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Cook County Recorder 35.50

Prepared by and after recording  
return to:

Steven M. Hartmann  
Freeborn & Peters  
311 S. Wacker Dr., Suite 3000  
Chicago, Illinois 60606



## MORTGAGE

**THIS MORTGAGE** is given on the \_\_\_\_ day of April 2000, by James Sponder and Susan J. Kroll, of 5831 North Nickerson Avenue, Chicago, Illinois 60631 ("Mortgagor"), to Indeck Power Equipment Co. an Illinois corporation located at, 1111 South Willis Avenue, Wheeling, Illinois 60090 ("Indeck").

To secure the repayment of the Indebtedness (as hereinafter defined), and any renewals or extensions of the Indebtedness, and performance of Mortgagor's other agreements, covenants and obligations hereunder, including without limitation, the obligations, agreements and covenants of Mortgagor under the Instruments (as defined below), and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are acknowledged, Mortgagor mortgages, grants, bargains, sells, warrants, conveys, alienates, releases, assigns, sets over and confirms to Indeck, and to its successors and assigns forever, the property located in Cook County, Illinois, having a common street address of 5831 North Nickerson Avenue, Chicago, Illinois 60631, and legally described on **EXHIBIT A** attached hereto (the "Land"), together with all (i) all buildings, structures and other improvements now or in the future located on the Land and all easements, hereditaments and appurtenances now or in the future belonging to the Land, (ii) all fixtures now or in the future attached to or used in connection with the Land, (iii) all equipment (including, without limitation, all machinery, engines, boilers, elevators and plumbing, heating, air conditioning and ventilating equipment) now or in the future located on the Land, all of which equipment shall be considered to be fixtures and a part of the realty, (iv) all rents, income and profits arising from the Land or from the buildings, structures, other improvements, fixtures and equipment now or in the future located on the Land, and (v) all proceeds of insurance, and demands or claims thereto, related to any and all improvements now or in the future located on the Land, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said Land and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages. In this Mortgage, the above-described Land, buildings, structures, improvements easements, hereditaments, appurtenances, fixtures and equipment are herein collectively called the "Premises."

**THIS MORTGAGE SECURES PAYMENT TO INDECK OF \$698,000 BY MORTGAGOR, JOHN C. VISKUP, JR., LESLIE DAILE VISKUP, VICTORY ENERGY**

OPERATIONS, LLC AND VICTORY ENERGY OPERATIONS, INC., ON OR BEFORE THE CLOSE OF BUSINESS, CHICAGO TIME, ON JULY 1, 2000 PURSUANT TO THE TERMS OF A NOTE DATED AS OF APRIL 4, 2000 AND PERFORMANCE OF THE OBLIGATIONS UNDER PARAGRAPH 1 OF THAT CERTAIN SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE ENTERED INTO BY SAID PARTIES AND INDECK, DATED AS OF APRIL 4, 2000 (THE "SETTLEMENT AGREEMENT"), PLUS THE TOTAL AMOUNT OF ADVANCES MADE BY INDECK TO PROTECT THE PREMISES AND THE SECURITY INTEREST AND LIEN CREATED HEREBY, INTEREST ON ALL THE FOREGOING, AND ALL COSTS OF ENFORCEMENT AND COLLECTION OF THIS MORTGAGE AND THE INDEBTEDNESS (AS HEREINAFTER DEFINED).

The indebtedness and obligations secured by this Mortgage are collectively referred to in this Mortgage as the "Indebtedness."

Mortgagor further warrants, represents and agrees as follows:

1. **Payment of Indebtedness.** Mortgagor agrees to pay or perform all of the Indebtedness owing by Mortgagor, including all interest on it, in accordance with the terms of the Settlement Agreement and any other instruments, documents or agreements evidencing it ("Instruments").
2. **Warranties.** Mortgagor warrants and represents to Indeck as follows:
  - (a) All title and other information concerning Mortgagor, the Premises, and any person obligated on any of the Indebtedness, that have been or in the future are furnished to Indeck, are and shall be true and correct in all material respects.
  - (b) The execution, delivery and performance of this Mortgage by Mortgagor will not violate any law, rule, judgment, order, agreement or instrument binding upon Mortgagor and will not require the approval of any public authority or any third party, and this Mortgage is the valid and binding obligation of Mortgagor, enforceable in accordance with its terms.
3. **Assignment of Leases and Contracts.** Mortgagor assigns and mortgages to Indeck, and grants to Indeck a security interest in, as additional security for the Indebtedness, all of Mortgagor's right, title and interest in and to all existing and future oral or written leases of all or any part of the Premises or of any interest in them and all existing and future land contracts or other agreements by which the Premises or any interest in them is being or shall be sold, together with all rents and profits arising from, and all other proceeds of, those leases, land contracts or other agreements. Mortgagor and Indeck further acknowledge and agree that upon recordation of this Mortgage in the Office of the Recorder of Deeds, of Cook County, Illinois, the rights of Mortgagor hereunder relative to the perfection and priority of the liens and security interests granted under this Section 3 are as set forth in Chapter 765 of the Illinois Compiled Statutes, Section 5/31.5, as amended.
4. **Taxes and Insurance.** Mortgagor shall pay, or cause to be paid, before they become delinquent, all taxes, assessments and other similar charges levied upon or with respect

to the Premises and shall promptly deliver to Indeck satisfactory evidence of payment of them. Mortgagor shall cause all buildings, improvements and other insurable parts of the Premises to be insured against loss or damage by fire, by hazards included within extended coverage and by other risks that Indeck from time to time requires, in amounts and with insurers that are acceptable to Indeck, and Mortgagor shall cause all premiums on the insurance to be paid when due. Each policy evidencing insurance required by this Paragraph shall provide that loss shall be payable to Indeck as its interest shall appear at the time of the loss, shall contain a standard mortgage clause, shall be in form and substance acceptable to Indeck, shall contain a provision that such policy will not be canceled, amended or reduced in amount or scope without at least 30 days' prior written notice to Indeck and a copy shall be delivered to Indeck. If there shall occur any destruction of or material damage to the Premises, Mortgagor shall give immediate notice to Indeck, and Indeck shall have the right to make proof of the loss or damage, if Mortgagor does not promptly do so. Indeck is authorized to settle, adjust or compromise any claims for loss or damage under any insurance policy. Mortgagor shall immediately endorse and deliver to Indeck all proceeds of any policy, up to the maximum secured hereby.

5. **Maintenance and Repair.** Mortgagor shall maintain the Premises in good condition and repair; shall not commit or suffer any waste of the Premises; shall not remove, demolish or substantially alter any building or fixture on the Premises without the prior written consent of Indeck; shall cause to be complied with all laws, ordinances, regulations and requirements of any governmental authority applicable to the Premises or to activities on the Premises; shall promptly repair, restore, replace or rebuild any part of the Premises that is damaged or destroyed by any casualty; and shall promptly pay when due all charges for utilities and other services to the Premises.

6. **Indeck's Right to Perform.** If Mortgagor shall default in the performance of any obligation of Mortgagor under this Mortgage, then Indeck shall have the right, but shall have no obligation, to perform, or cause to be performed, the obligation, and Mortgagor shall reimburse Indeck on demand for all sums expended by Indeck in doing so, together with interest at the Default Rate. Indeck and any persons authorized by Indeck shall have the right to enter upon the Premises at all reasonable times for the purpose of inspecting the Premises or effecting maintenance or repairs or taking any other action under the preceding sentence.

7. **Condemnation.** If all or any part of the Premises is taken, whether temporarily or permanently, under power of eminent domain or by condemnation, the entire proceeds of the award or other payment for the taking shall be paid directly to Indeck, up to the maximum amount secured hereby.

8. **Sale or Transfer.** If there shall be a sale or transfer, by operation of law or otherwise, of all or any part of the Premises, Indeck may deal with the buyer or transferee with respect to this Mortgage and the Indebtedness as fully and to the same extent as it might with Mortgagor, without in any way releasing, discharging or affecting the liability of Mortgagor under this Mortgage and upon the Indebtedness, and without waiving Indeck's right to accelerate payment of the Indebtedness by reason of the sale or transfer.

9. **Environmental and Access Law Warranties and Agreements.** Mortgagor warrants, represents, and agrees to Indeck that the Premises and all activities of Mortgagor and

all other persons on the Premises are and shall continue to be in compliance with all environmental laws and all access laws. No part of the Premises is or shall in the future be used as a "public accommodation," as defined in the federal Americans With Disabilities Act, as amended. The Premises are not and shall not become a site or source of environmental contamination. Except as expressly disclosed by Mortgagor to Indeck in writing, (i) no asbestos or polychlorinated biphenyls are present on or contained in the Premises, and (ii) the Premises do not contain, and have never contained, an underground storage tank.

10. **Events of Default and Acceleration.** Upon the occurrence of any of the following events of default, all or any part of the Indebtedness shall, at the option of Indeck, become immediately due and payable without notice or demand:

(a) If default occurs in the payment or performance of any of the Indebtedness, when and as it shall be due and payable, as provided in this Mortgage and under Paragraph 1 of the Settlement Agreement.

(b) If default occurs in the performance of any obligation to Indeck under this Mortgage, whether or not Indeck shall have performed the obligation on Mortgagor's behalf and whether or not Mortgagor shall have reimbursed Indeck for any payments or expenses it incurred in curing the default.

(c) If Mortgagor shall die, become insolvent or make an assignment for the benefit of creditors.

(d) If Mortgagor, without the written consent of Indeck, shall sell, convey, transfer, mortgage and/or further encumber the Premises or any interest in the Premises or any rents or profits from the Premises or if any mortgage, lien or other encumbrance or any writ of attachment, garnishment, execution or other legal process shall be issued against or placed upon the Premises or any interest in them or any rents or profits from them, except in favor of Indeck, or if any part of the Premises or any interest in them shall be transferred by operation of law.

(e) If all or any material part of the Premises shall be taken by condemnation or power of eminent domain.

(f) If all of the Premises shall be damaged or destroyed by fire or other casualty, regardless of insurance coverage for the loss.

(g) If a material part, but not all, of the Premises shall be damaged or destroyed by fire or other casualty and not fully covered by insurance, unless Mortgagor elects to and does pay any portion of the loss not covered by insurance within thirty (30) days of the date of such loss.

If a voluntary or involuntary case in bankruptcy or receivership shall be started by or against Mortgagor, then the entire Indebtedness shall automatically become immediately due and payable, without notice or demand. All or any part of the Indebtedness also may become, or may be declared to be, immediately due and payable under the terms and conditions contained in any

Security Document, Instrument or other agreement that at any time evidences, secures or relates to the Indebtedness.

11. **Remedies.** Indeck shall have all rights and remedies given by this Mortgage or otherwise permitted by law. In addition, upon an event of default, Indeck shall have the right and is authorized:

(a) To collect and receive all rents, profits and other amounts that are due or shall in the future become due under the terms of any leases, land contracts, now or later in effect, by which the Premises or any interest in them are then being sold or leased, and to exercise any other right or remedy of Mortgagor under any lease, land contract or other agreement.

(b) To foreclose this Mortgage by action under applicable law.

(c) To obtain the appointment of a receiver for the Premises in accordance with the Act (as hereinafter defined).

(d) To sell, lease and convey the Premises at public sale, and to sign and deliver to the purchasers at the sale good and sufficient deeds of conveyance, paying any surplus funds, after payment of the Indebtedness in full and the expenses of the sale, including attorneys' fees and expenses as provided by law, to Mortgagor, all in accordance with the Illinois Mortgage Foreclosure Law, as it may be amended from time to time, and any similar statutory provisions that may in the future be enacted. The Premises may, at the option of Indeck, be sold in one parcel.

All rights and remedies of Indeck under this Mortgage, whether or not exercisable only on default, shall be cumulative and may be exercised from time to time, and no delay by Indeck in the exercise of any right or remedy shall be a waiver of it, and no single or partial exercise of any right or remedy shall prevent other or further exercise of it or the exercise of any other right or remedy, except to the extent otherwise provided by law.

12. **Waivers.** Mortgagor waives any right to require Indeck to sue upon or otherwise enforce payment of the Indebtedness or to enforce any security for it before exercising its rights and remedies under this Mortgage. Mortgagor hereby expressly waives any and all rights of redemption from sale or from or under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Premises are located.

13. **Expenses.** Mortgagor shall pay to Indeck on demand all expenses, including attorneys' fees and legal expenses, paid or incurred by Indeck in collecting or attempting to collect the Indebtedness or in protecting and enforcing the rights of and obligations to Indeck under any provision of this Mortgage, including, without limitation, taking any action in any bankruptcy, insolvency or reorganization proceeding concerning Mortgagor or foreclosing this Mortgage by advertisement or by action.

14. **Application of Proceeds.** If any rents or profits or any proceeds of insurance or proceeds of any condemnation or eminent domain award or proceeds from any sale of the Premises at foreclosure are paid to Indeck, Indeck shall have the right to apply the rents or profits or proceeds, in amounts and proportions that Indeck shall in its sole discretion determine, to the full or partial satisfaction of any or all of the indebtedness and obligations secured by this Mortgage, including any contingent or secondary obligations, whether or not they shall then be due and payable by the primary obligor.

15. **Release.** Notwithstanding any other provision of this Mortgage, Mortgagor shall have the right to have this Mortgage discharged upon full payment of the maximum amount secured under this Mortgage. Indeck agrees to execute, file and deliver such additional documents as Mortgagor may reasonably request, or as may be necessary and appropriate, to effectuate the release of this Mortgage in accordance with and upon satisfaction of the terms of this Mortgage.

16. **Compliance with Illinois Mortgage Foreclosure Law.**

(i) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(ii) If any provision of this Mortgage shall grant to Indeck any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Indeck under the Act in the absence of said provision, Indeck shall be vested with the rights granted in the Act to the full extent permitted by law.

(iii) Without limiting the generality of the foregoing, all expenses incurred by Indeck to the extent reimbursable under Section 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

17. **WAIVER OF JURY TRIAL, ETC.** MORTGAGOR HEREBY IRREVOCABLY AGREES THAT, SUBJECT TO INDECK'S SOLE AND ABSOLUTE ELECTION, ALL SUITS, ACTIONS OR OTHER PROCEEDINGS WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION HERewith SHALL, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, BE SUBJECT TO LITIGATION IN COURTS HAVING SITUS WITHIN CHICAGO, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED IN CHICAGO, ILLINOIS, AND HEREBY IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT, SHE(HE)(IT) MAY HAVE TO REQUEST OR DEMAND TRIAL BY JURY, TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT BY INDECK IN ACCORDANCE WITH THIS PARAGRAPH,

OR TO CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

18. Other. Any notice to Mortgagor or to Indeck shall be considered to be given if and when mailed, with postage prepaid, to the respective address of Mortgagor or Indeck appearing on the first page of this Mortgage, or if and when delivered personally. The provisions of this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Indeck and their respective successors, assigns, heirs and personal representatives. Any provision of this Mortgage prohibited or unenforceable by any applicable law shall be ineffective only to the extent and for the duration of the prohibition or unenforceability without invalidating the remaining provisions of this Mortgage.

Mortgagor hereby RELEASES AND WAIVES, to the extent permitted under applicable law, all rights under and by virtue of the homestead exemption laws of the State of Illinois.

Mortgagor has signed this Mortgage as of the date stated on the first page of this Mortgage.

Witnesses:

JAMES SPONDER

SUBSCRIBED AND SWORN TO before me this 1st day of ~~April~~<sup>May</sup>, 2000.

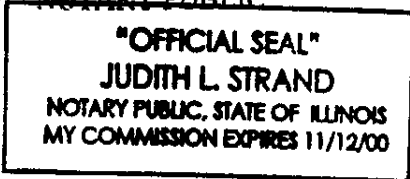
Judith L. Strand  
NOTARY PUBLIC

[Signature]  
SUSAN J. KROLL

SUBSCRIBED AND SWORN TO before me this 1st day of ~~April~~<sup>May</sup>, 2000.

Judith L. Strand  
NOTARY PUBLIC

[Signature]



#323392

# UNOFFICIAL COPY

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## EXHIBIT A

### LEGAL DESCRIPTION

THE WEST 10 FEET OF LOT 26 AND ALL OF LOT 27 IN BLOCK 13 IN NORWOOD PARK IN SECTION 6, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 5831 North Nickerson Avenue  
Chicago, Illinois 60631

PIN No: 13-06-305-006 Vol 323

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