion of the Improvements; pay promptly for all labor and materials for all construction, repairs and improvements to or on the Premises; not make any material changes, additions or alterations to the Premises or the Improvements except as required by any applicable governmental requirement or as otherwise approved in writing by the Mortgagee; maintain, preserve and keep the Goods and the Improvements in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction; promptly restore and replace any of the material Improvements or Goods which are destroyed or damaged; not commit, suffer, or permit waste of any part of the Premises; and maintain all grounds and abutting streets and sidewalks in good and neat order and repair.

BOOK 184 PAGE 612
1.4. Sales; Liens. Except as permitted under the Loan Agreement, the Mortgagor will not: sell, contract to sell, assign, transfer or convey, or permit to be transferred or conveyed, the Collateral or any part thereof or any interest or estate in any thereof (including any conveyance into a trust or any conveyance of the beneficial interest in any trust that may be holding title to the Premises) or remove any of the Collateral from the Premises or from the state in which the Real Estate is located; or create, suffer or permit to be created or to exist any mortgage, lien, claim, security interest, charge, encumbrance or other right or claim of any kind whatsoever upon the Collateral or any part thereof, except those of current taxes not delinquent or being contested in good faith as provided above, the Permitted Exceptions, mechanics' liens being diligently contested in good faith and with security satisfactory to the Mortgagee such as a bond or title indemnity. Notwithstanding the foregoing, Mortgagor shall not be required to have insured or bonded over mechanic liens which are included as part of the Permitted Exceptions in the Loan Agreement.

1.5. Access by Mortgagee. The Mortgagor will at all times: deliver to the Mortgagee either all of its executed originals (in the case of chattel paper or instruments) or certified copies (in all other cases) of all leases, agreements creating or evidencing Intangibles, Plans, Contracts for

BOOK 197 PAGE 728
Construction, Contracts for Sale, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Collateral; permit access by the Mortgagee to its books and records, construction progress reports, tenant registers, sales records, offices, insurance policies and other papers for examination and the making of copies and extracts; prepare such schedules, summaries, reports and progress schedules as the Mortgagee may reasonably request; and permit the Mortgagee and its agents and designees, at all times, to enter on and inspect the Premises.

BOOK 184 PAGE 613
1.6. Stamp and Other Taxes. If the Federal, or any state, county, local, municipal or other, government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any income tax on the Mortgagee's receipt of interest payments on the principal portion of the Loan Amounts), assessment or imposition upon this Mortgage, the Notes, any of the other Liabilities, or any of the Related Documents, the interest of the Mortgagee in the Collateral, or any of the foregoing, or upon the Mortgagee by reason of or as holder of any of the foregoing, or shall at any time or times require revenue stamps to be affixed to this Mortgage, the Notes, or any of the Related Documents, the Mortgagor shall pay all such taxes and stamps to or for the Mortgagee as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits the Mortgagor from paying the tax, assessment, stamp, or imposition to or for the Mortgagee, then such event shall constitute a Default (hereinafter defined) hereunder and all sums hereby secured shall become immediately due and payable at the option of the Mortgagee; provided, however, that Mortgagor may elect instead to prepay a portion of Notes in an amount equal to the value of the Collateral, and in such case Mortgagee shall not have a right to declare a Default hereunder.

1.7. Insurance. The Mortgagor will at all times maintain or cause to be maintained on the Goods, the Improvements and on all other Collateral, all insurance reasonably required at any time or from time to time by the Mortgagee under the terms of the Loan Agreement, including, without limitation, all insurance commonly or, in the reasonable judgment of the Mortgagee, prudently maintained by those whose business, improvement to, and use of real estate is similar to that of the Mortgagor. All such policies shall name Mortgagee as an additional insured and shall contain standard non-contributory mortgagee and loss payable clauses satisfactory to the Mortgagee, and clauses providing for not less than 30 days' prior written notice to the Mortgagee of cancellation or modification of such policies, attached thereto in favor of the Mortgagee, its successors and assigns. Subject

to the rights of the lessor or landlord under the Ground Lease, if any, the Mortgagor agrees that any loss paid to the Mortgagee under any of such policies shall be applied, at the option of the Mortgagee, toward pre-payment of the Notes or any of the Liabilities, or to the rebuilding or repairing of the damaged or destroyed Improvements or other Collateral, as the Mortgagee in its sole and unreviewable discretion may elect (which election shall not relieve the Mortgagor of the duty to rebuild or repair); provided, however, that any proceeds of insurance shall be made available to the extent required for the rebuilding or repairing of the damaged or destroyed Improvements or other Collateral under the following conditions:

(i) no Default or event which, with the lapse of time, the giving of notice, or both, would constitute a Default, under this Mortgage or the Related Documents shall have occurred or be continuing (and if such an event shall occur during restoration, the Mortgagee may, at its election, apply any insurance proceeds then remaining in its hands to the reduction of the indebtedness evidenced by the Notes and the other Liabilities);

(ii) the Mortgagor shall have submitted to the Mortgagee plans and specifications for the restoration which shall be reasonably satisfactory to it, which plans and specifications shall not be substantially modified, changed or revised without the Mortgagee's prior written consent and shall be in conformity with all governmental regulations, including, without limitation, building, zoning, land use and environmental regulations;

(iii) the Mortgagor, if so requested by the Mortgagee, shall have submitted to the Mortgagee fixed price contracts with good and responsible contractors and materialmen covering all work and materials necessary to complete restoration and providing for a total completion price not in excess of the amount of insurance proceeds available for restoration, or, if a deficiency shall exist, the Mortgagor shall have deposited the amount of such deficiency with the Mortgagee;

(iv) any insurance proceeds in excess of \$3,000,000 may, at the option of the Mortgagee, be held by Mortgagee and disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements may, at the Mortgagee's option, be made directly to the Mortgagor or to or through any contractor or materialman to whom payment is due or to or through a construction escrow to be maintained by a title insurer acceptable to the Mortgagee;

BOOK 197 PAGE 730

BOOK 184 PAGE 615

(v) the Mortgagee may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien;

(vi) all title insurance charges and other costs and expenses paid to or for the account of the Mortgagor in connection with the release of such insurance proceeds shall constitute so much additional indebtedness hereby secured to be payable upon demand with interest thereafter at the rate applicable to the Fixed Rate Loan (as defined in the Loan Agreement) whether or not the Fixed Rate Loan is then outstanding (the "Default Rate"). The Mortgagee may deduct any such costs and expenses from insurance proceeds at any time standing in its hands;

(vii) if the Mortgagor fails to complete restoration within a reasonable time, the Mortgagee shall have the right, but not the obligation, to restore or rebuild the Improvements and the other Collateral, or any part thereof, for or on behalf of the Mortgagor in lieu of applying said proceeds to the indebtedness hereby secured and for such purpose may do all necessary acts, including using funds deposited by the Mortgagor as aforesaid and advancing additional funds for the purpose of restoration, all such additional funds to constitute part of the indebtedness hereby secured payable upon demand with interest at the Default Rate.

The Mortgagor may settle, compromise and adjust any and all claims or rights under any insurance policy maintained by the Mortgagor relating to the Collateral unless a Default has occurred hereunder in which case Mortgagee may settle, compromise and adjust any and all such claims or rights. In the event of foreclosure of this Mortgage or other transfer of title to the Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. Nothing contained in this Mortgage shall create any responsibility or obligation on the Mortgagee to collect any amounts owing on any insurance policy or resulting from any condemnation, to rebuild or replace any damaged or destroyed Improvements or other Collateral or to perform any other act hereunder. The Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment

or defense of lawsuits, and the Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

1.8. Eminent Domain. The rights of the Mortgagee under this Section 1.8 are subject to the rights of the lessor or landlord set forth in the Ground Lease, if any. In case a material portion of the Collateral is taken by condemnation, the Mortgagee is hereby empowered to collect and receive all compensation and awards of any kind whatsoever (referred to collectively herein as "Condemnation Awards") which may be paid for any property taken or for damages to any property not taken (all of which the Mortgagor hereby assigns to the Mortgagee), and all Condemnation Awards so received shall be forthwith applied by the Mortgagee, as it may elect in its sole and unreviewable discretion, to the prepayment of the Notes or any of the Liabilities, or to the repair and restoration of any property not so taken or damaged; provided, however, that any Condemnation Awards payable by reason of the taking of less than all of the Collateral shall be made available to the extent required for the repair or restoration of any Collateral not so taken under the conditions set forth in Section 1.7 hereof. The Mortgagor may settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Collateral or any portion thereof unless a Default has occurred hereunder in which case Mortgagee shall have the right to settle, compromise and adjust such claims or rights.

1.9. Governmental Requirements. The Mortgagor will at all times fully comply with, and cause the Collateral and the use and condition thereof fully to comply with, all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate to the Mortgagor or the Collateral or the use thereof, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, construction, access, water rights and use, noise and pollution) which are applicable to the Mortgagor or have been granted for the Collateral or the use thereof; provided, however that failure to observe or comply with any of the foregoing shall not be a default hereunder if such failure does not impair the lien of this Mortgage or materially impair the value or use of the Collateral. Unless required by applicable law, or unless Mortgagee has otherwise first agreed in writing, the Mortgagor shall not make or allow any changes to be made in the nature of the occupancy or use of the Premises or any portion thereof for which the Premises or such portion was intended at the time this Mortgage was delivered. The Mortgagor

shall not initiate or acquiesce in any material change in any zoning or other land use classification now or hereafter in effect and affecting the Premises or any part thereof without in each case obtaining the Mortgagee's prior written consent thereto, which consent will not be unreasonably withheld if the value of the Premises is not in the opinion of the Mortgagee reduced thereby. Notwithstanding the foregoing, the Mortgagor shall have the right to diligently contest any such governmental requirement so long as the contest is in good faith and by appropriate proceedings, and for which adequate reserves have been established and are being maintained in accordance with generally accepted accounting principles.

1.10. No Mechanics' Liens. Except to the extent permitted under the Loan Agreement, the Mortgagor will not do or permit to be done any act or thing, and no person shall have any right or power to do any act or thing, whereby any mechanics' or other construction lien under the laws of the state where the Premises are located can arise against or attach to the Premises or any part thereof unless such lien shall first be wholly waived as against this Mortgage. In addition, it is further expressly made a covenant and condition hereof that the lien of this Mortgage shall extend to all right, title and interest of the Mortgagor in any and all improvements and fixtures now or hereafter on the Premises, prior to any other lien thereon that may be claimed by any person, so that subsequently accruing claims for lien on the Premises shall be junior and subordinate to this Mortgage. All contractors, subcontractors, and other parties dealing with the Premises, or with any parties interested therein, are hereby required to take notice of the above provisions.

1.11. Continuing Priority. The Mortgagor will: pay such fees, taxes and charges, execute and file (at the Mortgagor's expense) such financing statements, obtain such acknowledgements or consents, notify such obligors or providers of services and materials and do all such other acts and things as the Mortgagee may from time to time request to establish and maintain a valid and perfected first and prior lien on and security interest in the Collateral; keep all tangible Collateral on the Real Estate except as the Mortgagee may otherwise consent in writing and except for the sale of inventory in the ordinary course of business; make notations on its books and records sufficient to enable the Mortgagee, as well as third parties, to determine the interest of the Mortgagee hereunder; and not collect any rents or the proceeds of any of the Leases or Intangibles more than 30 days before the same shall be due and payable except as the Mortgagee may otherwise consent in writing.

1.12. Utilities. The Mortgagor will pay or cause to be paid all utility charges incurred in connection with the Collateral promptly when due and maintain all utility services available for use at the Premises.

1.13. Contract Maintenance; Other Agreements; Leases. The Mortgagor will, for the benefit of the Mortgagee, fully and promptly keep, observe, perform and satisfy each obligation, condition, covenant, and restriction of the Mortgagor affecting the Premises or imposed on it under any agreement between Mortgagor and a third party relating to the Collateral or the Liabilities secured hereby, including, without limitation, the Permitted Exceptions, the Leases, the Contracts for Sale, Contracts for Construction, the Intangibles and the Ground Lease, if any (collectively, the "Third Party Agreements"), so that there will be no default thereunder and so that the persons (other than the Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Mortgagee; and the Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such person to avoid such performance or exercise its remedies thereunder. Except to the extent permitted under the Loan Agreement, without the prior written consent of the Mortgagee, the Mortgagor shall not (i) make or permit any termination or amendment of the rights or obligations of the Mortgagor under any Third Party Agreement except for terminations or amendments which are subordinate to this Mortgage and which do not materially reduce the value or use of the Collateral; (ii) collect rents or the proceeds of any Leases or Intangibles more than 30 days before the same shall be due and payable; (iii) modify or amend any Lease or the Ground Lease, if any, or, except where the lessee is in default, cancel or terminate the same or accept a surrender of the leased premises; (iv) consent to the assignment or subletting of the whole or any portion of any lessee's interest under any Lease or the Ground Lease, if any, or grant any options to renew; (v) create or permit any lien or encumbrance which, upon foreclosure, would be superior to any Lease or the Ground Lease, if any; (vi) in any other manner impair Mortgagee's rights and interest with respect to the Rents or the Ground Lease, if any; or (vii) modify or amend any Permitted Exception or increase any liabilities or obligations outstanding thereunder. The Mortgagor shall promptly deliver to the Mortgagee copies of any demands or notices of default received by the Mortgagor in connection with any Third Party Agreement and allow the Mortgagee the right, but not the obligation, to cure any such default. In addition, if this Mortgage is a leasehold mortgage, the Mortgagor shall give, concurrently with the giving thereof or promptly upon receipt, as the case may be, copies of all notices that the Mortgagor sends or receives with respect to the Ground Lease. All security or

other deposits, if any, received from tenants under the Leases shall be segregated and maintained in a separate escrow account satisfactory to Mortgagee and in compliance with the law of the state where the Premises are located. If this is a leasehold mortgage, the Mortgagor's making any payments and deposits required by the provisions of Section 1.20 of this Article I shall not relieve the Mortgagor of, or diminish in any way, its obligations with respect to payment of all amounts due under the Ground Lease as set out in this Section 1.13.

1.14. Notify the Mortgagee of Default. The Mortgagor shall notify the Mortgagee in writing forthwith upon learning of the occurrence of any Default or other event which, upon the giving of notice or the passage of time or both, would constitute a Default, which notice shall describe such Default and the steps being taken by the Mortgagor with respect thereto.

1.15. No Assignments; Future Leases. Except as permitted under the Loan Agreement, the Mortgagor will not cause or permit any Rents, Leases, Contracts for Sale, or other contracts relating to the Premises to be assigned, transferred, conveyed, pledged or disposed of to any party other than the Mortgagee without first obtaining the express written consent of the Mortgagee to any such assignment or permit any such assignment to occur by operation of law. In addition, except as permitted in the Loan Agreement, the Mortgagor shall not cause or permit all or any portion of or interest in the Premises or the Improvements to be leased (that word having the same meaning for purposes hereof as it does in the law of landlord and tenant) directly or indirectly to any person, except with the prior written consent of the Mortgagee and, if granted, under Leases approved in writing by the Mortgagee.

1.16. Assignment of Leases and Rents and Collections.

(a) All of the Mortgagor's interest in and rights under the Leases now existing or hereafter entered into, and all of the Rents, whether now due, past due, or to become due, and including all prepaid rents and security deposits, and all other amounts due with respect to any of the other Collateral, are hereby absolutely, presently and unconditionally assigned and conveyed to the Mortgagee to be applied by the Mortgagee in payment of all sums due under the Notes, the Liabilities and all other sums payable under this Mortgage. Prior to the occurrence of any Default, the Mortgagor shall have a license to collect and receive all Rents and other amounts, which license shall be terminated at the sole option of the Mortgagee, without regard to the adequacy of its security hereunder and without notice to or demand upon the Mortgagor, upon the occurrence of any Default. It is understood and agreed that neither the foregoing assignment

to the Mortgagee nor the exercise by the Mortgagee of any of its rights or remedies under Article IV hereof shall be deemed to make the Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or any portion thereof, unless and until the Mortgagee, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Collateral by any court at the request of the Mortgagee or by agreement with the Mortgagor, or the entering into possession of any part of the Collateral by such receiver, be deemed to make the Mortgagee a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof. Upon the occurrence of any Default, this shall constitute a direction to and full authority to each lessee under any Lease, each guarantor of any Lease and any other person obligated under any of the Collateral to pay all Rents and other amounts to the Mortgagee without proof of the Default relied upon. The Mortgagor hereby irrevocably authorizes each such person to rely upon and comply with any notice or demand by the Mortgagee for the payment to the Mortgagee of any Rents and other amounts due or to become due.

(b) The Mortgagor shall at all times fully perform the obligations of the lessor under all Leases. The Mortgagor shall at any time or from time to time, upon request of the Mortgagee, transfer and assign to the Mortgagee in such form as may be satisfactory to the Mortgagee, the Mortgagor's interest in the Leases, subject to and upon the condition, however, that prior to the occurrence of any Default hereunder the Mortgagor shall have a license to collect and receive all Rents under such Leases upon accrual, but not prior thereto, as set forth in paragraph (a) above.

(c) The Mortgagee shall have the right to assign the Mortgagee's right, title and interest in any Leases to any subsequent holder of this Mortgage or any participating interest therein or to any person acquiring title to all or any part of the Collateral through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to the Mortgagee. Upon the occurrence of any Default, the Mortgagee shall have the right to execute new leases of any part of the Collateral, including leases that extend beyond the term of this Mortgage. The Mortgagee shall have the authority, as the Mortgagor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of the Mortgagor and to bind the Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Collateral.

(d) To the extent the applicable portion of the Premises is situated in the State of New York, reference is made to section 291-f of the Real Property Law of the State of New York in applying the provisions of this Section 1.16 and Section 1.13. Mortgagor will deliver to the lessees under each Lease notices, in form and substance satisfactory to the Mortgagee's special counsel, pursuant to section 291-f of the Real Property Law. Mortgagor shall request each lessee under each Lease to whom any notice is sent pursuant to this paragraph to acknowledge receipt of such notice. Mortgagor shall promptly deliver to Mortgagee a copy of each such acknowledgement or receipt which it is able to obtain. Mortgagee shall not be responsible for securing or causing Mortgagor to secure any such acknowledgment.

(e) To the extent the applicable portion of the Premises is situated in the State of Michigan, the Mortgagee shall be entitled to all of the rights and benefits conferred by Act No. 210 of the Michigan Public Acts of 1953 as amended by Act No. 151 of the Michigan Public Acts of 1966 (MCLA 554.231 et seq.), and Act No. 228 of the Michigan Public Acts of 1925 as amended by Act No. 55 of the Michigan Public Acts of 1933 (MCLA 554.211 et seq.).

1.17. The Mortgagee's Performance. If the Mortgagor fails to pay or perform any of its obligations herein contained (including payment of expenses of foreclosure and court costs), the Mortgagee may (but need not), after the expiration of any applicable grace period, as agent or attorney-in-fact of the Mortgagor, make any payment or perform (or cause to be performed) any obligation of the Mortgagor hereunder, in any form and manner deemed expedient by the Mortgagee, and any amount so paid or expended (plus reasonable compensation to the Mortgagee for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the Default Rate, shall be added to the principal debt hereby secured and shall be repaid to the Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, the Mortgagee may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any of the Collateral; complete construction; make repairs; collect rents; prosecute collection of the Collateral or proceeds thereof; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; redeem from any tax sale or forfeiture affecting the Premises; and, if this is a leasehold mortgage, pay any amount due, or perform any covenant, agreement, or other undertaking of the Mortgagor under, the Ground Lease. In making any payment or securing any performance relating to any obligation of the Mortgagor hereunder, the Mortgagee shall be the sole judge of the

legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of the Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a Default.

1.18. Subrogation. To the extent that the Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or the Mortgagor or any other person pays any such sum with the proceeds of the loan secured hereby, the Mortgagee shall have and be entitled to a lien or other interest on the Collateral equal in priority to the lien or other interest discharged and the Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit the Mortgagee in securing the Liabilities.

1.19. Hazardous Material. Except as previously disclosed to Mortgagee in writing, to the best of Mortgagor's knowledge, there are no Hazardous Materials (hereinafter defined) placed, held, located or disposed of on, under or at the Premises or the Real Estate or any part thereof or any other real property legally or beneficially owned (or any interest or estate in which is owned) or operated by the Mortgagor (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Mortgagor) and neither the Premises, the Land, nor any part of either thereof, has ever been used (whether by the Mortgagor or by any other person or entity) as a dump site or storage (whether permanent or temporary) site for any Hazardous Material.

The Mortgagor hereby indemnifies the Mortgagee and agrees to hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses, and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Mortgagee for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or releases from the Premises or the Real Estate or any other real property legally or beneficially owned (or any interest or estate which is owned) or operated by the Mortgagor, including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Mortgagor, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Federal,

state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards on conduct concerning, any Hazardous Material, regardless of whether or not caused by, or within the control of, the Mortgagor.

For purposes of this Mortgage, "Hazardous Material" means and includes (i) any asbestos or PCB's or other material composed of or containing asbestos or PCB's or (ii) any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

1.20. Reserve for Taxes, Assessments, Insurance and Ground Rents. Subject to the last paragraph of this Section 1.20, the Mortgagor covenants and agrees to pay to the Mortgagee monthly until the Notes and all of the Liabilities have been paid in full, in addition to the monthly payments of principal and interest under the terms of the Notes and concurrently therewith monthly until the said Notes are fully paid, the following sums:

(i) A sum equal to taxes and assessments next due upon the Premises (all as reasonably estimated by the Mortgagee) and the premiums that will next become due and payable on policies of fire, rental value and other insurance covering the Premises required under the terms of this Mortgage, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and insurance premiums will become due and payable, such sums to be held by the Mortgagee without interest accruing thereon, to pay each of the said items; and

(ii) If this is a leasehold mortgage, a sum equal to the monthly rental and additional rental, if any, due and payable under the terms of the Ground Lease on the first day of the month next succeeding, such sum to be held by the Mortgagee without interest accruing thereon, to pay said monthly rental and additional rental.

All payments described above in this Section shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee to the foregoing items in such order as the Mortgagee shall elect in its sole discretion.

The Mortgagor shall also pay to the Mortgagee, at least thirty (30) days prior to the due date of any taxes, assessments

or insurance premiums levied on, against or with respect to the Premises, and prior to the date for payment of any rent or additional rent under the Ground Lease, if any, such additional amount as may be necessary to provide the Mortgagee with sufficient funds to pay any such tax, assessment, insurance premiums, rent and additional rent under this Section 1.20 at least fifteen (15) days in advance of the due date thereof. The Mortgagor's failure timely to make any payments required under this Section 1.20 shall be a Default under this Mortgage.

The Mortgagee shall, within 15 days of receipt from the Mortgagor of a written request therefor together with such supporting documentation as the Mortgagee may reasonably require (including, without limitation, official tax bills or, as applicable, statements for insurance premiums or rent and additional rent), cause proper amounts to be withdrawn from such account and paid directly to the appropriate tax collecting authority, insurer or the lessor or landlord under the Ground Lease. Even though the Mortgagor may have made all appropriate payments to the Mortgagee as required by this Mortgage, the Mortgagor shall nevertheless have full and sole responsibility at all times to cause all taxes, assessments, insurance premiums and rent and additional rent to be fully and timely paid, and the Mortgagee shall have no responsibility or obligation of any kind with respect thereto. If at any time the funds so held by the Mortgagee shall be insufficient to cover the full amount of all taxes, assessments, insurance premiums, rent and additional rent then accrued (as estimated by the Mortgagee) with respect to the then-current twelve-month period, the Mortgagor shall, within ten (10) days after receipt of notice thereof from the Mortgagee deposit with the Mortgagee such additional funds as may be necessary to remove the deficiency. Failure to do so within such 10-day period shall be a Default hereunder and all sums hereby secured shall immediately become due and payable at the option of the Mortgagee. If the premises described herein are sold under foreclosure or are otherwise acquired by the Mortgagee, accumulations under this Section 1.20 may be applied to the Liabilities in such order of applications as the Mortgagee may elect in its sole discretion.

Anything contained in this Section 1.20 to the contrary notwithstanding, the Mortgagee hereby (by acceptance of this Mortgage and without the necessity of any written waiver, consent or acknowledgment from the Mortgagor) waives the requirement of all deposits described in this Section 1.20, provided, however, that the Mortgagee shall have the right, in its sole discretion, to rescind such waiver from and after the occurrence of any Default hereunder.

II. D E F A U L T

Each of the following shall constitute a default ("Default") hereunder:

2.1. The Loan Agreement. The occurrence of an Event of Default (as such term is defined in the Loan Agreement) under the terms and provisions of the Loan Agreement; or

2.2. Provisions of this Mortgage. Non-compliance by the Mortgagor with, or failure by the Mortgagor to perform, any agreement contained herein and continuance of such non-compliance or failure for a period of 30 days after notice thereof to the Mortgagor from the Mortgagee; or

2.3. Default Under Third Party Agreements. A material default by the Mortgagor occurs under the terms of any lease of which the Mortgagor is lessee and which requires the annual payment of rentals in excess of \$25,000 or under any other Third Party Agreement which requires the payment by Mortgagor of amounts in excess of \$25,000 and any such default continues for the applicable period of grace, if any, therein set forth and thereafter for a period of 30 days after notice thereof to the Mortgagor from the Mortgagee.

III. R E M E D I E S

3.1. Acceleration. Upon the occurrence of any Default, the entire indebtedness evidenced by the Notes and all other Liabilities together with interest thereon at the Default Rate shall, at the option of the Mortgagee, notwithstanding any provisions thereof and without demand or notice of any kind to the Mortgagor or to any other person (other than such demands or notices as may be required by Section 9 of the Loan Agreement), become and be immediately due and payable.

3.2. Remedies Cumulative. No remedy or right of the Mortgagee hereunder or under the Notes or any of the Related Documents, or otherwise, or available under applicable law or in equity, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law or in equity. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Default shall impair any such remedy or right or be construed to be a waiver of any such Default or an acquiescence therein, nor shall it affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed

expedient by the Mortgagee. All obligations of the Mortgagor, and all rights, powers and remedies of the Mortgagee, expressed herein shall be in addition to, and not in limitation of, those provided by law or in equity or in the Notes or any Related Documents or any other written agreement or instrument relating to any of the Liabilities or any security therefor.

BOOK 197 PAGE 741
BOOK 184 PAGE 626
3.3. Possession of Premises; Remedies under Notes and Related Documents. The Mortgagor hereby waives all right to the possession, income, and rents of the Premises from and after the occurrence of any Default, and the Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Premises or any part thereof, to complete any construction in progress thereon at the expense of the Mortgagor, to lease the same, to collect and receive all Rents and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Premises or, at the election of the Mortgagee in its sole discretion, to a reduction of such of the Liabilities in such order as the Mortgagee may from time to time elect. The Mortgagee, in addition to the rights provided under the Notes and any Related Documents is also hereby granted full and complete authority to enter upon the Premises, employ watchmen to protect the Goods and Improvements from depredation or injury and to preserve and protect the Collateral, and to continue any and all outstanding contracts for the erection and completion of Improvements to the Premises, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of the Mortgagor. All such expenditures by the Mortgagee shall be Liabilities hereunder. Upon the occurrence of any Default, the Mortgagee may also exercise any or all rights or remedies under the Loan Agreement, Notes and any Related Documents.

3.4. (A) Foreclosure. Upon the occurrence of any Default, the Mortgagee shall also have the right immediately to foreclose this Mortgage. This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Premises, as the Mortgagee may elect, until all of the Premises have been foreclosed against and sold. As part of the foreclosure, the Mortgagee in its discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Premises, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable law. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be

transferred and delivered, to the purchaser or purchasers the property so sold, in the manner and form as provided by applicable law, and Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Mortgagee may execute and deliver, for and in the name of Mortgagor, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by the Mortgagee for the enforcement, protection or collection of this security, including court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by the Mortgagor. To the extent the applicable portion of the Premises is situated in the State of Wisconsin, Mortgagor agrees that, to the extent permitted by law, this Mortgage may be foreclosed by Mortgagee, at its option, pursuant to the provisions of Section 846.103 of the Wisconsin Statutes or any successor thereof, as the same may be amended from time to time.

(B) Receiver. Upon the occurrence of any Default, the Mortgagee shall, as provided in Section 3.4 (A) above, have the right to immediately foreclose this Mortgage. Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of the Mortgagee or at any time thereafter, either before or after foreclosure sale, and without notice to the Mortgagor or to any party claiming under the Mortgagor and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the Liabilities, without regard to the then value of the Premises or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regarding any bond from the complainant in such proceedings, appoint a receiver for the benefit of the Mortgagee, with power to take possession, charge, and control of the Premises, to lease the same, to keep the buildings thereon insured and in good repair, and to collect all Rents during the pendency of such foreclosure suit, and, in case of foreclosure sale and a deficiency, during any period of redemption and the Mortgagor hereby irrevocably consents to such appointment. The court may, from time to time, authorize said receiver to apply the net amounts remaining in its hands, after deducting reasonable compensation for the receiver and its counsel as allowed by the court, in payment (in whole or in part) of any or all of the Liabilities, including without limitation the following, in such order of application as the Mortgagee may elect: (i) amounts due under the Notes, (ii) amounts due upon any

decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises, (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises, (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (vi) all moneys advanced by the Mortgagee to cure or attempt to cure any Default by the Mortgagor in the performance of any obligation or condition contained in any Related Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any Related Documents, with interest on such advances at the Default Rate. The overplus of the proceeds of sale, if any, shall then be paid to the Mortgagor, upon reasonable request.

(C) Purchase By Mortgagee. In the case of any sale of the Premises pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Notes and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt.

(D) Application of Proceeds. To the extent permitted by applicable state law, all proceeds received from the sale, foreclosure or other disposition of the Premises shall be applied by the Mortgagee in accordance with the following priorities:

First: to the costs and expenses of the sale or foreclosure, including the commission, if any, title and abstracting charges, reasonable attorneys fees and court costs;

Second: to the payment of the Liabilities (in such order as Mortgagee may elect); and

Third: to the payment to whomever shall be entitled thereto under law.

3.5. Power of Sale. (i) To the extent the applicable portion of the Premises is situated in the State of Alabama: Upon the occurrence of any Default, Mortgagee may sell the Premises at public outcry to the highest bidder for cash in front of the Courthouse door in the county where the Premises is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publications once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale

a deed to the Premises so purchased. Mortgagee may bid at said sale and purchase said Premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the applicable portion of the Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect. To effect said sale, if and to the extent permitted by law, Mortgagee may enter and take possession of all the Premises and may remove all or any portion of the Premises. The Mortgagee is hereby appointed the Mortgagor's attorney-in-fact to execute all such documents or instruments, and to do all such acts, as Mortgagee may deem necessary, appropriate or advisable to accomplish any or all of the acts referred to in this Section. The proceeds of any foreclosure sale pursuant to this Section shall be applied in payment (in whole or in part) of any or all of the Liabilities, including without limitation the following, in such order of application as the Mortgagee may elect: (a) amounts due upon the Notes with interest to the date of sale, (b) costs and expenses of making the sale, including attorneys' fees for such services as may be incurred in the collection of said indebtedness or the foreclosure of this Mortgage, (c) insurance premiums, repairs, taxes, special assessments, liens, water charges and interest, penalties and costs, in connection with the Premises, (d) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (e) all moneys advanced by the Mortgagee to cure or attempt to cure any default by the Mortgagor in the performance of any obligation or condition contained in any Related Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any Related Documents, with interest on such advances at the Default Rate. The surplus of the proceeds of sale, if any, shall then be paid to the party or parties appearing to be the owner of record of the Premises at the time of the sale after deducting any expense of ascertaining who is such owner.

(ii) To the extent the applicable portion of the Premises is situated in the State of Georgia: Upon the occurrence of any Default, the Mortgagee shall also have the right to sell and dispose of the Premises at public auction, at the usual place for conducting sales at the courthouse in the county where the Premises or any part thereof may be, to the highest bidder for cash, first advertising the time, terms and place of such sale by publishing a notice thereof once a week for four consecutive weeks in a newspaper in which sheriff's advertisements are published in said county, all other notice hereby waived by Mortgagor; and Mortgagee may thereupon execute and deliver to the purchaser at said sale a sufficient conveyance of the Premises in fee simple, which conveyance may contain recitals as to the happening of the default upon which the execution of the power of

sale, herein granted, depends, and said recitals shall be presumptive evidence that all preliminary acts prerequisite to said sale and deed were in all things duly complied with; and Mortgagee, its agents, representatives, successors or assigns, may bid and purchase at such sale; and Mortgagor hereby constitutes and appoints Mortgagee, or its assigns, as Mortgagor's agent and attorney-in-fact to make such recitals, sale and conveyance, and all of the acts of such attorney in fact are hereby binding and conclusive upon Mortgagor and that the conveyance to be made by Mortgagee, or its assigns, (and in the event of a deed in lieu of foreclosure, then as to such conveyance) shall be effectual to bar all right, title and interest, equity or redemption, including all statutory redemption, homestead, dower, curtesy and all other exemptions of Mortgagor, or its successor in interest, in and to said Premises; and Mortgagee, or its assigns, shall collect the proceeds of such sale, reserving therefrom all unpaid Liabilities with interest then due thereon, and all amounts advanced by Mortgagee for taxes, assessments, insurance premiums and other charges, with interest thereon from date of payment at the Default Rate, together with all costs and charges for advertising, and commissions for selling the Premises, and reasonable attorney's fees, and pay over any surplus to Mortgagor; and Mortgagor agrees that after such sale possession of the Collateral by Mortgagor, or any person claiming under Mortgagor, shall be that of tenant under Mortgagee, or its assigns, and, in case of a sale, as herein provided, Mortgagor or any person in possession under Mortgagor shall then become and be a tenant holding over, and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over; the power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are in addition to any and all other remedies which Mortgagee may have at law or in equity.

(iii) To the extent the applicable portion of the Premises is situated in the State of Maryland: Mortgagor, in accordance with Section 7-105 of the Real Property Article of the Annotated Code of Maryland and applicable provisions of the Maryland Rules of Procedure, or of any other general or local laws, rules or regulations of the State of Maryland relating to mortgages and deeds of trust, including any amendments thereof or supplements thereto which do not materially change or impair the remedy, does hereby (a) assent to the passage of a decree to sell the Premises, after any Default, by the equity court having jurisdiction for the sale thereof, and (b) authorize the said Mortgagee, its successors or assigns, or the fully authorized attorney and agent of the Mortgagee, or its successors or assigns, after any Default as aforesaid, to take possession of, to sell, or in case of default of any purchaser to resell, the Premises.

(iv) To the extent the applicable portion of the Premises is situated in the Commonwealth of Massachusetts: This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements on the part of the Mortgagor herein contained or herein referred to shall be fully kept and performed, for any breach of which the Mortgagee shall have the STATUTORY POWER OF SALE.

(v) To the extent the applicable portion of the Premises is situated in the State of New Hampshire: There shall be the statutory power of sale as well as any other rights of foreclosure contained herein or available under the laws of New Hampshire.

(vi) To the extent the applicable portion of the Premises is situated in the State of New Jersey: Upon the occurrence of any Default, the Mortgagee may sell, assign, transfer and deliver the whole or, from time to time, any part of the Premises, or any interest in any part thereof, at any private sale or at public auction, with or without demand, advertisement or notice, for cash, on credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Mortgagee in its uncontrolled discretion may determine, or as may be required by law. Without limiting the authority granted in the immediately preceding sentence, the Mortgagee shall, without demand on the Mortgagor, after the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, sell the Premises on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels and in such order as the Mortgagee may determine, at public auction to the highest bidder, the purchase price payable in lawful money to the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided that, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice of sale, notice of the time, date and place of sale shall be given in the same manner as the original notice of sale. The Mortgagee shall execute and deliver to the purchaser at any such sale a mortgagee's deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such a mortgagee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Mortgagee, may bid at the sale. The Mortgagee shall apply the proceeds of the sale, to the extent consistent with this Mortgage, to the payment of (a) the reasonable costs and expenses

BOOK 197 PAGE 746

BOOK 184 PAGE 631

184 BOOK 197 PAGE 632
747 PAGE 747
of exercising the power of sale and of the sale, including the payment of attorney's fees and costs, (b) the reasonable cost of any evidence of title procured in connection with such sale, (c) all reasonable sums expended under the terms hereof in conjunction with any default provision hereof, not then repaid, (d) all amounts then secured by this Mortgage, including all amounts due and owing under the Notes or other Related Documents together with interest accrued and unpaid thereon, and (e) the remainder, if any, to the person or persons legally entitled thereto, or the Mortgagee, in the Mortgagee's discretion, may deposit the balance of such proceeds with the County Clerk of the County in which the Premises is located.

(vii) To the extent the applicable portion of the Premises is located in the State of New York: Upon the occurrence of any Default, the Mortgagee may sell, assign, transfer and deliver the whole or, from time to time, any part of the Premises, or any interest in any part thereof, at any private sale or at public auction, with or without demand, advertisement or notice, for cash, on credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Mortgagee in its uncontrolled discretion may determine, or as may be required by law. Without limiting the authority granted in the immediately preceding sentence, Mortgagee shall, without demand on the Mortgagor, after the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, sell the Premises on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels and in such order as the Mortgagee may determine, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof such by such person at the time and place last appointed for the sale; provided that, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice of sale, notice of the time, date and place of sale shall be given in the same manner as the original notice of sale. The Mortgagee shall execute and deliver to the purchaser at any such sale a mortgagee's deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such mortgagee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Mortgagee may bid at the sale. The Mortgagee shall apply the proceeds of the sale, to the extent consistent with this Mortgage, to the payment of (a) the costs and expenses of exercising the power of sale and of the sale, including the

payment of attorneys' fees and costs, (b) the cost of any evidence of title procured in connection with such sale, (c) all sums expended under the terms hereof in conjunction with any default provision hereof, not then repaid, with accrued interest at the Default Rate from the date of incurrence, (d) all amounts then secured by this Mortgage, including the outstanding principal amount of the Notes and other Related Documents together with interest accrued and unpaid thereon, and (e) the remainder, if any, to the person or persons legally entitled thereto, or the Mortgagee, in the Mortgagee's discretion, may deposit the balance of such proceeds with any court or public official authorized to receive such proceeds.

(viii) To the extent the applicable portion of the Premises is located in the State of Michigan: Upon the occurrence of any Default, Mortgagee may commence foreclosure proceedings against the Premises through judicial proceedings or by advertisement, at the option of the Mortgagee, pursuant to the statutes in such case made and provided, and to sell the Premises or to cause the same to be sold at public sale, and to convey the same to the purchaser, in accordance with said statutes in a single parcel or in several parcels at the option of the Mortgagee.

3.6. Remedies for Leases and Rents. If any Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Mortgagee shall be entitled, in its discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto; (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases and other Collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases and other Collateral relating thereto (including actions for the recovery of rent, actions in forceable detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decorations, renewals, replacements, alterations,

additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure the Collateral for all risks incidental to the Mortgagee's possession, operation and management thereof; and (viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as the Mortgagee in its discretion may deem proper, the Mortgagor hereby granting the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Default without notice to the Mortgagor or any other person. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and (c) to the payment of any Liabilities. The entering upon and taking possession of the Premises, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Default theretofore or thereafter occurring or affect any notice or Default hereunder or invalidate any act done pursuant to any such Default or notice, and, notwithstanding continuance in possession of the Premises or any part thereof by the Mortgagee or a receiver, and the collection, receipt and application of the Rents, the Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of a Default. Any of the actions referred to in this Section 3.6 may be taken by the Mortgagee without regard to the adequacy of the security for the indebtedness hereby secured.

3.7. Personal Property. Whenever there exists a Default hereunder, the Mortgagee may exercise from time to time any rights and remedies available to it under applicable law upon default in payment of indebtedness. The Mortgagor shall, promptly upon request by the Mortgagee, assemble the Collateral and make it available to the Mortgagee at such place or places,

reasonably convenient for both the Mortgagee and the Mortgagor, as the Mortgagee shall designate. Any notification required by law of intended disposition by the Mortgagee of any of the Collateral shall be deemed reasonably and properly given if given at least ten days before such disposition. Without limiting the foregoing, whenever there exists a Default hereunder, the Mortgagee may, with respect to so much of the Collateral as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any person obligated on the Collateral to perform directly for the Mortgagee its obligations thereunder, (ii) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of the Mortgagor to allow collection of the Collateral, (iv) take control of any proceeds of the Collateral, (v) enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral, (vi) sell any or all of the Collateral, free of all rights and claims of the Mortgagor therein and thereto, at any public or private sale, and (vii) bid for and purchase any or all of the Collateral at any such public or private sale. Any proceeds of any disposition by the Mortgagee of any of the Collateral may be applied by the Mortgagee to the payment of expenses in connection with the Collateral, including attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by the Mortgagee toward the payment of such of the Liabilities and in such order of application as the Mortgagee may from time to time elect. Without limiting the foregoing, the Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Notes and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies hereunder. The Mortgagor hereby constitutes the Mortgagee its attorney-in-fact with full power of substitution to take possession of the Collateral upon any Default and, as the Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by the Mortgagee to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Liabilities are outstanding.

3.8. Performance of Third Party Agreements. The Mortgagee may, in its sole discretion at any time after the occurrence of a Default, notify any person obligated to the Mortgagor under or with respect to any Third Party Agreements of the existence of a Default, require that performance be made directly to the Mortgagee at the Mortgagor's expense, advance such sums as are necessary or appropriate to satisfy the Mortgagor's obligations thereunder and exercise, on behalf of the Mortgagor, any and all rights of the Mortgagor under the Third Party Agreements (including, without limitation, any options to renew, options to purchase and rights of first refusal under the Ground Lease) as the Mortgagee, in its sole discretion, deems necessary or appropriate; and the Mortgagor agrees to cooperate with the Mortgagee in all ways reasonably requested by the Mortgagee (including the giving of any notices requested by, or joining in any notices given by, the Mortgagee) to accomplish the foregoing.

3.9. No Liability on Mortgagee. Notwithstanding anything contained herein, the Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether hereunder, under any of the Third Party Agreements or otherwise, and the Mortgagor shall and does hereby agree to indemnify against and hold the Mortgagee harmless of and from: any and all liabilities, losses or damages which the Mortgagee may incur or pay under or with respect to any of the Collateral or under or by reason of its exercise of rights hereunder; and any and all claims and demands whatsoever which may be asserted against the Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Collateral or in any of the contracts, documents or instruments evidencing or creating any of the Collateral. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers granted to it under this Mortgage, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the Third Party Agreements or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.

3.10. Real Property Transfer Gains Tax. To the extent the applicable portion of the Premises is situated in the State of New York: The Mortgagor will, at its expense, comply with

Article 31-B of the New York Tax Law (the "Gains Tax Statute") and any similar successor statute in connection with any sale or foreclosure under or by virtue of this Mortgage (or deed or other conveyance in lieu of foreclosure), and the Mortgagor will furnish to the Mortgagee such documents and financial information as may be necessary to permit compliance with any applicable provisions thereof. In the event of such sale or foreclosure (or deed or other conveyance in lieu of foreclosure), the Mortgagor will pay any tax due pursuant to the Gains Tax Statute and the Mortgagor hereby irrevocably constitutes and appoints the Mortgagee the true and lawful attorney of the Mortgagor, which appointment is coupled with an interest, to execute and deliver on behalf of the Mortgagor all appropriate forms and schedules required by the Gains Tax Statute and to take all other steps or actions required in connection therewith. The Mortgagor will reimburse the Mortgagee for any cost or expense, including attorneys' fees, incurred by the Mortgagee in connection with the Gains Tax Statute or as a result of the Mortgagor's failure to comply with the provisions of this Section, together with interest thereon at the Default Rate.

IV. G E N E R A L

4.1. Permitted Acts. The Mortgagor agrees that, without affecting or diminishing in any way the liability of the Mortgagor or any other person (except any person expressly released in writing by the Mortgagee) for the payment or performance of any of the Liabilities or for the performance of any obligation contained herein or affecting the lien hereof upon the Collateral or any part thereof, the Mortgagee may at any time and from time to time, without notice to or the consent of any person, release any person liable for the payment or performance of the Notes or any of the other Liabilities or any guaranty given in connection therewith; extend the time for, or agree to alter the terms of payment of, any indebtedness under the Notes or any of the other Liabilities or any guaranty given in connection therewith; modify or waive any obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind for repayment of the Notes or the other Liabilities or any guaranty given in connection therewith; release any Collateral or other property securing any or all of the Notes or the other Liabilities or any guaranty given in connection therewith; make releases of any portion of the Premises; consent to the making of any map or plat of the Premises; consent to the creation of a condominium regime on all or any part of the Premises or the submission of all or any part of the Premises to the provisions of any condominium act or any similar provisions of law of the state where the Premises are located, or to the creation of any easements on the Premises or of any covenants restricting the use or occupancy thereof; or

exercise or refrain from exercising, or waive, any right the Mortgagee may have.

4.2. Legal Expenses. The Mortgagor agrees to indemnify the Mortgagee from all loss, damage and expense, including (without limitation) attorneys' fees, incurred in connection with any suit or proceeding in or to which the Mortgagee may be made or become a party for the purpose of protecting the lien or priority of this Mortgage.

4.3. Related Documents. The Mortgagor covenants that it will timely and fully perform and satisfy all the terms, covenants and conditions of any and all Related Documents.

4.4. Security Agreement; Fixture Filing. This Mortgage, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the state in which the Premises are located, and this Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Premises are located with respect to any and all fixtures included within the term "Collateral" as used herein and with respect to any Goods or other personal property that may now be or hereafter become such fixtures. For purposes of the foregoing, the Mortgagor is the debtor (with its address as set forth above), the Mortgagee is the secured party (with its address as set forth above) and, if this is a leasehold mortgage, the name of the record owner of the Premises is the lessor or landlord named on Exhibit A hereto. If any item of Collateral hereunder also constitutes collateral granted to the Mortgagee under any other mortgage, agreement, document, or instrument, in the event of any conflict between the provisions of this Mortgage and the provisions of such other mortgage, agreement, document, or instrument relating to such collateral, the provision or provisions selected by the Mortgagee shall control with respect to such collateral.

4.5. Defeasance. Upon full payment of all indebtedness secured hereby and satisfaction of all the Liabilities in accordance with their respective terms and at the time and in the manner provided, and when the Mortgagee has no further obligation to make any advance, or extend any credit under the Loan Agreement, under the Notes or any Related Documents, this conveyance shall be null and void, and thereafter, upon demand therefor, an appropriate instrument of reconveyance or release shall promptly be made, at the expense of the Mortgagor, by the Mortgagee to the Mortgagor.

4.6. Notices. Each notice, demand or other communication in connection with this Mortgage shall be given in accordance with the terms of the Loan Agreement.

4.7. Successors; The Mortgagor; Gender. All provisions hereof shall bind the Mortgagor and the Mortgagee and their respective successors, vendees and assigns and shall inure to the benefit of the Mortgagee, its successors and assigns, and the Mortgagor and its permitted successors and assigns. The Mortgagor shall not have any right to assign any of its rights hereunder. Except as limited by the preceding sentence, the word "Mortgagor" shall include all persons claiming under or through the Mortgagor and all persons liable for the payment or performance by the Mortgagor of any of the Liabilities whether or not such persons shall have executed the Notes or this Mortgage. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

4.8. Care by the Mortgagee. The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as the Mortgagor requests in writing, but failure of the Mortgagee to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of the Mortgagee to preserve or protect any rights with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by the Mortgagor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

4.9. No Obligation on Mortgagee. This Mortgage is intended only as security for the Liabilities. Anything herein to the contrary notwithstanding (i) the Mortgagor shall be and remain liable under and with respect to the Collateral to perform all of the obligations assumed by it under or with respect to each thereof, (ii) the Mortgagee shall have no obligation or liability under or with respect to the Collateral by reason or arising out of this Mortgage and (iii) the Mortgagee shall not be required or obligated in any manner to perform or fulfill any of the obligations of the Mortgagor under, pursuant to or with respect to any of the Collateral.

4.10. No Waiver; Writing. No delay on the part of the Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The granting or withholding of consent by Mortgagee to any

transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

4.11. Governing Law, Submission to Jurisdiction. This Mortgage, together with the Notes and the Related Documents, shall be construed in accordance with and governed by the internal laws of the State of Illinois without regard to its principles of conflicts of law; provided, however, that the foreclosure or power of sale procedures set forth herein shall be governed by the laws of the state where the Premises are located. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage. Except as provided herein with respect to foreclosure or power of sale procedures, the Mortgagee may enforce any claim arising out of this Mortgage, the Notes or the Related Documents in any state or federal court having subject matter jurisdiction and located in Chicago, Illinois. For the purpose of any action or proceeding instituted with respect to any such claim, the Mortgagor has, pursuant to the terms of the Loan Agreement, irrevocably submitted to the jurisdiction of such courts and has irrevocably designated the party whose name and address are set forth in the Loan Agreement to receive for and on behalf of the Mortgagor service of process in Illinois. The Mortgagor further irrevocably consents to the service of process out of said courts by mailing a copy thereof, by registered mail, postage prepaid, to the Mortgagor at its address for notices as set forth in the Loan Agreement and agrees that such service, to the fullest extent permitted by law (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding, and (ii) shall be taken and held to be valid personal service upon and personal delivery to it. Nothing herein contained shall affect the right of the Mortgagee to serve process in any other manner permitted by law or preclude the Mortgagee from bringing an action or proceeding in respect hereof in any other country, state or place having jurisdiction over such action. The Mortgagor irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any court located in Chicago, Illinois and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum.

4.12. Waiver. (i) The Mortgagor, on behalf of itself and all persons now or hereafter interested in the Premises or the

Collateral, to the fullest extent permitted by applicable law hereby waives all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby further waives the pleading of any statute of limitations as a defense to any and all Liabilities secured by this Mortgage, and the Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of the Collateral. Without limiting the generality of the preceding sentence, the Mortgagor, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. The Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Collateral shall be sold in the event of any sale or sales pursuant hereto and to have any of the Collateral and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

(ii) To the extent the applicable portion of the Premises is situated in the State of Michigan, the Mortgagor, on behalf of itself and all persons now or hereafter interested in the Premises, hereby waives all rights to a hearing prior to sale in connection with any foreclosure of this Mortgage by advertisement and all notice requirements except as set forth in the Michigan statute providing for foreclosure by advertisement.

4.13. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should the Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title. If this is a leasehold mortgage, the Mortgagor further agrees that so long as any of the indebtedness secured by this Mortgage shall remain unpaid, unless the Mortgagee shall otherwise in writing consent, the fee title and

197 PAGE 757
BOOK 184 PAGE 642
the leasehold estate in the Premises shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee, or in a third party, by purchase or otherwise; and the Mortgagor further covenants and agrees that, in case it shall acquire the fee title, or any other estate, title or interest in the Premises, this Mortgage shall attach to and cover and be a first lien upon such fee title or other estate so acquired, and such fee title or other estate so acquired by the Mortgagor shall be considered as mortgaged, assigned or conveyed to the Mortgagee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed and spread. The provisions of this paragraph shall not apply in the event the holder of the Notes secured hereby acquires the fee of the Premises except if the Mortgagee shall so elect.

4.14. Mortgagee Not a Joint Venturer or Partner. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Liabilities secured hereby, or otherwise.

4.15. Time of Essence. Time is declared to be of the essence in this Mortgage, the Notes and the Related Documents and of every part hereof and thereof.

4.16. No Third Party Benefits. This Mortgage, the Notes and the Related Agreements are made for sole benefit of the Mortgagor and the Mortgagee, and, subject to the provisions of Section 4.7, their successors and assigns, and no other party shall have any legal interest of any kind under or by reason of any of the foregoing. Whether or not the Mortgagee elects to employ any or all the rights, powers or remedies available to it under any of the foregoing, the Mortgagee shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of the Mortgagee's actions or omissions pursuant thereto or otherwise in connection with this transaction.

4.17. Lien Laws; Waste. (a) To the extent the applicable portion of the Premises is situated in the State of New York, pursuant to Section 13 of the Lien Law of the State of New York, Mortgagor shall receive the advances secured hereby as a trust fund to be applied first for the purpose of paying the cost of any improvement before using any part of the total of the same for any other purpose.

(b) To the extent the applicable portion of the Premises is situated in the State of Ohio, Mortgagee may pay out funds secured by the provisions of Section 1311.14 of the Revised Code of Ohio, and any amendments or supplements thereto, and Mortgagee is hereby authorized and empowered, but not required, to do that which a mortgagee is permitted to do under Section 1311.14 of the Ohio Revised Code.

BOOK 184 PAGE 643
1917 PAGE 758
(c) To the extent that the applicable portion of the Premises is situated in the State of Michigan, the failure of the Mortgagor to pay taxes or assessments assessed against the Premises, or any installment thereof, or any premiums payable with respect to any insurance policy covering the Premises, shall constitute waste as provided by Act No. 236 of the Michigan Public Acts of 1961 as amended (MCLA 600.2927). The Mortgagor hereby consents to the appointment of a receiver under said statute should the Mortgagee elect to seek such relief thereunder.

BOOK 184 PAGE 643
4.18. Future Advances. (a) This Mortgage is granted to secure future advances and loans from the Mortgagee to the Mortgagor, as provided in the Loan Agreement, and costs and expenses of enforcing the Mortgagor's obligations under this Mortgage, the Related Documents and the Loan Agreement. It is specifically acknowledged and agreed by Mortgagor, and all persons are required to take notice, that the loans evidenced by the Revolving Credit Notes shall be disbursed on a revolving basis and that this Mortgage shall secure all such disbursements whether or not the aggregate amount of disbursements exceed the Revolving Credit Notes so long as the principal amount of such loans outstanding at any one time do not exceed the face amount of the Revolving Credit Notes. All revolving advances and all other disbursements and payments required by the Loan Agreement are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by law, have priority over any and all mechanics' liens and other liens and encumbrances arising after this Mortgage is recorded. All payments received by Lenders with respect to any of the liabilities secured hereby shall be applied first to the most recent advances or disbursements made under the Revolving Credit Notes, i.e., all repayments of the liabilities secured hereby shall be deemed made in the inverse order from which they have been advanced such that the last dollars secured by this Mortgage shall be the first dollars advanced under the Revolving Credit Notes. The maximum amount, including present and future liabilities which may be secured hereby at any one time is \$305,000,000, plus interest and any disbursements and taxes and insurance on the Premises plus interest thereon and any other sums advanced in accordance with the terms hereof to protect the security of this Mortgage; provided in no event shall the total

maximum amount of liabilities secured hereby exceed \$610,000,000 at any one time, and the period within which such future liabilities may be incurred does not extend more than ten (10) years beyond the date of this Mortgage.

(b) To the extent the applicable portion of the Premises is situated in the State of Georgia, it is expressly agreed that the outstanding principal balance under the Loan Agreement may, from time to time, be reduced to a zero balance without such repayment operating to extinguish or release the lien, security title and security interest created by this Mortgage. This Mortgage shall remain in full force and effect as to any subsequent future advances made after the zero balance without loss of priority until the Liabilities are paid in full and satisfied and all agreements between Mortgagor and Mortgagee for further advances have been terminated and this Mortgage is released of record. Mortgagor waives the operation of any applicable statute, law or regulation having contrary effect.

(c) To the extent the applicable portion of the Premises is situated in the State of Ohio, upon request of the Mortgagor, the Mortgagee may hereafter at any time before full payment of this Mortgage, make further advances to the Mortgagor, and any such further advances, with interest, shall be secured by this Mortgage and shall be evidenced by additional security documents then to be given by the Mortgagor; provided, however, that the principal amount of the Notes secured by this Mortgage and remaining unpaid, shall not at the time of and including any such advance, exceed the original principal sum secured hereby. The Mortgagor does covenant and agree to and with the Mortgagee to repay all such further advances made as aforesaid with interest; that such further advances and security documents evidencing the same shall be secured by this Mortgage; and that all of the covenants and agreements of this Mortgage contained shall apply to such further advances as well as to the original principal sum herein recited.

(d) To the extent the applicable portion of the Premises is situated in the State of Florida and for purposes of this Mortgage in the State of Florida, this Mortgage is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of the Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of execution of this Mortgage, provided that such future advances are evidenced by the Term Note, the Fixed Rate Note or additional promissory notes, guarantees or other written agreements which additional promissory notes, guarantees or other written agreements make express reference to this Mortgage and expressly state that the obligations thereunder are secured by this Mortgage. The total amount of indebtedness that may be so secured

may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed \$240,000,000, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Premises, with interest on such disbursements.

(e) To the extent the applicable portion of the Premises is situated in the State of Alabama and for purposes of this Mortgage in the State of Alabama, this Mortgage is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of the Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of execution of this Mortgage, provided that such future advances are evidenced by the Term Note, the Fixed Rate Note or additional promissory notes, guarantees or other written agreements which additional promissory notes, guarantees or other written agreements make express reference to this Mortgage and expressly state that the obligations thereunder are secured by this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed \$240,000,000, plus interest thereon, and any disbursements and taxes and insurance on the Premises plus interest thereon and any other sums advanced in accordance with the terms hereof to protect the security of this Mortgage.

BOOK 197 PAGE 760

BOOK 184 PAGE 645

IN WITNESS WHEREOF, under seal, the undersigned have executed and delivered this Mortgage on the day and year first above written.

MORTGAGOR DECLARES THAT MORTGAGOR HAS RECEIVED A TRUE COPY OF THIS INSTRUMENT.

In the presence of:

WICKES LUMBER COMPANY, a
Delaware corporation

Witness:

Name: Beverly Hoernlein

Witness:

Name: Ellen Swietlik

By:

Name: William A. Hensler

Title: Vice President

- seal -

Attest:

Name: Richard L. Morphet

Title: Asst. Secretary

- seal -

In the presence of:

Accepted: General Electric
Capital Corporation

Witness:

Name: Zisk H. Taub

Witness:

Name: Ann Trombino

I certify that the address of
the within named Mortgagee is
1020 Marsh Road, Suite 200,
Menlo Park, California 94025

By:

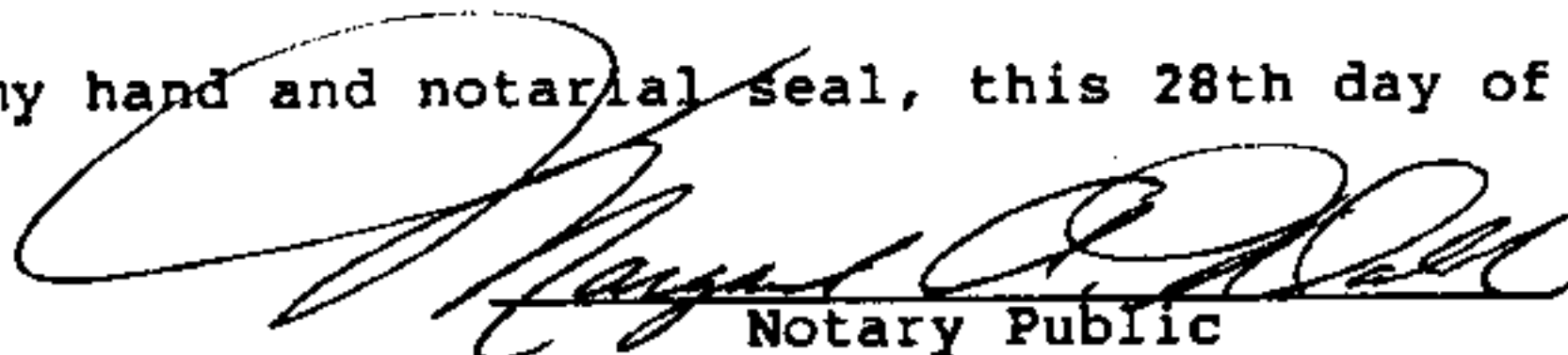
Its: Attorney in Fact

- seal -

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Margaret A. Walsh, a Notary Public, do hereby certify that William A. Hensler, personally known to me to be the Senior Executive Vice President of WICKES LUMBER COMPANY, a Delaware corporation and Richard L. Morphet, personally known to me to be the Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing document, appeared before me this day in person and severally acknowledged that as such Senior Executive Vice President and Assistant Secretary they signed and delivered the said document as Senior Executive Vice President and Assistant Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 28th day of April, 1988.


Notary Public

Type or
Print Name: Margaret A. Walsh

My commission expires:

OFFICIAL SEAL
MARGARET A. WALSH
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 8/3/90

BOOK 197 PAGE 762

BOOK 184 PAGE 647

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Barbara M. Braun, a Notary Public, do hereby certify that David H. Doering, personally known to me to be the Attorney in Fact of GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation, and personally known to me to be the same person whose name is subscribed to the foregoing document, appeared before me this day in person and acknowledged that as such Attorney in Fact he signed and delivered the said document as Attorney in Fact of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 28th day of April, 1988.

Barbara M. Braun
Notary Public

Type or
Print Name: Barbara M. Braun

My commission expires:

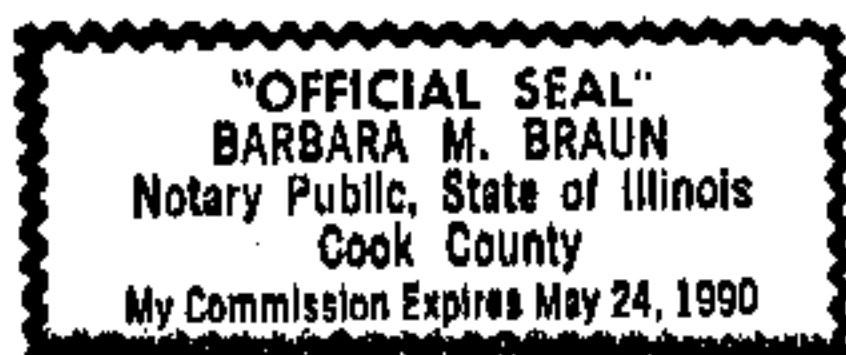


EXHIBIT A

Description of the Land

Address: Pelham, Alabama
County: Shelby

The Land is comprised of (i) all of the Mortgagor's leasehold estate (except the last day of the original term thereof unless extended, in which case excepting the last day of the extended term) created, and owned by the Mortgagor, by virtue of a certain Lease Agreement dated August 31, 1984 by and between City of Pelham, as landlord, and Homecrafters Warehouse, Inc., as tenant, recorded in the Probate Office of Shelby County on October 1, 1984 in Real Record 003, Page 893 and assigned by Mesne assignments to Mortgagor, said last assignment being evidenced by an unrecorded Assignment and Assumption Agreement dated April 27, 1988 (said lease, amended, together with all future amendments consented to by the Mortgagee, herein called the "Ground Lease") and (ii) all of the Mortgagor's right, title and interest in, to and under the Ground Lease including, without limitation, all credits, deposits, options, rights of first refusal and privileges of the Mortgagor thereunder. The Ground Lease demises the following legally described property:

Unit B of The Homecrafters Warehouse Building, a Condominium, according to the Declaration of Condominium, as recorded in Book 003, Page 860, in the Office of the Judge of Probate of Shelby County, Alabama, together with an undivided fractional interest in the common elements as set out in the said Declaration of Condominium.

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

88 AUG -3 PM 3:33

Re-Rec
JUDGE OF PROBATE

Rec 115.00
Ind 1.00
116.00

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

88 MAY 16 AM 10:21

JUDGE OF PROBATE

1. Deed Tax	\$	
2. Mtg. Tax		Pelham Butcher Co.
3. Recording Fee		115.00
4. Indexing Fee		1.00
TOTAL		116.00

