

CONTINUING COLLATERAL MORTGAGE

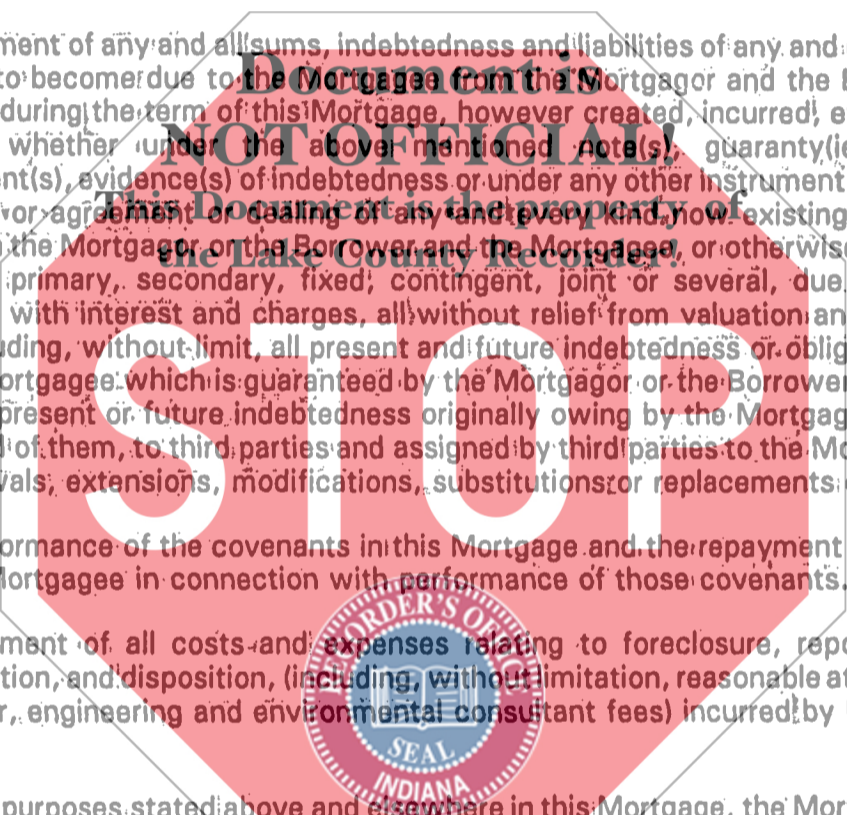
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Chicago Title Insurance Company

This Continuing Collateral Mortgage ("Mortgage") is made as of the 16th day of November, 1993 by Rosa of Indiana, Inc., a Michigan corporation (individually and collectively if more than one party "Mortgagor"), located at 322 Terminal, Grand Rapids, Michigan 49508, to Comerica Bank, a Michigan banking corporation ("Mortgagee"), located at 100 Renaissance Center, Detroit, Michigan 48243.

This Mortgage is made to secure all of the following (individually and collectively the "indebtedness"):

- (i) Payment in the sum of Four Hundred Seventy Thousand and 00/100 Dollars (\$470,000) lawful money of the United States, together with interest, costs and all other sums on that amount, to be paid according to certain note(s), guaranty(ies), letter of credit agreement(s), or other evidence(s) of indebtedness to Mortgagee made as of the date of this Mortgage by the Mortgagor and the following named borrower, if other than the Mortgagor: (None) (individually and collectively if more than one party "Borrower"), or made by either the Mortgagor or the Borrower or any or all of them, including, without limit, the Mortgage Note in the original principal sum of Four Hundred Seventy Thousand and 00/100 Dollars (\$470,000) with final payment due on November 1, 1998, and any and all extensions, renewals, modifications, substitutions or replacements of the above mentioned note(s), guaranty(ies), letter of credit agreement(s), or other evidence(s) of indebtedness, all without relief from valuation and appraisal laws.
- (ii) The payment of any and all sums, indebtedness and liabilities of any and every kind now owing or later to become due to the Mortgagee from the Mortgagor and the Borrower or any or all of them during the term of this Mortgage, however created, incurred, evidenced, acquired or arising, whether under the above mentioned note(s), guaranty(ies), letter of credit agreement(s), evidence(s) of indebtedness or under any other instrument, obligation, guaranty, contract or agreement of any and every kind, now existing or later entered into between the Mortgagor or the Borrower and the Mortgagee, or otherwise, and whether direct, indirect, primary, secondary, fixed, contingent, joint or several, due or to be come due, together with interest and charges, all without relief from valuation and appraisal laws, and including, without limit, all present and future indebtedness or obligations of third parties to the Mortgagee which is guaranteed by the Mortgagor or the Borrower or any or all of them, and the present or future indebtedness originally owing by the Mortgagor or the Borrower or any or all of them, to third parties and assigned by third parties to the Mortgagee, and any and all renewals, extensions, modifications, substitutions or replacements of any of them.
- (iii) The performance of the covenants in this Mortgage and the repayment of all sums expended by the Mortgagee in connection with performance of those covenants.
- (iv) The payment of all costs and expenses relating to foreclosure, repossession, collection, modification, and disposition, (including, without limitation, reasonable attorneys', accounting, appraiser, engineering and environmental consultant fees) incurred by Mortgagee.



As security for the purposes stated above and elsewhere in this Mortgage, the Mortgagor mortgages and warrants to the Mortgagee, its successors and assigns, the lands, premises and property in the County of Lake, in the State of Indiana (the "mortgaged premises"), described as follows:

Legal Description:

See Exhibit-A for legal description which is incorporated herein by reference.

Parcel Identification No. Key No. 15-619-1 (formerly 15-474-35)

Commonly Known As:	<u>9050 Louisiana Street</u>	<u>Merrillville</u>	<u>IN</u>	<u>46410</u>
	STREET ADDRESS	CITY	STATE	ZIP CODE

Together with:

- (a) all related easements, rights-of-way, licenses and privileges;
- (b) all buildings and improvements now or later situated under, upon or over the above described land or any part of it;
- (c) all the tenements, hereditaments, appurtenances, reversions and remainders belonging or pertaining to the above described land and also all other estate, right, title, and interest of the Mortgagor in and to the above described land;

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- (d) all the rents, issues, royalties, income and profits, license fees, revenues, charges, accounts and general intangibles arising from the above described land, or relating to any business conducted by the Mortgagor on it, under present or future leases, licenses or otherwise, which are specifically assigned and transferred to the Mortgagee;
- (e) all right, title and interest of the Mortgagor in and to the land lying in the bed of any street, road, avenue, alley or walkway, opened or proposed or vacated, adjoining the above described land;
- (f) all fixtures as defined under Indiana real estate law, of every kind and nature which are now or later located in or upon the above described land or now owned or later acquired by the Mortgagor (individually and collectively the "fixtures") including, without limit, all lighting, heating, cooling, ventilating, air-conditioning, incinerating, refrigerating, plumbing, sprinkling, communicating and electrical systems, and the related machinery, appliances, fixtures and equipment, and all of the right, title and interest of the Mortgagor in and to any fixtures which may be subjected to any title retention or security agreement superior in lien to the lien of this Mortgage. It is understood and agreed that all fixtures are part and parcel of the mortgaged premises and appropriated to the use of the said real estate and, whether affixed or annexed or not, shall for the purposes of this Mortgage, unless the Mortgagee shall otherwise elect, be deemed conclusively to be real estate and mortgaged under this Mortgage; and
- (g) any and all awards or payments, including without limit interest on them, and the right to receive them, which may be made with respect to the mortgaged premises as a result of (i) the exercise of the right of eminent domain; (ii) the alteration of the grade of any street, (iii) any loss of or damage to any building or other improvement on the above described land, (iv) any other injury to or decrease in the value of the mortgaged premises, (v) any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the mortgaged premises or (vi) any refund of utility deposits or right to any tenant deposit. The reasonable attorneys fees, costs and disbursements incurred by the Mortgagee in connection with the collection of these awards or payments shall be additional indebtedness secured by this Mortgage. The Mortgagor agrees to execute and deliver, from time to time, further instruments as may be requested by the Mortgagee to confirm the assignment to the Mortgagee of these awards and payments.

Any reference in this Mortgage to the "mortgaged premises" shall, unless the context requires otherwise, be deemed to include and apply to the above described land, buildings, improvements, equipment, fixtures, rents, issues, royalties, income and profits, accounts and general intangibles, leases, easements, tenements, hereditaments, and appurtenances, awards, payments and all other rights, privileges and interests described above. Notwithstanding the foregoing, this Mortgage shall not secure that part of the indebtedness, if any, which constitutes a consumer loan, other than a loan (which is a consumer loan) made at the same time as this Mortgage and referenced in clause (i) on page one above or otherwise referenced as being secured by this Mortgage (and all extensions, renewals, modifications or replacements thereof).

The Mortgagor, on a continuing basis, warrants, covenants and agrees to and with the Mortgagee, which covenants, warranties and agreements, to the extent permitted by law, shall be deemed to run with the land, as follows:

1. The Mortgagor will pay to the Mortgagee all indebtedness, all without relief from valuation and appraisal laws, according to the terms of the relevant instruments or agreements evidencing it, and the Mortgagor agrees that this Mortgage is a continuing mortgage securing the payment of the indebtedness.
2. The Mortgagor has good and indefeasible title to the entire mortgaged premises in fee simple and with good right and full power to sell, mortgage and convey it; the mortgaged premises are free and clear of all easements, restrictions, liens, security interests, leases and encumbrances whether now existing or later created, except those matters listed on attached Exhibit B (if any) to which this Mortgage is expressly subject, and the Mortgagor will warrant and defend the mortgaged premises against all other claims and demands whatsoever. The Mortgagee shall have the right, at its option and at such time or times as it, in its sole discretion, deems necessary, to take whatever action it may deem necessary to defend or uphold the lien of this Mortgage or otherwise enforce any of the rights of the Mortgagee under this Mortgage or any obligation secured by this Mortgage including, without limit, the right to institute appropriate legal proceedings for these purposes.
3. The Mortgagor shall pay when due, and before any interest, collection fees or penalties accrue or default occurs, all taxes, assessments, encumbrances, liens, mortgages, water or sewer charges and other charges and impositions levied, assessed or existing with respect to the mortgaged premises or any part of it, and will deliver to the Mortgagee upon request official

receipts showing these payments. If the Mortgagor fails to pay these taxes, assessments, encumbrances, liens, mortgages, charges and impositions when due, or if the Mortgagor fails to pay all interest, collection fees and penalties accrued on them, the Mortgagee, at its sole option, may (but is not obligated to) pay them and the monies paid shall be a lien upon the mortgaged premises added to the amount secured by this Mortgage and payable immediately by the Mortgagor to the Mortgagee, with interest at the higher of (i) the interest rate, if any, charged by the particular entity levying or assessing the tax, assessment or imposition or holding the encumbrance or lien, or (ii) the highest rate charged by the Mortgagee on any of the indebtedness (but in either case not to exceed the maximum interest rate permitted by applicable law).

Upon discovery of nonpayment by Mortgagor or the occurrence of an event of default under this Mortgage and at the sole option of the Mortgagee, the Mortgagor shall pay to the Mortgagee in advance on the first day of each month a pro-rata portion (as determined by the Mortgagee) of all taxes, assessments, liens, encumbrances, mortgages, and other charges levied, assessed or existing on the mortgaged premises. In the event that sufficient funds have been deposited with the Mortgagee to cover the amount of these taxes, assessments, liens, encumbrances, mortgages, and other charges when they become due and payable, the Mortgagee shall pay them. In the event that sufficient funds have not been deposited to cover the amount of these taxes, assessments, liens, encumbrances, mortgages and other charges, at least thirty (30) days prior to the time when they become due and payable, the Mortgagor shall immediately upon request by the Mortgagee pay the amount of the deficiency to the Mortgagee. The Mortgagee shall not be required to keep in a separate account or to pay the Mortgagor any interest or earnings whatever on the funds held by the Mortgagee for the payment of taxes, assessments, liens, encumbrances, mortgages, or other charges pursuant to this paragraph or for the payment of insurance premiums under paragraph (4) below, or on any other funds deposited with the Mortgagee in connection with this Mortgage. If an event of default occurs under this Mortgage, any funds then remaining on deposit with the Mortgagee may be applied against the indebtedness immediately upon or at any time after the event of default occurs, and without notice to the Mortgagor. Further, the Mortgagee may make payments from any funds on deposit with the Mortgagee for taxes, assessments, liens, encumbrances, mortgages, or other charges on or with respect to the mortgaged premises notwithstanding that subsequent owners of the premises may benefit as a result. The Mortgagor shall not, and nothing in this Mortgage shall be construed to give the Mortgagor the right to, mortgage or pledge the mortgaged premises or any part of it as security for any other indebtedness or obligations. Nothing in this paragraph shall be considered a consent by the Mortgagee to any lien, mortgage or encumbrance on the mortgaged premises unless set forth on attached Exhibit B, if any.

4. The Mortgagor shall keep the buildings and all other improvements now or later existing on the mortgaged premises constantly insured for the benefit of the Mortgagee against fire and other hazards and risks, including without limit vandalism and malicious mischief, as the Mortgagee may reasonably require and shall further provide flood insurance (if the mortgaged premises are situated in an area which is considered a flood risk area by the United States Department of Housing and Urban Development, and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended) public liability and product liability insurance and any other insurance as the Mortgagee may require from time to time, all in amounts and in forms and with companies as are satisfactory to the Mortgagee. The Mortgagor shall deliver to the Mortgagee the policies evidencing the required insurance with premiums fully paid for one year in advance and with standard mortgagee clauses (making all loss payable to the Mortgagee) satisfactory to the Mortgagee. Renewals of the required insurance (together with evidence of premium prepayment for one year in advance) shall be delivered to the Mortgagee at least thirty (30) days before the expiration of any existing policies. All policies and renewals shall provide that they may not be canceled or amended without giving the Mortgagee thirty (30) days prior written notice of cancellation or amendment. All policies and renewals shall be held by, and are pledged to, the Mortgagee, along with all insurance premium rebates, as additional security for the indebtedness. Should the Mortgagor fail to insure or fail to pay the premiums on any required insurance or fail to deliver the policies or renewals of them as provided above, the Mortgagee may (but is not obligated to) have the insurance issued or renewed (and pay the premiums on it for the account of the Mortgagor) in amounts and with companies and at premiums as the Mortgagee deems appropriate. If the Mortgagee elects to have insurance issued or renewed to insure the Mortgagee's interest, the Mortgagee shall have no duty or obligation of any kind to also insure the Mortgagor's interest or to notify the Mortgagor of the Mortgagee's actions. Any premiums or other sums paid by the Mortgagee for insurance as provided above shall be a lien upon the mortgaged premises added to the amount secured by this Mortgage and payable immediately, with interest on those sums at the highest rate charged by the Mortgagee on any of the indebtedness (but not to exceed the maximum interest rate permitted by applicable law). In the event of loss or damage, the proceeds of all required insurance shall be paid to the

Mortgagee alone. No loss or damage shall itself reduce the Indebtedness. Mortgagor hereby covenants and agrees to act promptly in the event of a loss or damage to the mortgaged premises to adjust and collect all insurance proceeds payable as a result of such loss or damage and if it fails to do so the Mortgagee may take all actions determined in its judgment to be advisable to preserve its collateral. Under such circumstances, the Mortgagee and any of its employees is each irrevocably appointed attorney-in-fact for the Mortgagor and is authorized to adjust and compromise each loss without the consent of the Mortgagor, to collect, receive and receipt for the insurance proceeds in the name of the Mortgagee and the Mortgagor and to endorse the Mortgagor's name upon any check in payment of the loss. So long as Mortgagor is not otherwise in default under this Mortgage and after first applying any insurance proceeds to the payment of all costs and expenses incurred by Mortgagee in obtaining the proceeds (including, without limit, court costs and reasonable attorneys' fees), Mortgagee agrees to make the balance of any insurance proceeds available for restoration and repair of the loss or damage to the mortgaged premises (the "Repair Work") upon the following terms and conditions: (a) the plans and specifications must be approved by the Mortgagee prior to the commencement of any work, (b) no liens, encumbrances or other claims of third parties shall be filed against the mortgaged premises with respect to the Repair Work, and (c) the Mortgagor shall demonstrate to the satisfaction of the Mortgagee that: (i) the Repair Work shall restore or rebuild the mortgaged premises to a value equal to or in excess of the value thereof as of the date of loss or damage as determined by an appraisal acceptable to Mortgagee and (ii) if the cost of the Repair Work exceeds the insurance proceeds available the Mortgagor has adequate resources to pay such excess. If the foregoing terms and conditions are satisfied, Mortgagee shall distribute the insurance proceeds to Mortgagor monthly on a construction draw basis upon the request of Mortgagor. If such terms and conditions may not be satisfied as determined by the Mortgagor in its sole discretion, the balance of the insurance proceeds shall be applied toward payment of the Indebtedness or any portion of it, whether or not then due or payable and in whatever order of maturity as the Mortgagee may elect. Application of proceeds by the Mortgagee toward later maturing installments of the Indebtedness shall not excuse the Mortgagor from making the regularly scheduled installment payments nor shall such application extend or reduce the amount of any of these payments. Application of proceeds by the Mortgagee toward payment of the Indebtedness shall constitute an acceleration and prepayment and shall subject the Mortgagor to any applicable prepayment premium or formula. In the event of a foreclosure of this Mortgage, or the giving of a deed in lieu of foreclosure, the purchaser or grantee of the mortgaged premises shall succeed to all of the rights of the Mortgagor under said insurance policies including, without limit, any right to unearned premiums and to receive the proceeds. Upon discovery of nonpayment by Mortgagor or the occurrence of an event of default under this Mortgage and at the sole option of the Mortgagee, the Mortgagor shall pay to the Mortgagee in advance on the first day of each month the equivalent of one-twelfth (1/12th) of the annual premiums (as estimated by the Mortgagee) due on the required insurance, but with an initial payment which together with subsequent monthly payments will be sufficient to pay the estimated annual premiums as provided in this paragraph. In the event that sufficient funds have been deposited with the Mortgagee to cover the amount of the insurance premiums for required insurance when the premiums become due and payable, the Mortgagee shall pay the premiums. In the event that sufficient funds have not been deposited with the Mortgagee to pay the insurance premiums at least thirty (30) days prior to the time when they become due and payable, the Mortgagor shall immediately upon request pay the amount of this deficiency to the Mortgagee.

5. Subject to the receipt of insurance or condemnation proceeds by Mortgagor, the Mortgagor shall promptly repair, restore, replace or rebuild each part of the mortgaged premises which may be damaged or destroyed by fire or other casualty or which may be affected by any eminent domain proceedings.
6. The Mortgagor shall abstain from commission of waste upon the mortgaged premises, keep the buildings, improvements and equipment on the mortgaged premises in good repair, and promptly comply with all laws, regulations and requirements of all governmental bodies affecting the mortgaged premises. If the Mortgagee determines that the mortgaged premises, or any part of it, requires inspection, testing, appraisal, repair, care, alteration or attention of any kind or nature, not provided to the Mortgagee's satisfaction by the Mortgagor, the Mortgagee may (but is not obligated to) enter or cause entry to be made upon the mortgaged premises, and inspect, test, appraise, repair, alter or maintain the mortgaged premises as the Mortgagee may deem necessary, and the Mortgagor shall reimburse the Mortgagee upon demand for all resulting costs and expenses incurred by the Mortgagee. The Mortgagee may pay sums of money as the Mortgagee deems essential for the preservation of the mortgaged premises, and these sums shall be additional Indebtedness secured by this Mortgage, shall be payable by the Mortgagor to the Mortgagee upon demand, and shall bear interest at the highest rate charged by the Mortgagee to the Mortgagor on any of the Indebtedness (but not to exceed the maximum interest rate under applicable law). The failure of Mortgagor to pay any taxes or assessments assessed against the mortgaged premises, or any installment of

them, or any premiums payable with respect to any insurance policy covering the mortgaged premises, shall constitute waste (although the meaning of "waste" shall not be limited to this nonpayment). The Mortgagor agrees to the appointment of a receiver without regard to the adequacy or inadequacy of any security for the indebtedness and without the requirement of any bond, should the Mortgagee seek this relief. The Mortgagor shall not make or permit any other party to make any structural alterations, additions or improvements of any type to the mortgaged premises (individually and collectively the "Improvements"); regardless of whether the improvements would increase the value of the mortgaged premises, without the Mortgagee's prior written consent. This consent may be withheld by the Mortgagee in its sole discretion. If the Mortgagee consents to the making of any improvements on the mortgaged premises, and the improvements are not completed with due diligence in accordance with the plans and specifications approved in writing by the Mortgagee, or if construction of the improvements should cease before completion for a period of thirty (30) days, then and in either event it shall be an event of default under this Mortgage and the Mortgagee shall have all the rights and remedies provided in this Mortgage upon an event of default, and all the rights and remedies set forth in this paragraph 6, including, without limitation, the right (but not the obligation) to enter or cause entry to be made upon the mortgaged premises and complete the improvements, with full power and authority to enter into such contracts or agreements as the Mortgagee may deem necessary to complete the improvements. To the extent of any conflict between the provisions of this paragraph 6 and any loan agreement between the Mortgagor and the Mortgagee relating to any improvements to the mortgaged premises, the provisions of the loan agreement will control.

7. The Mortgagor shall pay (before the same become liens, encumbrances or charges against the mortgaged premises) any and all obligations, liabilities or debts for repairs or improvements to the mortgaged premises or for any other goods, services, or utilities furnished to the mortgaged premises. The Mortgagor shall not mortgage or pledge the mortgaged premises or any part of it as security for any other indebtedness or obligations.
8. In the event the mortgaged premises, or any part of it, is taken under power of eminent domain, or by condemnation, the entire proceeds of the award shall be paid directly to the Mortgagee and applied toward reimbursement of all the Mortgagee's costs and expenses incurred in connection with collecting the award (including, without limit, court costs and reasonable attorneys' fees); and the balance shall be made available to Mortgagor for its use in restoring or rebuilding the mortgaged premises provided that (a) Mortgagee determines in good faith that only an insubstantial part of the mortgaged premises has been taken under power of eminent domain, and (b) Mortgagor is able to demonstrate to the satisfaction of Mortgagee that the value of the mortgaged premises based upon an appraisal acceptable to Mortgagee indicates that the mortgaged premises remains as sufficient collateral to support the indebtedness. Otherwise, the balance shall be applied upon the indebtedness whether or not then due or payable in whatever manner the Mortgagee deems advisable. Application by the Mortgagee of any condemnation award or portion of it toward the last maturing installments of the indebtedness shall not excuse the Mortgagor from making the regularly scheduled payments nor extend or reduce the amount of these payments. Application of any condemnation award by the Mortgagee toward payment of the indebtedness shall constitute an acceleration and a prepayment and shall subject the Mortgagor to any applicable prepayment premium or formula. The Mortgagor covenants and agrees to act promptly to discharge and satisfy any condemnation award and judgment. If not, the Mortgagee or any of its employees is irrevocably appointed attorney-in-fact and is duly authorized and empowered to receive, receipt for, discharge and satisfy any condemnation award and judgment, whether joint or several, on behalf of the Mortgagor, his legal representatives and assigns. This receipt, discharge and satisfaction shall be as legally effective and binding as if given directly by the Mortgagor; provided, however, that the Mortgagee shall not be liable for failure to collect any condemnation award, regardless of the cause of such failure.
9. The indebtedness secured by this Mortgage shall become due and payable immediately, without notice, at the option of the Mortgagee, if the Mortgagor shall convey, assign or transfer the mortgaged premises or any part of it by deed, land contract or other instrument, or if title to the mortgaged premises or any part of it shall become vested in any other person or party in any manner whatsoever other than to the Permitted Transferee (as defined below), or if there is any disposition (through one or more transactions) of legal or beneficial title to a controlling interest of the Mortgagor. In the event ownership of the mortgaged premises or any part of it becomes vested in a person or persons other than the Mortgagor (with or without the prior written approval of the Mortgagee), the Mortgagee may (but shall not be obligated to) deal with and may enter into any contract or agreement with the successor or successors in interest with reference to this Mortgage in the same manner as with the Mortgagor, without in any manner vitiating, discharging or otherwise affecting the lien of this Mortgage or the liability of the Mortgagor, or of the Borrower, or of any guarantor (as hereinafter defined) under this Mortgage or upon the indebtedness. Notwithstanding the

provisions of this paragraph 9, Mortgagor may transfer the mortgaged premises to either Roger J. Ciapara or Sally I. Ciapara or to them jointly, as husband and wife (each a "Permitted Transferee"), provided that the Permitted Transferee shall be bound by and shall perform the obligations of Mortgagor under this Mortgage; and provided further that the Mortgagor shall remain primarily liable for the prompt and full payment of the Indebtedness secured hereunder.

10. The Mortgagor hereby grants to Mortgagee a security interest in fixtures (as defined in subparagraph (f) in the mortgage granting clause above) and all accounts and general intangibles arising as rents from the mortgaged premises and all accounts and general intangibles arising from insurance and condemnation proceeds relating to the mortgaged premises pursuant to the Uniform Commercial Code (IND. CODE §§ 26-1 et seq.). The Mortgagor agrees, upon request of the Mortgagee from time to time, to immediately execute, deliver and/or file any mortgage and any amendments to this Mortgage, any separate security agreement and any financing statements to include specifically the property hereby given to secure the Indebtedness. Mortgagor further authorizes Mortgagee to execute and file on Mortgagor's behalf a financing statement or statements in those public offices deemed necessary by the Mortgagee, to perfect, protect, and maintain the security interests granted to Mortgagee hereunder, including, without limitation, any amendments, continuations or assignments of financing statements without the signature of Mortgagor and authorizes Mortgagee to file duplicates of any financing statements as determined by Mortgagee. Upon the occurrence of any event of default under this Mortgage, the Mortgagee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code or otherwise provided by law or by this Mortgage including, without limit, the right to require the Mortgagor to assemble the personal property and make it available to the Mortgagee at a place to be designated by the Mortgagee which is reasonably convenient to both parties, the right to take possession of the personal property with or without demand and with or without process of law and the right to sell and dispose of it and distribute the proceeds according to law. The Mortgagor agrees that any requirement of reasonable notice shall be met if the Mortgagee sends notice to the Mortgagor at least five (5) days prior to the date of sale, disposition or other event giving rise to the requirement of notice. The Mortgagor agrees that the proceeds of any disposition of the personal property may be applied by the Mortgagee first to the Mortgagee's reasonable expenses in connection with the disposition including, without limit, reasonable attorneys' fees and legal expenses, and then to payment of the Indebtedness.

11. As additional security for the payment of the Indebtedness and performance of this Mortgage, the Mortgagor assigns absolutely, and not conditionally, to the Mortgagee all its right, title and interest in and to all written and oral leases and occupancy agreements, now or later existing, covering the mortgaged premises or any part of it (but without an assumption by the Mortgagee of liabilities of the Mortgagor under any of these leases or occupancy agreements by virtue of this assignment), including, without limit, the Lease dated August 1, 1993 between Mortgagor and RSI Wholesale of Merrillville, Inc., a Michigan corporation (the "RSI Lease") and the Mortgagor assigns absolutely, and not conditionally, to the Mortgagee the rents, issues, income and profits of the mortgaged premises. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases, and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for the leases and occupancy agreements and for the rents, issues, income and profits and apply the same to the Indebtedness; provided, however, that Mortgagee hereby grants Mortgagor a license to collect the rents, issues, income and profits (but not more than one (1) month in advance) prior to any event of default. If an event of default occurs under this Mortgage, Mortgagor's license to collect the rents, issues, income and profits shall terminate immediately without notice to any other party and the Mortgagee may receive and collect the rents, issues, income and profits personally or through a receiver so long as the event of default exists and during the pendency of any foreclosure proceedings and during any redemption period. The Mortgagor shall be entitled to the appointment of a receiver as a matter of right, without notice to any other party, without regard to the adequacy or inadequacy of any security for the Indebtedness and without the requirement of any bond, and the Mortgagor agrees to the appointment of a receiver if this is believed necessary or desirable by the Mortgagee to enforce its rights under this Mortgage. The Mortgagee shall at no time have any obligation whatever to attempt to collect rent or other amounts from any tenant or occupier of the mortgaged premises notwithstanding that such tenants and occupiers may not be paying rent or other amounts to either the Mortgagor or to the Mortgagee. Further, the Mortgagee shall at no time have any obligation whatever to enforce any other obligations owed by tenants or occupiers of the mortgaged premises to the Mortgagor. No action taken by the Mortgagee under this Mortgage shall make the Mortgagee a "mortgagee in possession." The Mortgagor shall at no time collect advance rent under any lease or occupancy agreement pertaining to the mortgaged premises or any part of it in excess of one month (other than as a security deposit) and the Mortgagee shall not be bound in any respect by any rent prepayment made or received in violation of this prohibition. As additional security for the Indebtedness the Mortgagor assigns to the

Mortgagee all of the Mortgagor's rights and interest in all licenses and permits affecting the mortgaged premises. This assignment shall not be construed as a consent by the Mortgagee to any license or permit so assigned, or to impose upon Mortgagee any obligations with respect to any license or permit. The Mortgagor shall not cancel or amend any of the licenses and permits assigned (nor permit any of them to terminate if they are necessary or desirable for the operation of the mortgaged premises) without first obtaining the written approval of the Mortgagee. This paragraph shall not be applicable to any license or permit that terminates if it is assigned without the consent of another party (other than the Mortgagor) or its issuer, unless this consent has been obtained or this assignment is ratified by the other party or issuer; nor shall this paragraph be construed as a present assignment of any license or permit that the Mortgagor is required by law to hold in order to operate the mortgaged premises.

12. As additional security for the indebtedness, the Mortgagor grants a security interest to the Mortgagee in all deposit or other accounts with the Mortgagee.
13. In the event any tax shall be due with respect to the execution and delivery or recordation of this Mortgage or any note or other instrument evidencing or securing repayment of the indebtedness or the interest of the Mortgagee in the mortgaged premises, whether levied against the Mortgagee or otherwise, the Mortgagor shall pay this tax at the time and in the manner required by applicable law. The Mortgagor shall hold the Mortgagee harmless and shall indemnify the Mortgagee against all liability of any nature whatever as a result of the imposition of this tax. In the event payment by the Mortgagor of this tax would result in the payment of interest in excess of the permitted rate, then the Mortgagor shall have no obligation to pay the portion of the tax resulting in this excess; provided, however, that in this event the Mortgagee may declare the entire principal balance of the indebtedness, and accrued interest on it, immediately due and payable and this shall subject the Mortgagor to any applicable prepayment premium or formula.
14. (a) The Mortgagor represents, warrants and covenants that the Mortgagor has not used Hazardous Materials (as later defined) on or affecting the mortgaged premises in any manner which violates Environmental Laws (as later defined), that there is no condition concerning the mortgaged premises which could require remediation pursuant to applicable Environmental Laws, and that, to the best of the Mortgagor's knowledge, no prior owner of the mortgaged premises or any current or prior occupant has used Hazardous Materials on or affecting the mortgaged premises in any manner which violates Environmental Laws. The Mortgagor covenants and agrees that neither it nor any occupant shall use, introduce or maintain Hazardous Materials on the mortgaged premises in any manner unless done in strict compliance with all Environmental Laws.
- (b) The Mortgagor shall conduct and complete all investigations, environmental audits, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on or affecting the mortgaged premises, whether caused by the Mortgagor or a third party, in accordance with all Environmental Laws to the satisfaction of the Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities. Any remedial, removal or other action by the Mortgagor shall not be deemed a cure or waiver of any breach of this paragraph (14) due to the presence or use of Hazardous Materials on or affecting the mortgaged premises. Additionally, the Mortgagor shall defend, indemnify and hold harmless the Mortgagee, its employees, agents, shareholders, officers and directors, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limit, reasonable attorneys' fees) of whatever kind or nature arising out of or related to (i) the presence, disposal, release or threatened release of any Hazardous Materials on, from or affecting the mortgaged premises or the soil, water, air, vegetation, buildings, personal property, persons or animals on the mortgaged premises, (ii) any personal injury (including, without limit wrongful death) or property damage (real or personal) arising out of or related to these Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached or government order related to these hazardous materials, (iv) the cost of removal of all Hazardous Materials from all or any portion of the mortgaged premises, (v) taking necessary precautions to protect against the release of Hazardous Materials on or affecting the mortgaged premises, (vi) complying with all Environmental Laws and/or (vii) any violation of Environmental Laws or requirements of the Mortgagee, which are based upon or in any way related to Hazardous Materials including, without limit, attorneys and consultants' fees (the attorneys and consultants to be selected by the Mortgagee), investigation and laboratory fees, environmental studies required by the Mortgagee (whether prior to foreclosure, or otherwise), court costs and litigation expenses. Upon the request of the Mortgagee, the Mortgagor and any guarantor shall execute a separate indemnity consistent with this paragraph.

- (c) The Mortgagor has never received any notice ("Environmental Complaint") of any violation of Environmental Laws with respect to the Mortgagor or the mortgaged premises (and, within five (5) days of receipt of any Environmental Complaint, the Mortgagor shall give the Mortgagee a copy of it); and to the best of the Mortgagor's knowledge, there have been no actions commenced or threatened by any party with respect to the Mortgagor or the mortgaged premises for noncompliance with any Environmental Laws.
- (d) In the event this Mortgage is foreclosed or the Mortgagee accepts a deed in lieu of foreclosure, the Mortgagor shall deliver the mortgaged premises to the Mortgagee, purchaser or grantee, as the case may be, free of any and all Hazardous Materials so that the condition of the mortgaged premises shall not be a violation of any Environmental Laws.
- (e) Upon ten (10) days notice to the Mortgagor (except in an emergency or where not practical under applicable law, in which case notice is waived), and without limitation of the Mortgagee's other rights under this Mortgage or elsewhere, the Mortgagee has the right, but not the obligation, to enter on the mortgaged premises and to take other actions as it deems appropriate to investigate or test for, clean up, remove, resolve, minimize the impact of or advise governmental agencies of the possible existence of any Hazardous Materials or Environmental Complaint upon the Mortgagee's receipt of any notice from any source asserting the existence of any Hazardous Materials or an Environmental Complaint pertaining to the mortgaged premises which, if true, could result in an order, suit or other action against the Mortgagor and/or any part of the mortgaged premises which, in the sole opinion of the Mortgagee, could jeopardize its security under this Mortgage. All reasonable costs and expenses incurred by the Mortgagee in the exercise of any of these rights shall be secured by this Mortgage and shall be payable by the Mortgagor upon demand. Any such actions conducted by the Mortgagee shall be solely for the benefit of and to protect the interests of the Mortgagee and shall not be held to the benefit of the Mortgagor or any third party for any purpose whatsoever. By conducting any such actions, the Mortgagee does not assume control over the environmental affairs or operations of the Mortgagor nor assume any liability of the Mortgagor or any third party.
- (f) The provisions of this paragraph (14) shall be in addition to any and all other obligations and liabilities the Mortgagor may have to the Mortgagee at common law or pursuant to any other agreement, and shall survive (i) the repayment of all sums due under any note or other loan documents executed in connection with this Mortgage and the repayment of all other indebtedness, (ii) the satisfaction of all other obligations of the Mortgagor under this Mortgage and under the other loan documents and evidence(s) of indebtedness, (iii) the discharge of this Mortgage, and (iv) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure.
- (g) For purposes of this Mortgage, (i) "Hazardous Materials" means each and all of the following: hazardous materials and/or substances as defined in any Environmental Law, petroleum, petroleum by-products, natural gas, flammable explosives, radioactive materials, and toxic materials, and (ii) "Environmental Laws" mean any and all federal, state, local or other laws (whether under common law, by legislative action or otherwise), rules, policies, ordinances, directives, orders, statutes, or regulations an object of which is to regulate or improve health, safety, or the environment including, without limit, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 USC 6901 et seq.), the Toxic Substances Control Act, as amended (15 USC 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 as amended (42 USC 11001 et seq.), the Hazardous Materials Transportation Act, as amended (49 USC 1801 et seq.), the Clean Water Act, as amended (33 USC 1251 et seq.), the Oil Pollution Act of 1990, as amended (33 USC 2701 et seq.), and the Indiana Environmental Management Act, as amended (Ind. Code 13-7-1-1 et seq.).

15. The Mortgagor shall comply with and perform in the time required all obligations and restrictions imposed upon the Mortgagor or the mortgaged premises under applicable deed restrictions, restrictive covenants, easements or other agreements affecting the mortgaged premises, but this is not a consent by the Mortgagee to take subject to any of these agreements unless specifically set forth on attached Exhibit B, if any, and the Mortgagee does not assume any obligations under these agreements.
16. If the Mortgagor fails to perform in the time and manner required the covenants and agreements contained in this Mortgage, or if any action or proceeding is threatened or



commenced which affects the Mortgagee's interest in the mortgaged premises including, without limit, eminent domain, environmental, bankruptcy, insolvency, building, or zoning proceedings, then the Mortgagee at its option may make such appearances, disburse such sums and take such action as is deemed necessary by the Mortgagee to protect the Mortgagee's interest and the Mortgagor will reimburse the Mortgagee upon demand for all sums disbursed and costs incurred including, without limit, reasonable attorneys' fees and costs of entry upon the mortgaged premises to effect repairs. The Mortgagee shall not be liable in any case for failure to exercise its right or for failure to continue exercising its right once having exercised them.

17. No waiver or forbearance by the Mortgagee of any right or remedy under this Mortgage shall affect or extend to or be deemed a waiver of any other right or remedy of the Mortgagee under this Mortgage nor affect or impair the subsequent exercise of the same right or remedy by the Mortgagee for any future or subsequent default by the Mortgagor under this Mortgage.
18. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage, any other agreement or afforded by law, and may be exercised concurrently, independently or successively.
19. The occurrence of any of the following events shall be deemed an event of default (an "event of default" or a "default") under this Mortgage and shall entitle the Mortgagee to exercise its remedies under this Mortgage or as otherwise provided by law:
  - (a) Default by the Mortgagor or Borrower in making payment when due, by acceleration or otherwise, of any principal portion of or interest on the indebtedness or any part of it;
  - (b) Any failure by the Mortgagor, the Borrower, or any guarantor of all or any part of the indebtedness ("guarantor") to comply with, or breach by the Mortgagor, the Borrower, or any guarantor of, any of the terms, provisions, warranties or covenants of this Mortgage or any other agreement or commitment between the Mortgagor, the Borrower, or any guarantor and the Mortgagee;
  - (c) Any warranty, representation, financial statement or other information made, given or furnished to the Mortgagee by or on behalf of the Mortgagor, the Borrower, or any guarantor shall be, or shall prove to be or have been false or materially misleading when made, given or furnished;
  - (d) Default under or institution of foreclosure proceedings of any mortgage or lien of any kind against the mortgaged premises or any portion of it;
  - (e) Any proceeding is instituted against the Mortgagor, the Borrower, or any guarantor to enforce payment or liquidation of an outstanding obligation of the Mortgagor, the Borrower, or any guarantor to third parties involving an amount in excess of Fifty Thousand and 00/100 Dollars (\$50,000);
  - (f) Any loss, theft, substantial damage or destruction to the mortgaged premises, or the issuance or filing of any attachment, levy, garnishment or the commencement of any related proceeding or the commencement of any other judicial process upon or in respect to the Mortgagor, the Borrower, or any guarantor or the mortgaged premises;
  - (g) Sale or other disposition by the Mortgagor, the Borrower, or any guarantor of any substantial portion of its assets or property, or death, dissolution, merger, consolidation, termination of existence, insolvency, business failure or assignment for the benefit of creditors of or by the Mortgagor, the Borrower, or any guarantor; or commencement of any proceedings under any state or federal bankruptcy or insolvency laws or laws for the relief of debtors by or against the Mortgagor, the Borrower, or any guarantor; or the appointment of a receiver, trustee, court appointee, sequestrator or otherwise, for all or any part of the property of the Mortgagor, the Borrower, or any guarantor; or if there is any termination, notice of termination or breach of any collateral assignment, guaranty, pledge or subordination agreement relating to all or any part of the indebtedness; or if there is any failure by the Mortgagor, the Borrower, or any guarantor to pay when due any of its indebtedness (other than to the Mortgagee) or in the observance or performance of any term, covenant or condition in any document evidencing, securing or relating to its indebtedness;
  - (h) Any action, suit or proceeding is initiated against the Mortgagor, the Borrower, or any guarantor (or any subsidiary if any is a corporation or any general partner if any is a partnership) under any federal or state controlled substance, gambling, or racketeering

statute (including, without limit, the Racketeer Influenced and Corrupt Organization Act of 1970), which action, suit or proceeding could result in the confiscation or forfeiture of any portion of the assets of the Mortgagor, the Borrower, or any guarantor (or any subsidiary or general partner); or

- (i) The Mortgagee deems the margin of the collateral for the Indebtedness insufficient or itself insecure, in good faith believing that the prospect of payment of the Indebtedness, or performance of this Mortgage is impaired or shall fear deterioration, removal or waste of any of the mortgaged premises.

20. If the Mortgagee at any time(s) for any reason shall incur or expend any sums including, without limit, court costs and reasonable attorneys' fees, whether or not in connection with any suit, action or proceeding, to sustain the lien of this Mortgage or its priority, or to protect the value of the mortgaged premises, or to protect or enforce or otherwise administer any of its rights under this Mortgage, or to recover any of the Indebtedness, or for any appraisal, environmental audit, accounting, engineering, title examination or title insurance policy relating to the mortgaged premises, or otherwise in any way relating to this Mortgage or the Indebtedness including, without limit, sums expended in connection with any suit involving the conduct of the Mortgagor, the Borrower, or the Mortgagee with respect to this Mortgage or the Indebtedness, all of these sums shall on demand be paid by the Mortgagor to the Mortgagee, together with the interest on these sums at the highest rate charged by the Mortgagee to the Mortgagor on any of the Indebtedness (but not to exceed the maximum interest rate permitted by applicable law), and shall be a lien on the mortgaged premises and secured by this Mortgage.
21. In the event of any foreclosure or other sale under this Mortgage by virtue of judicial proceedings or otherwise, the mortgaged premises may be sold in one parcel and as an entirety, or in such parcels, manner or order as the Mortgagee in its sole discretion may elect.
22. Acceleration of the Indebtedness as provided in this Mortgage shall trigger any applicable prepayment premium or formula. Without limiting, when a prepayment premium may be due, it is agreed that at any time after acceleration a tender of payment of the amount necessary to satisfy the entire Indebtedness by the Mortgagor, or by anyone on behalf of the Mortgagor or otherwise, must include any applicable prepayment premium or formula.
23. Immediately upon the occurrence of any event of default, the Mortgagee shall have the option, in addition to and not in substitution for all other rights and remedies provided in this Mortgage or other agreement or by law, and is authorized by the Mortgagor, to do any or all of the following 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:
- (a) Declare the entire unpaid amount of the Indebtedness, together with accrued and unpaid interest on it and any applicable prepayment premium or formula, and any and all other charges payable by the Mortgagor to the Mortgagee to be immediately due and payable and, at the Mortgagee's option, (i) to bring suit for the same, (ii) to bring suit for any delinquent payment of or upon the Indebtedness, or (iii) to take any and all steps and institute any and all other proceedings that the Mortgagee deems necessary to enforce payment of the Indebtedness and performance of other obligations secured under this Mortgage and to protect the lien of this Mortgage.
  - (b) Commence foreclosure proceedings against the mortgaged premises, at the option of the Mortgagee, pursuant to applicable law. The commencement by the Mortgagee of foreclosure proceedings shall be deemed an exercise by the Mortgagee of its option to accelerate the Indebtedness, unless such proceedings on their face specifically indicate otherwise. The Mortgagor grants power to the Mortgagee to sell the mortgaged premises or to cause the same to be sold at public sale, and to convey the same to the purchaser, in accordance with applicable statutes in a single parcel or in several parcels at the option of the Mortgagee.
  - (c) Cause to be updated an abstract or abstracts and tax histories of the mortgaged premises, procure title insurance or title reports and procure new abstracts and tax histories.
  - (d) Obtain a receiver as a matter of right without regard to the adequacy or inadequacy of security for the Indebtedness and without the requirement of any bond, to manage the mortgaged premises and to collect the rents, profits and income from it.

- (e) Demand, receive and enforce payment and give receipts, releases and satisfactions and sue in the name of the Mortgagor or Mortgagee, for the rents, profits and income from the mortgaged premises.
- (f) Enter upon the mortgaged premises and take other actions as the Mortgagee deems appropriate to investigate or test for the presence of any Hazardous Materials and/or to appraise the mortgaged premises. Without limiting what other rights and remedies of the Mortgagee are specifically enforceable, the Mortgagor agrees that the Mortgagee's rights under this paragraph (23)(f) are specifically enforceable since there is no adequate monetary remedy available to the Mortgagee.
- (g) Contest the amount or validity of any taxes applicable to the mortgaged premises by appropriate proceedings either in the Mortgagee's name, the Mortgagor's name or jointly with the Mortgagor. The Mortgagor shall execute and deliver to the Mortgagee, upon demand, whatever documents and information the Mortgagee determines may be necessary or proper to so contest the taxes or to secure payment of any resulting refund. The Mortgagor shall reimburse the Mortgagee for all costs and expenses, including without limit reasonable attorneys' fees, incurred in connection with each tax contest proceeding. All refunds resulting from each tax contest proceeding shall belong to the Mortgagee to be applied against the Indebtedness with the surplus, if any, to be paid to the Mortgagor. The Mortgagee and any of its employees is each irrevocably appointed attorney-in-fact for the Mortgagor and is authorized to execute and deliver in the name of the Mortgagor those documents deemed necessary or proper by the Mortgagee to carry out any tax contest proceeding or receive the resulting refunds, if any.
- (h) In the event of any sale of the mortgaged premises by foreclosure, through judicial proceedings, or otherwise, apply the proceeds of any such sale in the following order, or such other order as the Mortgagee may elect: to (i) all expenses incurred for the collection of the Indebtedness and the foreclosure of this Mortgage including, without limit, reasonable attorneys' fees; (ii) all sums expended or incurred by the Mortgagee directly or indirectly in carrying out terms, covenants and agreements of or under this Mortgage or any related document, together with interest as provided in this Mortgage; (iii) all accrued and unpaid interest and late payment charges upon the Indebtedness; (iv) any applicable prepayment premium or formula; (v) the unpaid principal amount of the Indebtedness; and (vi) the surplus, if any, paid to the Mortgagor unless a court of competent jurisdiction decrees otherwise.
24. If any provision of this Mortgage is in conflict with any statute or rule of law or is otherwise unenforceable for any reason, then that provision shall be deemed null and void to the extent of the conflict or unenforceability and shall be deemed severable, but shall not invalidate any other provision of this Mortgage.
25. In the event of foreclosure of this Mortgage or the enforcement by the Mortgagee of any other rights and remedies under this Mortgage, the Mortgagor waives any right otherwise available in respect to marshalling of assets which secure the Indebtedness or to require the Mortgagee to pursue its remedies against any other assets or any other party which may be liable for any of the Indebtedness.
26. Promptly upon the request of the Mortgagee, the Mortgagor shall execute, acknowledge and deliver any and all further conveyances, documents, mortgages and assurances, and do or cause to be done all further acts as the Mortgagee may require in its sole discretion to confirm and protect the lien of this Mortgage or otherwise to accomplish the purposes of this Mortgage.
27. If more than one person or party has executed this Mortgage as the mortgagor, the term "Mortgagor" shall include each of the mortgagors individually and collectively, and all warranties, covenants, rights and powers given to or conferred upon the Mortgagee are made or given jointly and severally.
28. Nothing contained in this Mortgage is intended, nor should it be construed, to preclude the Mortgagee from pursuing any other remedy provided by law for the collection of the Indebtedness or any portion of it, or for the recovery of any other sum to which the Mortgagee may be or become entitled for breach of this Mortgage by the Mortgagor, nor shall anything contained in this Mortgage reduce or release in any manner any rights, security interests or liens in favor of the Mortgagee contained in any existing or future agreement between the Mortgagor and the Mortgagee.

29. Any reference in this Mortgage to attorneys' fees shall be deemed a reference to fees, charges, costs and expenses of both in-house and outside counsel and paralegals, whether or not a suit or proceeding is instituted, and whether incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding, in a workout, in consultation with counsel, or otherwise. All costs, expenses and fees of any nature for which the Mortgagor is obligated to reimburse or indemnify the Mortgagee are part of the Indebtedness secured by this Mortgage and are payable upon demand, unless expressly provided otherwise; with interest until repaid at the highest rate charged by the Mortgagee on any of the Indebtedness (but not to exceed the maximum rate permitted by applicable law).
30. With respect to the right, title, interest or lien of any person or entity which is superior to the lien of this Mortgage, the Mortgagee has the right, but not the obligation, to acquire and/or pay off the holder of such right, title, interest or lien and add the amount so paid to the Indebtedness and charge interest on that amount at the highest rate charged by the Mortgagee to the Mortgagor on any of the Indebtedness (but not to exceed the maximum interest rate permitted under applicable law).
31. This Mortgage constitutes the entire agreement of the Mortgagor and the Mortgagee with respect to the subject matter of this Mortgage. No waiver, consent, modification or change of the terms of this Mortgage shall bind the Mortgagor or the Mortgagee unless in writing and signed by the party, or an authorized officer of the party, against whom enforcement is sought. Each waiver, consent, modification or change shall be effective only for the specific purpose given.
32. This Mortgage shall be binding on the Mortgagor and the Mortgagee and on the Mortgagor's and the Mortgagee's heirs, legal representatives, successors and assigns, including, without limit, any debtor in possession or trustee in bankruptcy for the Mortgagor. This shall not be deemed a consent by the Mortgagee to a conveyance by the Mortgagor of all or part of the mortgaged premises or of any ownership interest in the Mortgagor.
33. The Mortgagor has entered into this Mortgage in good faith for the purpose of inducing the Mortgagee to extend credit or make other financial accommodations to or at the request of the Mortgagor, and the Mortgagor acknowledges that the terms of this Mortgage are reasonable.
34. Upon request by the Mortgagee, the Mortgagor shall promptly provide the Mortgagee with certificates of occupancy, licenses, rent rolls, income and expense statements and other documents and information pertaining to the mortgaged premises and its operations as the Mortgagee, from time to time, may request.
35. At the sole option of the Mortgagee, this Mortgage shall become subordinate, in whole or in part (but not with respect to priority as to insurance proceeds or any eminent domain award) to any or all leases and/or occupancy agreements of all or part of the mortgaged premises upon the execution by the Mortgagee, and recording in the appropriate official county records where the premises are located, of a unilateral declaration to that effect.
36. All notices and demands required or permitted to be given to the Mortgagor shall be deemed given when delivered to the Mortgagor or when placed in an envelope addressed to the Mortgagor at the address above, or at such other address as the Mortgagee may have on its records, and deposited, with postage, in a post office or other depository under the custody of the United States Postal Service. The mailing may be certified, first class or registered mail.
37. To the extent that any of the Indebtedness is payable upon demand, nothing contained in this Mortgage shall be construed to prevent the Mortgagee from making demand, without notice and with or without reason, for immediate payment of all or any part of that Indebtedness at any time or times, whether or not an event of default has occurred.
38. Any inspection, audit, appraisal or examination by the Mortgagee or its agents of the mortgaged premises or of information or documents pertaining to the mortgaged premises is for the sole purpose of protecting the Mortgagee's interests under this Mortgage and is not for the benefit or protection of the Mortgagor or any third party. The Mortgagee has no obligation to provide the Mortgagor or any third party designated by the Mortgagor with information concerning or results of any inspection, audit, appraisal or examination by the Mortgagee or its agents. If the Mortgagee, in its sole discretion, discloses information to the Mortgagor this disclosure is for the sole protection of the Mortgagee, does not constitute an agreement to further disclosure and does not create a warranty by the Mortgagee as to the accuracy, sufficiency or any other aspect of the disclosure.
39. Upon full and final payment of the Indebtedness and performance by the Mortgagor of all its other obligations under this Mortgage, except as otherwise provided in paragraphs 14(f) and

40 of this Mortgage, the parties shall automatically each fully, finally and forever release and discharge the other from any claim, liability or obligation in connection with this Mortgage and the Indebtedness.

40. Notwithstanding any prior revocation, termination, surrender or discharge of this Mortgage, the effectiveness of this Mortgage shall automatically continue or be reinstated, as the case may be; in the event that (a) any payment received or credit given by the Mortgagee in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of trust funds, or otherwise under any applicable state or federal law, including, without limitation, laws pertaining to bankruptcy or insolvency, in which case this Mortgage shall be enforceable as if the returned, disgorged or rescinded payment or credit had not been received or given; whether or not the Mortgagee relied upon this payment or credit or changed its position as a consequence of it; or (b) any liability is imposed, or sought to be imposed, against the Mortgagee relating to the environmental condition of, or the presence of hazardous or toxic substances, on, in or about, any property given as collateral to the Mortgagee for the Indebtedness, whether this condition is known or unknown, now exists or subsequently arises (excluding only conditions which arise after any acquisition by the Mortgagee of any such property, by foreclosure, in lieu of foreclosure or otherwise, to the extent due to the wrongful act or omission of the Mortgagee), in which case this Mortgage shall be enforceable to the extent of all liability, costs and expenses (including without limit reasonable attorneys' fees) incurred by the Mortgagee as the direct or indirect result of any environmental condition or hazardous toxic substances. In the event of continuation or reinstatement of this Mortgage, Mortgagor agree(s) upon demand by the Mortgagee to execute and deliver to the Mortgagee those documents which the Mortgagee determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of the Mortgagor to do so shall not affect in any way the reinstatement or continuation. If Mortgagor does not execute and deliver to the Mortgagee upon demand such documents, the Mortgagee and each Mortgagee officer is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of the Mortgagor (with full power of substitution) to execute and deliver such documents in the name and on behalf of the Mortgagor.

41. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF INDIANA.

42. THE MORTGAGOR AND THE MORTGAGEE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS MORTGAGE OR THE INDEBTEDNESS.

43. Additional provisions, if any:

- (a) For purposes of this Mortgage, the Mortgagor and the Borrower are one and the same entity.
- (b) The RSI Lease (as defined in paragraph 11), is subordinate, junior and inferior to the lien of this Mortgage, such subordination being evidenced by a certain Subordination, Attornment and Non-Disturbance Agreement among Mortgagor, Mortgagee and RSI Wholesale of Merrillville, Inc., a Michigan corporation, and recorded in the office of the Recorder of Lake County, Indiana.

IN WITNESS WHEREOF, the Mortgagor has signed and delivered this Mortgage the day and year first written above.

MORTGAGOR:

For Corporations or Partnerships:

WITNESS:

[Signature]  
SIGNATURE  
Timothy KieKover  
PRINTED NAME

Rosa of Indiana, Inc.  
NAME OF ENTITY  
By: [Signature]  
SIGNATURE OF Roger J. Ciapara

Its: President  
TITLE

For Individuals:

WITNESS:

\_\_\_\_\_  
SIGNATURE  
\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE OF  
\_\_\_\_\_  
SIGNATURE OF



STATE OF MICHIGAN )  
                          ) SS.  
COUNTY OF KENT )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 1993 by Roger J. Ciapara, the President of Rosa of Indiana, Inc., on behalf of said entity.

Notary's Signature: [Signature]  
Printed: Kelly R. Criner  
My commission expires: November 5, 1995  
My county of residence: Kent

For Individuals:

KELLY R. CRINER  
Notary Public, Kent County, Michigan  
My Commission Expires November 5, 1995.

STATE OF INDIANA )  
                          ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ by \_\_\_\_\_

Notary's Signature: \_\_\_\_\_  
Printed: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
My county of residence: \_\_\_\_\_

This instrument prepared by and when recorded should be returned to Julianne S. Lis-Milam, attorney at law, Sommer & Barnard, PC, 4000 Bank One Tower, 111 Monument Circle, P.O. Box 44363, Indianapolis, Indiana, 46244-0363.

EXHIBIT A

Legal Description

Lot 1 of RS1 Subdivision, a subdivision in Merrillville, Indiana in Section 27, Township 35 North, Range 8, West of the Second Principal Meridian, Ross Township, Lake County, Indiana and recorded in Plat Book 73, page 86 in the Recorder's office, Lake County, Indiana.



EXHIBIT B

Liens, Security, Interests, Encumbrances:

1. Real Estate Taxes for the year 1993 due and payable in 1994.
2. Merrillville Conservancy District Assessment for the year 1993 due and payable in 1994.
3. Easement dated June 21, 1977 made by Calumet National Bank as Trustee under Trust Number 2003 to Gary Hobart Water Corporation and recorded with the Office of the Recorder of Lake County, Indiana, on July 20, 1977 as Document No. 418291.
4. Easements for public utilities and for drainage over the easterly 10 feet of the mortgaged premises and over the westerly 25 feet of the mortgaged premises, pursuant to the Plat of RSI Subdivision, recorded in Plat Book 73, page 86 in the Recorder's Office, Lake County, Indiana.

