

MORTGAGE

Assignment of Rents  
And Security Agreement  
(Financing Statement)

# 020014598LD

THIS MORTGAGE (herein "Instrument") is made this 24<sup>th</sup> day of October, 2002 between the Mortgagor, HALPERN PROPERTIES LLC, an Illinois limited liability company authorized to transact business in the State of Indiana (herein "Mortgagor" or "Borrower"), whose address is 687 - 721 Main Street, Schererville, Lake County, Indiana 46320 and the Mortgagee, MERCANTILE NATIONAL BANK OF INDIANA, with offices at 5243 Hohman Avenue, Hammond, Indiana 46320 (herein, together with its successors and assigns, the "Lender").

This Instrument is given to secure the payment of a certain note in the principal sum of Four Million Thirty-seven Thousand Five Hundred and NO/100 Dollars (\$4,037,500.00), and all renewals, extensions, rewrites, refinances, modifications, consolidations and replacements thereof and substitutions therefor, (herein "Note") given to Mercantile National Bank of Indiana by Mortgagor, payable as therein provided. *Notwithstanding any other provision contained herein to the contrary*, the maximum aggregate amount of principal, interest, premium, if any, future advances, other indebtedness, sums (now owed or hereafter owed) advanced to protect the security of this Instrument and expenses of Lender secured by this Instrument is Eight Million Seventy-five Thousand and NO/100 Dollars (\$8,075,000.00).

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, and all renewals, extensions, rewrites, refinances, modifications, consolidations, and replacements thereof and substitutions therefor; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower under the Note; (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument; (d) the performance of the covenants and agreements of Borrower and/or Mortgagor herein contained; and (e) all other liabilities of the Borrower in favor of the Lender, direct or indirect, absolute or contingent, primary or secondary, matured or unmatured, whether or not related to or of the same class as any specific debt secured hereby, now existing or hereafter arising that incorporate the security interest of this Instrument by specific reference to same in the debt instrument; Mortgagor does hereby mortgage, warrant, grant, convey and assign to Lender its successors and assigns, the following described property in Lake County, State of Indiana, to wit:

EXCEPT THE NORTH 5 FEET OF THE WEST 60 FEET THEREOF,  
LOT 1 MAIN STREET PLAZA, AN ADDITION TO THE TOWN OF SCHERERVILLE LAKE  
COUNTY, INDIANA, AS SHOWN IN PLATBOOK 90, PAGE 7, IN LAKE COUNTY, INDIANA,

together with all buildings, improvements, and tenements now or hereafter erected on the property, and all easements, rights, right-of-ways, driveways, pavement, curb, and street front privileges, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and, to the extent owned by Borrower, all fixtures, machinery, equipment, engines, boilers, incinerators, building materials and supplies stored on the property, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, signs, trees and plants; all of which, including improvements, replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Instrument, whether actually physically annexed to said property or not; and all of the foregoing, together with said property are herein referred to as the "Property". The term "Property" specifically excludes all furniture, fixture, equipment and articles of personal property belonging to tenants of Borrower, regardless of whether or how it is attached to the Property.

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property, that, except for any easements, covenants, conditions and restrictions of record listed in the schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property and any space leases (the "Permitted Exceptions"), the Property is unencumbered, and that the Mortgagor will warrant and defend generally the title to the Property against all claims and demands, subject to the Permitted Exceptions.

Covenants. Borrower and/or Mortgagor hereby covenant and agree as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and charges thereon (if applicable) and late charges provided in the Note and all other sums secured by this Instrument.
2. BORROWER BREACH; RIGHT OF LENDER. Upon Borrower's and/or Mortgagor's breach of any covenant or agreement of Borrower and/or Mortgagor in this Instrument beyond the applicable notice and cure period, Lender may pay, in any amount and in any order as Lender shall determine in Lender's sole discretion, any rents, taxes, assessments, insurance premiums, judgment liens, tax liens, mechanic's liens and other charges and impositions attributable to the Property which are now or will hereafter become due which shall then become immediately due and owing by the Borrower and/or Mortgagor to the Lender, and secured by this Instrument pursuant to Paragraph 8 hereof.
3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (i) amounts payable to Lender by Borrower under Paragraph 2 hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to Paragraph 8 hereof; (v) principal of advances made pursuant to Paragraph 8 hereof; (vi) interest payable on any future advance, provided that if more than one future advance is outstanding, Lender may apply payments received among the amounts of interest payable on the future advances in such order as Lender, in Lender's sole discretion, may determine; (vii) principal of any future advance, provided that if more than one future advance is outstanding, Lender may apply payments received among the principal balances of the future advances in such order as Lender, in Lender's sole discretion, may determine; and (viii) any other sums secured by this Instrument in such order as

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Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to Paragraph 8 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this Paragraph 3.

4. CHARGES; LIENS. Mortgagor shall pay all utility, water and sewer charges, taxes, assessments, premiums, and other impositions attributable to the Property. Mortgagor shall promptly furnish to Lender, upon request, all notices of amounts due under this Paragraph 4, and in the event Mortgagor shall make payment directly, Mortgagor shall, upon request, promptly furnish to Lender receipts evidencing such payments. Mortgagor shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property; provided that Mortgagor shall not be required to discharge any such lien so long as Mortgagor shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender; or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

5. HAZARD INSURANCE. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included with the terms "extended coverage", rent loss and such other hazards, casualties, liabilities and contingencies as Lender shall require, and in such amounts and for such periods as Lender shall require. All premiums on insurance policies shall be paid Mortgagor making payment, when due, directly to the carrier, or in the event of the failure of the Mortgagor to make such payment, then in the manner described in Paragraph 2 hereof.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a Standard Mortgage Clause in favor and in form acceptable to Lender. Lender shall have the right to hold the policies; and Mortgagor shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Mortgagor shall deliver to Lender a renewal policy in form satisfactory to Lender.

In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Lender. If the Property is abandoned by Mortgagor, or if Mortgagor fails to respond to Lender within 30 days from the date notice is mailed by Lender to Mortgagor that the insurance carrier offers to settle a claim for insurance benefits, Mortgagor authorizes and empowers Lender as attorney-in-fact for Mortgagor to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Paragraph 5 shall require Lender to incur any expense or take any action hereunder.

To the extent that insurance proceeds are sufficient to restore the Property substantially to its original, pre-claim condition then the insurance proceeds shall be used to restore and repair the Property, with any excess insurance proceeds being applied to amounts secured by this Instrument. If insurance proceeds are insufficient to restore the Property to its original, pre-claim condition, or the cost to make the Mortgagor's improvements following any claim exceeds the amount of the insurance proceeds, then the Mortgagor may use the insurance proceeds to make such repairs and/or improvements only upon the posting of a deposit in amount equal to one hundred ten (110%) percent of the difference between the cost of the repairs and/or improvements and the insurance proceeds. In all other circumstances, the insurance proceeds shall be applied to the sums secured by this Instrument, with the excess, if any, paid to Borrower and/or Mortgagor. Any such application to the sums secured by this Instrument shall not postpone the Borrower's obligations to make the next scheduled payment of interest and principal.

If the insurance proceeds are held by Lender to reimburse Mortgagor for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as the parties may mutually approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the payments referred to in Paragraphs 1 and 2 hereof or change the amounts of such installments. If the Property is sold pursuant to Paragraph 25 hereof, or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon, and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

6. PRESERVATION AND MAINTENANCE OF PROPERTY. Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall keep the Property, including improvements thereon, in good repair, (d) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (e) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security to this Instrument or the rights or powers of Lender. Without the written consent of Lender, unless required by applicable law, Mortgagor shall not remove, demolish or alter any improvement now existing or hereafter erected on the Property so as to make it unfit for its intended use as a commercial professional/business/retail center.

7. USE OF PROPERTY. Unless required by applicable law or unless Lender has otherwise agreed in writing, Mortgagor shall not allow changes in the use the Property for its intended use as a commercial professional/business/retail center. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

8. PROTECTION OF LENDER'S SECURITY. If Borrower and/or Mortgagor fail to perform the covenants and agreements contained in this Instrument beyond all applicable notice and cure periods, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option, may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of reasonable attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in Paragraph 5 hereof.



Any amounts disbursed by Lender pursuant to this Paragraph 8, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this Paragraph 8 shall require Lender to incur any expense or take any action hereunder.

9. **INSPECTION.** Upon reasonable prior notice to the Borrower and subject to the rights of tenants, Lender may make or cause to be made reasonable entries upon and inspections of the Property. Lender agrees to conduct its inspections in a manner that causes the least possible interference with the operations of the tenants at the Property.

10. **BOOKS AND RECORDS.** Borrower and/or Mortgagor shall keep and maintain at all times at Borrower's and/or Mortgagor's address, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Borrower and/or Mortgagor shall furnish to Lender, within one hundred and twenty days after the end of each fiscal year of Borrower, a balance sheet, a statement of income and expenses and a statement of cash flows, each in reasonable detail and certified by Borrower and/or Mortgagor and, if Lender shall require, by an independent certified public accountant.

In addition, where applicable as determined by Lender, but no more often than annually, Borrower and/or Mortgagor shall submit a "rent roll" satisfactory to Lender, and certified to by Borrower and/or Mortgagor, setting forth each tenant's name, the size by square footage of the unit, the suite or unit number, status of rental payments, amount of rental payments, any common area maintenance expense reimbursed by tenant, any expense stops, expiration date of leases and any renewal options, and total rentable square footage of the Property. *Notwithstanding the foregoing*, the Borrower will be required to update its rent roll as new tenants are added to the rent roll.

11. **CONDEMNATION.** Mortgagor shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor shall appear and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Mortgagor authorizes Lender, at Lender's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Lender's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part hereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender for application as set out below.

In the event of a total taking of the Property, Borrower and/or Mortgagor authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Paragraph 3 hereof, with the balance, if any, to Borrower. In the event of a partial taking of the Property, unless Borrower and/or Mortgagor and Lender otherwise agree in writing, Borrower may use the awards, payments, proceeds and damages to restore the Property as nearly as possible to the condition it was in before the taking, but only to the extent that such restoration can be performed without increasing the Borrower's pre-taking loan to value ratio. The remaining proceeds shall be applied first to the sums secured by this Instrument in such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Instrument immediately prior to the date of taking bears to the fair market value of the property immediately prior to the date of taking, with the balance of proceeds paid to Borrower. Unless Borrower and/or Mortgagor and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of any monthly installments referred to in Paragraphs 1 and 2 hereof, or change the amount of such installments. Borrower and/or Mortgagor agree to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

12. **BORROWER AND LIEN NOT RELEASED.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower and/or Mortgagor, Borrower's and/or Mortgagor's successors or assigns, or any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's and/or Mortgagor's breach of any covenant or agreement of Borrower and/or Mortgagor in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, release from the lien of this Instrument any part of the Property, release security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this Paragraph 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, limited liability company, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

13. **FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under Paragraphs 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

14. ESTOPPEL CERTIFICATE. Borrower and/or Mortgagor shall within ten days of written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

15. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is intended to be a security agreement pursuant to the Indiana Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code and for Borrower's and Mortgagor's general intangibles, and Borrower and Mortgagor hereby grant and transfer to Lender a security interest in said items and all of Borrower's and Mortgagor's general intangibles, now owned or hereafter acquired, whether or not presently within the contemplation of the Borrower, Mortgagor and Lender, and the proceeds thereof, to include insurance proceeds and tort claims or settlements. Borrower and Mortgagor agree that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. Borrower and Mortgagor hereby authorize the Lender at the expense of the Borrower and Mortgagor to execute and file a financing statement or statements on its behalf in those public offices deemed necessary by Lender to protect its security interest. In addition, Borrower and Mortgagor agree to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower and/or Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Upon Borrower's and/or Mortgagor's breach of any covenant or agreement of Borrower and/or Mortgagor contained in this Instrument beyond all applicable notice and cure periods, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in Paragraph 25 hereof as to such items. In exercising any of said remedies, Lender may proceed against Borrower's and/or Mortgagor's general intangibles and the items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in Paragraph 25 hereof.

16. REMEDIES CUMULATIVE. Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

17. ACCELERATION IN CASE OF BORROWER'S AND/OR MORTGAGOR'S INSOLVENCY. If a petition under the United States Bankruptcy Code, as such Code may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, insolvency act, be filed by or against the Borrower and/or Mortgagor, or if a trustee or receiver shall be appointed for Borrower and/or Mortgagor or Borrower's and/or Mortgagor's property, or if the Property shall become subject to the jurisdiction of a United States Bankruptcy Court or similar state court, or if Borrower and/or Mortgagor shall make an assignment for the benefit of Borrower's and/or Mortgagor's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's and/or Mortgagor's assets (which petition, appointment, assignment or seizure is not vacated within the applicable time period provided in the Note), then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower and/or Mortgagor, and Lender may invoke any remedies permitted by Paragraph 25 hereof. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's and/or Mortgagor's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to Paragraph 8 hereof.

18. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER AND MORTGAGOR; ASSUMPTION. On sale or transfer of (i) all or any part of the Property, or any interest therein, or (ii) beneficial interests in Borrower and/or Mortgagor (if Borrower and/or Mortgagor is not a natural person or persons but is a limited liability company, partnership, trust or other legal entity), Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by Paragraph 25 hereof.

19. NOTICE. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower and/or Mortgagor provided for in this Instrument or in the Note, other than notice of an interest rate change, shall be given by personal delivery or by mailing such notice by certified mail, return receipt requested, or overnight courier addressed to Borrower and/or Mortgagor at Borrower's and/or Mortgagor's address or at such other address as Borrower and/or Mortgagor may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by personal delivery or by mailing such notice by certified mail, return receipt requested, or overnight courier, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower and/or Mortgagor as provided herein. Any notice provided for in this Instrument or in the Note, other than notice of an interest rate change, shall be deemed to have been given to Borrower and/or Mortgagor or Lender when given in the manner designated herein.

20. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, personal representatives, successors and assigns of Lender and Borrower and/or Mortgagor, subject to the provisions of Paragraph 18 hereof. All covenants and agreements of Borrower and/or Mortgagor shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the Paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

21. GOVERNING LAW; SEVERABILITY. This Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision of this Instrument or the Note conflicts with applicable law, such shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Instrument or in the Note, whether considered separately or together with other charges levied



in connection with this Instrument and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as other charges levied in connection with such indebtedness which constitutes interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

22. WAIVER OF STATUTE OF LIMITATIONS. Borrower and/or Mortgagor hereby waive the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

23. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interest in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property and other collateral hereunder shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property or other collateral hereunder and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

24. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. As part of the consideration for the indebtedness evidenced by the Note, Borrower and/or Mortgagor hereby absolutely and unconditionally assign and transfer to Lender all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property regardless of to whom the rents and revenues of the Property are payable. Borrower and/or Mortgagor hereby authorize Lender or Lender's agents to collect the aforesaid rents and revenues and hereby direct each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Borrower and/or Mortgagor of the breach by Borrower and/or Mortgagor of any covenant or agreement of Borrower and/or Mortgagor in this Instrument beyond all applicable notice and cure periods, Borrower and/or Mortgagor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower and/or Mortgagor, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in Paragraph 3 hereof with the balance, so long as no such breach has occurred, to the account of Borrower and/or Mortgagor, it being intended by Borrower and/or Mortgagor and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower and/or Mortgagor of the breach by Borrower and/or Mortgagor of any covenant or agreement of Borrower and/or Mortgagor in this Instrument beyond all applicable notice and cure periods, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Paragraph 24 as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Borrower and/or Mortgagor as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower and/or Mortgagor of the breach by Borrower and/or Mortgagor shall contain a statement that Lender exercises its rights to such rents. Borrower and/or Mortgagor agrees that commencing upon delivery of such written notice by Lender to Borrower and/or Mortgagor of Borrower's and/or Mortgagor's breach, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefore, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Borrower and/or Mortgagor.

Borrower and/or Mortgagor hereby covenant that Borrower and/or Mortgagor have not executed any prior assignment of said rents, that Borrower and/or Mortgagor have not performed, and will not perform, any acts or have not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this Paragraph 24, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property for more than thirty (30) days prior to the due dates of such rents. Borrower and/or Mortgagor covenant that Borrower and/or Mortgagor will not hereafter collect or accept payment of any rents of the Property more than thirty (30) days prior to the due dates of such rents. Borrower and/or Mortgagor further covenant that Borrower and/or Mortgagor will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's and/or Mortgagor's breach of any covenant or agreement of Borrower and/or Mortgagor in this Instrument beyond all applicable notice and cure periods, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's and/or Mortgagor's breach of any covenant or agreement of Borrower and/or Mortgagor in this Instrument, Borrower and/or Mortgagor hereby expressly consent to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower and/or Mortgagor of the breach by Borrower and/or Mortgagor of any covenant or agreement of Borrower and/or Mortgagor in this Instrument shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, and the costs of discharging any obligation or liability of Borrower and/or Mortgagor as lessor and landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property, and shall be liable to account only for those rents actually received. Lender shall not be liable

to Borrower and/or Mortgagor, anyone claiming under or through Borrower and/or Mortgagor or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Paragraph 24.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to Paragraph 8 hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

25. **ACCELERATION; REMEDIES.** Upon Borrower's and/or Mortgagor's breach of any covenant, warranty or condition or agreement of Borrower and/or Mortgagor in this Instrument that is not cured within thirty (30) days after receipt of written notice from the Lender, in the Note evidencing the indebtedness secured by this Instrument, including but not limited to, the covenants to pay when due any sums secured by this Instrument, or in any other agreement or instrument executed by Borrower and/or Mortgagor in connection herewith, Lender, at Lender's option, may declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may foreclose this Instrument by judicial proceedings, and may invoke any other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees, appraisal fees, expert witness fees, costs of court reporters, travel expenses, costs of documentary evidence, abstracts and title reports.

26. **RELEASE.** Upon payment of all sums secured by this Instrument, Lender shall release this Instrument. Borrower and/or Mortgagor shall pay Lender's reasonable costs incurred in releasing this Instrument.

27. **OTHER ENCUMBRANCES.** Except for leases to tenants, Mortgagor will not further mortgage or encumber the Property or other collateral in any way without the express written consent of the Lender.

28. **WAIVER OF VALUATION AND APPRAISEMENT.** Borrower and/or Mortgagor hereby waives all right of valuation and appraisal.

29. **FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option so long as this Instrument secures indebtedness held by Lender, may make future advances to Borrower. Such future advances, with interest thereon, shall be secured by this Instrument.

30. **HAZARDOUS MATERIALS.** Except as set forth in that certain Phase I Environmental Site Assessment on the Property dated November 2, 2000, by Environmental Assessment Group, Inc., neither Mortgagor nor, to the best of Mortgagor's knowledge, any other party has used, generated, released, discharged, stored, or disposed of any hazardous waste, toxic substance, or related material (cumulatively "Hazardous Materials") in violation of applicable environmental laws in connection with the Property or transported any Hazardous Materials to or from the Property in violation of applicable environmental laws. Mortgagor shall not commit or permit such actions to be taken in the future. The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any governmental authority including, but not limited to, (i) petroleum; (ii) friable or nonfriable asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a "hazardous substance" pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes; (v) those substances, materials or wastes defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; or (vi) those substances, pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), or any amendments or replacements to that statute or any other similar statute, rule, regulation or ordinance now or hereafter in effect.

Mortgagor has not violated and shall not violate any statute, regulation, ordinance, rule of law, contract or other agreement which might materially affect the Property (including, but not limited to, those governing Hazardous Materials) or Lender's rights or interest in the Property pursuant to this Instrument.

The Property: (1) contains no facilities that are subject to reporting under Section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C.11022); (2) is not the site of any underground storage tanks for which notification is required under 42 U.S.C.6991a; (3) is not the site of any underground storage tanks for which registration is required under I.C. § 13-23-1, *et seq.*; (4) is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) in accordance with Section 116 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C.9616); and (5) there are no environmental defects, as that term is defined in I.C. § 13-11-2-70, on the Property.

Borrower and Mortgagor covenant and agree to indemnify, defend and save harmless Lender from all liability, claims, obligations, losses, damages, actions, cases of action, costs and expenses (including, without limitation, reasonable attorneys' fees) which may arise or occur because of Mortgagor's breach of the aforesaid representations and warranties.

31. **TAX AND INSURANCE ESCROW.** In order to more fully protect the security of this Instrument:

A. If Borrower breaches that certain Non-Escrow Loan Agreement dated of even date herewith, then, in addition to the monthly payments required to be made upon the indebtedness secured hereby, the Borrower and/or Mortgagor shall pay to the Lender a sum equal to 1/12<sup>th</sup> of the amount of the annual real estate taxes and assessments from time to time estimated by the Lender will be levied against the Property during the ensuing tax year one (1) month before such taxes and assessments become delinquent.



B. If Borrower breaches that certain Non-Escrow Loan Agreement dated of even date herewith, then in addition to the monthly payments required to be made upon the indebtedness secured hereby and the escrow for real estate taxes provided in Subparagraph A above, the Borrower and/or Mortgagor shall pay to the Lender a sum equal to 1/12th of the ~~amount of the annual real estate taxes and assessments from time to time estimated by the Lender to be assessed against the Property plus~~ an amount equal to 1/12th of the annual premiums from time to time required to maintain the fire and hazard insurance required to be placed on the Property one (1) month before the next premium becomes due.

C. All sums received by the Lender pursuant to this Paragraph 31 shall be held by the Lender for the account of the Borrower and/or Mortgagor and applied to the payment of said taxes, assessments and insurance premiums.

D. If the total payments made by the Borrower and/or Mortgagor to the Lender pursuant to this Paragraph 31 shall exceed the amount at any time required, such excess shall be retained by the Lender to make subsequent payments for real estate taxes and assessments and insurance premiums. If however, the total of such payments shall at any time be insufficient to pay such taxes, assessments and insurance premiums when due, the Borrower and/or Mortgagor shall, one (1) month prior to the due date thereof, pay to the Lender such additional amounts as may be necessary to make up such deficiency. All sums received by the Lender under this Paragraph 31 and held by it at the time when the Borrower and/or Mortgagor shall desire to pay the indebtedness secured by this Instrument in full, may be applied by the Lender upon said indebtedness. In the event the Lender shall determine to foreclose this Instrument, it may, in such event, apply all sums held by it for the payment of taxes, assessments and insurance premiums on the indebtedness secured by this Instrument as Lender may, at its sole discretion, determine.

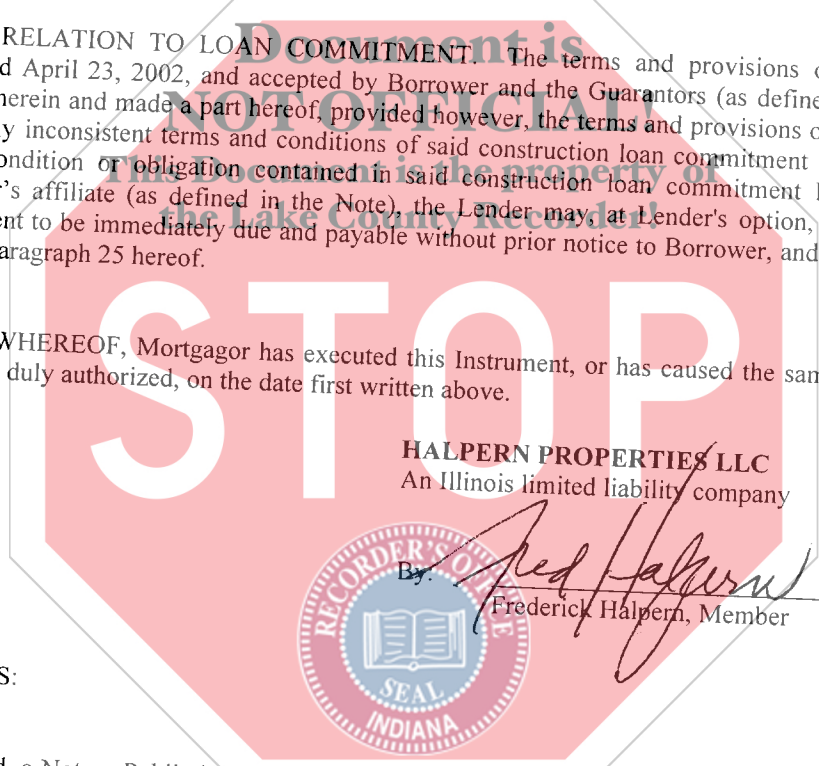
32. REPRESENTATION AND REVIEW. Borrower and Mortgagor acknowledge that Borrower and Mortgagor are represented by legal counsel, and that before executing and delivering the Note, this Instrument and all other agreements, instruments and loan documents, such documents, and the rights of Borrower and Mortgagor, were fully explained to Borrower and Mortgagor by such counsel; and that Borrower and Mortgagor understands the nature and extent of the obligations hereby and thereby undertaken.

33. RELATION TO LOAN COMMITMENT. The terms and provisions of the construction loan commitment letter dated April 23, 2002, and accepted by Borrower and the Guarantors (as defined therein) on April \_\_\_\_, 2002, are incorporated herein and made a part hereof, provided however, the terms and provisions of this Instrument and the Note shall supersede any inconsistent terms and conditions of said construction loan commitment letter. Further, upon the breach of any term, condition or obligation contained in said construction loan commitment letter by Borrower, any Guarantor, or Borrower's affiliate (as defined in the Note), the Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by Paragraph 25 hereof.

IN WITNESS WHEREOF, Mortgagor has executed this Instrument, or has caused the same to be executed by its representatives thereunto duly authorized, on the date first written above.

HALPERN PROPERTIES LLC  
An Illinois limited liability company

By: Frederick Halpern  
Frederick Halpern, Member



STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF LAKE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that on this day personally appeared before me, FREDERICK HALPERN, personally known to me to be the same persons whose names are subscribed to the foregoing Instrument and personally known to me to be a member of HALPERN PROPERTIES, LLC, An Illinois limited liability company, and acknowledged that he signed, sealed and delivered the said Instrument as his free and voluntary act, for the uses and purposes therein set forth, as a member of said limited liability company, and that said Instrument was signed, sealed and delivered in the name and behalf of said limited liability company by the authority of its members as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

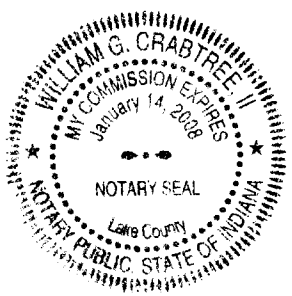
Given under my hand and notarial seal this 24<sup>th</sup> day of October, 2002.

Signed: William G. Crabtree II  
(Notary Public)

Print: William G. Crabtree II

My Commission Expires: 1-14-2008

My County of Residence: LAKE



This Instrument was prepared by:  
WILLIAM G. CRABTREE II  
William G. Crabtree II, P.C.  
5930 Hohman Avenue, Ste. 201  
Hammond, Indiana 46320  
e-mail: [WGCrab2@aol.com](mailto:WGCrab2@aol.com)