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Chicago Title Insurance Company

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LAKE COUNTY INDIANA

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MORTGAGE, OPEN-END MORTGAGE, ADVANCE MONEY MORTGAGE,
CREDIT LINE MORTGAGE, ASSIGNMENT, ASSIGNMENT OF RENTS, SECURITY AGREEMENT,
FIXTURE FILING AND FINANCING STATEMENT

Document is
Dated October 16, 2000
NOT OFFICIAL!

This Document is the property of
AMSTED INDUSTRIES INCORPORATED
the Lake County Recorder!

Mortgagor

to

STOP
CITICORP U.S.A., INC., as Collateral Agent for the Secured Parties under
the Credit Agreement among Mortgagor, Citicorp U.S.A., Inc., as Agent,
and the banks, financial institutions and other institutional lenders party
thereto, dated as of August 13, 1999 and amended by Amendment
No. 1 to the Credit Agreement dated as of August 25, 2000.

Mortgagee



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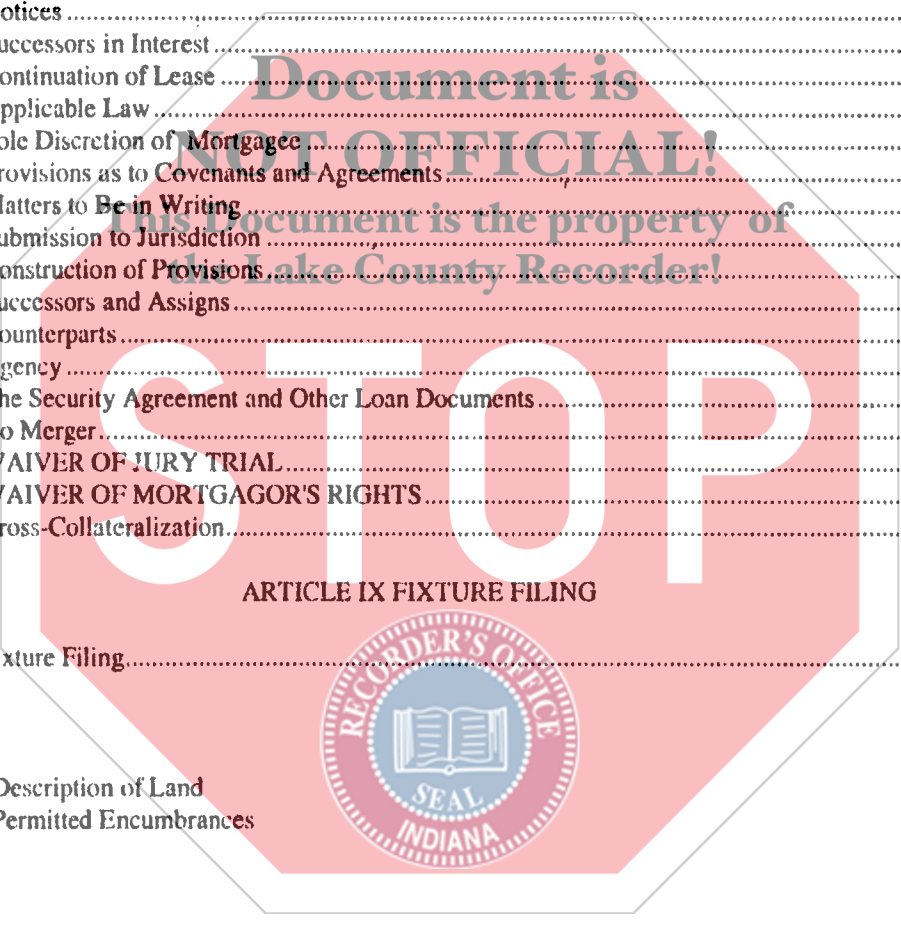
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THIS MORTGAGE, OPEN-END MORTGAGE, ADVANCE MONEY MORTGAGE, CREDIT LINE MORTGAGE, ASSIGNMENT, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT (as the same may from time to time be extended, spread, split, consolidated, modified, restated and renewed, this "Mortgage") made as of October __, 2000 by AMSTED INDUSTRIES INCORPORATED, a Delaware corporation having its principal office at 205 N. Michigan Avenue, 44th Floor, Chicago, IL 60601 ("Mortgagor"), to CITICORP U.S.A. INC., a national banking association having an address at 399 Park Avenue, New York, New York 10043, as Agent as defined in the Credit Agreement (in such capacity together with its successors in such capacity as appointed in accordance with the Credit Agreement (as hereinafter defined) ("Collateral Agent"), for the Secured Parties (as defined in the Credit Agreement, and which term includes the Holders of Specified Debt, as defined and as specified below) ("Mortgagee").

WITNESSETH:

WHEREAS, AMSTED INDUSTRIES INCORPORATED, a corporation organized under the laws of Delaware ("Borrower") has entered into that certain Credit Agreement (said credit agreement, dated August 19, 1999, as amended by Amendment No. 1 to the Credit Agreement, dated as of August 25, 2000 (the "Amendment"), as it may be further amended, modified or supplemented from time to time, being the "Credit Agreement"), with the Mortgagee as Collateral Agent for itself and the Lenders (as defined in the Credit Agreement); and

WHEREAS, each of the Bank of Montreal, Harris Bank and the Bank of Tokyo (collectively, the "Holders of Specified Debt") has advanced Specified Debt (as defined in the Credit Agreement) to the Borrower which is outstanding on and as of the date hereof, and the Borrower may hereafter incur additional Specified Debt permitted by the Credit Agreement and cause the lender of such Specified Debt to become a party to the Intercreditor Agreement (as defined in the Credit Agreement); and

WHEREAS, pursuant to the Credit Agreement, Mortgagor is entering into this Mortgage in order to grant to the Collateral Agent for the ratable benefit of the Secured Parties (which includes, for the purposes of this Mortgage and the other Collateral Documents, the Holders of Specified Debt) a security interest in the Mortgaged Property; and

WHEREAS, pursuant to the Credit Agreement and subject to the terms and conditions therein set forth, the Lenders have made and agree to make Advances and to issue certain Letters of Credit (as each such term is defined in the Credit Agreement) from time to time from the date hereof until August 12, 2004, in the aggregate amount not to exceed at any time \$1,000,000,000, excluding advances made to protect the lien of this Mortgage; and

WHEREAS, to evidence and secure such indebtedness, Borrower has executed and delivered certain of the Loan Documents (as defined in the Credit Agreement); and

WHEREAS, it has been agreed that as a condition to the making of the Amendment, that Mortgagor will secure such indebtedness by the execution and delivery of this Mortgage for the ratable benefit of the Secured Parties (which includes for purposes of this Agreement and the other Collateral Documents, the Holders of Specified Debt); and

WHEREAS, it has been agreed that the payment and performance of the Secured Obligations (as hereinafter defined) shall be secured by a mortgage, open-end mortgage, advance money mortgage, credit line mortgage, assignment, assignment of rents, security agreement and financing statement, as applicable, of certain property as hereinafter identified.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to secure the punctual payment by Mortgagor when due, whether at stated maturity, by acceleration or otherwise, of the Secured Obligations, without relief from valuation and appraisal laws, and the performance and observance of all other covenants, obligations and liabilities of Mortgagor under this Mortgage, as the same may be extended, modified or renewed or replighted, Mortgagor does hereby grant unto Mortgagee a security interest in the following with the understanding and intention that this Mortgage shall also constitute a security agreement pursuant to the Uniform Commercial Code of the State of Indiana and does hereby grant, bargain, sell, mortgage, warrant, convey, alien, remise, release, assign, transfer, set over, deliver, confirm and convey unto Mortgagee, upon the terms and conditions of this Mortgage, with power of sale and right of entry as provided hereinbelow, each and all of the real properties described in the Granting Clauses herein (which, together with all other property located therein or described in the Granting Clauses herein, is hereinafter collectively called the "Mortgaged Property"). Any rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable law.

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GRANTING CLAUSES

All the estate, right, title and interest of Mortgagor in, to and under, or derived from, the plots, pieces and parcels of land more particularly described in Exhibit A hereto (the "Land");

TOGETHER with the tenements, hereditaments, appurtenances and all the estates and rights of Mortgagor in and to the Land;

TOGETHER with all buildings and improvements now or hereafter located on the Land (hereinafter collectively referred to as the "Improvements") and all right, title and interest, if any, of Mortgagor in and to the streets, roads, sidewalks and alleys abutting the Land, and strips and gores within or adjoining the Land, the air space and right to use said air space above the Land and any transferable development or similar rights appurtenant thereto, all rights of ingress and egress by motor vehicles to parking facilities on or within the Land, all easements now or hereafter affecting the Land, royalties and all rights appertaining to the use and enjoyment of the Land, including alley, drainage, mineral, water, oil and gas rights;

TOGETHER with all fixtures and all appurtenances and additions thereto and substitutions or replacements thereof owned by Mortgagor and now or hereafter attached to the Premises (as hereinafter defined);

TOGETHER with all property, tangible and intangible, and all additions thereto and substitutions or replacements thereof owned by Mortgagor and now or hereinafter contained in, or used in connection with the Premises or placed on any part thereof though not attached thereto, to the extent the same constitutes real property in the state in which the Mortgaged Property is located (all of the foregoing, including the items hereinafter enumerated, collectively referred to as the "Equipment"), including all removable window and floor coverings, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator plants, cooking facilities, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings and fixtures (the Land, together with the Improvements and the Equipment, are hereinafter collectively referred to as the "Premises");

TOGETHER with all leases, subleases, lettings and licenses of, and all other contracts, bonds and agreements affecting the Premises or any part thereof now or hereafter entered into, and all amendments, modifications, supplements, additions, extensions and renewals thereof (all of the foregoing hereinafter collectively referred to as the "Subordinate Leases"), and all right, title and interest of Mortgagor thereunder, including cash and securities deposited thereunder (as down payments, security deposits or otherwise), the right to receive and collect the rents, security deposits, income, proceeds, earnings, royalties, revenues, issues and profits payable thereunder and the rights to enforce, whether at law or in equity or by any other means, all provisions and options thereof or

thereunder (all of the foregoing hereinafter collectively referred to as the "Rents") and the right to apply the same to the payment and performance of the Secured Obligations;

TOGETHER with all rights, dividends and/or claims of any kind whatsoever relating to the Premises (including damage, secured, unsecured, lien, priority and administration claims); together with the right to take any action or file any papers or process in any court of competent jurisdiction, which may in the opinion of Mortgagee be necessary to preserve, protect, or enforce such rights or claims, including the filing of any proof of claim in any insolvency proceeding under any state, Federal or other laws and any rights, claims or awards accruing to or to be paid to Mortgagor in its capacity as landlord under any Subordinate Lease;

TOGETHER with all other agreements, rights, written materials and intangible personal property (whether now or in the future existing) arising in connection with, derived from or otherwise relating to the Mortgaged Property or any portion thereof or the ownership, development, construction, use, operation, occupancy, lease, sale or financing of the Mortgaged Property or any portion thereof, including: (i) permits, approvals, consents and other authorizations; (ii) improvement plans and specifications and architectural drawings; (iii) agreements with contractors, subcontractors and suppliers; (iv) warranties and guaranties and (v) escrow proceeds, reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings and leases;

TOGETHER with all unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Mortgagor and relating to the Premises and all proceeds of the conversion, voluntary or involuntary, of the Premises into cash or liquidated claims, including proceeds of hazard and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Premises by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Premises or any easement therein, including awards for any change of grade of streets (collectively, "Awards");

TOGETHER with all right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, any of the foregoing hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Premises and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assemblage, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described herein.

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee and its successors and assigns, forever.

¶

ARTICLE I

CERTAIN DEFINITIONS

SECTION 1.01. Certain Definitions. Capitalized terms used herein and not defined herein shall have the meanings given them in the Credit Agreement. As used herein, the following terms shall have the meanings set forth opposite them below:

"Action" has the meaning set forth in Section 8.11.

"Awards" has the meaning set forth in the Granting Clauses.

"Bankruptcy Law" means any bankruptcy, insolvency, reorganization, moratorium or similar law.

"Borrower" has the meaning set forth in the Recitals.

"Collateral Agent" has the meaning set forth in the Recitals.

"Contest" has the meaning set forth in Section 3.11.

"Credit Agreement" has the meaning set forth in the Recitals.

"Equipment" has the meaning set forth in the Granting Clauses.

"Impositions" means all taxes, assessments, vault, water and sewer rents, rates, charges and assessments, levies, permits, inspection and license fees and other governmental and quasi-governmental charges and any penalties or interest for non-payment thereof, heretofore or hereafter imposed which may become a lien upon the Mortgaged Property.

"Improvements" has the meaning set forth in the Granting Clauses.

"Land" has the meaning set forth in the Granting Clauses.

"Lender" has the meaning set forth in the Recitals.

"Maximum Amount" has the meaning set forth in Section 2.01.

"Mortgage" has the meaning set forth in the Recitals.

"Mortgaged Property" has the meaning set forth in the Recitals.

"Mortgagee" has the meaning set forth in the Recitals.

"Mortgagor" has the meaning set forth in the Recitals.

"Notice" has the meaning set forth in Section 8.03.

"Permitted Encumbrances" has the meaning set forth in Section 3.03.

"Premises" has the meaning set forth in the Granting Clauses.

"Rents" has the meaning set forth in the Granting Clauses.

"Secured Obligations" has the meaning set forth in Section 2.01.

"Subordinate Leases" has the meaning set forth in the Granting Clauses.

ARTICLE II

OBLIGATIONS SECURED

SECTION 2.01. Obligations Secured. This Mortgage is given for the purpose of securing the payment, without relief from valuation and appraisal laws, of all obligations (of every kind and character now or hereafter existing, whether matured or unmatured, contingent or liquidated, including, without limitation, advances to protect security) of Borrower under: (i) the Credit Agreement, (ii) the Specified Debt, and (iii) this Mortgage; provided, however, that the aggregate amount of the above obligations the payment of which is secured by this Mortgage shall not exceed \$1,250,000,000 ("Maximum Amount"). All of the obligations described in this Section are referred to as the "Secured Obligations", and shall become due and payable no later than August 13, 2004.

SECTION 2.02. Fraudulent Conveyance. Mortgagor and, by its acceptance of this Mortgage, Mortgagee each hereby confirms its intention that this Mortgage and the Secured Obligations of the Mortgagor hereunder not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law, regulation or decision of any court, to the extent applicable to this Mortgage and the Secured Obligations of the Mortgagor hereunder. To effectuate the foregoing intention, and notwithstanding anything contained in this Mortgage to the contrary, Mortgagee and Mortgagor, to the extent permitted by law, hereby irrevocably agree that the Secured Obligations of the Mortgagor under this Mortgage at any time shall be limited to the maximum amount as will result in the Secured Obligations of Mortgagor under this Mortgage not constituting a fraudulent transfer or conveyance.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF MORTGAGOR

SECTION 3.01. Payment of Secured Obligations. Mortgagor shall punctually pay when due, and timely perform, the Secured Obligations, and will perform and observe all of its obligations under the Loan Documents.

SECTION 3.02. Legal Status, Authority and Other Matters. (a) Legal Status. Mortgagor represents and warrants that it is a corporation duly organized and existing in good standing under the laws of Delaware and has the full power and authority to own the Mortgaged Property and carry out its business in the state in which the Mortgaged Property is located.

(b) No Actions Pending. There is no action, suit or proceeding, judicial, administrative or otherwise, pending or, to the best of Mortgagor's knowledge, threatened or contemplated against or affecting Mortgagor or the Mortgaged Property.

SECTION 3.03. Warranty of Title. Mortgagor warrants that it has good and marketable title to the Mortgaged Property in each case free and clear of all liens, charges and encumbrances of every kind and character, subject only to the encumbrances set forth on Exhibit B hereto ("Permitted Encumbrances"); has and will continue to have full power and lawful authority to encumber and convey the Mortgaged Property as provided herein; this Mortgage is and will continue to remain a valid and enforceable first mortgage lien on and security interest in the Mortgaged Property, subject only to Permitted Encumbrances. Mortgagor further covenants that it will preserve such title and will forever warrant and defend the title to the Mortgaged Property unto Mortgagee against all lawful claims whatsoever and will forever warrant and defend the validity, enforceability and priority of the lien of this Mortgage against the claims of all persons and parties whomsoever.

SECTION 3.04. Operation and Maintenance. (a) **Repair and Maintenance.** Mortgagor will operate and maintain the Premises in good order, repair and operating condition, will promptly make all necessary repairs, restorations, renewals, replacements, additions and improvements thereto, interior and exterior, structural and nonstructural, foreseen and unforeseen, or otherwise necessary to insure that the same as part of the security under this Mortgage shall not in any material way be diminished or impaired, and will not cause or allow the Premises to be misused, wasted or to deteriorate.

(b) **Status of the Premises.** The Premises is not located in an area identified by the Secretary of Housing and Urban Development or a successor thereto as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968, or the Flood Disaster Protection Act of 1973, as amended, or any successor law; or if the Premises is located in such an area, Mortgagor will obtain and maintain insurance against damage or loss by flood on such basis and in such amounts as shall be required by Mortgagee; (ii) the Premises is served by all utilities required for the current use thereof; (iii) all streets necessary to serve the Land, and the Improvements for the current use thereof have been completed and are serviceable and have been dedicated or accepted by the appropriate governmental entities and Mortgagor has access from public roads to the Land, and the Improvements; and (iv) there is no condemnation or similar proceeding pending or, to Mortgagor's knowledge, threatened affecting any part of the Premises that might materially adversely affect the Premises.

(c) **Use.** Mortgagor will use the Premises for substantially the same use as in effect as of the date hereof and for no other use unless consented to in writing by Mortgagee. Mortgagor will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Premises or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Premises.

(d) **Removal of Improvements.** Mortgagor will not remove any material Improvements except in the ordinary course of business from the Premises or remove, demolish or alter, other than an alteration of an immaterial nature, the structural character of any Improvements without the written consent of Mortgagee, nor use or permit use of the Premises for any purpose other than that for which the same are now used.

(e) **Damage.** If the Premises or any part thereof are damaged by fire or any other cause to the extent that it affects the normal continuing operations of the Premises as such operations existed immediately prior to such damage or otherwise materially affects the value of the Premises, Mortgagor will give prompt written notice thereof to Mortgagee.

(f) **Entrance onto the Premises.** Mortgagee or its representative is hereby authorized to enter upon and inspect the Premises in accordance to the provisions set forth in Section 5.01(e) of the Credit Agreement.

(g) **Zoning; Title Matters.** Mortgagor will not, without the prior written consent of Mortgagee, (i) initiate or support any zoning reclassification of the Premises, seek any variance under existing zoning ordinances applicable to the Premises or use or permit the use of the Premises in a manner which would result in such use becoming a non-conforming use under the applicable zoning ordinances, (ii) modify or amend any of the Permitted Encumbrances, (iii) impose any restrictive covenants or encumbrances upon the Premises, execute or file any subdivision plat affecting the Premises or consent to the annexation of the Premises to any municipality or (iv) permit or suffer the Premises to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

SECTION 3.05. Insurance. (a) **Coverage.** Mortgagor shall maintain (i) casualty insurance insuring the Improvements now or hereafter constituting a part of the Mortgaged Property against damage by all hazards covered by a standard all-risk insurance policy for the full insurable value thereof (which, unless Mortgagee shall otherwise agree in writing, shall mean the full repair and replacement value thereof without reduction for depreciation or co-insurance), and (ii) Commercial General Liability Insurance in respect of the operation of the Mortgaged Property as required by the Loan Documents. In addition, Mortgagee may require Mortgagor to carry

such other insurance on the Mortgaged Property in such amounts as may from time to time reasonably be required by institutional lenders.

(b) Policy Requirements. All liability insurance policies required pursuant to Section 3.05(a) shall name Mortgagee as an additional insured thereunder, and all other insurance policies required pursuant to Section 3.05(a), to the extent reasonably possible, or otherwise maintained by Mortgagor shall name Mortgagee as the mortgagee under New York (or comparable) long form non-contributory endorsements. All such insurance policies and endorsements shall be fully paid or paid pursuant to an installment program offered to Mortgagor by the insurer or its broker/agent, provided that the installments are paid on or before the due date thereof so that all required insurance coverage is maintained without interruption. All insurance policies required to be maintained by Mortgagor shall contain such provisions and expiration dates, and be in such form and issued by such insurance companies qualified and licensed to do business in the jurisdiction in which the Mortgaged Property is located, as may be reasonably acceptable to Mortgagee. All insurance companies issuing insurance for the Mortgaged Property on behalf of the Mortgagor shall have a Best Insurance Guide Rating of A/XI or better. Any coverage required to be maintained pursuant to this Section may be maintained under a blanket insurance policy provided such policy otherwise satisfies the requirements of this Section. Each policy required to be maintained by Mortgagor shall provide that such policy may not be cancelled or materially changed except upon not less than thirty (30) days' prior written notice to Mortgagee of the intention of non-renewal, cancellation or material change and that no act or thing done by Mortgagor shall invalidate the policy as against Mortgagee. In the event Mortgagor fails to maintain insurance in compliance with Section 3.05(a) or, in the event that a notice of non-renewal, cancellation or material change is given to Mortgagee, as aforesaid, and within ten (10) days after the delivery of such notice Mortgagor shall fail to deliver to Mortgagee evidence of the purchase of a substitute policy of insurance or a renewal of the existing policy of insurance, Mortgagee may, after ten (10) days' notice to Mortgagor (or, if the policy in question shall sooner expire or be terminated, on or after the day before the date of such expiration or termination) but shall not be obligated to, obtain such insurance and pay the premium therefor and Mortgagor shall, on demand, reimburse Mortgagee for all sums, advances and reasonable expenses incurred in connection therewith, together with interest thereon at the rate of interest applicable under the Credit Agreement upon the occurrence of a Default (the "Default Rate") from the date such amounts are advanced until the same are paid to Mortgagee.

(c) No Separate Insurance. Mortgagor shall not carry separate or additional insurance concurrent in form or contributing, in the event of loss, with that required hereunder unless endorsed in favor of Mortgagee as loss payee or additional insured, as applicable, and otherwise acceptable to Mortgagee in all respects.

(d) Transfer of Title. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Premises in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of Mortgagor in and to all policies of insurance required under this Section or otherwise then in force with respect to the Premises and all proceeds payable thereunder and unearned premiums thereon shall immediately vest in the purchaser or other transferee of the Premises.

(e) Delivery of Policies. Mortgagor covenants that it has delivered to Mortgagee, and shall, from time to time as may be requested by Mortgagee, deliver to Mortgagee policies of insurance, or certificates thereof, that may be requested by Mortgagee to confirm that the insurance required under the terms of the Loan Documents is in place and in full force and effect.

SECTION 3.06. Liens and Liabilities. (a) Discharge of Liens. Mortgagor will pay, bond or otherwise discharge, from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a lien on the Premises.

(b) Creation of Liens. Mortgagor will not, without Mortgagee's consent, create, place or permit to be created or placed or allow to remain, and shall discharge and release in accordance with the provisions of Section 5.02(a) of the Credit Agreement, any deed of trust, mortgage, trust deed, voluntary or involuntary lien,

security interest or other encumbrance against or covering the Premises, other than Permitted Encumbrances, whether or not subordinate hereto.

(c) No Consent. Nothing in this Mortgage shall be deemed or construed in any way as constituting the consent or request by Mortgagee, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration or repair of the Premises. Mortgagor further agrees that Mortgagee does not stand in any fiduciary relationship to Mortgagor.

SECTION 3.07. Taxes and Other Charges. (a) Taxes on the Premises. Mortgagor will promptly pay when due and before any penalty or interest may be added thereto, all Impositions, as provided in Section 5.01(b) of the Credit Agreement. Mortgagor will also pay any penalty, interest or cost for non-payment of Impositions which may become due and payable.

(b) Increased Costs. In the event of the enactment after the date hereof of any law in the state in which the Mortgaged Property is located or any other governmental entity deducting from the value of the Mortgaged Property for the purpose of taxation any lien or security interest thereon, or changing in any way the laws for the taxation of mortgages, deeds of trust or other liens or debts secured thereby, or the manner of collection of such taxes, so as to affect this Mortgage, the Secured Obligations, Mortgagee or the holders of the Secured Obligations, then, and in such event, Mortgagor shall, on demand, pay to Mortgagee or such holder, or reimburse Mortgagee or such holder for payment of, all taxes, assessments, charges or liens for which Mortgagee or such holder is or may be liable as a result thereof, provided that if any such payment or reimbursement shall be unlawful or would constitute usury or render the Secured Obligations wholly or partially usurious under applicable law, then Mortgagee may, at its option, declare the Secured Obligations immediately due and payable or require Mortgagor to pay or reimburse Mortgagee for payment of the lawful and non-usurious portion thereof.

SECTION 3.08. Damage and Destruction. (a) Mortgagor's Obligations. In the event of any damage to or loss or destruction of the Premises, Mortgagor shall (i) promptly notify Mortgagee of such event, if such event would give rise to a claim under the insurance policies required to be maintained by Mortgagor pursuant to Section 3.05, (ii) take such steps as shall be necessary to preserve any undamaged portion of the Premises and (iii) except as otherwise instructed by Mortgagee, regardless whether the insurance proceeds, if any, shall be sufficient for the purpose or shall be otherwise applied by Mortgagee as provided herein, promptly commence and diligently pursue to completion the restoration, replacement and rebuilding of the Premises to substantially the condition of the Premises affected thereby immediately prior to such damage, loss or destruction.

(b) Mortgagee's Rights: Application of Proceeds. In the event that any portion of the Premises is so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance required by Section 3.05, and an Event of Default shall have occurred and be continuing then (i) Mortgagee may, but shall not be obligated to, make proof of loss if not made promptly by Mortgagor and is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for damage, destruction or loss thereunder, (ii) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Mortgagee, and (iii) Mortgagee shall have the right to apply the insurance proceeds, first, to reimburse Mortgagee and the holders of the Secured Obligations for all costs and expenses, including adjustors' and attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and, second, the remainder of such proceeds shall be applied, at Mortgagee's option, in payment (without premium or penalty) of all or any part of the Secured Obligations, in the order and manner determined by Mortgagee (provided that to the extent that any portion of the Secured Obligations shall remain outstanding after such application, such unpaid portion of the Secured Obligations shall continue in full force and effect and Mortgagor shall not be excused from the payment thereof), or to the cure of any then current default hereunder, or to the restoration, replacement or rebuilding, in whole or in part, of the portion of the Premises so damaged, destroyed or lost, provided that any insurance proceeds held by Mortgagee to be applied to the restoration, replacement or rebuilding of the Premises

shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Mortgagor with such provisions and requirements as may reasonably be imposed by Mortgagee. In the event that Mortgagor shall have received or possess all or any portion of the insurance proceeds, Mortgagor, upon demand from Mortgagee, shall pay to Mortgagee an amount equal to the amount so received by Mortgagor, to be applied as Mortgagee shall have the right pursuant to this subsection. Notwithstanding anything herein or at law or in equity to the contrary, no insurance proceeds or payments in lieu thereof paid to Mortgagee shall be deemed trust funds, and Mortgagee shall be entitled to dispose of such proceeds as provided in this Section.

(c) Mortgagor's Rights if No Event of Default. So long as no Event of Default has occurred and is continuing, in the event of a casualty to all or any portion of the Premises in connection with which insurance proceeds shall have been paid, then Mortgagor shall be entitled to collect insurance proceeds therefrom.

(d) Effect on the Secured Obligations. Notwithstanding any loss, damage or destruction referred to in this Section, Mortgagor shall continue to pay and perform the Secured Obligations as provided herein. Any reduction in the Secured Obligations resulting from such application shall be deemed to take effect only on the date of receipt by Mortgagee of such insurance proceeds and application against the Secured Obligations, provided that if prior to the receipt by Mortgagee of such insurance proceeds the Mortgaged Property shall have been sold on foreclosure of this Mortgage, or shall have been transferred by deed in lieu of foreclosure of this Mortgage, Mortgagee shall have the right to receive the same to the extent of any deficiency found to be due upon such sale, with legal interest thereon together with attorneys' fees and disbursements incurred by Mortgagee in connection with the collection thereof.

SECTION 3.09. Condemnation. (a) Mortgagor's Obligations; Proceedings. Mortgagor, promptly upon obtaining knowledge of any pending or threatened institution of any proceedings for the condemnation of the Premises, or of any right of eminent domain which would materially adversely affect the use and operation of the Premises as required hereunder, will notify Mortgagee of the threat or pendency thereof. If an Event of Default shall have occurred and be continuing, Mortgagee may participate in any such proceedings, and Mortgagor from time to time will execute and deliver to Mortgagee all instruments requested by Mortgagee or as may be required to permit such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, and, if an Event of Default shall have occurred and be continuing, (i) shall deliver to Mortgagee copies of all papers served in connection therewith and shall consult and cooperate with Mortgagee, its attorneys and agents, in the carrying on and defense of any such proceedings and (ii) shall not settle any such proceeding without Mortgagee's consent.

(b) Mortgagee's Rights; Application of Awards. At any time after the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right to apply any Awards first, to reimburse Mortgagee and the holders of the Secured Obligations for all costs and expenses, including appraiser and attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and, second, the remainder of such Awards shall be applied, at Mortgagee's option, in payment (without premium or penalty) of all or any part of the Secured Obligations, in the order and manner determined by Mortgagee (provided that to the extent that any portion of the Secured Obligations shall remain outstanding after such application, such unpaid portion of the Secured Obligations shall continue in full force and effect and Mortgagor shall not be excused from the payment thereof), or to the cure of any then current default hereunder, or to the restoration, replacement or rebuilding, in whole or in part, of the portion of the Premises so taken or condemned provided that any Awards held by Mortgagee to be applied to the restoration, replacement or rebuilding of the Premises shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Mortgagor with such provisions and requirements as may reasonably be imposed by Mortgagee. In the event that Mortgagor shall have received all or any portion of such Awards, Mortgagor, upon demand from Mortgagee, shall pay to Mortgagee an amount equal to the amount so received by Mortgagor, to be applied as Mortgagee shall have the right pursuant to this subsection. Notwithstanding anything herein or at law or in equity to the contrary, none of the Awards paid to Mortgagee under this Section shall be deemed trust funds and Mortgagee shall be entitled to dispose of the same as provided in this Section.

(c) Mortgagor's Rights if No Event of Default: Application of Proceeds. So long as no Event of Default has occurred and is continuing, in the event of a condemnation of all or any portion of the Premises in connection with which Awards shall have been paid, then Mortgagor shall be entitled to collect such Award.

(d) Effect on the Secured Obligations. Notwithstanding any condemnation, taking or other proceeding referred to in this Section, Mortgagor shall continue to pay and perform the Secured Obligations as provided herein. Any reduction in the Secured Obligations resulting from such application shall be deemed to take effect only on the date of receipt by Mortgagee of such Awards and application against the Secured Obligations, provided that if prior to the receipt by Mortgagee of such Awards the Mortgaged Property shall have been sold on foreclosure of this Mortgage, or shall have been transferred by deed in lieu of foreclosure of this Mortgage, Mortgagee shall have the right to receive the same to the extent of any deficiency found to be due upon such sale, with legal interest thereon together with attorneys' fees and disbursements incurred by Mortgagee in connection with the collection thereof.

SECTION 3.10. Environmental Disclosure. The Mortgagor hereby certifies that the Mortgaged Property is not "property" as defined by I.C. 13-11-2-174 and therefore no "disclosure document" as defined in I.C. 13-25-3-1 is required in connection with this transaction.

SECTION 3.11. Contest. Notwithstanding anything to the contrary contained herein, Mortgagor shall have the right to contest in good faith and at its own expense the validity or applicability of any duty or obligation described in Section 3.03, the validity of any lien, encumbrance, charge or security referred to in Section 3.06 and any Imposition imposed upon the Premises (a "Contest") by an appropriate legal proceeding which proceeding must operate to prevent the collection of such Impositions or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided, however, that if at any time payment of any Imposition which is the subject of such a Contest shall become necessary to prevent (i) the delivery of a tax deed conveying the Mortgaged Property because of non-payment or (ii) the imposition of any civil or criminal penalty or liability on Mortgagee or the holders of the Secured Obligations, Mortgagor shall pay the same in sufficient time to avoid the delivery of such tax deed or the imposition of any such penalty or liability.

SECTION 3.12. Notice Limiting Amount. Mortgagor covenants that it will not, without the prior written consent of Mortgagee, file of record any notice limiting the maximum principal amount secured by this Mortgage.

SECTION 3.13. Compliance with Environmental Laws. Mortgagor acknowledges that it is responsible for compliance with all Environmental Laws in any and all jurisdictions in which the Mortgagor is or at any time may be doing business or the Mortgaged Property is located.

SECTION 3.14. Permits. Mortgagor has and will maintain all necessary certificates, licenses, authorizations, registrations, permits and/or approvals necessary for the operation, use and occupancy of the Premises, and the conduct of Mortgagor's business at the Premises and, promptly upon request by Mortgagee, Mortgagor shall deliver to Mortgagee copies of all of the same.

SECTION 3.15. Compliance with Applicable Laws. The Premises and the operation, use and occupancy thereof do not and will not violate in any material respect any present or future federal, state, municipal or local laws, ordinances, rules, regulations, requirements, judgments, decrees, determinations, awards or court orders, including all environmental laws and zoning ordinances (collectively, "Applicable Laws"), and Mortgagor shall cause the Premises and the operation, use and occupancy thereof to continue to be in material compliance with all Applicable Laws.

SECTION 3.16. Further Assurances. Mortgagor shall:

(i) at Mortgagor's sole cost and expense and at the request of Mortgagee, (A) promptly correct any defect or error which may be discovered in the contents of this Mortgage or in its execution, acknowledgment or recordation and (B) promptly do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, mortgages, deeds of trust, trust deeds, assignments, estoppel certificates, financing statements and continuations thereof, notices of assignment, transfers, certificates, assurances and other instruments that may be necessary or desirable or that Mortgagee may reasonably request from time to time in order to carry out more effectively the purposes of this Mortgage, to subject to the lien and security interest hereby created any of Mortgagor's properties, rights or interests covered or now or hereafter intended to be covered hereby, to perfect and maintain said lien and security interest, and to better assure, convey, grant, assign, transfer and confirm unto Mortgagee the rights granted or now or hereafter intended to be granted to Mortgagee hereunder or under any other instrument executed in connection with this Mortgage or which Mortgagor may be or become bound to convey, mortgage or assign to Mortgagee in order to carry out the intention or facilitate the performance of the provisions of this Mortgage; and

(ii) at the request of Mortgagee, promptly record and re-record, file and refile and register and re-register this Mortgage, any financing or continuation statements and every other instrument in addition or supplemental to any thereof that shall be required by any present or future law in order to perfect and maintain the validity, effectiveness and priority of this Mortgage and the lien and security interest intended to be created hereby, or to subject after-acquired property of Mortgagor to such lien and security interest, in such manner and places and within such times as may be necessary to accomplish such purposes and to preserve and protect the rights and remedies of Mortgagee. Upon any failure by Mortgagor to do so after request by Mortgagee, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so, which appointment will terminate upon the satisfaction of record of this Mortgage. Mortgagor will furnish to Mortgagee evidence satisfactory to Mortgagee of every such recording, filing or registration. Mortgagee may, at Mortgagor's sole expense, file copies or reproductions of this instrument as financing statements at any time and from time to time at Mortgagee's option without further authorization from Mortgagor.

SECTION 3.17. Subordinate Leases. (a) **Assignment.** Mortgagor hereby absolutely and presently bargains, sells, transfers, assigns and sets over to Mortgagee, as further security for the payment of the Secured Obligations, all of its right, title and interest in and to the Subordinate Leases and the Rents payable thereunder and all rights of Mortgagor thereunder and any and all deposits held as security under the Subordinate Leases, whether before or after foreclosure or during the full period of redemption, if any, and shall, upon demand, deliver to Mortgagee an executed counterpart of each Subordinate Lease. The assignment of the Subordinate Leases and Rents, and of the aforesaid rights with respect thereto, is intended to be and is an absolute present assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. Such assignment and grant shall continue in effect until the Secured Obligations are paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Premises by Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver. Until the occurrence of an Event of Default hereunder, Mortgagor shall be entitled to collect and receive the Rents and agrees to hold the same in trust. Such right of Mortgagor to collect and receive said Rents shall be automatically revoked upon the occurrence and during the continuance of an Event of Default and thereafter Mortgagee shall have the right and authority to exercise any of the rights or remedies referred to or set forth in Article VI. In addition, upon such occurrence and during the continuance of an Event of Default, Mortgagor shall promptly pay to Mortgagee (i) all rent prepayments and security or other deposits paid to Mortgagor pursuant to any lease assigned hereunder and (ii) all charges for services or facilities or for escalation which were paid pursuant to any such lease to the extent allocable to any period from and after such Event of Default. Nothing contained in this Section 3.17 (a) shall be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any

Subordinate Lease or otherwise to impose any obligation on Mortgagee (including any liability under the covenant of quiet enjoyment contained in any Subordinate Lease or under any applicable law in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises), except that Mortgagee shall be accountable for any money actually received pursuant to such assignment. Mortgagor hereby further grants to Mortgagee the right to notify the tenant under any Subordinate Lease of the assignment thereof and, after the occurrence and during the continuance of an Event of Default hereunder (i) to demand that the tenant under any Subordinate Lease pay all amounts due thereunder directly to Mortgagee, (ii) to enter upon and take possession of the Premises for the purpose of collecting the Rents, (iii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof, (iv) to let the Premises, or any part thereof, and (v) to apply the Rents, after payment of all necessary charges and expenses, on account of the Secured Obligations.

(b) Mortgagor's Obligation to Pay Rent. If Mortgagor is not required to surrender possession of the Premises hereunder in the event of any Event of Default, Mortgagor will pay monthly in advance to Mortgagee, on its entry into possession pursuant to Article VI, or to any receiver appointed to collect said Rents, the fair and reasonable rental value for the use and occupation of the Premises or such part thereof as may be in the possession of Mortgagor. Upon a default in any such payment, Mortgagor will vacate and surrender such possession to Mortgagee or such receiver, and, in default thereof, may be evicted by summary or any other available proceedings or actions.

(c) Mortgagor will (i) perform or cause to be performed in all material respects all the lessor's obligations under any Subordinate Lease, (ii) enforce (including the termination and cancellation of any Subordinate Lease, so long as the same is a bona fide enforcement of Mortgagor's right as lessor under any such Subordinate Lease and such termination or cancellation, either by itself or in the aggregate with other terminations and cancellations, will not diminish or impair the security of this Mortgage) the performance by the lessee under its respective Subordinate Lease of all of said lessee's obligations thereunder and (iii) give Mortgagee prompt notice and a copy of any notice of default, Event of Default, termination or cancellation sent or received by Mortgagor; but nothing contained herein shall preclude Mortgagor from modifying, supplementing or amending any existing Subordinate Lease or, subject to subsection (d)(i) hereof, preclude Mortgagor from entering into additional Subordinate Leases which may, from time to time, be modified, supplemented, amended, terminated or canceled by Mortgagor subject to the provisions of subsection (d) below.

(d) (i) Mortgagor will not, without Mortgagee's consent, (1) assign, mortgage, pledge or otherwise transfer, dispose of or encumber, whether by operation of law or otherwise, any Subordinate Lease or the Rents, (2) accept or permit the acceptance of a prepayment of any amounts payable under such Subordinate Lease for more than one month in advance of the due date therefore, or (3) enter into, materially amend or modify, cancel, terminate or accept a surrender of any Subordinate Lease covering a material portion of the Premises.

(ii) Supplementing the provisions of paragraph (i) of this subsection (d), if the lessee under any Subordinate Lease (or any receiver, trustee, custodian or other party who succeeds to the rights of any lessee) rejects or disaffirms such Subordinate Lease pursuant to any Bankruptcy Law, Mortgagor hereby assigns to Mortgagee the proceeds of any claims (including the right to retain or apply any security deposits) that Mortgagor may have against the lessee (or receiver, trustee, custodian or other party who succeeds to the rights of any lessee) and any guarantor of any of the Subordinate Leases, under any one or more of the Subordinate Leases or any guaranty thereof based upon (1) any breach by such lessee of the terms and provisions of the applicable Subordinate Lease (including any claim that Mortgagor may have by reason of a termination, rejection or disaffirmance of such Subordinate Lease pursuant to any Bankruptcy Law), and (2) the use and occupancy of the premises demised thereby, whether or not pursuant to the applicable Subordinate Lease (including any claim for use and occupancy arising under any Bankruptcy Law). Mortgagor, immediately upon obtaining knowledge of any such breach or use by any such lessee, will notify Mortgagee of any such breach or use. Mortgagee shall have the sole right to elect to proceed against such lessee or guarantor as if it were the named lessor thereunder, in Mortgagee's name as agent for

Mortgagor and Mortgagee agrees to cooperate with Mortgagee in such action and shall execute any and all documents required in furtherance of such action.

ARTICLE IV

ADDITIONAL ADVANCES; EXPENSES; INDEMNITY

SECTION 4.01. Additional Advances and Disbursements. (a) Mortgagor agrees that, if Mortgagor shall default in any of its obligations hereunder, then Mortgagee shall have the right after 15 days prior notice to Mortgagor to advance all or any part of amounts owing or to perform any or all required actions. No such advance or performance shall be deemed to have cured such default by Mortgagor or any Event of Default with respect thereto. All sums advanced and all expenses incurred by Mortgagee in connection with such advances or actions, and all other sums advanced or expenses incurred by Mortgagee hereunder or under applicable law (whether required or optional and whether indemnified hereunder or not) shall be part of the Secured Obligations, shall bear interest at the Default Rate and as provided in the Credit Agreement and shall be secured by this Mortgage. Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact to make the payments and effect the performance contemplated by the aforesaid provisions in the name and on behalf of Mortgagor. This appointment, being coupled with an interest, shall be irrevocable until all of the Secured Obligations shall be fully satisfied, paid and performed and Mortgagee shall have no further Secured Obligations.

(b) This Mortgage secures all Secured Obligations of Mortgagor, a portion of which will be constituted by revolving credit indebtedness pursuant to which Mortgagor may borrow, repay and reborrow. This Mortgage secures not only initial advances of such revolving credit indebtedness, but also all future advances of the revolving credit indebtedness and all additional indebtedness, whether direct, indirect, future, contingent or otherwise, connected with or arising out of the Credit Agreement, as the same may hereafter by amended, to the extent of not more than the Maximum Amount.

SECTION 4.02. Other Expenses. Mortgagor will pay or, on demand, reimburse Mortgagee or any holder of the Secured Obligations for the payment of any and all costs or expenses (including attorneys' fees and disbursements) incurred in connection with (i) any default or Event of Default by Mortgagor hereunder, (ii) the exercise or enforcement by or on behalf of Mortgagee or any holder of the Secured Obligations of any of its rights or of Mortgagor's obligations under the Loan Documents or (iii) the granting, administration, enforcement and closing of the transactions contemplated hereunder.

SECTION 4.03. Interest After Default. If any payment due hereunder or under the other Loan Documents is not paid in full when due, whether by acceleration or otherwise, then the same shall bear interest hereunder at the Default Rate, and such interest shall be added to and become a part of the Secured Obligations and shall be secured hereby.

SECTION 4.04. Indemnity. Mortgagor agrees to indemnify and hold harmless Mortgagee, the holders of the Secured Obligations and their respective officers, directors, employees, agents and shareholders (the "indemnified parties") from and against any and all losses, damages, claims, costs and expenses (including attorneys' fees and disbursements) which may be imposed on, incurred by or asserted against any of the indemnified parties in connection with any transaction in any way connected with the Mortgaged Property or the Credit Agreement, except to the extent any such loss, damage, claim, cost or expense is the result of the willful misconduct or gross negligence of the indemnified party. Any amount payable under this Section shall be deemed a demand obligation, shall be added to and become a part of the Secured Obligations, shall bear interest at the default rate as provided in the Credit Agreement, and shall be secured by this Mortgage.

ARTICLE V

SALE OR TRANSFER OF THE PREMISES

SECTION 5.01. Continuous Ownership. Mortgagor acknowledges that the continuous ownership of the Mortgaged Property by Mortgagor, except as otherwise expressly permitted in Section 2.12(b) of the Credit Agreement, is of a material nature to the transaction hereinabove described and Mortgagee's agreement to create the Secured Obligations. Without Mortgagee's prior written consent, Mortgagor will not, whether voluntarily or involuntarily (other than as result of transfer described in Section 3.09 herein), (a) sell, grant, convey, assign or otherwise transfer, by operation of law or otherwise, (b) permit to be the subject of any transaction described in clause (a) above, (c) enter into an agreement for any transaction described in clause (a) above, or (d) grant an option which or take any action which pursuant to the terms of any agreement to which Mortgagor is a party may result in any transaction described in clause (a) above of, the Mortgaged Property, or any legal, beneficial or equitable interest therein (the foregoing, collectively or severally, "Transfer"), other than any specific Transfers expressly permitted by Section 2.12(b) of the Credit Agreement. The provisions of this Section shall apply to each and every such Transfer of all or any portion of the Mortgaged Property or any legal or equitable interest therein, unless Mortgagee has consented to any previous Transfer of all or any portion of the Mortgaged Property or any legal or equitable interest therein.

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ARTICLE VI

DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default. The occurrence of an "Event of Default" under the Credit Agreement shall be an Event of Default hereunder and upon acceleration of the indebtedness evidenced by the Credit Agreement, all Secured Obligations shall immediately become due and payable without further notice to Mortgagor.

SECTION 6.02. Remedies. Upon the occurrence of any one or more Events of Default, Mortgagee may, in addition to any rights or remedies available to it hereunder or under the other Loan Documents and to the extent permitted by applicable law, take such action personally or by its agents or attorneys, with or without entry, and without notice, demand, presentment or protest (each and all of which are hereby waived), as it deems necessary or advisable to protect and enforce its rights and remedies against Mortgagor and in and to the Mortgaged Property, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting its other rights or remedies:

- (a) institute a proceeding or proceedings, judicial or otherwise, for the complete or partial foreclosure of this Mortgage under any applicable provision of law; or
- (b) sell the Mortgaged Property, and all estate, right, title, interest, claim and demand of Mortgagor therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and/or personal property, and at such time and place and upon such terms as it may deem expedient, or as may be required by applicable law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Mortgaged Property; or
- (c) institute an action, suit or proceeding in equity for the specific performance of any of the provisions contained in the Loan Documents; or

(d) apply for the appointment of a receiver, custodian, trustee, liquidator or conservator of the Mortgaged Property, to be vested with the fullest powers permitted under applicable law, as a matter of right and without regard to, or the necessity to disprove, the adequacy of the security for the Secured Obligations or the solvency of Mortgagor or any other person liable for the payment of the Secured Obligations, and Mortgagor and each other person so liable waives or shall be deemed to have waived such necessity and consents or shall be deemed to have consented to such appointment; or

(e) enter upon the Premises and exclude Mortgagor and its agents and servants wholly therefrom, without liability for trespass, damages or otherwise, and take possession of all books, records and accounts relating thereto and all other Mortgaged Property, and Mortgagor agrees to surrender possession of the Mortgaged Property and of such books, records and accounts to Mortgagee on demand after the happening of any Event of Default; and having and holding the same may use, operate, manage, preserve, control and otherwise deal therewith and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers, without interference from Mortgagor (including, without limitation, (i) entering into such contracts and taking such other action as Mortgagee deems appropriate to complete any construction on the Land, and in connection with any such action Mortgagee may modify plans and specifications as Mortgagee deems appropriate; (ii) making, canceling, enforcing or modifying leases; (iii) obtaining and evicting tenants; (iv) fixing or modifying rents; (v) conducting the business of Mortgagor in its own name or in the name of Mortgagor; (vi) using any and all of Mortgagor's properties and facilities relating to the Premises; (vii) dealing with Mortgagor's creditors, debtors, tenants, lessees, agents, employees and other Persons (as defined in the Credit Agreement) having any relationship whatsoever with Mortgagor, and (viii) altering or amending any contracts between them, in any manner Mortgagee may determine); and upon each such entry and from time to time thereafter may, at the expense of Mortgagor and the Mortgaged Property, without interference by Mortgagor and as Mortgagee may deem advisable, (i) insure or reinsure the Premises, (ii) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon and (iii) in every such case in connection with the foregoing have the right to exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, either in Mortgagor's name or otherwise; or

(f) with or without the entrance upon the Premises, collect, receive, sue for and recover in its own name all Rents and cash collateral derived from the Mortgaged Property, and after deducting therefrom all costs, expenses and liabilities of every character incurred by Mortgagee in collecting the same and in operating, managing, preserving and controlling the Mortgaged Property, and otherwise in exercising Mortgagee's rights under subsection (e) of this Section, including all amounts necessary to pay Impositions, insurance premiums and other charges in connection with the Premises, as well as compensation for the services of Mortgagee and their respective attorneys, agents and employees, to apply the remainder as provided in Section 6.05; or

(g) release any portion of the Mortgaged Property for such consideration as Mortgagee may require without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Secured Obligations shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release and applied to the Secured Obligations, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder; or

(h) take all actions permitted under the Uniform Commercial Code in effect in the jurisdiction in which the Mortgaged Property is located; or

(i) take any other action, or pursue any other right or remedy, as Mortgagee may have under applicable law, and Mortgagor does hereby grant the same to Mortgagee.

In the event that Mortgagee shall exercise any of the rights or remedies set forth in subsections (e) and (f) of this Section, Mortgagee shall not be deemed to have entered upon or taken possession of the Mortgaged Property except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose, nor shall it be deemed a beneficiary or mortgagee in possession by reason of such entry or taking possession. Mortgagee shall not be liable to account for any action taken pursuant to any such exercise other than for Rents actually received by Mortgagee, nor liable for any loss sustained by Mortgagor resulting from any failure to let the Premises, or from any other act or omission of Mortgagee except to the extent such loss is caused by the willful misconduct or bad faith of Mortgagee.

SECTION 6.03. Rights Pertaining to Sales. Subject to the provisions or other requirements of law, and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the Mortgaged Property under or by virtue of this Article VI, whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

- (a) Mortgagee may conduct any number of sales from time to time. The power of sale set forth in Section 6.02(c) hereof shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Mortgagee's opinion, until the Secured Obligations shall have been paid in full.
- (b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice. Without limiting the foregoing, in case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings have been discontinued or abandoned for any such reason or shall have been determined adversely to Mortgagee, then in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken.
- (c) After each sale, Mortgagee or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Mortgagor in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as herein provided. Mortgagee is hereby appointed the true and lawful attorney-in-fact of Mortgagor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Mortgagor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Mortgagor, if requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or such purchaser or purchasers all such instruments as may be advisable, in Mortgagee's judgment, for the purposes as may be designated in such request.
- (d) Any and all statements of fact or other recitals made in any of the instruments referred to in subsection (c) of this Section given by Mortgagee as to nonpayment of the Secured Obligations, or as to the occurrence of any Event of Default, or as to Mortgagee having declared all or any of the Secured Obligations to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the property or rights to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagor or Mortgagee shall be taken as conclusive and binding against all persons as to evidence of the truth of the facts so stated and recited. Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale so held, including the posting of notices and the conduct of sale.

(e) The receipt of Mortgagee for the purchase money paid at any such sale, or the receipt of any other person authorized to receive the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no such purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Mortgage or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Mortgagor to the fullest extent permitted by applicable law.

(g) Upon any such sale or sales, Mortgagee may bid for and acquire the Mortgaged Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Secured Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder, and any other sums which Mortgagee is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.

(h) In the event that Mortgagor, or any person claiming by, through or under Mortgagor, shall transfer or refuse or fail to surrender possession of the Mortgaged Property after any sale thereof, then Mortgagor, or such person, shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of forcible entry and unlawful detainer proceedings, or subject to any other right or remedy available hereunder or under applicable law.

(i) Upon any such sale, it shall not be necessary for Mortgagee or any public officer acting under execution or order of court to have present or constructively in its possession any of the Mortgaged Property.

(j) In the event a foreclosure hereunder shall be commenced by Mortgagee, Mortgagee may at any time before the sale of the Mortgaged Property abandon the sale, and may institute suit for the collection of the Secured Obligations and for the foreclosure of this Mortgage, or in the event that Mortgagee should institute a suit for collection of the Secured Obligations, and for the foreclosure of this Mortgage, Mortgagee may at any time before the entry of final judgment in said suit dismiss the same and require Mortgagee to sell the Mortgaged Property in accordance with the provisions of this Mortgage.

SECTION 6.04. Expenses. In any proceeding, judicial or otherwise, to foreclose this Mortgage or enforce any other remedy of Mortgagee under the Loan Documents, there shall be allowed and included as an addition to and a part of the Secured Obligations in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred in connection with the exercise by Mortgagee of any of its rights and remedies provided or referred to in Section 6.02, or any comparable provision of any other Loan Document, together with interest thereon at the rate and as provided in the Credit Agreement, and the same shall be part of the Secured Obligations and shall be secured by this Mortgage.

SECTION 6.05. Application of Proceeds. The purchase money, proceeds or avails of any sale referred to in Section 6.02, together with any other sums which may be held by Mortgagee hereunder, whether under the provisions of this Article VI or otherwise, shall, except as herein expressly provided to the contrary, be applied as follows:

First: To the payment of the costs and expenses of any such sale, including compensation to Mortgagee, their agents and counsel, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee hereunder, together with interest thereon as provided herein, and all Impositions and other charges, except any Impositions or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment in full of the monetary Secured Obligations (including principal, interest, premium and fees) in such order as Mortgagee may elect.

Third: To the payment of any other sums secured hereunder or required to be paid by Mortgagor pursuant to any provision of the Loan Documents.

Fourth: To the extent permitted by applicable law, to be set aside by Mortgagee as adequate security in its judgment for the payment of sums which would have been paid by application under clauses **First** through **Third** above to Mortgagee, arising out of an obligation or liability with respect to which Mortgagor has agreed to indemnify Mortgagee, but which sums are not yet due and payable or liquidated.

Fifth: To the payment of any withholding tax requirements of the Foreign Investment in Real Property Tax Act of 1980, as amended.

Sixth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

SECTION 6.06. Additional Provisions as to Remedies. (a) No delay or omission by Mortgagee to exercise any right or remedy hereunder upon any default or Event of Default shall impair such exercise, or be construed to be a waiver of any such default or Event of Default.

(b) The failure, refusal or waiver (by consent, waiver or otherwise) of Mortgagee to assert any right or remedy hereunder upon any default or Event of Default or other occurrence shall not be construed as waiving such right or remedy upon any other or subsequent default or Event of Default or other occurrence.

(c) Mortgagee shall have no obligation to pursue any rights or remedies it may have under any other agreement prior to pursuing its rights or remedies hereunder or under the other Loan Documents.

(d) Acceptance of any payment after the occurrence of any default or Event of Default shall not be deemed a waiver or a cure of such default or Event of Default, and acceptance of any payment less than any amount then due shall be deemed an acceptance on account only.

(e) In the event that Mortgagee shall have proceeded to enforce any right or remedy hereunder by foreclosure, sale, entry or otherwise, and such proceeding shall be discontinued, abandoned or determined adversely for any reason, then Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property, subject to the lien hereof.

(f) Each right of Mortgagee provided for in this Mortgage shall be cumulative and shall be in addition to every other right provided for in this Mortgage or now or hereafter existing at law or in equity, by statute or otherwise, and the exercise by Mortgagee of any one or more of such rights shall not preclude the simultaneous or later exercise by Mortgagee of any other such right.

SECTION 6.07. Waiver of Rights and Defenses. To the full extent Mortgagor may lawfully do so, Mortgagor agrees with Mortgagee as follows:

(a) Mortgagor will not, at any time, insist on, plead, claim or take the benefit or advantage of any statute or rule of law now or hereafter in force providing for any appraisal, valuation, stay, extension, moratorium, redemption or reinstatement, or of any statute of limitations, and Mortgagor, for itself and its heirs, devisees, representatives, successors and assigns, and for any and all Persons ever claiming an interest in the Mortgaged Property (other than Mortgagee), hereby, to the extent permitted by applicable law, waives and releases all rights of redemption, reinstatement, valuation, appraisal, and notice of intention to mature or declare due the whole of the Secured Obligations and all rights to a marshaling of the assets of Mortgagor, including the Mortgaged Property, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created hereunder.

(b) Mortgagor shall not have or assert any right under any statute or rule of law pertaining to any of the matters set forth in subsection (a) of this Section, to the administration of estates of decedents or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Mortgagee hereunder, including the rights of Mortgagee hereunder to a sale of the Mortgaged Property for the collection of the Secured Obligations without any prior or different resort for collection, or to the payment of the Secured Obligations out of the proceeds of sale of the Mortgaged Property in preference to any other Person.

(c) If any statute or rule of law referred to in this Section 6.07 and now in force, of which Mortgagor or any of its representatives, successors or assigns and such other Persons claiming any interest in the Property might take advantage despite this Section 6.07, shall hereafter be repealed or cease to be in force, such statute or rule of law shall not thereafter be deemed to preclude the application of this Section 6.07.

(d) Mortgagor shall not be relieved of its obligation to pay the Secured Obligations at the time and in the manner provided in the Loan Documents, nor shall the lien or priority of this Mortgage or any other Loan Document be impaired by any of the following actions, non-actions or indulgences by Mortgagee, each of which actions, non-actions or indulgences Mortgagee may, in its discretion, take or refrain from taking:

(i) any failure or refusal by Mortgagee to comply with any request by Mortgagor (A) to consent to any action by Mortgagor or (B) to take any action to foreclose this Mortgage or otherwise enforce any of the provisions of the Loan Documents;

(ii) any release, regardless of consideration, of the whole or any part of the Property or any other security for the Secured Obligations, or any Person liable for payment of the Secured Obligations;

(iii) any waiver by Mortgagee of compliance by Mortgagor with any provision of the Loan Documents, or consent by Mortgagee to the performance by Mortgagor of any action which would otherwise be prohibited thereunder, or to the failure by Mortgagor to take any action which would otherwise be required thereunder; and

(iv) any agreement or stipulation between Mortgagee and Mortgagor, or, with or without Mortgagor's consent, between Mortgagee and any subsequent owner or owners of the Mortgaged Property or any other security for the Secured Obligations, renewing, extending or modifying the time of payment or the terms of the Loan Documents (including a modification of any interest rate), and in any such event Mortgagor shall continue to be obligated to pay the Secured Obligations at the time and in the manner provided in the Loan Documents, as so renewed, extended or modified, unless expressly released and discharged by Mortgagee.

(e) Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Property, Mortgagee may release any Person at any time liable for the payment of the Secured Obligations or any portion thereof or any part of the security held for the Secured Obligations and may extend the time of payment or otherwise modify the terms of the Loan Documents, including a modification of the interest rates payable on the principal balance of the Notes without in any manner impairing or affecting this Mortgage or the lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Secured Obligations over any such subordinate lien, encumbrance, right, title or interest. Mortgagee may resort for the payment of the Secured Obligations to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take or cause to be taken action to recover the Secured Obligations, or any portion thereof, or to enforce any provision of the Loan Documents without prejudice to the right of Mortgagee thereafter to foreclose or cause to be foreclosed this Mortgage. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law or equity. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

(f) Mortgagor hereby waives any defense to the recovery by Mortgagee hereunder against Mortgagor or the Mortgaged Property of any deficiency after a nonjudicial sale. Without limiting the foregoing, Mortgagor waives any defense arising out of any such nonjudicial sale even though such sale operates to impair or extinguish any right of reimbursement or subrogation or any other right or remedy of Mortgagor against Borrower or any subsidiary of Borrower or against any collateral security.

ARTICLE VII

RELEASE OF LIEN

SECTION 7.01. Release of Lien. If all of the Secured Obligations shall be fully satisfied, paid and performed, then and in that event only all rights and obligations hereunder shall terminate. In such event Mortgagee shall, at the request of Mortgagor, deliver to Mortgagor, in recordable form, all such documents as shall be necessary to release the Mortgaged Property from the liens, security interests, conveyances and assignments created or evidenced hereby.

ARTICLE VIII

ADDITIONAL PROVISIONS

SECTION 8.01. Provisions as to Payments, Advances. To the extent that any part of the Secured Obligations is used to pay indebtedness secured by any Permitted Encumbrance or other outstanding lien, security interest, charge or prior encumbrance against the Mortgaged Property or to pay in whole or in part the purchase price therefor, Mortgagee shall be subrogated to any and all rights, security interests and liens held by any owner or holder of the same, whether or not the same are released. Mortgagor agrees that, in consideration of such payment by Mortgagee, effective upon such payment Mortgagor shall and hereby does waive and release all demands, defenses and causes of action for offsets and payments with respect to the same.

SECTION 8.02. Separability. If all or any portion of any provision of this Mortgage or any other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, 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.

SECTION 8.03. Notices. Any notice, demand, consent, approval, direction, agreement or other communication (any "Notice") required or permitted hereunder shall be in writing and shall be validly given if delivered in accordance with Section 8.02 of the Credit Agreement to the parties hereto at the addresses set forth above.

SECTION 8.04. Successors in Interest. In the event that ownership of the Mortgaged Property becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage or the Secured Obligations in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the Secured Obligations or being deemed a consent to such vesting.

SECTION 8.05. Continuation of Lease. (a) Upon the foreclosure of the lien created hereby on the Mortgaged Property, as herein provided, any leases then existing shall not be destroyed or terminated as a result of such foreclosure unless Mortgagee or any purchaser at a foreclosure sale shall so elect by notice to the lessee in question.

(b) If both the lessor's and the lessee's interest under any lease which constitutes a part of the Premises shall at any time become vested in any one person, this Mortgage and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee hereunder as to each separate estate.

SECTION 8.06. Applicable Law. This Mortgage shall be governed by, and construed in accordance with, the internal law of the State in which the Mortgaged Property is located without regard to principles of conflicts of laws, except that the internal laws of the State of New York (without regard to principles of conflicts of laws) shall govern (i) those terms and conditions contained in the Credit Agreement which are incorporated by reference herein and (ii) the resolution of issues arising under the Credit Agreement to the extent that such resolution is necessary to the interpretation of this Mortgage.

SECTION 8.07. Sole Discretion of Mortgagee. (a) Whenever Mortgagee's judgment, consent or approval is required hereunder for any matter, or either shall have an option or election hereunder, such judgment, the decision whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Mortgagee.

(b) Notwithstanding anything contained herein to the contrary, in the event that Mortgagee fails or refuses to grant consent or approval when required hereunder for any matter, the parties agree that the remedy of specific performance shall be the sole remedy of Mortgagor with respect to such actions and Mortgagor hereby waives all claims for damages with respect thereto.

SECTION 8.08. Provisions as to Covenants and Agreements. All of Mortgagor's covenants and agreements hereunder shall run with the land and time is of the essence with respect thereto.

SECTION 8.09. Matters to Be in Writing. This Mortgage cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.

SECTION 8.10. Submission to Jurisdiction. Without limiting the right of Mortgagee to bring any action or proceeding against the undersigned or its property arising out of or relating to the Secured Obligations (an "Action") in the courts of other jurisdictions, Mortgagor hereby irrevocably submits to the jurisdiction of the state court or Federal court in each jurisdiction in which the Mortgaged Property is located, and Mortgagor hereby irrevocably agrees that any Action may be heard and determined in such state or federal court. Mortgagor hereby irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of any Action in the jurisdiction. Mortgagor hereby irrevocably agrees that the summons and complaint or any other process in any Action in any jurisdiction may be served by mailing to any of the addresses set forth herein or by hand delivery to a person of suitable age and discretion at any such address. Such service will be complete on the date such process is so mailed or delivered.

SECTION 8.11. Construction of Provisions. The following rules of construction shall be applicable for all purposes of this Mortgage and all documents or instruments supplemental hereto, unless the context otherwise requires:

- Document is NOT CONFIDENTIAL. This document is the property of the Lake County Recorder!**
- STOP**
- (a) All references herein to numbered Articles or Sections or to lettered Exhibits are references to the Articles and Sections hereof and the Exhibits annexed to this Mortgage, unless expressly otherwise designated in context. All Article, Section and Exhibit captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Mortgage.
- (b) The terms "include", "including" and similar terms shall be construed as if followed by the phrase "without being limited to".
- (c) The terms "Land", "Improvements", "Equipment", "Mortgaged Property" and "Premises" shall be construed as if followed by the phrase "or any part thereof".
- (d) The term "Secured Obligations" shall be construed as if followed by the phrase "or any other sums secured hereby, or any part thereof".
- (e) Words of masculine, feminine or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa.
- (f) The term "person" shall include natural persons, firms, partnerships, corporations and any other public and private legal entities.
- (g) The term "provisions", when used with respect hereto or to any other document or instrument, shall be construed as if preceded by the phrase "terms, covenants, agreements, requirements, conditions and/or".
- (h) The cover page of and all recitals set forth in, and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage.
- (i) All obligations of Mortgagor hereunder shall be performed and satisfied by or on behalf of Mortgagor at Mortgagor's sole cost and expense.
- (j) The term "lease" shall mean "tenancy, subtenancy, lease or sublease", the term "lessor" shall mean "landlord, sublandlord, lessor and sublessor" and the term "lessee" shall mean "tenant, subtenant, lessee and sublessee".

(k) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof.

SECTION 8.12. Successors and Assigns. The provisions hereof shall be binding upon Mortgagor and the heirs, devisees, representatives, successors and permitted assigns of Mortgagor, including successors in interest of Mortgagor in and to all or any part of the Mortgaged Property, and shall inure to the benefit of Mortgagee, the holders of the Secured Obligations and their respective heirs, successors, legal representatives, substitutes and assigns. Where two or more persons have executed this Mortgage, the obligations of such persons shall be joint and several.

SECTION 8.13. Counterparts. This Mortgage may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

SECTION 8.14. Agency. Mortgagee may deal with the Mortgaged Property and may issue any release to be given hereunder pursuant to Section 6.01 or 7.01 or grant any consent or approval or take any other action required or permitted hereunder, without reference to or the approval of the holders of the Secured Obligations and any third party (including any title insurance company issuing a title insurance policy, or a commitment to issue a title insurance policy, in connection with the Mortgaged Property) may conclusively rely on the due authority of Mortgagee to do any or all of the foregoing.

SECTION 8.15. The Security Agreement and Other Loan Documents. In the event that a valid and enforceable security interest has been created in any of the Mortgaged Property under the terms of the Security Agreement (as defined in the Credit Agreement) and the terms of the Security Agreement are inconsistent with the terms of this Mortgage, then with respect to such Mortgaged Property, the terms of the Security Agreement shall be controlling in the case of Equipment and proceeds of insurance policies and the terms of this Mortgage shall be controlling in all other cases. With respect to any other Loan Document (other than the Credit Agreement), in the event of a conflict between the provisions hereof and the provisions of such other Loan Document as they relate to the Mortgaged Property, the provisions of this Mortgage shall control. In the event of a conflict between the provisions hereof and the provisions of the Credit Agreement, the provisions of the Credit Agreement shall control.

SECTION 8.16. No Merger. The assignments by Mortgagor in favor of Mortgagee herein contained and the obligations of Mortgagor hereunder to (i) maintain the insurance required to be maintained by Mortgagor hereunder and to pay all premiums in respect thereof, (ii) to pay all Impositions, (iii) reimburse Mortgagee for all sums expended by Mortgagee pursuant to this Mortgage to protect the lien of this Mortgage and to prevent waste to the Mortgaged Property and (iv) to pay interest at the Default Rate on the aforementioned sums from the date due until paid in full shall not be merged into any judgment of foreclosure and shall survive any such judgment.

SECTION 8.17. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE DO EACH HEREBY KNOWINGLY, VOLUNTARILY, UNCONDITIONALLY, IRREVOCABLY AND INTENTIONALLY FOREVER WAIVE THE RIGHT TO A TRIAL BY JURY IN EVERY JURISDICTION IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY MORTGAGOR OR MORTGAGEE AGAINST THE OTHER OR THEIR RESPECTIVE SUCCESSOR OR ASSIGNS IN RESPECT OF ANY MATTER ARISING OUT OF, UNDER OR CONNECTED WITH (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS MORTGAGE OR THE OBLIGATIONS SECURED HEREBY, AND ANY CLAIMS ASSERTING THAT THE NOTE OR THE LOAN SECURED HEREBY WAS FRAUDULENTLY INDUCED OR OTHERWISE VOID OR VOIDABLE) IN ANY MANNER WHATSOEVER THIS MORTGAGE, THE MORTGAGED PROPERTY, OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN

DOCUMENTS. THIS WAIVER OF THE RIGHT TO A JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE TO ADVANCE THE SUMS MAKE THE LOAN SECURED HEREBY.

SECTION 8.18. WAIVER OF MORTGAGOR'S RIGHTS. BY EXECUTION OF THIS MORTGAGE, MORTGAGOR, EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF MORTGAGEE TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE LOAN DOCUMENTS AND ANY OTHER INDEBTEDNESS AND THE POWER OF ATTORNEY GIVEN HEREIN TO MORTGAGEE TO SELL THE PREMISES BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY MORTGAGOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED BE GIVEN UNDER THE PROVISIONS OF THIS MORTGAGE; (B) WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS OF THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (1) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY MORTGAGEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO MORTGAGEE, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS MORTGAGE AND (2) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; AND (C) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR LOAN TRANSACTION AND THAT THIS MORTGAGE IS VALID AND ENFORCEABLE BY MORTGAGEE AGAINST MORTGAGOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

SECTION 8.19. Cross-Collateralization. Mortgagor acknowledges that the Secured Obligations (in whole or in part) are secured by, among other things, this Mortgage together with additional mortgages, deeds of trust or similar security instruments (together with their respective documents securing or evidencing the Secured Obligations, the "Additional Mortgages") and encumbering the additional properties (the "Additional Properties"). Upon the occurrence of an Event of Default, or as otherwise provided in the Loan Documents, Mortgagee shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Mortgage and any or all of the Additional Mortgages whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Secured Obligations or the portion of the Secured Obligations subject to the respective Additional Mortgages, as the case may be, and the lien and the security interest created by the Additional Mortgages shall continue in full force and effect without loss of priority as a lien and security instrument securing the payment of that portion of the Secured Obligations then due and payable but still outstanding. Mortgagor acknowledges and agrees that the Mortgaged Property and the Additional Properties are located in one or more States and counties, and therefore Mortgagee shall be permitted, to enforce payment of the Secured Obligations and the performance of any term, covenant or condition of the Guaranties, this Mortgage or the Additional Mortgages and exercise any and all rights and remedies under the Security Agreements (as defined in the Credit Agreement) this Mortgage or the Additional Mortgages, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Mortgagee, in its sole discretion, in any one or more of the States or counties in which the Mortgaged Property or any of the Additional Properties is located. Neither the acceptance of this Mortgage, the Loan Documents or the Additional Mortgages nor the enforcement thereof in any one State or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of this Mortgage, the Loan Documents or any Additional Mortgages through one or more additional proceedings in that State or county or in any other State or county.

ARTICLE IX

FIXTURE FILING

SECTION 9.01. Fixture Filing. A portion of the Mortgaged Property is or is to become fixtures upon the Premises. To the extent permitted by applicable law, Mortgagor covenants and agrees that the filing of this Mortgage in the real estate records of the county in which the Mortgaged Property is located shall also operate from the time of filing as a fixture filing with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein. For such purpose, the following information is set forth:

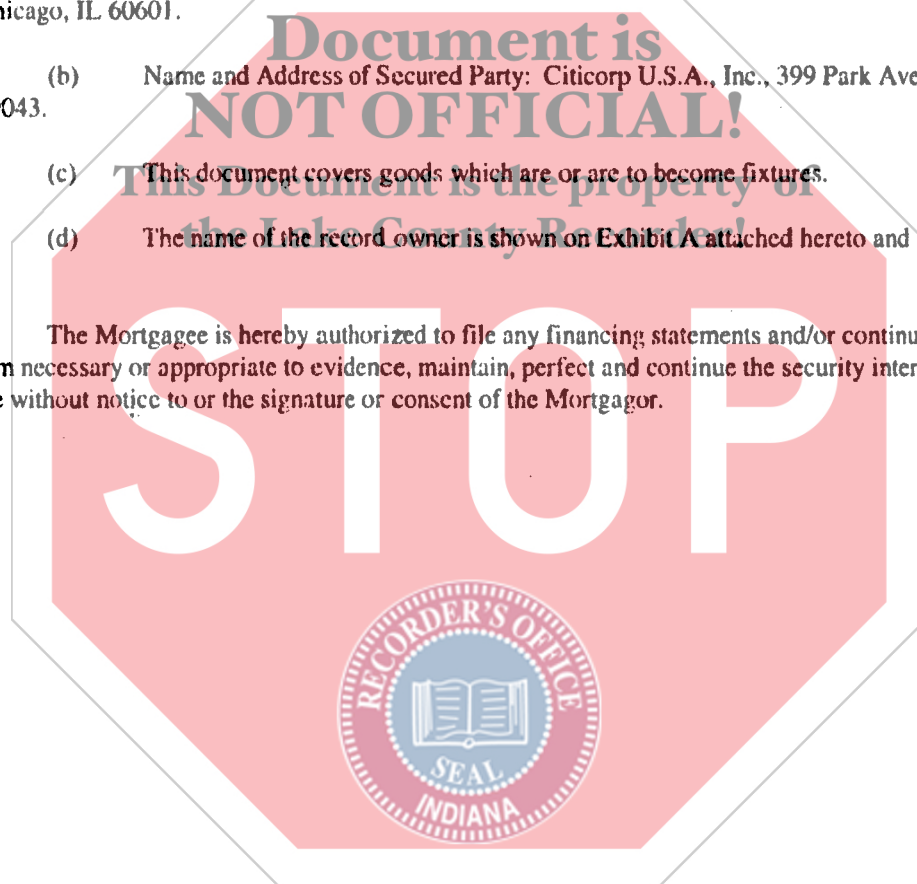
(a) Name and Address of Debtor: Amsted Industries Incorporated, 205 N. Michigan Avenue, 44th Floor, Chicago, IL 60601.

(b) Name and Address of Secured Party: Citicorp U.S.A., Inc., 399 Park Avenue, New York, New York 10043.

(c) This document covers goods which are or are to become fixtures.

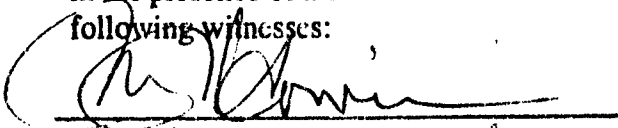
(d) The name of the record owner is shown on Exhibit A attached hereto and made a part hereof.

The Mortgagee is hereby authorized to file any financing statements and/or continuation statements as it may deem necessary or appropriate to evidence, maintain, perfect and continue the security interests granted by this Mortgage without notice to or the signature or consent of the Mortgagor.



IN WITNESS WHEREOF, the undersigned has executed this Mortgage the day first set forth above.

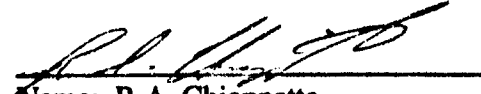
Signed, sealed and delivered
in the presence of the
following witnesses:



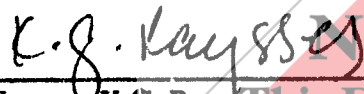
Name: M.J. Hower
Address: 205 N. Michigan Avenue
Chicago, IL 60601

AMSTED INDUSTRIES
INCORPORATED

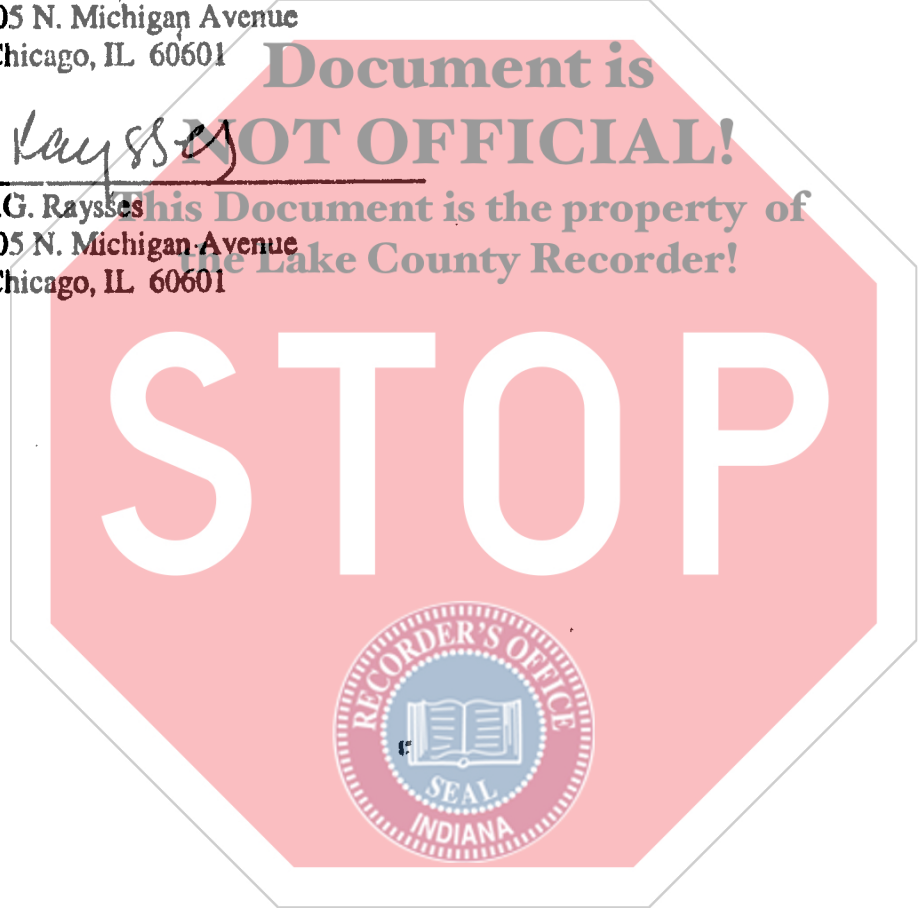
By:



Name: R.A. Chiappetta
Title: Vice President



Name: K.G. Raysses
Address: 205 N. Michigan Avenue
Chicago, IL 60601



STATE OF Illinois
COUNTY OF Cook

SS:

Before me, a Notary Public in and for the State of Illinois, personally appeared R.A. Chiappetta, the Vice President of Amsted Industries Incorporated, who, being first duly sworn, acknowledged the execution of the foregoing Mortgage and Security Agreement for and on behalf of said Amsted Industries Incorporated.

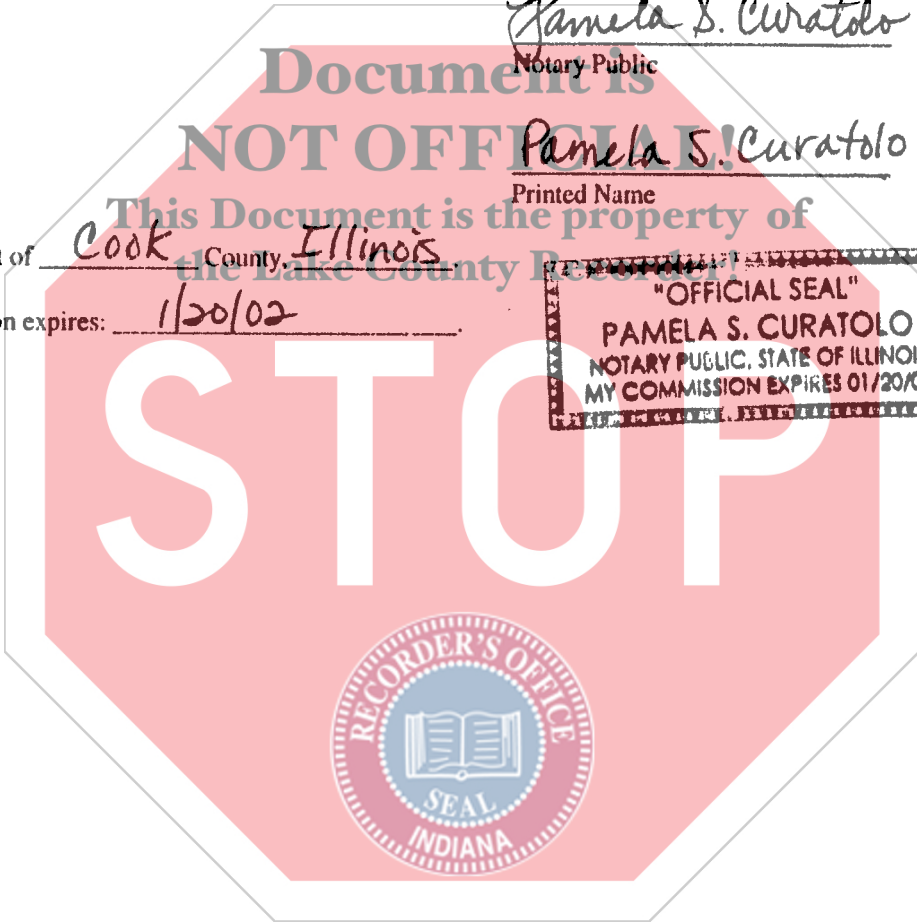
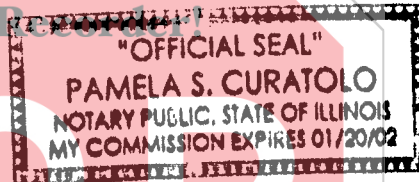
Witness my hand and Notarial Seal this 13 day of October, 2000.

Pamela S. Curatolo
Notary Public

Pamela S. Curatolo
Printed Name

I am a resident of Cook County, Illinois.

My commission expires: 1/20/02



This instrument was prepared in consultation
with counsel admitted to practice in the state
in which the property is located by:

Sheri P. Chromow, Esq.
Shearman & Sterling
599 Lexington Avenue
New York, New York 10022

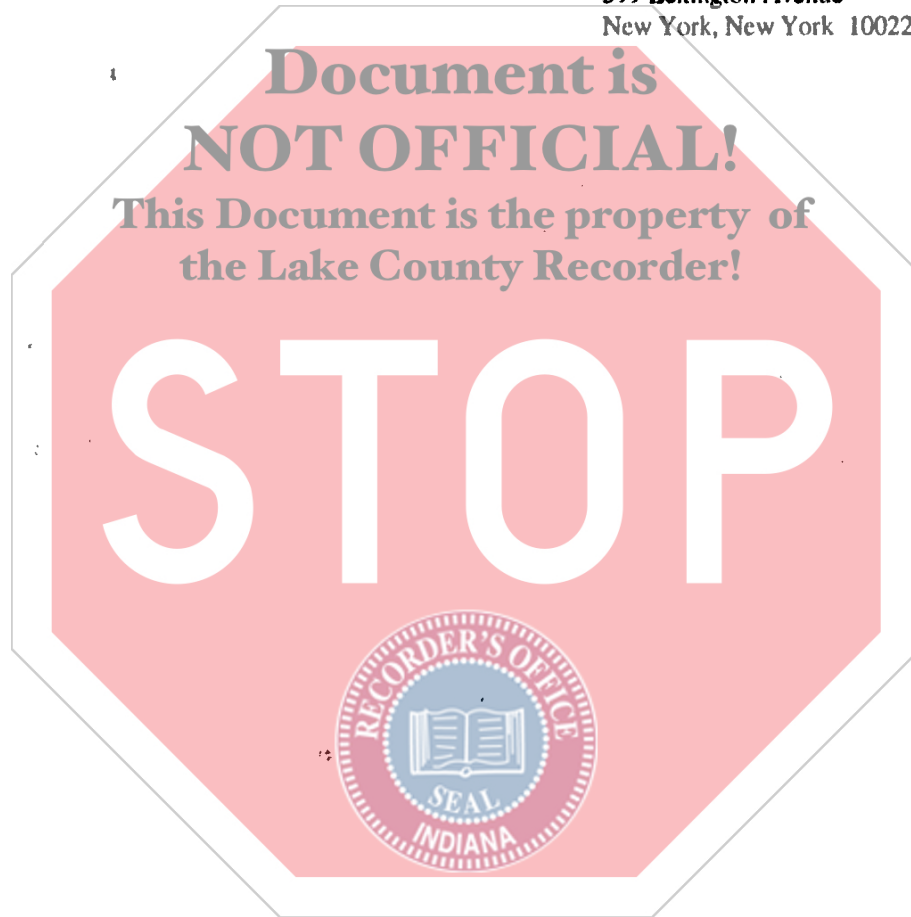


EXHIBIT A

Description of Land



2. AMSTED INDUSTRIES INC. 4831 HOHMAN AVENUE, HAMMOND IN 46327

The land referred to in this Commitment is described as follows:

Parcel 1: A parcel of land in Section 25, Township 37 North, Range 10 West and Section 36, Township 37 North, Range 10 West of the 2nd Principal Meridian lying East of Hohman Avenue, South of Hoffman Street and West of Sohl Avenue, more particularly described as follows to wit: Commencing at the East right-of-way line of Hohman Avenue and the intersection of the South line of Section 25, Township 37 North, Range 10 West, thence North 22 degrees 36 minutes 00 seconds East and a distance of 99.38 feet to the place of beginning; thence South 22 degrees 52 minutes 07 seconds East a distance of 14.2 feet; thence South 66 degrees 24 minutes 00 seconds East a distance of 347.20 feet; thence South 67 degrees 44 minutes 00 seconds East a distance of 116.10 feet; thence South 71 degrees 59 minutes 50 seconds East on an arc 37.83 feet concave to the Southwest whose radii are 3131.74 feet and interior angle is 00 degrees 41 minutes 32 seconds; thence South 74 degrees 10 minutes 24 seconds East on an arc 291.62 feet which is concave to the Southwest whose radii are 1992.08 feet and interior angle is 08 degrees 23 minutes 15 seconds; thence South 78 degrees 24 minutes 00 seconds East a distance of 330.19 feet; thence North 13 degrees 18 minutes 49 seconds West on an arc 2.50 feet which is concave to the Southwest whose radii are 985.37 feet and interior angle is 00 degrees 08 minutes 30 seconds; thence North 06 degrees 48 minutes 39 seconds West on an arc 234.38 feet concave to the Southwest whose radii are 985.37 feet and interior angle is 13 degrees 37 minutes 42 seconds; thence North 00 degrees 10 minutes 00 seconds East a distance of 24.64 feet; thence North 89 degrees 50 minutes 00 seconds West a distance of 18.99 feet; thence North 67 degrees 06 minutes 40 seconds West a distance of 316.73 feet; thence North 53 degrees 39 minutes 20 seconds West on an arc 141.80 feet concave to the Southwest whose radii are 603.85 feet and interior angle is 13 degrees 27 minutes 20 seconds; thence South 56 degrees 47 minutes 31 seconds West a distance of 18.99 feet; thence North 33 degrees 12 minutes 29 seconds West on an arc 26.77 feet concave to the Southwest whose radii are 44.69 feet and interior angle is 34 degrees 18 minutes 51 seconds; thence North 67 degrees 31 minutes 20 seconds West a distance of 373.90 feet; thence North 00 degrees 04 minutes 00 seconds East a distance of 113.15 feet; thence North 89 degrees 28 minutes 00 seconds West a distance of 134.0 feet; thence South 00 degrees 04 minutes 00 seconds West a distance of 115.0 feet; thence South 22 degrees 36 minutes 00 seconds West a distance of 286.31 feet to the point of beginning, all in Lake County, Indiana.

Parcel 2: A parcel of land in Section 36, Township 37 North, Range 10 West of the Second Principal Meridian lying East of Hohman Avenue, South of Hoffman Street, West of Sohl Avenue and North of the Grand Calumet River more particularly described as follows to wit: Commencing at the East right of way line of Hohman Avenue and the intersection of the North line of Section 36, Township 37 North, Range 10 West; thence South 22 degrees 35 minutes 00 seconds West a distance of 86.14 feet to the point of beginning; thence South 58 degrees 52 minutes 13 seconds East a distance of 397.92 feet; thence South 61 degrees 39 minutes 19 seconds East a distance of 132.13 feet; thence North 22 degrees 36 minutes 00 seconds East a distance of 188.11 feet; thence North 68 degrees 27 minutes 58 seconds West on an arc 164.51 feet concave to the Southwest whose radii are 2291.09 feet and interior angle is 08 degrees 13 minutes 08 seconds; thence North 60 degrees 39 minutes 17 seconds West on an arc 134.91 feet concave to the Southwest whose radii are 670.60 feet and interior angle is 11 degrees 31 minutes

36 seconds; thence North 67 degrees 01 minutes 54 seconds West a distance of 115.43 feet; thence North 61 degrees 33 minutes 35 seconds West on an arc 112.48 feet concave to the Southwest whose radii are 480.46 feet and interior angle is 13 degrees 24 minutes 50 seconds; thence South 22 degrees 36 minutes 00 seconds West a distance of 140.79 feet to the point of beginning, all in Lake County, Indiana.

Parcel 3: A parcel of land in Section 36, Township 37 North, Range 10 West of the Second Principal Meridian, more particularly described as follows:

Commencing at the intersection of the East right of way line of Hohman Avenue and the North line of Section 36, Township 37 North, Range 10 West; thence South 22 degrees 36 minutes 00 seconds West 86.14 feet; thence South 58 degrees 52 minutes 13 seconds East 397.92 feet; thence South 61 degrees 39 minutes 19 seconds East 132.13 feet to the place of beginning; thence South 61 degrees 39 minutes 19 seconds East 369.51 feet; thence South 64 degrees 19 minutes 57 seconds East 382.05 feet; thence South 63 degrees 42 minutes 47 seconds East 118.52 feet; thence North 08 degrees 32 minutes 15 seconds West on an arc 366.89 feet which is concave to the Northeast whose radii are 925.37 feet and interior angle is 22 degrees 43 minutes 00 seconds; thence North 19 degrees 53 minutes 45 seconds West 12.74 feet; thence North 17 degrees 45 minutes 15 seconds West on an arc 73.66 feet which is concave to the Southwest whose radii are 985.37 feet and interior angle is 4 degrees 17 minutes 00 seconds; thence North 79 degrees 30 minutes 41 seconds West 146.37 feet; thence South 80 degrees 25 minutes 30 seconds West 37.17 feet; thence North 72 degrees 30 minutes 13 seconds West 10.41 feet; thence North 77 degrees 21 minutes 58 seconds West on an arc 44.76 feet which is concave to the Northeast whose radii are 263.71 feet and interior angle is 9 degrees 43 minutes 30 seconds; thence North 81 degrees 39 minutes 19 seconds West 50.01 feet; thence North 82 degrees 13 minutes 24 seconds West 92.91 feet; thence North 76 degrees 43 minutes 15 seconds West on an arc 107.14 feet which is concave to the Southeast whose radii are 1206.74 feet and interior angle is 05 degrees 05 minutes 20 seconds; thence North 72 degrees 21 minutes 28 seconds West on an arc 145.78 feet which is concave to the Southeast whose radii are 2291.09 feet and interior angle is 3 degrees 38 minutes 44 seconds; thence South 22 degrees 36 minutes 00 seconds East 188.11 to the place of beginning, except the following described tract:

Beginning North 63 degrees 42 minutes 47 seconds West a distance of 100.45 feet West of the Westerly right of way line of Sohl Avenue; thence North 07 degrees 47 minutes 47 seconds East 120.24 feet; thence North 32 degrees 21 minutes 13 seconds West on an arc 388.20 feet which is concave to the Northeast whose radii are 276.99 feet; and interior angle is 80 degrees 18 minutes 00 seconds; thence South 80 degrees 25 minutes 30 seconds East 37.17 feet; thence South 28 degrees 44 minutes 19 seconds East on an arc 376.24 feet which is concave to the Northeast whose radii are 294.99 feet and interior angle is 73 degrees 04 minutes 34 seconds; thence South 07 degrees 47 minutes 47 seconds West 126.26 feet; thence North 63 degrees 42 minutes 47 seconds West a distance of 18.98 feet to the place of beginning, in Lake County, Indiana.

EXHIBIT B

Permitted Encumbrances

1. The lien of this Mortgage.
2. The encumbrances listed on Schedule B of Title Insurance Policy # 620003584
dated as of Aug. 2, 2002, 2000, issued by Chicago Title Insurance Co.

