

This instrument prepared by and return to:
Julian E. Whitehurst, Esquire
Lowndes, Drosdick, Doster,
Kantor & Reed, P.A.
Post Office Box 2809
Orlando, Florida 32802-2809

January 14, 1998

Borrower Name: Birmingham Realty Company
Project Name: Columbiana Square Shopping Center

Inst # 1998-01781

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the "Mortgage") is made, executed and delivered as of the day and year first written above, by **BIRMINGHAM REALTY COMPANY**, an Alabama corporation, whose address is 2118 First Avenue, North, Birmingham, Alabama, 35203, (hereinafter referred to as "Mortgagor"), to and in favor of **NATIONWIDE LIFE INSURANCE COMPANY**, an Ohio corporation, having its principal office at One Nationwide Plaza, Columbus, Ohio 43215-2220, Attention: Real Estate Investment Department, 34T, or at such other place either within or without the State of Ohio as it may from time to time designate, and any subsequent holder(s) hereof (hereinafter referred to as "Mortgagee");

WITNESSETH:

WHEREAS, Mortgagor is justly indebted to Mortgagee in the principal sum of THREE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,800,000.00) with interest thereon, which indebtedness is evidenced and represented by that certain Mortgage Note of even date herewith in the sum of THREE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,800,000.00) payable to Nationwide Life Insurance Company (said Mortgage Note being hereinafter referred to as the "Note"), which Note shall be due and payable on January 5, 2018; 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

Inst # 1998-01781

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SHELBY COUNTY JUDGE OF PROBATE
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Columbiana Title

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 also 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 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, all of Mortgagor's right, title and interest in and to the following described properties, rights and interests and all replacements thereof, substitutions therefor and additions thereto (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, situate 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 mineral, royalties, gas rights, water, water rights, water stock, flowers, shrubs, lawn plants, crops, trees, timber and other emblements now or hereafter located on, under or above all or any part of the Real Property;

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 the "Appurtenances");

TOGETHER WITH any and all leases, contracts, rents, royalties, issues, revenues, profits, proceeds, deposits, 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");

TOGETHER WITH any and all awards, payments or settlements, including interest thereon, and the right to receive the same, as a result of (a) the exercise of the right to eminent domain, (b) the alteration of the grade of any street, (c) any other injury, damage or casualty to, taking of, or decrease in the value of, the Property or (d) proceeds of insurance awards, to the extent of all amounts which may be secured by this Mortgage at the date of any such award or payment including but not limited to the Reasonable Attorneys' Fees (as hereinafter defined), costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment;

AS WELL AS all the right, title and interest of Mortgagor in and to all fixtures, goods, inventory, chattels, construction supplies and materials, fittings, furniture, furnishings, equipment, machinery, apparatus, appliances, and other items of personal property, whether tangible or intangible, of any kind, nature or description, whether now owned or hereafter acquired by Mortgagor, including, without limitation, all signs and displays; all heating, air conditioning, water, gas, lighting, incinerating, and power equipment; all engines, compressors, pipes, pumps, tanks, motors, conduits, wiring, and switchboards; all plumbing, lifting, cleaning, fire prevention, fire extinguishing, sprinkling, refrigerating, ventilating, waste removal and communications equipment and apparatus; all boilers, furnaces, oil burners, vacuum cleaning systems, elevators, and escalators; all stoves, ovens, ranges, disposal units, dishwashers, water heaters, exhaust systems, refrigerators, cabinets and partitions; all rugs, attached floor coverings, curtains, rods, draperies, and carpets; all building materials, tools, shades, awnings, blinds, screens, storm doors and windows; and all other general intangibles, inventory, contract rights, accounts receivable, chattel paper, documents and business records, of every kind, including, without limitation, any and all licenses, permits, franchises, trademarks, tradenames, service marks, or logos; any of which is, are or shall hereafter be located upon, attached, affixed to or used or useful, either directly or indirectly, in connection with the complete and comfortable use, occupancy and operation of the Real Property, Improvements and Appurtenances as a shopping center project, or any other business enterprise or operation as may hereafter be conducted upon or within said Real Property, Improvements and Appurtenances, as well as the proceeds thereof or therefrom regardless of form (hereinafter sometimes referred to as the "Fixtures and Personal Property", which term expressly excludes any toxic wastes or substances deemed hazardous under federal, state or local laws). Mortgagor hereby expressly grants to Mortgagee a present security interest in and lien and encumbrance upon said Fixtures and Personal Property, provided, however, the foregoing described property shall not include any personal property owned by (i) tenants of Debtor, or (ii) the lessors of personal property to such tenants;

TO HAVE AND TO HOLD the foregoing Property and the rights hereby granted for the use and benefit of Mortgagee, 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 1997 (which are not yet due and payable) and those matters set forth in the title insurance policy issued to Mortgagee insuring the first lien priority of this Mortgage (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:

1. Payment of Principal and Interest. 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").

2. Performance of Other Obligations. 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 in all material respects 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 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 applicable subdivision or platting laws, ordinances, rules or regulations, or other laws relating to the division or separation of real property.

3. Preservation and Maintenance of Property; Accessibility; Hazardous Waste. 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, impairment or deterioration thereof or thereon, nor to alter, remove or demolish any of said Improvements or any Fixtures or Personal Property attached or appertaining thereto, without the prior written consent of Mortgagee, except for minor changes in the ordinary course of leasing a shopping center and as required by tenant leases, 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 the Improvements, Appurtenances, Fixtures and Personal Property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

Mortgagor at all times shall maintain the Property in compliance in all material respects with all applicable federal, state or municipal laws, ordinances, rules and regulations currently in existence or hereinafter enacted or rendered governing accessibility for the disabled or handicapped, including, but not limited to, The Architectural Barriers Act of 1968, The Rehabilitation Act of 1973, The Fair Housing Act of 1988, The Americans with Disabilities Act, and all regulations and guidelines promulgated under any of the foregoing, as the same may be amended from time to time (collectively the "Accessibility Laws"). Pursuant to the terms of a separate Accessibility Indemnity Agreement of even date herewith executed by Mortgagor to and in favor of Mortgagee (the "Accessibility Indemnity Agreement"), Mortgagor 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 arising, either directly or indirectly, out of any noncompliance of the Property with any Accessibility Laws or any claimed breach or violation thereof by Mortgagor or the Property, regardless of whether or not caused by, or within the control of, Mortgagor. The indemnification agreement of Mortgagor contained in the foregoing sentence and in the Accessibility Indemnity Agreement shall survive repayment of the Note and satisfaction of this Mortgage, except as otherwise provided in Paragraph 45 (11) below.

Mortgagor at all times shall keep the Property and ground water of the Property free of Hazardous Materials (as defined in that certain Hazardous Materials Indemnity Agreement of even date herewith executed by Mortgagor to and in favor of Mortgagee (the "Hazardous Materials Indemnity Agreement")). Mortgagor shall not 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 and shall remove same in compliance with the terms and conditions of the Hazardous Materials Indemnity Agreement.

Pursuant to the terms of the Hazardous Materials Indemnity Agreement, Mortgagor 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 (as defined in the Hazardous Materials Indemnity Agreement)), regardless of whether or not caused by, or within the control of, Mortgagor.

Mortgagee, and/or its agents, shall, subject to the rights of tenants under Leases approved or deemed approved by Mortgagee, 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. The Hazardous Materials Indemnity Agreement, the provisions of this Paragraph 3 and similar provisions in this Mortgage and the other Loan Documents concerning Hazardous Materials shall survive repayment of the Note and satisfaction of this Mortgage; provided, however, that such liability shall not survive the repayment and satisfaction of the Note, Mortgage and other Loan Documents if contemporaneously with such repayment and satisfaction Mortgagor furnishes Mortgagee with an environmental assessment report acceptable to Mortgagee reflecting that the Property is free from Hazardous Materials and not in violation of Hazardous Materials Laws (as defined in the Hazardous Materials Indemnity Agreement); and provided further that Mortgagor shall not be liable by way of indemnification with respect to Hazardous Materials as provided herein or in the Hazardous Materials Indemnity Agreement if the Property becomes contaminated subsequent to Mortgagee's acquisition of title to the Property by foreclosure of this Mortgage or acceptance of a deed in lieu thereof or subsequent to any transfer of title to all (but not less than all) of the Property by means of a transfer approved by Mortgagee pursuant to this Mortgage, provided that such transferee assumes in writing all obligations of Mortgagor with respect to Hazardous Materials pursuant to this Mortgage and the Hazardous Materials Indemnity Agreement. The burden of proof under the preceding sentence with regard to establishing the date upon which any Hazardous Materials were placed or appeared in, on or under the Property shall be upon Mortgagor.

4. Payment of Taxes, Assessments and Other Charges. 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.

5. Payment of Liens, Charges and Encumbrances. 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 the title insurance company insuring the Mortgage) in connection with any such action by Mortgagor.

6. Payment of Junior Encumbrances. 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.

7. Payment of Mortgage Taxes. To pay any and all taxes which may be levied or assessed directly or indirectly upon the Note and this Mortgage (except for income taxes payable by Mortgagee) or the debt secured hereby, 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.

8. Hazard Insurance. 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, 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, or otherwise deemed necessary by Mortgagee in its reasonable judgement, on such forms as may be reasonably required by Mortgagee, covering the Property in the amount of the full replacement cost thereof, less excavating and foundation costs (provided, however, in no case shall the amount of insurance be less than the difference between the amount of the Note and eighty percent (80%) of the appraised value of the Real Property) covering all loss or abatement of rental or other income without a provision for co-insurance in an amount equal to the scheduled rental income from the Property for at least twelve (12) months or, if applicable, business interruption insurance in an amount sufficient to pay debt service on the Note, operating expenses, taxes and insurance on the Property for a period of twelve (12) months, and covering loss by flood (if the Property lies in a 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 outstanding principal balance of the indebtedness secured hereby or such other amount as approved by Mortgagee. All such insurance shall be carried with a company or companies acceptable to Mortgagee, which company or companies shall have a rating at the time this Mortgage is executed and during the entire term of the Note equivalent to at least A:VIII as shown in the most recent 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 any intent to modify, cancel or terminate such policies of insurance. If the insurance required under this Paragraph 8 or any portion thereof is maintained pursuant to a blanket policy, Mortgagor shall furnish to Mortgagee a certified copy of such policy, together with an original certificate indicating that Mortgagee is an insured under such policy in regard to the Property and showing the amount of coverage apportioned to the Property which coverage shall be in an amount sufficient to satisfy the requirements hereof. Not less than fifteen (15) days prior to the expiration dates of each policy required of 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.

In the event of loss by reason of hazards, casualties, contingencies and perils for which insurance has been required by Mortgagee hereunder, Mortgagor shall give immediate notice thereof to Mortgagee, and Mortgagee is hereby irrevocably appointed as attorney-in-fact coupled with an

interest, for Mortgagee to, at its option, 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, notwithstanding the fact that the amount owing thereon may not then be due and payable or that said indebtedness is otherwise adequately secured, 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 reduced 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.

In the case of Mortgagor's failure to keep the Property so insured, Mortgagee or its assigns may, at its option (but shall not be required to) obtain such insurance at Mortgagor's expense.

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 fifty percent (50%) of the outstanding principal balance of the Note, then 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 of the 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 all applicable building code and zoning ordinances and regulations, and further, that the sufficiency of such funds is certified to Mortgagee by Mortgagee's inspecting architect/engineer;
- (e) Mortgagor provides completion, payment and performance bonds and builders' 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 not more than five (5) increments 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 all applicable building codes, zoning ordinances and all other applicable federal, state or local laws, ordinances or regulations, 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, notwithstanding the fact that the amount owing thereon may not then be due and payable or that said indebtedness may otherwise be adequately secured; 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.

9. Liability Insurance. 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 company or companies as may be acceptable to Mortgagee, taking into account the type and nature of the Property and the business being operated thereon, and the corresponding liability exposure. 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. If the insurance required under this Paragraph 9 or any portion thereof is maintained pursuant to a blanket policy, Mortgagor shall furnish to Mortgagee a certified copy of such policy, together with an original certificate indicating that Mortgagee is an insured under such policy in regard to the Property and showing the amount of coverage apportioned to the Property which coverage shall be in an amount sufficient to satisfy the requirements hereof.

10. Compliance With Laws. To observe, abide by and comply in all material respects 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.

11. Maintenance of Permits. 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.

12. Obligations of Mortgagor as Lessor. To perform every obligation of Mortgagor (as the lessor) and enforce every material 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 lease or Occupancy Lease or any such rents to any party other than Mortgagee, without the prior written consent of Mortgagee; provided, however, that the consent of Mortgagee shall not be required for any such actions undertaken by Mortgagor in the ordinary course of its business with respect to any tenant occupying less than three thousand (3,000) square feet in the Improvements. 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, but without obligation to do so, 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 on the Note plus five percent (5%) per annum; 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 subject to the approval of Mortgagee and (a) shall be at competitive market rental rates then prevailing in the geographic area for shopping center projects 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. Neither the right nor the exercise of the right herein granted unto Mortgagee to keep or perform any such covenants, agreements or conditions 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 keeping or performing any such covenants, agreements or conditions as hereinabove required.

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 Major Tenant's 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, excluding options to renew the same, exceeds five (5) years, or (ii) the net rentable area to be occupied thereunder, including expansion options, exceeds ten percent (10%) of the net leasable area of the Improvements (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.

13. Maintenance of Parking and Access; Prohibition Against Alteration. 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.

14. Execution of Additional Documents. 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, registering or recording this Mortgage, and to pay all filing, registration or recording fees and all taxes, costs and other expenses, including Reasonable Attorneys' Fees (as defined in Paragraph 40), incident to the preparation, execution, acknowledgment, delivery and recordation of any of the same.

15. After-Acquired Property Secured. 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, encumbrance, 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.

16. Payments by Mortgagee on Behalf of Mortgagor. 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, but without obligation to do so, may make payment or payments of the same and also may redeem the Property from tax sale without any obligation to inquire into the validity of such taxes, assessments 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 and of any fees and expenses attendant in making the same, together with interest thereon at the lesser of either (i) the highest rate then allowable 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 percent (5%) per annum; 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 16, 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.

17. Funds Held by Mortgagee for Taxes, Insurance and Other Charges. 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, insurance 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, insurance 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, insurance or other charges as they become due and payable. If at any time the funds so held by Mortgagee are insufficient to pay such insurance 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, notwithstanding the fact that the amount owing thereon may not then be due and payable or that said indebtedness may otherwise be adequately secured, in such order and manner of application as Mortgagee may elect.

18. Condemnation; Eminent Domain. 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 irrevocably 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 reduced 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 building(s) or other 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, notwithstanding the fact that the amount due and owing thereon may not then be due and payable or that said indebtedness may otherwise be adequately secured.

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).

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, platting or other ordinances, or fails to comply with the terms of any Major Tenant Occupancy Leases, then in any such event, at the election of Mortgagee, the whole of the indebtedness hereby secured shall become immediately due and payable at par (i.e., without Prepayment Premium) and Mortgagee shall be entitled to exercise any or all remedies provided or referenced in this Mortgage.

19. Costs of Collection. In the event that the Note secured hereby is 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 or 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, Reasonable 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 percent (5%) per annum; all of which sums, if unpaid, shall be added to and become a part of the indebtedness secured hereby.

20. Default Rate. 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 of the other Loan Documents, 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 percent (5%) per annum, all of which sums shall be added to and become a part of the indebtedness secured hereby.

21. Savings Clause; Severability. 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, if controlling, 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 lawful 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.

22. Bankruptcy, Reorganization or Assignment. It shall be a default hereunder if 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 in any bankruptcy, reorganization or insolvency proceeding or fail to cause the dismissal of such petition within sixty (60) 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 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 and such order, judgment or decree shall continue unstayed and in effect for a period of thirty (30) days.

23. Time is of the Essence; Monetary and Non-Monetary Defaults. It is understood by Mortgagor that time is of the essence hereof in connection with all obligations of Mortgagor herein and in the Note, the Assignment (as defined in Paragraph 34) and in 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 the Note, this Mortgage, the Assignment, or any other Loan Documents, 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 (or, if a period of time greater than thirty (30) days is reasonably necessary to cure such Non-Monetary Default, such greater period of time so long as

Mortgagor commences to cure such Non-Monetary Default within said thirty (30) days and continues to prosecute the curing thereof to completion with due diligence, as determined in the sole discretion of Mortgagee) after written notice thereof from Mortgagee to Mortgagor has been delivered in the manner prescribed in Paragraph 41 hereof, then, upon the occurrence of any one of such events, 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 and 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, encumbering 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).

Mortgagee may institute an action to foreclose this Mortgage as to the amount so declared due and payable, and thereupon, the Property shall be sold according to law to satisfy and pay the same together with all costs, expenses and allowances thereof, including, without limitation, a reasonable fee for Mortgagee's attorneys, at all trial and appellate levels. 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.

If an event of default should occur as provided in this paragraph or in any of the other covenants, conditions herein contained or contained in any other instrument evidencing or securing the indebtedness described herein, Mortgagee shall have the right to sell the Property at public outcry, in front of the main or front Court House 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, together with a description of the Property, 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 Mortgagee, 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 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. The proceeds of 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 attorney's fee, or reasonable attorneys' fees for such services as may be, or have been, performed in any one or more of the foreclosure of this Mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings initiated by the Mortgagor, or anyone liable for said indebtedness, 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 in accordance with the provisions of this Mortgage, together with interest thereon at the rate specified in paragraph 16 of this Mortgage;

(c) to the payment and satisfaction of said indebtedness and interest thereon to the day of sale; in such order of application to the items of indebtedness referred to in the above clauses as the Mortgagee shall determine; and

(d) the balance, if any, shall be paid over to the persons entitled by law thereto.

In any event, the purchaser under any foreclosure sale shall be under no obligation to see to the proper application of the purchase money.

24. Protection of Mortgagee's Security. 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.

25. Appointment of Receiver. 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 indebtedness secured hereby 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, to the extent permitted by applicable law, 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, notwithstanding the fact that the amount owing thereon may not then be due and payable or the said indebtedness may otherwise be adequately secured. 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. To the extent permitted by applicable law, 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.

26. Rights and Remedies Cumulative; Forbearance Not a Waiver. 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.

27. Modification Not an Impairment of Security. 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.

28. Property Management/Leasing. 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 (or in the absence of any such written contract, a letter so stating and further identifying the name of the person or entity charged with the responsibility for managing and/or leasing the Property) shall be 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 or referenced in this Mortgage.

29. Modification Not a Waiver. 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 or in the Note, or any other Loan Document, 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 or of the Note or of 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.

30. Transfer of Property or Controlling Interest in Mortgagor; Assumption. 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, 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 to the extent permitted by the laws of the State of Alabama, 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 initiate amortization or modify the existing amortization schedule in order to amortize the then remaining unpaid principal balance of the Note secured hereby over a period of time as determined by Mortgagee in its sole discretion without a change in the maturity date of the Note, and (iii) the proposed transferee shall assume in writing all obligations of Mortgagor under the Note, this Mortgage and the other Loan Documents and an assumption fee to be determined by Mortgagee may be charged by Mortgagee in its sole discretion, (c) Mortgagee shall receive for its review and approval copies of all transfer documents, and (d) Mortgagor or the transferee shall pay all costs and expenses in connection with such transfer and assumption, including, without limitation, all fees and expenses incurred by Mortgagee. Mortgagor and any subsequent owner of the Property or any portion thereof shall do all things necessary to preserve and keep in full force and effect its and their existence, franchises, rights and privileges as a corporation under the laws of the state of its formation and its right to own property and transact business in the State of Alabama. It shall be a default hereunder if Mortgagor or any subsequent owner of the Property or any portion thereof shall amend, modify, transfer, assign or cancel the articles of incorporation of Mortgagor or such subsequent owner and, in the reasonable determination of Mortgagee, such amendment, modification, transfer, assignment or cancellation shall have a material adverse effect on Mortgagee, the Property or the security value thereof. Mortgagor or such subsequent owner shall provide Mortgagee with copies of any amendment to its articles of incorporation no later than thirty (30) days after the effective date of such amendment so that Mortgagee may, in its sole discretion, determine whether such amendment adversely affects Mortgagee, the Property or the security value thereof. 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 secured hereby 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:

- A. As long as no default, or event which, with notice or the passage of time or both, could result in a default, has occurred hereunder or under the Note, Mortgagee shall permit one (1) bona fide arm's length transfer of the Property to another borrowing

entity without a change in loan terms; provided, however, that no such transfer shall be valid or permitted hereunder unless: (i) Mortgagee receives at least sixty (60) days prior written notice of such proposed transfer, (ii) such proposed transferee has been approved in writing by Mortgagee (taking into consideration such factors as transferee's creditworthiness, business experience, financial condition, and managerial capabilities), (iii) Mortgagee is paid a transfer fee in the amount of two (2%) percent of the outstanding principal balance of the loan if such balance is less than Three million and no/100 dollars (\$3,000,000.00), or one and one half (1.5%) percent of the outstanding principal balance of the loan if such balance is Three million and no/100 dollars (\$3,000,000.00) or more, (iv) Mortgagor pays all fees and expenses incurred by Mortgagee in connection with such transfer and assumption, including, without limitation, inspection and investigation fees, title insurance charges, documentary stamp taxes, recording fees, and Reasonable Attorneys' Fees (as hereinafter defined), (v) such proposed transferee assumes in writing all obligations of Mortgagor under the Note, this Mortgage and the other Loan Documents, with the same degree of liability as Mortgagor; and (vi) Mortgagee approves the management agreement and the management company to be employed by the proposed transferee. This one time right to transfer shall apply to the Mortgagor named herein and not to any other owner of the Property.

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.

31. Further Encumbrance Prohibited; Subrogation. So long as the Note remains 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 indebtedness secured hereby 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.

32. Conveyance of Mineral Rights Prohibited. 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 therefor, which permission shall not be valid until recorded among the Public Records of Shelby County, 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, notwithstanding the fact that the amount owing thereon may not be due and payable or the said indebtedness may be otherwise adequately secured; provided, however, that the acceptance of such consideration shall in no way impair the lien of this Mortgage on the Property.

33. Estoppel Certification by Mortgagor. 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 owing on account of this Mortgage or 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) days if the request is made by mail.

34. Cross-Default. The Note secured hereby is also secured by the terms, conditions and provisions of the Assignment of Leases, Rents and Profits from Mortgagor to Mortgagee recorded among the Public Records of Shelby County, Alabama (hereinafter referred to as the "Assignment") and, additionally, may be secured by contracts or agreements of guaranty or other security instruments from Mortgagor to Mortgagee. The terms, conditions and provisions of each such security instrument shall be considered a part hereof as fully as if set forth herein verbatim. Any default under this Mortgage or the Note or any of the other Loan Documents shall constitute an event of default under the aforesaid Assignment and any other security instruments, and any default under the Assignment or other security instruments shall likewise constitute a default hereunder and under the Note secured hereby. Notwithstanding the foregoing, the enforcement or attempted enforcement of this Mortgage or any other security instrument 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 other Loan Document now or hereafter held by it in such order and manner as Mortgagee, in its sole discretion, shall determine.

35. Examination of Mortgagor's Records. 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, annual statements (a balance sheet, income statement, certified rent roll, and current annual sales figures for all Major Tenants if required under their respective leases or otherwise available) for Mortgagor and the Property prepared in accordance with generally accepted accounting principles and certified by Mortgagor 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 00/100 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.

36. Alteration, Removal and Change in Use of Property Prohibited. 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.

37. Future Advances Secured. This Mortgage shall secure not only existing indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of Mortgagee, as are made within twenty (20) years from the date hereof. Upon request of Mortgagor, and at Mortgagee's option prior to release of this Mortgage, Mortgagee may make future advances to Mortgagor. All future advances with interest thereon shall be secured by this Mortgage to the same extent as if such future advances were made on the date of the execution of this Mortgage unless the parties shall agree otherwise in writing, but the total secured indebtedness shall not exceed at any one time a maximum principal amount equal to double the face amount of the Note plus interest, and costs of collection including court costs and Reasonable Attorney's Fees. Any advances or

disbursements made for the benefit or protection of or the payment of taxes, assessments, levies or insurance upon the Property, with interest on such disbursements as provided herein shall be added to the principal balance of the Note and collected as part thereof. The filing of any notice limiting the maximum amount that may be secured by this Mortgage pursuant to any Alabama law shall be and constitute a default under this Mortgage.

38. Effect of Security Agreement. 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 Note 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. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created, pursuant to the Uniform Commercial Code, any other security interest in such real and personal property and fixtures described herein. Upon the occurrence of a default hereunder or Mortgagor's breach of any other covenants or agreements between the parties entered into in conjunction herewith, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, the remedies provided for in this Mortgage. 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.

39. Terms of Commitment Survive Closing. The terms and provisions of the Application/Contract for Mortgage Loan between Mortgagee and Mortgagor dated July 1, 1997, as revised and accepted by Mortgagee on August 19, 1997 and as accepted by Mortgagor on August 25, 1997, and any subsequent amendments thereto (hereinafter referred to as the "Commitment") are incorporated herein by reference. All terms and conditions of the Commitment not expressly set

forth in this Mortgage, the Note, and any of the 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.

40. Successors and Assigns; Terminology. The provisions hereof shall be binding upon Mortgagor, its successors and assigns, and inure to the benefit of Mortgagee, 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, the word "person" shall mean an individual, trustee, trust, corporation, partnership or unincorporated association and the phrase "successors and assigns" includes the personal representatives and heirs of any individual. 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.

41. Notices. 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:

BIRMINGHAM REALTY COMPANY
2118 First Avenue, North
Birmingham, Alabama
35203
Attention: President

TO MORTGAGEE:

NATIONWIDE LIFE INSURANCE COMPANY
One Nationwide Plaza
Columbus, Ohio 43215-2220
Attention: Real Estate Investment
Department, 34T

42. Governing Law. This Mortgage 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.

43. Rights of Mortgagee Cumulative. 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.

44. Modifications. 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.

45. Exculpation. The liability of Mortgagor with respect to the payment of principal and interest payable under the Note shall be "non-recourse," and, accordingly, Mortgagee's source of satisfaction of said indebtedness and Mortgagor's other obligations hereunder and under any of 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 or to enforce any of its other rights or remedies under the Loan Documents.

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 prior to delinquency, or to pay charges for labor, materials or other charges which can create liens on any portion of the Property;
- (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 makes written demand therefor pursuant to any of the Loan Documents;
- (4) causing or permitting waste to occur on, in or about the Property and failure to maintain the Property, excepting ordinary wear and tear;
- (5) the return to Mortgagee of any and all fees paid to Mortgagor by tenants of the Property which fees permit tenants to terminate their leases;

- (6) loss by fire or casualty to the extent not compensated by insurance proceeds collected by Mortgagee;
- (7) 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;
- (8) the return of, or reimbursement for, all Fixtures and Personal Property 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 Fixtures and Personal Property so removed;
- (9) all court costs and Reasonable Attorneys' Fees actually incurred which are provided for in the Note or in any other Loan Documents governing, securing or pertaining to the payment of the Note;
- (10) (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, regardless of the source of origination; (ii) the restoration of the Property to comply with all governmental regulations pertaining to Hazardous Materials found in, on or under the Property, regardless of the source of origination; and (iii) any indemnity or other agreement to hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs and expenses of any and every kind arising under Paragraph 3 of this Mortgage or under the Hazardous Materials Indemnity Agreement as described in this Mortgage. However, Mortgagor shall not be liable for the removal of any Hazardous Materials if such Hazardous Materials were placed on the Property subsequent to Mortgagee's acquisition of title to the Property by foreclosure of this Mortgage or acceptance of a deed in lieu thereof or subsequent to any transfer by Mortgagor of ownership of the Property by means of a transfer approved by Mortgagee pursuant to this Mortgage (provided that such transferee assumes in writing all obligations of Mortgagor pertaining to Hazardous Materials pursuant to this Mortgage and the Hazardous Materials Indemnity Agreement). Liability under this Subparagraph shall survive the repayment and satisfaction of the Note, Mortgage and other Loan Documents unless contemporaneously with such repayment and satisfaction Mortgagor furnishes Mortgagee with an environmental assessment report acceptable to Mortgagee reflecting that the Property is free of Hazardous Materials and not in violation of any Hazardous Materials Laws (as defined in the Hazardous Materials Indemnity Agreement). The burden of proof under this Subparagraph with regard to establishing the date upon which such Hazardous Materials were placed or appeared in, on or under the Property shall be upon Mortgagor;

- (11) (i) any and all costs incurred in order to cause the Improvements to comply with any Accessibility Laws; and (ii) any indemnity or other agreement to hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs or expenses of any and every kind arising under Paragraph 3 of this Mortgage regarding accessibility for the disabled or handicapped or under the Accessibility Indemnity Agreement as described in this Mortgage; provided, however, Mortgagor shall not be liable for compliance with Accessibility Laws that first become effective, or for any violation of any Accessibility Laws resulting from alterations or improvements to the Property that are performed, subsequent to Mortgagee's actually taking possession of the Property pursuant to foreclosure of this Mortgage or acceptance of a deed in lieu thereof, or subsequent to any transfer of ownership of the Property that has the prior written approval of Mortgagee, provided that such transferee assumes in writing all obligations of Mortgagor with respect to compliance with the Accessibility Laws under the Mortgage and the Accessibility Indemnity Agreement;
- (12) any and all state documentary stamp taxes and intangible personal property taxes, if any, which may be levied or assessed against the Note, this Mortgage or the other Loan Documents, together with all interest thereon and penalties or charges in connection therewith; and
- (13) obligations under any letter(s) of credit held by Mortgagee as described in the Commitment.

Except as provided in Subparagraphs (10) and (11) above, the obligations of Mortgagor in Subparagraphs (1) through (13) above shall survive the repayment and satisfaction of the indebtedness secured by this Mortgage and the other Loan Documents.

Notwithstanding the foregoing limitation on liability, the Mortgagor shall remain personally liable, without exculpation or limitation of liability whatsoever, for the entire amount of the Loan evidenced by the Note (including all principal, interest, and other charges hereunder and under the other Loan Documents) in the event that Mortgagor (a) violates any provision of the Mortgage governing the placing of subordinate financing on the Property, or (b) violates any provision of this Mortgage restricting transfers of interests in the Property or transfers of ownership interests in Mortgagor.

46. Captions. 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.

BIRMINGHAM REALTY COMPANY, an
Alabama corporation

By: _____

Name: RUSSELL M. CUNNINGHAM III

Its: President

STATE OF ALABAMA
COUNTY OF Jefferson

I, a Notary Public in and for said state, hereby certify that Russell M. Cunningham III whose name as (Office of Signature) _____ of **BIRMINGHAM REALTY COMPANY** an Alabama corporation, is signed to the foregoing instrument, and who is acknowledged before me on this 14th day of January, 1998 that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 14 day of January, 1998.

Don E. Hockaday

Notary Public

Name: _____

My Commission Expires: 9-19-98

(SEAL)

Exhibit "A"

Legal Description

SHOPPING CENTER SITE

A PARCEL OF LAND LOCATED IN THE NE 1/4 OF THE NW 1/4 AND THE NW 1/4 OF THE NE 1/4 OF SECTION 26, TOWNSHIP 21 SOUTH, RANGE 1 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NE CORNER OF THE NW 1/4 OF SAID SECTION 26; THENCE IN A NORTHERLY DIRECTION ALONG THE PROJECTION OF THE EASTERLY LINE OF SAID SECTION 26, A DISTANCE OF 2.82 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF JOINER TOWN ROAD SAID POINT ALSO BEING AN OLD REBAR CORNER WHICH IS ALSO THE SE CORNER OF THE ELLIOT LOT DESCRIBED IN DEED BOOK 12, PAGE 496; THENCE 137 DEGREES 14 MINUTES 28 SECONDS RIGHT IN A SOUTHEASTERLY DIRECTION ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 30.06 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG LAST DESCRIBED COURSE AND SAID RIGHT OF WAY LINE, A DISTANCE OF 40.09 FEET; THENCE 93 DEGREES 46 MINUTES 21 SECONDS RIGHT IN A SOUTHWESTERLY DIRECTION A DISTANCE OF 200.73 FEET; THENCE 93 DEGREES 46 MINUTES 21 SECONDS LEFT IN A SOUTHEASTERLY DIRECTION A DISTANCE OF 77.68 FEET; THENCE 21 DEGREES 21 MINUTES 23 SECONDS LEFT IN A SOUTHEASTERLY DIRECTION, A DISTANCE OF 171.49 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF ALABAMA HIGHWAY NO. 25; THENCE 90 DEGREES RIGHT IN A SOUTHWESTERLY DIRECTION AND ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 497.95 FEET; THENCE 90 DEGREES RIGHT IN A NORTHWESTERLY DIRECTION, A DISTANCE OF 328.00 FEET; THENCE 90 DEGREES LEFT IN A SOUTHWESTERLY DIRECTION, A DISTANCE OF 20.00 FEET; THENCE 90 DEGREES RIGHT IN A NORTHWESTERLY DIRECTION, A DISTANCE OF 325.09 FEET; THENCE 90 DEGREES RIGHT IN A NORTHEASTERLY DIRECTION, A DISTANCE OF 467.05 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF SOUTHERN RAILWAY; THENCE 30 DEGREES 06 MINUTES 20 SECONDS RIGHT IN A NORTHEASTERLY DIRECTION, A DISTANCE OF 235.48 FEET TO A POINT ON THE WEST LINE OF SAID ELLIOT LOT; THENCE 81 DEGREES 15 MINUTES 03 SECONDS RIGHT IN A SOUTHEASTERLY DIRECTION ALONG SAID WEST LINE OF THE ELLIOT LOT, AND PARALLEL WITH THE WESTERLY RIGHT OF WAY LINE OF JOINERTOWN ROAD, A DISTANCE OF 146.98 FEET; THENCE 93 DEGREES 46 MINUTES 21 SECONDS RIGHT IN A SOUTHWESTERLY DIRECTION, A DISTANCE OF 10.02 FEET; THENCE 93 DEGREES 46 MINUTES 21 SECONDS LEFT, IN A SOUTHEASTERLY DIRECTION, A DISTANCE OF 130.06 FEET; THENCE 86 DEGREES 13 MINUTES 39 SECONDS LEFT IN A NORTHEASTERLY DIRECTION, A DISTANCE OF 200.73 FEET TO THE POINT OF BEGINNING, CONTAINING 8.56 ACRES, MORE OR LESS.

Inst # 1998-01781

01/20/1998-01781
08:23 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE
032 REC 5786.00

Inst # 1998-01781