

STATE OF INDIANA
LAKE COUNTY
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MORTGAGE
FILED

Tower Bank & Trust Company
116 East Berry Street
Fort Wayne, IN 46802



**OPEN-END LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES
AND SECURITY AGREEMENT
(Vertical RealEstate, Inc.)**

THIS OPEN-END LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT (the "Mortgage") is made this 1st day of September, 2004, by **VERTICAL REALESTATE, INC.**, an Indiana corporation with an address of 2602 Cass Street, Fort Wayne, Indiana 46808 (the "Mortgagor"), to **Tower Bank & Trust Company**, a national banking association with an address of 116 East Berry Street, Fort Wayne, Indiana, 46802 (the "Mortgagee").

Document is NOT OFFICIAL!

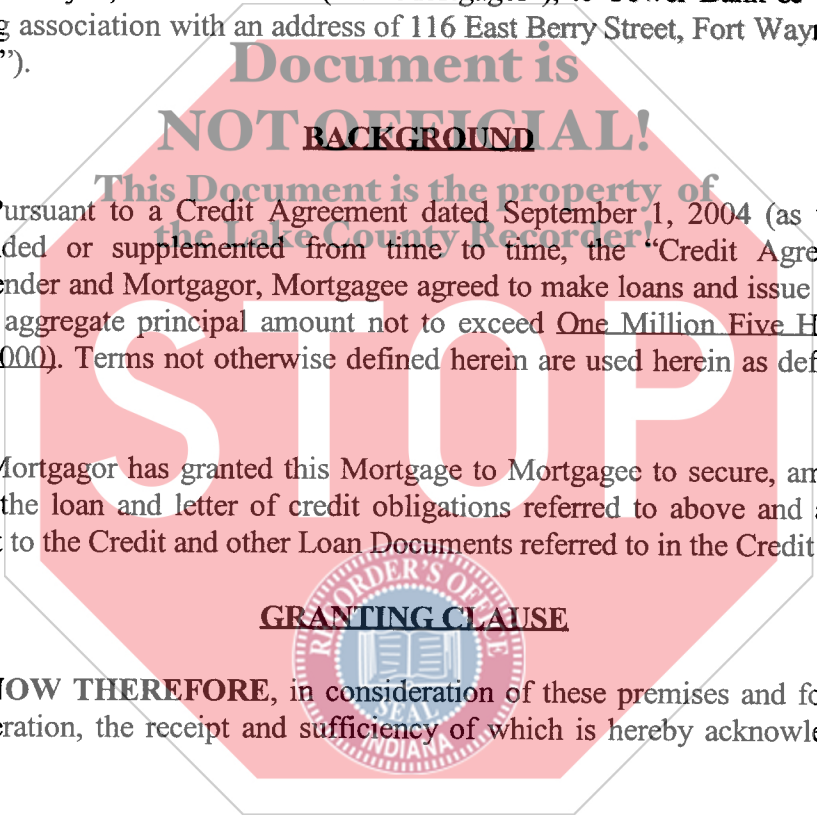
BACKGROUND

Pursuant to a Credit Agreement dated September 1, 2004 (as the same may be modified, amended or supplemented from time to time, the "Credit Agreement") between Mortgagee as Lender and Mortgagor, Mortgagee agreed to make loans and issue letters of credit to Borrower in an aggregate principal amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000). Terms not otherwise defined herein are used herein as defined in the Credit Agreement.

Mortgagor has granted this Mortgage to Mortgagee to secure, among other things, the payment of the loan and letter of credit obligations referred to above and all other amounts payable pursuant to the Credit and other Loan Documents referred to in the Credit Agreement.

GRANTING CLAUSE

NOW THEREFORE, in consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor



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hereby grants, assigns, transfers and conveys to Mortgagee, its successors and assigns, with MORTGAGE COVENANTS, as security for the Obligations (as defined below):

(a) all of the Mortgagor's estate, right, title, interest, claim and demand (whether at law or in equity, in possession or expectancy) in, to and under that certain Lease dated as of December 17, 2003 (as may be amended from time to time, the "Lease") by and between BANK CALUMET, as Trustee under Trust No. P-3552 under date of August 8, 1998 a/k/a CALUMET NATIONAL BANK, as Trustee, under the terms and provisions of that certain written agreement and declaration of trust dated August 8, 1998 and identified as Trust No. P-3552, as landlord (the "Landlord") and the Mortgagor, as lessee, pursuant to which the Mortgagor has leased some or all of the land, improvements and other property referred to in (b), below, which Lease is recorded in the Office of the Recorder of Lake County, Indiana as Document Number 2003-135391.

(b) All of Mortgagor's estate, right, title, interest, claim and demand (whether at law or in equity, in possession or expectancy) in, to and under the lot(s) or piece(s) of ground situate in Lake County, State of Indiana, more specifically described in Exhibit "A" attached hereto and made a part hereof; together with all easements, rights and appurtenances thereto belonging; all the buildings and improvements now or hereafter erected on said land; all fixtures, machinery, equipment, appurtenances and appliances now or hereafter attached to said land or used in connection therewith; all rights and claims to compensation for the taking of title to, possession of or any interest in the premises or any part thereof by exercise of the power of eminent domain; and all leases or subleases covering such land now or hereafter existing, together with all rents, issues and profits, which are hereby assigned to Mortgagee with the right to collect the same; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage.

All of the foregoing premises and property are herein referred to as the "Premises."

In the event Mortgagor acquires the fee title or any other estate, title, or interest in the real estate and property thereon covered by the Lease, this Mortgage shall attach to and cover and be a lien upon the fee title or such other estate, title or interest so acquired, and such fee title or other estate, title or interest shall, without further assignment, mortgage or conveyance, become and be subject to the lien of and covered by this Mortgage.

TO HAVE AND TO HOLD the Premises unto Mortgagee, its successors and assigns, in fee simple, forever.

PROVIDED ALWAYS that if Mortgagor shall observe all the obligations, covenants, conditions and agreements on Mortgagor's part to be performed herein and pay and perform all of the Obligations (as hereinafter defined) in full, then this Mortgage shall terminate.

1. **Obligations Secured.** This Mortgage and the rights in the Premises hereby granted shall secure Mortgagor's obligation to pay or perform the following from time to time:
 - A. All indebtedness, liabilities and obligations of Mortgagor under the Credit Agreement, the Letters of Credit and the Note;
 - B. The outstanding principal balance of the Note, payable to the order of Lender in the maximum principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000) or such lesser amount as has been borrowed by Mortgagor from Lender, together with all interest accruing thereon, being payable in the amounts, at the interest rates and on the dates stipulated in the Credit Agreement;
 - C. Any and all other amounts, liabilities, and obligations for which or for the performance of which Mortgagor may become indebted or obligated under the terms of this Mortgage, the Credit Agreement, the Notes and any other Loan Documents;
 - D. Taxes, assessments, maintenance charges and insurance premiums, costs incurred for the protection of the Premises or the lien of this Mortgage, expenses incurred by Mortgagee by reason of the default of Mortgagor hereunder and any other cost incurred by Mortgagee to protect and preserve the Premises; and
 - E. Any and all renewals, increases, rearrangements, modifications, supplements, restatements and extensions of the foregoing items of indebtedness and obligations.

Each and every item of indebtedness described and included in this Mortgage is intended to be fully secured by the liens, assignments, and security interests created under and by virtue of this

Mortgage; and all such items so secured (now or hereafter existing) are hereinafter collectively called the "Obligations."

2. Covenants and Agreements. Until the Obligations are paid in full, Mortgagor covenants and agrees with the Mortgagee as follows:

A. To make all payments on the Obligations when and where due, to pay all sums now or hereafter payable under the terms of the Obligations and this Mortgage or secured hereby, and to perform promptly and observe in full accordance with their terms all of the agreements and covenants contained in the Obligations, this Mortgage and in the Loan Documents;

B. To perform all of its obligations under the Lease and send to the Mortgagee a copy of any notice relating to default, termination or the like relating to the Lease within one (1) business day after receipt thereof by the Mortgagor. The Mortgagee is hereby granted the right (but not the obligation) to cure any default by the Mortgagor under the Lease;

C. If the Mortgagee shall so request while any Default or Event of Default shall exist under the Credit Agreement and remains uncured, to deposit with the Mortgagee, in trust, each installment of rent due under the Lease, at least five (5) days prior to the date on which the same shall become due and payable under the terms of the Lease, and in such event the Mortgagee shall pay or cause to be paid the amount of such installment received by the Mortgagee from the Mortgagor to Landlord;

D. To execute and deliver to Mortgagee upon request such documents and statements as Mortgagee may require to perfect, protect or extend the lien or priority of this Mortgage on the Premises and to pay all costs of recording or filing such documents or statements in such public offices (including reasonable attorney fees) as Mortgagee may require;

E. To comply with all laws, ordinances and regulations affecting the Premises;

F. Not to use or permit any person to use the Premises for the purposes of treating, producing, handling, transferring, processing, transporting, disposing, storing or otherwise releasing Hazardous Substances in violation of any Environmental Laws or cause or knowingly permit to exist as the result of an intentional or unintentional action or omission on the part of Mortgagor or any other person who occupies the Premises, a Release from, about, under or on the Premises of any Hazardous Substance except in the normal course of the business activities of Mortgagor and in conformity with Environmental Laws;

G. Other than subleases and similar agreements, which Mortgagor enters into in the normal course of business, Mortgagor shall not without the prior written consent in each instance of Mortgagee, which may be withheld in its sole discretion, (i) convey, sell, assign, lease or otherwise transfer any interest of Mortgagor in the Premises or any portion thereof; (ii) pledge, mortgage, hypothecate, place a deed of trust or other lien on or otherwise encumber Mortgagor's interest in the Premises or any portion thereof; (iii) cancel, surrender or terminate the Lease; (iv) amend or modify any of the economic terms of the Lease or any provision relating to the terms of the Lease; (v) assign or sublet any interest in the Lease; (vi) exercise any rights of termination afforded by Section 365(h) of Title 11 of the United States Code (or any successor provisions or acts); or (vii) enter into or permit to be entered into any agreement or arrangement to do any of the foregoing (each of the aforesaid acts referred to in clauses (i) through (vii) above being referred to herein as a "Transfer"). Any conveyance, sale, assignment, lease, pledge, mortgage, hypothecation, encumbrance or transfer deemed to be such by operation of law shall also be deemed to be a Transfer. Any attempted Transfer in violation of this subsection shall be void and of no force or effect;

H. To pay all reasonable costs, fees and expenses (including attorney fees) suffered or incurred by Mortgagee in the enforcement, exercise or defense of the rights and power of Mortgagee hereunder or in the collection of the Obligations;

The Mortgagee may, at Mortgagee's option, but without obligation so to do, make any payment which, under the provisions hereof, is the obligation of Mortgagor and is not paid by the Mortgagor when due; and all amounts so advanced by the Mortgagee shall be repaid by the Mortgagor upon demand, and until repaid may, at the option of the Mortgagee, be added to the

principal of the Obligations hereby secured, bear interest at the highest lawful rate as provided for the in the Obligations and, together with such interest, be a further lien upon the Premises and secured by this Mortgage.

3. Representations and Warranties. Mortgagor represents and warrants to Mortgagee that Mortgagor lawfully owns the leasehold estate in the Premises; that the Lease is in full force and effect and there exists no default nor any event which would, with the giving of notice or passage of time or both, constitute a default under the Lease; and that it has the absolute right to mortgage, grant and convey the Premises to Mortgagee free of the interest of any other person or entities except for any interest presently of record. In addition, Mortgagor confirms each of its representations set forth in the Credit Agreement.

4. Events of Default. The failure to pay any of the Obligations when due (subject to the grace period, if any, in the Credit Agreement) and each other Event of Default referred to in the Credit Agreement shall constitute a default hereunder (each, an "Event of Default").

5. Remedies. In addition to any other rights or remedies under the Credit Agreement or other Loan Documents or otherwise under contract or law, upon the occurrence of an Event of Default, and thereupon Mortgagee may:

- A. Institute an appropriate action(s) or proceeding(s) to foreclose this Mortgage and proceed therein to judgment and execution for the entire amount secured hereby;
- B. Appoint a trustee or receiver for the Premises which trustee or receiver shall have such powers as may be conferred by the appointing authority, it being understood that Mortgagor consents to the broadest authority which such appointing authority may confer;
- C. Take such other action at law or in equity for the enforcement hereof and recovery of sums secured hereby;
- D. Cure any default under the Lease and perform any other obligation which Mortgagor has failed to fulfill and take all steps Mortgagee deems advisable to perform or fulfill such obligation of Mortgagor.

The remedies of Mortgagee as provided herein, or in the Obligations, shall be cumulative and concurrent and may be pursued singly, successively, or together against Mortgagor or the Premises, or both, at the sole discretion of Mortgagee. The waiver of any default or failure to enforce any right or to pursue any remedy at any time, shall not be a waiver of any subsequent default or preclude such enforcement or pursuit at another time.

6. Assignment of Rents. Mortgagor hereby assigns to Mortgagee all leases already in existence and to be created in the future, together with all rents due and to become due under existing or future leases, hereby constituting and appointing Mortgagee the true and lawful attorney of Mortgagor to sue for and collect the same at any time and from time to time when an Event of Default exists hereunder.

7. Security Agreement. This instrument shall also constitute a Security Agreement within the meaning of Uniform Commercial Code of the State of Indiana with respect to all fixtures and proceeds thereof, whether now or hereafter existing, relating to the Premises.

8. Future Advances. This mortgage secures future advances either of an obligatory or a discretionary advance nature. Reference is hereby made to the Loan Documents executed and delivered by Mortgagor and Mortgagee to ascertain whether the future advances are obligatory or discretionary.

9. No Waiver. If Mortgagor sends a written notice to Mortgagee which purports to limit the indebtedness secured by this Mortgage and to release the obligation of the Mortgagee to make any additional advances to Mortgagor, such notices shall be ineffective as to any future advances made: (i) to pay taxes, assessments, maintenance charges and insurance premiums; (ii) to pay costs incurred for the protection of the Premises or the lien of this Mortgage; (iii) to pay expenses incurred by Mortgagee by reason of the default of Mortgagor hereunder; and (iv) any other costs incurred by Mortgagee to protect and preserve the Premises. It is the intention of the parties hereto that any such advances made by Mortgagee or any advance made to and accepted by Mortgagor after any such notice by Mortgagor shall be secured by the lien of this Mortgage on the Premises.

10. Notices. All notices and other communications hereunder shall be given at the time and in the manner specified in the Credit Agreement or, in the alternative, shall be given

in writing and deemed to have been duly given (2) business days after the date on which deposited in the United States mail, registered or certified mail, return receipt requested, postage prepaid; or one (1) business day after delivered to an express courier service guaranteeing overnight delivery; or on the date delivered when delivered in person; in all cases directed to the party to receive the same at the address stated in the caption hereof or at such other address as shall be designated by such party in a written notice to the other complying as to delivery with the terms of this Section.

11. Miscellaneous.

A. This Mortgage shall be binding upon Mortgagor, its successors and assigns, and shall inure to the benefit of Mortgagee, its successors and assigns subject to the restrictions on Transfer as set forth in Section 2(G) hereof.

B. Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

C. In the event of any conflict between the terms of this Mortgage and the terms of the Credit Agreement, the terms of the Credit Agreement shall control.

D. This Mortgage may be executed in any number of counterparts, each of which shall for all purposes be deemed an original, and all of which, taken together, shall constitute but one and the same instrument.

E. This Mortgage shall be governed by the laws of the state in which the Premises is located

12. **WAIVER OF JURY TRIAL. EACH UNDERSIGNED PARTY HEREBY WAIVES, AND MORTGAGEE BY ITS ACCEPTANCE HEREOF THEREBY WAIVES, TRIAL BY JURY IN ANY LEGAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF OR RELATED TO THIS MORTGAGE OR THE RELATIONSHIP ESTABLISHED HEREUNDER. THIS**

PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO ENTER INTO, ACCEPT OR RELY UPON THIS MORTGAGE.

IN WITNESS WHEREOF, the parties have executed this Agreement day, month, and year first above written.

VERTICAL REALESTATE, INC.

By: *Jack Buck*
Name: Jack Buck
Title: President



STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

On this 1st day of September, 2004, before me, a Notary Public authorized to take acknowledgements and proofs in and for the State and County aforesaid, personally appeared Jack Buck, the President of Vertical RealEstate, Inc., an Indiana corporation, and acknowledged that, being duly authorized to do so, he signed and delivered the same as such officer on behalf of the company, by the authority of the company, and that the within instrument is the voluntary act and deed of such company.

Witnesseth my hand and seal.

Laurie A. Smith

_____, Notary Public
A resident of Allen County

My Commission Expires:

4.24-09

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LAURIE A. SMITH
Allen County
My Commission Expires
April 24, 2009

This instrument was prepared by: Bruce O. Boxberger Esq.

Return recorded Mortgage to:

Tower Bank & Trust Company
116 East Berry Street
Fort Wayne, IN 46802

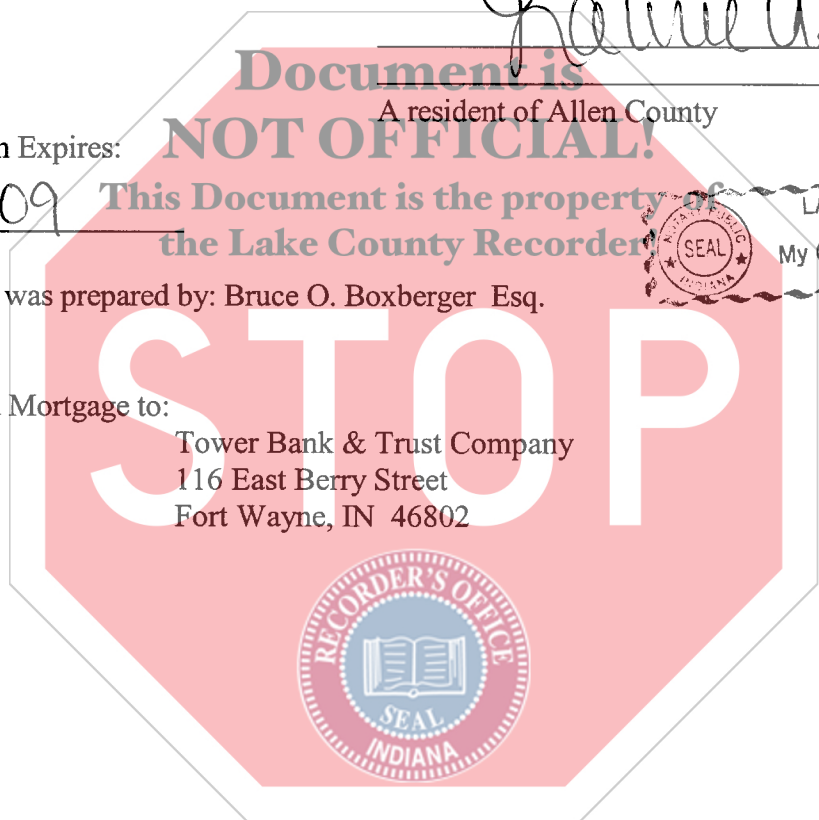


Exhibit A

Legal Description



Highland Tower
2552 Industrial Drive
Highland, IN 46322
Lake County



EXHIBIT A

DESCRIPTION OF LEASE AREA

Part of the West Half of the Northwest Quarter of Section 33, Township 36 North, Range 9 West, Lake County, Indiana, more particularly described as follows:

Commencing at a ½" diameter pipe marking the Southeast corner of real estate described in Document 001027 in the Office of the Recorder of Lake County; thence North 00 degrees 08 minutes 58 seconds West (all bearings in this description are based on Geodetic North) on the East line of said real estate described in Document 001027, a distance of 90.37 feet to the Point of Beginning; thence South 87 degrees 58 minutes 50 seconds West on a line defined by an existing 6 feet high chain link fence, 75.04 feet; thence North 00 degrees 08 minutes 58 seconds West and parallel with said East line, 77.45 feet; thence North 89 degrees 51 minutes 02 seconds East 75.00 feet to said East line of real estate described in Document 001027; thence South 00 degrees 08 minutes 58 seconds East on said East line, 75.00 feet to the Point of Beginning, containing 0.13 acre, more or less and subject to easements and rights of way of record.

DESCRIPTION OF ACCESS AND UTILITY EASEMENT

Part of the West Half of the Northwest Quarter of Section 33, Township 36 North, Range 9 West, Lake County, Indiana, more particularly described as follows:

Commencing at a ½" diameter pipe found at the Southeast corner of real estate described in Document 001027 in the Office of the Recorder of Lake County; thence North 00 degrees 08 minutes 58 seconds West (all bearings in this description are based on Geodetic North) on the East line of said real estate described in Document 001027, a distance of 90.37 feet; thence South 87 degrees 58 minutes 50 seconds West 75.04 feet; thence North 00 degrees 08 minutes 58 seconds West 32.44 feet to the Point of Beginning; thence South 89 degrees 51 minutes 02 seconds West 67.57 feet; thence North 11 degrees 16 minutes 25 seconds West 519.21 feet; thence North 07 degrees 50 minutes 10 seconds East 94.73 feet; thence North 11 degrees 01 minutes 59 seconds West 249.89 feet to the South right of way line of Industrial Drive; thence North 67 degrees 47 minutes 23 seconds East on said South right of way line, 20.39 feet; thence South 11 degrees 01 minutes 59 seconds East 257.17 feet; thence South 07 degrees 50 minutes 10 seconds West 94.69 feet; thence South 11 degrees 16 minutes 25 seconds East 499.40 feet; thence North 89 degrees 51 minutes 02 seconds East 51.12 feet; thence South 00 degrees 08 minutes 58 seconds East 20.00 feet to the Point of Beginning.