

96027628

CTLC 4138  
STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
96 APR 25 PM 1:19  
MAYOR...  
RECORDER

Chicago Tide Insurance Company

14

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS**

Effective this 23rd day of April, 1996, **ROBERT A. HILL**, personally (the "Mortgagor") having his address at 1000 Brookforest Avenue, Shorewood, Illinois, 60435 mortgages and warrants to **FIRST MIDWEST BANK, N.A.**, a National Banking Association (the "Mortgagee") having its address at 410 W. Lockport Street, Plainfield, Illinois 60544-1877, to secure the payment of all principal, interest and other sums or indebtedness evidenced by a certain Secured Promissory Note, bearing even date herewith, executed by Mortgagor and given to Mortgagee (the "Note") evidencing a certain commercial real estate loan (the "Loan") (and including all modifications, extensions and renewals thereof and any future advances thereunder whether direct or indirect, due or becoming due [provided, however, that in no event shall the aggregate indebtedness secured by this Mortgage exceed five (5) times the aforementioned original principal sum of the Note] in the original principal sum of **EIGHT HUNDRED FIFTY THOUSAND AND NO/100 (\$850,000.00) DOLLARS**, which Note provides for monthly installment payments of principal and interest with interest being charged at a regular rate of interest of Eight and Two-Hundredths (8.02%) percent per annum and which Note and Loan are for a term of approximately five (5) years maturing on April 23, 2001, the said Mortgage being dated, duly signed, sealed and acknowledged by the Mortgagor, shall be deemed and held to be good and sufficient Mortgage to the Mortgagee and Mortgagee's heirs, assigns, executors and administrators, with warranty from the Mortgagor and his legal representatives, of perfect title in the Mortgagor and against all previous encumbrances, that certain commercial real estate commonly known as **3731 East 81st Avenue, Merrillville, Indiana** and legally described on Exhibit "A" attached hereto and made a part hereof;

Prepared by and after  
recording return to:

First Midwest Bank, N.A.  
ATTN: Commercial Loan Dept.  
410 W. Lockport Street  
Plainfield, IL 60544-1877

Property Address:

3731 East 81st Avenue  
Merrillville, Indiana  
Tax Identification No.:  
(Key No. 53-12-83).  
(Tax Unit No. 43).

3500  
Su

**TOGETHER** with all buildings, improvements, and tenements now or hereafter erected on such real estate, and all heretofore or hereafter vacated alleys and streets abutting such real estate, and all easements, rights, appurtenances, leases, rents, profits and awards, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials (including but not limited to concrete, steel, lumber, pipe, conduit, systems, controls, doors and windows), freezers, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the real estate including, but not limited to, those for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air and light and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security systems and access control apparatus, plumbing, water heaters, attached floor coverings, furnishings, antennas, and all additional personalty located on the subject real estate, all of which, including replacements and additions thereto (excepting, however, any of the foregoing items which are movable trade fixtures or furnishings which are personal property belonging to tenants in possession) shall be deemed to be and remain a part of the real property covered by this Mortgage; and all of the foregoing, the real estate together with said property are herein collectively referred to as the "Mortgaged Premises".

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, warrant, grant, convey and assign the Mortgaged Premises and further to grant and make the assignment of leases and rents provided for herein, that the Mortgaged Premises are unencumbered, and that Mortgagor will warrant and defend generally the title to the Mortgaged Premises against all claims and demands, subject to any permitted easements and restrictions listed in a schedule of exceptions to coverage in any title policy insuring Mortgagee's interest in the Mortgaged Premises.

**COVENANTS.** Mortgagor covenants, warrants and agrees unto and with Mortgagee as follows:

1. Payment of Principal and Interest/Incorporation of Terms of the Note. Mortgagor and promises to promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and respective late charges provided in the Note and all other sums secured by this Mortgage. The terms and provisions of such Note are incorporated into this Mortgage by this reference as if the same were fully set forth herein. The terms of such Note shall govern in the event of any inconsistency between the terms of this Mortgage and such respective Note terms.
2. Application of Payments. Unless applicable law provides otherwise, all payments received by Mortgagee from any Mortgagor under the Note secured hereby or this Mortgage shall be applied by Mortgagee first to costs, expenses and other sums expended by Mortgagee pursuant to the "Loan Documents" (as defined and identified in the Note) then to any accrued and outstanding interest and then to principal and any other sums secured by this Mortgage in such order as Mortgagee, at Mortgagee's option, may determine; provided, however, that Mortgagee may, at Mortgagee's option, apply any sums payable pursuant to paragraph 6 hereof prior to interest on and principal of such respective Note.
3. Charges; Liens. Mortgagor shall pay all taxes, assessments, and other charges, fines and impositions attributable to the Mortgaged Premises which may attain a priority over this Mortgage by Mortgagor making payments when due, directly to the payee thereof. Mortgagor shall promptly furnish to Mortgagee all notices of amounts due under this paragraph, and Mortgagor shall promptly furnish Mortgagee receipts evidencing such payments. Mortgagor shall promptly discharge any lien which has priority over this Mortgage; provided, that Mortgagor shall not be required to discharge any such lien so long as Mortgagor shall: (i) promptly notify Mortgagee of the existence of such lien; and (ii) in good

faith contest such lien by, or defend against enforcement of the lien in, legal proceedings which in the opinion of Mortgagee operate to prevent the enforcement of the lien or forfeiture of the Mortgaged Premises or any part thereof; and (iii) in conjunction therewith fully insure or bond over such lien to Mortgagee's satisfaction within not more than thirty (30) days after the date such lien is first asserted against the Mortgaged Premises.

4. Insurance. The Mortgagor will procure for, deliver to and maintain for the benefit of the Mortgagee during the term of this Mortgage, a policy or policies (a) insuring the Mortgaged Premises against fire, lightning, vandalism, malicious mischief, all other perils insured against under "extended coverage", and such other insurable perils as the Mortgagee may reasonably require, including, without limitation, perils covered under an "additional other perils" endorsement, for the insurable replacement cost or value (whichever is greater) of the improvements to the Mortgaged Premises or in such other amount reasonably satisfactory to Mortgagee, (b) affording such other or additional coverage as from time to time may be requested by the Mortgagee, including, without limitation, builder's risk insurance, comprehensive general liability insurance, umbrella liability insurance, boiler and pressurized vessel insurance, and, if any part of the Mortgaged Premises is in a flood area (as defined under the Flood Disaster Protection Act of 1973, as amended from time to time), flood insurance, unless Mortgagee in its sole discretion agrees in writing to waive or suspend the requirements of such flood insurance.

All insurance policies and renewals thereof shall: (a) be in a form and amount acceptable to Mortgagee and (b) shall include a standard mortgagee clause in favor of and in form acceptable to Mortgagee and (c) provide thirty (30) days advance written notice to Mortgagee before cancellation or material modification. Mortgagee shall have the right to hold the policies, and Mortgagor shall promptly furnish to Mortgagee all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of a policy, Mortgagor shall deliver to Mortgagee a renewal policy in form satisfactory to Mortgagee.

In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Mortgagor hereby authorize and empower Mortgagee as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this paragraph 4 shall require Mortgagee to incur any expense or take any action hereunder. In the event of an adjustment, settlement and/or disbursement of insurance proceeds relative to a claim involving damage amounting to less than \$5,000.00 said funds shall be paid to Mortgagor and provided Loan is not in default, Mortgagor shall utilize and disburse said funds for purposes repair of the Mortgaged Premises and Mortgagor shall promptly provide Mortgagee with a detailed written accounting of all insurance proceeds so expended. In the event of an adjustment, settlement and/or disbursement of insurance proceeds relative to a claim involving damage amount to \$5,000.00 or more said funds shall be paid to Mortgagee and Mortgagor further authorize Mortgagee, at Mortgagee's sole option and election in its sole discretion, (a) to hold without interest the balance of such proceeds to be used to reimburse the cost of reconstruction or repair of the Mortgaged Premises or (b) in the event an Event of Default then or thereafter exists or if in Mortgagee's reasonable judgment the value of the Mortgaged Premises and/or the debt to value of collateral ratio of the Loan secured hereby is or if upon reconstruction or repair will be materially adversely affected by such loss, or if such damage or destruction occurs during the last year of the next scheduled end term and maturity of the Note secured hereby, or if such damage or destruction cannot, in Mortgagee's reasonable judgment be fully repaired, reconstructed and/or restored within one hundred eighty (180) days after the occurrence thereof, then to

apply the balance of such proceeds to the payment of the sums secured by this Mortgage, whether or not then due, in the order of application set forth in paragraph 2 hereof.

If the insurance proceeds are held by Mortgagee to reimburse Mortgagor for the costs of restoration and repair of the Mortgaged Premises, the Mortgaged Premises shall be restored to the equivalent of its original condition or such other condition as Mortgagee may approve in writing. Mortgagee may, at Mortgagee's option, condition disbursement of said proceeds upon the following, all of which shall be satisfied or furnished at Mortgagor's expense:

- (i) Mortgagee's approval of such plans and specifications by an architect satisfactory to Mortgagee;
- (ii) Mortgagee's receipt and approval of contractor's cost estimates and an "in-balance" project budget (i.e., sufficient insurance proceeds and Mortgagor's cash funds to pay for all repairs, restoration and/or reconstruction), an Architect's completion certificate, waivers of liens of mechanics and materialmen, sworn owner's and contractor's statements of mechanics and materialmen and such other evidence of costs, limiting disbursements to percentage completion of construction, application of payments, and satisfaction of liens as Mortgagee may require;
- (iii) disbursement of proceeds and funds through a title company construction escrow with such title insurance as Mortgagee may require; and
- (iv) periodic inspections of the work by Mortgagee's architect, all at the cost and expense of Mortgagor.

If the insurance proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall be subject to a prepayment penalty, if any, and shall not extend or postpone the due dates of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amounts of such installments. If the Mortgaged Premises is sold pursuant to paragraph 14 hereof or if Mortgagee acquires title to the Mortgaged Premises, Mortgagee shall have all of the rights, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Mortgaged Premises prior to such sale or acquisition.

5. Preservation and Maintenance of Mortgaged Premises. Mortgagor: (a) shall not waste or permit impairment or deterioration of the Mortgaged Premises, (b) shall not abandon the Mortgaged Premises, (c) shall restore or repair promptly and in a good workmanlike manner all or any part of the Mortgaged Premises to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall thereof in good repair and shall replace fixtures, equipment, machinery and appliances on the Mortgaged Premises when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Mortgaged Premises, and (f) shall give notice in writing to Mortgagee of and, unless otherwise directed by Mortgagee, appear in and defend any action or proceeding purporting to affect the Mortgaged Premises, the security of this Mortgage or the rights of powers of Mortgagee. Neither Mortgagor nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Mortgaged Premises or (except for trade fixtures or detachable, unfixed equipment belonging to tenants in possession) any fixture, equipment, machinery or appliance in or on the Mortgaged Premises except when incident to the replacement of obsolete or worn fixtures, equipment, machinery and appliances with updated or like new items of like

kind.

6. **Protection of Mortgagee's Security.** If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which affects the Mortgaged Premises or title thereto or the interest of Mortgagee therein, including, but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option may make such appearances, disburse such sums and take such action as Mortgagee deems necessary, in its reasonable discretion, to protect Mortgagee's interest, including, but not limited to, (a) disbursements of attorneys fees, (b) entry upon the Mortgaged Premises to make repairs, (c) procurement of satisfactory insurance as provided in paragraph 4 hereof. Any amounts disbursed by Mortgagee pursuant to this paragraph 6, with interest thereon, shall become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate stated in the Note secured hereby. Nothing contained in this paragraph 6 shall require Mortgagee to incur any expense or take any action hereunder.

7. **Inspection.** Mortgagee may make or cause to be made reasonable entries upon and inspections of the Mortgaged Premises.

8. **Books and Records.** Mortgagor shall keep and maintain at all times at Mortgagor's address stated below, or such other place as Mortgagee may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Mortgaged Premises and the financial condition of the Mortgagor. Such books and records shall be subject to examination and inspection at any reasonable time by Mortgagee. Mortgagor shall, within ninety (90) days after the end of each fiscal year of Mortgagor, furnish to Mortgagee the following: (i) financial information relating to the Mortgagor, including U.S. income tax returns, and (ii) financial and operating statements of the Mortgaged Premises for such fiscal year, in reasonable detail, including quarterly operating statements relative to the business operations of Mortgagor and principal tenant, Floor Covering Associates, Inc., including a quarterly certified rent roll for the Mortgaged Premises, and in any event including such itemized statements of receipts and disbursements as shall enable Mortgagee to determine whether a breach described in paragraph 15 or other default hereunder ("Event of Default") then exists. Mortgagor shall additionally furnish such other financial information or operating statements as may be required under the other Loan Documents. Such financial and operating statements shall be prepared and certified at Mortgagor's expense in a manner acceptable to Mortgagee, and shall include a statement as to whether or not an Event of Default exists hereunder. For purposes of this Paragraph the term "Mortgagor" also means any guarantors of the Note.

9. **Condemnation.** Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Mortgaged Premises, or any part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name any action or proceeding relating to any condemnation or other taking of the Mortgaged Premises, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Mortgaged Premises, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned to and shall be paid to Mortgagee.

Mortgagor authorizes Mortgagee to apply such awards, payments, proceeds or damages, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, at Mortgagee's option, to restoration or repair of the Mortgaged Premises or to payment of the sums secured by this Mortgage, whether or not then due, in the order of application set forth in paragraph 2 hereof, with the balance, if any, to Mortgagor. Any application of proceeds to principal shall be subject to a prepayment penalty, if any, and, unless Mortgagor and Mortgagee otherwise agree in writing, shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. Mortgagor agrees to execute such instruments required in connection with such condemnation or taking as Mortgagee may require.

10. Mortgagor and Lien Not Released. From time to time, Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns or of any junior lienholders, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Mortgage any part of the Mortgaged Premises, take or release other or additional security, reconvey any part of the Mortgaged Premises, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Mortgagor to modify the rate of interest or period of amortization, if any, of any Note secured hereby or change the amount of the monthly installments payable thereunder. Any actions taken by Mortgagee pursuant to the terms of this paragraph 10 shall not affect the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Mortgage and to observe the covenants of Mortgagor contained herein, and shall not affect the lien or priority of lien on the Mortgaged Premises. Mortgagor shall pay Mortgagee a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Mortgagee's option, for any such action if taken at Mortgagor's request.

11. Forbearance by Mortgagee Not a Waiver. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Mortgagee of payment of any sum secured by this Mortgage after the due date of such payment shall not be a waiver of Mortgagee's right to either require prompt when due of all other sums so secured. Mortgagee's receipt of any awards, proceeds or damages under paragraphs 4 and 9 hereof shall not operate to cure or waive Mortgagor's default in payment of sums secured by this Mortgage.

12. Real Estate Tax Escrow. In order to assure timely payment of real estate taxes, Mortgagee, to the fullest extent permitted by law, requires establishment of an escrow with Mortgagee for purposes of paying real estate taxes on the Mortgaged Premises. Mortgagor shall deposit with Mortgagee, as escrowee, such funds as are necessary, in Mortgagee's judgment, to meet the current real estate tax obligations related to the Mortgaged Premises plus a reserve of at least one-sixth (1/6) of the estimated annual real estate taxes and Mortgagor shall pay monthly to Mortgagee, in addition to other sums required under the Note secured hereby, a sum equal to one-twelfth (1/12) of such annual real estate taxes, as estimated by Mortgagee. The sums paid under this paragraph shall be held by Mortgagee, without interest, and shall be applied by Mortgagee to the payment of the expenses for which sums respectively were deposited, as and when said expenses shall become due and before the same shall become delinquent, upon the request of Mortgagor for such payment and the presentation by Mortgagor to Mortgagee of a bill covering such expense. Further, Mortgagor shall promptly deposit with Mortgagee any additional funds required to pay such real estate taxes in the event the balance of funds on deposit

in such escrow (including allocation for a reserve) is insufficient to pay any tax bill or when due. Mortgagor shall promptly furnish Mortgagee with copies of all tax bills and assessment notices received by Mortgagor from time to time.

The foregoing notwithstanding, Mortgagee hereby initially elects to initially suspend the requirement of such real estate tax escrow it being understood and agreed, however, that any such suspension shall be subject to Mortgagee's right to elect to reinstate such real estate tax escrow requirements upon the occurrence of either: (i) any Event of Default even if cured or (ii) failure by Mortgagor or its beneficiary to furnish Mortgagee with satisfactory evidence of timely payment of real estate taxes within ten (10) days after each due date for such tax payments.

13. Restriction on Transfer. It shall be, without further notice, an immediate breach of and Event of Default under this Mortgage if, without the prior written consent of the Mortgagee, any of the following shall occur: if any Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lease (other than in the ordinary course of business pursuant to fair market lease terms subject to Mortgagee's consent which shall not be unreasonably withheld or delayed provided such lease complies with Mortgagee's leasing guidelines in effect from time to time and provided any Debt Service Coverage Ratios required by Mortgagee shall at all times be met), lien, pledge, mortgage, security interest or other encumbrance or alienation of (i) the Mortgaged Premises or any part thereof, of interest therein (ii) all or a portion of the beneficial interest of any Mortgagor or change in the power of direction, (iii) all or a portion of the stock of any corporate Mortgagor or of any corporate beneficiary of a land trust-Mortgagor that results or could result in a material change in the identity of the person or entity in control of the corporation; or (iv) any general partner's interest in any partnership Mortgagor or in any partnership beneficiary of a land trust-Mortgagor; in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this paragraph 13 shall not apply (i) to the lien of current taxes and assessments not in default, (ii) to the lien of this Mortgage; or (iii) to a lease of the Mortgaged Premises to Floor Covering Associates, Inc. (upon rent and other terms reasonably satisfactory to Mortgagee) provided such lease is subordinated to the lien of this Mortgage. The provisions of this Paragraph 13 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Mortgaged Premises. Anything to the contrary set forth in this Mortgage or the other Loan Documents notwithstanding, Mortgagee shall not be required to give any notice of default or opportunity to cure with respect to a breach or default of the foregoing restrictions on transfer.

14. Assignment of Rents and Leases; Appointment of Receiver; Mortgagee in Possession. As part of the consideration for and as additional security for the indebtedness lent by Mortgagee and evidenced by the Note, Mortgagor hereby absolutely and unconditionally assigns and transfers to Mortgagee all the rents, revenues, proceeds and deposits (collectively, the "rents") of the Mortgaged Premises, including those now due, past due, or to become due by virtue of any lease or other agreement of the sale, occupancy or use of all or any part of the Mortgaged Premises, regardless of to whom the rents, revenues, proceeds and deposits of the Mortgaged Premises are payable. This Assignment also includes assignment for collateral purposes of all right, title and interest of Mortgagor in and to any other occupancy agreements, leases, licenses, easements or other agreements resulting in revenue or income from the Mortgaged Premises. Mortgagor hereby authorizes Mortgagee or Mortgagee's agents to collect the aforesaid rents, revenues, proceeds and deposits and hereby directs each tenant, occupant, or purchaser, as the case may be, of the Mortgaged Premises to pay such rents and proceeds to Mortgagee

or Mortgagee's agents; provided, however, that prior to written notice given by Mortgagee to Mortgagor of the Event of Default by Mortgagor relative to any covenant or agreement of Mortgagor in this Mortgage or the other Loan Documents, Mortgagor shall be permitted to collect and receive all rents, revenues, proceeds and deposits of the Mortgaged Premises as trustee for the benefit of Mortgagee and Mortgagor, to apply the rents, revenues, proceeds and deposits so collected to the sums secured by this Mortgage in the order provided in paragraph 2 hereof with the balance, so long as no Event of Default has occurred, to the account of Mortgagor, it being intended by Mortgagor and Mortgagee that this assignment of rents constitutes an **absolute, present assignment** and not an assignment for additional security only and further that such assignment is coupled with an interest in favor of Mortgagee. Upon delivery of written notice by Mortgagee to Mortgagor of an Event of Default by Mortgagor of any covenant or agreement of Mortgagor or any Beneficiary contained in this Mortgage or the other Loan Documents, and without the necessity of Mortgagee entering upon and taking and maintaining full control of the Mortgaged Premises in person, by agent or by a court-appointed receiver, Mortgagee shall immediately be entitled to receipt and possession of all rents, revenues, proceeds and deposits of the Mortgaged Premises as specified in this paragraph 14 as the same become due and payable, including but not limited to rents, revenues, proceeds and deposits then due and unpaid, and all such rents, revenues, proceeds and deposits shall immediately upon delivery of such notice be held by Mortgagor or Beneficiary as trustee for the benefit of Mortgagee only; provided, however, that the written notice by Mortgagee to Mortgagor shall contain a statement that Mortgagee exercises its rights to such rents, revenues, proceeds and deposits. Mortgagor agrees and hereby irrevocably direct that commencing upon delivery of such written notice of any such breach or Event of Default each such tenant, occupant or purchaser, as the case may be, of the Mortgaged Premises shall make such rents payable to and pay such rents, revenues, proceeds and deposits to Mortgagee or Mortgagee's agents on Mortgagee's written demand or direction given to each such tenant, occupant or purchaser therefor, as the case may be, delivered to each tenant, occupant or purchaser, as the case may be, by mail or by delivery such demand to each unit, without any liability on the part of said tenant, occupant or purchaser to inquire further as to the existence of a default by Mortgagor.

Mortgagor hereby represents and warrants that Mortgagor has not executed any prior assignment of said rents or leases, that neither has performed, nor will perform, any acts or has not executed, and will not execute, any instrument which would prevent Mortgagee from exercising its rights under this paragraph 14, and that at the time of execution of this Mortgage, there has been no anticipation or prepayment of any of the rents, revenues, proceeds or deposits of the Mortgaged Premises. Mortgagor covenants that Mortgagor will not hereafter collect or accept payment of any rents of the Mortgaged Premises more than thirty (30) days prior to the due dates of such rents. Mortgagor further covenants that Mortgagor will execute and deliver to Mortgagee such further assignments of rents, revenues, proceeds or deposits of the Mortgaged Premises as Mortgagee may from time to time request.

Upon occurrence of an Event of Default under this Mortgage or the other Loan Documents, as aforesaid, Mortgagee may in person, by agent or by a court-appointed receiver, enter upon and take and maintain full control of the Mortgaged Premises in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, enforcement, cancellation or modification of leases, the collection of all rents, revenues, proceeds and deposits of the Mortgaged Premises, the making of repairs to the Mortgaged Premises and the execution or termination of contracts providing for the management or maintenance of the Mortgaged Premises, all on such terms as Mortgagee deems best to protect the security of this Mortgage. In the event Mortgagee elects to seek the appointment of a receiver for the Mortgaged Premises upon breach of any covenant or agreement or Event of Default of Mortgagor in this Mortgage or any other Loan Document, Mortgagor hereby



expressly consents to the appointment of such receiver. Mortgagee or the receiver shall be entitled to receive a reasonable fee for so managing the Mortgaged Premises.

All rents, revenues, proceeds and deposits collected subsequent to delivery of written notice by Mortgagee to Mortgagor of an Event of Default under this Mortgage or the other Loan Documents, aforesaid, shall be applied first to the costs, if any, of taking control of and managing the Mortgaged Premises and collecting the rents, revenues, proceeds and deposits, including, but not limited to, attorney's fees, premiums on receiver's bonds, costs of repairs to the Mortgaged Premises, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Premises, and the costs of discharging any obligations or liability of Mortgagor as lessor, landlord, operator or licensor of the Mortgaged Premises and then to the sums secured by this Mortgage. Mortgagee or the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Premises and shall be liable to account only for those rents, revenues, proceeds or deposits actually received by Mortgagee. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor, Beneficiary or anyone having an interest in the Mortgaged Premises by reason of anything done or left undone by Mortgagee under this paragraph.

If the rents, revenues, proceeds or deposits of the Mortgaged Premises are not sufficient to meet the costs, if any, of taking control of and managing the Mortgaged Premises and collecting the rents, revenues, proceeds or deposits, any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Unless Mortgagee and Mortgagor agree in writing to other terms of payment, such amounts shall be payable upon notice from Mortgagee to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the Default Rate stated in the Note secured hereby.

Any entering upon and taking and maintaining of control of the Mortgaged Premises by Mortgagee or the receiver and any application of rents, revenues or proceeds as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Mortgagee under applicable law or provided herein. This assignment of rents of the Mortgaged Premises shall terminate at such time as the indebtedness secured hereby is repaid in full and/or this Mortgage ceases to secure indebtedness held by Mortgagee.

15. Events of Default. The terms "Event of Default" or "Events of Default", wherever used in this Mortgage shall mean any one or more of the following events:

(a) Failure by Mortgagor or any other Loan obligor to pay when due any payment under any Note secured hereby, this Mortgage or any other Loan Document and such failure continues for five (5) days ~~after the date the same is due, without further notice or cure period, as to any regularly scheduled installment payment or required escrow deposit payment and otherwise as to any other monetary obligation if such failure continues for five (5) days~~ after Mortgagee has given Mortgagor written notice thereof; or

(b) Failure by Mortgagor to duly observe or perform any other terms, covenant, condition or agreement of the Note secured hereby, this Mortgage or any other Loan Document and such failure continues for more than fifteen (15) days after Mortgagee has given Mortgagor written notice thereof, provided that if such non-monetary default is curable but is not by its nature reasonably susceptible to cure within such fifteen (15) days and provided Mortgagor has diligently commenced cure within such fifteen (15) days and notifies Mortgagee of the same within said fifteen (15) days, Mortgagee shall allow

Mortgagor such additional time, not to exceed thirty (30) days, to cure such non-monetary default with due diligence and continuity; or

(c) The occurrence of any other Event of Default under this Mortgage any other Loan Document and expiration of any applicable period of cure.

(d) The filing by Mortgagor or any of the beneficial interest owners (if any) of Mortgagor ("Beneficiary") or any Guarantor of the Loan of a voluntary petition in bankruptcy or Mortgagor's or Beneficiary's adjudication as the bankrupt or insolvent, or the filing by Mortgagor or Beneficiary or Guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's or Beneficiary's or Guarantor's seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of itself or any portion of its assets or of all or any part of the Mortgaged Premises or of any or all of the rents, issues, profits or revenues thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing or its inability to pay its debts generally as they become due; or

(e) The entry by a court of competent jurisdiction of any order, judgment or decree approving a petition filed against the Mortgagor or Beneficiary or Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other similar relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, of the appointment of any trustee, receiver or liquidator of the Mortgagor, Beneficiary, or of all or any part of the Mortgaged Premises of any or all of the rents, issues, profits or revenues thereof without its consent or acquiescence, which appointment shall remain unvacated or unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(f) The occurrence of any Event of Default and expiration of applicable cure period, if any, under any other commercial loan now or hereafter existing in favor of Mortgagee wherein Mortgagor or any Guarantor is an obligor or guarantor or which is secured by the Mortgaged Premises and/or any underlying beneficial interest therein.

16. Acceleration; Remedies. In case of an Event of Default or violation of Paragraph 13 hereof (Restrictions on Transfer), Mortgagee at Mortgagee's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further notice, presentment or demand and all sums secured by this Mortgage shall bear interest thereafter at the Default Rate defined in the Note secured hereby and Mortgagee may foreclose this Mortgage by judicial proceeding. Mortgagee may exercise this option to accelerate during any default by the Mortgagor regardless of any prior forbearance. Mortgagee shall be entitled to collect all costs and expenses incurred in pursuant such remedies, including, but not limited to, attorney's fees, costs of documentary evidence, abstracts and title reports, and other costs of suit and Mortgagee at its option may foreclose this Mortgage by judicial proceeding and/or may invoke any other remedies provided by equity, applicable law or provided herein.

17. Notice. Except for any notice required under applicable law to be given in any other manner, (a) any notice to Mortgagor provided for in this Mortgage or in the Note secured hereby shall be given by personal service upon Mortgagor or by mailing of such notice by certified mail addressed to:

Mortgagor: Robert A. Hill  
c/o Floor Covering Associates, Inc.  
1000 Brookforest Avenue  
Shorewood, Illinois 60435

or at such other address as Mortgagor may designate by notice to Mortgagee as provided herein, and (b) any notice to Mortgagee shall be given by certified mail, return receipt requested, to Mortgagee at:

Mortgagee: First Midwest Bank, N.A.  
Attn: Mr. Richard Ethridge, Vice President  
410 W. Lockport Street  
Plainfield, Illinois 60544-1877

or to such other address as Mortgagee may designate by notice to Mortgagor as provided herein. Any notice proved for in this Mortgage or in the Note shall be deemed to have been given when personally served as hereinabove provided or, if mailed, on the second (2nd) business day following deposit of such notice in the United States Mail.

18. Successors and Assigns Bound; Agents; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor, subject to the provisions of paragraph 13 hereof. In exercising any rights hereunder or taking any actions provided for herein, Mortgagee may act through its employees, agents, attorneys or independent contractors as authorized by Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

19. Governing Law; Venue; Severability; Excess Interest. This Mortgage shall, at Mortgagee's option, be governed by the laws of the State of Illinois or the laws of the jurisdiction in which the Mortgaged Premises is located. Venue for all disputes and claims arising from this Mortgage shall, at Mortgagee's option be in the State Court having jurisdiction in the County in which the subject part of the Mortgaged Premises are situated or in the Circuit Court of Will County, Illinois or in United States District Court, Northern District of Illinois, Eastern Division. In the event that any provisions of this Mortgage or the Note secured hereby conflict with applicable law, such conflict shall not affect other provisions of this Mortgage or any of the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Mortgage and any such Note is declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge provided for in this Mortgage or in the Note, whether considered separately or together with other charges levied in connection with this Mortgage and the Note, violates such law, and Mortgagor is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Mortgagee in excess of the amounts payable to Mortgagee pursuant to such charges as reduced shall be applied by Mortgagee to reduce the principal of the indebtedness evidenced by the Note (in which case no prepayment penalty shall be applicable) or, at Mortgagee's option, shall be refunded to the Mortgagor. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor has been violated, all indebtedness which is secured by this Mortgage or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall at Mortgagee's option be deemed to be allocated and spread over the stated term of the Note in any combination. Unless otherwise

required by applicable law, such allocation and spreading shall be effected in such a manner that the applicable, respective rate(s) of interest computed thereby is uniform throughout the stated term of the Note.

20. Waiver. Notwithstanding the existence of any other security interests in the Mortgaged Premises held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Mortgaged Premises shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor and any party who now or hereafter acquires a security interest in the Mortgaged Premises and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein. Mortgagor also waives any right of set-off and/or recoupment Mortgagor may have against Mortgagee. **TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR FURTHER WAIVES ANY RIGHT MORTGAGOR MAY HAVE TO DEMAND A JURY TRIAL IN RELATION TO ANY ACTION BROUGHT BY MORTGAGEE TO EXERCISE ITS REMEDIES, UNDER THIS MORTGAGE, THE NOTE, OR THE OTHER LOAN DOCUMENTS.** To the fullest extent permitted by law, Mortgagor waives any right of reinstatement and further waive the benefits of all present and future valuation, appraisal, stay, redemption and moratorium laws under any state or federal law. **FURTHER TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY EXPRESSLY WAIVES ALL RIGHTS OF REDEMPTION PURSUANT TO THIS MORTGAGE.**

21. Indemnification.

(A) Mortgagor agrees to indemnify and hold Mortgagee harmless from any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, decrees, costs and expenses (including reasonable attorney's fees), arising directly or indirectly, in whole or in part, out of the acts and omissions whether negligent, willful or otherwise, of Mortgagor, or any of its officers, directors, agents, subagents, or employees, in connection with this Mortgage or as a result of: (i) ownership of the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways; (iii) any use, non-use or condition of the Mortgaged Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways; (iv) any failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage; or (v) the performance of any labor or services or the furnishing of any materials or other property with respect to the Mortgaged Premises or any part thereof. Any amounts payable to the Mortgagee under this Paragraph which are not paid within ten (10) days after written demand therefor by the Mortgagee shall bear interest at the Default Rate defined in the Note. The obligations of the Mortgagor under this paragraph shall survive any termination or satisfaction of this Mortgage.

(B) Mortgagor further indemnifies the Mortgagee and agrees to hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Mortgagee for, with respect to, or as a direct or indirect result of (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Mortgaged Premises or any other property legally or beneficially owned (or in which any interest or estate is owned) by the Mortgagor of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation



EXHIBIT "A"

LEGAL DESCRIPTION

(3731 EAST 81ST AVENUE, MERRILLVILLE, INDIANA)

PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS BEGINNING AT A POINT ON THE SOUTH LINE OF U. S. HIGHWAY NO. 30 AND 1721.09 FEET EAST OF THE WEST LINE OF SAID SECTION 24 ALONG SAID SOUTH LINE OF U. S. HIGHWAY NO. 30; THENCE SOUTH 00 DEGREES 01 MINUTES 19 SECONDS EAST A DISTANCE OF 280.00 FEET; THENCE SOUTH 89 DEGREES 45 MINUTES 45 SECONDS EAST A DISTANCE OF 201.66 FEET; THENCE NORTH 00 DEGREES 01 MINUTES 19 SECONDS WEST A DISTANCE OF 280.00 FEET; THENCE NORTH 89 DEGREES 45 MINUTES 45 SECONDS WEST A DISTANCE OF 201.66 FEET TO THE POINT OF BEGINNING IN LAKE COUNTY, INDIANA, EXCEPTING THE NORTH 40 FEET THEREOF.

