

2000-066717

REAL ESTATE MORTGAGE

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THIS MORTGAGE is made this 31st day of August, 2000, between the Mortgagors, MICHAEL C. KOVERA and PAMALA E. KOVERA, husband and wife, individually and jointly, (herein "Borrower"), and the Mortgagee, BURTON C. MASEPOHL, (herein "Lender").

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WHEREAS, Borrower is indebted to Lender in the principal sum of Ninety-Two Thousand (\$92,000.00) Dollars, which indebtedness is evidenced by Borrower's Note dated August 31, 2000, (herein "Note"), with the balance of the indebtedness, if not sooner paid, due and payable in full on or before August 15, 2005.

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

LOT NUMBERS TWENTY TWO (22) IN BLOCK NUMBERED ONE (1) AS MARKED AND LAID DOWN ON THE RECORDED PLAT OF 2ND, ADDITION TO ORIGINAL TOWN OF HIGHLAND IN HIGHLAND, LAKE COUNTY, INDIANA.

TOGETHER with all buildings, improvements, and tenements now or hereafter erected on the property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, water heaters, and trees and plants; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Mortgage; and all of the foregoing, together with said property are herein referred to as the "Property".

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

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E.P.
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BORROWER AND LENDER COVENANT AND AGREE AS FOLLOWS:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note.

2. **APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received by Lender under the Note shall be applied by Lender in the following order of priority: (i) interest payable on the Note, (ii) principal of the Note, (iii) any other sums secured by this instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to paragraph 6 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this paragraph 2.

3. **CHARGES; LIENS.** Borrower shall pay all water and sewer rates, rents, taxes, assessments, premiums, and other impositions attributable to the property by Borrower making payment, when due, directly to the payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph 3, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Mortgage, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Mortgage to be perfected against the property.

4. **LIABILITY INSURANCE.** Borrower shall be required to maintain a public liability and property damage insurance policy naming Lender as an additional insured, in the amount of \$100,000.00 per person and \$300,000.00 for each occurrence of personal injury and \$100,000.00 for property damage.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender.

5. **PRESERVATION AND MAINTENANCE OF PROPERTY.** Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

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

to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the property to make repairs.

Any amounts disbursed by Lender pursuant to this paragraph 6, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder.

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

8. CONDEMNATION. Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender.

9. BORROWER AND LIEN NOT RELEASED. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Mortgage, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Mortgage any part of the property, take or release other or additional security, reconvey any part of the property, consent to any map or plan of the property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this paragraph 9 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sum secured by this Mortgage and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

10. **FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Mortgage after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Lender's receipt of any awards, proceeds or damages, under paragraphs 4 and 8 hereof operate to cure or waive Borrower's default in payment of sums secured by this Mortgage.

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

12. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS.** The covenants and agreements here in contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

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

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

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

16. **ACCELERATION; REMEDIES.** Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage or the Note, including, but not limited to, the covenants to pay when due any sums secured by this Mortgage, Lender, at Lender's option, may declare any and all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding and may invoke any other remedies permitted by applicable law or provided

herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees, interest as provided in paragraph 4 of the Secured Promissory Note, costs of documentary evidence, abstracts and title reports.

17. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY. If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower of Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by paragraph 16 of this Mortgage. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Mortgage pursuant to paragraph 6 hereof.

18. APPOINTMENT OF RECEIVER. Upon acceleration under paragraph 16 hereof or abandonment of the Property, and at any time prior to the expiration of any period of redemption following judicial sale, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents, if any, of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to receiver's fees, premiums on receiver's bonds and reasonable attorneys fees, and then to sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received.

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

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

21. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the property and who has actual or constructive notice hereof waives any and all right to

require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

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

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

24. LEGISLATION AFFECTING LENDER'S RIGHTS. If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Mortgage unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Mortgage and may invoke remedies permitted by paragraph 16.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.



MICHAEL C. KOVERA





PAMALA E. KOVERA

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

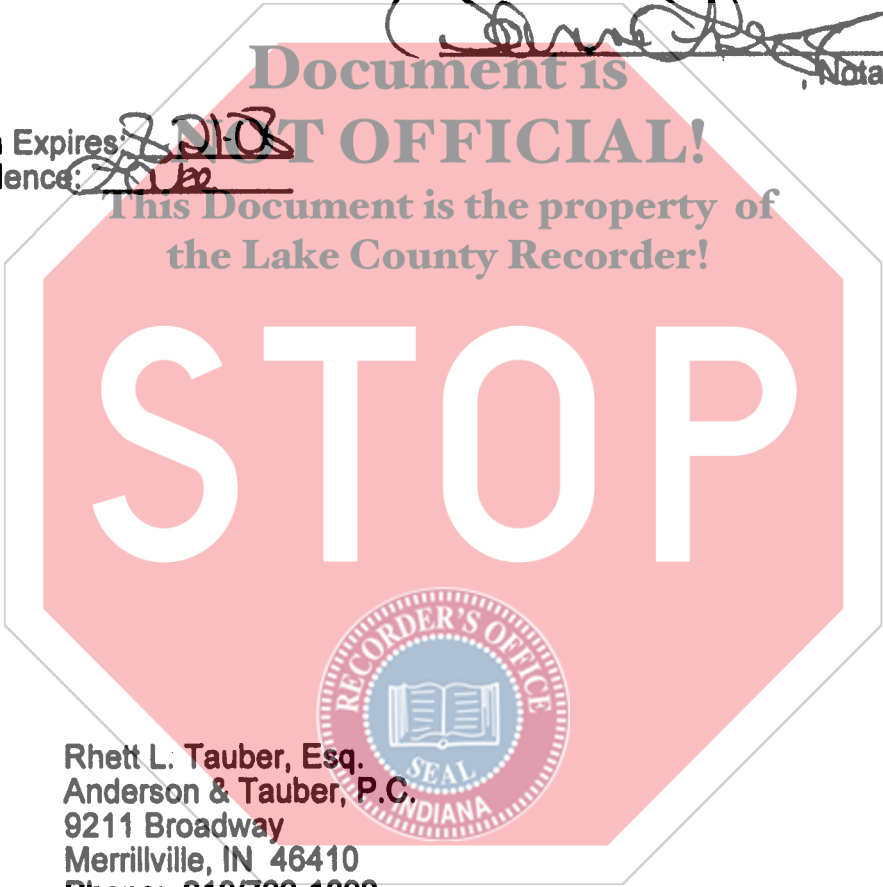
Before me, the undersigned, a Notary Public, in and for said County and State, this 31st day of August, 2000, personally appeared Michael C. Kovera and Pamala E. Kovera who duly acknowledged the execution of the above and foregoing Real Estate Mortgage as aforesaid and as their voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seals.



Notary Public

My Commission Expires: 8-31-03
County of Residence: Laurens



Prepared by: Rhett L. Tauber, Esq.
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