

Chicago Title Insurance Company

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STATE OF INDIANA  
LAKE COUNTY  
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MORRIS W. CARTER  
RECORDER

**MORTGAGE**

6977/492121

Site: Munster, IN

ULRICH E. MEYER, Trustee of the ULRICH E. MEYER REVOCABLE TRUST  
and CHARLES D. STEIN, Trustee of the CHARLES D. STEIN REVOCABLE TRUST,  
as Mortgagor

To

IL ANNUITY AND INSURANCE COMPANY,  
as Mortgagee

**MORTGAGE AND SECURITY AGREEMENT**

Dated: November 20, 1997

Location: Munster, IN

DRAFTED BY AND WHEN  
RECORDED RETURN TO:

Joseph H. Bourgon, Esq.  
Sommers Schwartz Silver & Schwartz  
2000 Town Center, Suite 900  
Southfield, Michigan 48075-1100

For cont. 97082776  
Sub # 97082777

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THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is given this \_\_\_ day of November, 1997, by ULRICH E. MEYER, Trustee of the ULRICH E. MEYER REVOCABLE TRUST under agreement dated May 25, 1978, and CHARLES D. STEIN, Trustee of the CHARLES D. STEIN REVOCABLE TRUST under agreement dated January 10, 1979 (collectively, the "Mortgagor"), whose address is 30 North LaSalle Street, Suite 2600, Chicago, Illinois 60602, to IL ANNUITY AND INSURANCE COMPANY, a Massachusetts corporation ("Mortgagee"), whose address is 2960 North Meridian Street, c/o Mortgage Loan Department/ML #25-936, Indianapolis, Indiana 46208.

## PART I

### WITNESSETH:

NOW, THEREFORE, Mortgagor, to secure the performance of the covenants hereinafter contained, and the repayment of loans and advances made simultaneously herewith, or hereafter to be made, to Mortgagor in the aggregate principal amount of Two Million Nine Hundred Twenty-Five Thousand and No/100 Dollars (\$2,925,000.00), together with interest thereon, payable in accordance with the terms of those certain Promissory Notes of even date herewith, as more particularly described in the attached Exhibit "A", in such amounts evidencing such loans and advances, and all amendments, extensions and renewals thereof (hereinafter collectively referred to as the "Note"), executed by Mortgagor in favor of Mortgagee, the terms, covenants and conditions of which said Note are herein incorporated as covenants and conditions of the Mortgagor, with the same force and effect as though such covenants and conditions were fully set forth herein [the covenants of this Mortgage, the Note and any and all other documents executed and delivered by Mortgagor which evidence or secure the Note (collectively, the "Loan Documents") are hereinafter collectively referred to as the "Indebtedness"], the Mortgagor hereby mortgages, warrants, grants, bargains, sells, pledges, assigns, transfers and conveys to the Mortgagee, its successors and assigns, and grants a security interest to Mortgagee in Mortgagor's interest in certain real estate and all of Mortgagor's estate, right, title and interest therein, as described in the attached Exhibit "B" (hereinafter referred to as the "Premises"), together with:

A. All awards heretofore made or hereafter to be made for the taking by eminent domain of the whole or any part of the above described Premises, or any estate or easement therein, including any awards for change of grade of streets, all of which awards are hereby assigned to the Mortgagee, which is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor;

B. All easements, rights, privileges, appurtenances, tenements and hereditaments belonging or in any way appertaining to the Premises and which may hereafter attach thereto, and the reversion and retitling and interest of the Mortgagor, if now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed in front of or adjoining said land to the center line thereof; together with all right, title and interest of the Mortgagor, if any, now owned or hereafter acquired, in and to any and all sidewalks and alleys, and all strips and gores of land, adjacent to or used in connection with the Premises;

C. All right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to any and all buildings, structures and improvements (collectively, the "Improvements"), now or at any time hereafter erected, constructed or situated upon the Premises or any part thereof;

D. All right, title and interest of the Mortgagor in and to any and all present and future leases of the Premises, and/or the Improvements or any portion thereof, including any lease guaranties executed and delivered in connection therewith, and the rents, issues and profits payable thereunder, together with all the right or privilege of the Mortgagor to cancel any present or future lease, to accept prepayment or more than one periodic installment of rent payable thereunder, to accept a surrender thereof, or to modify any such lease;

E. All right, title and interest of the Mortgagor in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor pursuant to the provisions of Paragraph 4 hereof and all of Mortgagor's interest in any management agreements, financing commitments and intangibles relating to the Property (hereinafter defined); and

F. All right, title and interest of the Mortgagor, now owned or hereafter acquired in and to any and all machinery, apparatus, equipment, fittings, fixtures, all building materials on or off the Premises, to be affixed to or incorporated in the Property, but not yet affixed to or incorporated in the Property, goods and articles of personal property of every kind and nature whatsoever, other than consumable goods, now or hereafter located in or upon the Premises or any part thereof and used or useable in connection with any present or future operation of said Property (hereinafter referred to as the "Equipment"), including, but without limiting the generality of the foregoing, all heating, lighting, laundry, incinerating and power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing apparatus, electrical apparatus (including, but not limited to all electrical transformers, switches, switch boxes, equipment boxes, cabinets, all whether used in the operation of the Property or any business operated within or upon the Property), lifting, cleaning, fire-prevention, fire-extinguishing, refrigerating, ventilating, and communications apparatus, air-conditioning and air-conditioning apparatus, elevators, escalators, shades, awnings, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ovens, ranges, disposals, dishwashers, carpeting, plants and shrubbery, ground maintenance equipment, ducts and compressors and all of the right, title and interest of the Mortgagor in and to any equipment which may be subject to any title retention or security agreement superior in lien to the lien of this Mortgage, and all additions and accessions thereto now or hereafter attached to or used in connection therewith or with the Property; and all products and proceeds of the Equipment; and all proceeds of hazard insurance of all of the foregoing; provided, however, that "Equipment" shall not include machinery, apparatus, equipment, fittings, and articles of personal property used in any business operated upon the Property, unless the same are also used in the operation of any building located thereon (except as hereinbefore stated). All Equipment is part and parcel of said Improvements and appropriated to the use of said Improvements and, whether affixed or annexed or not, shall for the purpose of this Mortgage be deemed conclusively to be real estate and mortgaged hereby.

All the Premises, Improvements, Equipment, rights, privileges and interests described in this and the preceding Paragraphs A through F are hereby granted and released, assigned, transferred, mortgaged, pledged and set over as collateral security, or intended so to be, being hereinafter collectively referred to as the "Property".

And the Mortgagor, for itself, its heirs, administrators, executors, successors and assigns, does covenant and agree to and with the Mortgagee, its successors and assigns, as follows:

1. The Mortgagor will pay, and otherwise perform, all the terms, conditions and covenants of the Indebtedness, subject to the terms of this Mortgage.

2. Mortgagor represents, covenants and warrants to the Mortgagee, upon which representations, covenants and warranties Mortgagee does and shall rely, that:

(a) Mortgagor is well and truly seized of the Property free and clear of all liens, encumbrances and interests, legal or equitable, whatsoever, except those encumbrances described on the attached Exhibit "C" (the "Permitted Encumbrances"), and will forever warrant and defend the same against any and all claims whatever, except the Permitted Encumbrances, and the lien created hereby is and will be kept a first lien upon the Property, subject to the Permitted Encumbrances; and

(b) Mortgagor has good right and lawful authority to mortgage and convey the Property in the form and manner embodied herein.

3. Mortgagor shall pay or cause to be paid before any penalty or interest attaches all taxes and assessments (general and special) that may be levied upon the Property, and shall promptly deliver to Mortgagee receipts showing payment thereof; provided, however, Mortgagor may contest such taxes or assessments without payment thereof so long as Mortgagee is adequately protected in a manner satisfactory to Mortgagee in its reasonable discretion. Mortgagor shall pay when due all water and sewer charges and all other amounts which might become a lien upon the Property prior to this Mortgage. In the event of the enactment (after the date of this Mortgage) of any applicable law for the purpose of taxation of any lien created under this Mortgage, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust or debts secured thereby, or the manner of the operation of any such taxes so as to affect the interest of Mortgagee, Mortgagor shall bear and pay the full amount of those taxes. However, if for any reason payment by Mortgagor of any such new or additional taxes would be unlawful, or if payment would constitute usury or render the Indebtedness wholly or partially usurious, Mortgagee may at its option declare the Indebtedness to be due and payable within ninety (90) days of such occurrence, or Mortgagee may at its option pay that amount or portion of the tax as would otherwise render the Indebtedness unlawful or usurious, in which event Mortgagor shall concurrently pay the remaining lawful and non-usurious portion or balance of those taxes. Notwithstanding the foregoing, it is understood and agreed that Mortgagor is not obligated to pay any portion of Mortgagee's federal or state income, net worth or franchise taxes.

The foregoing to the contrary notwithstanding, if the Lease with the Tenant (as such terms are defined in Paragraph 11 of this Mortgage) requires the Tenant to pay taxes and assessments, then the failure of the Tenant to pay such taxes or assessments shall not be a default of this Mortgage provided that (i) Mortgagor acts with appropriate diligence to compel the Tenant to pay such taxes or assessments and all applicable interest and penalties and (ii) Mortgagor deposits with Mortgagee cash in an amount deemed reasonable, in Mortgagee's sole discretion, to pay such taxes or assessments plus all applicable interest and penalties thereon. If in Mortgagee's reasonable discretion the failure to pay such taxes or assessments plus all applicable interest and penalties thereon will or may cause imminent loss of the Property, whether at tax sale or otherwise, then Mortgagee may use the cash so deposited by Mortgagor to make such payment.

4. Mortgagor will keep all Improvements and Equipment insured against loss and damage by fire and the perils covered by extended coverage insurance (including public liability insurance), and against such other risks and in such amounts, as may from time to time be required by Mortgagee, and with such insurer(s) as may from time to time be approved by Mortgagee, with proceeds thereof payable to Mortgagee under a standard mortgagee endorsement and loss payable endorsement thereto, and shall contain an agreement by such insurer(s) that such policy(ies) shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Mortgagee, at the following address, or at such other address as Mortgagee may specify by written notice:

IL ANNUITY AND INSURANCE COMPANY  
c/o The Philipsborn Company  
222 South Riverside Plaza  
Chicago, IL 60606-6201

All such insurance policies shall be issued by companies rated "A-" or better by Best's Key Rating Guide for property and liability companies and with a Best's financial size rating of Class IX or better. Satisfactory certificates evidencing that such policies have been issued and are in effect shall be delivered to Mortgagee. At least fifteen (15) days prior to the expiration of any such policy, Mortgagor will submit to Mortgagee satisfactory evidence showing payment of premiums to continue existing insurance in force or evidence of paid replacement coverages in compliance with the foregoing insurance requirements. If the Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the Act), as amended, the Mortgagor will keep the Property covered by flood insurance up to the maximum limit of coverage available under the Act, but not in excess of the amount of the Note.

Without in any way limiting the generality of the foregoing, Mortgagor covenants and agrees to maintain the following insurance coverages on the Property:

(a) All risk, fire and extended coverage insurance (including vandalism and malicious mischief, and such other endorsements as Mortgagee may require) with a replacement cost endorsement (without depreciation and without co-insurance penalty or limitation in the

policy), covering the entire Property, including, without limitation, all Improvements, Equipment and personal property.

(b) Comprehensive general public liability and property damage insurance for an amount not less than One Million and No/100 Dollars (\$1,000,000.00) (or such greater sum as Mortgagee may from time to time reasonably require) with a combined single limit for claims arising from any accident or occurrence on or upon the Property.

(c) Rent loss insurance or business interruption insurance insuring against losses arising out of the perils insured against in the policy or policies referred to in Subsection 4(a) above, in an amount equal to not less than one year's gross revenue from the operation and rental of the Property based upon the rental stream then in effect. Mortgagee shall be named as an additional insured with respect to such insurance.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

In the event of loss or damage, the proceeds of said insurance shall be paid to Mortgagee. Mortgagee is authorized to adjust and compromise such loss without the consent of Mortgagor, to collect, receive and receipt for such proceeds in the name of Mortgagee and Mortgagor and to endorse Mortgagor's name upon any check in payment thereof. Such proceeds shall be first applied toward reimbursement of all reasonable costs and expenses of Mortgagee in collecting said proceeds, and, provided that the Maturity Date of the Note is not less than one year from the date of the loss, the balance shall be held by the Mortgagee and the Mortgagee shall make such proceeds of insurance available to reimburse the Mortgagor or pay on the Mortgagor's behalf for the restoration of the Premises to its original condition (or such other condition as may be specified in the terms of the Lease), subject to the following terms and conditions: (a) the Lease with the Tenant (as such terms are hereinafter defined in Paragraph 11 of this Mortgage) remain in full force and effect, and the Tenant affirms in writing its continuing obligation under the Lease, and such restoration can be completed within twelve (12) months following such casualty loss, as determined by Mortgagee in its reasonable discretion, free and clear of all liens, except as to the lien of this Mortgage and those matters set forth on the attached Exhibit "C"; (b) no uncured Default under the Note or other Loan Documents shall have occurred and be continuing on the date upon which the Mortgagee would be required to make such reimbursement or payment; (c) no default shall have occurred and be continuing under the Lease beyond any applicable notice and/or cure period; (d) in the event such proceeds shall be insufficient to restore or rebuild the Property as determined by an independent written estimate reasonably satisfactory to the Mortgagee, the Mortgagor shall deposit promptly with the Mortgagee funds which, together with the insurance proceeds, shall be sufficient to restore and rebuild the Premises; (e) Mortgagee shall have reviewed and approved in writing, which approval shall not be unreasonably withheld or delayed, the plans and specifications for the restoration work and the same shall have been approved by all governmental authorities having

jurisdiction thereover; and (f) Mortgagor shall grant to the Mortgagee rights to supervise such restoration and disburse such proceeds in such manner as Mortgagee shall determine. Upon failure of any of the foregoing terms and conditions, the balance of the insurance proceeds shall be applied against the Indebtedness in the order selected by the Mortgagee, which reduction shall not result in the re-amortization of the principal balance outstanding under the Note. No prepayment premium shall be required as a result of such principal reduction.

If the Lease with the Tenant (as such terms are defined in Paragraph 11 of this Mortgage) requires the Tenant to maintain insurance, and such insurance fails to comply with Mortgagor's obligations to Mortgagee under this Paragraph 4, Mortgagor shall supplement such insurance to the extent necessary to fully comply with the requirements of this Paragraph 4.

5. Mortgagor will pay to Mortgagee, on dates upon which regular monthly installments are payable under the Note, such amounts as the Mortgagee from time to time estimates as necessary to create and maintain a reserve fund from which to pay, before the same become due, all taxes, assessments (general and special), liens and charges on or against the Property, and premiums for insurance as are herein covenanted to be paid by the Mortgagor. Such reserve fund shall not bear interest. Payments from said reserve fund for said purposes may be made by the Mortgagee at its discretion even though subsequent owners of the Property described herein may benefit thereby. If the funds to be paid to Mortgagee shall be insufficient to enable such taxes, assessments and insurance premiums to be paid in full thirty (30) days before the due dates thereof, the Mortgagor shall immediately upon written demand therefore, pay to Mortgagee such additional sums as may be required by Mortgagee, in accordance with its standard practices and procedures, in order to enable payment of such taxes, assessments and insurance premiums in full thirty (30) days before the due dates thereof, and if the funds so paid to Mortgagee shall exceed the amount of such taxes, assessments and insurance premiums paid by Mortgagee, such excess shall be credited by the Mortgagee to subsequent payments required to be made. Said amounts shall be held by Mortgagee as additional security for the Indebtedness. Nothing herein contained shall in any manner limit the obligation of Mortgagor to pay taxes, assessments, liens, charges, and to maintain insurance as above provided. In the event of any uncured Default by Mortgagor, Mortgagee may, at its option, but without any obligation on its part so to do, apply said amounts upon said taxes, assessments and insurance premiums, and/or toward the payment of any amounts payable by Mortgagor to Mortgagee under this Mortgage and/or toward the payment of the Indebtedness secured hereby or any portion thereof, whether or not then due or payable.

Anything contained in this Paragraph 5 to the contrary notwithstanding, Mortgagee agrees to waive the above escrow for taxes, assessments and insurance premiums (the "Escrow Items"), so long as either (a) if such Escrow Items are paid by Tenant, they are paid when due, or (b) if such Escrow Items are paid by Mortgagor, they are paid when due and there does not exist any uncured Defaults under the Note or other Loan Documents. Upon the failure of any of the foregoing conditions, Mortgagee shall have the right to revoke such waiver by written notice to Mortgagor, and thereafter Mortgagor shall be required to maintain the escrow reserve required by the immediately preceding paragraph.

The foregoing to the contrary notwithstanding, if the Lease with the Tenant (as such terms are defined in Paragraph 11 of this Mortgage) requires the Tenant to pay taxes and assessments, then the failure of the Tenant to pay such taxes or assessments shall not be a default of this Mortgage provided that (i) Mortgagor acts with appropriate diligence to compel the Tenant to pay such taxes or assessments and all applicable interest and penalties and (ii) Mortgagee deposits with Mortgagee cash in an amount deemed reasonable, in Mortgagee's sole discretion, to pay such taxes or assessments plus all applicable interest and penalties thereon. If in Mortgagee's reasonable discretion the failure to pay such taxes or assessments plus all applicable interest and penalties thereon will or may cause imminent loss of the Property, whether at tax sale or otherwise, then Mortgagee may use the cash so deposited by Mortgagor to make such payment.

6. If default be made in the payment of any of the aforesaid taxes, liens, charges, assessments or in making repairs or replacements or in procuring and maintaining insurance and paying the premiums therefore or in paying any governmental charges levied or assessed against the Property, subject to Mortgagor's right to contest the same without payment thereof so long as Mortgagee is adequately protected in a manner satisfactory to Mortgagee in its reasonable discretion, or in keeping or performing any other covenants of Mortgagor herein, Mortgagee may, at its option, and without any obligation on its part so to do, pay said taxes and assessments, make such repairs and replacements, effect such premiums or governmental charges, and perform any other covenant of Mortgagor herein. All amounts expended by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith on demand, with interest thereon at the rate at which interest accrues on amounts after the same become due under the Note.

7. Mortgagor will abstain from and will not suffer the commission of waste on the Property and will keep the buildings, improvements, fixtures and equipment now or hereafter thereon in good repair, and will make replacements thereto as and when the same become necessary, ordinary wear and tear excepted, so that the efficiency of the Property and every part thereof shall at all times be maintained and the Mortgage security shall not in any way be impaired. Mortgagor shall promptly notify Mortgagee in writing of the occurrence of any loss or damage to the Property. Except as permitted in the Lease, Mortgagor shall not materially alter the buildings, improvements, fixtures or equipment (exclusive of tenant fixtures and equipment) now or hereafter upon said Property, or remove the same therefrom, or permit any tenant or other person to do so, without the written consent of Mortgagee. Mortgagor will not permit any portion of the Property to be used for any unlawful purpose, or suffer or permit any works of visual art (as defined in the Visual Artists Rights Act of 1990) to be incorporated into or made a part of the Premises or Improvements. Mortgagor will comply promptly with all laws, ordinances, regulations and orders of all public authorities having jurisdiction thereof relating to the Property or the use, occupancy and maintenance thereof; provided, however, Mortgagor shall not be obligated to bring the Property into compliance with the Americans with Disabilities Act and/or any other laws relating to handicapped access (collectively, "Handicap Laws"), unless and to the extent required to do so by order of any court of competent jurisdiction; provided, however, any additions, substantial renovations or repairs, and/or replacement of the Property must be made in full compliance with all applicable Handicap Laws. Subject to the provisions of the Lease, Mortgagee shall have the right



at any time, and from time to time, during the Tenant's normal business hours, upon reasonable notice to Mortgagor and Tenant, to enter the Property for the purpose of inspecting the same.

Anything contained in this Paragraph 7 or in Paragraph 12 of this Mortgage to the contrary notwithstanding, during any period when the Property is leased to an unrelated tenant which is responsible for maintaining the Property, the Mortgagor will not be deemed to be in breach of its obligation to maintain the Property free of waste, and a Default shall not be deemed to have occurred hereunder, so long as Mortgagor is acting with appropriate diligence as landlord under such lease to compel the tenant to rectify any conditions(s) which constitute waste. If Mortgagee at any time determines, in its sole but reasonable discretion, that waste has or is occurring and is not being rectified in a manner acceptable to Mortgagee, Mortgagee shall provide Mortgagor with written notice of such determination and Mortgagor shall thereafter have the right to prepay the Note associated with the Property, without payment of the prepayment premium set forth in such Note, within a reasonable period of time following such written notice, not to exceed one hundred twenty (120) days. Mortgagor's failure to rectify such waste or to prepay the Note within such time period shall constitute a Default under Paragraph 12 of this Mortgage.

8. Mortgagor has executed and delivered to Mortgagee a certain Environmental Risk Agreement dated of even date herewith in connection with the Property (the "Environmental Agreement"), which Environmental Agreement is incorporated herein by reference. The representations, warranties, covenants and indemnities set forth in said Environmental Agreement shall be deemed to be part of the Indebtedness secured by this Mortgage.

9. Subject to Mortgagor's deposit with Mortgagee of unpaid taxes and Escrow Items as provided in Paragraphs 3 and 5 hereof, and to Mortgagor's right of contest, as hereinbefore provided, the failure of the Mortgagor to pay any taxes, assessments or governmental charges levied or assessed against the Property, or any part thereof, or any installment of any such tax, assessment or charge, or any premium upon any such tax, assessment or charge, or any premium upon any policy of insurance covering any part of the Property, at the time or times such taxes, assessments, charges, installments thereof or insurance premiums are due and payable, shall constitute waste. Payment by the Mortgagee for and on behalf of the Mortgagor of any such delinquent tax or insurance premium properly payable by Mortgagor under the terms of this Mortgage, shall not cure the default herein described nor shall it in any manner impair the Mortgagee's right to the appointment of a receiver on account thereof. Upon the happening of any such acts of waste, and provided Mortgagor has failed to cure such default within any applicable notice and cure period, and on proper application made therefore by Mortgagee to a court of competent jurisdiction, the Mortgagee shall forthwith be entitled to the appointment of a receiver of the Property hereby mortgaged and of the earnings, income, issues and profits thereof, with such powers as the court making such appointment shall confer; the Mortgagor hereby irrevocably consents to such appointment following the expiration of any applicable notice or grace period under this Mortgage or any of the Loan Documents, and waives notice of any application therefor.

10. In the event that Mortgagee is made a party to any suit or proceedings by reason of the interest of Mortgagee in the Property, and not otherwise by or through the acts or omissions of the Mortgagee, Mortgagor shall reimburse Mortgagee for all reasonable costs and expenses, including attorneys' fees, incurred by Mortgagee in connection therewith. All such amounts incurred by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith within thirty (30) days of demand, with interest thereon at the rate at which interest accrues on amounts after the same become due under the Note. Subject to the Lease, the Mortgagor hereby assigns to the Mortgagee, in their entirety, all judgments, decrees, and awards for injury or damage to the Property and the Mortgagor authorizes the Mortgagee, at its sole election, to apply the same, or the proceeds thereof, to the Indebtedness hereby secured in such manner as the Mortgagee may elect, subject to the terms and conditions set forth herein; and the Mortgagor hereby authorizes the Mortgagee, in the name of the Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. In the event of the taking of all or any portion of the Property in any proceedings under the power of eminent domain, the entire award rendered in such proceedings shall be paid to Mortgagee. Such award proceeds (proceeds remaining after deducting reasonable costs and expenses of collection) that are paid to and received by the Mortgagee shall, subject to the rights of the Tenant under the Lease, in each instance be applied as a partial prepayment of the Note, which repayment shall not result in the re-amortization of the principal balance outstanding under the Note, provided that no prepayment premium shall be required as a result thereof.

11. As additional security for the payment of the Indebtedness, at the time and in the manner herein agreed, and for the performance of the covenants and agreements herein contained, Mortgagor has executed and delivered to Mortgagee a certain Assignment of Leases and Rents dated of even date herewith, pursuant to which Mortgagor did sell, assign, transfer and set over unto the Mortgagee, its successors and assigns, its interest as lessor in (i) that certain Lease dated December 30, 1986, as amended (the "Lease"), entered into between Mortgagor, as lessor, and Carpetland U.S.A. Inc., an Indiana corporation (the "Tenant"), and (ii) each and every other lease, now or hereafter entered into by the Mortgagor, as lessor, covering all or any portion of the Premises and/or the Property, including any lease guaranties executed and delivered in connection therewith, and all the rents, profits and income under such leases of the Premises and/or Property (including any extensions, amendments or renewals thereof), whether due or to become due, including all such leases in existence or coming into existence during the period this Mortgage is in effect, including all security deposits and other payments with respect to the rental of any of the Property.

12. The occurrence of any of the following events, and the Mortgagor's failure to remedy same within any applicable grace period or notice and/or cure period ("Default"), shall be a Default under this Mortgage: (a) the Mortgagor's failure to make any payment required under the Note (including one or more of the Promissory Notes described in Exhibit "A") secured hereby within any applicable grace period set forth therein, or any payment due in accordance with the terms thereof, either of principal or interest, escrow payments or default be made in other amounts due hereunder or under the Loan Documents, or (b) Mortgagor or any guarantor or indemnitor under any of the Loan Documents (individually a "Guarantor" and collectively the "Guarantors")

shall file a petition in voluntary bankruptcy or under the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or any answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within sixty (60) days after the filing of such proceedings; or (c) Mortgagor or any Guarantor shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for Mortgagor or any Guarantor and not dismissed within sixty (60) days of appointment, or for all of the property of Mortgagor or any Guarantor in any involuntary proceeding, or any court shall have taken jurisdiction of the property of Mortgagor or any Guarantor, or the major part thereof in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days of appointment; or (d) Mortgagor or any Guarantor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; or (e) Mortgagor shall sell, transfer, convey or otherwise dispose of the Property or any legal or equitable interest therein, without (except as otherwise expressly permitted by Paragraph 21 of this Mortgage) tendering payment in full of the corresponding Note, including, without limitation, the payment of any prepayment premium required by such Note; or (f) Mortgagor, without the prior written consent of Mortgagee shall cause or allow any further easement, mortgage, lien or encumbrance, whether prior or subordinate to this Mortgage, to attach to the Property or any of the collateral for the Note or this Mortgage and not be contested, discharged, insured over or bonded to Mortgagee's reasonable satisfaction within sixty (60) days after attachment; or (g) Mortgagor shall sell, convey, assign, transfer, pledge, mortgage or hypothecate or otherwise dispose of any legal or equitable interest in Mortgagor without Mortgagee's prior written consent, except as otherwise expressly permitted by Paragraph 21 of this Mortgage; or (h) a default shall occur with respect to the due observance or performance of any other covenants, agreements or conditions contained, required to be kept or observed in this Mortgage, the Note or any other Loan Document or instrument given to secure the payment of the Note secured hereby, and Mortgagor shall fail to cure same within thirty (30) days following written notice of such default from Mortgagee to Mortgagor; then, and in every such case, Mortgagee shall have the option, without any further notice or demand, in addition to and not in lieu of or in substitution for, all other rights and remedies provided by law, to do any or all of the following:

(a) Declare the entire unpaid amount of the Indebtedness and any and all charges payable by Mortgagor to Mortgagee pursuant to this Mortgage, the Note, the Loan Documents or otherwise immediately due and payable, and if the same is not paid on demand at Mortgagee's option, to (i) bring suit therefor; or (ii) demand payment of and if the same is not paid on demand, bring suit for any delinquent payment; or (iii) take any and all steps and institute any and all other proceedings that Mortgagee deems necessary to enforce the Indebtedness and obligations secured hereunder and to protect the lien of this Mortgage.

(b) Immediately commence foreclosure proceedings against the Property through judicial proceedings or by advertisement, at the option of Mortgagee, pursuant to the

statutes in such case made and provided and to sell the Property or to cause the same to be sold in accordance with said statutes in a single parcel or in several parcels at the option of Mortgagee.

(c) Demand and thereupon receive peaceful possession of the Property and/or receive the rent, income, issues, proceeds, profits and security deposits therefrom, apply the same toward the payment of taxes and assessments, upkeep of the Property and the fulfillment of the covenants of Mortgagor, and have a receiver appointed to manage and preserve the Property with power and authority, pending foreclosure of this Mortgage, to collect and receive such rent, income and profit and to apply the same in the manner hereinabove set forth.

13. Power is hereby granted to Mortgagee, if an uncured Default is made in the payment of the principal or interest of said Indebtedness or any part thereof, or in the payment of any other sums provided for herein, or in the performance of any covenants or condition of this Mortgage, the Note or any other Loan Document, and following the expiration of any applicable notice or grace period, to grant, bargain, sell, release and convey the Property, Equipment, and appurtenances at public auction or vendue, and on such sale to execute and deliver to the purchaser or purchasers, his, her, its or their heirs, successors and assigns, good, ample and sufficient deed or deeds of conveyance in law, pursuant to the statute in such case made and provided, and to apply the proceeds of such sale in the manner thereafter provided.

Upon foreclosure sale of said Property or any part thereof, the proceeds of such sale shall be applied in the following order:

(a) To the payment of all reasonable costs of the suit or foreclosure, including reasonable attorneys' fees and the costs of title searches and abstracts;

(b) To the payment of all other reasonable expenses of Mortgagee, including all monies expended by Mortgagee and all other amounts payable by Mortgagee to Mortgagee hereunder, with interest thereon;

(c) To the payment of the principal and interest of the Indebtedness secured hereby;

(d) To the payment of the surplus, if any, to Mortgagor or to whomsoever shall be entitled thereto.

Upon any foreclosure sale of the Property, the same may be sold either as a whole or in parcels, as Mortgagee may elect, and if in parcels, the same may be divided as Mortgagee may elect, and at the election of the Mortgagee may be offered first in parcels and then as a whole, that offer producing the highest price for the entire Property to prevail, any law, statutory or otherwise, to the contrary notwithstanding, and Mortgagor hereby waives the right to require any such sale to be made in parcels or the right to select such parcels.

14. Should any uncured Default be made in the covenants herein, Mortgagee may cause the title insurance policy of the aforesaid mortgaged Property to be certified or extended as may be reasonable, or may procure new title insurance policies in case none were left or kept on deposit with said Mortgagee, and the money so paid shall be a lien on said Property added to the amount secured by this Mortgage and payable forthwith with interest thereon at the rate at which interest accrues on amounts after the same becomes due under the Note.

15. If foreclosure proceedings of any mortgage (other than the within Mortgage) or any construction or other lien of any kind should be instituted against the Property and such proceedings are not either contested, discontinued, insured over or bonded by a company reasonably satisfactory to Mortgagee within sixty (60) days of attachment, or if any other proceedings, either voluntary or involuntary, are instituted by or against Mortgagor or its successors in title to enforce payment or liquidation of its outstanding obligations (other than the Indebtedness and any other obligations owed by Mortgagor to Mortgagee), and subject to the Mortgagor's right to reasonably contest any such other proceedings provided that there is no uncured Default under this Mortgage, the Note or any other Loan Document, the Mortgagee may, at its option and without notice, immediately declare its lien and the Indebtedness which it secures due and payable and institute such proceedings as may be necessary to protect its interest in the Property.

16. All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person or if sent by registered or certified mail with postage prepaid and return receipt requested, or by overnight courier service (or to such other addresses as either party may subsequently designate):

If to Mortgagee:

IL ANNUITY AND INSURANCE COMPANY  
Attn: Mortgage Loan Department/ML #25-936  
2960 N. Meridian Street  
Indianapolis, IN 46208

If to Mortgagor:

c/o ULRICH E. MEYER  
30 North LaSalle Street, Suite 2600,  
Chicago, Illinois 60602

For the purposes of this Mortgage, all notices, demands, deliveries or other communications required hereunder shall be deemed received on the date of a signed receipt, if delivered in person, on the date of receipt, if mailed in the manner specified above, and on the date of delivery, if sent by courier.

17. Mortgagor and Mortgagee agree that this Mortgage shall also constitute a Security Agreement within the meaning of the Uniform Commercial Code in effect in the State where the

Premises is located (hereinafter in this Paragraph 17 so referred to as the "Code") with respect to all sums on deposit with Mortgagee pursuant to Paragraph 5 hereof ("Deposits"), and with respect to any property or items of collateral included in the definition herein of the word "Property," which property may not be deemed to form a part of the real estate described in Exhibit "B" attached hereto or may not constitute a "fixture" (within the meaning of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof, excluding, nevertheless, any of the foregoing property interests which are owned by the Tenant (said property, items of collateral and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter in this Paragraph 17 collectively referred to as the "Collateral"), and that a security interest in and to the Collateral and the Deposits now or hereafter acquired by Mortgagor or used in connection with the Property has been granted to Mortgagee and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness and to secure performance by Mortgagor of the terms, covenants and provisions hereof. Upon an uncured Default under this Mortgage, the Note or any other Loan Documents, Mortgagee, pursuant to the appropriate provisions of the Code, shall have the option of proceeding with respect to the Collateral in accordance with its rights and remedies with respect to the Premises, in which event the default provisions of the Code shall not apply. The parties agree that, in the event Mortgagee shall elect to proceed with respect to the Collateral separately from the Premises, seven (7) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other Collateral at least equal in value to the initial value of that disposed of and in such manner so that said Collateral shall be subject to the security interest created hereby and so that the security interest of Mortgagee shall be first in priority, it being expressly understood and agreed that all replacements of the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. Mortgagor covenants and represents that all Collateral and all replacements thereof and substitutions therefor are now and will be superior to all liens, encumbrances or security interests of others. Mortgagor shall, upon demand, execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee, and will do all such acts and things as Mortgagee may at any time, or from time to time, reasonably request or as may be necessary or appropriate to establish and maintain a first perfected security interest in the Deposits and Collateral subject to no liens, encumbrances or security interests other than the matters set forth in Exhibit "C" attached hereto or as provided herein.

18. At any time and from time to time, upon request of the Mortgagee, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered to the Mortgagee and where appropriate will cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or filed at such time and in such offices and places as shall be deemed desirable by the

Mortgagee, any and all such other and further mortgages, instruments of further assurance, certificates, financing statements, and other documents as may, in the opinion of the Mortgagee or its counsel, be necessary or reasonably desirable in order to effectuate, complete and perfect and continue to preserve the obligation of the Mortgagor under this Mortgage, without increasing Mortgagor's obligations hereunder, and the lien of this Mortgage as a first lien upon all the Property and Equipment, except as hereinabove stated, whether now owned or hereinafter acquired by the Mortgagor and wheresoever located. Upon any failure by the Mortgagor so to do, the Mortgagee may execute, record, file, re-record and refile any and all such mortgages, instruments, certificates, financing statements, and documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and attorney-in-fact of the Mortgagor so to do. Mortgagee shall provide Mortgagor with copies of any such documents executed by Mortgagee under the foregoing power of attorney. Any reasonable expenses of the Mortgagee in connection therewith shall be added to the Indebtedness of the Mortgagor and shall be secured hereby.

19. Upon any uncured Default by Mortgagor hereunder or under the Note or any other Loan Document, and following the acceleration of maturity as hereinbefore provided, a tender of payment of the amount necessary to satisfy the entire Indebtedness secured hereby, made at any time prior to foreclosure sale by Mortgagor, its successors and assigns or by anyone in behalf of the Mortgagor, its successors and assigns, shall constitute an attempted evasion of the payment terms hereof and shall be deemed to be a voluntary prepayment hereunder, and any such payment, to the extent permitted by law, will therefore include the premium required under the prepayment privilege contained in the Note secured hereby.

20. Each and every of the rights, remedies and benefits provided to Mortgagee herein shall be cumulative and shall not be exclusive of any other of said rights, remedies or benefits, or of any other rights, remedies or benefits allowed by law, and may be exercised either successively or concurrently. Any waiver by Mortgagee of any Default shall not constitute a waiver of any similar or other Default.

21. Mortgagee in making the loan secured by this Mortgage is relying upon the integrity of Mortgagor and its undertaking to maintain the mortgaged Property. If Mortgagor: (A) sells, leases, transfers, conveys or assigns its interest in the mortgaged Property, or any part thereof, voluntarily or involuntarily, or by operation of law, without the prior written consent of Mortgagee; or (B) sells, transfers, conveys, assigns, pledges, mortgages, hypothecates or otherwise disposes of any legal or equitable interest in Mortgagor, without the prior written consent of Mortgagee; or (C) incurs or suffers to exist any other mortgage, lien or encumbrance, except for those set forth on the attached Exhibit "C", without the prior written consent of Mortgagee, the Mortgagee shall have the right in its sole option thereafter to declare all sums secured hereby and then unpaid to be due and payable forthwith although the period limited for the payment thereof shall not then have expired, anything contained to the contrary hereinbefore notwithstanding, and thereupon to exercise all of its rights and remedies under this Mortgage. The consent of Mortgagee to any such sale, transfer, conveyance or assignment may be withheld by Mortgagee in its sole discretion, or conditioned upon such terms and conditions as Mortgagee in its discretion may prescribe, including, without

limitation, an increase in the Note Rate under the Note and the payment of a service fee to Mortgagee.

Notwithstanding the foregoing, provided there is no uncured Default under this Mortgage, the Note or any other Loan Document:

(a) There shall be no prohibition as to the sale or transfer of the Property by the Mortgagor to MS Partners L.L.C., an Illinois limited liability company, the members of which are Ulrich E. Meyer, Trustee of the Ulrich E. Meyer Revocable Trust under agreement dated May 25, 1978 and Ulrich E. Meyer, Trustee of the Harriet Meyer Annuity Trust under agreement dated March 28, 1997, provided that (i) the Mortgagee receives prior written notice of such transfer, (ii) MS Partners L.L.C. shall execute and deliver to Mortgagee such instruments, agreements and loan documents as Mortgagee shall deem necessary or desirable to evidence such transaction and the assumption of the Indebtedness, (iii) Ulrich E. Meyer, as Trustee of the Harriet Meyer Annuity Trust under agreement dated March 28, 1997, shall execute and deliver to Mortgagee a Guaranty and an Environmental Risk Agreement, in substantially the same form as those signed by the initial guarantors and indemnitors of the Indebtedness, and (iv) Ulrich E. Meyer, individually and as Trustee of the Ulrich E. Meyer Revocable Trust under agreement dated May 25, 1978, shall affirm his continuing obligations under the Indebtedness; and upon satisfaction of the foregoing requirements, Mortgagee agrees to release Charles D. Stein, individually and as Trustee of the Charles D. Stein Revocable Trust under agreement dated January 10, 1979, from all further liability under all Loan Documents.

(b) There shall be no prohibition as to the transfer of ownership interest in Mortgagor to individuals who are members of the transferor's immediate family, including children and grandchildren, or to trusts which are owned or controlled by such transferor or to members of their immediate family, provided that: (i) Ulrich E. Meyer, individually or as Trustee of the Ulrich E. Meyer Revocable Trust under agreement dated May 25, 1978, or his representative or successor, retains control (as trustee) of 50% of the Mortgagor; (ii) all such transfers are the result of estate planning or by operation of law; and (iii) Mortgagee receives prior written notice of all such transfers.

(c) There shall be no prohibition as to the sale of the Property on an arm's length basis to a third party buyer, provided that Mortgagor pays in full the corresponding Note plus the prepayment premium, as specified in such Note, to be paid in connection with such prepayment. If, in connection with a sale of the Property as described above, Mortgagor requests Mortgagee to permit the buyer (the "Buyer") to assume the Indebtedness under the Loan Documents, then Mortgagee shall not unreasonably withhold or delay consent to such transfer and assumption, provided that: (i) such Buyer is reasonably determined by Mortgagee to possess the financial strength and management and real estate expertise necessary to effectively operate the Property, and provided such Buyer otherwise meets all of Mortgagee's standard requirements for a loan assumption; (ii) such Buyer shall execute and deliver to Mortgagee such instruments, agreements and loan documents as Mortgagee shall reasonably deem necessary or desirable to evidence such transaction and the assumption of the Indebtedness by the Buyer; and (iii) Mortgagor



(or Buyer) shall pay to Mortgagee an assumption processing fee in an amount not to exceed Five Hundred and No/100 Dollars (\$500.00). Such transfer of the Property and assumption by the Buyer shall not be deemed to be a prepayment of the Note.

Mortgagor will additionally pay for Mortgagee's legal counsel fees, title insurance premiums and charges, recording fees, or other expenses incurred as a consequence of any transfer which (i) effectuates a change in the entity which holds title to the Property, and (ii) as a consequence thereof Mortgagee requires an assumption agreement, new UCC financing statements, or other documents.

Should the ownership of the mortgaged Property, or any part thereof, become vested in a person other than the Mortgagor, the Mortgagee may deal with such successor or successors in interest with reference to this Mortgage, and the Indebtedness hereby secured, in the same manner as with the Mortgagor, without it in any manner vitiating or discharging the Mortgagor's liability hereby or upon the Indebtedness hereby secured. The Mortgagor shall at all times continue primarily liable on the Indebtedness secured hereby until this Mortgage is fully discharged or Mortgagor is formally released by an instrument in writing duly executed by the Mortgagee.

22. Mortgagor agrees to deliver or cause to be delivered to Mortgagee annually, upon Mortgagee's written request, the current annual financial statements of Mortgagor, within ninety (90) days following the end of its fiscal year. Such financial statements shall contain a balance sheet and income statement and shall otherwise be acceptable to Mortgagee in form and content, and shall be prepared in accordance with generally accepted accounting principles, consistently applied.

23. All of the covenants and conditions hereof shall run with the land and shall be binding upon the heirs, representatives, successors and assigns of Mortgagee and shall inure to the benefit of the successors and assigns of Mortgagee; any reference herein to "Mortgagee" shall include the heirs, personal representatives, successors and assigns of Mortgagee.

24. All nouns, pronouns and relative terms relating to Mortgagor shall be deemed to be masculine, feminine or neuter, singular or plural, as the context may indicate. If Mortgagor consists of more than one person, their liability hereunder shall be joint and several.

25. Except as set forth below and in any guaranty now or hereafter delivered to Mortgagee in connection with all or any portion of the Indebtedness, and without in any manner impairing or adversely affecting the validity of this Mortgage, the Note or any other Loan Documents, neither Mortgagor shall have any personal liability for, and the holder hereof shall have no recourse to any property of either Mortgagor other than the Property, in the event of an uncured Default by Mortgagor in performing its obligations under this Mortgage, the Note or any other Loan Document; provided, however, that this provision shall in no way affect the Mortgagee's rights or liens in and to the mortgaged Property or any part thereof, in and to the income from the mortgaged Property, or the Mortgagee's other remedies and liens for the payment of the Indebtedness and enforcement of the covenants under this Mortgage, the Note or any other Loan

Document; provided, further, that Ulrich E. Meyer, individually and as Trustee of the Ulrich E. Meyer Revocable Trust Agreement dated May 25, 1978, and Charles D. Stein, individually and as Trustee of the Charles D. Stein Revocable Trust Agreement dated January 10, 1979, shall be fully and personally liable, on a joint and several basis, for, and shall defend and hold the holder harmless from and against any and all costs, expenses (including reasonable attorneys' fees), losses and damages incurred by the holder thereof and caused by: (i) waste, (ii) fraud, and (iii) the untruth of any representation or warranty, or breach of any covenant contained in the Loan Documents relating to environmental matters, or failure to perform under any related indemnification, and (iv) any failure by Mortgagor to perform any of its obligations as lessor under any present or future lease of all or any portion of the Property.

**26. ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (I) UNDER THIS MORTGAGE, THE NOTE OR ANY OTHER LOAN DOCUMENTS OR (II) ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, THE NOTE OR ANY OTHER LOAN DOCUMENT IS HEREBY WAIVED BY MORTGAGOR, AND IT IS AGREED BY MORTGAGOR THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.**

**27. THIS ASSIGNMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF INDIANA AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF INDIANA, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS ASSIGNMENT, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.**

28. Mortgagor acknowledges and agrees that the entire Indebtedness is secured by this Mortgage together with the other Loan Documents, including certain other mortgages, deeds of trust or similar security instruments, as the case may be, and related assignments of leases and rents, security agreements and other documents evidencing or securing the Indebtedness and encumbering the herein mortgaged property and the other Secured Parcels described in the attached Exhibit "A". Upon the occurrence of an uncured Default, Mortgagee shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Mortgage and any or all of the other Loan Documents whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Indebtedness or the portion of the Indebtedness allocated to the Property in the attached Exhibit "A" as evidenced by the Note executed in connection herewith, and the lien and the security interest created by the other Loan Documents shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Indebtedness then due and payable but still outstanding. Mortgagor acknowledges and agrees that the Property and the other Secured Parcels are located in one or more States and Counties, and, therefore, Mortgagee shall be permitted to enforce payment of the Indebtedness and the performance of any term, covenant or condition of all or any of the Notes, this Mortgage or the other Loan Documents and exercise any and all rights and remedies under the Notes, this Mortgage

or the other Loan Documents, or as provided by law or equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Mortgagee, in its sole discretion, in any one or more States or Counties in which the Property or any other Secured Parcel is located. Neither the acceptance of this Mortgage or the other Loan Documents nor the enforcement thereof in any one State or County, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude the enforcement by court action, foreclosure, power of sale or otherwise, of any Note, this Mortgage or the other Loan Documents through one or more additional proceedings in that State or County or in any other State or County. Following the occurrence of an uncured Default, any and all sums received by Mortgagee under any Note, this Mortgage and any other Loan Documents shall be applied to the Indebtedness in such order and priority as Mortgagee shall determine, in its sole discretion.

## PART II

### STATE OF INDIANA PROVISIONS

29. Inconsistencies. In the event of any inconsistencies between the terms and conditions of Part I of the Mortgage and Part II, the terms and conditions of Part II shall control and be binding.

(a) Notice is hereby given that the Indebtedness secured hereby may increase as a result of any defaults hereunder by Borrower due to, for example, and without limitation, unpaid interest or late charges, unpaid taxes or insurance premiums which Mortgagee elects to advance, defaults under leases that Mortgagee elects to cure, attorneys' fees or costs incurred in enforcing the Indebtedness or other expenses incurred by Mortgagee in protecting the Property, the security of this Mortgage or Mortgagee's rights and interests. The Indebtedness shall also include all other present and future, direct and indirect, obligations, indebtedness and liabilities of Mortgagor to Mortgagee or any of its affiliates up to a maximum of \$5,850,000.00.

(b) Subparagraph 12(b) of this Mortgage is hereby amended by deleting the words "or by advertisement, at the option of Mortgagee" appearing in the second line thereof.

(c) The first word in the first paragraph of Paragraph 13 of this Mortgage is hereby deleted, and in its place and stead the following is inserted: "To the extent permitted by applicable law".



This Instrument Prepared By and When Recorded Return To:

Joseph H. Bourgon, Esq.  
Sommers, Schwartz, Silver  
& Schwartz, P.C.  
2000 Town Center, Suite 900  
Southfield, Michigan 48075

indiana\carpetland\munster\mortgage

**EXHIBIT A**

**SCHEDULE OF PROMISSORY NOTES**

<u>Promissory Note Amount</u>	<u>Monthly Payment (Principal &amp; Interest)</u>	<u>Secured Parcels</u>	<u>Loan #</u>
\$310,000	\$3,740.72	1550 W. Columbia Ave. Battle Creek, Michigan	25-934
\$600,000	\$7,240.09	G4164 Miller Road Flint, Michigan	25-935
\$875,000	\$10,558.46	8201 Calumet Munster, Indiana	25-936
\$350,000	\$4,223.39	1440 Wabash Springfield, Illinois	25-937
\$275,000	\$3,318.38	1210 Highway 16 La Crosse, Wisconsin	25-938
\$265,000	\$3,197.71	2530 North Broadway Rochester, Minnesota	25-939
\$250,000	\$3,016.71	3040 North Range Road Joplin, Missouri	25-940

**EXHIBIT "B"**

**DESCRIPTION OF REAL ESTATE**

Located in the City of Munster, Lake County, Indiana, described as:

PARCEL 1: Lot 1, Meyer's Addition, to the Town of Munster, as shown in Plat Book 40, page 69, and amended by corrected Plat recorded November 16, 1972, as Document No. 176388, Plat Book 42, page 97, in Lake County, Indiana.

PARCEL 2: Lot 1, except the North 162 feet thereof, Meyer's Second Addition, to the Town of Munster, as shown in Plat Book 43, page 11, in Lake County, Indiana.

PARCEL 1: Key No. 28-353-1. Tax Unit No. 18.

PARCEL 2: Key No. 28-355-1. Tax Unit No. 18.

**EXHIBIT "C"**

**PERMITTED ENCUMBRANCES**

Following is a schedule of the Permitted Encumbrances as of the effective date of this Mortgage:

1. Easement dated November 28, 1969 and recorded January 8, 1970, as Document No. 44723, made by Bevrick Corporation, Inc., by Ulrich E. Meyer, President, to Illinois Bell Telephone Company.
2. Easement for public utilities and for drainage over the east 10 feet of Parcel 1 and Parcel 2 of the land as shown and granted on the Plats of Subdivision.
3. Asphalt parking areas over and upon the east 10 foot utility easement as indicated on the ALTA survey dated June 18, 1997, made by Rowland A. Fabian, under Job No. 97-075.
4. Encroachment of an existing building over and upon the west 35 foot building line and over and upon the easement recorded January 8, 1970, as Document No. 44723, as indicated on the ALTA survey dated June 18, 1997, made by Rowland A. Fabian, under Job No. 97-075.
5. The Survey dated June 18, 1997, prepared by Rowland A. Fabian, under Job No. 97-075, indicates existing underground telephone cables and manholes and underground storm drain as evidenced by manholes.

Munster, Indiana