

<b>Mortgagor's Name And Address</b> Joseph H Newell Marie J Newell, husband and wife 146 Carnoustie Av Schererville, IN 46375  ("Mortgagor" whether one or more)	<b>Mortgagee's Name and Address</b>  <b>Peoples Bank SB</b> <b>9204 Columbia Avenue</b> <b>Munster, Indiana 46321</b>  ("Mortgagee")	<b>After Recording Return to:</b>  <b>Peoples Bank SB</b> <b>9204 Columbia Avenue</b> <b>Munster, Indiana 46321</b>
--	--	---

2010 012880

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

("Mortgage")

FOR PURPOSES OF THE SECURITY AGREEMENT CONTAINED IN THIS INSTRUMENT THE "SECURED PARTY" AND THE "DEBTOR" AND THEIR RESPECTIVE ADDRESSES ARE AS STATED ABOVE IN THE MORTGAGEE/MORTGAGOR BOXES, RESPECTIVELY

**FOR VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged, Mortgagor does hereby grant, mortgage, warrant, and convey, with mortgage covenants, to Mortgagee that real estate situated in Lake County, State of Indiana,

described in Exhibit "A" attached hereto and by reference made a part hereof,

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

**CONSTRUCTION MORTGAGE.**  If this box is checked this is a construction mortgage and the proceeds of the line of credit loan described in Section 1.2 shall be used by the Mortgagor to make improvements to the Real Estate.

**1 INDEBTEDNESS SECURED.** This Mortgage is given to secure all of the Mortgagor's Obligations (and Borrower's Obligations if the Hypothecation Box is checked below) to the Mortgagee. The term "Obligations" as used in this Mortgage means all obligations of the Mortgagor (or Borrower) in favor of the Mortgagee of every type and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising and the term "Obligations" shall also include, but shall not be limited to the following (boxes not checked are inapplicable. Sections 1.4, 1.5, 1.6 and 1.7 are always applicable):

**HYPOTHECATION PROVISION**

XX If this box is checked, this Mortgage secures one or more loans to American Medical Oxygen Sales Corp., hereinafter referred to as "Borrower".

1.1  Payment of a term loan note executed by  Mortgagor  Borrower in favor of Mortgagee and dated the 2nd day of March, 2010 in the original principal amount of \$ 292,000.00, with interest thereon as provided in said term loan, and with any unpaid balance of principal and interest being due and payable on or before the 2nd day of March, 2013.

1.2  Payment of that certain line of credit loan note executed by  Mortgagor  Borrower in favor of Mortgagee and dated the \_\_\_\_\_ day of \_\_\_\_\_ with a maximum commitment of \$ \_\_\_\_\_, and with any unpaid balance of principal and interest being due and payable on or before the \_\_\_\_\_ day of \_\_\_\_\_. This is a line of credit obligation and Mortgagee will be making future loans and advances to Mortgagor pursuant to a \$ \_\_\_\_\_ commitment. It is intended by the Mortgagor that each such future loan or advance shall be secured by this Mortgage. The maximum principal amount of unpaid loan indebtedness secured under this paragraph 1.2, which may be outstanding at any time shall be \$ \_\_\_\_\_, exclusive of interest thereon and exclusive of unpaid balances of advances made with respect to the mortgaged premises for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the mortgage premises and all other costs which Mortgagee is authorized by this Mortgage to pay on Mortgagor's behalf, all of which amount shall also be secured by this Mortgage.

STATE OF INDIANA  
 ELK HARBOR COUNTY  
 FILED FOR RECORD  
 2010 MAR 10 AM 9:23  
 MICHELE R. FAYMAN  
 COUNTY CLERK

# 33  
 TI  
 CA

- 1.3 Any and all future loans, Obligations and advancements made by Mortgagee to  Mortgagor  Borrower except that the maximum amount of unpaid indebtedness under this paragraph 1.3 secured hereby which may be outstanding at any time shall not exceed \$292,000.00, exclusive of interest thereon and exclusive of unpaid balances of advances made with respect to the mortgaged premises for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the mortgaged premises and all other costs which Mortgagee is authorized by this Mortgage to pay on Mortgagor's behalf. It is the express intention of the Mortgagor and Mortgagee that this Mortgage be an open-ended mortgage". Mortgagor stipulates and agrees with Mortgagee that as of the date of this Mortgage, Mortgagee has made no written or oral commitment to Mortgagor to make any future loans or advancements under this paragraph 1.3. Any such future lending shall be at the Mortgagee's sole discretion.
- 1.4 Any renewal, extension, modification, refinancing or replacement of the indebtedness referred to in those paragraphs 1.1, 1.2, or 1.3, above, which are checked as being applicable.
- 1.5 Except as otherwise limited in this Mortgage, any other indebtedness which the Mortgagor (or any one or more of them if more than one) might from time to time, while this mortgage is in effect, owe Mortgagee including, but not necessarily limited to, obligations under guarantees executed by Mortgagor (or any one or more of them, if more than one) in favor of Mortgagee, indebtedness arising from overdrafts on depository accounts maintained by Mortgagor (or any one or more of them, if more than one) with Mortgagee and indebtedness arising from Mortgagee making payment to beneficiaries under letters of credit issued by Mortgagee for the account of Mortgagor (or any one or more of them, if more than one).
- 1.6 All interest, attorney fees, and costs of collection with respect to the Obligations referred to in those paragraphs 1.1 through 1.5, above, which are checked as being applicable, together with any extensions or renewals thereof.
- 1.7 The performance by Mortgagor of all Mortgagor's covenants, agreements, promises, payments and conditions contained in this Mortgage agreement.

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

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

- 2.1 **Security Agreement.** This instrument when recorded shall constitute a "fixture filing" for purposes of the Uniform Commercial Code. The address of the mortgagee shown above is the address at which information concerning the secured party's security interest may be obtained. Mortgagor hereby grants to Mortgagee a security interest in all fixtures, furniture, equipment and machinery currently attached to the Real Estate and in and to all such property to be attached or affixed to such Real Estate in the future including, but not necessarily limited to, all heating, ventilation and air conditioning equipment including related electrical components and duct work, all electrical wiring and equipment attached to or incorporated into the Real Estate, all shelving and storage devices affixed or attached to the Real Estate and all equipment or machinery attached to or affixed to such Real Estate.
- 2.2 **Waste and Maintenance of Premises.** The Mortgagor shall abstain from and not permit the commission of waste in or about the Real Estate; shall not move or demolish, or alter the structural character of, any building at any time erected on the Real Estate without the prior written consent of the Mortgagee; shall maintain the Real Estate in good condition and repair, reasonable wear and tear excepted. The Mortgagee shall have the right, but not the duty, to enter upon the premises at any reasonable hour to inspect the order, condition, and repair thereof, including the interiors of any buildings and improvements located thereon.
- 2.3 **Title; No Mortgages.** Mortgagor does hereby represent and warrant that Mortgagor is the owner of the Real Estate in fee simple; that there are no other mortgages, liens, encumbrances or claims against said Real Estate or which may affect said Real Estate except the lien of real estate taxes not yet due and owing, and except for those liens and encumbrances subordinate to this Mortgage which are permitted by the terms of any loan agreement between Mortgagor (and Borrower, if applicable) and Mortgagee.
- 2.4 **No Liens.** The Mortgagor shall not permit any lien of mechanics or materialmen to attach to and remain on the Real Estate or any part thereof for more than thirty (30) days after receiving notice thereof. Nothing herein contained, however, shall be construed as preventing or interfering with the contesting by Mortgagor, at its cost and expense, of the validity of such lien or the underlying indebtedness, if the same may be contested without loss or forfeiture of title, and Mortgagor may so contest the same, and during such contest Mortgagor shall not be treated as being or taken to be in default with respect to the subject matter of such contest; provided, however, that if Mortgagee shall so require, Mortgagor shall furnish to Mortgagee reasonable security for the payment at the termination of such contest of the indebtedness secured by such lien. For the purpose of complying with the proviso in the foregoing sentence, Mortgagor may, at its election, furnish a bond in an amount equal to the amount of the item so contested and with surety satisfactory to Mortgagee.
- 2.5 **Preservation of Security Interest.** Upon demand and failure of the Mortgagor so to do, the Mortgagee may, in its discretion, advance and pay all sums necessary to protect and preserve the Real Estate and all sums so advanced and paid by the Mortgagee shall become a part of the indebtedness secured hereby, shall bear interest from date of payment at a rate equal to the default interest rate specified in the note secured hereby, and shall be payable to the Mortgagee upon demand. Such sums shall include, but not by way of limitation:
- (1) taxes, assessments and other charges which may be or become senior to this Mortgage as liens on the Real Estate, or any part thereof;
  - (2) the cost of any title insurance, surveys, or other evidence which in the discretion of the Mortgagee may be required in order to evidence, confirm, insure or preserve the lien of this Mortgage;
  - (3) all costs, expenses, and attorneys' fees incurred by the Mortgagee in respect of any and all legal and equitable actions which relate to this Mortgage or to the Real Estate;

- (4) the cost of any repairs respecting the Real Estate which are reasonably deemed necessary by the Mortgagee;
- (5) the cost of all reasonable and necessary expenses for the operation, protection, and preservation of the Real Estate, including the usual and customary fees for management services; and
- (6) the cost of premiums due and payable with respect to insurance policies required by this Mortgage. The Mortgagee shall be subrogated to the rights of the holder of each lien or claim paid with moneys secured hereby.

**2.6 Insurance Obligation.** The Mortgagor will procure, deliver to, and maintain for the benefit of the Mortgagee during the continuance of this Mortgage and until the same is fully satisfied and released, a policy or policies of insurance insuring the buildings and improvements now existing or hereafter erected on the Real Estate against loss or damage by fire, wind storm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, flood (if required by applicable law) vandalism and malicious mischief and such other perils as are generally covered by "extended coverage" insurance for the full replacement value. All policies of insurance required here-under shall be in such form and amounts and by such companies, as the Mortgagee may accept, and shall contain a mortgagee clause acceptable to the Mortgagee, with loss payable to the Mortgagor and the Mortgagee as their interests may appear and shall provide that no act or omission of Mortgagor or any other person shall affect the right of Mortgagee to be paid the insurance proceeds pertaining to the loss or damage of the insured property. Such policies shall require the insurance company to provide Mortgagee with at least thirty (30) days' written notice before such policies are altered or cancelled in any manner. The Mortgagor will promptly pay when due any premiums on any policy or policies of insurance required hereunder, and will deliver to the Mortgagee renewals of such policy or policies at least ten (10) days prior to the expiration date(s) thereof, the said policies and renewals to be marked "paid" by the issuing company or agent.

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

**Payment of Taxes and Other Charges.** The Mortgagor shall pay all real estate taxes, water and sewer rents, other similar claims and liens assessed or which may be assessed against the Real Estate or any part thereof, without any deduction or abatement, in a manner acceptable to such taxing authorities and shall produce to the Mortgagee receipts for the payment thereof in full and shall pay every other tax, assessment, claim, lien, or encumbrance which may at any time be or become a lien upon the Real Estate prior to the lien of this Mortgage; provided, however, that if the Mortgagor shall in good faith, and by proper legal action, contest any such taxes, claims, liens, encumbrances or other charges or the validity thereof, and shall have established on its books or by deposit of cash with the Mortgagee (as the Mortgagee may elect), a reserve for the payment thereof in such amount as the Mortgagee may require, then the Mortgagor shall not be required to pay the same, or to produce such receipts, during the maintenance of said reserve and as long as such contest operates to prevent collection, and is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to the Mortgagor.

**2.7** **Payment of Taxes and Other Charges.** The Mortgagor shall pay all real estate taxes, water and sewer rents, other similar claims and liens assessed or which may be assessed against the Real Estate or any part thereof, without any deduction or abatement, in a manner acceptable to such taxing authorities and shall produce to the Mortgagee receipts for the payment thereof in full and shall pay every other tax, assessment, claim, lien, or encumbrance which may at any time be or become a lien upon the Real Estate prior to the lien of this Mortgage; provided, however, that if the Mortgagor shall in good faith, and by proper legal action, contest any such taxes, claims, liens, encumbrances or other charges or the validity thereof, and shall have established on its books or by deposit of cash with the Mortgagee (as the Mortgagee may elect), a reserve for the payment thereof in such amount as the Mortgagee may require, then the Mortgagor shall not be required to pay the same, or to produce such receipts, during the maintenance of said reserve and as long as such contest operates to prevent collection, and is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to the Mortgagor.

**2.8 Payment of Future Taxes.** If at any time the United States Government or any other federal, state, or municipal government or subdivision thereof shall require internal revenue or other documentary stamps or tax on this Mortgage or the indebtedness secured hereby, upon demand the Mortgagor shall pay for same; and on failure to make such payment within fifteen (15) days after demand for same, the Mortgagee may pay for such stamps and add the amount so paid to the principal indebtedness evidenced by the note and secured by this Mortgage, and said additional principal shall bear interest at the rate applicable to the note secured hereby.

**2.9 Compliance with Ordinances.** The Mortgagor shall comply with any municipal ordinance or regulation affecting the Real Estate within thirty (30) days after notice thereof; provided, however, that if the Mortgagor shall in good faith, and by proper legal action, contest any such ordinance or regulation, or the validity thereof, then the Mortgagor shall not be required to comply therewith so long as such contest operates to prevent enforcement, and is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to the Mortgagor.

**2.10 Personal Liability.** Unless the preceding box is checked and the preceding blank line is signed by an authorized officer of Mortgagee, the Mortgagor (jointly and severally, if more than one) agrees to pay all indebtedness secured by this Mortgage in accordance with its terms and with the terms of any note or other obligation secured hereby.

**2.11 Environmental Indemnification.** As used in this paragraph, the following terms have the meanings indicated:

- (1) **Clean-up.** "Clean-up" means the removal or remediation of Contamination or other response to Contamination in compliance with all Environmental Laws and to the satisfaction of all applicable governmental agencies, and in compliance with good commercial practice.
- (2) **Contamination.** "Contamination" means the Release of any Hazardous Substance on, in or under the Real Estate or the presence of any Hazardous Substance on, in or under the Real Estate as the result of a Release, or the emanation of any Hazardous Substance from the Real Estate.
- (3) **Environmental Laws.** "Environmental Laws" means all federal, state and local laws, statutes, codes, ordinances, regulations, rules or other requirements with the force of law, including but not limited to consent decrees and judicial or administrative orders, relating to the environment, including but not limited to those applicable to the use, storage, treatment, disposal or Release of any Hazardous Substances, all as amended or

modified from time to time including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"); the Clean Water Act, as amended; the Clean Air Act, as amended; the Federal Insecticide, Fungicide and Rodenticide Act, as amended; the Hazardous Materials Transportation Act, as amended, and any and all Indiana environmental statutes including, without limitation, those codified under Title 13 of the Indiana Code and all regulations promulgated under or pursuant to such federal and Indiana Statutes.

- (4) **Hazardous Substance.** "Hazardous Substance" means any hazardous waste or hazardous substance, or any pollutant or contaminant or toxic substance or other chemicals or substances including, without limitation, asbestos, petroleum, polychlorinated biphenyls, and any other substance regulated by any Environmental Laws.
- (5) **Release.** "Release" means the spilling, leaking, disposing, discharging, dumping, pouring, emitting, depositing, injecting, leaching, escaping or other release or threatened release, whether intentional or unintentional, of any Hazardous Substance.
- (6) **Regulatory Actions.** "Regulatory Actions" means any claim, demand, action or proceeding brought or instigated by any governmental authority in connection with any Environmental Law including, without limitation, any civil, criminal or administrative proceeding whether or not seeking costs, damages, penalties or expenses.
- (7) **Third-party Claims.** "Third-party Claims" means any claim, action, demand or proceeding, other than a Regulatory Action, based on negligence, trespass, strict liability, nuisance, toxic tort or detriment to human health or welfare due to Contamination, whether or not seeking costs, damages, penalties, or expenses, and including any action for contribution to Clean-up costs.

The Mortgagor shall indemnify, defend and hold harmless the Mortgagee, and its affiliates, shareholders, directors, officers, employees and agents (all being included in the word "Mortgagee" for purposes of this paragraph) from any and all claims, causes of action, damages, demands, fines, liabilities, classes, penalties, judgments, settlements, expenses and costs, however defined, and of whatever nature, known or unknown, absolute or contingent, including, but not limited to, attorneys' fees, consultant's fees, fees of environmental engineers, and related expenses including, without limitation, expenses related to site inspections and soil and water analyses, which may be asserted against, imposed on, suffered or incurred by the Mortgagee arising out of or in any way related to (a) any actual, alleged or threatened Release of any Hazardous Substance on, in or under the Real Estate, (b) any related injury to human health or safety (including wrongful death) or any actual or alleged injury to property or to the environment by reason of the condition of, or past or present activities on the Real Estate, (c) any actual or alleged violation of any Environmental Law related to the Real Estate, (d) any lawsuit or administrative proceeding brought or threatened by any person, including any governmental entity or agency, federal, state or local, including any governmental order relating to or occasioned by any actual or alleged Contamination or threat of Contamination, (e) any lien imposed upon the Real Estate in favor of any governmental entity as a result of any Contamination or threat of Contamination, and (f) all costs and expenses of any Clean-up. The Mortgagor represents and covenants that the Mortgagor's storage, generation, transportation, handling or use, if any, of Hazardous Substances on or from the property is currently, and will remain at all times, in compliance with all applicable Environmental Laws. If any Clean-up is required with respect to the Real Estate, the Mortgagor shall expeditiously complete such Clean-up at the Mortgagor's expense and without the necessity of demand by the Mortgagee. If the Mortgagor should fail to initiate and diligently pursue any Clean-up or should otherwise fail to perform any obligation under the terms of this paragraph, the Mortgagee may, at its sole discretion and without any obligation to complete any Clean-up which it may cause to be commenced, cause the Clean-up or partial Clean-up of the Real Estate and pay on behalf of the Mortgagor any costs, fines or penalties imposed on the Mortgagor pursuant to any Environmental Laws or make any other payment or perform any other action which will prevent a lien in favor of any federal, state or local government authority or any other person from attaching to the Real Estate pursuant to the provisions of any Environmental Law, and all costs and expenses of the Mortgagee incurred in pursuing any of the remedies provided in this paragraph shall be added to the Obligations secured by this Mortgage, which costs and expenses shall become due and payable without notice as incurred by the Mortgagee, together with interest thereon at the highest default interest rate specified in any note secured by this Mortgage until paid.

- 2.12 **Wetlands Protection.** Mortgagor agrees at all times while this Mortgage shall remain in effect it shall not disturb any wetlands (as that term is defined in the Clean Water Act) which comprise a part of the Real Estate so as to violate the Clean Water Act or any other federal, state or local law, regulation, ordinance or code applicable to the preservation of wetlands.
- 2.13 **Environmental Inspection.** Mortgagor agrees that Mortgagee (which term as used in this Section 2.11 shall include Mortgagee's designated agent or representative) shall have the right to conduct periodic environmental inspections of the Real Estate upon reasonable notification to Mortgagor. Mortgagor hereby grants an irrevocable license to Mortgagee to enter upon the Real Estate to conduct such inspections and to take photographs, water and soil samples, and to undertake such testing as may be deemed necessary by Mortgagee to determine that Mortgagor is in compliance with the environmental covenants contained in this Mortgage.
- 2.14 **Condemnation.** Mortgagor shall immediately provide Mortgagee with written notice of any actual or threatened condemnation or eminent domain proceeding pertaining to the Real Estate. All monies payable to Mortgagor from such condemnation or taking are hereby assigned to Mortgagee and shall be applied first to the payment of Mortgagee's attorney fees, legal expenses, and other costs (including appraisal fees) in connection with the condemnation action or eminent domain proceedings and then, at the option of Mortgagee, to the payment of the indebtedness secured by this Mortgage or the restoration or repair of the Real Estate.

**2.15 Assignment of Leases and Rents.** As further security for payment of the indebtedness and performance of the Obligations, covenants, and agreements secured hereby, the Mortgagor hereby assigns to the Mortgagee all leases already in existence and to be created in the future, together with all rents to become due under existing or future leases. The Mortgagor hereby confers on the Mortgagee the exclusive power, to be used or not be used in its sole discretion, to act as agent, or to appoint a third person to act as agent for the Mortgagor, with power to take possession of, and collect all rents arising from, the Real Estate and apply such rents, at the option of the Mortgagee, to the payment of the mortgage debt, taxes, costs of maintenance, repairs, expenses incident to managing, and other expenses, in such order of priority as the Mortgagee may in its sole discretion determine, and to turn any balance remaining over to the Mortgagor; but such collection of rents shall not operate as an affirmation of the tenant or lease in the event the Mortgagor's title to the Real Estate should be acquired by the Mortgagee. The Mortgagee shall be liable to account only for rents and profits actually received by the Mortgagee. In exercising any of the powers contained in this section, the Mortgagee may also take possession of, and for these purposes use, any and all personal property contained in or on the Real Estate and used by the Mortgagor in the rental or leasing thereof or any part thereof. Mortgagor does not assign to Mortgagee any of Mortgagor's obligations under any such lease, and Mortgagor shall be and remain solely responsible for performing or fulfilling such obligations. Mortgagor agrees that if a default occurs, Mortgagee may immediately notify any lessee of the Real Estate of such default and direct that all rental payments be paid directly to Mortgagee pursuant to this assignment. Mortgagee hereby directs each such lessee of the Real Estate to make all rental payments required to be made under the terms of any lease directly to Mortgagee, or at such other place as the Mortgagee may from time to time specify.

### 3 DEFAULT AND BREACH

**3.1 Events of Default.** The occurrence of any one or more of the following events shall constitute a continuing default under this Mortgage:

- (1) Mortgagor's breach of any representation, warranty, covenant or agreement of Mortgagor contained in this Mortgage;
- (2) Any event defined as an event of default in any note secured hereby, the terms and conditions of which are incorporated herein by reference and made a part hereof, including, but not limited to any failure by any one so obligated to make any payment of principal and/or interest when due or the Mortgagor (or Borrower, if applicable) shall otherwise fail to pay or perform any of the Obligations promptly when such payment or performance is due or within any grace period as may be applicable;
- (3) The Mortgagor shall abandon the Real Estate; or
- (4) The institution of any foreclosure proceeding by the holder of any mortgage or lien upon the Real Estate or security interest in the personal property in which a security interest has been granted to Mortgagee under this Mortgage.

**3.2 Remedies on Default.** Upon the occurrence of any one or more of said Events of Default, the Obligations including the entire unpaid balance on the principal, the accrued interest, and all other sums secured by this Mortgage, shall, at the option of the Mortgagee, become immediately due and payable without notice or demand, and in any such Event of Default the Mortgagee may proceed to foreclose this Mortgage by judicial proceedings according to the statutes. Any failure to exercise said option shall not constitute a waiver of the right to exercise the option at any other time. Should proceedings to foreclose this Mortgage be instituted, the Mortgagee may apply for the appointment of a receiver (and the Mortgagor hereby consents to the appointment of a receiver if there has been any Default), and such receiver is hereby authorized to take possession of the Real Estate, collect any rental, accrued or to accrue, whether in money or kind, for the use or occupancy of said Real Estate by any person, firm or corporation, or may let or lease said Real Estate or any part thereof, receive the rents, income and profits therefrom, and hold the proceeds subject to the orders of the court, or the judge thereof, for the benefit of the Mortgagee, pending the final decree in said proceedings, and said receiver may be appointed irrespective of the value of the Real Estate or its adequacy to secure or discharge indebtedness due or to become due or the solvency of the Mortgagor. The Mortgagee shall have the option of proceeding as to both the Real Estate and the Personal Property in accordance with its rights and remedies in respect to the Real Estate, in which event the default provisions of the Indiana Uniform Commercial Code shall not apply. If the Mortgagee elects to proceed with respect to the Personal Property separately from the Real Estate, the requirement of the Indiana Uniform Commercial Code as to reasonable notice of any proposed sale or disposition of the Personal Property shall be met if such notice is delivered or mailed to the Mortgagor at its address stated above at least ten (10) days prior to such sale or disposition. In any action to foreclose this Mortgage, the Mortgagee shall be entitled to recover, in addition to all attorney and related paraprofessional expenses incurred in connection therewith, all other costs and expenses associated with foreclosure including, without limitation, all expenses incurred for title searches, abstracts of title, title insurance, appraisals, surveys and environmental assessments reasonably deemed necessary by the Mortgagee, all of which costs and expenses shall be additional amounts secured by this Mortgage. As used in the preceding sentence, the term "environmental assessments" means inspections and reports of environmental engineers or firms of environmental engineers or other appropriate experts or consultants, and associated samplings and testings of soil or groundwater, the purpose of which is to determine whether there is any Contamination associated with the Real Estate and if so, the extent thereof, and to estimate of the cost of Clean-up of any Contamination, and to determine whether there are any underground storage tanks or any asbestos in, on, or under the Real Estate and if so, whether there are any violations of Environmental Laws in connection therewith. As used in this paragraph, the terms "Contamination," "Clean-up" and "Environmental Laws" are used as defined hereinabove.

### 4 SATISFACTION AND RELEASE.

**4.1 Payment in Full.** Upon payment of all sums secured by this Mortgage, Mortgagee shall release this Mortgage.

**4.2 Transfer of Real Estate by Mortgagor.** Any transfer by sale, gift, grant, devise, operation of law, or otherwise of the fee title or any other interest, (including, but not limited to mortgage, easement, land contract or leasehold interest) in all or any portion of the mortgaged Real Estate shall have the same consequences as an event of default respecting the indebtedness secured hereby, and upon such transfer, the Mortgagee, without prior notice or the elapse of any period of grace or the right to cure, shall have the right to declare all sums secured hereby immediately due and payable and, upon failure by the Mortgagor to make such payment within thirty (30) days of written demand therefor, the Mortgagee shall have the right to exercise all remedies provided in any note, this mortgage, or otherwise at law.

## 5 MISCELLANEOUS

**5.1 Notice.** A notice which is mailed to the Mortgagor at the address contained in this mortgage shall be sufficient notice when required under this Mortgage.

**5.2 Extensions; Reductions; Renewals; Continued Liability of Mortgagor.** The Mortgagee, at its option and on such terms as it may desire, may extend the time of payment or performance of any part or all of the Obligations or reduce the payments thereon, or accept a renewal note or notes therefor, without the consent of any junior lien holder, and without the consent of the Mortgagor if the Mortgagor has then parted with title to the Real Estate. No such extension, reduction or renewal shall affect the priority of this Mortgage or impair the security hereof in any manner whatsoever, or release, discharge or affect in any manner the personal liability of the Mortgagor or any guarantors or sureties of or for any of the Obligations. The Mortgagee, at its option and on such terms as it may desire, may release any part of the Real Estate from the lien of this Mortgage without impairing the lien of this Mortgage except as to the portion of the Real Estate expressly released and without releasing the Mortgagor or any guarantors or sureties of or for any of the Obligations. No delay by the Mortgagee in the exercise of any of its rights under this Mortgage shall preclude the subsequent exercise thereof so long as any Default continues uncured, and no waiver by the Mortgagee of any Default of the Mortgagor shall operate as a waiver of subsequent or other Defaults. The making of any payment by the Mortgagee for any of the purposes herein permitted shall not constitute a waiver of any breach of the Mortgagor's covenant to perform such act. Notice by the Mortgagee of its intention to exercise any right or option under this Mortgage is expressly waived by the Mortgagor, and any one or more of the Mortgagee's rights or remedies under this Mortgage may be enforced successively or concurrently. Time is of the essence of this Mortgage.

**5.3 Junior Liens.** Any person, firm or corporation taking a junior mortgage, or other lien, upon the Real Estate, shall take the said lien or mortgage subject to the rights of the Mortgagee herein to extend the maturity of the indebtedness hereby secured without obtaining the consent of the holder of said junior lien or mortgage and without the lien of this Mortgage losing its priority over any such junior lien or mortgage. This Mortgage shall have priority over any such junior lien or mortgage, not only with respect to advances made by the Mortgagor prior to the existence and/or recording of such junior lien or mortgage, but also with respect to any advances and other Obligations made or otherwise incurred after the existence and/or recording of such junior lien or mortgage.

**5.4 Insufficiency of Proceeds.** In the event the property pledged by this instrument is sold under foreclosure and the proceeds are insufficient to pay the total costs of said foreclosure and the indebtedness evidenced and secured by this instrument, the Mortgagee will be entitled to a deficiency judgment.

**5.5 Deposits for Assessments and Taxes.** In addition to the payments to be made by the Mortgagor as herein provided and also as provided in any note hereby secured, the Mortgagor agrees, if requested by the Mortgagee at any time or from time to time while this Mortgage remains unsatisfied, to deposit monthly with the Mortgagee approximately one-twelfth (1/12) of the annual property taxes and any and all assessments for public improvements levied upon the mortgaged property, and also one-twelfth (1/12) of the annual insurance premiums required by this Mortgage or any loan agreement.

**5.6 Commercial Mortgage.** This Mortgage secures indebtedness incurred for a business purpose.

**5.7 Cumulative Rights and Remedies.** The rights and remedies of the Mortgagee as provided herein, or in any note secured hereby, and the warranties therein contained, shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of the Mortgagee, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.

**5.8 Lawful Rates of Interest.** All agreements between the Mortgagor and the Mortgagee are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Mortgagee for the use, forbearance, or detention of the money due under any Note secured hereby exceed the maximum amount permissible under applicable law. If, due to any circumstances whatsoever, fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstances the Mortgagee should ever receive as interest an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the note secured hereby and not to the payment of interest.

5.9 **Choice of Law.** This Mortgage shall be governed by and construed and enforced in all cases by the substantive laws of the State of Indiana, notwithstanding the fact that Indiana conflicts of law rules might otherwise require the substantive rules of law of another jurisdiction to apply.

5.10 **Parties Bound.** This mortgage shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this mortgage.

5.11 **Severability.** In case any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.12 **Time of Essence.** Time is of the essence of this Mortgage.

5.13 **Construction.** The words "Mortgagor" and "Mortgagee" include singular or plural, individual or corporation, and the respective heirs, personal representatives, executors, administrators, successors, and assigns of the Mortgagor and the Mortgagee, as the case may be. The use of any gender applies to all genders. If more than one party is named as the Mortgagor, the obligation hereunder of each such party is joint and several.

5.14 **Limitations on Mortgage.** The security interest created under the provisions of this Mortgage will not secure the following indebtedness:

- (1) Any indebtedness with respect to which the Mortgagee is required to make any disclosure of the existence of this Mortgage under applicable law for this transaction and fails to do so as required by law;
- (2) If this security interest is in ad welling and this is a variable rate loan any indebtedness with respect to which the Mortgagee is required to disclose and provide for a limitation on the maximum interest rate that may be imposed during the term of such indebtedness when required by federal regulations and Mortgagee fails to do so as required by applicable law or regulation; or
- (3) If this security interest is in Mortgagor's principal dwelling any indebtedness with respect to which the Mortgagee is required to provide any notice of right of rescission required by law for this transaction and fails to do so.

5.15 **Second Mortgage Provision.**  If the preceding box is checked and the preceding blank line is signed by an authorized officer of Mortgagee, this is a second mortgage subordinate only to that certain mortgage granted by Mortgagor to \_\_\_\_\_ under date of \_\_\_\_\_, securing a loan in the original principal amount of \$ \_\_\_\_\_ and recorded with the Recorder of \_\_\_\_\_ County on \_\_\_\_\_ as Document No. \_\_\_\_\_.

5.16 **Captions.** The captions herein are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Mortgage or any particular paragraph or section hereof, nor the proper construction hereof.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage this 2nd day of March, 2010.

  
JOSEPH H NEWELL



  
MARIE J NEWELL

"Mortgagor"

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

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

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

[To be used with individual mortgagor(s)]

THE STATE OF INDIANA )  
 ) ss:  
COUNTY OF LAKE )

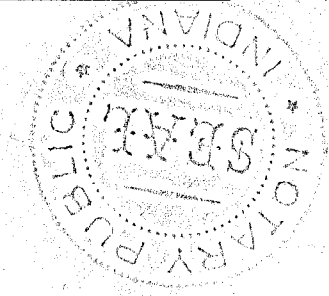
ACKNOWLEDGMENT

Before me, a Notary Public in and for said County and State personally appeared Joseph H & Marie J Newell, and acknowledged the execution of the above and foregoing Mortgage, this 2nd day of March, 2010.

Brian Rusin  
BRIAN RUSIN Notary Public,  
A resident of PORTER County, Indiana

My Commission Expires:

APRIL 9, 2016



[To be used when the Mortgagor(s) is a corporation or other business entity]

THE STATE OF INDIANA )  
 ) ss:  
COUNTY OF )

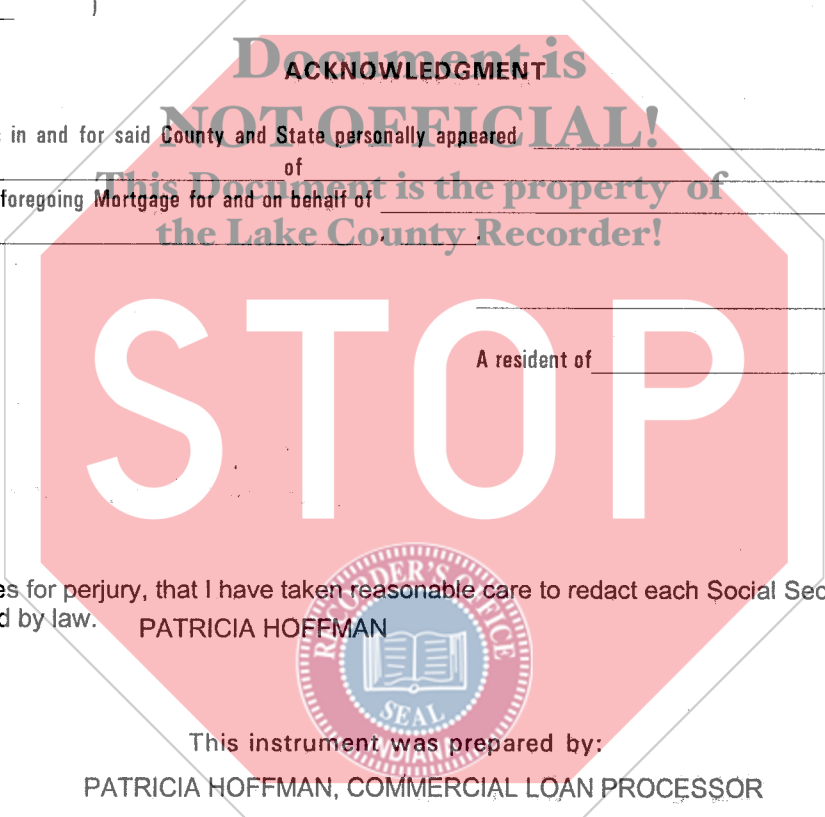
Before me, a Notary Public in and for said County and State personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged the execution of the above and foregoing Mortgage for and on behalf of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_  
A resident of \_\_\_\_\_ Notary Public, County, Indiana

My Commission Expires:

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. PATRICIA HOFFMAN

This instrument was prepared by:  
PATRICIA HOFFMAN, COMMERCIAL LOAN PROCESSOR





**LEGAL DESCRIPTION:**

The Condominium Unit designated as 146 Carnoustie Lane, Country Club Villas of Briar Ridge, a Residential Condominium, according to the Declaration of Horizontal Property Regime thereof, dated August 14, 1987 and recorded in the Office of the Recorder of Lake County, Indiana, on October 5, 1987, as Document No. 941915, First Amendment to said Declaration, recorded May 13, 1988 as Document No. 977117, Second Amendment to said Declaration, recorded March 16, 1989 as Document No. 027455 and Third Amendment to said Declaration, recorded October 11, 1989 as Document No. 062095, together with all of the appurtenances thereto and together with an undivided interest in the common areas and facilities.

COMMONLY KNOWN AS: 146 CARNOUSTIE, SCHERERVILLE, IN 46375



**ADJUSTABLE RATE RIDER**

This adjustable rate rider is made this 2nd day of March, 2010 and is incorporated into shall be deemed to amend and supplement the mortgage, Deed of Trust or Security Deed (the Security Instrument) of the same date given by the undersigned (the Borrower) to secure Borrower's Adjustable Rate Note (the Note) to Peoples Bank SB (the Lender) of 9204 Columbia Avenue, Munster, Indiana 46321 of the same date and covering the properties described in the Security Instrument and located at:

**146 CARNOUSTIE, SCHERERVILLE, IN 46375**

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE WHICH MAY EFFECT THE BORROWER'S BALANCE.

Additional Covenants. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agrees as follows:

A. INTEREST RATE

The Note provides for an initial rate of 5.50%. The Note provides for changes in the interest rate, as follows.

- (a) The interest rate I pay will change with any change in the INDEX. Each date on which my interest rate could change is called a "Change Date."

B. THE INDEX

The Index is Wall Street Journal posted Prime Rate. The Prime Rate is Wall Street Journal base rate of interest loans to substantial and responsible borrowers.

C. CALCULATION OF CHANGES

On each Change Date, the lender will calculate my new interest rate by adding Two & One Quarter Points (2.25%) to the Index.

D. EFFECTIVE DATE OF CHANGES.

My new interest rate will become effective March 2, 2011 and will adjust annually on the anniversary date of the note until maturity of March 2, 2013.

E. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in my interest rate.

By signing below, Borrowers accept and agree to the terms and covenants contained in this Adjustable Rate Rider.

**ACCEPTANCE**

  
JOSEPH H NEWELL

  
MARIE J NEWELL