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Ret. To: Attny Richard C. Jones, Jr.
Dardick + Denlow
737 N. Mich. Ave
Suite 1250
Chicago, IL 60611

LEASEHOLD MORTGAGE

CHICAGO TITLE INSURANCE COMPANY
INDIANA DIVISION

For 141051 see doc. #

THIS INSTRUMENT ("Mortgage") WITNESSES: That THOMAS W. SCHUYLER, divorced and not since remarried, whose address is 9004 Indianapolis Boulevard, Highland, Indiana 46322 ("Mortgagor"), in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby MORTGAGES and WARRANTS to FIRST MIDWEST BANK/ILLINOIS, N.A., a national banking association, whose address is 50 West Jefferson Street, Joliet, Illinois 60431, ("Mortgagee"), the real estate ("Real Estate") and property located in Lake County, State of Indiana, more particularly described as follows:

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the Lake County Recorder

LEASEHOLD ESTATE AS CREATED BY THE GROUND LEASE DATED MARCH 1, 1978 MADE BY MERCANTILE NATIONAL BANK OF INDIANA, AS TRUSTEE UNDER TRUST NUMBER 3518 TO MUNSTER RACQUETBALL ASSOCIATES, AN ILLINOIS LIMITED PARTNERSHIP, AS LESSEE, AS EVIDENCED IN MEMORANDUM OF LEASE DATED SEPTEMBER 8, 1978 AND RECORDED SEPTEMBER 12, 1978 AS DOCUMENT NO. 489917, AS AMENDED BY THE AMENDMENT TO GROUND LEASE DATED FEBRUARY 1, 1979 AS EVIDENCED IN AMENDMENT TO MEMORANDUM OF LEASE DATED FEBRUARY 7, 1980 AND RECORDED FEBRUARY 19, 1980 AS DOCUMENT NO. 573818 AND RECORDED ON FEBRUARY 20, 1980 AS DOCUMENT NO. 573974, AS ASSIGNED FROM FIRST BANK OF WHITING TO THOMAS SCHUYLER BY THE ASSIGNMENT AND ASSUMPTION AGREEMENT DATED MARCH 30, 1988, DEMISING AND LEASING FOR A TERM OF YEARS BEGINNING SEPTEMBER 1, 1978 AND ENDING AUGUST 30, 1993.

LOT 2, AND OUTLOT "A" OF FAIRMEADOW 32ND ADDITION TO THE TOWN OF MUNSTER, LAKE COUNTY, INDIANA, PER PLAT THEREOF, RECORDED IN THE RECORDER'S OFFICE OF LAKE COUNTY, AS DOCUMENT NO. 472181, IN BOOK 48, PAGE 100, BOOK 51, PAGE 45 AS DOCUMENT NO. 555017.

KEY NO. (28-431-2) (TAX UNIT NO. 18).

Common Address: 9245 Calumet Ave.
Munster, Indiana

together with all rights, title and interest of Mortgagor in and to: (i) All rights, privileges, interests, tenements, hereditaments, easements and appurtenances in any way now or hereafter pertaining to the Real Estate ("Easements"); (ii) All

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CX

buildings and other improvements of every kind and description now or hereafter placed on the Real Estate, together with all fixtures, machinery and other articles of personal property now or hereafter attached to or regularly used in connection with the Real Estate, and all replacements thereof, ("Improvements"); (iii) All extensions, improvements, betterments, substitutes, replacements, renewals, additions and appurtenances of or to the Easements or Improvements ("Additions"); (iv) All rents, issues, proceeds, income and profits of the Real Estate, Easements, Improvements and Additions, including all payments made in connection with leases, subleases and other agreements affecting the Real Estate, Easements and Appurtenances, Improvements or Additions ("Rents"); and (v) All awards, payments or proceeds of conversion, whether voluntary or involuntary, of any of the foregoing, including, without limitation, all insurance, condemnation and tort claims ("Proceeds"). (Hereinafter, the Real Estate, Easements, Improvements, Additions, Rents and Proceeds are referred to together as the "Mortgaged Property.")

This Mortgage is given to secure performance by Mortgagor of the covenants and agreements contained in this Mortgage and to secure payment of: (i) the principal of and interest on the indebtedness evidenced by a certain Mortgage Installment Note ("Note") dated December 10, 1990, executed and delivered by the Mortgagor, hereinafter sometimes referred to as "Borrower") to Mortgagee in the principal sum of One Million Eight Hundred Thousand and No/Hundredths (\$1,800,000.00) Dollars, with the final payment due on December 1, 1992, and with interest computed on the unpaid balance from time to time at the rate of ten percent (10%) per annum, and any other amounts payable to Mortgagee pursuant to the terms and provisions of the Note ("Primary Debt"); (ii) all sums advanced and costs and expenses incurred by Mortgagee which are made or incurred pursuant to, or allowed by, the terms of this Mortgage, plus interest thereon at the rate of fifteen percent (15%) per annum ("Default Rate") from the date paid or incurred until reimbursement ("Advancements"); (iii) all costs of repossession, collection, disposition and reasonable attorneys' fees incurred by Mortgagee ("Costs"); (iv) all other indebtedness, obligations and liabilities of Borrower (and each of them, if more than one) to Mortgagee, now existing or hereafter arising, whether fixed or contingent, direct or indirect, primary or secondary, joint or several, and regardless of how created or evidenced ("Additional Liabilities"); and (v) any and all extensions or renewals of any of the foregoing indebtedness ("Extensions"). (Hereinafter, the Primary Debt, Advancements, Costs, Additional Liabilities and Extensions are referred together as the "Indebtedness".)

Mortgagor hereby further covenants with the Mortgagee as follows:

1. **Payment of Sums Due.** Mortgagor covenants and agrees to promptly pay the principal of and interest on the Primary Debt and the other Indebtedness, as and when the payment(s) thereof become due, all without relief from valuation and appraisal laws and with attorneys' fees.

2. **Care and Condition of Mortgaged Property.** Mortgagor shall (a) promptly repair, restore or rebuild the Mortgaged Property, or any portion thereof, which is damaged or destroyed; (b) keep the Mortgaged Property in good condition and repair, without waste, and free from encroachments and form mechanic's or materialmen's liens or claims for lien not expressly subordinated to this Mortgage; (c) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property, whether or not superior to this lien; (d) comply with all requirements of law and covenants and restrictions of record applicable to the Mortgaged Property or its use; (e) permit no change in or alteration of the design, structural character or general nature of the Real Estate and the Improvements without Mortgagee's prior written consent (which consent shall not be withheld unreasonably); and (f) permit Mortgagee to enter upon and inspect the Mortgaged Property at all reasonable times.

3. **Covenants of Mortgagor as to Leasehold Estate.**

a. **Leasehold Estate.** Borrower hereby represents and covenants:

(i) that the Lease is in full force and effect and unmodified;

(ii) that all rents (including additional rents and other charges) reserved in the said Lease have been paid to the extent they were payable prior to the date hereof;

(iii) the quiet and peaceful possession of the Lender, and Borrower further agrees to defend the leasehold estate created under the Lease for the entire remainder of the term set forth therein, against all and every person or persons lawfully claiming, or who may claim the same or any part thereof, subject to the payment of the rents in the Lease reserved and subject to the performance and observance of all of the terms, covenants, conditions and warranties thereof.

(iv) that there is no uncured default under the Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the lessee to be observed and performed. Further, no state of facts exist under the Lease which, with the lapse of time or giving of notice or both would constitute a default thereunder.

b. **Payment of Lease Expenses.** The Borrower shall pay or cause to be paid all rents, additional rents, taxes, assessments, water rates, sewer rents, and other charges and impositions payable by the lessee under the Lease for which provision has not been made hereinbefore, when and as often as the same shall become due and payable. Borrower will in every case deliver, or cause to be delivered, a proper receipt for any such item so paid and will within ten (10) days after the time when such payment shall be due and payable deliver to the Lender, a copy of the receipts for any such payments.

c. **Borrower's Covenants with Respect to Lease.**

(i) The Borrower shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Lease by the lessee under the Lease be kept and performed and in all respects conform to and comply with the terms and conditions of the Lease, and the Borrower further covenants that it shall not do or permit anything which will impair or tend to impair the security of this Mortgage or will be grounds for declaring a forfeiture of the Lease, and upon any such failure aforesaid, Borrower shall be subject to all of the rights and remedies granted Lender in this Mortgage.

(ii) The Borrower shall not modify, extend or in any way alter the terms of the Lease or cancel or surrender said Lease, or waive, execute, condone or in any way release or discharge the lessor thereunder of or from the obligations, covenants, conditions and agreements by said lessor to be done and performed; and the Borrower does expressly release, relinquish and surrender unto the Lender all of its rights, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Lease and any attempt on the part of the Borrower to exercise any such right without the written approval and consent of the Lender thereto being first had and obtained shall constitute a Default under the terms hereof and the entire Indebtedness shall, at the option of the Lender, become due and payable forthwith and without notice.

(iii) The entire Indebtedness shall immediately become due and payable at the option of the Lender, if the Borrower fails to give the Lender immediate notice of any default under the Lease

or of the receipt by it of any notice of default from the lessor thereunder, or if the Borrower fails to furnish to the Lender immediately any and all information which it may request concerning the performance by the Borrower of the covenants of the Lease, or if the Borrower fails to permit the Lender or its representative at all reasonable times to make investigation or examination concerning the performance by the Borrower of the covenants of the Lease, or if the Borrower fails to permit the Lender or its representative at all reasonable time to make investigation or examination concerning such performance. The Borrower shall deliver to the Lender an original executed copy of the Lease, an estoppel certificate from the lessor of the Lease within ten (10) days if requested by Lender and in such form and content as shall be satisfactory to Lender, as well as any and all documentary evidence received by it showing compliance by the Borrower with the provisions of the Lease. Borrower shall also promptly deliver to the Lender an exact copy of any notice, communication, plan, specification or other instrument or document received or given by it in any way relating to or affecting the Parking Lease.

(iv) In the event of any failure by Borrower to perform any covenant on the part of lessee to be observed and performed under the Lease, the performance by Lender on behalf of Borrower of the Lease covenants shall not remove or waive, as between Borrower and Lender, the corresponding Default under the terms hereof and any amount so advanced by Lender or any costs incurred in connection therewith, with interest thereon at the Default Rate shall constitute additional Indebtedness and be immediately due and payable.

(v) To the extent permitted by law, the price payable by the Borrower, or by any other party so entitled, in the exercise of the right of redemption, if any, shall include all rents paid and other sums advanced by Lender, on behalf of Borrower, as lessee under the said Lease.

d. Merger. So long as any of the Indebtedness shall remain unpaid, unless the Lender shall otherwise in writing consent, the fee title and the leasehold estate in the Leasehold Estate 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 Borrower covenants and agrees that, if it shall acquire the fee title, or any other estate, title or interest in the Premises covered by said Lease, this Mortgage shall be considered as mortgaged, assigned or conveyed to the Lender 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 if the holder of the Note acquires the fee of the Premises unless Lender shall so elect.

4. **Insurance.** Mortgagor will keep the Mortgaged Property insured against loss by fire, extended casualty, vandalism, malicious mischief and such other hazards as reasonably may be required from time to time by Mortgagee for the benefit and protection of Mortgagee, including comprehensive and contractual liability insurance (together, the "Required Insurance"). The Required Insurance shall be written in forms, amounts, and by companies satisfactory to Mortgagee, and losses thereunder shall be payable to Mortgagee pursuant to standard noncontributing mortgage endorsements in favor of Mortgagee. Unless otherwise agreed by Mortgagee, all policies of Required Insurance, including additional and renewal policies, shall be deposited with and held by Mortgagee. Any monies received as payment for any loss under any of the Required Insurance paid over to Mortgagee may be applied, at the option of Mortgagee, either to the prepayment of any portion, as Mortgagee may select, of the Indebtedness, without premium, or to the reimbursement of Mortgagor for expenses incurred by Mortgagor in the restoration or repair of the Mortgaged Property. Proceeds paid or payable to Mortgagor of the Required Insurance shall be applied to restoration of the Mortgaged Property in such fashion as Mortgagee reasonably may require.

5. **Taxes.** Mortgagor will pay and discharge or cause to be paid and discharged when due, and before any penalty attaches, all taxes (including real and personal property taxes), general and special assessments, water and sewer rents or assessments, and all other governmental and municipal charges and impositions of any kind imposed upon or assessed against Mortgagor or the Mortgaged Property, or any part thereof, or arising in respect of the occupancy, use or possession thereof.

6. **Protection of Security by Mortgagee.** Mortgagee may, at Mortgagee's option, but without any duty or obligation of any sort to do so and without in any way waiving or relieving any default by Mortgagor, make any payment and perform any act required of Mortgagor by this Mortgage, including but not limited to, payment of insurance premiums, taxes, assessments, repair expenses and prior liens and encumbrances. All expenses so incurred, including reasonable attorneys' fees and any other reasonable expenses incurred by Mortgagee to protect the Mortgaged Property shall constitute Advancements and shall be immediately due and payable by Mortgagor.

7. **Transfer of Mortgaged Property.** Mortgagor shall not, without the prior written consent of Mortgagee, lease, transfer, sell, contract to sell or in any way further encumber all or any part of the Mortgaged Property.

8. **Release Fee.** In addition to the principal and interest payment required under the terms of the Note, Mortgagor shall pay to Mortgagee a Release Fee equal to (i) two (2%) percent of the principal amount prepaid during the first year of the term of the Note, and (ii) three (3%) percent of the principal amount prepaid during the second year of the term of the Note. The Release Fee shall be due and payable immediately upon any prepayment, in whole or in part, during the term of the Note. Upon maturity of the Note, whether by acceleration or otherwise, the Release Fee applicable as of the date of such prepayment shall become immediately due and payable and shall be added to the indebtedness secured by this Mortgage.

9. **Condemnation.** If all or any part of the Mortgaged Property is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award of compensation payable in respect of the part so taken or damaged are hereby assigned to and shall be paid directly to Mortgagee. The proceeds of any award or compensation actually received by Mortgagee after deduction therefrom of all costs and expenses including reasonable attorneys' fees incurred by Mortgagee in connection with the taking, at Mortgagee's option, shall be applied, without premium, in part or entirely to payment of the Indebtedness or to restoration of the Mortgaged Property.

10. **Default and Acceleration.** Time is of the essence of this Mortgage. Upon the occurrence of any "Event of Default" (as hereinafter defined), and at any time thereafter, then, in any and every such case, the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable without any notice, presentment, demand, protest, notice of protest, or other notice of dishonor or demand of any kind, all of which are hereby expressly waived by Mortgagor, and Mortgagee shall have the right immediately to foreclose the mortgage lien created by this Mortgage against the Mortgaged Property, to enforce every other security interest created by this Mortgage and to institute any action, suit or other proceeding which Mortgagee may deem necessary or proper for the protection of its interests. The following shall each constitute an "Event of Default" for purposes of this Mortgage:

(a) **Default:** (i) in the payment when due of any of the Indebtedness, (ii) in the performance of any covenant or term of this Mortgage or the Note secured hereby, or (iii) in the payment or performance of any obligation under the terms of the Lease creating the estate covered by this Mortgage;

(b) Lease, sublease, assignment, sale, contracting for sale, transfer or encumbrances of all or any part of the Mortgaged Property, or any interest therein, without Mortgagee's prior written consent;

(c) If Mortgagor or Borrower (or any one of them, if more than one) becomes the subject of an order for relief under the United States Bankruptcy Code, takes any action to obtain relief under the United States Bankruptcy Code, files an answer admitting bankruptcy or insolvency or in any manner is adjudged bankrupt or insolvent;

(d) Any part of the Mortgaged Property or all or any substantial part of the property or assets of Borrower (or any one of them, if more than one) is placed in the hands of any receiver or trustee, or Borrower (or any one of them, if more than one) consents, agrees or acquiesces to the appointment of any such receiver or trustee;

(e) Institution of proceedings to enforce or foreclose any Prior Mortgage Lien or any other mortgage or lien upon all or any part of the Mortgaged Property;

(f) Voluntary or involuntary dissolution of the Mortgagor, the death or resignation of any partner of the Mortgagor, or the voluntary or involuntary transfer or sale of the interest of any partner of the Mortgagor without the prior written consent of the Mortgagee.

11. **Foreclosure and Application of Proceeds.** All expenses which may be paid or incurred by or on behalf of Mortgagee in connection with the foreclosure of this Mortgage for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and cost of procuring all title searches, policies and examinations and similar data and assurances with respect to title as Mortgagee reasonably may deem necessary to prosecute such suit shall constitute Advancements, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, and shall be allowed and included as Indebtedness in the judgment for sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order or priority: First, on account of all advancements incident to the foreclosure proceedings and all Costs; second, all other items which under the terms of this Mortgage constitute Indebtedness additional to the primary Debt; third, all principal, interest and other amounts remaining unpaid on the Primary Debt; and fourth, any remainder to the person or persons entitled thereto as determined by the court in the foreclosure proceedings.

12. **Foreclosure Proceedings and Receiver.** Upon the commencement of any proceedings to foreclose this Mortgage, Mortgagee shall be entitled forthwith to the appointment of a

receiver or receivers, as a matter of right, without the giving of notice to any other party, without regard to the adequacy or inadequacy of any security by the Indebtedness and without the requirement of any bond. Mortgagee shall be entitled to recover judgment either before or after or during the pendency of any proceedings for the enforcement of this Mortgage. The right of Mortgagee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of this Mortgage, or the foreclosure of the lien of this Mortgage.

13. **No Exclusive Remedy.** Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any Event of Default or any acquiescence therein.

14. **Provisions Severable.** In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Mortgage.

15. **Notices.** All notices pursuant to this Mortgage shall be in writing and shall be deemed to be sufficiently given or served for all purposes when sent by certified mail, properly addressed with return receipt requested:

(a) To the Mortgagor as follows:

THOMAS W. SCHUYLER
9004 Indianapolis Boulevard
Highland, Indiana 46322

(b) To the Mortgagee as follows:

FIRST MIDWEST BANK/ILLINOIS, N.A.
50 West Jefferson Street
Joliet, Illinois 60431
Attn: Mr. Thomas G. Colgan
Assistant Vice President

or to such other place as either party may, by notice in writing, designate as the place for service of notice.

16. **Successors and Assigns.** This Mortgage shall (a) run with the land, (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's heirs, administrators, successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons, and (c) shall apply and extend to, be binding upon and inure to the benefit of Mortgagee and Mortgagee's successors and assigns. The word "Mortgagee" shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Note and any other Indebtedness instruments.

17. **Miscellaneous.** The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. All changes to this Mortgage must be in writing signed by Mortgagee and, if this Mortgage is recorded, shall not be effective until being recorded. Wherever used, the singular number shall include the plural, the plural the singular, and use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage this 10th day of December, 1990.



