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THIS INSTRUMENT  
PREPARED BY:  
Jennifer Taylor  
Thompson & Knight L.L.P.  
1700 Pacific Avenue, Suite 3300  
Dallas, Texas 75201

2002 049002

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
2002 MAY 23 PM 12:10  
MORRIS W. CARTER  
RECORDER

MORTGAGE AND SECURITY AGREEMENT

This MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the "Mortgage"), is made and executed as of the 28<sup>th</sup> day of May, 2002, by Calumet-Dyer, L.L.C., an Indiana limited liability company (hereinafter referred to as "Borrower"), to and in favor of Nationwide Life Insurance Company, an Ohio corporation, its successors and assigns (hereinafter referred to as "Lender"), having its principal office at One Nationwide Plaza, Columbus, Ohio 43215-2220, Attention: Real Estate Investment Department, or at such other place either within or without the State of Ohio, as Lender may from time to time designate;

WITNESSETH:

WHEREAS, Borrower is justly indebted to Lender in the original principal sum of Three Million and No/100 Dollars (\$3,000,000.00), with interest thereon (hereinafter referred to as the "Loan"), which Loan is evidenced and represented by that certain Note of even date herewith from Borrower to Lender in the amount of the Loan (hereinafter referred to as the "Note"), both principal and interest being payable as therein provided, with the first payment on the Note becoming due and payable on the date of disbursement and all amounts remaining unpaid thereon being finally due and payable on June 10, 2012, and the term "Note" shall include all other notes given in substitution, modification, increase, renewal or extension of the original Note described herein, in whole or in part; and

WHEREAS, Lender, as a condition precedent to the extension of credit and the making of the Loan evidenced by the Note, has required that Borrower provide Lender with security for the repayment of the Loan as well as for the performance, observance and discharge by Borrower of various terms, covenants, conditions and agreements made by Borrower to, with, in favor of and for the benefit of Lender with respect to the Loan and such security;

NOW THEREFORE, in consideration of and in order to secure the repayment of the Loan evidenced and represented by the Note, together with interest on such Loan, as well as the payment of all other sums of money secured hereby, as hereinafter provided; to secure the observance, performance and discharge by Borrower of all terms, covenants, conditions and agreements set forth in the Note, this Mortgage and in all other documents and instruments executed and delivered by Borrower to and in favor of Lender for the purpose of further securing the repayment of the Loan evidenced and represented by the Note; in order to charge the properties, interests and rights hereinafter described with such payment, observance, performance and discharge; and in consideration of the sum of ONE AND 00/100 DOLLAR (\$1.00) paid by Lender to Borrower, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by Borrower, Borrower does hereby grant, mortgage, bargain, sell, convey, assign,

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**HOLD FOR MERIDIAN TITLE CORP**

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[Signature]

Att. 2002-49004

transfer, pledge, deliver, hypothecate, warrant and confirm unto Lender forever, the following described properties, including all rights, interests, replacements, substitutions and additions thereto, therein or therefore, to wit:

(i) All that certain piece, parcel or tract of land or real property of which Borrower is now seized and in actual or constructive possession, situated in the City of Dyer, County of Lake, and State of Indiana (hereinafter referred to as the "State"), and being more particularly described on Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Real Property"); and

(ii) All buildings, structures and other improvements of any kind, nature or description now or hereafter erected, constructed, placed or located upon the Real Property now or hereafter owned by Borrower (hereinafter sometimes together referred to as the "Improvements"), including, without limitation, any and all additions to, substitutions for or replacements of such Improvements; and

(iii) All minerals, royalties, gas rights, water, water rights, water stock, flowers, shrubs, lawn plants, crops, trees, timber and other emblements now or hereafter located on, under or above all or any part of the Real Property; and

(iv) All and singular, the tenements, hereditaments, strips and gores, rights-of-way, easements, privileges, profits and other appurtenances now or hereafter belonging or in any way appertaining to the Real Property, including, without limitation, all right, title and interest of Borrower in any after-acquired right, title, interest, remainder or reversion in and to the beds of any ways, streets, avenues, roads, alleys, passages and public places, open or proposed, in front of, running through, adjoining or adjacent to said Real Property (hereinafter sometimes together referred to as "Appurtenances"); and

(v) Any and all leases, licenses, contracts, rents, license fees, royalties, issues, revenues, profits, proceeds, deposits, income and other benefits, including accounts receivable, termination fees, of, accruing to or derived from the Real Property, Improvements and Appurtenances, and any business or enterprise presently situated or hereafter operated thereon and therewith and all of Borrower's right, title and interest under any and all lease guaranties, letters of credit, and any other credit support furnished to Borrower in connection with any of the foregoing (hereinafter sometimes together referred to as the "Rents"); and

(vi) Any and all awards, payments or settlements, including interest thereon, and the right to receive the same, as a result of: (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any way, street, avenue, road, alley, passage or public place; (c) any other injury, damage, casualty or claim relating to the taking of, or decrease in the value of, the Real Property, Improvements or Appurtenances; or (d) proceeds of insurance awards, to the extent of all amounts which may be secured by this Mortgage at the date of any such award or payment including but not limited to Reasonable Attorneys' Fees (as hereinafter defined), costs and disbursements incurred by Lender in connection with the collection of such award or payment; and

(vii) All fixtures, goods, inventory, chattels, construction supplies and materials, fittings, furniture, furnishings, equipment, machinery, apparatus, appliances, and other items of personal property, whether tangible or intangible, of any kind, nature or description, whether now owned or hereafter acquired by Borrower, including, without limitation, all signs and displays; all heating, air conditioning, water, gas, lighting, incinerating and power equipment; all engines, compressors, pipes, pumps, tanks, motors, conduits, wiring, and switchboards; all plumbing, lifting, cleaning, fire prevention, fire extinguishing, sprinkling, refrigerating, ventilating, waste removal and communications equipment and apparatus; all boilers, furnaces, oil burners, vacuum cleaning systems, elevators, and escalators; all stoves, ovens, ranges, disposal units, dishwashers, water heaters, exhaust systems, refrigerators, cabinets and partitions; all rugs, attached floor coverings, curtains, rods, draperies, and carpets; all building materials, tools, shades, awnings, blinds, screens, storm doors and windows; and all other Goods (including Consumer Goods, Inventory, Equipment and Farm Products), Accounts, Chattel Paper (including Electronic Chattel Paper and Tangible Chattel Paper), Instruments; General Intangibles (including Payment Intangibles and Software), Letter-of-Credit Rights, Documents and Deposit Accounts (all as such terms are defined in the Uniform Commercial Code, as now adopted or amended from time to time in the State of every kind, including, without limitation, any and all licenses, permits, franchises, trademarks, trade names, service marks, or logos; any of which is, are or shall hereafter be located upon, attached, affixed to or used or useful, either directly or indirectly, in connection with the complete and comfortable use, occupancy and operation of the Real Property, Improvements and Appurtenances as a retail shopping center or any other business, enterprise or operation as may hereafter be conducted upon or within said Real Property, Improvements and Appurtenances, as well as the proceeds thereof or therefrom regardless of form (hereinafter sometimes together referred to as the "Fixtures and Personal Property," which term expressly excludes any toxic waste or substance deemed hazardous under federal, regional, state or local laws, codes, ordinances, statutes, rules, regulations, decisions or orders). Borrower hereby expressly grants to Lender a present security interest in, and a lien and encumbrance upon, the Fixtures and Personal Property.

The Real Property, Improvements, Appurtenances, Rents, Fixtures and Personal Property and all other property of any kind described herein and in which Borrower has granted Lender a security interest is collectively hereinafter referred to as the "Property."

TO HAVE AND TO HOLD the foregoing Property and the rights hereby granted for the use and benefit of Lender in fee simple forever.

Borrower hereby covenants and warrants with and to Lender that Borrower is indefeasibly seized of the Property and has good right, full power, and lawful authority to convey and encumber all of the same as aforesaid; that Borrower hereby fully warrants the title to the Property and will defend the same and the validity and priority of the lien and encumbrance of this Mortgage against the lawful claims of all persons whomsoever; and Borrower further warrants that the Property is free and clear of all liens and encumbrances of any kind, nature or description, save and except only (with respect to said Real Property, Improvements and Appurtenances) for real property taxes for years subsequent to 2001, and those matters set forth in Exhibit B attached hereto and by this reference made a part hereof (hereinafter referred to as the "Permitted Exceptions").



If Borrower shall pay to Lender the Loan evidenced by the Note, and if Borrower shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every one of the terms, covenants, conditions and agreements of the Note, this Mortgage and all other documents and instruments executed as further evidence of or as security for the Loan secured hereby, then this Mortgage and the estates and interests hereby granted and created shall cease, terminate and be null and void, and shall be discharged of record at the expense of Borrower.

Borrower, for the benefit of Lender does hereby expressly covenant and agree:

PAYMENT OF PRINCIPAL AND INTEREST

1. To pay the principal of the Loan evidenced by the Note, together with all interest thereon, in accordance with the terms, covenants and conditions of the Note, promptly at the times, at the place and in the manner that said principal and interest shall become due. To promptly and punctually pay all other sums required to be paid by Borrower pursuant to the terms, covenants and conditions of the Note, this Mortgage, the Assignment of Leases, Rents and Profits (hereinafter referred to as the "Assignment") and all other documents and instruments executed as further evidence of, as additional security for or executed in connection with the Loan evidenced by the Note and secured by this Mortgage (which documents are collectively hereinafter referred to as the "Loan Documents").

PERFORMANCE OF OTHER OBLIGATIONS

2. To perform, comply with and abide by each and every one of the terms, covenants, conditions and agreements contained and set forth in the Note, this Mortgage, and the other Loan Documents. To comply with all laws, codes, ordinances, statutes, rules, regulations, decisions and orders of any governmental authorities having jurisdiction over the parties hereto or the Property which now or hereafter affect the Property or which require or would require any alterations or improvements to be made to the Property. To perform all of its obligations under any term, covenant, condition, restriction or agreement of record affecting the Property, and to insure that at all times the Property constitutes one or more legal lots capable of being conveyed without violation of any subdivision or platting laws, codes, ordinances, statutes, rules, regulations, or other laws relating to the division or separation of real property.

PRESERVATION AND MAINTENANCE OF PROPERTY;  
ACCESSIBILITY; HAZARDOUS WASTE

3. (a) To keep all Improvements now existing or hereafter erected on the Real Property in good order and repair, and not to do or permit any waste, impairment or deterioration thereof or thereon, nor to alter, remove or demolish any of the Improvements or any Fixtures and Personal Property attached or appertaining thereto, without the prior written consent of Lender, nor to initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof, nor to do or permit any other act whereby the Property shall become less

valuable, be used for purposes contrary to applicable law or be used in any manner which will increase the premium for or result in a termination or cancellation of the insurance policies hereinafter required to be kept and maintained on the Property. In furtherance of, and not by way of limitation upon, the foregoing covenant, Borrower shall effect such repairs as Lender may reasonably require, and from time to time make all needful and proper replacements so that the Improvements, Appurtenances, Fixtures and Personal Property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. In connection with the making of such repairs, Borrower shall use contractors who are properly licensed, who carry workers' compensation insurance and appropriate liability insurance, who generally have a good reputation for completing their work in a neat, prompt and workmanlike manner, and use only new or re-manufactured goods of a quality as good or better than that originally used on the Property. As provided herein, Borrower shall insure that no liens are filed against the Property that relate in any way to the repair work provided for herein.

(b) Borrower at all times shall keep the Property and ground water of the Property free of Hazardous Materials (as hereinafter defined) and any liens arising in connection therewith. Borrower shall not and shall not knowingly permit its tenants or any third party requiring the consent of Borrower to enter the Property, to use, generate, manufacture, treat, store, release, threaten release, transport on or over, emit or dispose of Hazardous Materials in, on, over, under or about the Property including the ground water of the Property in violation of any federal, regional, state or local law, code, ordinance, statute, rule, regulation, decision or order currently in existence or hereafter enacted or rendered (hereinafter collectively referred to as "Hazardous Waste Laws") but shall not include (a) de minimis quantities of such materials or (b) substances customarily present in the ordinary course of business of ownership, operation and maintenance of a retail property in a prudent manner, as long as the storage, use and disposal of such materials or substances shall be in accordance with applicable Hazardous Waste Laws. Borrower shall give Lender prompt Written Notice (as hereinafter defined) of any claim by any person, entity, or governmental agency that a significant release or disposal of Hazardous Materials has occurred in, on, over, under or about the Property, including the ground water of the Property, in excess of those permitted by the Hazardous Waste Laws, whether caused by Borrower, tenant or any third party. Borrower, through its professional engineers and at Borrower's sole cost, shall promptly and thoroughly investigate any suspected release of Hazardous Materials in, on, over, under or about the Property, including the ground water of the Property. Borrower shall forthwith remove, repair, remediate, clean up, and/or detoxify any Hazardous Materials found in, on, over, under or about the Property or in the ground water of the Property to the extent such actions are required by any applicable Hazardous Waste Laws, and whether or not Borrower was responsible for the existence of the Hazardous Materials in, on, over, under or about the Property or the ground water of the Property. Hazardous Materials shall include, but not be limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by The Superfund Amendments and Reauthorization Act of 1986, The Hazardous Materials Transportation Act, The Resource Conservation and Recovery Act of 1976, as amended by The Used Oils Recycling Act of 1980, The Solid Waste Disposal Act Amendments of 1984, The Toxic Substances Control Act, The Clean Air Act, The Clean Water Act, or in any other Hazardous Waste Laws. In addition, Borrower shall not incorporate any underground storage tanks into the Real Property without the prior written consent of Lender, and shall insure that all tanks currently

on the Real Property comply with current Hazardous Waste Laws and underground storage tank regulations and are properly registered.

Borrower hereby agrees to indemnify Lender and hold Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses, fines, fees and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Lender for, with respect to, or as a direct or indirect result of, the presence in, on, over, under or about, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Property of any Hazardous Materials (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Hazardous Waste Laws), regardless of the source of origination and whether or not caused by, or within the control of, Borrower, AND INCLUDING ANY CLAIMS OF LENDER'S NEGLIGENCE OR STRICT LIABILITY, but excluding Lender's willful misconduct or gross negligence.

Liability under this subsection 3(b) and similar provisions in this Mortgage and the other Loan Documents concerning Hazardous Materials shall survive repayment of the Note and satisfaction of this Mortgage; provided, however, Borrower shall have no liability under this subsection 3(b) regarding Hazardous Materials if either (i) the Property becomes contaminated subsequent to Lender's acquisition of the Property by foreclosure, acceptance by Lender of a deed in lieu thereof, or subsequent to any transfer of ownership of the Property which was approved or authorized by Lender in writing, pursuant to this Mortgage, provided that such transferee assumes in writing all of the obligations of Borrower with respect to Hazardous Materials pursuant to the Loan Documents, or (ii) at such time Borrower provides Lender with an environmental assessment report acceptable to Lender, in Lender's sole discretion, showing the Property to be free of Hazardous Materials and not in violation of any Hazardous Waste Laws. The burden of proof under this subsection 3(b) with regard to establishing the date upon which any Hazardous Materials was released in, on, over, under or about the Property shall be upon Borrower.

(c) Borrower at all times shall maintain the Property in full compliance with all federal, state, county, regional or local laws, codes, ordinances, rules, regulations, decisions and orders currently in existence or hereafter enacted or rendered, governing accessibility for the disabled, including but not limited to, The Architectural Barriers Act of 1968; The Rehabilitation Act of 1973; The Fair Housing Act of 1988; and The Americans with Disabilities Act (hereinafter collectively referred to as the "Accessibility Laws").

Borrower hereby agrees to indemnify Lender and hold Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Lender for, with respect to, or as a direct or indirect result of, the non-compliance of the Property with the Accessibility Laws whether or not caused by, or within the control of, Borrower, AND INCLUDING ANY CLAIMS OF LENDER'S NEGLIGENCE OR STRICT LIABILITY, but excluding Lender's willful misconduct or gross negligence.

Liability under this subsection 3(c) and similar provisions in this Mortgage and the other Loan Documents concerning Accessibility Laws shall survive repayment of the Note and satisfaction of this Mortgage; provided, however, Borrower shall not be liable under this subsection 3(c) for



compliance with any Accessibility Laws if such Accessibility Laws first become effective, or such violations result from alterations or improvements to the Property that are performed subsequent to Lender's acquisition of the Property by foreclosure or acceptance of a deed in lieu thereof or subsequent to any transfer which was approved or authorized by Lender pursuant to this Mortgage, provided that such transferee assumes in writing all obligations pertaining to the Accessibility Laws pursuant to this Mortgage and the other Loan Documents. The burden of proof under this subsection 3(c) with regard to establishing the date upon which such non-compliance with any Accessibility Laws occurred at the Property shall be upon Borrower.

(d) Lender, and/or its agents, shall have the right and shall be permitted, but shall not be required, at all reasonable times, to enter upon and inspect the Property to insure compliance with the foregoing covenants, and any and all other terms, covenants, conditions and agreements set forth in this Mortgage.

#### PAYMENT OF TAXES, ASSESSMENTS AND OTHER CHARGES

4. To pay all taxes, assessments and other charges as already levied or assessed, or that may be hereafter levied or assessed, upon or against the Property, when the same shall become due and payable according to law, before delinquency, and before any interest or penalty shall attach thereto, and to deliver official receipts evidencing the payment of the same to Lender not later than thirty (30) days following the payment of the same. Borrower shall have the right to contest, in good faith, the proposed assessment of ad valorem taxes or special assessments by governmental authorities having jurisdiction over the Property; provided, however, Borrower shall give Written Notice of its intent to bring such an action to Lender and Lender may, in its sole discretion, require Borrower to post a bond or other collateral satisfactory to Lender (and acceptable to the title company insuring this Mortgage) as a result of Borrower's act.

#### PAYMENT OF LIENS, CHARGES AND ENCUMBRANCES

5. To immediately pay and discharge from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, realtors, brokers and others which, if unpaid, might result in, or permit the creation of, a lien, charge or encumbrance upon the Property or any part thereof, or on the rents, license fees, issues, income, revenues, profits and proceeds, including termination fees and taking proceeds, arising therefrom and, in general, to do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved, at the sole cost of Borrower, without expense to Lender. Borrower shall have the right to contest, in good faith and in accordance with applicable laws and procedures, mechanics', materialmen's and other such liens filed against the Property; provided however, that Borrower shall give Written Notice to Lender of its intent to bring such action, and Lender may, in Lender's sole discretion, require Borrower to post a bond or other collateral satisfactory to Lender (and acceptable to the title company insuring this Mortgage and have such title company issue a title endorsement to Lender insuring over said lien, charge or encumbrance) as a result of Borrower's act.

PAYMENT OF JUNIOR ENCUMBRANCES

6. To permit no default or delinquency under any other lien, imposition, charge or encumbrance against the Property, even though junior and inferior to the lien of this Mortgage; provided however, the foregoing shall not be construed to permit any additional lien or encumbrance against the Property, other than the Permitted Exceptions.

PAYMENT OF MORTGAGE TAXES

7. To pay any and all taxes which may be levied or assessed directly or indirectly upon the Note and/or this Mortgage (except for income taxes payable by Lender) or the Loan secured hereby, without regard to any law which may be hereafter enacted imposing payment of the whole or any part thereof upon Lender, its successors or assigns. Upon violation of this agreement to pay such taxes levied or assessed upon the Note and/or this Mortgage, or upon the rendering by any court of competent jurisdiction of a decision that such an agreement by Borrower is legally inoperative, or if any court of competent jurisdiction shall render a decision that the rate of said tax when added to the rate of interest provided for in the Note exceeds the then maximum rate of interest allowed by law, then, and in any such event, the debt hereby secured shall, at the option of Lender, its successors or assigns, become immediately due and payable, anything contained in this Mortgage or in the Note secured hereby notwithstanding, without the imposition of a Prepayment Premium (as defined in the Note). The additional amounts which may become due and payable hereunder shall become a part of the Loan secured by this Mortgage.

HAZARD INSURANCE

8. To continuously, during the term of this Mortgage, keep the Improvements, the Fixtures and Personal Property, now or hereafter existing, erected, installed and located in or upon the Real Property, insured with extended coverage insurance against loss or damage resulting from fire, windstorm, flood, sinkhole, earthquake and such other hazards, casualties, contingencies and perils including, without limitation, other risks insured against by persons operating like properties in the locality of the Property, or otherwise deemed necessary or advisable by Lender, on such forms and with such deductibles as may be required by Lender, covering the Property in the amount of the full replacement cost thereof, less excavating and foundation costs, and covering all loss or abatement of rental or other income, without a provision for co-insurance, in an amount equal to the scheduled rental income of the Property for at least twelve (12) months, or if applicable, business interruption insurance in an amount sufficient to pay debt service on the Note, operating expenses, taxes and insurance on the Property for a period of twelve (12) months, and covering loss by flood (if the Property lies in a Special Flood Hazard Area as designated on the Department of Housing and Urban Development's Maps, or other flood prone designation) in an amount equal to the outstanding principal balance of the Loan secured hereby or such other amount as approved by Lender, and earthquake insurance with a deductible amount of no more than ten percent (10%) of the policy amount, if the Property is located within one-half (1/2) mile of an Alquist-Priolo Special Earthquake Study Zone or if, in the judgement of Lender's inspecting architect, the Property lies in an area of anticipated significant seismic activity. All such insurance shall be carried with a company or companies licensed to do business in the state where the Property is located, which is acceptable to Lender, which company or companies shall have a rating at the time this Mortgage is executed



equivalent to at least A:X as shown in the most recent Best's Key Rating Guide. The original policy or policies and renewals thereof (or, at the sole option of Lender, duplicate originals or certified copies thereof), together with receipts evidencing payment of the premium therefor, shall be deposited with, held by and are hereby assigned to, Lender as additional security for the Loan secured hereby. Each such policy of insurance shall contain a noncontributing loss payable clause in favor of and in a form acceptable to Lender, and shall provide for not less than thirty (30) days prior Written Notice to Lender of any intent to modify, non-renew, cancel or terminate the policy or policies, or the expiration of such policies of insurance. If the insurance required under this Section 8 or any portion thereof is maintained pursuant to a blanket policy, Borrower shall furnish to Lender a certified copy of such policy, together with an original Evidence of Insurance Certificate (Acord Form 27) for hazard insurance indicating that Lender is an insured under such policy in regard to the Property and showing the amount of coverage apportioned to the Property, which coverage shall be in an amount sufficient to satisfy the requirements hereof. Not less than fifteen (15) days prior to the expiration dates of each policy required of Borrower hereunder, Borrower will deliver to Lender a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment and renewal satisfactory to Lender. In the event of foreclosure of this Mortgage or other transfer of title to the Property in extinguishment of the Loan secured hereby, all right, title and interest of Borrower, in and to any insurance policies then in force including any rights to unearned premiums, and in and to insurance proceeds then payable, shall pass to the purchaser or grantee.

In the event of loss by reason of hazards, casualties, contingencies and perils for which insurance has been required by Lender hereunder, Borrower shall give immediate notice thereof to Lender. Lender is hereby irrevocably appointed attorney-in-fact coupled with an interest, for Lender, at its option, to make proof of loss and/or to file a claim thereunder. Each insurance company concerned is hereby notified, authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and Lender jointly, and Borrower hereby authorizes Lender to adjust and compromise any losses for which insurance proceeds are payable under any of the aforesaid insurance policies and, after deducting the costs of collection, to apply the proceeds of such insurance, at its option, either: (a) to the restoration or repair of the insured Improvements and the Fixtures and Personal Property, provided that, in the opinion and sole discretion of Lender, such restoration or repair is reasonably practical and, provided further, that, in the opinion and sole discretion of Lender, either: (i) the insurance proceeds so collected are sufficient to cover the cost of such restoration or repair of the damage or destruction with respect to which such proceeds were paid; or (ii) the insurance proceeds so collected are not sufficient alone to cover the cost of such restoration or repair, but are sufficient therefor when taken together with funds provided and made available by Borrower from other sources; in which event Lender shall make such insurance proceeds available to Borrower for the purpose of effecting such restoration or repair; but Lender shall not be obligated to see to the proper application of such insurance proceeds nor shall the amount of funds so released or used be deemed to be payment of or on account of the Loan secured hereby, or (b) to the reduction of the Loan secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable or that said Loan is otherwise adequately secured, in which event such proceeds shall be applied at par against the Loan secured hereby and the monthly payment due on account of such Loan shall be reduced accordingly. None of such actions taken by Lender shall be deemed to be or result in a waiver or impairment of any equity, lien or right of Lender under and by virtue of this Mortgage, nor will the application of such insurance proceeds to the reduction of the Loan serve to cure any default in the payment thereof. In the event of

foreclosure of this Mortgage or other transfer of title to the Property in extinguishment of the Loan secured hereby, all right, title and interest of Borrower in and to any insurance policies then in force including any rights to unearned premiums and in and to insurance proceeds then payable, shall pass to the purchaser or grantee.

In case of Borrower's failure to keep the Property properly insured as required herein, Lender, its successors or assigns, may, at its option (but shall not be required to) acquire such insurance as required herein at Borrower's sole expense.

Notwithstanding anything set forth in this Section 8 to the contrary, in the event of loss or damage to the Property by fire or other casualty for which insurance has been required by Lender and provided by Borrower, and the amount of such loss or damage does not exceed fifty percent (50%) of the unpaid principal balance of the Note, or with respect to that portion of the Improvements covered by the Lease (hereinafter referred to as the "Walgreen's Lease") dated December 27, 2000, with Walgreen Co., an Illinois corporation, as tenant (hereinafter referred to as "Walgreen's"), as long as no default has occurred under the Walgreen's Lease and Walgreen's reaffirms the Walgreen's Lease, Lender hereby agrees to allow the proceeds of insurance to be used for the restoration of the Property and to release such insurance proceeds to Borrower as such restoration progresses, provided:

- (a) Borrower is not in default under any of the terms, covenants and conditions of this Mortgage, the Note or any of the other Loan Documents;
- (b) The Improvements, after such restoration, shall be at least eighty percent (80%) leased pursuant to leases approved in writing by Lender;
- (c) The plans and specifications for the restoration of the Property are approved in writing by Lender in advance;
- (d) At all times during such restoration, Borrower has deposited with Lender funds which, when added to the insurance proceeds received by Lender, are sufficient to complete the restoration of the Property in accordance with the approved plans and specifications and all applicable building codes, zoning ordinances, regulations and Accessibility Laws, and further, that the funds retained by Lender are sufficient to complete the restoration of the Property as certified to Lender by Lender's inspecting architect/engineer;
- (e) Borrower provides suitable completion, payment and performance bonds, builders' all risk insurance, and all necessary licenses and permits for such restoration in form and amount acceptable to Lender;
- (f) The insurer under such policies of fire or other casualty insurance does not assert any defense to payment under such policies against Borrower, any tenant, or third party of Borrower with regard to the Property;
- (g) Lender shall have the option, upon the completion of such restoration of the Property, to apply any surplus insurance proceeds remaining after the completion of such restoration,

at par, to the reduction of the outstanding principal balance of the Note without premium or penalty; notwithstanding the fact that the amount owing thereon may not then be due and payable or that said Loan is otherwise adequately secured;

(h) The funds held by Lender shall be disbursed no more often than once per month and in not more than five (5) increments of not less than Fifty Thousand and 00/100 Dollars (\$50,000.00) each, except the final disbursement of such funds which may be in an amount less than Fifty Thousand and 00/100 Dollars (\$50,000.00);

(i) Lender's obligation to make any such disbursement shall be conditioned upon Lender's receipt of written certification from Lender's inspecting architect/engineer (whose fees shall be reimbursed to Lender by Borrower) that all construction and work for which such disbursement is requested has been completed in accordance with the approved plans and specifications and in accordance with all applicable building codes, zoning ordinances and all other local, state or federal laws, codes, ordinances, statutes, rules and regulations, and, further, that Borrower has deposited with Lender sufficient funds to complete such restoration in accordance with subsection 8(d) above; and

(j) Lender shall be entitled to require and to impose such other conditions to the release of such funds as would be customarily or reasonably be required and imposed by local construction lenders for a project of similar nature and cost.

It is acknowledged that with respect to the Walgreen's Lease, proceeds of insurance shall be disbursed through a construction escrow agreement pursuant to the Walgreen's Lease.

**Document is NOT OFFICIAL!**  
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LIABILITY INSURANCE

9. To carry and maintain such commercial general liability insurance as may from time to time be required by Lender, taking into consideration the type of property being insured and the corresponding liability exposure, on forms, with deductibles, in amounts and with such company or companies licensed to do business in the state where the Property is located and as may be acceptable to Lender. All such commercial general liability insurance shall be carried with a company or companies which have a rating at the time this Mortgage is executed equivalent to at least A:X as shown in the most recent Best's Key Rating Guide. The original policy or policies and all renewals thereof (or, at the sole option of Lender, duplicate originals or certified copies thereof), together with a Certificate of Insurance (Acord Form 25S) and receipts evidencing payment of the premium therefor, shall be deposited with, held by and are hereby assigned to, Lender as additional security for the Loan secured hereby. Such policy or policies of insurance shall name Lender as an additional insured and shall provide for not less than thirty (30) days prior Written Notice to Lender of any intent to modify, cancel, non-renew, or terminate the policy or policies or the expiration of such policy or policies of insurance. Not less than fifteen (15) days prior to the expiration dates of each policy or policies required of Borrower hereunder, Borrower will deliver to Lender a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment and renewal satisfactory to Lender. In the event of foreclosure of this Mortgage or other transfer of title to the Property in extinguishment of the Loan secured hereby, all right, title and interest of Borrower, in



and to any insurance policies then in force including any rights to unearned premiums, and in and to insurance proceeds then payable, shall pass to the purchaser or grantee.

In case of Borrower's failure to keep the Property properly insured as required herein, Lender, its successors or assigns, may, at its option (but shall not be required to) acquire such insurance as required herein at Borrower's sole expense.

#### COMPLIANCE WITH LAWS

10. To observe, abide by and comply with all federal, regional, state and local laws, codes, ordinances, statutes, rules, regulations, decisions, orders, requirements or decrees relating to the Property enacted, promulgated or issued by any federal, state, county or local governmental or quasi-governmental authority or any agency or subdivision thereof having jurisdiction over Borrower or the Property (hereinafter collectively referred to as "Laws"), and to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning, variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Property, or which have been granted to or contracted for by Borrower in connection with any existing, presently contemplated or future uses of the Property.

#### MAINTENANCE OF PERMITS

11. To obtain, keep and constantly maintain in full force and effect during the entire term of this Mortgage, all certificates, licenses and permits necessary to keep the Property operating as a retail shopping center project and, except as specifically provided for in this Mortgage, not to assign, transfer or in any manner change such certificates, licenses or permits without first receiving the written consent of Lender.

#### OBLIGATIONS OF BORROWER AS LESSOR

12. To perform every obligation of Borrower (as the lessor) and to enforce every obligation of the lessee in any and every lease, license or other occupancy agreement of or affecting the Property or any part thereof (hereinafter referred to as the "Occupancy Leases"), and not to modify, alter, waive or cancel any such Occupancy Leases or any part thereof or rights thereunder, without the prior written consent of Lender (but such consent shall not be required for such action as to Occupancy Leases of 3,000 square feet or less if such action is in the ordinary course of business of owning and operating the Property in a prudent and business-like manner), nor collect for more than thirty (30) days in advance of the date due any rents that may be collectible under any such Occupancy Leases and, except as provided for in this Mortgage, not to assign any such Occupancy Leases or any such rents relating thereto, to any party other than Lender, without the prior written consent of Lender. In the event of default under any such Occupancy Lease by reason of failure of Borrower to keep or perform one or more of the covenants, agreements or conditions thereof, Lender is hereby authorized and empowered, and may, at its sole option, remedy, remove or cure any such default, and further, Lender may, at its sole option and in its sole discretion but without obligation to do so, pay any sum of money deemed necessary by Lender for the performance of said covenants, agreements and conditions, or for the curing or removal of any such default, and

incur all expenses and obligations which Lender may consider necessary or reasonable in connection therewith, and Borrower shall repay on demand all such sums so paid or advanced by Lender together with interest thereon until paid at the lesser of either: (i) the highest rate of interest then allowed by the laws of the State, or, if controlling, the laws of the United States, or (ii) the then applicable interest rate of the Note plus five hundred (500) basis points per annum; all of such sums, if unpaid, shall be added to and become part of the Loan secured hereby. All such Occupancy Leases hereafter made shall be subject to the approval of Lender and: (i) shall be at competitive market rental rates then prevailing in the geographic area for retail shopping centers comparable to the Property; (ii) shall have lease terms of not less than three (3) years; and (iii) at Lender's option, shall be superior or subordinate in all respects to the lien of this Mortgage. Provided, however, that Lender shall not require approval in advance of any Occupancy Leases which conform to Borrower's Form Lease (as hereinafter defined) as previously approved by Lender, except as set forth below. Neither the right nor the exercise of the right herein granted unto Lender to keep or perform any such covenants, agreements or conditions as aforesaid shall preclude Lender from exercising its option to cause the whole Loan secured hereby to become immediately due and payable by reason of Borrower's default in keeping or performing any such covenants, agreements or conditions as hereinabove required.

Lender has heretofore approved a form of Occupancy Lease to be used by Borrower in connection with the Property (hereinafter referred to as the "Form Lease"). Borrower shall not, without the prior written consent of Lender, modify or alter the Form Lease in any material respect. In addition, Borrower shall not, without the prior written consent of Lender, surrender, modify, alter or terminate, either orally or in writing, any Occupancy Lease now existing or hereafter made with any Major Tenant (as hereinafter defined) for all or part of the Property, permit an assignment or sublease of any such Occupancy Lease, or request or consent to the subordination of any Occupancy Lease to any lien subordinate to this Mortgage. Borrower shall furnish Lender with copies of all executed Occupancy Leases of all or any part of the Property now existing or hereafter made, and Borrower shall assign to Lender (which assignment shall be in form and content acceptable to Lender), as additional security for the Note and the Loan, all Occupancy Leases now existing or hereafter made for all or any part of the Property. Additionally, if any Occupancy Lease contains a provision allowing the tenant to terminate their lease upon payment of a lease termination fee, Borrower agrees that all such sums shall constitute Rent, and shall be paid to Lender so long as this Mortgage is in effect.

Notwithstanding the foregoing approval by Lender of Borrower's Form Lease, Lender hereby specifically reserves the right to approve all prospective tenants under all Occupancy Leases hereafter proposed to be made if either: (i) the term thereof, excluding options to renew the same, exceeds five (5) years; or (ii) the net rentable area to be occupied thereunder, including expansion options, exceeds ten percent (10%) of the net rentable area of each of the buildings comprising the Improvements (the tenants under such leases being hereinafter referred to as "Major Tenants"). Borrower shall notify Lender in writing of all prospective Major Tenants, and shall deliver to Lender, at Borrower's sole cost and expense, a copy of the prospective Major Tenant's current financial statement and the most recent Dun & Bradstreet credit report on said prospective Major Tenant. The financial statement delivered to Lender hereunder shall be certified as true and correct by the Major Tenant, or, if available, by a certified public accountant.

If Lender fails to respond within ten (10) business days after receipt from Borrower of a lease, together with tenant credit information, Lender shall be deemed to have approved such lease; provided that all items so submitted shall be sent certified mail, labeled with the following statement: "TIME SENSITIVE RESPONSE REQUIRED WITHIN TEN (10) BUSINESS DAYS OF ACTUAL RECEIPT."

MAINTENANCE OF PARKING & ACCESS; PROHIBITION AGAINST ALTERATION

13. To construct, keep and constantly maintain, as the case may be, all curbs, drives, parking areas and the number of parking spaces heretofore approved by Lender, or heretofore or hereafter required by any Laws or any governmental body, agency or authority having jurisdiction over Borrower or the Property, and as required by the terms of the Occupancy Leases, and not to alter, erect, build or construct upon any portion of the Property, any building, structure or improvement of any kind whatsoever, the erection, building or construction of which has not been previously approved by Lender in writing, which approval shall be at the sole discretion of Lender.

EXECUTION OF ADDITIONAL DOCUMENTS

14. To do, make, execute, acknowledge, witness and deliver all deeds, conveyances, mortgages, assignments, estoppel certificates, subordination non-disturbance and attornments, notices of assignments, transfers, assurances, security agreements, financing statements and renewals thereof, and all other instruments or other acts necessary as Lender shall from time to time require for the purpose of better assuring, conveying, assigning, transferring, securing and confirming unto Lender the Property and rights hereby encumbered, created, conveyed, assigned or intended now or hereafter so to be encumbered, created, conveyed or assigned, or which Borrower may now be or may hereafter become bound to encumber, create, convey or assign to Lender, or for the purpose of carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage, and to pay all filing, registration or recording fees and all taxes, costs and other expenses, including Reasonable Attorneys' Fees, incident to the preparation, execution, acknowledgment, delivery and recordation of any of the same. By signing this Mortgage, Borrower authorizes Lender to file such financing statements, with or without the signature of Borrower, as Lender may elect, as may be necessary or desirable to perfect the lien of Lender's security interest in the Fixtures and Personal Property. Borrower further authorizes Lender to file, with or without any additional signature from Borrower, as Lender may elect, such amendments and continuation statements as Lender may deem necessary or desirable from time to time to perfect or continue the lien of Lender's security interest in the Fixtures and Personal Property. Borrower hereby expressly ratifies any financing statements that may have been filed by Lender in advance of the date hereof to perfect Lender's security interest in the Fixtures and Personal Property.

AFTER-ACQUIRED PROPERTY SECURED

15. To subject to the lien of this Mortgage all right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to, the Property hereinabove described, hereafter acquired by or released to Borrower, or constructed, assembled or placed by Borrower on the Real Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release,



construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, encumbrance, conveyance, assignment or other act by Borrower, as fully, completely and with the same effect as though now owned by Borrower and specifically described herein, but at any and all times, Borrower will execute and deliver to Lender any and all such further assurances, mortgages, conveyances, security agreements, financing statements or assignments thereof or security interests therein as Lender may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

#### PAYMENTS BY LENDER ON BEHALF OF BORROWER

16. To make payment of any taxes, assessments or public charges on or with respect to the Property before the same shall become delinquent, or to make payment of any insurance premiums or other charges, impositions, or liens herein or elsewhere required to be paid by Borrower, or if Borrower shall fail so to do, then Lender, at its sole option, but without obligation to do so, may make payment or payments of the same and also may redeem the Property from tax sale without any obligation to inquire into the validity of such taxes, assessments, tax sales, charges, impositions or liens. In the case of any such payment by Lender, Borrower agrees to reimburse Lender, upon demand therefor, the amount of such payment and of any fees and expenses attendant in making the same, together with interest thereon at the lesser of either: (i) the highest rate of interest then allowed by the laws of the State or, if controlling, the laws of the United States or (ii) the then applicable interest rate of the Note plus five hundred (500) basis points per annum; and until paid such amounts and interest shall be added to and become part of the Loan secured hereby to the same extent that this Mortgage secures the repayment of the Loan evidenced by the Note. In making payments authorized by the provisions of this Section 16, Lender may do so whenever, in Lender's sole judgment and discretion, such advance or advances are necessary or desirable to protect the full security intended to be afforded by this Mortgage. Neither the right nor the exercise of the rights herein granted to Lender to make any such payments as aforesaid shall preclude Lender from exercising its option to cause the Loan secured hereby to become immediately due and payable by reason of Borrower's default in making such payments as hereinabove required.

#### FUNDS HELD BY LENDER FOR TAXES, ASSESSMENTS, INSURANCE PREMIUMS, AND OTHER CHARGES

17. In order to more fully protect the security of this Mortgage, Borrower shall deposit with Lender, together with and in addition to each monthly payment due on account of the Loan evidenced by the Note, an amount equal to one-twelfth (1/12) of the annual total of such taxes, assessments, insurance premiums and other charges (all as estimated by Lender in its sole discretion) so that, at least thirty (30) days prior to the due date thereof, Lender shall be able to pay in full all such taxes, assessments, insurance premiums and other charges as the same shall become due. Lender may hold the sums so deposited without paying interest, commingle same with its general funds, and/or apply the same to the payment of said taxes, assessments, insurance premiums or other charges as they become due and payable. If at any time the funds so held by Lender are insufficient to pay such taxes, assessments, insurance premiums or other charges as they become due and payable, Borrower shall immediately, upon notice and demand by Lender, deposit with Lender the amount of such deficiency. The failure on the part of Borrower to do so shall entitle Lender, at Lender's sole option, to make such payments in accordance with the rights and pursuant to the

conditions elsewhere provided in this Mortgage. Whenever any default exists under this Mortgage, Lender may, at Lender's sole option but without an obligation so to do, apply any funds so held by Lender pursuant to this Section 17 toward the payment of the Loan secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable or that the Loan may otherwise be adequately secured, in such order and manner of application as Lender may elect.

#### CONDEMNATION; EMINENT DOMAIN

18. All claims and rights of action for, and all awards and other compensation heretofore or hereafter made to Borrower and all subsequent owners of the Property in any taking by eminent domain, recovery for inverse condemnation or by deed in lieu thereof, whether permanent or temporary, of all or any part of the Property or any easement or any appurtenance thereto, including severance and consequential damages and change in grade of any way, street, avenue, road, alley, passage or public place are hereby assigned to Lender. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, and authorizes, directs and empowers Lender, at the option of Lender as said attorney-in-fact, on behalf of Borrower, its successors and assigns, to adjust or compromise the claim for any such award, and alone to collect and receive the proceeds thereof, to give proper receipts and acquittances therefor and, after deducting any expenses of collection, at Lender's sole option either:

(a) to apply the net proceeds as a credit upon any portion of the Loan secured hereby, as selected by Lender, notwithstanding the fact that the amount owing thereon may not then be due and payable, or that the Loan is otherwise adequately secured. In the event Lender applies such awards to the reduction of the outstanding Loan evidenced by the Note, such proceeds shall be applied at par, and the monthly installments due and payable under the Note shall be reduced accordingly; however no such application shall serve to cure an existing default in the payment of the Note; or

(b) to hold said proceeds without any allowance of interest, and make the same available for restoration or rebuilding of the Improvements. In the event that Lender elects to make said proceeds available to reimburse Borrower for the cost of the restoration or rebuilding of the Improvements on the Real Property, such proceeds shall be made available in the manner and under the same conditions as required under Section 8 hereof. If the proceeds are made available by Lender to reimburse Borrower for the cost of said restoration or rebuilding, any surplus which may remain out of said award after payment of such cost of restoration or rebuilding, shall be applied on account of the Loan secured hereby at par notwithstanding the fact that the amount owing thereon may not then be due and payable or that the Loan may otherwise be adequately secured.

Borrower further covenants and agrees to give Lender immediate notice of the actual or threatened commencement of any proceedings under eminent domain, and to deliver to Lender copies of any and all papers served in connection with any such proceedings. Borrower further covenants and agrees to make, execute and deliver to Lender, at any time or times, upon request, free, clear and discharged of any encumbrance of any kind whatsoever, any and all further assignments and/or other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning all such awards and other compensation heretofore or hereafter made to Lender (including the assignment of any award from the United States government at any time after the

allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof).

It shall be a default hereunder if either: (i) any part of any of the Improvements situated on the Real Property shall be condemned by any governmental authority having jurisdiction, such that the remaining Property is in violation of applicable parking, zoning, platting, or other ordinances, or fails to comply with the terms of the Occupancy Leases with Major Tenants; or (ii) lands constituting a portion of the Real Property shall be condemned by any governmental authority having jurisdiction, such that the remaining Property is in violation of applicable parking, zoning, platting, or other ordinances, or fails to comply with the terms of the Occupancy Leases with Major Tenants. In either of said events, Lender shall be entitled to exercise any or all remedies provided or referenced in this Mortgage, including the application of condemnation proceeds to the outstanding principal balance of the Note at par, and the right to accelerate the maturity date of the Note and require payment in full without the imposition of a Prepayment Premium.

#### COSTS OF COLLECTION

19. In the event that the Note secured hereby is placed in the hands of an attorney for collection, or in the event that Lender shall become a party either as plaintiff or as defendant, in any action, suit, appeal or legal proceeding (including, without limitation, foreclosure, condemnation, bankruptcy, administrative proceedings or any proceeding wherein proof of claim is by law required to be filed), hearing, motion or application before any court or administrative body in relation to the Property or the lien and interest granted or created hereby or herein, or for the recovery or protection of said Loan or the Property, or for the foreclosure of this Mortgage, or for the enforcement of the terms and conditions of the Loan Documents, Borrower shall indemnify, save, defend and hold Lender harmless from and against any and all costs and expenses incurred by Lender on account thereof, including, but not limited to, Reasonable Attorneys' Fees, title searches and abstract and survey charges, at all trial and appellate levels, and Borrower shall repay, on demand, all such costs and expenses, together with interest thereon until paid at the lesser of either (i) the highest rate of interest then allowed by the laws of the State, or, if controlling, the laws of the United States, or (ii) the then applicable rate of interest of the Note plus five hundred (500) basis points per annum; all of which sums, if unpaid, shall be added to and become a part of the Loan secured hereby.

#### DEFAULT RATE

20. Any sums not paid when due, whether maturing by lapse of time or by reason of acceleration under the provisions of the Note or this Mortgage, and whether principal, interest or money owing for advancements pursuant to the terms of this Mortgage or any other Loan Document, shall bear interest until paid at the lesser of either (i) the highest rate of interest then allowed by the laws of the State, or, if controlling, the laws of the United States, or (ii) the then applicable rate of interest of the Note plus five hundred (500) basis points per annum; all of which sums shall be added to and become a part of the Loan secured hereby.



## SAVINGS CLAUSE

21. Notwithstanding any provisions in the Note or in this Mortgage to the contrary, the total liability for payments in the nature of interest, including but not limited to Prepayment Premiums, default interest and late payment charges, shall not exceed the limits imposed by the laws of the State, or, if controlling, the laws of the United States, relating to maximum allowable charges of interest. Lender shall not be entitled to receive, collect or apply, as interest on the Loan evidenced by the Note, any amount in excess of the maximum lawful rate of interest permitted to be charged by the Laws. In the event Lender ever receives, collects or applies as interest any such excess, such amount which would be excessive interest shall be applied to reduce the unpaid principal balance of the Loan evidenced by the Note. If the unpaid principal balance of such Loan has been paid in full, any remaining excess shall be forthwith returned to Borrower.

## BANKRUPTCY, REORGANIZATION OR ASSIGNMENT

22. It shall be a default hereunder if Borrower shall: (i) elect to dissolve and liquidate its business organization and wind up its business affairs without receiving the prior written approval of Lender; (ii) consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of Borrower's assets; (iii) be adjudicated as bankrupt or insolvent, or file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due; (iv) make a general assignment for the benefit of creditors; (v) file a petition under or take advantage of any insolvency law; (vi) file an answer admitting the material allegations of a petition filed against Borrower in any bankruptcy, reorganization or insolvency proceeding, or fail to cause the dismissal of such petition within thirty (30) days after the filing of said petition; (vii) take action for the purpose of effecting any of the foregoing; or (viii) if any order, judgment or decree shall be entered upon an application of a creditor of Borrower by a court of competent jurisdiction approving a petition seeking appointment of a receiver or trustee of all or a substantial part of Borrower's assets and such order, judgment or decree shall continue unstayed and in effect for a period of thirty (30) days.

## TIME IS OF THE ESSENCE; MONETARY AND NON-MONETARY DEFAULTS

23. It is understood by Borrower that time is of the essence hereof in connection with all obligations of Borrower herein, in the Note, the Assignment and any of the other Loan Documents.

Lender, at its sole option, may declare the Loan evidenced by the Note, as well as all other monies secured hereby, including, without limitation, all Prepayment Premiums (to the extent permitted by the laws of the State) and late payment charges, to be forthwith due and payable, in the event that:

- (i) Borrower defaults in the payment of any monthly installment of the Note, whether of principal or interest, or both, or in the payment of any other sums of money referred to herein or in the Note, promptly and fully when the same shall be due, without notice or demand from Lender to Borrower in regard to such Monetary Default (as hereinafter defined); and any such Monetary Default remains uncured for a period of five (5) days after Written Notice thereof has been given by Lender to

Borrower, unless Lender has previously given Borrower such Written Notice for a failure to pay in the then-current Loan Year (as defined in the Note), in which event no such notice need be given and no right to cure need be afforded Borrower as to any further Monetary Default during such Loan Year; or

- (ii) Borrower breaches or defaults on any one of the terms, covenants, conditions and agreements of the Note, this Mortgage, the Assignment or any other Loan Documents evidencing or securing the Note or the Loan, or each and every one of said terms, covenants, conditions and agreements is not otherwise either duly, promptly and fully discharged or performed, and any such Non-Monetary Default (as hereinafter defined) remains uncured for a period of thirty (30) days after Written Notice thereof has been delivered from Lender to Borrower; unless such Non-Monetary Default cannot be cured within said thirty (30) day period, in which event Borrower shall have an extended period of time to complete cure, provided that action to cure such Non-Monetary Default is promptly commenced within said thirty (30) day period, and Borrower is, in Lender's sole judgment, not diminishing or impairing the value of the Property, and is diligently pursuing a cure to completion, but in no event longer than ninety (90) days; or
- (iii) Any default occurs in the performance of any covenant or obligation of Borrower or any other party under any indemnity or guaranty delivered to Lender in connection with the Loan and such default continues beyond the expiration of applicable notice and cure periods.

Upon the occurrence of any one of the above events, and at the option of Lender, the principal of and the interest accrued on the Loan (as evidenced by the Note) and all other sums secured by this Mortgage shall immediately become due and payable as if all of said sums of money were originally stipulated to be paid on such day. In addition, Lender may avail itself of all rights and remedies provided by law and may foreclose or prosecute a suit at law or in equity as if all monies secured hereby had matured prior to its institution, anything in this Mortgage or in the Note to the contrary notwithstanding. Lender shall have no obligation to give Borrower notice of, or any period to cure, any Monetary Default or any Incurable Default (as hereinafter defined) prior to exercising its rights, powers, privileges and remedies to accelerate the maturity of the Loan secured hereby.

As used herein, the term "Monetary Default" shall mean any default which can be cured by the payment of money such as, but not limited to, the payment of principal and interest due under the Note, taxes, assessments and insurance premiums when due as provided in this Mortgage. As used herein, the term "Non-Monetary Default" shall mean any default that is not a Monetary Default or an Incurable Default. As used herein, the term "Incurable Default" shall mean either: (i) any voluntary or involuntary sale, assignment, mortgaging, encumbering or transfer in violation of the covenants contained herein; or (ii) if Borrower, or any person or entity comprising Borrower or any guarantor or indemnitor of the Loan, should make an assignment for the benefit of creditors, become insolvent, or file a petition in bankruptcy (including but not limited to, a petition seeking a rearrangement or reorganization) which is not dismissed within thirty (30) days after the filing of same.

Lender may institute an action to foreclose this Mortgage as to the amount so declared due and payable, and thereunder, the Property shall be sold according to law to satisfy and pay the same, together with all costs, expenses and allowances thereof, including, without limitation, Reasonable Attorneys' Fees.

The Property may be sold in one parcel, several parcels or groups of parcels, and may be foreclosed successively and in parts until all of the Property has been foreclosed against and sold. Borrower waives and relinquishes any and all rights that Borrower may have to cause or compel a sale of any part or parcel of the Property less than the entire Property. Lender shall be entitled to bid at the sale, and, if Lender is the highest bidder for the Property or any part or parts thereof, Lender shall be entitled to purchase the same. In any such foreclosure, or upon the enforcement of any other remedy of Lender under this Mortgage or the Note, there shall be allowed and included as additional indebtedness all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs involved in title insurance and title examinations. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Borrower, with interest thereon at the default rate set forth in the Note, and shall be secured by this Mortgage as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded and shall be included in all determinations of indebtedness owing to Lender and secured by this Mortgage. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order or priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in this paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, any remaining amounts to Borrower, its successors or assigns, as their right may appear. The failure or omission on the part of Lender to exercise the option for acceleration of maturity of the Note and foreclosure of this Mortgage following any default as aforesaid or to exercise any other option or remedy granted hereunder to Lender when entitled to do so in any one or more instances, or the acceptance by Lender of partial payment of the Loan secured hereby, whether before or subsequent to Borrower's default hereunder, shall not constitute a waiver of any such default or the right to exercise any such option or remedy, but such option or remedy shall remain continuously in force. Acceleration of the maturity of the Note, once claimed hereunder by Lender, at the option of Lender, may be rescinded by written acknowledgment to that effect by Lender, but the tender and acceptance of partial payments alone shall not in any way either affect or rescind such acceleration of maturity, nor act as a waiver, accord and satisfaction, modification, novation or similar defense.

Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon



any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Borrower further waives and releases (a) all errors, defects and imperfections in any proceedings instituted by Lender under the Note, this Mortgage, or any of the other Loan Documents, (b) all benefits that might accrue to the Borrower by virtue of any present or future laws exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale under civil process, or extension, exemption from civil process or extension of time for payment, and (c) all notices not specifically required by this Mortgage of default, or of Lender's exercise, or election to exercise, any option under this Mortgage. To the extent permitted by law, Borrower hereby further waives any right to reinstate the loan evidenced by the Note including, without limitation, any right to reverse any acceleration of such indebtedness. All waivers by Borrower in this Mortgage have been made voluntarily, intelligently and knowingly by Borrower after Borrower has been informed by counsel of Borrower's choice as to possible alternative rights. Borrower's execution of this Mortgage shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

#### PROTECTION OF LENDER'S SECURITY

24. At any time after default hereunder, Lender, or Lender's agents or contractors, is authorized, without notice and in Lender's sole discretion, to enter upon and take possession of the Property or any part thereof, and to perform any acts which Lender deems necessary or proper to conserve the security interest herein intended to be provided by the Property, to operate any business or businesses conducted thereon, and to collect and receive all rents, license fees, issues, profits and income, including termination fees and taking proceeds, thereof and therefrom, including those past due as well as those accruing thereafter.

#### APPOINTMENT OF RECEIVER

25. If, at any time after a default hereunder, Lender deems, in Lender's sole discretion, that a receivership may be necessary to protect the Property or its rents, license fees, issues, profits or income, including termination fees and taking proceeds, whether before or after maturity of the Note and whether before or at the time of or after the institution of suit to collect such Loan or to enforce this Mortgage, Lender, as a matter of strict right and regardless of the value of the Property or the amounts due hereunder or secured hereby, or of the solvency of any party bound for the payment of such indebtedness, shall have the right, upon ex parte application and without notice to anyone, and by any court having jurisdiction, to the appointment of a receiver to take charge of, manage, preserve, protect and operate the Property, to collect the Rents thereof, to make all necessary and needful repairs, and to pay all taxes, assessments, insurance premiums and other such charges against and expenses of the Property, and to do such other acts as may by such court be authorized and directed, and after payment of the expenses of the receivership and the management of the Property, to apply the net proceeds of such receivership in reduction of the Loan secured hereby or in such other manner as the said court shall direct notwithstanding the fact that the amount owing thereon may not then be due and payable or the said Loan is otherwise adequately secured. Such receivership shall, at the option of Lender, continue until full payment of all sums hereby secured or until title to the Property shall have passed by sale under this Mortgage. Borrower hereby specifically waives its right to object to the appointment of a receiver as aforesaid, and hereby

expressly agrees that such appointment shall be made as an admitted equity and as a matter of absolute right to Lender.

**RIGHTS AND REMEDIES CUMULATIVE; FORBEARANCE NOT A WAIVER**

26. The rights and remedies herein provided are cumulative, and Lender, as the holder of the Note and of every other obligation secured hereby, may recover judgment thereon, issue execution therefor and resort to every other right or remedy available at law or in equity, without first exhausting any right or remedy available to Lender and without affecting or impairing the security of any right or remedy afforded hereby, and no enumeration of special rights or powers by any provisions hereof shall be construed to limit any grant of general rights or powers, or to take away or limit any and all rights granted to or vested in Lender by law. Borrower further agrees that no delay or omission on the part of Lender to exercise any rights or powers accruing to it hereunder shall impair any such right or power, or shall be construed to be a waiver of any such event of default hereunder or an acquiescence therein; and every right, power and remedy granted herein or by law to Lender may be exercised from time to time as often as Lender deems expedient. Lender may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Lender in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage. To the full extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or providing for any appraisal, valuation, stay, extension or redemption, and Borrower, for Borrower and Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Borrower shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Lender under the terms of this Mortgage to a sale of the Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Lender under the terms of this Mortgage to the payment of such indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. If any law referred to in this Section and now in force, of which Borrower or Borrower's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

**MODIFICATION NOT AN IMPAIRMENT OF SECURITY**

27. Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior mortgage liens or other liens thereon,

may release any part of the security described herein, or may release any person or entity liable for the Loan secured hereby without in any way affecting the priority of this Mortgage, to the full extent of the Loan remaining unpaid hereunder, upon any part of the security not expressly released. Lender may, at its option and within Lender's sole discretion, also agree with any party obligated on the Loan, or having any interest in the security described herein, to extend the time for payment of any part or all of the Loan secured hereby, and such agreement shall not, in any way, release or impair this Mortgage, but shall extend the same as against the title of all parties having any interest in said security, which interest is subject to this Mortgage.

#### PROPERTY MANAGEMENT AND LEASING

28. The exclusive manager of the Property shall be Borrower, or such other manager as may be first approved in writing by Lender. The exclusive leasing agent of the Property, if other than Borrower or the foregoing party, shall be first approved in writing by Lender. The management and leasing contracts (or in the absence of any such written contract, a letter so stating and further identifying the name of the person or entity charged with the responsibility for managing and/or leasing the Property) shall be subordinate to this Mortgage, and satisfactory to and subject to the prior written approval of Lender throughout the term of the Loan secured hereby. Upon default in either of these requirements, then the whole of the Loan hereby secured shall, at the election of Lender, become immediately due and payable, together with any Prepayment Premium, default premium, late payment charges and all other sums required by the Note, and Lender shall be entitled to exercise any or all remedies provided for or referenced in this Mortgage.

#### MODIFICATION NOT A WAIVER

29. In the event Lender (a) releases, as aforesaid, any part of the security described herein or any person or entity liable for any Loan secured hereby; (b) grants an extension of time for the payment of the Note; (c) takes other or additional security for the payment of the Note; or (d) waives or fails to exercise any rights granted herein, in the Note, or any of the other Loan Documents, any said act or omission shall not release Borrower, subsequent purchasers of the Property or any part thereof, or makers, sureties, endorsers or guarantors of the Note, if any, from any obligation or any covenant of this Mortgage, the Note or any of the other Loan Documents, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made, or any subsequent default.

#### TRANSFER OF PROPERTY OR CONTROLLING INTEREST IN BORROWER; ASSUMPTION

30. Except as set forth in Section 36(b) hereof, without the prior written consent of Lender, the sale, transfer, assignment or conveyance of all or any portion of the Property, or the transfer, assignment or conveyance of a controlling interest in Borrower (whether such control is direct or indirect through one or more intermediate entities), whether voluntary or by operation of law, without the prior written consent of Lender, shall constitute a default under the terms of this Mortgage, and entitle Lender, at Lender's sole option, to accelerate all sums due on the Note, together with any Prepayment Premiums (to the extent permitted by the laws of the State), late payment charges or any other amounts secured hereby. Lender may, however, elect to waive the



option to accelerate granted hereunder if, prior to any such sale, transfer, assignment or conveyance of the Property, the following conditions shall be fully satisfied: (a) Lender acknowledges in writing that, in Lender's sole discretion, the creditworthiness of the proposed transferee and the ability and experience of the proposed transferee to operate the Property are satisfactory to Lender; (b) Lender and the proposed transferee shall enter into an agreement in writing that (i) the rate of interest payable on the Loan secured hereby shall be at such rate as Lender shall determine, (ii) the repayment schedule as set forth in the Note shall be modified by Lender, in Lender's sole discretion, to initiate amortization or modify the existing amortization schedule in order to amortize the then remaining unpaid principal balance of the Note secured hereby over a period of time as determined by Lender, in Lender's sole discretion, without a change in the maturity date of the Note, and (iii) the proposed transferee shall assume all obligations of Borrower under the Note, this Mortgage and the other Loan Documents in writing and an assumption fee, to be determined by Lender in Lender's sole discretion, may be charged by Lender; (c) Lender shall receive, for Lender's review and approval, copies of all transfer documents; and (d) Borrower or the transferee shall pay all costs and expenses in connection with such transfer and assumption, including, without limitation, all fees and expenses incurred by Lender.

Borrower, or any subsequent owner of the Property or any portion thereof, shall do all things necessary to preserve and keep in full force and effect its and their legal existence, franchises, rights and privileges as a corporation or partnership, as the case may be, under the laws of the state of its formation and its right to own property and transact business in the State. It shall be a default hereunder if Borrower, or any subsequent owner of the Property or any portion thereof, shall amend, modify, transfer, assign or terminate the partnership agreement, certificate of partnership, operating agreement, articles of organization or articles of incorporation, as the case may be, of Borrower or such subsequent owner without the prior written consent of Lender and, in the reasonable determination of Lender, such amendment, modification, transfer, assignment or termination shall have a material adverse effect on Lender, the Property or the security value thereof. Borrower, or such subsequent owner of the Property, shall provide Lender with copies of any proposed amendment to its partnership agreement, certificate of partnership, operating agreement, articles of organization or articles of incorporation, as the case may be, so that Lender may, in Lender's sole discretion, determine whether such amendment adversely affects Lender, the Property or the security value thereof. Provided, however, that any amendment, modification, transfer, assignment or termination of Borrower's partnership agreement or any other action pursuant to which the current managing general partner of Borrower shall either: (a) cease to be the managing general partner of Borrower; or (b) except to the extent permitted herein, cease to own or maintain a partnership interest in Borrower equal to or greater than its partnership interest at the time this Mortgage is executed, shall be deemed to have a material adverse effect upon Lender and the Property, and shall be a default hereunder.

Notwithstanding anything contained in this Section 30 to the contrary, as long as no default, or event which, with notice or the passage of time or both, could result in a default, has occurred hereunder, under the Note or under any of the other Loan Documents, Lender shall allow the transfer of interests in the members of Borrower, provided that William Shiner maintains management and operating control of the Borrower and the Property and such transfer or distribution is made (i) to another member of Borrower; (ii) upon the death or disability of the current member, to any member of the immediate family of any such member including spouse, children or grandchildren; (iii) to

any trust or other entity for the benefit of any of the parties referred to in (ii) above; or (iv) pursuant to operation of law upon death of a member. Any transfer of all or any portion of the Property which does not strictly comply with the terms and conditions of the foregoing shall be a default hereunder and shall entitle Lender to exercise all rights and remedies provided in this Mortgage and the other Loan Documents. Notwithstanding the foregoing, the death or disability of William Shiner shall not be a violation for purposes of Section 46(ii) of this Mortgage or the "Full Recourse" paragraph of the Note.

Borrower shall not change its name or identity in any manner which may make any financing or continuation statement filed in connection with the Loan seriously misleading within the meaning of Section 9-402(7) of the UCC (or any other then applicable provision of the UCC) enacted in the State unless Borrower shall have delivered to Lender written notice thereof not less than thirty (30) days before the effective date of such change and shall have taken all action which Lender determines to be reasonably necessary or desirable to amend such financing statement or continuation statement so that it is not seriously misleading. Borrower will not change its principal places of business unless it shall have given the Lender prior written notice of its intent to do so not less than thirty (30) days in advance of the effective date of such change. Borrower shall bear all costs incurred by Lender in connection with any such change, including, without limitation Reasonable Attorney's Fees.

In the event the ownership of the Property, or any part thereof, shall become vested in a person or entity other than Borrower, whether with or without the prior written consent of Lender, Lender may, without notice to Borrower, deal with such successor or successors in interest with reference to the Property, this Mortgage and the Note, in the same manner and to the same extent as with Borrower without in any way vitiating or discharging Borrower's liability hereunder or under the Note. No sale, transfer or conveyance of the Property, no forbearance on the part of Lender and no extension of time given by Lender to Borrower for the payment of the Note hereby secured shall operate to release, discharge, modify, change or affect the original liability of Borrower, either in whole or in part, unless expressly set forth in writing executed by Lender. Notwithstanding anything contained herein to the contrary, Borrower hereby waives any right it now has or may hereafter have to require Lender to prove an impairment of its security as a condition to the exercise Lender's rights under this Section 30.

A sale, transfer, assignment or conveyance within the meaning of this Section shall be deemed to include, but not be limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (b) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a tenant under an Occupancy Lease or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any leases or any rents; (c) if Borrower, any guarantor, any indemnitor, or any general partner of Borrower, any guarantor or indemnitor is a corporation, the voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise), or the creation or issuance of new stock by which an aggregate of more than ten percent (10%) of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (d) if Borrower, any guarantor or indemnitor or any general partner of Borrower, any guarantor or indemnitor is a limited partnership, general partnership, limited liability partnership, limited liability company, or joint venture, the change, removal or resignation of a general partner,

managing partner, or member or the transfer or pledge of the interest of any general partner, managing partner, or member or any profits or proceeds relating to such interest.

Notwithstanding anything contained in this Section 30 to the contrary, as long as no default, or event which, with notice or the passage of time or both, could result in a default, has occurred hereunder, under the Note or any of the other Loan Documents, Lender shall permit one (1) bona fide arm's length transfer of the Property to another borrowing entity without a change in the terms of the Loan; provided, however, that no such transfer shall be valid or permitted hereunder unless: (i) Lender receives prior Written Notice of such proposed transfer; (ii) such proposed transferee has been approved in writing by Lender (taking into consideration such factors as transferee's creditworthiness, business experience, financial condition and managerial capabilities); (iii) Lender is paid a cash assumption fee of one percent (1%) of the then outstanding principal balance of the Note; (iv) Borrower pays all fees and expenses incurred by Lender in connection with such transfer and assumption, including, without limitation, inspection and investigation fees, title insurance charges and Reasonable Attorneys' Fees; (v) such proposed transferee assumes in writing all obligations of Borrower under the Note, this Mortgage and the other Loan Documents, with the same degree of liability as Borrower; and (vi) Lender approves the management agreement and the management company to be employed by the proposed transferee. Any transfer of all or any portion of the Property which does not strictly comply with the terms and conditions of the foregoing shall be a default hereunder and shall entitle Lender to exercise all rights and remedies provided in this Mortgage and the other Loan Documents. This one-time right of transfer shall apply to Borrower named herein and not to any subsequent owner of the Property.

FURTHER ENCUMBRANCE PROHIBITED; SUBROGATION

31. So long as the Note remains unpaid, Borrower shall not, either voluntarily or involuntarily, permit the Property or any part thereof (or if Borrower is a trust, the beneficial interest or any part thereof), to become subject to any secondary lien, mortgage, security interest or encumbrance of any kind whatsoever without the prior written consent of Lender, and the imposition of any such secondary lien, mortgage, security interest or encumbrance without the approval of Lender shall constitute an event of default hereunder and entitle Lender, at Lender's sole option, to declare the outstanding principal balance of the Note, all accrued and unpaid interest thereon, Prepayment Premiums (to the extent permitted by the laws of the State), late payment charges and any other amounts secured hereby to be and become immediately due and payable in full. In the event that Lender shall hereafter give its written consent to the imposition of any such secondary lien, mortgage, security interest or other encumbrance upon the Property or beneficial interest, Lender, at Lender's sole option, shall be entitled to accelerate the maturity of the Note and exercise any and all remedies provided and available to Lender hereunder and in the other Loan Documents in the event that the holder of any such secondary lien or encumbrance shall institute foreclosure or other proceedings to enforce the same; it being understood and agreed that a default under any instrument or document evidencing, securing or secured by any such secondary lien or encumbrance shall be and constitute an event of default hereunder. In the event all or any portion of the proceeds of the Loan secured hereby are used for the purpose of retiring debt or debts secured by prior liens on the Property, Lender shall be subrogated to the rights and lien priority of the holder or holders of the lien or liens so discharged.



## CONVEYANCE OF MINERAL RIGHTS PROHIBITED

32. Borrower agrees that the making of any oil, gas or mineral lease, or the sale or conveyance of any mineral interest or right to explore for minerals under, through or upon the Property, would impair the value of the Property securing the Note, and that Borrower shall have no right, power or authority to lease the Property, or any part thereof, for oil, gas or other mineral purposes, or to grant, assign or convey any mineral interest of any nature, or the right to explore for oil, gas and other minerals, without first obtaining Lender's express written permission therefor, which permission shall not be valid until recorded with the County Clerk of Lake County, Indiana, among the Public Records of Lake County, Indiana. Borrower further agrees that if Borrower shall make, execute, or enter into any such lease or attempt to grant any such mineral rights without such prior written permission of Lender, then Lender shall have the option, without notice, to declare the same to be a default hereunder, and to declare the Loan hereby secured immediately due and payable in full. Whether or not Lender shall consent to such lease or grant of mineral rights, Lender shall receive the entire consideration to be paid for any such lease or grant of mineral rights, with the same to be applied to the Loan hereby secured notwithstanding the fact that the amount owing thereon may not then be due and payable or that the said Loan is otherwise adequately secured; provided, however, that the acceptance of such consideration shall in no way impair the lien of this Mortgage on the Property or cure any existing Monetary Default.

## ESTOPPEL CERTIFICATION BY BORROWER

33. Borrower, upon request of Lender therefor made either personally or by mail, shall certify in writing to Lender (or any party designated by Lender), in a form satisfactory to Lender or such designee, the amount of principal and interest then outstanding under the terms of the Note and any other sums due and owing under this Mortgage or any of the other Loan Documents, and whether any offsets or defenses exist against the Loan. Such certification shall be made by Borrower within ten (10) days if the request is made personally, or within twenty (20) days if the request is made by mail.

## CROSS-DEFAULT

34. The Note is also secured by the terms, conditions and provisions of the Assignment recorded among the Public Records of Lake County, Indiana, and, additionally, may be secured by contracts or agreements of guaranty or other security instruments. The terms, covenants, conditions and agreements of each security instrument shall be considered a part hereof as fully as if set forth herein verbatim. Any default under this Mortgage or the Note secured hereby shall constitute an event of default under the Assignment and any of the other Loan Documents, and any default under the Assignment or other Loan Documents shall likewise constitute a default hereunder and under the Note. Notwithstanding the foregoing, the enforcement or attempted enforcement of this Mortgage or any of the other Loan Documents now or hereafter held by Lender shall not prejudice or in any manner affect the right of Lender to enforce any other Loan Document; it being understood and agreed that Lender shall be entitled to enforce this Mortgage and any of the other Loan Documents now or hereafter held by it in such order and manner as Lender, in its sole discretion, shall determine.

## EXAMINATION OF BORROWER'S RECORDS

35. Borrower will maintain complete and accurate books and records showing in detail the income and expenses of the Property, and will permit Lender and its agents, contractors or representatives, to examine said books and records and all supporting vouchers and data during normal business hours and from time to time upon request by Lender, in such place as such books and records are customarily kept. Borrower will furnish to Lender, within one hundred twenty (120) days after the close of each respective fiscal period annual and semi-annual financial statements (income statements and a balance sheet) for Borrower and the Property. These statements shall be in form acceptable to Lender, shall be prepared in accordance with generally accepted accounting principles, and shall include a rent roll, certified as true and correct by Borrower. The statements shall show in detail all income derived from and expenses incurred in connection with the ownership of the Property, including current annual sales figures for all Major Tenants of the Property if required under the Major Tenant leases or if such financial information is otherwise available. In the event Borrower fails to provide such statements to Lender within the time prescribed above, Borrower shall pay Lender the sum of Two Hundred and No/100 Dollars (\$200.00) in administrative expenses for each successive month for which the statements are delinquent. In the event of a default hereunder, Lender shall have the right to require that said financial statements be audited and certified by a certified public accountant acceptable to Lender, at the sole cost and expense of Borrower.

In addition, at the request of Lender, but in no case more often than once a quarter or more than three times during the term of the Loan, Borrower shall furnish to Lender (i) unaudited financial statements (balance sheet, income statement, cash flow statement and current rent roll) covering operation of the Property for periods other than those set forth in the preceding paragraph; (ii) unaudited financial statements (balance sheets, income statements, and cash flow statements) for Borrower and William A. Shiner; provided, however, that as to William A. Shiner, unless available, cash flow statements for all real estate owned shall not be furnished; and (iii) a portfolio analysis showing annualized cash flow statements (including debt service payments) for all real properties owned by Borrower, and for William A. Shiner, if available. All such statements shall be certified to Lender to be complete, correct, and accurate by the individual (for an individual's statements) or by an authorized representative of the entity (if statements are for a partnership, corporation or limited liability company).

## ALTERATION, REMOVAL AND CHANGE IN USE OF PROPERTY PROHIBITED

36. Borrower covenants and agrees to permit or suffer none of the following without the prior written consent of Lender:

(a) Except as permitted pursuant to the Walgreen's Lease, and provided no default has occurred thereunder, any structural alteration of, or addition to, the Improvements now or hereafter situated upon the Real Property, or the addition of any new buildings or other structure(s) thereto, other than the erection or removal of non-load bearing interior walls; or

(b) The removal, transfer, sale or lease of the Property, except that the renewal, replacement or substitution of fixtures, equipment, machinery, apparatus and articles of personal

property (replacement or substituted items must be of like or better quality than the removed items in their original condition) encumbered hereby may be made in the normal course of business; or

(c) The use of any of the Improvements now or hereafter situated on the Real Property for any purpose other than as a retail shopping center project and related facilities.

#### FUTURE ADVANCES SECURED

37. This Mortgage shall secure not only existing indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of Lender. Upon the request of Borrower, and at Lender's option prior to release of this Mortgage, Lender may make future advances to Borrower. All future advances with interest thereon shall be secured by this Mortgage to the same extent as if such future advances were made on the date of the execution of this Mortgage unless the parties shall agree otherwise in writing, but the total secured indebtedness shall not exceed at any one time a maximum principal amount equal to double the face amount of the Note plus interest, and costs of collection including court costs and Reasonable Attorneys' Fees. Any advances or disbursements made for the benefit or protection of or the payment of taxes, assessments, levies or insurance upon the Property, with interest on such disbursements as provided herein, shall be added to the principal balance of the Note and collected as a part thereof. To the extent that this Mortgage may secure more than one note, a default in the payment of any such note shall constitute a default in the payment of all such notes.

#### EFFECT OF SECURITY AGREEMENT

38. Borrower does hereby grant, and this Mortgage is and shall be deemed to create, grant, give and convey, a mortgage of, a lien and encumbrance upon, and a present security interest in, both real and personal property, including all improvements, goods, chattels, furniture, furnishings, fixtures, equipment, apparatus, appliances and other items of tangible or intangible personal property, hereinabove particularly or generally described and conveyed, whether now or hereafter affixed to, located upon, necessary for or used or useful, either directly or indirectly, in connection with the operation of the Property as a retail shopping center project, and this Mortgage shall also serve as a "security agreement" as that term is defined and used in the Uniform Commercial Code as adopted and in force from time to time in the State, and shall be operative and effective as a security agreement in addition to, and not in substitution for, any other security agreement executed by Borrower in connection with the extension of credit transaction secured hereby. Borrower agrees to, and shall upon the request of Lender, execute and deliver to Lender, in form and content satisfactory to Lender, such financing statements, descriptions of property and such further assurances as Lender, in Lender's sole discretion, may from time to time consider necessary to create, perfect, continue and preserve the lien and encumbrances hereof, and the security interest granted herein, upon and in such real and personal property and fixtures described herein, including all buildings, improvements, goods, chattels, furniture, furnishings, fixtures, equipment, apparatus, appliances, and other items of tangible and intangible personal property herein specifically or generally described and intended to be the subject of the security interest, lien and encumbrance hereby created, granted and conveyed, and in addition, Borrower hereby authorizes Lender to file any financing statement or financing statement amendment covering such collateral or relating to the security interest created herein. Without the prior written consent of Lender, Borrower shall not



create or suffer to be created, pursuant to the Uniform Commercial Code, any other security interest in such real and personal property and fixtures described herein. Upon the occurrence of a default hereunder or Borrower's breach of any other covenants or agreements between the parties entered into in conjunction herewith, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, the remedies provided for in this Mortgage. Lender, at the expense of Borrower, may cause such statements, descriptions and assurances, as herein provided in this Section 38, and this Mortgage, to be recorded and re-recorded, filed and refiled, at such times and in such places as may be required or permitted by law to so create, perfect and preserve the lien and encumbrance hereof upon all of the Property.

#### TERMS OF CONTRACT SURVIVE CLOSING

39. The terms and provisions of the Application/Contract for Mortgage Loan dated February 15, 2002, and any subsequent amendments thereto (hereinafter referred to as the "Contract"), executed by and between Borrower and Lender, are incorporated herein by reference. All terms, covenants, conditions and agreements of the Contract not expressly set forth in this Mortgage, the Note, the Assignment and any of the other Loan Documents additionally securing the Note shall survive the execution and delivery hereof, and remain in full force and effect. In the event any conflict exists between the terms, covenants, conditions and agreements of the Contract and the Loan Documents, the terms, covenants, conditions and agreements of the Loan Documents shall prevail.

#### SUCCESSORS AND ASSIGNS; TERMINOLOGY

40. The provisions hereof shall be binding upon Borrower and the heirs, personal representatives, trustees, successors and assigns of Borrower, and shall inure to the benefit of Lender, its successors and assigns. Where more than one Borrower is named herein, the obligations and liabilities of said Borrower shall be joint and several.

Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: (i) the word "Borrower" shall mean Borrower and/or any subsequent owner or owners of the Property; (ii) the word "Lender" shall mean Lender or any subsequent holder or holders of this Mortgage; (iii) the word "Note" shall mean the Note(s) secured by this Mortgage; and (iv) the word "person" shall mean an individual, trustee, trust, corporation, partnership, limited liability corporation, limited liability partnership, joint venture or unincorporated association. As used herein, the phrase "Reasonable Attorneys' Fees" shall mean fees charged by attorneys selected by Lender based upon such attorneys' then prevailing hourly rates as opposed to any statutory presumption specified by any statute then in effect in the State.

#### NOTICES

41. All notices, reports, requests or other written instruments required or permitted hereunder, shall be in writing, signed by the party giving or making the same, and shall be sent hand-delivered, effective upon receipt, sent by United States Express Mail or by a nationally recognized overnight courier, effective upon receipt, or sent by United States registered or certified mail, postage prepaid, with return receipt requested, deemed effective on the earlier of the day of actual delivery

as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, addressed to the party intended to receive the same at the address set forth below or at such other address as shall be given in writing by any party to another (herein referred to as "Written Notice"):

If to Borrower: Calumet-Dyer, L.L.C.  
c/o William A. Shiner  
Mid Northern Equities  
3100 West Dundee Road, Suite 304  
Northbrook, Illinois 60062

If to Lender: Nationwide Life Insurance Company  
One Nationwide Plaza  
Columbus, Ohio 43215-2220  
Attention: Real Estate Investment Department

**GOVERNING LAW; WAIVER SEVERABILITY.**

42. BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES HEREBY THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, AGAINST LENDER, ITS SUCCESSORS AND ASSIGNS, BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO OR IN CONNECTION WITH ANY OF THE LOAN DOCUMENTS, THE LOAN OR ANY COURSE OF CONDUCT, ACT, OMISSION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, LENDER'S DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER), IN CONNECTION WITH THE LOAN OR THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, IN ANY COUNTERCLAIM WHICH ANY PARTY MAY BE PERMITTED TO ASSERT THEREUNDER, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL LENDER, ITS SUCCESSORS OR ASSIGNS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION LOSS OF BUSINESS PROFITS OR OPPORTUNITY) AND BY ITS EXECUTION HEREOF, BORROWER WAIVES ANY RIGHT TO CLAIM OR SEEK ANY SUCH DAMAGES. This Mortgage and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the internal laws of the State, without regard to principles of conflicts of laws. The parties hereto irrevocably (a) agree that any suit, action or other legal proceeding arising out of or relating to this Mortgage may be brought in a court of record in the State or in the courts of the United States of America located in such State, (b) consent to the non-exclusive jurisdiction of each such court in any suit, action or proceeding, and (c) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. If any clauses or provisions herein contained operate, or would prospectively operate, to invalidate this Mortgage, then such clauses or provisions only shall

be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.

#### RIGHTS OF LENDER CUMULATIVE

43. The rights of Lender arising under the terms, covenants, conditions and agreements contained in this Mortgage shall be separate, distinct and cumulative, and 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 herein to the exclusion of any other provisions, anything herein or otherwise to the contrary notwithstanding. If Borrower is comprised of more than one person or entity, then the liability of each such person and entity hereunder shall be joint and several.

#### MODIFICATIONS

44. This Mortgage cannot be changed, altered, amended or modified except by an agreement in writing and in recordable form, executed by both Borrower and Lender.

#### EXCULPATION

45. Notwithstanding anything contained herein to the contrary, the liability of Borrower is subject to the limited recourse provisions contained in the Exculpation section of the Note, which are incorporated herein and made a part hereof by reference as if fully set forth herein.

#### FULL RECOURSE

46. Notwithstanding any provisions in this Mortgage to the contrary, including, without limitation the provisions set forth in the section captioned "Exculpation" hereinabove, Borrower and William A. Shiner shall be personally liable, jointly and severally, for the entire Loan secured by this Mortgage (including all principal, interest and other charges) in the event (i) Borrower violates the covenant governing the placing of subordinate financing on the Property as set forth in Section 31 of this Mortgage; (ii) Borrower violates the covenant restricting transfers of interest in the Property or transfers of ownership interests in Borrower as set forth in Section 30 of this Mortgage; or (iii) there is filed against Borrower or any guarantor or indemnitor of the Loan a petition in bankruptcy or for the appointment of a receiver, or there commences under any bankruptcy or insolvency law, proceedings for Borrower's relief, or for the compromise, extension, arrangement or adjustment of Borrower's obligations which is not dismissed within thirty (30) days after the filing of same, which shall be only applicable to a voluntary bankruptcy action by Borrower and not by an involuntary bankruptcy action.

#### LENDER NOT A JOINT VENTURER OR PARTNER

47. Borrower and Lender acknowledge and agree that in no event shall Lender be deemed to be a partner or joint venturer with Borrower or any manager or member of Borrower. Without limitation of the foregoing, Lender shall not be deemed to be a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage



or pursuant to any other instrument or document evidencing or securing any of the indebtedness secured hereby, or otherwise.

CAPTIONS

48. The captions set forth at the beginning of the various Sections of this Mortgage are for convenience only, and shall not be used to interpret or construe the provisions of this Mortgage.

TRADING WITH THE ENEMY ACT

49. Neither the making of the Loan to Borrower (or the use of its proceeds) nor the execution of any of the Loan Documents will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed as of the day and year first above written.

CALUMET-DYER, L.L.C., an Indiana limited liability company

By: [Signature]  
William A. Shiner, Manager

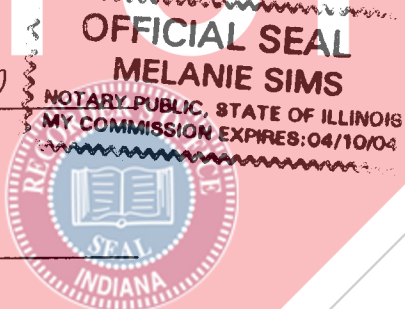
STATE OF ILLINOIS

COUNTY OF Clark

This Document is the property of the Lake County Recorder!

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of May, 2002 by William A. Shiner, Manager on behalf of Calumet-Dyer, L.L.C., an Indiana limited liability company, on behalf of such limited liability company.

Melanie Sims  
Signature of Notary



4/10/04  
Commission Expiration Date

**EXHIBIT A**

Lot 1 in Checker Commercial Park Resubdivision of Lots 1 and 2, an addition to the Town of Dyer, according to the plat thereof recorded March 28, 2002 as Document No. 2002-029353 in Book 91, of plats on Page 54, in Lake County, Indiana.



**EXHIBIT B**

1. Protective Restrictions, Covenants, Limitations and Easements for Checker Commercial Park recorded December 1, 1983 as Instrument No. 736104, and as amended by Waiver of Declarant's Review recorded July 30, 1999 as Instrument No. 99063586 in the Office of the Recorder of Lake County, Indiana. Restrictions do not provide for forfeiture or reversion for violation thereof.
2. Restrictions in Limited Warranty Deed recorded July 30, 1999 as Instrument No. 99063587.
3. Restrictions set forth in Memorandum of Lease recorded January 26, 2001 as Instrument No. 2001-006043.
4. Limited access to U.S. Highway 30 and Calumet Avenue limited access facilities.
5. No driveway access to Calumet Avenue within 200 feet from the North line of Lot 1, extended as shown on Plat Book 51, page 100 and in Plat Book 91, Page 54, and as shown on the survey dated March 18, 2002, as revised, by Thomas E. Hagensee, Registered land Surveyor No. 20100048.
6. Building lines and easements as evidenced on the recorded Plat recorded in Plat Book 91, page 54, in the Office of the Recorder of Lake County, Indiana, and as shown on the survey dated March 28, 2002, as revised, by Thomas E. Hagensee, Registered land Surveyor No. 20100048. Restrictions do not provide for forfeiture or reversion for violation thereof.
7. Rights of tenant, as tenant only, pursuant to that certain Lease Agreement by and between Calumet-Dyer L.L.C., an Indiana limited liability corporation, Lessor and Walgreen Co., an Illinois Corporation, Lessee, dated December 27, 2000 and recorded January 26, 2001 in Instrument No. 2001-006043 in the Office of the Recorder of Lake County, Indiana.
8. Encroachment of the east side of the building onto the Easement for Ingress and Egress evidenced on the recorded Plat recorded in Plat Book 91, page 54, in the Office of the Recorder of Lake County, Indiana, as shown on the survey dated March 18, 2002, as revised, by Thomas E. Hagensee, Registered land Surveyor No. 20100048.

