

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2000 002033

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MORRIS W. CARTER  
RECORDER

RECORDATION REQUESTED BY:

Bank One, Indiana, N.A.  
8585 Broadway  
Merrillville, IN 46410

RETURN ADDRESS:

Banc One Loan Servicing  
IN Commercial Lien Documents KY1-4190  
P.O. Box 37263  
Louisville, KY 40232-7263

SEND TAX NOTICES TO:

STEVEN J. O'DAY and DEBORAH A. O'DAY  
5321 QUAIL COURT  
SCHERERVILLE, IN 46375



1915084+1

053898380000536178

O'DAY, STEVEN

DEED OF TRUST / MORTGAGE

**BANK ONE**

**Document is**  
**MORTGAGE**

THIS MORTGAGE IS MADE THIS DECEMBER 20, 1999, between STEVEN J. O'DAY and DEBORAH A. O'DAY, HUSBAND AND WIFE, whose address is 5321 QUAIL COURT, SCHERERVILLE, IN 46375 (referred to below as "Grantor"); and Bank One, Indiana, N.A., whose address is 8585 Broadway, Merrillville, IN 46410 (referred to below as "Lender").

**GRANT OF MORTGAGE.** For valuable consideration, Grantor mortgages, warrants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, all tenant security deposits, utility deposits and all proceeds (including without limitation premium refunds) of each policy of insurance relating to any of the improvements, the Personal Property or the Real Property; all rents, issues, profits, revenues, royalties or other benefits of the improvements, the Personal Property or the Real Property; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, located in LAKE County, State of Indiana (the "Real Property"):

**LOT 111, FOXWOOD ESTATES, UNIT 3, AN ADDITION TO THE TOWN OF SCHERERVILLE, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 70 PAGE 53, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.**

The Real Property or its address is commonly known as 5321 QUAIL COURT, SCHERERVILLE, IN 46375.

As more fully described in this mortgage, the Property includes: (a) all extensions, improvements, substitutes, replacements, renewals, and additions to any of the property described; (b) all rents, proceeds, income, and profits from any of the other property described; and (c) all awards, payments, or proceeds of voluntary or involuntary conversion of any of the property described, including insurance, condemnation, tort claims, and other obligations dischargeable in cash.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**DEFINITIONS.** The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Credit Agreement.** The words "Credit Agreement" mean the revolving line of credit agreement dated December 20, 1999, between Lender and Grantor with a maximum credit limit of \$60,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the Credit Agreement.

**Grantor.** The word "Grantor" means STEVEN J. O'DAY and DEBORAH A. O'DAY. The Grantor is the mortgagor under this Mortgage.

**Guarantor.** The word "Guarantor" means and includes without limitation, each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness.

**Indebtedness.** The word "Indebtedness" means all principal and interest payable under the Credit Agreement and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Lender to enforce obligations of Grantor under this Mortgage, including, but not limited to, attorneys' fees, cost of collection and costs of foreclosure, together with interest on such amounts as provided in this Mortgage. Specifically, without limitation, this Mortgage secures a revolving line of credit, which obligates Lender to make future obligations and advances to Grantor up to a maximum amount of \$60,000.00 so long as Grantor complies with all the terms of the Credit Agreement. Such future obligations and advances, and the interest thereon, are secured by this Mortgage whether such obligations and advances arise under the Credit Agreement, this Mortgage or otherwise. This Mortgage also secures all

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modifications, extensions and renewals of the Credit Agreement, the Mortgage or any other amounts expended by Lender on Grantor's behalf as provided for in the Mortgage. Such advances may be made, repaid, and remade from time to time, subject to the limitation that the total outstanding balance owing at any one time, not including finance charges on such balance at a fixed or variable rate or sum as provided in the Credit Agreement, any temporary overages, other charges, and any amounts expended or advanced as provided in this paragraph, shall not exceed the Credit Limit as provided in the Credit Agreement. It is the intention of Grantor and Lender that this Mortgage secures the balance outstanding under the Credit Agreement from time to time from zero up to the Credit Limit as provided above and any intermediate balance.

**Mortgage.** The word "Mortgage" means this Mortgage between Grantor and Lender, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to, or located on, the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the property, interests and rights described above in the "Grant of Mortgage" section.

**THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ALL OBLIGATIONS OF GRANTOR UNDER THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due, and shall strictly perform all of Grantor's obligations under this Mortgage.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until in default, Grantor may remain in possession and control of and operate and manage the Real Property and collect the Rents.

**Duty to Maintain.** Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, instalment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. If any Grantor is a corporation, partnership or limited liability company, "sale or transfer" also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Indiana law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are a part of this Mortgage.

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Mortgage, except for the lien of taxes and assessments not due.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance for the full unpaid principal balance of the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at its election, apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property.

**EXPENDITURES BY LENDER.** If Grantor fails to comply with any provision of this Mortgage, or if any action or proceeding is commenced that would materially affect Lender's interests in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing will bear interest at the rate provided for in the Credit Agreement from the date incurred or paid by Lender to the date of repayment by Grantor. However, if this Loan is a "consumer loan" or a "consumer related loan" as defined under the Indiana Uniform Consumer Credit Code, the rate charged will not exceed the Annual Percentage Rate initially disclosed on the loan. All such expenses, at Lender's option, will (a) be payable on demand, (b) be added to the balance of the credit line and be apportioned among and be payable with any instalment payments to become due during either (i) the term of any applicable insurance policy, or (ii) the remaining term of the Credit Agreement, or (c) be treated as a balloon payment which will be due and payable at the Credit Agreement's maturity. This Mortgage also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

**WARRANTY; DEFENSE OF TITLE.**

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Real Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons.

**No Other Liens.** Grantor will not, without the prior written consent of Lender, create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for a lien for ad valorem taxes on the Real Property which are not delinquent), security interest, encumbrance or charge, against or covering the Property, or any part thereof, other than as permitted herein, regardless if same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Lender, Grantor will cause the same to be promptly discharged and released.

**FULL PERFORMANCE.** If Grantor pays all the Indebtedness when due, terminates the Credit Agreement, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**DEFAULT.** Each of the following, at the option of Lender, shall constitute an event of default ("Event of Default") under this Mortgage: (a) Grantor commits fraud or makes a material misrepresentation at any time in connection with the Credit Agreement. This can include, for example, a false statement about Grantor's income, assets, liabilities, or any other aspects of Grantor's financial condition. (b) Grantor does not meet the repayment terms of the Credit Agreement. (c) Grantor's action or inaction adversely affects the collateral for the Credit Agreement or Lender's rights in the collateral. This can include, for example, failure to maintain required insurance, waste or destructive use of the dwelling, failure to pay taxes, death of any or all persons liable on the Credit Agreement, transfer of title or sale of the dwelling, creation of a lien on the dwelling without Lender's permission, foreclosure by the holder of another lien, or the use of funds or the dwelling for prohibited purposes.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter but subject to any limitation in the Credit Agreement or any limitation in this Mortgage, Lender, shall have the statutory power of sale, and on foreclosure may retain statutory costs and attorney's fees, and at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

**Deficiency Judgment.** With respect to any Grantor who also is personally liable on the Credit Agreement, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section. Under all circumstances, the Indebtedness will be repaid without relief from any Indiana or other valuation and appraisal laws.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Credit Agreement or available at law or in equity.

**Attorneys' Fees; Expenses.** In the event of foreclosure of this Mortgage, Lender shall be entitled to recover from Grantor reasonable attorneys' fees and actual disbursements necessarily incurred by Lender in pursuing such foreclosure.

**MISCELLANEOUS PROVISIONS.**

**Applicable Law.** This Mortgage has been delivered to Lender and accepted by Lender in the State of Indiana. This Mortgage shall be governed by and construed in accordance with the laws of the State of Indiana.

**Time Is of the Essence.** Time is of the essence in the performance of this Mortgage.

**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.**

GRANTOR  
X Steven J. O'Day  
STEVEN J. O'DAY

X Deborah A. O'Day  
DEBORAH A. O'DAY

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Indiana )  
 ) ss  
COUNTY OF Lake )

On this day before me, the undersigned Notary Public, personally appeared STEVEN J. O'DAY and DEBORAH A. O'DAY, to me known to be the individuals described in and who executed the Mortgage, and acknowledged that they signed the Mortgage as their free and voluntary act and deed, for the uses and purposes therein mentioned.

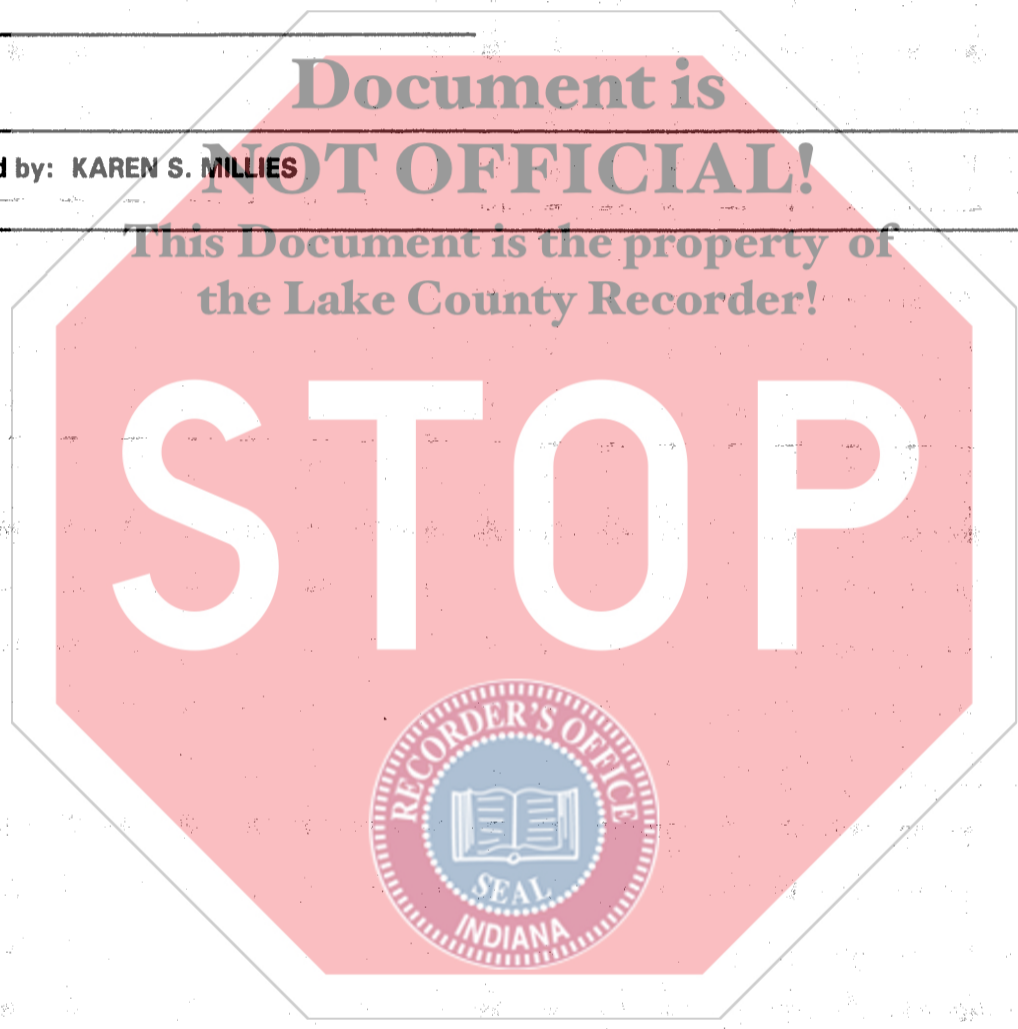
Given under my hand and official seal this 20 day of December, 19 99.

By Stella G. Leszczewski Residing at 545 Ridge Rd, Munster, In. 46321

Printed Name of Notary Public: STELLA G. LESZCZEWSKI  
NOTARY PUBLIC, Lake County, Indiana  
My Commission Expires April 3, 2008  
Notary Public in and for the State of Resident Of Lake County, Indiana

My commission expires \_\_\_\_\_

This Mortgage was prepared by: KAREN S. MILLIES



**RECORDING PAGE**



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