

92024321

REAL ESTATE MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE WITNESSETH, That 5TH AVENUE MALL, INC., an Indiana corporation, having its principal offices at 481-87 Broadway, Suite 202, Gary, Indiana 46402 ("Mortgagor"), mortgages and warrants to INDIANA SMALL BUSINESS DEVELOPMENT CORPORATION, an Indiana corporation, having its principal offices at One North Capital Avenue, Suite 1275, Indianapolis, Indiana ("Mortgagee"), the real estate located in Lake County, Indiana (hereinafter referred to as the "Real Estate"), more particularly described in Exhibit A attached hereto and made a part of this Real Estate Mortgage and Security Agreement by this reference (hereinafter referred to as the "Mortgage") together with all buildings, other structures and fixtures (including, but not limited to, all lighting fixtures, mechanical equipment, machinery, carpets, air conditioning and heating equipment, compressors, built-in cabinets, and other apparatus and devices owned by Mortgagor) now or hereafter erected, placed or installed in or upon, or now or hereafter attached to or used in connection with the operation and maintenance of, said Real Estate to the extent such items may be considered real estate under applicable law, and all tenements, hereditaments, easements, rights, royalties, appurtenances and all other rights and privileges thereunto attaching and belonging, or in any way appertaining, and the rents and other income therefrom (hereinafter collectively referred to as the "Mortgaged Premises"), all to the use and benefit of Mortgagee, its successors and assigns.

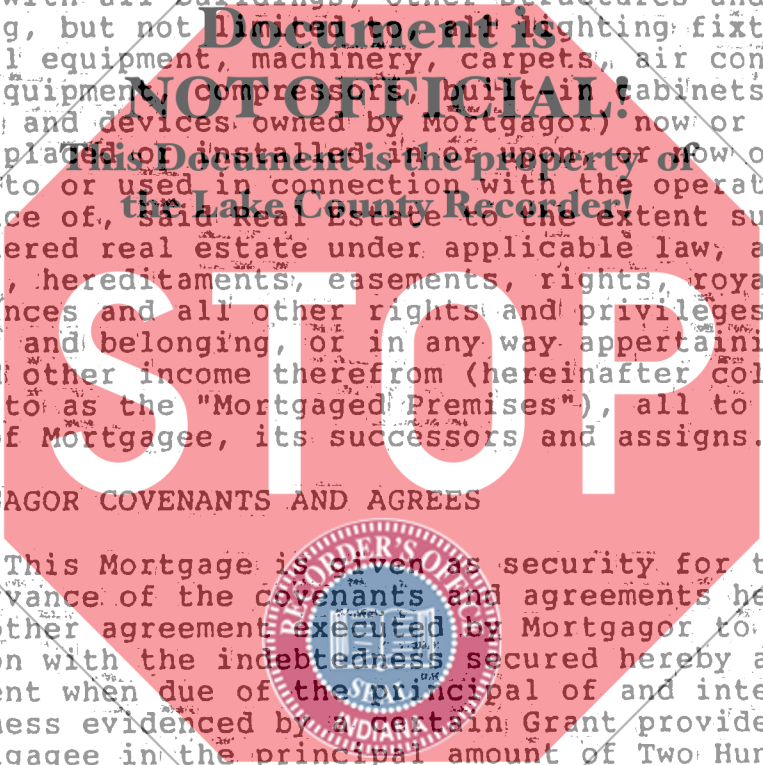
MORTGAGOR COVENANTS AND AGREES

1. This Mortgage is given as security for the performance and observance of the covenants and agreements herein contained and any other agreement executed by Mortgagor to Mortgagee in connection with the indebtedness secured hereby and to secure the payment when due of the principal of and interest on indebtedness evidenced by a certain Grant provided to Mortgagor from Mortgagee in the principal amount of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) (hereinafter referred to as the "Grant"), which Grant is set forth in a certain Loan Agreement executed by and between Mortgagor and Mortgagee of even date herewith (hereinafter referred to as the "Loan Agreement"). To evidence Mortgagor's obligation to repay the Grant, Mortgagor has executed a certain Promissory Note in the principal amount of the Grant of even date herewith (hereinafter referred to as the "Note"). The Note and this Mortgage shall be released and/or terminated by Mortgagee if the Incubator Program (as defined in the Loan Agreement) has been and continues to be operational during the five (5) year

CHICAGO TITLE INSURANCE COMPANY  
INDIANA DIVISION

STATE OF INDIANA / S.S.M.  
LAKE COUNTY  
FILED FOR RECORD

REC'D  
FEB 22 10 04 AM '92



3600  
CX

period following the Closing Date (as defined in the Loan Agreement).

2. Mortgagor is fee simple owner of the Mortgaged Premises and has full power to mortgage and assign the same; and the Mortgaged Premises are free and clear of all liens and encumbrances, except for the First Mortgage (as defined in the Loan Agreement), the Second Mortgage (as defined in the Loan Agreement), the Subordinated Mortgage (as defined in the Loan Agreement), use restrictions of record, zoning ordinances, rights of way and easements of record, and the lien of current taxes and assessments not delinquent. The lien of this Mortgage shall be senior to the rights of any lessee of all or any part of the Mortgaged Premises. Mortgagor shall make any further assurances of title that Mortgagee may require and shall warrant and defend the title to the Mortgaged Premises against all lawful claims and demands whatsoever.

3. Mortgagor shall procure and maintain in effect at all times the insurance required pursuant to Section 5.1(B) of the Loan Agreement. All amounts recoverable under any policy are hereby assigned to Mortgagee and, in the event of a loss, Mortgagor will give immediate notice by mail to Mortgagee, and Mortgagee may make proof of loss if not made promptly by the Mortgagor. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee rather than to Mortgagee and Mortgagor jointly, and the amount collected may, at the option of Mortgagee, be used in any one or more of the following ways: (a) applied upon the indebtedness secured hereby, whether or not such indebtedness is then due and payable, (b) used to fulfill any of the covenants contained herein as Mortgagee may determine, (c) used to replace or restore the Mortgaged Premises to the condition satisfactory to Mortgagee, or (d) released to Mortgagor.

The Mortgagor will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Premises or any part thereof without first causing such increased risk to be fully and adequately covered by insurance. Insurance as above-described shall also be obtained on all fixtures and personal property used by Mortgagor in connection with the Real Estate to the extent that the value thereof is not otherwise included in the insurance on the Real Estate. In the event of foreclosure of this Mortgage, or other transfer of title of the Mortgaged Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor, in and to any insurance policies then in force, shall pass to the purchaser or grantee of the Mortgaged Premises.

In the event that, prior to the extinguishment of the indebtedness secured hereby, there exists any claim under any hazard insurance policies which shall not have been paid and distributed in accordance with the terms of this Mortgage, and any such claims shall be paid after the extinguishment of the indebtedness secured hereby, and the foreclosure of this Mortgage, transfer of title to the Mortgaged Premises, or extinguishment of indebtedness secured hereby shall have resulted in extinguishment of the indebtedness secured hereby for an amount less than the total of the unpaid principal balance together with accrued interest plus costs of litigation, attorneys' fees, title insurance and all other costs and expenses incurred by Mortgagee in any action involving such extinguishment then, without limitation, that portion of the payment in satisfaction of the claim which is equal to the difference between the total amount of the aforementioned amounts due Mortgagee and the amount in extinguishment of the indebtedness secured hereby received by Mortgagee shall be paid to said Mortgagee, and the Mortgagor hereby assigns, transfers and sets over to the Mortgagee all of the Mortgagor's right, title and interest in and to said sum. The balance, if any, shall belong to Mortgagor. Notwithstanding the above, Mortgagor shall retain an interest in the insurance policies above-described during any redemption period.

4. Mortgagor shall pay, before they become delinquent or any penalty for non-payment attaches thereto, all taxes, assessments and charges of every nature ("Impositions") now or hereafter levied or assessed against or upon the Mortgaged Premises, or any part thereof, or upon the rents and other income therefrom, which by reason of non-payment could become a lien upon the Mortgaged Premises, whether an Imposition be levied directly or indirectly, as an excise tax, or as an income tax, and will submit to Mortgagee such evidence of the timely payment of all Impositions as Mortgagee may require; and Mortgagor will, in any event, pay all Impositions which may be levied on this Mortgage, the Note or the Grant, except any state or federal income taxes or any state intangibles taxes.

5. If Mortgagor neglects or refuses to keep the Mortgaged Premises in good repair, to maintain and pay the premiums for insurance which may be required, or to pay and discharge Impositions assessed against Mortgagor or the Mortgaged Premises, all as provided for under the terms of this Mortgage, Mortgagee may, at its election, and without demand or notice to Mortgagor, cause such repairs or replacements to be made, obtain such insurance or pay such Impositions, and any amounts paid as a result thereof, together with interest thereon at the

rate of twelve percent (12%) per annum from the date of payment and such amounts and interest thereon, shall be immediately due and payable by Mortgagor to Mortgagee, and until paid shall be added to and become a part of the indebtedness secured hereby, and may be collected in any suit hereon; or Mortgagee, by payment of any Imposition may, at its discretion, be subrogated to the rights of the governmental subdivisions levying such Imposition. No such advances shall be deemed to relieve Mortgagor from any default hereunder or impair any right or remedy of Mortgagee, and the exercise by Mortgagee of the right to make advances shall be optional with Mortgagee and not obligatory and Mortgagee shall not in any case be liable to Mortgagor for a failure to exercise any such right.

6. Mortgagor shall keep the Mortgaged Premises in good order, repair and condition at all times and shall not commit waste or allow waste to be committed against the Mortgaged Premises. Mortgagor shall not violate or permit the violations of any legal requirement or contract affecting the Mortgaged Premises and shall not commit or allow any material change in any of the buildings or improvements (including fixtures) constituting a part of the Mortgaged Premises without the prior written consent of Mortgagee. Mortgagee shall at all reasonable times have free access to the Mortgaged Premises for the purposes of inspection and the exercise of its rights hereunder.

7. All awards made by any public or quasi-public authority for damages to the Mortgaged Premises by virtue of an exercise of the right of eminent domain by such authority, including any award for a taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Mortgaged Premises, are, subject to the rights of the holders of the First Mortgage and the Second Mortgage, hereby assigned to Mortgagee; and Mortgagee, at its option, is authorized and directed to receive the proceeds of any such award to the extent of the indebtedness secured by or payable under this Mortgage from the authorities making such award and to give proper receipts and acquittances therefor, and may, at Mortgagee's election, use such proceeds in any one or more of the following ways: (a) applied upon the indebtedness secured hereby or payable hereunder, whether or not such indebtedness is then due, (b) used to fulfill any of the covenants contained herein as Mortgagee may determine, (c) used to replace or restore the Mortgaged Premises to a condition satisfactory to Mortgagee, or (d) released to Mortgagor. Mortgagee is authorized, at its option, to appear in and prosecute in its own name any action or proceeding or, with consent and joinder of Mortgagor, to make any compromise or settlement in connection with such taking or damage. Any

release of any portion of such proceeds, for the purposes of replacement and/or restoration of the Mortgaged Premises shall be subject to the reasonable controls and requirements of the Mortgagee, and Mortgagor agrees that if proceeds from such awards are insufficient for the full cost of any replacement or restoration of the Mortgaged Premises, Mortgagor will first deposit with Mortgagee funds which together with the amount of proceeds actually collected will equal the full cost of said replacement or restoration of the Mortgaged Premises and Mortgagor will deposit with Mortgagee all other funds necessary for the completion of said replacement or restoration. Mortgagor shall, upon request by Mortgagee, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning all proceeds from such awards to Mortgagee free and clear of any and all encumbrances or claims of any kind or nature whatsoever. Mortgagor shall notify Mortgagee of a condemnation suit affecting the Mortgaged Premises of which Mortgagor has notice. If all, or substantially all, of the Mortgaged Premises are taken by condemnation, the Mortgagee shall be responsible for the indebtedness secured hereby.

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

8. If required by Mortgagee or in the event of a default by Mortgagor hereunder or under the Loan Agreement, Mortgagor shall pay to Mortgagee, on dates upon which interest is payable, such amounts as Mortgagee from time to time estimates as necessary to create and maintain a reserve fund from which to pay at least sixty (60) days before the same become due, all Impositions on or against the Mortgaged Premises. If there is any insufficiency in said fund, Mortgagor shall, upon receipt of notice thereof from Mortgagee, immediately pay to Mortgagee any additional funds as may be necessary to remove such deficiency. Payments from such reserve fund for such purposes may be made by Mortgagee at its discretion. Such payments shall not be, nor deemed to be, trust funds but may be commingled with other reserve funds held by Mortgagee, or any other institution designated by Mortgagee, and no interest shall be payable in respect thereof. In the event of any default under the terms of this Mortgage or the Loan Agreement, any part or all of said reserve fund may be applied to the indebtedness secured hereby and, in refunding any part of said reserve fund, Mortgagee may deal with whomever is represented to be the owner of the Mortgaged Premises at that time.

9. Mortgagor shall maintain and keep full and correct records and books of account showing in detail the earnings and expenses of the operation of the Mortgaged Premises solely as an incubator (as defined pursuant to I.C. 4-4-18-3) in accordance with generally accepted accounting principles and shall permit Mortgagee, by its accountants, attorneys and other

authorized representatives, to examine and audit such books and records and all supporting vouchers and data at any reasonable time and from time to time upon request by Mortgagee. Within one hundred twenty (120) days after the end of each fiscal year of Mortgagor, Mortgagor shall deliver to Mortgagee an annual reviewed financial statement, consisting of a balance sheet of Mortgagor as at the end of and for such year, a statement of income of Mortgagor for such year setting forth in each case the corresponding figures to the preceding fiscal year, and a statement of changes in financial position during such year, such statements to be prepared by a firm of independent public accountants selected by Mortgagor and acceptable to Mortgagee. Throughout the term of this Mortgage, Mortgagor shall deliver to Mortgagee such other information with respect to the operation of the Mortgaged Premises and Mortgagor as Mortgagee may from time to time reasonably request.

10. Mortgagor shall indemnify Mortgagee and save it harmless from any and all loss, damage or expense, including attorneys' fees, and the cost of the execution and delivery of this Mortgage and the terms hereof, and the same is made a part of the indebtedness secured hereby. All sums paid by Mortgagee, including attorneys' fees, to cure a default by Mortgagor hereunder or for the expense of any litigation to prosecute or defend the rights and lien created hereby in any action or proceeding to which Mortgagee is made a party by reason of this Mortgage, the Note, the Grant, or any other instrument delivered in connection with the loan secured hereby, or in which it becomes necessary to defend or uphold the lien of this Mortgage, shall be paid by Mortgagor to Mortgagee, together with interest thereon from date of payment at the rate specified under Paragraph 5 above, and any such sums and the interest thereon shall be immediately payable and secured hereby, having the benefit of the lien hereby created as a part hereof and with its priority, all without relief from valuation or appraisal laws.

11. Mortgagor shall pay all sums which if not paid may result in the acquisition or creation of a lien prior to, of equal priority with, or junior to the lien of this Mortgage, except the First Mortgage, the Second Mortgage or the Subordinated Mortgage, including but not limited to mechanics' liens, or which may result in conferring upon a tenant of any part of the Mortgaged Premises a right to recover such sums as prepaid rent or as a credit or offset against any future rental obligation.

12. Mortgagee is subrogated for further security to the lien, although released of record, of any and all encumbrances paid with the proceeds of the indebtedness secured by this Mortgage.

13. As additional security for the repayment of the indebtedness hereby secured and subject to the rights of the holders of the First Mortgage and the Second Mortgage, Mortgagor assigns to Mortgagee its entire interest, as lessor, in all future leases, all rentals and other income from the Mortgaged Premises, and all licenses, permits, agreements or contracts pertaining to the Mortgaged Premises; but, so long as there is no default in any of the terms or conditions of this Mortgage, the Note, the Grant or the Loan Agreement, Mortgagor may continue to manage the Mortgaged Premises as owner and collect all income arising therefrom as it accrues. This assignment shall not be construed as a consent by Mortgagee to any such lease, license, permit, agreement or contract hereby assigned nor impose upon Mortgagee any obligations with respect thereto since it is given as collateral security only. In the event of a default in any of the terms and conditions of this Mortgage, the Note, the Grant, the Loan Agreement or any other instrument delivered in connection with the indebtedness secured hereby, this Mortgagor shall, upon demand therefor made by Mortgagee, surrender possession of the Mortgaged Premises to Mortgagee, or its duly constituted agents, who may thereafter take possession and assume the management of the Mortgaged Premises and collect the rentals and other income therefrom, rent or lease the Mortgaged Premises or any portion thereof, upon such terms and for such time as it may deem best, and maintain proceedings to recover rents or possession of the Mortgaged Premises from any tenant or trespasser, and apply the net proceeds of such rent and income to the following purposes and in the following order: (a) preservation and management of the Mortgaged Premises; (b) payment of taxes; (c) payment of insurance premiums; and (d) payment of the indebtedness secured hereby. Mortgagee shall be liable to account only for those rents actually received. In the event of default of Mortgagor relative to the environmental covenants set forth in Section 5.1(J)(ii) of the Loan Agreement, in the alternative, Mortgagee may proceed to enforce on Mortgagor's behalf any environmental restriction set forth in the leases without taking possession or assuming management of the Mortgaged Premises.

14. Mortgagor shall submit to Mortgagee for prior written approval of Mortgagee the proposed form of lease which Mortgagor intends to use for the Mortgaged Premises. All executed leases shall be subordinate to the lien of this Mortgage. Mortgagee may from time to time require that all lessees submit to Mortgagee an estoppel certificate, in form satisfactory to Mortgagee, certifying that there are then no defaults on the part of Mortgagor as lessor under any of the respective leases.

15. Mortgagor shall perform all of its obligations as lessor under all leases assigned to Mortgagee. All leases hereinafter entered into pertaining to the Mortgaged Premises shall be pursuant to a form approved by Mortgagee.

16. Mortgagor shall operate the Mortgaged Premises at all times as an incubator (as defined pursuant to I.C. 4-4-18-3) and shall not acquire any equipment or fixtures secured by this Mortgage subject to any security interest or other charge or lien having priority over the lien or security interest granted under this Mortgage, the First Mortgage, the Second Mortgage or the Subordinated Mortgage.

17. In the event the ownership of the Mortgaged Premises, or any part thereof, becomes vested in a person or persons other than Mortgagor, and Mortgagee does not exercise the option reserved to it hereunder to accelerate the indebtedness secured hereby in the event of alienation of all or any part of the Mortgaged Premises, Mortgagee may deal with the successor or successors in the same manner as with Mortgagor, without in any manner violating or discharging Mortgagor's liability hereunder, or upon the indebtedness hereby secured.

18. Mortgagor shall pay to Mortgagee, or its legal representatives, successors and assigns, attorneys' fees, any sums expended for title searches or for title insurance relating to the Mortgaged Premises, and all other costs incurred in any action to foreclose this Mortgage, or for the cure of a default by Mortgagor in any of its terms, covenants or agreements, which fees and costs shall be an additional lien and security interest against the Mortgaged Premises.

19. This Mortgage creates a continuing lien to secure the payment of the Note and the Grant and the performance of any other obligations of Mortgagor under this Mortgage and the Loan Agreement or under any other security documents or agreements executed by Mortgagor in connection with the indebtedness secured hereby.

20. Mortgagor covenants and agrees, at its sole cost and expense, to indemnify, protect and save Mortgagee harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee and arising from or out of (a) any



existing or future hazardous or toxic materials, wastes, and substances which are defined, determined, or identified as such in any federal, state, or local laws, rules, or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of such laws, rules, or regulations (any such materials, wastes, and substances being herein collectively referred to as "Hazardous Materials") on, in, under or affecting all or any portion of the Mortgaged Premises or any surrounding areas; or (b) the enforcement of this Mortgage or the assertion by Mortgagor of any defense to the obligations hereunder, whether any of such matters arise before or after the taking of title to all or any portion of the Mortgaged Premises by Mortgagor, including, without limitation, (i) the costs of removal of any and all Hazardous Materials from all or any portion of the Mortgaged Premises or any surrounding areas, (ii) additional costs required to take necessary precautions to protect against the release of Hazardous Materials on, in, under or affecting the Mortgaged Premises into the air, any body of water, any other public domain or any surrounding areas, and (iii) costs incurred to comply, in connection with all or any portion of the Mortgaged Premises or any surrounding areas, with all applicable laws, orders, judgments or regulations with respect to Hazardous Materials. Mortgagee's rights under this Mortgage shall be in addition to all rights of Mortgagee under the Loan Agreement and under any other documents or instruments evidencing or securing the indebtedness of Mortgagor to Mortgagee (the Mortgage, the Loan Agreement and such other documents or instruments, as amended or modified from time to time, being herein collectively referred to as the "Loan Instruments"), and payments by Mortgagor under this Mortgage shall not reduce Mortgagor's obligations and liabilities under any of the Loan Instruments.

21. The liability of Mortgagor under this Mortgage shall in no way be limited or impaired by, and Mortgagor hereby consents to and agrees to be bound by, any amendment to or modification of the provisions of the Loan Instruments by Mortgagor or any person who succeeds Mortgagor as owner or succeeds to Mortgagor's leasehold interest in the Mortgaged Premises. In addition, the liability of Mortgagor under this Agreement shall in no way be limited by (i) any extensions of time for performance required by any of the Loan Instruments, (ii) any sale, assignment or foreclosure of the Mortgage or any sale or transfer of all or part of the Mortgaged Premises, (iii) any exculpatory provision in any of the Loan Instruments limiting Mortgagee's recourse to property subject to this Mortgage or to any other security, or limiting Mortgagee's rights to a deficiency judgment against Mortgagor, (iv) the accuracy or inaccuracy of the representations and warranties

made by Mortgagor under any of the Loan Instruments, (v) the release of Mortgagor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Instruments by operation of law, Mortgagee's voluntary act, or otherwise, (vi) the release or substitution in whole or in part of any security for the Note or the Grant or (vii) Mortgagee's failure to record the Mortgage (or Mortgagee's improper recording or filing thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Note or the Grant.

22. Mortgagor hereby waives any right or claim of right to cause Mortgagee to proceed against any of the security for the indebtedness before proceeding under this Mortgage against Mortgagor; Mortgagor agrees that any payments required to be made hereunder shall become due on demand; and Mortgagor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

- This Document is the property of the Lake County Recorder!**
23. If
- (i) Mortgagor fails to pay any indebtedness secured hereby or any installment thereof when due;
  - (ii) Mortgagor fails to pay the Impositions required to be paid under the terms of this Mortgage;
  - (iii) Mortgagor fails to maintain in force the insurance required by Paragraph 3 hereof;
  - (iv) Mortgagor defaults in the performance and observance of any other of the terms, covenants or agreements of this Mortgage, the Note, the Grant, the Loan Agreement or any other security instrument executed in connection with the indebtedness secured hereby;
  - (v) Mortgagor defaults in the performance and observance of any of the terms, covenants or agreements of the First Mortgage, the Second Mortgage or the Subordinated Mortgage;
  - (vi) any foreclosure proceedings by the holder of any mortgage or lien upon the Mortgaged Premises, or any proceedings, either voluntary or involuntary, by or against Mortgagor or its successors in title to enforce payment or liquidation of all of its outstanding obligations, which proceedings continue for a period exceeding thirty (30) days, are instituted; or

(vii) any law is hereafter passed by the State of Indiana or local authority deducting from the value of the Mortgaged Premises for the purposes of taxation any lien thereon, or providing or changing in any way the laws now in force for the taxation of mortgages, or the indebtedness secured thereby, for state or local purposes, or the manner of collection of any such taxation so as to affect materially and adversely this Mortgage, the indebtedness secured hereby, or the interest of the Mortgagee hereunder, and Mortgagor due to the operation of any law or otherwise does not pay the whole of any such tax within thirty (30) days of notice thereof, in addition to all other payments hereunder without any penalty thereby accruing to Mortgagee; or

**Document is NOT OFFICIAL!**  
**This Document is the property of the Lake County Recorder!**

(viii) Mortgagor should (a) apply for or consent in writing to, the appointment of a receiver, trustee or liquidator of Mortgagor or of all or substantially all of its assets (b) file a petition in bankruptcy, federal or state, (c) admit in writing its inability to pay its debts as they become due, (d) make a general assignment for the benefit of creditors, (e) file a petition or an answer seeking a reorganization or an arrangement with creditors, (f) take advantage of any insolvency law, (g) file an answer admitting the material allegations of a petition filed against Mortgagor in any bankruptcy, reorganization or insolvency proceedings, (h) terminate or dissolve its existence without the prior written consent of Mortgagee, (i) be adjudicated a bankrupt or insolvent by an order, judgment or decree entered by any court of competent jurisdiction upon the application of a creditor or creditors, (j) receive approval by a court of competent jurisdiction of a petition seeking reorganization of Mortgagor (other than a reorganization not involving the liabilities of Mortgagor) or appointment of a receiver, trustee or liquidator of Mortgagor or of all or substantially all of its assets, and such order, judgment or decree shall continue unstayed and in effect for a period of thirty (30) days or (k) the Mortgaged Premises are seized under any writ or process of Court or by any trustee or receiver; or

(ix) Mortgagor fails to maintain in full force and effect such governmental approvals, rulings, permits and licenses as may be necessary to comply with all environmental, ecological and other governmental requirements relating to the Mortgaged Premises and the occupancy thereof; or

(x) Mortgagor sells, conveys, transfers or leases (except for occupancy leases for a term not exceeding five years pursuant to a lease form approved by Mortgagee) any interest in or any part of the Mortgaged Premises without, in each instance, the prior written consent of Mortgagee first having been obtained to the purchase, transfer or lease, to the purchaser, transferee or lessee and to the form and substance of any instrument evidencing any such purchase, transfer or lease, which consent shall not be unreasonably withheld;

then in any of said events, the whole of the indebtedness secured hereby shall, at the election of Mortgagee, become immediately payable without notice or demand, and Mortgagee, at its option, may proceed to foreclose this Mortgage without relief under valuation and appraisal laws; and thereupon, or at any time during the existence of any such default, Mortgagee may enter into possession of the Mortgaged Premises and collect the rents and other income therefrom, accrued and to accrue, and apply the same to the indebtedness secured hereby or, if Mortgagee so elects, Mortgagee may secure the appointment of a receiver in any court of competent jurisdiction to collect such rents and other income under the direction of the court, notice of the exercise thereof being hereby waived by Mortgagor.

24. No failure by Mortgagee in the exercise of any of its rights under this Mortgage shall preclude Mortgagee from the exercise thereof in the event of a subsequent default by Mortgagor hereunder, and no delay by Mortgagee in the exercise of its rights under this Mortgage shall preclude Mortgagee from the exercise thereof so long as Mortgagor is in default hereunder. Mortgagee may enforce any one or more of its rights or remedies hereunder successively or concurrently.

25. Mortgagee, at its option, may extend the time for the payment of the indebtedness secured hereby, or reduce the payments thereon, or accept a renewal note or notes therefor, without the covenants of any endorser, guarantor or junior lien holder and without the consent of Mortgagor if Mortgagor has conveyed title to the Mortgaged Premises; and any such extension, reduction or renewal shall not affect the priority of this Mortgage or impair the security hereof in any manner, or release, discharge or affect in any manner the primary liability of Mortgagor, or any endorser or guarantor, to Mortgagee.

26. Any part of the Mortgaged Premises covered by this Mortgage may be released by Mortgagee without affecting the lien and security interest hereby granted as to the remainder, and the security of this Mortgage shall not affect or be

affected by any other security for the indebtedness secured hereby, nor shall the taking of additional security release or impair the security hereof or the liability of Mortgagor for the indebtedness secured hereby in any manner whatsoever.

27. At any time and from time to time, upon request of Mortgagee, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and where appropriate shall cause to be recorded or filed and from time to time thereafter to be re-recorded or refiled at such time and in such offices and places as shall be deemed desirable by Mortgagee, such other and further mortgages, assignments of rents, security agreements, financing statements, current financial and operating statements, instruments of further assurance, certificates and other documents as may, in the opinion of Mortgagee or its counsel, be necessary or reasonably desirable in order to effectuate, complete and perfect and to continue and preserve the obligation of Mortgagor under this Mortgage, and the lien of this Mortgage as a lien upon the Mortgaged Premises, except as hereinabove stated whether now owned or hereafter acquired by Mortgagor and wheresoever located.

28. Mortgagor shall obtain and at all times maintain in full force and effect such governmental approvals, rulings, permits and licenses as may be necessary to comply with all environmental, ecological and other governmental requirements relating to the Mortgaged Premises and the operation thereof.

29. Any sale, conveyance, transfer, assignment, lease, pledge, dissolution or withdrawal which constitutes an event of default under the provisions of subparagraph (x) of Paragraph 23 shall be void and of no force or effect.

30. This Mortgage is executed in connection with the Loan Agreement and secures any and all advancements and indebtedness arising and accruing thereunder to the same extent as though the Loan Agreement were fully incorporated in this Mortgage and if any default shall occur under the Loan Agreement the same shall constitute a default under this Mortgage entitling Mortgagee to all rights and remedies conferred upon Mortgagee by the terms of this Mortgage or otherwise by law, as in the case of any other default.

31. Mortgagor waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety.

32. Mortgagor upon request made either personally or by mail, shall certify, by a writing duly acknowledged, to Mortgagee or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on the indebtedness secured by this Mortgage and whether any offsets or defenses exist against the mortgage debt within six (6) days in case the request is made personally, or within ten (10) days after the mailing of such request in the case the request is made by mail.

33. Every provision for notice, demand or request shall be deemed fulfilled by Mortgagee by its written notice, demand or request either served personally on the person who shall at that time hold the record title to the Mortgaged Premises, or on any of its officers, partners or principals, or mailed by depositing it in any post office station or letter-box, enclosed in a postpaid envelope addressed to such person at its last address known to Mortgagee. The addresses set forth in the Preamble to this Mortgage for the Mortgagor and Mortgagee respectively shall be deemed the correct mailing addresses for the parties hereto until such time as written notice of a change of address is delivered by one party upon the other.

34. This Mortgage is executed under and shall be construed in accordance with the laws of the State of Indiana. In the event that any provision of this Mortgage conflicts with applicable law, such conflicts shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision and to this end the provisions of this Mortgage are declared to be severable.

35. The covenants, conditions and agreements contained in this Mortgage shall bind, and the benefits thereof shall inure to, Mortgagor and Mortgagee, their respective successors, assigns, heirs and legal representatives.



IN WITNESS WHEREOF, the Mortgagor has caused this Real Estate Mortgage and Security Agreement to be executed and delivered by its duly authorized officers this 10th day of April, 1992.

5TH AVENUE MALL, INC.

By: [Signature]  
Donald L. Thompson,  
President

By: [Signature]  
Julius J. Hill,  
Vice President

By: [Signature]  
Gregory A. Clark,  
Secretary



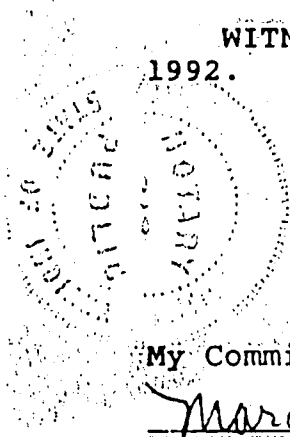
STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Donald L. Thompson, Julius J. Hill, and Gregory A. Clark, respectively, as President, Vice President, and Secretary of 5th Avenue Mall, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Real Estate Mortgage and Security Agreement for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this 10th day of April, 1992.



[Signature]  
Notary Public Residing in  
Hendricks County  
Julia A. Jacobson  
(printed signature)



My Commission Expires:  
March 4, 1994

This instrument was prepared by Julia A. Jacobson, Esq., Bingham Summers Welsh & Spilman, 2700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204-2982.

Exhibit "A"

Lots 6 and 7, Block 106, Gary Land Company's First Subdivision,  
in the City of Gary, as shown in Plat Book 6, Page 15, in Lake  
County, Indiana.



1255w