

Chicago Title Insurance Company

THIS DOCUMENT PREPARED BY AND RECORDER RETURN TO:

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Chicago, IL 60606

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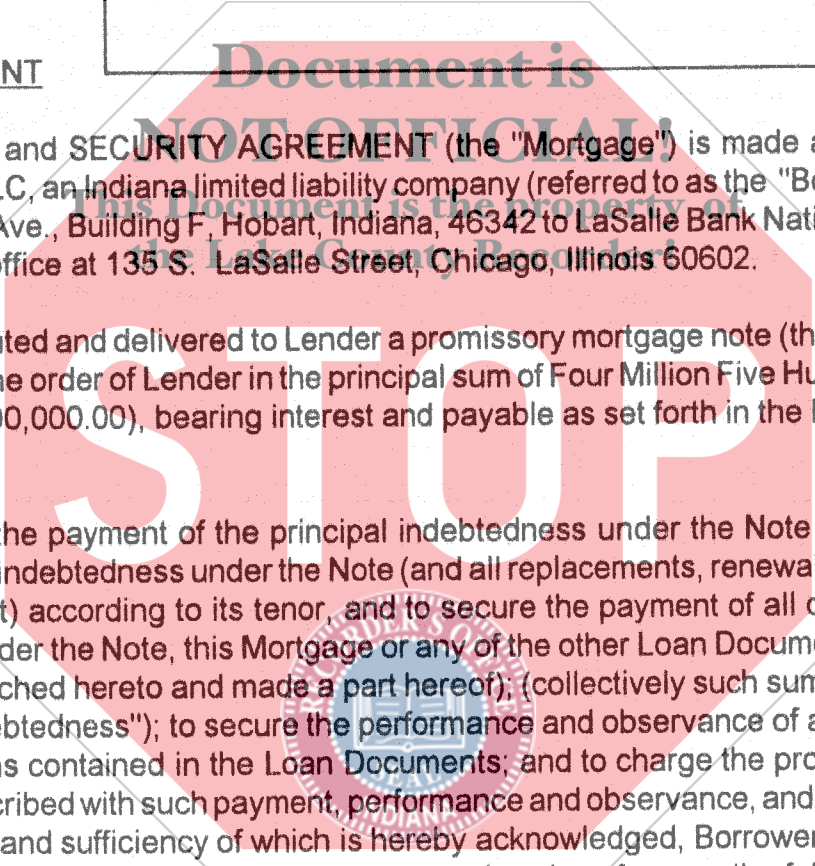
STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

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MORRIS W. CARTER
RECORDER

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MORTGAGE AND SECURITY AGREEMENT



THIS MORTGAGE and SECURITY AGREEMENT (the "Mortgage") is made as of September 29th, 1999, by THE VAP LLC, an Indiana limited liability company (referred to as the "Borrower"), having an office at 4410 W. 37th Ave., Building F, Hobart, Indiana, 46342 to LaSalle Bank National Association (the "Lender") having an office at 135 S. LaSalle Street, Chicago, Illinois 60602.

Borrower has executed and delivered to Lender a promissory mortgage note (the "Note") of even date herewith payable to the order of Lender in the principal sum of Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00), bearing interest and payable as set forth in the Note, and due on October 10, 2004.

In order to secure the payment of the principal indebtedness under the Note and interest and premiums on the principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor, and to secure the payment of all other sums which may be at any time due under the Note, this Mortgage or any of the other Loan Documents (as that term is defined in Exhibit A attached hereto and made a part hereof); (collectively such sums are sometimes referred to herein as "Indebtedness"); to secure the performance and observance of all the covenants, agreements and provisions contained in the Loan Documents; and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower DOES HEREBY MORTGAGE AND CONVEY unto Lender, its successors and assigns forever, the following described property, rights and interests (which are referred to herein as the "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Land (as hereinafter defined) and not secondarily:

THE LAND located in the State of Indiana and legally described in Exhibit B attached hereto (the "Land");

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Borrower and on, or used or intended to be used in connection with the Land or the improvements, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing and all of the right, title and interest of Borrower in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Borrower or on its behalf (the "Improvements");

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TOGETHER WITH all income from the Premises to be applied against the Indebtedness, provided, however, that Borrower may, so long as no Default has occurred hereunder, collect income as it becomes due, but not more than one (1) month in advance thereof;

TOGETHER WITH all interest of Borrower in all leases now or hereafter on the Premises whether written or oral (the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Borrower to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Borrower and forming a part of or used in connection with the Land or the Improvements and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Borrower and placed on the Land or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Lender as a secured party and Borrower as debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 14 hereof; and

PROVIDED, HOWEVER, anything in the foregoing to the contrary notwithstanding, nothing herein shall be deemed to create a lien on Borrower's operating equipment.

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds or any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Borrower hereby appoints Lender its attorney-in-fact and authorizes Lender, at its option, on behalf of Borrower, or the successors or assigns of Borrower, to adjust, compromise, claim, collect and receive such proceeds, to give proper acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Lender, of the Indebtedness, notwithstanding the fact that the same may not then be due or that the Indebtedness is otherwise adequately secured.

TO HAVE AND TO HOLD the Premises, unto the Lender, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Default as hereinafter defined; the Borrower hereby represents and warrants that the Premises is commercial in nature and, therefore, does not constitute homestead property under and by virtue of the homestead exemption laws of the State of Indiana.

BORROWER COVENANTS that it is lawfully seized of the Land, that the same is unencumbered, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend the Land and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

PROVIDED, NEVERTHELESS, that if Borrower shall pay in full when due the Indebtedness and shall timely perform and observe all of the provisions herein and in the Note and the other Loan Documents provided to be performed and observed by the Borrower, then the lien of this Mortgage and the interest of Lender in the Premises shall be released at the cost of Borrower but shall otherwise remain in full force.

BORROWER FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. **PAYMENT OF INDEBTEDNESS AND PERFORMANCE OF COVENANTS.**

Borrower shall (a) pay the Indebtedness when due; and (b) punctually perform and observe all of the requirements of the Note, this Mortgage, and the other Loan Documents.

2. **MAINTENANCE, REPAIR, COMPLIANCE WITH LAW AND USE.**

Borrower shall (a) promptly repair or restore any portion of the Improvements which may become damaged whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any Improvements at any time in the process of erection upon the Premises; (e) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (g) comply with any restrictions of record with respect to the Premises and the use thereof; and (h) observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises to be managed in a competent and professional manner. Without the prior written consent of Lender, Borrower shall not cause, suffer or permit any (i) material alterations of the Premises except as required by law or except as permitted or required to be made by the terms of any Leases approved by Lender; (ii) change in the intended use or occupancy of the Premises for which the Improvements were constructed; (iii) zoning reclassification with respect to the Premises; (iv) unlawful use of, or nuisance to exist upon, the Premises; or (v) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in Leases approved by Lender.

3. **LIENS.**

3.1 Prohibition. Borrower shall not create or suffer or permit any encumbrance to attach to or be filed against the Premises or any part thereof, excepting only (i) the lien of real estate taxes and assessments not due, (ii) any liens and encumbrances of Lender, and (iii) any other lien or encumbrance permitted by the terms hereof.

4. **TAXES.**

4.1 Payment. Borrower shall pay when due, all taxes, assessments and charges of any kind levied or assessed against the Premises or any interest therein or any obligation or instrument secured hereby, and all instruments thereof (all herein generally called "Taxes"), whether or not assessed against Borrower, and, upon request of Lender, Borrower shall furnish to Lender receipts therefor on or before the date the same are due; and shall discharge any claim or lien relating to taxes upon the Premises, other than matters expressly permitted by the terms hereof.

4.2 Contest. Borrower may, in good faith and with reasonable diligence, contest the validity or amount of any such Taxes, provided that:

(a) such contest shall prevent the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same;

(b) Borrower has notified Lender in writing of the intention of Borrower to contest the same before any Tax has been increased by any interest, penalties, or costs; and

(c) ~~Borrower has deposited with Lender, at such place as Lender may from time to time in writing designate, a sum of money or other security acceptable to Lender that, when added to the monies or other security, if any, deposited with Lender pursuant to Paragraph 8 hereof, is sufficient, in Lender's judgment, to pay in full such contested Tax, including interest and penalties whenever Lender deems such an increase advisable. Any deposits made hereunder are to be held without any allowance of interest thereon.~~

If Borrower fails to (i) prosecute such contest with reasonable diligence or (ii) ~~maintain sufficient funds on deposit as hereinabove provided, Lender may, at its option, apply the monies and liquidate any securities deposited with Lender, in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Borrower shall forthwith, upon demand, either deposit with Lender a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Lender has applied funds on deposit on account of such Taxes, restore such deposit to an amount satisfactory to Lender. Provided that Borrower is not then in default hereunder, Lender shall, after final disposition of such contest and upon Borrower's written request and Borrower's delivery to Lender of an official bill for such Taxes, apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon.~~

5. CHANGE IN TAX LAWS.

If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Lender, Borrower or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Borrower shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Lender the payment of the whole or any part of the taxes required to be paid by the Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Lender in the Premises, or the manner of collection of taxes, so as to affect this Mortgage, the indebtedness of Lender, then, and Borrower, upon demand by Lender, shall pay such taxes, or reimburse Lender therefor on demand, unless Lender determines, in Lender's exclusive judgment, that such payment or reimbursement by Borrower is unlawful; in which event the indebtedness shall be due within thirty (30) days after written demand by Lender to Borrower. Nothing in this Paragraph shall require Borrower to pay income, franchise or excise tax imposed upon Lender, except only such which may be levied against the income of Lender as a complete or partial substitute for taxes required to be paid by Borrower pursuant hereto.

6. INSURANCE COVERAGE.

Borrower will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Lender may from time to time require, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

6.1 Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood and other risks covered by the so-called extended coverage endorsements in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the Premises and bearing a replacement cost agreed amount endorsement;

6.2 Comprehensive public liability against death, bodily injury and property damage in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate together with a Five Million and No/100 Dollars (\$5,000,000.00) comprehensive general liability umbrella coverage;

6.3 Rental or business interruption insurance in amounts sufficient to pay, for a period of up to one (1) year, all amounts required to be paid by Borrower pursuant to the Note and this Mortgage;

6.4 Steam boiler, machinery and pressurized vessel insurance (if applicable to the Premises);

6.5 If the Federal Insurance Administration (FIA) has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available; and

6.6 The types and amounts of coverage as are customarily maintained by owners or operators of like properties.

7. INSURANCE POLICIES.

All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Lender. All Insurance Policies shall (i) include, when available, non-contributing Lender endorsements in favor of and showing Lender as an additional insured and loss payee, (ii) include standard waiver of subrogation endorsements, (iii) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Lender, and (iv) provide that no claims in excess of twenty-five percent (25%) of the then outstanding principal balance of this Mortgage Loan shall be paid thereunder without ten (10) days' advance written notice to Lender. Borrower will deliver original certificates of all Insurance Policies, showing premiums prepaid, to Lender and, will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Borrower concurrent in form or contributing in the event of loss with the Insurance Policies. Insurance Policies maintained by tenant(s) under the Lease(s) may, if in conformity with the requirements of this Mortgage and if approved by Lender, be presented to Lender in satisfaction of Borrower's obligation to provide the insurance coverages provided by those Insurance Policies.

8. DEPOSITS FOR TAXES AND INSURANCE PREMIUMS.

In order to assure the payment of taxes and insurance policy premiums ("Premiums") when due:

8.1 Borrower shall, if required by Lender, deposit with Lender on the first business day of each month, an amount equal to one-twelfth (1/12) of the Taxes and Premiums thereof to become due with respect to the Premises between one (1) and thirteen (13) months after the date of such deposit; provided that in the case of the first such deposit, Borrower shall deposit in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to Taxes and Premiums to become due within thirteen (13) months after such first deposit, will provide (without interest) a sufficient fund to pay such Taxes and Premiums, one (1) month prior to the date when they are due. The amounts of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Lender's estimate of the amount of Taxes and Premiums. Borrower shall promptly upon the demand of Lender make additional Tax and Insurance Deposits as Lender may from time to time require due to (i) failure of Lender to require, or failure of Borrower to make, Tax and Insurance Deposits in previous months, (ii) underestimation of the amounts of Taxes and/or Premiums, due dates and amounts of Taxes and/or Premiums, or (iii) application of the Tax and Insurance Deposits pursuant to Paragraph 8.3 hereof. Additionally, upon the execution hereof, Borrower shall deposit with Lender, as a Tax and Insurance Deposit, the amount of all Taxes and Premiums to become due and payable prior to the first monthly Tax and Insurance Deposit or within one (1) month thereafter. Lender shall hold all Tax and Insurance Deposits without any allowance of interest thereon.

8.2 Notwithstanding any provision hereof to the contrary, Lender shall not require Borrower to make Tax and Insurance Deposits unless one or more of the following events has occurred: (i) a Default has occurred hereunder; (ii) Borrower has failed to provide for the payment of Taxes and Premiums in a manner satisfactory to Lender, or (iii) Borrower has failed to maintain the Insurance Policies in a manner satisfactory to Lender.

8.3 Lender will, out of the Tax and Insurance Deposits, upon the presentation to Lender by Borrower of the bills therefor, pay the Taxes and Premiums or will, upon the presentation of receipted bills therefor, reimburse Borrower for such payments made by Borrower. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and Premiums when the same shall become due, then Borrower shall pay to Lender on demand the amount necessary to make up the deficiency.

8.4 Upon a Default under this Mortgage, Lender may, at its option, apply any Tax and Insurance Deposits on hand to the Indebtedness, in such order and manner as Lender may elect. When the Indebtedness has been fully paid, any remaining Tax and Insurance Deposits shall be paid to Borrower. All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness, and shall be held by Lender irrevocably to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of Borrower.

8.5 Notwithstanding anything herein contained to the contrary, Lender shall not be liable for any failure to apply the Tax and Insurance Deposits unless Borrower, while no Default exists hereunder, shall have (i) requested Lender in writing to make application of such Deposits to the payment of the Taxes or Premiums and (ii) presented Lender with bills for such Taxes or Premiums.

8.6 The provisions of this Mortgage are for the benefit of Borrower and Lender alone. No provision of this Mortgage shall be construed as creating in any other party any rights in and to the Tax and Insurance Deposits or any rights to have the Tax and Insurance Deposits applied to payment of Taxes and Premiums.

8.7 The exercise of Lender's rights under this Paragraph are within Lender's sole discretion. Lender shall have no obligation or duty to any third party to collect Tax and Insurance Deposits.

9. **PROCEEDS OF INSURANCE.**

Borrower will give Lender prompt notice of any loss or damage to the Premises in excess of twenty-five percent (25%) of the then outstanding principal balance of this Mortgage Loan, and:

9.1 In case of loss or damage covered by any of the Insurance Policies, Lender (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (i) settle and adjust any claim under such Insurance Policies without the consent of Borrower, or (ii) allow Borrower to settle and adjust such claim without the consent of Lender; provided that in either case Lender shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to Lender upon demand or may be deducted by Lender from said insurance proceeds prior to any other application thereof. Each insurance company which has issued an Insurance Policy is hereby authorized and directed to make payment for all losses covered by any Insurance Policy to Lender alone, and not to Lender and Borrower jointly.

9.2 Lender shall, in its sole reasonable discretion, elect to apply the proceeds of Insurance Policies consequent upon any casualty which is of a type which renders the Premises untenable either (i) to reduce the Indebtedness; or (ii) to reimburse Borrower for the cost of restoring or repairing the Premises subject to the conditions and in accordance with the provisions of Paragraph 10 hereof. Lender agrees to permit Borrower to rebuild so long as the rebuilt improvements are of at least equal value and of substantially the same character and use as prior to the casualty as provided in Section 9.3. In the event Lender applies the proceeds of Insurance Policies to the Indebtedness and such proceeds do not discharge the Indebtedness in full, the entire Indebtedness shall become immediately due and payable.

9.3 Whether or not insurance proceeds are made available to Borrower, Borrower shall restore or repair the Improvements, to be of at least equal value, and of substantially the same character and use as prior to such casualty, all to be effected in accordance with plans, specifications and procedures approved in advance by Lender, and Borrower shall pay all costs of such restoring and repairing.

10. **DISBURSEMENT OF INSURANCE PROCEEDS.**

Insurance proceeds held by Lender or, at Lender's option, pursuant to an escrow with Chicago Title and Trust Company for restoration or repairing of the Premises shall be disbursed from time to time upon Lender being furnished with (i) evidence satisfactory to it of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance, to fully pay for the restoration or repair and to pay debt service on the Loan during the period of restoration or repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidence of cost, payment and performance as Lender may require and approve. No payment made prior to the final completion of the restoration or repair shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined

by Lender in its sole judgment; funds deposited hereunder other than insurance proceeds shall be disbursed prior to disbursements of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited or irrevocably committed, to the satisfaction of Lender, by or on behalf of Borrower to pay the cost of such repair or restoration, shall be sufficient in the reasonable judgment of Lender to pay the entire unpaid cost of the restoration or repair, free of all liens or claims for lien. Any surplus remaining out of insurance proceeds held by Lender after payment of such costs of restoration or repair shall be paid to Borrower, provided Borrower is not in default hereunder. No interest shall be allowed to Borrower on account of any proceeds of insurance or other funds held by Lender.

11. **CONDEMNATION AND EMINENT DOMAIN.**

All awards (the "Awards") made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, are hereby assigned by Borrower to Lender. Lender may collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. Borrower shall immediately notify Lender of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Premises and shall deliver to lender copies of all papers served in connection with any such proceedings. Borrower shall make, execute and deliver to Lender, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Lender for the purpose of assigning the Awards to Lender. If any portion of or interest in the Premises is taken by condemnation or eminent domain, and the remaining portion of the Premises is not, in the judgment of Lender, a complete economic unit having equivalent value to the Premises as it existed prior to the taking, then, at the option of Lender, the entire Indebtedness shall immediately become due. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including attorneys' fees, Lender shall be entitled to apply the net proceeds toward repayment of such portion of the Indebtedness as it deems appropriate without affecting the lien of this Mortgage. In the event of any partial taking of the Premises or any interest in the Premises, which, in the judgment of Lender, leaves the Premises as a complete economic unit having equivalent value to the Premises as it existed prior to the taking, and provided Borrower is not in default hereunder, the Award shall be applied to reimburse Borrower for the cost of restoration and rebuilding the Premises in accordance with plans, specifications and procedures approved in advance by Lender, and such Award shall be disbursed in the same manner as is provided above for the application of insurance proceeds. If all or any part of the Award is not applied for reimbursement of such restoration costs, the Award shall at the option of Lender be applied against the Indebtedness, in such order or manner as Lender shall elect, or paid to Borrower.

12. **ASSIGNMENT OF RENTS, LEASES AND PROFITS.**

To further secure the Indebtedness, Borrower hereby assigns unto Lender all of the rents, leases and income now or hereafter due under any Leases agreed to by Borrower or the agents of Borrower or which may be made or agreed to by Lender under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, rents and income thereunder, to Lender. Borrower hereby irrevocably appoints Lender its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the prior written consent of Lender) with or without taking possession of the Premises as provided in Paragraph 18 hereof, to lease any portion of the Premises to any party upon such terms as Lender shall determine, and to collect all rents due under each of the Leases, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession pursuant to the

provisions of Paragraph 18 hereof. Borrower represents that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Borrower. Borrower waives any rights of set-off against any person in possession of any portion of the Premises. Borrower agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the taking of actual possession of the Premises by Lender pursuant to Paragraph 18 hereof. Borrower expressly waives all liability of Lender in the exercise of the powers herein granted Lender. Borrower shall assign to Lender all future leases upon any part of the Premises and shall execute and deliver, at the request of Lender, all such further assurances and assignments in the Premises as Lender shall from time to time require. Although the assignment contained in this Paragraph is a present assignment, Lender shall not exercise any of the rights or powers conferred upon it by this Paragraph until a Default shall exist under this Mortgage. Within thirty (30) days of Lender's written demand, Borrower will furnish Lender with executed copies of each of the Leases and with estoppel letters from each tenant in a form satisfactory to Lender. If Lender requires that Borrower execute and record a separate collateral assignment of rents or separate assignment of any of the Leases to Lender, the terms of those assignments shall control in the event of a conflict with the terms of this Mortgage.

13. **OBSERVANCE OF LEASE ASSIGNMENT.**

Borrower agrees that if any lessee under any of the Leases shall repeatedly (more often than twice each lease year) fail to pay its rent on a timely basis or fulfill (after applicable cure periods) any material provision in said Lease, Borrower shall notify Lender. Borrower agrees it shall not terminate or modify any of the Leases without Lender's prior written consent which consent shall not be unreasonably withheld.

14. **SECURITY AGREEMENT.**

Borrower and Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) all sums at any time on deposit for the benefit of Lender or held by the Lender (whether deposited by or on behalf of the Borrower or anyone else) pursuant to any of the provisions of the Mortgage or the other Loan Documents and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code) (which property is hereinafter referred to as "Personal Property") and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Mortgage Collateral"), and that a security interest in and to the Mortgage Collateral is hereby granted to the Lender, and the Mortgage Collateral and all of Borrower's right, title and interest therein are hereby assigned to the Lender, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Mortgage Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

14.1 Borrower (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Mortgage Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Lender and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

14.2 The Mortgage Collateral is to be used by Borrower solely for business purposes.

14.3 The Mortgage Collateral will be kept at the Land, and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Lender (being the Secured Party as that term is used in the Code). The Mortgage Collateral may be affixed to the Land but will not be affixed to any other real estate.

14.4 The only persons having any interest in the Premises are Borrower and Lender.

14.5 No Financing Statement (other than Financing Statements showing Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Mortgage Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Borrower will at its own cost and expense, upon demand, furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts as Lender may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Mortgage Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Lender and no other party and liens and encumbrances (if any) expressly permitted hereby; and Borrower will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Lender to be desirable.

14.6 Upon an Event of Default hereunder, Lender shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Mortgage Collateral, or any part thereof, and for that purpose may, so far as Borrower can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Mortgage Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Mortgage Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Lender shall be entitled to hold, maintain, preserve and prepare the Mortgage Collateral for sale, until disposed of, or may propose to retain the Mortgage Collateral subject to Borrower's right of redemption in satisfaction of Borrower's obligations, as provided in the Code. Lender may render the Mortgage Collateral unusable without removal and may dispose of the Mortgage Collateral on the Premises. Lender may require Borrower to assemble the Mortgage Collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to both parties. Lender will give Borrower at least twenty (20) days' notice of the time and place of any public sale of the Mortgage Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Borrower hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Lender may buy at any public sale. Lender may buy at any private sale if the Mortgage Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Lender so elects, the Premises and the Mortgage Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for expenses of retaking, holding preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Lender, shall be applied against the Indebtedness in such order or manner as Lender shall select. Lender will account to Borrower for any surplus realized on such disposition.

14.7 The terms and provisions contained in this Paragraph shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

14.8 This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Mortgage Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Borrower (Debtor) and Lender (Secured Party) are hereinabove set forth. This Mortgage is to be filed for the record with the Recorder of Deeds of the County or Counties where the Premises are located. Borrower is the record owner of the Premises.

14.9 To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Borrower or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Borrower, as lessor thereunder.

15. **RESTRICTIONS ON TRANSFER.**

15.1 Borrower covenants that Borrower shall not, without the prior written consent of Lender, effect, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer": The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Mortgage Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Mortgage Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral a transfer which results in the immediate retirement of all Indebtedness. The creation of any such Prohibited Transfer, whether voluntary, involuntary or by operation of law, without the prior written consent of Lender shall, at Lender's option, constitute a default under the terms of this Mortgage, with full right to accelerate the maturity of the Indebtedness secured hereby. *It is NOT A Prohibited Transfer if the effect is the retirement of the Indebtedness.*

16. **DEFAULT.**

Borrower shall be in default of this Mortgage and the Loan Documents upon the occurrence of any of the Events of Default as set forth in Article 7 of the Loan Agreement, which Article 7 is incorporated herein by this reference and shall have the same force and effect as if set forth fully herein.

17. **FORECLOSURE.**

When the Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof in accordance with the act governing foreclosure in the State of Indiana (the "Act") and to exercise any other remedies of Lender provided in the Note, this Mortgage, the other Loan Documents, or which Lender may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the Act to be included in such

decree. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Stated Rate specified in the Note until paid.

18. RIGHT OF POSSESSION.

When the Indebtedness shall become due, whether by acceleration or otherwise, or if Lender has a right to institute foreclosure proceedings, Borrower shall, forthwith upon demand of Lender, surrender to Lender, and Lender shall be entitled to be placed in possession of the Premises as provided in the Act, and Lender, in its discretion and pursuant to court order, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Borrower or the then owner of the Premises relating thereto, and may exclude Borrower, such as owner, and any agents and servants thereof wholly therefrom and may, on behalf of Borrower or such owner, or in its own name as Lender and under the powers herein granted:

18.1 hold, operate, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use measures, legal or equitable, as Lender may deem necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;

18.2 cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Borrower to cancel the same;

18.3 elect to disaffirm any Lease or sublease of all or any part of the Premises made subsequent to this Mortgage without Lender's prior written consent;

18.4 extend or modify any then existing Leases and make new Leases of all or any part of the Premises, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan evidenced by the Note and the issuance of a deed to a purchaser at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

18.5 make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Lender, to insure and reinsure the Property and all risks incidental to Lender's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

18.6 apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness in such order and manner as Lender shall select.

Without limiting the generality of the foregoing, Lender shall have all power, authority and duties as provided in the Act. Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Premises.

19. RECEIVER.

Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint upon petition of Lender, and at Lender's sole option, a receiver of the Premises pursuant to the Act. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Borrower at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to make leases to be binding upon all parties, including the mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure, all as provided in the Act. In addition, such receiver shall also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other provisions to be contained therein, shall be binding on Borrower and all the persons whose interest in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of (a) the Indebtedness or the Indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

20. FORECLOSURE SALE.

Except to the extent otherwise required by the Act, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute Indebtedness additional to the principal and interest thereon as herein provided; and second, all principal and interest remaining unpaid on the Note in such order as Lender shall elect; and lastly any surplus to Borrower and its successors and assigns, as their rights may appear.

21. INSURANCE DURING FORECLOSURE.

All rights and powers of Lender under Paragraphs 9 and 10 hereof shall, from and after the entry of judgment of foreclosure, continue in the Lender as decree creditor until confirmation of sale. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors. In the event of foreclosure sale, Lender may, without the consent of Borrower, assign any Insurance Policies to the purchaser at the sale, or take such other steps as Lender may deem advisable to protect the interest of such purchaser.

22. WAIVER OF RIGHT OF REDEMPTION AND OTHER RIGHTS.

To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the property or any part thereof, or relating to the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights to redemption and reinstatement under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower acknowledges that the Premises do not constitute agricultural real estate or residential real estate. The parties acknowledge that Indiana law may provide Borrower with certain rights relating to redemption which cannot be waived.

Upon payment in full of the Indebtedness Borrower may redeem, notwithstanding anything to the contrary in this paragraph.

23. LENDER'S PERFORMANCE OF BORROWER'S OBLIGATIONS.

In case of an Event of Default, either before or after acceleration of Indebtedness or the foreclosure of the lien hereof, Lender may, but shall not be required to, make any payment or perform any act herein required of Borrower (whether or not Borrower is personally liable therefor) in any manner deemed expedient to Lender. Lender may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs, including management fees, of every kind in connection therewith, so that the Premises shall be usable for their intended purposes. All such monies paid and expenses incurred, including attorneys' fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due with

interest thereon at the Stated Rate specified in the Note. Inaction of the Lender shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this Paragraph or any exercise by Lender of its rights hereunder prevent any default from constituting a Default. Lender, in making payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs thereof, may do so in such amounts and to such persons as Lender may deem appropriate. Nothing contained herein shall be construed to require Lender to advance monies for any purpose on behalf of or for the benefit of Borrower.

24. **RIGHTS CUMULATIVE.**

Each right herein or in any of the other Loan Documents conferred upon Lender is cumulative and in addition to every other right provided by law or in equity, and Lender may exercise each such right in any manner deemed expedient to Lender. Lender's exercise or failure to exercise any right shall not be deemed a waiver of that right or any other right or a waiver of any default. Except as otherwise specifically required herein, Lender is not required to give notice of its exercise of any right given to it by this Mortgage.

25. **SUCCESSORS AND ASSIGNS.**

25.1 Holder of Note. This Mortgage and each provision hereof shall be binding upon Borrower and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of Lender and its successors and assigns. Wherever herein Lender is referred to, such reference shall be deemed to include the holder from time to time of the Note; and each such holder of the Note shall have all of the rights afforded hereby and may enforce the provisions hereof, as fully as if Lender had designated such holder of the Note herein by name.

25.2 Covenants Run With Land; Successor Owners. All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. If the ownership of Premises or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to Borrower, deal with such person with reference to this Mortgage and the Indebtedness in the same manner as with Borrower without in any way releasing Borrower from its obligations hereunder. Borrower will give immediate written notice to Lender of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph shall vary the effectiveness of the provisions of Paragraph 15 hereof.

26. **EFFECT OF EXTENSIONS AND AMENDMENTS.**

If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Lender, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Lender to amend, modify, extend or release the Note, this Mortgage or any other Loan Document, in each case without obtaining the consent of the holder of such junior lien and without the lien of this

Mortgage losing its priority over the rights of any such junior lien.

27. ENVIRONMENTAL MATTERS.

Borrower represents that it is currently in compliance with, and covenants and agrees that, it will manage and operate the Premises and will cause each tenant to occupy its demised portion of the Premises in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Borrower further covenants and agrees that it shall not install or permit to be installed in the Premises asbestos or any substance containing asbestos and deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. Borrower shall remove from the Premises and dispose of any asbestos which is required by law to be removed in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Borrower, Lender and/or any third party with respect to hazardous substances. Borrower shall send to lender within five (5) days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Borrower agrees to indemnify, defend with counsel reasonably acceptable to Lender (at Borrower's sole cost), and hold Lender harmless against any claim, response or other costs, damages, liability or demand (including, without limitation, reasonable attorneys' fees and costs incurred by Lender) arising out of any claimed violation of Borrower of any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements. The foregoing indemnity shall survive repayment of the Indebtedness.

28. FUTURE ADVANCES/MAXIMUM INDEBTEDNESS.

At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures as part of the Indebtedness the payment of all Loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by Lender in connection with the Indebtedness, all in accordance with the Note, this Mortgage and the other Loan Documents, provided, however, that in no event shall the total amount of the Indebtedness, including Loan proceeds disbursed plus any additional charges, exceed two hundred percent (200%) of the face amount of the Note.

29. EXECUTION OF SEPARATE SECURITY AGREEMENTS, FINANCING STATEMENTS; ESTOPPEL LETTER.

Borrower will do, execute, acknowledge and deliver all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Lender shall reasonably require for the better assuring, conveying, mortgaging, assigning, and confirming unto Lender all property mortgaged hereby or property intended so to be, whether now owned by Borrower or hereafter acquired. Without limitation of the foregoing, Borrower will assign to Lender, upon request, as further security for the Indebtedness, its interests in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments satisfactory to Lender, but no such assignment shall be construed as a consent by the Lender to any agreement, contract, license or permit or to impose upon Lender any obligations with respect thereto. From time to time, Borrower will furnish within thirty (30) days after Lender's request a written and duly acknowledged statement of the Indebtedness and whether any alleged offsets or defenses exist against the Indebtedness.

30. **SUBROGATION.**

If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Premises or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other encumbrance any additional security held by such holder, and shall have the benefit of the priority of the same.

31. **OPTION TO SUBORDINATE.**

At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Lender and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.

32. **GOVERNING LAW.**

The place of negotiation, execution and delivery of this Mortgage and the location of the Property being the State of Indiana, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principals of that State. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of the Borrower which are more limited than the rights that would otherwise be vested in lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

33. **BUSINESS LOAN/LENDER'S CONSENT.**

The proceeds of the Note will be used for business purposes and the principal obligation secured hereby constitutes a "business loan".

34. **INSPECTION OF PREMISES AND RECORDS.**

Borrower shall keep full and correct books and records showing in detail the income and expenses of the Premises. Lender and its agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times.

35. **NO JOINT VENTURES.**

Borrower acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall Lender be deemed to be a partner or joint venturer with Borrower. Lender shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.

36. **TIME OF THE ESSENCE.**

Time is of the essence of the Note, this Mortgage, and the other Loan Documents.

37. **CAPTIONS AND PRONOUNS.**

The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

38. **SEVERABILITY.**

If all or any portion of any provision of this Mortgage or the other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

39. **NOTICES.**

Any notice or other communication which any party hereto may desire or may be required to give to any other party hereto shall be made as described in Section 13 of the Loan Agreement, which is incorporated herein.

40. **ANTI-FORFEITURE.**

Borrower hereby expressly represents and warrants to Lender that there has not been committed by Borrower or any other person involved with the Premises any act or omission affording the federal government or any state or local government the right of forfeiture as against the Premises or any part thereof or any monies paid in performance of its obligations under the Note, Mortgage or under any of the Loan Documents, and Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof, Borrower agrees to indemnify, defend with counsel reasonably acceptable to lender (at Borrower's sole cost) and hold Lender harmless from and against any claim or other cost (including, without limitation, reasonable attorneys' fees and costs incurred by Lender), damage, liability or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Borrower, the Lender or all or any part of the Premises under any federal or state law in which forfeiture of the Premises or any part thereof or of any monies paid in performance of Borrower's obligations under the Loan Documents is a potential result shall, at the election of Lender, constitute a Default hereunder without notice or opportunity to cure.

41. **JURY TRIAL WAIVER.**

The Borrower waives, to the extent permitted by law, trial by jury in any actions brought by either the Borrower or Lender in connection with the Indebtedness.

42. **NO MERGER.**

It is the desire and intention of the parties thereto that this Mortgage and the lien hereof shall not merge in fee simple title to the Premises, unless a contrary intent is ever manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded. Therefore, it is hereby understood and agreed that should Lender acquire any additional or other interest in or to the Premises or the ownership thereof, then this Mortgage and the lien hereof shall not merge in the fee

simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly signed, sealed and delivered the day and year first above written.

BORROWER:

THE VAP LLC, an Indiana limited liability company

By: Andrew Snoring
Member

By: Matthew M. Byle, C.F.O.

STATE OF INDIANA)

COUNTY OF LAKE)

**Document is
NOT OFFICIAL!**

SS. **This Document is the property of
the Lake County Recorder!**

Mary Ellen R. Stevens a Notary Public in and for said County, in the State aforesaid, do hereby certify that Andrew Snoring, personally known to me to be the Member respectively of THE VAP LLC, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company pursuant to authority by the board of managers of such Company.

Given under my hand and notarial seal this 20th day of September, 1999.

MARY ELLEN R STEVENS
NOTARY PUBLIC STATE OF INDIANA
LAKE COUNTY
Notary Public
COMMISSION EXP. MAY 28, 2003

EXHIBIT A

The term "Loan Documents," as used in this Mortgage, means the following documents and any other documents previously, now, or hereafter given to evidence, secure or govern the disbursement of the Indebtedness, including any and all extension, renewals, amendments, modifications, and supplements thereof or thereto:

1. The Note;
2. The following security documents:
 - (a) this Mortgage;
 - (b) a Loan and Security Agreement of even date herewith between Borrower and Lender;
 - (c) Guaranties of even date herewith made by Guarantors;
 - (d) Hazardous Materials Indemnity Agreement.



EXHIBIT B

Legal Description

P.I.N.

Address: 4410 W. 37th Ave., Hobart, Indiana, 46342



Parcel 1:

Lots 25 to 48, both inclusive, Block 2, and the East half of vacated Missouri Street adjacent to the West side of said Lots and the North half of vacated 36th Avenue adjacent to the South side of Lot 25 excepting therefrom the West 25 feet of the East 51 feet of the North 20 feet of Lot 47, the West 25 feet of the East 51 feet of the South 5 feet of Lot 48, the South 12.5 feet of the East 25 feet of Lot 27, the North 12.5 feet of the East 25 feet of Lot 26, and the East 25 feet of Lot 25, in Tolleston on the Hill, as per plat thereof, recorded in Plat Book 2 page 55, in the Office of the Recorder of Lake County, Indiana.

Parcel 2:

Lots 2 to 4, both inclusive, Block 8, and the East half of vacated Missouri Street adjacent to the West side of said lots; the South half of vacated 36th Avenue adjacent to the North side of said Lot 4, and the West half of the vacated 15 foot alley adjacent to the East side of said Lots, in Tolleston on the Hill, as per plat thereof, recorded in Plat Book 2 page 55, in the Office of the Recorder of Lake County, Indiana.

Parcel 3:

Lots 1 to 11, both inclusive, and Lot 12, except the South 10 feet thereof, Block 10, and the West half of vacated Missouri Street adjacent to the East side of said Lots, and the East half of vacated Tilden Street adjacent to the West side of said Lots, in Tolleston on the Hill, as per plat thereof, recorded in Plat Book 2 page 55, in the Office of the Recorder of Lake County, Indiana.

Parcel 4:

Lot 22, except that part taken for Ridge Road, and Lots 23 to 35, both inclusive, Block 11, and the East half of vacated Missouri Street adjacent to the West side of said Lots, excepting therefrom the East 25 feet of said Lot 25, in Tolleston on the Hill, as per plat thereof, recorded in Plat Book 2 page 55, in the Office of the Recorder of Lake County, Indiana.

Parcel 5:

Lots 1 to 10, both inclusive and Lots 12 to 25, both inclusive, Block 1, and the East half of vacated Tilden Street adjacent to the West side of said Lots 1 to 5, both inclusive, in Tolleston on the Hill, as per plat thereof, recorded in Plat Book 2 page 55, in the Office of the Recorder of Lake County, Indiana.

Parcel 6:

That part of the Joliet and Northern Indiana Railway 99 foot wide right of way in the South half of the Southwest Quarter of Section 23, Township 36 North, Range 8 West of of the 2nd Principal Meridian, in Lake County, Indiana, lying Southwesterly of the Westerly line of Interstate Highway I-65 and Northeasterly of a line extended North across said right of way from the Northwest corner of Lot 1, Block 10, Tolleston on the Hill, as per plat thereof, recorded in Plat Book 2 page 55, in the Office of the Recorder of Lake County, Indiana.

