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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2009 062509

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MICHAEL A. BROWN
RECORDER

MORTGAGE AND SECURITY AGREEMENT (FINANCING STATEMENT)

This Mortgage and Security Agreement (Financing Statement) ("**Mortgage**") is made as of August 20, 2009, by **WILLIAM J. McENERY**, as Trustee of the William J. McEnery Revocable Trust ("**Mortgagor**"), having an address at 160 South LaGrange Road, P. O. Box 70, Frankfort, Illinois 60423, to and for the benefit of **CENTIER BANK**, an Indiana state bank ("**Centier**"), having an address at 600 East 84th Avenue, Merrillville, Indiana 46410.

Mortgagor states as follows:

A. Mortgagor holds fee title to the improved real property commonly known as the Steel City Truck Stop, 3001 Grant Street, Gary, Lake County, Indiana, containing approximately 3.75 acres, as described on Exhibit A, which is attached hereto and made a part hereof, including all improvements thereon and all rights appurtenant thereto.

B. As of the date hereof, Centier is making a loan to Mortgagor in the principal amount of \$10,000,000.00 (the "**Loan**").

C. Centier has required and Mortgagor has agreed to grant a security interest in all of its right, title and interest in and to the Premises to secure full payment and performance of all payments to be made and all matters to be performed under and with respect to this Mortgage and the other Loan Documents.

NOW THEREFORE, in consideration of the agreement of Centier to make the Loan, Mortgagor covenants and agrees as follows:

PART 1 - DEFINITIONS

In addition to those terms defined in other provisions of this Mortgage, the following terms will have the following meanings:

1.1 "**Easements**" will mean all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity;

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TICOR TITLE INSURANCE

1.2 "**Fixtures**" will mean (a) all fixtures and articles of personal property forming a part of or used in connection with the Land or the Improvements, excluding such properties which are, pursuant to written leases, the sole property of tenants on the Premises and which such tenants are permitted or obligated to remove from the Premises upon termination of their respective leases, and (b) all other interests of Mortgagor with respect to any fixtures and/or articles of personal property forming a part of or used in connection with the Land or the Improvements;

1.3 "**Improvements**" will mean all improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter located on, or used or intended to be used in connection with, the Land or the improvements, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest in and to any such personal property or fixtures, together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures; for purposes hereof, "Improvements" will exclude the interests of tenants on the Premises in and to improvements which are, pursuant to written leases, the sole property of tenants on the Premises and which such tenants are permitted or obligated to remove from the Premises upon termination of their respective leases;

1.4 "**Land**" will mean that real estate situated in Gary, Lake County, Indiana, commonly known as 3001 Grant Street, Gary, Lake County, Indiana, containing approximately 3.75 acres, as described on Exhibit A, which is attached hereto and made a part hereof.

1.5 "**Loan Documents**" will mean the Note, this Mortgage, a certain Assignment of Rents and Leases, a certain Continuing Security Agreement, a Guaranty executed by Gas City, Ltd., a Limited Guaranty executed by William J. McEnery, a Mortgage of Ground Lease Interests and Security Agreement (Financing Statement) executed by Gas City, Ltd., and the Estoppel Certificate and Lease Amendment with respect to tenancies on the Premises, all of even date herewith, along with all other documents executed by or on behalf of Mortgagor with respect to the Loan, and all modifications, amendments, supplements, replacements, and restatements thereto or thereof, whether or not contemplated hereby.

1.6 "**Note**" will mean that certain Promissory Note of even date herewith, in the principal amount of \$10,000,000.00, drawn by Mortgagor to the order of Centier, along with and all allonges, modifications, amendments, supplements, replacements, and restatements thereto or thereof, whether or not contemplated hereby, evidencing a portion of the Loan, with final payment due on the fifth (5th) anniversary of the date hereof.

1.7 "**Premises**" will mean, collectively, the Land, the Improvements, the Fixtures and the Easements.

1.8 "**Permitted Exceptions**" those exceptions set forth on Exhibit B, which is attached hereto and made a part hereof;

1.9 "**Secured Obligations**": all indebtedness and all obligations evidenced by the Note and/or any of the other Loan Documents, and/or all future modifications, extensions, and renewals thereof; together with all obligations, liabilities, covenants and agreements of Mortgagor to Centier (and/or any successors or assigns of Centier) arising under or relating to any of the Loan Documents, and all future modifications, extensions, and renewals thereof, whether now existing

or hereafter arising, absolute or contingent, whether contemplated herein, or in any of the other Loan Documents or any amendment, modification, extension, renewal, supplement, replacement or restatement thereto or thereof; together with all future obligations of Mortgagor to Centier and all future advances by Centier to Mortgagor, provided that the amount of such future obligations and/or advances (excluding the amount of the Loan and all other amounts payable pursuant to the Note as presently in effect) will not exceed \$5,000,000.00, whether made as an obligation, made at the option of Centier, made after a reduction to a zero (0) or other balance, or made otherwise.

PART 2 - GRANT

2.1 **Grant to Centier.** In consideration of the agreement of Centier to make the Loan and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to secure the indefeasible payment and performance of all Secured Obligations, Mortgagor **HEREBY MORTGAGES, WARRANTS, GRANTS, HYPOTHECATES, REMISES, RELEASES, ALIENATES AND CONVEYS WITH MORTGAGE COVENANTS** to Centier and its successors and assigns forever, the following described property, rights and interests, all of which property, rights and interests are hereby pledged primarily and on a parity with Mortgagor's interest in the Premises and not secondarily, all of the following (collectively, the "**Collateral**"):

(a) The Premises and all of Mortgagor's right, title and interest in and to the Premises;

(b) Any and all of Mortgagor's other right, title and interest in and to the Premises, and all personal property of Mortgagor;

(c) All of rights of Mortgagor in any goodwill, trademarks, trade names, option rights, purchase contracts, books and records and general intangibles of Mortgagor relating to the Premises and/or all accounts, contract rights, instruments, chattel paper and other rights of Mortgagor for payment of money, for property sold or lent, for services rendered, for money lent, or for advances or deposits made, and any other intangible property of Mortgagor related to the Premises or any part thereof, and all accounts and monies held by and/or in the possession of Centier for the benefit of Mortgagor or otherwise held pursuant to any of the Loan Documents (all of the foregoing is herein referred to collectively as the "**Intangibles**");

(d) All rights of Mortgagor to rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Land, the Improvements, the Leases (defined below), and all proceeds of sale or other disposition of the Collateral or any portion thereof (all of the foregoing is herein collectively called the "**Rents**");

(e) All rights of Mortgagor as lessor under all subleases, leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money or any consideration for the use, possession or occupancy of, or any estate in, the Premises or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any of such items (all of the foregoing is herein referred to collectively as the "**Leases**");

(f) All rights and interests of Mortgagor in and to any and all service and other agreements relating to the operation, maintenance, and repair of the Premises or the buildings and improvements thereon ("**Service Agreements**");

(g) All rights and interests of Mortgagor in and to any plans, specifications, architectural renderings, drawings, foundation licenses, building licenses, and all other licenses and permits issued by governmental entities with respect to construction and rehabilitation of Improvements, soil test reports, other reports of examinations or analyses, contracts for services to be rendered to Mortgagor, or otherwise in connection with the Premises and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way relating to the Premises or the Collateral or construction of additional improvements thereto (the "**Plans**");

(h) All rights and interests of Mortgagor in and to unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Mortgagor and all proceeds of the conversion, voluntary or involuntary, of the Collateral or any part hereof into cash or liquidated claims, including, without limitation, all proceeds of casualty, liability, hazard and/or title insurance and all awards and compensation hereafter made to the present and all subsequent owners of the Collateral by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Collateral or any easement therein, including awards for any change of grade of streets;

(i) All rights and interests of Mortgagor in and to judgments, awards of damages and settlements which may result from any damage to the Premises or any part thereof or to any rights appurtenant thereto; all rights of Mortgagor to compensation, awards, damages, claims, rights of action and proceeds of, or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the Premises or any part thereof, (ii) any damage to the Premises by reason of the taking, pursuant to the power of eminent domain, of other property or of a portion of the Premises, or (iii) the alternation of the grade of any street or highway on or about the Premises or any part thereof; all rights of Mortgagor in and to any proceeds of any sales or other dispositions of the Premises or any part thereof (collectively "**Awards**");

(j) All rights and interests of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Premises, hereafter acquired by, or released to, Mortgagor or otherwise constructed, assembled or placed on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, will become subject to the lien of this Mortgage; and

(k) All rights of Mortgagor in and to any proceeds of any of the foregoing, including, without limitation, all judgments, awards, damages and settlements hereafter made resulting from condemnation or the taking of the Premises or any

portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof, together with the right, title and interest of Mortgagor whatsoever to receive the foregoing.

2.2 **Extent of Centier's Interests.** Centier and its successors and assigns will have and hold all of Mortgagor's interest in and to the Premises and the other Collateral, subject only to the Permitted Exceptions, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of and during the continuance of any Event of Default (as hereinafter defined) all whether now owned or hereafter acquired or arising, securing the indefeasible payment and performance of the Secured Obligations. Mortgagor hereby **RELEASES AND WAIVES** all rights under and by virtue of the homestead exemption laws of the State of Indiana.

Mortgagor, by this instrument, has granted a mortgage upon and a security interest in Mortgagor's fee title interest in and to the Premises, and this instrument will be deemed to create a mortgage, security interest in and lien upon such fee title. As to any part of the Collateral which does not form a part and parcel of Mortgagor's fee title interest in the Premises, this Mortgage is hereby deemed to be, as well, a security agreement under the Uniform Commercial Code as enacted in Indiana for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Centier as Secured Party (as said term is defined in the Uniform Commercial Code), securing the indefeasible payment and performance of all Secured Obligations.

2.3 **Release upon Full Payment and Performance.** At such time as the Secured Obligations are indefeasibly paid in full and all items to have been performed under or with respect to this Mortgage, the Note, and all of the other Loan Documents have been fully performed, and provided no Event of Default has occurred and is then continuing hereunder or thereunder, then the lien of this Mortgage and the interest of Centier in the Premises will be released at the cost of Mortgagor but will otherwise remain in full force.

PART 3 - ADDITIONAL COVENANTS AND AGREEMENTS OF MORTGAGOR

3.1 **Payment of Secured Obligations and Performance of Covenants.** Mortgagor will pay all liabilities under the Note and all of the other Loan Documents and punctually perform and observe all of the requirements thereunder.

3.2 **Maintenance, Repair, Compliance with Law, Use, etc.** Mortgagor will (a) promptly repair or restore any portion of the Improvements which may become damaged, whether or not proceeds of insurance are available or sufficient for that purpose; (b) maintain the Premises and keep the Premises in reasonable condition and free from waste; (c) pay all operating costs of the Premises; (d) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (e) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (f) comply with any restrictions of record with respect to the Premises and the use thereof; and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises and are necessary for its use and occupancy; and (g) cause the Premises to be operated and/or managed in a competent and professional manner.

3.3 **Prohibitions.** Without the prior written consent of Centier, Mortgagor will not cause, suffer or permit any: (a) use of the Premises other than for the sale of motor vehicle fuels, restaurants, retail establishments, services for trucks and other motor vehicles, and other uses incidental thereto; (b) change in the identity of the firm responsible for managing the Premises; (c) change the zoning reclassification with respect to the Premises; or (d) unlawful use of, waste with respect to, or nuisance to exist upon, the Premises.

3.4 **Liens.**

(a) **Prohibition.** Mortgagor will not create or suffer or permit any encumbrance or lien to attach to or be filed against the Premises or any other Collateral or any part thereof, other than the Permitted Exceptions.

(b) **Contest of Mechanic's Liens Claims.** Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any mechanic's lien and defer payment and discharge thereof during the pendency of such contest, provided that Mortgagor may contest in good faith and with reasonable diligence the validity of any such claim of lien upon furnishing to Centier such security or indemnity as Centier may in its discretion require, including but not limited to deposits and/or other assurances necessary to induce a title insurance company to issue title insurance insuring against all such claims or liens.

3.5 **Taxes and Assessments; Monthly Deposits.** Mortgagor will pay or cause to be paid, when due, all real property taxes, all assessments, all applicable personal property taxes, and all insurance premiums with respect to the Premises before penalty accrues thereon. Such payments will be facilitated through deposits as provided in this Section 3.5, subject to the right of Centier to waive such requirements as provided in Section 3.5(f) hereof.

(a) **Deposits.** Mortgagor will deposit with Centier on the day monthly installments of principal or interest, or both, are due with respect to the Note (or on another day designated in writing by Centier), until the Loan is paid in full, an additional amount sufficient to accumulate in an account held by Centier the entire sum required to pay, when due (a) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Centier may require under Section 3.7 hereof; (b) real property and personal property taxes and/or assessments with respect to the Premises and any personal property which secures payment of the Loan; and (c) amounts for other charges and expenses which Centier at any time reasonably deems necessary to protect the Premises, to prevent the imposition of liens on the Premises or any part thereof, or otherwise to protect Centier's interests, all as reasonably estimated from time to time by Centier. The amounts deposited under the preceding sentence are collectively referred to in this Mortgage as the "**Imposition Deposits**". The obligations of Mortgagor for which the Imposition Deposits are required are collectively referred to in this Mortgage as "**Impositions**". The amount of the Imposition Deposits will be sufficient to enable Centier to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Centier will maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Centier are held for the purpose of paying each separate item of the Impositions. Any waiver by Centier of the

requirement that Mortgagor remit Imposition Deposits to Centier may be revoked and/or reinstated by Centier, in Centier's discretion, at any time and from time to time upon notice to Mortgagor.

(b) **Holding of Deposits.** Imposition Deposits will be held in a non-interest-bearing account at Centier. Centier will apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Mortgagor hereby pledges and grants to Centier a security interest in the Imposition Deposits as additional security for all of the Secured Obligations. Any amounts deposited with Centier under this Section 3.5 will not be trust funds, nor will they operate to reduce any amounts due with respect to the Note and/or the Loan, unless applied by Centier for that purpose under Section 3.5(e) hereof.

(c) **Payment by Centier.** If Centier receives a bill or invoice for an Imposition, Centier will pay the Imposition from the Imposition Deposits held by Centier. Centier will have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Centier with respect to such specific Imposition. Centier may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition. If any real property taxes are under appeal, Centier will make reasonable efforts to coordinate with Mortgagor in order to cause the appropriate amount to be paid or deposited with the taxing authority or authorities in order to avoid arrearages and/or any tax sale with respect to the Premises.

(d) **Adjustments of Amounts of Deposits.** If at any time the amount of the Imposition Deposits held by Centier for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Centier, the excess will be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Centier for payment of a specific Imposition is less than the amount reasonably estimated by Centier to be necessary, Mortgagor will pay to Centier the amount of the deficiency within 10 days after notice from Centier.

(e) **Application upon Event of Default.** If an Event of Default has occurred and is continuing, Centier may apply any Imposition Deposits, in any amounts and in any order as Centier determines, in Centier's discretion, to pay any Impositions or as a credit against amounts owing with respect to the Loan. Upon payment in full of the Loan, Centier will refund to Mortgagor any Imposition Deposits held by Centier.

(f) **Option of Centier to Waive.** Notwithstanding the provisions of this Section 3.5, Centier may in its discretion waive, and prior to the occurrence of any Event of Default Centier will waive, the requirement that Borrower make deposits as provided in Sections 3.5(a) through 3.5(e) hereof. Centier may waive such requirements and reinstate such requirements at any time and from time to time in its discretion. No such waiver by Centier will affect or limit the obligation of Borrower to pay or cause to be paid, when due, all real property taxes, all assessments, all

applicable personal property taxes, and all insurance premiums with respect to the Premises before penalty accrues thereon.

3.6 **Replacement Reserves.** Borrower will maintain, at all times, adequate reserves for replacements of the Improvements and the Fixtures, and any applicable personal property.

3.7 **Insurance Coverage.**

(a) **General Insurance Requirements.** Mortgagor will, at all times during which the Loan or any portion thereof is outstanding, maintain such insurance in such amounts as Centier may from time to time require in its reasonable discretion. Centier's insurance requirements may change from time to time throughout the term of the Loan. All policies will be in forms approved by Centier and will be issued by insurers approved by Centier. Unless otherwise directed by Centier, Centier will be included as a named insured on all such policies as its interests may appear. The insurance required by Centier will include, but may not be limited to:

(i) coverage of all improvements on the Premises against such hazards as Centier may from time to time require in such amount or amounts as Centier may from time to time require, provided that the amount thereof will not be less than the total of all amounts outstanding with respect to the Loan, and will not be less than the full replacement value of the Improvements; such coverage will include but not be limited to coverage against loss by fire and allied perils and, if applicable, general boiler and machinery coverage;

(ii) coverage of rental and/or business interruption sufficient to cover all lost rents for a period of one year or more;

(iii) comprehensive public liability insurance, in such amount as Centier may from time to time direct, provided that the amount of coverage will be at least \$1,000,000.00 per occurrence, with additional umbrella coverage of \$9,000,000.00 per occurrence;

(iv) workers' compensation insurance and such other insurance as may be required by applicable law or governmental regulation;

(v) builder's risk insurance or other coverage applicable to any construction with respect to the Improvements;

(vi) such other liability, errors and omissions and fidelity insurance coverages as Centier may from time to time require;

(vii) if required by Centier, sinkhole insurance, mine subsidence insurance, earthquake insurance, and/or, if the Premises do not conform to applicable zoning or land use laws, building ordinance or law coverage; and

(viii) if any of the improvements on the Land are located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, insurance of such improvements against loss or damage by flood.

Not in limitation of any other provisions hereof, the builder's risk and hazard insurance policies will each be written on an all risk basis and on a completed value form (non-reporting basis) for the full replacement cost of the Improvements, will contain a standard, noncontributory mortgagee endorsement in favor of Centier, as mortgagee, and will contain a special extended coverage endorsement and such other endorsements as Centier may require. Centier will have the right to hold the original policies or duplicate original policies of all insurance required hereunder. Not in limitation of the foregoing, all such policies will contain clauses, satisfactory to Centier in form and substance, providing that no such policy may be terminated for any reason (including but not limited to non-payment of premiums) unless notice thereof is given to Centier at least 30 days prior to the effective date of termination.

(b) **Premiums.** On or before the date of this Mortgage, Mortgagor will prepay all premiums with respect to the insurance coverage required by Centier for a period extending at least six (6) months after the date hereof. All subsequent premiums on insurance policies required under Section 3.6(a) will be timely paid, in the manner provided in Section 3.4 hereof if applicable. Mortgagor will promptly deliver to Centier a copy of all renewal and other notices received by Mortgagor with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Mortgagor will deliver to Centier the original (or a duplicate original) of a renewal policy in form satisfactory to Centier.

(c) **Compliance with Requirements.** Mortgagor will comply with all insurance requirements and will not permit any condition to exist on the Premises that would invalidate any part of any insurance coverage that Mortgagor is required to maintain pursuant to this Mortgage and/or pursuant to any of the other Loan Documents.

(d) **Claims under Policies.** In the event of loss, Mortgagor will give immediate written notice to the insurance carrier and to Centier. Provided that Centier has reasonably determined that there has been casualty damage to the Premises with a total repair/replacement cost of \$100,000 or more, Mortgagor hereby authorizes and appoints Centier as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Centier's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 3.6 will require Centier to incur any expense or take any action. Centier may, at Centier's option, (i) hold the balance of such proceeds to be used to reimburse Mortgagor for the cost of restoring and repairing the Premises to the equivalent of its original condition or to a condition approved by Centier, or (ii) if the conditions provided in Section 3.6(e) hereof are not fully met, apply the balance of such proceeds to the payment of the Loan, whether or not then due. To the extent Centier determines to apply insurance proceeds to restoration, Centier will do so in accordance with Centier's then-current policies relating to the restoration of casualty damage on similar commercial properties.

(e) **Application of Proceeds.** Centier will not exercise its option to apply insurance proceeds to the payment of the Loan if all of the following conditions are met: (i) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Centier determines, in its reasonable discretion, that there will be sufficient funds to complete the applicable restoration; (iii) Centier determines, in its reasonable discretion, that the rental income from the Premises after

completion of the restoration will be sufficient to meet all operating costs and other expenses, deposits to reserves and loan repayment obligations relating to the Premises; and (iv) Centier determines, in its reasonable discretion, that the restoration will be completed before the earlier of: (A) the date which is one year before the maturity date (as defined in the Note), or (B) the date which is one year after the date of the loss or casualty. If the proceeds are to be so applied to restoration, all such proceeds will be delivered to and held by Centier and applied to restoration in accordance with construction budgets and schedules and plans and specifications approved by Centier in its discretion; in such event, such proceeds may be applied by Centier directly to such restoration and may be delivered by Centier to the applicable title insurance company for disbursement.

(f) **Foreclosure Rights.** If the Premises are sold at a foreclosure sale or Centier acquires title to the Premises, Centier will automatically succeed to all rights of Mortgagor in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Premises prior to such sale or acquisition.

3.8 **Condemnation and Eminent Domain.**

(a) **Acknowledgment of Security Interest in Awards.** Pursuant to the terms of this Mortgage, Mortgagor has granted to Centier a security interest in all of Mortgagor's rights to any and all Awards.

(b) **Notice to Centier.** Borrower will promptly notify Centier of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Premises, whether direct or indirect (a "Condemnation"). Borrower will appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Centier in writing. Borrower authorizes and appoints Centier as attorney-in-fact for Borrower to commence, appear in and prosecute, in Centier's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 3.7 will require Centier to incur any expense or take any action.

(c) **Application of Awards.** Centier may apply an Award or any portion thereof, after the deduction of Centier's expenses incurred in the collection of such amounts, at Centier's option, to the restoration or repair of the Premises or, if the conditions provided in Section 3.8(d) hereof are not fully met, to the payment of the Secured Obligations with the balance, if any, to Borrower. Unless Centier otherwise agrees in writing, any application of any Award to the Secured Obligations will not extend or postpone the due date of any installments referred to in the Note, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any Awards or proceeds as Centier may require.

(d) **Application of Proceeds.** Centier will apply all Award amounts, after the deduction of Centier's expenses incurred in the collection of such amounts, to the restoration or repair of the Premises, up to the full amount of all reasonable costs therefor, if all of the following conditions are met: (i) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Centier determines, in its reasonable discretion, that there will be sufficient funds to complete the applicable restoration; (iii) Centier determines, in its reasonable discretion, that the rental income from the Premises after completion of the restoration will be sufficient to meet all operating costs

and other expenses, deposits to reserves and loan repayment obligations relating to the Premises; and (iv) Centier determines, in its reasonable discretion, that the restoration will be completed before the earlier of: (A) the date which is one year before the Maturity Date (as defined in the Note), or (B) the date which is one year after the date of the loss of the applicable portion of the Premises.

3.9 **Security Agreement.** Mortgagor and Centier agree that this Mortgage will constitute a security agreement within the meaning of the Indiana Uniform Commercial Code (the "Code") with respect to (i) all sums at any time on deposit for the benefit of Centier or held by Centier (whether deposited by or on behalf of Mortgagor or any other person on behalf of Mortgagor, or any other Loan Party) pursuant to any of the provisions of this Mortgage and/or any of the other Loan Documents and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises and/or may not constitute a "fixture" (within the meaning of Section 9.1-102(a)(41) of the Code) (which property, together with all replacements thereof, substitutions therefor, additions thereto and the proceeds thereof being sometimes hereafter collectively referred to as the "Personal Property Collateral"), and that a security interest in and to the Personal Property Collateral is hereby granted to Centier, and the Personal Property Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Centier, subject to the Permitted Exceptions, all to secure payment of the Secured Obligations. All of the provisions contained in this Mortgage pertain and apply to the Personal Property Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section will not limit the applicability of any other provision of this Mortgage but will be in addition thereto.

(a) **Title to Personal Property Collateral.** Mortgagor (being the Debtor as that term used in the Code) is and will be the true and lawful owner of the Personal Property Collateral, subject to no liens, charges or encumbrances other than the Permitted Exceptions.

(b) **Use.** The Personal Property Collateral is to be used by Mortgagor solely and for business purposes.

(c) **Location.** The Personal Property Collateral will be kept at the Premises and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Centier (being the Secured Party as that term is used in the Code). The Personal Property Collateral may be affixed to the Land but will not be affixed to any other real estate.

(d) **Interests in Personal Property Collateral.** The only persons having any interest in the Personal Property Collateral are Mortgagor, Centier and holders of the Permitted Exceptions.

(e) **Financing Statements.** No Financing Statement (other than Financing Statements showing Centier as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Personal Property Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to Centier such further information and will execute and deliver to Centier such financing statements and other documents in form satisfactory to

Centier and will do all such acts as Centier may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Personal Property Collateral as security for the Secured Obligations, subject to no other liens or encumbrances, other than the Permitted Exceptions; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Centier to be desirable.

(f) **Remedies.** Upon the occurrence of an Event of Default hereunder and during the continuation thereof, Centier will have the remedies of a secured party under the Code, and Centier will be entitled to hold, maintain, preserve and prepare the Personal Property Collateral for sale, until disposed of, or may propose to retain the Personal Property Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Centier will give Mortgagor at least twenty (20) days notice of the time and place of any public sale of the Personal Property Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice will be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor set forth herein at least twenty (20) days before the time of the sale or disposition. Centier may buy at any public sale. Centier may buy at private sale if the Personal Property Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Centier so elects, the Premises and the Personal Property Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Centier, will be applied against the Secured Obligations then due and owing, by acceleration or otherwise, in such order or manner as Centier may select. Centier will cause any surplus to be paid to Mortgagor.

(g) **Definitions.** The terms and provisions contained in this Section 3.8 will, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(h) **Mortgage as Financing Statement.** This Mortgage is intended to be a financing statement within the purview of Section 9.1-502(b) of the Code with respect to the Personal Property Collateral and the goods described herein, which goods are or may become Fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Centier (Secured Party) are hereinabove set forth. This Mortgage is to be filed for record in the Offices of the Recorders of Huntington, Lake and Wayne Counties, Indiana.

3.10 **Restrictions on Transfer.**

(a) Mortgagor will not, without the prior written consent of Centier, effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests and/or any portions thereof and/or any interests therein will constitute a "**Prohibited Transfer**":

- (i) all or any portion of the Premises, and/or
- (ii) any interests of Mortgagor in or with respect to the Premises:
- (iii) the Personal Property Collateral or any part thereof or interest therein, excepting only sales or other dispositions of Personal Property Collateral (herein called "**Obsolete Collateral**") no longer useful in connection with the operation of the Premises; provided that if the Obsolete Collateral is necessary for the operation of the Premises, prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Personal Property Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral, unless Mortgagor will substitute additional property or collateral acceptable to Centier, in Centier's reasonable discretion;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including pursuant to a nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this Section 3.10(a) will not apply (I) to liens securing the Secured Obligations, or (II) to the lien of current taxes and assessments not in default, or (III) the Permitted Exceptions, or (IV) to any leases with respect to the Premises or any portion thereof entered into in the ordinary course of business.

(b) **Company Transactions.** Mortgagor will not merge into or consolidate with any person or dissolve, terminate or liquidate, in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Centier's consent.

3.11 **Events of Default.**

(a) **Definition.** The occurrence of any one or more of the following events will constitute an "**Event of Default**" hereunder:

- (i) Failure to pay any amounts due under or with respect to the Note and/or any of the other Secured Obligations as and when due;
- (ii) Failure to pay any other amount payable under or with respect to any of the Loan Documents as and when due;
- (iii) Mortgagor or any guarantor fails or neglects to fully and timely perform, keep or observe any other term, provision, condition, covenant or warranty contained in this Mortgage and/or in any of the other Loan Documents;

(iv) Any statement, representation or warranty at any time furnished to the Centier by Mortgagor or any guarantor is determined by Centier to have been untrue in any material respect as of the date given;

(v) Mortgagor and/or any guarantor becomes insolvent or unable to pay debts as they mature, or makes an assignment for the benefit of creditors, or any proceeding is instituted by or against Mortgagor and/or any guarantor alleging that Mortgagor and/or any such guarantor is insolvent or unable to pay debts as they mature, as determined by Centier;

(vi) The filing of any petition, or the commencement of any proceedings, by or against Mortgagor and/or any guarantor for any relief under any bankruptcy or insolvency laws, or any laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, composition or extension;

(vii) The calling of a Meeting of Creditors, or the offering of a composition or extension to Creditors, the sending of a Bulk Sales Notice or any assignment for the benefit of creditors by Mortgagor or any guarantor;

(viii) Entry of a judgment against Mortgagor or any guarantor in an amount in excess of \$10,000.00, which judgment is not voided or satisfied within thirty (30) days after entry;

(ix) Death or incompetency of Mortgagor or any guarantor who is a natural person, or of any partner of Mortgagor or any guarantor which is a partnership;

(x) Dissolution, merger, consolidation or transfer of a substantial portion of the property of Mortgagor or any guarantor which is a limited liability company, corporation, trust or partnership;

(xi) The occurrence of a Prohibited Transfer, or any transfer or assignment otherwise made by Mortgagor or any guarantor of any real or personal property that is collateral for the Secured Obligations (or any portion thereof);

(xii) The transfer or pledge of any interest in any of the beneficial interests in or to Mortgagor;

(xiii) A change in the condition or affairs, financial or otherwise, of Mortgagor and/or any guarantor that impairs Centier's security or increases Centier's risk, as determined by Centier;

(xiv) Any failure of Mortgagor to furnish Centier financial information in a form acceptable to Centier, on all entities executing the Note and any guarantors, or to permit the inspection of the books and records of Mortgagor or any guarantor;

(xv) Any levy, attachment, garnishment, replevin or other seizure of any property of Mortgagor and/or any guarantor, or any action is taken to enjoin the use of any property of Mortgagor and/or any guarantor, or any tax lien is placed on any

property of Mortgagor and/or any guarantor by any state, local or federal government agency;

(xvi) Suspension of business by Mortgagor and/or any guarantor;

(xvii) Not in limitation of any of the foregoing, Mortgagor fails to maintain insurance as required pursuant to Section 3.7 of this Mortgage;

(xviii) Not in limitation of any of the foregoing, the occurrence of any Prohibited Activities or Conditions (as defined in Section 3.20 hereof); and/or

(xix) The occurrence of any default or event of default under or with respect to any of the other Loan Documents.

(b) **Acceleration.** Upon the occurrence of an Event of Default Centier may, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Centier hereunder, declare, without further notice, all Secured Obligations immediately due with interest thereon at the default rate provided in the Note, whether or not such Event of Default is thereafter remedied by Mortgagor, and Centier may immediately proceed to foreclose this Mortgage and to exercise any right and/or remedy provided by this Mortgage and/or any of the other Loan Documents.

3.12 **Foreclosure.** When the Secured Obligations become due, whether by acceleration or otherwise, Centier will have the right to foreclose the lien hereof in accordance with the laws of Indiana and to exercise any other remedies of Centier provided in this Mortgage and/or any of the other Loan Documents or which Centier may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there will be allowed and included as additional Secured Obligations in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Centier for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Centier may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Centier and permitted by the laws of Indiana to be included in such decree. All expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Centier in any litigation or proceedings affecting this Mortgage or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, will be so much additional Secured Obligations and will be immediately due and payable by Mortgagor, with interest thereon at the applicable default rate until paid.

3.13 **Right of Possession.** When the Secured Obligations become due, whether by acceleration or otherwise, or if Centier has a right to institute foreclosure proceedings, Mortgagor will, forthwith upon demand of Centier, surrender to Centier, and Centier will be entitled to be placed in possession of, the Premises and the other Collateral as provided in the statutes relating

to the foreclosure of mortgages, and Centier, in its discretion upon notice to Mortgagor, may enter upon and take and maintain possession of all or any part of the Premises and the other Collateral, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Premises and the other Collateral relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Centier and under the powers herein granted:

(a) hold, operate, manage and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents;

(b) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements in connection with the Premises as may seem judicious to Centier, to insure and reinsure the Premises and all risks incidental to Centier's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom; and/or

(c) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Secured Obligations in such order and manner as Centier may select.

Without limiting the generality of the foregoing, Centier will have all power, authority and duties as provided in the statutes relating to the foreclosure of mortgages. Nothing herein contained will, be construed as constituting Centier a mortgagee in possession in the absence of the actual taking of possession of the Premises.

3.14 Receiver. Upon the institution of a foreclosure proceeding or at such later time as required by law, if any, or at any time thereafter, the court in which such proceeding is instituted may appoint upon petition of Centier, and at Centier's sole option, a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same will be then occupied as a homestead or not; and Centier hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver will have all powers and duties prescribed by law, including the power to make leases to be binding upon all parties, including the Mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure. In addition, such receiver will also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the final date for payment of liabilities and performance of obligations set forth in the Note, this Mortgage and the other Loan Documents and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other provisions to be contained therein, will be binding on Mortgagor and all the persons whose interest in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Secured Obligations, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver will have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency,

during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver will have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Secured Obligations or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

3.15 **Foreclosure Sale.** Except to the extent otherwise required by the statutes relating to the foreclosure of mortgages, the proceeds of any foreclosure sale of the Premises will be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute Secured Obligations in such order as Centier may elect with interest thereon as herein provided; and second, any surplus to Mortgagor and its successors and assigns, as their rights may appear.

3.16 **Insurance During Foreclosure.** All rights and powers of Centier under Section 3.13 of this Mortgage will, from and after the entry of judgment of foreclosure, continue in the Centier as decree creditor until confirmation of sale. In case of an insured loss after foreclosure has been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, will be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, will be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors. In the event of foreclosure sale, Centier may, without the consent of Mortgagor, assign any Insurance Policies to the purchaser at the sale, or take such other steps as Centier may deem advisable to protect the interest of such purchaser.

3.17 **Waiver of Right of Redemption.** To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the property or any part thereof, or relating to the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights to redemption provided by law or equity on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are and will be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or

remedy herein or otherwise granted or delegated to Centier, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof will be subject to any defense which would not be good and valid in an action at law upon the other Loan Documents to which Mortgagor is a party. Mortgagor acknowledges that the Premises do not constitute residential real estate.

3.18 **Centier's Performance of Mortgagor's Obligations.** Upon the occurrence of an Event of Default and during the continuation thereof, either before or after acceleration of the Secured Obligations or the foreclosure of the lien hereof, Centier may, but will not be required to, make any payment or perform any act herein required of Mortgagor in any manner deemed expedient to Centier. Centier may, but will not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs, including management fees, of every kind in connection therewith, so that the Premises will be useable for their intended purposes. All such monies paid and expenses incurred, including reasonable attorney's fees, will be so much additional Secured Obligations, whether or not the Secured Obligations, as a result thereof, will exceed the face amount of the Note, and will become immediately due with interest thereon at the applicable default rate. Inaction of Centier will never be considered as a waiver of any right accruing to it on account of any Event of Default nor will the provisions of this Section or any exercise by Centier of its rights hereunder prevent any default from constituting an Event of Default. Centier, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs thereof, may do so in such amounts and to such persons as Centier may deem appropriate. Nothing contained herein will be construed to require Centier to advance monies for any purpose.

3.19 **Financial Statements and Reporting.** During the term of the Loan, Mortgagor will furnish Centier with financial statements and financial information as provided in the Note.

3.20 **Environmental Hazards.**

(a) **Compliance with Laws.** The Premises is used for the storage, transport and sale of motor vehicle fuels. Mortgagor represents and warrants to Centier that all operations on the Premises are and will remain at all times in full compliance with all applicable laws, regulations, statutes, ordinances, rules and orders, including but not limited to all Hazardous Materials Laws (as defined herein). Not in limitation of the foregoing, underground storage tanks on the Premises, and all pipes, lines and other attachments thereto and with respect thereto will be installed, operated, tested, used, maintained and removed in full compliance with all legal requirements.

(b) **Prohibitions.** Except for matters described in Section 3.20 (a) and/or 3.20(c) hereof, Mortgagor will not cause or permit any of the following:

(i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks),

handling, or disposal of any Hazardous Materials on or under the Premises or any other property of Mortgagor that is adjacent to the Premises;

(ii) the transportation of any Hazardous Materials to, from, or across the Premises;

(iii) any occurrence or condition on the Premises or any other property of Mortgagor that is adjacent to the Premises, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or

(iv) any violation of or noncompliance with the terms of any permit, license, or other authorization relating to Hazardous Materials and/or Hazardous Materials Laws with respect to the Premises or any property of Mortgagor that is adjacent to the Premises

(collectively, "**Prohibited Activities or Conditions**").

For purposes of this Section 3.20, "**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Premises is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

For purposes of this Section 3.20, "**Hazardous Materials Laws**" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Mortgagor or to the Premises. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs.

(c) **Permitted Activities.** Prohibited Activities or Conditions will not include the safe and lawful use and storage of quantities of: (i) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable properties, (ii) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants in the Premises, and (iii) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Premises's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(d) **Prevention of Prohibited Activities.** Mortgagor will take all commercially reasonable actions (including the inclusion of appropriate provisions in any leases executed after

the date hereof) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Mortgagor will not lease or allow the sublease or use of all or any portion of the Premises to any tenant or subtenant for use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(e) **Operations and Maintenance Programs.** If a written program of operations and maintenance approved in writing by Centier has been established with respect to Hazardous Materials, Mortgagor will comply in a timely manner with, and cause all employees, agents, and contractors of Mortgagor and any other persons present on the Premises to comply with such program. All costs of performance of Mortgagor's obligations under any such program will be paid by Mortgagor, and Centier's out-of-pocket costs incurred in connection with the monitoring and review of such program and Mortgagor's performance will be paid by Mortgagor upon demand by Centier.

(f) **Environmental Warranties.** Mortgagor represents and warrants to Centier that:

(i) to the best of the knowledge and belief of Mortgagor after reasonable inquiry, Mortgagor has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;

(ii) to the best of Mortgagor's knowledge after reasonable inquiry, no Prohibited Activities or Conditions exist or have existed;

(iii) the Premises are "property" as defined in I.C. 13-11-2-174 by reason of the presence of registered and legally operated underground storage tanks; with this exception, Mortgagor represents and warrants to Centier that the Premises:

(A) Does not contain one or more facilities that are subject to reporting under Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11022); and

(B) Is not the site of one or more underground storage tanks for which notification is required under 42 U.S.C. 6991a and I.C. 13-23-1-2(c)(8)(A); and

(C) Is not listed on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) in accordance with Section 116 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9616).

(iv) Mortgagor has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials;

(v) there are no actions, suits, claims or proceedings pending or, to the best of Mortgagor's knowledge, threatened that involve the Premises and allege, arise out of, or relate to any Prohibited Activity or Condition; and

(vi) Mortgagor has not received any complaint, order, notice of violation or other communication from any governmental authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Premises or any other property of Mortgagor that is adjacent to the Premises.

The representations and warranties in this Section 3.20(f) will be continuing representations and warranties that will be deemed to be made by Mortgagor throughout the term of the Loan.

(g) **Notice to Centier.** Mortgagor will promptly notify Centier in writing upon the occurrence of any of the following events:

(i) Mortgagor's discovery of any Prohibited Activity or Condition;

(ii) Mortgagor's receipt of or knowledge of any complaint, order, notice of violation or other communication from any person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Premises or any other property of Mortgagor that is adjacent to the Premises; and

(iii) any representation or warranty in this Section 3.20 becomes untrue after the date of this Agreement.

Any such notice given by Mortgagor will not relieve Mortgagor of, or result in a waiver of, any obligation under this Agreement and/or any other Loan Document.

(h) **Environmental Inspections.** Mortgagor will pay promptly the costs of any environmental inspections, tests or audits delivered to and/or undertaken or directed by Centier with respect to the Premises as Centier in its sole discretion from time to time determines to be necessary or desirable. All such environmental inspections, tests or audits will be in such form or forms, will include such items, and will be prepared by such consultants as Centier in its discretion may direct. The results of all such environmental reports received by Centier will at all times remain the property of Centier; Centier will make reasonable efforts to provide a copy of any such report to Mortgagor, but Centier will have no obligation to disclose to any other party such results or any other information obtained by Centier in connection therewith. Mortgagor consents to Centier notifying any party (either as part of a notice of sale or as otherwise reasonably determined by Centier) of the information contained in any such environmental reports. Mortgagor acknowledges that Centier cannot control or otherwise assure the truthfulness or accuracy of the results of any environmental reports and that the release of such results to prospective bidders at a foreclosure sale of the Premises may have a material and adverse effect upon the amount which a party may bid at such sale. Mortgagor agrees that Centier will have no liability whatsoever as a result of delivering any environmental reports to any third party, and Mortgagor hereby releases and forever discharges Centier from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any such environmental reports.

(j) **Remedial Work.** If any investigation, site monitoring, containment, clean-up, restoration or other remedial work is necessary to comply with any Hazardous Materials Law or order of any governmental authority that has or acquires jurisdiction over the Premises or the use, operation or improvement of the Premises under any Hazardous Materials Law, Mortgagor will, by

the earlier of (a) the applicable deadline required by Hazardous Materials Law or (b) 30 days after notice from Centier demanding such action, begin performing the remedial work, and thereafter diligently prosecute it to completion, and will in any event complete the work by the time required by applicable Hazardous Materials Law. If Mortgagor fails to begin on a timely basis or diligently prosecute any required remedial work, Centier may, at its option, cause the remedial work to be completed, in which case Mortgagor will reimburse Centier on demand for the cost of doing so.

(k) **Cooperation with Governmental Authorities.** Mortgagor will cooperate with any inquiry by any governmental authority and will comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(l) **Indemnification Obligation.** Mortgagor will indemnify, hold harmless and defend Centier and all officers, directors, shareholders, partners, employees, attorneys and trustees thereof (collectively, "Indemnitees") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by governmental authorities or private parties), including fees and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

- (i) any breach of any representation or warranty of Mortgagor in this Section 3.20;
- (ii) any failure by Mortgagor to perform any of its obligations under this Section 3.20;
- (iii) the existence or alleged existence of any Prohibited Activity or Condition;
- (iv) the presence or alleged presence of Hazardous Materials on or under the Premises or any property of Mortgagor that is adjacent to the Premises; and/or
- (v) the actual or alleged violation of any Hazardous Materials Law.

Counsel selected by Mortgagor to defend Indemnitees will be subject to the approval of the affected Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at Mortgagor's expense.

(m) **Settlement of Indemnified Claims.** Mortgagor will not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding, settle or compromise such claim or legal or administrative proceeding if the settlement: (i) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Centier of a written release of those Indemnitees, satisfactory in form and substance to Centier; or (ii) may materially and adversely affect Centier, as determined by Centier in its reasonable discretion.

(n) **Non-Limitation on Indemnification.** Mortgagor's obligation to indemnify the Indemnitees will not be limited or impaired by any of the following, or by any failure of Mortgagor to receive notice of or consideration for any of the following: (i) any amendment or modification of any Loan Document; (ii) any extensions of time for performance required by any Loan Document;

(iii) any provision in any of the Loan Documents limiting Centier's recourse to property securing the Loan, or limiting the personal liability of Mortgagor or any other party for payment of all or any part of the Loan; (iv) the accuracy or inaccuracy of any representations and warranties made by Mortgagor under this Mortgage or any other Loan Document; (v) the release of Mortgagor or any other person, by Centier or by operation of law, from performance of any obligation under any Loan Document; (vi) the release or substitution in whole or in part of any security for the Loan; and (vii) Centier's failure to properly perfect any lien or security interest given as security for the Loan.

(o) **Indemnification Requirements.** Mortgagor will, at its own cost and expense, do all of the following:

(i) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 3.20;

(ii) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 3.20; and

(iii) reimburse Indemnitees for any and all expenses, including fees and out of pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 3.20, or in monitoring and participating in any legal or administrative proceeding.

(p) **Attorneys.** In any circumstances in which the indemnity under this Section 3.20 applies, Centier may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Centier, with the prior written consent of Mortgagor (which will not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding. Mortgagor will reimburse Centier upon demand for all costs and expenses incurred by Centier, including all costs of settlements entered into in good faith, and the fees and out of pocket expenses of such attorneys and consultants.

(q) **Effectiveness of Indemnification.** The provisions of this Section 3.20 will be in addition to any and all other obligations and liabilities that Mortgagor may have under applicable law or under other Loan Documents, and each Indemnitee will be entitled to indemnification under this Section 3.20 without regard to whether Centier or that Indemnitee has exercised any rights against the Premises or any other security, pursued any rights against any Guarantor, or pursued any other rights available under the Loan Documents or applicable law. The obligation of Mortgagor to indemnify Indemnitees under this Section 3.20 will survive any repayment or discharge of the Loan, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Mortgage.

3.21 **Payment of Fees and Expenses.** Mortgagor will pay or reimburse Centier for all of Centier's out-of-pocket expenses related to making, monitoring, performing and enforcing the Loan, including but not limited to all costs of or relating to: (a) title insurance, (b) surveys, (c) recording costs, (d) appraisals, (e) environmental inspections, reports, reviews, testing,

investigations, and other matters; (f) construction and building inspections, reviews, and reports, including but not limited to all charges and fees of the Inspector and any other reviewing architects and engineers, (g) filing fees and charges for UCC searches; (h) fees, costs, expenses and charges for Centier's legal counsel, including but not limited to legal fees and costs relating to document preparation, closing of the Loan, monitoring of the Loan, and defaults under or with respect to the Loan, regardless of whether or not suit is filed. All such charges will be paid by Mortgagor immediately upon receiving notice thereof from Centier.

3.22 **Rights Cumulative.** Each right and each remedy herein or in any of the other Loan Documents conferred upon Centier is cumulative and in addition to every other right provided by the other Loan Documents and/or at law or in equity, and Centier may exercise each such right in any manner deemed expedient to Centier. Centier's exercise or failure to exercise any right will not be deemed a waiver of that right or any other right or a waiver of any default. Except as otherwise specifically required herein, Centier is not required to give notice of its exercise of any right given to it by this Mortgage.

3.23 **Successors and Assigns.**

(a) **Holder of Note and Other Loan Documents.** This Mortgage and each provision hereof will be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Collateral or any other person having an interest therein), and will inure to the benefit of Centier and its successors and assigns. Wherever herein Centier is referred to, such reference will be deemed to include the holder from time to time of the rights of Centier provided in the Note and/or the other Loan Documents; and each such holder will have all of the rights afforded hereby, and may enforce the provisions hereof, as fully as if Centier had designated such holder of the Note and/or the other Loan Documents herein by name.

(b) **Covenants Run with Land; Successor Owners.** All of the covenants of this Mortgage will run with the Land and be binding on any successor owners of the Land. If the ownership of the Premises or any portion thereof becomes vested in a person other than Mortgagor, Centier may, without notice to Mortgagor, deal with such person with reference to this Mortgage in the same manner as with Mortgagor without in any way releasing Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to Centier of any conveyance, transfer or change of ownership of the Premises, but nothing in this paragraph will vary the effectiveness of the provisions of Section 3.9 hereof.

3.24 **Effect of Extensions and Amendments.** If the payment of the Secured Obligations, or any part thereof, is extended or varied, or if any part of the security or guaranties thereof is released, all persons now or at any time hereafter liable therefor, or interested in the Premises, will be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, will continue in full force and effect; the right of recourse against all such persons being expressly reserved by Centier, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, will take the said lien subject to the rights of Centier to amend, modify, extend or release the Note, this Mortgage or any other Loan Document, in each case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

3.25 **Future Advances.** At all times, this Mortgage secures as part of the Secured Obligations, the payment of all loan commissions, service charges, liquidated damages, reasonable attorneys' fees, expenses and advances due to or incurred by Centier in connection with the Secured Obligations, all in accordance with this Mortgage and the other Loan Documents, provided, however, that in no event will the total principal amount of the Secured Obligations, including loan proceeds disbursed, future advances (if any) plus any additional charges, exceed \$15,000,000.00.

3.26 **Execution of Separate Security Agreements, Financing Statements, etc: Estoppel Letter.** Mortgagor will do, execute, acknowledge and deliver all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Centier may reasonably require assuring, conveying, mortgaging, assigning and confirming to Centier all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired. From time to time, Mortgagor will furnish within five (5) Business Days after Centier's request a written and duly acknowledged statement of the Secured Obligations and whether any alleged offsets or defenses exist against the Secured Obligations.

3.27 **Subrogation.** If any part of the Secured Obligations is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Collateral or any part thereof, then Centier will be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and will have the benefit of the priority of the same.

3.28 **Availability of Remedies.** To the extent that the laws of the State of Indiana limit: (a) the availability of the exercise of any of the remedies set forth in this Mortgage, including, without limitation, the remedies involving a power of sale on the part of Centier, the right of Centier to pursue concurrent and multiple remedies, and the right of Centier to exercise self-help in connection with the enforcement of the terms of this Mortgage, or (b) the enforcement of waivers and indemnities made by Mortgagor, such remedies, waivers, or indemnities will be exercisable or enforceable, any provisions in this Mortgage to the contrary notwithstanding, if and to the extent permitted by the laws in force at the time of the exercise of such remedies or the enforcement of such waivers or indemnities without regard to the enforceability of such remedies, waivers or indemnities at the time of the execution and delivery of this Mortgage.

3.29 **Use of Loan Proceeds.** The proceeds of the Loan will be used to pay all currently-outstanding loans and obligations secured by the Premises or any portion thereof, for working capital for Mortgagor's business operated on the Premises, and such other purposes as Centier may permit.

3.30 **No Joint Ventures.** Mortgagor acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event will Centier be deemed to be a partner or joint venturer with Mortgagor. Centier will not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.

3.31 **Time of the Essence.** Time is of the essence.

3.32 **Captions and Pronouns.** The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confirming or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular

will include the plural, the plural will include the singular, and the masculine, feminine and neuter will be freely interchangeable.

3.33 **Severability.** If all or any portion of any provision of this Mortgage or the other Loan Documents will be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision hereof or thereof, and such provision will be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

3.34 **Notices.** Any notice or other communication which any person may desire or may be required to give to any other person pursuant or with respect to this Mortgage and/or any of the other Loan Documents will be served upon the parties at the addresses provided at the beginning of this document, or to such other addresses as the parties may designate. All notices will be in writing and will be personally delivered, mailed (certified mail, return receipt requested), or sent by facsimile transmission. However, if any party attempts to give notice by certified mail and the addressee fails to claim or accept such mail, such notice may be given by first class mail. Notices will be deemed for all purposes hereof to have been received, in the case of notice by certified mail (or first class mail, if applicable), three days after mailing with proper postage prepaid, and in the case of personal delivery or facsimile transmission, when actually received at the location for notice provided herein.

3.35 **Anti-Forfeiture.** Mortgagor hereby expressly represents and warrants to Centier that there has not been committed by Mortgagor or, to the best of the knowledge of Mortgagor, by any other person involved with the Premises any act or omission affording the federal government or any state or local government the right of forfeiture as against the Premises or any part thereof or any monies paid in performance of its obligations under the Guaranty Agreement, this Mortgage or any of the other Loan Documents, and Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof, Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to Centier (at Mortgagor's sole cost) and hold Centier harmless from and against any claim or other cost (including, without limitation, reasonable attorneys' fees and costs incurred by Centier), damage, liability or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in the prior sentence, excluding only such matters arising from the sole negligence or intentional misconduct of Centier. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, Centier or all or any part of the Premises under any federal or state law in which forfeiture of the Premises or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Guaranty Agreement, this Mortgage or any of the other Loan Documents is a potential result will, at the election of Centier, constitute an Event of Default hereunder without notice or opportunity to cure.

3.36 **Jury Trial Waiver.** Mortgagor waives, to the extent permitted by law, trial by jury in any actions brought by either the Mortgagor or Centier in connection with the Secured Obligations.

3.37 **Return of Payments.** Mortgagor agrees that, if at any time all or any part of the payments theretofore applied by Centier to any Secured Obligation is rescinded or returned by Centier or Centier is required to pay any amount thereof to any other party for any reason whatsoever (including, without limitation, the insolvency, bankruptcy, liquidation or reorganization of any party or the determination that such payment is held to constitute a preference under the

bankruptcy laws), such Secured Obligation will, for the purposes of this Mortgage, be deemed to have continued in existence to the extent of such payment, notwithstanding such application by Centier, and this Mortgage and the liens, security interests, rights and remedies created hereby will continue to be effective or be reinstated, as the case may be, as to such Secured Obligation, whether or not released of record or a satisfaction and release has been delivered by Centier, all as though such application and release by Centier had not been made and Mortgagor agrees to pay such amount to Centier upon demand and to execute any and all documents required to effect the provisions of this Section.

3.38 **No Merger.** It is the desire and intention of the parties hereto that this Mortgage and the lien hereof will not merge in fee simple title to the Premises, unless a contrary intent is ever manifested by Centier as evidenced by an express statement to that effect in an appropriate document duly recorded. Therefore, it is hereby understood and agreed that should Centier acquire any additional or other interests in or to the Premises or the ownership thereof, then this Mortgage and the lien hereof will not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

3.39 **Advances.** This Mortgage is given to secure, in part, future advances under or with respect to the Note and/or the other Loan Documents, and will secure not only the initial advance under the Note and the other Loan Documents, but also any subsequent advances and/or other payments made under or with respect to the Note and/or the other Loan Documents. This Mortgage will be valid and will, to the fullest extent permitted by law, have priority over any and all liens and encumbrances arising after this Mortgage is recorded in the recorder's office in the county in which the Land is located, including (to the extent permitted by applicable law) statutory liens except real property taxes and assessments levied on the Collateral.

3.40 **Further Assurances.** Mortgagor will execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Centier may require from time to time in order to better assure, grant, and convey to Centier the rights intended to be granted, now or in the future, to Centier under this Mortgage and/or under any of the other Loan Documents.

3.41 **Governing Law; Jurisdiction.**

(a) **Governing Law.** THIS MORTGAGE HAS BEEN DELIVERED IN MERRILLVILLE, INDIANA. THE SUBSTANTIVE INTERNAL LAWS OF THE STATE OF INDIANA WILL APPLY FOR ALL PURPOSES (EXCEPT THE CREATION AND ENFORCEMENT OF LIENS ON COLLATERAL LOCATED IN OTHER JURISDICTIONS), INCLUDING, WITHOUT LIMITATION, ACTIONS ON THIS MORTGAGE, THE NOTE, OR ANY OTHER LOAN DOCUMENTS, WHETHER SUCH ACTION IS BROUGHT SEPARATELY FROM THE MORTGAGE OR BEFORE, CONCURRENTLY OR SUBSEQUENTLY TO THE FORECLOSURE OF THE MORTGAGE).

(b) **Jurisdiction and Venue.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS PROVIDED IN SECTION 3.42 BELOW, MORTGAGOR AND CENTIER EACH HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE WILL BE TRIED AND DETERMINED ONLY IN THE FEDERAL COURT LOCATED IN THE NORTHERN DISTRICT OF ILLINOIS OR THE STATE COURT LOCATED IN LAKE COUNTY, INDIANA OR, AT THE SOLE OPTION OF CENTIER, IN ANY OTHER COURT IN WHICH CENTIER INITIATES LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS

SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND CENTIER EACH HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION. MORTGAGOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF INDIANA AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA FOR THE PURPOSE OF SUCH LITIGATION AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. MORTGAGOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY CERTIFIED OR REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE AT THE ADDRESS OF MORTGAGOR STATED HEREIN. TO THE EXTENT THAT MORTGAGOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, MORTGAGOR HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS MORTGAGE.

3.42 Other Jurisdictions. MORTGAGOR AGREES THAT CENTIER WILL HAVE THE RIGHT TO PROCEED AGAINST MORTGAGOR OR ITS PROPERTY IN A COURT IN ANY LOCATION TO ENABLE CENTIER TO REALIZE ON SUCH PROPERTY, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF CENTIER. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY PERMISSIVE COUNTERCLAIMS IN ANY PROCEEDING BROUGHT IN ACCORDANCE WITH THIS PROVISION BY CENTIER TO REALIZE ON SUCH PROPERTY, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF CENTIER. MORTGAGOR WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT IN WHICH CENTIER HAS COMMENCED A PROCEEDING DESCRIBED IN THIS SECTION.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage and Security Agreement to be duly signed and delivered as an instrument under seal as of the day and year first above written.

Mortgagor:



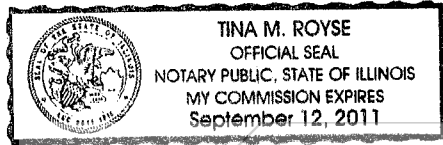
William J. McEnery, as Trustee of the
William J. McEnery Revocable Trust

STATE OF ILLINOIS)
)
COUNTY OF WILL)

SS:

BEFORE ME, the undersigned, a Notary Public, on August ____, 2009, personally appeared William J. McEnery, personally known to me to be the same person whose name is subscribed to the foregoing Mortgage and Security Agreement as Trustee of the William J. McEnery Revocable Trust, and being first duly sworn by me upon, oath, acknowledged that he has read and understands the foregoing and that he has affixed his name to and delivered the foregoing as his own free and voluntary act and as the free and voluntary act of said trust for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



Tina M. Royse

, Notary Public

Commission Expires: 9-12-11 County of Residence: Cook



This instrument was prepared by:

Demetri J. Retson
Genetos Retson Yoon & Molina LLP
8585 Broadway, Suite 480
Merrillville, Indiana 46410
219-755-0401; fax: 219-755-0410

The foregoing preparer states as follows: I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

EXHIBIT A

Legal Descriptions of Land

Parcel 1: Part of the Northwest 1/4 of Section 21, Township 36 North, Range 8 West of the 2nd Principal Meridian, in the City of Gary, Lake County, Indiana, described as follows: Beginning at a point on the East line of Grant Street (54 feet East of the West line of said Northwest 1/4) which is 1899.03 feet North of the South line of said Northwest 1/4; thence East at right angles to the East line of Grant Street, 120 feet; thence North parallel to the East line of Grant Street, 182.95 feet more or less, to a line drawn perpendicular to the West line of said Northwest 1/4 through a point identified as Station plus 35 on center line "C" as set out in the description of Parcel 334 of Project No. 365, Section 22, in a right-of-way grant to the State Highway Department of Indiana, recorded in right of way grant record 1127 page 273, in the Office of the Recorder of Lake County, Indiana; thence West along said perpendicular line 120 feet to the East line of Grant Street; thence South along the East line of Grant Street 182.95 feet, more or less to the point of beginning.

Parcel 2: Part of the Northwest 1/4 of Section 21, Township 36 North, Range 8 West of the 2nd Principal Meridian, in the City of Gary, Lake County, Indiana, described as follows: Beginning at a point on the East line of Grant Street which is 1,799.03 feet North of the South line of said Northwest 1/4 of Section 21, said point of beginning being 200 feet North of the North line of the entrance parcel of the United States Army site as said entrance parcel is described in an easement recorded in Miscellaneous Record 626 page 238; thence East at right angles to the East line of Grant Street and 200 feet North of a line parallel with the North line of said entrance parcel, 120 feet; thence North and parallel with the East line of Grant Street 100 feet; thence West at right angles 120 feet to the East line of Grant Street; thence South along the East line of Grant Street 100 feet to the place of beginning.

Parcel 3: A part of the Northwest 1/4 of Section 21, Township 36 North, Range 8 West of the 2nd Principal Meridian, in the City of Gary, Lake County, Indiana, more particularly described as follows: Commencing at a point on the East right-of-way line of Grant Street (54 feet East of the West line of said Northwest 1/4) which is 1,799.03 feet North of the South line of said Northwest 1/4; thence East at right angles to the East right-of-way line of Grant Street 120.0 feet to the point of beginning; thence continuing East along said last mentioned course 120.0 feet; thence North parallel with the East right-of-way line of Grant Street 283.95 feet more or less to a line drawn perpendicular to the West line of said Northwest 1/4, through a point identified as Station 2 plus 35 on center line "C" as set out in the description of Parcel 334 of Project No. 265, Section 22, in a right-of-way grant to the State Highway Department of Indiana, recorded in right-of-way grant record 1127 page 273, in the Office of the Recorder of Lake County, Indiana; thence West along said perpendicular line 120.0 feet thence South parallel with the East right-of-way line of Grant Street, 282.95 feet more or less to the point of beginning, EXCEPT from the above described parcel that part described as follows: Part of the Northwest 1/4 of Section 21, Township 36 North, Range 8 West of the 2nd Principal Meridian, in the City of Gary, Lake County, Indiana, described as follows: Commencing at a point on the East line of Grant Street which is 1,799.03 feet North of the South line of the Northwest 1/4 of Section 21, said point of commencement being 200 feet North of the North line of the entrance parcel of the United States Army site as said entrance is described in an easement recorded in Miscellaneous Record 626 page 238; thence East at right angles to the East line of Grant Street and 200 feet North of and parallel with the North line of said entrance parcel, 120 feet to the point of beginning; thence North parallel with the East right-of-way line of Grant Street 282.95

feet, more or less, to a line drawn perpendicular to the West line of said Northwest 1/4 of Section 21; thence East on said perpendicular line, 30 feet; thence South 68.97 feet; thence West 24 feet; thence South 213.98 feet to a point 6 feet East of the point of beginning; thence West 6 feet to the point of beginning.

Parcel 4: Part of the Northwest 1/4 of Section 21, Township 36 North, Range 8 West of the 2nd Principal Meridian, in the City of Gary, Lake County, Indiana, described as follows: Commencing at a point on the East line of Grant Street which is 1,799.03 feet North of the South line of the Northwest 1/4 of Section 21, said point of commencing being 200 feet North of the North line of the entrance parcel of the United States Army site as said entrance is described in an easement recorded in Miscellaneous Record 626 page 238; thence East at right angles to the East line of Grant Street and 200 feet North of and parallel with the North line of said entrance parcel 120 feet to the point of beginning; thence North parallel with the East right-of-way line of Grant Street 282.95 feet, more or less, to a line drawn perpendicular to the West line of said Northwest 1/4 of Section 21; thence East on said perpendicular line, 30 feet; thence South 68.97 feet; thence West 24 feet; thence South 213.98 feet to a point 6 feet East of the point of beginning; thence West 6 feet to the point of beginning.

Parcel 5: A part of the Northwest 1/4 of Section 21, Township 36 North, Range 8 West of the 2nd Principal Meridian, in the City of Gary, Lake County, Indiana, more particularly described as follows: Commencing at a point on the East right-of-way line of Grant Street said point being 54 feet East of the West line of said Northwest 1/4 of Section 21, and 1,799.03 feet North of the South line of said Northwest 1/4 of Section 21; thence East at right angles to the East right-of-way line of Grant Street 120.00 feet to the point of beginning; thence continuing East 120.00 feet; thence North and parallel with the East right-of-way line of Grant Street, 205.18 feet, more or less, to a point which is 78.77 feet South of a line drawn at right angles to the West line of said Northwest 1/4 of Section 21 through a point identified as Station 2 plus 35 on Center line "C" as set out in the description of Parcel 334 of Project No. 265, Section 22, in a right-of-way grant to the Indiana Department of Highways, recorded in right-of-way grant record 1127 page 273, in the Office of the Recorder of Lake County, Indiana; thence East perpendicular to the East right-of-way line of Grant Street 271.00 feet; thence South parallel with East right-of-way line of Grant Street 305.18 feet; thence continuing West perpendicular to the East right-of-way line of Grant Street, 391.00 feet; thence North perpendicular to said last mentioned course 100.00 feet to the point of beginning.

Parcel 6: That part of the Northwest 1/4 of Section 21, Township 36 North, Range 8 West of the 2nd Principal Meridian, in the City of Gary, Lake County, Indiana, described as follows: Beginning at a point on the East line of Grant Street which is 1,434.03 feet, North of the South line of the said Northwest 1/4 of Section 21; thence East at right angles to the East line of Grant Street a distance of 120 feet; thence North parallel to the East line of Grant Street a distance of 115 feet to the South line of the entrance parcel of the U.S. Army site, as the said entrance parcel is described in right-of-way easement, in Miscellaneous Record 626 page 238 as Document No. 811940, in Lake County, Indiana; thence West at right angles to the East line of Grant Street, along the South line of said entrance parcel a distance of 120 feet to the East line of Grant Street; thence South along the East line of Grant Street a distance of 115 feet to the point of beginning.

Parcel 7: That part of the Northwest 1/4 of the Northwest 1/4 of Section 21, Township 36 North, Range 8 West of the 2nd Principal Meridian, in the City of Gary, in Lake County, Indiana, described as follows: Beginning at a point on the East line of Grant Street, which is 1,599.03 feet, more or less North of the South line of said Northwest 1/4 of Section 21, said point of beginning being on the

North line of entrance parcel to U.S. Army Site, as the said entrance parcel is described in right of way easement, in Miscellaneous Record 626 page 238 as Document No. 811940, in Lake County, Indiana; thence East at right angles as to the East line of Grant Street, along the Northeast line of said entrance parcel a distance of 120 feet; thence North and parallel to the East line of Grant Street, a distance of 100 feet; thence West at right angles a distance of 120 feet to the East line of Grant Street; thence South along the East line of Grant Street, a distance of 100 feet to the point of beginning, in Lake County, Indiana.

Parcel 8: That part of the Northwest 1/4 of Section 21, Township 36 North, Range 8 West of the 2nd Principal Meridian, in the City of Gary, Lake County, Indiana, described as follows: Beginning at a point on the West line of said Northwest 1/4 which is 2081.98 feet North of the South line of the said Northwest 1/4 of said Section, the said point of beginning designated as Section 2 plus 35 as indicated on right of way grant to the State Highway Department of Indiana, Project No. 265, Section 22, thence East at right angles to the West line of said Northwest 1/4 of said Section a distance of 204 feet; thence North and parallel to the West line of said Northwest 1/4 of said Section a distance of 381.27 feet, more or less, to the South right of way line of the Northern Indiana Public Service Company's property; thence West along the said South right-of-way line of the said Northern Indiana Public Service Company, a distance of 204 feet to a point on the West line of the Northwest 1/4 of said Section; thence South along the West line of the said Northwest 1/4 of said Section to the place of beginning, EXCEPTING THEREFROM that part deeded to the State of Indiana, Little Calumet River Basin Development Commission by Clerk's Deed recorded April 26, 1995 as Document No. 95022966, described as follows:

Part of the Northwest 1/4 of Section 21, Township 36 North, Range 8 West of the 2nd Principal Meridian, in the City of Gary, Lake County, Indiana, more precisely described as: Beginning at a point on the West line of said Northwest 1/4, which is 517 feet South of the Northwest corner of Section 21; thence East on a line parallel with the North line of said Section 21 a distance of 204 feet; thence North on a line parallel with the West line of said Section 21 a distance of 329.27 feet to the South right-of-way line of the Northern Indiana Public Service Company's property; thence West along the said South right-of-way line of the said Northern Indiana Public Service Company a distance of 204 feet to a point on the West line of the Northwest 1/4 of said Section; thence South along the West line of said Section 21, a distance of 329.27 feet to the point of beginning, in the City of Gary, Lake County, Indiana.

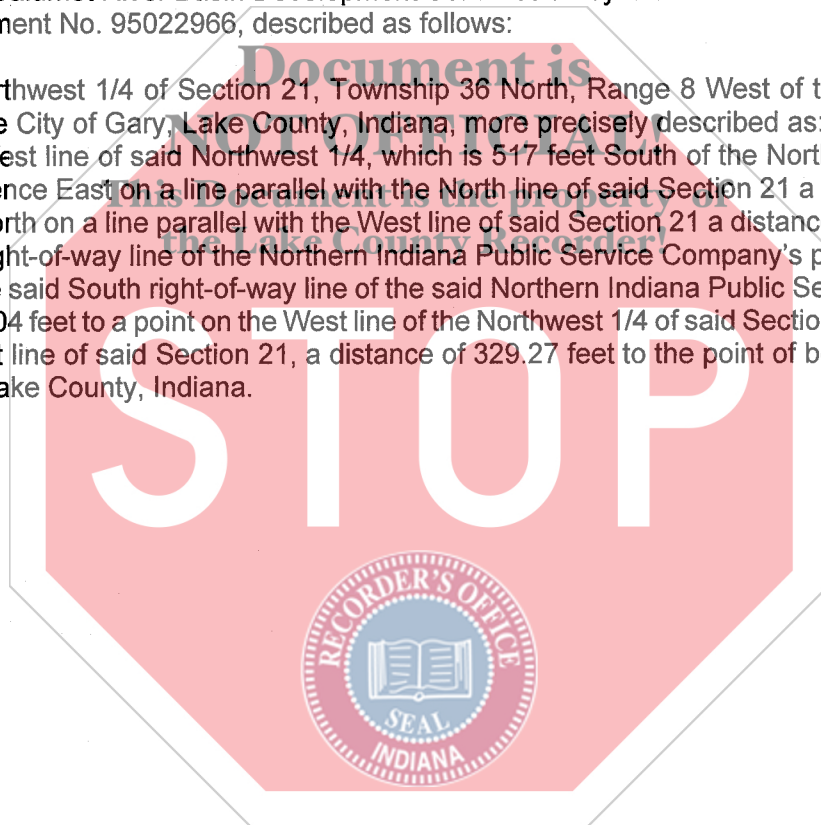


EXHIBIT B

Permitted Exceptions

1. Real property taxes for 2008 (payable 2009), to the extent not due and payable as of the date of this Mortgage, and subsequent years.
2. Rights of the public, the State of Indiana and/or the municipality, and others entitled thereto, in and to that part of the land taken for or lying within State Road #51, also known as Grant Street along the West side of the land.
3. Right, title and interest of Cat Scale Company and the Huntington Leasing Company as evidenced by an Assignment of Leases dated March 25, 1994 and recorded April 5, 1994 as Document No. 94025385.
4. Terms and provisions of an easement for ingress and egress contained in a grant from Sidney Talsma and Nellie Talsma, husband and wife to Ralph Wymer and Edward W. Koeugh recorded November 17, 1960 as Document No. 292678 in Miscellaneous Record 790 page 396.
5. Easement for Storm Water Sewer and open drainage ditch in favor of City of Gary, by and through the Board of Sanitary Commissioners of the Sanitary District of the City of Gary dated March 30, 1965 and recorded August 2, 1965 in Miscellaneous Record 924 page 533.
6. Easement for storm sewers in favor of the City of Gary, by and through the Board of Sanitary Commissioners of the Sanitary District of the City of Gary dated March 24, 1965 and recorded August 2, 1965 in Miscellaneous Record 924 page 550.
7. Easement for pipe line in favor of Wolverine Pipe Line Company dated January 7, 1953 and recorded January 19, 1953 in Miscellaneous Record 575 page 416 and recorded May 23, 1953 in Miscellaneous Record 590 page 140.
8. Easement for pipe line in favor of Wolverine Pipe Line Company dated September 28, 1971 and recorded October 16, 1971 as Document No. 121297.
9. Easement for pipe line in favor of Wolverine Pipe Line Company dated September 28, 1971 and recorded October 16, 1971 as Document No. 121298.
10. Right of way grant in favor of the State Highway Department of Indiana, recorded August 15, 1958 in deed record 1062 page 89.
11. Right of way grant in favor of the State of Indiana, recorded November 23, 1959 in Book 1127 page 273.
12. Easement for pipeline in favor of Wolverine Pipe Line Company dated April 6, 1972 and recorded May 15, 1972 as Document No. 148424.

13. Easement for pipe line contained in a grant in favor of Wolverine Pipe Line Company dated September 22, 1971 and recorded October 16, 1971 as Document No. 121296.
14. Lease by and between Gas City, Lessor(s), and Lamar Advertising, Lessee(s), dated December 13, 2002 as evidenced by a Memorandum of Lease dated January 28, 2003 and recorded February 21, 2003 as Document No. 2003 019092.
15. Lease by and between Gas City, Lessor(s), and Lamar Advertising Company, Lessee(s), dated March 25, 2008 as evidenced by a Memorandum of Lease dated March 25, 2008 and recorded May 28, 2008 as Document No. 2008 039147.

