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STATE OF ALABAMA)
COUNTIES OF JEFFERSON)
AND SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the "Mortgage" is made and executed this 31st day of Oct, 1989, by Folmar & Associates, an Alabama general partnership (hereinafter referred to as "Mortgagor"), to and in favor of NATIONWIDE LIFE INSURANCE COMPANY, an Ohio corporation, and any subsequent holder(s) hereof, having its principal office at One Nationwide Plaza, Columbus, Ohio 43216, Attention: Real Estate Investments, 33T or at such other place either within or without the State of Ohio, as Mortgagee may from time to time designate (hereinafter referred to as "Mortgagee");

W I T N E S S E T H:

WHEREAS, Mortgagor is justly indebted to Mortgagee in the principal sum of Twelve Million Five Hundred Thousand and No/100 Dollars (\$12,500,000) which indebtedness is evidenced and represented by a Mortgage Note of even date herewith in the sum of \$12,500,000 payable by Mortgagor to Mortgagee (herein, the "Note"); and

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

NOW THEREFORE, in consideration of and in order to secure the repayment of the indebtedness evidenced and represented by the Note, together with interest on such indebtedness, as well as the payment of all other sums of money secured hereby, as hereinafter provided; and to secure the observance, performance and discharge by Mortgagor of all covenants, conditions and agreements set forth in the Note, this Mortgage and in all other documents and instruments executed and delivered by Mortgagor to and in favor of Mortgagee for the purpose of further securing the repayment of the indebtedness evidenced and represented by the Note; and 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 dollar paid by Mortgagee to Mortgagor and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, pledge, deliver, set over, hypothecate, warrant and confirm unto Mortgagee, its successors and assigns forever, with Mortgage Covenants, the

Lawyers Title Ins Corp.

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following described properties, rights and interests (all of which are hereinafter together referred to as the "Property"), to wit:

ALL THAT certain piece, parcel or tract of land or real property of which Mortgagor is now seized and in actual or constructive possession, situated in Jefferson County and in Shelby County, Alabama more particularly described on Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Real Property");

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

TOGETHER WITH all and singular, the tenements, hereditaments, strips and gores, rights-of-way, easements, privileges 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 the Mortgagor 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");

TOGETHER WITH any and all leases, rents, royalties, issues, revenues, profits, proceeds, income and other benefits, including accounts receivable, of, accruing to or derived from said Real Property, Improvements and Appurtenances and any business or enterprise presently situated or hereafter operated thereon and therewith (hereinafter sometimes referred to as the "Rents");

AS WELL AS all of the right, title and interest of Mortgagor in and to all fixtures, goods, chattels, construction materials, 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 Mortgagor, including, without limitation, improvements including furnaces, steam boilers, hot-water boilers, oil burners, pipes, radiators, air-conditioning and sprinkler systems, gas and electric fixtures, carpets, rugs, shades, awnings, screens, elevators, motors, dynamos, cabinets, incinerators, lawn plants and shrubbery and all other furnishings, tools, equipment and machinery, appliances, building supplies, materials, contract rights, accounts receivable, business records, fittings and fixtures of every kind, 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 said Real Property and Improvements as a shopping center, or any other business, enterprise or operation as may hereafter be conducted upon or with said Real Property, Improvements and Appurtenances, including, without limitation, any and all licenses, permits or franchises, used or required in connection with such use, occupancy or operation, together with any and all additions, replacements or substitutions thereto, thereof or therefor as well as the proceeds thereof or therefrom regardless of form (hereinafter sometimes together referred to as "Fixtures and Personal Property", the term expressly excludes any toxic waste or substances deemed hazardous under federal, state or local laws). Mortgagor hereby expressly grants to Mortgagee a present security interest in and a lien and encumbrance upon said Fixtures and Personal Property;

TO HAVE AND TO HOLD all of the same unto Mortgagee and its successors and assigns in fee simple forever;

AND Mortgagor covenants and warrants with and to Mortgagee that Mortgagor 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 Mortgagor 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 Mortgagor 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 1989 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");

PROVIDED ALWAYS, however, that if Mortgagor shall pay unto Mortgagee the indebtedness evidenced by the Note, and if Mortgagor shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every one of the agreements, conditions and covenants of the Note, this Mortgage and all other documents and instruments executed as further evidence of or as security for the indebtedness 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 Mortgagor, which expense Mortgagor agrees to pay;

AND Mortgagor, for the benefit of Mortgagee, and its successors and assigns, does hereby expressly covenant and agree:

PAYMENT OF PRINCIPAL AND INTEREST

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

PERFORMANCE OF OTHER OBLIGATIONS

2. To perform, comply with and abide by each and every one of the covenants, agreements and conditions contained and set forth in the Note, this Mortgage and the other Loan Documents and to comply with all laws, ordinances, rules, regulations and orders of governmental authorities now or hereafter affecting the Property or requiring any alterations or improvements to be made thereon, and perform all of its obligations under any 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, ordinances, rules or regulations, or other laws relating to the division or separation of real property.

PRESERVATION AND MAINTENANCE OF PROPERTY; HAZARDOUS WASTE

3. To keep all Improvements now existing or hereafter erected on the Real Property in good order and repair and not to do or permit waste thereof or thereon, nor to alter, remove or demolish any of said Improvements or any Fixtures and Personal Property attached or appertaining thereto, without the prior written consent of Mortgagee, 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 used in any manner which will increase the premium for or result in a termination or cancellation of the insurance hereinafter required to be kept and maintained on the Property. In furtherance of, and not by way of limitation upon the foregoing covenant, Mortgagor shall effect such repairs as Mortgagee may reasonably require, and from time to time make all needful and proper replacements so that said 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. Mortgagor at all times shall keep the Property and ground water of the Property free of Hazardous Materials (as hereinafter defined). Mortgagor

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shall not knowingly permit its tenants or any third party requiring the consent of Mortgagor to enter the Property, to use, generate, manufacture, store, release, threaten release, or dispose of Hazardous Materials in, on or about the Property or the ground water of the Property in violation of any federal, state or municipal law, decision, statute, rule, ordinance or regulation currently in existence or hereinafter enacted or rendered. Mortgagor shall give Mortgagee prompt written notice of any claim by any person, entity, or governmental agency that a significant release or disposal of Hazardous Materials has occurred on the Property. Mortgagor, through its professional engineers and at its cost, shall promptly and thoroughly investigate suspected Hazardous Materials contamination of the Property. Mortgagor shall forthwith remove, repair, clean up, or detoxify any Hazardous Materials from the Property or the ground water of the Property whether or not such actions are required by law if the Lender reasonably determines that such Hazardous Materials pose a threat to the health or safety of the occupants, tenants, or patrons of the Property, regardless of whether or not the Mortgagor was responsible for the existence of the Hazardous Materials in, on 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, 42 U.S.C. Sec. 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq.; the Clean Air Act, 42 U.S.C. Sec. 7401 et seq.; the Clean Water Act, 33 U.S.C. Sec. 1251 et seq.; and the Hazardous Wastes Management Act of 1978, Alabama Code §22-30-1 et seq.

Mortgagor hereby agrees to indemnify Mortgagee and hold Mortgagee 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 Mortgagee for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging 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 whether or not caused by, or within the control of, Mortgagor (herein, the "Environmental Indemnity"). Except as set forth below, the Environmental Indemnity shall survive any foreclosure or deed in lieu of foreclosure of this Mortgage, or repayment of the Note and satisfaction of this Mortgage; provided, however, Mortgagee agrees that the original Mortgagor hereunder and its general partners shall be released from the Environmental Indemnity if the Note is repaid in full and this Mortgage is satisfied of record. (This release from the

Environmental Indemnity shall not apply to any party other than those specifically set forth herein, nor in any situation except for repayment in full of the Note and satisfaction of this Mortgage).

Mortgagee, 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 covenants, agreements and conditions set forth in this Mortgage.

PAYMENT OF TAXES, ASSESSMENTS AND OTHER CHARGES

4. To pay all and singular such taxes, assessments and public 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 the same become delinquent, and before any interest or penalty shall attach thereto, and to deliver official receipts evidencing the payment of the same to Mortgagee not later than thirty (30) days following the payment of the same. Mortgagor 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, Mortgagor shall give written notice thereof to Mortgagee and Mortgagee may, in its sole discretion, require Mortgagor to post a bond or other collateral satisfactory to Mortgagee in connection with any such action by Mortgagor.

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 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, issues, income, revenues, profits and 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 cost of Mortgagor, without expense to Mortgagee. Mortgagor shall have the right to contest, in good faith and in accordance with applicable laws and procedures, mechanics, and materialmen's liens filed against the Property; provided however, that Mortgagor shall give written notice thereof to Mortgagee, and Mortgagee may, at its sole option, require Mortgagor to post a bond or other collateral satisfactory to Mortgagee (and acceptable to the title company insuring the Mortgage) in connection with any such action by Mortgagor.

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 other lien or encumbrance against the Property.

PAYMENT OF MORTGAGE TAXES

7. To pay any and all taxes which may be levied or assessed directly or indirectly upon the Note and this Mortgage or the debt secured hereby, (except for income taxes payable by Mortgagee) without regard to any law which may be hereafter enacted imposing payment of the whole or any part thereof upon Mortgagee, its successors or assigns. Upon violation of this agreement to pay such taxes levied or assessed upon the Note and this Mortgage, or upon the rendering by any court of competent jurisdiction of a decision that such an agreement by Mortgagor 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 Mortgagee, 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 be part of the debt secured by this Mortgage.

HAZARD INSURANCE

8. To continuously, during the term hereof, keep the Improvements and 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 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, on such forms as may be required by Mortgagee, covering the Property in the amount of the full replacement cost thereof, and covering all loss or abatement of rental or other income without provision for co-insurance in an amount equal to the scheduled rental income of the Property for at least twelve (12) months, and covering loss by flood (if the Property lies in a specified Flood Hazard Area as designated on the Department of Housing and Urban Development Maps, or other flood prone designation) in an amount equal to the lesser of the outstanding principal balance of the indebtedness secured hereby or the maximum amount of coverage made

available with respect to the Property under the National Flood Insurance Program. All such insurance shall be carried with such company or companies as may be acceptable to Mortgagee, which company or companies shall have a current rating equivalent to at least A: VIII as shown in Best's Key Rating Guide, and the original policy or policies and renewals thereof (or, at the sole option of Mortgagee, 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 Mortgagee as additional security for the indebtedness secured hereby. Each such policy of insurance shall contain a non-contributing loss payable clause in favor of and in form acceptable to Mortgagee and shall provide for not less than thirty (30) days' prior written notice to Mortgagee of modification, cancellation, termination or expiration of such policies of insurance. Not less than fifteen (15) days prior to the expiration dates of each policy required of Mortgagor hereunder, Mortgagor will deliver to Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment and renewal satisfactory to Mortgagee; and in the event of foreclosure of this Mortgage, any purchaser or purchasers of the Property shall succeed to all rights of Mortgagor, including any rights to unearned premiums, in and to all insurance policies assigned and delivered to Mortgagee pursuant to the provisions of this Paragraph 8.

Notwithstanding any provisions to the contrary contained above, Mortgagee acknowledges that Wal-Mart and Picadilly Cafeteria, pursuant to the terms and conditions of their leases with Mortgagor, have the right to provide fire and extended coverage for their respective leased premises in an amount of not less than the full replacement cost of their leased premises. To the extent such insurance is provided by Wal-Mart and/or Picadilly Cafeteria, Mortgagor shall have no requirement to provide such fire and extended coverage for the respective premises that are leased by Wal-Mart and Picadilly Cafeteria, provided that all such policies shall designate Mortgagor as a named insured with the non-contributing loss payable clause in favor of and in form acceptable to Mortgagee with provision for not less than thirty days prior written notice to Mortgagee of modification, cancellation, termination, or expiration of such policy of insurance. Mortgagor shall use its best efforts to have such policies issued by companies acceptable to Mortgagee and with a current rating equivalent to at least A: VIII as shown in Best's Key Rating Guide. Mortgagee further acknowledges that Wal-Mart, pursuant to the terms of its lease with Mortgagor, has reserved the right to self-insure its leased premises. Mortgagor hereby transfers, sets over and assigns to Mortgagee any funds owed by Wal-Mart to Mortgagor as a result of the self-insurance obligation of Wal-Mart as provided in its lease with Mortgagor. Notwithstanding any provisions to the contrary above or in the Wal-Mart and Picadilly Cafeteria leases, Mortgagor shall continue

to be fully responsible for providing coverage for loss of abatement of rental or other income as provided above.

In the event of loss by reason of hazards, casualties, contingencies and perils for which insurance has been required of Mortgagor by Mortgagee hereunder, Mortgagor shall give immediate notice thereof to Mortgagee, and Mortgagee, at its option, may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby notified, authorized and directed to make payment for such loss directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly, and Mortgagor hereby authorizes Mortgagee 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, as follows: (a) to the restoration or repair of the insured Improvements, Fixtures and Personal Property, provided that, in the opinion and sole discretion of Mortgagee, such restoration or repair is reasonably practical and, provided further, that, in the opinion and sole discretion of Mortgagee, 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 Mortgagor from other sources; in which event Mortgagee shall make such insurance proceeds available to Mortgagor for the purpose of effecting such restoration or repair; but Mortgagee 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 indebtedness secured hereby, or (b) to the reduction of the indebtedness secured hereby, in which event such proceeds shall be applied at par against the indebtedness secured hereby and the monthly payment due on account of such indebtedness shall be adjusted accordingly. None of such actions taken by Mortgagee shall be deemed to be or result in a waiver or impairment of any equity, lien or right of Mortgagee under and by virtue of this Mortgage, nor will the application of such insurance proceeds to the reduction of the indebtedness 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 indebtedness secured hereby, all right, title and interest of Mortgagor in and to any insurance policies then in force and insurance proceeds then payable shall pass to the purchaser or grantee.

Notwithstanding anything set forth in this Paragraph 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 Mortgagee and provided by Mortgagor, and the amount of such loss

or damage does not exceed Nine Million and No/100 Dollars (\$9,000,000), Mortgagee hereby agrees to allow the proceeds of insurance to be used for the restoration of the Property and to release such insurance proceeds to Mortgagor as such restoration progresses, provided:

(a) Mortgagor is not in default under any of the terms, covenants and conditions of this Mortgage, the Note or any other Loan Documents evidencing or securing the Note;

(b) The Property, after such restoration, will be at least eighty percent (80%) leased pursuant to leases approved in writing by Mortgagee;

(c) The plans and specifications for the restoration of the Property are approved in writing by Mortgagee;

(d) At all times during such restoration, Mortgagor has deposited with Mortgagee funds which, when added to such insurance proceeds, are sufficient to complete the restoration of the Property in accordance with the approved plans and specifications, and further, that the sufficiency of such funds is certified to Mortgagee by Mortgagee's inspecting architect/engineer;

(e) Mortgagor provides payment and performance bonds and builder's all risk insurance for such restoration in form and amount acceptable to Mortgagee;

(f) The insurer under such policies of fire or other casualty insurance does not assert any defense to payment under such policies against Mortgagee, Mortgagor or any tenant of the Property;

(g) The insurance proceeds held by Mortgagee shall be disbursed no more often than once per month and in amounts of not less than Fifty Thousand and No/100 Dollars (\$50,000.00) each (except the final disbursement of such proceeds which may be in an amount less than \$50,000.00). Mortgagee's obligation to make any such disbursement shall be conditioned upon Mortgagee's receipt of written certification from Mortgagee's inspecting architect/engineer that all construction and work for which such disbursement is requested has been completed in accordance with the approved plans and specifications and, further, that Mortgagor has deposited with Mortgagee sufficient funds to complete such restoration in accordance with subparagraph (d) above;

(h) Mortgagee 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 indebtedness secured by this Mortgage; and

(i) Mortgagee shall be entitled to require and to impose such other conditions to the release of such insurance proceeds for restoration of the Property as would be customarily or reasonably required and imposed by a construction lender for a project of similar nature and cost.

LIABILITY INSURANCE

9. To carry and maintain such comprehensive general liability insurance as may from time to time be required by Mortgagee on forms, in amounts and with such companies as may be acceptable to Mortgagee. All such comprehensive general liability insurance shall be carried with a company or companies which have a current rating equivalent to at least A:VIII as shown in Best's Key Rating Guide. Such policy or policies of insurance shall name Mortgagee as an additional insured and shall provide for not less than thirty (30) days' prior written notice to Mortgagee of modification, cancellation, termination or expiration of such policy or policies of insurance. Not less than fifteen (15) days prior to the expiration dates of such policy or policies, Mortgagor will deliver to Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment and renewal satisfactory to Mortgagee. The original policy or policies and all renewals thereof (or, at the sole option of Mortgagee, 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 Mortgagee as additional security for the indebtedness secured hereby.

COMPLIANCE WITH LAWS

10. To observe, abide by and comply with all statutes, ordinances, laws, orders, requirements or decrees relating to the Property enacted, promulgated or issued by any federal, state, county or municipal authority or any agency or subdivision thereof having jurisdiction over Mortgagor or the Property, 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 Mortgagor in connection with any existing, presently contemplated or future use 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 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 Mortgagee.

OBLIGATIONS OF MORTGAGOR AS LESSOR

12. To perform every obligation of Mortgagor (as the lessor) and enforce every obligation of the lessee in any and every lease 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, nor collect for more than thirty (30) days in advance 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 Lease or any such rents to any party other than Mortgagee, without the prior written consent of Mortgagee. In the event of default under any such Occupancy Lease by reason of failure of the Mortgagor to keep or perform one or more of the covenants, agreements or conditions thereof, Mortgagee is hereby authorized and empowered, and may, at its sole option, remedy, remove or cure any such default, and further, Mortgagee may, at its sole option and in its sole discretion, pay any sum of money deemed necessary by it 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 it may consider necessary or reasonable in connection therewith, and Mortgagor shall repay on demand all such sums so paid or advanced by Mortgagee together with interest thereon until paid at the lesser of either (i) the highest rate then allowed by the laws of the State of Alabama, 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; all of such sums, if unpaid, shall be added to and become part of the indebtedness secured hereby. All such Occupancy Leases hereafter made shall be approved by Mortgagee and (a) shall be at competitive market rental rates then prevailing in the geographic area for shopping centers comparable to the Property, (b) shall have lease terms of not less than three (3) years, and (c) at Mortgagee's option, shall be superior or subordinate in all respects to the lien of this Mortgage. Provided, however, that Mortgagee shall not require approval in advance of any Occupancy Leases which conform to the Mortgagor's Form Lease (as hereinafter defined) as previously approved by Mortgagee, except as set forth below.

Mortgagee has heretofore approved a form of Occupancy Lease to be used by Mortgagor in connection with the Property (hereinafter referred to as the "Form Lease"). Mortgagor shall not, without the prior written consent of Mortgagee, modify or alter the Form Lease in any material respect. In addition, Mortgagor shall not, without the prior written consent of Mortgagee, surrender 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. Mortgagor shall furnish Mortgagee with copies of all executed Occupancy Leases of all or any part of the Property now existing or hereafter made, and Mortgagor shall assign to Mortgagee (which assignment shall be in form and content acceptable to Mortgagee), as additional security for the Note, all Occupancy Leases now existing or hereafter made for all or any part of the Property.

Notwithstanding the foregoing approval by Mortgagee of Mortgagor's Form Lease, Mortgagee hereby specifically reserves the right to approve all prospective tenants under all Occupancy Leases hereafter proposed to be made if: (i) the term thereof, including options to renew the same, exceeds five (5) years; and (ii) the net rentable area to be occupied thereunder, including expansion options, exceeds ten thousand (10,000) square feet (the tenants under such leases being hereinafter referred to as "Major Tenants"). Mortgagor shall notify Mortgagee in writing of all prospective Major Tenants and shall deliver to Mortgagee, at Mortgagor'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. Said financial statement shall be certified as true and correct by the Major Tenant, or, if available, by a certified*public accountant.

MAINTENANCE OF PARKING AND 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 Mortgagee or heretofore or hereafter required by any governmental body, agency or authority having jurisdiction over Mortgagor or the Property, and not to alter, erect, build or construct upon any portion of the Property, any building or structure of any kind whatsoever, the erection, building or construction of which has not been previously approved by Mortgagee in writing, which approval shall be at the sole discretion of Mortgagee.

EXECUTION OF ADDITIONAL DOCUMENTS

14. To do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, assurances and other instruments, including security agreements and financing statements, as Mortgagee shall from time to time require for the purpose of better assuring, conveying, assigning, transferring and confirming unto Mortgagee the Property and rights hereby encumbered, created, conveyed, assigned or intended now or hereafter so to be encumbered, created, conveyed or assigned or which Mortgagor may now be or may hereafter become bound to encumber, create, convey, or assign to Mortgagee, or for the purpose of carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registration, or recording this Mortgage, and to pay all filing, registration, or recording fees and all taxes, costs and other expenses, including attorneys' fees, incident to the preparation, execution, acknowledgment, delivery, and recordation of any of the same.

AFTER-ACQUIRED PROPERTY SECURED

15. It is understood and agreed that all right, title and interest of Mortgagor 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 Mortgagor, or constructed, assembled or placed by Mortgagor 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, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely and with the same effect as though now owned by Mortgagor and specifically described herein, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances, or assignments thereof or security interests therein as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

PAYMENTS BY MORTGAGEE ON BEHALF OF MORTGAGOR

16. Should Mortgagor fail to make payment of any taxes, assessments or public charges on or with respect to the Property before the same shall become delinquent, or shall fail to make payment of any insurance premiums or other charges, impositions, or liens herein or elsewhere required to be paid by Mortgagor, then Mortgagee, at its sole option, 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 and tax sales. In the case of any such payment by Mortgagee, Mortgagor agrees to reimburse Mortgagee, upon demand therefor, the amount of such payment of any fees and expenses attendant in making the same, together with interest thereon at the lesser of either (i) the highest rate then allowed by the laws of the State of Alabama 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; and until paid such amounts and interest shall be added to and become part of the debt secured hereby to the same extent that this Mortgage secures the repayment of the indebtedness evidenced by the Note. In making payments hereby authorized by the provisions of this paragraph, Mortgagee may do so whenever, in its sole judgment and discretion, such advance or advances are necessary or desirable to protect the full security intended to be afforded by this instrument. Neither the right nor the exercise of the right herein granted unto Mortgagee to make any such payments as aforesaid shall preclude Mortgagee from exercising its option to cause the whole indebtedness secured hereby to become immediately due and payable by reason of Mortgagor's default in making such payments as hereinabove required.

FUNDS HELD BY MORTGAGEE FOR TAXES, ASSESSMENTS AND OTHER CHARGES

17. In order to more fully protect the security of this Mortgage, Mortgagor shall deposit with Mortgagee, together with and in addition to each monthly payment due on account of the indebtedness evidenced by the Note, an amount equal to one-twelfth (1/12) of the annual total of such taxes, assessments and other charges (all as estimated by Mortgagee in its sole discretion) so that, at least thirty (30) days prior to the due date thereof, Mortgagee shall be able to pay in full all such taxes, assessments and other charges as the same shall become due, and Mortgagee may hold the sums so deposited without interest and commingled with its general funds and apply the same to the payment of said taxes, assessments or other charges as they become due and payable. If, at any time the funds so held by Mortgagee are insufficient to pay such taxes, assessments or other charges as they become due and payable, Mortgagor shall immediately, upon notice and demand by Mortgagee, deposit with Mortgagee the amount of such deficiency, and the failure on the part of Mortgagor to do so shall entitle Mortgagee, at its sole option, to make such payments in accordance with its right and pursuant to the conditions elsewhere provided in this Mortgage. Whenever any default exists under this Mortgage, Mortgagee may, at its sole option but without an obligation so to do, apply any funds so held by it pursuant to this Paragraph 17 toward the payment of the indebtedness secured hereby, in such order and manner of application as Mortgagee may elect.

CONDEMNATION: EMINENT DOMAIN

18. All awards and other compensation heretofore or hereafter made to Mortgagor and all subsequent owners of the Property in any taking by eminent domain or recovery for inverse condemnation, either 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 street, are hereby assigned to Mortgagee, and Mortgagor hereby appoints Mortgagee as its attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of said attorney, on behalf of Mortgagor, 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 its sole option:

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

or

(ii) to hold said proceeds without any allowance of interest and make the same available for restoration or rebuilding the Property. In the event that Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of the restoration or rebuilding of the buildings or improvements on the Property, such proceeds shall be made available in the manner and under the conditions that Mortgagee may require as provided under Paragraph 8 hereof. If the proceeds are made available by Mortgagee to reimburse Mortgagor 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 indebtedness secured hereby at par.

Mortgagor further covenants and agrees to give Mortgagee immediate notice of the actual or threatened commencement of any proceedings under eminent domain and to deliver to Mortgagee copies of any and all papers served in connection with any

proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, 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 Mortgagee for the purpose of validly and sufficiently assigning all such awards and other compensation heretofore or hereafter made to Mortgagee (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 any part of any of the Improvements situated on the Property shall be condemned by any governmental authority having jurisdiction, or if lands constituting a portion of the Property shall be condemned by any governmental authority having jurisdiction, such that the Property is in violation of applicable parking, zoning or other ordinances, or fails to comply with the terms of the Occupancy Leases, and in either of said events, Mortgagee shall be entitled to exercise any or all remedies provided or referenced in this Mortgage.

COSTS OF COLLECTION

19. In the event that the Note secured hereby are placed in the hands of an attorney for collection, or in the event that Mortgagee 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 security interest granted or created hereby or herein, or for the recovery or protection of said indebtedness or the Property, or for the foreclosure of this Mortgage, Mortgagor shall save and hold Mortgagee harmless from and against any and all costs and expenses incurred by Mortgagee on account thereof, including, but not limited to, attorneys, fees, title searches and abstract and survey charges, at all trial and appellate levels, and Mortgagor shall repay, on demand, all such costs and expenses, together with interest thereon until paid at the lesser of either (i) the highest rate then allowed by the laws of the State of Alabama 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; all of which sums, if unpaid, shall be added to and become a part of the indebtedness 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 document or instrument executed as security for the Note, shall bear interest until paid at the lesser of either (i) the highest rate then allowed by the laws of the State of Alabama 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.

SAVINGS CLAUSE: SEVERABILITY

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 Fees shall not exceed the limits imposed by the laws of the State of Alabama or the United States of America relating to maximum allowable charges of interest. Mortgagee shall not be entitled to receive, collect or apply, as interest on the indebtedness evidenced by the Note, any amount in excess of the maximum allowable legal rate of interest permitted to be charged by applicable law. In the event Mortgagee 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 indebtedness evidenced by the Note. If the unpaid principal balance of such indebtedness is paid in full, any remaining excess shall be forthwith paid to Mortgagor. If any clauses or provisions herein contained shall 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.

BANKRUPTCY, REORGANIZATION OR ASSIGNMENT

22. It shall be a default hereunder if Mortgagor or any general partner of Mortgagor shall: (a) consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of Mortgagor's assets, or (b) 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, or (c) make a general assignment for the benefit of creditors, or (d) file a petition under or take advantage of any insolvency law, or (e) file an answer admitting the material allegations of a petition filed against Mortgagor or any general partner of Mortgagor in any bankruptcy, reorganization or insolvency proceeding and fail to cause the dismissal of such

petition within thirty (30) days after the filing of said petition, or (f) take action for the purpose of effecting any of the foregoing, or (g) if any order, judgment or decree shall be entered upon an application of a creditor of Mortgagor or any general partner of Mortgagor by a court of competent jurisdiction approving a petition seeking appointment of a receiver or trustee of all or a substantial part of Mortgagor's assets or any of Mortgagor's general partner'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 Mortgagor that time is of the essence hereof in connection with all obligations of Mortgagor herein, in the Note, the Assignment and any of the other Loan Documents evidencing or securing the Note.

If default be made in the payment of any 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 Mortgagee to Mortgagor in regard to such Monetary Default (as hereinafter defined), or in the event a breach or default be made by Mortgagor in any one of the agreements, conditions and covenants of said Note, this Mortgage or any other Loan Documents evidencing or securing the Note, or in the event that each and every one of said agreements, conditions and covenants are not otherwise 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 from Mortgagee to Mortgagor, has been delivered in the manner prescribed in Paragraph 41 hereof, Mortgagee, at its sole option, may thereupon or thereafter declare the indebtedness evidenced by the Note, as well as all other monies secured hereby, including, without limitation, all prepayment premiums and late payment charges, to be forthwith due and payable, whereupon the principal of and the interest accrued on the indebtedness evidenced by the Note and all other sums secured by this Mortgage, at the option of Mortgagee, shall immediately become due and payable as if all of said sums of money were originally stipulated to be paid on such day, and thereupon, Mortgagee may avail itself of all rights and remedies provided by law and may 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. Mortgagee shall have no obligation to give Mortgagor notice of, or any period to cure, any Monetary Default or any Incurable Default (as hereinafter defined) prior to exercising its right, power and privilege to accelerate the maturity of the indebtedness evidenced 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, the payment of taxes, assessments and insurance premiums when due as provided in this Mortgage. As used herein, the term "Non-Monetary Default" shall mean any default which is not a Monetary Default or an Incurable Default. As used herein, the term "Incurable Default" shall mean (i) any voluntary or involuntary sale, assignment, mortgaging or transfer in violation of the covenants contained herein; or (ii) if Mortgagor, or any person or entity comprising Mortgagor, 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).

If default shall occur as hereinabove set forth, the Mortgagee, or the holder of the debt hereby secured, shall have the right to enter upon and take possession of the Property and after, or without, taking such possession of the same, sell the Property at public outcry, in front of the courthouse door of the county wherein the Property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Property so purchased in the name and on behalf of the Mortgagor, and the certificate of the holder of the mortgage indebtedness appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. In the alternative, the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages. The Mortgagee, or the then holder of the indebtedness secured by this Mortgage, may bid at any such sale and become the purchaser of the Property if the highest bidder therefor. The proceeds of any such sale shall be applied: (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable fee for Mortgagee's attorneys, and expenses for such services as may be, or have been, performed in any one or more of (i) the foreclosure of this Mortgage, or (ii) the collection of said indebtedness (iii) the pursuits of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings instituted by the Mortgagor, or anyone liable for said indebtedness, or interested in the Property, to prevent or delay, by any means, the exercise of said power of sale or the foreclosure of this Mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay; (c) to the payment and satisfaction of said indebtedness and interest thereon to the date of sale in such order of application as the

Mortgagee shall determine; (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. Mortgagor hereby expressly waives all rights to require marshalling of assets by Mortgagee. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money. The Property may be sold in one parcel, several parcels or groups of parcels, and Mortgagee shall be entitled to bid at the sale, and, if Mortgagee is the highest bidder for the Property or any part or parts thereof, Mortgagee shall be entitled to purchase the same. The failure or omission on the part of Mortgagee 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 Mortgagee when entitled to do so in any one or more instances, or the acceptance by Mortgagee of partial payment of the indebtedness secured hereby, whether before or subsequent to Mortgagor'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 maturity of the Note, once claimed hereunder by Mortgagee, at the option of Mortgagee, may be rescinded by written acknowledgment to that effect by Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity.

PROTECTION OF MORTGAGEE'S SECURITY

24. At any time after default hereunder, Mortgagee is authorized, without notice and in its sole discretion, to enter upon and take possession of the Property or any part thereof and to perform any acts which Mortgagee deems necessary or proper to conserve the security herein intended to be provided by the Property, to operate any business or businesses conducted thereon and to collect and receive all rents, issues and profits 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, in the sole discretion of Mortgagee, a receivership may be necessary to protect the Property or its rents, issues, revenue, profits or 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 indebtedness, or to enforce this Mortgage, Mortgagee, 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, issues, revenues, profits, proceeds and income thereof, to make all necessary and needful repairs, and to pay all taxes, assessments and charges against the Property and all premiums for insurance thereon, 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 indebtedness secured hereby or in such other manner as the said court shall direct. Such receivership shall, at the option of Mortgagee, continue until full payment of all sums hereby secured or until title to the Property shall have passed by sale under this Mortgage. Mortgagor 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 Mortgagee.

RIGHTS AND REMEDIES CUMULATIVE; FORBEARANCE NOT A WAIVER

26. The rights and remedies herein provided are cumulative and Mortgagee, 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 Mortgagee 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 Mortgagee by law, and Mortgagor further agrees that no delay or omission on the part of Mortgagee 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 Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee.

MODIFICATION NOT AN IMPAIRMENT OF SECURITY

27. Mortgagee, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior mortgages or other liens thereon, may release any part of the security described herein or may release any person or entity liable for any indebtedness secured hereby without in any way affecting the priority of this Mortgage, to the full extent of the indebtedness remaining unpaid hereunder, upon any part of the security not expressly released. Mortgagee may, at its option and within its sole discretion, also agree with any party obligated on said indebtedness, or having any interest in the security described herein, to extend the time for payment of any part or all of the indebtedness 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 MANAGER

28. The exclusive manager of the Property shall be Mortgagor or such other manager as may be first approved in writing by Mortgagee. The exclusive leasing agent of the Property, if other than the foregoing party, shall be first approved in writing by Mortgagee. The governing management and leasing contracts shall be satisfactory to and subject to the written approval of Mortgagee throughout the term of the indebtedness secured hereby. Upon default in either of these requirements, then the whole of the indebtedness hereby secured shall, at the election of Mortgagee, become immediately due and payable, together with any default premium and late payment charges required by the Note, and Mortgagee shall be entitled to exercise any or all remedies provided for or referenced in this Mortgage.

MODIFICATION NOT A WAIVER

29. In the event Mortgagee: (a) releases, as aforesaid, any part of the security described herein or any person or entity liable for any indebtedness secured hereby, or (b) grants an extension of time for the payment of the Note, or (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 Mortgagor, 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 Mortgagee 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 MORTGAGOR: ASSUMPTION

30. Except as set forth in Paragraph 36 (b) hereof, 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 Mortgagor, whether voluntarily or by operation of law (other than by the death or permanent disability of a general partner of Mortgagor), without the prior written consent of Mortgagee, shall constitute a default under the terms of this Mortgage and entitle Mortgagee, at its sole option, to accelerate all sums due on the Note together with any prepayment premiums, late payment charges, or any other amounts secured hereby. Mortgagee 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) Mortgagee acknowledges in writing that, in its sole discretion, the creditworthiness of the proposed transferee and the ability and experience of the proposed transferee to operate the Property are satisfactory to Mortgagee, and (b) Mortgagee and the proposed transferee shall enter into an agreement in writing that (i) the interest payable on the indebtedness secured hereby shall be at such rate as Mortgagee shall determine, (ii) the repayment schedule as set forth in the Note shall be modified by Mortgagee in its sole discretion to amortize the then remaining unpaid principal balance secured hereby over a period of not less than twenty-five (25) years without a change in the maturity date of the Note, and (iii) an assumption fee to be determined by Mortgagee may be charged by Mortgagee in its sole discretion. In the event the ownership of the Property, or any part thereof, shall become vested in a person or entity other than Mortgagor, whether with or without the prior written consent of Mortgagee, Mortgagee may, without notice to Mortgagor, 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 Mortgagor without in any way vitiating or discharging Mortgagor's liability hereunder or under the Note. No sale, transfer or conveyance of the Property, no forbearance on the part of Mortgagee and no extension of the time for the payment of the debt hereby secured given by Mortgagee shall operate to release, discharge, modify, change, or affect the original liability of Mortgagor, either in whole or in part, unless expressly set forth in writing executed by Mortgagee. Notwithstanding anything contained herein to the contrary, Mortgagor hereby waives any right it now has or may hereafter have to require Mortgagee to prove an impairment of its security as a condition to exercise Mortgagee's rights under this Paragraph 30.

Notwithstanding anything contained in this Paragraph 30 to the contrary, Mortgagee shall permit one (1) bona fide arm's length transfer of the Property to any transferee; provided, however, that no such transfer shall be valid or permitted hereunder unless: (i) Mortgagee receives prior written notice of such proposed transfer, (ii) such proposed transferee has been approved in writing by Mortgagee (taking into account such factors as transferee's creditworthiness, business experience, and managerial capabilities), (iii) Mortgagee is paid a transfer fee in the amount of One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000), and (iv) Mortgagor pays all fees and expenses incurred by Mortgagee in connection with such transfer and assumption, including, without limitation, inspection and investigation fees and reasonable attorneys' fees (as hereinafter defined). 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 Mortgagee to exercise all rights and remedies provided in this

Mortgage. Upon approval by Mortgagee of any such transferee and upon the transfer of the Property and compliance by Mortgagor with the terms of this paragraph, Mortgagor shall have no further liability under the Note, this Mortgage or the Loan Documents for matters occurring subsequent to such approved transfer.

FURTHER ENCUMBRANCE PROHIBITED; SUBROGATION

31. So long as the Note remain unpaid, Mortgagor shall neither voluntarily nor involuntarily permit the Property 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 Mortgagee, and the imposition of any such secondary lien, mortgage, security interest or encumbrance shall constitute an event of default hereunder and entitle Mortgagee, at its sole option, to declare all sums due on account of the Note to be and become immediately due and payable. In the event that Mortgagee shall hereafter give its written consent to the imposition of any such secondary lien, mortgage, security interest or other encumbrance upon the Property, Mortgagee, at its sole option, shall be entitled to accelerate the maturity of the Note and exercise any and all remedies provided and available to Mortgagee hereunder 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, Mortgagee shall be subrogated to the rights and lien priority of the holder of the lien so discharged.

CONVEYANCE OF MINERAL RIGHTS PROHIBITED

32. Mortgagor 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 Mortgagor 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 from Mortgagee express written permission therefore which permission shall not be valid until recorded in the Office of the Judge of Probate of Jefferson and Shelby Counties, Alabama. Mortgagor further agrees that if Mortgagor shall make, execute, or enter into any such lease or attempt to grant any such mineral rights without such prior written permission of Mortgagee, then Mortgagee shall have the option, without notice, to declare the same to be a default

hereunder and to declare the indebtedness hereby secured immediately due and payable. Whether or not Mortgagee shall consent to such lease or grant of mineral rights, Mortgagee shall receive the entire consideration to be paid for such lease or grant of mineral rights, with the same to be applied to the indebtedness hereby secured; provided, however, that the acceptance of such consideration shall in no way impair the lien of this Mortgage on the Property.

INDEMNIFICATION OF MORTGAGEE FOR EXERCISE OF MINERAL RIGHTS

33. Pursuant to that certain deed dated the 5th day of July, 1945 and recorded in Deed 3642, Page 258 in the Probate Office of Jefferson County, Alabama, title to all of the oil, gas, petroleum and sulphur for the Property and certain rights and privileges incident thereto were reserved by the grantor thereunder (the "Mineral Exception"). Mortgagor agrees to carry hazard insurance in an amount reasonably satisfactory to the Mortgagee insuring Mortgagee against any loss or damage from the Property as a result of a subsidence or other surface disturbance arising out of the Mineral Exception. In the event that such insurance is not carried by the Mortgagor, the Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from any loss or damage of any kind to the Property in connection with the exercise of the rights and privileges granted pursuant to the Mineral Exception.

ESTOPPEL CERTIFICATION BY MORTGAGOR

34. Mortgagor, upon request therefor made either personally or by mail, shall certify in writing to Mortgagee (or any party designated by Mortgagee) in form satisfactory to Mortgagee 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 Mortgage debt. Such certification shall be made by Mortgagor within ten (10) days if the request is made personally, or within twenty (20) if the request is made by mail.

CROSS-DEFAULT

35. The Note are also secured by the terms, conditions and provisions of an Assignment of Leases, Rents and Profits (hereinafter referred to as the "Assignment") recorded in the Office of the Judge of Probate of Jefferson County, Alabama, and, additionally, may be secured by contracts or agreements of guaranty or other security instruments. The terms, conditions and provisions 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 aforesaid 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 Mortgagee shall not prejudice or in any manner affect the right of Mortgagee to enforce any other Loan Document; it being understood and agreed that Mortgagee 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 Mortgagee, in its sole discretion, shall determine.

EXAMINATION OF MORTGAGOR'S RECORDS

36. Mortgagor will maintain complete and accurate books and records showing in detail the income and expenses of the Property, and will permit Mortgagee and its 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 Mortgagee, in such place as such books and records are customarily kept, and will furnish to Mortgagee, within one hundred twenty (120) days after the close of each calendar year, a balance sheet and profit and loss statement for Mortgagor and the Property prepared by Mortgagor, certified by a general partner to be true and correct and showing in detail all income derived from and expenses incurred in connection with the ownership of the Property. In the event Mortgagor fails to provide such statements to Mortgagee within the time prescribed above, Mortgagor shall pay Mortgagee the sum of Two Hundred and No/100 Dollars (\$200.00) for each successive month for which statements are delinquent. In the event of default hereunder, Mortgagee shall have the right to require that said financial statements be audited and certified by a certified public accountant acceptable to Mortgagee, at the sole cost and expense of Mortgagor.

ALTERATION, REMOVAL AND CHANGE IN USE OF PROPERTY PROHIBITED

37. Mortgagor covenants and agrees to permit or suffer none of the following without the prior written consent of Mortgagee:

(a) 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; 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 shopping center project and related facilities.

FUTURE ADVANCES SECURED

38. This Mortgage shall secure not only existing indebtedness, but also the future advances as specifically provided herein, whether such advances are obligatory or to be made at the option of Mortgagee, to the same extent as if such future advances were made on the date of the execution of this Mortgage. Any advances or disbursements shall be 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, and 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 mortgage note, a default in the payment of any such mortgage note shall constitute a default in the payment of all such mortgage notes.

EFFECT OF SECURITY AGREEMENT

39. Mortgagor 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 shopping center project, and this Mortgage shall also serve as a "security agreement" within the meaning of that term as used in the Uniform Commercial Code as adopted and in force from time to time in the State of Alabama, and shall be operative and effective as a security agreement in addition to, and not in substitution for, any other security agreement executed by Mortgagor in connection with the extension of credit transaction secured hereby. Mortgagor agrees to and shall, upon the request of Mortgagee, execute and deliver to Mortgagee, in form and content satisfactory to Mortgagee, such financing statements, descriptions of property and such further assurances as Mortgagee, in its 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. Mortgagee, at the expense of Mortgagor, may or shall cause such statements, descriptions and assurances, as herein provided in this Paragraph 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 COMMITMENT SURVIVE CLOSING

40. Unless otherwise waived or modified by the Mortgagee, the terms and provisions of the loan commitment from Mortgagee to Mortgagor are incorporated herein by reference, said commitment being dated July 31, 1989, and any subsequent amendments thereto (hereinafter referred to as the "Commitment"). All terms and conditions of the Commitment not expressly set forth in this Mortgage, the Note, the Assignment and any other Loan Documents additionally securing the Note shall survive the closing hereof and remain in full force and effect. In the event any conflict exists between the terms, conditions and provisions of the Commitment and the Loan Documents, the terms, conditions and provisions of the Loan Documents shall prevail.

SUCCESSORS AND ASSIGNS; TERMINOLOGY

41. The provisions hereof shall be binding upon Mortgagor and the successors and assigns of Mortgagor, and inure to the benefit of Mortgagee and its successors and assigns. Where more than one Mortgagor is named herein, the obligations and liabilities of said Mortgagor shall be joint and several. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean "Mortgagor and/or any subsequent owner or owners of the Property," the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage," the word "Note" shall mean "Note(s) secured by this Mortgage," and the word "person" shall mean "an individual, trustee, trust, corporation, partnership or unincorporated association." As used herein, the phrase "reasonable attorneys' fees" shall mean fees charged by attorneys selected by Mortgagee based upon such attorneys' then prevailing hourly rates as opposed to any statutory presumption specified by any statute then in effect in the State of Alabama.

NOTICES

42. All notices hereunder shall be deemed to have been duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, to the parties at the following addresses (or at such other addresses as shall be

given in writing by any party to the others), and shall be deemed complete upon any such mailing:

TO MORTGAGOR: Folmar & Associates
P. O. Box 12
Montgomery, Alabama 36101

TO MORTGAGEE: NATIONWIDE LIFE INSURANCE COMPANY
One Nationwide Plaza
Columbus, Ohio 43216
Attention: Real Estate Investments, 33T

GOVERNING LAW

43. This instrument is to be governed by and construed in accordance with the laws of the State of Alabama and, if controlling, by the laws of the United States.

RIGHTS OF MORTGAGEE CUMULATIVE

44. The rights of Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and no act of Mortgagee 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.

MODIFICATIONS

45. This Mortgage cannot be changed, altered, amended or modified except by an agreement in writing and in recordable form, executed by both Mortgagor and Mortgagee.

EXCULPATION

46. Mortgagor shall have no personal liability with respect to the payment of principal, interest, Prepayment Premiums, attorneys' fees and other obligations under the Note or hereunder; and accordingly, Mortgagee's source of satisfaction of said indebtedness and Mortgagor's other obligations hereunder and under the other Loan Documents shall be limited to the Property and Mortgagee's receipt of the rents, issues and profits from the Property and Mortgagee shall not seek to procure payment out of any other assets of Mortgagor or any person or entity comprising Mortgagor, or to seek any judgment for any sums which are or may be payable under the Note, this Mortgage or any of the other Loan Documents, as well as any claim or judgment (except as hereafter provided) for any deficiency remaining after foreclosure of this Mortgage. Notwithstanding the above, nothing herein contained shall be deemed to be a release or impairment of the Note or the security therefor intended by this Mortgage and the other Loan

Documents, or be deemed to preclude Mortgagee from exercising its rights to foreclose this Mortgage.

Notwithstanding the foregoing, it is expressly understood and agreed that the aforesaid limitation on liability shall in no way affect or apply to Mortgagor's continued personal liability for:

(1) fraud or misrepresentation made in or in connection with the Note or any of the other Loan Documents governing, securing or pertaining to the payment thereof;

(2) failure to pay taxes or assessments, or to pay charges for labor, materials or other charges which can create liens on any interest of Mortgagor in any portion of the Property which is security for the Note;

(3) the misapplication of (i) proceeds of insurance covering any portion of the Property; or (ii) proceeds of the sale or condemnation of any portion of the Property; or (iii) rentals received by or on behalf of Mortgagor subsequent to the date on which Mortgagee gives written notice of the commencement of foreclosure proceedings;

(4) causing or permitting waste to occur on, in or about the Property, excepting ordinary wear and tear;

(5) failure to repair or restore any loss by fire or casualty to the Property which is not covered by insurance as provided in paragraph 8 hereof;

(6) the return to Mortgagee of all unearned advance rentals and security deposits paid by tenants of the Property and not refunded to or forfeited by such tenants;

(7) the return of, or reimbursement for, all personalty owned by Mortgagor taken from the Property by or on behalf of Mortgagor, out of the ordinary course of business, and not replaced by items of equal or greater value than the original value of the personalty so removed;

(8) all court costs and Reasonable Attorneys' Fees relating to the enforcement of the obligations of Mortgagor in subparagraphs (1) through (9) of this Paragraph 45 actually incurred by Mortgagee and to the extent same are otherwise provided for in the Note or in any other Loan Document governing, securing, or pertaining to the payment of the Note; and

(9) (i) the removal of any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Federal, State, County, Regional or Local Authority which may or could pose a hazard to the health and safety of the occupants of the Property; and (ii) the restoration of the Property to comply with all governmental regulations pertaining to hazardous waste found in, on or under the Property, regardless of the source of origination; and (iii) any indemnity or other agreement to hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses of any and every kind arising under paragraph 3 of this Mortgage; and

(10) any loss or damage of any kind to the Property resulting from the exercise of the rights and privileges granted pursuant to the Mineral Exception, to the extent provided in paragraph 33 hereof.

CAPTIONS

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

IN WITNESS WHEREOF, Mortgagor has caused these presents to be executed as of the day and year first above written.

FOLMAR & ASSOCIATES, an Alabama
general partnership

By: 

General Partner

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, Sondra L. Hixson, a Notary Public in and for said County in said State, hereby certify that W. M. Cagle, Jr., whose name as general partner of Folmar & Associates, an Alabama general partnership, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, in his capacity as such general partner, executed the same voluntarily on the day the same bears date.

3706 PAGE 881

Given under my hand this the 31st day of Oct,
1989.

Landra L. Linton
Notary Public

My Commission Expires: 4/11/92

This instrument was prepared by:
J. Fred Powell, Esq.
Burr & Forman
3000 SouthTrust Tower
Birmingham, Alabama 35203

BOOK 265 PAGE 147

EXHIBIT A
TO MORTGAGE AND SECURITY AGREEMENT
BETWEEN
FOLMAR & ASSOCIATES
AND
NATIONWIDE LIFE INSURANCE COMPANY

A parcel of land situated in the NE 1/4 of Section 24, Township 19 South, Range 3 West and West Half of Section 19, Township 19 South, Range 2 West, Jefferson County, Alabama, and in the SE 1/4 of Section 24, Township 19 South, Range 3 West, in Shelby County, Alabama and being more particularly described as follows:

Commence at the Northeast corner of Section 24, Township 19 South, Range 3 West; thence North 88°58'25" West along the North line of said Section 24, 618.94 feet to a point; thence South 20°02'58" East, 1059.79 feet to a point 25 feet Southerly of the centerline of Data Center Drive, said point also being the POINT OF BEGINNING; thence continue along the previously described course, 433.66 feet to the approximate centerline of the Cahaba River; thence along said centerline of the Cahaba River the following courses: South 33°20'32" West, 37.15 feet; South 16°23'24" West, 43.61 feet; South 15°04'56" East, 541.33 feet; South 23°08'00" East, 222.85 feet; South 01°07'08" East, 216.30 feet; South 39°34'01" West, 236.88 feet; and South 45°24'27" West, 416.19 feet to a point on the Easterly right of way margin of U.S. Highway 31, said point being 150 feet easterly of the centerline of said U.S. Highway 31; thence North 26°23'50" West along said Easterly right of way margin, 201.95 feet to a point; thence leaving said right of way margin, proceed North 62°07'44" East, 239.50 feet to a point; thence North 26°23'50" West and parallel to said right of way margin, 147.00 feet to a point; thence North 72°08'03" West, 73.98 feet to a point; thence South 62°07'44" West, 186.50 feet to a point on the Easterly right of way margin of U.S. Highway 31; said point being 150.00 feet easterly of the centerline of said U.S. Highway 31; thence North 26°23'50" West along said Easterly right of way margin, 582.72 feet to a point; thence South 63°36'10" West along said Easterly right of way margin, 50.00 feet to a point, said point being 100.00 feet easterly of the centerline of said U.S. Highway 31; thence North 26°23'50" West along said Easterly right of way margin, 416.79 feet to a point; thence leaving said Easterly right of way margin, proceed North 63°52'22" East, 271.98 feet to point; thence North 25°27'37" West, 20.00 feet to the beginning of curve to the left, said curve having a central angle of 10°07'14", radius of 310.00 feet, an arc of 54.76 feet and a chord which bears North 30°31'13" West for 54.69 feet; thence proceed northwesterly along the arc of said curve, 54.76 feet to the end of said curve; thence North 35°34'51" West, 121.67 feet to the beginning of a curve to the left, said curve having a central angle of 82°11'28", a radius of 25.00 feet an arc of 35.86 feet and a chord which bears North 77°29'33" West for 32.87 feet; thence proceed northwesterly along the arc of said curve 35.86 feet to a point; thence North 28°35'17" West, 5.00 feet to a point on the Southerly right of way margin of Data Center Drive, said point being 25.00 feet Southerly of the centerline of said Data Center Drive, said point also being on a curve to the left, said curve having a central angle of 11°56'21", a radius of 429.69 feet, an arc of 89.54 feet, and a chord which bears North 55°26'33" East for 89.38 feet; thence proceed northeasterly along said Southerly right of way margin and along the arc of said curve, 89.54 feet to the end of said curve; thence North 49°28'23" East along said Southerly right of way margin, 290.58 feet to the beginning of a curve to the right, said curve having a central angle of 28°47'56", a radius of 382.42 feet, an arc of 192.22 feet and a chord which bears North 63°52'19" East for 190.20 feet; thence proceed northeasterly along said Southerly right of way margin and along the arc of said curve, 192.22 feet to the end of said curve; thence North 78°16'17" East, along said Southerly right of way margin, 125.18 feet to the beginning of a curve to the left, said curve having a central angle of 8°19'15", a radius of 546.00 feet, an arc of 79.29 feet and a chord which bears North 74°06'40" East for 79.22 feet; thence proceed northeasterly along said Southerly right of way margin and along the arc of said curve, 79.29 feet to the point of beginning.

**EXHIBIT B
TO MORTGAGE AND SECURITY AGREEMENT
BETWEEN**

**FOLMAR & ASSOCIATES
AND
NATIONWIDE LIFE INSURANCE COMPANY**

PERMITTED ENCUMBRANCES

1. Taxes due and payable October 1, 1990, not yet due and payable.
2. Rights of tenants in possession under written Lease Agreements.
3. Title to that portion of subject property within the normal bounds of the Cahaba River.
4. Title to all oil, gas, petroleum and sulphur, together with all mining rights relating thereto as recorded in deed recorded in Volume 3642, Page 258, in the Probate Office of Jefferson County, Alabama.
5. Right-of-way granted Alabama Power Company recorded in Bessemer Volume 802, Page 265, Bessemer Volume 1013, Page 340, and Real Volume 1306, Page 312, in the Probate Office of Jefferson County, Alabama, as amended by instrument dated October 6, 1989 and recorded in Real Volume 3700, page 162.
6. Easement for sanitary sewer as shown on Map Book 13, Page 70, in the Probate office of Shelby County, Alabama, and as shown on survey of Sain-South Engineering Company last revised on October 17, 1989.
7. Forty foot buffer along Data Drive as set out in deed recorded in Real Volume 778, Page 181, in the Probate Office of Jefferson County, Alabama, and as shown on the survey of Sain-South Engineering Company last revised on October 17, 1989.
8. Terms and conditions set out in deed to Folmar & Associates recorded in Real Volume 3334, Page 831, in the Probate Office of Jefferson County, Alabama, and in Book 173, Page 126, in the Probate Office of Shelby County, Alabama.
9. Agreement between Harbert-Equitable Joint Venture and Folmar and Associates, dated February 15, 1988, and recorded in Real Volume 3334, Page 835, in the Probate Office of Jefferson County, Alabama.

10. Right granted Alabama Power Company to construct, install, operate and maintain all conduits, cables, translosures and other appliances and facilities useful or necessary for overhead and underground transmission and distribution of electric power and for underground communication service as set forth by instruments recorded in Real Volume 3555, Page 510 and Real Volume 3619, Page 952, in the Probate Office of Jefferson County, Alabama, and in Real Record 208, Page 644, in the Probate Office of Shelby County, Alabama, and as shown on Survey of Sain-South Engineering Company last revised on October 17, 1989.
11. Easement and right-of-way granted the City of Hoover recorded in Real Volume 3365, Page 289, in the Probate Office of Jefferson County, Alabama, and as shown on survey of Sain-South Engineering Company last revised on October 17, 1989.
12. Easement and right-of-way granted Jefferson County recorded in Real Volume 3365, Page 925, in the Probate Office of Jefferson County, Alabama, and as shown on survey of Sain-South Engineering Company last revised on October 17, 1989.
13. Right-of-way granted South Central Bell Telephone Company recorded in Real Volume 3452, Page 831, in the Probate Office of Jefferson County, Alabama, and as shown on survey of Sain-South Engineering Company last revised on October 17, 1989.

NO TAX COLLECTED

1. Deed Tax -----	\$	18.7500
2. Mtg. Tax -----	\$	92.00
3. Recording Fee -----	\$	40.00
4. Indexing Fee -----	\$	3.00
5. Notary Fee -----	\$	1.00
6. Comm. Stamp Fee --	\$	1.00
Total -----	\$	95.00

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

89 NOV -7 PM 2:39

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

STATE OF ALA. JEFFERSON CO.
I CERTIFY THIS INSTRUMENT
WAS FILED ON

89 OCT 31 PM 4:05

RECORDED & INDEXED
& \$18.7500 MTG. TAX
PD. ON THIS INSTRUMENT

James B. Ryland
JUDGE OF PROBATE

18,750.00
92.00
18,842.00