

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2016 036109

2016 JUN 10 AM 10:20

MICHAEL B. BROWN
RECORDER

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(Space Above This Line For Recording Data)

Commercial Mortgage
(including assignment of leases and rents)
(OPEN-END CREDIT - THIS MORTGAGE SECURES FUTURE ADVANCES)

This Mortgage ("Security Instrument") is given on 5/10/2016
The mortgagor is Vater Construction LLC, INC. EV

_____ ("Mortgagor"),
whose address is 12640 Pennsylvania Street, Crown Point, IN 46307

This Security Instrument is given to Tech Credit Union
which is organized and existing under the laws of the United States of America _____ ("Lender"),
and whose address is 10951 Broadway, Crown Point, IN 46307

This Mortgage is given in consideration of the principal sum of Seventy Five Thousand Eight Hundred Twenty Nine 80/100 Dollars (U.S. \$ 475,829.90),

advanced or to be advanced by Lender to Mortgagor, as may be evidenced by a promissory note or notes or any other evidence of debt of any kind of even, subsequent or prior date, including future advances, and including any line of credit agreement under which Lender makes future advances or re-advances. Debt secured by this Security Instrument may also be the result of the guarantee of Mortgagor given to support an obligation owed to Lender by another person or entity. In addition, this Security Instrument also secures all other indebtedness, regardless of amount, of every and any kind now or hereafter owing from Mortgagor no matter how created or arising, and whether contingent, secondary or primary, together with interest and charges as provided in the evidence of or which might arise from such indebtedness, and secures the agreements and covenants of this Security Instrument, any promissory notes or any other mortgage, deed of trust, trust indenture, construction loan agreement, assignment of leases and rents, loan agreement, security agreement, and any other agreement of any kind, whether written or oral, which presently exists or arises hereafter between Mortgagor and Lender, all of which is referred to as "Indebtedness" in this Security Instrument. The full indebtedness, if not paid earlier, is due and payable on 6/15/2017 ("Maturity Date")

For this purpose, Mortgagor does hereby mortgage, warrant, grant and convey to Lender the following described property located in _____ Lake _____ County, Indiana:

Lot 43 in The Resubdivision of Lots 43 and 44 in The Galleries Unit 2-Phase 2, as per plat thereof, recorded in Plat Book 108 page 76, in the Office of the Recorder of Lake County, Indiana.

which has the address of 2800 133rd Lane _____ Crown Point _____
Indiana 46307 _____ ("Property Address"). [Street] [City]
[Zip Code] _____

FIDELITY NATIONAL
TITLE COMPANY
92016-0531

26.
PW
[Signature]

Together with all improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property, all hereditaments, easements, rents and profits, privileges, and equipment or other personal goods of any description used in connection with the Property and all rights to make divisions of the land which is part of the Property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property."

Mortgagor covenants that Mortgagor is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, and if this Mortgage is on a leasehold, that the ground lease is in full force and effect without modification except as now disclosed to Lender and is not in default on the part of either lessor or lessee, and that the Property is unencumbered except for encumbrances of record. Mortgagor warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

Mortgagor and Lender covenant and agree as follows:

1. **Promise to Pay.** Mortgagor promises to pay the Indebtedness, together with any interest, prepayment, fees, and late charges associated with any Indebtedness and to adhere to the terms and conditions related to any indebtedness.

2. **Application of Payments.** Unless a specific order is required by law, Lender may apply any payments made by Mortgagor in whatever order Lender chooses.

3. **Additional Collateral.**

(A) **Personal Property and Fixtures.** The Indebtedness shall be secured by and Mortgagor grants Lender a security interest in any personal property or fixtures which are presently or hereafter situated, located, or affixed on or used in connection with the Property.

(B) **Deposits.** The Indebtedness shall be secured by and Mortgagor grants Lender a security interest in any of Mortgagor's funds on deposit with Lender.

(C) **Leases and Rents.** The Indebtedness shall be secured by and Mortgagor grants Lender a security interest in and assigns all of the leases, rents, profits and income under any lease related to the Property, and any extensions or renewals of such leases or subleases, whether now existing or hereafter coming into existence. This assignment of leases and rents shall run with the land and be valid against the Mortgagor or against any other person or entity claiming an interest through the Mortgagor, from the time this Mortgage is recorded. Mortgagor promises to perform any of Mortgagor's obligations as a landlord under any lease related to the Property. Mortgagor will not terminate, modify or amend the terms of any lease without the prior written consent of Lender. At Lender's request, Mortgagor will provide Lender with copies of any lease related to the Property, whether now existing or hereafter coming into existence. If any action to enforce this Mortgage, including foreclosure, shall occur, the assignment of leases and rents shall continue to be operative. This assignment of leases and rents shall also be operative during any period of receivership created under this Mortgage, and during any period of redemption related to an action to enforce this Mortgage. This assignment is provided to Lender solely as collateral security and shall not be construed to obligate Lender to perform any of the terms, agreements, covenants, or undertakings of the Mortgage contained in any assigned lease, provided, that Lender at its exclusive and sole option, may do so. If Lender takes possession of the Property by any means, including the exercise of a remedy related to Mortgagor's default, Lender may then collect the rents and income from the Property, and may rent or lease the Property or any portion of the Property under terms that Lender may, in its sole and exclusive judgment, deem appropriate, and apply all of the proceeds of such revenue to the preservation of the Property, or the payment of taxes, or the payment of insurance premiums protecting the Property, or the payment of the Indebtedness. If Lender exercises any of its rights under this provision, Mortgagor waives any otherwise applicable notice requirement to the extent such waiver is not prohibited by law.

(D) **Awards and Judgments.** The Indebtedness shall be secured by and Mortgagor grants Lender a security interest and assigns to the Lender any and all judgments, decrees, injury awards, damage awards, eminent domain

awards, tax refunds, or condemnation awards related to the Property and grants Lender the authority, at Lender's sole exclusive option, to apply any such revenue proceeds to the payment of the Indebtedness in any manner deemed appropriate by Lender.

(E) **Ground Lease.** The Indebtedness shall be secured by and Mortgagor grants Lender a security interest in and assigns to Lender any of Mortgagor's rights in any ground lease which might exist in relation to the Property. Lender shall have no responsibility or liability for any promises of Mortgagor set forth in any such ground lease.

4. Protection of the Property.

(A) **Waste.** The Mortgagor shall not commit any act or commission of waste, whether affirmative or passive, in relation to the Property. The Mortgagor will preserve and maintain the Property or any part of the Property in good repair and condition and will make any and all needed and proper repairs to the Property, and otherwise promises that the value of the Property shall not in any way be impaired. The failure to pay any taxes or insurance when due shall constitute a commission of waste on the Property. If any commission of waste on the Property occurs, the Lender, at its sole and exclusive option, shall be entitled to the appointment of a receiver under applicable law.

(B) **Hazardous Substances.** Mortgagor certifies to Lender that as to any real property that has been owned or occupied by the Mortgagor in the past, present or future, that such real estate has never been nor will in the future be allowed in any way or manner to be exposed to or contain environmentally harmful or hazardous substances as the same may be defined or regulated by any federal or state law or regulation which impacts such substances, other than has been now disclosed in writing to the Lender. In the event any party makes an assertion to the contrary, Mortgagor will immediately notify Lender in writing of such assertion. Mortgagor indemnifies and holds Lender and any of Lender's directors, officers, employees, agents, or assigns harmless from any and all liability, cost or expense of any type or nature, including reasonable attorney fees, which might be incurred directly or indirectly as a result of Mortgagor's involvement with environmentally harmful or hazardous substances as the same may be defined or regulated under any state or federal law or regulation.

(C) **Right of Inspection.** Lender may, as it solely deems appropriate, have the right to access and inspect the Property, any part of the Property, or related books, financial records, or documents, at any reasonable time. If the Lender determines that the Property or any part of the Property requires repair or maintenance which Mortgagor has failed to provide, Lender may, after providing reasonable notice to Mortgagor, enter upon the Property to perform such repair or maintenance, and the cost of such Lender action shall be added to the Indebtedness subject to the highest rate permitted by law, and will be payable by Mortgagor on demand.

(D) **Charges Against the Property.** Mortgagor shall pay when due all liens, encumbrances, assessments, taxes, and governmental charges related to the Property whether assessed against the Mortgagor or the Property. In this regard, the Mortgagor will not allow any act to be done which would impair the value of the lien of this Mortgage, provided, that the Mortgagor is not required to pay any tax, assessment, or governmental charge as long as the Mortgagor in good faith is disputing the validity thereof and provides satisfactory manner for payment to the Lender if the Mortgagor fails to prevail in any such dispute.

(E) **Property Insurance.** Mortgagor will keep the Property insured against such risks, with such carriers, and in such form as may be required by Lender in its sole and exclusive discretion, with Lender named as loss payee, or, if requested by Lender, mortgagee. Any insurer of the Property is directed to make any payment of loss directly to the Lender with the proceeds of such payment to be applied, at Lender's sole and exclusive option, to repair or replacement of the damage or, alternatively, to be applied to the Indebtedness, with any surplus to be paid by Lender to Mortgagor.

(F) **Compliance with Statutes and Regulations.** Mortgagor promises to comply with all existing and future statutes, regulations, ordinances and/or rules, of any local, state, or federal governmental authority which might relate in any way to the Property, including the use or occupancy of the Property.

(G) **Preservation of Property.** Mortgagor shall not remove any part of the Property from its present location, other than in relation to maintenance or replacement in the ordinary course of business. Mortgagor shall not sell or otherwise dispose of the Property or any of Mortgagor's interest in the Property without the prior written consent of Lender.

(H) **Further Documentation.** Mortgagor will fully cooperate with Lender in any manner and in all respects in relation to any further documentation which Lender in its sole and exclusive discretion may deem appropriate or necessary to complete, effectuate, or perfect Lender's interest in the Property. If Mortgagor fails or refuses to so cooperate, Lender, through any of its officers, employees, or agents is hereby appointed as the Mortgagor's true and lawful attorney-in-fact to perform any such obligation of Mortgagor, and any costs associated with such Lender action may be added to the Indebtedness subject to the highest interest rate permitted by law and shall be paid by Mortgagor on demand.

(I) **Escrow.** At Lender's request, Mortgagor will pay a pro rata portion of any taxes, assessments, property insurance premiums, and other charges related to the Property, as determined by Lender, so that Lender will have a fund on hand to pay such taxes, assessments, insurance premiums and other charges thirty days before any due date thereof. In the event such fund is insufficient to pay such taxes, assessments, insurance premiums and other charges related to the Property, Mortgagor, upon demand by Lender, shall pay Lender any shortfall.

(J) **Lender Action.** Lender may, at its sole and exclusive option, without demand or notice to Mortgagor, take whatever action it deems appropriate and necessary to protect its interest in the Property, including, but not limited to, the payment of taxes, assessments, insurance premiums, or other charges which Mortgagor fails to pay. Any sum so advanced may be added to the Indebtedness, and Lender shall be entitled to add interest to such sum at the highest rate permitted by law and shall be paid by Mortgagor on demand.

5. Cross Collateralization. Mortgagor acknowledges that it is the express intent of Mortgagor and Lender that all obligations of Mortgagor to Lender shall be cross collateralized, meaning, by way of example, that this Mortgage secures any and all obligations of Mortgagor to Lender however arising and whenever incurred.

6. Future Information. Mortgagor will provide Lender with financial or any other information related to Mortgagor's affairs or the Property, as may, from time to time, be reasonably be requested by Lender.

7. Estoppel Certificate. Mortgagor will supply Lender with an acknowledged estoppel certificate reflecting the Indebtedness and any and all rights of setoff, counterclaims or defenses which exist against the Indebtedness, at Lender's request.

8. Construction Loan. If this Mortgage is given in relation to a construction loan to Mortgagor, Mortgagor promises to comply with the provisions of any construction loan agreement. If such construction loan agreement exists, it is incorporated by reference into this Mortgage.

Any disbursements of construction loan proceeds by Lender to Mortgagor become a part of the Indebtedness under this Mortgage and shall bear interest at the interest rate provided for in the evidence of Indebtedness related to such disbursement. Any default under the terms of any construction loan agreement associated with this Mortgage constitutes a default of this Mortgage and Lender may exercise any right or remedy provided in this Mortgage related to default, or as may otherwise be provided by law.

9. Ground Lease. If any ground lease exists related to the Property, Mortgagor promises to comply with all provisions of such ground lease and will provide Lender with any notice of a default on the part of the Lessor. If a ground lease exists, and an option to renew or extend occurs during the time any Indebtedness secured by this Mortgage is owed, Mortgagor agrees to exercise such option or extension and to provide Lender with evidence thereof. Mortgagor shall not amend or modify any ground lease related to the Property, or cancel, or terminate its interest in such ground lease without the prior written consent of Lender. Mortgagor will provide Lender with copies of any insurance policies related to any ground lease associated with the Property at Lender's request.

10. Default.

(A) **Events of Default.** The following events shall constitute a default of this Mortgage:

- (1) Mortgagor's failure to pay principal, interest or other charges included within the scope of Indebtedness when due;
- (2) Mortgagor's failure to keep any promise made in this Mortgage or in any other agreement with Lender, whether oral or written, out of which any Indebtedness arises;
- (3) A filing by or against the Mortgagor or any guarantor of any bankruptcy, receivership, or insolvency proceeding;
- (4) The filing of any form of tax lien, judgment, garnishment, or other charge against Mortgagor or any guarantor or any property of any kind owned by Mortgagor or any guarantor;
- (5) Any assignment made by the Mortgagor for the benefit of its creditors;
- (6) The death or insolvency of any guarantor of any of the Indebtedness;
- (7) The death of any partner if the Mortgagor is a partnership or the death of the Mortgagor if the Mortgagor is a natural person;
- (8) The merger, consolidation, dissolution, cessation or conveyance of a portion of the ownership of the Mortgagor or of any guarantor of any of the Indebtedness if the Mortgagor or any guarantor is a corporation.
- (9) Any sale or transfer by the Mortgagor of any interest whatsoever in the Property, whether by assignment, deed, land contract, sales contract, contract of sale, or any other form of conveyance.
- (10) The failure to pay any form of loan or other monetary obligation to Lender or any other person or entity in an as agreed manner pursuant to underlying contractual terms.
- (11) Lender, at its sole and exclusive option, subjectively deems itself insecure at any time for any reason whatsoever.

(B) **Acceleration.** If Mortgagor commits any act of default as set forth under the terms of this Mortgage, Lender, at Lender's sole and exclusive option, may declare all of the Indebtedness secured by this Mortgage to be immediately due and payable without further demand, subject to the requirements of any applicable law.

(C) **Foreclosure.** If Lender demands payment in full of the Indebtedness due to Mortgagor's default and is not then immediately paid, then if permitted by law, Lender may, at its sole and exclusive option, foreclosure this Mortgage by judicial proceeding, or exercise any other remedies provided for by law for the foreclosure of mortgages on real property.

(D) **Attorneys' Fees.** Mortgagor shall be liable for all costs and expenses incurred by Lender in pursuing any remedy permitted under this Mortgage, including, but not limited to, attorney fees and costs of documentary evidence.

(E) **Cumulative Remedies.** Any remedy or right Lender has under this Mortgage shall be cumulative and shall not be exclusive of one or the other or of any other remedy provided for by law, and all rights and remedies may be exercised by Lender either successively or concurrently.

(F) **Waiver of Statute of Limitations.** Mortgagor expressly waives the right to assert any statute of limitations which might otherwise affect Lender's right to enforce the lien it has upon the Property under this Mortgage.

(G) **Waiver of Valuation and Appraisalment.** Mortgagor waives all right of valuation and appraisalment.

(H) **Notices.** Any notices required to be provided to Mortgagor shall be deemed given if mailed via first class mail to Mortgagor's address as shown in this Mortgage.

(I) **Cross Default.** Mortgagor acknowledges that it is the express intent of Mortgagor and Lender that any default under the provisions of this Mortgage shall constitute a default of any other agreement which may now exist or hereafter come into existence between Mortgagor and Lender, and, that any default under any such other agreement shall constitute a default of this Mortgage.

11. **Conflicts.** Mortgagor certifies and warrants that no promise, provision or covenant made by Mortgagor in this Mortgage, or in any other document related to this Mortgage, causes any conflict with the terms of any document or agreement Mortgagor may have with any other person or entity.

12. **Forbearance.** Lender does not lose any of its rights under this Mortgage if Lender delays enforcement. No forbearance or extension of time of the payment of any Indebtedness shall operate to discharge, waive, release, change, or modify the liability and obligations of Mortgagor or Mortgagor's obligation to continue performance under the terms of this Mortgage.

13. **Lender Assignment.** Lender may assign any of its rights or interest in this Mortgage at its sole and exclusive option. The term "Lender", as used in this Mortgage, shall include any successor or assign of Lender.

14. **Releases.** Lender may, at its sole and exclusive option, reduce any of the Indebtedness secured by this Mortgage, release any person or entity liable to repay the Indebtedness, or release any interest Lender has in the Property. Any such action by Lender shall have no effect on the Mortgagor's remaining obligations under this Mortgage or under any other agreement Mortgagor has with Lender.

15. **Headings.** The headings preceding any text or verbiage in this Mortgage are for general convenience in identifying topics, but have no limiting impact whatsoever on any text or verbiage which follows any particular heading.

16. **Governing Law.** Mortgagor understands and agrees that this Mortgage will be governed by the laws of the State of Indiana except to the extent that federal law controls. If any provision of this Mortgage shall be prohibited by governing law, such prohibition shall apply only to the affected provision and all other provisions of this Mortgage shall remain in full force and effect.

17. **Future Advances and Readvances.** If the preceding this paragraph is marked (e.g.) then Lender is contractually obligated to make advances and readvances to Mortgagor consistent with the terms of a line of credit agreement secured by this Mortgage up to a maximum aggregate amount of \$ _____.

18. **Release.** Upon payment of all sums secured by this Security Instrument and if applicable, termination of the ability of Mortgagor and any third party whose Indebtedness is secured by this Security Instrument to obtain further advances under any line of credit or other agreement under which future advances or re-advances secured by this Security Instrument may be made, Lender shall release this Security Instrument and shall surrender all notes evidencing debt secured by this Security Instrument to Mortgagor, if Mortgagor is legally entitled to them. Lender may charge such person or persons a reasonable fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.



