

This Instrument Prepared by:
John R. Parks, Esq.
Powell, Goldstein, Frazer & Murphy LLP
Suite 1600
191 Peachtree Street, NE
Atlanta, Georgia 30303

After Recording, Return to:
Mr. Robert Strybel
Chicago Title Insurance Company
National Business Unit
171 N. Clark Street
Chicago, Illinois 60601

STATE OF ALABAMA
COUNTY OF JEFFERSON

**MORTGAGE, SECURITY AGREEMENT,
FINANCING STATEMENT AND FIXTURE FILING**

THIS MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING (this "*Mortgage*") is made as of April 17, 2003 by INLAND SOUTHEAST RIVER RIDGE, L.L.C., a Delaware limited liability company ("*Mortgagor*"), with the mailing address of c/o Inland Retail Real Estate Trust, Inc., 2901 Butterfield Road, Oak Brook, Illinois, 60523, for the benefit of SECURITY LIFE OF DENVER INSURANCE COMPANY, a Colorado corporation ("*Mortgagee*"), with the mailing address of c/o ING Investment Management LLC, 5780 Powers Ferry Road, NW, Suite 300, Atlanta, Georgia 30327-4349.

THIS MORTGAGE IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE COUNTY SHOWN ABOVE AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

WITNESSETH:

WHEREAS, Mortgagor has executed and delivered to Mortgagee that certain Promissory Note dated on or about this same date in the principal amount of FOURTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$14,500,000.00) with the final payment of principal and interest if not sooner paid or payable as provided therein, to be due on or before May 1, 2023 (which Promissory Note, together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified, extended, renewed, consolidated, restated or replaced, are hereinafter sometimes collectively referred to as the "*Note*").

Handwritten
Chicago Title

WHEREAS, Mortgagee is desirous of securing the prompt payment of the Note together with interest, charges and prepayment fees, if any, thereon in accordance with the terms of the Note, and any additional indebtedness accruing to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee pursuant to the Note or this Mortgage and any additional sums with interest thereon which may be loaned to Mortgagor by Mortgagee or advanced under the Loan Documents (as hereinafter defined) (all hereinafter sometimes collectively referred to as the “*Indebtedness*”).

NOW, THEREFORE, Mortgagor, to secure payment of the Indebtedness and the performance of the covenants and agreements herein contained to be performed by Mortgagor, for good and valuable consideration in hand paid, the receipt and sufficiency whereof are hereby acknowledged, and intending to be legally bound, hereby agrees and covenants as follows:

1. **Granting Clauses.** Mortgagor hereby irrevocably and absolutely does by these presents GRANT, CONVEY, WARRANT, SET OVER, TRANSFER, ASSIGN, BARGAIN, ALIEN, REMISE, RELEASE, MORTGAGE, CONFIRM AND SELL to Mortgagee, its successors and assigns, with all powers of sale and all statutory rights under the laws of Alabama, and grants to Mortgagee a security interest in, all of Mortgagor’s present and hereafter acquired estate, right, title and interest in, to and under the following (collectively referred to herein as the “*Premises*”):

(a) That certain real property situated in Birmingham, Shelby County, Alabama, and more particularly described in **Exhibit “A”** attached hereto and incorporated herein by this reference (the “*Land*”), together with all buildings, structures and improvements now or hereafter erected on the Land, together with all fixtures and items that are to become fixtures thereto (collectively, the “*Improvements*”);

(b) All and singular the easements, rights-of-way, licenses, permits, rights of use or occupancy, privileges, tenements, appendages, hereditaments and appurtenances and other rights and privileges attached or belonging to the Land or Improvements or in any wise appertaining thereto, whether now or in the future, and all the rents, issues and profits from the Land or Improvements;

(c) The land lying within any street, alley, avenue, roadway or right-of-way open or proposed or hereafter vacated in front of or adjoining the Land; and all right, title and interest, if any, of Mortgagor in and to any strips and gores adjoining the Land;

(d) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures, fittings, appliances, furniture and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Land or Improvements, or any part thereof, or used or usable in connection with any construction on or any present or future operation of the Land or Improvements, now owned or hereafter acquired by Mortgagor, including, but without limitation of the generality of the foregoing: all heating, lighting, refrigerating, ventilating, air-conditioning, air-cooling, electrical, fuel, garbage, sanitary drainage, removal of dust, refuse or garbage, fire extinguishing, plumbing, cleaning, telephone, communications and power equipment, systems and apparatus; and all elevators, switchboards,

motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all cranes and craneways, oil storage, sprinkler/fire protection and water service equipment; and also including any of such property stored on the Land or Improvements or in warehouses and intended to be used in connection with or incorporated into the Land or Improvements or for the pursuit of any other activity in which Mortgagor may be engaged on the Land or Improvements, and including without limitation all tools, musical instruments and systems, cabinets, awnings, window shades, venetian blinds, drapes and drapery rods and brackets, screens, carpeting and other window and floor coverings, decorative fixtures, plants, cleaning apparatus, and cleaning equipment, refrigeration equipment, cables, computers, software, books, supplies, kitchen equipment, motor vehicles, appliances, tractors, lawn mowers, ground sweepers and tools, swimming pools, whirlpools, recreational or play equipment together with all substitutions, accessions, repairs, additions and replacements to any of the foregoing; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, fittings, appliances, furniture, building materials, and property are a part of the Improvements and are declared to be a portion of the security for the Indebtedness (whether in single units or centrally controlled, and whether physically attached to said real estate or not), excluding, however, personal property owned by tenants of the Land or Improvements;

(e) Any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Land or Improvements or other properties described above as a result of: (1) the exercise of the right of eminent domain or action in lieu thereof; or (2) the alteration of the grade of any street; or (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Land or Improvements or other properties described above, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagor or Mortgagee, and of the reasonable counsel fees, costs and disbursements incurred by Mortgagor or Mortgagee in connection with the collection of such award or payment. Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by Mortgagee to confirm such assignment to Mortgagee of any such award or payment;

(f) Any and all accounts receivable and any right of Mortgagor to payment for goods sold or leased or for services rendered, whether or not yet earned by performance, and whether or not evidenced by an instrument or chattel paper, arising from the operation of the Land or Improvements, now existing or hereafter created, substitutions therefor, proceeds thereof (whether cash or noncash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and any or all of the foregoing and proceeds therefrom;

(g) To the full extent assignable any and all authorizations, licenses, permits, contracts, management agreements, franchise agreements, and occupancy and other certificates concerning the ownership, use and operation of the Land or Improvements;

(h) All monies on deposit for the payment of real estate taxes or special assessments against the Land or Improvements or for the payment of premiums on policies of fire and other hazard insurance covering the Land or Improvements and all tenants' or security deposits held by Mortgagor in respect of the Land or Improvements;

(i) Any and all leases, occupancy agreements, tenancies affecting the Land or Improvements and any and all names under or by which the Land or the Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, patents, patents pending and goodwill with respect to the Land or Improvements (but excluding the name "Inland" or any trademark associated therewith);

(j) Any and all shares of stock, membership or partnership interest or other evidence of ownership of any part of the Land or the Improvements that is owned by Mortgagor in common with others, including all water stock relating to the Land or the Improvements, if any, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Land or the Improvements and any management agreements;

(k) Any and all plans and specifications prepared for construction of improvements on the Land or the Improvements and all studies, data and drawings related thereto; and all contracts and agreements of Mortgagor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings, or to the construction of improvements on the Land or the Improvements;

(l) Any and all of Mortgagor's right, title and interest in, to and under any and all reserve, deposit or escrow accounts made pursuant to any loan documents made between Mortgagor and Mortgagee with respect to the Land or the Improvements, together with all income, profits, benefits and advantages arising therefrom;

(m) Any and all goods, accounts, general intangibles, chattel paper, instruments, documents, consumer goods, equipment and inventory (as defined in the Uniform Commercial Code of the State of Alabama ("*UCC*")) located on and used in the operation of the Land or the Improvements;

(n) All of Mortgagor's right, title and interest in and to deposit accounts and letter of credit rights (as defined in the UCC);

(o) Any and all substitutions, accessions, additions and replacements to any of the foregoing; and

(p) All products and proceeds of any of the foregoing, or with respect to the Land or the Improvements.

The parties intend the definition of Premises to be broadly construed and in the case of doubt as to whether a particular item is to be included in the definition of Premises, the doubt should be resolved in favor of inclusion.

TO HAVE AND TO HOLD the Premises with all rights, privileges and appurtenances thereunto belonging, and all income, rents, royalties, revenues, issues, profits and proceeds

therefrom, unto Mortgagee, its successors and assigns, in fee simple forever, for the uses and purposes herein expressed.

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if the Mortgagor shall fully pay or cause to be fully paid to the Mortgagee all Indebtedness, including, without limitation, any prepayment premium provided for herein or in the Note, the principal and interest payable with respect to the Loan and the Note, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to, reasonable attorneys' fees, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, in the other Loan Documents expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, and (ii) the Mortgagee shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Note, any other Loan Document (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

THIS MORTGAGE IS GIVEN TO SECURE: Payment of the Indebtedness; payment of such additional sums with interest thereon which may hereafter be loaned to Mortgagor by Mortgagee pursuant to the Note or Mortgage or otherwise advanced under the Loan Documents, including without limitation advances made by Mortgagee to protect the Premises or the lien and interest of this Mortgage or to pay taxes, assessments, insurance premiums, and all other amounts that Mortgagor has agreed to pay pursuant to the provisions hereof or that Mortgagee has incurred by reason of the occurrence of an Event of Default (as hereinafter defined), including without limitation, advances made to enable the completion of the Improvements or any restoration thereof, even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Note; and the due, prompt and complete performance of each and every covenant, condition and agreement contained in this Mortgage, the Note, and every other agreement, document and instrument to which reference is expressly made in this Mortgage or which at any time evidences or secures the Indebtedness evidenced by the Note (this Mortgage, the Note and guaranty of Mortgagor to Mortgagee and all such other agreements, documents and instruments, but excluding the certain Environmental Indemnification Agreement executed by Mortgagor are hereinafter sometimes collectively referred to as the "***Loan Documents***"). Mortgagor hereby warrants that Mortgagor has good and marketable title to the Premises, is lawfully seized and possessed of the Premises and every part thereof, and has the right to convey same; that Mortgagor will forever warrant and defend the title to the Premises unto Mortgagee against the claims of all persons whomsoever; and that the Premises are unencumbered except as set forth on Mortgagee's title insurance policy dated on or about even date herewith regarding the Premises. It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances.

2. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.** Mortgagor shall: (a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed, such Improvements to be of at least equal value and substantially the same character as prior to such damage or destruction (provided, however, if such damage or destruction is caused by casualty or condemnation, Mortgagor's obligation in this clause (a) is conditioned upon Mortgagee making any insurance or condemnation proceeds, after deduction of reasonable expenses in the collection thereof, available to Mortgagor for repair, restoration or rebuilding the Improvements, but Mortgagor's obligation herein is not limited by the sufficiency of such proceeds to fully repair, restore or rebuild the Improvements); (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien (except the lien of current general taxes duly levied and assessed but not yet due and payable); (c) promptly pay when due or within any applicable grace period any indebtedness which may be secured by a lien or charge on the Premises (no such lien, except for current general taxes duly levied and assessed but not yet payable, to be permitted hereunder), and upon request exhibit satisfactory evidence to Mortgagee of the discharge of such lien; (d) complete within a reasonable time any Improvements now or at any time in process of erection upon the Land; (e) comply with all requirements of law (including, without limitation, pollution control and environmental protection laws and laws relating to the accommodation of persons with disabilities), ordinance or other governmental regulation in effect from time to time affecting the Premises and the use thereof, and covenants, easements and restrictions of record with respect to the Premises and the use thereof; (f) make no material alterations in the Premises without Mortgagee's prior written consent which shall not be unreasonably withheld, delayed or denied; (g) suffer or permit no material change in the general nature of the use of the Premises, without Mortgagee's written consent which shall not be unreasonably withheld, delayed or denied; (h) initiate or acquiesce in no zoning reclassification or variance with respect to the Premises without Mortgagee's written consent; and (i) pay each item of Indebtedness when due according to the terms hereof or of the Note.

3. **Payment of Taxes.** Mortgagor shall pay before any delinquency or any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor.

4. **Tax Deposits.** Mortgagor covenants and agrees to deposit with such depository as the Mortgagee from time to time may in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, c/o ING Investment Management LLC, 5780 Powers Ferry Road, NW, Suite 300, Atlanta, Georgia 30327-4349, Attention: Mortgage Loan Servicing Department, commencing on the date of disbursement of the loan secured hereby and on the first day of each month following the month in which said disbursement occurred until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of the last total annual taxes and assessments for the last ascertainable year (if the current year's taxes and assessments are not yet ascertainable) (general and special) on the Premises (unless said taxes are based upon assessments which exclude the Improvements or any part thereof now constructed or to be constructed, in which event the amount of such deposits shall be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed);

provided, however, if there is a separate tax parcel for any portion of the Premises for which a tenant under a Lease (as hereinafter defined) is obligated to pay and such tenant is not in default with respect to such obligation, the amount of taxes for such separate tax parcel shall not be included in the calculation of the escrowed amount to be deposited by Mortgagor. Such deposits are to be held without any allowance of interest (unless local law requires otherwise) and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. Upon demand by such depository, Mortgagor shall deliver and pay over to such depository from time to time such additional sums or such additional security as are necessary to make up any deficiency in the amount necessary to enable such depository to fully pay any of the items hereinabove mentioned as they become payable. If the funds so deposited exceed the amount required to pay such items hereinabove mentioned for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee or such depository.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other property not covered by the lien of this Mortgage, then the computation of any amount to be deposited under this **Paragraph 4** shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

5. **Mortgagee's Interest In and Use of Deposits.** Upon the occurrence of an Event of Default, Mortgagee may at its option, without being required to do so, apply any monies at the time on deposit pursuant to **Paragraphs 4 and 7** hereof, on any of Mortgagor's obligations herein or in the Note or any of the Loan Documents contained, in such order and manner as the Mortgagee may elect; provided, however, in the event a payment for taxes, assessments or insurance premiums becomes delinquent if not paid within sixty (60) days of the date of the occurrence of an Event of Default, the applicable deposit shall be utilized for such payment if such payment is not otherwise made. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises. A security interest within the meaning of the UCC is hereby granted to the Mortgagee in and to any monies at any time on deposit pursuant to **Paragraphs 4 and 7** hereof and such monies and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all as additional security for the Indebtedness and shall in the absence of the occurrence of an Event of Default be applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments and insurance premiums any amount so deposited. Neither Mortgagee nor any depository hereunder shall be liable for any act or omission taken in good faith or pursuant to the instruction of Mortgagor, or any party Mortgagee reasonably believes is acting on behalf of Mortgagor but only for its willful misconduct or gross negligence.

6. **Insurance.**

- (a) Until the Indebtedness is fully paid, the Improvements and all fixtures, equipment

and property therein contained or installed shall be kept unceasingly insured against loss and damage by such hazards, casualties and contingencies in such amounts and for such periods as may from time to time be required by Mortgagee. All insurance shall be written in policies and by insurance companies approved by Mortgagee which approval shall not be unreasonably withheld so long as a Best Class rating of at least A XI is maintained and the policy otherwise conforms to the terms hereof. All policies of insurance and renewals thereof shall contain standard noncontributory Mortgagee loss payable clauses to Mortgagee and shall provide for at least thirty (30) days prior written notice of cancellation to Mortgagee as well as a waiver of subrogation endorsement, all as required by Mortgagee, in form and content reasonably acceptable to Mortgagee. All policies (or specimen policies with applicable endorsements for the Premises and certificates of insurance in forms reasonably acceptable to Mortgagee) shall, with all premiums fully paid, be delivered to Mortgagee as issued at least thirty (30) days before the expiration of existing policies and shall be held by Mortgagee until all sums hereby secured are fully paid. Upon request by Mortgagee, Mortgagor shall furnish Mortgagee reasonable evidence of the replacement cost of the Improvements. Mortgagee shall not by reason of accepting, rejecting, approving or obtaining insurance incur any liability for payment of losses.

(b) Without in any way limiting the generality of the foregoing, Mortgagor covenants and agrees to maintain insurance coverage on the Premises which shall include: (i) all risk coverage insurance (including vandalism and malicious mischief) for an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements, written on a replacement cost basis and with a replacement cost endorsement (without depreciation) an increased cost of construction endorsement and an agreed amount endorsement pertaining to the co-insurance clause, and containing a mortgagee clause in Mortgagee's favor; and if at any time a dispute arises with respect to replacement cost, Mortgagor agrees to provide at Mortgagor's expense, an insurance appraisal prepared by an insurance appraiser reasonably approved by Mortgagee, establishing the full replacement cost in a manner satisfactory to the insurance carrier; (ii) rent loss insurance insuring against loss arising out of the perils insured against in the policy or policies referred to in clause (i) above, in an amount equal to not less than gross revenue from the Premises for twelve (12) months from the operation and rental of all Improvements now or hereafter forming part of the Premises, based upon one hundred percent (100%) occupancy of such Improvements, less any allocable charges and expenses which do not continue during the period of restoration and naming Mortgagee in a standard mortgagee loss payable clause thereunder; (iii) comprehensive general public liability and property damage insurance with a broad form coverage endorsement for an amount as required from time to time by the Mortgagee but not less than an aggregate amount of Three Million and No/100 Dollars (\$3,000,000.00) with a single occurrence limit of not less than Three Million and No/100 Dollars (\$3,000,000.00) for claims arising from any one (1) accident or occurrence in or upon the Premises and naming Mortgagee as an additional insured thereunder; (iv) flood insurance whenever in Mortgagee's reasonable judgment such protection is necessary and is available and in such case in an amount acceptable to Mortgagee and naming Mortgagee as the loss payee thereunder; (v) insurance covering pressure vessels, pressure piping and machinery, if any, and all major components of any centralized heating or air-conditioning systems located in the Improvements, in an amount satisfactory to Mortgagee, such policies also to insure against physical damage to such buildings and improvements arising out of peril covered thereunder; and (vi) such other insurance that may be reasonably required from time to time by Mortgagee.

Notwithstanding the foregoing, Mortgagee agrees not to require insurance coverage for acts of terrorism as of the date of this Mortgage, however, Mortgagee retains the right to require terrorism coverage in the future, if in Mortgagee's sole judgment, terrorism coverage is commercially accessible and customary for Mortgagee or its affiliates to require for similar properties or similar loans. If Mortgagee requires terrorism coverage for similar properties or similar loans in the future Mortgagor will have the right to substitute a guarantee for any loss due to a terrorist act from an entity with a net worth of not less than \$300,000,000.00 in lieu of said coverage.

(c) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder.

7. **Insurance Premium Deposits.** It is further covenanted and agreed that for the purpose of providing funds with which to pay the premiums as the same become due on the policies of insurance as herein covenanted to be furnished by the Mortgagor, Mortgagor shall deposit with Mortgagee or the depository referred to in **Paragraph 4** hereof on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurred, an amount equal to the annual premiums that will next become due and payable on such policies less any amount then on deposit with the Mortgagee or such depository, divided by the number of months to elapse thirty (30) days prior to the date when such premiums become delinquent. No interest shall be allowed to Mortgagor on account of any deposit or deposits made hereunder and said deposits need not be kept separate and apart from any other funds of Mortgagee or such depository.

8. **Adjustment of Losses with Insurer and Application of Proceeds of Insurance.**

(a) In case of loss or damage by fire or other casualty, in which the estimated cost to repair exceeds \$150,000.00, Mortgagor shall immediately give Mortgagee and the insurance companies that have insured against such risks written notice of such occurrence.

(b) In case of loss or damage by fire or other casualty Mortgagor shall, if no Event of Default then exists hereunder, have the sole and exclusive right to settle, compromise or adjust any claim under, and receive, for the purpose of rebuilding and restoration, the proceeds arising from, any and all losses payable under insurance policies to the extent the amount thereof does not exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00), and all claims for losses in excess of said amount shall be settled, compromised or adjusted only with the mutual agreement of Mortgagor and Mortgagee and the proceeds paid as hereinafter provided. In the event insurance proceeds in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00) are payable or if an Event of Default exists hereunder, then in either of such events, Mortgagee is authorized to collect and receipt for any insurance proceeds. Insurance proceeds collected by Mortgagee as aforesaid, after deducting therefrom any reasonable expenses incurred in the collection thereof, shall, if requested by Mortgagor in writing within ninety (90) days after the proceeds of insurance covering such damage or destruction become available, be made available to Mortgagor for the purpose of paying the cost of rebuilding or restoring of the Improvements if (i) the Premises, in Mortgagee's reasonable discretion is capable of being restored to that condition which existed immediately prior to the damage or

loss, (ii) the insurance proceeds, together with all other funds which are to be provided by Mortgagor, are sufficient to restore the Premises, (iii) Mortgagee reasonably determines that income from the Premises shall not be materially affected following the completion of the restoration or rebuilding, (iv) no Event of Default then exists hereunder or under any other Loan Document, and no circumstance or condition exists that would constitute an Event of Default upon the giving of notice or the passage of time, or both, and (v) the rebuilding and restoration is reasonably estimated to be completed prior to the Maturity Date or any Call Date (if Mortgagee has exercised a Call Option), as those terms are defined in the Note. In the event that Mortgagee makes said proceeds available to Mortgagor to pay the cost of rebuilding or restoring of the Improvements, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may reasonably require to assure proper application of such proceeds. In the event such insurance proceeds are made available by the Mortgagee, the Mortgagor shall pay all costs incurred by Mortgagee in connection with the application of such insurance proceeds (including but not limited to reasonable costs incurred by Mortgagee, and a title company or agent approved by Mortgagee in overseeing the disbursement of such insurance proceeds). The Improvements shall be restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the projected cost of rebuilding, repairing or restoring of the Improvements exceeds the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00), then insurance proceeds shall not be made available to Mortgagor unless and until Mortgagee has approved plans and specifications for the proposed rebuilding and restoration, which approval shall not be unreasonably withheld, delayed or denied. If the proceeds are to be made available by Mortgagee to Mortgagor to pay the cost of said rebuilding or restoration, any surplus which may remain out of said insurance proceeds after payment of the costs of rebuilding or restoring the Premises shall be paid to Mortgagor. No interest shall be allowed to Mortgagor on any proceeds of insurance held by Mortgagee.

(c) In the event proceeds of insurance are not made available to Mortgagor for the purpose of paying the cost of the rebuilding or restoring of the Improvements, Mortgagee, after deducting the costs of any collection, adjustment and compromise, shall apply such insurance proceeds upon the Indebtedness in accordance with the terms of the Note and no Prepayment Premium (as that term is defined in the Note) shall be due.

9. **Stamp Tax.** If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note hereby secured and this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee reasonably expends by reason of the imposition of any tax on the issuance of the Note secured hereby and this Mortgage.

10. **Observance of Lease Assignment.**

(a) As additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, Mortgagor, as landlord, has assigned to Mortgagee, by that certain Assignment of Rents and Leases dated on or about this same date (the “*Assignment of Rents*”), all of Mortgagor’s right, title and interest as landlord in and to all leases or other rights of use and or occupancy of any part of the Premises, both present

and future (hereinafter collectively referred to as the “*Leases*”) and all of the rents, issues and profits from the Leases or guaranties thereof (hereinafter collectively referred to as the “*Rents*”).

(b) All Leases entered into after the date hereof (i) shall be bona fide arms-length transactions with a third party, (ii) shall not contain any rental or other concessions which are not approved by Mortgagee, and (iii) shall provide that the tenant pay a pro rata share (based on square footage of space) of, or increases in, taxes, insurance or other operating expenses. Mortgagee will, at the request of Mortgagor, approve a form of lease satisfactory to Mortgagee, but Mortgagee shall have the right subsequently to revoke such approval of the form upon thirty (30) days prior written notice to Mortgagor of its election to do so. After the date of this Mortgage, Mortgagor may enter into Leases in the normal course of business without the Mortgagee’s prior approval provided that the terms of such Leases are at least consistent with then current market conditions and provided that Mortgagee is not requested to review or execute a non-disturbance, attornment agreement or subordination with or in favor of the tenants of such Leases.

Except if the Non-Major Conditions are satisfied, all modifications to Leases, which are not automatically subordinated to this Mortgage must receive the prior approval of Mortgagee, which approval shall not unreasonably be withheld, delayed or denied. Those Leases for which Mortgagee executes a subordination, non-disturbance and attornment agreement shall not be considered automatically subordinated.

Mortgagee shall require that all leases for the Premises are subject and subordinate to this Mortgage. For any Lease which by its terms does not provide for automatic subordination without the requirement that Mortgagee grant non-disturbance provisions to tenant as a condition of the automatic subordination, Mortgagee requires the execution of a Subordination, Non-Disturbance and Attornment Agreement in a form reasonably approved by Mortgagee (the “*SNDA*”). Notwithstanding the aforesaid, Mortgagee shall require the SNDA from (a) all credit tenants, (b) all tenants occupying 20,000 square feet and greater of space, (c) all tenants having a lease term greater than twenty (20) years and (d) all tenants having a purchase option or right of first refusal to purchase the Premises or a portion thereof.

(c) Mortgagor will not, without Mortgagee’s prior written consent: (i) execute an assignment or pledge of any Rents and/or any Leases; or (ii) accept any prepayment of any installment of any Rents more than thirty (30) days before the due date of such installment, and in any event no more than thirty (30) days in advance of the then current month.

(d) Mortgagor at its sole cost and expense will: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all Leases, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of the Leases on the part of the lessees to be kept and performed, but if any of the Non-Major Conditions do not apply, Mortgagor shall not (except in accordance with the terms of such Leases) modify, amend, renew, extend, cancel, terminate or accept surrender of any Lease without the prior written consent of Mortgagee not to be unreasonably withheld, delayed or denied; (iii) appear in and defend any action or proceeding arising under, growing out of or in

any manner connected with the Leases or the obligations, duties or liabilities of landlord or of the lessees thereunder; (iv) upon written request of Mortgagee, transfer and assign to Mortgagee, any Lease or Leases heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish Mortgagee, within ten (10) business days after a request by Mortgagee so to do, a written statement containing the names of all lessees, terms of all Leases, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within ten (10) business days of any demand therefor by Mortgagee (but not more than once in a twelve-month period if no Event of Default exists) any right to request from the lessee under any Lease a certificate with respect to the status thereof (the form of such certificate to comply with any requirements set forth in such Lease).

(e) Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as landlord under any of the Leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay.

(f) Mortgagor will not permit any Lease or any part thereof to become subordinate to any lien hereof.

(g) Mortgagee shall have the option to declare this Mortgage in default because of a default of landlord in any Lease of the Premises for space in excess of 20,000 square feet unless such default is cured by Mortgagor pursuant to the terms of the Lease and within any applicable cure period or unless such default would not permit the tenant to terminate the Lease (such default under the Lease must either not have been contested or a judgment of default against landlord has been entered). It is covenanted and agreed that an Event of Default under the Assignment of Rents shall constitute an Event of Default hereunder on account of which the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to the Mortgagor.

(h) Mortgagor shall not, and shall not permit any tenant to, conduct any on-site dry cleaning operations on the Premises.

(i) In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each Lease of the Premises shall, at the option of Mortgagee, attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as landlord under such Lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any Lease made without the consent of Mortgagee or said successor in interest (except modifications not requiring Mortgagee's consent as provided in this Mortgage). Each lessee, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

11. **Effect of Extension of Time.** If the payment of the Indebtedness, or any part thereof, is extended or varied, or if any part of any security for the payment of the Indebtedness is released, or if any person or entity liable for the payment of the Indebtedness is released, or if Mortgagee takes other or additional security for the payment of the Indebtedness, or if Mortgagee waives or fails to exercise any right granted herein, or in the Note secured hereby, or in any other instrument given to secure the payment hereof, then all persons now or at any time hereafter liable for the payment of the Indebtedness, or any part thereof, or interested in the Premises shall be held to assent to such extension, variation, release, waiver, failure to exercise or the taking of additional security, and their liability and the lien and interest and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, release, waiver, failure to exercise, or the taking of additional security.

12. **Effect of Changes in Laws Regarding Taxation.** In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of Mortgages to secure debt or debts secured by Mortgages to secure debt or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor if Mortgagee pays such taxes and submits proof of payment to Mortgagor; provided, however, that if in the opinion of counsel for Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Indebtedness to be and become due and payable ninety (90) days from the giving of such notice, without the applicable Prepayment Premium (as defined in the Note).

13. **Mortgagee's Performance of Defaulted Acts.** Upon the occurrence of an Event of Default herein, Mortgagee may, but need not, and whether electing to declare the whole of the Indebtedness due and payable or not, and without waiver of any other remedy, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment or cure any default of Mortgagor as landlord in any Lease. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in **Paragraphs 9 and 12** hereof or to protect the Premises or the lien and interest hereof, shall be additional Indebtedness and shall become immediately due and payable without notice and with interest thereon at the Default Rate of interest set forth in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Event of Default on the part of Mortgagor.

14. **Mortgagee's Reliance on Tax Bills, Etc.** Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) relating to insurance premiums, may do so according to any bill or statement procured from the appropriate company without inquiry into the accuracy of such bill or statement; or (c) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

15. **Acceleration of Indebtedness in Event of Default.** It is expressly agreed by Mortgagor that time is of the essence hereof and that the whole of the Indebtedness shall become immediately due and payable without notice to Mortgagor at the option of the Mortgagee upon the occurrence of one or more of the following events (hereinbefore and hereinafter collectively referred to as "*Events of Default*" and individually referred to as an "*Event of Default*"), together with a prepayment premium in the amount, if any, required to be paid pursuant to the terms of the Note in the event of a prepayment:

(a) nonpayment of any monetary sum due hereunder within ten (10) days after the same shall become due; or

(b) default shall be made in the due observance or performance of the terms and conditions of **Paragraph 6** hereof (Insurance) or **Paragraph 30** hereof (Due on Sale or Further Encumbrance); or

(c) default shall be made in the due observance or performance of any of the other covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by the Mortgagor which does not relate to the nonpayment of any monetary sum, and such default is not cured within thirty (30) days following written notice thereof by Mortgagee to Mortgagor or within such longer period of time, not exceeding an additional sixty (60) days, as may be reasonably necessary to cure such non-compliance if Mortgagor is diligently and with continuity of effort pursuing such cure and the failure is susceptible of cure within an additional period of sixty (60) days; or

(d) the entry of a decree or order for relief by a court having jurisdiction in respect of Mortgagor, a general partner of Mortgagor if Mortgagor is a partnership, the beneficiary or beneficiaries of Mortgagor if Mortgagor is a trust, a managing member of Mortgagor if Mortgagor is a limited liability company, or any guarantor of the Note secured hereby (any of the foregoing parties being referred to herein as a "*Key Party*"), in any involuntary case under the federal bankruptcy laws now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for any Key Party or any substantial part of the property of any such Key Party, or for the winding up or liquidation of the affairs of any Key Party and the continuance of any such decree or order unstayed and in effect for a period of one hundred eighty (180) consecutive days; or

(e) the commencement by any Key Party, of a voluntary case under federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or any other similar laws or the consent by any such Key Party to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of any Key Party, or of any substantial part of the property of any such person or entity, or the making by any such Key Party of an assignment for the benefit of creditors or the failure of any such Key Party generally to pay the debts of any such Key Party as such debts become due, or the taking of action by any such Key Party in furtherance of any of the foregoing; or

(f) any warranty, representation, certification, financial statement, or other information furnished or to be furnished to Mortgagee by or on behalf of Mortgagor or any guarantor of the Note to induce Mortgagee to loan the money evidenced by the Note proves to have been inaccurate or false in any material respect when made; or

(g) any breach, default, event of default or failure of performance (however denominated) under the Note or any of the other Loan Documents and the expiration of any applicable cure period without the same having been cured; or

(h) Mortgagor shall be in default of, or in violation of, beyond any applicable grace period, any conditions, covenants or restrictions which benefit or burden the Premises but only if such breach or violation has a material adverse effect on the use, operation or value of the Premises.

If, while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, Mortgagee shall accelerate the Indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the Indebtedness and any excess held by it over the amount of Indebtedness then due hereunder shall be returned to Mortgagor or any other party entitled thereto without interest.

16. **Remedies.**

(a) **Primary Remedies.** If an Event of Default shall occur, Mortgagee may: declare the Indebtedness to be and the same shall be, immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived and without regard to the value of the Property held as security for the Indebtedness or the solvency of any person liable for the payment of such Indebtedness; and/or exercise any other right, power or remedy available to it at law or in equity, hereunder or under any other Loan Document without demand, protest or notice of any kind, all of which are hereby expressly waived, except such as is expressly required hereby or by such other Loan Document. Without limiting the generality of the foregoing, Mortgagee may:

(i) enter and take possession of the Premises or any part thereof, exclude Mortgagor and all persons claiming under Mortgagor wholly or partly therefrom, and operate, use, manage and control the same, or cause the same to be

operated by a person selected by Mortgagee, either in the name of Mortgagor or otherwise, and upon such entry, from time to time, at the expense of Mortgagor and of the Premises, make all such repairs, replacements, alterations, additions or improvements thereto as Mortgagee may deem proper, and to lease the Premises or any part thereof at such rental and to such persons as it may deem proper and collect and receive the rents, revenues, issues, profits, royalties, income and benefits thereof including, without limitation, those past due and those thereafter accruing, with the right of Mortgagee to terminate, cancel or otherwise enforce any Lease or sublease for any default that would entitle Mortgagor to terminate, cancel or enforce same and apply the same to the payment of all expenses which Mortgagee may be authorized to incur under the provisions of this Mortgage and applicable laws, the remainder to be applied to the payment, performance and discharge of the Indebtedness in such order as Mortgagee may determine until the same have been paid in full; provided, however, Mortgagee shall be responsible for its own gross negligence or willful misconduct in the exercise of the rights and remedies set forth in this clause (i);

(ii) institute an action for the foreclosure of this Mortgage and the sale of the Premises pursuant to the judgment or decree of a court of competent jurisdiction;

(iii) sell the Premises, either in person or by auctioneer, at public outcry in front of the courthouse door in the county where the Premises or any part thereof may be, to the highest bidder for cash, having first given notice of the time, terms and place of such sale, together with a description of the Premises to be sold, by publishing a notice thereof once a week for three consecutive weeks prior to said sale in some newspaper published in said county, all other notice being hereby waived by Mortgagor, and Mortgagee may, upon payment of the purchase money, thereupon execute and deliver to the purchaser at said sale a sufficient conveyance of the Premises in fee simple, which conveyance may contain recitals as to the happening of the default upon which the execution of the power of sale, herein granted, depends, and said recitals shall be presumptive evidence that all preliminary acts prerequisite to said sale and deed were in all things duly complied with; and Mortgagee, or its agents, representatives, successors or assigns, may bid for and purchase the Premises if the highest bidder therefor, and, upon compliance with the terms of the sale and applicable law, may hold, retain, possess and dispose of such Premises in its own absolute right without further accountability to Mortgagor; to the full extent permitted by applicable law, the Premises or any part thereof, may be sold in one parcel and as an entirety, or in such parcels, manner or order as Mortgagee in its sole discretion may elect, and one or more exercises of the rights herein granted shall not extinguish or exhaust the rights unless the entire Premises is sold or the Indebtedness paid in full; and Mortgagee, or its assigns, shall collect the proceeds of such sale, applying such proceeds as provided in this Mortgage and the Loan Documents or as required by applicable law; and Mortgagor agrees that in case of a sale, as herein provided, Mortgagor or any person in possession under

Mortgagor shall then become and be tenants holding over, and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over, the rights hereby granted are in addition to any and all other remedies which Mortgagee may have at law or in equity. One or more exercises of the powers herein granted shall not extinguish or exhaust the power unless the Indebtedness is paid in full and all other obligations under this Mortgage are fully performed or the entire Premises is sold;

(iv) take all action to protect and enforce the rights of Mortgagee under this Mortgage by suit for specific performance of any covenant herein contained, or in aid of the execution of any power herein granted or for the enforcement of any other rights;

(v) exercise any or all of the rights and remedies available to a secured party under the UCC, including the right to (A) enter the Premises and take possession of any personal property without demand or notice and without prior judicial hearing or legal proceedings, which Mortgagor hereby expressly waives, (B) require Mortgagor to assemble any personal property, or any portion thereof, and make it available to Mortgagee at a place or places designated by Mortgagee and reasonably convenient to both parties and (C) sell all or any portion of the personal property at public or private sale, without prior notice to Mortgagor except as otherwise required by law (and if notice is required by law, after ten days' prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as Mortgagee in its sole discretion may determine. As to any property subject to Article 9A of the UCC included in the Premises, Mortgagee may proceed under the UCC or proceed as to both real and personal property in accordance with the provisions of this Mortgage and the rights and remedies that Mortgagee may have at law or in equity, in respect of real property, and treat both the real and personal property included in the Premises as one parcel or package of security. Mortgagor shall have the burden of proving that any such sale pursuant to the UCC was conducted in a commercially unreasonable manner;

(vi) terminate any management agreements, contracts, or agents/managers responsible, for the property management of the Premises, if in the sole discretion of Mortgagee such property management is unsatisfactory in any respect;

(vii) if an Event of Default occurs due to the nonpayment of the Indebtedness, or any part thereof, as an alternative to the right of foreclosure for the full Indebtedness after acceleration thereof, Mortgagee shall have the right to institute proceedings, either judicial or non-judicial, at Mortgagee's option, for partial foreclosure with respect to the portion of said Indebtedness so in default, as if under a full foreclosure, and without declaring the entire Indebtedness due (such proceedings being hereinafter referred to as "***Partial Foreclosure***"), and

provided that if a foreclosure sale is made because of an Event of Default in the payment of a part of the Indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the Indebtedness; and it is agreed that such sale pursuant to a Partial Foreclosure, if so made, shall not in any manner affect the unmatured part of the Indebtedness, but as to such unmatured part, this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding any Partial Foreclosure, Mortgagee may elect, at any time prior to sale pursuant to such Partial Foreclosure, to discontinue such Partial Foreclosure and to accelerate the Indebtedness by reason of any Event of Default upon which such Partial Foreclosure was predicated or by reason of any other further Event of Default, and proceed with full foreclosure proceedings. It is further agreed that several foreclosures may be made pursuant to Partial Foreclosure without exhausting the right of full or Partial Foreclosure sale for any unmatured part of the Indebtedness, it being the purpose to provide for a Partial Foreclosure sale of the Indebtedness hereby without exhausting the power to foreclose and to sell the Premises pursuant to any such Partial Foreclosure for any other part of the Indebtedness, whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

(viii) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement of the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Receiver. If an Event of Default shall occur, Mortgagee shall be entitled as a matter of right to the appointment of a receiver of the Premises and the rents, revenues, issues, profits, royalties, income and benefits thereof, without notice or demand, and without regard to the adequacy of the security for the Indebtedness, the value of the Premises or the solvency of Mortgagor, either before or after any sale, and, Mortgagee may be appointed as such receiver. Such receiver shall have the power: (i) to collect the rents, issues and profits of the Premises during the pendency of any foreclosure proceedings whether by judicial or non-judicial foreclosure, and, in case of a sale and a deficiency, for such time when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, to the maximum time and extent permitted by law; (ii) to extend or modify any then existing Leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to leases to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date of the issuance of a Mortgage or Mortgages to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the secured obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or Mortgage to any purchaser; and (iii) all other powers which may be necessary or are usual in

such case for the protection, possession, control, management, and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in the receiver's hands in payment in whole or in part of: (i) the Indebtedness and all obligations hereunder, or by any decree foreclosing this Mortgage, or in accordance with applicable non-judicial foreclosure provisions, any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree; and (ii) if this is a leasehold Mortgage to secure debt, all rents due or which may become due under the underlying lease.

(c) Sales by Parcels. In any sale made under or by virtue of this Mortgage or pursuant to any judgment or decree of court, the Premises may be sold in one or more parts or parcels or as an entirety and in such order as Mortgagee may elect, without regard to the right of Mortgagor, or any person claiming under it, to the marshaling of assets. To the full extent permitted by law, Mortgagor waives the marshaling of assets.

(d) Effect of Sale. The purchaser at any sale made under or by virtue of this Mortgage or pursuant to any judgment or decree of court shall take title to the Premises or the part thereof so sold free and discharged of the estate of Mortgagor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Mortgagee, may purchase at any such sale. Mortgagee is hereby irrevocably appointed the attorney-in-fact of Mortgagor in its name and stead to make all appropriate transfers and deliveries of the Premises or any portions thereof so sold and, for this purpose, Mortgagee may execute all appropriate instruments of transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, promptly upon Mortgagee's written request, Mortgagor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for the purpose, and as may be designated, in such request. Any sale or sales made under or by virtue of this Mortgage, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of Mortgagor in, to and under the Premises, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against Mortgagor, its successors and assigns, and against any and all persons claiming or who may claim the same, or any part thereof, by, through or under Mortgagor, or its successors or assigns. The powers and agency herein granted are coupled with an interest and are irrevocable.

(e) Eviction of Mortgagor After Sale. If Mortgagor fails or refuses to surrender possession of the Premises after any sale thereof, Mortgagor shall be deemed a tenant at sufferance, subject to eviction by means of forcible entry and summary dispossessory proceedings, provided, that this remedy is not exclusive or in derogation of any other right or remedy available to Mortgagee or any purchaser of the Premises under any provision of this Mortgage or pursuant to any judgment or decree of court.

(f) Insurance Policies. In the event of a foreclosure sale pursuant to this Mortgage or other transfer of title or assignment of the Premises in extinguishment, in whole or in part, of the Indebtedness, all right, title and interest of Mortgagor in and to all policies of insurance required

under the provisions of this Mortgage shall inure to the benefit of and pass to the successor in interest of Mortgagor or the purchaser or Mortgagee of the Premises or any part thereof so transferred.

(g) Foreclosure; Expense of Litigation. When the Indebtedness hereby secured, or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, actual costs of environmental reviews or audits, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such action or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including appellate, probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceedings or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Mortgage.

17. Application of Proceeds. The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Mortgage, shall be applied:

(a) first to the payment of (i) all costs and expenses of such sale, including reasonable attorneys' fees, environmental site assessors fees and costs, appraisers' fees and costs of procuring title searches, title insurance policies and similar items and (ii) all charges, expenses and advances incurred or made by Mortgagee in order to protect the lien or estate created by this Mortgage or the security afforded hereby including any expenses of entering, taking possession of and operating the Premises;

(b) then to the payment of any other Indebtedness in such order as Mortgagee may determine until the same have been paid in full; and

(c) any balance thereof shall be paid to Mortgagor, or to whosoever shall be legally entitled thereto, or as a court of competent jurisdiction may direct.

18. Rights and Remedies Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time

as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

19. **Mortgagee's Right of Inspection.** Mortgagee shall, upon reasonable notice to Mortgagor, have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose; provided, however, if no Event of Default exists (a) Mortgagee shall bear the expense of such inspection, and (b) such inspections shall be limited to twice in any twelve-month period, except for extraordinary matters, including, without limitations, regulatory requirements, casualty, condemnation or environmental concerns.

20. **Condemnation.** The Mortgagee may, at its option, in its own name (a) appear or proceed in any condemnation proceeding, and (b) make any compromise or settlement thereof, provided that so long as the Mortgagor promptly prosecutes any compromise or settlement thereof, the Mortgagor shall control any compromise or settlement proceeding with the result thereof being subject to the Mortgagee's reasonable approval. The Mortgagor shall give the Mortgagee immediate notice of the initiation of any condemnation proceeding, and a copy of every pleading, notice and other items served in any condemnation proceeding. Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, or make said proceeds available for restoration or rebuilding of the Premises. In the event that Mortgagee elects, in Mortgagee's reasonable discretion, to make said proceeds available to reimburse Mortgagor for the cost of the rebuilding or restoration of the Improvements, such proceeds shall be promptly made available in the manner and under the conditions that Mortgagee may require. In any event, the Improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by Mortgagee prior to commencement of any building or restoration. If the proceeds are made available by Mortgagee to reimburse Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall at the option of Mortgagee be applied on account of the Indebtedness or be paid to any party entitled thereto. No interest shall be allowed to Mortgagor on the proceeds of any award held by the Mortgagee.

21. **Intentionally deleted.**

22. **Giving of Notice.** (a) All notices, demands, requests, and other communications desired or required to be given hereunder ("**Notices**"), shall be in writing and shall be given by: (i) hand delivery to the address for Notices; or (ii) delivery by overnight courier service to the address for Notices.

(b) All Notices shall be deemed given and effective upon the earlier to occur of: (i) the hand delivery of such Notice to the address for Notices; or (ii) one business day after the

deposit of such Notice with an overnight courier service by the time deadline for next day delivery addressed to the address for Notices. All Notices shall be addressed to the following addresses:

Mortgagor: Inland Southeast River Ridge, L.L.C.
c/o Inland Retail Real Estate Trust, Inc.
2901 Butterfield Road
Oak Brook, Illinois 60523
Attn.: Mr. Barry Lazarus

With a copy to: The Inland Real Estate Group, Inc.
2901 Butterfield Road
Oak Brook, Illinois 60523
Attn.: General Counsel

Mortgagee: Security Life of Denver Insurance Company
c/o ING Investment Management LLC
5780 Powers Ferry Road, NW, Suite 300
Atlanta, Georgia, 30327-4349
Attention: Mortgage Loan Servicing Department

and

ING Investment Management LLC
5780 Powers Ferry Road, NW, Suite 300
Atlanta, Georgia, 30327-4349
Attention: Real Estate Law Department

With a copy to: Powell, Goldstein, Frazer & Murphy LLP
191 Peachtree Street, NE, 16th Floor
Atlanta, Georgia 30303-1736
Attention: John R. Parks, Esq.

or to such other persons or at such other place as any party hereto may by Notice designate as a place for service of Notice. Provided, that the "copy to" Notice to be given as set forth above is a courtesy copy only; and a Notice given to such person is not sufficient to effect giving a Notice to the principal party, nor does a failure to give such a courtesy copy of a Notice constitute a failure to give Notice to the principal party.

23. **Waiver of Defense.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law or in equity upon the Note hereby secured.

24. **Waiver of Statutory Rights.** Mortgagor shall not, and will not, apply for or avail itself of any homestead, appraisalment, valuation, stay, extension or exemption laws, or any so-called "*Moratorium Laws*", now existing or hereafter enacted, in order to prevent or hinder the

enforcement or foreclosure of this Mortgage, but to the extent lawfully allowed hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. To the extent permitted by law, Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, the trust estate and all persons beneficially interested therein and each and every person, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

25. **Furnishing of Financial Statements to Mortgagee.** (a) Mortgagee covenants and agrees that it will keep and maintain books and records of account, or cause books and records of account to be kept and maintained in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times during business hours and on reasonable notice, be open to inspection by Mortgagee and Mortgagee's accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained on a cash basis in accordance with sound accounting principles consistently applied.

(b) Mortgagor covenants and agrees to furnish, or cause to be furnished to Mortgagee, annually, within ninety (90) days following the end of each fiscal year of Mortgagor a copy of a report of the operations of the Premises, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses and a current rent roll of the Premises and 10Q or 10K reports, on a consolidated basis, for Inland Retail Real Estate Trust, Inc. (the "**IRRETI**") and its other operating entities, including Mortgagor, so long as Mortgagor remains 100% owned and controlled by IRRETI (if Mortgagor is not so owned and controlled, annual financial statements of Mortgagor shall be required). Mortgagor shall simultaneously deliver to Mortgagee a financial statement of Mortgagor, and each of its general partners if Mortgagor is a partnership, prepared in accordance with the accounting requirements set forth above, certified by Mortgagor, or an officer, manager or a general partner of any corporate, limited liability company or partnership Mortgagor. Notwithstanding the aforesaid, Mortgagor, promptly upon request from Mortgagee, shall deliver to Mortgagee quarterly income and expense statements covering the operation of the Premises, which shall include current cash flow and up-to-date payables and receives for the Premises, and updates on the rent roll so as to reflect tenant leasing. Each report or statement provided hereunder shall be certified as correct by the appropriate party.

(c) If Mortgagor omits to deliver as required any report or statement required by this **Paragraph 25**, and said omission is not cured by Mortgagor within thirty (30) days after written notice of such omission has been given by Mortgagee to Mortgagor, Mortgagee may elect, in addition to exercising any remedy for an Event of Default as provided for in this Mortgage, to make an audit of all books and records of Mortgagor including its bank accounts which in any way pertain to the Premises and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent certified public accountant to be selected by Mortgagee. Mortgagor shall pay all reasonable expenses of the audit and other services, which expenses shall be secured

hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Mortgage.

26. **Filing and Recording Fees.** Mortgagor will pay all filing, registration or recording fees and all reasonable expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of said Note and this Mortgage.

27. **Business Purpose.** Mortgagor represents, covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor.

28. **Exculpatory.** The liability of the Mortgagor personally to pay the Note or any interest that may accrue thereon, or any Indebtedness or obligation accruing or arising hereunder is limited to the extent set forth in the Note.

29. **Security Agreement.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a security agreement within the meaning of the UCC with respect to all sums on deposit with the Mortgagee with respect to insurance proceeds or condemnation proceeds (“*Deposits*”) and with respect to any personal property and fixtures included in the definition herein of the word “Premises”, which property may not be deemed to form a part of the real estate described in **Exhibit “A”** or may not constitute a “fixture” within the meaning of the UCC, and all replacements of such property, substitutions and additions thereto and the proceeds thereof, all such property being sometimes hereinafter collectively referred to as the “Collateral”, and that a security interest in and to the Collateral and the Deposits is hereby granted to Mortgagee and the Deposits and all of Mortgagor’s right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness and to secure performance by Mortgagor of the terms, covenants and provisions hereof. Upon the occurrence of an Event of Default under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding with respect to the Collateral in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days’ notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys’ fees and legal expenses incurred by Mortgagee. Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral, when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other Collateral at least equal in value to the initial value to that disposed of and in such a manner so that said Collateral shall be subject to the security interest created hereby, and so that the security interest of Mortgagee shall be first in priority, it being expressly understood and agreed that all replacements of the

Collateral and any additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. Mortgagor shall, from time to time, on request of Mortgagee, deliver to Mortgagee an inventory of the Collateral in reasonable detail. Mortgagor covenants and represents that all Collateral, and all replacements thereof, substitutions therefor or additions thereto, unless Mortgagee otherwise consents, now are and will be free and clear of liens (other than the lien of taxes not yet due or payable), encumbrances or security interests of others. Mortgagor shall, upon demand execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee, and will do all such acts and things as Mortgagee may at anytime, or from time to time, reasonably request or as may be necessary or appropriate to establish and maintain a first perfected security interest in the Deposits and Collateral, subject to no liens (other than the lien of taxes not yet due or payable), encumbrances, or security interests of others. In addition, Mortgagee shall have the right to file such financing statements with respect to this Mortgage, with or without Mortgagor's signature, as the Mortgagee may deem appropriate, and to execute in Mortgagor's name such financing statements and amendments thereto and continuation statements which may require the Mortgagor's signature.

This Mortgage also constitutes a financing statement for the purpose of the UCC and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of the County in which the Land is located. For such purpose the name and address of the debtor and the secured party are as set forth below:

| | |
|--|---|
| Name of Debtor: | Inland Southeast River Ridge, L.L.C., a Delaware limited liability company |
| Debtor's Mailing Address: | c/o Inland Retail Real Estate Trust, Inc. 2901 Butterfield Road, Oak Brook, Illinois 60523 Attn: Mr. Barry Lazarus |
| Type of Organization: | Limited Liability Company |
| Organizational ID Number: | 3573970 |
| Jurisdiction of Organization: | Delaware |
| Debtor's Taxpayer Identification Number: | ██████████ |
| Address of Property: | 4608 U.S. Highway 280 Birmingham, Alabama 35242-5028 |
| Name of Secured Party: | Security Life of Denver Insurance Company, a Colorado corporation |
| Address of Secured Party: | c/o ING Investment Management LLC 5780 Powers Ferry Road, NW, Suite 300 |

Atlanta, Georgia 30327-4349
Attn: Real Estate Law Department

This financing statement covers the Collateral. Some of the items or types of property comprising the Collateral are or are to become fixtures on the real property described in this Mortgage. Mortgagor is the record owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located.

30. **Due on Sale or Further Encumbrance.** (a) If, without the Mortgagee's prior written consent, (i) the Premises or any part thereof or any interest in the Premises or the Mortgagor is sold or conveyed; (ii) title to the Premises or any interest therein is divested; (iii) the Premises or any ownership interest in the Mortgagor is further encumbered or pledged; (iv) any lease which gives the lessee any option to purchase the Premises or any part thereof is entered into, or, (v) without limiting the generality of clause (i) above, the ownership of shares of the Mortgagor, if a corporation, or of any corporate general partner of Mortgagor, if a partnership, or the general partnership interests in any partnership which is a general partner of Mortgagor, or any membership interest in a Mortgagor which is a limited liability company, or any beneficial or fiduciary interest in any Mortgagor which is a trust or trustee, is sold or conveyed, the Mortgagee shall at its sole discretion be entitled to accelerate the Indebtedness and declare the then unpaid principal balance and all accrued interests and other sums due and payable under the Note due and payable and exercise all remedies available to Mortgagee under the Loan Documents. The Mortgagor understands that the present ownership of the Premises and Improvements will be a material inducement to Mortgagee in the making of the loan secured by this Mortgage. Any consent by Mortgagee to a change in ownership or to a change in the composition of the Mortgagor may be conditioned upon payment of a transfer fee equal to one percent (1%) of the then outstanding Indebtedness for processing such request for consent, upon an increase in the rate of interest on the unpaid balance of the Indebtedness to a then-current market rate, and/or other terms and conditions as Mortgagee may impose in its sole discretion.

(b) Notwithstanding the foregoing subparagraph (a), Mortgagee will permit one transfer of the Premises, provided: (i) the transferee has a financial and credit standing and management expertise acceptable to Mortgagee; (ii) assumption documents in form and substance reasonably satisfactory to Mortgagee are executed by the transferee; (iii) Mortgagee is paid a transfer fee equal to one percent (1%) of the then outstanding indebtedness, (iv) Mortgagor reimburses Mortgagee all fees and expenses associated with the transfer including legal fees; (v) Mortgagee receives an endorsement to the Mortgagee's title policy, in form and substance acceptable to Mortgagee; and (vi) at Mortgagee's option, Mortgagee receives opinions of counsel, and Mortgagor and transferee authorization documents, in form and substance reasonably acceptable to Mortgagee. Further, Mortgagee, in its sole judgment and discretion, may require individuals specifically named by Mortgagee to deliver to Mortgagee an Environmental Indemnification Agreement on Mortgagee's standard form. The rights granted to Mortgagor in this subparagraph (b) are personal to Mortgagor, shall be extinguished after the exercise thereof, and shall not inure to the benefit of any subsequent transferee. Such transfer and assumption will release the Mortgagor or any guarantors from any liability to the Mortgagee conditioned upon, without limitation, the execution of new guaranties from principals of the transferee as Mortgagee deems necessary, execution by the principals of the transferee of

Mortgagee's standard Environmental Indemnification Agreement and such other requirements as Mortgagee may deem appropriate in its discretion.

(c) Notwithstanding any provision in this Mortgage to the contrary, Mortgagor shall have the right, provided no Event of Default exists, to assign, sell or transfer all of the Premises (the "***Permitted Affiliated Transfer***") to Inland Retail Real Estate Limited Partnership ("***IRRETI Partnership***") or to IRRETI or to a corporation, the stock of which is 100% owned by IRRETI or IRRETI Partnership, or to a limited liability company, the membership interest of which is 100% owned directly by IRRETI or IRRETI Partnership or to a partnership, the partnership interest of which is 100% owned directly by IRRETI or IRRETI Partnership (collectively, "***Permitted Affiliated Transferee***") provided that all requirements for a one time transfer set forth in Paragraph 30(b) are satisfied by Mortgagor other than the payment of the one percent (1%) transfer fee.

(d) Notwithstanding any provision in this Mortgage to the contrary, the limited partnership interests in IRRETI Partnership and shares in IRRETI may be transferred, encumbered or assigned so long as IRRETI maintains its status as a real estate investment trust ("***REIT***"). IRRETI shall have the right to sell its stock so long as it maintains its status as a REIT.

31. **Environmental Matters; Notice; Indemnity.** Mortgagor covenants and agrees as follows:

(a) For purposes of this Mortgage, the following definitions shall apply:

(i) The term "***Environmental Law***" means and includes any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Premises, including without limitation each of the following (and their respective successor provisions): the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601 et seq. ("***CERCLA***"); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901 et seq. ("***RCRA***"); the Federal Hazardous Materials Transportation Act, as amended, 49 U.S.C. sections 1801 et seq.; the Toxic Substance Control Act, as amended, 15 U.S.C. sections 2601 et seq.; the Clean Air Act, as amended, 42 U.S.C. sections 1857 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251 et seq.; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency and of all other federal, state, county and municipal agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Premises or the use or operation of the Premises.

(ii) The term "***Hazardous Substance***" means and includes: (1) those substances included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "pollutants", "toxic substances" or "solid waste" in any Environmental Law; (2) those substances listed in the U.S.

Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto); (3) those other substances, materials and wastes which are or become, regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and (4) any material, waste or substance which is any of the following: (A) asbestos; (B) polychlorinated biphenyl; (C) designated or listed as a "hazardous substance" pursuant to section 311 or section 307 of the Clean Water Act (33 U.S.C. sections 1251 et seq.); (D) explosive; (E) radioactive; (F) a petroleum product; or (G) infectious waste. Notwithstanding anything to the contrary herein, the term "Hazardous Substance" shall not include commercially sold products otherwise within the definition of the term "Hazardous Substance", but (X) which are used or disposed of by Mortgagor or used or sold by tenants of the Premises in the ordinary course of their respective businesses, (Y) the presence of which product is not prohibited by applicable Environmental Law, and (Z) the use and disposal of which are in all respects in accordance with applicable Environmental Law.

(iii) The term "***Enforcement or Remedial Action***" means and includes any action taken by any person or entity in an attempt or asserted attempt to enforce, to achieve compliance with, or to collect or impose assessments, penalties, fines, or other sanctions provided by, any Environmental Law.

(iv) The term "***Environmental Liability***" means and includes any claim, demand, obligation, cause of action, accusation, allegation, order, violation, damage (including consequential damage), injury, judgment, assessment, penalty, fine, cost of Enforcement or Remedial Action, or any other cost or expense whatsoever, including actual, reasonable attorneys' fees and disbursements, resulting from or arising out of the violation or alleged violation of any Environmental Law, any Enforcement or Remedial Action, or any alleged exposure of any person or property to any Hazardous Substance.

(b) To the knowledge of Mortgagor, its successors and assigns, after reasonable inquiry based solely on the environmental reports delivered to Mortgagee by Mortgagor (collectively, the "**Environmental Reports**"), covenants, warrants and represents that,

(i) No Hazardous Substances have been or shall be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape or migrate, or shall threaten to be injected, emptied, poured, leached, or spilled on or from the Premises.

(ii) No asbestos or asbestos-containing materials have been or will be installed, used, incorporated into, placed on, or disposed of on the Premises.

(iii) No polychlorinated biphenyls (“*PCBs*”) are or will be located on or in the Premises, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device.

(iv) No underground storage tanks are or will be located on the Premises or were located on the Premises and subsequently removed or filled.

(v) No investigation, administrative order, consent order and agreement, litigation, settlement, lien or encumbrance with respect to Hazardous Substances is proposed, threatened, anticipated or in existence with respect to the Premises.

(vi) The Premises and Mortgagor’s operations at the Premises are in compliance with all applicable Environmental Laws including without limitation any, state and local statutes, laws and regulations. No notice has been served on Mortgagor, or any subsidiary of Mortgagor, from any entity, government body, or individual claiming any violation of any law, regulation, ordinance or code, or requiring compliance with any law, regulation, ordinance or code, or demanding payment or contribution for environmental damage or injury to natural resources. Copies of any such notices received subsequent to the date hereof shall be forwarded to Mortgagee within three (3) days of their receipt.

(vii) There is no release or threat of release of any Hazardous Substances from any property adjoining or in the immediate vicinity of the Premises.

(viii) No portion of the Premises is a wetland or other water of the United States subject to jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any comparable state statute or local ordinance or regulation defining or protecting wetlands or other special aquatic areas.

(ix) There are no concentrations of radon or other radioactive gases or materials in any buildings or structures on the Premises that exceed background ambient air levels.

(x) There have been no complaints of illness or sickness alleged to result from conditions inside any buildings or structures on the Premises.

Mortgagor further represents and warrants to Mortgagee that Mortgagor has no material knowledge regarding Hazardous Substances or Environmental Liability with respect to the Premises except as disclosed in the Environmental Reports.

(c) Mortgagor will give prompt written notice to Mortgagee of:

(i) any proceeding, known investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Premises or the migration thereof to or from adjoining property;

(ii) all claims made or threatened by any individual or entity against Mortgagor or the Premises relating to any loss or injury allegedly resulting from any Hazardous Substance; and

(iii) the discovery by Mortgagor of any occurrence or condition on any real property adjoining or in the vicinity of the Premises which might cause the Premises or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Premises under any Environmental Law.

(d) Mortgagee shall have the right and privilege to: (i) join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the Premises; and to (ii) have all costs and expenses thereof (including without limitation Mortgagee's reasonable attorneys' fees and costs) paid by Mortgagor.

(e) Mortgagor agrees to protect, defend, indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, contractors, sub-contractors, licensees, invitees, participants, successors and assigns, from and against any Environmental Liability and any and all claims, demands, judgments, settlements, damages, actions, causes of action, injuries, administrative orders, consent agreements and orders, liabilities, losses, penalties, costs, including but not limited to any cleanup costs, remediation costs and response costs, and all expenses of any kind whatsoever including reasonable attorneys' fees and expenses, including but not limited to those arising out of loss of life, injury to persons, property or business or damage to natural resources in connection with the activities of Mortgagor, its predecessors in interest, third parties who have trespassed on the Premises, or parties in a contractual relationship with Mortgagor, and any of them, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Mortgagee, the foregoing being collectively referred to as "**Claims**", which:

(i) arise out of the actual, alleged or threatened migration, spill, leaching, pouring, emptying, injection, discharge, dispersal, release, storage, treatment, generation, disposal or escape of any Hazardous Substances onto or from the Premises; or

(ii) actually or allegedly arise out of, in connection with the Premises, the use, specification or inclusion of any product, material or process containing Hazardous Substances, the failure to detect the existence or proportion of Hazardous Substances in the soil, air, surface water or ground water, or the performance of or failure to perform the abatement of any Hazardous Substances

source or the replacement or removal of any soil, water, surface water or ground water containing any Hazardous Substances; or

(iii) arise out of the breach of any covenant, warranty or representation contained in any statement or other information given by Mortgagor to Mortgagee relating to environmental matters; or

(iv) arise out of any Enforcement or Remedial Action or any judicial or administrative action brought pursuant to any Environmental Law.

Mortgagor, its successors and assigns, shall bear, pay and discharge when and as the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise against Mortgagee described in this subparagraph (e), shall hold Mortgagee harmless for those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth in this subparagraph (e).

Mortgagor's indemnifications made herein shall survive any termination or expiration of the documents evidencing or securing the Loan and/or the repayment of the indebtedness evidenced by the Note, including, but not limited to, any foreclosure on this Mortgage or acceptance of a Mortgage in lieu of foreclosure. Without limiting the generality of the foregoing, Mortgagor's indemnifications shall extend to Hazardous Substances which first originate on the Premises subsequent to Mortgagee's succession to title by virtue of a foreclosure or acceptance of a Mortgage in lieu of foreclosure, excepting only such Claims which arise out of actions taken by Mortgagee, or by those contracting with Mortgagee, its successors or assigns, subsequent to Mortgagee, its successors or assigns, becoming owner of the Premises.

Notwithstanding anything to the contrary contained in this **Section 31**, Mortgagor shall not be required to indemnify Mortgagee for matters arising due to Mortgagee's gross negligence or willful misconduct. Mortgagee shall be liable for its gross negligence or willful misconduct.

(f) If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "**Remedial Work**") is reasonably desirable (in the case of an operation and maintenance program or similar monitoring or preventative programs) or necessary, both as determined by an independent environmental consultant selected by Mortgagee under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, groundwater, or surface water at, on, about, under or within the Premises or any portion thereof, Mortgagor shall within thirty (30) days after written demand by Mortgagee for the performance (or within such shorter time as may be required under applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work to the extent required by law. All Remedial Work shall be performed by contractors approved in advance by Mortgagee (which approval in each case shall not be unreasonably withheld or

delayed) and under the supervision of a consulting engineer approved in advance by Mortgagee. All costs and expenses of such Remedial Work (including without limitation the reasonable fees and expenses of Mortgagee's counsel) incurred in connection with monitoring or review of the Remedial Work shall be paid by Mortgagor. If Mortgagor shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, Mortgagee may (but shall not be required to) cause such Remedial Work to be performed; and all costs and expenses thereof, or incurred in connection therewith (including, without limitation, the reasonable fees and expenses of Mortgagee's counsel), shall be paid by Mortgagor to Mortgagee forthwith after demand and shall be a part of the Indebtedness.

32. **Captions.** The captions or headings preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction or effect.

33. **No Waiver; Modifications in Writing.** No failure or delay on the part of Mortgagee in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this Mortgage, nor consent to any departure therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the party to be charged with the enforcement thereof. Any amendment, modification or supplement of or to any provision of this Mortgage, any waiver of any provision of this Mortgage, and any consent to any departure from the terms of any provision of this Mortgage, shall be effective only in the specific instance and for the specific purpose for which made or given.

34. **Relationship.** Mortgagee is only a lender under the Loan Documents, and nothing contained in this Mortgage or the other Loan Documents and no action taken by the parties pursuant hereto shall be deemed to constitute the Mortgagee and any other of the parties to any of the Loan Documents a partnership, an association, a joint venture or other entity, nor constitute Mortgagee as a fiduciary for any of the parties.

35. **Governing Law.** This Mortgage shall be governed by the laws (excluding conflicts of laws rules) of the State of Alabama.

36. **Time of Essence.** Time is of the essence in the performance by the parties of this Mortgage.

37. **Construction.** Mortgagor has been represented by its own counsel in this transaction, and this Mortgage shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

38. **Gender; Number; Terms.** Words and phrases herein shall be construed as in the singular or plural number and as masculine, feminine or neuter gender, according to the context.

The use of the words “herein,” “hereof,” “hereunder” and other similar compounds of the word “here” shall refer to this entire Mortgage and not to any particular section, paragraph or provision. The term “person” and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

39. **Integration.** This Mortgage, together with the other Loan Documents and the certain Environmental Indemnification Agreement executed by Mortgagor, constitute the entire agreement between the parties hereto pertaining to the subject matters hereof and thereof and supersede all negotiations, preliminary agreements and all prior or contemporaneous discussions and understandings of the parties hereto in connection with the subject matters hereof and thereof.

40. **General Indemnification.** (a) Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (defined below) from and against any and all Losses (defined below) imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (ii) any use, nonuse or condition in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof; (iv) any failure of the Premises to be in compliance with any applicable laws; (v) any and all claims, demands or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (vi) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Mortgage. Any amounts payable to Mortgagee by reason of the application of this Paragraph shall become immediately due and payable and shall bear interest at the Default Rate (as defined in the Note) from the date loss or damage is sustained by Mortgagee until paid. The term “*Losses*” shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to attorneys’ fees and other costs of defense). The term “*Indemnified Parties*” shall mean (i) Mortgagee, (ii) any prior owner or holder of the Note, (iii) any servicer or prior servicer of the Loan, (iv) any participant or any prior participant in any portion of the Loan, (v) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any participant or other third party, (vi) any receiver or other fiduciary appointed in a foreclosure or other collection proceeding, (vii) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (viii) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties’

assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan.

(b) Upon written request by any Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of the Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Mortgagor shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

(c) Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note or any of the other Loan Documents.

41. **Miscellaneous.**

(a) This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and its heirs, successors, Mortgagees and assigns, any subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor (but this clause shall not be construed as constituting the consent by Mortgagee to the transfer of any interest in the Premises), and the word “**Mortgagor**” when used herein shall include any such person and all persons liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed said Note or this Mortgage. The word “**Mortgagee**”, when used herein, shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Note secured hereby. In addition, in the event Mortgagor is a land trust or similar entity, the term “**Mortgagor**” as used herein shall include the beneficiary or beneficiaries of such land trust or similar entity.

(b) In the event one or more of the provisions contained in this Mortgage or the Note secured hereby, or in any other security documents given to secure the payment of the Note secured hereby, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

(c) The Mortgagor will, from time to time, upon ten (10) business days’ prior written request from Mortgagee, make, execute, acknowledge and deliver to Mortgagee such supplemental Mortgages to secure debt, certificates and other documents, including without limitation UCC financing statements, as may be necessary for better assuring and confirming unto Mortgagee any of the Premises, or for more particularly identifying and describing the Premises, or to preserve or protect the priority of this Mortgage lien, and generally do and

perform such other acts and things and execute and deliver such other instruments and documents as may reasonably be deemed necessary or advisable by Mortgagee to carry out the intentions of this Mortgage.

(d) Mortgagor shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other Improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Paragraph shall be void.

(e) Mortgagor or Mortgagee will, from time to time (but not more than twice in any twelve (12) month period), upon ten (10) business days' prior written request by the other party, execute, acknowledge and deliver to the requesting party, a certificate stating that this Mortgage is unmodified and in full force and effect (or, if there have been modifications, that this Mortgage is in full force and effect as modified and setting forth such modifications) and stating the principal amount secured hereby and the interest accrued to date on such principal amount. The estoppel certificate from Mortgagor shall also state to the best knowledge of Mortgagor whether any offsets or defenses to the Indebtedness exist and if so shall identify them.

(f) The Note secured hereby includes provisions for the assessment of a Late Charge, as defined therein. Said Late Charge shall be secured hereby as Indebtedness, as that term is used herein.

(g) Mortgagee shall have the right and option to exercise power of sale or to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure. The failure to join any tenant or tenants as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(h) At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation), to any one or more, or to all, Leases upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the Office of the Recorder in and for the county wherein the Premises are situated, or such other office as determined by Mortgagee, of a unilateral declaration to that effect.

(i) In the event that maturity of the Indebtedness is accelerated by Mortgagee because of the occurrence of an Event of Default hereunder and a tender of payment is made by or on behalf of Mortgagor in the amount necessary to satisfy the Indebtedness at any time prior

to judicial confirmation or other conclusion if confirmation is not required, of a foreclosure sale or sale under a power of sale, then such tender shall constitute a prepayment under the Note and shall, to the extent specified in the Note, require payment of the prepayment premium provided for in the Note.

(j) All agreements between Mortgagor and Mortgagee (including, without limitation, those contained in this Mortgage and the Note) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Mortgagee exceed the highest lawful rate of interest permissible under the laws of the State of Alabama. If, from any circumstances whatsoever, fulfillment of any provision hereof or the Note or any other documents securing the Indebtedness at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Alabama; and if for any reason whatsoever Mortgagee shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the principal Indebtedness (whether or not then due and payable) and not to the payment of interest.

(k) Mortgagor covenants and agrees that it shall constitute an Event of Default hereunder if any of the proceeds of the loan for which the Note is given will be used, or were used, as the case may be, for the purpose (whether immediate, incidental or ultimate) of **“purchasing”** or **“carrying”** any **“margin security”** as such terms are defined in Regulation G of the Board of Governors of the Federal Reserve System (12 CFR Part 207) or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose.

(l) Mortgagor shall exert its best efforts to include a **“no lien”** provision in any property management agreement hereafter entered into by Mortgagor or its beneficiary with a property manager for the Premises, whereby the property manager waives and releases any and all mechanics’ lien rights that he, or anyone claiming through or under such manager, may have. Such property management agreement containing such **“no lien”** provision or a short form thereof shall, at Mortgagee’s request, be recorded in the office of the recorder in and for the County wherein the Premises is situated, or such other office as reasonably requested by Mortgagee.

42. **Release Provision for Outparcel C.** Mortgagee, upon Mortgagor’s written request (given at least ten (10) to fifteen (15) days prior to proposed closing) during the term of the Note, agrees to release that portion of the Premises which lies in the northwest quadrant of the Premises containing approximately 34,412 square feet of land (**“Outparcel C”**) which is described in Exhibit “B” attached hereto and will be developed with approximately 13,500 square feet of retail space. The purpose of the release is the current owner is in the process of subdivision Outparcel C from the Premises and upon establishing a separate legal parcel, Mortgagee will release Outparcel C from the lien of this Mortgage. Mortgagee’s agreement to release is also subject to the following conditions:

(a) There shall not exist as of the time of release of Outparcel C, any default or Event of Default under this Mortgage or any of the other Loan Documents.

(b) Mortgagee shall receive a survey and legal description of the tract, Outparcel C, proposed to be released ("***Release Tract***") prior to the closing of the loan evidenced by the Note and a survey and legal description of the collateral remaining in Mortgagee's security ("***Remaining Tract***"). The surveys and legal description shall each depict and provide for a common property line between the Remaining Tract and the Release Tract in a location acceptable to Mortgagee in its sole discretion.

(c) Mortgagee shall be provided with such evidence as its counsel may require in order to verify that no violation of zoning or subdivision requirements with respect to the Release Tract or the Remaining Tract shall exist upon closing of the release;

(d) Mortgagee shall be provided with evidence satisfactory to it and its counsel that any and all necessary or desired governmental approvals of the subdivision of the Release Tract from the Remaining Tract have been obtained by Mortgagor at Mortgagor's sole expense;

(e) Mortgagee shall receive an endorsement to its loan title policy with respect to the Remaining Tract in form and substance satisfactory to Mortgagee in its sole discretion insuring that the Remaining Tract has access to the same publicly dedicated streets as prior to the release of the Release Tract and amending the legal description to include only the Remaining Tract;

(f) Mortgagor shall pay all costs, fees, and expenses incurred in connection with the release, including, without limitation, recording fees, title charges and Mortgagee's reasonable attorney's fees.

(g) Mortgagor shall have created easements for utilities, signage, drainage, parking, ingress and egress and other appropriate purposes in, on and over the Release Tract for the benefit of the Remaining Tract to the extent necessary for the operation of and access to and from the Remaining Tract and such easements shall be insured as appurtenances in Mortgagee's loan policy via the endorsement required in item (e). The required easements shall include, without limitation, parking sufficient to meet all tenant lease requirements for tenants of the Remaining Tract.

(h) Mortgagor and any guarantor shall reaffirm their respective obligations pursuant to a ratification agreement in form and substance satisfactory to the Mortgagee.

(i) The release shall not affect any obligations of Mortgagor or any guarantor under the Loan Documents except with respect to the Release Tract;

(j) Mortgagor must obtain separate tax parcel numbers for the Release Tract and the Remaining Tract at or prior to the release closing or as a result of subdivision;

(k) Mortgagor shall provide evidence satisfactory to Mortgagee that all necessary tenant approvals (if any) have been obtained for the release;

(l) The parking ratio for the existing development on the Remaining Tract and any development on the Release Tract must provide for a parking ratio of not less than the greater of (a) the minimum ratio required by law to meet all code and zoning regulations, or (b) the minimum number or ratio required by all tenant leases and applicable restrictions, covenants and conditions affecting the Premises.

(m) The appraisal required by Mortgagee must not include the value of Outparcel C in the final appraised value of the Premises, or must include a separate value for Outparcel C that is not to be used in meeting the appraised value requirement of Mortgagee.

(n) Mortgagor hereby informs Mortgagee that Mortgagor has contracted to sell Outparcel C to a third party upon certain conditions contained in a separate purchase and sale agreement between Mortgagor and its purchaser thereunder, and Mortgagor is obligated to sell Outparcel C upon satisfaction by Mortgagee of the conditions set forth in the purchase contract free and clear of Mortgagee's lien and security interest. Mortgagee agrees that it will not unreasonably withhold or delay its approval of the due diligence items required in this Section to be submitted by Mortgagor in order to obtain the release of Outparcel C from the Mortgage.

43. **ERISA Representations and Warranties.** Mortgagor hereby represents, warrants and agrees that it is acting on its own behalf and that it is not an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("***ERISA***"), which is subject to Title 1 of ERISA, nor a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (each of the foregoing hereinafter referred to collectively as a "***Plan***"). Mortgagor represents, warrants and agrees that (a) it does not and shall not, during the entire term of the Note hold any assets which constitute "plan assets" within the meaning of Department of Labor ("***DOL***") Regulation Section 2510.3-101, and (b) Mortgagor is not a Plan, notwithstanding the status of the ownership of any membership, general or limited partnership, shareholder or other beneficial interests in the Mortgagor.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. MORTGAGOR ACKNOWLEDGES AND AGREES THAT THERE ARE NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT AND NO SUCH OTHER TERMS AND PROVISIONS MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

Mortgagor acknowledges receipt of a copy of this instrument at the time of execution hereof.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the Mortgagor has executed and sealed this instrument the day and year first above written.

INLAND SOUTHEAST RIVER RIDGE, L.L.C.,
a Delaware limited liability company

By: Inland Retail Real Estate Limited
Partnership, an Illinois limited partnership,
Its sole member

By: Inland Retail Real Estate Trust, Inc., a
Maryland corporation, Its general
partner

By: Roberta S. Matlin
Roberta S. Matlin, Vice President

[CORPORATE SEAL]

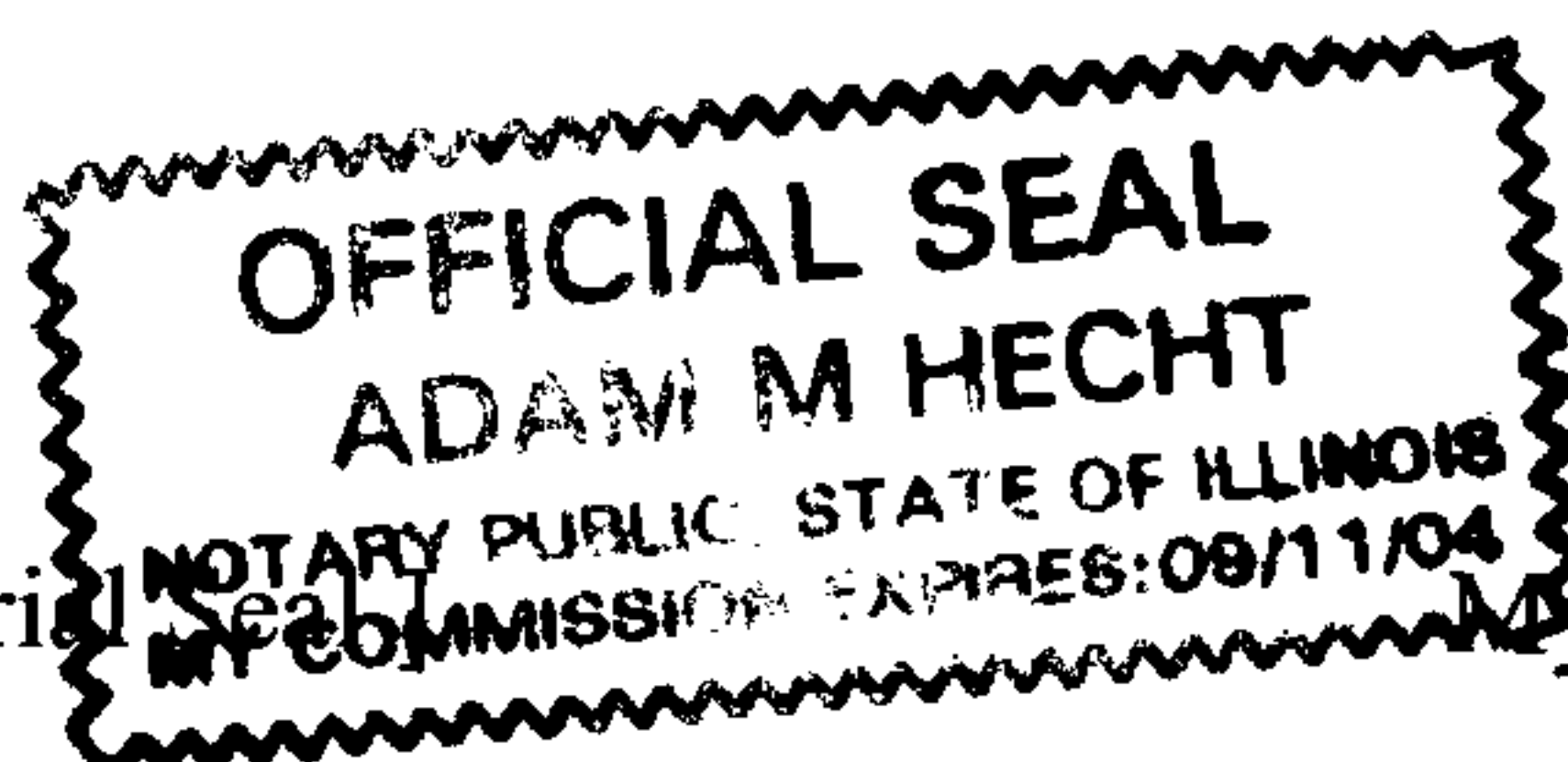
::ODMA\PCDOCS\ATL\664208\2
137718.00005

STATE OF Illinois

COUNTY OF DuPage

I, Adam M. Hecht, a notary public in and for said county in said state, hereby certify that Roberta S. Matlin, whose name as the Vice President of Inland Retail Real Estate Trust, Inc., a Maryland corporation, the General Partner of Inland Retail Real Estate Limited Partnership, an Illinois limited partnership, the Sole Member of **INLAND SOUTHEAST RIVER RIDGE, L.L.C.**, a Delaware limited liability company, 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 such instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said entities.

Given under my hand and official seal this 17th day of April, 2003.



[Signature]
Notary Public

[Notarial Seal] My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

Lots 3 and 5, according to the Survey of River Ridge Plaza, as recorded in Map Book 26, Page 14, aforesaid records.

The above described property is shown and depicted on that certain ALTA/ASCM Land Title Survey certified to Inland Southeast River Ridge, L.L.C., Security Life of Denver Insurance Company and Chicago Title Insurance Company dated November 25, 2002, last revised April 10, 2003, prepared by Walter Schoel Engineering Co., Inc., bearing the seal and certification of Joseph F. Breighner, Alabama License Number 17518, said survey incorporated herein by reference thereto.

TOGETHER WITH easement rights as contained in that certain Reciprocal Easement and Operating Agreement recorded as Instrument 1999-38039 in the aforesaid records; and

TOGETHER WITH easement rights as contained in that certain Operation and Easement Agreement recorded as Instrument 1999-38041 in the aforesaid records, as amended by that certain First Amendment to Operation and Easement Agreement recorded as Instrument 20021217000629710 in the aforesaid records; and

TOGETHER WITH easement rights as contained in that certain Grant of Easements recorded as Instrument 2000-01426 in the aforesaid records; and

TOGETHER WITH easement rights as contained in that certain Construction, Operations, Restrictions and Easement Agreement recorded as Instrument 2001-37114 in the aforesaid records.

EXHIBIT B

LEGAL DESCRIPTION FOR "OUTPARCEL C"

Lot 3A, according to the River Ridge Plaza Lot 3 Resurvey, to be recorded in the Probate Office of Shelby County, Alabama.

The above described property is shown and depicted on that certain ALTA/ASCM Land Title Survey certified to Inland Southeast River Ridge, L.L.C., Security Life of Denver Insurance Company and Chicago Title Insurance Company dated November 25, 2002, last revised April 10, 2003, prepared by Walter Schoel Engineering Co., Inc., bearing the seal and certification of Joseph F. Breighner, Alabama License Number 17518, said survey incorporated herein by reference thereto.