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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORDATION EXECUTION VERSION

2014 007678

2014 FEB 10 AM 10:19

MICHAEL B. BROWN  
RECORDER

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

by

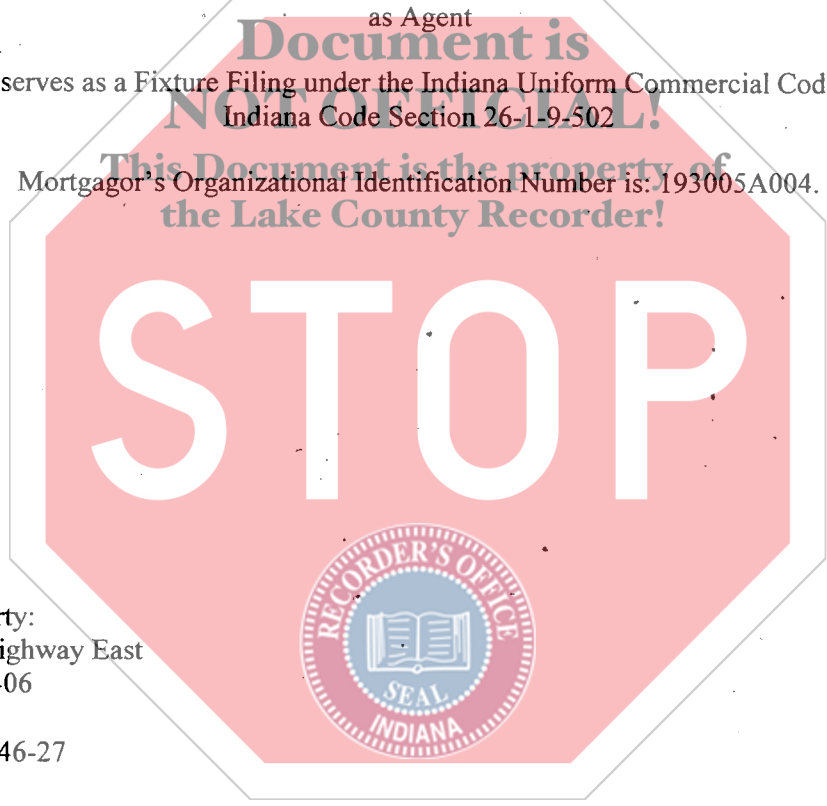
LAKE COUNTY TRUST COMPANY,  
as Mortgagor,

to and in favor of

MIDMARKET CAPITAL PARTNERS, LLC,  
as Agent

This document serves as a Fixture Filing under the Indiana Uniform Commercial Code, as provided in  
Indiana Code Section 26-1-9-502.

Mortgagor's Organizational Identification Number is: 193005A004.



Address of Property:  
6401 Industrial Highway East  
Gary, Indiana 46406

Key No.: 25-40-146-27

PIN No.: 45-03-26-457-008.000-004

HOLD FOR MERIDIAN TITLE

5292037.1

13.47284

\$ 68  
CK#  
24624  
MT  
CX

Open-End Mortgage, Assignment, Security Agreement and Fixture Filing

(Maximum Principal Amount of Debt -- \$6,650,000.00)

This Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage") is made as of the 31st day of January, 2014, by LAKE COUNTY TRUST COMPANY, an Indiana corporation, as Trustee under the provisions of the Trust Agreement, dated the 1st of April 2013 (as the same may from time to time be extended, amended, restated, supplemented or otherwise modified), known as Trust Number 6361 (herein referred to as "Mortgagor"), whose address is 9800 Connecticut Drive, Suite B2-900, Crown Point, Indiana 46307 to MIDMARKET CAPITAL PARTNERS, LLC, as administrative agent under the Credit Agreement (as hereinafter defined) and, whose address is 301 East Fourth Street, 27th Floor, Cincinnati, Ohio 45202, and its successors and assigns (herein referred to as "Agent").

Recitals

Mortgagor has requested that the lenders under the Credit Agreement (the "Lenders") make the Loans (as hereinafter defined) to Mortgagor. As a condition precedent to making the Loans, Agent on behalf of the Lenders has required that Mortgagor execute and deliver this Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing to Agent.

Grants and Agreements

Now, therefore, in order to induce each Lender under the Credit Agreement to make the Loans to Mortgagor, Mortgagor agrees as follows:

Article I  
Definitions.

As used in this Mortgage, the terms defined in the Preamble and the Recitals hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified and capitalized terms used, and not otherwise defined, herein shall have the meanings ascribed thereto in the Credit Agreement:

"Accessories" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"Accounts" means all accounts of Mortgagor within the meaning of the Uniform Commercial Code of the State, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

"Additions" means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.

“Beneficiary” means Agent and its successors and assigns.

“Borrower” means Summit, Inc., an Indiana corporation.

“Claim” means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

“Collateral” has the meaning as defined in Section 2.4.

“Condemnation” means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

“Condemnation Awards” means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

“Contract of Sale” means any contract for the sale of all or any part of the Property or any interest therein, whether now in existence or hereafter executed.

“Credit Agreement” means the Credit Agreement dated as of January 31, 2014 among Borrower, Beneficiary, as administrative agent and the Lenders from time to time party thereto, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Default” means an event or circumstance which, with the giving of Notice or lapse of time, or both, would constitute an Event of Default under the provisions of this Mortgage.

“Deposits” has the meaning as defined in Section 2.4.

“Design and Construction Documents” means, collectively, (a) all contracts for services to be rendered, work to be performed or materials to be supplied in the development of the Land or the construction or repair of Improvements, including all agreements with architects, engineers or contractors for such services, work or materials; (b) all plans, drawings and specifications for the development of the Land or the construction or repair of Improvements; (c) all permits, licenses, variances and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the development of the Land or the construction or repair of Improvements; and (d) all amendments of or supplements to any of the foregoing.

“Encumbrance” means any Lien, easement, right of way, roadway (public or private), condition, covenant or restriction (including any condition, covenant or restriction in connection with any condominium development or cooperative housing development), Lease or other matter of any nature that would affect title to the Property.

“Event of Default” means an event or circumstance specified in Article VI and the continuance of such event or circumstance beyond the applicable grace and/or cure periods therefor, if any, set forth in Article VI hereof.

“Expenses” means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Beneficiary in making, funding, administering or modifying any Loan, in negotiating or entering into any “workout” of any Loan, or in exercising or enforcing any rights, powers and remedies provided in this Mortgage or any of the other Loan Documents, including attorneys’ fees, court costs, receiver’s fees, management fees and costs, insurance fees, inspection and testing fees, leasing and sales commissions, advertising costs and expenses, taxes and assessments, costs for surveys, costs for engineering studies and reports, engineering fees and expenses, costs for soils tests, space planning costs and expenses, contractors fees, and all other costs incurred by Beneficiary to maintain, preserve and protect the Property, or incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Property.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

“Guarantor” means, individually or collectively, Peter Coulopoulos, Kelly Coulopoulos, Alpha Scrap, Inc. and any other Person that becomes a Guarantor pursuant to the terms of the Credit Agreement.

“Guaranty” means each of the Individual Guarantee dated as of January 31, 2014 executed by Peter Coulopoulos and Kelly Coulopoulos for the benefit of Agent, the Guarantee and Security Agreement dated as of January 31, 2014 executed by Alpha Scrap, Inc. for the benefit of Agent and each other Guaranty executed and delivered by a Guarantor in favor of Agent, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Improvements” means all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, together with any on-site improvements and off-site improvements in any way used or to be used in connection with the use, enjoyment, occupancy or operation of the Land.

“Insurance Proceeds” means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

“Judicial Sale” has the meaning as defined in Section 7.4.

“Land” means the real property described in Exhibit A attached hereto and made a part hereof.

“Laws” means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

“Leases” means all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties



thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder.

“Lien” means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

“Loan” means each Term Loan from the Lenders to Borrower pursuant to the terms of the Credit Agreement, the repayment obligations in connection with which are evidenced by the Credit Agreement and the other Loan Documents.

“Loan Documents” means this Mortgage, the Credit Agreement, the Security Documents, each Guaranty and any other instrument or agreement now or hereafter executed and delivered by any Loan Party in connection herewith, each as amended and in effect from time to time.

“Mortgage” means this Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Notice” means a notice, request, consent, demand or other communication given in accordance with the provisions of this Mortgage.

“Obligations” the unpaid principal of and Applicable Premium, if any, and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of Borrower to Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, the Credit Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to Agent or to any Lender that are required to be paid by Borrower pursuant hereto) or otherwise.

“Permitted Encumbrances” means (a) any matters set forth in any policy of title insurance issued to Beneficiary and insuring Beneficiary’s interest in the Property which are acceptable to Beneficiary as of the date hereof, (b) the Liens and interests of this Mortgage, and (c) any other Encumbrance that Beneficiary shall expressly approve in its sole and absolute discretion, as evidenced by a “marked-up” commitment for title insurance initialed on behalf of Beneficiary.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

“Personalty” means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Mortgagor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the

Accessories, (b) the Accounts, (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Mortgage, and Beneficiary shall have no responsibility for the performance of Mortgagor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof, (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof, (e) all insurance policies held by Mortgagor with respect to the Property or Mortgagor's operation thereof, and (f) all money, mortgages and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Mortgagor with Beneficiary related to the Property, including any such deposit account from which Mortgagor may from time to time authorize Beneficiary of debit and/or credit payments due with respect to the Loans; together with all Additions to and Proceeds of all of the foregoing.

"Proceeds," when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

"Property" means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Mortgagor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of Mortgagor's right, title and interest in and to all Design and Construction Contracts and all Contracts of Sale.

"Property Assessments" means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner's association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

"Real Property" means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, and privileges thereto, (b) all water rights, water courses, ditches and ditch rights, reservoirs, reservoir rights and storage rights, wells and well rights, well permits, springs and spring rights, groundwater rights (whether tributary, nontributary or not-nontributary), water contracts, water allotments, water taps, stock certificates, shares in ditch or reservoir or water companies, all rights with respect to nontributary groundwater underlying said land, any permit to construct any water well, water from which is intended to be used in connection with the Land, all of Mortgagor's right, title and interest under any decreed or pending plan of augmentation or water exchange plan, and all other rights of any kind or nature in or to the use of water, whether or not adjudicated, which are appurtenant to, historically used on or in connection with, or located on or under the Land (collectively, "Water Rights"), together with any and all associated structures and facilities for the diversion, carriage, transmission, conveyance, measurement, storage or use of said Water Rights, and any and all easements, rights of way, fixtures, personal property, contract rights, licenses, permits or decrees associated with or used in connection with any such Water Rights or which may be necessary for the development, operation or

maintenance of such Water Rights, (c) all alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Mortgagor and belonging or appertaining to the Land or Improvements, (d) all Claims whatsoever of Mortgagor with respect to the Land or Improvements, either in Law or in equity, in possession or in expectancy, (e) all estate, right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements, (f) all development rights associated with the Land, whether previously or subsequently transferred to the Land from other real property or now or hereafter susceptible of transfer from the Land to other real property, and (g) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

“Rents” means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

“Selling Official” has the meaning as defined in Section 7.4.

“State” means the state in which the Land is located.

“Taxes” means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Mortgagor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

“Transfer” means any direct or indirect sale, assignment, conveyance or transfer, including any Contract of Sale and any other contract or agreement to sell, assign, convey or transfer, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration.

“Water Rights” has the meaning as defined in the definition of “Real Property” set forth herein.

Article II  
Granting Clauses; Condition of Grant.

Section 2.1 Conveyances and Security Interests.

In order to secure the prompt payment and performance of the Obligations, including any and all renewals, or extensions of the whole or any part thereof (and any such renewals or extensions shall not impair in any manner the validity of or priority of this Mortgage), Mortgagor (a) CONVEYS, GRANTS, MORTGAGES AND WARRANTS to Beneficiary for the benefit of the Lenders TO HAVE AND TO HOLD the Real Property, with all rights, appurtenances, and privileges thereunto belonging, unto Beneficiary, Beneficiary’s successors and assigns forever; (b) grants to Beneficiary a security interest in the Personalty; (c) assigns to Beneficiary, and grants to Beneficiary a security interest in, all Condemnation Awards and all Insurance Proceeds; and (d) assigns to Beneficiary, and grants to Beneficiary a security interest in, all of Mortgagor’s right, title and interest in, but not any of Mortgagor’s obligations or liabilities under, all Design and Construction Documents and all Contracts of Sale. All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have



notice of, and will be bound by, the terms of the Obligations and each other agreement or Mortgage made or entered into in connection with each of the Obligations. Such terms include any provisions in the Credit Agreement or any Note, if applicable, which provide that the interest rate on one or more of the Obligations may vary from time to time.

Section 2.2 Absolute Assignment of Leases and Rents.

In consideration of the making of the Loans by the Lenders to Mortgagor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor absolutely and unconditionally assigns the Leases and Rents to Beneficiary for the benefit of the Lenders. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Mortgagor to Beneficiary of all of Mortgagor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist, however, and so long as Mortgagor is not in default in the performance of any obligation, covenant or agreement contained in the Leases, Mortgagor shall have a license (which license shall terminate automatically and without notice upon the occurrence of an Event of Default or a default by Mortgagor under the Leases) to collect, but not prior to accrual, all Rents.

Section 2.3 Security Agreement and Financing Statement.

This Mortgage creates a security interest in the Personalty, and, to the extent the Personalty is not real property, this Mortgage constitutes a security agreement from Mortgagor to Beneficiary under the Uniform Commercial Code of the State. In addition to all of its other rights under this Mortgage and otherwise, Beneficiary shall have all of the rights of a secured party under the Uniform Commercial Code of the State, as in effect from time to time, or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable Law. This Mortgage shall also be effective as a financing statement with respect to any other Property as to which a security interest may be perfected by the filing of a financing statement and may be filed as such in any appropriate filing or recording office. The respective mailing addresses of Mortgagor and Beneficiary are set forth in the opening paragraph of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or any other financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section. Mortgagor hereby irrevocably authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable Law, reasonably required by Beneficiary to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage. The foregoing authorization includes Mortgagor's irrevocable authorization for Beneficiary at any time and from time to time to file any initial financing statements and amendments thereto that indicate the Personalty (a) as "all assets" of Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Personalty falls within the scope of the Uniform Commercial Code of the State or the jurisdiction where the initial financing statement or amendment is filed, or (b) as being of an equal or lesser scope or with greater detail.

Section 2.4 Fixture Financing Statement.

From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Indiana Code Section 26-1-9-502 with respect to all sums on deposit with



Beneficiary pursuant to this Mortgage ("Deposits"), and with respect to the Personalty and the goods described herein, which Personalty and goods are or are to become fixtures related to the Property and all replacements of such property, all substitutions for such property, additions to such property, and the proceeds thereof (all of which shall be included in the meaning of the term "Collateral"). The addresses of Mortgagor and Beneficiary (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Property is located. For this purpose, the following information is set forth:

(a) Name and Address of Mortgagor:

Lake County Trust Company, as Trustee of Trust Number 6361  
c/o Peter Coulopoulos, as grantor and beneficiary of Trust Number 6361  
2902 Windsor Trail  
Valparaiso, Indiana 46385

(b) Name and Address of Secured Party:

MidMarket Capital Partners, LLC  
301 East Fourth Street, 27th Floor  
Cincinnati, Ohio 45202

(c) This document covers goods which are or are to become fixtures.

(d) Lake County Trust Company, as Trustee under the provisions of the Trust Agreement, dated the 1st of April 2013 (as the same may from time to time be extended, amended, restated, supplemented or otherwise modified), known as Trust Number 6361, is the record title holder and owner of the Property.

(e) Mortgagor's chief executive office is located in the state of Indiana.

(f) The Collateral is held in trust pursuant to a Trust Agreement between Peter Coulopoulos, as grantor and beneficiary, and Lake County Trust Company, as trustee, dated the 1st of April 2013 (as the same may from time to time be extended, amended, restated, supplemented or otherwise modified).

(g) Mortgagor agrees that:

(i) Where Collateral is in possession of a third party, Mortgagor will join with Beneficiary in notifying the third party of Beneficiary's interest and obtaining an acknowledgment from the third party that it is holding such Collateral for the benefit of Beneficiary;

(ii) Mortgagor will cooperate with Beneficiary in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until the Obligations are paid in full, Mortgagor will not change the state where it is located or change its company name without giving Beneficiary at least thirty (30) days prior written notice in each instance.

Mortgagor hereby appoints Beneficiary as its attorney-in-fact to execute and file on its behalf any financing statements, continuation statements or other statements in connection therewith which Beneficiary deems necessary or reasonably advisable to preserve and maintain the priority of the lien

hereof, or to extend the effectiveness thereof, under the Uniform Commercial Code of the State or any other laws which may hereafter become applicable. This power, being coupled with an interest, shall be irrevocable so long as any part of the Obligations remains unpaid. Mortgagor shall pay to Beneficiary, from time to time, upon demand, any and all costs and expenses incurred by Beneficiary in connection with the filing of any such statements including, without limitation, reasonable attorneys' fees and all disbursements and such amounts shall be part of the Obligations secured by this Mortgage.

Section 2.5 Release of Mortgage and Termination of Assignments and Financing Statements.

If and when Mortgagor has paid and performed all of the Obligations, and no further advances are to be made under the Credit Agreement, Beneficiary will execute and deliver to Mortgagor such documents as may be required to release this Mortgage of record together with termination statements for filed financing statements, if any. Mortgagor shall be responsible for the recordation of such release and the payment of any recording and filing costs in connection therewith. Upon the recording of such release and the filing of such termination statements, the absolute assignments set forth in Section 2.2 shall automatically terminate and become null and void.

Section 2.6 Maturity Date.

The Loan Maturity Date, as defined in the Credit Agreement, is January 31, 2018.

Article III

Representations and Warranties.

Mortgagor makes the following representations and warranties to Beneficiary:

Section 3.1 Title to Real Property.

Mortgagor (a) owns fee simple title to the Real Property, (b) owns all of the beneficial and equitable interest in and to the Real Property, and (c) is lawfully seized and possessed of the Real Property. Mortgagor has the right and authority to convey the Real Property and does hereby convey the Real Property with general warranty. The Real Property is subject to no Encumbrances other than the Permitted Encumbrances.

Section 3.2 Title to Other Property.

Mortgagor has good title to the Personalty, and the Personalty is not subject to any Encumbrance other than the Permitted Encumbrances. None of the Leases, Rents, Design and Construction Documents or Contracts of Sale is subject to any Encumbrance other than the Permitted Encumbrances.

Section 3.3 Property Assessments.

The Real Property is assessed for purposes of Property Assessments as a separate and distinct parcel from any other property, such that the Real Property shall never become subject to the Lien of any Property Assessments levied or assessed against any property other than the Real Property.

Section 3.4 Independence of the Real Property.

No buildings or other improvements on property not covered by this Mortgage rely on the Real Property or any interest therein to fulfill any requirement of any Governmental Authority for the existence of such property, building or improvements; and none of the Real Property relies, or will rely, on any property not covered by this Mortgage or any interest therein to fulfill any requirement of any Governmental Authority. The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.

Section 3.5 Existing Improvements.

The existing Improvements, if any, were constructed, and are being used and maintained, in accordance with all applicable Laws, including zoning Laws.

Section 3.6 Leases and Tenants.

Each Lease relating to the Real Property is described on Schedule 3.6 hereof and the Leases are valid and are in full force and effect, and Mortgagor is not in default under any of the terms thereof. Mortgagor has not accepted any Rents in advance of the time the same became due under the Leases and has not forgiven, compromised or discounted any of the Rents. Mortgagor has title to and the right to assign the Leases and Rents to Beneficiary, and no other assignment of the Leases or Rents has been granted.

Article IV  
Affirmative Covenants.

Section 4.1 Obligations.

Mortgagor agrees to promptly pay and perform all of the Obligations, time being of the essence in each case.

Section 4.2 Property Assessments; Documentary Taxes.

Mortgagor (a) will promptly pay in full and discharge all Property Assessments, and (b) will furnish to Beneficiary, upon demand, the receipted bills for such Property Assessments prior to the day upon which the same shall become delinquent. Property Assessments shall be considered delinquent as of the first day any interest or penalty commences to accrue thereon. Mortgagor will promptly pay all stamp, documentary, recordation, transfer and intangible taxes and all other taxes that may from time to time be required to be paid with respect to the Loans, this Mortgage or any of the other Loan Documents.

Section 4.3 Permitted Contests.

Mortgagor shall not be required to pay any of the Property Assessments, or to comply with any Law, so long as Mortgagor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to prevent the collection of, or other realization upon, such Property Assessments or enforcement of the Law so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) Beneficiary is not subjected to any Claim as a result of such contest, and (d) Mortgagor provides assurances satisfactory to Beneficiary

(including the establishment of an appropriate reserve account with Beneficiary) of its ability to pay such Property Assessments or comply with such Law in the event Mortgagor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Mortgagor shall indemnify and save Beneficiary harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Mortgagor shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

Section 4.4 Compliance with Laws.

Mortgagor will materially comply with and not violate, and cause to be complied with and not violated, all present and future Laws applicable to the Property and its use and operation.

Section 4.5 Maintenance and Repair of the Property.

Mortgagor, at Mortgagor's sole expense, will (a) keep and maintain Improvements and Accessories in good condition, working order and repair, and (b) make all necessary or appropriate repairs and Additions to Improvements and Accessories, so that each part of the Improvements and all of the Accessories shall at all times be in good condition and fit and proper for the respective purposes for which they were originally intended, erected, or installed.

Section 4.6 Additions to Security.

All right, title and interest of Mortgagor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further mortgage, conveyance, assignment or other act by Mortgagor, become subject to the Lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clauses hereof. Mortgagor agrees, however, to execute and deliver to Beneficiary such further documents as may be required by the terms of the Credit Agreement and the other Loan Documents.

Section 4.7 Subrogation.

To the extent permitted by Law, Beneficiary shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by Beneficiary whether or not from the proceeds of the Loans. This Section shall not be deemed or construed, however, to obligate Beneficiary to pay or discharge any Lien.

Section 4.8 Leases.

(a) Except as expressly permitted in the Credit Agreement, Mortgagor shall not enter into any Lease with respect to all or any portion of the Property without the prior written consent of Beneficiary.

(b) Beneficiary shall not be obligated to perform or discharge any obligation of Mortgagor under any Lease. The assignment of Leases provided for in this Mortgage in no manner places on Beneficiary any responsibility for (i) the control, care, management or repair of the Property, (ii) the carrying out of any of the terms and conditions of the Leases, (iii) any waste committed on the Property, or (iv) any dangerous or defective condition on the Property (whether known or unknown).



(c) No approval of any Lease by Beneficiary shall be for any purpose other than to protect Beneficiary's security and to preserve Beneficiary's rights under the Loan Documents, and no such approval shall result in a waiver of a Default or Event of Default.

Section 4.9 Mechanic's Lien Matters.

Mortgagor represents and warrants that no notice of intention to hold mechanics' lien (as identified in Indiana Code Section 32-28-3-3) as to the Property has been filed or will be filed prior to the filing for record of this Mortgage and that Mortgagor shall promptly provide Agent with a copy of any such notices received by Mortgagor.

Section 4.10 Indiana Responsible Property Transfer Law.

Mortgagor represents and warrants to Beneficiary, based on the best knowledge of Mortgagor, that the Real Property does not constitute "property" (as defined by Indiana Code 13-11-2-174) and as in the Indiana Real Property Transfer Law (Indiana Code 13-25-3-1 et. seq.). Mortgagor shall observe, perform and comply with the requirements of the Indiana Real Property Transfer Law in connection with the transaction contemplated by this Mortgage and the other Loan Documents.

Article V

Negative Covenants.

Section 5.1 Encumbrances.

Mortgagor will not permit any of the Property to become subject to any Encumbrance other than the Permitted Encumbrances. Within thirty (30) days after the filing of any mechanic's lien or other Lien or Encumbrance against the Property, Mortgagor will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Beneficiary's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Beneficiary in its sole and absolute discretion, Mortgagor shall have the right to contest in good faith any Claim, Lien or Encumbrance; provided that Mortgagor does so diligently and without prejudice to Beneficiary or delay in completing construction of the Improvements. Mortgagor shall give Beneficiary Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property.

Section 5.2 Transfer of the Property.

Mortgagor will not Transfer, or contract to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for certain Transfers of the Accessories expressly permitted in this Mortgage). The Transfer of the beneficial interest in Mortgagor, if Mortgagor is a trust, the Transfer of the general partnership interest in Mortgagor, if Mortgagor is a general partnership, the Transfer of any of the membership interests in Mortgagor, if Mortgagor is a limited liability company or any similar ownership transfer (whether in one or more transactions during the term of the Loans) shall be deemed to be a prohibited Transfer of the Property.

Section 5.3 Removal, Demolition or Alteration of Accessories and Improvements.

Except to the extent permitted by the following sentence, no Improvements or Accessories shall be removed, demolished or materially altered without the prior written consent of Beneficiary. Mortgagor may remove and dispose of, free from the Lien of this Mortgage, such Accessories as from time to time become worn out or obsolete; provided that, either (a) at the time of, or prior to, such removal, any such Accessories are replaced with other Accessories which are free from Liens other than Permitted Encumbrances and have a value at least equal to that of the replaced Accessories (and by such removal and replacement Mortgagor shall be deemed to have subjected such Accessories to the Lien of this Mortgage), or (b) such Accessories are sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to Beneficiary to be applied to the prepayment of the principal of the Loans as required by the Credit Agreement.

Section 5.4 Additional Improvements.

Mortgagor will not construct any Improvements other than those presently on the Land and those described in the Credit Agreement without the prior written consent of Beneficiary. Mortgagor will complete and pay for, within a reasonable time, any Improvements which Mortgagor is permitted to construct on the Land. Mortgagor will construct and erect any permitted Improvements (a) strictly in accordance with all applicable Laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction and setback lines applicable to the Land.

Section 5.5 Restrictive Covenants, Zoning, etc.

Without the prior written consent of Beneficiary, Mortgagor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property or initiate, join in or consent to any action or proposal to include all or any part of the Property in any special improvement district or other special district or taxing authority that does not include the Property on the date of this Mortgage. Mortgagor (a) will promptly perform and observe, and cause to be performed and observed, all of the terms and conditions of all agreements affecting the Property, and (b) will do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

Article VI  
Events of Default.

The occurrence or happening, from time to time, of any one or more of the following shall constitute an Event of Default under this Mortgage:

Section 6.1 Payment Obligations.

Mortgagor fails to pay any of the Obligations when due, whether on the scheduled due date or upon acceleration, maturity or otherwise.

Section 6.2 Transfers.

Mortgagor Transfers, or contracts to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for Transfers of the Accessories expressly permitted under this Mortgage).

Section 6.3 Other Obligations.

Mortgagor fails to promptly perform or comply with any of the Obligations set forth in this Mortgage (other than those expressly described in other Sections of this Article VI), and such failure continues uncured for a period of thirty (30) days after Notice from Beneficiary to Mortgagor.

Section 6.4 Event of Default under Other Loan Documents.

An Event of Default (as defined therein) occurs under the Credit Agreement, or Borrower or any Guarantor fails to promptly pay, perform, observe or comply with any obligation or agreement contained in any of the other Loan Documents (within any applicable grace or cure period).

Section 6.5 Change in Zoning or Public Restriction.

Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Loan Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed.

Section 6.6 Default Under Leases.

Mortgagor fails to perform its obligations under any Lease, and such failure is not cured within any applicable grace or cure period provided in the Lease.

Section 6.7 Default Under Other Lien Documents.

A default occurs under any other mortgage, deed of trust or security agreement covering the Property, including any Permitted Encumbrances.

Section 6.8 Execution; Attachment.

Any execution or attachment is levied against any of the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Article VII  
Rights and Remedies.

Upon the happening of any Event of Default, Beneficiary shall have the right, in addition to any other rights or remedies available to Beneficiary under any of the Loan Documents or applicable Law, to exercise any one or more of the following rights, powers or remedies:

Section 7.1 Acceleration.

Beneficiary may accelerate all Obligations under the Loan Documents, whereupon such Obligations shall become immediately due and payable, without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby waived by Mortgagor).

Section 7.2 Foreclosure; Judicial Foreclosure.

In the event that any provision in this Mortgage shall be inconsistent with any provision of Indiana law, the provisions of Indiana law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with applicable law. If any provision of this Mortgage shall grant to Beneficiary any rights or remedies upon an Event of Default which are more limited than the rights that would otherwise be vested in Beneficiary under Indiana law in the absence of said provision, Beneficiary shall be vested with the rights granted by Indiana law. Without limiting the generality of the foregoing, all expenses incurred by Beneficiary to the extent reimbursable under applicable law, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Obligations.

Beneficiary may institute one or more actions of foreclosure on this Mortgage or to institute other proceedings according to law for foreclosure, and prosecute the same to judgment, execution and sale, for the collection of the Obligations and all costs and expenses of such proceedings, including reasonable attorneys' fees and actual attorneys' expenses.

To the extent permitted by law, Beneficiary has the option of proceeding as to both the Real Property and the Personalty in accordance with its rights and remedies in respect of the Property, in which event the default provisions of the Uniform Commercial Code will not apply. Beneficiary also has the option of exercising, in respect of the Property consisting of Personalty, all of the rights and remedies available to a secured party upon default under the applicable provisions of the Uniform Commercial Code in effect in the State. In the event Beneficiary elects to proceed with respect to the Personalty separately from the Real Property, whenever applicable provisions of the Uniform Commercial Code require that notice be reasonable, ten (10) days notice will be deemed reasonable.

Section 7.3 Remedies under the Credit Agreement.

Without limiting the other rights and remedies of Beneficiary set forth in this Mortgage, Beneficiary may exercise any and all rights and remedies of Beneficiary specified in the Credit Agreement, or at law or in equity.

Section 7.4 Possession of Property Not Required.

Upon any sale of any item of the Property made pursuant to judicial proceedings for foreclosure ("Judicial Sale"), it will not be necessary for any public officer acting under execution or order of the court (a "Selling Official") to have any of the Property present or constructively in his possession.



Section 7.5 Mortgages of Conveyance and Transfer.

Upon the completion of every Judicial Sale, the Selling Official will execute and deliver to each purchaser a bill of sale or deed of conveyance, as appropriate, for the items of the Property that are sold. Mortgagor hereby grants every such Selling Official the power as the attorney-in-fact of Mortgagor to execute and deliver in Mortgagor's name all deeds, bills of sale and conveyances necessary to convey and transfer to the purchaser all of Mortgagor's rights, title and interest in the items of Property which are sold. Mortgagor hereby ratifies and confirms all that such attorneys-in-fact lawfully do pursuant to such power. Nevertheless, Mortgagor, if so requested by the Selling Official or by any purchaser, will ratify any such sale by executing and delivering to such Selling Official or to such purchaser, as applicable, such deeds, bills of sale or other Mortgages of conveyance and transfer as may be specified in any such request.

Section 7.6 Recitals.

The recitals contained in any deed of conveyance or transfer made by a Selling Official to any purchaser at any Judicial Sale will, to the extent permitted by law, conclusively establish the truth and accuracy of the matters stated therein, including the amount of the Obligations, the occurrence of an Event of Default, and the advertisement and conduct of such Judicial Sale in the manner provided herein or under applicable law, and the qualification of the Selling Official. All prerequisites to such Judicial Sale will be presumed from such recitals to have been satisfied and performed.

Section 7.7 Divestiture of Title; Bar.

To the extent permitted by applicable law, every Judicial Sale, and every sale made as contemplated by this Mortgage, will operate to divest all rights, title, and interest of Mortgagor in and to the items of the Property that are sold, and will be a perpetual bar, both at law and in equity, against Mortgagor and Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns, and against everyone else, claiming the item sold either from, through or under Mortgagor or Mortgagor's heirs, executors, administrators, personal representatives, successors or assigns.

Section 7.8 Receipt of Purchase Money Sufficient Discharge.

A receipt from any person authorized to receive the purchase money paid at any Judicial Sale, or other sale contemplated by this Mortgage, will be sufficient discharge therefor to the purchaser. After paying such purchase money and receiving such receipt, neither such purchaser nor such purchaser's heirs, executors, administrators, personal representatives, successors or assigns will have any responsibility or liability respecting the application of such purchase money or any loss, misapplication or non-application of any of such purchase money, or to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Section 7.9 Purchase by Beneficiary.

In any Judicial Sale, or other public sale made as contemplated by this Mortgage, Beneficiary may bid for and purchase any of the Property being sold, and will be entitled, upon presentment of the relevant Loan Documents and documents evidencing the same, to apply the amount of the Obligations held by it against the purchase price for the items of the Property so purchased. The amount so applied will be credited against the Obligations in accordance with the terms of the Credit Agreement.

Section 7.10 Sale of Portion of Mortgaged Property.

The Lien created by this Mortgage, as it pertains to any Property that remains unsold, will not be affected by a Judicial Sale of less than all of the Property.

Section 7.11 Judicial Action.

Beneficiary shall have the right from time to time to sue Mortgagor for any sums (whether interest, damages for failure to pay principal or any installments thereof, taxes, or any other sums required to be paid under the terms of this Mortgage, as the same become due), without regard to whether or not any of the other Obligations shall be due, and without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Mortgagor, including an action of foreclosure or an action for injunction or specific performance, for a Default or Event of Default existing at the time such earlier action was commenced.

Section 7.12 Collection of Rents.

Upon the occurrence of an Event of Default, the license granted to Mortgagor to collect the Rents shall be automatically and immediately revoked, without further notice to or demand upon Mortgagor. Beneficiary may, but shall not be obligated to, perform any or all obligations of the landlord under any or all of the Leases, and Beneficiary may, but shall not be obligated to, exercise and enforce any or all of Mortgagor's rights under the Leases. Without limitation to the generality of the foregoing, Beneficiary may notify the tenants under the Leases that all Rents are to be paid to Beneficiary, and following such notice all Rents shall be paid directly to Beneficiary and not to Mortgagor or any other Person other than as directed by Beneficiary, it being understood that a demand by Beneficiary on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Beneficiary without the necessity of further consent by Mortgagor. Mortgagor hereby irrevocably authorizes and directs the tenants under the Lease to pay all Rents to Beneficiary instead of to Mortgagor, upon receipt of written notice from Beneficiary, without the necessity of any inquiry of Mortgagor and without the necessity of determining the existence or non-existence of an Event of Default. Mortgagor hereby appoints Beneficiary as Mortgagor's attorney-in-fact with full power of substitution, which appointment shall take effect upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Mortgagor's name or in Beneficiary's name: (a) to endorse all checks and other Mortgages received in payment of Rents and to deposit the same in any account selected by Beneficiary; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Beneficiary may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied first to pay all Expenses and next in reduction of the other Obligations. Mortgagor shall pay, on demand, to Beneficiary, the amount of any deficiency between (i) the Rents received by Beneficiary, and (ii) all Expenses incurred together with interest thereon as provided in the Credit Agreement and the other Loan Documents.

Section 7.13 Receiver

Upon, or at any time prior or after, the filing of any complaint to foreclose the lien of this Mortgage or instituting any other foreclosure of the liens and security interests provided for in this

Mortgage or any other legal proceedings under this Mortgage, Beneficiary may, at Beneficiary's sole option, make application to a court of competent jurisdiction for appointment of a receiver pursuant to Section 32-30-5 of the Indiana Code and other applicable law for all or any part of the Property, as a matter of strict right and without notice to Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Beneficiary, but nothing herein is construed to deprive Beneficiary of any other right, remedy or privilege Beneficiary may now have under the law to have a receiver appointed; provided that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Beneficiary to receive payment of all of the rents, issues, deposits and profits pursuant to other terms and provisions set forth in this Mortgage. Such appointment may be made either before or after sale, without notice; without regard to 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 Obligations; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Beneficiary hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by Section 32-30-5 of the Indiana Code and other applicable law, including the power to take possession, control and care of the Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Obligations, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing Leases and make new leases of the Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loans, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

Section 7.14 Taking Possession or Control of the Property.

To the extent permitted by Law, and with or without the appointment of a receiver, or an application therefor, Beneficiary may (a) enter upon, and take possession of (and Mortgagor shall surrender actual possession of), the Property or any part thereof, without notice to Mortgagor and without bringing any legal action or proceeding, or, if necessary by force, legal proceedings, ejectment or otherwise, and (b) remove and exclude Mortgagor and its agents and employees therefrom.

Section 7.15 Management of the Property.

Upon obtaining possession of the Property as described in Section 7.14 or upon the appointment of a receiver as described in Section 7.13, Beneficiary or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and Additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the Property, and (c) complete the construction of any



unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary, either in their or its own name or in the name of Mortgagor (the costs of completing such Improvements shall be Expenses secured by this Mortgage and shall accrue interest as provided in the Credit Agreement and the other Loan Documents). Beneficiary or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for gross negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default, and the enforcement of such remedies, once commenced, shall continue for so long as Beneficiary shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

Section 7.16 Uniform Commercial Code.

Beneficiary may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Upon the occurrence of any Event of Default, Mortgagor shall assemble all of the Accessories and make the same available within the Improvements. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Mortgage at least ten (10) days before any sale or other disposition of the Personalty. Disposition of the Personalty shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where the Property is located. It shall be deemed commercially reasonable for Beneficiary to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties.

Section 7.17 Application of Proceeds.

Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Mortgage and any other proceeds received by Beneficiary from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Obligations (all with interest at the rate per annum provided in the Credit Agreement for interest on past due principal owed on the Loans, but never in excess of the maximum nonusurious amount permitted by applicable Law, which interest shall be payable to Beneficiary on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the Obligations), in such manner and order as Beneficiary may elect.

Section 7.18 Other Remedies.

Beneficiary shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Mortgagor provided under the Loan Documents or by applicable Laws. To the extent the applicable Laws of state of Indiana limit the availability of any of the remedies set forth herein, such remedies shall be enforceable or exercisable and to the extent permitted by the Laws of the state of Indiana in force at the time of the exercise of such remedies.



Article VIII  
Miscellaneous.

Section 8.1 Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Beneficiary as provided in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Beneficiary of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Beneficiary of any or all such other rights, powers or remedies.

Section 8.2 No Waiver by Beneficiary.

No course of dealing or conduct by or among Beneficiary and Mortgagor shall be effective to amend, modify or change any provisions of this Mortgage or the other Loan Documents. No failure or delay by Beneficiary to insist upon the strict performance of any term, covenant or agreement of this Mortgage or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Beneficiary from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Beneficiary shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Beneficiary to comply with any request of Mortgagor or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Beneficiary, or (c) Beneficiary's extending the time of payment or modifying the terms of this Mortgage or any of the other Loan Documents without first having obtained the consent of Mortgagor or such other Person. Regardless of consideration, and without the necessity for any notice or consent by the holder of any subordinate Lien on the Property, Beneficiary may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Mortgage or any of the other Loan Documents without in any way impairing or affecting the Lien of this Mortgage or the priority of this Mortgage over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Mortgage. Beneficiary may resort to the security or collateral described in this Mortgage or any of the other Loan Documents in such order and manner as Beneficiary may elect in its sole discretion.

Section 8.3 Waivers and Agreements Regarding Remedies.

To the full extent Mortgagor may do so, Mortgagor hereby:

(a) to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption, and to the full extent permitted by law, waives the benefits of all present and future valuation, appraisal, homestead, exemption, stay, extension or redemption, right to notice of election to accelerate the Obligations, and moratorium laws under any state or federal law;

(b) waives all rights to a marshaling of the assets of Mortgagor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshaling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Beneficiary under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of Beneficiary to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties

Anything contained herein or in Indiana Code 32-29-7-5 to the contrary notwithstanding, no waiver made by Mortgagor under this Mortgage or any of the other Loan Documents shall constitute the consideration for or be deemed to be a waiver or release by Beneficiary or any judgment holder of the Obligations or the right to seek a deficiency judgment against Mortgagor or any other person or entity who may be personally liable for the Obligations, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Beneficiary for its own behalf, the Lenders, and its successors and assigns.

Section 8.4 Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the Land and shall apply to and bind the successors and assigns of Mortgagor (including any permitted subsequent owner of the Property), and inure to the benefit of Beneficiary, its successors and assigns.

Section 8.5 No Warranty by Beneficiary.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Mortgagor or to be given to Beneficiary pursuant to this Mortgage or any of the other Loan Documents, Beneficiary shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Beneficiary.

Section 8.6 Amendments.

This Mortgage may not be amended, supplemented or otherwise modified except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 8.7 Severability.

In the event any one or more of the provisions of this Mortgage or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Mortgage or any of the other Loan Documents, then and in either of those events, at the option of Beneficiary, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 8.8 Notices.

All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile transmission or equivalent electronic transmission (including .pdf format)), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or, in the case of notice by facsimile transmission or equivalent electronic transmission (including .pdf format), when received, addressed as specified in the Preamble to this Mortgage or to such other address as such party may hereafter notify to the other parties hereto; provided that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Agent or Mortgagor may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Mortgage or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Section 8.9 Joint and Several Liability.

If Mortgagor consists of two (2) or more Persons, the term "Mortgagor" shall also refer to all Persons signing this Mortgage as Mortgagor, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. Beneficiary may release, compromise, modify or settle with any of Mortgagor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the others of Mortgagor hereunder or under the Credit Agreement. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any of Mortgagor.

Section 8.10 Rules of Construction.

The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The headings of this Mortgage are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made,



respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Mortgage unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code of the State, as in effect from time to time, which is not defined in this Mortgage, shall have the meaning ascribed to that term in the Uniform Commercial Code of the State. If a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term shall have the meaning specified in Article 9.

Section 8.11 Governing Law.

Except where the law of the State is expressly referenced in this Mortgage, this Mortgage and the rights and obligations of the parties under this Mortgage shall be governed by and construed and interpreted in accordance with the law of the state of Ohio, without giving effect to any choice or conflict of law provision or rule (whether of the state of Ohio or any other jurisdiction). The parties stipulate and agree that the state of Ohio has a substantial relationship to the underlying transactions related to this Mortgage and the parties involved. Notwithstanding the foregoing, the parties stipulate and agree that the laws of the State govern issues of lien creation and priority, and the procedures for foreclosure and for enforcing, in the State, provisional remedies directly related to the real property encumbered hereby, including, without limitation, appointment of a receiver.

Section 8.12 Other Amounts Secured; Maximum Indebtedness.

Mortgagor acknowledges and agrees that this Mortgage secures the entire principal amount of each Loan and interest accrued thereon, regardless of whether any or all of the proceeds of any Loan are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Beneficiary in connection with any Loan, all in accordance with any Loan commitment issued in connection with this transaction and the Loan Documents. This Mortgage is given to, and the parties intend that it shall secure, among other items, indebtedness in a maximum amount of Six Million Six Hundred Fifty Thousand and 00/100 Dollars (\$6,650,000.00) evidenced by the Credit Agreement and the other Loan Documents, which indebtedness may include advances made by the Lenders under the Credit Agreement, after this Mortgage is filed of record. The making of such advances is obligatory on the part of the Lenders subject to the terms and conditions provided for in the Credit Agreement and the other Loan Documents. The maximum amount of the unpaid balance of such indebtedness, in the aggregate and exclusive of interest thereon, which is or will be outstanding at any time, is that set forth above; provided that this Mortgage shall also secure unpaid balances of advances made by Agent or any Lender, as applicable, for the payment of taxes, assessments, insurance premiums, and other costs incurred for the protection of the Property.

Section 8.13 Adjustable Mortgage Loan Provision.

The Loans which this Mortgage secures bear interest at a rate that may be adjusted from time to time in accordance with the terms and provisions set forth in the Credit Agreement.



Section 8.14 Deed in Trust.

If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

Section 8.15 Counterparts.

This Mortgage may be executed by one or more of the parties to this Mortgage on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Mortgage signed by all the parties shall be lodged with Borrower and Agent.

Section 8.16 Severability.

Any provision of this Mortgage that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.17 Entire Agreement.

This Mortgage and the other Loan Documents represent the entire agreement of Mortgagor, Borrower, Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by Agent or any Lender relative to subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

Section 8.18 Submission to Jurisdiction; Waivers. Each of the parties hereto hereby irrevocably and unconditionally submits for itself and its Property in any legal action or proceeding relating to this Mortgage and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the state of Ohio sitting in Hamilton County, Ohio, the courts of the United States for the Southern District of Ohio, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at its address set forth in the Preamble of this Mortgage or at such other address of which Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

Section 8.19 WAIVERS OF JURY TRIAL.

MORTGAGOR AND AGENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 8.20 Trustee's Exculpation.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Lake County Trust Company on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

Nothing contained herein shall be construed as creating any liability on Lake County Trust Company, personally under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other Federal, State or local law, rule or regulation. Lake County Trust Company, personally is not a "Transferor or Transferee" under the Act and makes no representations concerning any possible environmental defects. In making any warranty herein the Trustee is relying solely on information furnished to it by the beneficiaries and not of its own knowledge and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any warranty in this instrument. The information contained in this instrument has been furnished the undersigned by the beneficiary/beneficiaries under aforesaid Trust and the statements made therein are made solely in reliance thereon and no responsibility is assumed by the undersigned, in its individual capacity for the truth or accuracy of the facts herein stated.

*[SIGNATURE PAGE TO FOLLOW]*



Exhibit A

Legal Description

Part of the Southeast Quarter of Section 26 and the Northeast Quarter of Section 35, Township 37 North, Range 9 West of the 2nd P.M. in Lake County, Indiana and being bounded and described as follows: Commencing at the Southwest corner of the Southeast Quarter of said Section 26; thence East along the South line of said Section, 77.02 feet to the point of beginning; thence North along a line parallel to and 77 feet from measured right angles to the North and South center line of said Section 26, 131.77 feet to a point; thence Northeasterly along a line  $60^{\circ}38'$  right to the last described course, 123.70 feet to a point; thence continuing Northeasterly along a line  $8^{\circ}26'$  right to the last described course, 44.76 feet to a point of curve; thence continuing Northeasterly on a curve convex to the North having a radius of 297.94 feet, an arc distance of 114.4 feet to a point; thence Northeasterly, tangent to last described course, 6.40 feet to a point; thence continuing Northeasterly along a line  $4^{\circ}16'45''$  left to the last described course, 41.52 feet to a point; thence Northeasterly along a line,  $26^{\circ}09'15''$  left to the last described course, 503.38 feet to a point; thence Northwesterly at right angles to the last described course, 119.69 feet to a point; thence Northeasterly along a line forming an interior angle of  $98^{\circ}21'30''$  to the last described course, 647.72 feet to a point on the Southwesterly right of way line of a public road commonly known as Industrial Highway; thence Southeasterly, along said Southwesterly right of way line of Industrial Highway which forms an interior angle of  $98^{\circ}41'30''$  to the last described course, 267.14 feet to a point which marks the most Northerly corner of the property deeded to Johnson's Incorporated by E.J. and E. Railway Company dated October 9, 1944 and recorded October 23, 1944 in Deed Record 710, page 112; thence Southwesterly along said Johnson's Northwesterly line along a line forming an interior angle of  $72^{\circ}57'$  to the last described course, 1543.27 feet to a point; thence Southwesterly along a line  $15^{\circ}00'$  left to the last described course, 70.37 feet to a point; thence North, along a line forming an interior angle of  $45^{\circ}38'$  to the last described course, 12.41 feet to the point and place of beginning.

