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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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**MORTGAGE**

THIS INSTRUMENT ("Mortgage") WITNESSES: That **GREAT WESTERN PARTNERS, an Indiana General Partnership, ("Mortgagor")**, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby **MORTGAGES and WARRANTS to JOHN F. ESSELMAN AND MELANIE A. ESSELMAN of 9000 Keystone Crossing, Suite 730, Indianapolis, Indiana 46240 ("Mortgage")**, the real estate ("Real Estate") and property located in Lake County, State of Indiana, more particularly described in Exhibit "A" attached hereto and made a part hereof, **together with all rights, title and interests of Mortgagor in and to: (i) all rights, privileges, interests, tenements, hereditaments, easements and appurtenances in any way now or hereafter pertaining to the Real Estate ("Easements"); (ii) all buildings and other improvements of every kind and description now or hereafter placed on the Real Estate, together with all fixtures, machinery and other articles of personal property now or hereafter attached to or regularly used in connection with the Real Estate, and all replacements thereof, ("Improvements"); (iii) all extensions, improvements, betterments, substitutes, replacements, renewals, additions and appurtenances of or to the Easements or Improvements ("Additions"); and (iv) all awards, payments or proceeds of conversion, whether voluntary or involuntary, of any of the foregoing, including, without limitation, all insurance, condemnation and tort claims ("Proceeds"). (Hereinafter, the Real Estate, Easements, Improvements, Additions, and Proceeds are referred to together as the "Mortgaged Property").** In addition, the following terms and conditions shall apply:

1. **Mortgage Amount. This mortgage is given to secure:**

(a) the performance by Mortgagor of the covenants and agreements contained in this Mortgage and to secure payment of the principal and interest evidenced by a certain promissory note of even date herewith executed and delivered by Mortgagor to Mortgagee in the principal sum of Two Hundred Thousand Dollars (\$200,000.00). Interest on the unpaid balance shall accrue from time to time at the rates set forth therein and any other amounts payable to Mortgagee pursuant to the terms and provisions of the Note (the "Primary Debt");

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# 1281

(b) all sums advanced and costs and expenses incurred by Mortgagee which are made or incurred pursuant to, or allowed by, the terms of this Mortgage, plus interest thereon at the rate of fifteen percent (15%) per annum ("Default Rate") from the date paid or incurred until reimbursement ("Advancements");

(c) all costs of repossession, mortgage foreclosure, collection, disposition and reasonable attorneys fees incurred by Mortgagee ("Costs");

(d) any and all extensions or renewals of any of the foregoing indebtedness ("Extensions").

Hereinafter, the Primary Debt, Advancements, Costs and Extensions are referred together as the "Indebtedness."

2. **Payment of Sums Due.** Mortgagor covenants and agrees to promptly pay the principal of and interest on the Primary Debt and the other Indebtedness, as and when the payment(s) thereof become due, all without relief from valuation and appraisal laws and with attorneys' fees.

3. **Care and Condition of Mortgaged Property.** Mortgagor shall (a) keep the Mortgaged Property in good condition and repair, without waste, and free from encroachments and from mechanic's or materialman's lien or claims for lien not expressly subordinated to this Mortgage; (b) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property, whether or not superior to this lien; (c) comply with all requirements of law and covenants and restrictions of record applicable to the Mortgaged Property or its use; and (d) permit Mortgagee to enter upon and inspect the Mortgaged Property at all reasonable times.

4. **Insurance.** Mortgagor will keep the Mortgaged Property insured against loss by fire, extended casualty, vandalism, malicious mischief and such other hazards as reasonably may be required from time to time by Mortgagee for the benefit and protection of Mortgagee, including comprehensive and contractual liability insurance (together, the "Required Insurance"). The Required Insurance shall be written in forms, amounts, and by companies reasonably satisfactory

to Mortgagee, and losses thereunder shall be payable to Mortgagee pursuant to standard noncontributing mortgage endorsements in favor of Mortgagee. Unless otherwise agreed by Mortgagee, all policies of Required Insurance, including additional and renewal policies, shall be deposited with and held by Mortgagee. Any monies received as payment for any loss under any of the Required Insurance paid over to Mortgagee may be applied, at the option of Mortgagee, either to the prepayment of any portion, as Mortgagee may select, of the Indebtedness, without premium, or to the reimbursement of Mortgagor for expenses incurred by Mortgagor in the restoration or repair of the Mortgaged Property.

5. Taxes. Mortgagor will pay and discharge or cause to be paid and discharged when due, and before any penalty attaches, all taxes (including real and personal property taxes), general and special assessments, water and sewer rents or assessments, and all other governmental and municipal charges and impositions of any kind imposed upon or assessed against Mortgagor or the Mortgaged Property, or any part thereof, or arising in respect of the occupancy, use or possession thereof.

6. Protection of Security by Mortgagee. After notice to Mortgagor and Mortgagor's failure to pay within the applicable period, Mortgagee may, at Mortgagee's option, but without any duty or obligation of any sort to do so and without in any way waiving or relieving any default by Mortgagor, make any payment and perform any act required of Mortgagor by this Mortgage, including but not limited to, payment of insurance premiums, taxes, assessments, repair expenses and prior liens and encumbrances. All expenses so incurred, including reasonable expenses incurred by Mortgagee to protect the Mortgaged Property shall constitute Advancements and shall be immediately due and payable by Mortgagor.

7. Condemnation. If all or any part of the Mortgaged Property, is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award or compensation payable in respect of the part so taken or damages are hereby assigned to and shall be paid directly to Mortgagee. The proceeds of any award or compensation actually received by Mortgagee after deduction therefrom of all costs and expenses including reasonable attorneys' fees incurred by Mortgagee in connection with the taking shall be applied, without premium, in part or entirely to payment of the Indebtedness.

8. **Default and Acceleration.** Time is of the essence of this Mortgage. Upon the occurrence of any "Event of Default" (as hereinafter defined) then, in any and every such case, the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable without any notice, presentment, demand, protest, notice of protest, or other notice of dishonor or demand of any kind, all of which are hereby expressly waived by Mortgagor, and Mortgagee shall have the right immediately to foreclose the mortgage lien created by this Mortgage against the Mortgaged Property, to enforce every other security interest created by this Mortgage and to institute any action, suit or other proceeding which Mortgagee may deem necessary or proper for the protection of its interests. The following shall each constitute an "Event of Default" for purposes of this Mortgage:

- (a) **Default:** (i) in the payment when due of any of the Indebtedness, or (ii) in the performance any covenant or term of this Mortgage;
- (b) If Mortgagor becomes the subject of an order for relief under the United States Bankruptcy Code, takes any action to obtain relief under the United States Bankruptcy Code, files an answer admitting bankruptcy or insolvency or in any manner is adjudged bankrupt or insolvent;
- (c) Any part of the Mortgaged Property or all or any substantial part of the property or assets of Mortgagor, or any one of them, is placed in the hands of any receiver or trustee, or Mortgagor, or any one of them, consents, agrees or acquiesces to the appointment of any such receiver or trustee;
- (d) Institution of proceedings to enforce or foreclose any mortgage or lien upon all or any part of the Mortgaged Property.

9. **Foreclosure and Application of Proceeds.** All expenses which may be paid or incurred by or on behalf of Mortgagee in connection with the foreclosure of this Mortgage for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and cost of procuring all title searches, policies and examinations and similar data and assurances with respect to title as Mortgagee reasonably may deem necessary to prosecute such suit shall constitute Advancements, shall be immediately due and payable by

Mortgagor upon receipt of a detailed invoice, with interest thereon at the Default Rate if not paid within ten (10) days of the receipt of such invoice, and shall be allowed and included as Indebtedness in the judgement for sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order or priority: First, on account of all Advancements incident to the foreclosure proceedings and all Costs; second, all other items which under the terms of this Mortgage constitute Indebtedness additional to the Primary Debt; third all principal, interest and other amounts remaining unpaid on the Primary Debt; and fourth, any remainder to the person or persons entitled thereto as determined by the court in foreclosure proceedings.

10. Foreclosure Proceedings and Receiver. Upon the commencement of any proceedings to foreclose this Mortgage, Mortgagee shall be entitled forthwith to the appointment of a receiver or receivers, as a matter of right, without the giving of notice to any other party, without regard to the adequacy or inadequacy of any security for the Indebtedness and without the requirement of any bond. Mortgagee shall be entitled to recover judgment either before or after or during the pendency of any proceedings for the enforcement of this Mortgage. The right of Mortgagee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of this Mortgage, or the foreclosure of the lien of this Mortgage.

11. No Exclusive Remedy. Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any Event of Default or any acquiescence therein.

12. Provisions Severable. In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such in validity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Mortgage.

13. Notices. All notices pursuant to this Mortgage shall be in writing and shall be deemed

to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified United States mail, addressed to Mortgagor at the following address:

Great Western Partners  
9445 Haver Way  
Indianapolis, IN 46240

and to Mortgagee at the following address:

John F. Esselman and Melanie A. Esselman  
9000 Keystone Crossing, Suite 730  
Indianapolis, IN 46240

or at such other place as either party may, by notice in writing, designate as a place for service of notice.

14. **Successors and Assigns.** This Mortgage shall (a) run with the land, (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's heirs, administrators, successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons, and (c) shall apply and extend to, be binding upon and inure to the benefit of Mortgagee and Mortgagee's successors and assigns. The word "Mortgagee" shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Note and any other Indebtedness instruments.

15. **Miscellaneous.** The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. All changes to this Mortgage must be in writing signed by Mortgagee and, if this Mortgage is recorded, shall not be effective until such changes have been recorded. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

Upon payment in full of any indebtedness evidenced hereby and the release of this

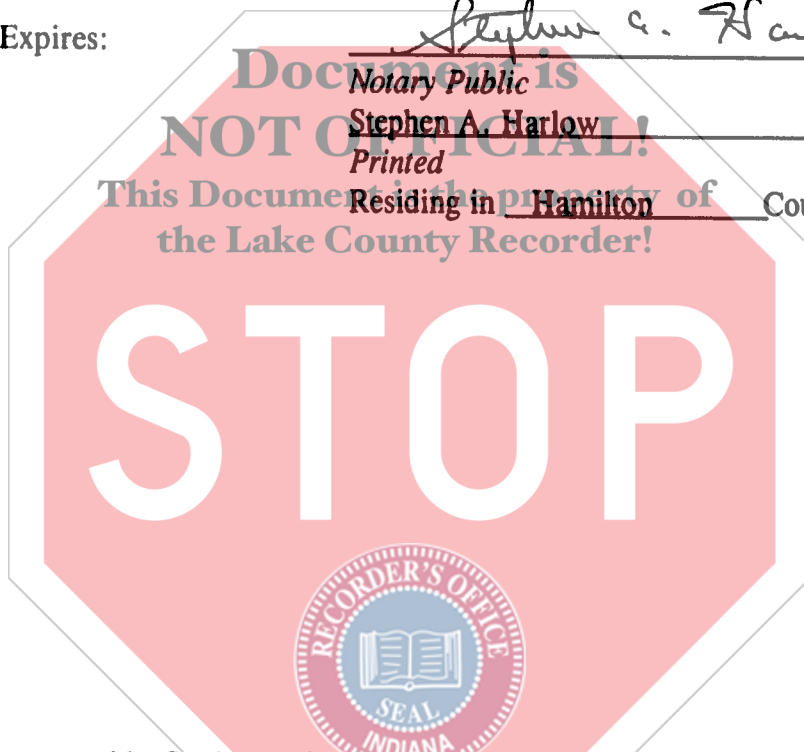


Mortgage, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 13 day of April, 1998.

My Commission Expires:

March 27, 2008



Stephen A. Harlow  
Notary Public

Stephen A. Harlow  
Printed

This Document is the property of  
Residing in Hamilton County, Indiana.  
the Lake County Recorder!

This document was prepared by Stephen A. Harlow, Attorney at Law, PETIT HESS HARLOW PETIT REICHERT & SLACK, 2000 E. 116th Street, P.O. Box 459, Carmel, Indiana 46032 (317) 844-1377.

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## EXHIBIT A

### Parcel I:

Part of the East Half of the Southeast Quarter Section 22, Township 35 North, Range 8 West of the Second Principal Meridian lying south of the southerly line of the I-65 exit ramp, Lake County, Indiana and being more particularly described as follows: Beginning at a point on the southerly right-of-way of I-65 and 1029.00 feet West of the East line of Section 22 (measured perpendicularly); thence southwesterly along a curve to the left being the southerly right-of-way line of the I-65 exit ramp a distance of 161.36 feet, having a radius of 722.27 feet and a delta angle of  $12^{\circ} - 48' 02''$  with a chord bearing South  $74^{\circ} - 16' - 12''$  West and a length of 161.03 feet; thence South a distance of 301.84 feet; thence East a distance of 91.50 feet; thence South a distance of 32.50 feet; thence East a distance of 63.50 feet to a point on the common boundary of the Lucky Steer Steak House and the La Quinta Motor Inn tract; thence North a distance of 378.00 feet along the said common boundary to the point of beginning, being a part of Parcel I in Westlake Plaza, as per plat thereof, recorded in Plat Book 47 page 77, in the Office of the Recorder of Lake County, Indiana and as amended by certificates of correction recorded August 10, 1977 as Document Nos. 422236 and 422237 and in certificate of correction recorded August 29, 1977 as Document No. 425494.

### Parcel II:

Together with common-access and cross-parking easement set out in Agreement dated June 7, 1990 and recorded June 29, 1990 as Document No. 109458, over, upon and across part of the East  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 22, Township 35 North, Range 8 West of the Second Principal Meridian, lying South of the Southerly line of the I-65 exit ramp, Lake County, Indiana, being more particularly described as beginning at a point on said Southerly line and 1029.00 feet West of the East line of said Section 22 (measured perpendicular); thence Southwesterly along a curve concaved Southeasterly having a radius of 722.27 feet, a central angle of  $12^{\circ} - 48' - 01''$  and an arc length of 161.36 feet to the point of commencement to a found iron pipe; thence South, 301.84 feet to a found PK nail; thence East, 91.50 feet to a found PK nail; thence South 32.50 feet to a found PK nail; thence East 63.50 feet to a found iron pipe; thence South, 17.88 feet to a set iron bar; thence S  $63^{\circ} - 58' 17''$  E, 87.78 feet to a found iron bar on the Westerly right-of-way line of Westlake Drive; thence Southerly along a curve concaved to the East having a radius of 180.0 feet, a central angle of  $26^{\circ} - 00' - 20''$  and an arc length of 81.69 feet to a set iron bar; thence S  $00^{\circ} - 01' - 23''$  W, 12.33 feet to a found iron pipe; thence N  $89^{\circ} - 58' - 37''$  W, 350.00 feet to a found iron pipe being 15 feet East of the West line of the East  $\frac{1}{2}$  of said Section 22, as shown on the "Westlake Plaza Plat of Dedication" as shown in Plat Book 47, page 77, in the Office of the Recorder of Lake County, Indiana; thence N  $00^{\circ} - 01' - 23''$  E, 15 feet East and parallel to the West line of the East  $\frac{1}{2}$  of said Section 22, 409.60 feet to a found iron pipe, to the Southerly right of way line of I-65 (exit ramp), thence Northeasterly, along the curved South right-of-way line of I-65 exit ramp, concaved to the Southeast having a radius of 72.27 feet, a central angle of  $12^{\circ} - 06' - 32''$  and an arc length of 152.64 feet to the point of commencement.