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LTIC 62685

**REAL ESTATE MORTGAGE,  
ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT**

THIS MORTGAGE is made this 31st day of March 1997, between the Mortgagor, ~~CARL D.~~ **CURRY** and **MARY A. CURRY**, as husband and wife, all individually, jointly, collectively and severally, (herein "Borrower"), and the Mortgagee, **HFS BANK, F.S.B.**, a corporation organized and existing under the laws of the United States, whose address is 555 East Third Street, Hobart, Indiana 46342 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of One Million Ninety Thousand Dollars (\$1,090,000.00) which indebtedness is evidence by Borrower's Note dated March 31, 1997 (herein "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable in full on or before April 1, 2022.

The Note has an "Initial Interest Rate" of 8.75. The Note interest rate may be increased or decreased on the 1st day of April, beginning on April 1, 2002 and the 1st day of April every five (5) years thereafter during the term of the loan.

Changes in the interest rate are governed by changes in an interest rate index called "Index". The Index is 300 basis points above the weekly average yield on United States Treasury Notes adjusted to a Constant Maturity of five (5) years, as made available by the Federal Reserve Board. If the interest rate changes, the amount of Borrower's monthly payments will change as provided by the Note. Increases in the interest rate will result in higher payments. Decreases in the interest rate will result in lower payments. The interest rate charged by the Note Holder will never be less than 7.50% or more than 12.50% per annum. The interest rate adjustments will not increase or decrease by more than 2% at each Change Date.

TO SECURE to Lender (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, and all renewals, extensions and modifications thereof; (b) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and (c) the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of Lake, State of Indiana:

PARCEL I:

LOTS 4 AND 5, POKAGON HEIGHTS, UNIT 2, CITY OF HOBART, AS SHOWN IN PLAT BOOK 42, PAGE 9, LAKE COUNTY, INDIANA, WHICH HAS THE ADDRESS OF 628-630 SHELBY PLACE, HOBART.

PARCEL II:

LOT 29, POKAGON HEIGHTS, UNIT NO. 1, CITY OF HOBART, AS SHOWN IN PLAT BOOK 41, PAGE 64, LAKE COUNTY, INDIANA, WHICH HAS THE ADDRESS OF 2080 RAND STREET, HOBART.

PARCEL III:

Lot 25 and Lot 26, <sup>PMC</sup> ~~LOT 26 AND THE SOUTH 42.5 FEET OF LOT 25~~ POKAGON HEIGHTS, UNIT NO. 2, IN THE CITY OF HOBART, AS SHOWN IN PLAT BOOK 42, PAGE 9, LAKE COUNTY, INDIANA, WHICH HAS THE ADDRESS OF 629 SHELBY PLACE, HOBART.

PARCEL IV:

LOT 24, POKAGON HEIGHTS, UNIT NO. 2, IN THE CITY OF HOBART, AS SHOWN IN PLAT BOOK 42, PAGE 9, LAKE COUNTY, INDIANA, WHICH HAS THE ADDRESS OF 635 SHELBY PLACE, HOBART.

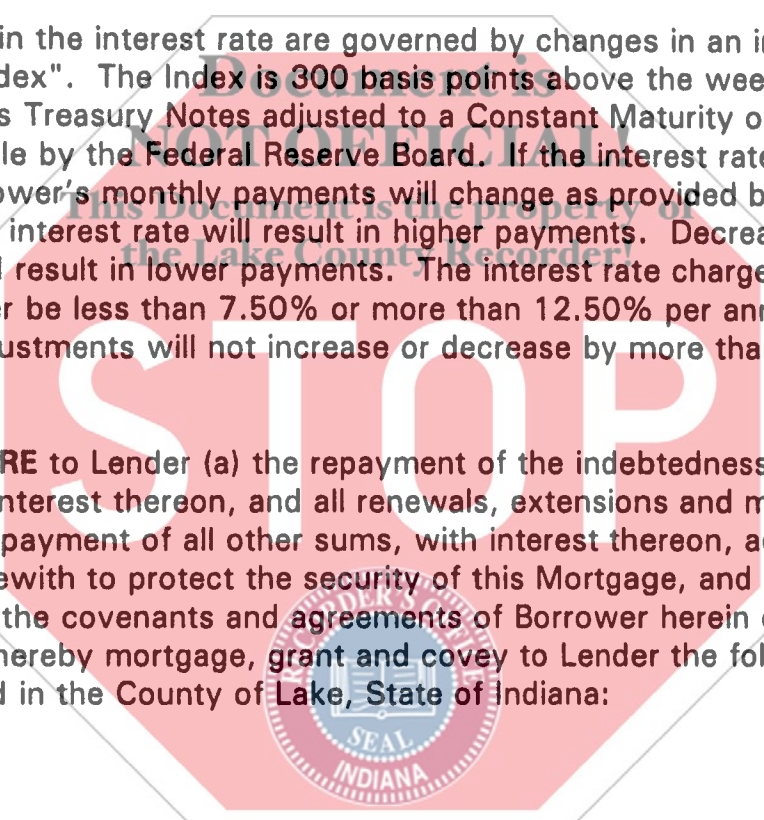
LAWYERS  
ONE PIONEER CENTER  
SUITE 210  
CROWN POINT, IN 46307

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STATE OF INDIANA  
LAKE COUNTY  
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FOUNDER



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**TOGETHER** with all buildings, improvements, and tenants now or hereafter erected on the property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, 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 property, including, but not limited to, those for the purposes 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 and access control apparatus, plumbing, water heaters, water closets, sinks, refrigerators, ranges and stoves, dishwashers, disposal, washers, dryers, storm doors, storm windows, awnings, blinds, shades, mirrors, cabinets, panelling, rugs, attached floor coverings, antennae, and trees and plants; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Mortgage; and all of the foregoing, together said property are herein referred to as the "Property".

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements or restrictions specifically listed in a schedule of special exceptions to coverage in any Lender's title insurance policy insuring Lender's interest in the Property.

**BORROWER AND LENDER COVENANT AND AGREE AS FOLLOWS:**

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, prepayment and late charges as provided in the Note.

2. **FUNDS FOR TAXES AND INSURANCE.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Mortgage, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The funds shall be held by Lender. Lender shall apply the Funds to pay said taxes, assessments, and insurance premiums. Lender may not charge for so holding and applying the Funds, analyzing said account, or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable laws permit Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall give to Borrower, without charge, an annual accounting of the funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, and insurance premiums, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If any amount of the Funds held by

Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay Lender any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 20 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, not later than immediately prior to the sale of Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

**3. APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender in the following order of priority; (i) amounts payable to Lender by Borrower under paragraph 2 hereof, (ii) interest payable on the Note, (iii) principal of the Note, and (iv) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to paragraph 7 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this paragraph 3.

**4. CHARGES; LIENS.** Borrower shall pay all water and sewer rates, rents, taxes, assessments, premiums, and Other Impositions attributable to the property at Lender's option in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof, or in such manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph 4, and in the event Borrower shall make payments directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien of this Mortgage, and Borrower shall pay, when due, the claims of all persons, supplying labor or materials to or in connection with the property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Mortgage to be perfected against the property.

**5. HAZARD INSURANCE.** Borrower shall keep the improvements now existing or hereafter erected on the property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage", rent loss and such other hazards, casualties, liabilities and contingencies as Lender shall require and in such amounts and for such periods as Lender shall require. All premiums on insurance policies shall be paid, at Lender's option, in the manner provided under paragraph 2 hereof, or by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender.

In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower 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 there from Lender's expenses incurred in the collection of such proceeds;

provided, however, that nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the property, or (b) to apply the balances 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 3 hereof.

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the property, the property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architects, certificates, waiver of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall not exceed 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 property is sold pursuant to paragraph 20 hereof or if Lender acquires title to the property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the property prior to such sale or acquisition.

**6. PRESERVATION AND MAINTENANCE OF PROPERTY.** Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender 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 keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property 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 Property, (f) shall provide for professional management of the Property by a rental property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing, (g) shall generally operate and maintain the Property in a manner to ensure maximum rentals, and (h) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this instrument or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the property except when incident to the replacement of fixtures, equipment, and machinery with items of like kind.

**7. PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower may make such appearance, disburse such sums and take such action as necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. If Lender required

mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law. Borrower shall pay the amount of all mortgage insurance premiums in the manner provided under paragraph 2 hereof. In addition, Borrower shall reimburse Lender the cost of any additional appraisals of the property required by Lender or the Office of Thrift Supervision.

Any amounts disbursed by Lender pursuant to this paragraph 7 with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

**8. INSPECTION.** Lender may make or cause to be made reasonable entries upon and inspections of the Property.

**9. BOOKS AND RECORDS.** Borrower shall keep and maintain at all times at Borrower's address stated below, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the property and copies of all written contracts, leases and other instruments which affect the property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Upon Lender's request, Borrower shall furnish to Lender, within one hundred twenty (120) days after the end of each fiscal year of Borrower, a balance sheet, a statement of income and expenses of the property, and a statement of changes in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require, by an independent certified public accountant.

**10. CONDEMNATION.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the property, 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 property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender.

**11. BORROWER AND LIEN NOT RELEASED.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower 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 property, take or release other additional security,

reconvey any part of the property, consent to any map or plan of the property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this paragraph 11 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sum secured by this Mortgage and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien of priority of lien hereof on the property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may incurred at Lender's option, for any such action if taken at Borrower's request.

**12. FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender 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 Lender of payment of any sum secured by this Mortgage after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Lender's receipt of any awards, proceeds or damages, under paragraphs 5 and 10 hereof operate to cure or waive Borrower's default in payments of sums secured by this Mortgage.

**13. REMEDIES CUMULATIVE.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity and may be exercised concurrently, independently or successively, in any order whatsoever.

**14. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 19 hereof. All covenants and agreements of Borrower shall be joint and several. 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.

**15. NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by mailing such notice by certified mail, return receipt requested, addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have given to Borrower or Lender when given in the manner designated herein.

**16. GOVERNING LAW; SEVERABILITY.** This Mortgage shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and the Note are declared to be severable.

17. **BORROWER'S COPY.** Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

18. **LEASES OF THE PROPERTY.** Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the property or any part thereof. Borrower, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made or all or any part of the property, and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. All leases of the property shall specifically provide that such leases are subordinate to this Mortgage; that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property, that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Lender may, at Lender's option, accept or reject such attornment. Borrower shall not, without Lender's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter made of all or any part of the property providing for a term of one year or more, permit an assignment or sublease of such a lease without Lender's written consent, or request or consent to the subordination of any lease of all or any part of the property to any lien subordinate to this Mortgage. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any rights to a set-off against rent, (ii) notify Lender thereof and of the amount of said set-offs, and (iii) within ten (10) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

Upon Lender's request, Borrower shall assign by Lender, by written instrument satisfactory to Lender, all leases now existing or hereafter made of all or any part of the property and all security deposits made by tenants in connection with such leases of the property. Upon assignment by Borrower to Lender of any leases of the property, Lender shall have all the rights and powers possessed by the Borrower prior to such assignment and Lender shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Lender's sole discretion.

Borrower shall provide Lender with an occupancy list certified by Borrower containing names and addresses of persons occupying the units secured by this Mortgage, the expiration date of each lease, the rent paid and the rent payable by each tenant, commencing with the date of closing. Thereafter, the occupancy list shall be due on or before November 1st of each year during the term of this loan and shall reflect the occupancy as of October 1st of the respective year. In addition, occupancy lists, as described herein, shall also be provided by Borrower upon Lender's request.

19. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; ASSUMPTION.** On sale or transfer of (i) all or any part of the Property, or any interest therein, or (ii) beneficial interests in Borrower (if Borrower is not a natural person or persons but is a partnership or other legal entity), then the Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable, and Lender may invoke any remedies permitted by paragraph 20 of this Mortgage.

20. **ACCELERATION; REMEDIES.** Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage or the Note, including, but not limited to, the covenants to pay when due any sums secured by this Mortgage, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be

immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding and may invoke any other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees, cost of documentary evidence, abstracts and title reports.

**21. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.** If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangement of reorganization, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower of Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by paragraph 20 of this Mortgage. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Mortgage pursuant to paragraph 7 hereof.

**22. ASSIGNMENT OF RENT; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** As additional security hereunder, Borrower hereby assigns to Lender the rents to the Property, provided that Borrower shall, prior to acceleration under paragraph 20 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 30 hereof or abandonment of the Property, and at any time prior to the expiration of any period of redemption following judicial sale, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received.

**23. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, any be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items.

Borrower represents the following:

- (i) It is and will be the true and lawful owner of the collateral, subject to no liens, charges or encumbrances other than the lien hereof;
- (ii) the collateral is to be used by the Borrower solely for rental business purposes, being installed upon the property for Borrower's own use or as the equipment and furnishing furnished by Borrower as



landlord, to tenants of the property;

(iii) the collateral will be kept at the property and will not be removed therefrom without the consent of the Lender by Borrower or any other person; and the collateral may be affixed to such real estate but will not be affixed to any other real estate; and

(iv) the only persons having any interest in the property are the Borrower and the Lender.

Borrower agrees that Lender may file this Instrument, or reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all cost of filing such financing statement and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable cost and expenses of any record searches for financing statements Lender may reasonable require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, any also invoke the remedies provided in paragraph 20 of this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in paragraph 18 of this Instrument.

24. **RELEASE.** Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

25. **WAIVER OF VALUATION AND APPRAISEMENT LAWS.** Borrower hereby waives all right of valuation and appraisement.

26. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the property shall be subjected to the remedies provided herein. Lender 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. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the property and who has actual or constructive notice hereof waives any and all right to require the marshalling of assets in connections with the exercise of any of the remedies permitted by applicable law or provided herein.

27. **USE OF PROPERTY.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

**28. SECONDARY LIENS AND/OR ENCUMBRANCES.** The Borrower further covenants and agrees not to further encumber the property without the written consent of Lender, nor commit, permit, or suffer any waste, impairment, or depreciation of said property and, in the event of any breach of this covenant, at any time after such breach, without limiting the foregoing, the Lender may, at its option, declare all of the remainder of the indebtedness immediately due and collectible, whether or not any other default exists; this covenant shall run with the land and remain in full force and effect until said indebtedness is liquidated.

**29. LEGISLATION AFFECTING LENDER'S RIGHTS.** If enactment or expiration of applicable laws has the effect of rendering any provision of the note or this Mortgage unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Mortgage and may invoke remedies permitted by paragraph 20.

**30. BORROWER'S REPRESENTATIONS AND WARRANTIES.** To induce Lender to fund the Note, Borrower represents, acknowledges and warrants to Lender, and agrees with Lender, as follows:

(a) The improvements on the property in all respects are in compliance with applicable zoning and building codes, regulations and ordinances. The Premises are zoned to permit the operation and use of the Project for its intended purpose;

(b) The improvements located on the property do not encroach upon any easements or any adjoining properties;

(c) No services, labor or materials have been furnished to the property within the past sixty (60) days which would create any mechanic's liens or right to mechanic's liens.

(d) The Premises, and the use and operation thereof, are currently in compliance and will remain in compliance with all applicable laws and regulations (including all environmental, health and safety laws and regulations). All required governmental permits are in effect and will remain in effect.

(e) There are and will be no environmental, health or safety hazards that pertain to any of the Premises or the business or operations conducted thereon. No storage, treatment or disposal of hazardous waste or material (collectively, "Hazardous Materials") has or will occur on the Premises (for purposes of these representations and warranties, the term "Hazardous Materials" shall include substance defined as "hazardous substance" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601 *et seq.*; Hazardous Material Transportation Act, 49 U.S.C. Sec. 1802 *et seq.*; The Resources Conservation and Recovery Act, 42 U.S.C. Sec. 6901 *et seq.*; and the regulations adopted and publications promulgated pursuant to said laws). The business and all operations conducted on the Premises have and will lawfully dispose of their Hazardous Materials.

(f) There are no pending or threatened: (i) actions or proceedings from any governmental agency or any other entity regarding the condition or use of Premises, or regarding any environmental, health or safety law, or (ii) "superliens" or similar governmental actions or proceedings that could impair the value of the Premises, or the priority of the lien of this Mortgage or any of the

other Loan Documents (collectively "Environmental Proceedings"). Borrower will promptly notify Lender of any notices, or other knowledge obtained by Borrower hereafter of any pending or threatened Environmental Proceedings, and Borrower will promptly cure and have dismissed with prejudice any such Environmental Proceedings to the satisfaction of Lender.

(g) Any fees, costs and expenses imposed upon or incurred by Lender on account of any breach of this Paragraph shall be immediately due and payable by Borrower to Lender upon demand, and shall become part of the Indebtedness. Borrower shall keep, save and protect, defend, indemnify and hold Lender harmless from and against any and all claims, loss, costs, damages, liability or expense, including reasonable attorneys' fees, sustained or incurred by Lender by reason of any Environmental Proceedings or the breach of default by Borrower of any representation, warranty or covenant contained in this Paragraph.


**31. TAX RETURNS.** The Borrower will, within one hundred thirty-five (135) days after the end of each calendar year, deliver to the Lender a copy of the federal tax return, currently Form 1040, for the immediately preceding calendar year. Such tax returns shall be prepared by a certified public accountant acceptable to Lender.

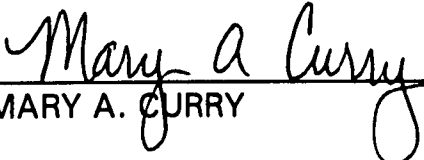
**32. LOAN TO VALUE RATIO.** The unpaid loan balance to appraised value ratio used by the Lender in making the loan to Borrower is Eighty (80%) Percent. In the event that a reappraisal of the real estate required by the Lender, its auditors, or the Office of Thrift Supervision results in a loan to value ratio of greater than Eighty (80%) Percent computed based on the unpaid principal balance at the time of the reappraisal and the appraised value as determined in the reappraisal, Borrowers covenant and agree, upon demand of Lender, to make additional principal payments to Lender sufficient to reduce the loan to value ratio based on the reappraisal to Eighty (80%) Percent or less.

**33. MISCELLANEOUS.** Carl D. Curry and Mary A. Curry who is the maker of the Adjustable Rate Mortgage Note which this real estate mortgage secures, by execution of this real estate mortgage is agreeing to be individually liable and responsible for the performance of all of the covenants and agreements of Borrower expressed in said Mortgage.

IN WITNESS WHEREOF, the Borrower has executed this Mortgage the day and year first above written.

CARL D. CURRY and MARY A. CURRY

BY:   
CARL D. CURRY

BY:   
MARY A. CURRY

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF LAKE     )

Before me, the undersigned, a Notary Public in and for said County and State, this 31st day of March, 1997 personally appeared **CARL D. CURRY** and **MARY A. CURRY** and duly acknowledge the execution of the above and foregoing Real Estate Mortgage, Assignment of Rents and Security Agreement as aforesaid and as his/her voluntary act and deed.

Given under my hand and official seal, this 31st day of March 1997.

*Pamela K. Broadway*  
Notary Public

My Commission Expires: \_\_\_\_\_

County of Residence: \_\_\_\_\_

PAMELA K. BROADWAY  
Notary Public, State of Indiana  
LAKE COUNTY  
My Commission Expires: 12/25/2000



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