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This Instrument Prepared by  
and Return to:  
Michael S. Ross, Esq.  
Greenspoon, Marder, Hirschfeld,  
Raffin, Ross & Berger, P.A.  
100 W. Cypress Creek Road, Suite 700  
Fort Lauderdale, Florida 33309

**WILL CALL**

## **DECLARATION OF RESTRICTIONS, EASEMENTS AND MAINTENANCE**

THIS DECLARATION OF RESTRICTIONS, EASEMENTS AND MAINTENANCE ("Declaration") is made as of the 14<sup>th</sup> day of February, 2003, by and between **Margate Partners, L.L.C.**, a Florida limited liability company ("**Parcel I Owner**") and **Margate Crossroads Center, LLC**, a Florida limited liability company ("**Parcel II Owner**").

### **1. PRELIMINARY**

#### **1.1. Definitions.**

(a) "Building Area": All those areas on each Parcel shown as Building Area on Exhibit "B" attached hereto and incorporated herein by this reference.

(b) "Common Area": All those areas initially identified on Exhibit "D" attached hereto and incorporated herein by reference, including any area which are not from time to time actually covered by a building or other commercial structure or which cannot under the terms of this Declaration be used for buildings. Canopies which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

(c) "Environmental Laws": The Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Water Act, the Resource Conservation and Recovery Act and other similar federal state or local law, rule or regulation respecting Hazardous Materials, together with all rules and regulations promulgated thereunder and all present or future amendments thereto.

(d) "General Common Area Improvements": The traffic directional arrow signs and other signs permitted under Article 4, paving, bumper guards and curbs, landscape planters and other landscaped areas, parking lot lighting, sidewalks, and walkways.

(e) "Hazardous Materials": Underground storage tanks (previously exposed to or containing any substance, pollutant, contaminant, waste or materials described in this Section), petroleum and petroleum products, asbestos, PCB's, urea-formaldehyde and any hazardous or toxic substances, pollutants, contaminants, wastes or materials as defined under any Environmental Laws.

(f) "Lienholder": Any mortgagee under a mortgage constituting a lien on any Parcel. A Lienholder shall not be deemed to be an Owner for purposes of this Declaration until such time as said Lienholder acquires fee simple title to any Parcel by foreclosure or otherwise.

(g) "Owner": The record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns. In the event a Parcel is divided into one or more separate legal lots in accordance with this Declaration, each of such separate legal lots shall thereafter be considered to be a "Parcel" and the owners of each such legal lot shall be an "Owner". Any Parcel or Parcels subdivided as aforesaid shall remain subject to all terms and conditions of this Declaration.

(h) "Parcel: Parcel I or II, as shown on Exhibit "A" and more particularly described in Schedule I attached hereto and incorporated herein by this reference.

(i) "Parcel I Owner": Margate Partners, L.L.C., a Florida limited liability company, together with any person succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety and any wholly owned subsidiary thereof. Parcel I Owner's address is: c/o JM Properties of South Florida, Inc., 3201 North Federal Highway, Suite #300, Fort Lauderdale, Florida 33306.

(j) "Parcel II Owner": Margate Crossroads Center, LLC, a Florida limited liability company, together with any person succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety and any wholly owned subsidiary thereof. Parcel II Owner's current address is: c/o Yoram Izhak, 1420 Biscaya Drive, Surfside, FL 33154.

(k) "Person": Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other forms of business or legal entity.

(l) "Restrictions": The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

(m) "Shopping Center": Parcels I and II, collectively.

(n) "Utility Lines": Those facilities and systems for transmissions of utility services, including, but not limited to, water drainage systems or structures or both; lift stations; sewers; water sprinkler systems; telephones; communications lines; pneumatic tube systems; electrical conduits or systems, gas mains and other public or private utilities or underground systems facilitating communication and/or coordination of business operations between two or more parcels. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to more than one Parcel. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to only one Parcel. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a single building shall be considered a Separate Utility Line.

1.2. Parties. Parcel I Owner is the current Owner of Parcel I and Parcel II Owner is the current Owner of Parcel II. The Parcels are located at the southeast corner of the

intersection of State Road #7 (U.S. 441) and Coconut Creek Parkway (Hammondville Road) in the County of Broward, State of Florida as shown on Exhibit "A" and more particularly described in Schedule I attached hereto.

## 2. BUILDING AND COMMON AREA DEVELOPMENT

2.1. Building Location. All buildings and other structures (except those permitted in this Section 2.1 and 2.2 below) shall be placed or constructed only in the Parcel Building Areas as more particularly described in Exhibit "B" and in such other areas which applicable governmental authorities may hereafter, upon proper application therefore, allow such other buildings or other structures which the respective Owner may deem appropriate or advisable, in their discretion. All buildings shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. Once construction of any building has been commenced, the Owner of such Parcel shall diligently and continuously prosecute such construction to completion. Notwithstanding the foregoing, each Owner may chose to expand the Building Area within each Parcel to the maximum extent permitted by all applicable governmental authorities having jurisdiction thereunder so long as all parking areas as currently identified and situated on Exhibit "C" ("Permanent Parking Area") remain unchanged and are available for parking of automotive vehicles.

### 2.2. Common Area.

(a) The Common Area described in Exhibit "D", except as may be from time to time changed or modified as permitted in Section 2.1 above, is hereby reserved for the sole and exclusive use of all Owners of the Shopping Center, their tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. The Common Area may be used for vehicular driving, parking (except that there shall be no multi-level parking), pedestrian traffic, directional signs, sidewalks, walkways, landscaping, parking lot lighting, and Utility Lines, and for no other purpose unless otherwise specifically provided in this Declaration. Except as otherwise permitted in Section 2.1, no buildings or structures shall be placed or constructed in the Common Area except monument and directional signs (as provided in Section 4.3), paving, bumper guards or curbs, landscape planters, lighting standards and sidewalks.

(b) The Common Area shall be kept and maintained as provided for in Article 5 hereof. All portions of the Building Area which are not covered by a building shall be considered Common Area by the Owner thereof.

(c) Changes and Additions. Except as otherwise permitted in Section 2.1, no buildings or structures not approved in writing by both owners shall be placed in the Common Area. Except as otherwise permitted in Section 2.1, the sizes and arrangements of Common Area improvements including, without limitation, service drives, parking areas and striping, and all buildings and structures approved pursuant to this subparagraph (c) may not be changed without both Owners' prior written approval, which approval shall not be unreasonably withheld so long as the Owner has complied with the provisions of Section 2.1.

(d) Undeveloped Building Area. All portions of a Building Area which are not from time to time used for buildings or other commercial structures shall be maintained by the Owner thereof, at said Owner's sole cost and expense, and maintained as improved Common Area until buildings are constructed thereon.

2.3. Type and Design of Building.

(a) Parcel II Owner does hereby approve the construction of a prototypical Eckerd Drug Store building and bank drive thru facility upon Parcel I in accordance with the Site Plan attached hereto as Exhibit "E".

(b) Intentionally Deleted.

(c) No building or other structure shall be built in such a manner as to adversely affect the structural integrity of any other building in the Shopping Center.

(d) Each Owner shall maintain or cause to be maintained the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of shopping centers of comparable size and nature located in the same geographic area as the Shopping Center.

2.4. Casualty and Condemnation.

(a) Casualty. In the event all or any portion of any building in the Shopping Center is damaged or destroyed by fire or other casualty, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect drainage or Utility Lines of the Shopping Center or any portion thereof, shall be covered by a one inch asphalt dust cap and shall be kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

(b) Condemnation.

(i) Building Restoration. If all or any portion of any building in the Shopping Center is taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof ("**Condemnation**"), the Owner of such building shall have the same obligations with respect to restoration or removal of the building and Building Area as are set forth in Section 2.4(a).

(ii) Allocation of Award. If all or any portion of any Parcel in the Shopping Center is taken or damaged as a result of a Condemnation ("**Condemned Parcel**"), the Owner of the Condemned Parcel shall be entitled to the entire award or purchase price paid for the Condemned Parcel; provided, however, that nothing contained herein shall affect any other person's right to seek severance damages for its Parcel, provided the award of such severance damages does not reduce or diminish the amount which would otherwise be paid

to the Owner of the Condemned Parcel. The Owner of the Condemned Parcel shall restore or cause to be restored the remaining portion of the Condemned Parcel as near as practicable to the condition immediately prior to such Condemnation to the extent, but only to the extent, of any condemnation proceeds allocated by the court or condemning party, as the case may be, to such restoration and actually received by the Owner of the Condemned Parcel. Any restoration of the Condemned Parcel which involves a change in the configuration of the Common Area from that shown on Exhibit "D" except as otherwise permitted in Section 2.1, shall require the Owner of the non-condemned parcels prior written approval, which approval shall not be unreasonably withheld as long as the Owner of the Condemned Parcel fully complies with the provisions of Section 2.1. Notwithstanding the above, this Section 2.4(b) is not intended to and shall not alter the allocation of any award between the Owner of a Condemned Parcel and any tenant of such Condemned Parcel pursuant to the terms of any lease or other agreement between the parties.

2.5 Intentionally Omitted.

3. **EASEMENTS**

3.1. Ingress, Egress and Parking. Each Owner, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, nonexclusive easement(s) for: (a) ingress and egress by vehicular and pedestrian traffic upon, over and across the roadways and driveways as may from time to time exist upon the Common Area and specifically within the Permanent Access Easements hereinafter defined in Section 3.5; and (b) parking upon such parking areas as may exist from time to time. The reciprocal rights of ingress and egress and parking set forth in this Section 3.1 shall apply to the Common Area lying within each Parcel as may from time to time exist in compliance with Section 2.1 herein.

3.2. Utility Lines.

(a) Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual nonexclusive easement under, through and across that portion of the Common Area located on the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of Utility Lines. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements, ground mounted electrical transformers and such other Utility Lines as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Shopping Center, so long as they do not materially and adversely affect the Owner's use or operation of its Parcel). The installation, operation, maintenance, repair and replacement of such Utility Lines shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Shopping Center. The grantee(s) shall be responsible for and shall bear all costs related to the installation, operation, maintenance, repair and replacement of such Utility Lines, shall repair to the original specifications any damage to buildings, improvements, signs, Utility Lines or Common Area resulting from such use and shall provide as-built plans for all such utility lines to the Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after

the date of completion of construction of same. All reasonable costs directly associated with the installation, operation, maintenance repair and replacement of Separate Utility Lines shall be borne solely by the Owner of the Parcel served thereby. Except as may be required for the construction of a the Eckerd Drug Store building and bank drive thru facility upon Parcel I in accordance with the Site Plan attached hereto as Exhibit "E", which such costs shall be borne solely by the Parcel I Owner, all costs associated with the installation, operation, maintenance repair and replacement of Common Utility Lines shall be allocated among the Owners of the Parcels served thereby in proportion to the Building Area of such Parcel. Except as may be otherwise provided in Article 5, the installation, operation, maintenance, repair and replacement of Common Utility Lines may be performed by the Owner of any Parcel served thereby, provided the written consent of the other Parcel Owner is first obtained, which consent shall not be unreasonably withheld. The Owner performing such installation, operation, maintenance, repair or replacement of a Common Utility Line ("Performing Owner") shall bill the Owner(s) of the other Parcel(s) served thereby for each such Owner's proportionate share of the costs incurred by the Performing Owner not more often than monthly in arrears and such costs shall be payable within thirty (30) days after receipt of an invoice therefor and, if requested, reasonable supporting documentation. The Owner of a Parcel shall be given at least thirty (30) days written notice of any intention to utilize the easement, and the Owner shall have the right to reasonably require the relocation of any proposed Utility Line so long as it does not materially and adversely impact the utilization of the Utility Line for its intended purpose.

(b) At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any Utility Line installed pursuant to the foregoing grant of easement which is then located on such Owner's Parcel, provided that any such relocation (i) shall be performed only after sixty (60) days notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line, (ii) shall not unreasonably interfere with or diminish utility service to the businesses served by the Utility Line, (iii) shall not reduce or unreasonably impair the usefulness or function of the Utility Line, (iv) shall be performed without cost or expense to the Owner or occupant of any other Parcel, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(c) Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the Utility Lines described herein provided such easements are in accordance with and not otherwise inconsistent with the provisions of this Declaration.

3.3. Signs. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing sign referred to in Section 4.2 of this Declaration and all Utility Lines appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the Owners shall share evenly (50%-50%) all costs related to the installation, operation, maintenance, repair and replacement of its free-standing sign and appurtenant facilities and Utility Lines, and shall repair to the original specifications any damage to the buildings,

improvements, signs, Utility Lines or Common Area resulting from such use and shall provide as-built plans for all such facilities and Utility Lines to the Owners of all Parcels upon which such facilities and Utility Lines are located within thirty (30) days after the date of completion of construction of same.

3.4. Intentionally Deleted.

3.5. Permanent Access Easement. Each Owner, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of, such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual non-exclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across that portion of the Common Area located on each the grantor's Parcel(s) shown as "Permanent Access Easements" and more particularly described in Exhibit "F" attached hereto and incorporated herein by this reference. No building shall be permitted on or over the Permanent Access Easements, and no Owner shall have the right to restrict access or materially modify or alter any Permanent Access Point as identified on Exhibit "F".

3.6. Maintenance Easement. Each Owner, as grantor, hereby grants to the other Owners, their respective employees, agents, and contractors, as grantees, an easement over and across that portion of the Common Area located on each grantors' Parcel for the purpose of protecting the Common Area and operating or performing any maintenance, repairs, resurfacing or replacements pursuant to Sections 3.2(a), 4.3 and 5.2 hereof.

#### 4. OPERATION OF COMMON AREA

4.1. Parking. There shall be no charge for parking in the Common Area without the prior written consent of all Owners or unless otherwise required by law.

4.2. Signs.

(a) Subject to governmental approval, a free-standing sign shall be constructed at the location designated "Monument Sign" more particularly described in Exhibit "G". The cost of constructing, installing, maintaining, repairing and replacing the Monument Sign structure shall be split evenly by the Owners of both Parcels on a 50%-50% basis. Each Owner displaying, or whose occupant is displaying, a designation on the Monument Sign shall supply and maintain its own sign fascia and can and shall pay all electrical or other charges for the operation of same. Each Owner displaying, or whose occupant is displaying, a designation on a Monument Sign shall keep its sign fascia and can lighted from dusk to dawn or during such other times mutually agreed by the businesses designated thereon. The design of the Monument Sign shall be subject to the approval of both Owners. The sign shall prominently display the name of the shopping center.

(b) In addition to the foregoing Monument Sign, subject to governmental approval, the Owner or occupants of Parcel I, shall have the right to erect free-standing signs on its Parcel to display only the designation of the tenant or other occupant of such Parcel.

(c) There shall be no other signs, except directional signs and signs on buildings, in the Shopping Center without the prior written consent of the Owner which consent shall not be unreasonably withheld.

4.3. Protection of Common Areas. Each Owner shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Common Area from using the Common Area for ingress, egress and parking or for any other purpose. Such steps may include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of such Owner's parcel within the Shopping Center, except along the common boundary line of any Parcel with any other Parcel, provided, however, that any impairment of access to or from the Shopping Center, or any part thereof, shall require the other Owner's prior written approval, which may be withheld in such Owner's sole and absolute discretion.

4.4. Intentionally Omitted.

4.5. Intentionally Omitted.

## 5. COMMON AREA MAINTENANCE

(a) Maintenance by Individual Owners. Except as otherwise provided in this Declaration, commencing on the date of this Declaration, each Owner, at such Owner's sole cost and expense, shall maintain the Common Area located on such Owner's Parcel at all times in good and clean condition and repair in a quality and condition comparable to the quality and condition as shopping centers within the general area in which the Shopping Center is located.

(b) The Owner of each Parcel shall at all times provide and maintain or cause to be provided and maintained commercial general liability insurance with respect to bodily injury, death or property damage or destruction in an amount not less than Two Million and No/100 Dollars (\$2,000,000.00) for personal injury or bodily injury or death of any one person, Two Million and No/100 Dollars (\$2,000,000.00) for personal injury or bodily injury or death of more than one person in one occurrence, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) with respect to damage to or destruction of property, or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence. Said insurance shall be written with an insurer licensed to do business in the state in which the Shopping Center is located. The Owner of each Parcel shall furnish the Owner of any other Parcel with a certificate evidencing such insurance upon request. The insurance which an Owner is required "to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Declaration.

5.2. Lighting. It is agreed that the artificial lighting for the Common Area shall remain lit until midnight. If artificial lighting for a time later than the foregoing ("**After Hours Lighting**") is needed by any Owners or occupants, then, upon request, the other Owners shall negotiate in good faith to reach an agreement under which such After Hours Lighting is provided.



5.3. Taxes. Each Owner shall be responsible for the real property taxes and other special taxes and assessments assessed against the Owner's Parcel, including the portion of the Common Area on such Owner's Parcel; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments. If each Parcel does not have a separate tax folio identification number and until such time as separate tax folio identification numbers are assigned, then the total tax bill will be split between the Owners in direct proportion to the total square footage contained in each Owner's Parcel. In the event an Owner of a Parcel fails to pay its proportionate share of property taxes or assessments assessed against such Parcel before the same become delinquent, the remaining Owner may, upon thirty (30) days written notice (unless a shorter period of time is necessary to prevent any taking or remedial action by the taxing authority) pay such taxes or assessments. In the event the Owner does not pay its proportionate share of real property taxes or assessments, the non-paying Owner shall reimburse the paying Owner for the full amount of its proportionate share of such taxes or assessments paid by the Owner within thirty (30) days after receipt of an invoice therefor. The Parcel Owners agree to cooperate to have separate tax folio identification numbers assigned to their respective Parcels.

## 6. RESTRICTIONS ON USE

6.1. Pharmacy Restrictions. No part of Parcel II shall be used as a drugstore offering for sale any pharmaceutical products requiring the services of a registered pharmacist.

6.2. Intentionally Omitted.

6.3. Hazardous Materials. No Owner or occupant shall use or permit the use, handling, generation, storage, release, disposal or transportation of Hazardous Materials on, about or under its Parcel except in the ordinary course of its or its tenant(s) business and in compliance with all Environmental Laws.

## 7. GENERAL PROVISIONS

7.1. Covenants Run With the Land. Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcel and each part thereof and shall run with the land..

7.2. Successors and Assigns.

(a) This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, such Owner shall upon delivery of a Transfer Notice (as defined in subparagraph (b) below) thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this

Declaration with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

(b) Transfer Notice. An Owner selling or transferring all or any portion of its interest in any Parcel shall give written notice thereof to the other Owner in the Shopping Center ("Transfer Notice") which Transfer Notice shall include at least the following information: (i) the name, current address and current phone number of the transferee and (ii) a copy of the legal description of the portion of the parcel or interest sold or transferred.

7.3. Duration. Except as otherwise provided herein, the term of this Declaration shall be for sixty-five (65) years ("Primary Period") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Declaration shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an Extension Period) unless at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, the Owners of both Parcels mutually agree, in writing, that this Declaration shall terminate, in which event the Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect.

7.4. Injunctive Relief. In the event of any violation or threatened violation by any person of any of the Restrictions contained in this Declaration, any or all of the Owners of the property included within the Shopping Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

7.5. Modification and Termination. This Declaration may not be modified in any respect whatsoever, in whole or in part, except with the consent of the Owners of the Parcels, and then only by written instrument duly executed and acknowledged by all of the Owners. No modification of this Declaration shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification. This Declaration may not terminate without the written consent of all lienholders.

7.6. Method of Approval. Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. Each Parcel shall have only one (1) vote. The Owners (if consisting of more than one [1] person) of each Parcel shall agree among themselves and designate in writing to the Owners of each of the other Parcels a single person who is entitled to cast the vote for that Parcel. If the Owners of any such Parcel cannot agree who shall be entitled to cast the single vote of that Parcel, or if the Owners fail to designate the single person who is entitled to cast the vote for that Parcel within thirty (30) days after receipt of request for same from any other Owner, then that Parcel shall not be entitled to vote. In the event a Parcel is not entitled to vote, its consent or approval shall not be necessary and the total Building Area in said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 7.5.

7.7. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

7.8. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

7.9. Default.

(a) A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days from receipt of written notice from any Owner specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days, has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

(b) In the event the defaulting party has defaulted in the payment of money to the Owner, the Owner, in addition to other remedies provided by law, shall be entitled to interest on such amount at the rate of twelve (12%) percent per annum, commencing on the date such payment was due pursuant to this Declaration until paid in full.

7.10. Notices.

(a) All notices given pursuant to this Declaration shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charges prepaid, return receipt requested, addressed to the person and address designated below or, if a Transfer Notice has been given to the person designated in the Transfer Notice. If a notice must be given to a person other than one designated below or in a Transfer Notice such notice shall be sent to the person and address shown on the then current real property tax rolls of the county in which the Shopping Center is located. All notices to the Owners shall be sent to the person and address or telefacsimile number set forth below:

Parcel I Owner:

Margate Partners, L.L.C.  
c/o Jonas S. Nordal  
JM Properties of South Florida, Inc.  
3201 North Federal Highway, Suite #300  
Fort Lauderdale, Florida 33306

Parcel II Owner:

Margate Crossroads Center, LLC  
c/o Yoram Izhak  
1420 Biscaya Drive  
Surfside, FL 33154

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

(b) For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

7.11. Waiver. The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the restrictions contained herein by the same or any other person.

7.12. Attorney's Fees. In the event any party initiates or defends any legal action or proceeding in connection with this Declaration, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable) shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's and fees (including without limitation, its reasonable costs and reasonably attorney's fees on any appeal) as awarded by a court of competent jurisdiction..

7.13. Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

7.14. Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

7.15. Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto other than Albertson's, unless otherwise expressly provided herein. The parties hereto acknowledge that Albertson's is intended to be a third party, beneficiary of this Declaration.

7.16. Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

7.17. Entire Agreement. This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject

matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

7.18. Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

7.19. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

7.20. Recordation. This Declaration shall be recorded in the office of the recorder of the county in which the Shopping Center is located.

7.21. Non-Merger. Ownership of more than one Parcel by the same Owner shall not result in the merger of the dominant and servient estates of such Owner created by this Declaration.

EXECUTED as of the day and year first above written.

Witnesses for Parcel I Owner:

Print Name: Michael S. Ross

Print Name: ANDREA DONNA DE SANTI

Print Name: Michael S. Ross

ANDREA DONNA DE SANTI

Witnesses for Parcel II Owner:

Print Name: Robert Brandt

Print Name: Michael S. Ross

**MARGATE PARTNERS, L.L.C.**, a  
Florida limited liability company

By: \_\_\_\_\_

Name: JONAS S. NORDAL

Title: Managing Member

By: \_\_\_\_\_

MARK L. SAGER


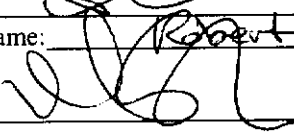
Title: Managing Member

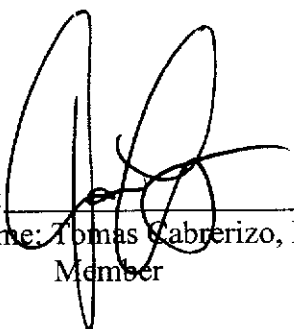
("Parcel I Owner")

**MARGATE CROSSROADS CENTER,  
LLC**, a Florida limited liability company

By: \_\_\_\_\_

Name: Yoram Izhak, Managing Member

  
Print Name: Robert Brandt  
  
Print Name: MICHAEL S. ROSS

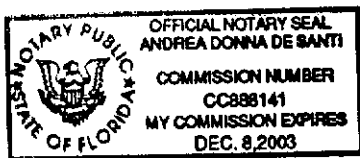
  
By: \_\_\_\_\_  
Name: Tomas Cabrerizo, Managing Member

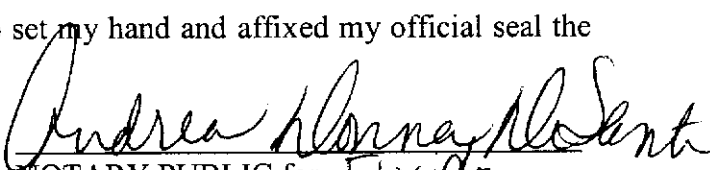
("Parcel II Owner")

STATE OF FLORIDA       )  
  ) ss.  
COUNTY OF BROWARD   )

On this 14 day of February, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared JONAS S. NORDAL and MARK L. SAGER, as Managing Members of MARGATE PARTNERS, L.L.C., a Florida limited liability company, on behalf of the company, who are personally known to me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



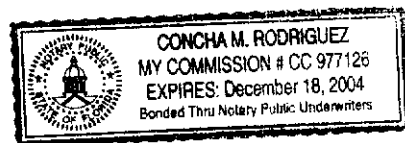
  
NOTARY PUBLIC for Florida  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Andrea Donna De Santi

STATE OF FLORIDA )  
COUNTY OF DADE ) ss.

On this 14<sup>th</sup> day of February, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared Yoram Izabel Tomas Capelido, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Concha M. Rodriguez  
NOTARY PUBLIC for STATE OF FLORIDA  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
CONCHA M. RODRIGUEZ







Parcel I:

Schedule I

## LEGAL DESCRIPTION: BANK PARCEL

A PORTION OF TRACT "A", "BRANDON-FARRIS DEVELOPMENTS PLAT NO. 2" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 110, PAGE 19 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT "A"; THENCE SOUTH 90°00'00" WEST ON THE NORTH LINE OF SAID TRACT "A" 242.79 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 90°00'00" WEST ON SAID NORTH LINE 89.46 FEET TO A POINT ON THE ARC OF A CIRCULAR CURVE CONCAVE EAST, WITH A RADIAL BEARING OF SOUTH 47°22'35" EAST; THENCE SOUTHERLY ON THE ARC OF SAID CURVE, WITH A RADIUS OF 35.00 FEET AND A CENTRAL ANGLE OF 42°39'50" AN ARC DISTANCE OF 26.06 FEET TO A POINT OF TANGENCY; THENCE SOUTH 00°02'25" EAST 81.63 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE EAST; THENCE SOUTHERLY ON THE ARC OF SAID CURVE, WITH A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 09°57'25" AN ARC DISTANCE OF 17.38 FEET TO A POINT OF TANGENCY; THENCE SOUTH 09°59'50" EAST 87.11 FEET; THENCE NORTH 89°49'02" EAST 66.98 FEET; THENCE NORTH 00°19'04" WEST 146.81 FEET; THENCE SOUTH 89°42'10" EAST 16.18 FEET; THENCE NORTH 00°19'04" WEST 61.49 FEET TO THE POINT OF BEGINNING. CONTAINING 17,443 SQUARE FEET, 0.4004 ACRES. AND

## LEGAL DESCRIPTION: ECKERD PARCEL

A PORTION OF TRACT "A", "BRANDON-FARRIS DEVELOPMENTS PLAT NO. 2" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 110, PAGE 19 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT "A"; THENCE SOUTH 90°00'00" WEST ON THE NORTH LINE OF SAID TRACT "A" 332.25 FEET TO A POINT ON THE ARC OF A CIRCULAR CURVE CONCAVE EAST, WITH A RADIAL BEARING OF SOUTH 47°22'35" EAST, THE POINT OF BEGINNING; THENCE SOUTHERLY ON THE ARC OF SAID CURVE, WITH A RADIUS OF 35.00 FEET AND A CENTRAL ANGLE OF 42°39'50" AN ARC DISTANCE OF 26.06 FEET TO A POINT OF TANGENCY; THENCE SOUTH 00°02'25" EAST 81.63 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE EAST; THENCE SOUTHERLY ON THE ARC OF SAID CURVE, WITH A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 09°57'25" AN ARC DISTANCE OF 17.38 FEET TO A POINT OF TANGENCY; THENCE SOUTH 09°59'50" EAST 87.11 FEET; THENCE SOUTH 89°49'02" WEST 302.35 FEET; THENCE SOUTH 05°03'36" WEST 3.75 FEET; THENCE NORTH 88°29'48" WEST 71.71 FEET TO A POINT ON THE ARC OF A CIRCULAR CURVE CONCAVE EAST, WITH A RADIAL BEARING OF NORTH 70°35'49" EAST; THENCE NORTHERLY ON THE ARC OF SAID CURVE, WITH A RADIUS OF 35.00 FEET AND A CENTRAL ANGLE OF 26°08'25" AN ARC DISTANCE OF 15.97 FEET; THENCE NORTH 82°31'01" WEST 3.31 FEET TO A WEST LINE OF SAID TRACT "A", BEING THE ARC OF A CIRCULAR CURVE CONCAVE WEST, WITH A RADIAL BEARING OF NORTH 82°31'01" WEST; THENCE ALONG THE BOUNDARY OF SAID TRACT "A" THE FOLLOWING THREE NUMBERED COURSES: 1) NORTHERLY ON THE ARC OF SAID CURVE, WITH A RADIUS OF 3627.10 FEET AND A CENTRAL ANGLE OF 02°44'07" AN ARC DISTANCE OF 173.16 FEET TO A POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE CONCAVE SOUTHEAST; 2) NORTHEASTERLY ON THE ARC OF SAID CURVE, WITH A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 85°15'08" AN ARC DISTANCE OF 37.20 FEET TO A POINT OF TANGENCY; 3) NORTH 90°00'00" EAST 328.59 FEET TO THE POINT OF BEGINNING. CONTAINING 74,573 SQUARE FEET, 1.7120 ACRES.

Parcel II:

## LEGAL DESCRIPTION: SHOPPING CENTER PARCEL

A PORTION OF TRACT "A", "BRANDON-FARRIS DEVELOPMENTS PLAT NO. 2" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 110, PAGE 19 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEAST CORNER OF SAID TRACT "A"; THENCE SOUTH 90°00'00" WEST ON THE NORTH LINE OF SAID TRACT "A" 242.79 FEET; THENCE SOUTH 00°19'04" EAST 61.49 FEET; THENCE NORTH 89°42'10" WEST 16.18 FEET; THENCE SOUTH 00°19'04" EAST 146.81 FEET; THENCE SOUTH 89°49'02" WEST 369.33 FEET; THENCE SOUTH 05°03'36" WEST 3.75 FEET; THENCE NORTH 88°29'48" WEST 71.71 FEET TO A POINT ON THE ARC OF A CIRCULAR CURVE CONCAVE EAST, WITH A RADIAL BEARING OF NORTH 70°35'49" EAST; THENCE NORTHERLY ON THE ARC OF SAID CURVE, WITH A RADIUS OF 35.00 FEET AND A CENTRAL ANGLE OF 26°08'25" AN ARC DISTANCE OF 15.97 FEET; THENCE NORTH 82°31'01" WEST 3.31 FEET TO A WEST LINE OF SAID TRACT "A", BEING THE ARC OF A CIRCULAR CURVE CONCAVE WEST, WITH A RADIAL BEARING OF NORTH 82°31'01" WEST; THENCE ALONG THE BOUNDARY OF SAID TRACT "A" THE FOLLOWING SIX NUMBERED COURSES: 1) SOUTHERLY ON THE ARC OF SAID CURVE, WITH A RADIUS OF 3627.10 FEET AND A CENTRAL ANGLE OF 03°05'42" AN ARC DISTANCE OF 195.94 FEET TO A POINT OF COMPOUND CURVATURE OF A CIRCULAR CURVE CONCAVE WEST, WITH A RADIAL BEARING OF NORTH 79°25'21" WEST; 2) SOUTHERLY ON THE ARC OF SAID CURVE, WITH A RADIUS OF 1005.37 FEET AND A CENTRAL ANGLE OF 00°39'48" AN ARC DISTANCE OF 11.64 FEET; 3) NORTH 90°00'00" EAST 355.98 FEET; 4) SOUTH 00°10'31" WEST 134.00 FEET; 5) NORTH 90°00'00" EAST 400.58 FEET; 6) NORTH 02°02'18" WEST 534.34 FEET TO THE POINT OF BEGINNING. CONTAINING 246,743 SQUARE FEET, 5.6644 ACRES.





EXHIBIT D

