

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2003 108970

2003 OCT -9 AM 10:38

MORRIS W. CARTER  
RECORDER

# MORTGAGE

LOAN ID: 1301289945

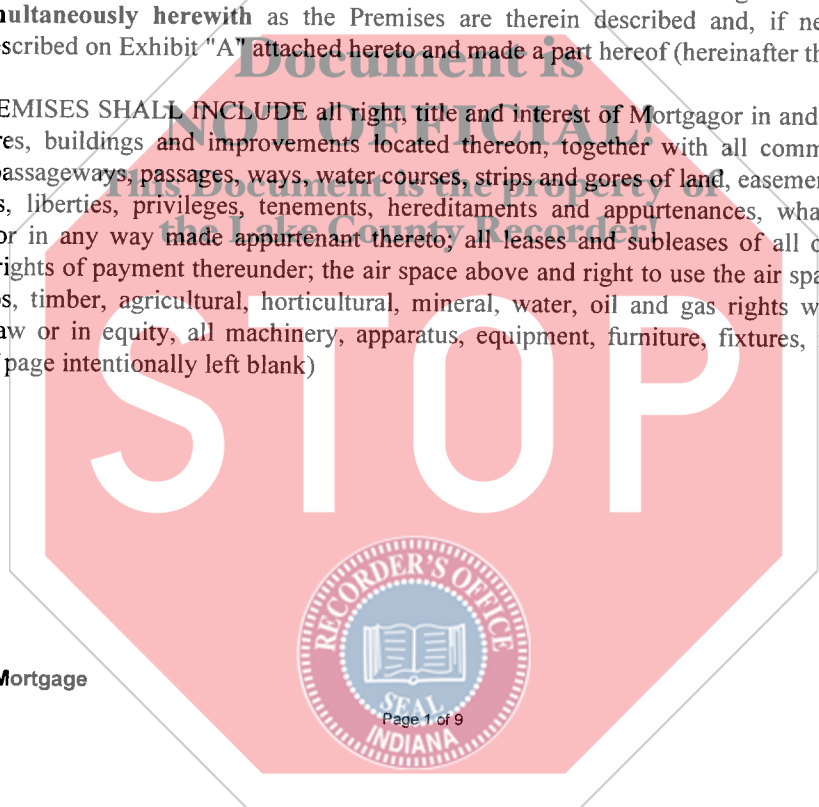
Asg # 2003-108971

**THIS MORTGAGE** made this **June 11, 2003**, between **John R. Desmaretz** with an address of **4914 Sandy Beach Drive, Crown Point, IN 46307** (each jointly and severally, if more than one person, and hereinafter referred to as "Mortgagor") and **American Business Credit, Inc.**, the mortgagee ("Lender"), with a mailing address of **111 Presidential Blvd., Ste. 127, Bala Cynwyd, PA 19004**.

In consideration for and to secure payment and performance to Lender of all of the Obligations, as that term is defined in subparagraphs (a) through (d) below, Mortgagor has granted, bargained, sold, conveyed, released, assigned, transferred, pledged, mortgaged and confirmed, and by these presents does hereby grant, bargain, sell, convey, release, assign, transfer, pledge, mortgage and confirm unto Lender, its successors and assigns, forever:

ALL THAT CERTAIN real estate situated in the County of **Lake**, State of Indiana, known and designated as **513 North Main Street, City of Crown Point, Tax Parcel: 23-09-0320-0054** conveyed to Mortgagor by Deed dated **June 11, 2003**, duly recorded in the office for recording of deeds in said County of **Lake** **simultaneously herewith** as the Premises are therein described and, if necessary, as more particularly described on Exhibit "A" attached hereto and made a part hereof (hereinafter the "Premises");

THE PREMISES SHALL INCLUDE all right, title and interest of Mortgagor in and to all present and future structures, buildings and improvements located thereon, together with all common areas, streets, lanes, alleys, passageways, passages, ways, water courses, strips and gores of land, easements, estates, rights, titles, interests, liberties, privileges, tenements, hereditaments and appurtenances, whatsoever thereunto belonging to or in any way made appurtenant thereto, all leases and subleases of all or any part of the Premises and rights of payment thereunder; the air space above and right to use the air space above, and the drainage, crops, timber, agricultural, horticultural, mineral, water, oil and gas rights with respect to the Premises, at law or in equity, all machinery, apparatus, equipment, furniture, fixtures, including without (Remainder of page intentionally left blank)



Indiana Surety Mortgage  
ABC5IN (0110)

Quality Title Inc

26.00  
K/M  
CK# 6757

**LOAN ID: 1301289945**

limitation, trade fixtures, goods, appliances and other property of every kind, nature and description whatsoever, now or hereafter located in, on or about, or attached to or used in connection with, the Premises, together with any and all replacements and substitutions thereof and all accessories, parts or accessions thereto now or hereafter owned by the Mortgagor or in which Mortgagor has or may obtain any interest, and all awards, damages, payments and/or claims arising out of any eminent domain or condemnation proceeding, damage or injury to any part of the Premises and/or any buildings, structures or improvements thereon (the Premises, together with all of the foregoing, is hereinafter referred to as the "Mortgaged Property");

TO HAVE AND TO HOLD the Mortgaged Property hereby conveyed or mentioned and intended so to be, unto Lender, to its own use, forever.

PROVIDED, ALWAYS, that this instrument is upon the express condition that, if Mortgagor promptly satisfies all of the Obligations, as hereinafter defined, in accordance with the provisions of the Loan Documents, as hereinafter defined, and this Mortgage, at the times and in the manner specified, without deduction, fraud or delay, and if all the agreements, conditions, covenants, provisions and stipulations contained therein and in this Mortgage and in the Loan Documents are fully performed and complied with, then this Mortgage and the estate hereby granted shall cease, determine and become void.

As used in this Mortgage, "Obligations" means any or all of the following:

(a) The indebtedness, liabilities and obligations of Mortgagor to Lender arising out of a certain surety agreement dated **June 11, 2003**, as now or hereafter as amended ("Surety Agreement") pursuant to which the Mortgagor became unconditional surety for the Obligations [as such term is defined in the certain promissory note of **Naughty Grapes, Inc. d/b/a Naughty Grapes Wine Bar & Bistro** (the "Obligor") in the original principal amount of **One Hundred Eighty Five Thousand And Zero/100 DOLLARS (\$185,000.00)** dated **June 11, 2003**, which, as now or hereafter amended, being hereafter referred to as the "Note") plus all amounts due under the Note and all other liabilities of Mortgagor to Lender described in any agreements, documents and instruments executed in connection therewith (all of which, now and as amended, being hereafter collectively referred to as the "Loan Documents");

(b) All other existing and future indebtedness, liabilities and obligations of Obligor to Lender whether sole, joint or several, matured or unmatured, direct or indirect, absolute or contingent, of any nature whatsoever, and out of what ever transactions arising, including, without limitation, any debt, liability or obligation owing from Mortgagor to others which Lender may obtain by assignment or otherwise, excepting only any indebtedness constituting "Consumer Credit" as that term is defined in Regulation Z, 12 C.F.R. § 226.1 et seq.;

(c) All amounts advanced by Lender for or on behalf of Mortgagor (i) to pay taxes, charges, assessments or other amounts assessed against the Mortgaged Property not paid by Mortgagor when due, or (ii) to keep the Mortgaged Property continuously insured if Mortgagor fails to maintain all insurance coverage required hereunder; and the costs of curing any Event of Default set forth in the Note, this Mortgage or in the Loan Documents which the Lender elects to cure; and

(d) The reasonable costs and expenses, including attorneys' fees incurred by Lender in preserving, protecting and/or enforcing any of the obligations of Mortgagor specified in (a), (b) and (c) above.

MORTGAGOR REPRESENTS, COVENANTS AND WARRANTS to and with Lender that, until the Obligations secured hereby are fully paid and performed: (Remainder of page intentionally left blank)

1. **Payment and Performance.** Mortgagor shall pay to Lender in accordance with the terms of the Note, the Surety Agreement, this Mortgage and the Loan Documents, the principal, interest and other sums therein and herein set forth and shall perform and comply with all the agreements, conditions, covenants, provisions and stipulations of the Note, this Mortgage and the Loan Documents.
2. **Warranty of Title.** Mortgagor warrants that Mortgagor possesses good and marketable fee simple title to the Premises, and has all power and authority to mortgage the Mortgaged Property to Lender and to grant a security interest therein in the manner set forth herein.
3. **Maintenance of Mortgaged Property.** Mortgagor shall keep and maintain or cause to be kept and maintained the Mortgaged Property, including all buildings and improvements now or at any time hereafter erected on the Premises and the sidewalks and curbs abutting them, in good order and condition and repair and shall abstain from and shall not permit the commission of waste of, in or about the Mortgaged Property.
4. **Insurance.** Mortgagor shall keep the Mortgaged Property continuously insured against fire and such other hazards in such amounts as may be required by Lender from time to time. All policies of insurance shall be issued by companies acceptable to Lender, and shall contain a standard mortgagee clause, in favor of Lender, and shall provide for at least thirty (30) days prior written notice of cancellation or reduction in coverage to Lender, all of which policies are hereby assigned to Lender as additional security for the Obligations. If Lender shall become the owner of the Mortgaged Property or any part thereof by foreclosure or otherwise, such policies, including all right, title and interest of Mortgagor thereunder, shall become the property of Lender. At least thirty (30) days prior to the expiration date of any insurance policy, Mortgagor shall deliver to Lender satisfactory evidence of the renewal of such insurance and the payment of all premiums therefor. In the event of any loss, Mortgagor will give immediate notice thereof to Lender and Lender may make proof of loss on behalf of Mortgagor. Each insurance company concerned is hereby authorized and directed to make payments under any such policies directly to Lender, instead of Lender and Mortgagor jointly, and Mortgagor hereby irrevocably appoints Lender as Mortgagor's attorney-in-fact to endorse in Mortgagor's name any checks or drafts issued thereon. Lender shall have the right to retain and apply the proceeds of any such insurance, at its reasonable election, to reduction of the Obligations, or to restoration and repair of the property damaged.
5. **Taxes and Other Charges.** Mortgagor shall pay when due and before interest or penalties shall accrue thereon, all taxes, charges, assessments and other governmental charges of any kind whatsoever including electricity, water and sewer rents, levied or assessed against the Mortgaged Property and will deliver receipts therefore to Lender upon request, and shall pay when due all amounts secured by any prior lien or the Mortgaged Property.
6. **Inspection.** Lender and any persons authorized by Lender shall have the right at any time, upon reasonable notice to Mortgagor, to enter the Premises at a reasonable hour to inspect and photograph its condition and state of repair.
7. **Declaration of No Set-Off.** Within one (1) week after request to do so by Lender, Mortgagor shall certify to Lender or to any assignee or proposed assignee of this Mortgage, in writing duly acknowledged, the amount of principal, interest and other charges then owing on the Obligations and on any obligations secured by prior liens upon the Mortgaged Property, if any, and whether there are any set-offs or defenses against them.
8. **Required Notices.** Mortgagor shall notify Lender promptly of the occurrence of any of the following:
  - (a) a fire or other casualty causing damage to all or any part of the Mortgaged Property;
  - (b) receipt of notice of eminent domain proceedings or condemnation of all or any part of the Mortgaged Property and Mortgagor hereby grants Lender an irrevocable power of attorney to appear and act for and on behalf of Mortgagor in any and all such proceedings;
  - (c) receipt of notice from any governmental authority relating to the structure, use or occupancy of the Mortgaged Property or any real property adjacent to the Mortgaged Property;
  - (d) a change in the occupancy of the Mortgaged Property;

- (e) receipt of any notice from the holder of any lien or security interest in all or any part of the Mortgaged Property; or
- (f) commencement of any litigation affecting the Mortgaged Property.

**9. Mortgage and Liens.** Without the prior written consent of Lender, Mortgagor will not create or permit to be created or filed against the Mortgaged Property, any mortgage lien or other lien or security interest superior or inferior to the lien of this Mortgage, or in any way modify or amend any prior lien on the Mortgaged Property.

**10. No Transfer.** Without the prior written consent of Lender, Mortgagor will not cause nor permit any transfer of legal or equitable title to, beneficial interest in, or any estate or interest in the Mortgaged Property, or any part thereof, voluntarily or by operation of law, whether by sale, exchange, lease, conveyance, merger, consolidation, the granting of any lien or security interest or otherwise, or any agreement to do any of the foregoing.

**11. Events of Default.** Any one or more of the following events shall constitute an Event of Default hereunder:

- (a) Failure of Mortgagor or Obligor to make any payment of principal or interest or any other sum promptly when due on any of the Obligations;
- (b) Mortgagor's or Obligor's nonperformance of or noncompliance in any material respect with any other agreements, conditions, covenants, provisions or stipulations contained in the Note, the Surety Agreement, this Mortgage or any of the Loan Documents;
- (c) Any signature, statement, representation or warranty made in the Note, the Surety Agreement, this Mortgage, or any of the Loan Documents, or in any financial statement, certificate, application, request or other document furnished to Lender by Mortgagor at any time prior to, now or hereafter, is not true and correct in any material respect when made or delivered;
- (d) The occurrence of any default under the Note, the Surety Agreement or any of the Loan Documents or under any other agreement binding upon the Mortgagor or Obligor or their property;
- (e) The commencement by or against any Mortgagor or Obligor of any proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, the making by any Mortgagor or Obligor of any general assignment for the benefit of creditors, the failure of any Mortgagor or Obligor generally to pay debts as such debts become due, or the taking of action by any Mortgagor or Obligor in furtherance of any of the foregoing; or
- (f) The transfer or sale of any part of the Mortgaged Property or any interest therein, without the Lender's prior written consent.

**12. Remedies of Lender.**

- (a) Upon the occurrence of any Event of Default, the entire unpaid balance of the Obligations, including interest as has accrued and as may thereafter accrue thereon, and all other sums secured by this Mortgage, shall become immediately due and payable, at the option of Lender, without notice to or demand upon Mortgagor or any other person, or upon such notice as may be required by or permissible under law; and thereupon, in addition to all other rights or remedies available under the Note, the Surety Agreement or any of the Loan Documents, or at law or in equity, Lender may:
  - (i) forthwith bring an action of mortgage foreclosure hereon, and may proceed to judgment and execution to recover the balance due on the Obligations and any other sums that may be due thereunder, including attorneys fees, costs of suit and costs of sale to the extent, if any, provided in the Obligations and permitted by law; and
  - (ii) enter into possession of Premises, with or without legal action, lease the same, collect all rents and profits therefrom and, after deducting all costs of collection and administrative expenses, apply the net rents and profits to the payment of taxes and other necessary maintenance and operational costs (including agents' fees and attorneys' fees) or on account of the Obligations, in such order and in such amounts as Lender in its sole discretion may elect, and Lender shall

be liable to account only for rents and profits actually received by Lender; and

- (b) Any real estate sold hereunder or on any other judicial proceedings, may be sold in one parcel as an entity or in such parcels and in such order and manner as Lender, in its sole discretion, may elect.

**13. Rights and Remedies Cumulative.** The rights and remedies of Lender as provided in the Note, the Surety Agreement, this Mortgage and the Loan Documents shall be cumulative and concurrent, may be pursued separately, successively or together against Mortgagor, against the Mortgaged Property, or any other person liable hereunder or thereunder, at the sole discretion of Lender, and may be exercised as often as occasion thereof shall arise. The failure of Lender to exercise any right or remedy on any one or more occasions shall in no event be construed as a waiver or release thereof.

**14. Mortgagor's Waivers.** Mortgagor hereby waives and releases to the extent permitted by law:

- (a) All errors, defects and imperfections in any proceeding instituted by Lender under the Note, the Surety Agreement or this Mortgage, and/or the Loan Documents;
- (b) All benefits that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment; and
- (c) Unless specifically required herein, all notices of Mortgagor's default or of Lender's election to exercise, or Lender's actual exercise of any option under the Note, the Surety Agreement or this Mortgage.

**15. Future Advances.** Without limiting any other provisions of this Mortgage, this Mortgage shall also secure additional loans or advances hereafter made by Lender to or on behalf of Obligor in the maximum principal amount of \$ **\$185,000.00** . Nothing contained herein shall impose any obligation on the part of Lender to make any such additional loan(s) to Obligor.

**16. Communications.** All communications required or permitted to be given under this Mortgage, to be effective, shall be in writing, and shall be hand delivered or sent by registered mail, postage prepaid, return receipt requested, addressed to the addresses set forth above or at such other address as the addressee may hereafter designate in writing in the manner herein provided.

**17. Severability.** If for any reason whatsoever any part of this Agreement shall be declared void or invalid, by operation of law or otherwise, in any jurisdiction, then as to such jurisdiction only, such part shall be void and the remaining provisions of this Mortgage shall remain in all other respects valid and enforceable, and such invalidity shall not invalidate or render unenforceable such provision in any other jurisdiction.

**18. Binding Effect - Amendment.** This Mortgage is binding upon and shall inure to the benefit of Mortgagor and Lender, and their respective successors and assigns. This Mortgage may not be changed or amended except by agreement in writing signed by the party against whom enforcement of the change or amendment is sought. This Mortgage contains the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, statements and representations, whether written or oral, with respect thereto.

**19. Applicable Law.** The validity, construction, meaning and effect of the provisions of this Mortgage shall be governed and determined by and under the laws of the State of Indiana.

(Signatures begin on next page)



LOAN ID: 1301289945

AS WITNESS the hand and seal of the Grantor hereto as of the date first above written. This instrument is intended to be a sealed instrument.

*[Handwritten Signature]*

John R. Desmaretz, Individual

[L.S.]

[L.S.]

DO NOT SIGN

\_\_\_\_\_[L.S.]  
DO NOT SIGN

\_\_\_\_\_[L.S.]  
DO NOT SIGN

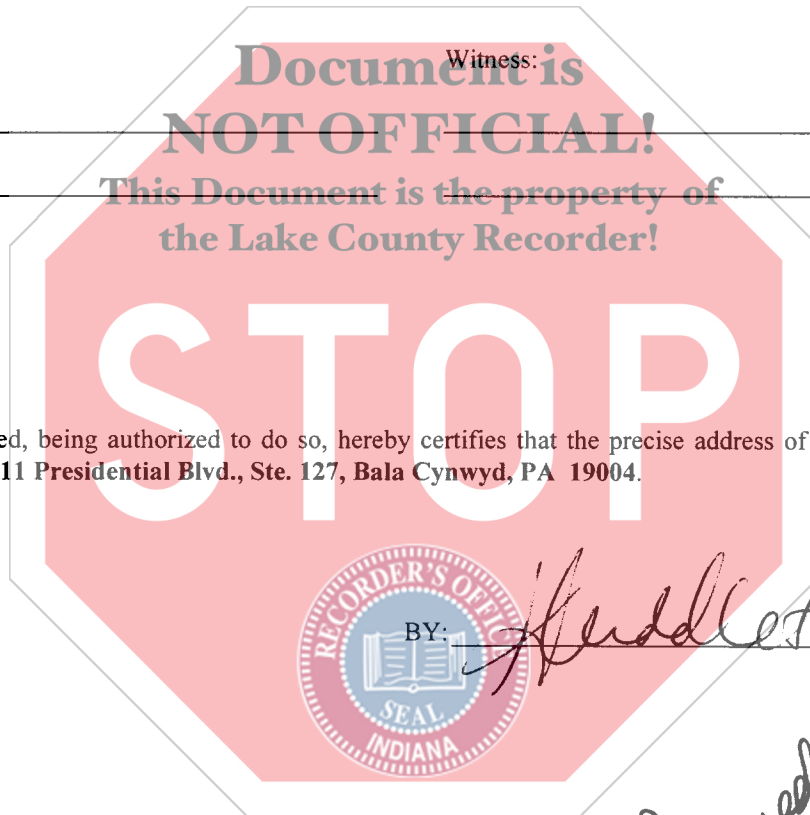
\_\_\_\_\_[L.S.]  
DO NOT SIGN

\_\_\_\_\_[L.S.]  
DO NOT SIGN

Witness:

Witness:

\_\_\_\_\_  
\_\_\_\_\_



The undersigned, being authorized to do so, hereby certifies that the precise address of the within named Mortgagee is 111 Presidential Blvd., Ste. 127, Bala Cynwyd, PA 19004.



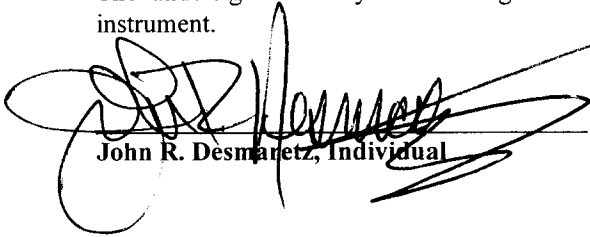
BY:

*[Handwritten Signature]*

*[Handwritten Signature]*

**LOAN ID: 1301289945**

The undersigned hereby acknowledges receipt, without cost, of a true and correct copy of the within instrument.

  
\_\_\_\_\_  
John R. Desmaretz, Individual [L.S.]

\_\_\_\_\_  
[L.S.] **DO NOT SIGN**

\_\_\_\_\_  
[L.S.] **DO NOT SIGN**

\_\_\_\_\_  
[L.S.] **DO NOT SIGN**

\_\_\_\_\_  
[L.S.] **DO NOT SIGN**

\_\_\_\_\_  
[L.S.] **DO NOT SIGN**



**EXHIBIT A**

Description of Premises

**513 North Main Street, City of Crown Point, County of Lake, State of Indiana**

PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 34 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, IN THE CITY OF CROWN POINT, LAKE COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 132 FEET NORTH OF THE INTERSECTION OF THE NORTH LINE OF GOLDSBOROUGH STREET IN RAILROAD ADDITION TO CROWN POINT, EXTENDED WEST, AND THE WEST LINE OF MAIN STREET IN SAID CITY, EXTENDED NORTH; THENCE WEST 160 FEET; THENCE 66 FEET; THENCE EAST 160 FEET TO SAID WEST LINE OF MAIN STREET, EXTENDED NORTH; THENCE SOUTH 66 FEET TO THE POINT OF BEGINNING.





ACKNOWLEDGMENT

STATE OF Indiana :  
 : SS  
COUNTY OF Lake :

On this 11th day of June, 2003 before me, the undersigned, personally appeared  
John R. Desmaretz

known to me or satisfactorily proven to me to be the person(s) whose name(e) is/are subscribed to the within instrument and acknowledged:

that he/she/they executed the same for the purposes therein contained and desire that it be recorded as such;

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires:

