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This Document Prepared by and After  
Recording, Return To:

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(Space Above This Line For Recorder's Use Only)

AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT

by

SIMON PROPERTY GROUP (ILLINOIS), L.P.,  
an Illinois limited partnership  
("Mortgagor")

in favor of

METROPOLITAN LIFE INSURANCE COMPANY,  
a New York corporation  
("Mortgagee")

Dated: October 15, 1999

MATTESON PLAZA, COOK COUNTY, ILLINOIS

90-01114A

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# UNOFFICIAL COPY

AMENDED AND RESTATED MORTGAGE **09008280**  
AND  
SECURITY AGREEMENT

**THIS AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT** (as the same may hereafter be amended, modified, supplemented, extended, consolidated or restated from time to time, hereinafter referred to as this "Mortgage") is made as of the 15<sup>th</sup> day of October, 1999, by **SIMON PROPERTY GROUP (ILLINOIS), L.P.**, an Illinois limited partnership, having its chief executive office at Merchants Plaza -- 15 East, 115 West Washington Street, Indianapolis, Indiana 46204 ("Mortgagor"), in favor of **METROPOLITAN LIFE INSURANCE COMPANY**, a New York corporation, having its principal place of business at One Madison Avenue, New York, New York 10010 ("Mortgagee").

**WITNESSETH:**

**WHEREAS**, Matteson Joint Venture, an Indiana general partnership (the "Original Mortgagor"), executed a certain Mortgage and Security Agreement, dated November 7, 1990 and recorded with the Recorder of Deeds of Cook County, Illinois on November 9, 1990 as Document No. 90549900 (the "Original Mortgage"), mortgaging and granting to Mortgagee a security interest in the real property and personal property described therein (said real estate being legally described on **Exhibit B** attached hereto), which Original Mortgage was given to secure, among other things, a certain Promissory Note dated November 7, 1990 from Original Mortgagor in the face amount of Eleven Million Two Hundred Thousand and No/100ths Dollars (\$11,200,000.00) (the "Original Note"), which Original Note was payable to Mortgagee.

**WHEREAS**, the Original Note and the Original Mortgage were each modified by, and assumed by Mortgagor pursuant to, that certain First Note and Mortgage Modification and Assumption Agreement dated as of September 1, 1994, and recorded with the Recorder of Deeds of Cook County, Illinois on September 2, 1994 as Document No. 94775070 (the "First Modification").

**WHEREAS**, the outstanding principal balance of the Original Note, as of October 1, 1999 is Eleven Million One Hundred Fifty-Nine Thousand Fifteen and 21/100ths Dollars (\$11,159,015.21), and Mortgagor has requested that Mortgagee decrease the stated principal amount of the Original Note to Nine Million Six Hundred Thousand and No/100ths Dollars (\$9,600,000.00).

**WHEREAS**, Mortgagor has requested that Mortgagee also amend, modify, and restate the Original Mortgage, as modified by the First Modification and the other documents and instruments evidencing and/or securing the Original Note, as modified by the First Modification (the "Original Loan Documents"), and Mortgagee has so agreed to amend, modify and restate the Original Note, the Original Mortgage, and the other Original Loan Documents upon the terms and subject to the conditions set forth herein and in such amended and restated Original Loan Documents.

**WHEREAS**, this Mortgage secures: (1) the full and punctual payment of the indebtedness evidenced by those certain promissory notes listed on Schedule 2.02 attached hereto and made a part hereof (such notes, together with all notes issued in substitution or exchange for any of them, as any of the foregoing are amended, modified, supplemented, extended, consolidated or restated from time to time hereafter, are hereinafter sometimes collectively referred to as the "Notes") dated as of even date with this Mortgage, the final payment of each of which is due no later than the first (1<sup>st</sup>) day of October, 2009 (the "Maturity Date"), unless sooner accelerated pursuant to the terms and provisions of the Loan Documents (as hereinafter defined), made to the order of Mortgagee in the principal face amounts set forth on Schedule 2.02, with interest thereon at the rates provided in the Notes, together with any and all renewals, modifications, consolidations and extensions of the indebtedness evidenced by the Notes, any and all additional advances made by Mortgagee to protect or preserve the Property (as hereinafter defined) or any of the property (other than the Property) securing the mortgages or deeds of trust listed on Schedule 2.01 hereto (such mortgages and deeds of trust listed on Schedule 2.01 (except for this Mortgage), as any of them are amended, modified, supplemented, consolidated, extended or restated from time to time, are sometimes collectively referred to as the "Other Mortgage Instruments" and this Mortgage, as amended, modified, supplemented, consolidated, extended or restated from time to time, and the Other Mortgage Instruments are sometimes collectively referred to as the "Mortgage Instruments" and individually referred to as a "Mortgage Instrument"), any and all future advances as may be made by Mortgagee under this Mortgage or the Other Mortgage Instruments, any other amounts required to be paid by Mortgagor under any of the Loan Documents (as hereinafter defined), and any other amounts required to be paid to Mortgagee under any of the Other Mortgage Instruments or the Loan Documents, any and all such indebtedness, advances and amounts being hereinafter collectively referred to as the "Secured Indebtedness"; and (2) full performance by Mortgagor and the mortgagors, grantors or trustors under the Other Mortgage Instruments (such mortgagors, grantors and trustors under the Other Mortgage Instruments being sometimes collectively referred to as the "Other Indebted Parties" and sometimes individually referred to as an "Other Indebted Party") of all of the provisions, agreements, covenants and obligations contained herein, in the Other Mortgage Instruments or in any of the other Loan Documents. The Notes, the Mortgage Instruments and any and all of the other documents evidencing, securing or relating to the indebtedness secured by any of the Mortgage Instruments are herein sometimes collectively referred to as the "Loan Documents" and sometimes individually referred to as a "Loan Document" (but excluding from the definition of the Loan Documents (i) that certain Guaranty of even date herewith (the "Guaranty") by Simon Property Group, L.P., a Delaware limited partnership ("SPG") in favor of Mortgagee, and (ii) those certain Unsecured Indemnity Agreements and those certain Amended and Restated Unsecured Indemnity Agreements of even date herewith between Mortgagor, the Other Indebted Parties and Mortgagee (such instruments are sometimes collectively referred to as the "Indemnity Agreements" and individually referred to as an "Indemnity Agreement"), which exclusion is solely for definitional purposes, and is not to in any way limit, waive or release Mortgagor or the Other Indebted Parties of their obligations thereunder).

**NOW, THEREFORE, IN CONSIDERATION**, of the sum of ONE HUNDRED DOLLARS (\$100.00), in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the Secured Indebtedness

and the other obligations of Mortgagor and the Other Indebted Parties set forth in this Mortgage, the Other Mortgage Instruments and the other Loan Documents, Mortgagor does hereby bargain, sell, mortgage, transfer, grant, convey, assign and warrant to Mortgagee, its successors and assigns:

(A) All of Mortgagor's present and future estate, right, title and interest in and to that certain real property located in the County and State (as defined in **Exhibit A** attached hereto and made a part hereof) and as more particularly described in **Exhibit B** attached hereto and made a part hereof, together with all right, title, interest and estate of Mortgagor, in and to all easements, rights-of-way, gaps, strips and gores of land, streets, ways, alleys, sewers, sewer rights, waters, water courses, water rights, privileges, licenses, tenements, hereditaments and appurtenances whatsoever, in any way appertaining to said real property, whether now owned or hereafter acquired by Mortgagor, and the reversion(s), remainder(s), possession(s), claims and demands of Mortgagor in and to the same, and the rights of Mortgagor in and to the benefits of any conditions, covenants and restrictions now or hereafter affecting said real property (collectively, the "**Land**"), together with all estate, right, title and interest that Mortgagor now has or may hereafter acquire in:

(1) all things now or hereafter affixed to the Land, including all buildings, structures and improvements of every kind and description now or hereafter erected or placed thereon, any fixtures and any and all machinery, motors, elevators, boilers, equipment (including, without limitation, all equipment for the generation or distribution of air, water, heat, electricity, light, fuel or refrigeration or for ventilating or air conditioning purposes or for sanitary or drainage purposes or for the removal of dust, refuse or garbage), partitions, appliances, furniture, furnishings, building service equipment, building materials, supplies, ranges, refrigerators, cabinets, laundry equipment, hotel, kitchen and restaurant equipment, computers and software, radios, televisions, awnings, window shades, venetian blinds, drapes and drapery rods and brackets, screens, carpeting and other floor coverings, lobby furnishings, games and recreational and swimming pool equipment, incinerators and other property of every kind and description now or hereafter placed, attached, fixed or installed in such buildings, structures, or improvements and all replacements, repairs, additions, accessions or substitutions or proceeds thereon or therefor (all of such things whether now or hereafter placed thereon being hereby declared to be real property and hereinafter collectively referred to as the "**Improvements**");

(2) all income, rents, royalties, revenue, issues, profits, proceeds and other benefits from any and all of the Land and/or Improvements, subject, however, to the right, power and authority hereinafter conferred upon Mortgagee or reserved to Mortgagor to collect and apply such income, rents, royalties, revenue, issues, profits, proceeds and other benefits;

(3) all deposits made with respect to the Land and/or Improvements, including, but not limited to, any security given to utility companies by Mortgagor, and all advance payments of insurance premiums made by Mortgagor with respect thereto and all claims or demands relating to such deposits, other security and/or such insurance;

(4) all damages, royalties and revenue of every kind, nature and description whatsoever that Mortgagor may be entitled to receive, either before or after any Event of Default (as hereinafter defined), from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Land, with the right in Mortgagee to receive and apply the same to the Secured Indebtedness;

(5) all proceeds and claims arising on account of any damage to, or Condemnation (as hereinafter defined) of, the Land and/or Improvements or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Land and/or Improvements;

(6) all licenses (including, but not limited to, any operating licenses or similar licenses), contracts, management contracts or agreements, guaranties, warranties, franchise agreements, permits, authorities or certificates required or relating to the ownership, use, operation or maintenance of the Land and/or Improvements; and

(7) all names under or by which the Land and/or 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 pending and goodwill relating to the Land and/or Improvements.

All of the property described in paragraph (A) above is hereinafter collectively referred to as the "Real Property".

(B) As a secured party, a security interest in Mortgagor's interest in any portion of the Real Property which may be construed to be personal property and in all other personal property of every kind and description, whether now existing or hereafter acquired, now or at any time hereafter attached to, erected upon, situated in or upon, forming a part of, appurtenant to, used or useful in the construction or operation of or in connection with, or arising from the use or enjoyment of all or any portion of, or from any lease or agreement pertaining to, the Real Property, including:

(1) all water rights appurtenant to the Real Property together with all pumping plants, pipes, flumes and ditches, all rights to the use of water, all rights in ditches for irrigation, all water stock, shares of stock or other evidence of ownership of any part of the Real Property that is owned by Mortgagor in common with others and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Real Property;

(2) all plans and specifications in the possession or control of Mortgagor prepared for construction of 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 the Improvements;

(3) all equipment, machinery, fixtures, goods, accounts, general intangibles, documents, instruments and chattel paper;



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

(5) all sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into with respect to the sale to any purchasers of any part of the Real Property, together with all deposits and other proceeds of the sale thereof; and

(6) all proceeds of any of the foregoing, including, without limitation, proceeds of any voluntary or involuntary disposition or claim respecting any of the foregoing (pursuant to judgment, condemnation award or otherwise) and all goods, documents, general intangibles, chattel paper and accounts, wherever located, acquired with cash proceeds of any of the foregoing or proceeds thereof.

All of the property described in paragraph (B) above is hereinafter collectively referred to as the "Personal Property". All of the Real Property and the Personal Property is herein collectively referred to as the "Property".

**TO HAVE AND TO HOLD** the Property, for the benefit of Mortgagee, its successors and assigns, subject, however, to the terms, covenants and conditions contained herein.

**PROVIDED, HOWEVER,** if the Secured Indebtedness is paid in full at the times and in the manner stipulated in the Notes, this Mortgage, the Other Mortgage Instruments and the other Loan Documents, and if all and singular of the covenants and promises of Mortgagor and the Other Indebted Parties in this Mortgage, the Other Mortgage Instruments and the other Loan Documents are kept, performed and observed, then this Mortgage and all of the properties, interests and rights hereby granted, encumbered, transferred or assigned shall be released by Mortgagee in accordance with the laws of the State.

**MORTGAGOR HEREBY COVENANTS AND AGREES FOR THE BENEFIT OF MORTGAGEE AS FOLLOWS:**

#### **ARTICLE I COVENANTS**

**1.01 Performance by Mortgagor.** Mortgagor shall pay the Secured Indebtedness evidenced by the Note, this Mortgage, and the other Loan Documents executed by Mortgagor to Mortgagee with respect to the Property and shall keep and perform or cause to be kept and performed each and every other obligation, covenant and agreement of the Loan Documents executed by Mortgagor with respect to the Property.

**1.02 Warranty of Title.** Mortgagor warrants that it is lawfully seized of that portion of the Property which constitutes real property, that it holds marketable and indefeasible fee simple absolute title to same, and has good right and is lawfully authorized to sell, convey or encumber the Property subject only to those matters set forth in **Exhibit C** attached hereto and made a part hereof (the "Permitted Exceptions"). Mortgagor further covenants to warrant and

forever defend all and singular the Property unto Mortgagee forever from and against all persons whomsoever claiming the same or any part thereof.

**1.03 Taxes, Liens and Other Charges.** Unless sums sufficient to pay the same shall have been fully paid to Mortgagee as provided in **Section 1.06** hereof, Mortgagor shall pay all real estate and other taxes, assessments, water and sewer charges, vault and other license or permit fees, levies, fines, penalties, interest, impositions, and other similar claims, general and special, public and private, of any kind whatsoever which may be assessed, levied, confirmed, imposed upon or arise out of or become due and payable out of, or become a lien on or against the Property or any part thereof (all of the foregoing, together with utility and refuse removal charges, being hereinafter collectively referred to as the "Imposition(s)") not later than ten (10) days before the dates on which such Impositions would become delinquent. Not later than the date when any Impositions would become delinquent, Mortgagor shall produce to Mortgagee official receipts of the appropriate imposing authority, or other evidence reasonably satisfactory to Mortgagee evidencing the payment thereof in full. If Mortgagor shall in good faith, and by proper legal action, contest any Impositions, and shall have deposited cash (or in lieu of depositing cash, Mortgagor shall deliver to Mortgagee a letter of credit in form and substance acceptable to Mortgagee in its sole and absolute discretion and issued by a financial institution acceptable to Mortgagee in its sole and absolute discretion) with Mortgagee (or as Mortgagee may direct) as a reserve for the payment thereof plus all fines, interest, penalties and costs which may become due pending the determination of such contest, as Mortgagee may require, then Mortgagor shall not be required to pay the same during the maintenance of said deposit and as long as such contest operates to prevent enforcement or collection of such Impositions against, or the sale or forfeiture of, the Property for non-payment thereof, and is prosecuted with due diligence and continuity, including appeals, and shall not have been terminated or discontinued or adjudicated without right of appeal adversely to Mortgagor. Upon termination of any such proceeding or contest, Mortgagor shall pay the amount of such Impositions or part thereof as finally determined in such proceeding or contest. However, if monies, or their equivalent, have been deposited with Mortgagee pursuant to this **Section 1.03**, said funds shall be applied toward such payment and the excess, if any, shall be returned to Mortgagor.

**1.04 Further Taxes.** In the event of the passage, after the date of this Mortgage, of any law deducting from the value of the Property, for the purposes of taxation, any lien thereon or security interest therein, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust and/or security agreements or debts secured by mortgages, deeds of trust and/or security agreements, or the manner of the collection of any such taxes, which has the effect of imposing payment of the whole or any portion of any taxes, assessments or other similar charges against the Property upon Mortgagee, the Secured Indebtedness shall upon thirty (30) days prior written notice to Mortgagor become immediately due and payable at the option of Mortgagee; provided, however, that such election by Mortgagee shall be ineffective if prior to the due date thereof: (1) Mortgagor is permitted by law (including, without limitation, applicable interest rate laws) to, and actually does, pay such tax or the increased portion thereof (in addition to continuing to pay the Secured Indebtedness as and when due and payable); and (2) Mortgagor agrees with Mortgagee in writing to pay, or reimburse Mortgagee for the payment of any such tax or increased portion thereof. Provided there exists no Event of Default hereunder (which has

continued beyond any applicable grace or cure period provided in Section 2.02 of this Mortgage), including without limitation, an Event of Default (which has continued beyond the applicable five (5) day grace or cure period provided in Section 2.02(1) for monetary defaults of Mortgagor) arising as a result of a breach by Mortgagor of its payment obligations under this Section 1.04, no Prepayment Fee (as defined in the Note) shall be due and owing as a result of the Secured Indebtedness being paid pursuant to Mortgagee exercising its election under this Section 1.04. Any money paid by Mortgagee under this Section 1.04 shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

#### 1.05 Insurance.

(a) Mortgagor, at its sole cost and expense, shall at all times, unless otherwise indicated, provide, maintain and keep in force:

(1) "All Risks" Property Insurance on the Improvements and Personal Property in an amount not less than one hundred percent (100%) of the Full Replacement Cost (as hereinafter defined) of the Improvements and Personal Property with a Replacement Cost Endorsement and an Agreed Amount Endorsement. As used herein "Full Replacement Cost" means the cost of replacing the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) and Personal Property without deduction for physical depreciation thereof. The present amount of such Full Replacement Cost determined by Mortgagor and Mortgagee as of the Advance Date is set forth in Schedule 1 attached hereto and made a part hereof;

(2) Boiler and Machinery insurance, in the amount set forth in Schedule 1 attached hereto, covering physical damage to the Improvements and to the major components of any central heating, air conditioning or ventilation systems and such other equipment as Mortgagee may reasonably require;

(3) Business Income insurance in an amount sufficient to prevent Mortgagor from becoming a co-insurer within the terms of the applicable policies, and sufficient to recover one (1) year's "Business Income" (from all sources of income for the Real Property). The present amount of coverage for such insurance as of the Advance Date is set forth in Schedule 1 attached hereto. "Business Income" as used herein shall mean the sum of (i) the total anticipated rental income from occupancy of the Property as furnished and equipped by Mortgagor, and (ii) the amount of all charges (such as, but not limited to, operating expenses, insurance premiums and taxes) and any other continuing expenses of the Property which are the obligation of tenants or occupants to Mortgagor;

(4) Flood insurance, provided that the location is designated a flood prone area participating in the National Flood Insurance Program, in an amount equal to full replacement cost or maximum amount then available, or evidence supplied by Mortgagor satisfactory to Mortgagee, that the Improvements are not within a one hundred year flood plain as determined by the Federal Emergency Management Agency;



(5) Comprehensive General Liability insurance against claims for personal injury (to include without limitation bodily injury or death), and property damage liability with a limit of not less than Twenty-Five Million and No/100ths Dollars (\$25,000,000.00), all on an occurrence basis, if available; and

(6) Such other insurance in form and amounts as may from time to time be reasonably required by Mortgagee for hazards commonly insured against in case of properties similarly situated.

(b) Mortgagee acknowledges and agrees that property insurance may be maintained in the form of a blanket policy with a specific allocation to each property encumbered by the Mortgage Instruments. Except as herein expressly provided otherwise, all policies of insurance required under this **Section 1.05** shall be issued by companies, and be in form, amount, and content and have an expiration date, approved by Mortgagee and as to the policies of insurance required under subparagraphs (1), (2) and (4) of **Section 1.05(a)**, shall contain a Standard Non-Contributory Mortgagee Clause or Mortgagee's Loss Payable Endorsement, or equivalents thereof, in form, scope and substance satisfactory to Mortgagee, in favor of Mortgagee, and as to policies of insurance required under subparagraphs (1), (2) and (4) of **Section 1.05(a)**, shall provide that the proceeds thereof ("Insurance Proceeds") shall be payable to Mortgagee or at Mortgagee's election, in escrow with an escrowee of Mortgagee's choosing, to be disbursed in accordance with the terms and provisions hereof. Any Insurance Proceeds received by Mortgagee pursuant to **Section 1.05(a)(3)** shall be held and applied by Mortgagee (unless deposited in escrow at Mortgagee's election, as aforesaid) toward payment of that portion of the Secured Indebtedness then due and payable, or which will become due and payable for the period for which such Insurance Proceeds are received by Mortgagee and the remainder, if any, shall be paid to Mortgagor. Mortgagor hereby authorizes and empowers Mortgagee to jointly with Mortgagor settle, adjust or compromise any claims for loss, damage or destruction to the Property, regardless of whether there are Insurance Proceeds available or whether any such proceeds are sufficient in amount to fully compensate for such loss or damage. Mortgagee shall be furnished with the original or certified copy of each policy required under **Sections 1.05(a)(1), (2) and (4)**, which policy shall provide that it shall not be modified or canceled without thirty (30) days' prior written notice to Mortgagee. At least thirty (30) days prior to expiration of any such policy, Mortgagor shall furnish Mortgagee appropriate proof of issuance of a policy continuing in force the insurance covered by the policy so expiring. All other policies of insurance, such as general liability insurance, shall be evidenced by certificates and, shall provide that the same shall not be modified or canceled without ten (10) days' prior written notice to Mortgagee. Mortgagor shall furnish Mortgagee receipts for the payment of premiums on such insurance policies or other evidence of such payment reasonably satisfactory to Mortgagee in the event that such premiums have not been paid to Mortgagee pursuant to **Section 1.06** hereof. In the event that Mortgagor does not deposit with Mortgagee a new policy of insurance with evidence of payment of premiums thereon at least thirty (30) days prior to the expiration of any policy, then Mortgagee may, but shall not be obligated to, procure such insurance and pay the premiums therefor and any money paid by Mortgagee for such premiums shall be reimbursed to Mortgagee in accordance with **Section 3.10** hereof. All binders, original policies or certified copies of insurance policies, endorsements, copies of certificates, and cancellation notices shall be sent to Mortgagee at One Madison Avenue,

New York, New York 10010-3690, Attention: Risk Management Unit, Area 3D/E. By its execution hereof, Mortgagee confirms that the insurance policies delivered to Mortgagee by Mortgagor satisfy the requirements of Sections 1.05(a) and (b).

(c) In the event of the foreclosure of this Mortgage or other transfer of the title to the Property in extinguishment, in whole or in part, of the Secured Indebtedness, all right, title and interest of Mortgagor in and to any insurance policy, or Premiums (as hereinafter defined) or payments in satisfaction of claims or any other rights thereunder then in force, shall pass to the purchaser or grantee. Nothing contained herein shall prevent accrual of interest as provided in the Notes on any portion of the Secured Indebtedness to which the Insurance Proceeds are to be applied until such time as the Insurance Proceeds are actually received by Mortgagee and applied by Mortgagee to reduce the Secured Indebtedness.

**1.06 Escrow Deposits.** Without limiting the effect of Sections 1.03, 1.04 and 1.05 hereof, Mortgagor shall pay to Mortgagee monthly at the time when the monthly installment of interest, principal or principal and interest is payable, an amount equal to 1/12th of what Mortgagee estimates is necessary to pay, on an annualized basis, all (1) Impositions and (2) premiums for the insurance policies required under Section 1.05(a) hereof ("Premiums") to enable Mortgagee to pay same at least thirty (30) days before the Impositions would become delinquent and the Premiums are due, and, on demand, from time to time shall pay to Mortgagee additional sums necessary to pay the Premiums and Impositions. No amounts so paid shall be deemed to be trust funds, but shall be commingled with the general funds of Mortgagee in an interest bearing account. In the event that Mortgagor does not pay such sums for Premiums and Impositions, then Mortgagee may, but shall not be obligated to, pay such Premiums and Impositions and any money so paid by Mortgagee shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof. If an Event of Default occurs, Mortgagee shall have the right, at its election, to apply any amounts so held under this Section 1.06 against all or any part of the Secured Indebtedness, or in payment of the Premiums or Impositions for which the amounts were deposited. Mortgagor will furnish to Mortgagee bills for Impositions and Premiums thirty (30) days before Impositions become delinquent and such Premiums become due. The foregoing obligations of Mortgagor set forth in this Section 1.06 are subject to the condition that Mortgagor shall not be required to pay such items until the first to occur of: (i) an Event of Default; (ii) any Partial Prepayment (as defined in the Notes); or (iii) the transfer of all of the properties encumbered by this Mortgage and the Other Mortgage Instruments as permitted and in accordance with Section 3.03(c). Upon the occurrence of any of such events described in the preceding clauses (i), (ii) and (iii), the foregoing waiver of monthly deposits shall become null and void, and without further force and effect, and Mortgagee shall immediately pay to Mortgagee an amount on account of such Impositions and Premiums, as estimated by Mortgagee, as shall be necessary to pay the Impositions and Premiums which would have accrued up to the time of the occurrence of such events, and thereafter, shall make such monthly payments of equal to 1/12 of what Mortgagee estimates is necessary to pay, on an annualized basis, such Impositions and Premiums.

**1.07 Restoration.**

(a) After the happening of any casualty to the Property, whether or not required to be insured against under the insurance policies to be provided by Mortgagor hereunder, Mortgagor shall give prompt written notice thereof to Mortgagee generally describing the nature and cause of such casualty and the extent of the damage to or destruction of the Property.

(b) Mortgagor hereby assigns to Mortgagee all Insurance Proceeds which Mortgagor may be entitled to receive. In the event of any damage to or destruction of the Property, and provided: (1) an Event of Default does not currently exist; and (2) Mortgagee has reasonably determined that (i) the tenants occupying not less than ninety percent (90%) of the occupied square footage of the Property do not have the right to terminate their tenancies pursuant to the terms of their respective leases, and (ii) the repair, restoration and rebuilding of any portion of the Property that has been partially damaged or destroyed can be accomplished in full compliance with all Requirements (as defined in Exhibit A) to the same condition, character and general utility as nearly as possible to that existing prior to such damage or destruction and at least equal value as that existing prior to such damage or destruction (or if not of at least equal value, then such value which is sufficient, in Mortgagee's sole and absolute discretion, to fully secure the Secured Indebtedness) (the "**Restoration**"), then Mortgagor shall commence and diligently pursue to completion the Restoration. Mortgagee shall hold and disburse the Insurance Proceeds, less (x) the cost, if any, to Mortgagee of recovering such proceeds including, without limitation, attorneys' fees and expenses, adjusters' fees and fees incurred in Mortgagee's performance of its obligations hereunder, and (y) any insurance proceeds received by Mortgagee pursuant to Section 1.05(a)(2) (the "**Net Insurance Proceeds**") in the manner hereinafter provided, to the Restoration. In the event that the above conditions for Restoration have not been met, Mortgagee may, at its option, apply the Net Insurance Proceeds to the reduction of the Secured Indebtedness in such order as Mortgagee may determine and Mortgagee may declare the entire Secured Indebtedness immediately due and payable.

(c) In the event the Net Insurance Proceeds are to be used for the Restoration, Mortgagor shall comply with Mortgagee's Requirements For Restoration as set forth in Exhibit D attached hereto and made a part hereof. Upon Mortgagee's receipt of a final certificate of occupancy or other evidence of approval of appropriate governmental authorities for the use and occupancy of the Improvements and other evidence reasonably requested by Mortgagee that the Restoration has been completed and the costs thereof have been paid in full, and reasonably satisfactory evidence that no mechanic's or similar liens for labor or material supplied in connection with the Restoration are outstanding against the Property (or in the case of a mechanics' lien or similar claim to which Mortgagor shall object, Mortgagor shall be permitted to contest such mechanic's lien claim provided Mortgagor shall cause the same to be bonded or insured over, in each instance, such bonding or insurance to be subject to the reasonable approval of Mortgagee) and provided that an Event of Default does not currently exist, Mortgagee shall pay any remaining Restoration Funds (as defined in Exhibit D) then held by Mortgagee to Mortgagor; provided, however, nothing contained herein shall prevent Mortgagee from applying at any time the whole or any part of the Restoration Funds to the curing of any Event of Default.

(d) In the event that Mortgagee applies all or any portion of the Restoration Funds to repay the unpaid Secured Indebtedness as provided in this Section 1.07, after payment in full of the Secured Indebtedness, any remaining Restoration Funds shall be paid to Mortgagor. Furthermore, provided no Event of Default exists which has continued beyond any applicable grace or cure period provided in Section 2.02 of this Mortgage, no Prepayment Fee shall be due and owing as a result of the application by Mortgagee of all or any portion of the Restoration Funds in payment of the unpaid Secured Indebtedness.

(e) Provided the total cost and expense of Restoration does not exceed Five Hundred Thousand and No/100ths Dollars (\$500,000.00) and further provided the conditions of Sections 1.07(b)(1) and (2) above are satisfied, Mortgagor shall collect the Net Insurance Proceeds, which proceeds Mortgagor shall hold in trust for the benefit of Mortgagor and Mortgagee and expend solely for the costs and expenses of Restoration. Mortgagor shall comply with Mortgagee's Requirements For Restoration as set forth in Exhibit D, except the provisions of (a) (ii) and (b)(ii) A (relating only to the "Request for Payment" and not the architects certificate) of Exhibit D need not be complied with insofar as Mortgagee will not in such instance be holding the Net Insurance Proceeds.

**1.08 Condemnation.** Should the Property or any part thereof be taken by reason of any condemnation or similar eminent domain proceeding, or a grant or conveyance in lieu thereof ("Condemnation"), Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceeding or to make any compromise or settlement in connection with such Condemnation. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact, and such appointment is coupled with an interest, to commence, appear in and prosecute any action or proceeding or to, jointly with Mortgagor, make any compromise or settlement in connection with any such Condemnation. All such compensation, awards, damages, rights of action and proceeds (collectively, the "Condemnation Proceeds") are hereby assigned to Mortgagee, who shall, after deducting therefrom all its reasonable expenses, including attorneys' fees ("Condemnation Expenses"), apply the remaining Condemnation Proceeds to repair any damage to, and to restore the Improvements remaining on the portion of, the Property not taken in the manner provided in Section 1.07 with respect to disposition of Net Insurance Proceeds; provided, however, that at the time of application of the remaining Condemnation Proceeds: (1) there shall not exist an Event of Default; (2) Mortgagor shall have paid to Mortgagee all sums in excess of available Condemnation Proceeds necessary to repair any damage to and restore the Improvements remaining on the portion of the Property not taken (or, in lieu of paying cash to Mortgagee, Mortgagor shall have delivered to Mortgagee a letter of credit in form and substance acceptable to Mortgagee in its sole and absolute discretion and issued by a financial institution acceptable to Mortgagee in its sole and absolute discretion); and (3) Mortgagee shall have determined that its security is not impaired. After restoration of the remaining Improvements, provided there exists no Event of Default hereunder, and after deducting therefrom any unpaid Condemnation Expenses, to the extent the remaining balance of the Condemnation Proceeds do not exceed Twenty-Five Thousand and No/100ths Dollars (\$25,000.00), Mortgagor shall be entitled to same and Mortgagee upon written request of Mortgagor shall pay over said excess to Mortgagor. In the event the conditions precedent for such restoration are not met, or in



the event the remaining balance of the Condemnation Proceeds exceeds Twenty-Five Thousand and No/100ths Dollars (\$25,000.00) and the Loan to Value Ratio (as hereinafter defined), expressed as a percentage, is greater than sixty-five percent (65%), Mortgagee shall have the right, after deducting therefrom the Condemnation Expenses, to apply the balance of the Condemnation Proceeds to the Secured Indebtedness, in such manner and such order as Mortgagee in its sole discretion shall determine, without adjustment in the dollar amount of the installments due under the Notes and if the entire Secured Indebtedness is paid in full, any remaining Condemnation Proceeds shall be delivered to Mortgagor. Nothing contained herein shall prevent the accrual of interest as provided in the Notes on any portion of the Secured Indebtedness to which the Condemnation Proceeds are to be applied until such Condemnation Proceeds are actually received by Mortgagee and so applied to reduce the Secured Indebtedness. Furthermore, provided no Event of Default exists which has continued beyond any applicable grace or cure period contained in **Section 2.02** of this Mortgage, no Prepayment Fee shall be due and owing as a result of the application of all or any portion of the Restoration Funds in payment of the unpaid Secured Indebtedness.

**1.09 Care and Use of the Property.**

(a) Mortgagor, at its sole cost and expense, shall keep the Property in good order, condition, and repair, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. Mortgagor shall abstain from, and not permit, the commission of physical waste in or about the Property and shall not remove or demolish, or alter in any substantial manner, the structure or character of any Improvements without the prior written consent of Mortgagee.

(b) Mortgagor shall at all times comply with all present or future Requirements affecting or relating or pertaining in any way to the Property and/or the use, operation and/or the maintenance thereof, and shall furnish Mortgagee, on request, proof of such compliance. Mortgagor shall not use or permit the use of the Property, or any part thereof, for any illegal purpose.

(c) Subject to the rights of tenants to the Property, Mortgagee and Mortgagee's representatives and designees shall have the right, but not the duty, to enter the Property at reasonable times to inspect the same. Mortgagee shall not be liable to Mortgagor or any person in possession of the Property with respect to any matter arising out of such entry to the Property, except for damage caused by the negligence of Mortgagee or its employees.

(d) Mortgagor shall, from time to time, upon request by Mortgagee in the event that Mortgagee has reasonable grounds to believe that Hazardous Substances (as defined in **Exhibit A**) may exist on the Property: (1) perform a site investigation of the Property to determine the existence and levels of Hazardous Substances on the Property; (2) issue a report certifying the results of such inspection to Mortgagee; and (3) take such remedial action as may be required by Mortgagee based upon such report.

(e) Mortgagor shall use, or cause to be used, the Property continuously as and for first class property of its type and kind at the time of the execution of this Mortgage. Mortgagor shall not use, or permit the use of, the Property for any other use without the prior written consent of Mortgagee. To the extent the Property is used as a residential apartment complex, Mortgagor shall at no time file or record a Declaration of Condominium, Master Deed of Trust or any other similar document evidencing the imposition of a so-called "condominium regime" whether superior or subordinate to this Mortgage. Mortgagor shall at no time permit any part of the Property to be converted to, or operated as, a so-called "cooperative apartment house" (or on a like cooperative basis) whereby the tenants or occupants thereof participate in the ownership, management or control of any part of the Property, as tenants, stockholders or otherwise.

(f) Mortgagor shall not initiate or acquiesce in a change in the zoning classification of and/or restrictive covenants affecting the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances or other applicable laws, ordinances, rules or regulations or subject the Property to restrictive covenants without Mortgagee's prior written consent.

(g) Mortgagor represents and warrants to Mortgagee that there is no third-party manager for the Property, nor are any management fees assessed against the Property. Mortgagor covenants and agrees that Mortgagor shall not retain any manager for the Property without the prior written consent of Mortgagee.

#### **1.10 Leases and Other Agreements Affecting the Property.**

(a) In order to further secure payment of the Secured Indebtedness and the observance, performance and discharge of all obligations under the Loan Documents, Mortgagor hereby assigns to Mortgagee all of Mortgagor's right, title, interest and estate in, to and under all of the leases now or hereafter affecting the Property or any part thereof and in and to all of the Rents and Profits (as defined in **Exhibit A**). Unless and until an Event of Default occurs and continues beyond any applicable grace or cure period provided herein, Mortgagor shall be entitled to collect the Rents and Profits (except as otherwise provided in this Mortgage) as and when they become due and payable. Mortgagee shall be liable to account only for the Rents and Profits actually received by Mortgagee pursuant to any provision of any Loan Document executed by Mortgagor.

(b) Mortgagor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it or the Property under any lease or any other agreement or instrument of any nature whatsoever which involves or affects the Property or any part thereof. Mortgagor represents that it has heretofore furnished Mortgagee true and complete copies of all executed leases existing on the date of this Mortgage that Mortgagee has requested. Upon request of Mortgagee, Mortgagor agrees to furnish Mortgagee with executed copies of all leases hereafter entered into with respect to all or any part of the Property. Mortgagor shall not, without the express written consent of Mortgagee, as to leases of eight thousand (8,000) or more square feet of space, enter into any new lease or, modify, extend or renew, either orally or in writing, any such lease now existing or hereafter created upon the Property, or any part thereof. Mortgagor

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shall not, without the express written consent of Mortgagee, enter into any new lease as to leases of less than eight thousand (8,000) square feet of space, modify, extend or renew, either orally or in writing any such lease unless: (i) no Event of Default shall have occurred and be continuing; and (ii) such lease shall be in compliance with the Leasing Guidelines (as defined in Exhibit A). Mortgagee shall not, without the express written consent of Mortgagee, terminate or surrender any lease of eight thousand (8,000) or more square feet of space now existing or hereafter created upon the Property, or any part thereof, unless Mortgagee has entered into a new lease covering all of the leased premises to be terminated or surrendered, which new lease has been approved by Mortgagee as provided herein. As to any lease with respect to which Mortgagee's express written consent is required, Mortgagee shall have ten (10) business days from the date of receipt of: (i) the proposed lease; (ii) a credit report from a reputable reporting agency, if available; and (iii) financial statements of the proposed tenant, in which to approve or disapprove of the proposed lease. If Mortgagee does not approve of such lease, Mortgagee shall notify Mortgagee within said ten (10) business day period advising Mortgagee specifically of what portions of such lease are disapproved. If Mortgagee fails to give its approval or disapproval within ten (10) business days from the date of its receiving all of the aforesaid lease, credit report, if any, and financials, Mortgagee shall be deemed to have given its express written consent. Mortgagee shall not permit an assignment or sublease of any lease now existing or hereafter created upon the Property, or any part thereof, without the express written consent of Mortgagee unless such lease shall be in compliance with the Leasing Guidelines.

(c) Except for those leases existing as of the date hereof and which Mortgagee has not required to be subordinated to the lien of this Mortgage, each lease of any portion of the Property shall be absolutely subordinate to the lien of this Mortgage, but shall also contain a provision, reasonably satisfactory to Mortgagee, that in the event of the exercise of the power of sale hereunder or a sale pursuant to a judgment of foreclosure, such lease, at the sole and exclusive option of the purchaser at such sale, shall not be terminated and the tenant thereunder shall attorn to such purchaser and, if requested to do so, shall enter into a new lease for the balance of the term of such lease then remaining, upon the same terms and conditions. Upon Mortgagee's reasonable request, Mortgagee shall cause, if Mortgagee has the legal right to cause the tenant, and if Mortgagee does not have such right, Mortgagee shall use its best efforts to cause the tenant, under each or any of such leases to enter into subordination and attornment agreements with Mortgagee which are satisfactory in form, scope and substance to Mortgagee.

(d) Mortgagee shall not accept payment of advance rents or security deposits equal, in the aggregate, to more than two (2) months' rent.

(e) Mortgagee covenants and agrees that all contracts and agreements relating to the Property to pay leasing commissions, management fees or other compensation shall: (1) provide that the obligation to pay such commissions, fees and other compensation will not be enforceable against any party other than the party who entered into such a contract; (2) be subordinate and inferior to the lien of this Mortgage; and (3) not be enforceable against Mortgagee. Mortgagee shall promptly furnish Mortgagee with evidence of Mortgagee's compliance with this paragraph upon the execution of each such contract or agreement.

(f) Mortgagor covenants and agrees that it shall, throughout the term of the Note, lease the Property, or any portion thereof, solely to tenants and for uses which are compatible with a community shopping center. Without limitation to any other rights and remedies Mortgagee has available to it hereunder, or under the other Loan Documents or applicable law, if Mortgagor breaches the aforesaid covenant, such breach shall constitute an Event of Default hereunder and under the other Loan Documents allowing Mortgagee to immediately following the expiration of any applicable grace or cure period contained in Section 2.02 of this Mortgage, exercise its rights and remedies hereunder and under the other Loan Documents including without limitation accelerating the maturity date of the indebtedness evidenced by the Note, and in such instance Mortgagor shall pay to Mortgagee the principal sum evidenced by the Note, all accrued interest thereon, an amount equal to the Prepayment Fee and any and all other sums and monies to be paid to Mortgagee under the Loan Documents.

**1.11 Books, Records and Accounts.** Mortgagor shall keep and maintain or shall cause to be kept and maintained on a calendar year basis, in accordance with generally accepted accounting principles, consistently applied, proper and accurate books, records and accounts reflecting all of the financial affairs of Mortgagor with respect to all items of income and expense in connection with the operation of the Property, whether such income or expense be realized by Mortgagor or by any other person whatsoever (excepting lessees unrelated to and unaffiliated with Mortgagor who have leased from Mortgagor portions of the Property for the purpose of occupying same). Mortgagee or its representatives or designees shall have the right from time to time at reasonable times during normal business hours to examine, with respect to the Property, such books, records and accounts at the office of Mortgagor or other person maintaining such books, records and accounts and to make copies or extracts thereof as Mortgagee shall desire. Mortgagee shall also have the right to discuss Mortgagor's affairs, finances and accounts with representatives of Mortgagor, at such reasonable times as may be requested by Mortgagee. Mortgagor shall deliver to Mortgagee within one hundred twenty (120) days after the close of each calendar year, financial statements prepared by an independent certified public accountant satisfactory to Mortgagee, containing a balance sheet, profit and loss statements and income and expense statements with such detailed supporting schedules covering the operation of the Property as Mortgagee shall reasonably require and certified by the chief financial officer of Mortgagor, if Mortgagor is a corporation, by the managing general partner of Mortgagor, if Mortgagor is a partnership, or by Mortgagor, if Mortgagor is an individual. Mortgagor shall also furnish at such time a rent roll certified by Mortgagor to be correct showing each tenant, the term of the lease, the rentable area demised thereunder and the fixed annual rent, percentage rent, other charges, if any, payable thereunder, date of last rental payment, amount of security deposit, nature and amounts of material defaults (if any) and such other matters as Mortgagee may reasonably require.

**1.12 Subrogation.** As additional security hereunder, Mortgagee shall be subrogated to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan evidenced by the Notes and secured by this Mortgage and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment.



**1.13 Collateral Security Instruments.** Mortgagor covenants and agrees that if Mortgagee at any time holds additional security for any obligations secured hereby, it may enforce the terms thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds to the Secured Indebtedness in such order as Mortgagee may determine, without affecting the status of or waiving any right to exhaust all or any other security, including the security hereunder, and without waiving any breach or default or any right or power whether exercised hereunder or under any of the other Loan Documents, or contained herein or therein, or in any such other security.

**1.14 Suits and Other Acts to Protect the Property.**

(a) Mortgagor covenants and agrees to appear in and defend any action or proceeding purporting to affect the Property, any other security afforded by any of the Loan Documents and/or the interest of Mortgagee thereunder. As to any action, proceeding or other matter or claim which names Mortgagee as a party, or which is equal to or in excess of Twenty-Five Thousand and No/100ths Dollars (\$25,000.00), or which actions, proceedings, or other matters or claims taken together equal or exceed One Hundred Thousand and No/100ths Dollars (\$100,000.00), Mortgagor shall immediately notify Mortgagee of the commencement, or receipt of notice, of any such action or proceeding or other matter or claim purporting to, or which could, affect the Property, any other security afforded by any of the Loan Documents and/or the interest of Mortgagee thereunder.

(b) Mortgagee shall have the right, at the cost and expense of Mortgagor, to institute and maintain such suits and proceedings and take such other action, as it may deem expedient to preserve or protect the Property and any other security afforded by any of the Loan Documents and/or Mortgagee's interest therein (to the extent Mortgagor fails to diligently commence, pursue, or defend, as the case may be, such suits, proceedings and such other action). Any money paid by Mortgagee under this **Section 1.14(b)** shall be reimbursed to Mortgagee in accordance with **Section 3.10** hereof.

**1.15 Mortgagee's Right to Perform Mortgagor's Obligations.** Mortgagor agrees that, if Mortgagor fails to perform any act or to pay any money which Mortgagor or any Other Indebted Party is required to perform or pay under the Loan Documents, Mortgagee, at the cost and expense of Mortgagor and, if applicable, such Other Indebted Party, and in Mortgagor's name and/or, if applicable, such Other Indebted Party's name or in its own name, may (but shall not be obligated to) perform or cause to be performed such act or take such action or pay any money. Any money paid by Mortgagee under this **Section 1.15** shall be reimbursed to Mortgagee in accordance with **Section 3.10** hereof.

**1.16 Liens and Encumbrances.** Mortgagor shall not, without the prior written consent of Mortgagee (or as otherwise provided below in **Section 5.04**), create, place or suffer to be created or placed, or through any act or failure to act, allow to remain, any deed of trust, mortgage, security interest, or other lien, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Exceptions and the lien for ad valorem taxes or general assessment for general real estate taxes

on the Property not yet delinquent, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property, Mortgagor shall cause the same to be promptly discharged and released, or in the case of a mechanics' lien claim to which Mortgagor shall object, Mortgagor shall be permitted to contest such mechanic's lien claim provided Mortgagor shall cause the same to be bonded or insured over, in each instance, such bonding or insurance to be subject to the reasonable approval of Mortgagee. Mortgagor shall own all parts of the Property and, except as expressly approved in writing by Mortgagee, shall not acquire any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license, title retention document or similar agreement.

**1.17 Liability of Mortgagor.** Notwithstanding anything to the contrary contained in this Mortgage or in any of the other Loan Documents, but without in any manner releasing, impairing or otherwise affecting this Mortgage or any of the other Loan Documents, or the validity hereof or thereof, or the lien of the Mortgage Instruments, upon the occurrence of an Event of Default, except as expressly set forth in this **Section 1.17**, the liability of Mortgagor and the partners in Mortgagor shall be limited to and satisfied out of the properties secured by the Mortgage Instruments. Notwithstanding any of the foregoing, nothing contained in this **Section 1.17** shall be deemed to prejudice the rights of Mortgagee to (i) proceed against any entity or person whomsoever, including Mortgagor, with respect to the enforcement of any covenants and conditions of the Loan Documents; and/or (ii) recover actual, not consequential, indirect or special, damages against Mortgagor for fraud, breach of trust, material breach of warranty, material misrepresentation or physical waste; and/or (iii) recover any Condemnation Proceeds or Insurance Proceeds or other similar funds or payments attributable to the Property which have been misapplied by Mortgagor or which, under the terms of the Loan Documents, should have been paid to Mortgagee; and/or (iv) recover any tenant security deposits, prepaid rents or other similar sums paid to or held by Mortgagor or any other entity or person on behalf of or for the benefit of Mortgagor in connection with the Property; and/or (v) recover the Rents and Profits accruing from and after the occurrence of an Event of Default that is not cured, which have not been applied to pay any portion of the indebtedness evidenced by the Notes, operating expenses, management fees and maintenance expenses of the Property, Premiums, Impositions, deposits into a reserve for replacement or other sums required by the Loan Documents; and/or (vi) recover actual, not consequential, indirect or special, damages against Mortgagor arising from, or in connection with, the covenants, obligations, liabilities, warranties and representations contained in **Section 3.08** herein and in the Other Mortgage Instruments (which Section refers to hazardous materials), but only to the extent of the value of Mortgagor's or its general partners' interests, or the interests of SPG, in all of the properties encumbered by the Mortgage Instruments; and/or (vii) except to the extent Mortgagee actually receives proceeds therefor under its lender's title policy(ies), recover from Mortgagor the entire indebtedness secured by the Loan Documents, in the event of any judicial determination in a criminal forfeiture proceeding that the liens of the Mortgage Instruments are invalid, and/or (viii) recover from Mortgagor amounts due and payable pursuant to **Section 3.06** herein and in the Other Mortgage Instruments (which Section refers to certain out-of-pocket expenses); and/or (ix) to recover damages arising from Mortgagor's failure to comply with the provisions of **Section 3.11** herein or in the Other Mortgage Instruments pertaining to ERISA. Mortgagor shall be personally liable for Mortgagor's obligations arising in

connection with the matters set forth in the foregoing clauses (i) to (ix) inclusive. The general partners in Mortgagor and/or SPG shall be personally liable for Mortgagor's obligations arising in connection with the matters set forth in the foregoing clauses (i) to (ix) inclusive; provided, however, that the liability for Mortgagor's obligations referred to in **Subsection 10(vi)** shall be limited to the extent of the value of Mortgagor's general partners' interests, or the interests of SPG, in all of the properties encumbered by the Mortgage Instruments.

## ARTICLE II DEFAULTS AND REMEDIES

**2.01 Events of Default.** Any of the following shall be deemed to be a material breach of Mortgagor's covenants herein and shall constitute a default hereunder ("**Event of Default**"):

(a) The failure of Mortgagor or any Other Indebted Party to pay any installment of principal, interest or principal and interest, any required escrow deposit or any other sum required to be paid under any of the Notes or under any other Loan Document, whether to Mortgagee or otherwise, when the same shall become due and payable;

(b) The failure of Mortgagor or any Other Indebted Party to perform or observe any other term, provision, covenant, condition or agreement under any of the Loan Documents;

(c) The filing by Mortgagor of a voluntary petition or application for relief in bankruptcy or Mortgagor's adjudication as a bankrupt or insolvent, or the filing by Mortgagor of any petition, application for relief or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law, code or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's seeking or consenting to or acquiescing in the appointment of any trustee, custodian, conservator, receiver or liquidator of Mortgagor or of all or any substantial part of the Property or of any or all of the Rents and Profits thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due; provided, however, any involuntary petition or application for (i) relief in bankruptcy, (ii) Mortgagor's adjudication as a bankrupt or insolvent, or (iii) the appointment of any trustee, custodian, conservator, receiver or liquidator of Mortgagor or of all or any substantial part of the Property or of any or all of the Rents and Profits thereof shall not be deemed an Event of Default hereunder in the event that Mortgagor causes the same to be dismissed within sixty (60) days following the filing of such petition or application;

(d) If any warranty, representation, certification, financial statement or other information made or furnished at any time pursuant to the terms of the Loan Documents or otherwise, by Mortgagor, or by any person or entity otherwise liable under any Loan Document shall be materially false or misleading or furnished with knowledge of the false nature thereof;

(e) If Mortgagor shall suffer or permit the Property, or any part thereof, to be used in such manner as to: (1) divest Mortgagor's title to the Property, or any part thereof; or (2) create

rights of adverse use or possession; or (3) constitute an implied dedication of the Property, or any part thereof;

(f) The occurrence and continuance of an Event of Default beyond the expiration of any applicable grace or cure period under any of the Other Mortgage Instruments; or

(g) A default or breach by Mortgagor or any Other Indebted Party of any term, provision, covenant, agreement, representation or warranty under any of the Indemnity Agreements.

**2.02 Remedies upon Default.** Upon: (1) five (5) days following an Event of Default described in Section 2.01(a) or 2.01(g) without cure (provided, however, that with respect to any of the Loan Documents executed by the Other Indebted Parties, the grace or curative periods specified in this Section 2.02 shall not be deemed or construed to provide any grace or curative period in addition to that afforded to the Other Indebted Parties pursuant to the express provisions of the Loan Documents to which they are a party, all such grace and curative periods to run concurrently with the applicable grace or curative period in this Mortgage); or (2) two hundred and seventy (270) days after the date Mortgagee sends notice of any nonmonetary Event of Default described in Section 2.01(b) or 2.01(c) (except for an Event of Default described in Sections 2.01(b) or 2.01(d) arising as a result of a breach by Mortgagor of the provisions of Sections 1.05(a) and (b), 3.03(a), 3.08(c), 3.11, 4.03 or 5.04 for which no notice or cure period is allowed under this Section 2.02) without cure, or (3) the happening of any other Event of Default, the Secured Indebtedness shall, at the option of Mortgagee, become immediately due and payable, without further notice or demand, and Mortgagee may forthwith undertake any one or more of the following:

(a) **Foreclosure.** Institute an action of mortgage foreclosure in accordance with the law of the State, or take such other action as the law may allow, at law or in equity, for the enforcement of the Loan Documents and realization on the Property or any other security afforded by the Loan Documents and, in the case of a judicial proceeding, proceed to final judgment and execution thereon for the amount of the Secured Indebtedness (as of the date of such judgment) together with all costs of suit, attorneys' fees and interest on such judgment at the lesser of the maximum rate permitted by law and the Default Rate (as defined in the Note) from and after the date of such judgment until actual payment is made to Mortgagee in the full amount due Mortgagee; provided, however, if Mortgagee is the purchaser at the foreclosure sale of the Property, the foreclosure sale price (Mortgagee's final bid) shall be applied against the total amount due Mortgagee; and/or

(b) **Entry.** Enter into possession of the Property, lease the same, collect all Rents and Profits therefrom and, after deducting all costs of collection and administration expenses, apply the remaining Rents and Profits in such order and amounts as Mortgagee, in Mortgagee's sole discretion, may elect to the payment of Impositions, operating costs, Premiums and other charges (including, but not limited to, costs of leasing the Property and fees and costs of counsel and receivers) and to the maintenance, repair, and restoration of the Property, or on account and in reduction of the Secured Indebtedness; and/or



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(c) **Receivership.** Have a receiver appointed to enter into possession of the Property, collect the Rents and Profits therefrom and apply the same as the appropriate court may direct. Mortgagee shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Mortgagor or any other person who may be legally or equitably liable to pay any portion of the Secured Indebtedness and Mortgagor and each such person shall be deemed to have waived such proof and to have consented to the appointment of such receiver. Should Mortgagee or any receiver collect the Rents and Profits, the moneys so collected shall not be substituted for payment of the Secured Indebtedness nor can they be used to cure the Event of Default.

**2.03 Application of Proceeds of Sale.** In the event of a sale of the Property pursuant to Section 2.02(a) hereof, the proceeds of said sale, to the extent permitted by law, shall be applied to the following, in such order as Mortgagee shall, in its sole discretion, determine: the expenses of such sale and of all proceedings in connection therewith, including attorneys' fees and expenses; Impositions, Premiums, liens, and other charges and expenses; the outstanding principal balance of the Secured Indebtedness; any accrued interest; and any other unpaid portion of the Secured Indebtedness.

## ARTICLE III GENERAL COVENANTS

### 3.01 Security Agreement.

(a) THIS MORTGAGE CREATES A LIEN ON THE PROPERTY, AND TO THE EXTENT THE PROPERTY IS PERSONAL PROPERTY UNDER APPLICABLE LAW, THIS MORTGAGE CONSTITUTES A SECURITY AGREEMENT UNDER THE UNIFORM COMMERCIAL CODE OF THE STATE WHERE THE PERSONAL PROPERTY IS SITUATED (THE "U.C.C.") AND ANY OTHER APPLICABLE LAW AND IS FILED AS A FIXTURE FILING. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, MORTGAGEE MAY, AT ITS OPTION, PURSUE ANY AND ALL RIGHTS AND REMEDIES AVAILABLE TO A SECURED PARTY WITH RESPECT TO ANY PORTION OF THE PROPERTY, AND/OR MORTGAGEE MAY, AT ITS OPTION, PROCEED AS TO ALL OR ANY PART OF THE PROPERTY IN ACCORDANCE WITH MORTGAGEE'S RIGHTS AND REMEDIES WITH RESPECT TO THE LIEN CREATED BY THIS MORTGAGE.

(b) The grant of a security interest to Mortgagee in the granting clause of this Mortgage shall not be construed to derogate from or impair the lien or provisions of or the rights of Mortgagee under this Mortgage with respect to any property described therein which is real property or which the parties have agreed to treat as real property. The hereby stated intention of Mortgagor and Mortgagee is that everything used in connection with the production of income from such real property or adapted for use thereon is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the Land and/or Improvements.

(c) If required by Mortgagee, at any time during the term of this Mortgage, Mortgagor will execute and deliver to Mortgagee, in form satisfactory to Mortgagee, additional security agreements, financing statements and/or other instruments covering all Personal Property or fixtures of Mortgagor which may at any time be furnished, placed on, or annexed or made appurtenant to the Real Property or used, useful or held for use, in the operation of the Improvements.

(d) Mortgagor hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact and such appointment is coupled with an interest, to execute, deliver and file with the appropriate filing officer or office such security agreements, financing statements and/or other instruments as Mortgagee may request or require in order to impose and perfect the lien and security interest created hereby more specifically on the Personal Property or any fixtures.

(e) If Mortgagor enters into a separate security agreement with Mortgagee relating to any of the Personal Property or fixtures, the terms of such security agreement shall govern the rights and remedies of Mortgagee after an Event of Default thereunder.

(f) It is understood and agreed that, in order to protect Mortgagee from the effect of U.C.C. Section 9-313, as amended from time to time, in the event that Mortgagor intends to purchase any goods which may become fixtures attached to the Property, or any part thereof, and such goods will be subject to a purchase money security interest held by a seller or any other party:

(1) Mortgagor shall, before executing any security agreement or other document evidencing or perfecting such security interest, obtain the prior written approval of Mortgagee, and all requests for such written approval shall be in writing and contain the following information:

- (i) a description of the fixtures to be replaced, added to, installed or substituted;
- (ii) the address at which the fixtures will be replaced, added to, installed or substituted; and
- (iii) the name and address of the proposed holder and proposed amount of the security interest.

Mortgagor's execution of any such security agreement or other document evidencing or perfecting such security interest without Mortgagee's prior written approval shall constitute an Event of Default. No consent by Mortgagee pursuant to this subparagraph shall be deemed to constitute an agreement to subordinate any right of Mortgagee in fixtures or other property covered by this Mortgage.

(2) If at any time Mortgagor fails to make any payment on an obligation secured by a purchase money security interest in the Personal Property or any fixtures, Mortgagee, at its

option, may at any time pay the amount secured by such security interest. Any money paid by Mortgagee under this subparagraph, including any expenses, costs, charges and attorney's fees incurred by Mortgagee, shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof. Mortgagee shall be subrogated to the rights of the holder of any such purchase money security interest in the Personal Property.

(3) Mortgagee shall have the right to acquire by assignment from the holder of such security interest any and all contract rights, accounts receivable, negotiable or non-negotiable instruments, or other evidence of Mortgagor's indebtedness for such Personal Property or fixtures, and, upon acquiring such interest by assignment, shall have the right to enforce the security interest as assignee thereof, in accordance with the terms and provisions of the U.C.C. and in accordance with any other provisions of law.

(4) Whether or not Mortgagee has paid the indebtedness secured by, or taken an assignment of, such security interest, Mortgagor covenants to pay all sums and perform all obligations secured thereby, and if Mortgagor at any time shall be in default under such security agreement, it shall constitute an Event of Default.

(5) The provisions of subparagraphs (2) and (3) of this paragraph (f) shall not apply if the goods which may become fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding such security interest have been expressly subordinated, at no cost to Mortgagee, to the lien and security interest of this Mortgage in a manner satisfactory to Mortgagee, including without limitation, at the option of Mortgagee, providing to Mortgagee a satisfactory opinion of counsel to the effect that this Mortgage constitutes a valid and subsisting first lien on such fixtures which is not subordinate to the lien of such security interest under any applicable law, including without limitation, the provisions of Section 9-313 of the U.C.C.

(g) Mortgagor hereby warrants, represents and covenants as follows:

(1) Mortgagor is and has been the sole owner of the Personal Property for at least fifteen (15) days free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will protect, defend and indemnify Mortgagee against, all claims and demands of all persons at any time claiming any rights or interest therein.

(2) The Personal Property is not used or bought and shall not be used or bought for personal, family, or household purposes, but shall be bought and used solely for the purpose of carrying on Mortgagor's business.

(3) The Personal Property has been located on the Land and/or Improvements or at Mortgagor's chief executive office, for at least fifteen (15) days and will be kept on or at the Land or the Improvements or at Mortgagor's chief executive office, and Mortgagor will not remove the Personal Property therefrom without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage,

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all of which shall be promptly replaced by Mortgagor with other Personal Property of value equal to or greater than the value of the replaced Personal Property when new, and except such portions or items of Personal Property temporarily stored elsewhere to facilitate refurbishing or repair thereof or of the Improvements.

(4) Mortgagor will immediately notify Mortgagee in writing of any change in its principal place of business as set forth in the beginning of this Mortgage.

**3.02 No Waiver.** No single or partial exercise by Mortgagee, or delay or omission in the exercise by Mortgagee, of any right or remedy under the Loan Documents shall preclude, waive or limit any other or further exercise thereof or the exercise of any other right or remedy. Mortgagee shall at all times have the right to proceed against any portion of, or interest in, the Property in such manner as Mortgagee may deem fit, without waiving any other rights or remedies with respect to any other portion of the Property.

**3.03 Conveyance of Property, Change in Ownership and Composition.**

(a) Except as expressly set forth in this **Section 3.03**, Mortgagor shall not, without the prior written consent of Mortgagee, which consent may be subject to such conditions as Mortgagee may require, cause, permit or suffer: (i) the Property, or any part thereof, or any interest therein, to be conveyed, transferred, assigned, encumbered (without limitation to the provisions of **Section 1.10** hereof concerning Leases to the Property), sold or otherwise disposed of; or (ii) any change in Mortgagor or in the partners in Mortgagor or in any other direct or indirect interest in Mortgagor from those represented to Mortgagee in that certain Amended and Restated Borrower's Certificate from Mortgagor in favor of Mortgagee dated as of the date hereof. Any such conveyance, transfer, pledge or encumbrance made without Mortgagee's prior written consent shall be null and void and of no force and effect, but the attempt at making thereof shall, at the option of Mortgagee, constitute an Event of Default under this Mortgage and the other Loan Documents, allowing Mortgagee to immediately (without regard to any notice or cure provision contained in **Section 2.02** hereof) exercise its rights and remedies hereunder and under the other Loan Documents. The foregoing prohibitions shall not be applicable to: (i) transfers of ownership as a result of the death of a natural person to a spouse, son or daughter or descendant or either, a stepson or stepdaughter or descendant of either; (ii) transfers of ownership by a natural person in connection with bona fide estate planning; or (iii) changes of or transfers of any interests in, or any merger, consolidation, liquidation, incorporation or other similar company-level transaction of Simon Property Group, Inc., a Delaware corporation ("SPG"), or any successor to SPG, or any sale or transfer of all or substantially all of the assets of SPG (or any successors).

(b) Changes may be made in the partners in Mortgagor so long as any one or more of David Simon, Melvin Simon or Herbert Simon or their family trusts, SPG (or its successors) or one of its direct or indirect wholly owned subsidiaries, or one of its direct or indirect ninety-five percent (95%) owned subsidiaries is a managing general partner of the owner of the Property, and one or more of such parties owns, directly or indirectly, at least fifty percent (50%) of all of the beneficial interests in Mortgagor, including, without limitation, the rights to profits, losses and distributions; provided that prior to any such permitted transfer pursuant to subsection (a) and this



subsection (b), Mortgagee receives, at its sole option, a satisfactory attorney's opinion opining that such transfer is exempt from registration under, or is in compliance with, any state securities laws. Any transferee of Mortgagor's interest in the Property shall assume, in writing delivered to Mortgagee, all of the obligations of Mortgagor under the Loan Documents and the Indemnity Agreements. Mortgagor shall not be released of its obligations under the Loan Documents and the Indemnity Agreements upon the assumption of the same by a transferee of Mortgagor's interest in the Property unless Mortgagee acknowledges the same in writing delivered to Mortgagor. Mortgagor may grant or withhold its release of Mortgagor from said obligations in its sole and absolute discretion.

(c) In addition to, and not in limitation of, the foregoing rights under the first and second paragraphs of this **Section 3.03**, from and after the date which is twenty-four (24) months following the Advance Date (as defined in the Notes), Mortgagor shall have a one time right to transfer all of the properties encumbered by the Mortgage Instruments (but not less than all of the properties encumbered by the Mortgage Instruments) to a third party, provided that the third party must assume Mortgagor's obligations under the Notes, and provided further that each of the following conditions are satisfied:

(i) no Event of Default shall have occurred and be continuing under the Loan Documents or any guaranty or any of the Indemnity Agreements,

(ii) Mortgagee shall have approved the proposed third-party transferee in its reasonable discretion, which approval shall require that: (a) the creditworthiness of the proposed transferee is acceptable to Mortgagee, (b) the transferee shall be able to make the ERISA representations set forth in **Section 2.11** herein and in the Other Mortgage Instruments; (b) the proposed transferee has a minimum net worth of Fifty Million and No/100ths Dollars (\$50,000,000); (c) the proposed transferee or its manager has specific experience in ownership, operation and management of community shopping centers acceptable to Mortgagee (and in the event that following such transfer such approved manager no longer manages the Property and is not replaced by a manager approved by Mortgagee, such occurrence shall be deemed an Event of Default under the Loan Documents), and (d) Mortgagee has not had any adverse experience with such proposed transferee,

(iii) the Debt Service Coverage (as hereinafter defined) calculated at the time of the request for such transfer is at least 1.50,

(iv) the Loan to Value Ratio does not exceed sixty-five percent (65%),

(v) a payment by Mortgagor to Mortgagee of a fee equal to One Hundred Thousand and No/100ths Dollars (\$100,000.00),

(vi) the proposed third-party transferee shall expressly assume the obligations of Mortgagor under the Loan Documents arising after the date of transfer in a manner reasonably satisfactory to Mortgagee,

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(vii) the assumption will be documented in a manner approved by Mortgagee,

(viii) the transferee shall expressly assume the obligations of Mortgagor and the Other Indebted Parties under Loan Documents and the Indemnity Agreements in a manner satisfactory to Mortgagee, and an additional person or entity acceptable to Mortgagee shall execute a guaranty with respect to events arising or occurring from and after the date of the transfer, and

(ix) Mortgagor or third party transferee shall pay all reasonable costs and expenses incurred by Mortgagee in connection with the transfer, including title insurance premiums, documentation costs and reasonable attorneys' fees.

Notwithstanding the foregoing, no such transfer shall release Mortgagor or SPG from their obligations under the Loan Documents, the Indemnity Agreements or the Guaranty with respect to events arising or occurring prior to the date of the transfer.

As used herein, "Debt Service Coverage" means the (i) "Cash Flow of All of the Property" (as hereinafter defined), for a given period of time, divided by (ii) the sum of the debt service on the Notes for such period of time, as determined by Mortgagee (which determination shall be binding in the absence of manifest error).

As used herein, "Cash Flow of All of the Property" means the gross proceeds generated from the all of the properties encumbered by the Mortgage Instruments and received by Mortgagor and the Other Indebted Parties during a given period of time, including rental income, tenant reimbursements, profits and other income, less the normal operating expenses, maintenance, real estate taxes, property insurance, tenant improvements and leasing commissions incurred by Mortgagor and the Other Indebted Parties in the ownership and operation of the properties encumbered by the Mortgage Instruments during such time period but excluding depreciation, amortization, and building related capital expenditure items. For purposes of calculating Debt Service Coverage: (i) Cash Flow of All of the Property will be annualized to include annualized base rental from tenants in occupancy for less than twelve (12) months and annualized rental income from tenants that have executed Leases, whose premises are under construction and are scheduled to open for business within one hundred twenty (120) days from the date of such proposed permitted transfer, and (ii) Mortgagee shall include in Cash Flow of All of the Property cash flow expected to be in place at the time of the proposed permitted transfer as evidenced by Leases in place and Leases which have been executed but pursuant to which tenants are not yet in occupancy; provided, however, cash flow not expected to be received at the time of such proposed permitted transfer shall be excluded.

As used herein, "Loan to Value Ratio" means a number derived by dividing (i) the sum of the outstanding principal balance of the Notes by (ii) the market value of the properties encumbered by the Mortgage Instruments agreed to among Mortgagor, the Other Indebted Parties and Mortgagee, or if not so agreed then as determined by an MAI appraiser, paid for by Mortgagor, and selected and engaged by Mortgagee (which determination shall be binding in the absence of manifest error).

As part of a permitted transfer as described in this Section 3.03(c), and commencing on the first day of the forty-ninth (49<sup>th</sup>) month following the Advance Date, Mortgagor may, at its option, partially prepay the Notes with a Prepayment Fee to the extent necessary to satisfy the Loan to Value Ratio and/or Debt Service Coverage requirements for a third party transfer as required hereunder. In such event each of the individual Notes shall be prepaid pro-rata.

(d) Without limitation to the provisions of 3.03(a) and (b) above, Mortgagor agrees to submit or cause to be submitted to Mortgagee within ninety (90) days after December 31st of each calendar year during the term hereof, without further request from Mortgagee, and within ten (10) days after any written request by Mortgagee for the same, a certificate signed by an authorized: (i) individual who is Mortgagor or one of the individuals comprising Mortgagor, (ii) partner in Mortgagor, or (iii) officer of Mortgagor, as the case may be, stating whether: (x) the Property, or any part thereof, or any interest therein, has been conveyed, transferred, assigned, encumbered, sold or otherwise disposed of, and if so, to whom; (y) any conveyance, transfer, pledge or encumbrance of any interest in Mortgagor has been made by Mortgagor and if so, to whom; or (z) there has been any change in the individual(s) comprising Mortgagor or in the partners, stockholders or beneficiaries of Mortgagor from those on the date hereof, and if so, a description of such change or changes.

**3.04 - Mortgagor's Estoppel.** Mortgagor shall, within ten (10) days after a request by Mortgagee, furnish a written statement in form reasonably satisfactory to Mortgagee setting forth the amount of the Secured Indebtedness, stating either that no offsets or defenses exist against the Secured Indebtedness or any defaults under the Loan Documents, or if such offsets, defenses or defaults are alleged to exist, the nature and extent thereof.

**3.05 Further Assurances.** Mortgagor shall, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, deeds of trust, assignments, security agreements, financing statements, modifications, notices of assignment, transfers and assurances as Mortgagee shall from time to time reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or any of the other Loan Documents, or for filing, refiling, registering, reregistering, recording or rerecording this Mortgage. Upon any failure by Mortgagor to comply with the terms of this Section 3.05, Mortgagee may, at Mortgagor's expense, make, execute, record, file, rerecord and/or refile any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact so to do and such appointment is coupled with an interest.

**3.06 Fees and Expenses.** If Mortgagee becomes a party (by intervention or otherwise) to any action or proceeding affecting, directly or indirectly, Mortgagor, the Property or the title thereto or Mortgagee's interest under this Mortgage, or employs an attorney to collect any of the Secured Indebtedness or to enforce performance of the obligations, covenants and agreements of the Loan Documents, Mortgagor shall reimburse Mortgagee for all reasonable expenses, costs,

charges and legal fees incurred by Mortgagee (including, without limitation, the fees and expenses of experts and consultants), whether or not suit be commenced, and the same shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

**3.07 Replacement of Note.** Upon notice to Mortgagor of the loss, theft, destruction or mutilation of the Amended and Restated Promissory Note secured by this Mortgage (the "Location Note"), as such Location Note is from time to time amended, modified, supplemented, consolidated, extended or restated, Mortgagor will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Location Note and dated as of the date of the Location Note, and upon such execution and delivery all references in any of the Loan Documents to Location Note shall be deemed to refer to the replacement note, as such replacement note may from time to time thereafter be amended, modified, supplemented, consolidated, extended or restated. Upon written request of Mortgagor, Mortgagee shall evidence in writing delivered to Mortgagee the reasons for the replacement of the Location Note.

**3.08 Hazardous Substances.**

(a) To the best of Mortgagor's knowledge (after due inquiry), except as set forth in the Phase I Environmental Site Assessments delivered by or on behalf of Mortgagor to Mortgagee, Mortgagor hereby represents, warrants, covenants and agrees to and with Mortgagee that all operations or activities upon, or any use or occupancy of the Property, or any portion thereof, by Mortgagor, and any tenant, subtenant or occupant of the Property, or any portion thereof, is presently and shall hereafter be in all respects in compliance with all state, federal and local laws and regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether legal or illegal accidental or intentional) of any Hazardous Substance; and that neither Mortgagor nor (to the best of Mortgagor's knowledge, after due inquiry) any tenant, subtenant or occupant of all or any portion of the Property, has at any time placed, suffered or permitted the presence of any such Hazardous Substances at, on, under, within or about the Property, or any portion thereof in violation of applicable law.

(b) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any applicable federal, state or local law or regulation, or by any judicial order, or by any governmental entity, or in order to comply with any agreement entered into by Mortgagor because of, or in connection with, any occurrence or event described in this Section 3.08(b), Mortgagor shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order or agreement. All Remedial Work shall be performed by one or more contractors, selected by Mortgagor and approved in advance in writing by Mortgagee, which approval by Mortgagee shall not be unreasonably withheld or delayed, and under the supervision of a consulting engineer, selected by Mortgagor and approved in advance in writing by Mortgagee, which approval by Mortgagee shall not be unreasonably withheld or delayed. All costs and expenses of such Remedial Work shall be paid by or caused to be paid by, Mortgagor including, without limitation, the charges of such contractor(s) and/or the consulting engineer, and Mortgagee's reasonable attorneys' architects' and/or consultants' fees and costs incurred in



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connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or 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, shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

(c) Mortgagor hereby further represents, warrants, covenants and agrees to and with Mortgagee that no environmental notice of lien has been filed on the Property or with respect to any part thereof, and that Mortgagor will not during the term of the Notes acquire any other real property upon which an environmental notice of lien has been filed. In the event that the Property or any other property hereafter so acquired by Mortgagor during the term of the Note, has an environmental notice of lien filed thereon or with respect to any part thereof, or if any representation made herein is false, Mortgagee shall have the option, in its sole and absolute discretion, to accelerate the maturity of the Notes and declare a default thereunder and an Event of Default hereunder and under the other Loan Documents, and immediately exercise its rights and remedies hereunder and under the other Loan Documents, except that in the event that the Property has an environmental notice of lien filed thereon or with respect to any part thereof, and no default (other than the filing of such notice) exists hereunder or under the other Loan Documents and Mortgagor elects, by notice of such election given by Mortgagor to Mortgagee within thirty (30) days of the date such environmental notice of lien is filed (hereinafter referred to as a "Lien Cure Notice"), to cure and correct, at Mortgagor's sole expense, all conditions which form the basis for such notice and secure the full satisfaction and release thereof, Mortgagee shall: (a) allow such cure by notice to such effect given by Mortgagee to Mortgagor (hereinafter referred to as the "Notice to Allow") within thirty (30) days after receipt of such Lien Cure Notice from Mortgagor, if such environmental notice of lien is in an amount of less than One Million Five Hundred Thousand and No/100ths Dollars (\$1,500,000.00), as determined by Mortgagee in its sole discretion; or (b) if such environmental notice of lien is in an amount equal to or greater than One Million Five Hundred Thousand and No/100ths Dollars (\$1,500,000.00), as determined by Mortgagee in its sole discretion, at its option either: (i) deliver such Notice to Allow within thirty (30) days after receipt of such Lien Cure Notice from Mortgagor; or (ii) require payment of the outstanding indebtedness evidenced by the Note securing this Mortgage as provided below. If Mortgagee does not give such Notice to Allow to Mortgagor within such time, Mortgagee shall be deemed to have given such Notice to Allow to Mortgagee. If, prior to such time Mortgagee notifies Mortgagor that it will not give such Notice to Allow, Mortgagor shall, within thirty (30) days after expiration of said period of time for Mortgagee to give such Notice to Allow or receipt of said notification that Mortgagee will not give such Notice to Allow, pay the entire outstanding indebtedness evidenced by the Note securing this Mortgage, including without limitation, all accrued interest thereon and all other sums due thereunder and under this Mortgage including, without limitation, all legal fees, charges and disbursements of Mortgagee's special counsel with respect thereto, but without a Prepayment Fee if such payment is so made, and Mortgagee shall thereupon cancel and deliver such Note to Mortgagor, and release this Mortgage and the other Loan Documents securing the indebtedness evidenced by the Note. If: (x) Mortgagee gives such Notice to Allow and such Applicant does not diligently proceed with such cure or does not complete such cure within four (4) months after Mortgagee receives such Lien Cure Notice from Mortgagor or such longer period of time agreed upon by Mortgagee, in its sole and absolute

discretion; (y) Mortgagee does not give such Notice to Allow to Mortgagor within the time provided above or prior to such time, notifies Mortgagor that it will not give such Notice to Allow, and Mortgagor does not make the payment required above within the time set forth above; or (z) any Event of Default (other than the filing of said environmental notice of lien) occurs under this Mortgage or under the other Loan Documents, Mortgagee shall have the option, in its sole and absolute discretion, to accelerate the maturity of the Note, declare a default thereunder, an Event of Default under this Mortgage and under the other Loan Documents and proceed hereunder as if this exception (and the acts of the parties pursuant hereto) does not exist, allowing Mortgagee to immediately exercise its rights and remedies hereunder and under the other Loan Documents (without regard to any notice or cure provision contained in Section 2.02 hereof or any of the other Loan Documents).

**3.09 Waiver of Consequential Damages.** Mortgagor covenants and agrees that in no event shall Mortgagee be liable for consequential damages, whatever the nature of a failure by Mortgagee to perform its obligation(s), if any, under the Loan Documents, and Mortgagor hereby expressly waives all claims that it now or may hereafter have against Mortgagee for such consequential damages.

**3.10 Mortgagee Reimbursement.** Any payments made or funds expended or advanced by Mortgagee pursuant to the provisions of any Loan Document, shall: (1) become a part of the Secured Indebtedness; (2) bear interest at the Interest Rate (as such term is defined in the Notes), from the date such payments are made or funds expended or advanced; (3) become due and payable to Mortgagee upon demand therefor by Mortgagee; and (4) bear interest at the Default Rate (as such term is defined in the Notes) from the date of such demand. Failure to reimburse Mortgagee upon such demand shall constitute an Event of Default under Section 2.01(a) hereof.

**3.11 ERISA.** Mortgagor hereby represents, warrants and agrees that: (i) 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"); (ii) Mortgagor's assets do not constitute "plan assets" of one or more such Plans within the meaning of Department of Labor Regulation Section 2510.3-101; (iii) it will not be reconstituted as a Plan or as an entity whose assets constitute "plan assets"; (iv) Mortgagor will not engage in any transaction which would cause any obligation hereunder to be a non-exempt prohibited transaction under ERISA; and (v) Mortgagor will deliver to Mortgagee certifications or other evidence of its compliance with these provisions as may be requested by Mortgagee from time to time during the term of the Notes.

#### ARTICLE IV MISCELLANEOUS COVENANTS

**4.01 Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Mortgagee by any of the Loan Documents is intended to be exclusive of any other right, power or remedy, but shall be cumulative and concurrent and in addition to any other right, power and

remedy given hereunder or under any of the other Loan Documents or now or hereafter existing under applicable law.

**4.02 Notices.** All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing. All notices hereunder shall be deemed to have been duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or other comparable overnight courier service to the parties at the addresses set forth on Exhibit A (or at such other addresses as shall be given in writing by any party to the others) and shall be deemed complete upon receipt or refusal to accept delivery as indicated in the return receipt or in the receipt of such United States Express Mail or courier service.

**4.03 Heirs and Assigns; Terminology.**

(a) This Mortgage applies to, inures to the benefit of, and binds Mortgagor and Mortgagee, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Mortgagor" shall include both the original Mortgagor and any subsequent owner or owners of any of the Property. The term "Mortgagee" shall include the owner and holder of the Note, whether or not named as Mortgagee herein.

(b) In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

**4.04 Severability.** If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then, Mortgagee may, at its option declare the Secured Indebtedness immediately due and payable.

**4.05 Applicable Law.** This Mortgage shall be construed and enforced in accordance with the laws of the State.

**4.06 Captions.** The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Mortgage, nor in any way affect this Mortgage.

**4.07 Time of The Essence.** Time shall be of the essence with respect to all of Mortgagor's obligations under this Mortgage and the other Loan Documents.

**4.08 No Merger.** In the event that Mortgagee should become owner of the Property, there shall be no merger of the estate created by this Mortgage with the fee estate in the Property.

**4.09 No Modifications.** This Mortgage may not be changed, amended or modified, except in a writing expressly intended for such purpose and executed by Mortgagor and Mortgagee.

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## ARTICLE V NON-UNIFORM COVENANTS

**5.01 Use of Proceeds.** Mortgagor represents and agrees that the proceeds of the Notes secured by this Mortgage will be used for the purposes specified in Paragraph 6404 of Chapter 17 of the Illinois Revised Statutes, and that the Secured Indebtedness constitutes a business loan which comes within the purview of said Paragraph 6404.

**5.02 Limitation on Secured Indebtedness.** It is expressly understood and agreed that the Secured Indebtedness will in no event exceed two hundred percent (200%) of: (i) the total face amount of the Notes, plus (ii) the total interest which may hereafter accrue under the Notes on such face amount.

**5.03 Non-Competition.** Mortgagor covenants and agrees that, in the event of a foreclosure or other judicial or non-judicial sale of the Property following the occurrence of an Event of Default, neither Mortgagor nor any affiliate of Mortgagor, shall for a period of three (3) years following the date of such sale, open a new community shopping center, nor lease property in connection with the operation of a new community shopping center, within three (3) miles of the Property. The covenants and obligations referred to in this **Section 5.03** shall survive the foreclosure of the lien of this Mortgage and/or Mortgagee's acceptance of a deed to the Property in lieu of the foreclosure of the lien hereof.

**5.04 Subordinate Financing.** Mortgagor shall not incur or secure any financing which is secured by a mortgage lien, pledge or other encumbrance on the Property or any partnership or other interest in Mortgagor thereunder without the prior written consent of Mortgagee.

**5.05 Waiver of Statutory Rights.** Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisement, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

**5.06 Cross Collateral.** The Secured Indebtedness is secured by the Mortgage Instruments. The Notes are secured by, among other things, the Mortgage Instruments encumbering real and personal property in the States of Illinois, Indiana, Kansas, Missouri, Maryland and Texas. The Secured Indebtedness may be accelerated as provided in any of the Loan Documents and an Event of Default under any of the Loan Documents constitutes an Event of Default under this Mortgage. In consequence of an Event of Default, Mortgagee may accelerate the Secured Indebtedness and foreclose any one or more of the Mortgage Instruments or resort to any one or more of its other rights and remedies under the Mortgage Instruments and other Loan Documents.



All of the properties of all kinds conveyed and/or mortgaged by the Mortgage Instruments are security for the Secured Indebtedness without allocation of any one or more of the parcels or portions thereof to any portion of the Secured Indebtedness less than the whole amount thereof. Mortgagee may allocate the proceeds received by Mortgagee upon the exercise of its remedies and rights, including foreclosure, among the Secured Indebtedness, as Mortgagee in its sole discretion may determine to be advisable.

Mortgagee may proceed, at the same or different times, to foreclose the Mortgage Instruments or any one or more of them, by any proceedings appropriate in the State where any of the land lies, including private sale if permitted, and no event of enforcement taking place in any state, including without limiting the generality of the foregoing, any pending foreclosure, judgment or decree of foreclosure, foreclosure sale, rents received, possession taken, deficiency judgment or decrees, or judgment taken on the Note, shall in any way stay, preclude or bar enforcement of the Mortgage Instruments or any of them in any other state, and Mortgagee may pursue any or all of its remedies to the maximum extent permitted by applicable law until all of the Secured Indebtedness and all other obligations now or hereafter secured by any or all of the Mortgage Instruments has been paid or discharged in full.

Additionally, and without limitation of any other provision of this Mortgage, if this Mortgage is foreclosed and sale is made of the Property (or any part thereof which remains subject to this Mortgage) pursuant to foreclosure proceedings, and if the proceeds of such sale (after application of such proceeds as provided elsewhere in this Mortgage and after deducting all accrued general and special taxes and assessments) are not sufficient to pay the total sum of the Secured Indebtedness then outstanding and any other amounts provided for by applicable law (herein sometimes collectively referred to as the "Balance Owed"), then the Secured Indebtedness shall not be satisfied to the extent of the deficiency in such proceeds to pay the Balance Owed, but such Secured Indebtedness shall continue in existence and continue to be evidenced by the Notes and shall continue to be secured by all of the Other Mortgage Instruments. Subject to the requirements of applicable law, if Mortgagee shall acquire the Property as a result of any such foreclosure sale (whether by bidding all or any portion of the Secured Indebtedness or otherwise), the proceeds of such sale shall not be deemed to include (and Mortgagor shall not be entitled to any benefit or credit on account of) proceeds of any subsequent sale of the Property by Mortgagee. Without limitation of any other provision hereof, Mortgagor further agrees that if any of the Other Mortgage Instruments are foreclosed and sale is made of any of the property subject to any Other Mortgage Instruments, and if the proceeds of such sale (after application of such proceeds as provided for elsewhere herein and after deducting all accrued and general and special taxes and assessments) are not sufficient to pay the Secured Indebtedness and any other amounts provided for by applicable law, thereby creating a Balance Owed, then the Secured Indebtedness then outstanding shall not be satisfied to the extent of the deficiency in such proceeds to pay such Balance Owed, but such Secured Indebtedness shall continue in existence and continue to be evidenced by the Notes and shall continue to be secured by this Mortgage and all of the Other Mortgage Instruments existing immediately prior to any such foreclosure, except such Mortgage Instrument foreclosed upon.

No release of personal liability of any person whatsoever and no release of any portion of the property now or hereafter subject to the lien of any of the Mortgage Instruments shall have any effect whatsoever by way of impairment or disturbance of the lien or priority of any other of the Mortgage Instruments or the unreleased properties encumbered by any of the Mortgage Instruments. Any foreclosure or other appropriate remedy brought in any of the states aforesaid may be brought and prosecuted as to any part of the security, wherever located, without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other land subject to the lien of the Mortgage Instruments or any of them.

Neither Mortgagor nor any person claiming by, through or under Mortgagor shall have or enjoy any right to marshaling of assets, all such right being hereby expressly waived as to Mortgagor and all persons claiming by, through or under Mortgagor, including, without limitation, junior lienors. Mortgagor and all endorsers, guarantors and sureties of the Notes, and each of them, hereby waive any and all rights arising because of payment or performance by Mortgagor of any Secured Indebtedness or other obligations secured by the Other Mortgage Instruments, (a) against any of the Other Indebted Parties by way of subrogation of the rights of Mortgagee or otherwise, or (b) against any party obligated to pay or perform the Secured Indebtedness or other obligation secured by the Other Mortgage Instruments by way of contribution, reimbursement or otherwise.

**5.07 Certain Matters Regarding Filings.** Mortgagor agrees that in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in the event Mortgagor, any of the Other Indebted Parties or any general partners of Mortgagor or the Other Indebted Parties shall (such events are herein sometimes collectively referred to as the "Filings"):

(a) file with any bankruptcy court or be the subject of any case, chapter or proceeding under Title 11 of the United States Code (said code, as amended from time to time, together with any replacement statute, is hereinafter sometimes collectively referred to as the "Bankruptcy Code");

(b) be the subject of any order for relief issued under the Bankruptcy Code;

(c) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors;

(d) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator; or

(e) be the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors,

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then, Mortgagee shall thereupon be immediately and automatically entitled to relief from any automatic stay or other injunction imposed by Section 362 of the Bankruptcy Code or any other section or chapter of the Bankruptcy Code, or otherwise, of or against the exercise of the rights and remedies otherwise available to Mortgagee as provided in this Mortgage or the other Loan Documents and as otherwise provided by law so that, to the fullest extent permitted by law, Mortgagee may proceed to exercise its rights and remedies against the collateral provided under this Mortgage and the other Loan Documents in accordance with applicable law as if no such Filings had taken place, and Mortgagor hereby irrevocably, absolutely and unconditionally waives its right to object to such relief. Mortgagor further agrees that it will not contest any motion or application of Mortgagee made in any court of competent jurisdiction seeking enforcement of this Section 5.07 or otherwise seeking modification or termination of such automatic stay or other injunction.

**5.08 Collateral and Cash Collateral.** Mortgagor agrees that this Mortgage grants Mortgagee, its successors and assigns, a fully perfected, choate and complete first-priority lien on and security interest in, *inter alia*, the Property, including all cash, leases, accounts, accounts receivable, income, rents, revenues, issues and profits of the Property, whether existing before or after the commencement of any proceedings under the Bankruptcy Code involving Mortgagor, any Other Indebted Parties, any general partners of Mortgagor or the Other Indebted Parties or the Property, and constitute cash collateral of Mortgagee, its successors and assigns, within the meaning of Bankruptcy Code Section 363(a).

**5.09 No Defenses, Counterclaims and Release.** Mortgagor represents, warrants, covenants and agrees that as of the date hereof, (a) Mortgagor has no defenses, offsets or counterclaims of any kind or nature whatsoever against Mortgagee with respect to the Loan Documents, or any action previously taken or not taken by Mortgagee with respect thereto or with respect to any security interest, encumbrance, lien or collateral in connection therewith and (b) Mortgagee has fully performed all obligations to Mortgagor. Without limiting the generality of the foregoing, Mortgagor, on its own behalf and on behalf of its past and present representatives, partners, agents, employees, servants, officers, directors, heirs, shareholders, subsidiaries, affiliated and related companies, successors and assigns (hereinafter collectively referred to as the "**Mortgagor Group**"), waives, releases and forever discharges Mortgagee, and its past, present and future officers, directors, subsidiaries, affiliated and related companies, agents, servants, employees, shareholders, representatives, successors, assigns, attorneys, accountants assets and properties (hereinafter referred to as the "**Mortgagee Group**"), from and against all manner of actions, causes and causes of action, suits, charges, complaints, debts, reckonings, liabilities, obligations, debts, agreements, contracts, bonds, bills, specialties, controversies, liabilities, costs, expenses, losses, damages, judgments, executions, claims and demands, of whatsoever kind or nature, in law or in equity, whether known or unknown, whether actual or contingent, and whether or not concealed or hidden, arising out of or relating to any matter, cause or thing whatsoever, that any of the Mortgagor Group, jointly or severally, may have had, or now have or that may subsequently accrue against the Mortgagee Group, or any one of them, by reason of any matter or thing whatsoever through the date hereof arising out of or in any way directly or indirectly connected to the Loan Documents or any property secured by the Mortgage Instruments (hereinafter sometimes referred to collectively as "**Claims**"). Mortgagor, on its own behalf and

on behalf of the other members of the Mortgagor Group, hereby covenants and agrees not to sue, answer, counterclaim or defend against Mortgagee or any other member of the Mortgagee Group for, or by reason of, any Claims. Mortgagor acknowledges and agrees that Mortgagee is specifically relying upon the representations, warranties, covenants and agreements contained herein and that such representations, warranties, covenants and agreements constitute a material inducement to Mortgagee.

**5.10 Amendment and Restatement.** This Mortgage amends, modifies, supplements, supersedes and restates the Original Mortgage in its entirety.

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage, or has caused this Mortgage to be executed by its duly authorized representative as of the day and year first written above.

SIMON PROPERTY GROUP (ILLINOIS) L.P., an Illinois limited partnership

By: CHARLES MALL COMPANY LIMITED PARTNERSHIP, a Maryland limited partnership, its general partner

By: SIMON PROPERTY GROUP (DELAWARE), INC., a Delaware corporation, its general partner

By:  \_\_\_\_\_  
David Simon, Chief Executive Officer

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STATE OF INDIANA     )  
                                  )  
COUNTY OF MARION    )

SS.

09008280

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT David Simon the Chief Executive Officer of Simon Property Group (Delaware), Inc., the sole general partner in Charles Mall Company Limited Partnership, the sole general partner in Simon Property Group (Illinois), L.P., an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act and as the free and voluntary act of said corporation on behalf of Charles Mall Company, the sole general partner in Simon Property Group (Illinois), L.P., for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 11<sup>th</sup> day of October 1999.



Christine Fallon  
Notary Public

My Commission Expires:

CHRISTINE A. FALLON, Notary Public  
County of Residence: MARION  
My Commission Expires: 8-19-06

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EXHIBIT "A"  
TO MORTGAGE AND SECURITY AGREEMENT

I. DEFINED TERMS

"County" shall mean Cook County, Illinois.

The term "Hazardous Substances" shall include without limitation:

(i) Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

(ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(iii) Any material, waste or substance which is: (A) petroleum; (B) asbestos; (C) polychlorinated biphenyls; (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317); (E) flammable explosives; or (F) radioactive materials; and

(iv) Any material, waste or substance which is regulated under the Illinois Environmental Protection Act, Ill. Rev. Stat. Ch. 111-1/2, Section 1001 et seq.; or the Illinois Responsible Property Transfer Act, Ill. Rev. Stat. Ch. 30 Section 900 et seq.; and

(v) Such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

"Leasing Guidelines" shall mean guidelines, from time to time approved in writing by Mortgagee, for the leasing of all or any part of the Property, but which in any event, unless and until further leasing guidelines are approved by Mortgagee, shall be as follows:

(i) leases must be in the form of the standard form of lease approved by Mortgagee in writing;

(ii) leases must have an initial term of at least three (3) years, but not more than fifteen (15) years;

(iii) leases must not demise more than eight thousand (8,000) square feet of net leasable area; and

(iv) leases must have an annual minimum rent payable at the then market rate per square foot of net leasable area for first class community shopping centers in the market in which the Property is located.

"Rents" and "Profits" shall mean all and any income, rents, royalties, revenue, issues, profits, proceeds, accounts receivable and other benefits now or hereafter arising from the Property, or any part thereof.

"Requirements" shall mean all requirements relating to land and building construction, use and maintenance, including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, handicapped facilities and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with any of the foregoing, and other applicable statutes, rules, orders, regulations, laws, ordinances and covenants, conditions and restrictions, which now or hereafter pertain to and/or affect the design, construction, existence, operation or use and occupancy of the Property, or any part thereof, or any business conducted therein or thereon.

"State" shall mean the State of Illinois, the state in which the Property is located.

## II. ADDRESSES

Mortgagor's address:

Simon Property Group (Illinois), L.P.  
Merchants Plaza -- 15 East  
115 West Washington Street  
Indianapolis, Indiana 46204  
Attention: David Simon, Chief Executive Officer

with a copy to:

Simon Property Group  
Merchants Plaza -- 15 East  
115 West Washington Street  
Indianapolis, Indiana 46204  
Attention: James Schmidt, Esq.



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Mortgagee's address:

Metropolitan Life Insurance Company  
200 Park Avenue  
New York, New York 10166  
Attention: Senior Vice-President  
Real Estate Investments

and:

Metropolitan Life Insurance Company  
2001 Spring Road, Suite 400  
Oak Brook, Illinois 60523-1813  
Attention: Assistant Vice-President  
Mortgage Portfolio Services

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EXHIBIT "B"  
TO MORTGAGE AND SECURITY AGREEMENT

PROPERTY DESCRIPTION

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Property Address: Route 30 and Governor's Highway  
Matteson, Illinois 60443

Tax Parcel: 31-22-401-017, Vol. 179

LEGAL DESCRIPTION

PARCEL 1:

A tract of land in the East Half of the Southeast Quarter of Section 22, Township 35 North, Range 13 East of the Third Principal Meridian, described as follows:

Commencing at the intersection of the West right-of-way line of Governors Highway as dedicated and the North right-of-way line of St. Lawrence Avenue; thence South 89 degrees 46 minutes 13 seconds West 537.20 feet along last said North line to a Place of Beginning; thence continuing South 89 degrees 46 minutes 13 seconds West 733.93 feet to the East line of Keeler Avenue as dedicated; thence North 00 degrees 30 minutes 37 seconds West 1041.40 feet along last said line to the South right-of-way line of U.S. Route 30; thence due East 330.29 feet; thence South 84 degrees 17 minutes 22 seconds East 100.50 feet; thence due East 285.00 feet; thence due South 20.0 feet; thence due East 80.0 feet; thence due North 20.0 feet; thence due East 226.00 feet all along the Southerly right-of-way line of U.S. Route 30; thence South 00 degrees 30 minutes 30 seconds East 164.00 feet; thence due East 250.00 feet; thence South 00 degrees 30 minutes 30 seconds East 30.0 feet; thence South 89 degrees 29 minutes 30 seconds West 20.0 feet; thence South 00 degrees 30 minutes 30 seconds East 80.0 feet; thence North 89 degrees 29 minutes 30 seconds East 20.0 feet; thence South 00 degrees 30 minutes 30 seconds East 131.30 feet to a point on curve; thence Westerly on a curve convex to the North having a radius of 50.0 feet, an arc distance of 38.77 feet and a chord bearing of North 68 degrees 17 minutes 41 seconds West to a point of tangent; thence South 89 degrees 29 minutes 30 seconds West 177.0 feet to a point of curve; thence Westerly on a curve convex to the South having a radius of 406.60 feet, an arc distance of 206.65 feet and a chord bearing of North 75 degrees 56 minutes 54 seconds West; thence South 00 degrees 13 minutes 47 seconds East 352.36 feet; thence South 89 degrees 46 minutes 13 seconds West 79.00 feet; thence South 00 degrees 13 minutes 47 seconds East 253.00 feet; thence South 89 degrees 46 minutes 13 seconds West 45.00 feet; thence South 00 degrees 13 minutes 47 seconds East 79.33 feet to the North right-of-way line of St. Lawrence Avenue and the Place of Beginning, except that part thereof dedicated for Keeler Avenue by Agreement for Public Dedication recorded March 6, 1990 as Document No. 90100147, all in Cook County, Illinois.

PARCEL 2:

Easements appurtenant to Parcel 1 for ingress, egress, access, signage, utilities, parking, drainage and detention over the Common Areas as described and set forth in Declaration of Easements, Restrictions and Operating Agreements made by and between K Mart Corporation and Matteson Associates Limited Partnership dated April 19, 1988 and recorded April 21, 1988 as Document Number 88167508.

P.I.N.: 31-22-401-020 and 31-22-401-019

Commonly known as: Matteson Plaza, Matteson, Illinois

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## EXHIBIT C PERMITTED EXCEPTIONS

Those exceptions set forth in Schedules B-1 and B-2 in Lawyers Title Insurance Corporation Policy No. 82-02-589593, as endorsed through the date hereof (Matteson Plaza)

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## EXHIBIT "D" TO MORTGAGE AND SECURITY AGREEMENT **09008280**

### REQUIREMENTS FOR RESTORATION

Unless otherwise expressly agreed in a writing signed by Mortgagee for such purpose, the Requirements For Restoration shall be as follows:

(a) In the event the Net Insurance Proceeds are to be used for the Restoration, Mortgagor shall, prior to the commencement of any work or services in connection with the Restoration (the "Work"), deliver or furnish to Mortgagee: (i) complete plans and specifications for the Work which (A) have been approved by all governmental authorities whose approval is required, (B) bear the signed approval of an architect satisfactory to Mortgagee (the "Architect") and (C) are accompanied by Architect's signed estimate of the total estimated cost of the Work which plans and specifications shall be subject to Mortgagee's prior approval (the "Approved Plans and Specifications"); (ii) the amount of money (or in lieu of depositing cash, Mortgagor shall deliver to Mortgagee a letter of credit in form and substance acceptable to Mortgagee in its sole and absolute discretion and issued by a financial institution acceptable to Mortgagee in its sole and absolute discretion) which, as determined by Mortgagee, will be sufficient when added to the Net Insurance Proceeds, if any, to pay the entire cost of the Restoration (all such money as held by Mortgagee being herein collectively referred to as the "Restoration Funds"); (iii) copies of all permits and approvals required by law in connection with the commencement and conduct of the Work; (iv) a contract for construction executed by Mortgagor and a contractor reasonably satisfactory to Mortgagee (the "Contractor") in form, scope and substance reasonably satisfactory to Mortgagee (including a provision for retainage) for performance of the Work; and (v) a surety bond for and/or guarantee of payment for and completion of the Work, which bond or guarantee shall be (A) in form, scope and substance satisfactory to Mortgagee, (B) signed by a surety or sureties, or guarantor or guarantors, as the case may be, who are acceptable to Mortgagee, and (C) in an amount not less than Architect's total estimated cost of completing the Work.

(b) Mortgagor shall not commence any portion of the Work, other than temporary work to protect the Property or prevent interference with business, until Mortgagor shall have complied with the requirements of subparagraph (a) above. After commencing the Work, Mortgagor shall perform or cause Contractor to perform the Work diligently and in good faith in accordance with the Approved Plans and Specifications. So long as there does not currently exist an Event of Default under any of the Loan Documents, Mortgagee shall disburse the Restoration Funds in increments to Mortgagor, from time to time as the Work progresses, to pay (or reimburse Mortgagor for) the costs of the Work, but subject to the following conditions, any of which Mortgagee may waive in its sole discretion:

(i) Mortgagor and Architect, jointly, shall be in charge of the Work;

(ii) Mortgagee shall make such payments directly or through escrow with a title company selected by Mortgagor and approved by Mortgagee, only upon not less than ten (10) days' prior written notice from Mortgagor to Mortgagee and Mortgagor's delivery to Mortgagee

of (A) Mortgagor's written request for payment (a "Request for Payment") accompanied by a certificate by Architect in form, scope and substance satisfactory to Mortgagee which states that all of the Work completed to that date has been done in compliance with the Approved Plans and Specifications and in accordance with all provisions of law, that the amount requested has been paid or is then due and payable and is properly a part of the cost of the Work and that when added to all sums, if any, previously paid out by Mortgagee, the requested amount does not exceed the value of the Work done to the date of such certificate; (B) evidence reasonably satisfactory to Mortgagee that there are no mechanic's or similar liens for labor or material supplied in connection with the Work to date or that any such liens have been adequately provided for to Mortgagee's satisfaction; and (C) evidence reasonably satisfactory to Mortgagee that the balance of the Restoration Funds remaining after making the payments shall be sufficient to pay the balance of the cost of the Work not completed to date (giving in such reasonable detail as Mortgagee may require an estimate of the cost of such completion). Each Request for Payment shall be accompanied by: (x) waivers of liens reasonably satisfactory to Mortgagee covering that part of the Work previously paid for, if any; (y) a search prepared by a title company or by other evidence reasonably satisfactory to Mortgagee that no mechanic's liens or other liens or instruments for the retention of title in respect of any part of the Work have been filed against the Property and not discharged of record; and (z) an indorsement to Mortgagee's title policy insuring Mortgagee that no encumbrance exists on or affects the Property other than the Permitted Exceptions;

(iii) No lease affecting the Property immediately prior to the damage or destruction shall have been canceled, nor contain any still exercisable right to cancel, due to such damage or destruction; and

(iv) Any Request for Payment after the Restoration has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the Improvements legal.

(c) If: (i) within sixty (60) days after the occurrence of any damage or destruction to the Property requiring Restoration, Mortgagor fails to submit to Mortgagee and receive Mortgagee's approval of plans and specifications or fails to deposit with Mortgagee the additional amount necessary to accomplish the Restoration as provided in subparagraph (a) above; or (ii) after such plans and specifications are approved by all such governmental authorities and Mortgagee, Mortgagor fails to commence promptly or diligently continue to completion the Restoration, or (iii) subject to Section 1.16 hereof, Mortgagor becomes delinquent in payment to mechanics, materialmen or others for the costs incurred in connection with the Restoration, then, in addition to all of the rights herein set forth and after five (5) days' written notice of the non-fulfillment of one or more of the foregoing conditions, Mortgagee may apply the Restoration Funds then or thereafter held by Mortgagee to reduce the Secured Indebtedness in such order as Mortgagee may determine, and at Mortgagee's option and in its sole discretion, Mortgagee may declare the Secured Indebtedness immediately due and payable.

SCHEDULE 1

INSURANCE REQUIREMENTS

*Matteson Plaza, Cook County, Illinois*

Agreed amount of Full Replacement Cost Insurance: . . . . . \$15,900,000.00

Agreed amount of Boiler and Machinery Insurance: . . . . . Included in Full Replacement Cost

Agreed amount of Business Income Insurance: . . . . . \$2,600,000.00

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SCHEDULE 2.01

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## LIST OF MORTGAGE INSTRUMENTS

1. Amended and Restated Mortgage and Security Agreement from SPGI to be recorded in Cook County, Illinois (Lake View Plaza)
2. Amended and Restated Mortgage and Security Agreement from SPGI to be recorded in DuPage County, Illinois (Bloomingdale Court)
3. Amended and Restated Mortgage and Security Agreement from SPGI to be recorded in Cook County, Illinois (Matteson Plaza)
4. Amended and Restated Mortgage and Security Agreement from SPGI to be recorded in St. Clair County, Illinois (Lincoln Crossing)
5. Amended and Restated Mortgage and Security Agreement from SPGI to be recorded in Winnebago County, Illinois (Forest Plaza)
6. Amended and Restated Mortgage and Security Agreement from SPGI to be recorded in Sangamon County, Illinois (White Oaks Plaza)
7. Amended and Restated Mortgage and Security Agreement from SPG to be recorded in St. Charles County, Missouri (Regency Plaza)
8. Amended and Restated Mortgage and Security Agreement from SPG to be recorded in Shawnee County, Kansas (West Ridge Plaza)
9. Amended and Restated Mortgage and Security Agreement from St. Charles to be recorded in Charles County, Maryland (St. Charles Towne Square)
10. Deed of Trust and Security Agreement from Lakeline to be recorded in Williamson County, Texas (Lakeline Plaza)
11. Mortgage, Security Agreement and Fixture Filing from SPG to be recorded in Delaware County, Indiana (Muncie Plaza)



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## SCHEDULE 2.02

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### LIST OF PROMISSORY NOTES

1. \$21,800,000 Amended and Restated Promissory Note from SPGI (Lake View Plaza - Loan No. 700484)
2. \$29,900,000 Amended and Restated Promissory Note from SPGI (Bloomingdale Court - Loan No. 700485)
3. \$9,500,000 Amended and Restated Promissory Note from SPGI (Matteson Plaza - Loan No. 700477)
4. \$3,300,000 Amended and Restated Promissory Note from SPGI (Lincoln Crossing - Loan No. 700474)
5. \$16,400,000 Amended and Restated Promissory Note from SPGI (Forest Plaza - Loan No. 700486)
6. \$17,700,000 Amended and Restated Promissory Note from SPGI (White Oaks Plaza - Loan No. 700479)
7. \$4,500,000 Amended and Restated Promissory Note from SPG (Regency Plaza - Loan No. 700475)
8. \$5,800,000 Amended and Restated Promissory Note from SPG (West Ridge Plaza - Loan No. 700478)
9. \$28,800,000 Amended and Restated Promissory Note from St. Charles (St. Charles Towne Square - Loan No. 700487)
10. \$23,900,000 Promissory Note from Lakeline (Lakeline Plaza)
11. \$8,300,000 Promissory Note from SPG (Muncie Plaza)