

OPEN-END MORTGAGE

_____ and _____ (marital status) (individually, collectively, jointly, and severally, "**Mortgagor**"), whose address is _____ for good and valuable consideration, grant(s), with mortgage covenants, to **American Surety Company** ("**Mortgagee**,"), whose address is P.O. Box 68932, Indianapolis, IN 46268, the following real property:

Situate in City (Township) of _____, _____ County, **Ohio**, and being more particularly described as follows: *[insert description of Property]*

TOGETHER WITH any of the following items either now or in the future located on, affixed to, used in the operation of, or otherwise benefiting the land (or any part of the land) described above: all buildings, structures and improvements; all fixtures, machinery, apparatus and equipment used in the operation of the real estate; all easements, rights-of-way, licenses, privileges and other appurtenances; and all leases, rents, income, profits and proceeds. As used in this Mortgage, the term "**Property**" means the land described above together with all of the items described above.

Mortgagor excepts from the mortgage covenants the following: (a) all legal highways; (b) easements, covenants, conditions, and restrictions of record as of the date hereof; (c) zoning and building laws, ordinances, and regulations; and (d) real estate taxes and assessments not yet due and payable.

This Mortgage is given, upon the statutory condition, to secure performance of each agreement of Mortgagor herein contained and securing payment to Mortgagee of (a) all monies due to Mortgagee pursuant to the Bail Bond Application and Agreement, the Indemnitor Application and Agreement, the Promissory Note and Installment Payment Plan for Unpaid Premium, executed and delivered by Mortgagor on or about the date of this Mortgage (individually or collectively, the "**Agreements**"), (b) all losses, damages, attorneys' fees, investigation fees, forfeitures, judgments, court assessments, and liabilities suffered, sustained, or incurred by Mortgagee arising out of or relating to one or more bail bonds posted on behalf of defendant _____ in the amount of \$_____ in the case of the State of _____ v. _____ ("**Action**"), Power Number(s) (if known) **AS** _____, and (c) on account of or related to the execution of any other bail bond executed or posted by or for Mortgagee in connection with or related to the Action or Agreements (all of the foregoing items described in clauses (a) through (c) above sometimes referred to collectively in this Mortgage as the "**Obligations**").

"**Statutory condition**" is defined in Section 5302.14 of the Ohio Revised Code and provides generally that if Mortgagor pays the indebtedness secured by this Mortgage, performs the other Obligations secured hereby and the conditions of any prior mortgage, pays all taxes and assessments, maintains insurance against fire and other hazards, and does not commit or suffer waste, then this Mortgage shall be void.

As a further condition of this Mortgage, Mortgagor agrees as follows:

1. Mortgagor shall pay the Obligations, pay all other sums secured by this Mortgage and perform and comply with all terms and conditions of this Mortgage, when and as the same arise or become due.

2. Mortgagor shall pay, when due, (i) all taxes, assessments and levies of every type or nature levied or assessed against the Property, and (ii) any claim, lien, or encumbrance against the Property, whether prior to or after to the lien of this Mortgage. Proof of payment shall be delivered promptly to Mortgagee.

3. Mortgagor shall keep the Property insured, in such amount as Mortgagee may reasonably require, against loss or damage by fire, extended coverage perils, rent loss (if applicable), and such other risks and perils as Mortgagee, in its discretion, may require. This insurance shall be written by a company of recognized financial standing that is authorized to do an insurance business in the State of Ohio. Every policy shall contain a standard first mortgage endorsement in favor of Mortgagee and shall provide that in case of loss or damage, the proceeds shall be payable to Mortgagee. Every policy shall also contain an agreement by the insurer that it will not cancel the policy except after 10 days' prior written notice to Mortgagee. Mortgagor shall deliver to Mortgagee certificates of the insurance required to be maintained under this Mortgage. Any and all amounts received by Mortgagee under any of these policies shall be applied by Mortgagee on the indebtedness secured by this Mortgage or at Mortgagee's option and in its sole discretion paid to Mortgagor for repairing and rebuilding any improvements on the Property in accordance with Paragraph 4. Neither the application nor the payment of any of those amounts shall cure or waive any default of Mortgagor.

4. Mortgagor shall maintain the Property in good condition and repair, shall not commit or suffer waste of the Property, and shall not alter, improve, or demolish any portion of the Property without Mortgagee's consent. Upon damage or destruction of the Property by fire or other casualty, Mortgagor shall promptly restore or rebuild the damaged portion of the Property to substantially its condition prior to the occurrence of the casualty or in such other manner as Mortgagee may approve. Provided that (a) Mortgagor is not in default in the payment or performance of any Obligations under the Agreements or this Mortgage and (b) the available insurance proceeds are adequate to pay all costs of restoration and rebuilding of the Property, or, if inadequate, Mortgagor furnishes Mortgagee with evidence satisfactory to Mortgagee shall make the proceeds of insurance available to Mortgagor for costs incurred as the rebuilding or restoration progresses. Any additional funds required to be furnished by Mortgagor shall be applied to payment of the cost of restoration and rebuilding prior to disbursement of insurance proceeds by Mortgagee. If (i) either of the conditions set forth in clauses (a) and (b) above is not satisfied, (ii) Mortgagor fails to promptly commence the restoration or rebuilding, or (iii) Mortgagor fails to complete the same with all reasonable diligence, then the insurance proceeds or any remaining balance shall, at the option of Mortgagee, be applied to payment of the indebtedness secured by this Mortgage.

5. Mortgagor shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property, and shall not suffer or permit any violation of the same.

6. If Mortgagor (a) fails to pay, when due, any claim, lien or encumbrance that is prior to this Mortgage, or any tax, assessment, levy or insurance premium; (b) fails to restore, rebuild or keep the Property in good condition and repair; (c) commits or permits waste; or (d) permits or suffers the commencement of any action or proceeding affecting the Property or title to the Property, and if any such failure or condition is not cured within 10 days after written notice from Mortgagee to Mortgagor (except that no notice shall be required if the action is necessary to protect the security of this Mortgage), then Mortgagee, at Mortgagee's option, may (i) pay the claim, lien, encumbrance, tax, assessment, levy, or premium and any penalty or interest on the same, (ii) procure such insurance as Mortgagee deems necessary, (iii) make the repairs, restoration, or rebuilding, (iv) take such steps as Mortgagee deems advisable to prevent or cure waste, and (v) appear in any action or proceeding, retain counsel, and take such action as Mortgagee deems advisable. Mortgagor shall pay to Mortgagee, within 10 days after written demand, all sums of money advanced by Mortgagee under the provisions of this Paragraph, together with interest on each advancement at 10% per annum (but in no event higher than the highest rate allowed by law). All such advances and interest on the same shall be considered protective advances pursuant to Section 5301.233 of the Ohio Revised Code to the maximum extent permitted by law, shall be added to the principal debt and shall be secured by this Mortgage.

7. Mortgagor assigns to Mortgagee all of the rents, issues, and profits of the Property. So long as there is no default by Mortgagor in the performance or observance of any Obligations secured by this Mortgage, Mortgagor shall have the right to collect the rents, issues, and profits, but no more than one month in advance. This paragraph constitutes an absolute and present assignment of the rents, issues, and profits of the Property, subject, however, to a conditional license given to Mortgagor to collect and use same to the extent provided above.

8. Mortgagor assigns to Mortgagee all awards and payments ("**Condemnation Awards**") arising by reason of any taking of all or any part of the Property by condemnation or other eminent domain proceedings pursuant to any law, general or special, by any governmental or other authorized condemning authority. Mortgagee shall be entitled to participate fully in any condemnation proceeding. Mortgagee may, after deducting all of its expenses, including attorneys' fees, release any Condemnation Awards to Mortgagor, or, in Mortgagee's sole discretion, apply the same on any indebtedness secured in this Mortgage and release any excess proceeds to Mortgagor. Mortgagor agrees to execute and deliver such further assignments of any Condemnation Awards as Mortgagee may require.

9. If Mortgagor (i) conveys to any other person a security interest in the Property or any part of the Property or (ii) sells, conveys, contracts to sell or convey, enters into an option to sell or convey, or otherwise disposes of the Property, any interest in the Property or any part of the Property, without the prior written consent of Mortgagee, Mortgagee may, at its option, declare the entire indebtedness secured by this Mortgage immediately due and payable.

10. As long as this Mortgage is in effect, Mortgagor shall not conduct or permit to be conducted on the Property any operations involving the treatment, storage, disposal, handling or use of any toxic, explosive or dangerous materials or any "hazardous substances" or "hazardous wastes," as defined under applicable federal, state or local environmental laws and regulations. (For purposes of this Mortgage, all of the foregoing are referred to as "**Hazardous Materials**.") Mortgagor indemnifies and agrees to defend and hold Mortgagee harmless from and against any claims, liabilities, losses, damages and expenses (including attorneys' fees) to

which Mortgagee may become subject due to (i) any Hazardous Materials being located on or concealed within the Property or (ii) any contamination of soils, groundwater or the environment due to Hazardous Materials being released, discharged, deposited, dumped, spilled, leaked or placed into, on or from the Property. This indemnity shall apply regardless of Mortgagor's knowledge of or participation in the events giving rise to the claim or liability, and regardless of whether those events occurred before or after Mortgagor acquired the Property. This indemnity shall also survive the cancellation or release of this Mortgage.

11. If one or more of the following events ("**defaults**") occurs and is continuing: (i) Mortgagor fails to pay, when due, or within 10 days after the due date, any sums payable under the Agreements; (ii) Mortgagor fails to pay, when due, any other sum secured by this Mortgage, and this failure continues for more than 15 days after written notice; (iii) Mortgagor fails to fully perform any of Mortgagor's obligations, covenants or agreements under this Mortgage, and the failure continues for more than 15 days after written notice (or, if the matter complained of cannot reasonably be cured within 15 days, Mortgagor fails to promptly commence and diligently proceed to effect the cure within a reasonable time); or (iv) Mortgagor files, or there is filed or commenced against Mortgagor, the Property or any material assets of Mortgagor, a petition in bankruptcy, reorganization, foreclosure, receivership, attachment, garnishment, or other proceedings of a similar nature, and the proceedings are not dismissed within 45 days; then, and in any of these events, all of the indebtedness secured by this Mortgage shall become immediately due and payable, at the option of Mortgagee, without additional notice or demand. In the event of a default, in addition to any other right or remedy Mortgagee may have at law or in equity, Mortgagee shall have the right to (a) foreclose this Mortgage; (b) enter upon and take possession of the Property or any part of the Property, and perform any act Mortgagee deems necessary or proper to conserve the security, and collect and receive all rents, issues and profits, including those past due as well as those subsequently accruing; and/or (c) apply without additional notice and in *ex parte* proceedings for the appointment of a receiver of the rents, issues, and profits of the Property, as a matter of right without consideration of the value of the Property as security for the amount due Mortgagee, or the solvency of any person or persons liable for the payment of those amounts, or the availability of other remedies, whether at law or in equity.

12. No delay by Mortgagee in exercising any right or remedy, or otherwise afforded by law, shall operate as a waiver or preclude the exercise of the right or remedy during the continuance of any default.

13. Mortgagor agrees that Mortgagee shall have the right to enter upon the Property from time to time during normal business hours to inspect the condition of the Property.

14. Mortgagee shall have the right, but not the obligation, to make protective advances with respect to the Property for the payment of taxes, assessments, insurance premiums, repairs, and maintenance costs, if any, incurred by reason of all or any part of the Property being classified as a "Reporting Facility" within the meaning of Ohio Revised Code Section 3752.01 and other costs incurred in the protection of the Property as contemplated by Section 5301.233 of the Ohio Revised Code, and such protective advances, together with interest thereon at 10% per annum (but in no event higher than the highest rate allowed by law) from the date of each such advance until it is repaid in full, shall be secured by this Mortgage to the fullest extent and with the highest priority contemplated by such Section 5301.233.

15. Any notice required or permitted to be given to Mortgagor or Mortgagee or by law shall be deemed given if mailed by certified or registered United States mail, postage prepaid, addressed to the address set forth in the introductory paragraph of this Mortgage. Mortgagor or Mortgagee may, from time to time, change its notice address by giving written notice to the other party at that party's then current notice address, in accordance with the provisions of this Paragraph.

16. Mortgagee is authorized to do all matters permitted or sanctioned by O.R.C. § 1311.14, as amended from time to time.

17. Subject to the provisions of Paragraph 9, all of the covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of Mortgagor and Mortgagee.

18. Any provision of this Mortgage that is prohibited or unenforceable shall be ineffective only to the extent of the prohibition or unenforceability, without invalidating the remaining provisions.

19. Wherever used in this Mortgage, the singular number shall include the plural, and vice versa, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, Mortgagor has hereto set his/her hand the date first above written.

MORTGAGOR:

Printed Name _____

Printed Name: _____

Printed Name _____

Printed Name: _____

[if Mortgagor is married, husband and wife must sign]

STATE OF _____, _____ COUNTY

I HEREBY CERTIFY, that on _____, 20____, before me, a Notary Public of the State of _____, personally appeared _____ and _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within Mortgage, who acknowledged that he/she/they executed the same for the purpose therein contained.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

AFTER RECORDING, PLEASE RETURN TO:

American Surety Company
P.O. Box 68932
Indianapolis, IN 46268

DRAFTING NOTES

[DO NOT RECORD; REMOVE THIS PAGE FROM THIS INSTRUMENT BEFORE RECORDING]:

1. If Mortgagor is married, both spouses must execute the Mortgage.
2. The Mortgage is silent as to whether it secures bail bond premiums. For maximum protection against the argument that the Mortgage cannot secure bail bond premiums, consider adding a specific exclusion for bail bond premiums in the first paragraph after the word "liabilities" so that it reads as follows: "liabilities (excluding, however, any bail bond premiums)" If this parenthetical is not included, there is a risk that the Grantor may prevail in arguing that the Mortgage impermissibly secures a bail bond premium. On the other hand, if you want the strongest argument that unpaid premiums are covered by the Mortgage, you should add the Promissory Note and Installment Payment Plan for Unpaid Premium to the definition of "Agreements". If this language is not added, the debtor may have an argument that unpaid premiums are not covered by the Mortgage. Venable does not opine whether any state or federal mortgage licensing laws apply to securing unpaid premium with a mortgage or deed of trust.
3. Mortgage must contain the Mortgagee's then current address.
4. Many counties have their own formatting requirements for recorded documents. Please consult with the county recording office in question before preparing the Mortgage to ensure compliance with these requirements.
5. Provide full legal description of the property being secured.