

STATE OF INDIANA  
LAKE COUNTY

FILED FOR RECORD

SUBORDINATION, NON-DISTURBANCE AND ATTORNEY AGREEMENT

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Chicago Tide Insurance Company

THIS AGREEMENT is entered into as of the 25<sup>th</sup> day of July, 1997, between the undersigned, Carpetland U.S.A., Inc., an Indiana corporation, its successors and assigns (being herein referred to as "Tenant"), whose address is 616 East Walnut Avenue, P.O. Drawer 2128, Dalton, Georgia 30722-2128, and INDIANAPOLIS LIFE INSURANCE COMPANY, its successors and assigns of interest under the hereinafter described mortgage (being herein referred to as "Indianapolis Life"), whose address is c/o Mortgage Loan Department/ML #25-936, 2960 North Meridian, Indianapolis, Indiana 46208.

RECITALS

UNRECORDED

A. Tenant is the lessee under a lease dated December 30, 1986, together with any and all extensions thereof and modifications and amendments thereto (the "Lease").

B. MS Partners L.L.C., an Illinois limited liability company (together with its successors and assigns being herein collectively referred to as "Borrower"), lessor or successor to the lessor under the Lease, has requested Indianapolis Life to make a loan to Borrower, such loan to be secured by a mortgage from Borrower to or for the benefit of Indianapolis Life (the "Mortgage"), covering the property leased pursuant to the Lease and located in the Town of Munster, Lake County, Indiana, more particularly described in Exhibit "A" attached hereto and made a part hereof by reference (the "Property").

C. Indianapolis Life is willing to make the requested loan, provided Tenant executes this Agreement and the Lease is subordinate to the lien of the Mortgage.

D. The parties hereto desire to effect the subordination of the Lease to the lien of the Mortgage and to provide for the non-disturbance of Tenant by Indianapolis Life, all as more particularly hereinafter provided.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, each of which are incorporated herein by reference, and of the mutual covenants and agreements herein contained, and in order to induce Indianapolis Life to make the requested loan, Tenant and Indianapolis Life hereby agree and covenant as follows:

1. The Lease and all rights, titles and interests thereto and thereunder are hereby made and shall at all times continue to be subject and subordinate in all respects to the lien of the Mortgage and all rights, privileges and provisions in favor of

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Indianapolis Life thereunder, and to all renewals, increases, replacements, consolidations, modifications and extensions of the Mortgage.

2. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession under the Lease and Tenant's rights and privileges thereunder, or under any extensions or renewals thereof which may be affected in accordance with any option therefor contained in the Lease, shall not be diminished or interfered with by Indianapolis Life acting pursuant to the Mortgage, and Tenant's occupancy shall not be disturbed by Indianapolis Life during the term of the Lease or any such extensions or renewals thereof.

3. If the interests of Borrower in the Property or the Lease shall be acquired by Indianapolis Life or any other person (Indianapolis Life and such other person referred to as the "Successor") by reason of foreclosure of the Mortgage or other proceedings brought to enforce the rights of the holder of the Mortgage, by deed in lieu of foreclosure or by any other method, and the Successor succeeds to the interests of Borrower under the Lease, provided that and so long as Tenant is not in default in the payment of any sums due from Tenant under the Lease or in the performance of any other obligation of Tenant under the Lease, the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated, diminished, interfered with or disturbed except in accordance with the terms of the Lease, and except that Tenant shall be bound to the Successor under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be affected in accordance with any option therefor contained in the Lease, with the same force and effect as if the Successor were the original Lessor under the Lease, and Tenant does hereby attorn to the Successor as its Lessor, said attornment to be effective and self-operative without the execution of any other instruments on the part of either party hereto immediately upon the Successor's succeeding to the interests of Borrower under the Lease; provided however, that Tenant shall be under no obligation to pay rent to the Successor until Tenant receives written notice from the Successor to do so. It is the intention of the parties hereto for this purpose to incorporate the Lease into this Agreement by reference with the same force and effect as if set forth at length herein.

4. If the Successor shall succeed to the interests of Borrower under the Lease, the Successor shall be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after the Successor's succession to the interests

of Borrower under the Lease, have the same remedies against the Successor for the breach by the Successor of any agreement contained in the Lease that Tenant might have had under the Lease against Borrower for Borrower's breach; provided, however, that the Successor shall not be:

A. liable for any act or omission of any prior or succeeding landlord (including Borrower); or

B. subject to any offsets or defenses which Tenant might have against any prior or succeeding landlord (including Borrower); or

C. bound by any rent or additional rent which Tenant might have paid for more than the then current month to any prior or succeeding landlord (including Borrower); or

D. liable for the completion of any construction on the property or tenant improvements to the leased premises commenced or agreed or represented to by any prior or succeeding landlord (including Borrower) which is not a Successor.

5. This Agreement may not be modified orally or in any other manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, successors and assigns.

6. Tenant, from and after the date hereof, shall send a copy of any notice or statement of default under the Lease or any notices or statement of any intention to cancel or terminate the Lease by certified mail, return receipt requested, postage prepaid, to Indianapolis Life at the address shown above at the same time such notice or statement is sent to Borrower (if such notice or statement is from Tenant to Borrower).

7. Indianapolis Life shall have the option (but not the obligation) within a reasonable time (but not less than sixty (60) days following receipt by Indianapolis Life of notice as provided in paragraph 6 above) to cure any such act, omission, breach or default of Borrower described in such notice, including, if necessary, the commencement and prosecution of foreclosure proceedings, and Tenant agrees to accept the performance of Indianapolis Life in lieu of the performance of Borrower and that the Lease shall thereby remain in full force and effect. Tenant shall not exercise any such right to terminate or claim eviction or any other rights or remedies available at law or in equity for breach of the Lease or act or omission by Borrower in connection with the Lease, unless and until Tenant has notified Indianapolis Life as provided in paragraph 6 hereof and until the time for Indianapolis Life to

commence and pursue the cure of such act or omission has elapsed.

8. Tenant agrees that it will not, without the written consent of Indianapolis Life, pay rent or any other sums becoming due under the Lease more than one (1) month in advance.

9. Tenant agrees that the Mortgage and the note evidencing the indebtedness secured thereby may be increased, replaced, renewed, extended and/or modified from time to time by agreement between Borrower and Indianapolis Life, and Indianapolis Life may exercise any one or more of its rights under the Mortgage from time to time at Indianapolis Life's discretion, all without notice to or consent of Tenant, and this Agreement shall continue in full force and effect as to all such renewals, extensions and/or modifications and all such exercise of rights.

10. In no event shall Indianapolis Life be personally liable as landlord under the Lease, either by virtue of any assignment of the Lease, the exercise of any right thereunder or hereunder, the foreclosure of its lien on the Property, the acquisition of the Property or the collection of any rent under the Lease as owner or mortgagee, and Tenant shall look solely to the real estate that is the subject of the Lease and to no other assets of Indianapolis Life for satisfaction of any liability in respect of the Lease; but Tenant shall have reserved to it all other remedies available to it at law or in equity.

11. The Lease has not been amended or modified and is in full force and effect as originally executed, and there are no side letters or other arrangements, whether or not constituting amendments to the Lease, for tenant inducements or otherwise.

12. Neither Borrower nor Tenant is in default in any way under any term of the Lease. Borrower has complied fully and completely with all of Borrower's covenants, warranties and other obligations under the Lease to the date hereof. Tenant is fully obligated to pay and is paying the rent and other charges due from Tenant under the Lease and is fully obligated to perform and is performing all of the other obligations of Tenant under the Lease, without right of counterclaim, offset or other defense as of the date hereof. Indianapolis Life shall return to Tenant one (1) copy of this fully executed Agreement.





**EXHIBIT "A"**

**DESCRIPTION OF REAL ESTATE**

Located in the City of Munster, Lake County, Indiana, described as:

PARCEL 1: Lot 1, Meyer's Addition, to the Town of Munster, as shown in Plat Book 40, page 69, and amended by corrected Plat recorded November 16, 1972, as Document No. 176388, Plat Book 42, page 97, in Lake County, Indiana.

PARCEL 2: Lot 1, except the North 162 feet thereof, Meyer's Second Addition, to the Town of Munster, as shown in Plat Book 43, page 11, in Lake County, Indiana.

PARCEL 1: Key No. 28-353-1. Tax Unit No. 18.

PARCEL 2: Key No. 28-355-1. Tax Unit No. 18.

Munster, IN

## **LOAN ASSIGNMENT ADDENDUM**

THIS LOAN ASSIGNMENT ADDENDUM ("Assignment") is entered into as of the 5th day of November, 1997, between INDIANAPOLIS LIFE INSURANCE COMPANY, having its principal office at 2960 North Meridian Street, Indianapolis, Indiana 46208 ("Assignor"), and IL ANNUITY AND INSURANCE COMPANY, having its principal office at 2960 North Meridian Street, Indianapolis, Indiana 46208 ("Assignee").

### **RECITALS**

A. Assignor and ULRICH E. MEYER, Trustee of the Ulrich E. Meyer Revocable Trust under Agreement dated May 25, 1978 (the "Meyer Trust") entered into a certain Commitment Letter dated March 4, 1997 (the "Commitment"), pursuant to which Assignor agreed to extend to MS Partners L.L.C., an Illinois limited liability company, or to the Meyer Trust and to CHARLES D. STEIN, as Trustee of the Charles D. Stein Revocable Trust under Agreement dated January 10, 1979 (the "Stein Trust"), as Co-Borrowers (collectively, the "Borrower"), seven (7) loans secured by mortgages on seven (7) different Carpetland stores, which loans are in an aggregate principal amount of Two Million Nine Hundred Thousand Twenty-Five and No/100 Dollars (\$2,925,000.00) (collectively, the "Loans"), which Loans are more particularly described on Exhibit "A" attached hereto and incorporated herein.

B. As contemplated by Paragraph 3 of the Commitment, Assignor desires to assign all of its right, title and interest in and to the Commitment, together with all such agreements, documents and rights evidencing or securing the Loans made or to be made thereunder, to Assignee, its wholly-owned subsidiary, and Assignee desires to accept such assignment.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals, each of which are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed between Assignor and Assignee as follows:



1. Assignor hereby assigns, grants and transfers to Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to the Commitment and the Loans made or to be made thereunder, to have and to hold by Assignee and its successors and assigns forever.

2. In furtherance of the foregoing Assignment, Assignor does further assign, grant and transfer to Assignee, and its successors and assigns, all of Assignor's right, title and interest in the following documents, interests and rights evidencing and/or securing the Loans: (a) all Promissory Notes or other evidences of indebtedness (the "Notes"), (b) all monies due and to become due thereon, (c) all Mortgages, Deeds of Trust, and other hypothecation agreements (the "Mortgages") securing all or any portion of the indebtedness due or to become due under the Notes, (d) all Assignments of Leases and Rentals entered into in connection with any Leases in existence with respect to the real property encumbered by the Mortgages, any Lease Guaranties with respect to such Leases, and all Estoppel Certificates and Subordination, Non-Disturbance and Attornment Agreements executed and delivered in connection therewith, (e) any UCC-1 Financing Statements made by Borrower to perfect any security interests granted thereby, (f) any other agreements, contracts, collateral commitments, assignments, collateral assignments, certificates, guaranties, notes, bills, deposits, accounts, receivables, insurance policies, title insurance policies, opinions, or other documents or interests related to such Loans, whether or not identified, and (g) all rights of the Assignor thereto and thereunder.

3. Assignee hereby accepts the foregoing assignment and agrees to perform all of the obligations of the Lender thereunder.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

WITNESSES:

Lynette C. Sherton  
Sharon L. Weese

ASSIGNOR:

INDIANAPOLIS LIFE INSURANCE COMPANY

By: Wesley M. McDivitt  
Wesley M. McDivitt  
Its: Vice President-Mortgage Loans

ASSIGNEE:

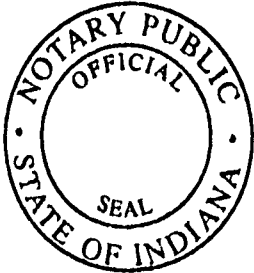
IL ANNUITY AND INSURANCE COMPANY

Lynette C. Sherton  
Sharon L. Weese

By: Wesley M. McDivitt  
Wesley M. McDivitt  
Its: Vice President-Mortgage Loans

STATE OF INDIANA     )  
                                  ) ss.  
COUNTY OF MARION    )

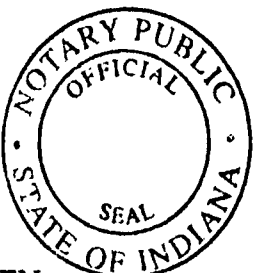
Before me the undersigned, a Notary Public in and for Marion County, State of Indiana, personally appeared Wesley M. McDivitt, who acknowledged the execution of the foregoing instrument this 5th day of November, 1997, on behalf of Indianapolis Life Insurance Company.



Lynette C. Grafton  
Notary Public LYNETTE C. GRAFTON  
Hancock County, Indiana  
My Commission Expires: 1/16/98

STATE OF INDIANA     )  
                                  ) ss.  
COUNTY OF MARION    )

Before me the undersigned, a Notary Public in and for Marion County, State of Indiana, personally appeared Wesley M. McDivitt, who acknowledged the execution of the foregoing instrument this 5th day of November, 1997, on behalf of IL Annuity and Insurance Company.



Lynette C. Grafton  
Notary Public LYNETTE C. GRAFTON  
Hancock County, Indiana  
My Commission Expires: 1/16/98

DRAFTED BY AND WHEN  
RECORDED RETURN TO:

Joseph H. Bourgon, Esq.  
Sommers, Schwartz, Silver & Schwartz, P.C.  
2000 Town Center, Suite 900  
Southfield, MI 48075-1100

\\indiana\carpet\land\loan assignment addendum

**EXHIBIT A**

**SCHEDULE OF LOANS**

<u>Promissory Note Amount</u>	<u>Monthly Payment (Principal &amp; Interest)</u>	<u>Secured Parcels</u>	<u>Loan #</u>
\$310,000	\$3,740.72	1550 W. Columbia Ave. Battle Creek, Michigan	25-934
\$600,000	\$7,240.09	G4164 Miller Road Flint, Michigan	25-935
\$875,000	\$10,558.46	8201 Calumet Munster, Indiana	25-936
\$350,000	\$4,223.39	1440 Wabash Springfield, Illinois	25-937
\$275,000	\$3,318.38	1210 Highway 16 La Crosse, Wisconsin	25-938
\$265,000	\$3,197.71	2530 North Broadway Rochester, Minnesota	25-939
\$250,000	\$3,016.71	3040 North Range Road Joplin, Missouri	25-940