

**This Document Prepared By
and After Recording Return to:**

Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601
Attention: Oren Fishman, Esq.

2020-044423

2020 Jul 15

8:47 AM

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
MICHAEL B BROWN
RECORDER

Address of Property:

2555 E. 15th Avenue, Gary, IN

PIN No.:

Parcel No. 001-25-40-0053-0025 State ID
No. 45-08-11-451-003.000-004



BANK OF AMERICA, N.A.,
a national banking association,
as Administrative Agent

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ck. 007357
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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as from time to time amended, modified, restated, supplemented and in effect, the "Mortgage") is made as of this 26th day of June, 2020, by and between OZINGA READY MIX CONCRETE, INC., an Illinois corporation (the "Mortgagor"), whose address is 19001 Old LaGrange Road, Mokena, Illinois, and BANK OF AMERICA, N.A., a national banking association (the "Mortgagee"), whose address is 135 South LaSalle Street, 12th Floor, Chicago, IL 60603, in its capacity and as agent for the Lenders (as defined herein).

RECITALS

WHEREAS, Mortgagor is the owner of that certain real property situated in Lake County, in the State of Indiana (the "State"), more fully described in Exhibit A attached hereto and made a part hereof (the "Real Estate");

WHEREAS, Mortgagor and Mortgagee are parties to that certain Third Amended and Restated Credit Agreement dated as of April 26, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, pursuant to such Credit Agreement, Mortgagee and certain financial institutions (collectively, the "Lenders") have made and may in the future make certain term loans, revolving loans (including letters of credit), advances and other financial accommodations to Mortgagor and various other borrowers party to the Credit Agreement (the "Borrowers") in the aggregate principal amount of up to One Hundred Eighty Million and 00/100 Dollars (\$180,000,000.00) (collectively, "Loans" and each a "Loan") upon the terms and subject to the conditions set forth in the Credit Agreement;

WHEREAS, capitalized terms used herein without definitions shall have the meaning assigned to such terms in the Credit Agreement;

WHEREAS, the Loans are evidenced by certain promissory notes executed by the Borrowers (the "Notes");

WHEREAS, Mortgagor wishes to provide further assurance and security to Mortgagee and, as a condition to Mortgagee and the Lenders continuing to make loans, advances and other financial accommodations to Borrowers under the Credit Agreement, Mortgagee and the Lenders are requiring that Mortgagor grant to Mortgagee a mortgage lien on and security interest in the Premises (as hereinafter defined) to secure the obligations of the Borrowers under the Loan Documents;

WHEREAS, this Mortgage is being given by Mortgagor to secure the Mortgagor's obligations under the Loan Documents and the performance of all terms, covenants, conditions, agreements and liabilities of Mortgagor contained in this Mortgage;

WHEREAS, Mortgagor derives substantial direct and indirect economic benefit from the making of the Loans and other benefits to be provided to the Borrowers under the Credit Agreement, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged;

WHEREAS, the total amount of Indebtedness secured by this Mortgage may decrease or increase from time to time but the total unpaid principal balance so secured at any one time shall not exceed the lesser of: (i) the maximum principal sum permitted by the laws of the State; or (ii) One Hundred Eighty Million and 00/100 Dollars (\$180,000,000.00), together with interest thereon and any and all disbursements made by Mortgagee for the payment of taxes, or insurance on the Real Estate covered by the lien of this Mortgage and for reasonable attorneys' fees, loan commissions, service charges, liquidated damages, expenses and court costs incurred in the collection of any or all of such sums of money; and

WHEREAS, this Mortgage also secures the payment of and includes all amounts owing in respect of all future or further advances of the Loans as shall be made at all times, regardless of whether proceeds of the Loans have or shall be disbursed by Mortgagee herein or its successors or assigns, to and for the benefit of Mortgagor, its successors or assigns, to the same extent as if such future advances were made on the date of execution of this Mortgage. Such further or future advances shall be considered obligatory advances and the same shall bear interest at the same rate as specified in the Credit Agreement unless such interest rate shall be modified by subsequent agreement. The parties hereby acknowledge and intend that all advances, including future advances whenever hereafter made, shall be secured by this Mortgage.

AGREEMENT

NOW, THEREFORE, for and in consideration of: (i) the Loans, (ii) other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and (iii) the Recitals set forth above (such Recitals being incorporated herein and made a part hereof by this reference) and to secure the Obligations (as defined below) Mortgagor agrees as follows:

1. Grant. Mortgagor does hereby WARRANT, MORTGAGE, GRANT A SECURITY INTEREST, REMISE, ASSIGN, TRANSFER AND CONVEY unto Mortgagee, its successors and assigns, its fee simple interest in the Real Estate, together with all right, title and interest of Mortgagor (including, but not limited to, after acquired title or reversion) in and to the following property (collectively, with the Real Estate, the "Premises"):

(a) all buildings and other improvements of every kind and description now or hereafter erected or placed on the Real Estate and all materials intended for construction, reconstruction, alteration and repair of all such buildings and improvements;

(b) all tenements, easements, fixtures and appurtenances pertaining or belonging to the Real Estate whether now held or hereafter acquired, including, but not limited to, all easements, licenses, privileges and appurtenances created pursuant to any reciprocal easement agreement or declaration of covenants, conditions and restrictions now existing or hereafter created, together with all estates, interests, rights, titles, claims or demands which Mortgagor now has or may hereinafter acquire in the Premises, including, but not limited to, any and all claims, awards, proceeds or payments, including interest thereon, and the right to receive the same, which may be made to or for the account of Mortgagor with respect to the Premises as a result of (i) the exercise of the right of eminent domain, (ii) the alteration of the grade of any street, (iii) any casualty or loss of or damage to any building or other improvement included in or on the Premises, (iv) any other injury to or decrease in the value of the Premises, or (v) any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Premises;

(c) all leases, lettings, subleases, agreements for use and occupancy, concessions, licenses and contracts of or with respect to any or all of the Real Estate, whether written or oral (individually a "Lease" and collectively, the "Leases"), and (i) all rents, issues and profits thereof accruing and to accrue from the Real Estate and the avails thereof (which are pledged primarily and on a parity with said Real Estate and not secondarily), (ii) any and all guarantees of any and all covenants, agreements and obligations of tenants under each Lease, (iii) all sums which may be due and payable under any guaranty of any Lease, including, but not limited to, all such rents, issues, profits which are or may become due and payable (including those which are or may accrue or be paid during or after the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) and (iv) any and all security and other deposits made pursuant to or contemplated by the terms and provisions of each Lease (the matters referred to in clauses (i), (ii), (iii) and (iv) above hereinafter referred to as the "Rents"); it being the intention hereby to establish an absolute, unconditional and presently effective transfer and assignment of all Leases and all Rents thereunder (and not merely a security interest) and it shall not be necessary for Mortgagee to institute any type of legal proceedings or take any other legal action whatsoever to enforce the assignment provisions of this paragraph;

(d) all fixtures, apparatus, machinery, equipment, goods, inventory, systems and articles now or hereafter in or on the Real Estate and used or useful in connection with the Real Estate, and any replacements thereof, accessions thereto and all proceeds thereof, but expressly excluding any interest of Mortgagor in any vehicles, trucks or rolling stock located in or on the Real Estate from time to time;

(e) all general intangibles, accounts, fees, booking deposits, accounts receivable, instruments, contract rights, licenses, chattel paper, deposit accounts, securities,

unearned premiums accrued, accruing or to accrue under insurance policies, insurance policies, advertising material, guaranties, warranties, plans and specifications, permits, licenses, soil tests, environmental reports, appraisals and any other documents, materials and other property of any kind now or hereafter existing in connection with the use of the Premises or the operation and maintenance of the Premises or the business of Mortgagor (including, but not limited to, all cash, accounts, deposits and other property now or hereafter in possession of Mortgagee);

(f) all other property and assets of Mortgagor of whatever nature whether real, fixtures, personal and intangible, including, but not limited to, all right, title and interest of Mortgagor in and to any and all property in which Mortgagor has an interest pursuant to any Lease, it being understood that the above enumeration of any specific articles of property shall in no way result in or be held to exclude any items of property not specifically mentioned; and

(g) all appurtenances and additions to and substitutions or replacements for, and proceeds and products of, the foregoing clauses (a) through (f), whether currently owned or hereafter acquired, together with all books and records (including computer records) relating to or employed in any business now or hereafter operated on the Premises.

TO HAVE AND TO HOLD the Premises unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

2. Security Agreement and Fixture Filing. All of the land, estate and property hereinabove described, real, personal, intangible and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Real Estate mortgaged hereby and to be appropriated to the use of the Premises, and shall, for the purposes of this Mortgage, be deemed to be real estate and conveyed and mortgaged hereby. If an Event of Default occurs, Mortgagee may proceed under the Uniform Commercial Code in effect or as amended from time to time in the jurisdiction where the Premises is located or under similar or replacement statutes hereafter enacted (collectively, the "Code") as to any personal property or may proceed as to both the real and personal property in accordance with the rights and remedies in respect of real property. As to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of said Real Estate, this Mortgage is hereby deemed to be, as well, a security agreement under the Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as secured party, securing the Obligations, and Mortgagee shall have in addition to its rights and remedies hereunder, all rights and remedies of a secured party under the Code and the Uniform Commercial Code. As to any such property which the Code classifies as fixtures, this Mortgage instrument shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Uniform Commercial Code (and any similar applicable or corresponding reference under the Code), which shall be deemed a continuous, perfected fixture filing pursuant to Section 9-403 of the Uniform Commercial Code (and any similar applicable or corresponding reference under the Code).

3. Warranty of Title. Mortgagor represents and warrants (a) that Mortgagor is lawfully seized of fee simple title to the Premises, (b) that the Premises is unencumbered, except for those matters listed on Exhibit B hereto ("Permitted Exceptions"), and (c) that it has good right, full power and lawful authority to convey and mortgage the Premises. Mortgagor agrees to forever defend the Premises and the quiet and peaceful possession of the Premises against the lawful claims of all persons whomsoever.

4. Obligations Secured. This Mortgage is to secure:

(a) the due and punctual payment of all indebtedness evidenced by the Notes, including any future advances, plus all interest accruing thereon (including, but not limited to, all interest which may accrue or be paid during or after the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), and all fees due and payable in connection therewith, and all other Loan Documents, and amounts due thereunder and otherwise secured hereby under law when and as due, whether at maturity, acceleration, upon one or more dates set for payment or otherwise;

(b) the due and punctual payment of all other monetary obligations of Mortgagor to Mortgagee under this Mortgage, the Notes and the other Loan Documents, whether now existing or hereafter arising;

(c) the due and punctual performance by Mortgagor of all other covenants, agreements and obligations on the part of Mortgagor under this Mortgage, the Notes, and the other Loan Documents, whether now existing or hereafter arising;

(d) any renewals, extensions, restatements, supplements, amendments or modifications of this Mortgage, the Notes, and the other Loan Documents.

The foregoing items set forth in clauses (a) through (d) of this Section 4 of this Mortgage are hereinafter collectively called the "Obligations."

5. Maintenance, Repair and Restoration of Improvements; Payment of Liens.

(a) Mortgagor shall (i) promptly repair, restore or rebuild any buildings or improvements now or hereafter located on the Premises which may become damaged or be destroyed; (ii) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other Liens of any kind or nature whatsoever except Permitted Exceptions; (iii) pay when due any indebtedness which may be secured by a mortgage on the Premises, whether senior or junior to this Mortgage and whether permitted by the terms hereof or otherwise, and comply with all requirements of all loan documents evidencing or securing such indebtedness, and upon request, exhibit satisfactory evidence of the discharge of any such mortgage to Mortgagee; (iv) complete any other improvements at any time in the process of erection upon the Premises; (v) substantially comply, in all material respects, with all requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (vi) make no material alterations adverse to the Premises or its functionality

except as required by law or municipal ordinance; (vii) suffer or permit no change in the general nature of the occupancy or use of the Premises; (viii) initiate or acquiesce in no zoning variation or reclassification without Mortgagee's prior written consent; and (ix) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof, and pay, perform, satisfy and discharge each of the Obligations when required to do so under the terms of this Mortgage, the Notes and the other Loan Documents. Mortgagor represents and warrants that the Premises and all improvements thereon are, and covenants that during the term hereof the Premises and all improvements thereon will be, in substantial compliance in all material respects with all zoning, building, health and safety codes, laws, rules and regulations, including but not limited to, the Americans with Disabilities Act.

(b) Notwithstanding anything in Section 5(a)(ii) of this Mortgage to the contrary, Mortgagor may, in good faith and with due diligence, contest the validity or amount of any lien, and defer payment and discharge thereof during the pendency of such contest; provided, however, that: (i) such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) within thirty (30) days after Mortgagor has first learned of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; and (iii) subject to the last sentence of this Section 5(b), Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, a sum of money which shall be sufficient in the reasonable judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and Mortgagor shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the reasonable judgment of Mortgagee, such increase is advisable. If Mortgagor shall: (x) fail to prosecute such contest with reasonable diligence, or (y) fail to maintain sufficient funds on deposit as hereinabove provided, then Mortgagee may, at its option and after ten (10) days prior notice to Mortgagor (during which time Mortgagor may cure such failures), apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided no default has occurred hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made. In lieu of the cash deposit described above, Mortgagor may deliver to Mortgagee either an amendment to or endorsement of the title insurance policy or a payment bond from a surety satisfactory to Mortgagee; provided, however, that such amendment, endorsement or bond shall insure over, or indemnify Mortgagee against, the Lien which Mortgagor is contesting as aforesaid, and shall otherwise be in form and substance satisfactory to Mortgagee.

6. Payment of Impositions.

(a) Mortgagor shall pay or cause to be paid, before the due date thereof, all general real estate taxes, special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises (collectively, "Impositions"), and shall, upon written request, promptly furnish to Mortgagee duplicate receipts evidencing such payment. If Mortgagor wishes to contest any such Impositions, Mortgagor may do so only by paying such taxes or assessments in full under protest in the manner provided under applicable law.

(b) Mortgagor shall, at Mortgagee's option and request, upon the occurrence of an Event of Default, deposit with Mortgagee, on the first day of each month from and after the date of such request, an amount equal to one-twelfth (1/12th) of (a) the annual Impositions, and (b) the annual premiums for the insurance required to be provided hereunder with respect to the Premises (such premiums for insurance being hereinafter referred to as "Insurance Premiums"). The amount of annual Impositions and Insurance Premiums, when unknown, shall be estimated by Mortgagee, based on one hundred ten percent (110%) of the most recent actual amounts. Such deposits shall be used by Mortgagee to pay Impositions and Insurance Premiums when due. From time to time, on demand, Mortgagor shall pay to Mortgagee additional sums sufficient to permit payment of the next due installments of Impositions and Insurance Premiums, if, and to the extent that, the required monthly deposits thereafter falling due before the respective payment dates would otherwise be insufficient to permit the full payment thereof. Upon any failure of Mortgagor to make any payment of the Obligations when due and payable or to perform any of the Obligations in accordance with the provisions of this Mortgage or any other Loan Document and following the giving of any required notice and the expiration of any applicable grace or cure period, Mortgagee may apply any funds deposited with Mortgagee for Impositions or Insurance Premiums to the payment of any of the Obligations or to the performance of any such Obligations. All sums deposited pursuant to this Section 6(b) shall be deposited in interest-bearing escrow accounts by Mortgagee in accordance with Mortgagee's customary practice. Subject to the terms and conditions of the two next preceding sentences, upon an assignment of this Mortgage, Mortgagee shall have the right to pay over the entire balance of any sums deposited pursuant to this Section 6(b) and then in its possession to Mortgagee's assignee, and, upon notice to Mortgagor, Mortgagee shall be completely released from all liability with respect to such sums and Mortgagor shall look solely to Mortgagee's assignee with respect thereto. The foregoing provisions shall apply to every transfer of such deposits to a new assignee. Upon payment of the entire amount of the Obligations and performance of the Obligations in accordance with the provisions of this Mortgage and the other Loan Documents, or, at the election of Mortgagee, at any prior time, the balance of the deposits then in Mortgagee's possession shall be paid over to the record owner and the Premises. Mortgagor, at Mortgagee's request, shall make the aforesaid deposits with such services or financial institution as Mortgagee from time to time shall designate.

7. Insurance.

(a) Mortgagor shall provide and keep in full force and effect, or require to be provided and kept in full force and effect, for the benefit of the Mortgagee, the insurance

required under the Credit Agreement. Each of the policies so required shall name Mortgagee as mortgagee and loss payee under a standard non-contributory mortgagee and lender loss payable clause, and shall provide that Mortgagee shall receive not less than thirty (30) days written notice prior to cancellation. The proceeds of the policies described above shall be payable to Mortgagee, and shall be delivered to Mortgagee, and such proceeds (after deducting Mortgagee's costs and expenses of obtaining such proceeds) shall be applied by Mortgagee, at Mortgagee's sole option, either (i) to the full or partial payment or prepayment of the Obligations, or (ii) to the repair and/or restoration of the Premises damaged or taken.

(b) Notwithstanding the foregoing, Mortgagee agrees that Mortgagee shall make the net proceeds of insurance (after payment of Mortgagee's costs and expenses) available to Mortgagor for Mortgagor's repair, restoration and replacement of the Premises damaged or taken on the following terms and subject to Mortgagor's satisfaction of the following conditions:

(i) At the time of such loss or damage and at all times thereafter while Mortgagee is holding any portion of such proceeds, there shall exist no Event of Default;

(ii) The Premises for which loss or damage has resulted shall be capable of being restored to its pre-existing condition and utility in all material respects with a value equal to or greater than prior to such loss or damage and shall be capable of being completed prior to the Maturity Date;

(iii) Within sixty (60) days from the date of such loss or damage Mortgagor shall have given Mortgagee a written notice electing to have the proceeds made available for such purpose;

(iv) Within sixty (60) days following the date of notice under the preceding subparagraph (iii) and prior to any proceeds being disbursed to Mortgagor, Mortgagor shall have provided to Mortgagee all of the following:

(A) complete plans and specifications for restoration, repair and replacement of the Premises damaged to the condition, utility and value required by (ii) above,

(B) if loss or damage exceeds five percent (5%) of the replacement cost of the Premises, as determined by Mortgagee, at its option either from the most recent appraisal received and approved by Mortgagee or from a current estimate of a licensed architect approved by Mortgagee, then fixed-price or guaranteed maximum cost bonded construction contracts for completion of the repair and restoration work in accordance with such plans and specifications (Mortgagee will determine whether this subsection (B) is applicable upon Mortgagor's written request within fifteen (15) days following the last to occur of a written request of Mortgagor to make such determination and receipt of such

estimate from a licensed architect selected by Mortgagor and approved by Mortgagee),

(C) builder's risk insurance for the full cost of construction with Mortgagee named under a standard mortgagee loss-payable clause,

(D) such additional funds as in Mortgagee's reasonable judgment (and, if contracts for all of the work have been provided as required in (B) above, then based upon such contracts) are necessary to complete the repair, restoration and replacement (which shall be disbursed by Mortgagee prior to any disbursement of insurance proceeds), and

(E) copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications;

(v) Mortgagee may, at Mortgagor's expense, retain an independent inspector to review and approve plans and specifications and completed construction and to approve all requests for disbursement, which approvals shall be conditions precedent to release of proceeds as work progresses;

(vi) No portion of such proceeds shall be made available by Mortgagee for architectural reviews or for any other purposes which are not directly attributable to the cost of repairing, restoring or replacing the Premises for which a loss or damage has occurred unless the same are covered by such insurance;

(vii) Provided Mortgagee makes such insurance proceeds available to Mortgagor, Mortgagor shall commence such work within one hundred twenty (120) days of such loss or damage and shall diligently pursue such work to completion;

(viii) Each disbursement by Mortgagee of such proceeds and deposits shall be funded subject to conditions and in accordance with disbursement procedures which a commercial construction lender would typically establish in the exercise of sound banking practices and shall be made only upon receipt of disbursement requests on an AIA G702/703 form (or similar form approved by Mortgagee) signed and certified by the Mortgagor and its architect and general contractor with appropriate invoices and lien waivers as required by Mortgagee;

(ix) Mortgagee shall have a first lien and security interest in all building materials and completed repair and restoration work and in all fixtures and equipment acquired with such proceeds, and Mortgagor shall execute and deliver such mortgages, deeds of trust, security agreements, financing statements and other instruments as Mortgagee shall request to create, evidence, or perfect such lien and security interest; and

(x) In the event and to the extent such proceeds are not required or used for the repair, restoration and replacement of the Premises for which a loss or damage has occurred, or in the event Mortgagee fails to timely make such election or having made such election fails to timely comply with the terms and conditions set forth herein and does not cure such noncompliance within thirty (30) days after written notice from Mortgagee, Mortgagee shall be entitled without consent from Mortgagor to declare the Loan and all interest thereon (without premium) immediately due and payable by written notice to Mortgagor, and with or without so accelerating the maturity of the Loan, Mortgagee may apply such proceeds, or the balance thereof, at Mortgagee's option either (i) to the full or partial payment or prepayment of the Obligations in the manner aforesaid, or (ii) to the repair, restoration and/or replacement of all or any part of such Premises for which a loss or damage has occurred.

Mortgagor appoints Mortgagee as Mortgagor's attorney-in-fact to cause the issuance of or an endorsement of any policy to bring Mortgagor into compliance herewith. At Mortgagee's sole option, Mortgagee may make any claim for, receive payment for, and execute and endorse any documents, checks or other instruments in payment for loss, theft, or damage covered under any such insurance policy; provided, however, in no event will Mortgagee be liable for failure to collect any amounts payable under any insurance policy. Notwithstanding the foregoing provisions of this Section, in the case of any loss or damage having a replacement and repair cost of \$100,000 or less, then so long as no Event of Default exists, Mortgagor shall have the sole right to make a claim for and receive payment for, such loss or damage; and Mortgagor agrees to promptly rebuild and restore the Premises to its pre-existing condition and utility.

(c) Mortgagor shall (i) pay as they become due all required insurance premiums, and (ii) not later than thirty (30) days prior to the expiration of each such policy, deliver a renewal policy or a duplicate original thereof and a certificate of insurance certified to Mortgagee by the insurer as being a true copy evidencing the insurance required to be provided hereunder, marked "premium paid", or accompanied by such other evidence of payment as shall be reasonably satisfactory to Mortgagee.

(d) If Mortgagor shall be in default of its obligation to so insure or deliver any such prepaid policy or policies of insurance to Mortgagee in accordance with the provisions hereof, Mortgagee, at its option and without notice, may effect such insurance from year to year, and pay the premium or premiums therefor, and, in such event, the amount of all such premium or premiums (i) shall be deemed to be Obligations, (ii) shall be a lien on the Premises prior to any right or title to, or interest in, or claim upon, the Premises subordinate to the lien of this Mortgage and (iii) shall be immediately due and payable, three (3) days after a demand made not later than twenty-one (21) days after said funds are expended, together with interest thereon at the default rate provided for in the Credit Agreement, from the date of any such payment by Mortgagee to the date of repayment to Mortgagee.

(e) Mortgagor promptly shall comply with, and shall cause the Premises to comply with, (i) all of the provisions of each such insurance policy, and (ii) all of the

requirements of the insurers thereunder applicable to Mortgagor or to any of the buildings or the fixtures located on the Premises or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of any of the buildings or the fixtures located on the Premises, even if such compliance would necessitate structural changes or improvements. If Mortgagor shall use the Premises or any portion thereof in any manner which would permit the insurer to cancel any insurance required to be provided hereunder, Mortgagor immediately shall obtain a substitute policy which shall be reasonably satisfactory to Mortgagee and which shall be effective on or prior to the date on which any such other insurance policy shall be canceled.

(f) Mortgagor shall give prompt notice to Mortgagee of any casualty, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtainable), resulting in damage to or destruction of the Premises or any part thereof.

(g) Any transfer of the Premises, in accordance with the provisions hereof, including a transfer by foreclosure or deed in lieu of foreclosure, shall transfer therewith all of Mortgagor's interest in all insurance policies then covering the buildings and the fixtures located on the Premises or the operations conducted at the Premises, including, but not limited to, any unearned premiums.

8. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any stamp tax or similar tax is due or becomes due in respect of any of the Obligations or the recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any stamp tax or similar tax on the issuance of the Obligations or the recording of this Mortgage.

9. Prepayment Privilege. Mortgagor shall only have the right to make prepayments on the principal of the Obligations (in addition to the required payments) in accordance with the terms and conditions set forth in the Notes, as they may be applicable to the respective Obligations in question.

10. Effect of Extensions of Time. If the payment of any of the Obligations or any part thereof is extended or varied or if any part of the security is released, all persons or entities now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability and the Lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

11. Effect of Changes in Laws Regarding Taxation. In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of land for the purpose of taxation any Lien thereon, and imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts

secured by mortgages or the mortgagee's interest in the property, or the manner of collection of taxes so as to affect this Mortgage or the indebtedness secured hereby, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor in the event Mortgagor fails to pay such taxes after demand by Mortgagee and Mortgagee thereafter pays such taxes; provided, however, that if in the opinion of counsel for Mortgagee (a) it shall be unlawful to require Mortgagor to make such payment, or (b) the making of such payment shall result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Obligations to be and become due and payable ninety (90) days from the giving of such notice.

12. Mortgagee's Performance of Defaulted Acts; Subrogation. In case of default on the part of Mortgagor under this Mortgage and the failure of Mortgagor to cure such default within the applicable cure period, if any, Mortgagee shall have the right, but not the obligation, to make any payment or perform any act herein or in or with respect to any of the Obligations required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien on title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. Anything to the contrary notwithstanding, Mortgagee may immediately take action to cure any default in the payment of taxes or insurance premiums or any other defaults that create an emergency regarding the priority or validity of the lien of this Mortgage or the physical condition of the Premises without regard to the Mortgagor's cure rights, if any. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including, but not limited to, attorneys' fees and expenses, and any other moneys advanced by Mortgagee to protect the Premises and the lien hereof, shall become much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor under this Mortgage. Should the proceeds of the Obligations or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Mortgagee's Reliance on Tax Bills, Etc. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or

settlement of any Lien, may do so without inquiry as to the validity or amount of such Lien or any claim for Lien which may be asserted.

14. Event of Default. The following shall be an Event of Default ("Event of Default") hereunder:

(a) Failure by Mortgagor to pay any amounts in accordance with the terms of the Credit Agreement;

(b) Failure by Mortgagor or any other obligated person or entity duly to observe any other covenant, condition, or agreement of this Mortgage or any other Loan Document, which failure is not cured within thirty (30) days after written notice thereof from Lender to Borrower;

(c) The occurrence of a Default (after the giving of any required notice and expiration of any applicable cure period) or Event of Default under the Credit Agreement or any Loan Document;

(d) The creation or suffering to exist by Mortgagor of any lien or encumbrance on the Premises, other than (i) the lien of this Mortgage, (ii) Permitted Exceptions, and (iii) liens and encumbrances, if any, expressly permitted by this Mortgage, subject to any right of Mortgagor expressly set forth herein to contest certain liens and encumbrances; or

(e) Any representation or warranty provided herein or in any Loan Document, in any document or instrument evidencing, securing or guaranteeing the Obligations and given or provided by or on behalf of Mortgagor is false in any material respect or materially misleading at the time given.

Provided that with respect to any of the foregoing wherein a notice is required, such Event of Default will be deemed to have occurred upon the occurrence of such event without notice being required if Mortgagee is prevented from giving notice by bankruptcy or other applicable law. Nothing herein shall require notice in any item of this Section where notice is not expressly required.

15. Foreclosure; Expense of Litigation; Protective Advances.

(a) When an Event of Default shall have occurred (whether listed in Section 14 hereof or described elsewhere in this Mortgage), Mortgagee shall have the right upon Mortgagee's notice to Mortgagor (or without notice if Mortgagee is prevented from giving notice by bankruptcy or other applicable law) to accelerate the maturity of all of the Obligations (or take any other action provided in the Notes or at law or equity) to Mortgagee or any other person or entity and to foreclose the lien hereof by judicial action, power of sale or in any other manner permitted by applicable law. In any suit to foreclose the lien hereof or in any other action to enforce any other remedy of Mortgagee under this Mortgage or with respect to any of the other

Obligations, there shall be allowed and included as additional indebtedness in the decree for sale, judgment of foreclosure or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, paralegals' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and 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 assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including, but not limited to, the fees and expenses of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Obligations or the Premises, including bankruptcy or probate proceedings, or in the preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

(b) All advances, disbursements and expenditures (collectively "Advances") made by Mortgagee after an Event of Default, before and during foreclosure, prior to sale, and where applicable, after sale, including interest thereon at the Default Rate, are hereinafter referred to as "Protective Advances", and shall include, without limitation:

- i. Advances pursuant to this Section 15(b).
- ii. Any amount expended by Mortgagee in restoring the Property in excess of the actual or estimated proceeds of insurance or condemnation;
- iii. Advances in accordance with the terms of this Mortgage to: (a) protect, preserve or restore the Property; (b) preserve the lien of this Mortgage or the priority thereof; or (c) enforce this Mortgage;
- iv. When due, installments of real estate taxes and other Impositions; other obligations authorized by this Mortgage; or with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title;
- v. Reasonable attorneys' fees and other costs incurred in connection with: (a) the exercise of Mortgagee's rights to make Protective Advances; (b) the foreclosure of this Mortgage; (c) any other litigation or administrative proceeding relating to the Property to which Mortgagee and/or any Lender may be or become or be threatened or contemplated to be a party, without fault on its part, including probate and bankruptcy proceedings; or (d) in the preparation for the

commencement or defense of any such suit or proceeding; in each case including, without limitation, filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, Torrens certificates, appraisals, and similar data and assurances with respect to title and value as Mortgagee and/or any Lender may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Property;

- vi. Mortgagee's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing;
- vii. Payment by Mortgagee of any Impositions as may be permitted by this Mortgage;
- viii. Mortgagee's Advances of any amount required to make up a deficiency in deposits for installments of Impositions as may be permitted by this Mortgage;
- ix. Expenses deductible from proceeds of sale; and
- x. Expenses incurred and expenditures made by Mortgagee for any one or more of the following: (a) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required without regard to the limitation to maintaining insurance in effect at the time any receiver, deed of trust beneficiary or Mortgagee takes possession of the Property; (b) expenditures in connection with restoring the Property in excess of available insurance proceeds or condemnation awards; (c) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (d) operating deficits incurred by Mortgagee as a deed of trust beneficiary or Mortgagee in possession or reimbursed by Mortgagee to any receiver; and (e) all amounts paid to any public authority for the use or occupancy of any street, alley, or public way.

(c) All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the law, apply to and be included in: (i) determination of the amount of Obligations secured by this Mortgage at any time; (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (iii) determination of amounts deductible from sale proceeds; (iv) application of income in the hands of any receiver or mortgagee in possession; and (v) computation of any deficiency judgment.

(d) Upon any sale made under or by virtue of this Section or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Premises or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations of Mortgagor secured by this Mortgage the sale price, after deducting therefrom the expenses of the sale and the cost of the action and any other sums which Mortgagor is required to pay or that Mortgagee is authorized to deduct under this Mortgage.

(e) Mortgagor understands and agrees that in the event of an Event of Default, Mortgagee, to the extent this Mortgage constitutes a security agreement under the Code, may exercise any and all rights and remedies of a secured party under the Code, including, but not limited to, the taking possession of any personal property covered by this Mortgage and disposing of the same by sale or otherwise; provided, however, that at least 10 Business Days prior notice of such disposition must be given to the Mortgagor, all as provided for by the Code, it being agreed that such 10 Business Days' notice shall constitute fair and reasonable notice to Mortgagor of such disposition.

16. Application of Proceeds of Foreclosure Sale. Unless Mortgagee otherwise directs pursuant to the Notes, the proceeds of any sale of any foreclosure sale pursuant to this Mortgage, as well as any collateral consisting of cash, shall be applied after receipt by Mortgagee as follows:

First, to the payment of or reimbursement for all Protective Advances, including all costs, fees and expenses of Mortgagee and its agents, representatives and attorneys incurred in connection with such sale or with the retaking, holding, handling, preparing for sale (or other disposition) of the Premises or collateral or otherwise in connection with the Notes, any other Loan Document or any of the Obligations;

Second, to pay all other amounts payable by Mortgagor under the Loan Documents;

Third, to the payment of the outstanding principal balance and accrued interest and fees on the Obligations; and

Fourth, to Mortgagor or to such other Person as a court may direct.

17. Appointment of Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises ("Third Party Receiver"). Such appointment may be made either before or after sale, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises, and Mortgagee hereunder may be appointed as such receiver ("Mortgagee in Possession," collectively the Third Party Receiver and Mortgagee in Possession shall be known as the "Receiver"). The Receiver shall have power: (a) to collect the Rents during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such Receiver, would be entitled to collect such Rents; (b) to extend or modify any leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renewal terms to expire, beyond the maturity date of the indebtedness hereunder 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 such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from any judgment or decree of foreclosure, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the Receiver to apply the net income in his hands in payment in whole or in part to: (x) the Obligations 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 any foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

18. Assignment of Leases and Rents.

(a) To further secure the Obligations, Mortgagor hereby sells, assigns and transfers unto Mortgagee all Leases and all Rents (whether before or after foreclosure or during the period of redemption) under or by virtue of, and to the extent payable pursuant to, any Leases, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases and Rents, and all the avails thereunder to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee, its true and lawful attorney in its name and stead (with or without taking possession of the Premises as provided in Section 19 hereof) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as Mortgagee shall, in its sole discretion, determine, with the

same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Section 19 hereof.

(b) Mortgagor agrees that no Rents will hereafter be paid by any person in possession of any portion of the Premises for more than one month in advance, and Mortgagor further agrees that the payment of the Rents to accrue for any portion of the Premises will not be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor, without Mortgagee's prior written consent. Mortgagor agrees that it will not hereafter assign any Leases or Rents of the Premises to other persons or entity.

(c) Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession of the Premises in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Section 17 and/or 19 hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

(d) Mortgagor further agrees to assign and transfer to Mortgagee all future Leases upon all or any part of the Premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall from time to time require.

(e) Although it is the intention of the parties that the assignment contained in this Section 18 shall be a present and absolute assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section 18 until an Event of Default occurs and Mortgagor shall retain such rights and powers until such time. The rights of Mortgagee under this Section 18 shall continue and remain in full force and effect both before and after commencement of any action or proceeding to foreclose this Mortgage, after the foreclosure sale in connection with the foreclosure of this Mortgage, and until expiration of the period of redemption from any such foreclosure sale, whether or not any deficiency from the unpaid balance of the indebtedness secured hereby exists after such foreclosure sale.

(f) This Section 18 is subject to certain rights of Mortgagor set forth in the Credit Agreement relating to financing of accounts receivable.

19. Mortgagee's Right of Possession in Case of an Event of Default.

(a) In any case in which under the provisions of this Mortgage, Mortgagee has a right to foreclose the lien hereof, Mortgagor shall, forthwith, upon demand by Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Premises or any part thereof personally or by its agent or attorneys all subject to the laws of the State of Indiana. In such event, Mortgagee in its discretion may, in accordance with law, enter upon and take and maintain possession of all or any part of the Premises together with all

documents, books, records, papers and accruals of Mortgagor or the then owner of the Premises relating thereto and may exclude Mortgagor its agents or servants wholly therefrom and may, as attorney in fact, as agent for Mortgagor or in its own name as Mortgagee, and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the Rents of the Premises, including actions for the recovery of Rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any Leases for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any Leases which are then subordinate to the lien hereof, unless such Leases are covered by a nondisturbance agreement signed by Mortgagee; (c) to extend or modify any then-existing Leases and to make new Leases which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder 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 such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) to receive all of such Rents; Mortgagor hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor. Without limitation on the foregoing, in addition to any rights granted Mortgagee hereunder or under applicable law, Mortgagee shall have all powers, rights and duties as provided for in the Act.

(b) Mortgagor shall be deemed to have constituted and appointed Mortgagee its true and lawful attorney-in-fact with full power of substitution either in the name of Mortgagee or in the name of Mortgagor, to exercise any of the powers granted to Mortgagee pursuant to this Section 19. Unless Mortgagee is acting as a Mortgagee in Possession, Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases. Unless Mortgagee acting as a Mortgagee in Possession, Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which Mortgagee may or might incur by reason of its performance of any action authorized under this Section 19 and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor, excluding liability, loss or damage resulting from the gross negligence or willful misconduct of Mortgagee.

20. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 18 and Section 19 hereof, shall have full power to use and apply the Rents of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine in its sole discretion:

(a) to the payment of the operating expenses of the Premises, including, but not limited to, the cost of the management and leasing thereof (which shall include compensation to Mortgagee or its assignee or assignees, if management is delegated to an assignee or assignees, and shall include lease commissions and other compensation and expenses of seeking and providing tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the Premises and of placing the Premises in such condition as which, in the judgment of Mortgagee, make it readily rentable; and

(d) to the payment of any Obligations or any deficiency which may result from any foreclosure sale in accordance with the provisions of Section 16.

21. Mortgagee's Right of Inspection. Mortgagee shall have the right to inspect the Premises at all reasonable times upon reasonable prior notice and access thereto shall be permitted for that purpose.

22. Condemnation. If all or any part of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, other than a taking of a part of the Premises which does not in Mortgagee's reasonable opinion materially and adversely affect access to and use of the Premises as operated on the date of this Mortgage, the entire Obligations secured hereby shall at the option of the Lender become immediately due and payable. If a part of the Premises shall be physically damaged through condemnation such that Mortgagee does not require that the Obligations be paid in full, Mortgagor will restore promptly, repair or alter the remaining Premises in a manner consistent with those requirements in Section 7(b) hereof, which at all times must be satisfactory to the Mortgagee and Mortgagee shall reimburse Mortgagor for said repair or alteration out of the proceeds received therefor. Subject to Mortgagor's right to receive payments in the foregoing sentence, Mortgagee shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith; provided that so long as no Default or Event of Default then exists, Mortgagor shall be entitled to participate in any such action or proceeding and may, without Mortgagee's consent, settle or compromise any

claim so long as such settlement or compromise results in a payment to Mortgagee sufficient to pay in full all Obligations, whether or not then due, and Mortgagor directs Mortgagee to apply the proceeds of such settlement or compromise for such purpose. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Mortgagee, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this Mortgage or apply the same in such manner as Mortgagee shall determine to the reduction of the sums secured hereby, whether matured or to mature in the future, and any balance of such moneys then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceed as the Mortgagee may require. Mortgagor represents and warrants to Mortgagee that there are no proceedings pending, or, to the best of Mortgagor's knowledge, threatened, to acquire any power of condemnation or eminent domain, with respect to the Premises, or any interest therein, or to enjoin or similarly prevent or restrict the proposed use of the Premises in any manner.

23. Release upon Payment and Discharge of Mortgagor's. If Mortgagor shall fully pay and perform all Obligations and all commitments under the Credit Agreement shall have terminated, then Mortgagee shall execute and deliver to Mortgagor a release of this Mortgage in recordable form.

24. Giving of Notice. Any notice or other communication required or permitted to be given by this Mortgage or by the applicable law shall be in writing and shall be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below), (b) three (3) days following the date deposited in U.S. mail, certified or registered, with return receipt requested, (c) one (1) Business Day following the date deposited with a national overnight carrier, and in each case addressed as follows, or (d) on the date sent by facsimile to the facsimile number set forth below during normal business hours (being 9:00 a.m. to 5:00 p.m., local time of the party to which notice is sent) on any business day provided a copy is thereafter promptly sent by one other method set forth above:

If to Mortgagor:

Ozinga Ready Mix Concrete, Inc.
Attention: Barry Voorn
19001 Old LaGrange Road
Mokena, Illinois 60448

If to Mortgagee:

Bank of America, N.A.
135 South LaSalle Street, 12th Floor
Chicago, IL 60603

Either party may change its address to another single address by notice given as herein provided, except any change of address notice must be actually received in order to be effective.

25. Waiver of Defense; Remedies Not Exclusive; Time is of the Essence. No action for the enforcement of the lien hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Obligations. Mortgagee shall be entitled to enforce payment and performance of any indebtedness secured hereby and to exercise all rights and powers under this Mortgage or under or with respect to any other Obligations or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. No waiver of any Event of Default shall be implied from any omission by the Mortgagee to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any such default other than the default specified in the express waiver and then only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the Default Rate from the date of delinquency shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such Default Rate. Time is of the essence of this Mortgage and each of the covenants and provisions hereof.

26. Default Rate; Late Payment Charge. No right of offset or claim that Mortgagor now has or may have in the future against Mortgagee shall relieve Mortgagor from paying any amounts due under or with respect to the Obligations or from performing any other duties contained herein or secured hereby. If an amount hereunder or under the Obligations, is not paid when due (subject to applicable grace and time periods provided in the Credit Agreement), such unpaid amount shall bear interest at the Default Rate specified in the Credit Agreement.

27. Binding on Successors and Assigns. The provisions of this Mortgage shall apply to, inure to the benefit of, and bind Mortgagor and Mortgagee and their respective successors and assigns.

28. Definitions of "Mortgagor," and "Mortgagee". The word "Mortgagor," when used herein shall include: (a) the original Mortgagor, as the case may be, named in the preambles hereof, (b) the original Mortgagor's successors and assigns; and (c) all owners from time to time of the Premises. The word "Mortgagee" when used herein shall include all successors and assigns of the Mortgagee identified in the preambles hereof.

29. Captions. The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

30. Filing and Recording Fees. Mortgagor shall pay all title insurance premiums, escrow charges, filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the other Loan Documents.

31. Execution of Separate Security Agreement, Financing Statements, Etc. Mortgagor, upon request by Mortgagee from time to time, shall forthwith on demand execute, acknowledge and deliver to Mortgagee, a security agreement, financing statement or other similar security instruments, in form reasonably satisfactory to Mortgagee, covering all property of any kind whatsoever which Mortgagor may hereafter acquire, which in the opinion of Mortgagee is essential to the operation of the Premises and which constitutes goods within the meaning of the Code, and Mortgagor will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document.

32. Notes. The Notes and all provisions thereof are incorporated herein by express reference. All advances and indebtedness arising and accruing under the Notes and the Credit Agreement from time to time shall be secured hereby to the full extent of the amount stated to be secured hereby according to law. Except as otherwise specifically provided herein, in the event of any conflict or inconsistency between the terms and provisions of this Mortgage and those of the Notes or any other Loan Document, the terms and provisions of the Notes shall in each instance govern and control to the extent of such conflict or inconsistency.

33. Mortgagee's Lien for Service Charge and Expenses; Maximum Obligations Secured. At all times, regardless of whether any proceeds have been disbursed, this Mortgage secures (in addition to the Obligations disbursed from time to time) the payment of any Protective Advances and all other expenses and advances due to or incurred by Mortgagee in connection with the Obligations and which are to be reimbursed by Mortgagor under the terms of this Mortgage, the Credit Agreement or the other Loan Documents; provided, however, that in no event shall the total amount of the Obligations plus such additional amounts exceed 300% of the original face amount of the Notes.

34. Maintenance of Mortgagor's and Mortgagee's Interest. So long as any of the Obligations remain unpaid, unperformed, unsatisfied, or undischarged, the occurrence of any of the following events, either voluntarily, by operation of law or otherwise, shall constitute an

immediate Event of Default: (a) any sale, assignment, transfer, conveyance, mortgage or encumbrance of the Premises or any portion thereof (including, without limitation, any transfer of beneficial interest if the Premises are owned by a land trust); (b) any sale, assignment, transfer, conveyance, pledge or encumbrance, of any partnership interest, or other equity interest in Mortgagor, or the sale or creation of any additional partnership interests, or other equity interest in Mortgagor, or any change in the structure of Mortgagor or the modification, amendment or restatement of the partnership agreement or other action of or with respect to Mortgagor which results in (i) a statutory dissolution of Mortgagor; or (ii) the transfer of effective control of Mortgagor (whether by merger, consolidation, recapitalization, operation of law or otherwise); (c) any merger, business combination, dissolution, liquidation or termination of Mortgagor; or (d) any contract to effectuate any of the foregoing shall be entered into.

35. No Offsets. No right of offset or claim that Mortgagor now has or may have in the future against Mortgagee shall relieve Mortgagor from paying any amounts due under or with respect to the Obligations or from performing any other duties contained herein or secured hereby.

36. Future Advances and Revolving Credit Advances. This Mortgage also secures all future advances, revolving credit advances and letters of credit provided by Mortgagee made within twenty (20) years from the date hereof made or to be made under the Notes, which future advances, revolving credit advances and letters of credit shall have the same priority as if all such future advances, revolving credit advances and letters of credit were made or issued on the date of execution hereof. Nothing in this Section 36 or in any other provision of this Mortgage shall be deemed either (a) an obligation on the part of Mortgagee to make any future advances, revolving credit advances or to issue any letters of credit other than in accordance with the terms and provisions of the Notes or (b) an agreement on the part of Mortgagee to increase the amount of the Notes or the aggregate face amount of the Notes, taken together, to any amount in excess of \$360,000,000.00.

37. Counterparts. This Mortgage may be executed in two or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one contract, and shall become effective when copies hereof which, when taken together bear the signatures of the parties hereto, shall be delivered or mailed to the Mortgagee.

38. Indemnity. Mortgagor shall indemnify, defend and hold harmless Mortgagee (and its officers, directors, employees, agents, attorneys and affiliates) from and against any and all liabilities, suits, actions, proceedings, obligations, fines, damages, penalties, claims, losses, costs, charges and expenses (including, but not limited to, reasonable architects', engineers', accountants', consultants' and attorneys' fees and expenses) which may be imposed upon, incurred or asserted against Mortgagee or such Persons by reason of: (i) any capital improvements, other work or thing done in, on or about the Premises or any portion thereof; (ii) any use, non-use, misuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any street, drive, sidewalk, curb, passageway or space comprising a part thereof or adjacent thereto; (iii) any negligence or willful act or omission

of Mortgagor, any lessee, any other occupant of the Premises or any agent, contractor, servant, employee, licensee or invitee of any of them; (iv) the claims of any lessee or any party acting through or under any such lessee or otherwise arising under or as a consequence of any lease; (v) any accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or in, on or about any sidewalks, drives, curbs, passageways, streets, spaces or alleys adjacent thereto; (vi) any lien or claim which may be alleged to have arisen on or against the Premises under any law or any liability asserted against Mortgagee or such Persons with respect thereto; (vii) any tax or other imposition, including, but not limited to, any imposition attributable to the execution, delivery, filing or recording of any document evidencing the Obligations or memorandum thereof; (viii) any contest permitted pursuant to the provisions of this Mortgage; or (ix) any claim for any premium or other charge or any brokerage commission or other compensation that may be made by any real estate broker or any person acting as such with respect to (A) the Obligations or (B) any leasing brokerage commission arising from any lease; or (x) breach of any laws, rules or regulations.

39. No Usury. In no event shall the amount paid or agreed to be paid hereunder or with respect to the Obligations exceed the highest lawful rate permissible under applicable law; and if under any circumstances whatsoever, fulfillment of any provision of this Mortgage or any Loan Document, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by applicable law, then *ipso facto*, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstance Mortgagee should receive as interest an amount which would exceed the highest lawful rate allowable under law, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Obligations and not to the payment of interest, or if such excess interest exceeds the unpaid balance of principal, the excess shall be refunded to the Mortgagor. Without limitation on the foregoing, all sums paid, or agreed to be paid, for the use, forbearance, detention, taking, charging, receiving or reserving on all Obligations shall, to the extent permitted by law, be amortized, prorated, allocated and spread throughout the term of such Obligations until payment in full so that the rate or amount of interest on account of such Obligations does not exceed the usury ceiling limit from time to time in effect and applicable thereto, if any, for so long as Obligations are outstanding.

40. Partial Invalidity. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to comply with all applicable local, state and federal laws and judicial decisions. However, if any provision or provision(s) of this Mortgage is found by a court of law to be in violation of any applicable local, state or federal laws or judicial decisions, and if such court should declare such portion, provision or provisions of this Mortgage to be illegal, unlawful, invalid, void or unenforceable as written, then it is the intent of both Mortgagee and Mortgagor that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the respective rights, obligations and

interest of Mortgagor and Mortgagee under the remainder if this Mortgage shall continue in full force and effect.

41. WAIVER OF STATUTORY RIGHTS. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, MORTGAGOR SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY HOMESTEAD, APPRAISEMENT, VALUATION, STAY, EXTENSION OR EXEMPTION LAWS, OR ANY SO-CALLED "MORATORIUM LAWS," NOW EXISTING OR HEREAFTER ENACTED, IN ORDER TO PREVENT OR HINDER THE ENFORCEMENT OR FORECLOSURE OF THIS MORTGAGE, BUT HEREBY WAIVES THE BENEFIT OF SUCH LAWS. MORTGAGOR FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT WAIVES ANY AND ALL RIGHT TO HAVE THE PROPERTY AND ESTATES COMPRISING THE PREMISES MARSHALLED UPON ANY FORECLOSURE OF THE LIEN HEREOF AND AGREES THAT ANY COURT HAVING JURISDICTION TO FORECLOSE SUCH LIEN MAY ORDER THE PREMISES SOLD AS AN ENTIRETY. MORTGAGOR HEREBY WAIVES AND ANY ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE ON ITS BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES SUBSEQUENT TO THE DATE OF THIS MORTGAGE. THE FOREGOING WAIVER OF THE RIGHT OF REDEMPTION IS MADE PURSUANT TO SECTION 15-1601 OF THE ACT. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR FURTHER WAIVES DILIGENCE, DEMAND, PRESENTMENT, PROTEST AND NOTICE OF EVERY KIND IN CONNECTION WITH THE DELIVERY, ACCEPTANCE, PERFORMANCE, DEFAULT OR ENFORCEMENT OF THIS MORTGAGE AND THE OBLIGATIONS, EXCEPT FOR SUCH NOTICES AS ARE EXPRESSLY PROVIDED IN THIS MORTGAGE OR THE LOAN DOCUMENTS.

42. BUSINESS LOAN RECITAL; STATUTORY EXEMPTIONS.

(a) MORTGAGOR ACKNOWLEDGES AND AGREES THAT (i) THE PROCEEDS OF THE OBLIGATIONS WILL BE USED IN CONFORMANCE WITH THE INTEREST ACT, (ii) THAT THE INDEBTEDNESS SECURED HEREBY CONSTITUTES A BUSINESS LOAN WHICH COMES WITHIN THE PURVIEW OF SAID ACT; AND (iii) THAT THE OBLIGATIONS ARE EXEMPT TRANSACTIONS UNDER THE TRUTH-IN-LENDING ACT.

(b) MORTGAGOR ACKNOWLEDGES AND AGREES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE EITHER AGRICULTURAL REAL ESTATE OR RESIDENTIAL REAL ESTATE.

43. APPLICABLE LAW. THIS MORTGAGE SHALL BE CONSTRUED, INTERPRETED AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF

INDIANA (WITHOUT GIVING EFFECT TO INDIANA CONFLICTS OF LAW PRINCIPLES).

44. WAIVER OF JURY TRIAL. MORTGAGOR HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF MORTGAGEE AND/OR MORTGAGOR WITH RESPECT TO THE DOCUMENTS OR IN CONNECTION WITH THIS MORTGAGE OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS MORTGAGE OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. MORTGAGOR AGREES THAT MORTGAGEE MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF MORTGAGOR IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF MORTGAGEE TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN MORTGAGOR AND MORTGAGEE SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

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the Lake County Recorder**

45. FORECLOSURE. IF ANY PROVISION OF THIS MORTGAGE SHALL GRANT TO MORTGAGEE ANY RIGHTS OR REMEDIES UPON ANY EVENT OF DEFAULT BY MORTGAGOR WHICH ARE MORE LIMITED THAN THE RIGHTS THAT WOULD OTHERWISE BE VESTED IN MORTGAGEE UNDER APPLICABLE LAW IN ABSENCE OF SAID PROVISION, MORTGAGEE SHALL BE VESTED WITH THE RIGHTS GRANTED IN THE ACT TO THE FULL EXTENT PERMITTED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES INCURRED BY MORTGAGEE TO THE EXTENT REIMBURSABLE, WHETHER INCURRED BEFORE OR AFTER ANY DECREE OR JUDGMENT OF FORECLOSURE, PRIOR TO SALE AND, WHERE APPLICABLE, AFTER SALE AND WHETHER OR NOT ENUMERATED IN THIS MORTGAGE, SHALL BE PAID BY MORTGAGOR TO MORTGAGEE, INCLUDING WITHOUT LIMITATION ON ALL ATTORNEYS' FEES AND OTHER COSTS INCURRED IN CONNECTION WITH THE PREPARATION, FILING OR PROSECUTION OF ANY FORECLOSURE SUIT. ANY SUCH AMOUNTS NOT PAID BY MORTGAGOR SHALL BE ADDED TO THE OBLIGATIONS SECURED BY THIS MORTGAGE OR BY THE JUDGMENT OF FORECLOSURE AND SHALL BE A LIEN AS TO SUBSEQUENT PURCHASERS AND JUDGMENT CREDITORS FROM THE TIME THIS MORTGAGE IS RECORDED.

46. Indiana Specific Provisions.

(a) Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Section 46 and the other provisions of this Mortgage, the terms and conditions of this Section 46 shall control and be binding.

(b) Effect of Waivers. Notwithstanding anything contained herein or in Indiana Code §32-29-7-5 to the contrary, no waiver made by Mortgagor in this Mortgage, or the Loan Agreement, or in any of the other terms and provisions of the Loan Documents shall constitute the consideration for or be deemed to be a waiver or release by Mortgagee or any judgment holder of the Obligations of the right to seek a deficiency judgment against Mortgagor or any other person or entity who may be personally liable for the Obligations, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Mortgagee for its own behalf and its successors and assigns.

(c) IRPTL Disclosure. To the best of Mortgagor's knowledge, after diligent inquiry and investigation, none of the Property is within the definition of the term "property" contained in Indiana Code §13-11-2-174 and that no disclosure statement under Indiana Code §13-25-3 *et seq.* (the "**Indiana Responsible Property Transfer Law**" or "**IRPTL**") is required and, as a result, the transaction evidenced by this Mortgage is not subject to the provisions of said act. If the Property ever becomes subject to or constitutes "property" subject to IRPTL, Mortgagor agrees to comply with IRPTL requirements.

(d) Receipt. In compliance with Indiana law, including without limitation Ind. Code. §26-1-9.1-502(f) of the UCC, Mortgagor hereby acknowledges receipt of a copy of this Mortgage in compliance with Mortgagee's obligation to deliver a copy of the fixture filing to Mortgagor.

(e) Obligations. The term "Obligations" as defined or utilized herein shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligation of Mortgagor to Mortgagee and/or to enforce the performance or collection of all covenants, agreements, other obligations and liabilities of the Mortgagor under this Mortgage; provided, however, such Obligations shall not include, without limitation, any judgment(s) or final decree(s) rendered in another jurisdiction, which judgment(s) or final decree(s) would be unenforceable by an Indiana Court pursuant to Ind. Code §34-54-3-4, or as recodified from time to time. The obtaining of any judgment by Mortgagee (other than a judgment foreclosing this Mortgage) and any levy of any execution under any such judgment upon the Property shall not affect in any manner or to any extent the lien of this Mortgage upon the Property or any part thereof, or any liens, powers, rights and remedies of Mortgagee, but such liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied.

(f) Names. Mortgagor warrants that Mortgagor does business under no other names with respect to the Property. Mortgagor shall immediately notify Mortgagee in writing of any change in the name of and the use of any trade names by Mortgagor and, upon request of Mortgagee, shall execute any additional financing statements and other certificates required to reflect any change in name or trade names and shall execute and file any assumed name certificate required by applicable laws including, without limitation, Ind. Code §23-15-1-1.

(g) Assignment of Rents. Without limiting the scope of the Assignment of Rents contained in this Mortgage, the Assignment of Rents set forth herein shall constitute an Assignment of Rents as set forth in Indiana Code 32-21-4-2 and hereby creates, and Mortgagor hereby grants to Mortgagee, a security interest in the Rents herein described that will be perfected upon the recording of this Mortgage.

(h) Purposes and Proceeds. Mortgagor acknowledges, represents and agrees that the Loan and all other Obligations are being obtained for business or commercial purposes and the proceeds thereof are not to be used for personal, family, residential, household or agricultural purposes. Mortgagor further acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate or residential real estate within the purview and operation of Indiana Code § 32-30-10.5.

(i) Limitation on Future Advances, Obligations and Liabilities. Notwithstanding anything contained in this Security Instrument to the contrary, this Security Instrument shall secure: (i) a maximum principal amount not to exceed One Hundred Eighty Million and 00/100 Dollars (\$180,000,000.00) exclusive of any items described in clause (ii) below, including any additional advances made from time to time after the date hereof pursuant to the Notes and other Loan Documents whether made as part of the indebtedness secured hereby or made at the option of Lender; (ii) all other amounts payable by Borrower, or advanced by Lender for the account, or on behalf, of Borrower, pursuant to the Notes and Loan Documents, including amounts advanced with respect to the Property for the payment of taxes, assessments, insurance premiums and other costs and Impositions incurred for the protection of the Property to the same extent as if the future obligations and advances were made on the date of execution of Mortgage; and (iii) future modifications, extensions, and renewals of any Notes or the Obligations. Pursuant to IC 32-29-1-10, the lien of this Mortgage with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time to time shall have the same priority to which this Mortgage otherwise would be entitled as of the date this Mortgage is executed and recorded without regard to the fact that any such future advance, modification, extension, or renewal may occur after this Mortgage is executed. The maximum principal amount is stated herein for the purpose of any applicable laws pertaining to future advances and is not deemed a commitment by Lender to make any future advances.

The Mortgagor acknowledges that it has read and understood all the provisions of this Mortgage, including, without limitation, the waiver of jury trial, and has been advised (i) by counsel as necessary or appropriate, and (ii) by the Mortgagee that the Loan and other Obligations are being made in reliance of such waiver.

[Signature Page Follows]



EXHIBIT A

Legal Description

PARCEL 1:

Part of the West 1/2 of the Southeast 1/4 of Section 11, Township 36 North, Range 9 West of the 2nd Principal Meridian, being more particularly described as follows: Commencing at the intersection of the West line of the Southeast 1/4 of said Section 11 with the Northerly line of the Michigan Central Railroad; thence South 60 degrees 58 minutes 37 seconds East, along the said Northerly right-of-way line, a distance of 679.50 feet to the point of beginning of this described Parcel; thence continuing South, 60 degrees 58 minutes 37 seconds East, 379.73 feet; thence North 00 degrees 44 minutes 45 seconds West and parallel to the West line of the Southeast 1/4 of said Section 11, a distance of 651.16 feet; thence South 89 degrees 15 minutes 15 seconds West, 329.62 feet; thence South 00 degrees 44 minutes 45 seconds East, 462.63 feet, more or less, to the point of beginning, in Lake County, Indiana.

PARCEL 2:

Part of the West 1/2 of the Southeast 1/4 of Section 11, Township 36 North, Range 8 West of the 2nd Principal Meridian, in Lake County, Indiana, being more particularly described as follows: Commencing at the intersection of the West line of the Southeast 1/4 of said Section 11 with the Northerly line of the Michigan Central Railroad; thence South 60 degrees 58 minutes 37 seconds East, along the Northerly line of said railroad, 679.50 feet; thence North 00 degrees 44 minutes 45 seconds West and parallel to the West line of the Southeast 1/4 of said Section 11, a distance of 462.63 feet to the point of beginning of this described Parcel; thence North 89 degrees 15 minutes 15 seconds East, 329.62 feet; thence North 00 degrees 44 minutes 45 seconds West, 428.98 feet, more or less, to the Southerly right-of-way line of I-65; thence North 43 degrees 12 minutes 25 seconds West, 90.12 feet; thence North 37 degrees 57 minutes 20 seconds West, 49.03 feet; thence Northwesterly, 115.66 feet along an arc to the left, having a radius of 788.51 feet and subtended by a long chord having a bearing of North 49 degrees 27 minutes 24 seconds West and a length of 115.55 feet; thence North 53 degrees 39 minutes 44 seconds West, 190.92 feet; thence South 00 degrees 44 minutes 45 seconds East, 725.88 feet to the point of beginning.

PIN:

Parcel No. 001-25-40-0053-0025 State ID No. 45-08-17-451-003.000-004

Common Address: 2555 E. 15TH Avenue, Gary, Indiana



EXHIBIT B

Permitted Exceptions

Those exceptions as set forth on the ALTA Loan Policy issued by Near National Title (IN2005678-18) in final form to Mortgagee.



CERTIFICATE OF PROOF

WITNESS to the signature(s) executed and delivered in my presence on the foregoing instrument to which this Proof is attached:

Barn N. Vaorn

Witness Signature

Barn N. Vaorn

Witness Name (must be typed / printed)

PROOF: Illinois
STATE OF ~~INDIANA~~

COUNTY OF Will

Before me, a Notary Public in and for said County and State, on July 2, 2020, personally appeared the above named WITNESS to the foregoing instrument, who, being by me duly sworn, did depose and say that he/she knows Donald L. Van Dyk to be the individual(s) described in and who executed the foregoing instrument; that said WITNESS was present and saw said Treasurer execute the same; and that said WITNESS at the same time subscribed his/her name as a witness thereto.

Witness my hand and Notarial Seal this 2 day of July, 2020.

**This Document is the property of
the Lake County Recorder!**

Signature Nicole Ramsay, Notary Public

Printed: Nicole Ramsay

My Commission Expires: 03/09/21

My County of Residence is: Will

OFFICIAL SEAL
NICOLE RAMSAY
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 03/09/21

NNTG File No.:

IN2005678-18

