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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
2014 JUL -2 PM 1:45  
MICHAEL B. BRON  
RECORDER

2014 050514  
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### MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (FINANCING STATEMENT)

This Mortgage, Assignment of Leases and Rents and Security Agreement (Financing Statement) ("**Mortgage**") is made as of June 26, 2014 by **DWELL LLC**, an Indiana limited liability company ("**Mortgagor**"), having an address at 1840 Kleven Lane, Crown Point, Indiana 46307, to and for the benefit of **CENTIER BANK**, an Indiana state bank (together with its successors and assigns, "**Centier**"), having an address at 600 East 84<sup>th</sup> Avenue, Merrillville, Indiana 46410.

Mortgagor states as follows:

A. Mortgagor holds title in and to the real property commonly known as a portion of Deer Creek Estates, Winfield, Lake County, Indiana, as described on Exhibit A, which is attached hereto and made a part hereof, consisting of approximately 19 single-family home lots, approximately 44 acres of unimproved land, and one lot with a single-family residence, together with all buildings, improvements, and tenements now or hereafter erected on the property, and all easements, rights, right-of-ways, driveways, pavement, curb, and street front privileges, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property.

B. As of the date hereof, Centier is making two separate loans to Mortgagor, one in the maximum principal amount of \$750,000.00, and the other in the maximum principal amount of \$350,000.00 (collectively, the "**Loan**").

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

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

#### PART 1 - DEFINITIONS

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

1.1 "**Easements**" will mean all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and

PTS14-7280  
WHEN RECORDED RETURN TO:  
PROFESSIONALS' TITLE SERVICES LLC  
9195 BROADWAY  
MERRILLVILLE, IN 46410

\*This document is being re-recorded to add signature page and legal descriptions

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STATE OF INDIANA  
LAKE COUNTY  
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MICHAEL B. BRON  
RECORDER

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appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity;

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

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

1.4 "**Land**" will mean that real estate commonly known as a portion of Deer Creek Estates, Winfield, Lake County, Indiana, consisting of approximately 19 single-family home lots, approximately 44 acres of unimproved land, and one lot with a single-family residence, as described on Exhibit A hereto.

1.5 "**Loan Documents**" will mean the Note, this Mortgage, a certain Continuing Security Agreement, and the Limited Guaranties of Dennis Caudill and Jana Caudill (collectively, the "**Guarantors**"), all of even date herewith, along with all other documents executed by or on behalf of Mortgagor with respect to the Loan, and all modifications, amendments, supplements, replacements, and restatements thereto or thereof, whether or not contemplated hereby.

1.6 "**Note**" will mean, collectively, that certain Promissory Note of even date herewith, in the principal amount of \$750,000.00, with final payment due on the third (3<sup>rd</sup>) anniversary of the date of this Mortgage, and that certain Promissory Note of even date herewith, in the principal amount of \$350,000.00, with final payment due on the second (2<sup>nd</sup>) anniversary of the date of this Mortgage, both drawn by Mortgagor to the order of Centier, along with and all allonges, modifications, amendments, supplements, replacements, and restatements thereto or thereof, whether or not contemplated hereby, evidencing the Loan.

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

1.8 **"Permitted Exceptions"** means the title exceptions listed on Exhibit B, which is attached hereto and made a part hereof, and any liens or encumbrances with respect to the Premises arising in the future that are approved in writing by Centier in its discretion prior to the existence thereof.

1.9 **"Secured Obligations"**: all indebtedness and all obligations evidenced by the Note and/or any of the other Loan Documents, and/or all future modifications, extensions, and renewals thereof; together with all obligations, liabilities, covenants and agreements of Mortgagor to Centier (and/or any successors or assigns of Centier) arising under or relating to any of the Loan Documents, and all future modifications, extensions, and renewals thereof, whether now existing or hereafter arising, absolute or contingent, whether contemplated herein, or in any of the other Loan Documents or any amendment, modification, extension, renewal, supplement, replacement or restatement thereto or thereof; together with all future obligations of Mortgagor to Centier and all future advances by Centier to Mortgagor, provided that:

(a) the total amount secured hereby, including but not limited to such future obligations and/or advances, along with the amount of the Loan and all other amounts payable pursuant to the Note as presently in effect, will not exceed \$2,200,000.00, whether made as an obligation, made at the option of Centier, made after a reduction to a zero (0) or other balance, or made otherwise, and

(b) not in limitation of the foregoing, the total amount of all future obligations of Mortgagor to Centier and all future advances by Centier to Mortgagor secured hereby (excluding all amounts presently owing and all interest and expenses with respect thereto) will not exceed \$1,100,000.00, whether made as an obligation, made at the option of Centier, made after a reduction to a zero (0) or other balance, or made otherwise.

Not in limitation of the foregoing, the "Secured Obligations" will include, but not be limited to, all loans, advances, debts, liabilities, obligations, covenants and duties owing by Mortgagor to Centier of any kind or nature, present or future (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to Mortgagor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, whether or not (i) evidenced by any note, guaranty or other instrument, (ii) arising under any agreement, instrument or document, (iii) for the payment of money, (iv) arising by reason of an extension of credit, opening of a letter of credit, loan, equipment lease or guarantee, (v) under any interest rate swap, collar, cap, floor, swaption, or other interest rate protection or similar agreement, or (vi) arising out of overdrafts on deposit or other accounts or out of electronic funds transfers (whether by wire transfer or through automated clearing houses or otherwise) or out of the return unpaid of, or other failure of Centier to receive final payment for, any check, item, instrument, payment order or other deposit or credit to a deposit or other account, or out of Centier's non-receipt of or inability to collect funds or otherwise not being made whole in connection with depository or other similar arrangements; and any amendments, extensions,

renewals and increases of or to any of the foregoing, and all costs and expenses of Centier incurred in the documentation, negotiation, modification, enforcement, collection and otherwise in connection with any of the foregoing, including reasonable attorneys' fees and expenses.

## PART 2 - GRANT

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

- (a) The Premises and all of Mortgagor's right, title and interest in and to the Premises;
- (b) Any and all of Mortgagor's other right, title and interest in and to the Premises, and all personal property of Mortgagor;
- (c) All of rights of Mortgagor in any goodwill, trademarks, trade names, option rights, purchase contracts, books and records and general intangibles of Mortgagor relating to the Premises and/or all accounts, contract rights, instruments, chattel paper and other rights of Mortgagor for payment of money, for property sold or lent, for services rendered, for money lent, or for advances or deposits made, and any other intangible property of Mortgagor related to the Premises or any part thereof, and all accounts and monies held by and/or in the possession of Centier for the benefit of Mortgagor or otherwise held pursuant to any of the Loan Documents (all of the foregoing is herein referred to collectively as the "**Intangibles**");
- (d) All rights of Mortgagor to rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Land, the Improvements, the Leases (defined below), and all proceeds of sale or other disposition of the Collateral or any portion thereof (all of the foregoing is herein collectively called the "**Rents**");
- (e) All security deposits, rents, issues, profits and revenues of the Premises from time to time accruing (the "**Rents and Profits**") and all existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or part of the Premises, together with all guarantees of the lessees' obligations thereunder (collectively, the "**Leases**"), whether oral or written, for a definite term or month-to-month. This assignment will extend to and cover any and all extensions and renewals and future Leases and to any and all present and future rights against guarantor(s) of any such obligations and to any



and all Rents and Profits collected under the Leases or derived from the Premises. As a part of this assignment, and not in limitation thereof, Mortgagor hereby agrees, upon the request or requests of Centier, to execute and deliver to Centier separate specific assignments of rents and leases covering some or all of the Leases, the terms of such assignments being incorporated herein by reference. This assignment is absolute and effective immediately and without possession; however, Mortgagor will have a revocable license to receive, collect and enjoy the Rents and Profits accruing from the Premises until an Event of Default has occurred. Upon the occurrence of any Event of Default, the license will be revoked automatically, without need of notice, possession, foreclosure or any other act or procedure, and all Rents and Profits assigned hereby will thereafter be payable to Centier;

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

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

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

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

and to any proceeds of any sales or other dispositions of the Premises or any part thereof (collectively "**Awards**");

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

(k) All rights of Mortgagor in and to any proceeds of any of the foregoing, including, without limitation, all judgments, awards, damages and settlements hereafter made resulting from condemnation or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof, together with the right, title and interest of Mortgagor whatsoever to receive the foregoing.

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

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

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

### PART 3 - ADDITIONAL COVENANTS AND AGREEMENTS OF MORTGAGOR

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

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

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

3.4 **Liens.** **the Lake County Recorder!**

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

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

3.5 **Taxes and Assessments; Deposits.** Mortgagor will pay or cause to be paid, when due, all real property taxes, all assessments, all applicable personal property taxes, and all insurance premiums with respect to the Premises before penalty accrues thereon. Notwithstanding the foregoing, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of real or personal property tax or assessment, and may defer

payment and discharge thereof during the pendency of such contest, provided that Mortgagor furnishes to Centier such security or indemnity with respect thereto as Centier may in its discretion require, including but not limited to deposits and/or other assurances necessary to induce a title insurance company to issue title insurance insuring against all liens with respect thereto, and further provided that Mortgagor pursues such contest or appeal in good faith and with reasonable diligence.

3.6 **Construction.** Mortgagor will construct and/or rehabilitate the Improvements only pursuant to plans and specification, construction budgets and construction schedules approved in writing in advance by Centier, which approval will not be unreasonably withheld or delayed, subject to all terms and provisions of the Note and the other Loan Documents.

3.7 **Insurance Coverage.**

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

- (i) coverage of all improvements on the Premises against such hazards as Centier may from time to time require in such amount or amounts as Centier may from time to time require, provided that the amount thereof will not be less than the total of all amounts outstanding with respect to the Loan, and will not be less than the full replacement value of the Improvements; such coverage will include but not be limited to coverage against loss by fire and allied perils and, if applicable, general boiler and machinery coverage;
- (ii) coverage of rental and/or business interruption sufficient to cover all lost rents for a period of one year or more;
- (iii) comprehensive public liability insurance, in such amount as Centier may from time to time direct, provided that the amount of coverage will be at least \$1,000,000.00 per occurrence, with additional umbrella coverage of \$2,000,000.00 per occurrence;
- (iv) workers' compensation insurance and such other insurance as may be required by applicable law or governmental regulation;
- (v) builder's risk insurance or other coverage applicable to any construction with respect to the Improvements;
- (vi) such other liability, errors and omissions and fidelity insurance coverages as Centier may from time to time require;



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

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

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

(b) **Premiums.** All premiums on insurance policies required under Section 3.7(a) will be timely paid. Mortgagor will promptly deliver to Centier a copy of all renewal and other notices received by Mortgagor with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Mortgagor will deliver to Centier certificates of insurance or, if specifically requested by Centier, the original (or a duplicate original) of a renewal policy in form satisfactory to Centier.

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

(d) **Claims under Policies.** In the event of loss, Mortgagor will give immediate written notice to the insurance carrier and to Centier. Provided that Centier has reasonably determined that there has been casualty damage to the Premises with a total repair/replacement cost of \$100,000 or more, and/or if there is an uncured Event of Default or an occurrence which, with the passage of time and/or the giving of notice would constitute an Event of Default, Mortgagor hereby authorizes and appoints Centier as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Centier's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 3.7 will require Centier to incur any expense or take any action. Centier may, at Centier's option, (i) hold the balance of such proceeds to be used to

reimburse Mortgagor for the cost of restoring and repairing the Premises to the equivalent of its original condition or to a condition approved by Centier, or (ii) if the conditions provided in Section 3.7(e) hereof are not fully met, apply the balance of such proceeds to the payment of the Loan, whether or not then due. To the extent Centier determines to apply insurance proceeds to restoration, Centier will do so in accordance with Centier's then-current policies relating to the restoration of casualty damage on similar commercial properties.

(e) **Application of Proceeds.** Centier will not exercise its option to apply insurance proceeds to the payment of the Loan if all of the following conditions are met: (i) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Centier determines, in its reasonable discretion, that there will be sufficient funds to complete the applicable restoration; (iii) Centier determines, in its reasonable discretion, that the rental income from the Premises after completion of the restoration will be sufficient to meet all operating costs and other expenses, and loan repayment obligations relating to the Premises; and (iv) Centier determines, in its reasonable discretion, that the restoration will be completed before the earlier of: (A) the date which is one year before the maturity date (as defined in the Note), or (B) the date which is one year after the date of the loss or casualty. If the proceeds are to be so applied to restoration, all such proceeds will be delivered to and held by Centier and applied to restoration in accordance with construction budgets and schedules and plans and specifications approved by Centier in its discretion; in such event, such proceeds may be applied by Centier directly to such restoration and may be delivered by Centier to the applicable title insurance company for disbursement.

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

### 3.8 **Condemnation and Eminent Domain.**

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

(b) **Notice to Centier.** Mortgagor will promptly notify Centier of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Premises, whether direct or indirect (a "Condemnation"). Mortgagor will appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Centier in writing. Mortgagor authorizes and appoints Centier, if Centier reasonably determines there is a reasonable possibility that the Condemnation award or settlement may exceed \$50,000.00, as attorney-in-fact for Mortgagor to commence, appear in and prosecute, in Centier's or Mortgagor's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 3.8 will require Centier to incur any expense or take any action.

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

(d) **Application of Proceeds.** Centier will apply all Award amounts, after the deduction of Centier's expenses incurred in the collection of such amounts, to the restoration or repair of the Premises, up to the full amount of all reasonable costs therefor, if all of the following conditions are met: (i) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Centier determines, in its reasonable discretion, that there will be sufficient funds to complete the applicable restoration; (iii) Centier determines, in its reasonable discretion, that the rental income from the Premises after completion of the restoration will be sufficient to meet all operating costs and other expenses, and loan repayment obligations relating to the Premises; and (iv) Centier determines, in its reasonable discretion, that the restoration will be completed before the earlier of: (A) the date which is one year before the Maturity Date (as defined in the Note), or (B) the date which is one year after the date of the loss of the applicable portion of the Premises.

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

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

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

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

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

(e) **Financing Statements.** No Financing Statement (other than Financing Statements showing Centier as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Personal Property Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to Centier such further information and will execute and deliver to Centier such financing statements and other documents in form satisfactory to Centier and will do all such acts as Centier may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Personal Property Collateral as security for the Secured Obligations, subject to no other liens or encumbrances, other than the Permitted Exceptions; and Mortgagor will pay the cost of filing of recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Centier to be desirable.

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



disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Centier, will be applied against the Secured Obligations then due and owing, by acceleration or otherwise, in such order or manner as Centier may select. Centier will cause any surplus to be paid to Mortgagor.

(g) **Definitions.** The terms and provisions contained in this Section 3.9 will, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

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

### 3.10 **Assignment of Rents.**

(a) **Assignment to Centier.** As part of the consideration for the indebtedness evidenced by the Note, Mortgagor hereby absolutely and unconditionally assigns and transfers to Centier all the rents and revenues of the Premises, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Premises regardless of to whom the rents and revenues of the Premises are payable. Mortgagor hereby authorizes Centier or Centier's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Premises to pay such rents to Centier or Centier's agents; provided, however, that prior to written notice given by Centier to Mortgagor of the breach by Mortgagor of any covenant or agreement of Mortgagor in this Mortgage, Mortgagor will collect and receive all rents and revenues of the Premises as trustee for the benefit of Centier and Mortgagor, to apply the rents and revenues so collected to the sums secured by this Mortgage in the order provided in the Note, with the balance, so long as no such breach has occurred, to the account of Mortgagor, it being intended by Mortgagor and Centier that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Centier to Mortgagor of the breach by Mortgagor of any covenant or agreement of Mortgagor in this Mortgage, and without the necessity of Centier entering upon and taking and maintaining full control of the Premises in person, by agent or by a court-appointed receiver, Centier will immediately be entitled to possession of all rents and revenues of the Premises as specified in this Section 3.10 as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents will immediately upon delivery of such notice be held by Mortgagor as trustee for the benefit of Centier only; provided, however, that the written notice by Centier to Mortgagor of the breach by Mortgagor will contain a statement that Centier exercises its rights to such rents. Mortgagor agrees that commencing upon delivery of such written notice by Centier to Mortgagor of Mortgagor's breach, each tenant of the Premises will make such rents payable to and pay such rents to Centier or Centier's agents on Centier's written demand to each tenant therefore, delivered to each tenant personally, by mail or by delivering such demand to each rental unit,

without any liability on the part of said tenant to inquire further as to the existence of a default by Mortgagor.

(b) **Covenants Regarding Rents.** Mortgagor hereby covenants that Mortgagor has not executed any prior assignment of said rents, that Mortgagor has not performed, and will not perform, any acts or has not executed, and will not execute, any Mortgage which would prevent Centier from exercising its rights under this Section 3.10, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any of the rents of the Premises for more than thirty (30) days prior to the due dates of such rents. Mortgagor covenants that Mortgagor will not hereafter collect or accept payment of any rents of the Premises more than thirty (30) days prior to the due dates of such rents. Mortgagor further covenants that Mortgagor will execute and deliver to Centier such further assignments of rents and revenues of the Premises as Centier may from time to time request.

(c) **Rights of Centier upon Default.** Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, Centier may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Centier's security, enter upon and take and maintain full control of the Premises in order to perform all acts necessary and appropriate for the operation and maintenance thereof including but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Premises, the making of repairs to the Premises and the execution or termination of contracts providing for the management or maintenance of the Premises, all on such terms as are deemed best to protect the security of this Mortgage. In the event Centier elects to seek the appointment of a receiver for the Premises upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, Mortgagor hereby expressly consents to the appointment of such receiver. Centier or the receiver will be entitled to receive a reasonable fee for so managing the Premises.

(d) **Application of Receipts.** All rents and revenues collected subsequent to the occurrence of any Event of Default will be applied first to the costs, if any, of taking control of and managing the Premises and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Premises, and the costs of discharging any obligation or liability of Mortgagor as lessor and landlord of the Premises and then to the sums secured by this Mortgage. Centier or the receiver will have access to the books and records used in the operation and maintenance of the Premises and will be liable to account only for those rents actually received. Centier will not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Premises by reason of anything done or left undone by Centier under this Section 3.10

(e) **Deficiencies.** If the rents of the Premises are not sufficient to meet the costs, if any, of taking control of and managing the Premises and collecting the rents, any funds expended by Centier for such purposes will become Obligations secured by this Mortgage. Unless Centier and Mortgagor agree in writing to other terms of payment, such amounts will be payable upon notice from Centier to Mortgagor requesting payment thereof, and will bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts will bear interest at the highest rate which may be collected from Mortgagor under applicable law.

(f) **No Waivers.** Any entering upon and taking and maintaining of control of the Premises by Centier or the receiver and any application of rents as provided herein will not cure or waive any default hereunder or invalidate any other right or remedy of Centier under applicable law or provided herein. This assignment of rents of the Premises will terminate at such time as this Mortgage ceases to secure indebtedness held by Centier.

3.11 **Transfers.** Mortgagor will not, without the prior written consent of Centier, effect, suffer or permit any Prohibited Transfer (as defined herein). The occurrence of any one or more of the following will constitute a "**Prohibited Transfer**":

- (a) Any transfer of any interest in or to the Premises;
- (b) The Premises or any interest therein are mortgaged, hypothecated or otherwise encumbered, or a security interest in the Premises or any portion thereof is otherwise granted, for the benefit of any person or entity other than Centier; and/or
- (c) A declaration of condominium with respect to the Premises is recorded.

3.12 **Events of Default.**

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

- (i) Failure to pay any amounts due under or with respect to either or both of the documents constituting the Note hereunder, or any of the other Loan Documents (as defined herein) within ten (10) days after the due date thereof;
- (ii) Mortgagor fails or neglects to fully perform, keep or observe any other term, provision, condition, covenant or warranty contained in this Mortgage, and/or any of the other Loan Documents within thirty (30) days after written notice of such default is given to Mortgagor provided that, if such default cannot reasonably be cured within said 30-day period, such occurrence will not constitute an Event of Default if Mortgagor commences to cure such default within said 30-day period and thereafter diligently proceeds to cure such default and fully cures such default within ninety (90) days after such written notice is given;
- (iii) Any statement, representation or warranty at any time furnished to Centier by Mortgagor is determined by Centier to have been untrue in any material respect as of the date given;
- (iv) Mortgagor and/or one or more of the Guarantors becomes insolvent or unable to pay debts as they mature, or makes an assignment for the benefit of creditors, or any proceeding is instituted by any one or more of Mortgagor or any Guarantor alleging that Mortgagor and/or such Guarantor is

insolvent or unable to pay debts as they mature, or any proceeding is instituted against any one or more of Mortgagor or any Guarantor alleging that Mortgagor or such Guarantor is insolvent or unable to pay debts as they mature and such proceeding is not dismissed within 60 days after filing, as determined by Centier;

(v) The filing of any petition, or the commencement of any proceedings, by any one or more of Mortgagor or any Guarantor for any relief under any bankruptcy or insolvency laws, or any laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, composition or extension; or the filing of any petition, or the commencement of any proceedings, against any one or more of Mortgagor or any Guarantor under any bankruptcy or insolvency laws, or any laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, composition or extension, and such proceeding is not dismissed within 60 days after filing, as determined by Centier;

(vi) The calling of a meeting of creditors, or the offering of a composition or extension to creditors, the sending of a Bulk Sales Notice or any assignment for the benefit of creditors by any one or more of Mortgagor or any Guarantor;

(viii) Entry of a judgment against Mortgagor in an amount in excess of \$10,000.00, which judgment is not voided or satisfied within sixty (60) days after entry or appealed with stay of enforcement;

(ix) Dissolution, merger, consolidation or transfer of a substantial portion of the property of Mortgagor;

(x) The occurrence of a Prohibited Transfer, or any transfer or assignment otherwise made by Mortgagor of any real or personal property that is collateral for the Secured Obligations (or any portion thereof) except as specifically permitted under this Mortgage or any of the other Loan Documents;

(xi) Any failure of Mortgagor and/or any Guarantor to furnish Centier financial information in a form acceptable to Centier, or to permit the inspection of the books and records of Mortgagor, within ten (10) days after written notice with respect thereto is given to Mortgagor;

(xii) Any levy, attachment, garnishment, replevin or other seizure of any property of Mortgagor, or any action is taken to enjoin the use of any property of Mortgagor, or any tax lien (excluding liens for taxes not yet due and payable) is placed on any property of Mortgagor by any state, local or federal government agency, provided that the placement of any such tax lien will not constitute an Event of Default if Mortgagor causes such tax lien to be released within 60 days after placement thereof;

(xiii) A material adverse change occurs in Borrower's financial condition, or Centier reasonable believes that prospect for payment or



performance of this Note and/or any of the other Loan Documents is materially impaired.

(xiv) Abandonment of the Property by Mortgagor or the existence of any waste with respect to the Premises;

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

(xvi) Not in limitation of any of the foregoing, the occurrence of any Prohibited Activities or Conditions (as defined in Section 3.21 hereof); and/or

(xvii) The occurrence of any Event of Default as defined in any of the other Loan Documents.

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

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

3.14 **Right of Possession.** When the Secured Obligations become due, whether by acceleration or otherwise, or if Centier has a right to institute foreclosure proceedings, Mortgagor will, forthwith upon demand of Centier, surrender to Centier, and Centier will be entitled to be placed in possession of, the Premises and the other Collateral as provided in the statutes relating to the foreclosure of mortgages, and Centier, in its discretion upon notice to Mortgagor, may enter upon and take and maintain possession of all or any part of the Premises and the other Collateral, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Premises and the other Collateral relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Centier and under the powers herein granted:

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

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

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

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

3.15 **Receiver.** Upon the institution of a foreclosure proceeding or at such later time as required by law, if any, or at any time thereafter, the court in which such proceeding is instituted may appoint upon petition of Centier, and at Centier's sole option, a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same will be then occupied as a homestead or not; and Centier hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver will have all powers and duties prescribed by law, including the power to make leases to be binding upon all parties, including the Mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure. In addition, such receiver will also have the power to extend or modify any then-existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the final date for payment of liabilities and performance of obligations set forth in the Note, this Mortgage and the other Loan Documents and beyond the date of the issuance of a deed or deeds to a

purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other provisions to be contained therein, will be binding on Mortgagor and all the persons whose interest in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Secured Obligations, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver will have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver will have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Secured Obligations or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

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

3.17 **Insurance During Foreclosure.** All rights and powers of Centier under Section 3.14 of this Mortgage will, from and after the entry of judgment of foreclosure, continue in the Centier as decree creditor until confirmation of sale. In case of an insured loss after foreclosure has been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, will be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, will be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors. In the event of foreclosure sale, Centier may, without the consent of Mortgagor, assign any Insurance Policies to the purchaser at the sale, or take such other steps as Centier may deem advisable to protect the interest of such purchaser.

3.18 **Waiver of Right of Redemption.** To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in



force to redeem the property or any part thereof, or relating to the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights to redemption provided by law or equity on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are and will be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Centier, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof will be subject to any defense which would not be good and valid in an action at law upon the other Loan Documents to which Mortgagor is a party. Mortgagor acknowledges that the Premises do not constitute residential real estate.

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

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



3.21 **Environmental Hazards.**

(a) **Compliance with Laws.** Mortgagor represents and warrants to Centier that all operations on the Premises are and will remain at all times in full compliance with all applicable laws, regulations, statutes, ordinances, rules and orders, including but not limited to all Hazardous Materials Laws (as defined herein).

(b) **Prohibitions.** Except for matters described in Section 3.21(c) hereof, Mortgagor will not cause or permit any of the following:

(i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Premises or any other property of Mortgagor that is adjacent to the Premises (except as expressly permitted pursuant to Section 3.21(c) hereof);

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

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

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

(collectively, "Prohibited Activities or Conditions").

For purposes of this Section 3.21, "**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Premises is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

For purposes of this Section 3.21, "**Hazardous Materials Laws**" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Mortgagor or to the Premises. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.

Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs.

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

(d) **Prevention of Prohibited Activities.** Mortgagor will take all commercially reasonable actions (including the inclusion of appropriate provisions in any leases executed after the date hereof) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Mortgagor will not lease or allow the sublease or use of all or any portion of the Premises to any tenant or subtenant for use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

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

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

(i) to the best of the knowledge and belief of Mortgagor after reasonable inquiry, Mortgagor has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions, except as specifically disclosed in the Phase I Environmental Site Assessment prepared by Alt & Witzig Consulting Services, dated March 18, 2014;

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

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

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

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

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

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

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

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

The representations and warranties in this Section 3.21(f) will be continuing representations and warranties that will be deemed to be made by Mortgagor throughout the term of the Loan.

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

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

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

(iii) any representation or warranty in this Section 3.21 becomes untrue after the date of this Agreement.

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

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

(j) **Remedial Work**. If any investigation, site monitoring, containment, clean-up, restoration or other remedial work is necessary to comply with any Hazardous Materials Law or order of any governmental authority that has or acquires jurisdiction over the Premises or the use, operation or improvement of the Premises under any Hazardous Materials Law, Mortgagor will, by the earlier of (a) the applicable deadline required by Hazardous Materials Law or (b) 30 days after notice from Centier demanding such action, begin performing the remedial work, and thereafter diligently prosecute it to completion, and will in any event complete the work by the time required by applicable Hazardous Materials Law. If Mortgagor fails to begin on a timely basis or diligently prosecute any required remedial work, Centier may, at its option, cause the remedial work to be completed, in which case Mortgagor will reimburse Centier within ten (10) days after written demand therefor is made by Centier for the cost of doing so.

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

(l) **Indemnification Obligation**. Mortgagor will indemnify, hold harmless and defend Centier and all officers, directors, shareholders, partners, employees, attorneys and trustees thereof (collectively, "Indemnitees") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by governmental authorities or private parties),



including fees and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

- (i) any breach of any representation or warranty of Mortgagor in this Section 3.21;
- (ii) any failure by Mortgagor to perform any of its obligations under this Section 3.21;
- (iii) the existence or alleged existence of any Prohibited Activity or Condition;
- (iv) the presence or alleged presence of Hazardous Materials on or under the Premises or any property of Mortgagor that is adjacent to the Premises; and/or
- (v) the actual or alleged violation of any Hazardous Materials Law.

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

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

(n) **Non-Limitation on Indemnification.** Mortgagor's obligation to indemnify the Indemnitees will not be limited or impaired by any of the following, or by any failure of Mortgagor to receive notice of or consideration for any of the following: (i) any amendment or modification of any Loan Document; (ii) any extensions of time for performance required by any Loan Document; (iii) any provision in any of the Loan Documents limiting Centier's recourse to property securing the Loan, or limiting the personal liability of Mortgagor or any other party for payment of all or any part of the Loan; (iv) the accuracy or inaccuracy of any representations and warranties made by Mortgagor under this Mortgage or any other Loan Document; (v) the release of Mortgagor or any other person, by Centier or by operation of law, from performance of any obligation under any Loan Document; (vi) the release or substitution in whole or in part of any security for the Loan; and (vii) Centier's failure to properly perfect any lien or security interest given as security for the Loan.

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

(i) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 3.21;

(ii) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 3.21; and

(iii) reimburse Indemnitees for any and all expenses, including fees and out of pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 3.21, or in monitoring and participating in any legal or administrative proceeding.

(p) **Attorneys.** In any circumstances in which the indemnity under this Section 3.21 applies, Centier may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Centier, with the prior written consent of Mortgagor (which will not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding. Mortgagor will reimburse Centier upon demand for all reasonable costs and expenses incurred by Centier, including all costs of settlements entered into in good faith, and the fees and out of pocket expenses of such attorneys and consultants.

(q) **Effectiveness of Indemnification.** The provisions of this Section 3.21 will be in addition to any and all other obligations and liabilities that Mortgagor may have under applicable law or under other Loan Documents, and each Indemnitee will be entitled to indemnification under this Section 3.21 without regard to whether Centier or that Indemnitee has exercised any rights against the Premises or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. The obligation of Mortgagor to indemnify Indemnitees under this Section 3.21 will survive any repayment or discharge of the Loan, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Mortgage. Notwithstanding any provisions of this Section 3.21 to the contrary, the indemnification liabilities and obligations of Mortgagor under this Section 3.21 will not apply to the extent that such liabilities and obligations arose solely from Prohibited Activities and Conditions and/or Hazardous Materials that: (a) were not in existence or present on or near the Premises prior to the date Indemnitee or its nominee acquired title to the Premises, whether by foreclosure or otherwise (or, if later, the date on which Mortgagor and all persons claiming under Mortgagor vacated the Premises), and (b) were not the result of any acts or omissions of Mortgagor, any of Mortgagor's affiliates, agents or contractors, or any persons claiming under Mortgagor.

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

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

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

3.24 **Successors and Assigns.**

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

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

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

junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

3.26 **Future Advances.** At all times, this Mortgage secures as part of the Secured Obligations, the payment of all loan commissions, service charges, liquidated damages, reasonable attorneys' fees, expenses and advances due to or incurred by Centier in connection with the Secured Obligations, all in accordance with this Mortgage and the other Loan Documents, provided, however, that in no event will the total principal amount of the Secured Obligations, including loan proceeds disbursed, future advances (if any) plus any additional charges, exceed the amounts provided in Section 1.9 hereof.

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

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

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

3.30 **Use of Loan Proceeds.** The proceeds of the Loan will be used to re-finance the indebtedness secured by the Premises, and such other purposes as Centier may permit.

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



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

3.33 **Captions and Pronouns.** The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confirming or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular will include the plural, the plural will include the singular, and the masculine, feminine and neuter will be freely interchangeable.

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

3.35 **Notices.** Any notices to Mortgagor under this Mortgage will be deemed to have been given to Mortgagor when delivered to:

c/o Dennis Caudill  
503 East Summit Street, Suite 1  
Crown Point, Indiana 46307  
fax: \_\_\_\_\_

or such other address that may from time to time be designated by Mortgagor. All such notices will be in writing and will be personally delivered, mailed (certified mail, return receipt requested), or sent by facsimile transmission. However, if any party attempts to give notice by certified mail and the addressee fails to claim or accept such mail, such notice may be given by first class mail. Notices will be deemed for all purposes hereof to have been received, in the case of notice by certified mail (or first class mail, if applicable), three days after mailing with proper postage prepaid, and in the case of personal delivery or facsimile transmission, when actually received at the location for notice provided herein.

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

which forfeiture of the Premises or any part thereof or of any monies paid in performance of Mortgagor's obligations under this Mortgage or any of the other Loan Documents is a potential result will, at the election of Centier, constitute an Event of Default hereunder without notice or opportunity to cure.

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

3.38 **Return of Payments.** Mortgagor agrees that, if at any time all or any part of the payments theretofore applied by Centier to any Secured Obligation is rescinded or returned by Centier or Centier is required to pay any amount thereof to any other party for any reason whatsoever (including, without limitation, the insolvency, bankruptcy, liquidation or reorganization of any party or the determination that such payment is held to constitute a preference under the bankruptcy laws), such Secured Obligation will, for the purposes of this Mortgage, be deemed to have continued in existence to the extent of such payment, notwithstanding such application by Centier, and this Mortgage and the liens, security interests, rights and remedies created hereby will continue to be effective or be reinstated, as the case may be, as to such Secured Obligation, whether or not released of record or a satisfaction and release has been delivered by Centier, all as though such application and release by Centier had not been made and Mortgagor agrees to pay such amount to Centier upon demand and to execute any and all documents required to effect the provisions of this Section.

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

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

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

3.42 **Governing Law; Jurisdiction.**

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

(b) **Jurisdiction and Venue.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS PROVIDED IN SECTION 3.43 BELOW, MORTGAGOR AND CENTIER EACH HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE WILL BE TRIED AND DETERMINED ONLY IN THE FEDERAL COURT LOCATED IN THE NORTHERN DISTRICT OF INDIANA OR THE STATE COURT LOCATED IN LAKE COUNTY, INDIANA OR, AT THE SOLE OPTION OF CENTIER, IN ANY OTHER COURT IN WHICH CENTIER INITIATES LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND CENTIER EACH HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION. MORTGAGOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF INDIANA AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA FOR THE PURPOSE OF SUCH LITIGATION AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. MORTGAGOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY PERSONAL SERVICE AT THE ADDRESS STATED IN SECTION 3.35 HEREOF. TO THE EXTENT THAT MORTGAGOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, MORTGAGOR HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS MORTGAGE.

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





**EXHIBIT A**  
**Legal Description of Premises**

**Parcel 1:** Lots 1 through 3, inclusive, Lots 7 through 10, inclusive, and Lots 12, 15, 19, 20, 21, 28, 29, 31, 34 and 37 in Deer Creek Estates, Phase I, a Planned Unit Development in the Town of Winfield, as per plat thereof, recorded in Plat Book 97, page 30, and Plat of Amendment recorded in Plat Book 98, page 91, in the Office of the Recorder of Lake County, Indiana.

Tax Parcel Nos.: 45-17-08-102-002.000-047  
45-17-08-105-001.000-047  
45-17-08-105-002.000-047  
45-17-08-101-012.000-047  
45-17-08-101-013.000-047  
45-17-08-101-014.000-047  
45-17-08-101-015.000-047  
45-17-08-101-017.000-047  
45-17-08-101-020.000-047  
45-17-08-101-024.000-047  
45-17-08-101-025.000-047  
45-17-08-101-026.000-047  
45-17-08-104-001.000-047  
45-17-08-104-002.000-047  
45-17-08-104-004.000-047  
45-17-08-104-007.000-047  
45-17-08-104-010.000-047

**Parcel 2:** Lots 4 and 5 in the Replat of Lots 4 & 5, Plat of Amendment, Deer Creek Estates, Phase I, a Planned Unit Development in the Town of Winfield, as per plat thereof, recorded October 16, 2009 in Plat Book 104, page 6 and as Document No. 2009 069935 in the Office of the Recorder of Lake County, Indiana.

Tax Parcel Nos.: 45-17-08-105-006.000-047  
45-17-08-105-007.000-047

**Parcel 3:** Part of the West 70 acres of the Northwest Quarter of Section 8, Township 34 North, Range 7 West of the Second Principal Meridian in Lake County, Indiana, being more particularly described as follows; Commencing at the Northwest corner of said Section 8; thence South 00 degrees 12 minutes 08 seconds East along the West line of said Section 8, a distance of 50.00 feet to a point on the South right-of-way line of 109th Avenue, said point also being the point of beginning; thence North 90 degrees 00 minutes 00 seconds East along said South right-of-way line, a distance of 448 50 feet to the Northwest corner of Lot 1 of Deer Creek Estate, Phase I, and recorded in Plat Book 97, page 30 in the Office of the Recorder of Lake County, Indiana; thence South 36 degrees 00 minutes 00 seconds East along the West line of said Lot 1, a distance of 205.94 feet to the Southwest corner of said Lot 1, said point lying on the North right-of-way line of Linden Drive; thence South 20 degrees 48 minutes 49 seconds East, a distance of 60.00 feet to a point on a curve, said point also lying on the South right-of-way line of said Linden Drive; thence Southwesterly along said curve, also lying on the North boundary of Outlot

"B" of said Deer Creek Estates, Phase I, which is concave to the Southeast and having a radius of 150.00 feet (the chord of which bears South 63 degrees 14 minutes 09 seconds West, a chord distance of 31.10 feet), an arc distance of 31.16 feet to a point of reverse curve, thence Westerly along said curve, said curve also lying on the North boundary of said Outlot "B", which is concave to the North and having a radius of 325.00 feet (the chord of which bears South 69 degrees 25 minute 57 seconds West a chord distance of 136.78 feet), an arc distance of 137.81 feet to a point of reverse curve thence Southwesterly along said curve on the North boundary of said Outlot "B", which is concave to the Southeast and having a radius of 270 00 feet (the chord of which bears South 51 degrees 39 minutes 12 seconds West a chord distance of 269.40 feet), an arc distance of 282.05 feet; thence South 71 degrees 25 minutes 50 seconds East, a distance of 89.53 feet; thence South 85 degrees 39 minutes 58 seconds East, a distance of 15.06 feet; thence South 29 degrees 37 minutes 48 seconds East a distance of 69.53 feet; thence South 06 degrees 47 minute; 15 seconds East, a distance of 33.71 feet; thence South 48 degrees 06 minutes 03 seconds West, a distance of 19.62 feet; thence South 05 degrees 00 minutes 00 seconds West, a distance of 142.43 feet; thence South 24 degrees 00 minutes 00 seconds West, a distance of 213.37 feet; thence South 64 degrees 00 minutes 00 seconds West, a distance of 272.06 feet to a point on the West line of said Section 8; thence North 00 degrees 12 minutes 08 seconds West, a distance of 1,044.63 feet to the point of beginning, EXCEPTING THEREFROM part of the West 70 acres of the Northwest Quarter of Section 8, Township 34, Range 7 West of the Second Principal Meridian and more particularly described as follows: Commencing at the Northwest corner of said Northwest Quarter; thence South 00 degrees 12 minutes 08 seconds E, along the West line of said Northwest Quarter, a distance of 50.00 feet to the point of beginning; thence North 90 degrees 00 minutes 00 seconds East along a line parallel with the North line of said Northwest Quarter, a distance of 183.42 feet; thence South 05 degrees 09 minutes 26 seconds West, a distance of 139.21 feet to a point of curve; thence Southerly and Southeasterly along a curve concave to the East and having a radius of 50.00 feet (chord of which curve bears South 16 degrees 19 minutes 40 seconds West, a chord distance of 36.63 feet), an arc distance of 37.50 feet; thence South 37 degrees 48 minutes 46 seconds East, a distance of 148.52 feet; thence Southwesterly along a curve concave to the Southeast and having a radius of 330.00 feet (the chord of which curve bears South 44 degrees 23 minutes 35 seconds West, a chord distance of 89.51 feet), an arc distance of 89.78 feet; thence North 53 degrees 24 minutes 03 seconds West, a distance of 31.07 feet to a point of curve; thence Northwesterly along a curve concave to the Northeast and having a radius of 80.00 feet (the chord of which curve bears North 30 degrees 47 minutes 57 seconds West, a chord distance of 61.49 feet), an arc distance of 63. 12 feet to a point of reverse curve; thence Northwesterly along a curve concave to the Southwest and having a radius of 50.00 feet (the chord of which curve bears North 33 degrees 21 minutes 58 seconds West, a chord distance of 42. 53 feet) an arc distance of 43.93 feet; thence North 58 degrees 32 minutes 06 seconds West, a distance of 151.51 feet to the West line of said Northwest Quarter; thence North 00 degrees 12 minutes 08 seconds West along said West line, a distance of 169.14 feet to the point of beginning.

Tax Parcel No.: 45-17-08-103-003.000-047

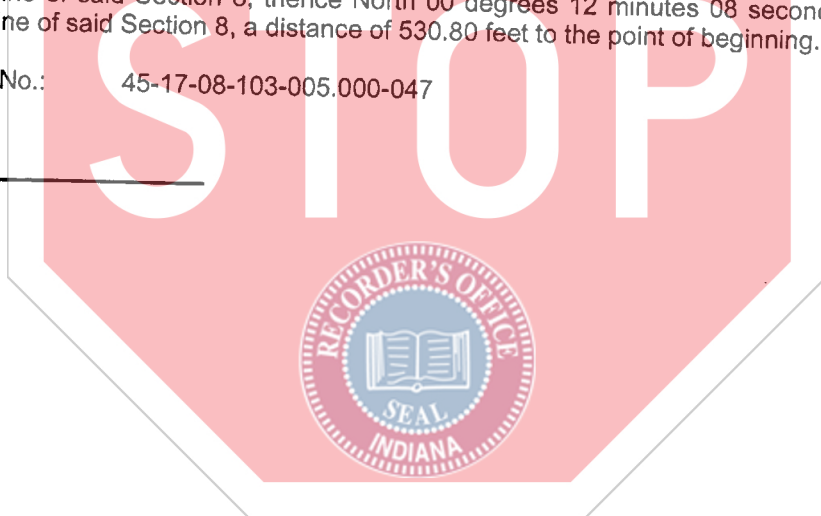
**Parcel 4:** Part of the West 70 acres of the Northwest Quarter of Section 8, Township 34 North, Range 7 West of the Second Principal Meridian in Lake County, Indiana, being more particularly described as follows: Commencing at the Northwest corner of said Section 8; thence South 00

degrees 12 minutes 08 seconds East along the West line of said Section 8, a distance of 1997.44 feet; thence South 54 degrees 00 minutes 00 seconds East a distance of 436.84 feet; thence South 82 degrees 00 minutes 00 seconds East a distance of 141.86 feet to the point of beginning, thence North 01 degrees 00 minutes 00 seconds West a distance of 236.89 feet to a point on a curve, thence Westerly along said curve which is concave to the North and having a radius of 245.00 feet (the chord of which bears North 86 degrees 02 minutes 19 seconds West a chord distance of 18.75 feet), an arc distance of 18.75 feet thence North 10 degrees 00 minutes 00 seconds East a distance of 131.33 feet; thence North 49 degrees 00 minutes 00 seconds West a distance of 127.37 feet; thence North 04 degrees 00 minutes 00 seconds West a distance of 71.71 feet thence North 32 degrees 00 minutes 00 seconds East a distance of 90.71 feet; thence North 41 degrees 00 minutes 00 seconds East a distance of 261.98 feet; thence North 90 degrees 00 minutes 00 seconds East along the South line of Lots 35, 36 and 37 in Deer Creek Estates, Phase I, and recorded in Plat Book 97, page 30 in the Office of the Recorder of Lake County, Indiana, a distance of 335.01 feet to a point on a curve, said point also being the Southeast corner of said Lot 37, also being the West right-of-way line of Deer Creek Drive; thence Northerly along said curve on the West right-of-way line of said Deer Creek Drive, also being the East line of said Lot 37, which is concave to the East and having a radius of 8,030.00 feet (the chord of which bears North 00 degrees 56 minutes 33 seconds East a chord distance of 130.28 feet), an arc distance of 130.28 feet; thence South 88 degrees 35 minutes 34 seconds East, a distance of 60.00 feet to a point on a curve on the East right-of-way line of said Deer Creek Drive; thence Northerly along said curve which is concave to the East and having a radius of 7,970.00 feet (the chord of which bears North 01 degrees 32 minutes 37 seconds East a chord distance of 37.91 feet), an arc distance of 37.91 feet to the Southwest corner of Lot 27 in said Deer Creek Estates, Phase I; thence North 89 degrees 00 minutes 00 seconds East along the South line of said Lot 27, a distance of 140.10 feet to a point on the East line of the West 70 acres of the Northwest Quarter of said Section 8, said point also being the Southeast corner of said Lot 27; thence South 00 degrees 07 minutes 35 seconds East along said East line, a distance of 930.91 feet; thence South 71 degrees 00 minutes 00 seconds West, a distance of 279.37 feet; thence North 82 degrees 00 minutes 00 seconds West, a distance of 398.80 feet to the point of beginning.

AND part of the West 70 acres of the Northwest Quarter of Section 8, Township 34 North, Range 7 West of the Second Principal Meridian in Lake County Indiana, being more particularly described as follows: Commencing at the Northwest corner of said Section 8, thence South 00 degrees 12 minutes 08 seconds East along the West line of said Section 8 a distance of 1,466.64 feet to the point of beginning thence North 75 degrees 00 minutes 00 seconds East, a distance of 229.47 feet thence North 05 degrees 00 minutes 00 seconds East, a distance of 327.08 feet; thence North 35 degrees 00 minutes 00 seconds East, a distance of 255.33 feet; thence North 55 degrees 00 minutes 00 seconds East, a distance of 225.23 feet to a point on a curve on the West right-of-way line of Deer Creek Drive, as shown on the recorded plat of Deer Creek Estates, Phase I, and recorded in Plat Book 97, page 30, in the Office of the Recorder of Lake County, Indiana; thence Southeasterly along said curve along the Southwest right-of-way line of said Deer Creek Drive, which is concave to the Northeast and having a radius of 280.00 feet (the chord of which bears South 27 degrees 22 minutes 28 seconds East a chord distance of 122.64 feet), an arc distance of 123.65 feet to a point of reverse curve on said right-of-way line, thence Southerly along said curve on the West right-of-way line of said Deer Creek Drive which is concave to the West and having a radius of 20.00 feet (the chord of which bears South

00 degrees 10 minutes 41 seconds West a chord distance of 25.82 feet), an arc distance of 28.07 feet, thence South 49 degree, 37 minutes 09 seconds East along the Southwest right-of-way line of said Deer Creek Drive, a distance of 60.00 feet to a point on the South right-of-way line of said Deer Creek Drive, said point also being the Northwest corner of Lot 28 of said Deer Creek Estates, Phase I; thence South 14 degrees 00 minutes 00 seconds East along the West line of said Lot 28, a distance of 144.53 feet to the Southwest corner of said Lot 28, said point also being the Northerly most corner of Lot 32 of said Deer Creek Estates, Phase I; thence South 48 degrees 00 minutes 00 seconds West along the Northwest line of said Lot 32 and of Lot 33 in said Deer Creek Estates, Phase I, a distance of 159.72 feet; thence South 29 degrees 00 minutes 00 seconds West along the West line of said Lot 33, distance of 59.79 feet to the Westernmost corner of said Lot 33, said point also being the Northwest corner of Lot 34 in said Deer Creek Estates, Phase I; thence South 00 degrees 00 minutes 00 seconds East along the West line of said Lot 34, a distance of 61.09 feet to the Westernmost corner of said Lot 34; thence South 08 degrees 00 minutes 00 seconds East along the West line of said Lot 34, a distance of 105.00 feet to the Southwest corner of said Lot 34; thence North 62 degrees 00 minutes 00 seconds East along the South line of said Lot 34, a distance of 14.47 feet to the Westernmost corner of Lot 35 in said Deer Creek Estates, Phase I; thence South 28 degrees 00 minutes 00 seconds East along the Southwesterly line of said Lot 35, a distance of 115.93 feet to the Southwest corner of said Lot 35; thence South 90 degrees 00 minutes 00 seconds West a distance of 37.68 feet thence South 41 degrees 00 minutes 00 seconds West a distance of 261.98 feet, thence South 32 degrees 00 minutes 00 seconds West a distance of 90.71 feet, thence South 04 degrees 00 minutes 00 seconds East a distance of 71.71 feet; thence South 49 degrees 00 minutes 00 seconds East a distance of 127.37 feet; thence South 10 degrees 00 minutes 00 seconds West a distance of 131.33 feet to a point on a curve, thence Easterly along said curve which is concave to the North and having a radius of 245.00 feet (the chord of which bears South 86 degrees 02 minutes 19 seconds East a chord distance of 18.75 feet), an arc distance of 18.75 feet; thence South 01 degrees 00 minutes 00 seconds East a distance of 236.89 feet; thence North 82 degrees 00 minutes 00 seconds West, a distance of 141.86 feet; thence North 54 degrees 00 minutes 00 seconds West, a distance of 436.84 feet to a point on said West line of said Section 8; thence North 00 degrees 12 minutes 08 second West along said West line of said Section 8, a distance of 530.80 feet to the point of beginning.

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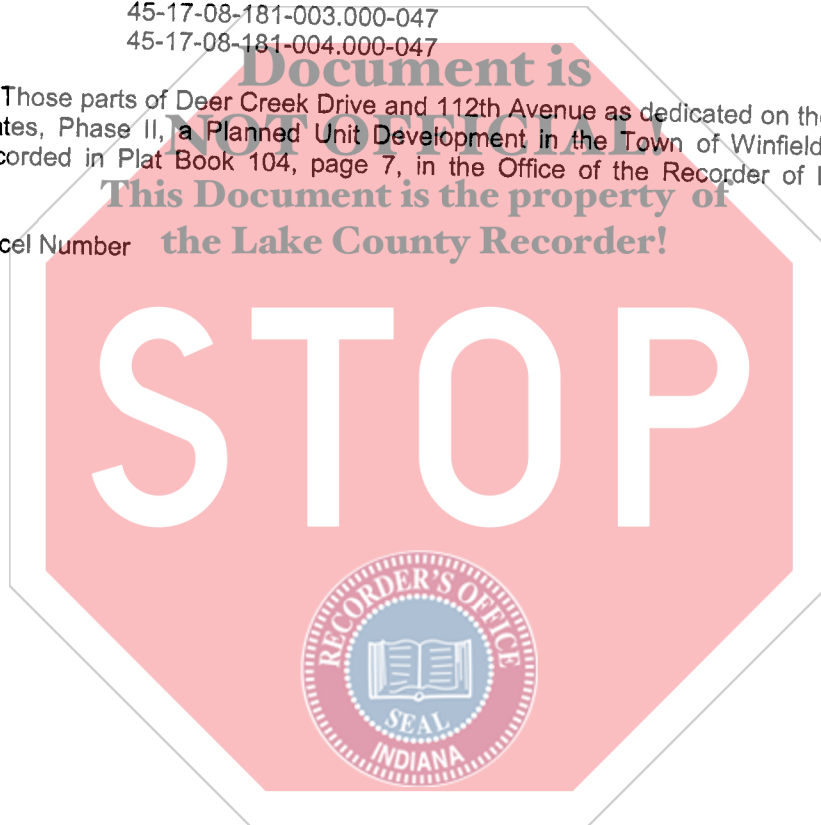


**Parcel 5:** Outlot 'A', and Lots 38 through 43, inclusive, and Lots 55 through 63, inclusive, in Deer Creek Estates, Phase II, a Planned Unit Development in the Town of Winfield, as per plat thereof, recorded in Plat Book 104, page 7, in the Office of the Recorder of Lake County, Indiana.

Tax Parcel Nos.: 45-17-08-180-001.000-047  
45-17-08-180-002.000-047  
45-17-08-180-003.000-047  
45-17-08-180-004.000-047  
45-17-08-180-005.000-047  
45-17-08-180-006.000-047  
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45-17-08-101-036.000-047  
45-17-08-101-037.000-047  
45-17-08-181-001.000-047  
45-17-08-181-002.000-047  
45-17-08-181-003.000-047  
45-17-08-181-004.000-047

**Parcel 6:** Those parts of Deer Creek Drive and 112th Avenue as dedicated on the plat of Deer Creek Estates, Phase II, a Planned Unit Development in the Town of Winfield, as per plat thereof, recorded in Plat Book 104, page 7, in the Office of the Recorder of Lake County, Indiana.

No Tax Parcel Number



**EXHIBIT B**  
**Permitted Exceptions**

1. Real Property Taxes for 2013 (payable 2014), second installment only, and subsequent years.
2. Declaration of Covenants and Restrictions for Deer Creek Estates recorded September 14, 2005 as Document No. 2005 080167 and amended by a document recorded September 27, 2006 as Document No. 2006 084541.
3. Covenants, conditions, restrictions, building lines and easements for Deer Creek Estates, Phase I, as shown on the plat of said subdivision as recorded in Plat Book 97, page 30, and in Plat Book 98, page 91.
4. Covenants, conditions, restrictions, building lines and easements for the Replat of Lots 4 & 5, Plat of Amendment, Deer Creek Estates, Phase I, as shown on the plat of said subdivision as recorded in Plat Book 104, page 6.
5. Covenants, conditions, restrictions, building lines and easements for Deer Creek Estates, Phase II, as shown on the plat of said subdivision as recorded in Plat Book 104, page 7.
6. Sanitary Sewer Easement as set forth in a Declaration recorded April 2, 2012 as Document No. 2012 022360.
7. Terms and provisions of an Access and Easement Agreement recorded June 19, 2012 as Document No. 2012 040456.
8. Terms and provisions of a Sanitary Sewer Reimbursement Agreement as set forth in a Declaration recorded March 26, 2013 as Document No. 2013 022327.
9. Terms, covenants, conditions, restrictions and special assessments not yet due or payable of the Deer Creek Estates Homeowners Association, Inc.

