Do not use this form if this is a consumer credit transaction

REAL ESTATE MORTGAGE
(Open-End)

ID #42-105537

THIS REAL ESTATE MORTGAGE ("Mortgage") is made and entered into this 29TH day of DECEMBER, 19 93, by and between ATI Incorporated, an Iowa Corporation (f/k/a American Trencher, Inc.) ("Mortgagors") and FIRSTAR BANK CEDAR RAPIDS, N.A. ("Mortgagee").

NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF $ 300,000.00. LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS.

Mortgagors hereby acknowledge the receipt of a copy of this Mortgage.

1. **GRANT OF MORTGAGE AND SECURITY INTEREST.** Mortgagors hereby sell, convey and mortgage unto Mortgagee, and grant a security interest to Mortgagee, in the following described property:

a. **Land and Building.** All of Mortgagors' right, title and interest in and to the following described real estate situated in the County of Delaware, State of Iowa (the "Land"):

SEE ATTACHED EXHIBIT "A"

For Release, See Book 40
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and all buildings, structures and improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including all hereditaments, easements, appurtenances, riparian rights, mineral rights, oil and gas rights and profits, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the Land, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the Land;

b. **Personal Property and Fixtures.** All fixtures and other personal property belonging to, or hereafter becoming a part of the Land or the Buildings, whether attached or detached, including, but not limited to, light fixtures, shades, rods, blinds, venetian blinds, awnings, storm windows, screens, linoleum, floor coverings, water softeners, automatic heating and air-conditioning equipment and all proceeds, products, assessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for the foregoing (the "Personal Property");

c. **Revenues and Income.** All rents, issues, profits, leases, condemnation awards and insurance proceeds now or hereafter arising from the ownership, occupancy or use of the Land, Buildings and Personal Property, or any part thereof (the "Revenues and Income");

TO HAVE AND TO HOLD the Land, Buildings, Personal Property and Revenues and Income (collectively called the "Mortgaged Property"), together with all privileges and hereditaments thereunto now or hereafter belonging, or in any way appertaining to, and the products and proceeds thereof, unto Mortgagee, its successors and assigns.

2. **OBLIGATIONS.** This Mortgage secures the following (hereinafter collectively referred to as the "Obligations"): all indebtedness and obligations of Mortgagors to Mortgagee now existing or hereafter incurred, whether incurred individually or jointly, whether direct or indirect, contingent or absolute, whether as maker or surety and of every kind and character, whether from time to time reduced and thereafter reincurred, whether such other indebtedness and obligations are secured by additional or different collateral and whether such additional indebtedness and obligations arise or arose from or are or were acquired by Mortgagee by purchase, assignment or otherwise, including, but not limited to, any sums advanced by Mortgagee for legal expenses and attorneys' fees arising out of the enforcement of or foreclosure under this Mortgage and all costs and expenses advanced by Mortgagee hereunder.

Indebtedness incurred in a "Consumer Credit Transaction", as defined in the Iowa Consumer Credit Code, shall not be secured by this Mortgage.

The limitation upon the total amount of credit secured by this Mortgage shall not be construed to include any accrual of interest, protective disbursements made by Mortgagee hereunder or any expenses advanced by Mortgagors hereunder.

THIS PARAGRAPH 2 AND THE NOTICE PROVISION SET FORTH ABOVE SHALL NOT CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL LOANS IN ANY AMOUNT.

3. **REPRESENTATIONS AND WARRANTIES OF MORTGAGORS.** Mortgagors represent, warrant and covenant to Mortgagee that (i) Mortgagors hold clear title to the Mortgaged Property and title in fee simple in the Land; (ii) Mortgagors have the right, power and authority to execute this Mortgage and to mortgage and grant a security interest in the Mortgaged Property; (iii) the Mortgaged Property is free and clear of all liens, security interests and encumbrances, except for real estate taxes not yet delinquent and except as otherwise stated in subparagraph 1(a) herein; (iv) Mortgagors will warrant and defend title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons, whether now existing or hereafter arising; and (v) all buildings and improvements now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land.

4. **PAYMENT AND PERFORMANCE OF THE OBLIGATIONS.** Mortgagors will pay all amounts payable under the Obligations in accordance with the terms of the Obligations and will pay all other indebtedness when and as due and will timely perform all other obligations of Mortgagors under this Mortgage and the Obligations. The provisions of the Obligations are hereby incorporated by reference into this Mortgage as if fully set forth herein.

5. **TAXES AND SPECIAL ASSESSMENTS.** Mortgagors shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Mortgaged Property before the same become delinquent, without notice or demand, and shall deliver to Mortgagee proof of such payment within fifteen (15) days after the date on which such tax or assessment becomes delinquent.

Upon request of Mortgagee, Mortgagors shall deposit with and pay to Mortgagee of the first day of each month, one-twelfth (1/12) of the estimated annual taxes and assessments levied or assessed against the Mortgaged Property and one-twelfth (1/12) of the annual premiums for insurance required by this Mortgage to be furnished by Mortgagors. Mortgagee shall use such deposits to pay the taxes, assessments and insurance premiums when the same become due. Unless required by law, Mortgagee shall not be required to pay Mortgagors interest on such deposits. Mortgagors shall procure and deliver to Mortgagee, in advance, statements for such charges. If the total payments made by Mortgagors under this paragraph exceed the amount of payments actually made by Mortgagee for taxes, assessments and insurance premiums, such excess shall be credited by Mortgagee on subsequent deposits to be made by Mortgagors. If, however, the deposits are insufficient to pay the taxes, assessments and the insurance premiums when the same are due and payable, Mortgagors will pay to Mortgagee any amount necessary to make up the deficiency, on or before the date when payment of such taxes, assessments and insurance premiums shall be due.

FILE No. 350-2093
RECORDING FEE $ 26.00
TRANSFER FEE $

FILED FOR RECORD THE 6 DAY OF Jan, 19 94 AT 10:39 O'CLOCK A. M. BOOK 34 PAGE 164

STATE OF IOWA, DELAWARE COUNTY
Deborah L. Peyton, Recorder
TLM CM 31

6. **LIENS.** Mortgagors shall not create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Mortgagors shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

7. **COMPLIANCE WITH LAWS.** Mortgagors shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof.

8. **PERMITTED CONTESTS.** Mortgagors shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 5 hereof, (ii) discharge or remove any lien, encumbrance or charge referred to in paragraph 6 hereof, or (iii) comply with any statute, law, rule, regulation or ordinance referred to in paragraph 7 hereof, so long as Mortgagors shall contest, in good faith, the existence, amount or the validity thereof, the amount of damages caused thereby or the extent of Mortgagors' liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (a) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrances or charge so contested, (b) the sale, forfeiture or loss of Mortgaged Property or any part thereof, and (c) any interference with the use or occupancy of the Mortgaged Property or any part thereof. Mortgagors shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 8.

9. **CARE OF PROPERTY.** Mortgagors will not commit or permit any waste on or to the Mortgaged Property. Mortgagors shall take good care of the Mortgaged Property; shall keep the Buildings and Personal Property in good and reasonable repair and shall not injure, destroy or remove either the Buildings or Personal Property during the term of this Mortgage. Mortgagors shall not make any material alteration to the Mortgaged Property without the prior written consent of Mortgagee.

10. **DUE ON SALE.** If all or any part of Mortgagors' interest in the Mortgaged Property is sold, conveyed, assigned, mortgaged, encumbered, hypothecated or transferred without Mortgagee's prior written consent, Mortgagee may, at Mortgagee's sole option, declare all sums secured hereby immediately due and payable.

11. **INSURANCE.**

(a) **Risks to be Insured.** Mortgagors, at their sole cost and expense, shall maintain insurance on the Personal Property and on Buildings and other improvements now existing or hereafter erected on the Land against loss by fire, extended coverage perils and such other hazards as Mortgagee may from time to time require, such insurance to have a "Replacement Cost" endorsement attached thereto, with the amount of the insurance at least equal to the balance of the Obligations. At Mortgagors' option, such policy may have a co-insurance clause of not less than 90% of replacement cost, provided the policy contains an appropriate form of cost escalation endorsement. Mortgagors will at their sole cost and expense, from time to time, and at any time at the request of Mortgagee, provide Mortgagee with evidence satisfactory to Mortgagee of the replacement cost of the Personal Property and Buildings. Mortgagors will maintain such other insurance as Mortgagee may reasonably require.

(b) **Policy Provisions.** All insurance policies and renewals thereof maintained by Mortgagors pursuant to this Mortgage shall be written by an insurance carrier satisfactory to Mortgagee, contain a mortgagee clause in favor of and in form acceptable to Mortgagee, contain an agreement of the insurer that it will not amend, modify or cancel the policy except after thirty (30) days prior written notice to Mortgagee and be reasonably satisfactory to Mortgagee in all other respects.

(c) **Delivery of Policy or Certificate.** If requested by Mortgagee, Mortgagors will deliver to Mortgagee original policies satisfactory to Mortgagee evidencing the insurance which is required under this Mortgage, and Mortgagors shall promptly furnish to Mortgagee all renewal notices and, upon request of Mortgagee, evidence of payment thereof. At least ten (10) days prior to the expiration date of a required policy, Mortgagors shall deliver to Mortgagee a renewal policy in form satisfactory to Mortgagee. If Mortgagors have a blanket insurance policy in force providing coverage for several properties of Mortgagors, including the Mortgaged Property, Mortgagee will accept a certificate of insurance, together with a certified copy of such blanket insurance policy, provided the certificate sets forth the amounts of insurance and coverage (and such amounts are at least equal to the amounts required herein), the original policy or policies of insurance are written by a carrier or carriers acceptable to Mortgagee, such policies insure the Mortgaged Property against the risks set forth herein, and such certificate provides that the policy or policies referred to therein cannot be amended, modified or cancelled without thirty (30) days prior written notice to Mortgagee.

(d) **Assignment of Policy and Proceeds.** If the Mortgaged Property is sold at a foreclosure sale or if Mortgagee shall acquire title to the Mortgaged Property, Mortgagee shall have all of the right, title and interest of Mortgagors in and to any insurance policies required hereunder, and the unearned premiums thereon, and in and to the proceeds thereof resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(e) **Notice of Damage or Destruction; Adjusting Loss.** If the Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other casualty, Mortgagors will, within five (5) calendar days after the occurrence of such damage or destruction, give written notice thereof to the insurance carrier and Mortgagee and will not adjust any damage or loss which is estimated by Mortgagors in good faith to exceed $25,000 unless Mortgagee shall have joined in or concurred with such adjustment; but if there has been no adjustment of any such damage or loss within four (4) months from the date of occurrence thereof and if an Event of Default shall exist at the end of such four (4) month period or at any time thereafter, Mortgagee may alone make proof of loss, adjust and compromise any claim under the policies, and appear in and prosecute any action arising from such policies. In connection therewith, Mortgagors do hereby irrevocably authorize, empower and appoint Mortgagee as attorney-in-fact for Mortgagors (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Mortgagors.

(f) **Application of Insurance Proceeds.** All sums paid under any insurance policy required by this Mortgage shall be paid to Mortgagee, which shall, at its option, apply the same (after first deducting therefrom Mortgagee's expenses incurred in collecting the same, including, but not limited to, reasonable attorneys' fees) to the reduction of the Obligations or to the payment of the restoration, repair, replacement or rebuilding of the Mortgaged Property that is damaged or destroyed in such manner as Mortgagee shall determine and secondly to the reduction of the Obligations. Any application of insurance proceeds to principal of the Obligations shall not extend or postpone the due date of the installments payable under the Obligations or change the amount of such installments.

(g) **Reimbursement of Mortgagee's Expenses.** Mortgagors shall promptly reimburse Mortgagee upon demand for all of Mortgagee's expenses incurred in connection with the collection of the insurance proceeds, including, but not limited to, reasonable attorneys' fees, and all such expenses shall be additional amounts secured by this Mortgage.

12. **INSPECTION.** Mortgagee, or its agents, shall have the right to enter upon the Mortgaged Property, at all reasonable times, for the purpose of inspecting the Mortgaged Property or any part thereof. Mortgagee shall, however, have no duty to make such inspection. Any inspection of the Mortgaged Property by Mortgagee shall be entirely for its benefit and neither Mortgagors nor any third party shall in any way rely or claim reliance thereon.

13. **PROTECTION OF MORTGAGEE'S SECURITY.** Subject to the rights of Mortgagors under paragraph 8 hereof, if Mortgagors fail to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then Mortgagee, at Mortgagee's option, may perform such covenants and agreements, defend against or investigate such action or proceeding, and take such other action as Mortgagee deems necessary to protect Mortgagee's interest. Any amounts or expenses disbursed or incurred by Mortgagee in good faith pursuant to this paragraph 13, with interest thereon at the highest rate (default or otherwise) payable pursuant to any of the Obligations, shall become an Obligation of Mortgagors secured by this Mortgage. Such amounts advanced or disbursed by Mortgagee hereunder shall be immediately due and payable by Mortgagors unless Mortgagors and Mortgagee agree in writing to other terms of repayment. Mortgagee shall, at its option, by subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Obligations or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph shall require Mortgagee to incur any expense or do any act hereunder, and Mortgagee shall not be liable to Mortgagors for any damage or claims arising out of action taken by Mortgagee pursuant to this paragraph.

14. **CONDEMNATION.** Mortgagors shall give Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assign, transfer and set over to Mortgagee the entire proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation. Mortgagee is hereby authorized to intervene in any such action in the names of Mortgagors, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by Mortgagee in intervening in such action or compromising and settling such action or claim, or collecting such proceeds, shall be reimbursed to Mortgagee first out of the proceeds. The remaining proceeds or any part thereof shall be applied to reduction of that portion of the Obligations then most remotely to be paid, whether due or not, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.

15. **FIXTURE FILING.** From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to the Personal Property and for this purpose the name and address of the debtor is the name and address of Mortgagors as set forth in this Mortgage and the name and address of the secured party is the name and address of the Mortgagee as set forth in this Mortgage.

16. **EVENTS OF DEFAULT.** Each of the following occurrences shall constitute an event of default hereunder ("Event of Default"):

a. Mortgagors shall default in the due observance or performance of or breach Mortgagors' agreement contained in paragraph 4 hereof or shall default in the due observance or performance of or breach any other covenant, condition or agreement on Mortgagors' part to be observed or performed pursuant to the terms of this Mortgage.

b. Mortgagors shall make an assignment for the benefit of Mortgagors' creditors, or a petition shall be filed by or against Mortgagors under the United States Bankruptcy Code, or Mortgagors shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of Mortgagors' properties or of the Mortgaged Property or shall not, within thirty (30) days after the appointment of a trustee, receiver or liquidator of any material part of Mortgagors' properties or of the Mortgaged Property, have such appointment vacated.

c. A judgment, writ or warrant of attachment or execution, or similar process, shall be entered and become a lien on or be issued or levied against the Mortgaged Property or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy.

d. An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Mortgaged Property or any part thereof.

e. Mortgagors shall be in default with respect to any agreement, obligation or evidence of indebtedness of Mortgagors and such default shall continue beyond the cure period, if any, specified therein.

17. **ACCELERATION; FORECLOSURE.** Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagee may, at its option, exercise one or more of the following rights and remedies (and any other rights and remedies, at law or in equity, available to it):

a. Mortgagee may declare immediately due and payable all Obligations secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.

b. Mortgagee shall have and may exercise with respect to the Personal Property, all the rights and remedies accorded upon default to a secured party under the Iowa Uniform Commercial Code. If notice to Mortgagors of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Mortgagors at least ten (10) days prior to the date of intended disposition.

c. Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage in accordance with the law of the State of Iowa, and at any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of Mortgagee appoint a receiver to take immediate possession of the Mortgaged Property and of the Revenues and Income accruing therefrom, and to rent or cultivate the same as such receiver may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagors only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Obligations.

18. **CONTINUATION OF ABSTRACT.** If an Event of Default occurs, Mortgagee may, at the expense of Mortgagors, procure an abstract of title or continuation thereof for the Mortgaged Property and the expense of such abstract or continuation shall become an Obligation. Said abstract shall be delivered to the Mortgagee on the date of this Mortgage and may be retained by Mortgagee until the satisfaction and release of this Mortgage. If the abstract is in the possession of another party, including the Mortgagors, for any reason whatsoever, said abstract shall be delivered to the Mortgagee immediately upon the request of Mortgagee, and Mortgagors hereby irrevocably authorize and direct any party who may be in possession of said abstract to deliver said abstract to the Mortgagee immediately upon the request of Mortgagee.

19. **REDEMPTION.** It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Mortgagee, in such action, files an election to waive any deficiency judgment against Mortgagors which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) The real estate is less than ten (10) acres in size; (2) the court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagors or their successor in interest in such action.

This paragraph 19 shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 or any other Chapter of the Iowa Code, whether now in effect or hereafter adopted.

20. **ATTORNEYS' FEES.** Mortgagors shall pay on demand all costs and expenses incurred by Mortgagee in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys' fees and legal expenses and such costs and expenses shall become an obligation of Mortgagors secured by this Mortgage.

21. **FOREBEARANCE NOT A WAIVER; RIGHTS AND REMEDIES CUMULATIVE.** No delay by Mortgagee in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Mortgagee of any particular provisions of this Mortgage shall be deemed effective unless in writing signed by Mortgagee. All such rights and remedies provided for herein or which Mortgagee or the holder of the Obligations may otherwise have, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises.

22. **NOTICES.** All notices required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed to the appropriate party at the address of such party as set forth in this Mortgage or to such other address or person as hereafter designated in writing by the applicable party in the manner provided in this paragraph for the giving of notices.

23. **SEVERABILITY.** In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

24. **FURTHER ASSURANCES.** At any time and from time to time until payment in full of the Obligations, Mortgagors will, at the request of Mortgagee, promptly execute and deliver to Mortgagee such additional instruments as may be reasonably required to further evidence the lien of this Mortgage and to further protect the security interest of Mortgagee with respect to the Mortgaged Property, including, but not limited to, additional security agreements, financing statements and continuation statements. Any expenses incurred by Mortgagee in connection with the recordation of any such instruments shall become additional Obligations of Mortgagors secured by this Mortgage. Such amounts shall be immediately due and payable by Mortgagors to Mortgagee.

25. **SUCCESSORS AND ASSIGNS BOUND; NUMBER; GENDER; CAPTIONS.** The rights, covenants and agreements contained herein shall be binding upon and inure to the respective legal representatives, successors and assigns of the parties. Words and phrases contained herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the contexts. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

26. **FILING OF RELEASE.** If this Mortgage is released of record, the release shall be filed and recorded at the expense of Mortgagors.

27. **GOVERNING LAW.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Iowa.

28. **RELEASE OF RIGHTS OF DOWER, HOMESTEAD AND DISTRIBUTIVE SHARE.** Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the Mortgaged Property and waives all rights of exemption as to any of the Mortgaged Property.

29. **ENVIRONMENTAL ISSUES.**

(a) "Environmental Laws" means any federal, state or local statute, regulation, ordinance, law or decree relating to the environment, public health or safety presently in effect or that may be promulgated in the future, as such statues, regulations, and ordinances may be amended from time to time. "Hazardous Substances" means any substance or material defined or designated as a hazardous or toxic waste, material, substance, or infectious material, substance or waste, or other similar term, by any Environmental Law. "Liabilities and Costs" means all liabilities, obligations, responsibilities, losses, damages (including punitive damages, consequential damages, and treble damages), costs and expense (including the fees and costs of attorneys, experts and consultants), fines penalties, and monetary sanctions, that are direct or indirect, known or unknown, absolute or contingent, past, present or future.

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(b) No Hazardous Substance has been stored, used, or disposed of on, in or under the Mortgaged Property nor has the Land been used as a landfill or as a dump, except as listed on the Hazardous Substance Certificate delivered to Mortgagee prior to the date of the Mortgage. Mortgagor agrees to comply with all applicable Environmental Laws and will obtain any permits, licenses, or buildings, improvements, fixtures, equipment or property required by reason of any Environmental Laws. Mortgagor shall exercise due diligence in determining the applicability of Environmental Laws and shall take the necessary steps to comply with such laws within a reasonable period of time after discovering any violations of such laws.

(c) Mortgagor agrees to defend, indemnify and hold harmless Mortgagee and all of its officers, employees, attorneys, consultants, and agents against Liabilities and Costs incurred with respect to any past, present or future existence of Hazardous Substances or violation of any Environmental Laws relating to the Mortgaged Property. This indemnity shall survive the payment of the Obligations, any foreclosure proceedings against the Mortgaged Property, any statute of limitations.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

ATI Incorporated (f/k/a American Trencher, Inc.)

Dated: DECEMBER 29, 1993

By: Roger Schnittjer V.P
Roger Schnittjer, Vice President

ADDRESS OF MORTGAGEE: 222 Second Avenue SE
Cedar Rapids, IA 52401-9091

ADDRESS OF MORTGAGORS: P. O. Box 266
Delhi, IA 52233

[Complete if the Mortgaged Property includes the "homestead," within the meaning of Chapter 561 of the Iowa Code and is "agricultural land" as defined in Section 172C.1 of the Iowa Code, or dwellings, buildings, or other appurtenances located on the land.]

I (WE) UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS MORTGAGE, I (WE) VOLUNTARILY GIVE UP MY (OUR) RIGHT TO THIS PROTECTION FOR THIS MORTGAGED PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS MORTGAGE.

Dated: _____ _____

Dated: _____ _____

Dated: _____ _____

Dated: _____ _____

STATE OF IOWA, County of Linn, ss:

On this 29th day of December A.D., 1993, before me, a Notary Public in and for said County, State of Iowa, personally appeared Roger Schnittjer

to me personally known, who being by me duly sworn did say respectively, that ~~they are~~ he is Vice President of said corporation executing the within and foregoing instrument to which this is attached, that (no seal has been procured by the said) (~~the seal affixed thereto is the seal of said~~) corporation; that said instrument was signed (~~and sealed~~) on behalf of said corporation by authority of its Board of Directors; and that each of them as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

LARRY D. CHMELICEK
MY COMMISSION EXPIRES
June 22, 1995

Notary Public in and for the State of Iowa

ORIGINAL
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ATI Incorporated
December 29, 1993

EXHIBIT "A"

Lots Five (5), Six (6) and Seven (7), Block Sixteen (16), and Lots One (1), Two (2), Three (3), Four (4), Seven (7), Eight (8), Nine (9) and Ten (10), Block Eighteen (18), Delhi, Iowa, and that part of vacated Sixth Street in said Town of Delhi, Iowa lying South of the extended center line of Gay Street and North of the railroad right-of-way, according to plat recorded in Book A L.D., Pages 128-129; and that part of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) of Section Seventeen (17), Township Eight Eight (88) North, Range Four (4), West of the Fifth P.M. described as commencing at the intersection of the center line of Gay Street with the West line of Sixth Street in the Town of Delhi, Iowa, and running thence West to the East line of the Anamosa and Garnavillo State Road, thence Southwesterly along said road to the North line of the railroad right-of-way, thence Southeasterly along said railroad right-of-way to its intersection with the West line of said Sixth Street, thence North to the point of beginning, except that part described as commencing at the intersection of the North line of the railroad right-of-way with the East line of the Anamosa and Garnavillo State Road and running thence Southeasterly along said railroad right-of-way two hundred fifty (250.0) feet, thence Northwesterly to a point on the East line of said Anamosa and Garnavillo State Road which is one hundred seventy five (175.0) feet from the point of beginning, thence Southwesterly along the East line of said road one hundred seventy five (175.0) feet to the point of beginning; and Lot One (1) of the Subdivision of the Northwest part of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of Section Twenty (20), Township Eighty Eight (88) North, Range Four (4), West of the Fifth P.M., according to plat recorded in Book A Plats, Page 49, from the 30th day of September, 1987, at 8:00 o'clock A.M. to the 19th day of October, 1993, at 8:00 o'clock A.M.

AND

Fifth Street between Market Street and South Street, the alley in Block Eighteen (18), and South Street between Fifth Street and Sixth Street; all in Delhi, Iowa, according to plat recorded in Book A L.D., Pages 128-129, from the date of the filing of the plat on the 11th day of March, 1846 to the 19th day of October, 1993, at 8:00 o'clock A.M.