

**PREPARED BY:**

Dennis M. Coghlan, Esq.  
 Sidley & Austin  
 Bank One Plaza  
 10 South Dearborn Street  
 Chicago, Illinois 60603

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

WELLS FARGO BANK, N.A.  
 1320 Willow Pass Road, Suite 205  
 Concord, California 94520

Attn: Loan Administration  
 Northgate Loan No.: LC# 80-0000062/FUNB# 41-0000053  
 Southgate Loan No.: LC# 80-0000063/FUNB# 41-0000067

Inst # 2001-06611

02/27/2001-06611  
 07:43 AM CERTIFIED  
 SHELBY COUNTY JUDGE OF PROBATE  
 66.00  
 019 MMB

## **MODIFICATION AGREEMENT**

### **Cross-Default/Cross-Collateralization**

THIS MODIFICATION AGREEMENT ("Agreement") is dated as of February 9, 2001, by and among LASALLE BANK NATIONAL ASSOCIATION (formerly known as LaSalle National Bank), as Trustee for LB Commercial Mortgage Trust Commercial Mortgage Pass-Through Certificates, Series 1998-C4 ("Lender"), GARDENDALE (AL) DEVELOPMENT, L.L.P., an Alabama limited liability partnership ("Northgate Mortgagor") and VALLEYDALE (5) DEVELOPMENT, L.L.P., an Alabama limited liability partnership ("Southgate Mortgagor") (Northgate Mortgagor and Southgate Mortgagor are sometimes referred to herein each individually as a "Mortgagor" and collectively as "Mortgagors").

### **RECITALS**

- A. Pursuant to that certain promissory note ("Northgate Note") executed by Northgate Mortgagor dated as of September 2, 1998 and other loan documents of even date therewith, Laureate Realty Services, Inc., a South Carolina corporation ("Original Lender") made a loan ("Northgate Loan") to Northgate Mortgagor in the principal amount of SIX MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$6,850,000.00) secured by a mortgage and security agreement (the "Northgate Mortgage") dated as of September 2, 1998, and recorded September 2, 1998, as Instrument No. 9811/4829 in the office of the Judge of Probate of Jefferson County, Alabama and that certain assignment of leases and rents (the "Northgate Assignment") dated as of September 2, 1998, and recorded September 2, 1998, as Instrument No. 9811/4830 in the office of the Judge of Probate of Jefferson County, Alabama (the Northgate Note, the Northgate Mortgage, the Northgate Assignment and the other "Loan Documents" as defined in the Northgate Note are hereinafter collectively referred to as the "Northgate Loan Documents"); and
- B. Pursuant to that certain promissory note ("Southgate Note") executed by Southgate Mortgagor dated as of September 2, 1998 and other loan documents of even date therewith, Original Lender made a loan ("Southgate Loan") (the Northgate Loan and the Southgate Loan are sometimes referred to herein each individually as a "Loan" and collectively as the "Loans") to Southgate Mortgagor in the principal amount of FIVE MILLION SEVEN HUNDRED THOUSAND AND NO/100THS DOLLARS

(\$5,700,000.00) secured by a mortgage and security agreement (the "Southgate Mortgage") dated as of September 2, 1998, and recorded September 3, 1998, as Instrument No. 1998-34409 in the office of the Judge of Probate of Shelby County, Alabama and that certain assignment of leases and rents (the "Southgate Assignment") dated as of September 2, 1998, and recorded September 3, 1998, as Instrument No. 1998-34410 in the office of the Judge of Probate of Shelby County, Alabama (the Southgate Note, the Southgate Mortgage, the Southgate Assignment and the other "Loan Documents" as defined in the Southgate Note are hereinafter collectively referred to as the "Southgate Loan Documents") (the Northgate Loan Documents and the Southgate Loan Documents are sometimes referred to herein collectively as the "Loan Documents"); and

- C. Lender is the successor-in-interest to Original Lender as lender under the Loans; and
- D. Capitalized terms used herein and not defined herein shall have the meanings provided therefor in the Northgate Mortgage and the Southgate Mortgage; and
- E. Lender and Mortgagors wish to provide for a period during which Mortgagors would be permitted to temporarily suspend the making of the Monthly Replacement Account Deposit under both the Northgate Mortgage and the Southgate Mortgage and to make certain other modifications to the Northgate Loan Documents and the Southgate Loan Documents, all upon the terms and conditions set forth herein; and
- F. Mortgagors and Lender have agreed to modify the Northgate Mortgage and the Northgate Assignment and the Southgate Mortgage and the Southgate Assignment to provide for cross-collateralization and cross-default of the obligations secured by the Northgate Mortgage and the Northgate Assignment with the obligations secured by the Southgate Mortgage and the Southgate Assignment.

NOW THEREFORE, Mortgagors and Lender agree as follows:

#### **Article I. CROSS-COLLATERALIZATION AND CROSS-DEFAULT**

- 1.1. **ADDITIONAL SECURITY - SOUTHGATE MORTGAGE AND SOUTHGATE ASSIGNMENT.** In addition to the obligations secured by the Northgate Mortgage and the Northgate Assignment, the Northgate Mortgage and the Northgate Assignment shall also secure the payment and performance of all obligations secured by the Southgate Mortgage and the Southgate Assignment.
- 1.2. **ADDITIONAL SECURITY - NORTHGATE MORTGAGE AND NORTHGATE ASSIGNMENT.** In addition to the obligations secured by the Southgate Mortgage and the Southgate Assignment, the Southgate Mortgage and the Southgate Assignment shall also secure the payment and performance of all obligations secured by the Northgate Mortgage and the Northgate Assignment.
- 1.3. **DEFAULT OR EVENT OF DEFAULT - SOUTHGATE LOAN DOCUMENTS.** A Default or an Event of Default under the Southgate Loan Documents, as defined therein, shall, at Lender's option, constitute a Default or an Event of Default under the Northgate Loan Documents.
- 1.4. **DEFAULT OR EVENT OF DEFAULT - NORTHGATE LOAN DOCUMENTS.** A Default or an Event of Default under the Northgate Loan Documents, as defined therein, shall, at Lender's option, constitute a Default or an Event of Default under the Southgate Loan Documents.

#### **Article II. COVENANTS AND AGREEMENTS OF MORTGAGORS AND LENDER.**

- 2.1. **SUSPENSION OF MONTHLY REPLACEMENT ACCOUNT DEPOSIT.** Subject to satisfaction of the following conditions precedent, commencing effective as of the monthly payments under each Loan due on February 1, 2001 and continuing through July 31, 2001 (the "Replacement Reserve



Suspension Period"), Lender agrees to temporarily suspend the requirements under the Northgate Mortgage and Southgate Mortgage to make the Monthly Replacement Account Deposit; provided, however, that, commencing effective as of the monthly payments due on August 1, 2001 and continuing through July 1, 2002 (the "Replacement Reserve Restoration Period"), Mortgagors shall, in addition to the Monthly Replacement Account Deposit otherwise required under each Loan, make an additional deposit into the Replacement Account for each Loan in a monthly amount ("Monthly Supplemental Reserve Payment") equal to one-twelfth of an amount that would be sufficient to cause the amount held in such Replacement Account to be fully restored to the amount it would have held but for the Replacement Reserve Suspension Period and but for the application of any amounts previously deposited in such Replacement Account to the payment of principal and interest in accordance with Section 2.4 below. Until such time as the Replacement Reserve Restoration Period shall have expired and each Replacement Account shall be fully restored as provided in the previous sentence, in no event shall Mortgagors be permitted to receive, nor shall Lender be required to make, disbursements of funds available in any Replacement Account to reimburse Mortgagors for Replacements and any such Replacements shall be paid for by Mortgagors out of separate funds of Mortgagors (such separate funds of Mortgagors expressly not to include any income from the property securing the Northgate Loan ("Northgate Property") or the property securing the Southgate Loan ("Southgate Property")) (the Northgate Property and the Southgate Property are sometimes referred to herein each individually as a "Property" and collectively as the "Properties").

- 2.2. **REPLACEMENT TENANT(S)**. Mortgagors shall use diligent efforts to re-lease the currently vacant space previously leased to Delchamps, Inc. at each Property to tenant(s) which Mortgagors reasonably and in good faith believe are creditworthy and pursuant to leases permitted under the terms of the Loan Documents. All costs and expenses that may be required in connection with such re-leasing, including, without limitation, all costs of all tenant improvements, brokerage commissions and other leasing costs, shall be paid for by Mortgagors out of separate funds of Mortgagors (such separate funds of Mortgagors expressly not to include any income from either Property).
- 2.3. **INCOME TO BE PAID TO LENDER**. During the Replacement Reserve Suspension Period, Mortgagors shall promptly deliver or cause to be delivered to or as directed by Lender all rental payments and other amounts received directly or indirectly by or on behalf of or credited to Mortgagors from any person with respect to the Mortgagors' ownership, use, development, operation, leasing, franchising, marketing or licensing of the Properties, including, without limitation, all parking fees or charges, all expense reimbursements, all concession income, all business interruption insurance proceeds, if any, and all other income and payments of any kind from any tenants, lessees, licensees and other users of either Property. Such amounts shall be computed on a cash basis and shall include for each month, all amounts actually received by or on behalf of or credited to Mortgagors in such month whether or not such amounts are attributable to a charge arising in such month. All amounts received by Lender pursuant to this Section 2.3 shall be deposited by Lender into an account established by Lender in the name of Lender as Pledgee for Mortgagors (the "Pledged Account"). Borrower has and hereby does grant to Lender a first-priority security interest in the Pledged Account and the proceeds thereof. Mortgagors shall take such action as requested by Lender to cause Lender to maintain a first-priority perfected security interest in the Pledged Account. Upon the occurrence of any Default or Event of Default under any of the Loan Documents (as defined therein), Lender may apply funds in the Pledged Account towards satisfaction of either or both Mortgagors' obligations under the Loan Documents. The Pledged Account shall not bear interest.
- 2.4. **APPLICATION OF RESERVE ACCOUNTS**. So long as the Replacement Reserve Suspension Period shall continue and during such time as no default hereunder or Default or Event of Default under any of the Loan Documents (as defined therein) exists, if there shall be insufficient funds on deposit in the Pledged Account to pay any portion of principal and interest then due under the Loans as provided below in this Article II, Lender shall pay to itself out of amounts, if any, then on

deposit in any Replacement Account an amount necessary to make up such deficiency; provided, however, nothing contained herein shall in any way relieve Mortgagors from the obligation to pay all principal and interest under the Loans as and when due to the extent that there shall not be sufficient amounts in either the Pledged Account or any Reserve Account to make such payments.

2.5. **APPLICATION OF PLEDGED ACCOUNT DURING REPLACEMENT RESERVE SUSPENSION PERIOD.** So long as the Replacement Reserve Suspension Period shall continue and during such time as no default hereunder or Default or Event of Default under any of the Loan Documents (as defined therein) exists, all amounts on deposit in the Pledged Account shall be applied in the following order and priority:

- 2.5.1 First, to Lender, to pay principal and interest as and when due under the Loans;
- 2.5.2 Second, into the Replacement Accounts to the extent of any deficiency in the Replacement Accounts as a result of the application of any amounts previously held in the Replacement Accounts to pay principal and interest on the Loans in accordance with Section 2.4 hereof; and
- 2.5.3 Third, to be retained in the Pledged Account for future disbursement in accordance herewith.

2.6. **APPLICATION OF PLEDGED ACCOUNT AFTER REPLACEMENT RESERVE SUSPENSION PERIOD.** Any amounts on deposit in the Pledged Account upon the expiration or earlier termination of the Replacement Reserve Suspension Period shall be applied in the following order and priority:

- 2.6.1 First, to Lender, to pay any principal and interest then due under the Loans;
- 2.6.2 Second, into the Replacement Accounts to the extent necessary to fully restore the Replacement Accounts to the amounts the Replacement Accounts would have held but for the Replacement Reserve Suspension Period and but for the application of any amounts previously deposited in such Replacement Accounts to the payment of principal and interest in accordance with Section 2.4 above;
- 2.6.3 Third, to Lender, to pay any other amounts then due and owing under the Loan Documents; and
- 2.6.4 Fourth, to Mortgagors as directed by both Mortgagors or, if not so directed, on a pro rata basis as reasonably determined by Lender.

2.7. **OPERATING EXPENSES.** During the Replacement Reserve Suspension Period, Mortgagors shall pay (out of separate funds of Mortgagors, such separate funds of Mortgagors expressly not to include any income from either Property) all operating expenses of both Properties, including without limitation, those for maintenance, repairs, taxes (as set forth in Section 2.8 below), bond assessments, ground lease payments, insurance (as set forth in Section 2.8 below), utilities, capital expenses, management fees, other expenses of any kind and (subject to Section 2.4 above) any interest or principal payments on the Loans.

2.8. **PROPERTY TAXES AND INSURANCE.** During the Replacement Reserve Suspension Period, Mortgagors shall pay (out of separate funds of Mortgagors, such separate funds of Mortgagors expressly not to include any income from either Property) to or as directed by Lender, all amounts required to be paid by Mortgagors into the Escrow Fund under Section 3.4(a) of the Northgate Mortgage and Section 3.4(a) of the Southgate Mortgage.



- 2.9. **RESERVATION OF LENDER'S RIGHTS; TERMINATING EVENTS.** Notwithstanding the foregoing, Lender expressly reserves all of its rights and remedies with respect to any and all defaults, Defaults or Events of Default existing as of the date hereof or at any time hereafter under any of the Loan Documents (as defined therein) and does not waive any of such defaults, Defaults or Events of Default or any of such rights or remedies in connection therewith. The Replacement Reserve Suspension Period, the Lender's agreement to suspend Mortgagors' obligation to make the Monthly Replacement Account Deposit under the Northgate Mortgage and Southgate Mortgage, and all other covenants and agreements of Lender contained in this Agreement shall terminate, immediately and automatically, without further notice to Mortgagors, upon the occurrence of any one or more of the following events or conditions during the term of this Agreement (each a "Terminating Event," collectively, the "Terminating Events"):
- 2.9.1 Any Mortgagor breaches or fails to perform any term, condition or provision of this Agreement;
  - 2.9.2 Any material adverse change in any Mortgagor's business, financial condition, prospects or the value of the Lender's collateral occurs, as determined by the Lender in its sole discretion;
  - 2.9.3 Any Default or Event of Default occurs under any of the Loan Documents (as defined therein) or any event or condition that with the giving of notice, passage of time, or otherwise would become a Default or an Event of Default occurs; or
  - 2.9.4 Any Mortgagor or any guarantor or indemnitor commences a voluntary case under any chapter of the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any state insolvency, bankruptcy, debtor relief, or other similar law, or any involuntary case is commenced against any Mortgagor or any guarantor or indemnitor or any Mortgagor or any guarantor or indemnitor makes a general assignment for the benefit of creditors.
- 2.10. **RESTORATION OF REPLACEMENT ACCOUNTS UPON TERMINATING EVENT.** Upon the occurrence of a Terminating Event and notwithstanding anything to the contrary contained in Section 2.1 above, Mortgagors shall pay to Lender on demand an amount sufficient to cause the amount held in each Replacement Account to be fully restored to the amount it would have held but for the Replacement Reserve Suspension Period and but for the application of any amounts previously deposited in such Replacement Account to the payment of principal and interest in accordance with Section 2.4 above.
- 2.11. **ONE-TIME RIGHT OF TRANSFER OF SOUTHGATE PROPERTY.** The parties acknowledge that Southgate Mortgagor has entered into that certain Real Estate Purchase Agreement (Southgate Village Shopping Center, Pelham, Alabama) ("Southgate Sale Agreement") dated as of January 2, 2001 by and between Southgate Mortgagor and Regency Realty Group, Inc., a Florida corporation, relating to the potential sale of the Southgate Property by Southgate Mortgagor. Notwithstanding anything to the contrary contained in Article 8 of the Southgate Mortgage, Lender shall, one time only, consent to the voluntary sale or exchange of all of the Southgate Property by Southgate Mortgagor to a bona-fide third party purchaser pursuant to the Southgate Sale Agreement, without any modification of the terms of the Southgate Note or the other Southgate Loan Documents, if no default hereunder or Default or Event of Default under any of the Loan Documents (as defined therein) has occurred and is continuing and all of the following conditions have been satisfied:
- 2.11.1 Lender's reasonable determination that the proposed purchaser, the proposed guarantor, if any, and the Southgate Property all satisfy Lender's then applicable credit review and underwriting standards, taking into consideration, among other things, (a) any decrease in the Southgate Property's cash flow which would result from any increase in real

property taxes due to any anticipated reassessment of the Southgate Property for tax purposes and (b) any requirement of Lender that the proposed borrowing entity satisfy Lender's then applicable criteria for a single purpose bankruptcy remote entity;

- 2.11.2 Lender's reasonable determination that the proposed purchaser possesses satisfactory recent experience in the ownership and operation of properties comparable to the Southgate Property;
- 2.11.3 the execution and delivery to Lender of such documents and instruments as Lender shall reasonably require, in form and content reasonably satisfactory to Lender, including, without limitation, (i) an assumption agreement under which the purchaser assumes all obligations and liabilities of Southgate Mortgagor under the Southgate Note and the other Southgate Loan Documents and agrees to periodically pay such new or additional impounds to Lender as Lender may reasonably require, (ii) a consent to the transfer by any existing guarantor and a reaffirmation of such guarantor's obligations and liabilities under any guaranty made in connection with the Southgate Loan or a new guaranty executed by a new guarantor reasonably satisfactory to Lender, (iii) a consent to the transfer by any existing environmental indemnitor and a reaffirmation of such indemnitor's obligations and liabilities under any environmental indemnity made in connection with the Southgate Loan or a new environmental indemnity executed by a new indemnitor reasonably satisfactory to Lender;
- 2.11.4 delivery to Lender of evidence of title insurance reasonably satisfactory to Lender insuring Lender that the lien of the Southgate Mortgage and the priority thereof will not be impaired or affected by reason of such transfer or exchange of the Southgate Property;
- 2.11.5 payment to Lender of an assumption fee equal to 1% of the then outstanding principal balance of the Southgate Note;
- 2.11.6 payment to Lender of an amount, as determined by Lender, sufficient to cause the amount held in the Replacement Account under the Southgate Mortgage to be fully restored to the amount it would have held but for the Replacement Reserve Suspension Period provided for in Section 2.1 above and but for the application of any amounts previously deposited in such Replacement Account to the payment of principal and interest in accordance with Section 2.4 above;
- 2.11.7 reimbursement to Lender of any and all costs and expenses paid or incurred by Lender in connection with such transfer or exchange, including, without limitation, all in-house or outside counsel attorneys' fees, title insurance fees, appraisal fees, inspection fees, environmental consultant's fees and any fees or charges of the applicable rating agencies; and
- 2.11.8 if required by Lender, delivery to Lender of written evidence from the applicable rating agencies that such transfer or exchange will not result in a downgrading, withdrawal or qualification of the respective ratings in effect immediately prior to the transfer or exchange for any securities issued in connection with the securitization of the Southgate Loan which are then outstanding.

Lender shall fully release Southgate Mortgagor and any existing guarantor and environmental indemnitor from any further obligation or liability to Lender under the Southgate Note and the other Southgate Loan Documents upon the assumption by the purchaser and any new guarantor and new environmental indemnitor of all such obligations and liabilities and the satisfaction of all other conditions precedent to a transfer or exchange in accordance with the provisions of this Agreement.



- 2.12. EFFECT OF TRANSFER OF SOUTHGATE PROPERTY.** Upon completion of the voluntary sale or exchange of all of the Southgate Property by Southgate Mortgagor in accordance with the terms of Section 2.11 above, as evidenced by the recordation of a memorandum of assumption agreement evidencing the sale or exchange of the Southgate Property and the assumption of the Southgate Loan in the office of the Judge of Probate of Shelby County, Alabama and the office of the Judge of Probate of Jefferson County, Alabama:
- 2.12.1 The cross-collateralization and cross-default provisions contained in Article I above in this Agreement shall be of no further force and effect;
- 2.12.2 Lender's agreement to temporarily suspend the requirements under the Southgate Mortgage to make the Monthly Replacement Account Deposit, as set forth in Section 2.1 above, shall be of no further force and effect and Southgate Mortgagor (or its successor by assumption as borrower under the Southgate Loan) shall again be required to make such Monthly Replacement Account Deposit in accordance with the terms of the Southgate Loan Documents;
- 2.12.3 Notwithstanding anything to the contrary contained in Section 2.1 above, the disbursement of funds available in the Replacement Account under the Southgate Mortgage shall again be governed by the terms of the Southgate Loan Documents without regard to the limitations otherwise imposed by Section 2.1 above;
- 2.12.4 Notwithstanding anything to the contrary contained in Section 2.2 above, the ability of the Southgate Mortgagor (or its successor by assumption as borrower under the Southgate Loan) to use income from the Southgate Property to pay the costs and expenses that may be required in connection with re-leasing the currently vacant space previously leased to Delchamps, Inc. at the Southgate Property, including, without limitation, all costs of all tenant improvements, brokerage commissions and other leasing costs, shall again be governed by the terms of the Southgate Loan Documents without regard to the limitations otherwise imposed by Section 2.2 above;
- 2.12.5 Notwithstanding anything to the contrary contained in Section 2.3 above, Southgate Mortgagor's obligation, as set forth in said Section 2.3, to deliver or cause to be delivered to or as directed by Lender all rental payments and other amounts received directly or indirectly by or on behalf of or credited to Southgate Mortgagor from any person with respect to the Southgate Mortgagor's ownership, use, development, operation, leasing, franchising, marketing or licensing of the Southgate Property, shall be of no further force and effect and Southgate Mortgagor's ability to retain any such amounts shall again be governed by the terms of the Southgate Loan Documents without regard to the limitations otherwise imposed by Section 2.3 above. All amounts theretofore received by Lender pursuant to said Section 2.3 shall be retained in the Pledged Account, provided, however, that such Pledged Account shall thereafter be maintained by Lender in the name of Lender as Pledgee for Northgate Mortgagor only (and not for Southgate Mortgagor), regardless of whether any amounts in such Pledged Account originally related to the Northgate Property or the Southgate Property;
- 2.12.6 Notwithstanding anything to the contrary contained in Section 2.4 above, in no event shall any amounts on deposit in the Pledged Account or any amounts on deposit in any Replacement Account be used to pay any portion of principal and interest or any other amount due under the Southgate Loan;
- 2.12.7 Sections 2.5 and 2.6 above shall be deemed to have been amended to apply only to the Northgate Loan. In furtherance thereof, all references in said Sections 2.5 and 2.6 to the

Loan Documents, the Loans, the Replacement Accounts or the Mortgagors shall thereafter be deemed to be references to the Northgate Loan Documents, the Northgate Loan, the Replacement Account under the Northgate Loan and the Northgate Mortgagor, respectively;

- 2.12.8 Notwithstanding anything to the contrary contained in Sections 2.7 and 2.8 above, the ability of the Southgate Mortgagor (or its successor by assumption as borrower under the Southgate Loan) to use income from the Southgate Property to pay operating expenses of the Southgate Property, including without limitation, those for maintenance, repairs, taxes (including payments for the same to be made into the Escrow Fund under the Southgate Mortgage), bond assessments, ground lease payments, insurance (including payments for the same to be made into the Escrow Fund under the Southgate Mortgage), utilities, capital expenses, management fees, other expenses of any kind and any interest or principal payments on the Southgate Loan, shall again be governed by the terms of the Southgate Loan Documents without regard to the limitations otherwise imposed by Sections 2.7 and 2.8 above; and
- 2.12.9 Sections 2.9 and 2.10 above shall be deemed to have been amended to apply only to the Northgate Loan. In furtherance thereof, all references in said Sections 2.9 and 2.10 to the Loan Documents, any Mortgagor (or Mortgagors) or any Replacement Accounts shall thereafter be deemed to be references to the Northgate Loan Documents, the Northgate Mortgagor and the Replacement Account under the Northgate Loan, respectively.

### Article III. CONDITIONS PRECEDENT.

The following are conditions precedent to Lender's obligations under this Agreement:

- 3.1. **TITLE INSURANCE**. If required by Lender, the irrevocable commitment of First American Title Insurance Company ("Title Company") to issue so-called "date down," "deletion of creditors' rights," and "modification" endorsements to its existing title policy for each Loan, in each case in form and substance acceptable to Lender, issued by Title Company without deletions or exception other than expressly approved by Lender in writing, insuring Lender that the priority and validity of the Northgate Mortgage and the Southgate Mortgage, each as modified by this Agreement, constitutes a first and prior lien upon the Property referred to therein;
- 3.2. **EXECUTED AGREEMENT AND OTHER DOCUMENTS**. Receipt by Lender of (a) two fully executed originals of this Agreement, (b) if requested by Lender, two executed originals of a Memorandum of Modification Agreement, and (c) any and all other documents and agreements which are required by this Agreement, each in form and content acceptable to Lender;
- 3.3. **RECORDATION**. Recordation in the Official Records of the County where each Property is located of this Agreement or, at Lender's option, a Memorandum of Modification Agreement, in either case together with such other documents and agreements, if any, required pursuant to this Agreement or which Lender has requested to be recorded or filed;
- 3.4. **REPRESENTATIONS AND WARRANTIES**. The representations and warranties contained in this Agreement are true and correct;
- 3.5. **CONSENTS**. Receipt by Lender of an executed Guarantor's Consent and Hazardous Indemnitor's Consent in the forms of those attached hereto and otherwise in form and substance acceptable to Lender;
- 3.6. **RESOLUTIONS**. Receipt by Lender of a copy of such resolutions or certificates of Mortgagors as Lender shall reasonably require authorizing the execution of this Agreement and the consummation of the transactions contemplated hereby;



- 3.7. **OPINION OF COUNSEL.** Delivery to Lender of an opinion by Mortgagors' counsel regarding the due authorization, execution and enforceability of this Agreement and the other documents required hereby, in form and substance satisfactory to Lender;
- 3.8. **PAYMENT OF LENDER'S COSTS AND EXPENSES.** Mortgagors' reimbursement to Lender of Lender's costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, title insurance costs, escrow and recording fees, attorneys' fees, appraisal, engineers' and inspection fees, flood determination fee and documentation costs and charges, whether such services are furnished by Lender's employees or agents or independent contractors;

**Article IV. ACKNOWLEDGEMENT AND STIPULATIONS BY MORTGAGORS.**

As a material part of the consideration for this Agreement, Mortgagors hereby acknowledge, stipulate and agree as follows:

- 4.1. **REAFFIRMATION AND ACKNOWLEDGEMENT.** Mortgagors reaffirm the validity and enforceability of the Loan Documents, including this Agreement, and hereby fully, completely and unconditionally acknowledge the debt evidenced thereby in the principal amount set forth in Section 4.2 below (together with any and all accrued and unpaid interest and any and all costs and expenses payable to Lender pursuant to the Northgate Loan Documents and Southgate Loan Documents).
- 4.2. **OUTSTANDING BALANCES.** The outstanding principal balances of the Loans as of January 31, 2001 are as follows:
- |                |                |
|----------------|----------------|
| Northgate Loan | \$6,614,665.36 |
| Southgate Loan | \$5,504,174.15 |
- 4.3. **NO CLAIMS OR DEFENSES.** Mortgagors hereby acknowledge and agree that, with respect to the Loan Documents and any other contracts or instruments executed by either Mortgagor in connection with the Loan Documents (i) the Lender has heretofore properly performed and satisfied in a timely manner all of its obligations to Mortgagors, (ii) Mortgagors are unaware of any claims or causes of action of any kind whatsoever against Lender or any of Lender's employees, assistants, officers, directors, attorneys, successors, assigns or any of Lender's other representatives or agents on account of any condition, act, omission, event, contract, liability, obligation, indebtedness, claim, cause of action or matter of any kind whatsoever which existed, arose or occurred at any time prior to the execution and delivery of this Agreement, and (iii) Mortgagors are unaware of any defense against any of their obligations, indebtedness or contracts in favor of Lender or of any demands, offsets or defenses at law or in equity that would defeat Lender's right to collect the indebtedness evidenced by the Northgate Note and the Southgate Note as the same become due under the Northgate Loan Documents and Southgate Loan Documents, respectively.

**Article V. REPRESENTATIONS AND WARRANTIES.**

- 5.1. **FIRST LIENS.** Mortgagors represent and warrant that the lien of each of the Northgate Mortgage, the Northgate Assignment, the Southgate Mortgage and the Southgate Assignment is a first lien on the property described therein and covered thereby and that this Agreement will not cause intervening liens to become prior to the lien of the Northgate Mortgage, the Northgate Assignment, the Southgate Mortgage or the Southgate Assignment. If any intervening lien exists or hereafter arises, Mortgagors shall cause the same to be released or subordinated to the lien of the Northgate Mortgage, the Northgate Assignment, the Southgate Mortgage or the Southgate Assignment, as applicable, without limiting any other right or remedy available to Lender.

- 5.2. **FORMATION AND ORGANIZATIONAL DOCUMENTS.** Mortgagors represent and warrant that each Mortgagor has previously delivered to Lender all of the relevant formation and organizational documents of such Mortgagor, of the partners or joint venturers of such Mortgagor (if any), and of all guarantors of the Loan to such Mortgagor, and all such formation documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. Each Mortgagor hereby certifies that: (i) the above documents are all of the relevant formation and organizational documents of such Mortgagor; (ii) they remain in full force and effect; and (iii) they have not been amended or modified since they were previously delivered to Lender.
- 5.3. **HAZARDOUS MATERIALS.** Without in any way limiting any other provision of this Agreement, Mortgagors expressly reaffirm as of the date hereof, and continuing hereafter: (i) each and every representation and warranty in the Loan Documents respecting "Hazardous Substances"; and (ii) each and every covenant and indemnity in the Loan Documents respecting "Hazardous Substances".
- 5.4. **NO RELATED THIRD-PARTY CLAIMS.** Mortgagors represent and warrant that, other than those listed as parties to this Agreement, there is no individual or entity owned by, controlled by, under common ownership with, or affiliated with Mortgagors (or either one of them), which possesses a claim, demand, or cause of action of any kind and nature whatsoever arising out of or related to the Loans against Lender, or any of its past or present subsidiaries, divisions, affiliates, attorneys, officers, employees, directors, agents, alter egos, shareholders, partners, heirs, executors, administrators, legal successors and assigns, or their respective insurers and underwriters.
- 5.5. **INDIVIDUAL AUTHORITY.** Each individual executing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and has all requisite power, authority, and approval required to enter into, execute, and deliver this Agreement in the indicated capacity;
- 5.6. **DUE DILIGENCE.** Each Mortgagor hereby represents and warrants that, by executing this Agreement, it has done the due diligence necessary and sufficient to determine that the representations and warranties made in Sections 5.1, 5.2, 5.3, 5.4 and 5.5 above are true.

#### Article VI. GENERAL PROVISIONS.

- 6.1. **PARTIES REPRESENTED BY COUNSEL.** Each party to this Agreement acknowledges and warrants that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement. Each party has read or had read to it all of this Agreement and had it explained to it by his attorney and fully understands all the terms used and their significance;
- 6.2. **ATTORNEYS' FEES; ENFORCEMENT.** If any attorney is engaged by Lender to enforce, construe or defend any provision of this Agreement, or as a consequence of any default under or breach of this Agreement, with or without the filing of any legal action or proceeding, Mortgagors shall pay to Lender, upon demand, the amount of all attorneys' fees and costs reasonably incurred by Lender in connection therewith, together with interest thereon from the date of such demand at the rate of interest applicable to the principal balance of the Northgate Note and the Southgate Note as specified therein.
- 6.3. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement and understanding concerning the subject matter hereof between the parties, and supersedes and replaces all prior negotiations, proposed agreements and agreements written or oral. Each of the parties to this Agreement acknowledges that no other party to this Agreement, nor any agent or attorney of any such party, has made any promise, representation or warranty whatever, express or implied, not contained in this Agreement, to induce him to execute this Agreement. Each of the parties further



acknowledge that he is not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement;

- 6.4. **CONSTRUCTION.** Whenever, in this Agreement, the context may so require, the masculine or neuter gender shall be deemed to refer to and include the feminine, masculine, and neuter, and the singular to refer to and include the plural;
- 6.5. **GOVERNING LAW.** This Agreement shall in all respects be interpreted, enforced and governed by the laws of the State of Alabama and the applicable laws of the United States of America;
- 6.6. **NO ADMISSION.** It is expressly understood and agreed that this Agreement is being made solely for the purpose of avoiding the expense and inconvenience of litigation and that it is not an admission of wrongful conduct or of any liability to any other party, all of which is expressly denied;
- 6.7. **WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY;
- 6.8. **TIME IS OF THE ESSENCE.** TIME IS OF THE ESSENCE IN THIS AGREEMENT.
- 6.9. **WAIVERS.** In further consideration of Lender entering into this Agreement, each Mortgagor waives, with respect to each of the Loans, any and all rights to which either Mortgagor is or may be entitled pursuant to any antideficiency or similar laws which limit, qualify or reduce such party's obligations under any loan.
- 6.10. **WAIVER OF MARSHALLING RIGHTS.** Each Mortgagor waives all rights to have all or part of either Property marshalled upon any foreclosure of the Northgate Mortgage, the Northgate Assignment, the Southgate Mortgage or the Southgate Assignment. Lender shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of either or both Properties, of either or both of said mortgages or said assignments of leases and rents, or any part thereof, as a whole or in separate parcels, in any order that Lender may designate. Each Mortgagor makes this waiver for itself, and for all persons and entities claiming through or under such Mortgagor, and for persons and entities who may acquire a lien on all or any part of the Subject Property described in either of said mortgages or assignments of leases and rents, or on any interest therein.
- 6.11. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Agreement, all of the terms, covenants, and conditions contained in each of the Loan Documents shall remain in full force and effect.
- 6.12. **EXECUTION IN COUNTERPART.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature

Northgate Loan No.: LC# 80-0000062/FUNB# 41-0000053  
Southgate Loan No.: LC# 80-0000063/FUNB# 41-0000067

of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.




Northgate Loan No.: LC# 80-0000062/FUNB# 41-0000053  
Southgate Loan No.: LC# 80-0000063/FUNB# 41-0000067

IN WITNESS WHEREOF, Mortgagors and Lender have caused this Agreement to be duly executed as of the date first above written.

**"LENDER"**


LASALLE BANK NATIONAL ASSOCIATION  
(formerly known as LaSalle National Bank), as  
Trustee for LB Commercial Mortgage Trust  
Commercial Mortgage Pass-Through  
Certificates, Series 1998-C4

By: Wells Fargo Bank, National Association,  
as Special Servicer under the Pooling  
and Servicing Agreement, dated as of  
November 1, 1998, by and among  
Structured Asset Securities Corporation,  
First Union National Bank, Lennar  
Partners, Inc. (predecessor-in-interest  
as Special Servicer to Wells Fargo  
Bank, National Association), LaSalle  
National Bank and ABN Amro Bank N.V.

By:   
Name: E. J. GERAGHTY  
Title: VICE PRESIDENT

**"MORTGAGORS"**

GARDENDALE (AL) DEVELOPMENT, L.L.P.,  
an Alabama limited liability partnership

By:   
Name: L.W. Cave  
Title: Managing Partner/General Partner

VALLEYDALE (5) DEVELOPMENT, L.L.P.,  
an Alabama limited liability partnership

By:   
Name: L.W. Cave  
Title: Managing Partner/General Partner

**(ALL SIGNATURES MUST BE ACKNOWLEDGED)**

STATE OF California )

Orange COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that E.S. GERAGHTY, whose name as VICE PRESIDENT of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, in its capacity as Special Servicer under the Pooling and Servicing Agreement, dated as of November 1, 1998, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/~~she~~, as such VICE PRESIDENT and with full authority, executed the same voluntarily for and as the act of said banking association in its capacity as aforesaid.

Given under my hand and official seal this 15<sup>th</sup> day of February, 2001.

Eileen M. Noyes  
Notary Public

[NOTARIAL SEAL]

My commission expires: August 31, 2002

STATE OF ALABAMA )

Mobile COUNTY )



I, the undersigned, a notary public in and for said county in said state, do hereby certify that L.W. CAVE, whose name as Managing Partner/General Partner of GARDENDALE (AL) DEVELOPMENT, L.L.P., an Alabama limited liability partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Managing Partner/General Partner and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand and official seal this 9<sup>th</sup> day of February, 2001.

Teresa Ann Japohnick  
Notary Public

[NOTARIAL SEAL]

My commission expires: 7-11-01



STATE OF ALABAMA )

Mobile COUNTY )

I, the undersigned, a notary public in and for said county in said state, do hereby certify that L.W. CAVE, whose name as Managing Partner/General Partner of VALLEYDALE (5) DEVELOPMENT, L.L.P., an Alabama limited liability partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Managing Partner/General Partner and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand and official seal this 9<sup>th</sup> day of February, 2001.

Jessica Ann Topolnicki  
Notary Public

[NOTARIAL SEAL]

My commission expires: 7-11-01

## GUARANTOR'S CONSENT

The undersigned ("Guarantor") hereby consents to the terms and provisions of the foregoing Modification Agreement and the transactions contemplated thereby and hereby reaffirms its obligations under (a) the Guaranty of Recourse Obligations of Borrower executed in connection with the Northgate Loan, and (b) the Guaranty of Recourse Obligations of Borrower executed in connection with the Southgate Loan (each, a "Guaranty" and collectively, the "Guaranties") each dated September 2, 1998, and its waivers, as set forth in the Guaranties, of each and every one of the possible defenses to such obligations. Guarantor further reaffirms that its obligations under the Guaranties are separate and distinct from either Mortgagor's obligations under the Modification Agreement and the Loan Documents.


In addition, Guarantor hereby waives all rights and defenses that Guarantor may have because the debtors' debt is secured by real property. This means, among other things:

- (1) The creditor may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by the debtors.
- (2) If the creditor forecloses on any real property collateral pledged by the debtors:
  - (A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
  - (B) The creditor may collect from Guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from the debtors.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the debtor's debt is secured by real property.

Guarantor further hereby waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by the operation of any applicable law.

Dated as of: February 9, 2001

  
\_\_\_\_\_  
L.W. Cave

(ALL SIGNATURES MUST BE ACKNOWLEDGED)



STATE OF ALABAMA )

Mobile COUNTY )

I, the undersigned, a notary public in and for said county in said state, do hereby certify that L.W. CAVE, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, the executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 9<sup>th</sup> day of February, 2001.

Jessica Ann Topolinski  
Notary Public

[NOTARIAL SEAL]

My commission expires: 7-11-01

## HAZARDOUS INDEMNITOR'S CONSENT

The undersigned ("Indemnitor") hereby consents to the terms and provisions of the foregoing Modification Agreement and the transactions contemplated thereby and hereby reaffirms its obligations under (a) the Environmental Indemnity Agreement executed in connection with the Northgate Loan, and (b) the Environmental Indemnity Agreement executed in connection with the Southgate Loan (each, a "Indemnity" and collectively, the "Indemnities") each dated September 2, 1998, and its waivers, as set forth in the Indemnities, of each and every one of the possible defenses to such obligations. Indemnitor further reaffirms that its obligations under the Indemnities are separate and distinct from either Mortgagor's obligations under the Modification Agreement and the Loan Documents.

In addition, Indemnitor hereby waives all rights and defenses that Indemnitor may have because the debtors' debt is secured by real property. This means, among other things:


- (1) The creditor may collect from Indemnitor without first foreclosing on any real or personal property collateral pledged by the debtors.
- (2) If the creditor forecloses on any real property collateral pledged by the debtors:
  - (A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
  - (B) The creditor may collect from Indemnitor even if the creditor, by foreclosing on the real property collateral, has destroyed any right Indemnitor may have to collect from the debtors.

This is an unconditional and irrevocable waiver of any rights and defenses Indemnitor may have because the debtor's debt is secured by real property.

Indemnitor further hereby waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Indemnitor's rights of subrogation and reimbursement against the principal by the operation of any applicable law.

**AGREED:**

Dated as of: February 1, 2001

"INDEMNITOR"  
  
L.W. Gave

**(ALL SIGNATURES MUST BE ACKNOWLEDGED)**



STATE OF ALABAMA )

:

Mobile COUNTY )

I, the undersigned, a notary public in and for said county in said state, do hereby certify that L.W. CAVE, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, the executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 9<sup>th</sup> day of February, 2001.

Jessica Ann Topolnick  
Notary Public

[NOTARIAL SEAL]

My commission expires: 7-11-01

Inst # 2001-06611