

25

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2014 078136

2014 DEC -9 AM 10:09

MICHAEL B. BROWN
RECORDER

Document is
NOT OFFICIAL!

**MORTGAGE AND SECURITY AGREEMENT
(FINANCING STATEMENT)**

1404961 CT/CM

This Mortgage and Security Agreement (Financing Statement) ("**Instrument**") is made as of November 25, 2014 by **EMBASSY PLACE, LLC**, an Indiana limited liability company ("**Mortgagor**"), whose address is 8087 Randolph Street, Hobart, Indiana 46342, to and for the benefit of **CENTIER BANK**, an Indiana state bank (together with its successors and assigns, "**Bank**"), with offices at 600 East 84th Avenue, Merrillville, Indiana 46410.

Mortgagor is indebted to Bank in the aggregate maximum principal amount of Fourteen Million Dollars (\$14,000,000.00), which indebtedness is evidenced by the Promissory Note of even date herewith in the maximum principal amount of \$14,000,000.00, with a final payment due on or before the date that is five (5) years after the date of this Instrument (the "**Note**"). **Notwithstanding any other provision contained herein to the contrary**, the maximum aggregate amount of principal, interest, premium, if any, future advances, other indebtedness sums (now owed or hereafter owed) advanced to protect the security of this Instrument and expenses of Bank secured by this Instrument is \$30,000,000.00.

Grant to Bank. To secure to Bank:

- (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, and all renewals, extensions, rewrites, refinances, modifications, consolidations and replacements thereof and substitutions therefor;
- (b) the payment and performance by Mortgagor of all obligations to Bank under that certain Limited Guaranty of even date herewith, in the maximum obligation amount of \$13,370,000.00, with a final payment due on or before the date that is five (5) years after the date of this Instrument, and all amendments, renewals, extensions, rewrites, refinances, modifications, consolidations and replacements thereof and substitutions therefor;
- (c) the payment of all amounts otherwise payable by Mortgagor under or with respect to the other Loan Documents (as defined in the Note);
- (d) the repayment of any future advances, with interest thereon, made by Bank to Mortgagor, whether made as an obligation, made at the option of Bank, made after a reduction to a zero (0) or other balance, or made otherwise,

62
CT
CA

Chicago Title Insurance Company

provided that the total principal amount of future advances secured hereby will not exceed \$14,000,000.00;

(e) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument;

(f) the performance of the covenants and agreements of Mortgagor herein contained;

(g) the performance of the covenants and agreements under the Loan Documents to be performed by Mortgagor; and

(h) all other liabilities of Mortgagor in favor of the Bank, direct or indirect, absolute or contingent, primary or secondary, matured or unmatured, whether or not related to or of the same class as any specific debt secured hereby, now existing or hereafter arising

(collectively, the "**Obligations**"), Mortgagor hereby mortgages, warrants, grants, conveys and assigns to Bank, its successors and assigns, the property in Lake County, Indiana, as described on Exhibit A, which is attached hereto and made a part hereof, 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, and all fixtures, boilers, incinerators and building materials of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, attached floor coverings, furniture, antennas, signs, trees and plants; all of which, including improvements, replacements and additions thereto, will be deemed to be and remain a part of the real property covered by this Instrument, whether actually physically annexed to said property or not; and all of the foregoing, but excluding equipment that is leased by Mortgagor in the conduct of its business, to the extent that the leasehold interest therein is not assignable by Mortgagor under the applicable lease agreement, together with said property are herein referred to as the "**Property**".

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property, that, with the exception of the encumbrances listed on Exhibit B, which is attached hereto and made a part hereof, the Property is unencumbered, and that Mortgagor will warrant and defend generally the title to the Property against all claims and demands, subject to any easements, covenants, conditions and restrictions of record listed in schedule of exceptions to coverage in any title insurance policy insuring Bank's interest in the Property.

Covenants. Mortgagor hereby covenants and agrees as follows:

1. **General Mortgagor Undertakings.**

(a) **Payment of Principal and Interest.** Mortgagor will promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and charges thereon (if applicable) and late charges provided in the Note and all other Obligations.

(b) **Distributions to Members.** Mortgagor will make no distributions of equity or return of capital to or for the benefit of any of its members upon the occurrence and during the continuance of any Default under this Instrument.

(c) **Use of Property.** Unless required by applicable law or unless Bank has otherwise agreed in writing, Mortgagor will not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Mortgagor will not initiate or acquiesce in a change in the zoning classification of the Property without Bank's prior written consent.

2. **Mortgagor Breach; Right of Bank.** Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Bank may pay, in any amount and in any order as Bank may determine in Bank's sole discretion, any rents, taxes, assessments, insurance premiums, judgment liens, tax liens, mechanic's liens and other charges and impositions attributable to the Property which are now or will hereafter become due, which will then become immediately due and owing by the Mortgagor to the Bank, and secured by this Instrument pursuant to Paragraph 8 hereof.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Bank from Mortgagor under the Note or this Instrument will be applied by Bank in the following order of priority: (i) amounts payable to Bank by Mortgagor under Paragraph 2 hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to Paragraph 8 hereof; (v) principal of advances made pursuant to Paragraph 8 hereof; (vi) interest payable on any future advance, provided that if more than one future advance is outstanding, Bank may apply payments received among the amounts of interest payable on the future advances in such order as Bank, in Bank's sole discretion, may determine; (vii) principal of any future advance, provided that if more than one future advance is outstanding, Bank may apply payments received among the principal balances of the future advances in such order as Bank, in Bank's sole discretion, may determine; and (viii) any other sums secured by this Instrument in such order as Bank, at Bank's option, may determine; provided, however, that Bank may, at Bank's option, apply any sums payable pursuant to Paragraph 8 hereof prior to interest on and principal of the Note, but such application will not otherwise affect the order of priority of application specified in this Paragraph 3.

4. **Charges; Liens.** Mortgagor will pay all utility, water and sewer charges, real property taxes, personal property taxes, assessments, income and franchise taxes, premiums, and other impositions attributable to the Property. Mortgagor will promptly furnish to Bank, upon request, all notices of amounts due under this Paragraph 4, and in the event Mortgagor makes

payment directly, Mortgagor will, promptly furnish to Bank receipts evidencing such payments. Mortgagor will promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Mortgagor will pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property; provided that Mortgagor will not be required to discharge any such lien so long as Mortgagor agrees in writing to the payment of the obligation secured by such lien in a manner acceptable to Bank, or in good faith contests such lien by, or defends enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof, or furnishes to a title company such security or indemnity as it may require to induce said title insurance company to issue title insurance insuring against all such claims or liens, as determined by Bank.

5. **Insurance.**

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

- (i) coverage of all improvements on the Property against such hazards as Bank may from time to time require in such amount or amounts as Bank 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; 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;
- (iii) comprehensive public liability insurance, in such amount as Bank may from time to time direct, provided that the amount of coverage will be at least \$5,000,000 per occurrence or such greater amount as Bank may direct from time to time;
- (iv) workers' compensation insurance and such other insurance as may be required by applicable law or governmental regulation;
- (v) such other liability, errors and omissions and fidelity insurance coverages as Bank may from time to time require;
- (vi) if required by Bank, sinkhole insurance, mine subsidence insurance, earthquake insurance; and
- (vii) if any of the improvements on the Property 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 hazard insurance policy will be written on an all risk basis and on a completed value form (non-reporting basis) for the full replacement cost of the Property improvements (except as Bank may otherwise determine), will contain a standard, noncontributory mortgagee endorsement in favor of Bank, as mortgagee, and will contain a special extended coverage endorsement and such other endorsements as Bank may require. Bank will have the right to hold the original policies or duplicate original policies of all insurance required hereunder.

(b) **Premiums.** On or before the Note Date (as defined in the Note), Mortgagor will prepay (or cause to be prepaid) all premiums with respect to the insurance coverage required by Bank for a period extending at least six (6) months after the Note Date. All subsequent premiums on insurance policies required under Paragraph 5 (a) will be fully and timely paid by Mortgagor. At least ten (10) days prior to the expiration date of a policy, Mortgagor will deliver to Bank a certificate of insurance, in form satisfactory to Bank, evidencing the renewal thereof (or a new policy satisfactory to Bank). Upon the request or requests of Bank, Mortgagor will deliver to Bank copies of insurance policies or a renewal policies, as applicable) in form satisfactory to Bank.

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

(d) **Claims under Policies.** In the event of material loss, Mortgagor will give prompt written notice to the insurance carrier and to Bank. Mortgagor hereby authorizes and appoints Bank as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claims under policies of property damage insurance (provided that, so long as there is no uncured Default and no event has occurred which, with the giving of notice or passage of time, would constitute an Default, Bank will adjust and compromise any such claims only with the consent of Mortgagor, which consent will not be unreasonably withheld or delayed), 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 Bank'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 Paragraph 5 will require Bank to incur any expense or take any action. Bank may, at Bank's option, (i) hold the balance of such proceeds to be used to reimburse Mortgagor for the cost of restoring and repairing the Development to the equivalent of its original condition or to a condition approved by Bank, or (ii) subject to Paragraph 5(e) hereof, apply the balance of such proceeds to the payment of the Loan, whether or not then due. To the extent Bank determines to apply insurance proceeds to restoration, Bank will do so in accordance with Bank's then-current policies relating to the restoration of casualty damage on similar commercial properties.

(e) **Application of Proceeds.** Bank 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 Default (or any event which, with the giving of notice or the passage of time, or both, would constitute a Default) has occurred and is continuing; (ii) Bank determines, in its reasonable discretion, that there will be sufficient funds to complete the applicable restoration; (iii) Bank determines, in its reasonable discretion, that the income from the Property after completion of the restoration will be sufficient to meet all operating costs and other expenses, deposits to reserves and loan repayment obligations relating to the Property; and (iv) Bank determines, in its reasonable discretion, that the restoration will be completed before the earlier of: (A) the date which is six (6) months before the Maturity Date (as defined in Paragraph 3(d) of the Note), or (B) the date which is one year after the date of the loss or casualty.

(f) **Foreclosure Rights.** If the Property is sold at a foreclosure sale or Bank acquires title to the Property, Bank 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 Property prior to such sale or acquisition.

6. **Preservation and Maintenance of Property.** Mortgagor (a) will not commit material waste or permit material impairment or deterioration of the Property, (b) will not abandon the Property, (c) will keep the Property, including improvements thereon, in good repair and in slightly condition, (d) will comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (e) will give notice in writing to Bank of and, unless otherwise directed in writing by Bank, appear in and defend any action or proceeding purporting to affect the Property, the security to this Instrument or the rights or powers of Bank. Mortgagor will not remove, demolish or materially alter any permanent structure now existing or hereafter erected on the Property without the written consent of Bank, which consent shall not be unreasonably withheld or delayed.

7. **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 material 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 7(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 (as defined below) on or under the Property or any other property of Mortgagor that is adjacent to the Property;

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

(iii) any occurrence or condition on the Property or any other property of Mortgagor that is adjacent to the Property, 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 (as defined below) with respect to the Property or any property of Mortgagor that is adjacent to the Property.

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

As used herein, 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 Property 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.

As used herein, 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 Property. 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 and Conditions will not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the construction, operation and maintenance of comparable rental properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(d) **Prevention of Prohibited Activities.** Mortgagor will take all commercially reasonable actions (including the inclusion of appropriate provisions in any leases executed after the Note Date) to prevent its employees, agents, and contractors, and all residents 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 Property to any tenant or

subtenant for nonresidential 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 Bank 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 Property to comply with such program. All costs of performance of Mortgagor's obligations under any such program will be paid by Mortgagor, and Bank'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 Bank.

(f) **Environmental Warranties**. Mortgagor represents and warrants to Bank that, except as previously disclosed to Bank:

(i) Mortgagor has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;

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

(iii) to the best of Mortgagor's knowledge after reasonable and diligent inquiry, except as previously disclosed to Bank, the Property:

(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 (excepting only tanks to be removed as provided in Section 4.3(e) hereof); 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 Property 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 Property or any other property of Mortgagor that is adjacent to the Property.

The representations and warranties in this Section 7 will be continuing representations and warranties that will be deemed to be made by Mortgagor throughout the term of the Loan.

(g) **Notice to Bank.** Mortgagor will promptly notify Bank 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 Property or any other property of Mortgagor that is adjacent to the Property; and

(iii) any representation or warranty in this Section 7 becomes untrue after the date of this Instrument.

Any such notice given by Mortgagor will not relieve Mortgagor of, or result in a waiver of, any obligation under this Instrument 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 Bank with respect to the Property pursuant to this Instrument, as Bank in its sole discretion from time to time determines to be necessary or desirable. All such environmental inspections, tests or audits will be in such form or forms, will include such items, and will be prepared by such consultants as Bank in its discretion may direct. The results of all such environmental reports received by Bank will at all times remain the property of Bank and Bank will have no obligation to disclose or otherwise make available to any party (other than Mortgagor) such results or any other information obtained by Bank in connection therewith. Mortgagor acknowledges that Bank 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 Property may have a material and adverse effect upon the amount which a party may bid at such sale. Mortgagor agrees that Bank will have no liability whatsoever as a result of delivering any environmental reports to any third party, and Mortgagor hereby releases and forever discharges Bank 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, to the extent not resulting from the gross negligence or intentional misconduct of Bank.

(i) **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 Property or the use, operation or improvement of the Property under any Hazardous Materials Law, Mortgagor will, by the earlier of (i) the applicable deadline required by Hazardous Materials Law or (ii) 30 days after notice from Bank 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, Bank may, at its option, cause the remedial work to be completed, in which case Mortgagor will reimburse Bank on demand for the cost of doing so.

(j) **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.

(k) **Indemnification Obligation.** Mortgagor and Guarantor (individually "Indemnitor" and collectively "Indemnitors") will jointly and severally indemnify, hold harmless and defend Bank and any loan participant and all respective 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, to the extent not arising from the negligence or intentional misconduct of the Indemnitees:

- (i) any breach of any representation or warranty of Mortgagor in this Section 7;
- (ii) any failure by Mortgagor to perform any of its obligations under this Section 7;
- (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 Property or any property of Mortgagor that is adjacent to the Property; and/or
- (v) the actual or alleged violation of any Hazardous Materials Law.

Counsel selected by an Indemnitor 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 Indemnitor's expense.

(l) **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 Bank of a written release of those Indemnitees, satisfactory in form and substance to Bank; or (ii) may materially and adversely affect Bank, as determined by Bank in its discretion.

(m) **Non-Limitation on Indemnification.** Indemnitors' obligation to indemnify the Indemnitees will not be limited or impaired by any of the following, or by any failure of any one or more of the Indemnitors 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 Bank'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 Instrument or any other Loan Document; (v) the release of Mortgagor or any other person, by Bank 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) Bank's failure to properly perfect any lien or security interest given as security for the Loan.

(n) **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 Indemnitors in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 7;

(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 7; and

(iii) reimburse Indemnitees for any and all expenses, including fees and reasonable 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 7, or in monitoring and participating in any legal or administrative proceeding.

(o) **Attorneys.** In any circumstances in which the indemnity under this Section 7 applies, Bank and/or any loan participant may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Bank, 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. Indemnitors will jointly and severally reimburse Bank upon demand for all costs and reasonable expenses incurred by Bank, including all costs of settlements entered into in good faith, and the fees and out of pocket expenses of such attorneys and consultants.

(p) **Effectiveness of Indemnification**. The provisions of this Section 7 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 7 without regard to whether Bank or that Indemnitee has exercised any rights against the Property 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 Indemnitors to indemnify Indemnitees under this Section 7 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 Instrument. Notwithstanding the foregoing, the Guarantors will cease to be Indemnitors hereunder, and will be fully and completely released from liability for any and all indemnities hereunder as and when the respective Guaranties of the Guarantors are released.

8. **Protection of Bank's Security**. If Mortgagor fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Bank therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Bank, at Bank's option, may make such appearances, disburse such sums and take such action as Bank deems necessary, in its sole discretion, to protect Bank's interest, including, but not limited to, (i) disbursement of reasonable attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in Paragraph 5 hereof.

Any amounts disbursed by Bank pursuant to this Paragraph 8, with interest thereon, will become additional indebtedness of Mortgagor secured by this Instrument. Unless Mortgagor and Bank agree to other terms of payment, such amounts will be immediately due and payable and will bear interest from the date of disbursement at the rate stated in the Note unless collection from Mortgagor 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. Mortgagor hereby covenants and agrees that Bank will be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this Paragraph 8 will require Bank to incur any expense or take any action hereunder.

9. **Inspection**. Bank may make or cause to be made reasonable entries upon and inspections of the Property.

10. **Books and Records**. Mortgagor will keep and maintain at all times at Mortgagor's address, or at 2121 45th Street, Highland, Lake County, Indiana or at such other place as Bank may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments will be subject to examination and inspection at any reasonable time by Bank.

In addition, where applicable as determined by Bank, Mortgagor will submit a rent roll in form and substance satisfactory to Bank, and certified by Mortgagor, setting forth each

occupant's name, the size by square footage of the unit, the suite or unit number, status of rental payments, amount of rental payments, any common area maintenance expense reimbursed by occupant, any expense stops, expiration date of rental agreements and any renewal options, and total rentable square footage of the Property at least on an annual basis.

11. **Condemnation.** Mortgagor will promptly notify Bank of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor will appear and prosecute any such action or proceeding unless otherwise directed by Bank in writing. Mortgagor authorizes Bank, but only during the continuance of any Default, at Bank's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Bank's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part hereof, or for conveyances in lieu of condemnation, are hereby assigned to and will be paid to Bank for application as set out below.

In the event of a total taking of the Property, Mortgagor authorizes Bank to apply such awards, payments, proceeds or damages, after the deduction of Bank's out-of-pocket expenses incurred in the collection of such amounts to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Paragraph 3 hereof, with the balance, if any, to Mortgagor. In the event of a partial taking of the Property, unless Mortgagor and Bank otherwise agree in writing, there will be applied to the sums secured by this Instrument such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Instrument immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of proceeds paid to Mortgagor. Unless Mortgagor and Bank otherwise agree in writing, any application of proceeds to principal will not extend or postpone the due date of any monthly installments referred to in Paragraphs 1 and 2 hereof, or change the amount of such installments. Mortgagor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Bank may require.

12. **Mortgagor and Lien Not Released.** From time to time, Bank may, at Bank's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns, or any junior lienholder or guarantors, without liability on Bank's part and notwithstanding Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, extend the time for payment of the indebtedness secured by this Instrument, or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefore, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Bank pursuant to the terms of this Paragraph 12 will not affect the

obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Mortgagor contained herein, will not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured by this Instrument, and will not affect the lien or priority of lien hereof on the Property. Mortgagor will pay Bank a reasonable service charge, together with such title insurance premiums and reasonable attorney's fees as may be incurred at Bank's option, for any such action if taken at Mortgagor's request.

13. **Forbearance by Bank Not a Waiver.** Any forbearance by Bank in exercising any right or remedy hereunder, or otherwise afforded by applicable law, will not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Bank of payment of any sum secured by this Instrument after the due date of such payment will not be a waiver of Bank's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Bank will not be a waiver of Bank's right to accelerate the maturity of the indebtedness secured by this Instrument, nor will Bank's receipt of any awards, proceeds or damages under Paragraphs 5 and 11 hereof operate to cure or waive Mortgagor's default in payment of sums secured by this Instrument.

14. **Estoppel Certificate.** Mortgagor will within ten days of written request from Bank furnish Bank with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

15. **Uniform Commercial Code Security Agreement.** This Instrument is intended to be a security agreement pursuant to the Indiana Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants and transfers to Bank a security interest in said items, now owned or hereafter acquired, whether or not presently within the contemplation of the Mortgagor and Bank, and the proceeds thereof, to include insurance proceeds and tort claims or settlements. Mortgagor agrees that Bank may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items which are a part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement will be sufficient as a financing statement. Mortgagor hereby authorizes the Bank at the expense of the Mortgagor to execute and file a financing statement or statements on its behalf in those public offices deemed necessary by Bank to protect its security interest. In addition, Mortgagor agrees to execute and deliver to Bank, upon Bank's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Bank may require to perfect a security interest with respect to said items. Mortgagor will pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and will pay all reasonable costs and expenses of any record searches for financing statements Bank may reasonably require. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Bank will have the remedies of a secured party under the Uniform Commercial Code and, at Bank's option, may also invoke the remedies provided in Paragraph 24 hereof as to such items. In exercising any of said remedies, Bank may proceed

against the items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Bank's remedies under the Uniform Commercial Code or of the remedies provided in Paragraph 24 hereof.

16. **Remedies Cumulative.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

17. **Defaults.** The occurrence of any one or more of the following will constitute a "Default" under this Instrument:

- (a) The occurrence of any "Event of Default" under the Note;
- (b) Default by Mortgagor in the payment and/or deposit of any sum due under this Instrument when due, which default continues for more than seven (7) days after written notice thereof from Bank to Mortgagor;
- (c) Default on the part of Mortgagor in the performance of any matters to be performed under this Instrument (other than the payment or deposit of monies) or under any of the other Loan Documents, and such default continues for more than thirty (30) days after notice of such default is given by Bank or, if such default cannot reasonably be cured within said 30-day period, if Mortgagor does not commence to cure such default within such 30-day period with a reasonable probability of success and diligently proceed to cure such default as quickly as reasonably possible, as reasonably determined by Bank;
- (c) Mortgagor becomes insolvent or admits in writing its inability to pay debts as they mature; or applies for, consents to or acquiesces in the appointment of a trustee or receiver for Mortgagor and/or the Property or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for Mortgagor; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Mortgagor and, if instituted against Mortgagor, is consented to or acquiesced in by Mortgagor, or remains undismissed for sixty (60) days; or Mortgagor makes an assignment for the benefit of creditors;
- (d) the Property (or any portion thereof) becomes subject to the jurisdiction of a United States Bankruptcy Court or similar state court;
- (e) Mortgagor hereunder fails within sixty (60) days after filing or entry to pay or bond or otherwise discharge any attachment or judgment which involves money or property of a value in excess of \$25,000.00, and which is unstayed on appeal;
- (f) There is a material abandonment of the Property and/or any

cessation of rental operations thereon;

(g) Mortgagor sells, transfers, conveys, or otherwise ceases to hold unencumbered fee simple title to the Property;

(h) If any representation made by Mortgagor herein and/or in any of the other Loan Documents is untrue in any material respect, or any schedule, statement, report, notice, assignment or other writing furnished by Mortgagor to Bank, is untrue in any material respect on the date as of which the facts set forth are stated or certified;

(j) Prior to full and final payment of all amounts owing with respect to the Loan, any one or more of the Guarantors becomes insolvent or admits in writing his inability to pay debts as they mature; or applies for, consents to or acquiesces in the appointment of a trustee or receiver for any Guarantor and/or any properties thereof or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for any Guarantor; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against any Guarantor and, if instituted against any Guarantor, is consented to or acquiesced in by such Guarantor, or remains undismissed for sixty (60) days; or any Guarantor makes an assignment for the benefit of creditors;

(k) Default by Guarantors in payment of any amount due or in the performance of Guarantors' obligations under any of the Loan Documents beyond any applicable cure periods;

(l) Mortgagor commits or permits waste in any material respect on or with respect to the Property;

(m) Mortgagor permits secondary financing, junior liens, or a security interest of any type to attach to the Property or any part thereof or to any security for the Obligations at any time without prior written consent of Bank, except as permitted pursuant to Paragraph 4 hereof;

(n) Any material adverse change, after the Note Date, in the financial condition of Mortgagor and/or Guarantors from the financial condition of Mortgagor and/or Guarantors as of the Note Date, as determined by Bank; and/or

(o) Bank deems itself insecure with respect to any future obligations of Mortgagor.

Upon the occurrence of any Default, Bank may, at Bank's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Mortgagor, and Bank may invoke any remedies permitted by Paragraph 24 hereof. All reasonable

attorney's fees and other expenses incurred by Bank in connection with Mortgagor's bankruptcy or any of the other aforesaid events will be additional indebtedness of Mortgagor secured by this Instrument pursuant to Paragraph 8 hereof.

18. **Transfers of the Property or Beneficial Interests in Mortgagor; Assumption.**

On sale or transfer of all or any part of the Property, or any interest therein, or upon sale or transfer of any beneficial interest in Mortgagor such that Eric T. Gastevich (and/or a trust or limited liability company controlled by Eric T. Gastevich) ceases to own at least fifty-one percent (51%) of all voting interests and all equity interests in and to Mortgagor, Bank may, at Bank's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Bank may invoke any remedies permitted by Paragraph 24 hereof.

19. **Notice.** Except for any notice required under applicable law to be given in another manner, any notice to Mortgagor or to Bank hereunder will be made as provided in the Note.

20. **Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.** The covenants and agreements herein contained will bind, and the rights hereunder will inure to, the respective heirs, personal representatives, successors and assigns of Bank and Mortgagor, subject to the provisions of Paragraph 18 hereof. All covenants and agreements of Mortgagor will be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Bank may act through its employees, agents or independent contractors as authorized by Bank. The captions and headings of the Paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

21. **Governing Law; Severability.** This Instrument will be governed by the laws of the State of Indiana. In the event that any provision of this Instrument or the Note conflicts with applicable law, such will not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge provided for in this Instrument or in the Note, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Mortgagor is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Bank in excess of the amounts payable to Bank pursuant to such charges as reduced will be applied by Bank to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as other charges levied in connection with such indebtedness which constitutes interest, will be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

22. **Waiver of Statute of Limitations.** Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

23. **Waiver of Marshalling.** Notwithstanding the existence of any other security interest in the Property held by Bank or by any other party, Bank will have the right to determine the order in which any or all of the Property and Mortgagor's general intangibles will be subjected to the remedies provided herein. Bank will have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property or Mortgagor's general intangibles and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

24. **Acceleration; Remedies.**

(a) **Acceleration.** Upon the occurrence of any Default, Bank, at Bank's option, may declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may foreclose this Instrument by judicial proceedings, and may invoke any other remedies permitted by applicable law or provided herein. Bank will be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, reasonable attorney's fees, appraisal fees, expert witness fees, costs of court reporters, travel expenses, costs of documentary evidence, abstracts and title reports.

(b) **Foreclosure.** When the Obligations become due, whether by acceleration or otherwise, Bank will have the right to foreclose the lien hereof in accordance with the laws of Indiana and to exercise any other remedies of Bank provided in this Mortgage and/or any of the other Loan Documents or which Bank may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there will be allowed and included as additional Obligations in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Bank for reasonable 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 Bank 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 Property, and any other expenses and expenditures which may be paid or incurred by or on behalf of Bank and permitted by the laws of Indiana to be included in such decree. All expenditures and expenses of the nature mentioned in this paragraph 24, and such other expenses and fees as may be incurred in the protection of the Property and rents and income therefrom and the maintenance of the lien of this Instrument, including the fees of any attorney employed by Bank in any litigation or proceedings affecting this Instrument or the Property, 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 Obligations and will be immediately due and payable by Mortgagor, with interest thereon at the applicable default rate until paid.

(c) **Right of Possession.** When the Obligations become due, whether by acceleration or otherwise, or if Bank otherwise has a right to institute foreclosure proceedings, Mortgagor will, forthwith upon demand of Bank, surrender to Bank, and Bank will be entitled to be placed in possession of, the Property as provided in the statutes relating to the foreclosure of mortgages, and Bank, in its discretion upon notice to Mortgagor, may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property 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 Bank and under the powers herein granted:

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

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

(iii) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Property, to the payment of Taxes, Premiums and other charges applicable to the Property, or in reduction of the Obligations in such order and manner as Bank will select.

Without limiting the generality of the foregoing, Bank 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 Bank a mortgagee in possession in the absence of the actual taking of possession of the Property.

(d) **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 Bank, and at Bank's sole option, a receiver of the Property. 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 Property or whether the same will be then occupied as a homestead or not. 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 Property 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 Instrument 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 Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the 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 Property 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 Property during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Property in payment in whole or in part of: (a) the Obligations or the indebtedness secured by a decree foreclosing this Instrument, 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.

(e) **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 Property will be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute Obligations in such order as Bank elects, with interest thereon as herein provided; and lastly any surplus to Mortgagor and its successors and assigns, as their rights may appear.

(f) **Insurance During Foreclosure.** All rights and powers of Bank under paragraph 24(c) hereof of this Instrument will, from and after the entry of judgment of foreclosure, continue in the Bank 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, Bank may, without the consent of Mortgagor, assign any Insurance Policies to the purchaser at the sale, or take such other steps as Bank may deem advisable to protect the interest of such purchaser.

(g) **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 Property, 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 Property 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 Property 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 Bank, 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.

25. **Release.** Upon payment of all sums secured by this Instrument, Bank will release this Instrument without charge to Mortgagor.

26. **Other Encumbrances.** Mortgagor will not further mortgage or encumber the Property in any way without the express written consent of the Bank, except as otherwise permitted under Paragraph 4 of this Instrument.

27. **Waiver of Valuation and Appraisement.** Mortgagor hereby waives all right of valuation and appraisement.

28. **Future Advances.** Upon request of Mortgagor, Bank, at Bank's option so long as this Instrument secures indebtedness held by Bank, may make future advances to Mortgagor. Such future advances, with interest thereon, will be secured by this Instrument.

29. **Representation and Review.** Mortgagor acknowledges that Mortgagor is represented by legal counsel, and that before executing and delivering the Note, this Instrument and all other agreements, instruments and Loan Documents, such documents, and the rights of Mortgagor, were fully explained to Mortgagor by such counsel; and that Mortgagor understands the nature and extent of the obligations hereby and thereby undertaken.

30. **Rights under Other Loan Documents.** All rights, remedies and benefits of Bank under and with respect to this Instrument are in addition to, and not in limitation of, all rights, remedies and benefits of Bank arising under the Loan Agreement and/or any of the other Loan Documents

31. **WAIVER OF TRIAL BY JURY.** MORTGAGOR AND BANK EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS MORTGAGOR AND MORTGAGEE THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO

THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.



EXHIBIT A

LEGAL DESCRIPTION

Parcel 1: Lots 1, 2, 3, 4, 5, 12, 13, 14, and Outlot "A", White Oak Estates of Highland, Block Four, an Addition to the Town of Highland, as per plat thereof, recorded in Plat Book 83, page 21, in the Office of the Recorder of Lake County, Indiana.

Parcel 2: Lots 6, 7, 8, 9, 10, 11, 15 and 16, White Oak Estates of Highland, Block Four, an Addition to the Town of Highland, as per plat thereof, recorded in Plat Book 83, page 21, in the Office of the Recorder of Lake County, Indiana.



**EXHIBIT B
PERMITTED EXCEPTIONS**

1. Real Property Taxes and assessments for 2014 (payable 2015), and subsequent years.
2. Rights of tenants under unrecorded residential leases.
3. Lease by and between Network Multi-Family Security Corporation, Lessor(s), and ATG Development Company 5, LLC, Lessee(s), dated September 18, 1997 as evidenced by a Memorandum of Lease dated September 18, 1997 and recorded January 8, 1998 as Document No. 98001589.
4. Easement for pipe line in favor of The Texas-Empire Pipe Line Company, a Delaware corporation, dated January 18, 1950 and recorded July 12, 1950 in Miscellaneous Record 534, page 283 as Document No. 480510.
An Assignment of the above Grant to Amoco Pipeline Company, a Main corporation, was recorded August 30, 1984 as Document No. 771620.
Agreements and partial releases of the above was recorded July 13, 1993 as Document No. 93044888, Recorded August 20, 1993 as Document No. 93054762 and recorded May 24, 1995 as Document No. 95028598.
5. Easement for Electrical Lines in favor of Northern Indiana Public Service Company, an Indiana corporation, and to its successors and assigns, dated December 8, 1954 and recorded December 14, 1954 in Miscellaneous Record 620, page 453, as Document No. 803587.
6. Terms and provisions of a Sanitary Sewer Easement Agreement dated August 5, 1994 and recorded August 11, 1994 as Document No. 94057398, made by and between Lake County Trust company, as Trustee under Trust Agreement dated December 29, 1981, as amended, known as Trust Number 3188 and the Town of Highland.
7. Terms and provisions of a Sanitary Sewer Easement Agreement dated August 5, 1994 and recorded August 11, 1994 as Document No. 94057438, made by and between Lake County Trust Company, as Trustee under Trust Agreement dated December 19, 1981, as amended, known as Trust Number 3189, and The Town of Highland.
8. Terms and provisions of Nonexclusive Easement Agreement dated November 23, 1998 and recorded December 11, 1998 as Document No. 98099210, made by and between ATG Development Company 5, LLC, an Indiana limited liability company and Meijer, Inc., a Michigan Corporation.
9. Utility easements as shown and granted on the plat of subdivision.
10. Grant of Easement recorded January 23, 2013 as Instrument Number 2013 005837, made by Embassy Place, LLC in favor of Comcast Illinois/Indiana/Michigan, Inc., its successor and assigns.