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**DEED OF TRUST,  
ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING ("**Security Instrument**") is made as of this 15<sup>th</sup> day of August, 2006 by THE THOMSEN MILE SHOPPES, LLC, a Nebraska limited liability company, whose address is c/o Coldwell Banker Commercial World Corp., 780 North 114<sup>th</sup> St, Omaha, NE 68154, as trustor ("**Borrower**"), to R. Kent Radke, a member of the Nebraska bar association, whose address is 6003 Old Cheney Road, Suite 300, P.O. Box 6169, Lincoln, NE 68506-0169, as trustee ("**Trustee**"), for the benefit of CAPMARK BANK (formerly known as GMAC Commercial Mortgage Bank), a Utah industrial bank, whose address is 200 Witmer Road, Horsham, PA 19044, Attn.: Servicing Accounting - Manager, Fax: 215-328-3478, as beneficiary (together with its successors and assigns, "**Lender**").

**BACKGROUND**

Borrower and Lender are entering into a certain Loan Agreement of even date herewith ("**Loan Agreement**") pursuant to which Lender will make a loan ("**Loan**") to Borrower in the maximum principal amount of TWO MILLION TWO HUNDRED THOUSAND DOLLARS AND NO/100 (\$2,200,000.00). The Loan also will be evidenced by Borrower's promissory note to Lender of even date herewith ("**Note**"). Borrower desires to secure payment and performance of Borrower's obligations in respect of the Loan by granting to Lender the security described in this Security Instrument.

NOW, THEREFORE, to induce Lender to make the Loan to Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Borrower agrees as follows:

**ARTICLE 1  
DEFINED TERMS**

1.01 Defined Terms. Capitalized terms used in this Security Instrument and not specifically defined in this Security Instrument have the meaning provided in the Loan Agreement.

**ARTICLE 2  
GRANT OF SECURITY**

2.01 Property Mortgaged. Borrower does hereby irrevocably deed, mortgage, grant, bargain, sell, assign, pledge, warrant, transfer and convey to Trustee, and to its successors and assigns as trustee, IN TRUST WITH POWER OF SALE for the benefit of Lender, as security for the Obligations, under and subject to the terms and conditions hereinafter set forth, all of the

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following property, rights, interests and estates, now owned or hereafter acquired by Borrower (collectively, "**Property**"):

(a) **Land**. The land described in Exhibit A attached hereto and made a part hereof, together with all estates and development rights now existing or hereafter acquired for use in connection therewith ("**Land**");

(b) **Additional Land**. All land that, from time to time, by supplemental deed or otherwise, may be expressly made subject to this Security Instrument, and all estates and development rights hereafter acquired by Borrower for use in connection with such land (also, the "**Land**");

(c) **Improvements**. All buildings, structures, improvements and fixtures now or hereafter erected or located on the Land ("**Improvements**");

(d) **Easements**. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Property and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof, and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Property and every part and parcel thereof, with all appurtenances thereto;

(e) **Fixtures and Personal Property**. All machinery, equipment, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furnishing, building supplies and materials, and all other personal property of every kind and nature whatsoever owned by Borrower (or in which Borrower has or hereafter acquires an interest) and now or hereafter located upon, or appurtenant to, the Property or used or useable in the present or future operation and occupancy of the Property, along with all accessions, replacements, betterments, or substitutions of all or any portion thereof (collectively, "**Personal Property**");

(f) **Leases and Rents**. All leases, subleases, licenses and other agreements granting others the right to use or occupy all or any part of the Property together with all restatements, renewals, extensions, amendments and supplements thereto ("**Leases**"), now existing or hereafter entered into, and whether entered before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code, and all of Borrower's right, title and interest in the Leases, including, without limitation (i) all guarantees, letters of credit and any other credit support given by any tenant or guarantor in connection therewith ("**Lease Guaranties**"), (ii) all cash, notes, or security deposited thereunder to secure the performance by the tenants of their obligations thereunder ("**Tenant Security Deposits**"), (iii) all claims and rights to the payment of damages and other claims arising from any rejection by a tenant of its Lease under the Bankruptcy Code ("**Bankruptcy Claims**"), (iv) all of the landlord's rights in casualty or condemnation proceeds of a tenant in respect of the leased premises ("**Tenant Claims**"), (v) all rents, ground rents, additional rents, revenues, termination and similar payments, issues and profits (including all oil and gas or other mineral royalties and bonuses)

from the Property (collectively with the Lease Guaranties, Tenant Security Deposits, Bankruptcy Claims and Tenant Claims, "**Rents**"), whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code, (vi) all proceeds or streams of payment from the sale or other disposition of the Leases or disposition of any Rents, and (vii) the right to receive and apply the Rents to the payment of the Debt and to do all other things which Borrower or a lessor is or may become entitled to do under the Leases or with respect to the Rents;

(g) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) Insurance Proceeds. All proceeds of, and any unearned premiums on, any insurance policies covering the Property, including, without limitation, the exclusive right to receive and apply the proceeds of any claim awards, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in Taxes, including, without limitation, rebates as a result of tax certiorari or any other applications or proceedings for reduction;

(j) Operating Agreements. All contracts (including, without limitation, service, supply, maintenance and construction contracts), registrations, franchise agreements, permits, licenses (including, without limitation, liquor licenses, if any, to the fullest extent assignable by Borrower), plans and specifications, and other agreements, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Property, or respecting any business or activity conducted by Borrower from the Property, and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, while an Event of Default remains uncured, to receive and collect any sums payable to Borrower thereunder (collectively, "**Operating Agreements**");

(k) Rate Cap Agreements. All interest rate cap agreements, swaps or other interest hedging agreements now or hereafter executed with respect to the Loan or to guard against interest rate exposure in connection with the Loan, if any;

(l) Intangibles. All accounts, escrows, chattel paper, claims, deposits, trade names, trademarks, service marks, logos, copyrights, books and records, goodwill, and all other general intangibles relating to or used in connection with the operation of the Property;

(m) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property (including, without limitation, the Borrower Operating Account and all reserves, escrows, deposit accounts and lockbox accounts established pursuant to the Loan Agreement), together with all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property from time to time held therein, and all proceeds, products, distributions, dividends or substitutions thereon or thereof;

(n) Rights to Conduct Legal Actions. The right, in the name and on behalf of Borrower, to commence any action or proceeding to protect the interest of Lender in the Property and to appear in and defend any action or proceeding brought with respect to the Property;

(o) Proceeds. All proceeds and profits arising from the conversion, voluntary or involuntary, of any of the foregoing into cash (whether made in one payment or a stream of payments) and any liquidation claims applicable thereto; and

(p) Rights. Any and all other rights of Borrower in and to the items set forth in the foregoing subsections (a) through (o), inclusive, and in and to the Property.

TO HAVE AND TO HOLD the above granted and described Property unto Trustee, and its successors and assigns, in trust, with power of sale in accordance with the terms and conditions hereof, for the use and benefit of Lender, and the successors and assigns of Lender, forever; subject, however, to Section 2.06 below.

2.02 Grant of Security Interest; Security Agreement. Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Property to the fullest extent that the Property now or hereafter may be subject to a security interest under the UCC. Borrower intends for this Security Instrument to be a “security agreement” within the meaning of the UCC. Borrower hereby irrevocably authorizes Lender to prepare, execute and file all initial financing statements, and any restatements, extensions, continuations, renewals or amendments thereof, in such form as Lender may require to perfect or continue the perfection of this security interest or other statutory liens held by Lender. Unless prohibited by applicable law, Borrower agrees to pay all reasonable expenses incident to the preparation, execution, filing and/or recording of any of the foregoing. With respect to any of the Property in which a security interest is not perfected by the filing of a financing statement, Borrower consents and agrees to undertake, and to cooperate fully with Lender, to perfect the security interest hereby granted to Lender in the Property. Without limiting the foregoing, if and to the extent any of the Property is held by a bailee for the benefit of Borrower, Borrower shall promptly notify Lender thereof and, if required by Lender, promptly obtain an acknowledgment from such bailee that is satisfactory to Lender and confirms that such bailee holds the Property for the benefit of Lender as secured party and shall only act upon instructions from Lender with respect to the Property.

### 2.03 Assignment of Leases and Rents.

(a) Rights Granted to Lender. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower’s right, title and interest in and to all current and future Leases and Rents. Borrower hereby declares its intention to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and Leases and to authorize and empower Lender to collect and receive all Rents and exercise all of Borrower’s rights under the Leases (including, without limitation, the right to modify, extend or terminate any Lease) without any further action by Borrower; it being intended that this assignment is effective immediately and not an assignment made for security only, notwithstanding any provision hereof to the contrary. For purposes of giving effect to this assignment of Rents and Leases and for no other purpose, Rents and Leases shall not be deemed to be part of the “Property” as that term is defined in Section 2.01 of this Security Instrument. If, however, this assignment of Rents and Leases is not enforceable by its terms under the laws of the State where the Property is located, then Rents and Leases shall be included as part of the Property and it is

Borrower's intention that, in this circumstance, this Security Instrument creates and perfects a lien of the Rents and Leases in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

(b) License to Borrower; Revocation. Nevertheless, subject to the terms of this Security Instrument and the Loan Agreement, Lender grants to Borrower a revocable license (i) to manage the leasing activities of the Property as contemplated by the Loan Agreement, (ii) to exercise all of Borrower's rights under the Leases and (iii) to collect and receive the Rents in trust for Lender and to apply the Rents to discharge all current amounts due on the Debt and to pay the current costs of managing, operating and maintaining the Property. So long as no Event of Default exists, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Security Instrument. From and after the occurrence of an Event of Default, and without the necessity of notice or prior demand or Lender's entering upon and taking and maintaining control of the Property (whether directly or through a receiver), the license granted to Borrower by this Section shall terminate automatically, and Lender shall be entitled to receive and collect the Rents as they become due and payable and exercise all of Borrower's rights or the rights of lessor under the Leases and with respect to the Rent. Lender's right to revoke the license granted to Borrower is in addition to all other rights and remedies available to Lender following an Event of Default.

(c) No Obligations Assumed by Lender. Neither the granting of this assignment to Lender, nor Lender's exercise of any rights or remedies with respect to this assignment, shall be construed (i) to make Lender a "mortgagee in possession" of the Property in the absence of Lender itself taking actual possession of the Property or (ii) to obligate Lender to take any action with respect to the Leases, including, without limitation, the performance of any obligation to be performed on the part of Borrower under any of the Leases, which shall remain exclusively with Borrower. Without limiting the foregoing, this assignment shall not operate to place on Lender any obligation or liability for: (i) the control, care, management or repair of the Property; (ii) for carrying out any of the terms and conditions of the Leases; (iii) any waste committed on the Property by tenants or any other parties; (iv) any dangerous or defective condition of the Property (including, without limitation, the presence of any Hazardous Materials as defined in the Environmental Indemnity); or (v) any negligence in the management, upkeep, repair or control of the Property resulting in injury or death to any tenant or any other party or any loss of personal property. Borrower, for itself and any party claiming under or through Borrower, hereby releases and discharges Lender from any such liability to the fullest extent permitted by law. Lender shall be obligated to account only for Rents actually collected or received by Lender, and Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to lease the Property after an Event of Default.

2.04 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the UCC) on the Land, and this Security Instrument upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the UCC upon such of the Property that is or will become fixtures.

2.05 Pledge of Monies Held. Borrower hereby pledges to Lender, as security for the Obligations, all money now or hereafter held by Lender in escrow or reserve or on deposit

pursuant to the terms hereof or pursuant to the Loan Agreement or any other Loan Document, until expended or applied as provided in this Security Instrument or such other Loan Document.

2.06 Release of Security. The grants, deed of trust, mortgage, liens, security interests, assignments, pledges and transfers by this Security Instrument are subject to the express condition that, if Borrower pays to Lender the Debt at the time and in the manner provided in the Loan Agreement and performs all Obligations when and as required by the Loan Agreement and each other Loan Document, Lender shall release the Property from the grants, deed of trust, mortgage, liens, security interests, assignments, pledges and transfers created by this Security Instrument and reconvey the Property to Borrower. Lender shall prepare (at Borrower's expense) and deliver to Borrower such documents as are necessary to effect such release and reconveyance.

### **ARTICLE 3** **DEBT AND OBLIGATIONS SECURED**

3.01 Debt. This Security Instrument and the interests created in favor of Lender hereunder are given for the purpose of securing (a) payment of principal, interest and all other amounts due at anytime under the Loan Agreement, the Note and each of the other Loan Documents, including, without limitation, interest at the Default Rate, any late fee for delinquent payment, the Prohibited Prepayment Fee, the Prepayment Fee, and the Exit Fee (if any) as provided in the Loan Agreement, and amounts advanced by Lender to protect and preserve the Property and the Liens hereby created for the benefit of Lender (collectively "**Debt**"), and (b) performance of all obligations of Borrower contained in the Loan Agreement, the Note and each of the other Loan Documents (collectively with the Debt, "**Obligations**"). Notwithstanding any provision of this Security Instrument to the contrary, the obligations of Borrower and the other indemnitors under the Environmental Indemnity shall not be deemed secured by this Security Instrument unless and until Lender expressly declares in writing such obligations to be secured hereby.

### **ARTICLE 4** **BORROWER COVENANTS**

4.01 Payment of Debt and Performance of Obligations. Borrower will pay the Debt at the time and in the manner provided in the Loan Documents and fully and punctually perform the Obligations when and as required by the Loan Documents. Borrower may not prepay the Debt except in strict accordance with the Loan Agreement.

4.02 Compliance with Loan Agreement. Borrower shall comply with all covenants and agreements in the Loan Agreement and other Loan Documents, including, without limitation, all obligations regarding the ownership, operation, management and condition of the Property and the protection and perfection of the Liens hereby created in favor of Lender. Without limiting the foregoing, Borrower agrees:

(a) No Transfers of the Property or Interests in Borrower. Borrower shall not cause or permit any Transfer of the legal or beneficial ownership of the Property, Borrower or SPE Equity Owner in violation of the Loan Agreement.

(b) Payment of Taxes and Other Liable Charges. Borrower shall pay all Taxes and Other Charges assessed or imposed against the Property when and as required by the Loan Agreement.

(c) Insurance. Borrower shall obtain and maintain, in full force and effect at all times, all insurance with respect to Borrower and the Property as required by the Loan Agreement.

(d) Obligations upon Condemnation or Casualty. Borrower shall comply with all obligations required under the Loan Agreement in the event the Property is damaged by a Casualty or becomes involved in any Condemnation. All proceeds or awards recovered or payable to Borrower as a result of a Casualty or Condemnation shall be paid to, and administered by Lender, in accordance with the Loan Agreement.

(e) Leases and Rents. Borrower shall not enter into any Leases for all or any portion of the Property unless in accordance with the Loan Agreement.

(f) Operating Agreements. Borrower shall observe and perform in a timely manner each and every obligation to be observed or performed by Borrower pursuant to the terms of each Operating Agreement and shall not terminate any Operating Agreement unless otherwise permitted in accordance with the Loan Agreement.

(g) Warranty of Title. Borrower has good, marketable and insurable fee simple title of record to the Property, free and clear of all liens, encumbrances and charges whatsoever except for the Permitted Encumbrances. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender and/or Trustee against the claims of all Persons whomsoever.

## **ARTICLE 5** **SUBROGATION**

5.01 Subrogation. If the Loan is used to pay, satisfy, discharge, extend or renew any indebtedness secured by a pre-existing mortgage, deed of trust or other lien encumbering the Property ("**Prior Lien**"), then to the extent of funds so used, Lender shall automatically, and without further action on its part, be subrogated to all rights, including lien priority, held by the holder of the indebtedness secured by the Prior Lien, whether or not the Prior Lien is released, and such former rights are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for payment of the Debt and performance of the Obligations.

## **ARTICLE 6** **DEFAULT**

6.01 Events of Default. The occurrence of an "Event of Default" as that term is defined under the Loan Agreement shall constitute an "**Event of Default**" under this Security Instrument.



6.02 Remedies. If an Event of Default occurs, Lender may, at its option, acting directly or through Trustee and without prior notice or demand, exercise, and hereby is authorized and empowered by Borrower so to exercise, any or all of the remedies set forth in the Loan Agreement (including, without limitation, the right to accelerate the Loan) or otherwise permitted by law or in equity, and in all events in conformance with applicable laws.

6.03 Cumulative Remedies; No Waiver; Other Security. Lender's remedies under this Security Instrument are cumulative with the remedies provided in the other Loan Documents, by law or in equity and may be exercised independently, concurrently or successively in Lender's sole discretion and as often as occasion therefor shall arise. Lender's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of an Event of Default shall not be deemed a waiver of such right as remedy. No partial exercise by Lender of any right or remedy will preclude further exercise thereof. Notice or demand given to Borrower in any instance will not entitle Borrower to notice or demand in similar or other circumstances nor constitute Lender's waiver of its right to take any future action in any circumstance without notice or demand (except where expressly required by this Security Instrument to be given). Lender may release other security for the Debt, may release any party liable for the Debt, may grant extensions, renewals or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Debt, in each case without prejudice to its rights under this Security Instrument and without such action being deemed an accord and satisfaction or a reinstatement of the Debt. Lender will not be deemed as a consequence of its delay or failure to act, or any forbearances granted, to have waived or be estopped from exercising any of its rights or remedies.

6.04 Enforcement Costs. Borrower shall pay, on written demand by Lender, all costs incurred by Lender in (a) collecting any amount payable under the Loan Documents, or (b) enforcing its rights under the Loan Documents, in each case whether or not legal proceedings are commenced. Such fees and expenses include, without limitation, reasonable fees for attorneys, paralegals, law clerks and other hired professionals, a reasonable assessment of the cost of services performed by Lender's default management staff, court fees, costs incurred in connection with pre-trial, trial and appellate level proceedings, including discovery, and costs incurred in post-judgment collection efforts or in any bankruptcy proceeding. Amounts incurred by Lender shall be added to the Debt, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of disbursement until paid in full, if not paid in full within five (5) days after Lender's written demand for payment.

6.05 Application of Proceeds. The proceeds from disposition of the Property shall be applied by Lender to the payment of the Debt (including, without limitation, advances made by Lender and enforcement costs incurred by Lender) in such priority and proportion as Lender determines in its sole discretion (as may be limited by applicable law).

6.06 Continuing Lien; Right to Release Property. If less than all of the Property is, at any time, sold through foreclosure, power of sale, or otherwise, or if Lender releases any portion of the Property (for whatever consideration Lender deems appropriate), this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property, unimpaired and without loss of priority.

6.07 LIMITATION ON PERSONAL LIABILITY. NOTWITHSTANDING ANY PROVISION HEREOF TO THE CONTRARY, BORROWER'S PERSONAL LIABILITY FOR PAYMENT OF THE DEBT AND PERFORMANCE OF THE OBLIGATIONS IS LIMITED HEREUNDER IN THE SAME MANNER AND TO THE SAME EXTENT AS EXPRESSLY PROVIDED IN THE LOAN AGREEMENT.

**ARTICLE 7**  
**WAIVER OF RIGHT OF REDEMPTION AND OTHER RIGHTS**

7.01 Waiver of Rights of Redemption, Marshalling and Other Rights. Borrower hereby waives, to the fullest extent permitted by law, the benefit of all laws, now or hereafter in force, providing for (a) the valuation or appraisal of the Property, or any party thereof, prior to any sale or sales thereof pursuant to this Security Instrument or any decree, judgment or order of a court of competent jurisdiction; (b) the right to stay or extend any such proceeding, to have this Security Instrument reinstated or to redeem the Property or any portion thereof so sold; (c) rights of marshalling relating to any such sale or sales; (d) any right to require that the Property be sold as separate tracts or units in connection with enforcement of this Security Instrument; and (e) the benefit of any moratorium, exemption or homestead rights now or hereafter provided. Borrower makes such waivers on its own behalf and on behalf of all parties now or hereafter claiming or having an interest (direct or indirect) by, through or under Borrower.

7.02 Waiver of Counterclaim. Borrower hereby waives, to the fullest extent permitted by law, the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Trustee or Lender arising out of, or in any way connected with, the Obligations.

7.03 Waiver of Foreclosure Defense. Borrower hereby waives, to the fullest extent permitted by law, any defense Borrower might have by reason of Lender's failure to make any tenant or tenant of the Property a party defendant in any foreclosure instituted by Lender.

7.04 Waiver of Notices Generally. Borrower hereby waives, to the fullest extent permitted by law, its rights to notice from Lender except when this Security Instrument or the other Loan Documents expressly provides for Lender to give notice to Borrower.

7.05 Waiver of Statute of Limitations and Laches. Borrower hereby waives, to the fullest extent permitted by law, the benefit of any statute of limitations or laches defense to payment of the Debt or performance of the Obligations.

7.06 WAIVER OF TRIAL BY JURY. BORROWER WAIVES ITS RIGHT, TO THE FULLEST EXTENT PERMITTED BY LAW, AND AGREES NOT TO ELECT, A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS SECURITY INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER.

7.07 Consent to Jurisdiction. Borrower hereby consents and submits to the exclusive jurisdiction and venue of any state or federal court sitting in the county and state where the Land is located with respect to any legal action or proceeding arising with respect to this Security Instrument or any other Loan Document and waives all objections which it may have to such jurisdiction and venue. Nothing herein shall, however, preclude or prevent Lender from bringing

actions against Borrower in any other jurisdiction as may be necessary to enforce or realize upon the security herein provided.

**ARTICLE 8**  
**MISCELLANEOUS PROVISIONS**

8.01 Intentionally Deleted.

8.02 Further Acts. Borrower, at Borrower's expense, agrees to take such further actions and execute such further documents as Lender reasonably may request to carry out the intent of this Security Instrument or to establish and protect the rights and remedies created or intended to be created in favor of Lender hereunder or to protect the value of the Property and the Liens and security hereby created in favor of Lender. Borrower agrees to pay all filing, registration or recording fees or taxes, and all expenses incident to the preparation, execution, acknowledgement or filing/recording of this Security Instrument or any such instrument of further assurance, except where prohibited by law so to do.

8.03 No Third Party Beneficiary. Notwithstanding any provision of this Security Instrument to the contrary, this Security Instrument is not intended by the parties to create, and shall not create, benefits on behalf of any tenant or other occupant of the Property or anyone claiming rights through any tenant or other occupant of the Property.

8.04 No Agency or Partnership. Nothing contained in this Security Instrument shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower.

**ARTICLE 9**  
**TRUSTEE PROVISIONS**

9.01 Trustee's Fees and Expenses. Borrower shall pay all reasonable fees and expenses incurred by Trustee for legal counsel and other professional advisors in connection with Trustee's performance of its duties hereunder. Amounts incurred by Trustee shall be deemed a part of the Debt secured by this Security Instrument and bear interest at the Default Rate if not paid in full within five (5) days after Trustee's written demand for payment. Trustee hereby waives any statutory fee or compensation for services rendered hereunder.

9.02 Duties of Trustee.

(a) Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts and duties herein created and conferred upon Trustee. Notwithstanding the foregoing, Trustee agrees not to execute any of the powers conferred upon Trustee hereunder, nor to take any action to protect or enforce Lender's rights hereunder, nor to provide any interpretation of this Security Instrument or any of the other Loan Documents without Lender's prior written consent thereto in each instance. Trustee, however, has an affirmative duty to reasonably cooperate with Lender as Lender may require to protect the Property and to enforce Lender's rights hereunder, but Trustee shall not be obligated to institute or defend any suit in respect hereof or to perform any act which would involve Trustee in any expense or liability unless, in each case, properly indemnified to Trustee's reasonable satisfaction. Trustee also has no duty to see to any recording, filing or registration of this Security Instrument or any other

instrument in addition or supplemental hereto, or to give any notice thereof, or to see to the payment of, or be under any duty in respect of, any tax or assessment or other governmental charge which may be levied or assessed on the Property or against Borrower, or to see to the performance or observance by Borrower of any of the covenants and agreements contained herein. Trustee shall not be responsible for the sufficiency of the security purported to be created hereby and makes no representation or warranty in respect thereof or in respect of the rights of Lender.

(b) Trustee shall not be liable for any error of judgment or act done by Trustee in good faith or otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. Trustee has the right to advice of counsel upon any matters arising hereunder and shall be fully protected in relying on the advice of counsel. Trustee has the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall not be personally liable in case of entry upon the Property by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, or for liability or damages incurred in the management or operation of the Property.

(c) All money received by Trustee with respect to the Debt and Obligations shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

#### 9.03 Resignation and Substitution of Trustee.

(a) Trustee may resign at any time upon written notice to Lender delivered not less than thirty (30) days prior to the intended date of resignation. In the event of Trustee's death, resignation, refusal to act, disqualification or other inability to act, or if Lender shall deem it desirable to remove Trustee for any reason with or without cause, Lender has the right, in its sole discretion, to select and appoint a successor trustee (who may be Lender or an affiliate of Lender if permitted by law), without application to court or compliance with any formality other than appointment and designation in writing by Lender. If Lender is a corporation or association and such appointment is executed in its behalf by an officer of such corporation or association, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association.

(b) Any successor appointed as Trustee shall, without further act, deed or conveyance, become vested with all of the estates, properties, rights, powers, privileges, immunities and duties herein conferred upon Trustee with like effect as if such successor were originally named as trustee herein. Nevertheless, upon the written request of Lender or of the successor as Trustee, the party ceasing to act as Trustee shall execute and deliver an instrument, in recordable form, transferring to such successor as Trustee, all of the estates, properties, rights, powers, privileges, immunities and duties herein conferred upon Trustee and shall duly assign, transfer and deliver to such successor, in trust, any of the property and money then held by the party ceasing to act as Trustee.

9.04 Multiple Trustees. If more than one Trustee is appointed hereunder at any one time, or from time to time, all rights granted to and all powers conferred upon Trustee hereunder may be exercised by any or all of such Trustees, independently or jointly. Action exercised by one Trustee shall be deemed valid and binding on all Trustees.

## **ARTICLE 10**

### **LOCAL LAW PROVISIONS**

The provisions set forth below control in the event of any conflict with the other terms of this Security Instrument.

10.01 Exercise of Power of Sale. If Lender elects to sell Borrower's interest in the Trust Property by exercise of the power of sale herein contained, Lender shall notify Trustee in the manner then required by law.

Upon receipt of such notice of Lender and at the direction of Lender, Trustee shall cause to be recorded, published and delivered such notices of default and notices of sale as may then be required by law and by this Security Instrument. Trustee shall, only at the direction of Lender and without demand on Borrower, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Property at the time and place of sale fixed by it in such notice of sale, either as whole or in separate lots or parcels or items as Lender shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Borrower, Trustee or Lender, may purchase at such sale. Trustee may in the manner provided by law postpone sale of all or any portion of the Property.

10.02 Application of Proceeds. The Trustee shall apply the proceeds of the trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees actually incurred not to exceed the amount which may be provided for in this Security Instrument, second, to payment of the obligation secured by the Security Instrument, third, to the payment of junior deeds of trust, mortgages or other lienholders, and the balance, if any, to the person or persons legally entitled thereto.

10.03 Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon this Security Instrument for debts contracted or liability for damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder or believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by it in the performance of its duties hereunder and to reasonable compensation for such of its services hereunder as shall be rendered. Borrower will, from time to time, pay compensation due Trustee hereunder and reimburse Trustee for and save and hold it harmless from and against any and all loss, cost, liability, damage and expense whatsoever incurred by it in the performance of its duties.

10.04 Notice. Borrower, for himself or herself and for each party hereto, hereby request a copy of any notice of default and a copy of any notice of default and a copy of any notice of sale hereunder be mailed to them at the applicable address provided to the party.

10.05 No Joint Venture; No Third Party Beneficiaries. Borrower and Lender intend that the relationships created hereunder and under each of the other Loan Documents are solely those of borrower and lender. Nothing herein or in any of the other Loan Documents is intended to create, nor shall it be construed as creating anything but a debtor-creditor relationship between Borrower and Lender nor shall they be deemed to confer on anyone other than Lender, and its successors and assigns, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein.

10.06 Lender Approval. Wherever pursuant to a Loan Document (a) Lender exercises any right to approve or disapprove or to grant or withhold consent; (b) any arrangement or term is to be satisfactory to Lender; (c) a waiver is requested from Lender, or (d) any other decision is to be made by Lender, all shall be made in Lender's sole discretion, unless expressly provided otherwise in such Loan Document. By approving or granting consent, accepting performance from Borrower, or releasing funds from a Reserve Account, Lender shall not be deemed to have warranted or affirmed the sufficiency, completeness, legality or effectiveness of the subject matter or of Borrower's compliance with Requirements of Laws. Notwithstanding any provision under the Loan Documents which provide Lender the opportunity to approve or disapprove any action or decision by Borrower, Lender is not undertaking the performance of any obligation of Borrower under any of the Loan Documents or any of the other documents and agreements in connection with this transaction (including, without limitation, the Leases).

10.07 Performance at Borrower's Expense. Borrower acknowledges and agrees that in connection with each request by Borrower to: (a) modify or waive any provision of the Loan Documents; (b) release or substitute Property; (c) obtain Lender's approval or consent whenever required by the Loan Documents including, without limitation, review of a Transfer request, matters affecting a Major Lease, improvements or alterations to the Property, and easements or other additions to Permitted Encumbrances; or (d) provide a subordination, non-disturbance and attornment agreement, Lender reserves the right to collect a review or processing fee from Borrower based on a reasonable estimate of the administrative costs which Lender will incur to connection therewith. Borrower agrees to pay such fee along with all reasonable legal fees and expenses incurred by Lender and the fees required for a Rating Confirmation or approval from the trustee if the Loan has been Securitized, as applicable, irrespective of whether the matter is approved, denied or withdrawn. Any amounts payable by Borrower hereunder, shall be deemed a part of the Loan, shall be secured by the Loan Agreement and shall bear interest at the Default Rate if not fully paid within ten (10) days of written demand for payment.

10.08 Non-Reliance. Borrower agrees that any diligence or investigation performed by or on behalf of Lender in underwriting or servicing the Loan (including, without limitation, information obtained about the Property the Borrower or its equity investors or Affiliates) does not in any respect limit or excuse any of Borrower's representations, warranties, covenants or agreements set forth in the Loan Agreement or any of the other Loan Documents. The fact that Lender has performed diligence does not affect Lender's ability or right to rely fully upon the representations, warranties, covenants and agreements made by Borrower in the Loan Documents or to pursue any available remedy for a breach thereof. If Lender delivers or has

delivered to Borrower (or to Borrower's agents, equity investors or representatives) any information obtained or developed by Lender relating to the Loan, the Property or Borrower, Borrower acknowledges and agrees that such information has been delivered for informational purposes only and Lender has no liability of responsibility to Borrower with respect to such information, including, without limitation, the completeness or accuracy of any such information. No due diligence consultant engaged by Lender is or shall be deemed an agent of Lender.

10.09 Notices. All notices and other communications under this Security Instrument, the Loan Agreement or any other Loan Documents are to be in writing and addressed to each party as set forth below. Default or demand notices shall be deemed to have been duly given upon the earlier of: (a) actual receipt; (b) one (1) Business Day after having been timely deposited for overnight delivery, fee prepaid, with a reputable overnight courier service, having a reliable tracking system; or (c) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by certified mail, postage prepaid, return receipt requested, and in the case of clause (b) and (c) irrespective of whether delivery is accepted. A new address for notice may be established by written notice to the other; provided, however, that no change of address will be effective until written notice thereof actually is received by the party to whom such address change is sent. Notice to outside counsel or parties other than the named Borrower and Lender, now or hereafter designated by a party as entitled to notice, are for convenience only and are not required for notice to a party to be effective in accordance with this section. Notice addresses are as follows:

Address for Lender:           Capmark Finance Inc.  
  200 Witmer Road  
  Horsham, PA 19044  
  Attn.: Servicing Accounting - Manager  
  Fax: 215-328-3478

  Capmark Bank  
  6955 Union Park Center, Suite 330  
  Midvale, UT 84047  
  Attn: President  
  Fax: 801-567-2681]

Address for Borrower:       The Thomsen Miles Shoppes, LLC  
  c/o Coldwell Banker Commercial World Corp.  
  780 North 114<sup>th</sup> St  
  Omaha, NE 68154

and                               Slusky Law, LLC  
  17445 Arbor Street, Suite 300  
  Omaha, NE 68130  
  (402) 991-5777  
  (F) (402) 991-5117  
  Attn.: Shaun Michelle James

10.10 Entire Agreement; Modifications; Time of Essence. The Loan Agreement, together with the other Loan Documents, contain the entire agreement between Borrower and Lender relating to the Loan and supersede and replace all prior discussions, representations, communications and agreements (oral or written). If the terms of any of the Loan Documents are in conflict, the Loan Agreement shall control over all of the other Loan Documents unless otherwise expressly provided in such other Loan Document. No Loan Document shall be modified, supplemented or terminated, nor any provision thereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing. Time is of the essence with respect to all of Borrower's obligations under the Loan Documents.

10.11 Binding Effect; Joint and Several Obligations. This Security Instrument, the Loan Agreement or any other Loan Documents shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, whether by voluntary action of the parties or by operation of law. (The foregoing does not modify any conditions regulating Transfers.) If Borrower consists of more than one party, each shall be jointly and severally liable to perform the obligations of Borrower under the Loan Documents.

10.12 Duplicate Originals; Counterparts. This Security Instrument, the Loan Agreement and each of the other Loan Documents may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Security Instrument, the Loan Agreement and each of the other Loan Documents (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document.

10.13 Unenforceable Provisions. Any provision of this Security Instrument, the Loan Agreement or any other Loan Documents which is determined by a court of competent jurisdiction or government body to be invalid, unenforceable or illegal shall be ineffective only to the extent of such holding and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

10.14 Governing Law. This Security Instrument, the Loan Agreement and each of the other Loan Documents shall be interpreted and enforced according to the laws of the state where the Property is located (without giving effect to rules regarding conflict of laws).

10.15 Consent to Jurisdiction. Borrower hereby consents and submits to the exclusive jurisdiction and venue of any state or federal court sitting in the county and state where the Property encumbered by the Security Instrument is located with respect to any legal action or proceeding arising with respect to the Loan Documents and waives all objections which it may have to such jurisdiction and venue. Nothing herein shall, however, preclude or prevent Lender from bringing actions against Borrower in any other jurisdiction as may be necessary to enforce or realize upon the security for the Loan provided in any of the Loan Documents.

**10.16 WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH WAIVE THEIR RESPECTIVE RIGHT, TO THE FULLEST EXTENT PERMITTED BY LAW, AND AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS SECURITY INSTRUMENT, THE LOAN**



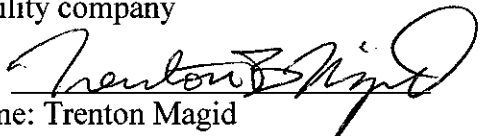
**AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER.**

*[Remainder of page is blank; signatures appear on next page.]*

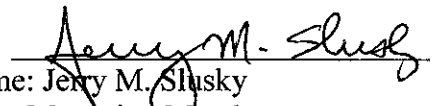
IN WITNESS WHEREOF, the undersigned hereby signs, seals and delivers this Security Instrument.

THE THOMSEN MILE SHOPPES, LLC, a  
Nebraska limited liability company

By: TM ASSOCIATES, L.L.C., a Nebraska limited  
liability company

By:   
Name: Trenton Magid  
Title: Managing Member

By: WEST MAPLE, L.L.C., a Nebraska limited  
liability company

By:   
Name: Jerry M. Slusky  
Title: Managing Member

ACKNOWLEDGEMENTS

STATE OF ~~NEBRASKA~~ <sup>Utah</sup> )  
 )s.s.  
COUNTY OF ~~DOUGLAS~~ <sup>Summit</sup> )

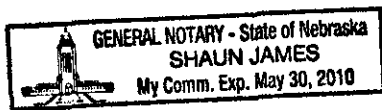
The foregoing instrument was acknowledged before me on 10<sup>th</sup> of August, 2006 by Jerry M. Slusky, a Managing Member of WEST MAPLE, L.L.C., a Nebraska limited liability company, a Managing Member of THE THOMSEN MILE SHOPPES, LLC, a Nebraska limited liability company, on behalf of the Limited Liability Company. Jerry M. Slusky personally appeared before me, a General Notary Public for the State of Nebraska, and is either personally known to me or was identified by me through satisfactory evidence.

Donna M. Horn  
Notary Public



STATE OF NEBRASKA )  
 )s.s.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on August 8, 2006 by Trenton Magid, a Managing Member of TM ASSOCIATES, L.L.C., a Nebraska limited liability company, a Managing Member of THE THOMSEN MILE SHOPPES, LLC, a Nebraska limited liability company, on behalf of the Limited Liability Company. Trenton Magid personally appeared before me, a General Notary Public for the State of Nebraska, and is either personally known to me or was identified by me through satisfactory evidence.



Shaun James  
Notary Public

**EXHIBIT A**

**Description of the Land**

(See attached)

**EXHIBIT "A"**

**Parcel 1:**

**Lot 3, The Thomsen Mile Replat Three, a Subdivision located in the SE1/4 of Section 4, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:**

**Beginning at the Northwest Corner of said Lot 3, The Thomsen Mile Replat Three, said point also being the Northeast Corner of Outlot "A", said The Thomsen Mile Replat Three, said point also being on the Southerly Right-of-Way line of Spaulding Street; Thence North 89 degrees 50 minutes 51 seconds East (assumed bearing) along the Northerly line of said Lot 3, The Thomsen Mile Replat Three, said line also being said Southerly Right-of-Way line of Spaulding Street, a distance of 224.02 feet; Thence South 47 degrees 45 minutes 03 seconds East along said Northerly line of Lot 3, The Thomsen Mile Replat Three, said line also being said Southerly Right-of-Way line of Spaulding Street, a distance of 14.83 feet to the Northeast Corner of said Lot 3, The Thomsen Mile Replat Three, said point also being the point of intersection of said Southerly Right-of-Way line of Spaulding Street and the Westerly Right-of-Way line of 168th Street; Thence South 00 degrees 00 minutes 02 seconds East along the Easterly line of said Lot 3, The Thomsen Mile Replat Three, said line also being said Westerly Right-of-Way line of 168th Street, a distance of 157.24 feet; Thence South 89 degrees 59 minutes 58 seconds West along said Easterly line of Lot 3, The Thomsen Mile Replat Three, said line also being said Westerly Right-of-Way line of 168th Street, a distance of 10.00 feet; Thence South 00 degrees 00 minutes 02 seconds East along said Easterly line of Lot 3, The Thomsen Mile Replat Three, said line also being said Westerly Right-of-Way line of 168th Street, a distance of 103.71 feet to the Southeast Corner of said Lot 3, The Thomsen Mile Replat Three, said point also being the Northeast Corner of Lot 5, The Thomsen Mile Replat Two, a Subdivision located in said SE1/4 of Section 15; Thence North 89 degrees 59 minutes 58 seconds West along the South line of said Lot 3, The Thomsen Mile Replat Three, said line also being the North line of said Lot 5, The Thomsen Mile Replat Two, a distance of 225.00 feet to the Southwest Corner of said Lot 3, The Thomsen Mile Replat Three, said point also being the Northwest Corner of said Lot 5, The Thomsen Mile Replat Two, said point also being on the East line of said Outlot "A" The Thomsen Mile Replat Three; Thence North 00 degrees 00 minutes 02 seconds West along the West line of said Lot 3, The Thomsen Mile Replat Three, said line also being said East line of Outlot "A", The Thomsen Mile Replat Three, a distance of 270.33 feet to the point of beginning.**

**Parcel 2:**

**Easement Rights for Ingress, Egress and Utility Services as contained in Restated Easements with Covenants and Restrictions affecting Land dated May 17, 2004, recorded May 20, 2004 as Inst. No. 2004064745, in the Office of the Register of Deeds of Douglas County, Nebraska.**