

48171620 5772
FBI Bk + Info of all
300 East Northwest Hwy
Palatine, IL 60067

THIS INSTRUMENT WAS
PREPARED BY AND AFTER
RECORDING SHOULD BE
RETURNED TO:

David G. Spak, Esq.
Horwood, Marcus & Braun
Chartered
333 West Wacker Drive
Suite 2800
Chicago, Illinois 60606
(312) 606-3200

Property Address:
Southlake Plaza
Hobart, Indiana

Key Numbers:
53-78-3, Tax Unit No. 43
53-78-4, Tax Unit No. 43

Document is

NOT OFFICIAL!

ASSIGNMENT OF RENTS AND LEASES

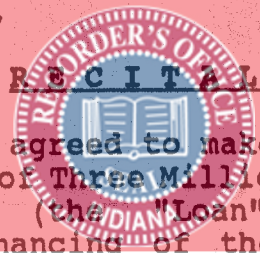
This Document is the property of

the Lake County Recorder

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment"), made as of this 27th day of October, 1995, by JBG Properties II, L.L.C. ("Beneficiary"), an Indiana limited liability company, having an office at 8707 North Skokie Boulevard, Suite 303, Skokie, Illinois 60077 and Lake County Trust Company ("Trustee"), not personally, but solely as Trustee under Trust Agreement dated October 9, 1995, and known as Trust No. 4702 (the "Trust") (Beneficiary and Trustee are referred to hereinafter collectively as "Assignor"), to First Bank and Trust Company of Illinois, a state chartered bank ("Lender"), having an office at 300 East Northwest Highway, Palatine, Illinois 60067.

95066994

Doc # 95066993



RECITALS

WHEREAS, Lender has agreed to make a loan to Assignor the maximum principal amount of Three Million Five Hundred Thousand and 00/100 (\$3,500,000.00) (the "Loan") for the acquisition, improvement and/or refinancing of the property located at and commonly known as Southlake Plaza, Hobart, Lake County, Indiana, as more fully described in Exhibit A, attached hereto and made a part hereof by this reference (the "Property");

WHEREAS, as evidence of the indebtedness incurred under the Loan, Assignor has executed and delivered to Lender a Note of even date herewith, payable to Lender, in the maximum principal amount of \$3,500,000.00 (the "Note"), use of the Loan and payment of the Note being governed and secured by, among other things, a certain Loan Agreement of even date herewith (the "Loan Agreement") by and among Assignor, Scott H. Gendell, David P. Bossy and Lender and a certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith (the "Mortgage") from Trustee covering the Property as well as other security (the

Chicago Title Insurance Company

95 NOV - 2 PM 1:36

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

For info see doc #

Handwritten initials/signature

Note, the Loan Agreement, the Mortgage, this Assignment and the other documents evidencing, securing or governing the Loan are collectively referred to hereinafter as the "Loan Documents"); and

WHEREAS, the execution and delivery of this Assignment is a condition precedent to Lender making the Loan.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby warrants, conveys, unconditionally and absolutely transfers, assigns and sets over to Lender, its successors and assigns, from and after the date hereof, all of Assignor's right, title and interest in and to (a) all leases, subleases, licenses, rental contracts and other agreements, now existing or hereafter entered into, relating to the occupancy and affecting the Property, together with all guarantees, modifications, extensions and renewals thereof which now exist or may hereafter be made (collectively, the "Leases"), including, but not limited to, landlord's interest in any Leases between Trustee and Beneficiary or Beneficiary's general contract, all rents, issues, profits, income and proceeds due or to become due from tenants of the Property, including but not limited to, rentals under all present and future Leases, together with all deposits of tenants thereunder, including, without limitation, security deposits, now or hereafter held by Assignor in connection with the Property (collectively, the "Rents").

In connection with and as part of the foregoing assignment, Assignor hereby makes the following grants, covenants, agreements, representations and warranties:

1. Subject to the provisions of Paragraph 3 below, Lender shall have the right, power and authority: (a) to collect Rents and to notify any and all tenants and other obligors on Leases that the same have been assigned to Lender and that all Rents are to be paid directly to Lender (and such Tenants are hereby authorized to make such payments to Lender without inquiry of any kind), whether or not Lender shall have foreclosed or commenced foreclosure proceedings against the Property and whether or not Lender has taken possession of the Property, (b) to settle, compromise or release, on terms acceptable to Lender, in whole or in part, any amounts owing under any Leases and any Rents; (c) to enforce payment of Rents and to prosecute any action or proceeding, and to defend legal proceedings, with respect to any and all Rents and Leases and to extend the time of payment, make allowances, adjustments and discounts; (d) to enter upon, take possession of and operate the Property; (e) to lease all or any part of the Property, and/or (f) to enforce all other rights of the lessor under the Leases. Notwithstanding anything herein to the contrary, Lender shall not be obligated to perform or discharge, and Lender does not undertake or perform or discharge under or by reason of

this Assignment, any obligation, duty or liability (including, without limitation, liability under any covenant of quiet enjoyment contained in any Lease or under the law of any state if any tenant shall be joined as a party defendant in any action to foreclose the Mortgage, and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Property) with respect to the Leases or the Rents. This Assignment shall not operate to place responsibility for the control, care, maintenance or repair of the Property upon Lender, or to make Lender responsible or liable for any waste committed on the Property by any tenant or other person, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Nothing contained in this Assignment shall be construed as constituting Lender a trustee or mortgagee in possession.

2. Subject to the terms of Paragraph 3 below, Lender shall have the right, power and authority to use and apply any Rents received hereunder (a) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this Assignment, or the rights of Lender hereunder, and collecting any Rents, and (b) for the operation and maintenance of the Property and the payment of all costs and expenses in connection therewith, in such order and manner as Lender shall determine, including, without limitation, the payment of (i) rentals and other charges payable by Assignor under any ground lease affecting the Property, (ii) interest, principal or other amounts with respect to any and all loans secured by mortgages on the Property, including, without limitation, the Mortgage, (iii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property or any part thereof, (iv) insurance premiums, (v) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents, (vi) wages and salaries of employees, commissions of agents and attorneys' fees, and (vii) all other carrying costs, fees, charges and expenses whatsoever relating to the Property. To the extent not paid pursuant to the immediately preceding sentence, after the payment of all such costs and expenses and after Lender shall have set up such reserves as it, in its reasonable discretion, shall deem necessary for the proper management of the Property, Lender shall apply all remaining Rents collected and received by it to the reduction of the Indebtedness (as defined in the Mortgage). Exercise or nonexercise by Lender of the rights granted in this Assignment, or collection and application of Rents by Lender or its agent shall not be a waiver of any default by Assignor under this Assignment, the Mortgage, the Note or any other Loan Document (as defined in the Mortgage). No action or failure to act by Lender with respect to any of the obligations of Assignor under the Loan Documents, to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to such

obligations, shall in any manner affect, impair or prejudice any of Lender's rights and privileges under this Assignment or discharge, release or modify any of Assignor's duties or obligations hereunder. This Assignment is intended by Assignor and Lender to create, and shall be construed to create, an absolute assignment to Lender, subject only to the terms and provisions hereof, and not as an assignment as security for the payment of the Indebtedness and performance of the obligations evidenced by the Loan Documents, or for any other indebtedness of Assignor.

3. Although it is the intention of the parties that the assignment discussed herein shall be a present absolute assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Assignee shall not exercise any of the right or powers conferred upon it by this Assignment until a default or an Event of Default shall have occurred under this Assignment or any of the other Loan Document and the default or Event of Default shall not have been cured within the applicable grace or cure period provided therefor, if any.

4. This Assignment shall continue in full force and effect until (a) all sums due and payable under the Loan Documents shall have been fully paid and satisfied, together with any and all other sums which may become due and owing under this Assignment, and (b) all other obligations of Assignor under the Loan Documents have been satisfied. At such time, this Assignment and the authority and powers herein granted (all of which powers are coupled with an interest) by Assignor to Lender shall cease and terminate and Assignor shall assume payment of all unmatured or unpaid charges, expenses or obligations incurred or undertaken by Lender, if any, in connection with the management of the Property.

5. Assignor hereby represents and warrants that there are no Leases which now affect the Property except as set forth in that certain rent roll dated not more than ten (10) days prior to the date hereof which has been delivered to Lender and which Assignor represents and warrants to Lender as being current, true and accurate and containing all the material terms of such Leases.

6. Lender shall not in any way be liable to Assignor or any other party for any act done or anything omitted to be done to the Property, the Leases or the Rents by or on behalf of Lender in good faith in connection with this Assignment except for the consequences of its own gross negligence or willful misconduct or the failure of Lender to materially comply with the terms hereof. Lender shall not be liable for any act or omission of its agents, servants, employees or attorneys, provided that reasonable care is used by Lender in the selection of such agents, servants, employees and attorneys. Lender shall be accountable to Assignor only for monies actually received by Lender pursuant to this Assignment.

7. Assignor shall indemnify, defend and hold Lender and its

officers, directors, employees and agents harmless from and against any and all liability, loss, damage, cost or expense, including reasonable attorneys' fees, which it may incur under any of the Leases, or with respect to this Assignment or any action or failure to act of Lender hereunder, and from and against any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants and conditions of any of the Leases or with respect to any Rents, except to the extent caused by or resulting from the gross negligence or willful misconduct of Lender, its agents, employees or representatives or the failure of Lender to materially comply with the terms hereof. If Lender incurs any such liability, loss, damage, cost or expense, the amount thereof, together with interest thereon from the date such amount was suffered or incurred by Lender until the same is paid by Assignor to Lender at a rate equal to the Delinquency Rate (as defined in the Note) shall be payable by Assignor to Lender immediately upon demand, or at the option of Lender, Lender may reimburse itself therefor out of any Rents collected by Lender.

8. Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification, or amendment of any of the Leases prohibited by the terms of this Assignment and any amounts received by Assignor as rents, income, issues, or profits from the Property from any after the occurrence of an Event of Default hereunder or under the Mortgage, shall be held by Assignor as trustee for Lender and all such amounts shall be accounted for to Lender and shall not be commingled with other funds of Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Lender as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith; by way of example and not of limitation, such notice may be given by an instrument recorded with the Recorder of Deeds of Lake County, Indiana stating that Assignor has received or will receive such amounts in trust for Lender.

9. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents to secure said indebtedness contained in the Mortgage or in any other document. Any provision in the Mortgage that pertains to this Assignment shall be deemed to be incorporated herein as if such provision were fully set forth in this Assignment. If there is any conflict between the terms of this Assignment and the terms of the Mortgage, the terms of the Mortgage shall prevail. A provision in this Assignment shall not be deemed to be inconsistent with the Mortgage by reason of the fact that no provision in the Mortgage covers such provision in this Assignment.

10. Upon issuance of a deed or deeds pursuant to foreclosure of the Mortgage, all right, title and interest of Assignor in and

to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor.

11. All notices, demands, requests and other communications which are required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given when delivered or mailed in the manner set forth in the Mortgage.

12. Upon request of Lender, Assignor shall execute and deliver to Lender, such further instruments as Lender reasonably may deem necessary to effect this Assignment and the covenants of Assignor contained herein.

13. This Assignment shall be assignable by Lender and all of the representations, warranties, covenants, agreements and provisions in this Assignment shall bind and inure to the benefit of Lender and Assignor and their respective legal representatives, successors and assigns.

14. This Assignment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

15. This Assignment shall be governed by, construed and enforced in accordance with the laws of the State of Illinois without regard to the conflicts rules or laws of any other state or court. The parties hereto submit to the jurisdiction of courts located in Cook County, Illinois.

16. It is expressly intended, understood and agreed that this Assignment and the other Loan Documents are made and entered into for the sole protection and benefit of Assignor and Lender, and their respective successors and assigns; that no other person shall have any right at any time to action hereon or rights to the proceeds of the Loan, that the Loan proceeds do not constitute a trust fund for the benefit of any third party; that no third party shall under any circumstances be entitled to any equitable lien on any undisbursed Loan proceeds at any time; and that Lender shall have a lien upon and right to direct application of any undisbursed Loan proceeds as provided in the Loan Documents.

17. The relationship between Assignor and Lender is solely that of a lender and borrower, and nothing contained herein or in any of the Loan Documents shall in any manner be construed as making the parties hereto partners, joint venturers or any other relationship other than lender and borrower.

18. Assignor and Lender intend and believe that each provision in this Assignment comports with all applicable local, state or federal laws and judicial decisions. However, if any

provision or provisions, or if any portion of any provision or provisions, in this Assignment is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision or public policy, and if such court should declare such portion, provision or provisions of this Assignment to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Assignor and Lender that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein and that the rights, obligations and the interests of Assignor and Lender under the remainder of this Assignment shall continue in full force and effect.

19. The occurrence of any of the following events shall constitute an "Event of Default" under this Assignment:

(a) default under the Note, the Loan Agreement, the Mortgage or any of the other Loan Documents, which default has not been cured within the applicable grace or cure period, if any provided therein; or

(b) default in the due observance or performance of any of the terms, covenants or conditions contained in this Assignment which continues for more than thirty (30) days after receipt from Lender of written notice of such default, provided, however, that if such default is not reasonably curable within said thirty (30) days and Assignor is diligently attempting to cure the same, Assignor shall have such additional time as is reasonably necessary to cure the default, not to exceed an additional sixty (60) days; or

(c) should any representation or warranty made herein or in any other Loan Document prove to be untrue in any material respect; or

(d) default beyond any applicable grace or cure period under any obligation set forth in any of the other Loan Documents.

20. This Assignment is executed by Lake County Trust Company, as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed hereunder (whether or not the same are expressed in the terms of covenants, promises or agreements) by Trustee, are undertaken by it solely as Trustee under the Trust Agreement, and not individually, and no personal liability shall be asserted or be enforceable against Trustee by reason of any of the terms, provisions,

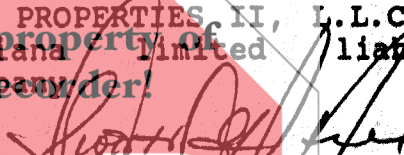
stipulations, covenants and conditions contained in this Assignment.

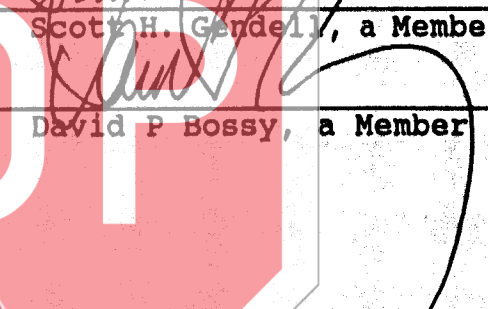
IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed and delivered on the date first above written.


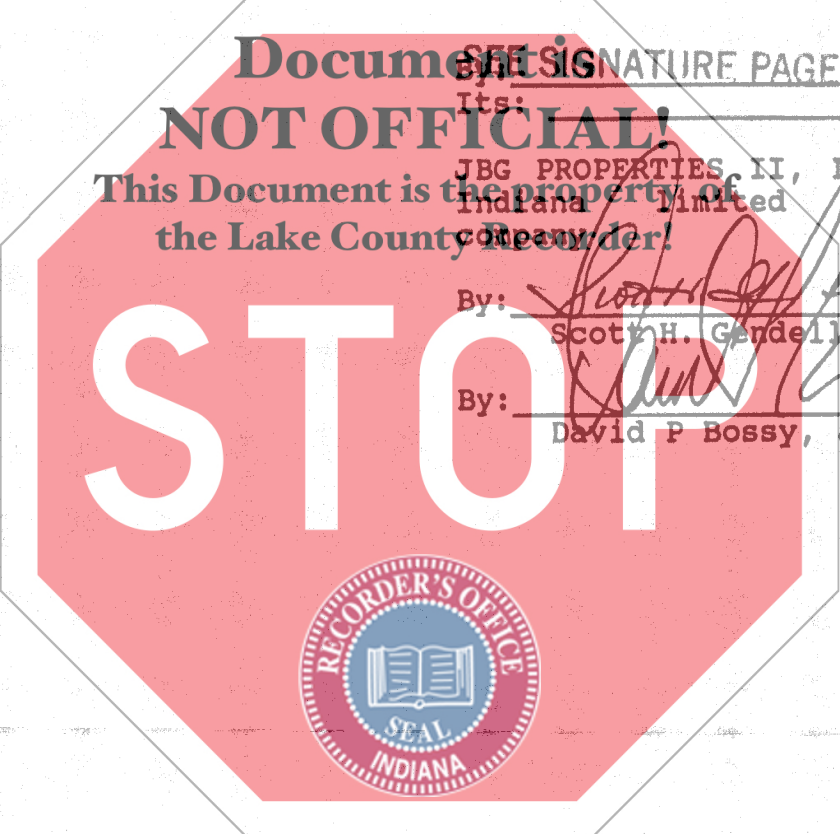
ASSIGNOR:

LAKE COUNTY TRUST COMPANY, not personally, but solely as Trustee under a certain Trust Agreement dated October 9, 1995 and known as Trust No. 4702

Document SIGNATURE PAGE ATTACHED
Its:
NOT OFFICIAL!
This Document is the property of JBG PROPERTIES, II, L.L.C., an Indiana Limited liability company.
the Lake County Recorder.

By:  _____
Scott H. Gendell, a Member

By:  _____
David P. Bossy, a Member



STATE OF ILLINOIS)
COUNTY OF COOK) SS.

I, K.C. Piscitello, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that SCOTT H. BENDALL and DAVID P. BOSSY, Members of JBG Properties II, L.L.C., an Indiana limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of October, 1995.

This Document is the property of
the Lake County Recorder.

"OFFICIAL SEAL"
K. C. PISCITELLO
Notary Public, State of Illinois
My Commission Expires 7/28/97

Notary Public
My Commission Expires:

STATE OF INDIANA)
COUNTY OF COOK) SS.

I, _____, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____ of Lake County Trust Company, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said Company, as Trustee as aforesaid, for the uses and purposes therein set forth.

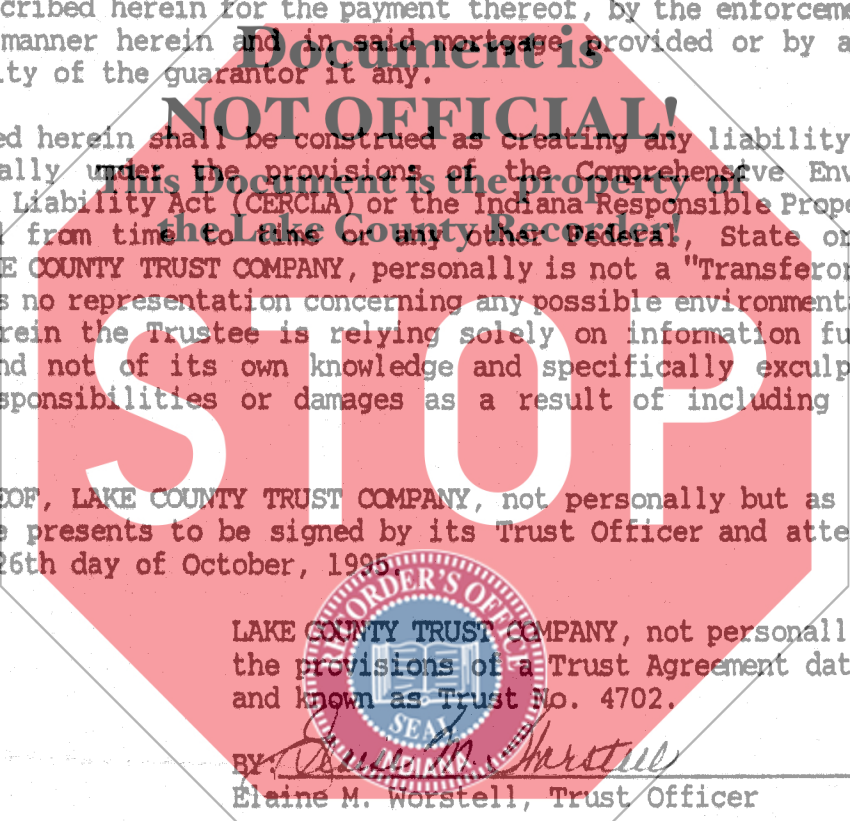
GIVEN under my hand and notarial seal this _____ day of _____, 1995.

SEE SIGNATURE PAGE ATTACHED

Notary Public

My Commission Expires: _____

It is expressly understood and agreed that this Assignment of Leases and Rents is executed by the LAKE COUNTY TRUST COMPANY herein designated as Trustee not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is further expressly understood and agreed that LAKE COUNTY TRUST COMPANY, as Trustee as aforesaid, has no right or power whatsoever to manage, control or operate said real estate in any way or to any extent and is not entitled at any time to collect or receive for any purpose, directly or indirectly, the rents, issues, profits or proceeds of said real estate or any lease or sale or any mortgage or any disposition thereof. Nothing herein or in said mortgage contained shall be construed as creating any liability on the LAKE COUNTY TRUST COMPANY herein designated as Trustee, either individually or as Trustee aforesaid, personally to pay the said mortgage or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by the Assignee and by every person now or hereafter claiming any right or security hereunder, and that so far as the LAKE COUNTY TRUST COMPANY herein designated as Trustee, either individually or as Trustee aforesaid, or its successors, personally are concerned, the legal holder or holders of said mortgage and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises described herein for the payment thereof, by the enforcement of the lien hereby created in the manner herein and in said mortgage provided or by action to enforce the personal liability of the guarantor if any.



Nothing contained herein shall be construed as creating any liability on LAKE COUNTY TRUST COMPANY, personally under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other Federal, State or local law, rule or regulation. LAKE COUNTY TRUST COMPANY, personally is not a "Transferor or Transferee" under the Act and makes no representation concerning any possible environmental defects. In making any warranty herein the Trustee is relying solely on information furnished to it by the beneficiaries and not of its own knowledge and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any warranty in this instrument.

IN WITNESS WHEREOF, LAKE COUNTY TRUST COMPANY, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Trust Officer and attested by its Assistant Secretary this 26th day of October, 1995.

LAKE COUNTY TRUST COMPANY, not personally but as Trustee under the provisions of a Trust Agreement dated October 9, 1995 and known as Trust No. 4702.

BY: Elaine M. Worstell
Elaine M. Worstell, Trust Officer

ATTEST:
BY: Sandra L. Stiglitz
Sandra L. Stiglitz, Assistant Secretary

STATE OF INDIANA)
)SS:
COUNTY OF LAKE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Officers of Lake County Trust Company, who acknowledge the execution of the foregoing instrument as the free and voluntary act of said Corporation, and as their free and voluntary act, acting for such Corporation, as Trustee.

Witness my hand and seal this 26th day of October, 1995.

Laura L. Anderson
Laura L. Anderson-Notary Public

My Commission Expires:
November 11, 1995

Resident: Lake County, In.

EXHIBIT A

PARCEL 1: PART "A" OF LOT 3 IN RESUBDIVISION OF LOT 3 OF SOUTHLAKE PLAZA, AS SHOWN IN PLAT BOOK 77, PAGE 91, IN LAKE COUNTY, INDIANA.

PARCEL 2: LOT 4, IN THE RESUBIVISION OF LOT 3 OF SOUTHLAKE PLAZA, AS SHOWN IN PLAT BOOK 77, PAGE 91, IN LAKE COUNTY, INDIANA.

PARCEL 3: ALL RIGHTS ON A NON-EXCLUSIVE BASIS FOR PARKING, UTILITY CROSSOVERS AND DRIVEWAYS CREATED BY THE EASEMENT AGREEMENT DATED NOVEMBER 25, 1992 AND RECORDED DECEMBER 8, 1992, AS DOCUMENT NO. 92077518, MADE BY AND BETWEEN NORTHERN INDIANA PUBLIC SERVICE COMPANY, AN INDIANA CORPORATION, AND FOCUS PARTNERSHIP IN, AN INDIANA PARTNERSHIP, UPON THE TERMS, COVENANTS, CONDITIONS AND RESTRICTIONS AND OBLIGATIONS THEREIN PROVIDED, OVER THE FOLLOWING DESCRIBED REAL ESTATE: PART "B" OF LOT 3 IN RESUBDIVISION OF LOT 3 OF SOUTHLAKE PLAZA, AS SHOWN IN PLAT BOOK 77, PAGE 91, IN LAKE COUNTY, INDIANA.

PARCEL 4: PART "C" OF LOT 3 IN RESUBDIVISION OF LOT 3 OF SOUTHLAKE PLAZA, AS SHOWN IN PLAT BOOK 77, PAGE 91, IN LAKE COUNTY, INDIANA.

PARCEL 5: SUBJECT TO AND TOGETHER WITH THE RIGHTS TO USE THE EASEMENTS CREATED BY THE OPERATION AND EASEMENT AGREEMENT DATED DECEMBER 8, 1992, RECORDED DECEMBER 17, 1992, AS DOCUMENT NO. 92080433, UPON THE TERMS, COVENANTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS THEREIN PROVIDED, AS AMENDED BY FIRST AMENDMENT DATED APRIL 1, 1993, RECORDED MAY 21, 1993, AS DOCUMENT NO. 93033098 AND FURTHER AMENDED BY SECOND AMENDMENT DATED JANUARY 18, 1995 AND RECORDED JANUARY 31, 1995 AS DOCUMENT NO. 95005204. SUPPLEMENT TO SAID OPERATION AND EASEMENT AGREEMENT MADE BY ARIZONA FUNDING CORPORATION DATED FEBRUARY 10, 1995 WAS RECORDED FEBRUARY 23, 1995 AS DOCUMENT NO. 95009842 AND SUPPLEMENT TO SAME MADE BY HOME DEPOT U. S. A., INC., A DELAWARE CORPORATION, DATED MARCH 14, 1995 AND RECORDED MARCH 28, 1995, AS DOCUMENT NO. 95016408.

Common Address:

Lots 3 and 4 of the Resubdivision of
Lot 3 of Southlake Plaza, Hobart, Indiana

Key Numbers:

53-78-3, Tax Unit No. 43
53-78-4, Tax Unit No. 43