

# INDEMNIFYING REAL ESTATE MORTGAGE

THIS MORTGAGE, made the 16th day of January, 1995, WITNESSETH, that Precision Enterprises, Inc., d/b/a Precision Construction, Inc. hereinafter called "Mortgager", MORTGAGES AND WARRANTS TO INDIANA FEDERAL BANK FOR SAVINGS, hereinafter with its successors and assigns, called "Mortgagee", the property situated in the County of Lake and State of Indiana, legally described as follows to-wit:

Lots 61, 62 and 79, White Oak Estate, Block 3, as shown in Plat Book 77, page 51, Lake County, Indiana.

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LAWYERS TITLE INS. CORP.  
ONE PROFESSIONAL CENTER  
SUITE 200  
PROVO, UTAH 84601

STATE OF INDIANA  
LAKE COUNTY  
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Including all buildings and improvements thereon or that may hereafter be erected thereon, together with the hereditaments and thereunto belonging or in anyway now or hereafter appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits appurtenances and all other rights thereof, and all plumbing, heating, electrical and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate (herein called "Mortgaged Premises").

As additional security for the repayment of the indebtedness hereby secured, the Mortgager hereby assigns to the Mortgagee all rights, title and interest in and to all existing leases and all future leases (if any) upon and affecting the Mortgaged Premises, together with any extensions or renewals of such leases, and all rentals and income therefrom from the Mortgaged Premises; provided that so long as there is no default in any of the terms or conditions of this Mortgage or of the note hereby secured or of any extension or renewal thereof, the Mortgager shall continue to manage the Mortgaged Premises as owner and collect all income arising therefrom, but only as it accrues and after deducting such report or reports as may reasonably be required by the Mortgagee.

This Mortgage is granted to secure the performance of the covenants contained in this Mortgage and to secure the payment of all indebtedness or liability of Precision Enterprises, Inc. d/b/a Precision Construction, Inc. ("Borrower"), or (when applicable) either of them individually, to Mortgagee, which may be existing at this time or created or existing at any time in the future, including (if applicable) but not limited to a promissory note in the original principal sum of \$146,400.00 with interest as provided for in the note ("Note").

All of the indebtedness secured by this Mortgage shall be without relief from valuation and appraisal laws, and with attorney fees and shall be referred to in this Mortgage as the "indebtedness secured hereby".

And the said Mortgager does covenant and agree to and with said Mortgagee, as follows:

1. That the Borrower will pay the Mortgagee all indebtedness secured hereby in accordance with the terms of any note or obligation and the provisions hereof.  
2. That said Mortgager will pay all taxes, assessments and other governmental charges levied against or affecting the Mortgaged Premises before any penalty for non-payment attaches thereto, and all levies, tax levies or liens which may be made or placed against the Mortgaged Premises which might in any way affect the security or any part thereof.

3. That said Mortgager will abstain from the commission of waste on the Mortgaged Premises and keep the buildings and improvements thereon in good repair, and promptly comply with all laws, ordinances, regulations and requirements of any governmental authority affecting said premises, and should said Mortgaged Premises or any part thereof require inspection, repair, care of attention of any kind or nature not provided by the Mortgager, the Mortgagee, being made sole judge of the necessity therefor, may, without obligation to do so, after notice to the Mortgager, enter or cause entry to be made upon said Mortgaged Premises, and inspect, repair, protect, care for or maintain said Mortgaged Premises to the extent that the Mortgagee may deem necessary; and may pay such sum of money as the Mortgagee may deem to be necessary therefor and it shall be the sole judge of the amount necessary to be paid. Waste, for the purposes hereof, shall include but not be limited to, the failure of the Mortgager to pay the taxes, assessments or insurance premiums required to be paid under the terms hereof.

4. The Mortgager will keep all buildings and improvements now or hereafter placed on the Mortgaged Premises insured against loss and damage by fire and other hazards, casualties, and contingencies with insurers, and in the amount and manner approved by the Mortgagee, with insurance money in case of loss made payable by the policies to the Mortgagee as its mortgage interest may appear, and deliver all such policies to the Mortgagee with premiums fully prepaid.

5. That if default be made in the payment of any taxes, assessments or other governmental charges assessed against the Mortgaged Premises, or in the payment of levies or tax liens made or levied against the Mortgaged Premises, or in procuring and maintaining insurance required to be maintained on said Mortgaged Premises or paying the premiums therefore, or in keeping the building and improvements in good repair, or in providing for the repair, care or attention of the Mortgaged Premises, or complying with the laws, ordinances, regulations and requirements of any governmental body affecting the Mortgaged Premises, or in keeping any other agreement herein contained, the Mortgagee may pay said taxes, assessments and other governmental charges affecting the Mortgaged Premises, may effect such insurance and pay the premiums therefore, make or cause such necessary repairs, care or attention to be given the Mortgaged Premises, may procure abstracts, title searches and tax histories and may cause any one or more of them to be extended from time to time, and the moneys paid for any one or more or all of said purposes shall from the time of payment be due and payable to the Mortgagee with interest thereon at the per annum rate in effect on the Note at the time an advance is made under this paragraph and shall become part of the indebtedness secured hereby.

6. Time is of the essence of this Mortgage. Upon default by Mortgager or Borrower in the making of any of the payments provided for in this Mortgage (including payments due not only under the Note but also under any other indebtedness owing to Mortgagee), or in the observance or performance of any of the terms, provisions or conditions of this Mortgage or of the Note, or upon breach of any of the terms or conditions of the Commitment Letter dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, or upon the institution of any legal or equitable proceeding to enforce any mortgage or other lien upon any part of the Mortgaged Premises, or in the event of an attempt to transfer the Mortgaged Premises contrary to Paragraph 10, supra, or if a petition in bankruptcy shall be filed by Mortgager or Borrower, or if an involuntary bankruptcy petition is filed against Mortgager or Borrower and an Order of Relief, or adjudication of bankruptcy is entered or if the Mortgager shall file a petition or answer seeking reorganization or an arrangement with creditors, or if Mortgager or Borrower shall be adjudged insolvent or shall make an assignment for the benefit of creditors, or if a receiver for all or any part of the Mortgaged property of Mortgager or Borrower shall be appointed, and such appointment shall not be set aside within thirty (30) days, or if the Mortgaged Premises shall be levied upon by virtue of any execution, or attachment, or other writ or shall come into the possession of or be ordered sold by an official of any court, and in any such event, the entire indebtedness, or the amount then outstanding secured by this Mortgage shall, at the option of the Mortgagee, become immediately due and payable without notice to Mortgager or Borrower, and the Mortgagee shall have the right immediately to foreclose the mortgage lien hereby created, sell and convey the Mortgaged Premises and execute and deliver a deed to the purchaser, and shall be absolved from the obligation of making any further advances that may be due Mortgager or Borrower on account of this Mortgage and the notes secured by it. In the event proceedings to foreclose such lien shall be instituted, all sums expended for information and insurance respecting the title to the Mortgaged Premises, together with interest thereon at the rate set forth in the Note, shall become a part of the indebtedness secured by this Mortgage together with all costs and attorney fees incurred by the Mortgagee.

Notwithstanding anything to the contrary herein, no Event of Default shall be deemed to exist except with respect to the failure to pay principal and interest when due under the terms of the Note or of any other indebtedness owing to Mortgagee, however evidenced, unless such event of default has not been cured within thirty (30) days after written notice thereof has been sent by Mortgagee to Mortgager or Borrower, or in the event such default cannot be cured within said thirty (30) day period unless Mortgager or Borrower fails to commence such cure within said thirty (30) day period and thereafter fails to diligently pursue said cure.

7. The Mortgagee shall have the right in case of failure of the Mortgager or Borrower (which failure continues after any applicable cure period) to perform



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any of the covenants, and conditions, in the Mortgage or in the Note, upon a complaint filed or any proper action being commenced for the foreclosure of the Mortgagee's Mortgage, to apply for, and the Mortgagee shall be entitled, as a matter of right without consideration of the value of the Mortgaged Premises as security for the amount due the Mortgagee or of the solvency of any person or persons obligated for the payment of such amounts, to the appointment by any competent court or tribunal, without notice to any party, of a receiver of the rents, issues, and profits of the Mortgaged Premises, with power to lease the Mortgaged Premises, or such part thereof as may not then be under lease and with such other powers as may be deemed necessary. The receiver, after deducting all proper charges and expenses, shall apply the residue of the rents and profits to the payment and satisfaction of the amount remaining secured hereby, or to any deficiency which may exist after applying the proceeds of any judicially decreed sale of the Mortgaged Premises to the payment of the amount due, including interest and the costs of the foreclosure and sale. Such rents and profits are hereby, in the event of any default or defaults in the payment of principal, or of any installment thereof, or interest, or any tax assessment, water rate, or insurance, pledged and assigned to the Mortgagee, with full power and authority to the Mortgagee, with full power and authority to the Mortgagee to enter upon and to take possession of the Mortgaged Premises and to institute and prosecute all suits now due and unpaid, and hereafter to become due, and to pay the costs and expenses of all suits, actions, and proceedings out of the rent received, and to maintain the Mortgaged Premises and to keep the same in repair, and also all interest on this Mortgage and the Note and all taxes, assessments, and water rates, which may hereafter become liens on the real property, and all premiums of insurance on policies of insurance effected by the Mortgagee as security for the amount hereby secured, and also the principal sum of this Mortgage and of the Note to secure which the same is given out of the rent received and with power and authority to rent or lease the whole or any part of the Mortgaged Property for such term or terms and on such conditions as to the Mortgagee may seem proper and to employ any agent to rent and manage the Mortgaged property and to collect the rents and profits thereof, and to pay the reasonable value of its service out of the rent received.

8. In order to more fully protect the security of this Mortgage:

- A. If requested by the Mortgagee, the Mortgagor will, at the time of closing, deposit with the Mortgagee an amount which, together with the payments specified in subparagraph B of this paragraph, will aggregate a sum sufficient to enable the Mortgagee to pay the real estate taxes and assessments that the Mortgagee estimates will be levied against the Mortgaged Premises during the ensuing tax year one (1) month before such taxes and assessments become delinquent plus an amount which, together with the payments designated in subparagraph B of this paragraph, will aggregate a sum sufficient to enable the Mortgagee to pay the premiums on the fire and other hazard insurance required to be placed on the Mortgaged Premises one (1) month before the next premium become due.
- B. In addition to the monthly payments required to be made upon the indebtedness secured hereby, the Mortgagor shall pay to the Mortgagee a sum equal to 1/12th of the amount of the annual real estate taxes and assessments from time to time estimated by the Mortgagee to be assessed against the Mortgaged Premises plus an amount equal to 1/12th of the premiums on the fire and hazard insurance required to be placed on the Mortgaged Premises as estimated by the Mortgagee.

Subject to paragraph Nine, all sums received by the Mortgagee pursuant to this paragraph or paragraph Nine shall be held by the Mortgagee for the account of the Mortgagor and applied to the payment of said taxes, assessments and insurance premiums.

9. If the total payments made by the Mortgagor to the Mortgagee pursuant to the preceding paragraph for the purposes therein stated, shall exceed the amount at any time required for such purposes, such excess shall be retained by the Mortgagee to make subsequent payments for such purposes. If, however, the total of such payments shall at any time be insufficient to pay such taxes, assessments and insurance premiums when due, the Mortgagor shall, one (1) month prior to the due date thereof, pay to the Mortgagee such additional amount as may be necessary to make up such deficiency. All sums received by the Mortgagee under the preceding paragraph and held by it at the time when the Mortgagor shall desire to pay the indebtedness secured hereby in full, may be applied by the Mortgagee under such indebtedness. In the event the Mortgagee shall determine to foreclose this Mortgage, it may, in such event, apply all sums held by it for the payment of taxes, assessments and insurance premiums on the indebtedness secured hereby in any manner at its sole discretion.

10. It shall be an immediate Event of Default and default hereunder if, without the prior consent of the Mortgagee the Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale, sale on contract, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Mortgaged Premises or any part thereof, or interest therein, excepting only sales, or other encumbrance or alienation of the Mortgaged Premises or any part thereof, or interest therein, excepting only sales, or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Mortgaged Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral, subject to the first and prior lien hereof, of a least equal value and utility for the purposes of this paragraph, an "alienation" shall include without limitation, (i) any further mortgaging, hypothecating or encumbering of (A) the Mortgaged Premises, or (B) any interest or estate therein.

11. That the Mortgagor will furnish to the Mortgagee:

- A. Within ninety (90) days after each fiscal year of said Mortgagor, a detailed report of the operations of said Mortgagor for such year, including a balance sheet and statements of profit and loss and surplus of said Mortgagor, unaudited, but certified as correct by an authorized representative of said Mortgagor.
- B. Promptly, such other information as said Mortgagee, its successors or assigns, may reasonably request.

12. Mortgagor represents and warrants that (i) Mortgagor has no knowledge of any discharge, spillage, uncontrolled loss, seepage or filtration (a "Spill") of oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous waste or hazardous substances, as those terms are used in the Comprehensive Environmental Response Compensation and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "Hazardous Waste Laws"), at, upon, under or within the Mortgaged Property or any contiguous real estate, and (ii) Mortgagor has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a Spill at, upon, under or within the Mortgaged Property or on any contiguous real estate.

Mortgagor further represents and warrants that (i) neither Mortgagor nor, to the best of its knowledge, any other party has been is or will be involved in operations at the Mortgaged property, which operations could lead to (A) the imposition of liability on Mortgagor or on any other subsequent owner of the Mortgaged Property or (B) the creation of a lien on the Mortgaged Property under the Hazardous Waste Laws, Clean Air Act, or under any similar laws or regulations and (ii) Mortgagor has not permitted, and will use its best efforts not to permit, any tenant or occupant of the Mortgaged Property to engage in any activity that could impose liability under the Hazardous Waste Laws and/or Clean Air Act on such tenant or occupant, on Mortgagor or on any other owner of any of the Mortgaged Property.

Mortgagor shall comply strictly and in all respects with the Hazardous Waste Laws, Clean Air Act and related regulations and with all similar laws and regulations now in effect or as amended or modified hereafter, and shall notify Mortgagee immediately in the event of any Spill or the discovery of any hazardous substance at, upon, under or within the Mortgagor Property. Mortgagor shall promptly forward to Mortgagee copies of all orders, notices, permits, applications or other communications and reports in connection with any Spill or the presence of any hazardous substance or any other matters relating to the Hazardous Waste Laws, Clean Air Act, or any similar laws or regulations, as they may affect the Mortgaged Property.

At such time as Mortgagee has reason to believe a hazardous substance may be present on the Mortgaged premises by reason of a Spill of such a substance, or otherwise, the Mortgagor, upon the then written request of the Mortgagee, shall provide Mortgagee, at Mortgagor's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to Mortgagee, to assess with a reasonable degree of certainty the presence or absence of any hazardous substance and the potential costs in connection with abatement, cleanup or removal of any hazardous substance found on, under, at or within the Mortgaged Property.

Mortgagor shall at all times indemnify and hold harmless Mortgagee against and from any and all claims, suits, actions, debts, damages, costs, charges, losses obligations, judgments, and expenses, of any nature whatsoever, suffered or incurred by Mortgagee, whether as Mortgagee of this Mortgage, as Mortgagee in possession, or as successor-in-interest to Mortgagor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws, Clean Air Act, or any similar

laws or regulations, including the assertion of any lien thereunder: (i) with respect to any Spill, the threat of any Spill, or the presence of any hazardous substance affecting the Mortgaged Property whether or not the same originates or emanates from the Mortgaged property, including any loss of value of the Mortgaged Property as a result of any of the foregoing; and (ii) with respect to any other matter affecting the Mortgaged Property within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local environmental agency. Mortgagor's obligations under this Section shall arise upon the discovery of the presence of any hazardous substance under the Hazardous Waste Laws, and/or the Clean Air Act, whether or not the Environmental Protection Agency, any other federal agency or any state or local environmental agency has taken or threatened any action in connection with the presence of any hazardous substance.

In event of any Spill, the threat of any Spill, or the presence of any hazardous substance affecting the Mortgaged Property, whether or not the same originates or emanates from the Mortgaged property and/or if Mortgagor shall fail to comply with any of the requirements of the Hazardous Waste Laws, Clean Air Act and/or related regulation of any other environmental law or regulation, Mortgagee may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Mortgaged Property and/or take any and all other actions as Mortgagee shall deem necessary or advisable in order to abate the Spill, remove the hazardous substance or cure Mortgagor's noncompliance.

If Mortgagee, or someone on Mortgagee's behalf, retains the services of an attorney in connection with the subject of indemnity herein, Mortgagor shall pay Mortgagee's costs and reasonable attorney fees thereby incurred. Mortgagee may employ an attorney of Mortgagee's own choice.

Mortgagor acknowledges that Mortgagee has agreed to make the loan secured by this Mortgage in reliance upon Mortgagor's representations, warranties and covenants in this Section. For this reason, it is the intention of Mortgagor and Mortgagee that the Mortgagor shall be personally liable for any obligations arising under this Section even if the amount of liability incurred exceeds the amount of the loan secured by this Mortgage. All of the representations, warranties, covenants and indemnities of this Section shall survive the repayment of the Loan and the release of the lien of this Mortgage from the Mortgaged property and shall survive the transfer of any or all right, title and interest in and to the Mortgaged property by Mortgagor to any party, whether or not affiliated with Mortgagor.

Upon an Event of Default, Mortgagor (or its representative) may visit the Mortgaged property and perform or cause to be performed environmental site investigations and assessments ("Site Assessments") on the Mortgaged Property for the purpose of determining whether there exists on the Mortgaged Property any environmental condition which could result in any liability, cost or expense to the owner or occupier of the Mortgaged Property. Such Site Assessment may include both above and below the ground testing as may be necessary to properly conduct the Site Assessments in the opinion of the persons conducting the Site Assessment (in the "Site Reviewers"). Mortgagor hereby covenants to supply to the Site Reviewers such historical and operational information regarding the Mortgaged Property as may be requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. The cost of performing all Site Assessments shall be paid by Mortgagor within five days after demand by Mortgagee, and thereafter shall bear interest per annum at the lesser of five percent (5%) in excess of the interest rate on the Note and the maximum rate permitted by applicable law.

13. It is further agreed that in case Mortgagee herein shall be a party to any suit filed in any court by reason of its being Mortgagee herein, or is at any time called upon to defend said Mortgage and interest in and to said property under the terms of said Mortgage, the Mortgagor will pay unto the Mortgagee all expenses incurred by said Mortgagee, including a reasonable attorney fee, in so defending its interest in said property by reason of said Mortgage, in protecting the lien thereof, or in protecting itself in said suite.

14. The covenants herein contained shall bind, the covenants and advantages shall inure to the respective heirs, executors, administrators successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the said Mortgagor (or, if applicable, Mortgagor/Borrower) has executed this Mortgage on the date stated above.

MORTGAGOR (or where applicable Mortgagor/Borrower):

Precision Enterprises, Inc. d/b/a Precision Construction, Inc.

By: David Vanbyke

By: \_\_\_\_\_

STATE OF Indiana )

) SS:

COUNTY OF Lake )

Before me, the undersigned, a Notary Public in and for said County and State, this 16th day of January, 1995, came Precision Enterprises, Inc. d/b/a Precision Construction, Inc. and acknowledged the execution of the above and foregoing Mortgage.

WITNESS MY HAND and Official Seal.



Lori L. Bruder  
Notary Public Lori L. Bruder

County of Residence: Porter

My Commission expires 11/11/95

This instrument prepared by Richard C. Simaga, Vice President of Indiana Federal Bank for Savings

