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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2010 000599

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CAROLYN J. POLLARD
ACTING RECORDER

**OPEN-END MORTGAGE, ASSIGNMENT OF RENTS
AND LEASES, SECURITY AGREEMENT, AND FIXTURE FILING**

This Open-End Mortgage, Assignment of Rents and Leases and Security Agreement (the "Mortgage") is made by **Eggert Builders, Inc., an Indiana corporation** ("Mortgagor"), with an address of **9695 Julia Dr; St. John, IN 46373-9203** for the benefit of **First Financial Bank, N.A.** ("Mortgagee"), with an address of **225 N. Main Street, Celina, Ohio 45822**, as follows:

1. GRANT.

1.1 Property. Mortgagor hereby grants, bargains, mortgages, warrants, sells, encumbers, conveys, assigns and transfers to Mortgagee, its successors and assigns forever, all estate, title and interest of Mortgagor in and to the following, now existing or hereafter arising (collectively, the "Property"):

1.1.1 the real estate described in Exhibit A attached hereto ("Real Estate") and by reference made a part hereof, all of the estate, title and interest of Mortgagor in law or equity, of, in and to such Real Estate and all of the privileges, easements and appurtenances belonging to such Real Estate, and all heretofore or hereafter vacated streets or alleys which abut such Real Estate;

1.1.2 all buildings and improvements of every kind and description now existing or hereafter placed on such Real Estate and all fixtures, machinery, appliances, equipment, furniture and personal property of every kind whatsoever owned by Mortgagor and located in or on, or attached to, and used or intended to be used in connection with the operation of such Real Estate, or the buildings, structures or other improvements thereon or in connection with any construction being conducted or which may be conducted thereon, including but not limited to the electric, water, laundry, incinerating and power equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, ranges, furnaces, oil burners or units thereof; radiators; heaters; air-cooling and air conditioning apparatus; elevators; escalators; awnings, doors, and windows; attached cabinets; partitions; ducts and compressors; rugs and carpets; draperies; and all other furniture and furnishings; together with all building materials and equipment owned by Mortgagor now or hereafter delivered to the Real Estate and intending to be installed therein;

1.1.3 all rents, leases, issues and profits arising out of any of the foregoing, including all insurance policies and payments made under insurance policies relating directly or indirectly to any of the items comprising the Property;

1.1.4 all contracts for or related to the design, development, construction, management, maintenance or operation, leasing, sale or refinancing of such Real Estate, all licenses and permits relating to construction of any such contracts, any bonds or warranties assuring payment or performance thereunder, and all plans, designs, specifications, books, records and escrow accounts related thereto;

1.1.5 all damages, claims, losses, judgments, awards and settlements previously or hereafter made or occurring relating to, directly or indirectly, the Real Estate or any of the other items comprising the Property, including but not limited to those resulting from: (i) condemnation proceedings; (ii) the taking under the power of eminent domain; (iii) any award for change of grade or streets; and (iv) claims in contract or tort, including but not limited to those relating to items described in Section 1.1.4, above;

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- 1.1.6 all moneys, credits and other property of any nature whatsoever of Mortgagor now or hereafter in the possession of, in transit to or from, under the custody or control of, or on deposit with (whether held by Mortgagor individually or jointly with another) Mortgagee or any affiliate of Mortgagee, including but not limited to cash collateral accounts, construction disbursement accounts and reserve accounts;
- 1.1.7 all of the following relating, directly or indirectly, to the Real Estate or any of the other items comprising the Property: Mortgagor's Accounts, Inventory, Equipment, General Intangibles, Chattel Paper, Investment Property, Instruments, Documents, Letter of Credit Rights, Supporting Obligations, as each such term is defined under the applicable version of the Uniform Commercial Code in effect; and
- 1.1.8 all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and the proceeds of all of the foregoing.

1.2 **Security.** The grant described in Section 1.1, above, to have and to hold the Property is given to Mortgagee and its successors and assigns forever, for the uses and purposes herein set forth to secure the payment of the Indebtedness as defined in Section 2, below, and the performance of all of the obligations of Mortgagor hereunder. The Indebtedness secured hereby may include future advances of any type made in accordance with the terms of the Loan Agreement and Note up to the maximum amount as described in Section 8 hereof.

2. INDEBTEDNESS

This conveyance is made to secure: (i) the payment of the promissory note of Mortgagor of even date herewith payable to the order of Mortgagee in the original principal amount of **\$327,244.00**, with a maturity date of **September 29, 2010** (the "Note"), and all extensions, renewals, reamortizations, restatements, modifications and amendments thereof and thereto; (ii) all future advances made pursuant to Section 9 hereof and all advances or expenses of any kind made by Mortgagee pursuant to the provisions of this Mortgage; (iii) the performance and/or payment of any other debts, liabilities, obligations, covenants and duties of Mortgagor to Mortgagee; (iv) performance of the terms, covenants and conditions contained in the Note, this Mortgage and any other document related to the indebtedness secured hereby, including, but not limited to the obligations of Mortgagor under the Loan Agreement (the "Loan Agreement") between Mortgagor and Mortgagee dated **December 29, 2009**; and (v) any judgment(s) or final decree(s) rendered to collect any money obligations of Mortgagor to Mortgagee and/or to enforce the performance or collection of all covenants, agreements, other obligations and liabilities of the Mortgagor under this Mortgage, the Note, or any or all of the Loan Documents; provided, however, such secured indebtedness will not include any judgment(s) or final decree(s) rendered in another jurisdiction, which judgment(s) or final decree(s) would be unenforceable by an Indiana Court pursuant to Ind. Code 34-54-3-4 (the foregoing collectively referred to as the "Indebtedness"). The obtaining of any judgment by Mortgagee (other than a judgment foreclosing this Mortgage) and any levy of any execution under any such judgment upon the Property will not affect in any manner or to any extent the lien of this Mortgage upon the Property or any part thereof, or any liens, powers, rights and remedies of Mortgagee, but such liens, powers, rights and remedies will continue unimpaired as before until the judgment or levy is satisfied. All references to the Loan Agreement or Note will mean the Loan Agreement or Note and any amendments or modifications thereto and restatements thereof.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Mortgagor covenants, represents, warrants and agrees with Mortgagee as follows:

3.1 **Title.** Mortgagor is the lawful owner of the real estate, appurtenances and existing improvements included within the Property; title to such real estate, appurtenances and

improvements is vested in Mortgagor and is free, clear and unencumbered except "Permitted Exceptions" as such term is defined in the Loan Agreement ("Permitted Exceptions"); there has been no prior assignment of any of Mortgagor's rights in the Property except for the Permitted Exceptions; Mortgagor has good right and full power to encumber the Property and to execute this Mortgage; Mortgagor will make such further assurances of title as Mortgagee may require; and Mortgagor will warrant and defend the Property against all claims and demands whatsoever, except for the Permitted Exceptions.

3.2 Indebtedness. Mortgagor will promptly pay, or cause to be paid, and will perform all obligations under, the Indebtedness when due.

3.3 Impositions. Mortgagor will pay, or cause to be paid, when due:

3.3.1 All of the following (hereinafter collectively called the "Impositions"): all real estate taxes, personal property taxes, assessments, water and sewer rates and charges, and all other governmental levies and charges, of every kind and nature whatsoever, general and special, ordinary and extraordinary, which are assessed, levied, confirmed, imposed or become a lien upon or against the Property or any portion thereof, and all taxes, assessments and charges upon the rents, issues, income or profits of the Property, or which become payable with respect thereto or with respect to the occupancy, use or possession of the Property, whether such taxes, assessments or charges are levied directly or indirectly. If Mortgagee is not establishing an escrow for Impositions, then within 20 days after demand therefor, Mortgagor will deliver to Mortgagee the original, or a photostatic copy, of the official receipt evidencing payment of Impositions or other proof of payment satisfactory to Mortgagee. Notwithstanding the provisions of this Section, any tax or special assessment that is a lien on the Property may be paid in installments provided that each installment is paid on or prior to the date when the same is due without the imposition of any penalty.

3.3.2 On the first day of each month after the occurrence of any one or more Events of Default (as that term is defined below), a deposit with Mortgagee equal to one-twelfth of the annual charges, as estimated by Mortgagee, for the Impositions and premiums for insurance as set forth in Section 3.6. Such amount will be held by or on behalf of Mortgagee and will be applied to pay such Impositions and premiums when the same become due. Mortgagee will not be required to pay any interest or earnings on such sums. Mortgagor hereby pledges all such sums as additional collateral for the Indebtedness. If the amount held by Mortgagee is not sufficient to pay the Impositions and premiums when due, Mortgagor will, promptly upon request of Mortgagee, pay to Mortgagee any amount necessary to make up such deficiency.

3.4 Compliance with Laws. Mortgagor will promptly comply or cause compliance with all present and future laws, ordinances, rules, regulations and other requirements of all governmental authorities having or claiming jurisdiction of or with respect to the Property or any portion thereof or the use or occupancy thereof. Mortgagor will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Property. Mortgagor will take appropriate measures to prevent, and will not engage in or knowingly permit, any illegal activities at the Property that could endanger tenants or visitors, result in damage to the Property, result in forfeiture of the Property, or otherwise materially impair the lien created by this Mortgage or Mortgagee's interest in the Property. Mortgagor represents and warrants to Mortgagee that no portion of the Property has been or will be purchased with the proceeds of any illegal activity.

3.5 **Condition of Property.** The Property is or will be served by electric, gas, storm and sanitary sewers, sanitary water supply, telephone and other utilities required for the use thereof as represented by Mortgagor at or within the boundary lines of the Property. To the extent the Property is improved, the Property is in good condition and repair with no deferred maintenance and is free from damage caused by fire or other casualty. Mortgagor is aware of no latent or patent structural or other significant defect or deficiency in the Property. Design and as-built conditions of the Property will be such that no drainage of surface or other water will drain across or rest on the Property or land of others, so as to materially and adversely affect the use thereof. None of the improved areas of the Property is or will be within a flood plain except as indicated on a survey of the Property delivered to Mortgagee. Mortgagor will keep and maintain, or cause to be kept and maintained, the Property (including all improvements thereon and the sidewalks, sewers, and curbs) in good order and condition, will make or cause to be made, as and when the same becomes necessary, all structural and nonstructural and all ordinary and extraordinary repairs and all maintenance necessary to that end but will not make or permit others to make any structural or mechanical alterations to the Property or any alterations thereto which impair the value thereof, will suffer no waste to the Property, and will make all repairs and maintenance to the Property in a good and workmanlike manner. Notwithstanding the foregoing, Mortgagor will not without the prior written consent of Mortgagee institute or cause to be instituted any proceedings or suffer to be done anything which will materially increase the risk of fire or other hazard to the Property or any part thereof. In connection with the construction performed in accordance with the Loan Agreement, Mortgagor may demolish or remove or permit others to demolish or remove improvements, fixtures or personal property on the Property, provided that all applicable laws and regulations, including but not limited to those relating to the environment, are complied with. Notwithstanding the foregoing, after completion of the construction contemplated by the Loan Agreement, Mortgagor will not without the prior written consent of Mortgagee:

- 3.5.1** remove or demolish or suffer or permit others to remove or demolish any improvements installed or placed on the Property;
- 3.5.2** remove from the Property any fixtures or personal property covered by this Mortgage, except such as is replaced by Mortgagor by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest (except the security interest created by this Mortgage);
- 3.5.3** make or permit others to make any alterations to the Property except pursuant to plans and specifications approved in writing by Mortgagee; or
- 3.5.4** institute or cause to be instituted any proceedings that could change the permitted use of the Property from the use or uses permitted as of the date of such completion.

3.6 **Insurance.** Mortgagor will keep all improvements, if any, now on, or that hereafter may be put upon, the Property, including fixtures and all personal property owned by Mortgagor and used in the operation of the Property, insured at all times for the benefit of Mortgagee and Mortgagor, as their respective interests may appear, against loss or damage by fire, flood, and such other risks of damage, hazards, casualties and contingencies and in the manner and form and in the amounts as specified in writing by Mortgagee from time to time, subject to the requirements of the Loan Agreement and the following additional terms and conditions:

- 3.6.1** Such insurance will be issued by a company or companies and in amounts acceptable to, and in every respect satisfactory to, Mortgagee and will contain a provision requiring that the coverage evidenced thereby will not be terminated or materially modified without 30 days' prior written notice to

Mortgagee. If Mortgagor fails to carry any insurance required to be carried by Mortgagor under the terms of this Mortgage, Mortgagee, at its option, may procure and maintain such insurance and Mortgagor will promptly reimburse Mortgagee for any premiums paid by Mortgagee for such insurance. The originals or appropriate certificates of all policies of insurance required to be carried under this Mortgage, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Mortgagee of such payment, will be delivered to Mortgagee concurrently with the execution and delivery hereof. Mortgagor will deliver to Mortgagee a new policy (or certificate, in the case of insurance for which only certificates have been previously furnished) bearing such notation or accompanied by such other evidence as replacement for any expiring policy at least 30 days before the date of such expiration.

- 3.6.2** All policies of insurance required by this Section will contain a standard mortgagee clause in favor of Mortgagee and a waiver of insurer's right of subrogation against funds paid under the standard mortgagee endorsement. In case of a loss payable under such insurance for damage to or destruction of the Property, the right to adjust all claims under such insurance policies (jointly with Mortgagor), and the application of the proceeds of any such claim, are assigned to Mortgagee. Mortgagor hereby assigns to Mortgagee all amounts recoverable under any such policy. Except as may be otherwise provided in tenant leases approved by Mortgagee, the amount collected by Mortgagee, at the option of Mortgagee, may be used in any one or more of the following ways: (i) applied to the payment of any sums then in default to Mortgagee hereunder; (ii) used to fulfill any of the covenants contained herein which Mortgagor has failed to fulfill, as Mortgagee may determine; (iii) unless the insurer denies liability to any insured, used to restore the Property to a condition satisfactory to Mortgagee; (iv) applied upon the Indebtedness, whether the Indebtedness is then matured or unmatured; or (v) released to Mortgagor. Mortgagee is hereby irrevocably appointed by Mortgagor as attorney-in-fact of Mortgagor to assign any policy in the event of the foreclosure of this Mortgage or other extinguishment of the Indebtedness, and Mortgagor will have no right to reimbursement for premiums unearned at the time of any such assignment.
- 3.6.3** In the event of either a partial or total loss, all proceeds and rights of action are hereby assigned to Mortgagee. At its option, in its own name, Mortgagee will be entitled to commence, appear in and prosecute any action or proceedings or to make any compromise or settlement in connection with any such loss. The payment to Mortgagee of such insurance proceeds will not cure or waive any Event of Default hereunder. Notwithstanding such total or partial loss, all payments of the Indebtedness will be made without reduction, modification or interruption and all applicable terms and conditions of this Mortgage will be applicable to Mortgagor without modification or interruption.
- 3.6.4** In the event of a conflict between any provisions of this Section and the terms of the Loan Agreement relating to insurance, the provision in the Loan Agreement will control.
- 3.7** **Sale, Transfer or Encumbrance.** Mortgagor will not, voluntarily or involuntarily, further mortgage, sell or convey, grant a deed of trust, pledge, grant a security interest in, lease, execute a land contract or installment sales contract, or otherwise dispose of, further encumber or suffer the encumbrance of, whether by operation of law or otherwise, any or all of its interest in the Property without Mortgagee's prior written consent.

- 3.8 **Mechanics Liens.** Mortgagor will cause the Property to be kept free from all liens of persons supplying labor and materials for the construction, modification, repair or maintenance of any building or improvements whether on the Property or not. If any such lien is filed against the Property, Mortgagor will cause the same to be immediately discharged of record. Mortgagor has, as of the date hereof, permitted no work on the Property which could give rise to a lien on the Property, or if such work has commenced, has furnished such releases or indemnifications so that a title policy can be issued without exceptions for mechanics' liens.
- 3.9 **Eminent Domain.** Mortgagor will give Mortgagee immediate written notice of the actual or threatened commencement of any proceedings under eminent domain affecting all or any part of the Property, and will deliver to Mortgagee copies of any and all documents relating to such proceedings. All awards heretofore or hereafter made by any public or quasi-public authority to the present and any subsequent owner of the Property by virtue of an exercise of the right of eminent domain by such authority, including any award for a taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Property, are hereby assigned to Mortgagee and Mortgagee, at its option, is hereby authorized, directed and empowered to collect and receive the proceeds of any such award from the authorities making the same and to give proper receipts and acquittances therefor. The proceeds may be used, at Mortgagee's election, in any one or more of the following ways: (i) applied to the payment of any sums then in default to Mortgagee hereunder; (ii) used to fulfill any of the covenants contained herein which Mortgagor has failed to fulfill, as Mortgagee may determine; (iii) used to replace or restore the Property to a condition satisfactory to Mortgagee; (iv) applied upon the Indebtedness, whether the Indebtedness is then, matured or unmatured; or (v) released to Mortgagor. Mortgagee will have the right to intervene and participate (jointly with Mortgagor) in any proceedings for and in connection with any such taking. Upon request of Mortgagee, Mortgagor will make, execute, and deliver all assignments and other instruments sufficient for the purpose of assigning all such awards to Mortgagee free, clear and discharged of all encumbrances. Mortgagee will not be, in any event or circumstance, liable or responsible for failure to collect or exercise diligence in connection with any proceeds, judgments, decrees, or awards.
- 3.10 **Unpaid Impositions.** In the event that any governmental agency claims that any tax or other governmental charge or imposition is due, unpaid or payable by Mortgagor or Mortgagee upon the Indebtedness (other than income tax, franchise tax or similar tax on the interest or premium receivable by Mortgagee thereunder) and including any recording tax, documentary stamps or other tax or imposition on the Note or this Mortgage, Mortgagor forthwith will pay such tax and, within a reasonable time thereafter, deliver to Mortgagee satisfactory proof of payment thereof or if Mortgagor is contesting the same in good faith, Mortgagor will establish with Mortgagee security in form, substance and amount reasonably acceptable to Mortgagee for the payment thereof.
- 3.11 **Suits and Judgments.** There are no judicial or administrative actions, suits or proceedings (including without limitation any judgments, garnishments or attachments) pending or to the best of Mortgagor's knowledge, threatened against, affecting or involving Mortgagor, any other person liable, directly or indirectly, for the Indebtedness, or the Property, or any other property owned by Mortgagor, or any other person liable, directly or indirectly, for the Indebtedness.
4. **Waiver of Appraisement, Valuation, Impairment of Collateral, Etc.** Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any moratorium, reinstatement, forbearance, appraisement, valuation, stay, extension, homestead right, entitlement or exemption, or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the delivery of possession thereof immediately after such sale

to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshalled upon any foreclosure. Mortgagor agrees that Mortgagee may, at its discretion, and without the knowledge or consent of Mortgagor, release any guarantor of the Indebtedness or release any collateral for the Indebtedness, all without affecting the validity or priority of the lien of this Mortgage, and Mortgagor hereby expressly waives the right to assert any defense based upon such releases or upon any assertion that any such release has impaired Mortgagee's collateral.

5. ASSIGNMENT OF RENTS AND LEASES.

5.1 Assignment. Mortgagor hereby transfers and assigns to Mortgagee as further security for the payment of the Indebtedness all of the following (collectively, the "Leases"): (i) all present and future leases granted by Mortgagor covering all or any portion of the Property, (ii) all agreements for use or occupancy of any portion of the Property, (iii) all present and future ground leases for use or occupancy of any portion of the Property, (iv) any and all guarantees of the performance of any lessee under any lease of all or any part of the Property, (v) any extensions, amendments, modifications, supplements or replacements to any lease of all or any part of the Property (or to any guarantee or other item assigned pursuant to this Section) and (vi) any and all further leases and subleases, lettings or agreements (including rights and respective tenants holding over and tenancies following attornment) of all or any part of the Property. The rights assigned hereunder include but are not limited to all of Mortgagor's rights (a) to materially modify the Leases, (b) to terminate or to accept the surrender thereof, (c) to waive or release the lessees from the observance or performance by the lessees of any material covenant or condition of the Leases; and (d) to give any consent to any assignment of the Leases or any sublease of any part of the Property. Without limiting the scope of the assignment of rents contained in this Mortgage, the assignment of rents set forth herein will constitute an assignment of rents as set forth in Ind. Code 32-21-4-2 and thereby creates, and Mortgagor hereby grants to Mortgagee, a security interest in the rents that will be perfected upon the recording of this Mortgage.

5.2 Duties of Mortgagor. Mortgagor will observe and perform all covenants and conditions to be observed or performed by the lessor under the Leases and enforce the observance and performance of the Leases by the lessees. Mortgagor will not cancel, surrender, terminate, or materially alter, amend or modify any Leases, release any party liable thereunder or consent to the assignment of the interests of any lessees without the prior written consent of Mortgagee which consent will not be unreasonably withheld. Mortgagee will be deemed to have consented to any such items if Mortgagee fails to object thereto within five days of receipt of a written request for Mortgagee's consent. Mortgagor will not permit the prepayment of any rents under the Leases for more than 30 days in advance of their due date without the prior written consent of Mortgagee. The form of lease to be used for tenants in the Property will be submitted to Mortgagee.

5.3 Rights of Mortgagee. If Mortgagor fails to observe or perform any covenant or condition to be observed or performed by Mortgagor under any of the Leases, Mortgagee, without obligation to do so and without notice to or demand on Mortgagor or releasing Mortgagor from its obligation to do so, may perform such covenant or condition and, to the extent that Mortgagee incurs any costs or pays any monies in connection therewith, including any costs or expenses of litigation, the costs and expenses will be due from Mortgagor on demand and will be included in the indebtedness secured hereby and will bear interest from the incurring or payment thereof at the Default Rate (as defined in the Loan Agreement).

5.4 Indemnification. Mortgagee will not be obligated to perform or discharge any obligation or duty of Mortgagor under any of the Leases, and the acceptance of this Assignment

does not constitute an assumption of any such obligation or duty. Mortgagee will not be deemed to have any responsibility for the control, care, management or repair of the Property or any responsibility or liability for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss, injury or death to any lessee, licensee, employee, stranger or other person. Mortgagor will indemnify and hold Mortgagee harmless against all liabilities, losses and damages that Mortgagee may incur under the Leases or under or by reason of this assignment except for Mortgagee's grossly negligent acts or liabilities or losses and damages arising out of Mortgagee's possession or control of the Property. This indemnification will survive the repayment of the Note and release or satisfaction of this Mortgage or the foreclosure hereof.

5.5 Rent. As long as no Event of Default exists, Mortgagor will have the right to collect all rents under any Lease, but not more than 30 days in advance of their due date. Upon the occurrence of an Event of Default, Mortgagee may take such actions with respect to the Leases and the rents, issues and profits (including the notification to lessees to make rent payments directly to Mortgagee) from the Property, as permitted by law or in equity, including but not limited to the remedies set forth in Section 7, below.

5.6 Contracts. Mortgagor will not enter into any contract for the management of the Property or appoint a rental agent for the Property without Mortgagee's prior review and written consent. Payment of any management fees or agent fees due under any such approved contract will be subordinated to the payment of the annual debt service under the Indebtedness.

6. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

6.1 Security Agreement. This Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the Property for which a security interest may be granted pursuant to the applicable version of the Uniform Commercial Code, including fixtures (hereinafter, the "UCC Collateral") and Mortgagor hereby grants Mortgagee a security interest in the UCC Collateral.

6.2 Filings. Mortgagor hereby authorizes Mortgagee to file any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Mortgagee may require to perfect a security interest with respect to said items, and which financing statements lists or otherwise describes the UCC Collateral as consisting of all of Mortgagor's assets or words to that effect, regardless of the actual description of the UCC Collateral set forth in this Mortgage. Mortgagor hereby ratifies any filing by Mortgagee that predates the date of this Mortgage but that was intended to perfect the security interest granted hereby. Mortgagor will pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and will pay all reasonable costs and expenses of any record searches for financing statements Mortgagee may require.

6.3 Other Liens. Without the prior written consent of Mortgagee, Mortgagor will not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in the UCC Collateral, including replacements and additions thereto, except for purchase money security interests in or leases of equipment. Mortgagor will keep its books, records and documents concerning the Property at the Property or at the address set forth in Section 8.6, below. Mortgagee and its agents may examine and make extracts and copies from the books, records, and documents of Mortgagor which relate to the Property.

6.4 Contracts. Mortgagor will observe and perform all covenants and conditions to be performed by Mortgagor under any contracts which are included within the Property, will enforce such contracts, will not materially modify such contracts, terminate such contracts or release parties thereto without the prior written consent of Mortgagee and

will not assign or encumber its interest therein. The assignment and grant of a security interest in the Property does not constitute an assumption by Mortgagee of any obligation or duty thereunder.

6.5 Remedies. Upon any Event of Default (as defined below) under this Mortgage, Mortgagee will have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, may also invoke the remedies provided in this Mortgage, the Loan Agreement and under applicable law. In exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or of the remedies in this instrument. Taking possession of any of the Property and the performance of the obligations of Mortgagor thereunder will not operate to cure or waive any default or prohibit the taking of any other action by Mortgagee under any instrument or at law or in equity to enforce the payment of the Indebtedness or to realize upon any other security or guarantee therefor. Mortgagee may, so far as Mortgagor can give authority therefor, enter upon any premises on which the Property or the books and records relating to the Property are located and take possession of and remove the same therefrom. Mortgagor waives all claims for damages by reason of any seizure, repossession, retention, or sale of the Property under the terms hereof. Any requirement of reasonable notice, if necessary, will be met if such notice is mailed, postage prepaid, to the address of Mortgagor shown in Section 8.6, below, at least 10 days before the time of the sale or other disposition of the Property. The net proceeds arising from the disposition of the Property, after deducting Mortgagee's expenses, will be applied to the Indebtedness in the order determined by Mortgagee. If any excess remains after the discharge of all of the Indebtedness and the payment of all such expenses, it will be paid to Mortgagor.

6.6 Definitions. Capitalized terms used herein and not otherwise defined will be given the definitions set forth in the Uniform Commercial Code in force and effect in the State indicated in the Construction and Governing Law section of this Agreement.

7. DEFAULT; REMEDIES.

7.1 Events of Default. The entire Indebtedness will become due, at the option of Mortgagee, if any one or more of the Events of Default, as such term is defined in the Loan Agreement ("Event of Default"), occurs and is continuing beyond any applicable grace or notice period.

7.2 Remedies. Upon maturity of any of the Indebtedness, including the Note, or at any time after an Event of Default, Mortgagee will have all rights and remedies provided at law or in equity or under this Mortgage, including the right to accelerate the maturity of the Indebtedness and the right to foreclose the lien of this Mortgage. In addition to the foregoing, and not in limitation thereof, and notwithstanding anything in this Mortgage, the Note, or the Loan Documents to the contrary, Mortgagee will be entitled to all rights and remedies that a mortgagee would have under Indiana law or in equity including, but not by way of limitation, Mortgage Foreclosure Actions, Ind. Code 32-30-10, Receiverships, Ind. Code 32-30-5, and the Revised Uniform Commercial Code Ind. Code 26-1-9.1 (the "UCC") (such laws, as amended, modified and/or recodified from time to time, are collectively referred to herein collectively as the "Applicable Law"). In the event of any inconsistency between the provisions of this Mortgage, the Note or the Loan Documents, and the provisions of Applicable Law, the provisions of Applicable Law will take precedence, but will not invalidate or render unenforceable any other provisions of this Mortgage, the Note or the Loan Documents that can be construed in a manner consistent with Applicable Law. Conversely, if any provision of this Mortgage will grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights or remedies that would otherwise be vested in the Mortgagee under

Applicable Law in the absence of said provision, Mortgagee will be vested with the rights and remedies granted under Applicable Law. Notwithstanding any provision in this Mortgage relating to a power of sale or other provision for sale of the Property upon default other than under a judicial proceeding, any sale of the Property pursuant to this Mortgage will be made through a judicial proceeding, except as otherwise may be permitted under the UCC.

7.3 **Waivers.** The failure of Mortgagee to exercise either or both of its options to accelerate the maturity of the Indebtedness secured hereby and to foreclose the lien hereof following any Event of Default, or to exercise any other option granted to Mortgagee or the acceptance by Mortgagee of partial payments under any of the Indebtedness, will neither constitute a waiver of any such default or of Mortgagee's options hereunder nor establish, extend or affect any grace period for payments due under the Note, but such options will remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at Mortgagee's option, be rescinded by written acknowledgement to that effect by Mortgagee and will not affect Mortgagee's right to accelerate maturity upon or after any future default. To the extent the Applicable Law limits (i) 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 Mortgagee and the right of Mortgagee to exercise self-help in connection with the enforcement of the terms of this Mortgage, or (ii) 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 whether such remedies, waivers or indemnities were enforceable at the time of the execution and delivery of this Mortgage.

7.4 **Expenses.** In any proceeding (i) to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under the Note, this Mortgage, the Loan Agreement or any other document securing the Indebtedness or executed in connection therewith; (ii) in which Mortgagee is named as a party in connection with any of the Property; or (iii) affecting the Note, this Mortgage or any of the Property; or (iv) in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, there will be allowed and included, as additional indebtedness in the judgment or decree resulting therefrom, any and all of the following expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee: reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and any similar data and assurances with respect to title to the Property as Mortgagee may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the premises or the Property. All expenses of the foregoing nature and such expenses as may be incurred in the protection of any of the Property and the maintenance of the lien of this Mortgage thereon, including, without limitation, the reasonable fees of any attorney employed by Mortgagee in any litigation affecting the Note, this Mortgage or any of the Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, will be immediately due and payable by Mortgagor with interest thereon at the Default Rate.

- 7.5 Application of Indebtedness Towards Purchase Price.** Upon any foreclosure sale, pursuant to judicial proceedings, Mortgagee may bid for and purchase the Property, and upon compliance with the terms of the sale, may hold, retain, possess and dispose of such property as its own absolute right without further accountability. Any such purchase will permit Mortgagee to apply to the purchase price any portion of or all sums due to Mortgagee under the Indebtedness and this Mortgage in lieu of cash, to the amount which will, upon distribution of the net proceeds of such sale, be payable thereon.
- 7.6 Proceeds.** The proceeds of any foreclosure sale of the Property, or any part thereof, will be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 7.4 hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the highest rate permitted by law; (c) all principal and interest remaining unpaid under the Note, in the order of priority specified by Mortgagee in its sole discretion; and (d) the balance to Mortgagor or its successors or assigns, as its interests may appear.
- 7.7 Additional Remedies.** If an Event of Default has occurred and is continuing, Mortgagee, at its option, in addition to the other remedies provided herein or in law or equity, may without regard to the adequacy of security for the Indebtedness hereby secured and with or without bringing any legal action or causing any receiver to be appointed by any court (i) enter upon, take possession of, and manage and operate the Property; (ii) perform any or all obligations of Mortgagor under the Leases, and exercise the rights of Mortgagor contained therein as fully as Mortgagor itself could; (iii) let or re-let the Property or any part thereof; (iv) enforce, modify, cancel or accept the surrender of any of the Leases; (v) bring or defend any suits in connection with the possession of the Property or any part thereof, in the name of either Mortgagor or Mortgagee; (vi) make such repairs as Mortgagee may deem appropriate; (vii) pay out of rents, income or profits any liens, taxes, assessments, insurance premiums, utility charges or costs of keeping the Property in good condition and repair; (viii) in the name of either Mortgagor or Mortgagee sue for or otherwise collect and receive all rents, issues and profits, including those past due and unpaid; and (ix) do all other things Mortgagee may deem necessary or proper to protect its security. Entry upon and taking possession of the Property and the collection of the rents and the application thereof will not operate to cure or waive any default under any instrument given by Mortgagor to Mortgagee or prohibit the taking of any other action by Mortgagee under any such other instrument, or at law or in equity to enforce the payment of the Indebtedness or to realize on any other security or guarantee.
- 7.8 Receivers.** Upon or at any time after the occurrence of an Event of Default, Mortgagee may request the appointment of a receiver of the Property. Such appointment may be made either before or after any foreclosure action or sale, without notice, and without regard to (i) the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness; (ii) the value of the Property at such time; and (iii) whether the same is then occupied as a homestead, and without bond being required of the applicant. Such receiver will have the power to take possession, control and care of the Property and to collect all rents, issues, deposits and profits thereof. Notwithstanding the appointment of any receiver, trustee, or other custodian, Mortgagee will be entitled to the possession and control of any cash, or other instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Mortgagee. In the event that the rents and profits collected from the Property are inadequate to pay for insurance, and other expenses incurred in the operation of the Property, Mortgagee may, but is not obligated, to advance to any receiver the amounts necessary to operate, maintain and repair the Property and any such amount so advanced, together with interest at the Default Rate, shall be immediately payable by Mortgagor and shall be secured by this Mortgage as Indebtedness. Mortgagor shall indemnify and save harmless Mortgagee and receiver

from all claim, losses, damages and expenses, including without limitation, reasonable attorneys' fees, suffered or to be suffered by the indemnified party in connection, or arising out of the appointment of said receiver in the performance by said receiver of its services with respect to the Property, except for the gross negligence or willful misconduct of Mortgagee or the receiver.

- 7.9 **Rights of Mortgagee.** If Mortgagor fails to pay any of the Impositions or to make any other payment required to be paid by Mortgagor under this Mortgage at the time and in the manner provided in this Mortgage, or if an Event of Default occurs, then without limiting the generality of any other provision of this Mortgage and without waiving or releasing Mortgagor from any of its obligations hereunder, Mortgagee will have the right, but will be under no obligation, to pay any of the Impositions or other payment, or any sums due under this Mortgage, and may perform any other act or take such action as may be appropriate to cause such other term, covenant, condition or obligation to be promptly performed or observed on behalf of Mortgagor, provided that, unless in Mortgagee's judgment the sending of a 10 day notice will impair the security of the lien of the Mortgage, Mortgagee will give Mortgagor 10 days' prior written notice prior to making any such payment. Mortgagee and any person designated by Mortgagee is hereby granted the right to enter upon the Property at any time and from time to time for the purpose of performing any such act or taking any such action, and all monies expended by Mortgagee in connection with making such payment or performing such act (including, but not limited to, legal expenses and disbursements), together with interest thereon at the Default Rate will be paid by Mortgagor to Mortgagee forthwith upon demand by Mortgagee and will be secured by this Mortgage.

8. **MISCELLANEOUS**

- 8.1 **Advances to Cure Default.** In the event that Mortgagor fails to perform any of Mortgagor's covenants or agreements under this Mortgage, the Note or any other document relating to the Indebtedness secured hereby, Mortgagee may, but will not be required to, perform any or all of such covenants and agreements and any amounts expended by Mortgagee in so doing will constitute additional Indebtedness under this Mortgage.

- 8.2 **Rights Cumulative.** The rights of Mortgagee arising under this Mortgage and the Note and other documents securing the Indebtedness or any part thereof will be separate, distinct and cumulative and none of them will be exclusive of the others. No act of Mortgagee and nothing contained herein will be construed as an election to proceed under any one provision herein or in such other documents to the exclusion of any other provision.

- 8.3 **Waivers.** A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof, or of the Note or any documents securing the Indebtedness or any part thereof, will apply to the particular instance or instances and at the particular time or times only, and no such waiver will be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Mortgage and of such other documents will survive and continue to remain in full force and effect. No waiver will be asserted against Mortgagee unless in writing signed by Mortgagee. In no way limiting the generality of the foregoing, the failure of Mortgagee to exercise the option for acceleration of maturity or to foreclose following any default as set forth above, or to exercise any other option granted to Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of parties payments hereunder will not constitute a waiver of any such default, nor extend or affect the grace period, if any, but such option will remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee may, at the option of Mortgagee, be rescinded by written acknowledgement to that effect by Mortgagee, but the tender and acceptance of partial payments alone will not in any

way affect or rescind such acceleration of maturity, or extend or affect the grace period, if any.

- 8.4 Titles.** The titles to the Sections hereof are for reference only and do not limit in any way the content thereof.
- 8.5 Amendments.** No change, amendment, modification, cancellation or discharge hereof, or any part hereof, will be valid unless in writing and signed by the parties hereto or their respective successors and assigns.
- 8.6 Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder will be in writing and will be conclusively deemed to have been received by party hereto and to be effective if delivered personally to such party, or sent by telex, telecopy (followed by written confirmation) or other telegraphic means, or by overnight courier service, or by certified or registered mail, return receipt requested, postage prepaid, addressed to such party at the address set forth below or to such other address as any party may give to the other in writing for such purpose:

To Mortgagor at: **Eggert Builders, Inc.**
9695 Julia Drive
St. John, IN 46373
Attn: Scott R Eggert, President

To Mortgagee at: First Financial Bank, N.A.
225 N. Main Street
Celina, Ohio 45822
Attn: Kyle A Ropac, VP Commercial Loan Officer

All such communications, if personally delivered, will be conclusively deemed to have been received by a party hereto and to be effective when so delivered, or if sent by telex, telecopy or telegraphic means, on the day on which transmitted, or if sent by overnight courier service, on the day after deposit thereof with such service, or if sent by certified or registered mail, on the third business day after the day on which deposited in the mail.

- 8.7 Construction and Governing Law.** Any words herein that are used in one gender will be read and construed to mean or include the other genders wherever they would so apply. Any words herein which are used in the singular will be read and construed to mean and to include the plural wherever they would so apply, and vice versa. This Mortgage will be governed by and construed in accordance with the laws of the State where the Property is located without regard to the principles of conflicts of laws. Otherwise the Loan Agreement, the Note, and the other documents executed in connection therewith or otherwise evidencing the Indebtedness will be construed in accordance with the laws of the State of Ohio without regard to conflicts of law principles.

- 8.8 Waivers by Mortgagor.** Mortgagor hereby expressly waives, to the extent permitted by law, the equity of redemption, any statutory right of redemption, dower and homestead, as well as the benefit of all valuation and appraisal privileges and also, redemptions and moratoriums under or by virtue of the constitution and laws of the States of Ohio and Indiana, of any other state or of the United States, now existing or hereafter enacted, and all other rights and exemptions of every kind in and to the Property.

- 8.9 **Interest, Variable Rate.** The rate of interest payable on the outstanding principal balance due under the Note may change from time to time as provided in the Note. If from any circumstances whatsoever the fulfillment of any provision of this instrument involves transcending the limit of validity prescribed by any applicable usury statute or any other applicable law (it being the intention of Mortgagor and Mortgagee that the laws of Ohio will govern) with regard to obligations of like character and amount, then the obligation to be fulfilled will be reduced to the limit of such validity as provided in such statute or law, so that in no event will any exaction of interest be possible under this instrument in excess of the limit of such validity. In no event will Mortgagor be bound to pay interest of more than the legal limit for the use, forbearance or detention of money and the right to demand any such excess is hereby expressly waived by Mortgagee.
- 8.10 **Releases.** Mortgagor agrees that Mortgagee, without notice to or further consent of Mortgagor, may release or discharge any persons who are or may become liable for the payment of the Indebtedness or release or discharge any other collateral for the payment of the Indebtedness and any such release or discharge will not alter, modify, release or limit the validity and enforceability of this Mortgage or the liability of Mortgagor under the Indebtedness or this Mortgage.
- 8.11 **Appraisal.** From time to time, but in any event no more often than once each calendar year, Mortgagee may require a reappraisal of the market value of the Property, which appraisal will be paid for by Mortgagor. Such appraisal will be in form and content satisfactory to Mortgagee and be performed by an independent, certified appraiser selected by Mortgagee.
- 8.12 **Joint and Several.** If this Mortgage is executed by more than one person or entity as the "Mortgagor," the obligations of such persons or entities hereunder will be joint and several. Unless otherwise specified herein, any reference to "Mortgagor" will mean each such person or entity executing this Mortgage individually and all of such persons or entities collectively. This Mortgage will bind Mortgagor and the heirs, administrators, successors and assigns of Mortgagor, and the benefits hereof will inure to the benefit of Mortgagee and its successors and assigns. All references herein to the "Mortgagor" and "Mortgagee" will be deemed to apply to Mortgagor and Mortgagee and their respective heirs, administrators, successors and assigns; provided, however, that Mortgagor may not assign this Mortgage in whole or in part without the prior written consent of Mortgagee, and Mortgagee at any time may assign this Mortgage in whole or in part.
- 8.13 **Waiver of Marshalling and Other Rights.** Mortgagor hereby waives for itself and its successors and assigns, in the event of foreclosure of this Mortgage, any right, legal, equitable or otherwise, with respect to marshalling of assets hereunder that could dictate the application of any proceeds from any sheriff's sale or other execution against the Property other than the application of any such proceeds to the Note; and Mortgagor agrees and consents that any such proceeds may be applied at the sole and absolute discretion of the then holder of the Note to reduce the amounts due on the Note or under the terms of this Mortgage.

9. **FUTURE ADVANCES.**

- 9.1 **Advances by Mortgagee.** Notwithstanding anything contained in this Mortgage to the contrary, this Mortgage will secure: (i) a maximum principal amount of **\$327,244.00** exclusive of any items described in (ii) below, including any additional advances made from time to time after the date hereof pursuant to the Note and other Loan Documents whether made as part of the indebtedness secured hereby or made at the option of the Mortgagee, (ii) all other amounts payable by Mortgagor, or advanced by Mortgagee for the account, or on behalf, of Mortgagor, pursuant to the Note and Loan Documents, including amounts advanced with respect to the Property for the payment of taxes, assessments, insurance premiums and other costs and impositions incurred for the

protection of the Property to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage; and (iii) future modifications, extensions, and renewals of any Note or indebtedness secured hereby by this Mortgage. Pursuant to Ind. Code 32-29-1-10, the lien of this Mortgage with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time to time will have the same priority to which this Mortgage otherwise would be entitled as of the date this Mortgage is executed and recorded without regard to the fact that any such future advance, modification, extension, or renewal may occur after this Mortgage is executed. The maximum principal amount is stated herein for the purpose of any applicable laws pertaining to future advances and is not deemed a commitment by Mortgagee to make any future advances.

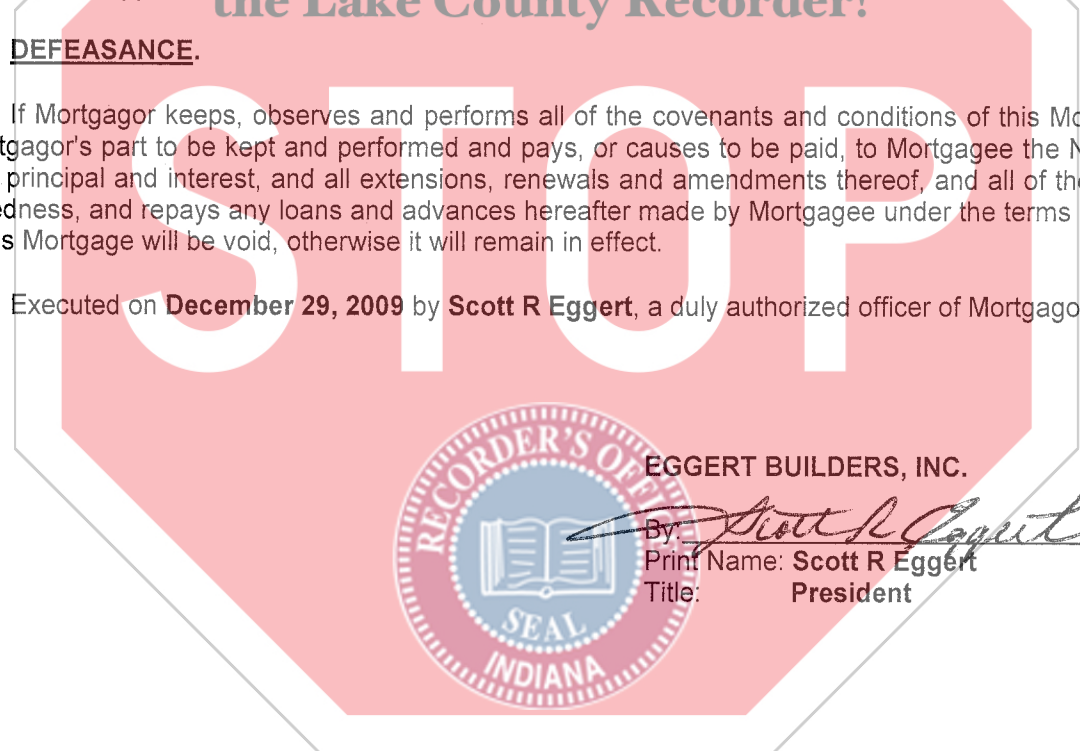
9.2 Other Liens. It is agreed that the lien hereby created will take precedence over and be a prior lien to any other lien of any character whether vendor's, materialmen's or mechanic's lien hereafter created on the Property, and in the event the proceeds of the Indebtedness are used to pay off and satisfy any liens existing on the Property, then Mortgagee is, and will be, subrogated to all of the rights, liens and remedies of the holders of the indebtedness so paid.

9.3 Nature of Advances. This Mortgage is given to secure repayment of advances made pursuant to the Loan Agreement, which advances are obligatory. Mortgagor hereby consents and agrees that the funds secured by this Mortgage may be paid out by Mortgagee as provided in the Loan Agreement or any amendment thereto, and Mortgagee may do all things as provided to be done by Mortgagee thereunder. This Mortgage secures an obligation incurred for the construction of an improvement on land. This Mortgage is given to secure, among other things, a loan for the purpose of erecting, improving, or adding to a building on the Property. This Mortgage will be deemed a construction mortgage entitled to all the benefits of a construction mortgage under applicable Indiana law.

10. DEFEASANCE.

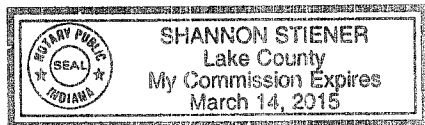
If Mortgagor keeps, observes and performs all of the covenants and conditions of this Mortgage on Mortgagor's part to be kept and performed and pays, or causes to be paid, to Mortgagee the Note as to both principal and interest, and all extensions, renewals and amendments thereof, and all of the other Indebtedness, and repays any loans and advances hereafter made by Mortgagee under the terms hereof, then this Mortgage will be void, otherwise it will remain in effect.

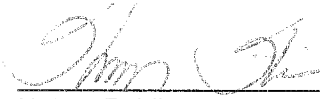
Executed on **December 29, 2009** by **Scott R Eggert**, a duly authorized officer of Mortgagor.



STATE OF Indiana)
) SS:
COUNTY OF Lake)

Executed and acknowledged before me on the **29th** day of **December, 2009**, by **Scott R Eggert**, the duly authorized **President**, of Mortgagor, on behalf of **Eggert Builders, Inc.**, who represented to me to be said person.




Notary Public Shannon Stiener
My Commission Expires: 3/14/15

This instrument was prepared by:

Kyle Ropac
Printed Name
Representative of First Financial Bank, N.A.
225 N. Main Street
Celina, Ohio 45822



"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." Shannon Stiener

EXHIBIT A

Legal Description

Lot 60 in The Galleries Unit 2-Phase 1, as per plat thereof, recorded in Plat Book 97 page 20, in the Office of the Recorder of Lake County, Indiana.

