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**94021879 MORTGAGE**

THIS MORTGAGE is made as of March 15, 1994 by and between ACC INDUSTRIES, INCORPORATED, a Delaware corporation (hereinafter referred to as "Mortgagor") and MUTUAL TRUST LIFE INSURANCE COMPANY, an Illinois corporation (hereinafter referred to as "Mortgagee").

**WITNESSETH:**

A. Mortgagor has executed and delivered to Mortgagee a Promissory Note in the principal amount of One Million and No/100 Dollars (\$1,000,000.00), (which Promissory Note, together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified or extended, is hereinafter sometimes called the "Note"), which Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due on the first day of April, 2009, the Note by this reference thereto being incorporated herein; and

B. Mortgagee is desirous of securing the prompt payment of the Note together with interest and prepayment fees, if any, thereon in accordance with the terms of the Note, and any additional indebtedness accruing to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee pursuant to the Note or this Mortgage and any additional sums with interest thereon which may be loaned to Mortgagor by Mortgagee or advanced under the Loan Documents (as hereinafter defined) (all hereinafter sometimes collectively referred to as the "indebtedness").

NOW, THEREFORE, Mortgagor, to secure payment of the indebtedness and the performance of the covenants and agreements herein contained to be performed by Mortgagor, for good and valuable consideration in hand paid, the receipt and sufficiency whereof are hereby acknowledged, hereby agrees and covenants that:

**1. Granting Clauses.**

Mortgagor hereby irrevocably and absolutely does by these presents grant, mortgage, warrant, convey, transfer, assign, bargain, and sell to Mortgagee, its successors and assigns, with all powers of sale (if any) and all statutory rights under the laws of the State of Indiana, all of Mortgagor's present and hereafter acquired estate, right, title and interest in, to and under, and grants to Mortgagee a security interest in, the following:

94021880

For copy see doc. #

Chicago Title Insurance Company

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(a) The real property described in EXHIBIT A attached hereto and incorporated herein by this reference, together with all buildings, structures and improvements now or hereafter erected thereupon and together with the fixtures and personal property hereinafter described (which real property, buildings, structures, improvements, fixtures and personal property is hereinafter sometimes referred to as the "Premises");

(b) All and singular the easements, rights-of-way, licenses, permits, rights of use or occupancy, privileges, tenements, appendages, hereditaments and appurtenances and other rights and privileges thereunto belonging or in any wise appertaining, whether now or in the future, and all the rents, issues and profits therefrom;

(c) All right, title and interest, if any, of Mortgagor, in and to the land lying within any street, alley, avenue, roadway or right-of-way open or proposed or hereafter vacated in front of or adjoining said Premises; and all right, title and interest, if any, of Mortgagor in and to any strips and gores adjoining said Premises;

(d) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the said Premises, or any part thereof, or used or usable in connection with any construction on or any present or future operation of said Premises, now owned or hereafter acquired by Mortgagor, including, but without limitation of the generality of the foregoing: all heating, lighting, refrigerating, ventilating, air-conditioning, air-cooling, fire extinguishing, plumbing, cleaning, communications and power equipment, systems and apparatus; and all elevators, switchboards, motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all cranes and craneways, oil storage, sprinkler/fire protection and water service equipment; and also including any of such property stored on said Premises or in warehouses and intended to be used in connection with or incorporated into said Premises; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, and property are a part of the said Premises and are declared to be a portion of the security for the indebtedness secured hereby (whether in single units or centrally controlled, and whether physically attached to said real estate or not), excluding, however, personal property and trade fixtures owned by the Mortgagor; and

(e) Any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Premises as a result of:



- (1) the exercise of the right of eminent domain; or
- (2) the alteration of the grade of any street; or
- (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Premises, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagee, and of the reasonable counsel fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment. Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by Mortgagee to confirm such assignment to Mortgagee of any such award or payment.

TO HAVE AND TO HOLD the Premises with all rights, privileges and appurtenances thereunto belonging, and all rents, issues and profits therefrom, unto Mortgagee, its successors and assigns, forever, for the uses and purposes herein expressed.

**THIS MORTGAGE IS GIVEN TO SECURE:**

- (1) payment of the indebtedness;
- (2) payment of such additional sums with interest thereon which may hereafter be loaned to Mortgagor by Mortgagee or advanced under the Loan Documents, even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Note (provided, however, that the indebtedness secured hereby shall in no event exceed an amount equal to three hundred percent (300%) of the face amount of the Note); and
- (3) the due, prompt and complete performance of each and every covenant, condition and agreement contained in this Mortgage, the Note, and every other agreement, document and instrument to which reference is expressly made in this Mortgage or which at any time evidences or secures the indebtedness evidenced by the Note (this Mortgage, the Note and all such other instruments are hereinafter sometimes collectively referred to as the "Loan Documents").

2. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.

Mortgagor shall:

- (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed, such buildings or improvements to be of at least equal value and substantially the same character as prior to such damage or destruction;

(b) keep said Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien (except the lien of current general taxes duly levied and assessed but not yet due and payable);

(c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises (no such lien, except for current general taxes duly levied and assessed but not yet payable, to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee;

(d) complete within a reasonable time any building or buildings now or at any time in process of erection upon said Premises;

(e) comply with all requirements of law (including, without limitation, pollution control and environmental protection laws), ordinance or other governmental regulation in effect from time to time affecting the Premises and the use thereof, and covenants, easements and restrictions of record with respect to the Premises and the use thereof;

(f) make no alterations in said Premises;

(g) suffer or permit no change in the general nature of the occupancy of the Premises, without Mortgagee's written consent;

(h) initiate or acquiesce in no zoning reclassification or variance without Mortgagee's written consent; and

(i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of said Note.

### 3. Payment of Taxes.

Mortgagor shall pay before any penalty or interest attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor.

### 4. Tax Deposits.

Mortgagor covenants and agrees to deposit with such depository as the Mortgagee from time to time may in writing appoint, and in the absence of such appointment, then at the office of Cohen Financial in Chicago, Illinois, commencing on the date of disbursement of the loan secured hereby and on the first day of each month following the month in which said disbursement occurred until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of the last total annual taxes and assessments



for the last ascertainable year (general and special) on said Premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed or to be constructed, in which event the amount of such deposits shall be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Such deposits are to be used for the payment of taxes and assessments (general and special) on said Premises next due and payable when they become due. Upon demand by such depository, Mortgagor shall deliver and pay over to such depository from time to time such additional sums or such additional security as are necessary to make up any deficiency in the amount necessary to enable such depository to fully pay any of the items hereinabove mentioned as they become payable. If the funds so deposited exceed the amount required to pay such items hereinabove mentioned for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee or such depository.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not covered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 4 shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

**5. Mortgagee's Interest In and Use of Deposits.**

In the event of a default in any of the provisions contained in this Mortgage or the Note secured hereby or any of the other Loan Documents and after ten (10) days prior written notice to Mortgagor, the Mortgagee may at its option, without being required to do so, apply any monies at the time on deposit pursuant to Paragraphs 4 and 7 hereof, on any of Mortgagor's obligations herein or in said Note or any of the other Loan Documents contained, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises. A security interest within the meaning of the Indiana Uniform Commercial Code is hereby granted to the Mortgagee in and to any monies at any time on deposit pursuant to Paragraphs 4 and 7 hereof and such monies and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all as additional security for the indebtedness hereunder and shall in the absence of default hereunder be applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor; provided, however, that neither the Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments and

insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee or said depository in writing to make application of such funds to the payment of the particular taxes and assessments and insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes and assessments and insurance premiums. Neither Mortgagee nor any depository hereunder shall be liable for any act or omission taken in good faith or pursuant to the instruction of any party but only for its gross negligence or willful misconduct.

6. Insurance.

Until the indebtedness secured hereby is fully paid, all buildings and improvements upon the Premises and all fixtures, equipment and property therein contained or installed shall be kept unceasingly insured against loss and damage by such hazards, casualties and contingencies in such amounts and for such periods as may from time to time be required by Mortgagee. All insurance shall be written in policies and by insurance companies approved by Mortgagee. All policies of insurance and renewals thereof shall contain standard noncontributory mortgagee clauses as required by Mortgagee or loss payable clauses to the Mortgagee as required by Mortgagee or naming the Mortgagee as an additional insured as required by Mortgagee and shall provide for at least 30 days prior written notice of cancellation to Mortgagee without cost to the Mortgagee as well as a waiver of subrogation endorsement and such other endorsements as Mortgagee shall require. All policies of insurance and renewals thereof shall contain such further endorsements as the Mortgagee may require, in form and content acceptable to the Mortgagee. At Mortgagee's option all policies shall, with all premiums fully paid, be delivered to Mortgagee as issued at least thirty (30) days before the expiration of old policies and shall be held by Mortgagee until all sums hereby secured are fully paid. Upon request by Mortgagee, Mortgagor shall furnish Mortgagee evidence of the replacement cost of the Premises without cost to the Mortgagee. In case of sale pursuant to a foreclosure of this Mortgage or other transfer of title to the Premises and extinguishment of the indebtedness secured hereby, complete title to all policies held by Mortgagee and to all prepaid or unearned premiums thereon shall pass to and vest in the purchaser or grantee. Mortgagee shall not by reason of accepting, rejecting, approving or obtaining insurance incur any liability for payment of losses.

Without in any way limiting the generality of the foregoing, Mortgagor covenants and agrees to maintain insurance coverage on the Premises to include: (i) all risk coverage insurance (including vandalism and malicious mischief) for an amount equal to not less than ninety percent (90%) of the full replacement cost of the improvements and fixtures located on the Premises, written on a replacement cost basis and with a replacement cost endorsement (without depreciation) and an agreed amount endorsement pertaining



to the co-insurance clause. If at any time a dispute arises with respect to replacement cost, Mortgagor agrees to provide at Mortgagor's expense, an insurance appraisal prepared by an insurance appraiser approved by Mortgagee, establishing the full replacement cost in a manner satisfactory to the insurance carrier; (ii) rent loss insurance insuring against loss arising out of the perils insured against in the policy or policies referred to in Subsection (i) above, in an amount equal to not less than the taxes referred to in Paragraph 3 hereof that will accrue for a period of six (6) months, the premiums that will accrue on the insurance referred to in this Paragraph 6 for a period of six (6) months and the monthly installments of rental under the lease of the Premises with Air Comfort Corporation, a Delaware corporation, for a period of six (6) months; (iii) comprehensive general public liability and property damage insurance with a broad form coverage endorsement for an amount as reasonably required from time to time by the Mortgagee but not less than an aggregate amount of Three Million Dollars (\$3,000,000.00) per location and an occurrence limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit; (iv) flood insurance whenever in the opinion of Mortgagee such protection is necessary and is available; (v) insurance covering pressure vessels, pressure piping and machinery, if any, and all major components of any centralized heating or air-conditioning systems located in the buildings and improvements forming part of the Premises, in an amount satisfactory to Mortgagee, such policies also to insure against physical damage to such buildings and improvements arising out of peril covered thereunder; (vi) such other insurance that may be required from time to time by Mortgagee.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder.

7. Insurance Premium Deposits.

It is further covenanted and agreed that for the purpose of providing funds with which to pay the premiums as the same become due on the policies of insurance as herein covenanted to be furnished by the Mortgagor, Mortgagor shall deposit with Mortgagee or the depository referred to in paragraph 4 hereof on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurred, an amount equal to the premiums that will next become due and payable on such policies less any amount then on deposit with the Mortgagee or such depository, divided by the number of months to elapse prior to the date when such premiums become delinquent. Said deposits need not be kept separate and apart from any other funds of the Mortgagee or such depository.

8. Adjustment of Losses with Insurer and Application of Proceeds of Insurance.

In case of loss or damage by fire or other casualty, Mortgagor shall immediately give Mortgagee and the insurance companies that have insured against such risks, notice of such loss or damage; and Mortgagee is authorized:

(a) to settle and adjust any claim under insurance policies which insure against such risks; or

(b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance money. Such insurance proceeds, after deducting therefrom any expenses incurred in the collection thereof, may, at the option of the Mortgagee, be applied in the reduction of the indebtedness secured hereby, whether due or not, in such order as Mortgagee shall determine, or be held by the Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of buildings or improvements on said Premises. In the event that the Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on said Premises, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require. Regardless of whether Mortgagee makes insurance proceeds available to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements, the buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the buildings and improvements can reasonably exceed the sum of Twenty-Five Thousand and No/100 (\$25,000.00) Dollars, then the Mortgagee shall approve plans and specifications of such work before such work shall be commenced. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said insurance proceeds after payment of such cost of rebuilding or restoration shall, at the option of the Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto and under the conditions that the Mortgagee may require. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Mortgagee.

In the event that Mortgagee elects to apply insurance proceeds in the reduction of the indebtedness secured hereby, such application shall be without premium or penalty and should the entire indebtedness secured hereby not be repaid as a result of such application, the unpaid portion of the indebtedness may be prepaid by Mortgagee within ninety (90) days of said application



without premium or penalty, anything contained herein or in the Note secured hereby to the contrary notwithstanding.

9. Stamp Tax.

If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note hereby secured, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note secured hereby.

10. Observance of Lease Assignment.

As additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, Mortgagor, as landlord, has assigned to the Mortgagee all of its right, title and interest as landlord in and to all present and future leases of the Premises, and the rents, issues and profits therefrom.

All future leases of the Premises are subject to the approval of the Mortgagee as to form, content and tenants, and without limiting the generality of the foregoing, Mortgagor will not, without Mortgagee's prior written consent, make any lease of the Premises. Any permitted lease shall require actual occupancy by the lessee thereunder.

Mortgagor will not, without Mortgagee's prior written consent:

(i) execute an assignment or pledge of any rents of the Premises and/or any leases of the Premises; or (ii) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment.

Mortgagor at its sole cost and expense will: - (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees to be kept and performed, but Mortgagor shall not modify, amend, renew, extend, cancel, terminate or accept surrender of any lease without the prior written consent of Mortgagee; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of landlord or of the lessees thereunder; (iv) transfer and assign to Mortgagee upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to

Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all lessees, terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the lessee under any lease of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay.

Mortgagor will not permit any lease of the Premises or any part thereof to become subordinate to any lien other than the lien hereof.

In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease of the Premises shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof, provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest. Each lessee, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

Mortgagee shall have the option to declare this Mortgage in default because of a default of landlord in any lease of the Premises, whether or not such default is cured by Mortgagee pursuant to the right granted herein. It is covenanted and agreed that a default under any Assignment of Rents and Leases executed pursuant to this Paragraph 10 or otherwise shall constitute a default hereunder on account of which the whole of the indebtedness secured hereby shall at once, at the option of the Mortgagee, become immediately due and payable without notice to the Mortgagor.

**11. Effect of Extensions of Time.**

If the payment of said indebtedness, or any part thereof, be extended or varied, or if any part of any security for the payment of the indebtedness be released, or if any person or entity liable for the payment of the indebtedness be released, or if the



Mortgagee takes other or additional security for the payment of the indebtedness, or if the Mortgagee waives or fails to exercise any right granted herein, or in the Note secured hereby, or in any other instrument given to secure the payment hereof, all persons now or at any time hereafter liable for the payment of the indebtedness, or any part thereof, or interested in the Premises shall be held to assent to such extension, variation, release, waiver, failure to exercise or the taking of additional security, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation, release, waiver, failure to exercise, or the taking of additional security.

12. Effect of Changes in Laws Regarding Taxation.

In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee:

(a) it might be unlawful to require Mortgagor to make such payment; or

(b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

13. Mortgagee's Performance of Defaulted Acts.

In case of default herein, Mortgagee may, but need not, and whether electing to declare the whole of the indebtedness due and payable or not, and without waiver of any other remedy, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment or cure any default of landlord in any lease of the

Premises, provided that in no event shall Mortgagee undertake to cure any such default without providing at least ten (10) days written notice of such default and intent to cure to Mortgagor. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraphs 9 and 12 hereof or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate of interest set forth in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

14. Mortgagee's Reliance on Tax Bills, Etc.

Subject to Paragraph 13, Mortgagee in making any payment hereby authorized:

(a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or

(b) relating to insurance premiums, may do so according to any bill or statement procured from the appropriate company without inquiry into the accuracy of such bill or statement; or

(c) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

15. Acceleration of Indebtedness in Case of Default.

If: (a) default be made in the due and punctual payment of the Note secured hereby, or any payment of principal or interest due in accordance with the terms thereof and such default shall continue for ten (10) days; or

(b) any of the following events shall occur: (i) the entry of a decree or order for relief by a court having jurisdiction in respect of the Mortgagor thereof or any guarantor of the Note secured hereby, in any involuntary case under the Federal Bankruptcy Laws now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for the Mortgagor or any guarantor of the Note secured hereby or any substantial part of the property of any such person or entity, or for the winding up or liquidation of the affairs of any such person



or entity and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or (ii) the commencement by the Mortgagor or any guarantor of the Note secured hereby or of a voluntary case under federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or any other similar laws or the consent by any such person or entity to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Mortgagor or any guarantor of the Note secured hereby or of any substantial part of the property of any such person or entity or the making by any such person or entity of an assignment for the benefit of creditors or the failure of any such person or entity generally to pay the debts of any such person or entity as such debts become due, or the taking of action by any such person or entity in furtherance of any of the foregoing; (iii) the death of any guarantor of the Note secured hereby unless a beneficiary or beneficiaries of the decedent having a net worth or an aggregate net worth, as the case may be, greater than the net worth of the decedent upon the date hereof shall become liable by assumption under the guaranty within 5 days of the appointment of the executor; or the Lake County Recorder!

(c) default shall be made in the due observance or performance of any of the other covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by the Mortgagor; or

(d) default shall be made in the due observance or performance of any of the covenants, agreements or conditions contained and required to be kept or observed by Mortgagor in any other instrument given to secure the payment of the Note secured hereby; or

(e) any warranty, representation, certification, financial statement, or other information furnished or to be furnished by or on behalf of Mortgagor or any guarantor of the Note to Mortgagee to induce Mortgagee to loan the money evidenced by the Note proves to have been materially inaccurate or false in any material respect when made; or

(f) default or breach of any representation or warranty shall occur under any guaranty of payment of the Note; then and in every such case the whole of the indebtedness hereby secured shall, at once, at the option of the Mortgagee, become immediately due and payable without notice to Mortgagor. If, while any insurance proceeds or condemnation awards are being held by the Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, as set forth in Paragraphs 8 or 21 hereof, the Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, the Mortgagee shall be entitled to apply

all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

**16. Foreclosure; Expense of Litigation.**

When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, said Note or said Premises, including appellate, probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceedings or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Mortgage.

**17. Application of Proceeds of Foreclosure Sale.**

The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which may, under the terms hereof or of the Note or under any other instrument given to secure the Note, constitute indebtedness additional to that evidenced by the Note, with interest thereon as herein or therein provided and all principal and interest and other sums (including prepayment premiums) remaining unpaid on the Note; and third, any overplus to any party entitled thereto as their rights may appear.



**18. Appointment of Receiver.**

Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of said Premises and Mortgagor does hereby consent to such appointment. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said Premises during the pendency of such foreclosure suit, and in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of:

(a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and

(b) the deficiency in case of a sale and deficiency.

**19. Rights Cumulative; Modification.**

Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

20. Mortgagee's Right of Inspection.

Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

21. Condemnation.

Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or make said proceeds available for restoration or rebuilding of the Premises. In the event that the Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on said Premises, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require. In any event, the buildings and improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by the Mortgagee. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall at the option of the Mortgagee be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto. No interest shall be allowed to Mortgagor on the proceeds of any award held by the Mortgagee.

In the event that Mortgagee elects to apply such condemnation proceeds in the reduction of the indebtedness secured hereby, such application shall be without premium or penalty and should the entire indebtedness secured hereby not be repaid as result of such application, the unpaid portion of the indebtedness may be prepaid by Mortgagee within ninety (90) days of said application without premium or penalty, anything contained herein or in the Note secured hereby to the contrary notwithstanding.

22. Release Upon Payment and Discharge of Mortgagor's Obligations.

Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby including any prepayment charges provided for herein or in the Note secured hereby.

**23. Giving of Notice.**

All notices required or permitted under this instrument shall be in writing and shall be either by: (i) hand delivery to the address for notices; (ii) delivery by overnight courier service to the address for notices; or (iii) by certified mail, return receipt requested, addressed to the address for notices by United States Mail, postage prepaid.

All notices shall be deemed received upon the earlier to occur of: (i) the hand delivery of such notice to the address for notices; (ii) one day after the deposit of such notice with an overnight courier service addressed to the address for notices; or (iii) three (3) days after depositing the notice in the United States Mail as set forth in (iii) above.

All notices shall be addressed to the following addresses:

If to Mortgagor: **ACC INDUSTRIES, INCORPORATED**  
2550 Braga Drive  
Broadview, IL 60153

With a copy to: **SIDLEY & AUSTIN**  
One First National Plaza  
Chicago, Illinois 60603  
Attn: David J. Boyd

If to Mortgagee: **MUTUAL TRUST LIFE INSURANCE COMPANY**  
1200 Jorie Boulevard  
Oak Brook, IL 60522-9006

With a copy to: **MICHAEL I. FREEMAN, P.C.**  
2 North LaSalle Street  
Suite 1400  
Chicago, Illinois 60602

or to such other person or at such other place as any party hereto may by notice designate as a place for service of notice.

**24. Waiver of Defense.**

No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

**25. Waiver of Statutory Rights.**

Mortgagor shall not, and will not, apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclo-



sure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor and each and every person, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

**26. Furnishing of Financial Statements to Mortgagee.**

Mortgagor covenants and agrees that it will keep and maintain books and records of account, in which full, true and correct entries shall be made of all dealings and transactions relative to its operations, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting practices consistently applied.

Mortgagor covenants and agrees to furnish, or cause to be furnished to the Mortgagee, annually, within ninety (90) days of the end of each fiscal year of the Mortgagor a copy of an audit report of its operations, prepared by a Certified Public Accountant satisfactory to the Mortgagee of recognized standing in the accounting profession, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. The accountant's certificate to the audit report shall be unqualified and shall certify that in substance the accountant examined, in accordance with generally accepted auditing standards such records of Mortgagor as deemed necessary for such certification and that those statements are in accordance with generally accepted and sound accounting principles applied on a consistent basis.

If Mortgagor omits to prepare and deliver promptly any report required by this Paragraph 26, the Mortgagee may elect, in addition to exercising any remedy for an event of default as provided for in this Mortgage, to make an audit of all books and records of Mortgagor including its bank accounts and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent Certified Public Accountant to be selected by the Mortgagee. Mortgagor shall pay all expenses of the audit and other services, which expenses shall be secured hereby as additional indebtedness and shall be immediately due and payable with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Mortgage.

Mortgagor covenants and agrees that it will obtain and furnish to Mortgagee the annual audited financial statements of Air Comfort Corporation or any entity affiliated with Mortgagor which entity is the primary tenant of the Premises. In the event Air Comfort Corporation or any affiliated entity ceases to be the primary tenant while the Note secured hereby is outstanding, Mortgagor will use its best efforts to obtain and furnish to Mortgagee annual audited financial statements of replacement tenants.

Mortgagee covenants and agrees to cause Nancy Smerz to furnish the periodic financial statements which Nancy Smerz has agreed to furnish pursuant to Paragraph 3.1 of that certain Guaranty of Payment of even date herewith executed and delivered by Nancy Smerz.

27. Filing and Recording Fees.

Mortgagor will pay all filing, registration or recording fees and all expenses incident to the execution and acknowledgement of this Mortgage and all federal, state, county and municipal taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of said Note and this Mortgage.

28. Business Purpose.

Mortgagor covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of the Mortgagor, and the entire principal obligation secured hereby constitutes: (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4, Subsection (1)(c); and (ii) "a loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4, Subsection 1(1).

29. INTENTIONALLY OMITTED.

30. Miscellaneous.

This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor (but this clause shall not be construed as constituting the consent by Mortgagee to the transfer of any interest in the Premises), and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed said Note or this Mortgage. The word "Mortgagee", when used herein, shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby.

In the event one or more of the provisions contained in this Mortgage or the Note secured hereby, or in any other security documents given to secure the payment of the Note secured hereby, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note secured hereby or such other security documents and this Mortgage, the Note secured hereby or such other security documents shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The creation of a mortgage lien against the real estate that it described in Exhibit A and remedies against such of the Premises as are located or deemed to be located in the State of Indiana shall be governed by the internal laws of the State of Indiana. This Mortgage shall in other respects be governed by the internal laws of the State of Illinois.

Mortgagor shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

Mortgagor, on written request of the Mortgagee, will furnish a signed statement of the amount of the indebtedness secured hereby and whether or not any default then exists hereunder and specifying the nature of such default.

The Note secured hereby requires the payment of a late charge in the event any installment of principal or interest due thereunder and/or any escrow fund payment for taxes and insurance due hereunder shall become overdue. Said Note requires the payment to the Mortgagee of a late charge of four cents (\$0.04) for each dollar so overdue to defray part of the cost of collection. Said late charge shall be secured hereby as indebtedness, as that term is used herein.

Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises. The failure to join any such tenant or tenants as party defendant or defendants in any such civil action or the



failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the Office of the Recorder of Deeds or Registrar of Titles in and for the county wherein the Premises are situated, of a unilateral declaration to that effect.

In the event that maturity of the indebtedness is accelerated by Mortgagee because of default hereunder, a tender of payment is made by or on behalf of Mortgagor in the amount necessary to satisfy such indebtedness at any time prior to judicial confirmation of a foreclosure sale, such tender shall constitute a prepayment under the Note and shall require payment of the prepayment premium provided for in the Note and shall be treated as a prepayment thereunder.

All agreements between Mortgagor and Mortgagee (including, without limitation, those contained in this Mortgage and the Note) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Mortgagee exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or the Note or any other documents securing the indebtedness secured hereby, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, the Mortgagee shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the principal indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

Mortgagor covenants and agrees that it shall constitute a default hereunder if any of the proceeds of the loan for which the Note is given will be used, or were used, as the case may be, for the purpose (whether immediate, incidental or ultimate) of "purchasing" or "carrying" any "margin security" as such terms are defined in Regulation G of the Board of Governors of the Federal Reserve System (12 CFR Part 207) or for the purpose of reducing or

retiring any indebtedness which was originally incurred for any such purpose.

To the extent that Mortgagee, on or after the date hereof, pays any sum due under any provision of law or any instrument or document creating any lien prior or superior to the lien of this Mortgage, or Mortgagor or any other person pays any such sum with the proceeds of the loan secured hereby, Mortgagee shall have and be entitled to a lien on the Premises equal in priority to the lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the indebtedness secured hereby. Mortgagee shall be subrogated, notwithstanding their release of record, to the lien of all mortgages, trust deeds, superior titles, vendors' liens, liens, charges, encumbrances, rights and equities on the Premises, to the extent that any obligation under any thereof is directly or indirectly paid or discharged with proceeds of disbursements or advances under the Note secured hereby.

31. Security Agreement.

Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Indiana Uniform Commercial Code (hereinafter in this paragraph referred to as the "Code") with respect to all sums on deposit with the Mortgagee pursuant to Paragraphs 4, 7, 8 and 21 hereof ("Deposits") and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in EXHIBIT A or may not constitute a "Fixture" (within the meaning of Section 9-313 of the Code), and all replacements, substitutions and additions to such property and the proceeds thereof, such property and all replacements of, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral", and that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee and the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof. In the event of a default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have the option of proceeding with respect to the Collateral in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that, in the event the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, five (5) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by



Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other Collateral at least equal in value to the initial value to that disposed of and in such a manner so that said Collateral shall be subject to the security interest created hereby and so that the security interest of the Mortgagee shall be first in priority, it being expressly understood and agreed that all replacements of the Collateral and any additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral, and all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, now is and will be free and clear of liens, encumbrances or security interest of others. The Mortgagor shall, upon demand, execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee, and will do all such acts and things as Mortgagee may at any time, or from time to time, reasonably request or as may be necessary or appropriate to establish and maintain a first perfected security interest in the Deposits and Collateral, subject to no liens, encumbrances or security interests of others.

This Mortgage also constitutes a financing statement for the purpose of Section 9-402 of the Code and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of LAKC County, Indiana.

(1) Name of Debtor:  
**ACC INDUSTRIES, INCORPORATED**

Debtor's Mailing Address:  
2550 Braga Drive  
Broadview, IL 60153

Address of Property:  
575 West 84th Street  
Merrillville, IN

Name of Secured party:  
**MUTUAL TRUST LIFE INSURANCE COMPANY**

Address of Secured party:  
1200 Jorie Boulevard  
Oak Brook, IL 60522-9006



(2) This financing statement covers the Collateral.

(3) Some of the above goods are or are to become fixtures on the real property described herein. Mortgagor is the recorded owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located.

**32. Due on Sale or Further Encumbrance.**

Mortgagor covenants and agrees that Mortgagee, at its option, has the unqualified right to accelerate the maturity of the indebtedness evidenced by the Note and secured hereby causing the full principal balance and accrued interest under the Note, together with a prepayment premium in the amount, if any, required to be paid pursuant to the terms of the Note in the event of a prepayment at the time of such acceleration (and if at the time of such acceleration Mortgagor has no right to prepay the indebtedness, then the amount of such premium shall be equal to ten percent (10%) of the then outstanding principal balance), to be immediately due and payable without notice to Mortgagor, in the event that:

(a) Except as provided in Paragraph 34 hereof, Mortgagor shall, without the prior written consent of Mortgagee, sell, transfer, convey, or assign the legal or equitable title to all or any portion of the Premises, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing; or

(b) any shareholder who can elect a majority of the board of directors of Mortgagor shall, without the prior written consent of the Mortgagee, sell, transfer, convey, assign or create a security interest in any of the shares owned by such shareholder, whether by operation of law, voluntarily or otherwise or shall contract to do any of the foregoing.

(c) Mortgagor shall, without the prior written consent of Mortgagee, directly or indirectly, create, suffer or permit to be created or filed against the Premises, or any portion thereof, or against the rents, issues or profits therefrom (including, without limitation, any lien arising with respect to the payment of taxes, assessments and other charges described in Paragraph 2 above), any mortgage lien, security interest, or other lien or encumbrance, except the lien of current general taxes duly levied and assessed but not yet due and payable, the lien of this Mortgage and the Second Mortgage (as hereinafter defined).

The foregoing provisions of this Paragraph 32 are for the purpose of:

(1) protecting Mortgagee's security, both of repayment of the indebtedness secured hereby and the value of the Premises;

(2) giving the Mortgagee the full benefit of its bargain with the beneficiaries of Mortgagor;

(3) allowing the Mortgagee to raise the interest rate and collect assumption fees equal to one percent (1%) of the principal amount then secured hereby; and

(4) keeping the Premises and the beneficial interest in Mortgagor free of subordinate financing liens or security interests.

As used in this Paragraph 32, the following terms shall have the following meanings:

(a) "Second Note" shall mean a promissory note executed by the Mortgagor first named herein which:

(1) evidences an indebtedness in an amount that shall not exceed an amount to be determined by subtracting the unpaid principal amount evidenced by the Note at the time of the execution of the Second Note from an amount equal to seventy-five per cent (75%) of the value of the real estate described in the Mortgage Instruments (as defined in Paragraph 35 hereof) which are then a lien against the real estate described therein (such Fair Market Value to be determined by an MAI appraiser (the "Appraiser") approved by the Mortgagee in a currently dated appraisal report which shall be satisfactory to the Mortgagee);

(2) requires equal monthly installments of principal and interest or equal monthly installments of interest only (each such monthly installment, except for the final installment, shall not exceed the amount of any other monthly installment); and

(3) requires annual payments of principal and interest or annual payments of interest only which when added to the annual payments of principal and interest that are required under the Note shall not exceed eighty-three and thirty-three one-hundredths percent (83.33%) of the Fair Rental Value (as hereinafter defined) of the real estate described in the Mortgage Instruments which are then a lien against the real estate described therein;

(b) "Second Mortgage" shall mean a mortgage which shall encumber the real estate described in the Mortgage Instruments which are then a lien against the real estate described therein; and

(c) "Fair Rental Value" shall mean the lesser of (i) the "Net Rental" (as hereinafter defined) paid by a lessee in occupancy of the real estate described in the Mortgage Instruments which are then a lien against the real estate described therein; and (ii) the Net Rental that the real estate described in the Mortgage Instruments which are then a lien against the real estate described therein could be leased for as determined by the Appraiser in a currently dated report approved by the Mortgagee.

"Net Rental" shall mean the rental paid under a lease which requires the Tenant to pay all real estate taxes and insurance premiums and to maintain and repair (regardless of whether such repairs are structural, foreseen or unforeseen and replace the leased premises to comply with all laws and ordinances relating to the leased premises and its use thereof and to pay all utility costs with respect to the leased premises.

Mortgagee may encumber the Premises with a Second Mortgage to secure the Second Note provided that:

(1) The Second Mortgage and Second Note have been approved by the Mortgagee (without limiting the generality of the foregoing, the "Second Note" and the "Second Mortgage" shall provide that the terms, covenants and provisions thereof and the lien created thereby shall be subject, junior, subordinate and inferior to the Loan Documents and the lien created thereby and for all purposes stated therein and to each extension, modification, renewal and replacement thereof and for all sums advanced or to be advanced thereunder;

(2) This Mortgage and the Note are not then in default; and

(3) Mortgagor shall pay to the Mortgagee all costs incurred by Mortgagee in connection with its approval of the Second Note, Second Mortgage, the Appraiser, said appraisal report and the Fair Rental Value.

Mortgagor covenants and agrees that a default under the Second Note or Second Mortgage shall constitute a default hereunder on account of which the whole of the indebtedness secured hereby shall at once, at the option of the Mortgagee, become immediately due and payable without notice to the Mortgagor.

Mortgagor further covenants and agrees that the Second Note and Second Mortgage shall not be modified or amended without the prior written consent of the Mortgagee.

### 33. Environmental Matters; Notice; Indemnity.

(a) Mortgagor will not, install, use, generate, manufacture, produce, store, release, discharge or dispose of on,



under or about the Premises, nor transport to or from the Premises, any Hazardous Substance (as defined below) nor allow any other person or entity to do so except in minor amounts and under conditions permitted by applicable laws, regulations and ordinances.

(b) Mortgagor will keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of, any Environmental Law (as defined below).

(c) Mortgagor will give prompt written notice to Mortgagee of:

(1) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Premises or the migration thereof to or from adjoining property;

(2) all claims made or threatened by any individual or entity against Mortgagor or the Premises relating to any loss or injury allegedly resulting from any Hazardous Substance; and

(3) the discovery by Mortgagor of any occurrence or condition on any real property adjoining or in the vicinity of the Premises which might cause the Premises or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Premises under any Environmental Law.

(d) Mortgagee shall have the right and privilege to:

(i) join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the Premises under any Environmental Law; and to (ii) have all costs and expenses thereof (including without limitation Mortgagee's reasonable attorneys' fees and costs) paid by Mortgagor.

(e) Mortgagor shall protect, indemnify and hold Mortgagee and its directors, officers, employees, agents, successors and assigns harmless from and against any and all loss, damage, cost, expense and liability (including without limitation reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to the installation, use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a Hazardous Substance on, under or about the Premises, including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup or detoxification of the Premises; and (iii) the preparation and implementation of any closure, remedial or other required plans. This indemnity shall survive the satisfaction, release or extinguishment of the lien of this Mortgage, including without limitation any extinguishment of the lien of this Mortgage by foreclosure or deed in lieu whereof.

(f) If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is necessary or desirable under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, ground-water, surface water or soil vapor at, on, about, under or within the Premises or portion thereof, Mortgagor shall within thirty (30) days after written demand for the performance by Mortgagee (or within such shorter time as may be required under applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work to the extent required by law. All Remedial Work shall be performed by contractors approved in advance by Mortgagee and under the supervision of a consulting engineer approved in advance by Mortgagee. All costs and expenses of such Remedial Work (including without limitation the reasonable fees and expenses of Mortgagee's counsel) incurred in connection with monitoring or review of the Remedial Work shall be paid by Mortgagor. If Mortgagor shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, the Mortgagee may (but shall not be required to) cause such Remedial Work to be performed; and all costs and expenses thereof, or incurred in connection therewith (including, without limitation, the reasonable fees and expenses of Mortgagee's counsel), shall be paid by Mortgagor to Mortgagee forthwith after demand and shall be a part of the indebtedness secured hereby.

(g) (1) The term "Environmental Law" means and includes, without limitation, any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Premises, including without limitation each of the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"); the Federal Hazardous Materials Transportation Act, as amended; the Toxic Substance Control Act, as amended; the Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency, and the County in which the Premises is located and of all other agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Premises or the use or operation thereof.

(2) The term "Hazardous Substance" means and includes, without limitation: (i) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances" or "solid waste" in any of the Environmental Laws; (ii) those substances listed in the U.S. Department of



Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto); (iii) those other substances, materials and wastes which are or become regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and (iv) any material, waste or substance which is any of the following: (A) asbestos; (B) polychlorinated biphenyl; (C) designated or listed as a "hazardous substance" pursuant to §307 or §311 of the Clean Water Act (33 U.S.C. §§1251 et. seq.); (D) explosive; or (E) radioactive.

34. Partial Release

After not less than forty-five (45) days advance written request in writing from or by Mortgagor, Mortgagee shall, with payment of the Release Price (as hereinafter defined), release the Premises from the lien hereof and from all other security for the Note, but only upon the following conditions:

(a) that at the time of such release, there shall be no default under the Note or this Mortgage or any other instrument executed in connection with or to secure the Note;

(b) that Mortgagee shall be furnished with an endorsement to its then existing loan policy of title insurance that the release given as provided in this Paragraph 34 shall not adversely affect (x) the priority of the Mortgage encumbering real estate in Cook County, Illinois and (y) the coverage under such loan policy of Title Insurance with respect thereto.

(c) that Mortgagor shall not request such release until after May 1, 1999;

(d) that such release shall be given in connection with a bona-fide sale of the Premises (the "Sale") to a purchaser that is not affiliated directly or indirectly with Mortgagor;

(e) that Mortgagor shall deliver to Mortgagee a payment in the amount of the Release Price, the portion of which is not allocable to the prepayment premium as set forth in the Note, to be applied in partial prepayment of the principal sum evidenced by the Note; and

(f) that any and all documents and agreements used in connection with the release pursuant to this Paragraph 34 shall be in form and substance reasonably satisfactory to Mortgagee and all reasonable costs and expenses, including, but not limited to title



companies' fees and reasonable attorneys' fees, shall be paid by Mortgagor.

As used herein the term "Release Price" shall mean the sum of:

(i) Three Hundred Thousand and No/100 Dollars (\$300,000.00) or the amount of the purchase price with respect to the Sale, whichever is greater; and

(ii) five percent (5%) of the amount set forth in (i) above provided said prepayment is made during the sixth (6th) Loan Year (as that term is defined in the Note), said premium to be reduced by one-half percent (.5%) in each succeeding Loan Year after the sixth Loan Year until one and one-half percent (1.5%) is reached and shall remain at one and one-half percent (1.5%) thereafter.

The premiums referred to in (ii) above shall constitute prepayment premiums.

35. Other Collateral

The payment of the indebtedness is also secured by a mortgage conveying real estate in Cook County, Illinois. That mortgage, including this Mortgage, are hereinafter referred to as the "Mortgage Instruments".

A default or breach of covenant under any of the Mortgage Instruments is a default or breach of covenant under all of the Mortgage Instruments and in consequence of such default or breach of covenant the Mortgagee, at its option, may accelerate the indebtedness and foreclose all or both of the Mortgage Instruments or resort to any of its other remedies thereunder.

It is specifically covenanted and agreed that the Mortgagee in any of the Mortgage Instruments may proceed to foreclose the Mortgage Instruments, or either of them, by any proceedings appropriate in the States of Illinois or Indiana, and that no foreclosure, judgment or decree of foreclosure, foreclosure sale, rents received, possession taken, deficiency judgment or decree or judgment under the Note secured hereby in any State or any matter whatever shall in any wise preclude or bar foreclosure of said Mortgage Instruments or either of them and that the Mortgagee may continue to pursue all of its remedies until all indebtedness now or hereafter secured by all of the Mortgage Instruments has been paid in full.

Neither the Mortgagor nor any person claiming under it, including all junior lienors whatever, shall have or enjoy any right to marshalling of assets, all such right being hereby expressly waived as to the Mortgagor and all persons claiming under it, including junior lienors. Any release of personal liability of

any person whatever and any release of the mortgage security created by any of the Mortgage Instruments shall have no affect whatever by way of impairment or disturbance of the lien or priority of the Mortgage Instruments. Any foreclosure or other appropriate remedy may be brought and prosecuted as to any part of the mortgage security, wherever located, without regard to the fact that foreclosure proceedings or other appropriate remedies have not been instituted on any other land subject to the lien of the Mortgage Instruments or either of them.

**36. Opportunity to Cure**

Notwithstanding anything contained herein to the contrary, if Mortgagor shall default in the performance of, or breach of, any of the covenants or agreements of Mortgagor contained herein or in any other documents securing the Note ("Performance Default"), Mortgagee shall not declare the indebtedness to be due and payable unless Mortgagee shall first give Mortgagor notice of such default; and Mortgagor shall have thirty (30) days after giving of notice in which to cure the same, except that if such Performance Default is of a nature that it cannot be cured within said thirty (30) day period, Mortgagee shall not declare the indebtedness to be due and payable if Mortgagor shall, within such thirty (30) days, commence the cure of such default and complete the same with diligence, and without unreasonable delay, in a manner satisfactory to Mortgagee and within a reasonable period, not to exceed one hundred eighty (180) days after the date notification of default was issued by Mortgagee; provided that any abandonment or unreasonable delay in the prosecution of the cure of such default shall, without further notice or period of grace, give the Mortgagee the right to declare the indebtedness due and payable.

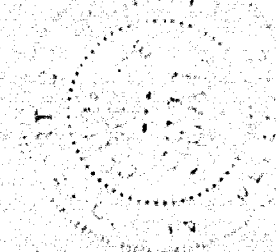
**IN WITNESS WHEREOF**, the Mortgagor has executed this instrument the day and year first above written.

**ACC INDUSTRIES, INCORPORATION**,  
a Delaware corporation

By: Nancy E. Amey  
Its: President

**ATTEST:**

By: Donald J. Boyd  
Its: Secretary





STATE OF ILLINOIS )  
COUNTY OF COOK ) SS.

Before me, the undersigned, a notary public, in and for said county and state, personally appeared NANCY E. SMERZ as President of ACC INDUSTRIES, INCORPORATED, a Delaware corporation, and DAVID J. BOYD as Secretary of ACC INDUSTRIES, INCORPORATED, who having been duly sworn upon his/her oath, acknowledged the execution of the foregoing mortgage for and on behalf of said corporation.

Witness my hand and seal this 15TH day of MARCH, 1994.

Document is Margaret Mulligan  
NOT OFFICIAL Notary Public residing in  
COOK County, Illinois

This Document is the property of  
My Commission expires: Jake County Recorder!  
OFFICIAL SEAL  
MARGARET MULLIGAN  
Notary Public, State of Illinois  
My Commission Expires Dec. 5, 1994

Printed Name

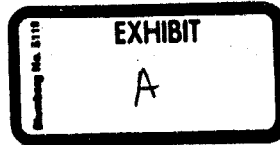
Property Address: 575 West 84th Drive, Merrillville, IN  
Permanent Real Estate Tax Index Numbers: 15-483-23

**PREPARED BY:**  
MICHAEL I. FREEMAN, P.C.  
2 North LaSalle Street  
Suite 1400  
Chicago, Illinois 60602



**RETURN TO:**  
MICHAEL I. FREEMAN, P.C.  
2 North LaSalle Street  
Suite 1400  
Chicago, Illinois 60602





**LEGAL DESCRIPTION**

**PROPERTY ADDRESS:** 575 WEST 84TH DRIVE  
MERRILLVILLE, INDIANA

**P.I.N.:** 15-483-23

**LOT N, EXCEPT THE EAST 80.62 FEET THEREOF, COMMERCE PARK, A  
PLANNED BUSINESS CENTER, IN THE TOWN OF MERRILLVILLE, AS SHOWN  
IN PLAT BOOK 48, PAGE 119, IN LAKE COUNTY, INDIANA.**

**This Document is the property of  
the Lake County Recorder!**

