

2004 080247

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

SEP 23 2004 9:40

MORTGAGE

<p style="text-align: center;"><b>Mortgagor's Name And Address</b></p> <p>MERCANTILE NATIONAL BANK OF INDIANA AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 8, 1997 KNOWN AS TRUST NO. 6342 401 N. JACKSON ST., CROWN POINT, IN 46307</p>	<p style="text-align: center;"><b>BANK CALUMET NATIONAL ASSOCIATION</b> 5231 Hohman Avenue Hammond, Indiana 46320</p> <p style="text-align: center;">("Mortgagee")</p>	<p style="text-align: center;"><b>Return to:</b></p> <p><b>BANK CALUMET</b> 5231 Hohman Avenue Hammond, Indiana 46320</p>
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030045752

**REAL ESTATE MORTGAGE, SECURITY AGREEMENT,  
COLLATERAL ASSIGNMENT OF RENTS AND LEASES, AND FIXTURE FILING**

**FOR VALUABLE CONSIDERATION** given this 14<sup>th</sup> day of September 2004, the receipt of which is hereby acknowledged, **Mercantile National Bank of Indiana as Trustee under Trust Agreement dated January 8, 1997 known as Trust No. 6342** ("Mortgagor" whether one or more) hereby grants, mortgages, warrants, and conveys, with mortgage covenants, to Mortgagee that real estate situated in **Lake County, State of Indiana**, described as follows:

**Parcel 1:** The South 42 feet of Lot 6, all of Lots 7 and 8 in Block 17 in Railroad Addition to Crown Point, as per plat thereof, recorded in Miscellaneous Record "A" page 508 and 509, in the Office of the Recorder of Lake County, Indiana.

**Parcel 2:** Part of the Southeast Quarter of Section 5, Township 34 North Range 8 West of the Second Principal Meridian, in Lake County, Indiana being a part of the tract of land marked and designated as "Depot Grounds on the recorded plat of Railroad Addition to the Town, now City of Crown Point, recorded in Miscellaneous Record "A" page 508 and 509, in the Office of the Recorder of Lake County, Indiana and more particularly described as follows: Commencing at a point where the Southwesterly line of said designated "Depot Grounds" intersects the West line of Jackson Street, as designated on said recorded plat, being in the East line of said Lot 7, 43.65 feet North of the Southeast corner thereof; thence running North 44 degrees 15 minutes 30 seconds West on the Southwesterly line of said designated "Depot Grounds" a distance of 91.75 feet; thence East 53.20 feet to the Southerly line of said sidewalk to a point (which is on the West line of said Jackson Street produced); thence South 0 degrees 51 minutes West 55.05 feet to the West line of said Jackson Street (produced) to the place of beginning.

**Common Address:** 401 N. Jackson Street, Crown Point, IN 46307

**Unit #23, Key # (9-61-7) (9-61-8) (9-61-9) (9-328-24)**

together with all rights, privileges, interests, mineral rights, water rights, air rights, timber rights and/or gas rights, easements, buildings, improvements, appurtenances, fixtures and hereditaments therein, thereon, or thereto belonging (herein collectively "Real Estate"), and the rents and profits and other income of the Real Estate whether now existing or hereafter acquired, which said rents and profits are now and hereby assigned to Mortgagee.

**CONSTRUCTION MORTGAGE.**  If this box is checked this is a construction mortgage and the proceeds of the line of credit loan described in Section 1.02 shall be used by the Mortgagor to make improvements to the Real Estate.

1. **INDEBTEDNESS SECURED.** This Mortgage is given to secure the following (sometimes collectively referred to herein as the "Obligations")(boxes not checked are inapplicable. Sections 1.04, 1.05, 1.06 and 1.07 are always applicable):

<b>THIRD PARTY BORROWER PROVISION</b>
<input checked="" type="checkbox"/> If this box is checked, this Mortgage secures one or more loans to <b>Jadco, LTD.</b> , hereinafter referred to as "Borrower".

- 1.01.  Payment of a term loan note executed by  Mortgagor  **Borrower** in favor of Mortgagee and dated the 14<sup>th</sup> day of September, 2004 in the original principal amount of **\$220,000.00**, with interest thereon as provided in said term loan, and with any unpaid balance of principal and interest being due and payable on or before the 14<sup>th</sup> day of September, 2009.
- 1.02.  Payment of that certain line of credit loan note executed by  Mortgagor  Borrower in favor of Mortgagee and dated the \_\_\_\_\_th day of \_\_\_\_\_ with a maximum commitment of \$ \_\_\_\_\_, and with any unpaid balance of principal and interest being due and payable on or before the \_\_\_\_\_th day of \_\_\_\_\_. This is a line of credit obligation and Mortgagee will be making future loans and advances to Mortgagor pursuant to a \$ \_\_\_\_\_ commitment. It is intended by the Mortgagor that each such future loan or advance shall be secured by this Mortgage. The maximum principal amount of unpaid loan indebtedness secured under this Section 1.02, which may be outstanding at any time shall be \$ \_\_\_\_\_, exclusive of interest thereon and exclusive of unpaid balances of advances made with respect to the mortgaged premises for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the mortgage premises and all other costs which Mortgagee is authorized by this Mortgage to pay on Mortgagor's behalf, all of which amount shall also be secured by this Mortgage.
- 1.03. Any and all future loans, obligations and advancements made by Mortgagee to Mortgagor (and Borrower if the Third Party Borrower box is checked on the preceding page) except that the maximum amount of unpaid indebtedness under this paragraph 1.03 secured hereby which may be outstanding at any time shall not exceed two times the combined original principal indebtedness referenced in sections 1.01 and 1.02 above, exclusive of interest thereon and exclusive of unpaid balances of advances made with respect to the Real Estate for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the Real Estate and all other costs which Mortgagee is authorized by this Mortgage to pay on Mortgagor's behalf. Mortgagor stipulates and agrees with Mortgagee that as of the date of this Mortgage, Mortgagee has made no written or oral commitment to Mortgagor (or Borrower) to make any future loans or advancements under this Section 1.03. Any such future lending shall be at the Mortgagee's sole discretion.
- 1.04. Any renewal, extension, modification, refinancing or replacement of the indebtedness referred to in those paragraphs 1.01, 1.02, or 1.03, above, which are checked as being applicable.
- 1.05. Except as otherwise limited in this Mortgage, any other indebtedness which the Mortgagor and/or Borrower (if designated above) (or any one or more of them if more than one) might from time to time, while this mortgage

is in effect, owe Mortgagee including, but not necessarily limited to, obligations under guarantees executed by Mortgagor and/or Borrower (or any one or more of them, if more than one) in favor of Mortgagee, indebtedness arising from overdrafts on depository accounts maintained by Mortgagor and/or Borrower (or any one or more of them, if more than one) with Mortgagee and indebtedness arising from Mortgagee making payment to beneficiaries under letters of credit issued by Mortgagee for the account of Mortgagor and/or Borrower (or any one or more of them, if more than one).

- 1.06. All interest, attorney fees, and costs of collection with respect to the obligations referred to in those paragraphs 1.01 through 1.05, above, together with any extensions or renewals thereof.
- 1.07. The performance by Mortgagor of all Mortgagor's covenants, agreements, promises, payments and conditions contained in this Mortgage agreement.

The Mortgagor shall have and hold the Real Estate unto the Mortgagee, for the purposes and uses set forth herein under the following terms and conditions:

2. **COVENANTS.** Mortgagor hereby covenants and agrees with Mortgagee as follows:

- 2.01. **Security Agreement.** THIS INSTRUMENT WHEN RECORDED SHALL CONSTITUTE A "FIXTURE FILING" FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE. THE ADDRESS OF THE MORTGAGEE AS SHOWN ABOVE IS THE ADDRESS AT WHICH INFORMATION CONCERNING THE MORTGAGEE'S SECURITY INTEREST MAY BE OBTAINED. Mortgagor hereby grants to Mortgagee a security interest in all equipment or other tangible personal property which is now or hereafter becomes attached to the Real Estate or any improvement thereon so as to constitute a fixture, whether now owned or hereinafter acquired, including, not by way of limitation, all heating, ventilation and air conditioning equipment, and all shelving and storage devices now or hereafter affixed or attached to the Real Estate.
- 2.02. **Waste and Maintenance of Premises.** The Mortgagor shall abstain from and not permit the commission of waste in or about the Real Estate; shall not move or demolish, or alter the structural character of any building at any time erected on the Real Estate without the prior written consent of the Mortgagee; shall maintain the Real Estate in good condition and repair, reasonable wear and tear excepted. The Mortgagee shall have the right, but not the duty, to enter upon the premises at any reasonable hour to inspect the order, condition, and repair thereof, including the interiors of any buildings and improvements located thereon.
- 2.03. **Insurance Obligation.** The Mortgagor will procure, deliver to, and maintain for the benefit of the Mortgagee during the continuance of this Mortgage and until the same is fully satisfied and released, a policy or policies of insurance insuring the buildings and improvements now existing or hereafter erected on the Real Estate for their full replacement value against loss or damage by fire, lightning, flood (if required by applicable law), wind-storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and such other hazards, casualties, and contingencies as the Mortgagee may designate. The Mortgagor shall procure business interruption insurance in such amounts as the Mortgagee may reasonably require. All policies of insurance required hereunder shall be in such form and amounts and by such companies, as the Mortgagee may accept, and shall contain a mortgagee clause acceptable to the Mortgagee, with loss payable to the Mortgagor and the Mortgagee as their interests may appear and shall provide that no act or omission of Mortgagor or any other person shall affect the right of Mortgagee to be paid the insurance proceeds pertaining to the loss or damage of the insured property. Such policies shall require the insurance company to provide Mortgagee with at least thirty (30) days' written notice before such policies are altered or canceled in any manner. The Mortgagor will promptly pay when due any premiums on any policy or policies of insurance required hereunder, and will deliver to the



Mortgagee renewals of such policy or policies at least ten (10) days prior to the expiration date(s) thereof, the said policies and renewals to be marked "paid" by the issuing company or agent.

In the event of any loss or damage, the Mortgagor will give prompt notice thereof to the Mortgagee. All proceeds of insurance in the event of such loss or damage shall be payable jointly to the Mortgagor, its successors and assigns, and the Mortgagee. All funds will be utilized by the Mortgagor to the extent necessary to restore the Real Estate to substantially the same condition as the Real Estate existed prior to the loss or damage, unless the Mortgagee shall elect not to do so. In the latter event, the Mortgagee shall then apply the proceeds to the then existing indebtedness and the balance shall be paid to the Mortgagor. Mortgagee may act as attorney-in-fact for the Mortgagor in making and settling claims under insurance policies, canceling any policy or endorsing Mortgagor's name on any draft or negotiable instrument drawn by any insurer.

- 2.04. Payment of Taxes and Other Charges.** The Mortgagor shall pay all real estate taxes, water and sewer rents, other similar claims and liens assessed or which may be assessed against the Real Estate or any part thereof, without any deduction or abatement, and shall produce to the Mortgagee receipts for the payment thereof in full and shall pay every other tax, assessment, claim, lien, or encumbrance which may at any time be or become a lien upon the Real Estate prior to the lien of this Mortgage.
- 2.05. Compliance with Laws and Ordinances.** The Mortgagor shall comply with all statutes, ordinances, rules, regulations, orders, and directions of any legislative, executive, administrative, or judicial body or official applicable to the Real Estate, or any part thereof.
- 2.06. Condemnation.** Mortgagor shall immediately provide Mortgagee with written notice of any actual or threatened condemnation or eminent domain proceeding pertaining to the Real Estate, or any part thereof. All monies payable to Mortgagor from such condemnation or taking are hereby assigned to Mortgagee and shall be applied first to the payment of Mortgagee's attorney's fees, legal expenses and other costs (including appraisal fees) in connection with the condemnation action or eminent domain proceedings and then, at the option of Mortgagee, to the payment of the indebtedness secured by this Mortgage or the restoration or repair of the Real Estate.
- 2.07. Title; No Mortgages.** Mortgagor does hereby represent and warrant that Mortgagor is the owner of the Real Estate in fee simple; that there are no other mortgages, liens, encumbrances or claims against the Real Estate or which may affect the Real Estate except the lien of real estate taxes not yet due and owing, and except for those liens and encumbrances subordinate to this Mortgage which are permitted by the terms of this Mortgage, if any.
- 2.08. Leases.** Mortgagor will observe and perform all covenants, conditions and agreements contained in any Lease or Leases now or hereafter affecting the Real Estate, or any portion thereof, on the part of the Mortgagor to be observed and performed. Mortgagor will not accept any prepayment of rents or installments of rents for more than one (1) month in advance without prior written consent of Mortgagee. Mortgagor, upon request, from time to time, will furnish to Mortgagee a statement in such reasonable detail as Mortgagee may request, certified by Mortgagor, of all Leases relating to the Real Estate; and on demand, Mortgagor will furnish to Mortgagee executed counterparts of any and all such Leases.
- 2.09. Environmental Indemnification.** As used in this paragraph, the following terms have the meanings indicated:

**Clean-up.** "Clean-up" means the removal or remediation of Contamination or other response to Contamination in compliance with all Environmental Laws and to the satisfaction of all applicable governmental agencies, and in compliance with good commercial practice.

**Contamination.** "Contamination" means the Release of any Hazardous Substance on, in or under the Real Estate or the presence of any Hazardous Substance on, in or under the Real Estate as the result of a Release, or the emanation of any Hazardous Substance from the Real Estate.

**Environmental Laws.** "Environmental Laws" means all federal, state and local laws, statutes, codes, ordinances, regulations, rules or other requirements with the force of law, including but not limited to consent decrees and judicial or administrative orders, relating to the environment, including but not limited to those applicable to the use, storage, treatment, disposal or Release of any Hazardous Substances, all as amended or modified from time to time including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"); the Clean Water Act, as amended; the Clean Air Act, as amended; the Federal Insecticide, Fungicide and Rodenticide Act, as amended; the Hazardous Materials Transportation Act, as amended, and any and all Indiana environmental statutes including, without limitation, those codified under Title 13 of the Indiana Code and all regulations promulgated under or pursuant to such federal and Indiana Statutes.

**Hazardous Substance.** "Hazardous Substance" means any hazardous waste or hazardous substance, or any pollutant or contaminant or toxic substance or other chemicals or substances including, without limitation, asbestos, petroleum, polychlorinated biphenyls, and any other substance regulated by any Environmental Laws.

**Release.** "Release" means the spilling, leaking, disposing, discharged, dumping, pouring, emitting, depositing, injecting, leaching, escaping or other release or threatened release, whether intentional or unintentional, of any Hazardous Substance.

**Regulatory Actions.** "Regulatory Actions" means any claim, demand, action or proceeding brought or instigated by any governmental authority in connection with any Environmental Law including, without limitation, any civil, criminal or administrative proceeding whether or not seeking costs, damages, penalties or expenses.

**Third-party Claims.** "Third-party Claims" means any claim, action, demand or proceeding, other than a Regulatory Action, based on negligence, trespass, strict liability, nuisance, toxic tort or detriment to human health or welfare due to Contamination, whether or not seeking costs, damages, penalties, or expenses, and including any action for contribution to Clean-up costs.

The Mortgagor shall indemnify, defend and hold harmless the Mortgagee, and each of its affiliates, shareholders, directors, officers, employees and agents (all being included in the word "Mortgagee" for purposes of this paragraph) from any and all claims, cause of action, damages, demands, fines, liabilities, classes, penalties, judgments, settlements, expenses and costs, however defined, and of whatever nature, known or unknown, absolute or contingent, including, but not limited to, attorneys' fees, consultant's fees, fees of environmental engineers, and related expenses including, without limitation, expenses related to site inspections and soil and water analyses, which may be asserted against, imposed on, suffered or incurred by the Mortgagee arising out of or in any way related to (a) any actual, alleged or threatened Release of any Hazardous Substance on, in or under the Real Estate, (b) any related injury to human health or safety (including wrongful death) or any actual or alleged injury to property or to the environment by reason of the condition of, or past or present activities on the Real Estate, (c) any actual or alleged violation of any Environmental Law related to the Real Estate, (d) any lawsuit or administrative proceeding brought or threatened by any person, including any governmental entity or agency, federal, state or local, including any governmental order relating to or occasioned by any actual or alleged Contamination or threat of Contamination, (e) any lien imposed upon the Real Estate in favor of any governmental entity as a result of any Contamination or threat of Contamination, and (f) all costs and expenses of any Clean-up. The Mortgagor represents and covenants that the Mortgagor's storage, generation, transportation, handling or use, if any, of Hazardous Substances on or from the property is currently, and will remain at all times, in compliance with all

applicable Environmental Laws. If any Clean-up is required with respect to the Real Estate, the Mortgagor shall expeditiously complete such Clean-up at the Mortgagor's expense and without the necessity of demand by the Mortgagee. If the Mortgagor should fail to initiate and diligently pursue any Clean-up or should otherwise fail to perform any obligation under the terms of this paragraph, the Mortgagee may, at its sole discretion and without any obligation to complete any Clean-up which it may cause to be commenced, cause the Clean-up or partial Clean-up of the Real Estate and pay on behalf of the Mortgagor any costs, fines or penalties imposed on the Mortgagor pursuant to any Environmental Laws or make any other payment or perform any other action which will prevent a lien in favor of any federal, state or local government authority or any other person from attaching to the Real Estate pursuant to the provisions of any Environmental Law, and all costs and expenses of the Mortgagee incurred in pursuing any of the remedies provided in this paragraph shall be added to the obligations secured by this Mortgage, which costs and expenses shall become due and payable without notice as incurred by the Mortgagee, together with interest thereon at the highest rate specified in any note secured by this Mortgage until paid.

### 3. DEFAULT AND BREACH

- 3.01. Events of Default.** Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Mortgage or any event defined as a default in any note secured hereby, or in any other instrument or document executed by Mortgagor (or Borrower) in favor of Mortgagee, including, but not limited to any failure by any one so obligated to make any payment of principal and/or interest when due under the Obligations including, without limitation, any note secured hereby shall constitute a default under this Mortgage.
- 3.02. Remedies on Default.** Upon the occurrence and continuance of an event of default, all indebtedness secured hereby shall, at the option of the Mortgagee, become immediately due and payable and this Mortgage may be foreclosed accordingly. Should proceedings to foreclose this Mortgage be instituted, the Mortgagee may apply for the appointment of a receiver (and the Mortgagor hereby consents to the appointment of a receiver if there has been any Default), and such receiver is hereby authorized to take possession of the Real Estate, collect any rental, accrued or to accrue, whether in money or kind, for the use or occupancy of said Real Estate by any person, firm or corporation, or may let or lease said Real Estate or any part thereof, receive the rents, income and profits there from, and hold the proceeds subject to the orders of the court, or the judge thereof, for the benefit of the Mortgagee, pending the final decree in said proceedings, and said receiver may be appointed irrespective of the value of the Real Estate or its adequacy to secure or discharge indebtedness due or to become due or the solvency of the Mortgagor. In any action to foreclose this Mortgage, the Mortgagee shall be entitled to recover, in addition to all attorney and related paraprofessional expenses incurred in connection therewith, all other costs and expenses associated with foreclosure including, without limitation, all expenses incurred for title searches, abstracts of title, title insurance, appraisals, surveys and environmental assessments reasonably deemed necessary by the Mortgagee, all of which costs and expenses shall be additional amounts secured by this Mortgage. As used in the preceding sentence, the term "environmental assessments" means inspections and reports of environmental engineers or firms of environmental engineers or other appropriate experts or consultants, and associated samplings and testings of soil or groundwater, the purpose of which is to determine whether there is any Contamination associated with the Real Estate and if so, the extent thereof, and to estimate of the cost of Clean-up of any Contamination, and to determine whether there are any underground storage tanks or any asbestos in, on, or under the Real Estate and if so, whether there are any violations of Environmental Laws in connection therewith. As used in this paragraph, the terms "Contamination," "Clean-up" and "Environmental Laws" are used as defined hereinabove.
- 3.03. Failure to Pay Taxes or Insurance Premiums.** If the Mortgagor fails to pay any tax, claim, lien or encumbrance which shall be or become prior in lien to this Mortgage, or to pay any insurance premium as aforesaid, or to keep the Real Estate in repair, as aforesaid, or commits or permits waste, then the Mortgagee, at its option, may pay said claim, lien, encumbrance, tax assessment, or premium, with right of subrogation there under, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any action or proceeding with respect to any of the foregoing and retain counsel therein, and take such action therein as the Mortgagee deems advisable, and for any of said purposes the Mortgagee



may advance such sums of money as it deems necessary. All sums of money advanced by the Mortgagee pursuant to this section, together with interest on each such advance at the highest rate of interest specified in any note secured hereby, shall be so much additional indebtedness secured hereby and shall immediately become due and payable without notice or demand. The failure of the Mortgagee to act pursuant to this section shall not be deemed a waiver of any rights the Mortgagee may have because of any default by the Mortgagor.

**3.04. Assignment of Leases and Rents.** As further security for payment of the indebtedness and performance of the Obligations, covenants, and agreements secured hereby, the Mortgagor assigns to the Mortgagee the rents, issues and profits of the Real Estate, including any rents and all other amounts (collectively "Lease Payments") which are due or shall become due to the Mortgagor under the terms of any present or future lease (a "Lease"), oral or written, of all or any portion of the Real Estate (all such rents, issues, profits and Lease Payments are hereafter collectively referred to as the "Rents"), and all other rights of the Mortgagor with respect to any such Lease. This assignment of Rents and leasehold rights is an absolute assignment, contingent only upon the occurrence of a Default (as hereafter defined) or as otherwise provided herein, and includes the right of the Mortgagee to collect all Rents and exercise such rights subject to the conditional license to collect Rents and exercise such rights granted by the Mortgagee to the Mortgagor herein below. At any time an event of default has occurred and is continuing, the Mortgagee may enter upon and take possession of the Real Estate or any part thereof, and at any such time the Mortgagee may demand, sue for, receive and give receipts, releases and satisfactions for all Rents, and for such purposes Mortgagor hereby irrevocably appoints and constitutes the Mortgagee as its true and lawful attorney-in-fact with full power of substitution for and on behalf of Mortgagor and in a manner not adverse to the interests of Mortgagor, to request, demand, enforce payment, collect and receive the Rents payable under the Leases, to endorse any checks, drafts or orders evidencing the payment of Rents under the Leases, and to do and perform any act which Mortgagor might do for and on its own behalf. The collection of such Rents shall not operate as an affirmation of any tenant or lease in the event the Mortgagor's title to the Real Estate or any portion thereof shall be acquired by the Mortgagee. The Mortgagee shall be liable to account only for Rents actually received by the Mortgagee. In exercising any of the powers contained in this Mortgage, Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in the Real Estate and used by the Mortgagor in the maintenance, rental or leasing thereof or any part thereof. Mortgagor does not assign to Mortgagee any of Mortgagor's obligations under any such Lease, and Mortgagor shall be and remain solely responsible for performing or fulfilling such obligations. At any time that the Mortgagee has not exercised its right to take possession of the Real Estate and there is not in effect any demand by the Mortgagee for the direct payment of Rents to the Mortgagee, the Mortgagor may collect and retain Rents or use them for any proper purpose in the ordinary course of the Mortgagor's business. Any demand by the Mortgagee upon any tenant of the Real Estate accompanied by a copy of this Mortgage shall be sufficient authority for such tenant thereafter to make all payments of Rents directly to the Mortgagee and any such tenant shall have no obligation or authority to inquire into the propriety of any such demand. Upon making payments of Rents to the Mortgagee pursuant to the Mortgagee's demand, any tenant of the Real Estate shall be as fully discharged of its obligations under any Lease to the extent of such payments as if such payments had been made directly to the Mortgagor. If at any time payments of Rents are required to be made directly to the Mortgagee under the terms of this paragraph and notwithstanding such requirement such payments are made to the Mortgagor, the Mortgagor will receive such payments in trust for the Mortgagee and will forward them immediately to the Mortgagee in the form in which received, adding only such endorsements or assignments as may be necessary to perfect the Mortgagee's title thereto. Any amounts collected by the Mortgagee pursuant to the assignment of rents contained in this Mortgage shall be applied by the Mortgagee to the payment of such of the Obligations as are then due and payable as the Mortgagee in its sole discretion shall determine. If no Obligations are then due and payable, such amounts may be held by the Mortgagee as cash collateral for the Obligations, without liability for interest thereon, provided that the Mortgagee will, at the direction of the Mortgagor, invest such amounts for the account and at the risk of the Mortgagor in U.S. Treasury Bills with less than sixty (60) days remaining to maturity or in similar essentially risk-free, cash equivalent investments as the Mortgagor may reasonably direct and any earnings derived from such investments will become a part of the collateral cash account. Any portion or all of the cash collateral account which is not applied to Obligations pursuant to the terms of this paragraph may at the discretion of the

Mortgagee be released to the Mortgagor. The authority given to collect Rents conferred upon the Mortgagee under the terms of this Mortgage is irrevocable.

#### 4. SATISFACTION AND RELEASE

- 4.01. **Release.** Upon payment of the Obligations and any other sums secured by this Mortgage, Mortgagee shall release this Mortgage.
- 4.02. **Transfer of Real Estate by Mortgagor.** Any transfer by sale, gift, grant, devise, operation of law, or otherwise of the fee title or any other interest, (including, but not limited to mortgage, easement, land contract or leasehold interest) in all or any portion of the Real Estate shall have the same consequences as an event of default respecting the indebtedness secured hereby, and upon such transfer, the Mortgagee, without prior notice shall have the right to declare all sums secured hereby immediately due and payable and, upon failure by the Mortgagor to make such payment the Mortgagee shall have the right to exercise all remedies provided in any note secured hereby, this mortgage, or otherwise at law.

#### 5. MISCELLANEOUS

- 5.01. **Notice.** A notice which is mailed to the Mortgagor at the address contained in this mortgage shall be sufficient notice when required under this Mortgage.
- 5.02. **Commercial Mortgage.** This Mortgage secures indebtedness incurred for a business purpose.
- 5.03. **Cumulative Rights and Remedies.** The rights and remedies of the Mortgagee as provided herein, or in any note secured hereby, and the warranties therein contained, shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of the Mortgagee, and may be exercised as often as occasion therefore shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.
- 5.04. **Extensions; Reductions; Renewals; Continued Liability of Mortgagor.** The Mortgagee, at its option and on such terms as it may desire, may extend the time of payment or performance of any part or all of the Obligations or reduce the payments thereon, or accept a renewal note or notes therefore, without the consent of any junior lien holder, and without the consent of the Mortgagor if the Mortgagor has then parted with title to the Real Estate. No such extension, reduction or renewal shall affect the priority of this Mortgage or impair the security hereof in any manner whatsoever, or release, discharge or affect in any manner the personal liability of the Mortgagor or any guarantors or sureties of or for any of the Obligations. The Mortgagee, at its option and on such terms as it may desire, may release any part of the Real Estate from the lien of this Mortgage without impairing the lien of this Mortgage except as to the portion of the Real Estate expressly released and without releasing the Mortgagor or any guarantors or sureties of or for any of the Obligations. No delay by the Mortgagee in the exercise of any of its rights under this Mortgage shall preclude the subsequent exercise thereof so long as any Default continues uncured, and no waiver by the Mortgagee of any Default of the Mortgagor shall operate as a waiver of subsequent or other Defaults. The making of any payment by the Mortgagee for any of the purposes herein permitted shall not constitute a waiver of any breach of the Mortgagor's covenant to perform such act. Notice by the Mortgagee of its intention to exercise any right or option under this Mortgage is expressly waived by the Mortgagor, and any one or more of the Mortgagee's rights or remedies under this Mortgage may be enforced successively or concurrently. Time is of the essence of this Mortgage.
- 5.05. **State Law to Apply.** This Mortgage shall be governed by and construed and enforced in all cases by the substantive laws of the State of Indiana, notwithstanding the fact that Indiana conflicts of law rules might otherwise require the substantive rules of law of another jurisdiction to apply.
- 5.06. **Junior Liens.** Any person, firm or corporation taking a junior mortgage, or other lien, upon the Real Estate, shall take the said lien or mortgage subject to the rights of the Mortgagee herein to extend the maturity of the



indebtedness hereby secured without obtaining the consent of the holder of said junior lien or mortgage and without the lien of this Mortgage losing its priority over any such junior lien or mortgage. This Mortgage shall have priority over any such junior lien or mortgage, not only with respect to advances made by the Mortgagor prior to the existence and/or recording of such junior lien or mortgage, but also with respect to any advances and other Obligations made or otherwise incurred after the existence and/or recording of such junior lien or mortgage.

- 5.07. Insufficiency of Proceeds.** In the event the property pledged by this instrument is sold under foreclosure and the proceeds are insufficient to pay the total costs of said foreclosure and the indebtedness evidenced and secured by this instrument, the Mortgagee will be entitled to a deficiency judgment.
- 5.08. Deposits for Assessments and Taxes.** In addition to the payments to be made by the Mortgagor as herein provided and also as provided in the Note hereby secured, the Mortgagor agrees, if requested by the Mortgagee at any time or from time to time while this Mortgage remains unsatisfied, to deposit monthly with the Mortgagee approximately one-twelfth (1/12) of the annual property taxes and any and all assessments for public improvements levied upon the mortgaged property, and also one-twelfth (1/12) of the annual insurance premiums required by this Mortgage or the Loan Agreement. If so requested by Mortgagee, Mortgagor agrees to sign and deliver to Mortgagee an escrow agreement in form and content acceptable to Mortgagee.
- 5.09. Parties Bound.** This mortgage shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.
- 5.10. Severability.** In case any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 5.11. Construction.** The words "Mortgagor" and "Mortgagee" include singular or plural, individual or corporation, and the respective heirs, personal representatives, executors, administrators, successors, and assigns of the Mortgagor and the Mortgagee, as the case may be. The use of any gender applies to all genders. If more than one party is named as the Mortgagor, the Obligations hereunder of each such party is joint and several.
- 5.12. Limitations on Mortgage.** The security interest created under the provisions of this Mortgage will not secure (a) any indebtedness with respect to which the Mortgagee is required to make any disclosure of the existence of this Mortgage under applicable law for this transaction and fails to do so as required by law; (b) if this security interest is in a dwelling and secures a variable rate loan any indebtedness with respect to which the Mortgagee is required to disclose and provide for a limitation on the maximum interest rate that may be imposed during the term of such indebtedness as and when required by law or regulation and Mortgagee fails to do; or if this security interest is in Mortgagor's principal dwelling any indebtedness with respect to which the Mortgagee is required to provide any notice of right of rescission required by law for this transaction and fails to do so.
- 5.13. Captions.** The captions herein are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Mortgage or any particular paragraph or section hereof, nor the proper construction hereof.



This REAL ESTATE MORTGAGE, SECURITY AGREEMENT, COLLATERAL ASSIGNMENT OF RENTS AND LEASES, AND FIXTURE FILING is executed by the undersigned Trustee, not personally, but solely as Trustee under the terms of that certain agreement dated January 8, 1997, creating trust number 6342; and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings, representations, agreements and liabilities, herein made are made and are intended, not as personal covenants, undertakings, representations, agreements and liabilities, of the Trustee, individually, or for the purpose of binding it personally, but this instrument is executed and delivered by the MERCANTILE NATIONAL BANK OF INDIANA, AS TRUSTEE, solely in the exercise of the powers conferred upon it as such Trustee under said agreement and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against MERCANTILE NATIONAL BANK OF INDIANA, on account hereof, or on account of any covenant, undertaking, representation or agreement herein, either expressed or implied, all such personal liability, if any, being expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or through or under said parties or holder hereof.

Nothing contained herein shall be construed as creating any liability upon MERCANTILE NATIONAL BANK OF INDIANA, personally under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the "Act") as amended from time to time or any other federal, state or local law, rule or regulation. MERCANTILE NATIONAL BANK OF INDIANA, personally, is not a "Transferor or Transferee" under the Act and makes no representations concerning any possible environmental defects. In making any warranty herein, the Trustee is relying solely on information furnished to it by the beneficiaries and not of its own knowledge and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any warranty in this instrument.

Furthermore, the information contained in this instrument has been furnished to the undersigned by the beneficiary/beneficiaries under aforesaid Trust and the statements made therein are made solely in reliance thereon and no responsibility is assumed by the undersigned in its individual capacity for the truth or accuracy of the facts herein stated.

IN WITNESS WHEREOF, said MERCANTILE NATIONAL BANK OF INDIANA, has caused its name to be signed to these presents by an Assistant Vice President and Trust Officer and attested by its Vice President and Trust Officer the day and year first above written.

MERCANTILE NATIONAL BANK OF INDIANA, AS TRUSTEE

AFORSAID AND NOT PERSONALLY  
of  
the Lake County Recorder!

William S. Trowbridge, Assistant Vice President and Trust Officer

ATTEST:

Michael Cava, Vice President  
and Trust Officer

STATE OF INDIANA, COUNTY OF LAKE

Before me, a Notary Public in and for said County, in the State aforesaid, personally appeared before me, William S. Trowbridge, Assistant Vice President and Trust Officer, and Michael Cava, Vice President & Trust Officer, of MERCANTILE NATIONAL BANK OF INDIANA, a national banking association, who acknowledged the execution of the foregoing instrument as the free and voluntary act of said national banking association, and as their free and voluntary act, on behalf of said national banking association, as Trustee.

Given under my hand and notarial seal this 14th day of September, 2004

Signed: Janet L. Dremonas, Notary Public

