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STATE OF INDIANA  
LAKE COUNTY  
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NOTES W/ CENTER

JUNIOR COMMERCIAL MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS IS A FUTURE ADVANCE MORTGAGE.

THIS INSTRUMENT WHEN RECORDED SHALL CONSTITUTE A "FIXTURE FILING" FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE. THE ADDRESS OF THE SECURED PARTY SHOWN BELOW IS THE ADDRESS AT WHICH INFORMATION CONCERNING THE SECURED PARTY'S SECURITY INTEREST MAY BE OBTAINED.

This Junior Commercial Mortgage ("Mortgage") is made February 28, 2000, by the Debtor (whose name and address are below in the Recitals) to Ruby Tuesday, Inc., a Georgia corporation ("Lender"), whose address for purposes of this Mortgage is 150 West Church Avenue, Maryville, Tennessee 37801. This Mortgage pertains to the real estate described in Exhibit A, attached.

RECITALS

- A. Amount of the Loan: Three Million Seven Hundred Dollars (\$3,700,000). (This is not necessarily the sole amount secured by this Mortgage. See "Obligations".)
- B. Name of Debtor (Debtor or Mortgagee): RT Michiana Franchise, L.L.C., a Delaware limited liability company and RT Smith, L.L.C., a Delaware limited liability company.
- C. Debtor's Mailing Address: Jerry D. Smith, 4870 Westgate, Holt, MI 48842.
- D. Debtors' Federal Employer Tax Identification Number: RT Michiana Franchise, L.L.C. - 63-1228739; RT Smith, L.L.C. 62-1800557.
- E. Premises Subject to this Mortgage: Described in Exhibit "A" attached. (Premises also includes all Improvements and Fixtures. See "Premises").

To induce Lender to make the loan to Debtor, as evidenced by the Note, and for other consideration, the receipt and adequacy of which is acknowledged by Debtor, and as Collateral for satisfaction of the Obligations, Debtor agrees with Lender as follows:

I. DEFINITIONS.

In addition to the definitions set forth above, for purposes of this Mortgage and unless the context otherwise requires, those terms set forth below shall have the following meanings:

1.1. ACCESS LAWS means The Americans With Disabilities Act of 1990, as amended, and all other federal, state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant to that Act including,

First Title Corp  
3237 Satellite Blvd  
Ste 450  
Duluth Ga. 30096

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without limitation, The Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities.

1.2. ACCOUNTS means hotel receipts and "accounts" as defined in the UCC, excluding accounts which are not Related to the Premises.

1.3. COLLATERAL means and includes, but is not limited to, all Accounts, General Intangibles, Fixtures, Improvements, Premises and all assets of Debtor, excluding alcoholic beverage inventory, in which Lender or any affiliate of Lender now or in the future has a lien, security interest, mortgage or encumbrance under this Mortgage, the Note or any other Security Document. Collateral includes the assets secured under Section 4 and the escrow amounts provided in Section 12.

1.4. ENVIRONMENTAL LAWS means all laws, regulations, and rules of the United States of America, State of Indiana, and all local authorities which pertain to the environment, including but not limited to:

- Clean Air Act (42 USC 7401 et seq.),
- Federal Water Pollution Control Act (33 USC 1251 et seq.),
- Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.),
- Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC 9601 et seq.),
- Hazardous Materials Transportation Act (42 USC 1801 et seq.),
- Solid Waste Disposal Act (42 USC 6901 et seq.),
- Toxic Substances Control Act (15 USC 2601 et seq.),
- National Environmental Policy Act (42 USC 4 321),
- Safe Drinking Water Act (42 USC 300F et seq.),
- Environmental Protection Agency Regulations,
- Occupancy Safety and Health Administration Regulations,
- Any and all Indiana environmental statutes, including, without limitation, those codified under Title 13 of the Indiana Code.

as each of these statutes have been or are subsequently amended, together with all rules and regulations promulgated by the Environmental Protection Agency and the Indiana Department of Environmental Quality and all additional environmental laws, rules, and regulations in effect on the date of this Agreement or as may be subsequently enacted and effective.

1.5. EVENTS OF DEFAULT means any of those acts, events or omissions set forth at the Section entitled "Events of Default".

1.6 FIRST MORTGAGE means the Mortgage in favor of CNL APF Partners, L.P., a Delaware limited partnership ("First Mortgage Holder") in the original amount of Ten Million Dollars (\$10,000,000) dated February, 2000.

1.7. FIXTURES means and includes (in addition to the meanings ascribed to "fixtures" under the UCC), but is not limited to, the following: All of the debtor's interest in any and all tangible personal property, including machinery, apparatus, equipment, appliances, carpeting, furniture, furnishings, supplies, fittings, trade fixtures and fixtures; building signs and signage; heating, lighting, ventilation, air cooling, air conditioning, refrigeration, power apparatus and restaurant equipment; boilers, ranges, furnaces, oil burners; pipes, pumps, tanks, engines, motors, conduits; plumbing, laundry, lifting, cleaning, fire-extinguishing systems; gas, water and electrical equipment; elevators, escalators, cranes, platforms, docks, bins; attached cabinets, shelving, partitions; floor coverings, rugs, carpeting, draperies, curtains, shades, venetian blinds; ducts and compressors; all sanitary sewer systems, septic tile fields and related pumps and equipment; water pipes, water systems and related equipment; flowers, potted plants, plants, shrubs and trees; communications, intercom, computer and telephone equipment; medical equipment; and the right, title and interest of Debtor in and to any tangible personal property which may be subject to any title retention or security agreement whether or not superior in lien to the

lien of this Mortgage. The above items, including replacements, are Fixtures under the terms of this Mortgage whether now owned or subsequently acquired, whether used or usable in connection with any present or future operation of the Premises, and whether located on the Premises or intended to be used in connection with the Premises. Fixtures includes all building materials Related to the Premises in which Debtor now has or subsequently acquires any interest, whether or not the materials and equipment are located on the Premises.

1.8. GENERAL INTANGIBLES means and includes (in addition to the meaning ascribed to "general intangibles" under the UCC), but is not limited to, all rights now existing or subsequently acquired, arising or accruing to Debtor under any contract or agreement that Debtor may now or subsequently have with any architects, engineers, construction managers, contractors, subcontractors, laborers, materialmen or designers who are or may be providing or assisting in improvements or plans for the improvement of the Premises, whether or not those rights are subject to the UCC. General Intangibles means all intangible property of Debtor, whether now existing or subsequently acquired, arising or accruing, including, without limitation, general intangibles as defined in the UCC; hotel receipts; rights to any utility deposit, cash or security deposit or other deposit Related to the Premises; all escrow agreements Related to the Premises; all rights under any escrow agreement and all condominium or other escrow accounts Related to the Premises; condemnation awards; any claims for damages or other claims Related to the Premises; licenses and permits usable in connection with the Premises; all insurance policies covering all or any part of the Premises or other Collateral and all insurance deposits and refunds; rights to any proceeds of a lease, sale, option or other disposition of all or any portion of the Premises; advance rentals and land contract payments; all developer's rights Related to the Premises; and all drawings, plans and specifications Related to the Premises which have been prepared by Debtor or in which Debtor has an interest (whether prepared by an architect, contractor, civil engineer, surveyor or any other person).

1.9. HAZARDOUS MATERIALS means and includes, but is not limited to, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in Environmental Laws. "Hazardous Materials" includes, but is not limited to, solid waste, toxic or hazardous substances, wastes or contaminants, polychlorinated biphenyls ("PCBs"), paint containing lead, and urea formaldehyde foam insulation, and discharges or sewage or effluent.

1.10. IMPOSITIONS means real and personal property taxes and other taxes and assessments, water and sewer rates and charges, all other charges of governmental units, agencies or instrumentalities (and all other entities or authorities having the power to impose such taxes, assessments or other charges) and all interest, costs or penalties with respect to such taxes, assessments and charges; and charges for any easement or agreement maintained for the benefit of the Premises, whether general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind and nature and which at any time prior to or after the execution of this Mortgage may be assessed, levied or imposed against the Debtor or upon the Premises, or upon rent or income received from, or received for any use or occupancy of, the Premises.

1.11. IMPROVEMENTS mean and include, but is not limited to, all buildings, structures and improvements now existing or subsequently erected below, on, or above the Premises, including all Fixtures.

1.12. LEASES AND LAND CONTRACTS (referred to as "LEASE") means and includes, but is not limited to, any lease, sublease or contract for lease or sublease, rental, or sale of any portion of the Premises, whether such lease or contract is now in existence or executed in the future, covering all or any part of the Premises, together with all amendments, extensions, renewals, modifications or replacements of any Lease; all rents, income, royalties, interest, profits, and other payments, including taxes and insurance escrows, security deposits, due and becoming due under any Lease; and all guaranties of the indebtedness of the lessees, vendees, or obligors under any provisions thereof and otherwise.

1.13. LEGAL REQUIREMENTS means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, policies, permits, licenses, authorizations, directives and requirements of all federal, state, county, municipal and other governmental agencies, departments, commissions, boards, courts, authorities, officials and officers, whether ordinary or extraordinary, foreseen or unforeseen, which now or at any time in the future may be applicable to the business operations of Debtor, to the Collateral.

1.14. LENDER includes the Lender as defined in the Preamble, its successors and assigns, and any holder of the Note.

1.15. MATERIAL ADVERSE EFFECT means any circumstance or event which:

- (a) could have any adverse effect whatever upon the validity, performance or enforceability of any Security Document;
- (b) is or might be material and adverse to the financial condition or business operations of Debtor;



- (c) could impair the ability of Debtor to fulfill its Obligations; or
- (d) causes an Event of Default or which, with notice or lapse of time or both, would become an Event of Default.

1.16. MORTGAGE means this Mortgage.

1.17. NOTE means the promissory note or notes executed and delivered to Lender in the Amount set forth in Recital A, as the same may be amended, extended, ratified, renewed, substituted, superseded, or otherwise modified in writing from time to time.

1.18. NOTICE. See the Section below entitled "Notices."

1.19. OBLIGATIONS is intended to be interpreted liberally and it means all obligations, indebtedness and liabilities of Debtor to Lender of whatever kind, nature and description, whether primary, secondary, absolute, contingent or likely, due or to become due, and whether now existing or subsequently arising, and however acquired, whether or not evidenced by a note, and whether joint, joint and several, or several, including by way of illustration and not limitation:

- (1) The Note;
- (2) All claims, notes, loans, debts, indebtedness, interest, advances, service fees, audit fees, and borrowings, whether dated as of the date of this Mortgage or otherwise, and all substitutions, modifications, amendments, extensions, ratifications or renewals of any of them;
- (3) All future advances made by Lender to Debtor in connection with agreements between Debtor and Lender whether dated as of the date of this Mortgage or otherwise, whether in the form of refinancings or otherwise, and whether made at Lender's option or otherwise;
- (4) All credit or credit accommodations; extensions of credit; guaranties and contracts of suretyship; issuance or confirmation of letters of credit or creation of acceptances; overdrafts; payments against uncollected or insufficient funds; discounts or purchases of accounts, leases, instruments, securities, documents, chattel paper and other security arrangements; obligations arising out of any contracts or agreements for foreign exchange, precious metals or otherwise between Debtor and Lender;
- (5) All future advances made by Lender for the protection or preservation of Lender's rights or interest arising under this Mortgage or in the Collateral, including by way of illustration and not limitation, advances for taxes, levies and assessments, insurance or maintenance of the Collateral, advances against damages, costs or other demands indemnified by Debtor or any Guarantor, and reasonable attorneys' fees;
- (6) All covenants, promises, obligations, indemnities, or undertakings of Debtor to perform acts or refrain from taking action to or for the benefit of Lender;
- (7) All costs, expenses and reasonable attorneys' fees incurred by Lender in the protection, enforcement or collection of any of the foregoing; and
- (8) The Sub-Lease.

Provided, however, that this Mortgage shall not be deemed to secure any Obligation for personal, family or household purposes unless the note or agreement evidencing such Obligation expressly states it is secured by this Mortgage.

1.20. PERMITTED LIENS means those exceptions to marketable fee simple record title to the Premises set forth in any loan agreement between the parties to this Mortgage referring to this Mortgage and specifically describing the Permitted Liens, or if there is not contemporaneous loan agreement, then those exceptions set forth on the attached Exhibit B. If there is neither a loan agreement contemporaneous with, nor an Exhibit B attached to this Mortgage, then there are no Permitted Liens.

1.21. PREMISES means all of the real estate or other property described in the attached Exhibit "A" together with all Improvements and Fixtures.

1.22. RELATED TO THE PREMISES means relating to or otherwise arising in connection with or derived from the Premises or any part of the Premises or items constituting part of the Premises, or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Premises or any part of the Premises or any items constituting part of the Premises. Collateral does not have to be physically located on the Premises to be "Related to the Premises."

1.23. SECURITY DOCUMENTS means all agreements and undertakings made by Debtor or others to Lender in connection with any loan agreement or with the Obligations, including, by way of example and not of limitation, the Note, any mortgages, including this Mortgage, the Additional Second Mortgages, security agreements, assignment of rents, fixture filings, guarantys, pledges, financing statements, and all other documents and instruments previously, now or in the future furnished to Lender to evidence or secure payment or performance of any of the Obligations.

1.24. SUBLEASE means the certain sublease dated February, 2000 between Debtor, as Sub-Tenant, and Lender, as Sub-Lessor, for the leasehold estate held pursuant to a lease between Gary Joint Venture, an Ohio partnership, as "Lessor" and Lender, as "Tenant" dated March 12, 1991 and evidenced by a Short Form Lease dated March 12, 1991 and recorded in the Official Record Book of Lake County, Indiana, Instrument # 91026558, as amended by that certain First Amendment to Lease dated July 22, 1991 (as so amended the "GTV Lease"), for certain property which is more particularly described in the GTV Lease and includes the Premises and all leasehold improvement and personal property located thereon.

1.25. TAKING means a taking or conveyance of all or part of the Premises, or any interest therein or right accruing thereto (including a change in the grade of any street abutting on the Premises), as the result of, or in lieu of, a condemnation under the power of eminent domain. A TOTAL TAKING means a Taking (other than for temporary use) of (a) the entire Premises or of (b) a perpetual easement on the entire Premises, or of (c) such a substantial part of the Premises as in the Lender's judgment shall result in it being uneconomic or impractical to restore the Premises remaining after such Taking to their prior use. Any other Taking is referred to as a PARTIAL TAKING.

1.26. UCC means the Uniform Commercial Code as adopted in Indiana, as amended from time to time, or any successor to it if the UCC shall be repealed.

## 2. MORTGAGE.

To secure payment of the Note and the prompt and faithful payment and performance of all Obligations, Debtor MORTGAGES and WARRANTS to Lender (and GRANTS a security interest in), subject to the Permitted Exceptions, the First Mortgage and the GTV Lease, all right, title and interest of Debtor in or to all of the following:

- (a) The Premises and all Improvements now existing or constructed in the future, together with the following:
- (b) The tenements, hereditaments, appurtenances, easements, rights-of-way, rights used in connection with the Premises or as a means of access to the Premises, licenses and privileges, reversions, remainders, all air rights, all development rights and all riparian, littoral and water rights belonging to the Premises;
- (c) The land underlying any alley, street, road or avenue, opened or proposed or vacated, in front of or adjoining the Premises to their fullest extent, and to any strips, gaps or gores adjoining the Premises;
- (d) The Fixtures and the proceeds, profits, products and royalties arising from them (to the extent permitted by law, all Fixtures shall be deemed part and parcel of the Premises and appropriated to its use and, whether affixed or annexed, or intended to be affixed or annexed, shall for the purpose of this Mortgage be conclusively deemed to be real estate and mortgaged by this Mortgage);
- (e) Any and all awards or payments, including all interest on them, and including the right to receive such awards or payments which may be made or accrued regarding the Premises or any portion of the Premises as a result of (i) any Taking, (ii) the alteration of the grade of any street, or (iii) any other injury to or decrease in the value of the Premises, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment, together with costs, expenses and reasonable attorney fees in connection with the collection of such award or payment. The Debtor shall execute and deliver, from time to time, such further instruments as may be requested by Lender to confirm such assignment to Lender of any such award or payment;



(f) All proceeds of and any unearned premiums on any insurance policies covering the Premises including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements of any insurance claims, for any damage to any of the Premises or the Improvements;

(g) All leasehold estates; all of the rent, issues, income and profits under present or future Leases covering the Premises or any other portion of the Premises, including, without limitation, all cash or security deposits, advance rentals or land contract payments, deposits and payments of any kind or description).

(h) All mineral, oil, gas and water rights, royalties, water and water stock;

(i) All right, title and interest of Debtor in and to all options or contracts to purchase or lease the Premises or any portion of, or interest in, the Premises, and any greater estate in the Premises owned or subsequently acquired;

(j) All estates, rights, title, interests, dower and rights of dower, courtesy and rights of courtesy, property, possession, estate claims, claims or demands, both in law and in equity, which Debtor now has or may subsequently acquire in the Premises, including, but not limited to, the leasehold estate of the Debtor;

(k) Any and all rights with respect to submerged property adjoining the Premises, including without limitation any leases of submerged property;

(l) Any permits from the U.S. Corps of Engineers or Indiana Department of Natural Resources with respect to the Premises or any adjoining property.

(m) All drawings, plans and specifications relating to the Premises which have been prepared by Debtor or in which Debtor has an interest (whether prepared by an architect, contractor, civil engineer, surveyor or any other person);

(n) Any and all proceeds and products of any of the foregoing and of any and all other Collateral of any nature now or subsequently given as security for the Obligations;

(o) The GTV Lease; and

(p) Any after-acquired title to any of the foregoing.

All of the foregoing is granted to the use and benefit of the Lender, its successors and assigns TO HAVE AND TO HOLD FOREVER.

### 3. PAYMENT OF FIRST MORTGAGE AND GTV LEASE.

3.1. Debtor agrees to pay and perform the following obligations with respect to the First Mortgage and the GTV Lease:

(a) Debtor will promptly pay the interest, installments of principal, and each and every other sums and charges mentioned in and made payable by the First Mortgage when such sums shall become due and payable and in any event, no later than the expiration of any grace period, if any, allowed for payments under the first Mortgage and the GTV Lease.

(b) Debtor will promptly pay the rent, additional rent and each and every other sums and charges mentioned in and made payable by the GTV Lease when such sums shall become due and payable and in any event no later than the expiration of any grace period, if any, allowed for payments under the GTV Lease.

(c) Debtor will promptly perform and observe each and every one of the terms, covenants and conditions required to be performed and observed by Debtor under the First Mortgage and the GTV Lease, within the respective periods provided in the First Mortgage and the GTV Lease, and will do all things necessary to preserve and keep the First Mortgage and the GTV Lease free from default.

(d) Debtor will promptly notify Lender in writing of any default by Debtor in the performance or observance of any of the terms, covenants or conditions on the part of Debtor to be performed under the First Mortgage and the GTV Lease.

(e) Debtor will (1) promptly notify Lender in writing of the receipt by Debtor of any notice from the First Mortgage Holder or from the Lessor under the GTV Lease and of any notice noting or claiming any default by Debtor in the performance or observance of any of the terms, covenants or conditions on the part of Debtor to be performed or observed under the First Mortgage or the GTV Lease, and (2) promptly cause a copy of each such notice received by Debtor from the First Mortgage Holder or the Lessor under the GTV Lease to be delivered to Lender.

(f) Debtor will furnish to Lender upon demand proof of payment of all items which are required to be paid by Debtor pursuant to the First Mortgage and the GTV Lease.

(g) Debtor shall execute and deliver, on request of Lender, such instruments as Lender may deem useful or required to permit Lender to cure any default under the First Mortgage or the GTV Lease or permit Lender to take such other reasonable action as Lender considers necessary to cure or remedy the matter in default and preserve the interest of Lender in the Premises.

3.2. Debtor agrees that failure of Debtor to comply with any one or all of the foregoing requirements, and any default beyond applicable notice and cure periods under the First Mortgage or the GTV Lease shall constitute an Event of Default hereunder. Debtor further agrees that should Debtor fail to make payment of any money or charges under the First Mortgage or the GTV Lease before the same shall become delinquent, or otherwise be in default under said First Mortgage or the GTV Lease, and if the Lender cures the default of Debtor then upon demand therefore, Debtor hereby agrees to reimburse Lender for any payments made by Lender on Debtor's behalf, together with interest thereon at the default interest rate under the Note, and until paid, such amounts and interest shall be added to and become part of the debt secured hereby to the same extent that this Mortgage secures the repayment of the indebtedness evidenced by the Note secured hereby.

3.3 . The repayment of the Note is also secured by other second mortgages of even date herewith made by Debtor to Lender (the "Additional Second Mortgages"). This Mortgage and the Additional Second Mortgages are herein collectively referred to as the "Mortgage Instrument". An Event of Default (as defined in the Mortgage Instrument) under any of the Mortgage Instruments shall constitute an Event of Default under each of the other Mortgage Instruments and in consequence of said Event of Default, Lender may exercise one or more of its default remedies hereunder or thereunder.

#### 4. TITLE, AUTHORITY AND WARRANTIES.

Debtor has the power and authority necessary to execute and deliver this Mortgage the Sublease and each Security Document. Debtor is the owner of its Sub-Lease interest, free from all encumbrances and charges except the Permitted Liens (if any) the First Mortgage and the GTV Lease. All Leases, except the GTV Lease, are subordinate to this Mortgage. The lien of this Mortgage is subject only to the Permitted Liens. Debtor owns all of the Sub-Lease interest free and clear of any lien, security interest, encumbrance or adverse claim except for the lien granted by this Mortgage, the GTV Lease, the Permitted Encumbrances and liens and security interests which are in fact subordinate to this Mortgage. Debtor will forever warrant and defend the Collateral against all claims and demands and shall not permit a lien or encumbrance of any nature to attach to the Collateral which might take precedence over the lien of this Mortgage, except as expressly allowed by the terms of this Mortgage or in a writing signed by an officer of Lender specifically referring to this Mortgage. The Collateral was not, is not, and shall not be used or bought for personal, family or household purposes.

#### 5. SATISFACTION OF OBLIGATIONS.

Debtor covenants, promises and represents that the debt evidenced by the Note, and any and all other Obligations of Debtor to Lender, shall be promptly satisfied in accordance with the terms of the Note and the Security Documents. The liability of Debtor to Lender under this Mortgage shall be absolute and unconditional, without regard to the liability of any guarantor, accommodation party, surety, or other party primarily or secondarily liable for any of the Obligations.

#### 6. TIME OF ESSENCE.

Time is of the essence to this Mortgage and to each provision of it.

#### 7. INSURANCE.

7.1. Debtor shall insure the Collateral for the benefit of Lender against loss or damage by the perils covered by standard fire and other hazard insurance policies with windstorm, casualty, vandalism, malicious mischief and other extended coverage (in so called "all-risk" forms) in amounts required by Lender, and shall obtain such other insurance as Lender may from time to time reasonably require. Debtor shall also obtain and keep in force public liability and property damage insurance upon the Premises in



and during any repair or restoration of the Premises in the minimum amounts for hazard insurance and public liability insurance required by Lender. If the Premises are located in an area which has been identified as a flood hazard area by the Secretary of the U.S. Department of Housing and Urban Development and flood insurance has been made available, Debtor will keep the Premises insured for the maximum amount available (but not in excess of the amount of the Note). All policies shall be with companies approved by Lender and shall provide that they may not be canceled or reduced in amount or scope of coverage without thirty (30) days prior written notice to an officer of Lender. Debtor shall deliver to Lender memorandum copies or true copies of all policies of insurance as Collateral and as further security for satisfaction of the Obligations, with loss payable clauses and with mortgagee clauses satisfactory to Lender. Renewal policies shall be delivered to and held by Lender with premiums fully paid, at least ten (10) days before the expiration of any existing policy.

7.2. In the event of sale or foreclosure under this Mortgage, any insurance policies in force or written during the pendency of those proceedings or during the period of redemption shall, if no redemption is made from foreclosure, become the property of the purchaser at the foreclosure sale. After the right of redemption has expired, the Debtor shall have no right, title or interest in or to the insurance policies or their cash surrender value. Debtor irrevocably appoints Lender its attorney-in-fact, in Debtor's name, to assign and transfer all such policies and proceeds to such foreclosure sale purchaser.

7.3. In the event of material loss, Debtor shall give prompt notice in writing to an officer of Lender. For the purpose of this section, material shall mean in excess of Twenty Five Thousand Dollars (\$25,000.00). Lender may make proof of loss if not promptly made by Debtor. The Lender is authorized and empowered to settle, adjust or compromise, without the consent of Debtor, any claims for loss, damage or destruction under any policy of insurance if Debtor shall fail or refuse to make its claim within thirty (30) days of the date of occurrence of such loss. The Lender is authorized to collect, receive and receipt for such insurance proceeds in the name of Lender and Debtor.

7.4. Insurance proceeds may be used by Debtor to restore the Improvements, subject to the rights of the First Mortgage lender and subject to the following conditions precedent:

- (a) Such proceeds, together with funds made available by Debtor, shall equal the cost of restoration of the Improvements as determined by an independent estimate satisfactory to Lender and all such proceeds and other funds shall be deposited with Lender in an account under Lender's control;
- (b) Plans for such restoration shall be delivered to and approved by Lender;
- (c) Debtor shall grant to Lender, rights to supervise such restoration, in accordance with Lender's standard construction loan practices and procedures;
- (d) The tenants of the Premises confirm their tenancy and do not exercise any right they may have to terminate their leases of the Premises because of such casualty loss;
- (e) No Event of Default exists and no event exists which would constitute an Event of Default with the giving of notice or lapse of time or both; and
- (f) The Lender shall reasonably determine that there has been no substantial impairment of either:
  - (1) the ability of Debtor to make payments on, or to satisfy, any of the Obligations when due; or
  - (2) the total value of all Collateral, including all insurance proceeds.

If any of the foregoing conditions are not satisfied, as determined by Lender in its sole discretion, then such insurance proceeds shall not be used to restore the Improvements and such proceeds shall instead be used to satisfy the Obligations whether or not due and payable at that time.

#### 8. INDEMNIFICATION; SUBROGATION; WAIVER OF OFFSET.

8.1. If Lender is made a party, or is threatened to be made a party, to any litigation concerning this Mortgage or the Premises or any part thereof or interest therein, or the occupancy thereof by Debtor, or in any litigation arising out of any claim by any person against the Lender which would not have been asserted were it not for the Lender's relationship with the Debtor (excluding claims for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Lender, its agents or employees), then Debtor shall indemnify, defend and hold Lender harmless from all liability by reason of the



litigation, including without limitation reasonable attorneys' fees and expenses incurred by Lender in any such litigation, the allocated costs of in-house legal counsel of the Lender, and the cost or expense of any judgment, settlement or resolution. The provisions of this Section shall survive (i) the repayment of all sums due under the Note and the other instruments securing in whole or in part the Obligations, (ii) the satisfaction of all other Obligations of the Debtor, and (iii) any discharge of this Mortgage.

8.2. Debtor waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Debtor, the Premises, Debtor's property or the property of others under Debtor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

8.3. All sums payable by Debtor under this Mortgage shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the Obligations of Debtor shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to, or destruction of, or any Taking of the Premises or any part thereof; (ii) any restriction or prevention of or interference with any use of the Premises or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lender or any action taken with respect to this Mortgage by any trustee or receiver of Lender, or by any court, in any such proceeding; (v) any claim which Debtor has or might have against Lender, (vi) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Debtor; whether or not Debtor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Debtor waives all rights now or subsequently conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured by this Mortgage and payable by Debtor.

#### 9. IMPOSITIONS AND LEGAL REQUIREMENTS

9.1. Debtor shall pay all Impositions now or subsequently assessed, as they become due and payable and prior to the date when they become delinquent. Debtor shall present to Lender receipts or other evidence of the timely payment of all Impositions. Lender may contest any Imposition, in its own name and at its own expense.

9.2. Debtor shall comply with all Access Laws and all other Legal Requirements. Debtor agrees to give written notice to Lender within ten days of the receipt by Debtor of any complaints related to violation of any Access Laws or other Legal Requirements, and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws and other Legal Requirements.

#### 10. ENVIRONMENTAL WARRANTIES, COMPLIANCE AND INDEMNIFICATION

10.1. Debtor represents, agrees and warrants that: (a) Debtor has not used Hazardous Materials on, from or affecting the Premises; (b) Debtor has no actual knowledge of any use by any prior owner of the Premises, or by any other person, corporation or entity, of Hazardous Materials on, from or affecting the Premises; (c) Debtor has never received any written or other notice of any violations of Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials which in any manner relate to or affect the Premises, and has no knowledge of any action commenced or threatened by any party, including but not limited to any governmental authority, for noncompliance with such Legal Requirements; and (d) Debtor has in the past, and will in the future, strictly comply with all Environmental Laws.

10.2. Debtor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle dispose of, transfer, produce or process Hazardous Materials in violation of Environmental law. Debtor shall not cause or permit, as a result of any intentional or unintentional acts or omissions on the part of Debtor or any tenant, subtenant or occupant of the Premises, a release of Hazardous Materials onto the Premises or onto any other property in violation of Environmental law. Debtor shall allow Lender or its agent access to the Premises at anytime upon 24 hours notice to confirm Debtor's continuing compliance with Debtor's covenants under this Section 11 and Lender may, in Lender's sole discretion, hire an environmental consultant at Debtor's sole cost and expense, to inspect the Premises and to advise Lender concerning Debtor's compliance with such covenants.

10.3. If Hazardous Materials are subsequently discovered on the Premises or if Lender in good faith believes that Hazardous Materials are possibly being used or possibly exist on, under, from or affecting the Premises, Debtor shall conduct and complete all investigations, studies, sampling and testing, and shall take all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, under from or affecting the Premises in accordance with all applicable Environmental Laws to the reasonable satisfaction of Lender, and in accordance with the orders and directives of all federal, state and local governmental authorities.

10.4. If the Debtor fails to conduct an environmental audit required by a governmental authority or by the Lender, then Lender may at its option, and at the expense of Debtor, conduct such an audit. Any environmental audit conducted by Lender shall be conducted solely for the benefit of and the protection of the interests of Lender and shall not be relied upon by Debtor or any third party whatsoever, including, but not limited to Debtor's or any third party's obligation, if any, to conduct an independent environmental investigation of its own. By conducting any such audit, Lender does not assume any control over the environmental affairs or operations of Debtor nor assume any obligation or liability to Debtor or any third party.

10.5. Debtor shall have the right, after prior written notice to an officer of Lender, at Debtor's sole expense, to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Lender, any environmental orders and directives of any federal, state or local governmental authorities provided that (a) no Event of Default shall exist during such proceedings and such contest shall not in any way threaten any interest of Lender or subject Lender to any claim for the payment of money; (b) such contest will not subject Lender to any civil or criminal liabilities; (c) the contest suspends enforcement of the applicable order, directive or any Environmental Law; and (d) before and during such contest, Debtor shall furnish to Lender security satisfactory to Lender in Lender's sole discretion against loss or injury by reason of such contest.

10.6. Debtor shall defend, indemnify and hold harmless Lender, Lender's parent holding company, Lender's affiliates and subsidiaries, and the employees, agents, officers and directors, of all the foregoing entities, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, including, without limitation, reasonable attorney's and consultant's fees and the allocated costs of in-house legal counsel of the Lender, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Premises or the soil, water, vegetation, Improvements, buildings, personal property, persons, or animals thereon; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Premises; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Premises; (d) any violation by Debtor of Environmental Laws; and/or (e) any written policies or reasonable requirements of Lender which are based on or in any way related to such Hazardous Materials used in or on the Premises, except to the extent any of the foregoing occurred or arose prior to the date of this Mortgage.

10.7. Debtor agrees that if the Mortgage is foreclosed or Debtor tenders a deed in lieu of foreclosure, Debtor shall deliver the Premises to Lender free of any and all Hazardous Materials, arising after the date hereof, so that the condition of the Premises shall conform with all applicable Environmental Laws affecting the Premises.

10.8. The provisions of this Section shall be in addition to any and all other Obligations and liabilities the Debtor may have to the Lender at common law, and shall survive (i) the repayment of all sums due under the Note and the other instruments securing in whole or part the Obligations, (ii) the satisfaction of all other Obligations of the Debtor, (iii) any discharge of this Mortgage; and (iv) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure.

#### 11. SECURITY AGREEMENT AND FIXTURE FILING.

11.1. This Mortgage shall serve as a "security agreement" and a "fixture filing" as those terms are used in the UCC.

11.2. To secure payment of the Note and prompt payment and satisfaction of all Obligations, Debtor ASSIGNS and GRANTS to Lender a continuing security interest in and lien against Debtor's right, title and interest in the following assets, excluding alcoholic beverage inventory, of Debtor whether now owned or subsequently acquired or arising: Accounts; General Intangibles; Fixtures; timber standing on the Premises; minerals, soil or the like (including oil and gas) Related to the Premises or extracted from any wellhead or minehead located on the Premises; accounts resulting from the sale of minerals, soil or the like (including oil and gas) Related to the Premises or extracted from any wellhead or minehead located on the Premises; equipment, inventory, and building materials Related to the Premises; chattel paper Related to the Premises; documents and instruments Related to the Premises; chattel paper, documents, instruments, money, certificates of deposit and any balance of any deposit(s) now or in the future in the possession of Lender but in or to which Debtor has now or later acquires an interest; farm products; and all proceeds, products, profits or royalties of any of the foregoing; all of which Lender has the right to apply against the Obligations, without notice to Debtor, upon an Event of Default.

11.3. For purposes of the fixture filing:

(a) The Debtor's name and address are set forth in Recitals B and C.

- (b) The Debtor's social security number or federal employer tax identification number is set forth in Recital D.
- (c) The secured party is the Lender, whose name and address is set forth in the Preamble. Information concerning the security interest may be obtained from Lender at this address.
- (d) The types or items of property covered by this fixture filing are set forth above in Section 3.2.
- (e) Products, proceeds, profits and royalties of the collateral are also covered.
- (f) The goods are to become fixtures on the Premises.
- (g) The above described collateral includes timber standing on the Premises.
- (h) The above described collateral includes minerals, soil or the like (including oil and gas) extracted from any wellhead or minehead of any mine located on the Premises.
- (i) The above described collateral includes accounts resulting from the sale of minerals, soil or the like (including oil and gas) to be extracted from any wellhead or minehead of any mine located on the Premises.

11.4. Debtor shall furnish further UCC financing statements to Lender, as Lender shall reasonably request, in recordable form satisfactory to Lender. Debtor irrevocably appoints Lender as Debtor's attorney-in-fact, coupled with an interest in the Collateral, for the purpose of recording, filing, re-recording and re-filing any such documents for and in the name of Debtor. Debtor authorizes Lender at the expense of the Debtor to execute on its behalf and file any financing statement deemed necessary to the Lender to perfect its security interest in the Collateral. The existence of a security interest under this Section shall not be deemed to abrogate the intention of the parties that all Collateral, to the extent possible under applicable law, shall be deemed annexed to real estate and subject to the mortgage lien of this document.

11.5. Debtor authorizes Lender to record a photocopy or other reproduction of this Mortgage in office(s) other than the office where this Mortgage is to be or has been originally recorded.

11.6. Upon an Event of Default Lender shall have all of the rights and remedies available to a secured party under the UCC. Any requirement of reasonable notice for sale of personal property Collateral shall be met if Lender sends notice to Debtor at least 10 days prior to the date of sale, disposition or other event giving rise to the required notice. In the alternative, Lender may elect to sell the Premises and all other Collateral (including personal property Collateral) at public auction in accordance with Lender's rights and remedies under the statutes for the foreclosure of mortgages. In such case, Debtor agrees that the only notice provided to Debtor for the sale of the Premises and all other Collateral (including personal property Collateral) shall be the notice as expressly set forth in the Indiana Code providing for foreclosure.

11.7. All agreements, obligations and warranties of Debtor contained in this Mortgage shall be deemed to apply to all Collateral regardless of whether express reference to "Collateral" is made.

**12. REPAIRS AND WASTE; REMOVAL OF FIXTURES; RECEIVER.**

12.1. Debtor shall (a) maintain the Premises in good condition and repair, including all on-site paved parking areas, roadways and landscaped areas; (b) not commit or suffer any waste of the Premises; (c) promptly repair, restore, replace or rebuild any part of the Premises which may be damaged or destroyed by any casualty or which may be affected by any proceeding of the character referred to in Section 15; (d) within a reasonable time, complete and pay for any structure at any time in the process of construction on the Premises; (e) not initiate, join in or consent to any change in any restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of any portion of the Premises; (f) not demolish, sell, lease, remove or dispose of any Improvements, Fixtures or Collateral without the written consent of an officer of Lender, except that Debtor may dispose of obsolete, defective or worn-out Fixtures or Collateral without Lender's consent if replaced with suitable Fixtures or Collateral in good condition and owned by Debtor free from any lien or security interest except Permitted Liens; and (g) not remove, sell or dispose of any soil or fill dirt from the Premises without written consent of an officer of the Lender. Upon written notice to an officer of Lender, Debtor may sell any crops and livestock in the ordinary course of business. All repairs and replacements shall be of at least equal type, quality and specification to the original item repaired or replaced. Notwithstanding anything above to the contrary, it is intended that Debtor shall have the right at any time and in its sole discretion to add Improvements to any portion of the Premises without consent or permission of Lender, provided that, any such Improvements shall be subject to the lien of this Mortgage.



12.2. Debtor shall comply, or cause to be complied, with: (a) all terms and provisions of each insurance policy covering or applicable to the Collateral or any part of the Collateral, all requirements of the issuers of all such policies, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Collateral or any part of the Collateral or any use or condition of the Premises; and (b) all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, ordinary or extraordinary, foreseen or unforeseen, which now or at any time in the future may be applicable to the Collateral or any part of the Collateral, or to any of the streets, alleys, passageways, sidewalks, curbs, gutters, vaults and vault spaces adjoining the Collateral or any part of the Collateral, or to any use or condition of the Collateral or any part of the Collateral.

12.3. If after ten (10) days written notice and demand by Lender to cure, Debtor has failed or refused to pay any Imposition or any insurance premium upon policies covering the Premises when due, such failure or refusal shall constitute waste. Upon the happening of either or both of those acts of waste or upon such other circumstance which might affect Lender's rights to the income from the Collateral or otherwise affect Lender's rights or the value of the Collateral, and on application made by Lender to a court of competent jurisdiction, Lender shall be entitled to apply for the appointment of a receiver of the Premises and of the earnings, income, issue and profits of the Premises and the Collateral. The receiver shall have the powers conferred by the court making the appointment. Payment by Lender for and on behalf of Debtor of any delinquent tax or insurance premium, properly payable by Debtor under the terms of this Mortgage, shall not cure Debtor's default nor shall it in any manner impair Lender's right to the appointment of a receiver because of that Event of Default.

**Document is NOT OFFICIAL!**  
13. PAYMENT OF OBLIGATIONS.

13.1. Debtor will pay or cause to be paid all utility charges incurred in connection with the Premises promptly when due and maintain all utility services available for use at the Premises.

13.2. Debtor will not suffer any mechanics, labors or construction liens to be created or remain outstanding upon the Premises or any part of the Premises. Debtor agrees to deliver to Lender, promptly, but in no event more than ten (10) days after Debtor's receipt, a copy of any notice that Debtor receives with respect to any pending or threatened lien or the foreclosure of any lien.

13.3. Debtor shall pay all other obligations for any present or future repairs or improvements made on the Premises, and for any other goods, services, utilities furnished to the Premises, and shall pay all of Debtor's debts as they become due.

**STOP**  
14. PAYMENTS BY LENDER.

Upon any failure by Debtor to observe or perform any covenant of this Mortgage or any Security Document, or if any representation in this Mortgage is, or becomes false, Lender may at any time and from time to time, at its option, make any advances or incur any expenses or otherwise act as in its judgment may seem advisable to protect Lender's security or carry out covenants of Debtor or to make true any representation of Debtor. Upon prior notice to Debtor, Lender, independent contractors engaged by Lender, and other persons authorized by Lender shall have the right to enter upon the Premises to perform emergency repairs, to secure the Premises from hazard, or otherwise to take action which Lender deems advisable to protect Lender's security interest in the Improvements and the Premises if Debtor has failed to do same. All advances, costs and expenses (including reasonable attorneys' fees and the allocated costs of in-house legal counsel of the Lender) (collectively "Advances") made, paid or incurred by Lender under this Mortgage for the protection of Lender's security or rights in connection with the Premises, or in foreclosure proceedings commenced and subsequently abandoned, or in any dispute or litigation to which Lender or the holder of the Note may become involved by reason of or arising out of this Mortgage, or to carry out any obligation of Debtor, shall be additional Obligations of Debtor, secured by the lien of this Mortgage. Lender may, at its option, either (a) add an Advance to the principal balance of the Note(s) or, in the alternative, (b) invoice Debtor for the amount of the Advance in which case Debtor agrees to pay the Advance upon demand. Nothing contained in this Section shall require the Lender to incur any cost or expense or to take any action.

15. EMINENT DOMAIN.

Debtor shall give Lender prompt written notice of any actual or proposed Taking. Debtor shall continue to satisfy the Obligations in the event of any Taking. Subject to the rights of the First Mortgage Lender, in the event of a Partial Taking of any single parcel, any award or payment may, in whole or in part and at Lender's sole option, be retained and applied by Lender (without penalty or surcharge) upon the last maturing installments of the Note, or any other part of the Obligations, or paid over to Debtor for the purpose of altering, restoring or rebuilding any part of the Premises, or for any other purpose or object satisfactory to Lender.

Lender shall have no obligation to control, supervise or administer, and no liability whatever in connection with, the application of any amount paid over to Debtor. If prior to the receipt of the award or payment by Debtor the Premises shall be sold on foreclosure of this Mortgage, then Lender shall have the right to receive and retain that portion of the award or payment equal to any deficiency due upon sale (whether or not a deficiency judgment on this Mortgage shall have been sought, recovered or denied) with interest and the reasonable attorneys' fees, costs and disbursements incurred by Lender in connection with collection of that award or payment. Any award or payment for a Total Taking of any single parcel shall be paid solely to the Lender and applied by it on the Obligations, without penalty or surcharge, and the excess, if any, shall be paid to the Debtor. Any reduction in the principal sum resulting from the application by Lender of any such award or payment shall take effect only on the date of actual receipt by Lender. The provisions of this Section shall not apply to any award specifically allocated for, or to any portion of any award specifically allocated for, loss of business incurred by Debtor as a result of a Taking.

#### 16. FINANCIAL REPORTS.

In addition to any reporting requirements set forth in the Security Documents, Debtor shall, unless waived in writing by the Lender, provide Lender with Debtor's balance sheet and statement of income, together with a statement of all income and expenses in connection with the Premises, in such detail as shall reasonably be required by Lender, within ninety (90) days after the end of each fiscal year of the Debtor, certified by Debtor to be true and correct.

#### 17. INSPECTION.

Lender, independent contractors engaged by Lender and other persons authorized by Lender shall have the right to enter upon the Premises for inspection, engineering or environmental purposes. These purposes shall include the right to make surveys, inspections, and topographical maps; to perform soil tests; to verify the location and adequacy of utility lines and services; to perform environmental testing; and to perform such other inspections and testing pertaining to the Premises as may be deemed appropriate by Lender. Lender agrees to reasonably restore the Premises to its condition prior to such entry. All such inspections and testing may occur at all reasonable times, and from time to time, upon 24 hours prior notice to Debtor.

#### 18. ESTOPPEL CERTIFICATE.

Debtor shall, at Lender's request, furnish an officer of Lender or any person designated by it with a certified statement in form satisfactory to Lender showing as of the date of the certificate the unpaid principal balance and accrued interest on the Note and stating that Debtor is not in default under this Mortgage, the First Mortgage or the Sub-Lease (or describing any such default), and stating that Debtor has no defense, right of setoff or counterclaim to the payment of any portion or all of the Note or the observance or performance of any Obligation (or describing any such defense, setoff or counterclaim). Any purchaser or assignee of the Note or Security Documents, or any interest therein, may rely on such certificate.

#### 19. LENDER'S RIGHT TO DEAL WITH PURCHASER OF COLLATERAL.

In the event of the sale or transfer, by operation of law or otherwise, of all or any part of the Collateral, whether before or after an Event of Default or a foreclosure, Lender is authorized and empowered to deal with the transferee with reference to the Collateral, the Obligations or this Mortgage as fully and to the same extent as it might with Debtor, without in any way releasing or discharging Debtor from its liability or undertakings, subject nevertheless to the other provisions of this Mortgage. Debtor shall, in any event, at all times continue to be primarily liable to Lender on the Obligations secured by this Mortgage until this Mortgage shall be discharged or the Debtor is formally released by an instrument in writing executed by the Lender.

#### 20. DUE ON SALE OR ENCUMBRANCE.

Without the prior written consent of Lender which may be unreasonably withheld, Debtor shall not convey or transfer any right, title or interest in the Premises, or any portion of it, whether legal or equitable, voluntary or involuntary and whether by outright sale, deed, installment contract, land contract, leasehold interest, option or lease with an option. Debtor shall not execute any mortgage, chattel mortgage, security agreement, deed of trust or other document or agreement granting a lien against the Premises without prior written approval of an officer of Lender and then only when the document granting that lien (a) has been approved in writing by an officer of Lender and (b) expressly provides that it is subject to the lien of this Mortgage for the full amount of the Obligations and is subject and subordinate as well to any then existing leases affecting the Premises. Upon the occurrence of any of the foregoing events of transfer or encumbrancing, Lender may at its sole election immediately declare the Note, the Obligations and all other sums secured hereby to be due and payable even though the time for payment shall not then have otherwise expired. If Lender declares the Note to be due and payable, Lender may exercise all of its rights and remedies under this Mortgage.

granting a lien against the Premises without prior written approval of an officer of Lender and then only when the document granting that lien (a) has been approved in writing by an officer of Lender and (b) expressly provides that it is subject to the lien of this Mortgage for the full amount of the Obligations and is subject and subordinate as well to any then existing leases affecting the Premises. Upon the occurrence of any of the foregoing events of transfer or encumbrancing, Lender may at its sole election immediately declare the Note, the Obligations and all other sums secured hereby to be due and payable even though the time for payment shall not then have otherwise expired. If Lender declares the Note to be due and payable, Lender may exercise all of its rights and remedies under this Mortgage.

## 21. EVENTS OF DEFAULT.

21.1. The term "Event of Default" means any of the following: (a) any failure to pay the entire amount then due (after a grace period, with notice, of ten (10) days) of any Obligation of the Debtor to Lender; (b) any default in the performance of any term, agreement, covenant or condition contained in this Note or in any guaranty, including but not limited to any guaranty given by Jerry D. Smith to Lender, or other Security Document after notice and a thirty (30) day opportunity to cure, which the parties deem to be reasonable; (c) the Debtor's failure to account promptly, when requested by Lender and to Lender's satisfaction, for any of the Collateral or proceeds thereof, but in no event more than ten (10) days after Lender's request; (d) the failure of Debtor promptly to provide Lender with such financial and other information when requested by the Lender, but in no event more than ten (10) days after Lender's request; (e) the Debtor shall fail to pay all or any part of the principal of or interest on any indebtedness of or assumed by the Debtor for borrowed money as and when due and payable, whether at maturity, by acceleration or otherwise, and the default shall not be cured within the period of grace, if any, specified in the evidence of the indebtedness; (f) the existence or declaration of a default under any agreement (including any mortgage, lease, land contract, security agreement or other arrangement) pertaining to the Collateral, and the default shall not be cured within the period of grace, if any, specified in such agreement; (g) if any representation, warranty, certificate, financial statement or other information made or given by Debtor or any guarantor or surety for the Obligations to Lender is materially incorrect or misleading or omits to state any fact necessary to keep the statements from being materially misleading; (h) the sale of all or substantially all of Debtor's or any guarantor's assets, or the dissolution, merger or consolidation of Debtor or any guarantor, or if any agreement for such sale of all or substantially all of Debtor's or of guarantor's assets, or the dissolution, merger or consolidation of Debtor or any guarantor, is entered into without the prior written consent of Lender; (i) if [1] the Debtor becomes insolvent or bankrupt, Debtor fails to pay its debts as they mature, or Debtor makes a general assignment for the benefit of, or entering into a composition or arrangement with, creditors; [2] procedures for the appointment of a receiver, trustee, or liquidator of Debtor or of a substantial part of its assets, are authorized or instituted by or against Debtor; or [3] proceedings under the United States Bankruptcy Code or other bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any other jurisdiction are authorized or instituted by or against the Debtor; provided, however, that if the bankruptcy or insolvency proceedings are involuntary, the Debtor shall have a period of forty-five (45) days after institution of the action to obtain an order dismissing the action; (j) the occurrence of any substantial change in the existing business operations or financial condition of Debtor which Lender determines in good faith to have a Material Adverse Effect; (k) the death, insolvency, bankruptcy or adjudication of mental incompetency of any Debtor, guarantor or surety of the Obligations; (l) the termination or revocation, or attempted termination or revocation, of any guaranty securing any of the Obligations; (m) any judgment issued against Debtor which shall remain outstanding and unsatisfied, unbonded or unstayed for twenty-one (21) days after the date of entry of the judgment; (n) any execution, levy, attachment, writ of garnishment, appointment of a receiver or other proceedings obtained in connection with a judgment obtained against Debtor; (o) Debtor fails to pay the full amount of any tax, fee or assessment due and owing to any federal, state or local governmental authority; (p) any tax lien, tax levy, jeopardy assessment, or other tax assessment issued against Debtor; (q) the filing of any mortgage by other(s) against real estate Collateral, or the filing of any financing statement by other(s) against other Collateral, excluding the First Mortgage; (r) the Debtor shall suffer a casualty as to any material asset or assets used in the conduct of Debtor's business which is not, except for reasonable deductibles, fully covered by property insurance conforming to the requirements of the Lender; (s) the cancellation or termination of any insurance required by Lender in any loan agreement or other Security Document; (t) Debtor's conduct in issuing checks or other withdrawals which would cause overdrafts or draws against uncollected funds in Debtor's checking, demand deposit or other bank accounts; (u) if the Lender in good faith reasonably believes that the value of the Collateral securing the Obligations or the ability of the Debtor to pay or satisfy the Obligations to the Lender is or will soon be, impaired, time being of the essence; (v) the Mortgage, the Note, or any Security Document shall cease to be a legal, valid, binding agreement enforceable against any party executing the document in accordance with the respective terms of the document or shall in any way be terminated or become or be declared ineffective or inoperative or shall in any way whatever cease to give or provide the respective liens, security interest, rights, titles, interests, remedies, powers or privileges intended to be granted by the document; (w) the Debtor shall be in default under the Additional Second Mortgages beyond applicable notice and cure periods; (x) the Debtor shall be in default under the First Mortgage beyond applicable notice and cure periods, or (y) the Debtor shall be in default under the Sub-Lease. Debtor agrees that an Event of Default under the Mortgage Instrument, or any Security Document is a default under all other notes endorsed by Debtor and delivered to Lender, and similarly a default under any other note or Security Document executed by Debtor and delivered to Lender is an Event of Default under the Mortgage Instrument. Debtor and Lender



may procure surveys, abstracts of title, tax histories or title insurance policies, and the cost of such items shall be added to the Obligations, to be payable at once, with interest at the default rate of interest provided in the Note.

## 22. REMEDIES.

22.1 At any time after an Event of Default, Lender may sue, with respect to this Mortgage, the Note or the Security Documents, to enforce the payment of any sum or the performance of any of the Obligations, for the recovery of damages or for any other reason at any time or times and without regard to the existence of additional causes of action or whether or not all or any portion of the Obligations shall be due. Any such suit by Lender shall not prejudice Lender's right thereafter to institute other suits (including foreclosure), or to foreclose this Mortgage whether based upon the same Event of Default or based upon any other Event of Default. The rights, remedies and benefits provided to Lender in this Mortgage shall be cumulative and shall not be exclusive of any other rights, remedies or benefits allowed by law or equity, and may be exercised either successively or concurrently.

22.2 The Lender shall be entitled to the appointment of a receiver for the Premises to collect the rents and profits and to maintain the Premises during any foreclosure proceedings. The Lender shall have the option of proceeding as to both the Real Estate and the Personal Property in accordance with its rights and remedies in respect of the Real Estate, in which event the default provisions of the Uniform Commercial Code shall not apply. If the Lender elects to proceed with respect to the Personal Property separately from the Real Estate, the requirement of the Uniform Commercial Code as to reasonable notice of any proposed sale or disposition of the Personal Property shall be met if such notice is delivered or mailed to the Mortgagor at its address stated above at least ten (10) days prior to such sale or disposition. In any action to foreclose this Mortgage, the Lender shall be entitled to recover, in addition to all reasonable attorney and related paraprofessional expenses incurred in connection therewith, all other reasonable costs and expenses associated with the foreclosure.

## 23. RESERVED.

## 24. RESERVED.

## 25. LIABILITY UNDER LEASES.

25.1. In addition to any other indemnifications provided in any of the Security Documents, Debtor shall indemnify and hold harmless Lender, its subsidiaries, affiliates, and their officers, directors, shareholders, employees, consultants, attorneys and their respective successors and assigns (collectively the "Indemnified Parties"), from and against all liabilities, obligations, claims, demands, damages, penalties, causes of actions, losses, fines, costs and expenses (including without limitation reasonable attorneys fees and expenses and the allocated costs of in-house counsel for Lender) imposed upon or incurred by or asserted against any of the Indemnified Parties by reason of (a) ownership of this Mortgage, the Collateral or any interest therein or receipt of any income or rent derived from the Premises or the Improvements; (b) any accident, injury to or death of persons or loss of or damage to property incurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways (excluding claims for damages arising out of bodily injury to persons or damage to property to the extent caused by or resulting from the gross negligence of Lender, its agents or employees); (c) any use, non-use or condition in, on or about the Premises or any part of the Premises or adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Debtor to perform or comply with any of the terms of the Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises, the Improvements, or any part of them; (f) any failure of the Improvements to comply with any Access Laws or other Legal Requirements; (g) any representation or warranty made in the Note, this Mortgage or the other Security Documents being false or misleading in any respect as of the date such representation or warranty was made; (h) any claims by brokers, finders or similar persons claiming to be entitled to a commission in connection with transactions leading to this Mortgage, any Lease, or any other transaction involving the Premises, the Improvements or any part thereof asserted against the Indemnified Parties; and (i) the claims of any lessee to any portion of the Premises or the Improvements or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease. Any amounts owing to any of the Indemnified Parties by reason of the application of this paragraph shall be secured by this Mortgage and shall become

immediately due and payable and shall bear interest at the highest default rate as specified in the Note from the date the loss or damage is sustained by any of the Indemnified Parties until paid.

25.2. Except to the extent provided by law, nothing contained in this Mortgage shall be construed to bind Lender to the performance of any of the terms and provisions contained in any Lease, to make Lender a mortgagee in possession, to require it to make payments or otherwise to impose any obligation on Lender, including without limitation, any liability under the covenants of quiet enjoyment contained in any Lease in the event that the lessee(s) are barred and foreclosed of all right, title, interest and equity of redemption in the Premises. Lender shall not be liable or responsible for waste committed upon the Premises by any lessee or other party, or for any negligence in the management, upkeep, repair or control of the Premises resulting in damage, loss, injury or death to any lessee, licensee, employee or stranger. Prior to actual entry into and taking physical possession of the Premises by Lender, this Mortgage shall not operate to place responsibility upon Lender for the control, custody, care, management or repair of the Premises, or for the carrying out of any of the terms or provisions of any Lease.

25.3. Except to the extent of Lender's willful acts or those of its agents or employees, if Lender incurs a liability by reason of actual entry into and taking of possession, or for any other reason or occurrence, or if Lender sustains loss or damage under any Lease or under or by reason of this Mortgage or in the defense of any such claims or demands, Debtor shall upon demand reimburse Lender for the full amount of the liability, loss or damage, including interest at the default rate set forth in the Note, together with costs, expenses and reasonable attorneys' fees and the allocated costs of in-house legal counsel for the Lender. Upon incurring or sustaining any such liability, loss or damage, Lender may obtain or retain possession of the Premises and collect the rents, income, royalties, interest, profits and any other payments, and from time to time apply them toward satisfaction of, or reimbursement for, that liability, loss or damage, and the liability of Debtor for the liability, loss or damage incurred or sustained by Lender shall be included in the Obligations secured by this Mortgage.

25.4. The provisions of this Section shall survive (i) the repayment of all sums due under the Note and the other instruments securing in whole or in part the Obligations, (ii) the satisfaction of all other Obligations of the Debtor, and (iii) any discharge of this Mortgage.

#### 26. MARSHALLING OF ASSETS.

Debtor acknowledges that the Lender may have previously received, and may subsequently receive, other security for the Obligations. Debtor understands that under certain circumstances Debtor may have the right to assert or compel a marshalling of assets or to cause the application of legal or equitable principles such as inverse order of alienation or similar principles. Notwithstanding the foregoing, Debtor expressly agrees that upon the occurrence of an Event of Default, Lender may pursue any of its rights and remedies with respect to all security granted to Lender to secure the Obligations, including this Mortgage and the Security Documents, notwithstanding any release of any portion of such security by Lender. Such rights and remedies may be pursued against any and all such security, real or personal, or any portion thereof, in any order Lender elects, without regard to marshalling of assets, inverse order of alienation, or similar principles, equitable or otherwise, purporting to limit the discretion of Lender in the exercise of its rights against such security. Debtor waives all its rights to compel a marshalling of assets or an application of the inverse order of alienation.

#### 27. NON-WAIVER.

27.1. No forbearance by Lender in enforcing any of its rights under any Obligation (including the Note), nor any renewal, extension, or rearrangement of any payment to be made under the Note, nor any acceptance by Lender of any payment in an amount less than the amount then due under the Note shall constitute a waiver of any of the terms or of the Lender's rights or remedies under the Note. Lender shall not by any act of omission or commission be deemed to waive any of its rights or remedies under any Obligation (including the Note), or any Event of Default, unless such waiver is in writing and signed and delivered by an officer of Lender and then only to the extent specifically set forth in the writing. No waiver of any Event of Default shall operate as a waiver of the same Event of Default on a future occasion, or as a waiver of any other Event of Default. No other amendment, modification, or waiver of, or consent with respect to, any provision of any Obligation (including the Note), shall be effective unless the same shall be in writing and signed and delivered by an officer of Lender.

27.2. Neither Debtor nor any other person now or in the future liable for the payment of, or satisfaction of, the whole or any part of the Obligations shall be relieved by reason of the Lender's failure to comply with any request of Debtor or of any other person to take action to foreclose this Mortgage or otherwise enforce any of its provisions or by reason of any agreement or stipulation between any subsequent owner or owners of the Premises and Lender extending the time of payment or modifying the terms of the Note or this Mortgage without first having obtained the consent of Debtor or such other person. In the latter event, Debtor and all such other persons shall continue to be liable to make payments according to the terms of any such agreement or



extension or modification unless they are expressly released and discharged by an officer of Lender in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Premises, Lender may release anyone at any time liable for any of the Obligations or any part of the security held for the Obligations and may extend the time of payment or otherwise modify the terms of the Note, the Mortgage or the Security Documents without, as to the remaining security, in any manner impairing or affecting the payment of the Obligations, as extended or modified, over any subordinate lien. The holder of any subordinate lien shall have no right to terminate any Lease, whether or not it is subordinate to this Mortgage.

#### 28. NOTICES.

Except as to notices where the manner of service is prescribed by statute or court rule, any notice, demand or communication (collectively "Notice") under or in connection with this Mortgage or other Security Document shall be effective upon either (a) actual delivery of it; (b) confirmed transmission by facsimile telephone transmission; or (c) three days after deposit in the United States mail, postage prepaid (either by first class mail or registered or certified mail, return receipt requested). The Notice shall be addressed to Debtor at its address in Recital C and to Lender at the address stated in the Preamble on the first page of this Mortgage. Any party may change the address to which a Notice is to be sent by notice in writing to all parties to this Mortgage in accordance with the foregoing; provided that Debtor may not designate an address outside of Indiana. Debtor maintains a place of business in Indiana. Debtor shall immediately notify the Lender in writing of any change in its mailing address as set forth in Recital C.

#### 29. SEVERABILITY.

The rights of Lender arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative. None of them shall be in exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision of this Mortgage to the exclusion of any other provision. The invalidity of any of the provisions or clauses in this Mortgage or application of them to any person, party or circumstance shall not affect any remaining provisions, clauses or applications which can be given effect without the invalid provision, clause or application. To this end, the provisions of this Mortgage are declared to be severable.

#### 30. USURY SAVINGS CLAUSE.

It is not intended by this Mortgage or the Note to impose upon Debtor any obligation to pay interest in excess of the maximum rate of interest permitted by applicable laws. If any interest provided for by this Mortgage or the Note is determined by Lender or by a court of competent jurisdiction to exceed the maximum rate of interest, the provisions of the Note in this regard shall apply.

#### 31. INTERNAL REVENUE CODE REQUIREMENTS.

31.1. Debtor shall furnish such information, execute such documents, withhold such taxes and take such other action (or cause the information to be furnished, the documents to be executed, the taxes to be withheld and the action to be taken) as may be requested by the Lender to comply with the legal requirements, if any, related to the Premises and this mortgage transaction imposed on Lender by the Internal Revenue Code ("Code"). The "Code" means the Internal Revenue Code and all Regulations issued under the Code as now in effect or later amended. The legal requirements under the Code include: (a) Section 6045 of the Code which generally provides that "real estate brokers" shall make returns under regulations prescribed by the Commissioner; (b) Section 1445 of the Code which generally provides that in the case of any disposition of a United States real property interest by a foreign person the transferee is required to deduct 10% percent of the amount realized.

31.2. Debtor represents and warrants that it is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

31.3. Debtor shall indemnify and hold the Lender harmless from any tax, penalty or any withholding tax related to the Premises or to this mortgage transaction and from any interest or penalty thereon and all related liabilities, costs or expenses including reasonable attorney fees and the allocated costs of in-house legal counsel of the Lender.

31.4. The provisions of this Section shall survive (i) the repayment of all sums due under the Note and the other instruments securing in whole or in part the Obligations, (ii) the satisfaction of all other Obligations of the Debtor, and (iii) any discharge of this Mortgage.



32. TAXATION OF MORTGAGES.

In the event of the enactment (after the date of this Mortgage) of any applicable law for the purpose of taxation of any lien created under this Mortgage, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust or debts secured by them, or the manner of the operation of any such taxes so as to affect the interest of Lender, Debtor shall bear and pay the full amount of those taxes. However, if for any reason payment by Debtor of any such new or additional taxes would be unlawful, or if payment would constitute usury or render the Obligations wholly or partially usurious, Lender may at its option declare the Obligations to be immediately due and payable, or Lender may at its option pay that amount or portion of the tax as would otherwise render the Obligations unlawful or usurious, in which event Debtor shall concurrently pay the remaining lawful and non-usurious portion or balance of those taxes.

33. EFFECT OF DISCHARGE.

The Lender's execution and recordation of a discharge of this Mortgage and/or return of the Note marked "paid" shall not act to release or terminate any obligation under this Mortgage which survives the repayment of sums due under the Note but shall merely act to discharge the lien of this Mortgage.

34. NO MERGER.

It is the desire and intention of Lender and Debtor that this Mortgage and the lien of this Mortgage do not merge into the fee simple title to the Premises. It is expressly agreed that if Lender acquires an additional or other interest in, or title to, the Premises then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document signed by Lender and duly recorded, this Mortgage and the lien of this Mortgage shall not merge in the fee simple title. In such event this Mortgage may be foreclosed as if held by a stranger to the fee simple title.

35. STATUTE OF LIMITATIONS.

Lender's rights under this Mortgage shall continue even to the extent that a suit for collection of the Note, the Obligations or any part thereof, is barred by a statute of limitations. Debtor expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Note or any of the Obligations.

36. CROSS-DEFAULT WITH OTHER AGREEMENTS.

Debtor expressly acknowledges and agrees that a default in any of the provisions of this Mortgage shall constitute a default in any other agreement or instrument which now exists or may later exist between Debtor, either singly or jointly, and any guaranty given by Jerry D. Smith in favor of Lender, and Lender and that similarly a breach of any such other agreement or instrument shall constitute an Event of Default in this Mortgage.

37. CAPTIONS.

The captions or titles to sections of this Mortgage are provided for the sake of convenient reference only, and are entirely without substantive effect. They shall not be relied upon to explain, modify or interpret this Mortgage.

38. INDIANA LAW.

Any proceedings for the foreclosure of this Mortgage or the enforcement of any rights conferred on Lender under its terms shall be governed, construed and enforced in accordance with the laws of the State of Indiana, where this Mortgage and the Note secured hereby have been made, executed and delivered.

39. SUCCESSORS.

Subject to the provisions of this Mortgage, each of the covenants and obligations of this Mortgage shall be binding upon and inure to the benefit of the parties to this Mortgage and their respective legal representatives, successors and assigns.

40. GENDER AND JOINT LIABILITY.

The gender of terms used in this Mortgage shall be deemed to include every other gender as appropriate. The singular shall include the plural, and the plural shall include the singular. If more than one party executes this Mortgage as Debtor, their liability shall be joint, joint and several, and several.

41. OTHER EXISTING SECURITY.

All security, including guaranties, mortgages, security agreements, assignment of rents, financing statements, pledges and other arrangements for Collateral, security and suretyships, and the liens, security interests and encumbrances created or reflected under them in existence prior to, as of, or subsequent to the date of this Mortgage shall, unless specifically discharged or terminated by the Lender, constitute continuing, additional and supplemental security for the note(s) contemplated by this Mortgage and for all other Obligations. Debtor and Lender agree that all Collateral secures all of Debtor's Obligations to Lender. It is the express intent of the parties to cross-collateralize all of Debtor's Obligations to Lender regardless of whether or not the other Collateral is related to or of the same kind as the Premises.

42. WARNING.

This Mortgage contains a power of sale and, upon an Event of Default, may be foreclosed by advertisement. In that event, no hearing is involved and no actual personal notice is required. The only notice required in a foreclosure by advertisement is to publish notice in a local newspaper and to post a copy of the notice on the Premises. Debtor voluntarily, intelligently and knowingly waives all rights under the federal and Indiana laws and constitutions to any notice or hearing in connection with any foreclosure, except as expressly set forth in the Indiana statutes providing for foreclosure.

43. JUNIOR MORTGAGE

Anything contained in this Mortgage in the contrary notwithstanding, this Mortgage is subject to, and only to the First Mortgage, the GTV Lease and the Permitted Encumbrances. Debtor warrants, covenants and agrees: (i) to defend Lender against any and all claims against the Premises whatsoever, and the lien created hereby is and will be kept a second lien upon the Premises and every part thereof, subject only to the First Mortgage and Permitted Encumbrances; (ii) to pay all amounts required to be paid, and to perform all terms and conditions required to be performed under the First Mortgage; and (iii) not to increase, extend, or in any other fashion amend, the First Mortgage, without the prior written consent of Lender. Any default by Debtor under the First Mortgage shall be deemed a default under this Mortgage.

Debtor has executed this Mortgage on the day and year indicated above.

WITNESSES AS TO ALL SIGNATURES:

Tang Kansial

J.P. Smith

Tang Kansial

J.P. Smith

"DEBTOR"

RT MICHIANA FRANCHISE, L.L.C.

By: Jerry D. Smith  
Its: Manager/Member

RT SMITH, L.L.C.

By: Jerry D. Smith  
Its: Manager/Member

STATE OF TENNESSEE

COUNTY OF BLOUNT

Before me, a Notary Public in and for the above county and state, personally appeared and the foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of February 2000, by Jerry D. Smith, the Manager/Member of RT Michiana Franchise, L.L.C., a Delaware limited liability company, on behalf of the Company and as Manager/Member of RT Smith, L.L.C., a Delaware limited liability company, on behalf of the Company who as a manager/member of such entities acknowledged the execution of the foregoing mortgage.

WITNESS my hand and Notarial Seal this 23<sup>rd</sup> day of February, 2000.

**NOT OFFICIAL!**

This Document is the property of  
the Lake County Recorder!

Signature

Printed Name

*Jo Lynn Christian*  
JO LYNN CHRISTIAN

Notary Public

My Commission Expires: 6-29-02  
My County Residence: BLOUNT

Drafted by: When recorded return to:

Keith A. Schofner  
Plunkett & Cooney, P.C.  
505 N. Woodward, Suite 3000  
Bloomfield Hills, MI 48304  
Telephone: (248) 901-4049

11219.92775.246661



Tammy Kaousias, Esq.  
Ruby Tuesday, Inc.  
150 West Church Avenue  
Maryville, TN 37801



EXHIBIT A

LEGAL DESCRIPTION

Unit No. AU-500 of the SOUTHLAKE MALL in Merrillville, Indiana more particularly described as follows:  
PARCEL 1: PART OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 35 NORTH, RANGE 3 WEST OF THE SECOND PRINCIPAL MERIDIAN, IN LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 23; THENCE NORTH 87 DEGREES 54 SECONDS 24 MINUTES EAST, 40.00 FEET TO THE EASTERLY RIGHT-OF-WAY OF MISSISSIPPI STREET; THENCE NORTH 2 DEGREES 42 MINUTES 00 SECONDS WEST ALONG THE EASTERLY RIGHT-OF-WAY OF MISSISSIPPI STREET, 376.01 FEET; THENCE NORTH 68 DEGREES 21 MINUTES 41 SECONDS EAST, 904.18 FEET TO THE POINT OF BEGINNING; THENCE NORTH 21 DEGREES 38 MINUTES 19 SECONDS WEST, 71.31 FEET; THENCE ALONG THE ARC OF A 350 FOOT RADIUS CURVE, CONCAVE TO THE NORTHEAST, WHOSE CHORD BEARS NORTH 58 DEGREES 57 MINUTES 55 SECONDS WEST, 188.62 FEET; THENCE SOUTH 46 DEGREES 40 MINUTES 00 SECONDS WEST, 251.51 FEET; THENCE NORTH 43 DEGREES 20 MINUTES 00 SECONDS WEST, 334.48 FEET; THENCE NORTH 46 DEGREES 40 MINUTES 00 SECONDS EAST, 255.69 FEET; THENCE ALONG THE ARC OF A 350 FOOT RADIUS CURVE, CONCAVE TO THE NORTHEAST, WHOSE CHORD BEARS NORTH 25 DEGREES 43 MINUTES 53 SECONDS WEST, 94.17 FEET; THENCE NORTH 19 DEGREES 00 MINUTES 00 SECONDS WEST, 78.00 FEET; THENCE ALONG THE ARC OF A 350 FOOT RADIUS CURVE, CONCAVE TO THE EAST, WHOSE CHORD BEARS NORTH 4 DEGREES 42 MINUTES 06 SECONDS WEST, 172.88 FEET; THENCE NORTH 9 DEGREES 35 MINUTES 46 SECONDS EAST, 177.00 FEET; THENCE ALONG THE ARC OF A 35 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHWEST, WHOSE CHORD BEARS NORTH 35 DEGREES 24 MINUTES 14 SECONDS WEST, 49.50 FEET; THENCE NORTH 80 DEGREES 24 MINUTES 14 SECONDS WEST, 103.84 FEET; THENCE ALONG THE ARC OF A 370 FOOT RADIUS CURVE, CONCAVE TO THE SOUTH, WHOSE CHORD BEARS NORTH 86 DEGREES 33 MINUTES 07 SECONDS WEST, 79.25 FEET; THENCE SOUTH 87 DEGREES 18 MINUTES 00 SECONDS WEST, 225.00 FEET TO THE EASTERLY RIGHT-OF-WAY OF MISSISSIPPI STREET; THENCE ALONG THE EASTERLY RIGHT-OF-WAY OF MISSISSIPPI STREET NORTH 2 DEGREES 42 MINUTES 00 SECONDS WEST, 80.00 FEET; THENCE NORTH 87 DEGREES 18 MINUTES 00 SECONDS EAST, 225.00 FEET; THENCE ALONG THE ARC OF A 450 FOOT RADIUS CURVE, CONCAVE TO THE SOUTH, WHOSE CHORD BEARS SOUTH 86 DEGREES 33 MINUTES 07 SECONDS EAST, 96.39 FEET; THENCE SOUTH 80 DEGREES 24 MINUTES 14 SECONDS EAST, 103.84 FEET; THENCE ALONG THE ARC OF A 35 FOOT RADIUS CURVE, CONCAVE TO THE NORTHEAST, WHOSE CHORD BEARS NORTH 57 DEGREES 16 MINUTES 30 SECONDS EAST, 47.13 FEET; THENCE ALONG THE ARC OF A 340 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST, WHOSE CHORD BEARS NORTH 32 DEGREES 13 MINUTES 26 SECONDS EAST, 201.90 FEET; THENCE ALONG THE ARC OF A 450 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST, WHOSE CHORD BEARS NORTH 39 DEGREES 44 MINUTES 54 SECONDS EAST, 152.39 FEET; THENCE NORTH 60 DEGREES 00 MINUTES 00 SECONDS WEST, 185.00 FEET; THENCE NORTH 30 DEGREES 00 MINUTES 00 SECONDS EAST, 552.88 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF U. S. ROUTE #30; THENCE ALONG THE ARC OF A 53,617.23 FOOT RADIUS CURVE, CONCAVE TO THE SOUTH, WHOSE CHORD BEARS NORTH 88 DEGREES 30 MINUTES 23 SECONDS EAST, 3.03 FEET; THENCE SOUTH 1 DEGREE 21 MINUTES 47 SECONDS EAST, 29.84 FEET TO A POINT OF CURVE; THENCE ALONG THE ARC OF A 300.68 FOOT RADIUS CURVE, CONCAVE TO THE EAST, WHOSE CHORD BEARS SOUTH 19 DEGREES 45 MINUTES 47 SECONDS EAST, 189.82 FEET; THENCE ALONG THE ARC OF A 35 FOOT RADIUS CURVE, CONCAVE TO THE WEST, WHOSE CHORD BEARS SOUTH 4 DEGREES 04 MINUTES 54 SECONDS EAST, 39.23 FEET; THENCE SOUTH 30 DEGREES 00 MINUTES 00 SECONDS WEST, 154.98 FEET; THENCE SOUTH 17 DEGREES 52 MINUTES 00 SECONDS EAST, 416.47 FEET; THENCE NORTH 72 DEGREES 08 MINUTES 00 SECONDS EAST, 292.00 FEET; THENCE SOUTH 62 DEGREES 52 MINUTES 00 SECONDS EAST, 105.36 FEET; THENCE NORTH 72 DEGREES 08 MINUTES 00 SECONDS EAST, 355.70 FEET; THENCE NORTH 17 DEGREES 52 MINUTES 00 SECONDS WEST, 95.71 FEET; THENCE NORTH 72 DEGREES 08 MINUTES 00 SECONDS EAST, 222.80 FEET; THENCE NORTH 17 DEGREES 52 MINUTES 00 SECONDS WEST, 312.59 FEET; THENCE SOUTH 88 DEGREES 38 MINUTES 13 SECONDS WEST, 179.55 FEET; THENCE NORTH 1 DEGREE 21 MINUTES 47 SECONDS WEST, 48.50 FEET; THENCE NORTH 88 DEGREES 38 MINUTES 13 SECONDS EAST, 105.80 FEET; THENCE ALONG THE ARC OF A 35 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST, WHOSE CHORD BEARS NORTH 43 DEGREES 38 MINUTES 13 SECONDS EAST, 49.50 FEET; THENCE NORTH 1 DEGREE 21 MINUTES 47 SECONDS WEST, 78.91 FEET; THENCE SOUTH 88 DEGREES 38 MINUTES 13 SECONDS WEST, 100.00 FEET; THENCE NORTH 1 DEGREE 21 MINUTES 47 SECONDS

WEST, 30.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF U. S. ROUTE #30;  
 THENCE NORTH 88 DEGREES 38 MINUTES 13 SECONDS EAST, 180.00 FEET ALONG  
 THE SOUTHERLY RIGHT-OF-WAY LINE OF U. S. ROUTE #30; THENCE SOUTH 1  
 DEGREE 21 MINUTES 47 SECONDS EAST, 108.93 FEET; THENCE ALONG THE ARC  
 OF A 35 FOOT RADIUS CURVE, CONCAVE TO THE NORTHEAST, WHOSE CHORD BEARS  
 SOUTH 46 DEGREES 21 MINUTES 47 SECONDS EAST, 49.50 FEET; THENCE NORTH  
 88 DEGREES 38 MINUTES 13 SECONDS EAST, 196.21 FEET; THENCE SOUTH 17  
 DEGREES 52 MINUTES 00 SECONDS EAST, 392.71 FEET; THENCE SOUTH 72  
 DEGREES 08 MINUTES 00 SECONDS WEST, 254.00 FEET; THENCE SOUTH 17  
 DEGREES 52 MINUTES 00 SECONDS EAST, 666.70 FEET; THENCE NORTH 72  
 DEGREES 08 MINUTES 00 SECONDS EAST, 736.50 FEET; THENCE ALONG THE ARC  
 OF A 712 FOOT RADIUS CURVE, CONCAVE TO THE WEST, WHOSE CHORD BEARS  
 NORTH 6 DEGREES 49 MINUTES 08 SECONDS WEST, 322.07 FEET; THENCE NORTH  
 87 DEGREES 14 MINUTES 16 SECONDS EAST, 83.44 FEET; THENCE DUE SOUTH  
 353.91 FEET; THENCE SOUTH 9 DEGREES 47 MINUTES 44 SECONDS WEST, 174.01  
 FEET; THENCE SOUTH 68 DEGREES 21 MINUTES 41 SECONDS WEST, 700.00 FEET;  
 THENCE SOUTH 21 DEGREES 39 MINUTES 19 SECONDS EAST, 210.00 FEET;  
 THENCE SOUTH 68 DEGREES 21 MINUTES 41 SECONDS WEST, 130.00 FEET;  
 THENCE NORTH 21 DEGREES 38 MINUTES 19 SECONDS WEST, 210.00 FEET;  
 THENCE SOUTH 68 DEGREES 21 MINUTES 41 SECONDS WEST, 48.58 FEET; THENCE  
 NORTH 17 DEGREES 52 MINUTES 00 SECONDS WEST, 479.41 FEET; THENCE SOUTH  
 72 DEGREES 08 MINUTES 00 SECONDS WEST, 73.73 FEET; THENCE NORTH 17  
 DEGREES 52 MINUTES 00 SECONDS WEST, 120.00 FEET; THENCE SOUTH 72  
 DEGREES 08 MINUTES 00 SECONDS WEST, 270.00 FEET; THENCE SOUTH 17  
 DEGREES 52 MINUTES 00 SECONDS EAST, 116.00 FEET; THENCE SOUTH 72  
 DEGREES 08 MINUTES 00 SECONDS WEST, 87.86 FEET; THENCE SOUTH 20  
 DEGREES 19 MINUTES 09 SECONDS WEST, 100.51 FEET; THENCE SOUTH 72  
 DEGREES 08 MINUTES 00 SECONDS WEST, 451.23 FEET; THENCE SOUTH 17  
 DEGREES 52 MINUTES 00 SECONDS EAST, 466.71 FEET; THENCE SOUTH 68  
 DEGREES 21 MINUTES 41 SECONDS WEST, 183.84 FEET TO THE POINT OF  
 BEGINNING.

ALSO COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 23; THENCE  
 NORTH 2 DEGREES 42 MINUTES 00 SECONDS WEST, 2402.02 FEET ALONG THE WEST  
 LINE OF SECTION 23; THENCE NORTH 87 DEGREES 54 MINUTES 28 EAST, 330.00  
 FEET; THENCE NORTH 2 DEGREES 42 MINUTES 00 SECONDS WEST, 200.93 FEET;  
 THENCE NORTH 88 DEGREES 11 MINUTES 44 SECONDS EAST, 510.01 FEET;



EXHIBIT B

PERMITTED LIENS

2. All assessments and taxes for the year 1999 and all subsequent years, which are not yet due and payable.
3. Easements and restrictions of record which apply to Southlake Mall.
4. Mortgage, Security Agreement and Assignment of Leases and Rents between Gary Joint Venture to Wells Fargo Bank, N.A. recorded October 11, 1997, as Document No. 97083378.
5. Mortgage and Security Agreement between Gary Joint Venture to Teachers Insurance and Annuity Association of America recorded December 26, 1997, as Document No. 97088726.
6. Assignment of Lessor's Interest in Leases between Gary Joint Venture to Teachers Insurance and Annuity Association of America recorded December 26, 1997, as Document No. 97088727.
7. UCC Financing Statement between Gary Joint Venture to Teachers Insurance and Annuity Association of America recorded December 29, 1997, as Document No. 97004549.

8. Subordination, Non-Disturbance and Attornment Agreement recorded in ~~liber 3728~~ at ~~Page 156~~ Instrument No. 9202407.

9. Short Form Lease recorded as Instrument No. 91026558. ~~in liber 3541 at Page 48, as amended in liber 1740, Page 124.~~

Note: Said leasehold interest is protected in the event of a foreclosure on the lease fee estate by virtue of that certain SNDA recorded in ~~liber 3728 at Page 154.~~ at Instrument

No. 9202407

