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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

RECORDATION REQUESTED BY  
AND RETURN TO:

2005 047255

2005 JUN -9 AM 8:52

JAMES M. NOVARA, ESQUIRE  
RUGGIRELLO, VELARDO, NOVARA & VER BEEK, P.C.  
65 Southbound Gratiot Avenue  
Mount Clemens, Michigan 48043 ↗

MICHAEL A. BROWN  
RECORDER

SEND TAX BILLS TO:

LAKE COUNTY TRUST #5273 UNDER A  
TRUST AGREEMENT DATED AUGUST 1, 2001  
c/o LAKE COUNTY TRUST COMPANY  
2200 North Main Street  
Crown Point, IN 46307

**MORTGAGE AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is effective the 24<sup>th</sup> day of May, 2005, between Lake County Trust #5273 Under A Trust Agreement Dated August 1, 2001, ("Mortgagor" and/or "Borrower"), c/o LAKE COUNTY TRUST COMPANY, located at 2200 North Main Street, Crown Point, IN 46307, for good and valuable consideration, received to Borrower's full satisfaction and to it or on its behalf paid by COMERICA BANK - MC7355, a Michigan banking association, with an office at 3551 Hamlin, Auburn Hills, Michigan 48326 ("Lender").

Borrower shall mortgage and warrant unto Lender its successors and assigns the Mortgaged Property as defined below, with the appurtenances thereunto belonging TO HAVE AND TO HOLD the same unto the Lender and its successors and assigns against all lawful claims and demands whatsoever and Borrower does hereby covenant with Lender, its successors and assigns, that Borrower has good right to mortgage and convey the Mortgaged Property; and that Borrower will warrant and defend said estate, with the appurtenances thereunto belonging to Lender, its successors and assigns, forever against all lawful claims and demands whatsoever; that the same are free and clear of all liens and encumbrances except the Permitted Encumbrances defined in Exhibit "A", and that this Mortgage is a first lien on the Mortgaged Property and Borrower will execute, acknowledge and deliver all necessary assurances unto Lender of the title to all and singular the Mortgaged Property hereby conveyed and intended so to be, or which Borrower may be or shall become hereafter bound so to do.

This Mortgage including the Assignment of Leases and Rents is given to secure payment of the indebtedness in the amount of Four Hundred Eighteen Thousand and 00/100 Dollars (\$418,000.00) and to secure performance of all of the obligations of Borrower and/or Mortgagor under this Mortgage and other instruments executed contemporaneously herewith (including, but not limited to certain loan documents made in connection with a loan from Comerica Bank to Professional Garment Services, Inc. and Professional Garment Systems, Inc. in the principal amount of \$418,000.00) and is given and accepted on the following terms:

**1. THE MORTGAGED PROPERTY.** Borrower hereby mortgages and warrants unto the Lender, the premises commonly known as 5625 E. 3<sup>rd</sup> Place, Gary, IN 46403 together with all existing and subsequently erected buildings, improvements, and fixtures; all easements, rights of way, and appurtenances; and all other rights, royalties, and profits relating to the real property located in the County of Lake, and State of Indiana (the "Mortgaged Property"), and more particularly described as follows:

Lot 3, Block 2 in Lake Avenue Subdivision, in the City of Gary, Lake County, Indiana.

Parcel No.: 25-45-237-3

Commonly known as: 5625 E. 3<sup>rd</sup> Place, Gary, IN 46403

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ck# 18790  
J. H.

As more fully described in this Mortgage, the Mortgage Property includes: (a) all extensions, improvements, substitutes, replacements, renewals, and additions to the Mortgaged Property; (b) all rents, proceeds, income, deposits, and profits from the Mortgaged Property; and (c) all awards, payments, or proceeds of voluntary or involuntary conversion of all or any part of the Mortgaged Property, including but not limited to insurance, condemnation, or tort claims.

**2. ASSIGNMENT OF LEASES AND RENTS.** In addition to any other obligation secured by this Mortgage, Borrower hereby assigns to Lender all of Borrower's right, title and interest to all leases, profits, deposits, reservations, and rents of the Mortgaged Property pursuant to the Assignment of Leases and Rents executed of even date herewith.

**3. INDEBTEDNESS.** Borrower has executed and delivered this Mortgage for the purpose of securing the performance of the covenants and agreements contained herein, and to secure the payment when due of all of the following, which are herein collectively referred to as the "Indebtedness":

- a. the principal, interest and any late charges of a certain Variable Rate Note of even date herewith in the original principal amount of Four Hundred Eighteen Thousand and 00/100 Dollars (\$418,000.00) (the "Note") payable according to its terms and maturing May 31, 2015 and executed by Professional Garment Services, Inc. and Professional Garment Systems, Inc.
- b. all sums expended or advanced by Lender pursuant to any term or provision of this Mortgage;
- c. all unpaid advances of Lender with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, or costs incurred in the protection of the Mortgaged Property;
- d. all future advances made hereunder.

**4. PAYMENT AND PERFORMANCE.** Borrower shall tender the prompt payment of the principal of and interest of the indebtedness evidenced by the Note at the time and in the manner provided herein and as required pursuant to the Note.

**5. TAXES AND LIENS.** Borrower shall keep the Mortgaged Property free from statutory liens of every kind; to pay, before delinquency and before any penalty for nonpayment attaches thereto, all taxes, assessments, water rents and charges, sewer rents and charges and other governmental or municipal or public dues, charges, fines or impositions which are or may be levied against the Mortgaged Property or any part thereof, except when payment for all such items has theretofore been made into escrow to the Lender, to deliver to Lender at least ten (10) days before delinquency, receipted bills evidencing payment of any items for which an escrow or reserve deposit has not been made; to pay in full under protest and in the manner provided by statute, any tax, assessment, rate, rental, charge, fine or imposition aforesaid which Borrower may desire to contest; and in the event of the passage after the date of this Mortgage of any law of the State of Indiana deducting from the value of land for the purposes of taxation the amount of any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes, or the manner of the collection of any such taxes as to impose a tax upon or otherwise to affect this Mortgage, or upon the rendition by any court of competent jurisdiction of a decision that any undertaking by Borrower as in this Paragraph provided is legally inoperative, then in any such event, the indebtedness secured hereby, at the option of Lender and upon five (5) days' prior written notice, shall become immediately due and payable; provided, however, said option and right shall be unavailing and the Note and this Mortgage shall remain in effect if Borrower lawfully may pay all such taxes, assessments and charges, including interest and penalties thereon, to or for Lender and does in fact pay same when so payable. Any assessment which has been made payable in installments at the application of Borrower, fee owner or any lessee or sublessee of the Mortgaged Property shall, nevertheless, for the purposes of this Paragraph, be deemed due and payable in its entirety on the day the first installment becomes due or payable or a lien on any portion of the Mortgaged Property.

**6. INSURANCE.** To keep the improvements now existing or hereafter erected on the Mortgaged Property insured as may be required from time to time by Lender against loss or damage by, or abatement of rental income resulting from fire, flood (if the Mortgaged Property is now or hereafter designated as being within an area having special flood or mud slide hazards by the Secretary of Housing and Urban Affairs, or other similar governmental department or agency, and such insurance is available pursuant to such designation), perils included under extended coverage and such other hazards, casualties and contingencies including, but not limited to: fire and extended coverage in an amount not less than the full replacement cost, exclusive of excavations, foundations and footings, of the improvements located on the Mortgaged Property; business interruption or rental value insurance insuring against any abatement of rent and/or other payments or failure to perform any other duties or obligations

required pursuant to leases and rental contracts relating to the Mortgaged Property, resulting from fire or other casualty, for a period of not less than twelve (12) months; flood insurance in an amount equal to the full replacement cost of the Mortgaged Property if the Mortgaged Property is in a special flood or mud slide hazard area as provided hereunder; comprehensive public liability insurance on an "occurrence basis" against claims for bodily injury, or property damage occurring on, in or about the Mortgaged Property and the sidewalks and passageways, such insurance to afford immediate minimum protection to a combined single limit of not less than One Million Two Hundred Twenty Thousand and 00/100 Dollars (\$1,220,000) per occurrence and not less than One Million Two Hundred Twenty Thousand and 00/100 Dollars (\$1,220,000) in the aggregate; and such other insurance, and in such amounts, as may from time to time be required by Lender against the same or other hazards and risks insured against by persons operating like properties in the locality of the Mortgaged Property; all such insurance to be in amounts and for such periods as reasonably may be required by Lender and Borrower shall pay promptly when due any premiums on such insurance. The policies of property, flood insurance and business interruption or rental value insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Lender in form satisfactory to Lender. All such policies shall include a replacement cost coverage endorsement, shall at all times be in an amount sufficient to prevent application of any co-insurance provisions, and shall be in a Special Form policy acceptable to Lender and during any reconstruction or remodeling shall be in the builder's risk form or shall contain a builder's risk endorsement during any period in which construction, reconstruction, or remodeling is in progress on the Mortgaged Property. All policies of insurance as set forth above shall contain standard Lender clauses naming Lender as "first mortgagee" as its interest may appear without contribution, pursuant to which the insurer agrees that any loss shall be payable in accordance with the terms of such policy notwithstanding any act of negligence of Borrower which might otherwise result in forfeiture of said insurance and further that the insurer waives all rights of set-off, counterclaim or deductions against Lender. The original policies or copies thereof, certified by an authorized insurance agent, and renewals thereof, together with an original certificate of insurance for each such policy, shall be deposited with and held by Lender, together with evidence of payment of the premium thereon, and have attached thereto a standard non-contributing mortgage clause (in favor of and entitling Lender to collect any and all proceeds payable under all such insurance), as well as a standard waiver of subrogation endorsement, all to be in form and amounts acceptable to Lender.

The policies must provide that the insurer shall give to Lender at least thirty (30) days' prior written notice prior to the expiration of each such policy, before materially amending (including but not limited to any reduction in the scope or limits of coverage) or terminating any such policy. Borrower shall not carry separate insurance, concurrent in kind or form and contributing, in the event of loss, with any insurance requirement hereunder. In the event of a change in ownership or of occupancy of the Mortgaged Property, notice thereof by mail shall be delivered within five (5) days to all insurers and, in the event of loss, Borrower shall give notice to Lender within five (5) days.

In addition, at least twenty (20) days prior to the expiration of each policy herein referenced, Borrower shall furnish Lender with evidence satisfactory to Lender of the payment of premium and the renewal or replacement of a policy continuing all insurance in force as provided herein. Borrower may provide any of the insurance required hereunder through blanket policies carried by Borrower covering more than one location.

**7. POSSESSION AND MAINTENANCE.** No building or other improvement on the Mortgaged Property shall be structurally or materially altered, removed or demolished, nor shall any fixtures or appliances on, in or about the said buildings or improvements be severed, removed, sold or mortgaged, without the written consent of Lender and, in the event of the demolition or destruction in whole or in part of the Mortgaged Property, the same shall be restored promptly to the condition as existed prior to such demolition or destruction, free from any encumbrances thereon or reservation of title thereto; not to permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof; to keep and maintain the Mortgaged Property and every part thereof with buildings, fixtures, machinery and appurtenances in good repair and condition; to effect such repairs as Lender may reasonably require and from time to time make all needful and proper replacements so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were erected or installed; to comply with all statutes, orders, requirements or decrees relating to the Mortgaged Property by any Federal, state or Municipal authority; to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Property, or which have been granted to or contracted for by Borrower in connection with any existing or presently contemplated use of the Mortgaged Property; to obtain and keep in full force and effect all necessary governmental and municipal approvals as may be necessary from time to time to comply with all environmental, ecological and other requirements relating to the Mortgaged Property with any and all conditions attached to the insurance and maintenance thereof being subject to prior written approval by Lender; and to permit Lender or its agents, at all reasonable times, to enter upon and inspect the Mortgaged Property.



**8. GOVERNMENTAL PERMITS AND HAZARDOUS SUBSTANCES.** Borrower shall not use or occupy or permit the Mortgaged Property to be occupied, nor do or permit anything to be done in or on the Mortgaged Property, in whole or in part which will cause or be apt to cause structural injury to the Mortgaged Property, or will constitute a public or private nuisance or will cause pollution of the air, water and/or ground, or will violate any applicable state or Federal environmental or other governmental regulation or hazardous waste legislation now or hereafter in force with respect to the Mortgaged Property. Borrower shall permit no waste, damage or injury to the Mortgaged Property, nor shall any toxic or hazardous waste, substance or material of any kind or nature, including without limitation, asbestos and radon, be stored at, disposed of or be located upon the Mortgaged Property. Borrower hereby makes the following representations, warranties, covenants, and agreement regarding Hazardous Materials (as hereinafter defined) after due and reasonable investigation:

a. No Hazardous Materials are located on the Mortgaged Property or were used in the construction of the improvements on the Mortgaged Property or have been released into the environment, or deposited, discharged, placed, transported or disposed of at, on, under, over or near the Mortgaged Property. No portion of the Mortgaged Property is being used or, to the knowledge of Borrower, has been used at any previous time for the disposal, storage, treatment, processing, transportation or other handling of Hazardous Materials nor is the Mortgaged Property affected by any Hazardous Materials Contamination (as hereinafter defined).

b. No property adjoining the Mortgaged Property is being used, or has ever been used at any previous time, for the disposal, storage, treatment, processing, transportation or other handling of Hazardous Materials, nor is any other property adjoining the Mortgaged Property affected by Hazardous Materials Contamination.

c. No polychlorinated biphenyls ("PCB's") are located on or in the Mortgaged Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils or any other device or form. No PCB's are located on or in the Mortgaged Property in the form of electrical transformers which Borrower is obligated to remove or responsible for removing. Borrower, at any time during the term hereof, shall, upon request of Lender, at Borrower's sole cost and expense, request that the utility company then owning such electrical transformers have such electrical transformers tested for PCB's and provide Lender with such reports and test results as Lender deems necessary and appropriate. No underground or aboveground tanks were, are or will be located on or at the Mortgaged Property.

d. No investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Mortgaged Property. There is no condition on the Mortgaged Property that is in violation of any requirements of any Federal, state or local governmental entity having jurisdiction over the Mortgaged Property (collectively, "Governmental Authority") relating to Hazardous Materials, and Borrower has received no communication from or on behalf of any Governmental Authority that any such condition exists. The Mortgaged Property and its existing and prior uses comply and at all times have complied with any applicable requirements of all Governmental Authorities relating to environmental matters and Hazardous Materials. The Mortgaged Property is not currently on and, to Borrower's knowledge after diligent investigation and inquiry, has never been on any Federal or state "Superfund" or "Super lien" list.

e. Borrower shall keep and maintain the Mortgaged Property in compliance with any and all requirements of any Governmental Authority laws and all other Federal, state and local laws, ordinances and regulations relating to industrial hygiene or to the environmental conditions on, under or about the Mortgaged Property. Borrower shall not permit the use of Hazardous Materials at, to, from, in, under or about the Mortgaged Property. Borrower shall institute and implement diligently a program designed to cause all its tenants and all of Borrower's and tenants' employees, agents, contractors and subcontractors and any other person lawfully occupying or present on the Mortgaged Property to comply with all requirements of any Governmental Authority. Borrower shall enforce all rights and remedies available to it under the leases of the Mortgaged Property, under applicable requirements of any Governmental Authority and under all other applicable laws, ordinances, rules, regulations and orders (including, but not limited to, under common law principles for liability resulting from nuisance, negligence, strict liability in tort and waste) which provide a cause of action or other basis for recovery of damages, for indemnification, for a declaration of a default under a lease, for the disclosure of information, or for injunctive relief, in the event of the use of Hazardous Materials or other activities which do or may result in any loss of value of, lost use of or other loss, damage or waste to the Mortgaged Property. Borrower at all times shall comply with, and shall maintain and operate the Mortgaged Property in compliance with all requirements of any Governmental Authority in effect on the date of this Mortgage or hereafter enacted, promulgated or issued by any Federal, state or local statute, law, ordinance, code, regulation, rule, order or decree (whether by court or by any Governmental Authority) with respect to environmental protection, occupational safety and health, and similar laws, ordinances, restrictions, licenses and regulations, including without limitation, those cited or described in subsection (i), below.

f. Borrower shall (i) give notice to Lender within five (5) days upon Borrower's acquiring knowledge of the presence of any Hazardous Materials or wetlands on the Mortgaged Property or of any Hazardous Materials Contamination, with a full description thereof; (ii) promptly, at Borrower's sole cost and expense, comply with all requirements of any Governmental Authority as to the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Lender with satisfactory evidence of such compliance; (iii) provide Lender, within thirty (30) days after demand by Lender, with a bond, letter of credit or similar financial assurance evidencing to Lender's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination, obtaining the necessary approvals or certificates with respect to wetlands and discharging any assessments that may be established against the Mortgaged Property, as a result thereof; (iv) Borrower shall immediately notify Lender in writing of (a) any and all enforcement, cleanup, removal or other governmental or regulatory actions, or litigation (whether public or private) relating to the Mortgaged Property instituted, completed or threatened pursuant to any requirements of any Governmental Authority or common law principles, and of any notices received by Borrower with respect to the foregoing; (b) Borrower's discovery of any claim made or threatened by any third party or governmental agency against Borrower or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in (a) and (b) are hereinafter collectively referred to as "Hazardous Materials Claims"). Borrower shall immediately deliver to Lender copies of all notices and legal documents relating to Hazardous Materials Claims. Lender shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower.

g. Borrower shall not cause or suffer any liens to be recorded against the Mortgaged Property as a consequence of, or in any way related to, the presence or disposal of Hazardous Materials in or about the Mortgaged Property, including any Federal, state or local so-called "Superfund" lien relating to such matters.

h. Borrower at all times shall defend, indemnify and hold harmless Lender from and against any and all liabilities (including strict liability), suits, actions, causes of action, claims, demands, penalties, damages (including, without limitation, damages to property or individuals, interest, penalties, fines and monetary sanctions), losses, costs and expenses (including, without limitation attorneys' fees (to the extent permitted by law) and expenses, and remedial and clean-up costs) (collectively, "Liabilities") that may now or in the future be incurred or suffered by Lender because of, resulting from, in connection with or arising in any manner whatsoever out of the breach of any warranty or covenant or the inaccuracy of any representation of Borrower contained or referred to in this paragraph or that may be asserted as a direct or indirect result of the presence on or under, or the handling, treatment, storage, transportation, removal, disposal, escape, seepage, leakage, spillage, discharge, emission or release on or from the Mortgaged Property of any Hazardous Materials or any Hazardous Materials Contamination, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Lender.

Such Liabilities also shall include, without limitation: (i) injury to or death of any person; (ii) damage to or loss of the use of any property; (iii) the cost of any demolition and rebuilding of any improvements on the Mortgaged Property, repair or remediation and the preparation for and completion of any activity required by any Governmental Authority; (iv) any lawsuit brought or threatened, good faith settlement reached, or governmental order relating to the presence, disposal, release or threatened release of any Hazardous Materials, on, from or under the Mortgaged Property; and (v) the imposition and removal of any lien on the Mortgaged Property arising from the activity of Borrower or Borrower's predecessors in interest on the Mortgaged Property or from the existence of Hazardous Materials or Hazardous Materials Contamination upon the Mortgaged Property. Any amounts expended by Lender in connection with any Liabilities, together with interest thereon at the rate in effect hereunder in the event of default from and after the date of advancement, shall be secured by this Mortgage and shall have the same priority of collection as the principal indebtedness secured hereby until Borrower reimburses Lender pursuant to this indemnity. Notwithstanding the foregoing, this indemnity shall survive repayment of all indebtedness secured by this Mortgage, transfer of the Mortgaged Property by Borrower (including without limitation foreclosure sale of the Mortgaged Property or delivery of a deed in lieu of foreclosure) and assignment, assumption, modification, amendment, cancellation, release, termination or discharge of the Note, and shall not be subject to any anti-deficiency laws.

i. Borrower has obtained all certificates, permits, licenses, approvals and authorizations necessary for the lawful construction, occupancy, use and operation of the Mortgaged Property for the purposes for which it is currently being used, including, but not limited to, any certificates, permits, licenses, approvals and authorizations required by any Federal, state, county, regional or local authority whose jurisdiction includes, in whole or in part, environmental protection or matters pertaining to health, safety and welfare. Borrower has no knowledge of, and has received no notice of, any litigation or other regulatory, administrative, judicial or legal proceedings which (i) challenge the issuance of any of the certificates, permits, licenses, approvals



and authorizations obtained for the Mortgaged Property or (ii) allege non-compliance by Borrower or the Mortgaged Property with any law, regulation, rule or ordinance which has a material effect on the operation, occupancy, leasing or use of the Mortgaged Property for the purposes for which it is currently being used.

j. No waste or waste waters have been, or are being, treated, stored or disposed of on the Mortgaged Property, and no threatened damage to the environment (including, but not limited to, ambient air, surface water, groundwater, land surface and land subsurface) exists at the Mortgaged Property.

k. No part of the Mortgaged Property contains, is located within or abuts any area designated by the Secretary of Housing and Urban Development or other similar agency as having special flood hazard risks, navigable water or other body of water, tidelands, wetlands or marshlands which is subject to special federal, state, county, regional or local authority regulation, control or protection.

l. All surface water drains servicing the Mortgaged Property have been constructed in accordance with all applicable laws and ordinances and have been properly connected to public or private storm or sanitary sewer lines which carry such water off the Mortgaged Property, and such connection has been approved by all necessary parties and governmental authorities.

m. All garbage, trash and other solid waste from or relating to the Mortgaged Property are and will be collected on a regular basis by an independent commercial waste disposal company.

n. The term "Hazardous Materials" shall mean (i) any "hazardous waste" as now or hereafter defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, or in regulations now or hereafter promulgated thereunder; (ii) any "hazardous substance" as now or hereafter defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, or in regulations now or hereafter promulgated thereunder; (iii) any "toxic substance" as now or hereafter defined by the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended from time to time, or in regulations now or hereafter promulgated thereunder; (iv) any "toxic pollutant" as now or hereafter defined by the Federal Water Pollution Prevention and Control Act, 33 U.S.C. Section 1251 et seq., as amended from time to time, or in regulations now or hereafter promulgated thereunder; (v) any "air pollutant" as now or hereafter defined by the Clean Air Act, 42 U.S.C. Section 7401 et seq., as amended from time to time, or in regulations now or hereafter promulgated thereunder; (vi) any "contaminant" now or hereafter defined by the Safe Drinking Water Act, 42 U.S.C. Section 300f, et seq., as amended from time to time, or in regulations now or hereafter promulgated thereunder; (vii) asbestos or any other "hazardous chemical" as now or hereafter defined by the Occupational Safety and Health Administration ("OSHA") pursuant to 29 U.S.C. Section 655 or in any other regulation or rule now or hereafter promulgated by OSHA; (viii) petroleum distillates; (ix) polychlorinated biphenyls in excess of 50 parts per million; (x) underground storage tanks, whether empty, filled or partially filled with any substance; (xi) any substance the presence of which on the Mortgaged Property is now or hereafter prohibited by any Governmental Authority; (xii) lead paint; (xiii) urea formaldehyde foam insulation; (xiv) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million; and (xv) any other substance for which special handling or notification is now or hereafter required for its collection, storage, treatment, use or disposal or which is known to pose a hazard to the health and safety of the occupants of the Mortgaged Property or of the property adjacent to the Mortgaged Property.

o. The term "Hazardous Materials Contamination" shall mean the contamination (whether currently existing or hereafter occurring) of the Mortgaged Property, Collateral, facilities, soil, groundwater, air or other elements on or of the Mortgaged Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Mortgaged Property.

p. In the event that Borrower fails to remove any Hazardous Materials and/or cure any direct or indirect violation of any environmental laws, Lender may, at Lender's option, cause the Mortgaged Property to be remediated of any Hazardous Materials or otherwise brought into conformance as required by the Governmental Authority and any cost of same shall be added to the principal balance of the Note and shall bear interest thereafter until paid at the default interest rate set forth in the Note.

q. There has not been committed by Borrower or any other person involved with the Mortgaged Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of its obligations under the Note or under any of the other

documents evidencing the indebtedness, and Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof, Borrower hereby indemnifies Lender and agrees to defend and hold Lender harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence.

r. In the event that Borrower fails to remove any Hazardous Materials and/or cure any direct or indirect violation of any environmental laws, Lender may, at Lender's option, cause the Mortgaged Property to be remediated of any Hazardous Materials or otherwise brought into conformance as required by the Governmental Authority and any cost of same shall be added to the principal balance of the Note and shall bear interest thereafter until paid at the default interest rate set forth in the Note.

**9. TAXES AND LIENS.** Borrower will not voluntarily create or permit to be created or filed against the Mortgaged Property, any encumbrance, mortgage lien or other lien or liens inferior or superior to the lien of this Mortgage, without the prior written consent of Lender, which consent may be withheld for any reason or for no reason. Further, that Borrower will keep and maintain the same free from all claims of all persons supplying labor, materials or services which will enter into or otherwise contribute to the construction of any and all buildings now being erected or which hereafter may be erected on the Mortgaged Property notwithstanding by whom such labor or materials may have been contracted, or in the event of the filing of such a lien, Borrower will have said lien discharged or bonded off within thirty (30) days of such filing, and on the failure of Borrower to perform these covenants, or any part thereof, thereupon the principal and all arrears of interest shall, at the option of Lender, or any holder of the Note secured by this Mortgage, become due and payable, anything contained herein to the contrary notwithstanding.

**10. INDEMNIFICATION.** Borrower shall save Lender harmless from all costs and expenses, including reasonable attorneys' fees, if and to the extent permitted by law, and costs of a title search, continuation of abstract and preparation of survey, incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body (excepting an action to foreclose or to collect the debt secured hereby) and incurred in connection with any extra judicial collection procedure, in and to which Lender may be or become a part by reason thereof, including but not limited to condemnation, bankruptcy, probate and administration proceedings, as well as any other of the foregoing wherein proof of claims are by law required to be filed or in which it becomes necessary to defend or uphold the terms of and the lien created by this Mortgage, and all money paid or expended by Lender in that regard, together with interest thereon from date of such payment at the rate set forth in said Note or at the legal rate, whichever is higher, shall be so much additional indebtedness secured hereby and shall be immediately upon demand due and payable by Borrower.

**11. CONDEMNATION.** Borrower shall give Lender notice within five (5) days of any actual or threatened commencement of any proceedings under eminent domain affecting all or any part of the Mortgaged Property or any easement therein or appurtenance hereof, including change in grade of streets, and shall deliver to Lender copies of any and all papers served in connection with any such proceedings within ten (10) days of receipt of said papers. Borrower further covenants and agrees to make, execute and deliver to Lender, at any time or times upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments and/or instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter to be made to Borrower (including the assignment of any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof) for any taking, either permanent or temporary, under any such proceeding.

Lender shall be entitled to all awards and other compensation, including any severance or consequential damages, heretofore or hereafter to be made to the present and all subsequent owners of the property subject to this Mortgage for any taking by eminent domain, either permanent or temporary, of all or any part of the premises or any easement or appurtenance thereof, including any change in grade of streets, which said awards and compensation are hereby assigned to Lender.

**12. EVENT OF DEFAULT.**

**a. Default on Indebtedness.** The failure of Borrower (i) to pay, within ten (10) days following written notice from Lender any monetary payment hereunder of any kind whatsoever but no notice shall be required for failure to pay required periodic principal and interest payments or (ii) to perform any other term, covenant or condition of the Note or this Mortgage except those defined as being immediate events of default, within thirty (30) days following written notice from Lender, shall constitute an event of default hereunder and under the Note. Notwithstanding anything to the contrary set forth herein, if Lender shall have provided to Borrower any such notice of default (whether as to monetary or nonmonetary default) one (1) time during any calendar year, then no further notice or cure period shall be required with respect to any subsequent defaults within the same

calendar year, either monetary or nonmonetary, and such default shall be an immediate event of default, and if Lender shall have provided to Borrower any such notice of default (whether as to monetary or non-monetary default) two (2) times during the term hereof, then no further notice or cure period shall be required with respect to any subsequent defaults, either monetary or non-monetary, under this Mortgage, and such subsequent default shall be an immediate event of default hereunder or under the Note.

**b. Default on Other Payments.** The failure of Borrower within the time required by this Mortgage to make any payment for taxes and insurance, or any other payment to prevent filing of or to effect discharge of any lien shall constitute an event of default.

**c. Compliance Default.** The failure to comply with any other term, obligation, covenant or condition contained in this Mortgage, the Note or in any other instruments executed of even date herewith shall constitute an event of default.

**d. Insolvency.** It shall be an event of default hereunder if Borrower or any guarantor of any part of the indebtedness evidenced by the Note or any other obligation of Borrower, shall file a voluntary petition in bankruptcy or be adjudicated a bankrupt or insolvent, or Borrower or any such guarantor shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future Federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors or protection for creditors, or Borrower seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of Borrower or guarantor, as the case may be, or of all or any substantial part of the Mortgaged Property or any or all of the rents, revenues, issues, earnings, profits or income thereof or the making of any general assignment for the benefit of creditors, or the admission in writing of his inability to pay his debts generally as they become due, or the entry by a court of competent jurisdiction of any order, judgment or decree approving a petition filed against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future Federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors or protection for creditors, or the appointment of any trustee, receiver, or liquidator of Borrower or guarantor, as the case may be, or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of Lender.

**e. Legal Proceedings.** Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Borrower, Lender or all or any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Borrower's obligations under the Note or this Mortgage is a potential result shall, at the election of the Lender, constitute an event of default hereunder without notice or opportunity to cure. In the event of a forfeiture, the non-recourse provisions, if any, in the Note and in the Mortgage shall be deemed deleted and of no force and effect. In such event, Lender shall have all rights against Borrower as provided herein, and at law and in equity.

**f. Misrepresentation.** Any misrepresentation of Borrower relating to any warranty, representation or statement made or furnished to Lender by or on behalf of Borrower shall constitute an event of default.

**g. Events Affecting Guarantor.** If any of the events described in subparagraphs (a) through (f) of this Paragraph occur with respect to either of the Guarantors executing a Guaranty of even date herewith to guaranty payment of the Indebtedness, or if the Guarantor dies, is found incompetent or dissolves, such event shall constitute an event of default.

**h. Insecurity.** If the Lender in good faith deems Borrower insecure, the Borrower's insecurity shall constitute an event of default.

**i. Immediate Event of Default.** If an event of default is defined herein as being an immediate event of default, no notice or cure period shall be required with respect thereto.

### 13. RIGHTS AND REMEDIES UPON BORROWER'S DEFAULT.

a. Upon default by Borrower in the performance of any of the terms, covenants or conditions in the Mortgage or in the Note, Lender may, at its option and whether electing to declare the whole indebtedness due and payable or not, perform the same without waiver of any other remedy, and any amount paid or advanced by Lender in connection therewith, or any other costs, charges or expenses incurred in the protection of the Mortgaged Property and the maintenance of this lien with interest thereon at the rate of eighteen percent (18 %) per annum in excess of the then interest rate under the Note (the "Default Rate") shall be



repayable by Borrower upon demand, shall be a lien upon the Mortgaged Property prior to any right or title to interest in or claim thereon attaching or accruing subsequent to the lien of this Mortgage and shall be deemed to be included in and secured by this Mortgage.

b. Upon any default by Borrower in the payment of the indebtedness secured hereby, or in the performance or observance of any other term, covenant or condition in the Note, or upon any default by Borrower in the performance or observance of any term, covenant or condition in this Mortgage, Assignment of Rents and Leases of even date herewith from Borrower to Lender or any other instrument securing the indebtedness evidenced by the Note, then, in any of said events, at the option of Lender, the whole indebtedness secured hereby shall become immediately due and payable, anything hereinbefore or in the Note contained to the contrary notwithstanding and thereupon or at any time during the existence of any such default, Lender may proceed to foreclose (including sale under power of sale hereunder) this Mortgage or otherwise pursue any other right or remedy herein or by law provided.

c. Upon any default by Borrower or as otherwise authorized by Borrower, Lender may tender any payment on behalf of Borrower at Borrower's expense, relating to taxes, assessments, water rents and charges, sewer rents and charges and other governmental or municipal charges, fines, impositions or liens asserted against the Mortgaged Property may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim or charge, Lender, acting reasonably, shall be the sole judge of the legality or validity of same, or otherwise relating to any purpose herein and hereby authorized, but not enumerated in this Paragraph, Lender may do so whenever, in its judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument.

d. Lender may obtain a judicial decree foreclosing Borrower's interest in all or any part of the Property.

e. Lender may obtain a deficiency judgment against the Borrower or any Guarantor for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received by Lender from the exercise of the rights provided in the Mortgage.

f. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover all of its attorney fees at trial and on appeal, expenses of collection and other costs incurred by Lender. Whether or not any court action is involved, all reasonable expenses incurred by Lender that in Lender's opinion are necessary to protect its interest or for enforcement of its shall rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of the expenditure until repaid at the Note rate.

g. Upon any such default being made and after the period, if any, for curing such default has expired, Lender, its legal representatives, successors and assigns are hereby **AUTHORIZED AND EMPOWERED** to exercise any right or remedy available under this Mortgage, at law and in equity.

#### 14. FORECLOSURE.

a. Lender in any suit to foreclose this Mortgage shall be entitled to the appointment of a receiver of the rents, issues and profits of the Mortgaged Property as a matter of right and without notice, with power to collect the rents, issues and profits of the Mortgaged Property due and becoming due during the pendency of such foreclosure suit to and including the date of confirmation of the sale under such foreclosure and during the redemption period, if any, after such confirmation, such rents and profits being hereby expressly assigned and pledged as additional security for the payment of the indebtedness secured by this Mortgage without regard to the value of the Mortgaged Property or the solvency of any person or persons liable for the payment of the mortgage indebtedness and regardless of whether Lender has an adequate remedy at law. Borrower for Borrower and any subsequent owner hereby waives any and all defenses to the application for a receiver as above and hereby specifically consents to such appointment without notice but nothing herein contained is to be construed to deprive the holder of this Mortgage of any other right or remedy or privilege it may now have under the law to have a receiver appointed. The provision for the appointment of a receiver and the assignment of such rents, issues and profits is made an express condition upon which the loan hereby secured is made. The rights and remedies herein provided for shall be deemed to be cumulative and in addition to and not in limitation of those provided by law and if there were no receiver so appointed, Lender itself may proceed to collect the rents, issues and profits from the Mortgaged Property. From any said rents, issues and profits collected by the receiver or by Lender prior to a foreclosure sale shall be deducted the cost of collection thereof, including but not limited to real estate commissions, receiver's fee and the fees

of his attorney, if any, and Lender's attorney's fees, if permitted by law, and court costs; the remainder shall be applied against the indebtedness hereby secured. In the event the rental and other income is not adequate to pay all tax and other expenses of operation, Lender may, but is not obligated to, advance to any receiver the amounts necessary to operate, maintain and repair, if necessary, the Mortgaged Property, and any such amounts so advanced, together with interest thereon at the rate in effect hereunder in the event of default from and after the date of advancement, shall be secured by this Mortgage and have the same priority of collection as the principal indebtedness secured hereby.

b. In the event of foreclosure of this Mortgage in any court of law or equity, whether or not any order or decree shall have been entered therein, and, to the extent permitted by law, all sums shall be allowed for attorneys' fees of the Lender in such proceeding, for stenographers' fees and for all moneys expended for documentary evidence and the cost of a complete abstract of title and title report for the purpose of such foreclosure, such sums to be secured by the lien hereunder; and, to the extent permitted by law, there shall be included in any judgment or decree foreclosing this Mortgage and there shall be paid out of said rents, issues and profits or out of the proceeds of any sale made in pursuance of any such judgment or decree: (a) all costs and expenses of such suit or suits, advertising, sale, and conveyance, including attorneys', solicitors' and stenographers' fees, if permitted by law, outlays for documentary evidence and the cost of said abstract, examination of title and title report; (b) all moneys advanced by Lender, if any, for the purpose authorized in this Mortgage with interest as herein provided; (c) all the accrued interest remaining unpaid on the Note; (d) all the said principal money remaining unpaid. The surplus of the proceeds, if any, shall be paid to Borrower as the court may direct or as required under Indiana law.

c. In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels at the option of Lender.

d. To the extent permitted by law with respect to the debt secured hereby or any renewals or extensions thereof, Borrower waives and renounces any and all homestead and exemption rights, as well as the benefit of all valuation and appraisal privileges, and also redemption and moratoriums under or by virtue of the constitution and laws of the State of Indiana, of any other state or of the United States, now existing or hereafter enacted. Also, Borrower hereby waives, in the event of foreclosure of this Mortgage, any right, legal, equitable or otherwise, with respect to marshalling of assets hereunder which could dictate the application of any proceeds from any Sheriff's Sale or other execution against the Mortgaged Property other than the application of any such proceeds to the Note; and Borrower hereby agrees and consents that any such proceeds may be applied at the sole and absolute discretion of the then holder of the Note to reduce the amounts due on the Note or under the terms of this Mortgage.

**15. WAIVER.** The failure of Lender to exercise the option for acceleration of maturity and/or foreclosure (including sale under power of sale hereunder) following any default as aforesaid or to exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments hereunder shall not constitute a waiver of any such default, nor extend or affect the grace period, if any, but such option shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender may, at the option of Lender, be rescinded by written acknowledgment to that effect by Lender, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, or extend or affect the grace period, if any.

In the event Lender: (a) releases, as aforesaid, any part of the security described herein or any person liable for any indebtedness secured hereby, (b) grants an extension of time for any payments of the debt secured hereby, (c) takes other or additional security for the payment thereof, or (d) waives or fails to exercise any right granted herein or in the Note; and no such act or omission shall release Borrower, subsequent purchasers of the Mortgaged Property or any part thereof, or makers or sureties of this Mortgage or of the Note, under any covenant of this Mortgage or of the Note, or preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or any subsequent default.

**16. APPLICABLE LAW.** The Mortgage and the rights and indebtedness hereby secured shall, without regard to the place of contract or payment, shall be construed and enforced according to the laws of Indiana. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable.

**17. NOTICES.** Any notice or communication given under this Mortgage or under the Note shall be in writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight express service, addressed as follows:

To Borrower: Lake County Trust #5273 Under A Trust  
Agreement Dated August 1, 2001  
c/o LAKE COUNTY TRUST COMPANY  
2200 North Main Street  
Crown Point, IN 46307

To Lender: COMERICA BANK – MC7355  
3551 Hamlin  
Auburn Hills, Michigan 48326  
Attn: Jacqueline M. Woodstock

with a copy to: James M. Novara, Esq.  
Ruggirello, Velardo, Novara & Ver Beek, P.C.  
65 Southbound Gratiot Avenue  
Mount Clemens, Michigan 48043

or to such other address as either party may designate by notice given in accordance herewith. Any notice given in the manner set forth herein shall be deemed received as follows: (i) if personally delivered, on the date delivered; (ii) if mailed through the United States Postal Service by registered or certified mail, return receipt requested, postage prepaid, three (3) days after the date of deposit in the mail; (iii) if sent by nationally recognized overnight express service, one (1) day after deposit with such service.

**18. RIGHT OF INSPECTION.** Borrower hereby grants to Lender, subject to the rights of tenants, an irrevocable easement for ingress, egress and inspection for the purpose of entering upon the Mortgaged Property for making such inspections and tests as Lender may deem necessary to determine whether there is compliance with all environmental and other governmental laws and regulations. Notwithstanding the foregoing, any information provided to Lender under this Paragraph is to allow Lender to protect Lender's security interest in the Mortgaged Property and is not intended to create any obligations upon Lender with respect to the operation or ownership of the Mortgaged Property. Any rights, authority or approvals granted to Lender by Borrower or actions taken by Lender under this paragraph are solely to protect Lender's security interest in the Mortgaged Property and are not intended to create any obligations upon Lender with respect to the operation or ownership of the Mortgaged Property.

**19. FULL PERFORMANCE.** If Borrower shall pay all of the indebtedness evidenced by the Note and fully keep and perform all of the terms, covenants and conditions to be kept and performed in the Note, and Borrower shall fully keep and perform all of the terms, covenants and conditions by Borrower to be kept and performed herein, then this Mortgage shall be void and shall be released by Lender, at the cost and expense of Borrower, and, in case of failure of Lender to so release this Mortgage, all claim for statutory penalties and damages are hereby waived; otherwise this Mortgage is to be and shall remain in full force and effect.

**20. TIME IS OF THE ESSENCE.** IT IS SPECIFICALLY AGREED that time is of the essence of this Mortgage and that the waiver of the rights and options, or obligations secured hereby, shall not at any time thereafter be held to be abandonment of such rights. Notice of the exercise of any right or option granted to Lender herein, or in the Note secured hereby, is not required to be given.

**21. MISCELLANEOUS.** All of the covenants, agreements and waivers herein contained are joint and several and shall also bind, and the benefits and advantages thereof shall also inure to, the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

**22. SMALL BUSINESS ADMINISTRATION.** The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:



- a. When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.
- b. Mortgagee or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Mortgagor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Mortgagor, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

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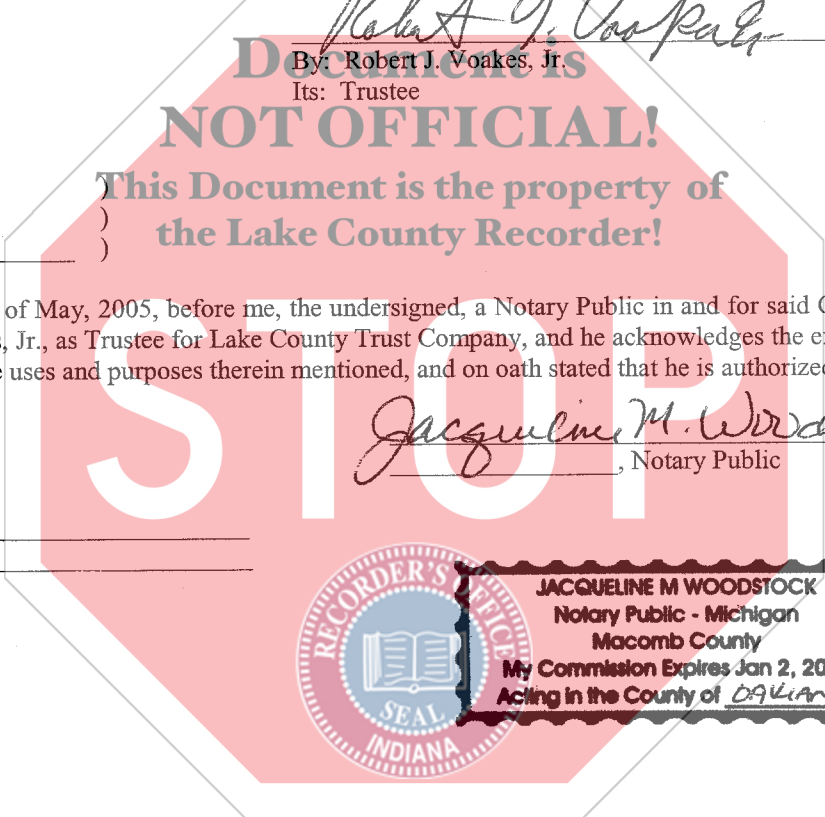
IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the date first written above.

**BORROWER/MORTGAGOR:**

**LAKE COUNTY TRUST #5273 UNDER A TRUST AGREEMENT DATED AUGUST 1, 2001**

By: **LAKE COUNTY TRUST COMPANY**, an Indiana corporation

*Robert J. Voakes, Jr.*  
 By: Robert J. Voakes, Jr.  
 Its: Trustee



STATE OF INDIANA

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of May, 2005, before me, the undersigned, a Notary Public in and for said County and State personally appeared Robert J. Voakes, Jr., as Trustee for Lake County Trust Company, and he acknowledges the execution of the Mortgage to be his voluntary act for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this Mortgage.

*Jacqueline M. Woodstock*  
 \_\_\_\_\_, Notary Public

County of Residence: \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_



**JACQUELINE M WOODSTOCK**  
 Notary Public - Michigan  
 Macomb County  
 My Commission Expires Jan 2, 2012  
 Acting in the County of *DAKOTA*

**EXHIBIT "A"**

**PERMITTED ENCUMBRANCES**

None.

