

T-51017

Return To: Mark Lee @ FATIC  
6077 Primacy Parkway, Suite 121-B  
Memphis, TN 38119

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**FIRST MORTGAGE,  
SECURITY AGREEMENT  
AND  
FIXTURE FILING**

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Borrower: **RESTRUCTURE PARTNERS, LLC**, a Florida limited liability company

Lender: **FRANCHISE MORTGAGE ACCEPTANCE COMPANY**

Facility: Station No. 3981  
340 South SR #199  
Alabaster, AL 35224

This instrument was prepared by ~~and after~~  
~~recording return to:~~

Franchise Mortgage Acceptance Company  
Three American Lane  
Greenwich, Connecticut 06831  
Attention: Chief Operating Officer

Inst # 2000-30197

NA #5466 SRUR SITE #3981  
340 South SR #199  
Birmingham, AL  
Shelby County

09/01/2000-30197  
12:42 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
026 HHS 72.00

**FIRST MORTGAGE,  
SECURITY AGREEMENT  
AND  
FIXTURE FILING**

THIS IS A "First Mortgage, Security Agreement and Fixture Filing" (this "**Indenture**"), made as of July 29, 1999 (this Indenture is intended to be made as of the foregoing date even though it may be executed prior to such date),

by: **RESTRUCTURE PARTNERS, LLC**, a Florida limited liability company, whose address is 205 S. Hoover Boulevard, Suite 101, Tampa, Florida 33609 (referred to in this Indenture as the "**Borrower**"), as grantor;

to: **FRANCHISE MORTGAGE ACCEPTANCE COMPANY**, a Delaware corporation, whose address is Three American Lane, Greenwich, Connecticut 06831 (referred to in this Indenture as the "**Lender**").

The Borrower grants this Indenture to the Lender and covenants and agrees as follows:

**1. BACKGROUND; PURPOSE.**

1.1. This is the "**Indenture**" referred to in the Loan and Security Agreements (collectively, the "**Loan Agreements**" and individually, the "**Loan Agreement**") dated today's date between the Borrower, among others, and the Lender. Capitalized terms used but not defined in this Indenture have the same meanings given to them in the Loan Agreements. A complete copy of each Loan Agreement is on file at the Lender's office address as specified above.

1.2. This Indenture is given to secure the Secured Promissory Notes dated today's date made by the Borrower, among others, to the order of the Lender in the aggregate principal amount of \$30,000,000.00, as may be amended, recast, renewed, replaced or extended from time to time (collectively, the "**Notes**" and individually, the "**Note**") and the other Obligations (as that term is defined below). The maturity date of each of the Notes is August 1, 2019. All of the terms of each Loan Agreement and each Note are incorporated into this Indenture by reference, with the same effect as if they were reprinted here in full. The Borrower grants this Indenture in order to induce the Lender to accept the Notes. The Borrower understands and acknowledges that but for the Borrower's granting this Indenture, the Lender would not have accepted the Notes or extended credit to the Borrower on the terms contained in the Loan Agreements, the Notes and the other Loan Documents.

1.3. Each Note is a **recourse** obligation. The Borrower and every present or future Guarantor (if any) are jointly, severally and primarily liable for the payment and performance in full of the Obligations evidenced by the Loan Documents, irrespective of the value of the Mortgaged Property (as defined below) or

other collateral.

2. **DEFINITIONS**. As used in this Indenture, the following terms mean:

**"Default Event"**: Any "Default Event" as defined in each Loan Agreement or in Section 13 of this Indenture.

**"Equipment"**: All equipment, machinery, appliances, furniture, furnishings and fixtures now or hereafter owned by Borrower and which are now or may at any time in the future be installed in, attached to or located at the Facility, or used or held for use in connection with the operation of the Facility, such as pumps, dispensing equipment, car wash equipment, vacuum units, store fixtures, cash registers, point-of-sale devices, diagnostic, monitoring and repair equipment, tools, racks, coolers, display cases, cooking apparatus, and food service equipment, whether or not constituting "fixtures" under State law; and including all alterations, replacements, controls and operating accessories.

**"Facility"**: The service station, restaurant, fast food, convenience store, car wash, or any other facility located on the Real Estate, including all Equipment and Improvements.

**"Impositions"**: Irrespective of when levied or imposed, (i) all real estate taxes and assessments and other governmental impositions, expenses and charges of any kind assessed or incurred with respect to the Real Estate, the Improvements, the Equipment or any of the other Mortgaged Property; (ii) water, sewer and other utility rents, rates and charges, including service charges, hook-up, installation and connection fees; and (iii) any revenue tax or other tax or excise imposed on the Lender by reason of the Lender's holding the Notes or this Indenture (but excluding income taxes which may be payable by the Lender in respect of payments made by the Borrower under any Note, to the extent that they constitute income or gain to the Lender); in each case whether foreseen or unforeseen, and which may be assessed or imposed against, or become a lien on, the Real Estate or any of the Mortgaged Property, or in respect of the rent or income received from the Mortgaged Property.

**"Improvements"**: All structures and appurtenances installed or constructed at the Facility, including buildings, canopies, garages, booths, fuel storage facilities, paving, fencing, lighting, landscaping and other real estate improvements, now or hereafter owned by Borrower.

**"Leases"**: All leases, subleases, licenses, tenancies, concession rights or other rights of use or occupancy of any kind affecting any part of the Real Estate or the Improvements or any estate or interest in the Real Estate or Improvements, under which Borrower is a party or a beneficiary.

**"Legal Requirements"**: All present and future: (i) laws, ordinances, rules, statutes, regulations, requirements, rulings, orders and decrees of the federal, state, county, municipal and local governments and their respective constituent administrative departments, public and semi-public agencies, commissions, boards, bureaus, offices and judicial and other authorities; (ii) orders, rules and regulations of any national or local board of fire underwriters or other public or private body exercising similar functions; and (iii) requirements under policies of comprehensive general liability, property and other insurance in force with respect to any of the Mortgaged Property; in each case whether foreseen or unforeseen, ordinary or

extraordinary, and whether or not they may necessitate structural changes or improvements or may interfere with the use and enjoyment of any of the Mortgaged Property by the Borrower or by anyone else.

**"Mortgaged Property":** As defined in Section 3.1.

**"Obligations":** All indebtedness and all liability, responsibility or obligation of the Borrower, each Guarantor or any of their respective Affiliates to the Lender or to any Affiliate of the Lender for payment or performance, whether accrued or contingent and whether incurred in the capacity of maker, co-indorser or obligor or as surety, guarantor or in any other capacity, under: (i) each Note, (ii) this Indenture, (iii) each Loan Agreement, (iv) any Guaranty, (v) the other Loan Documents, or (vi) any other agreement, commitment, undertaking, instrument or obligation of the Borrower or any Affiliate of the Borrower to the Lender or any Affiliate of the Lender with respect to the Facility; in each case whether due or to become due or now existing or subsequently arising, and as may be amended, recast, renewed, replaced or extended from time to time. The term **"Obligations"** specifically includes but is in no way limited to principal, accrued interest and late payment processing fees under each Note, all advances made by or on behalf of the Lender under this Indenture, any Loan Agreement and any other Loan Document, and all collection and other costs and expenses incurred by or on behalf of the Lender.

**"Permitted Exceptions":** As defined in Section 3.2 and attached as *Schedule B*.

**"Real Estate":** The real estate described in attached *Schedule A*.

### 3. GRANT OF INDENTURE.

3.1. **Conveyance.** To secure the observance, payment and performance of the Notes, this Indenture, the Loan Agreements and the other Obligations, the Borrower by execution and delivery of this Indenture, hereby grants, bargains, sells, assigns and conveys unto Lender, and hereby grants to Lender a first priority security interest in and to, all of Borrower's right, title and interest in, to and under all of the following property and interests in property, whether now owned or held or subsequently acquired, created or arising (and which collectively constitute the **"Mortgaged Property"**):

3.1.1. The Real Estate;

3.1.2. The Equipment;

3.1.3. Any lease, chattel mortgage, and rental, use or conditional sale agreement covering any items of Equipment;

3.1.4. The Improvements;

3.1.5. The Leases;

3.1.6. The following:



3.1.6.1. All streets, roads, alleyways, passageways, sidewalks and parking areas, open or proposed, which adjoin, serve or are intended to be used in connection with the Facility; all easements and covenants existing or to be created for the benefit of the Borrower or any subsequent owner or occupant of the Real Estate which are otherwise appurtenant to or benefit the Facility;

3.1.6.2. All awards, insurance proceeds, damages, claims and other compensation payable in connection with or arising from any permanent or temporary taking of any of the Mortgaged Property pursuant to the power of eminent domain or in lieu of the exercise of the power of eminent domain, or from any damage, injury, casualty or other loss or destruction to the Mortgaged Property;

3.1.6.3. All agreements now or subsequently in effect providing for or relating to the construction, maintenance, operation or management of any of the Mortgaged Property;

3.1.6.4. All certificates of occupancy, zoning and other permits and authorizations, approvals, licenses and accreditations relating to the ownership, construction, maintenance, use, occupancy or operation of the Facility;

3.1.6.5. All warranties and guarantees from contractors, subcontractors, suppliers, vendors, sellers and manufacturers relating to the Facility;

3.1.6.6. All designs, drawings and plans and specifications for the Facility;

3.1.6.7. All other rights and privileges, hereditaments, reversions and remainders appurtenant to the Facility, together with the rents and profits arising from them; and

3.1.7. All replacements, substitutions and proceeds relating to any of the above.

3.2. **Habendum.** TO HAVE AND TO HOLD the Mortgaged Property, together with all rights, privileges and appurtenances thereunto belonging, unto the Lender, its successors and assigns in fee simple forever, subject only to the specific matters (the "Permitted Exceptions") listed on *Schedule B*.

3.3. **Termination.** This Indenture and the Lender's liens under this Indenture in the Mortgaged Property will not be terminated until a written mortgage satisfaction instrument executed by one of the Lender's officers is filed for record in the county in which the Real Estate is located. Except as otherwise expressly provided in this Indenture, no satisfaction of this Indenture shall in any way affect or impair the representations, warranties, agreements or other obligations of the Borrower or the powers, rights and remedies of the Lender under this Indenture with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive satisfaction. Even if all of the Obligations owing to the Lender at any one time should be paid in full, this Indenture will continue to secure any Obligations that might later be owed to the Lender until such mortgage satisfaction instrument has been executed and recorded. In no event shall the Lender be obligated to satisfy its liens under this Indenture or return or release any of the Mortgaged Property to the Borrower until all of the following conditions have been satisfied: (a) all Obligations have been paid in full, and (b) all periods for avoiding or setting aside any payment to Lender under bankruptcy or insolvency law have expired. Any claim or statement by a duly authorized officer of the Lender or by an

attorney-at-law representing the Lender, in each case to the effect that any Obligation remains unpaid or outstanding, shall be sufficient evidence to any inquiring creditor or other Person of the validity and continuing effectiveness of such Obligation and of the Lender's continuing rights under this Indenture.

3.4. **Reinstatement.** This Indenture and the obligations of the Borrower hereunder, and the liens, rights, powers and remedies of the Lender hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the Obligations is rescinded or must otherwise be restored or returned to the Borrower, any obligor, or any other person (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower, any obligor or any such person, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.

4. **WARRANTIES OF TITLE.** The Borrower covenants, represents and warrants to the Lender as follows:

4.1. **Borrower's Title.** The Borrower has good and marketable indefeasible fee simple title to the Mortgaged Property, free and clear of all liens, encumbrances, security interests and claims or rights of others, except only for the Permitted Exceptions listed on *Schedule B*.

4.2. **First Lien.** This Indenture is a first priority, exclusive mortgage lien and security interest against the Mortgaged Property, subject only to the Permitted Exceptions listed on *Schedule B*. The Borrower shall warrant and defend title to the Mortgaged Property and the lien and security interest of this Indenture for the benefit of the Lender, and the Lender's successors and assigns, against all other claims whatsoever.

5. **PAYMENT AND PERFORMANCE.** The Borrower shall pay and perform all of the Obligations in full when due in accordance with their respective terms. The Borrower shall not claim and will not be entitled to any credit on account of the Obligations for any real estate taxes paid with respect to the Mortgaged Property, and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property by reason of this Indenture.

6. **MAINTENANCE AND REPAIRS; INSPECTION.**

6.1. **No Waste.** The Borrower shall not commit or permit the commission of waste in or about the Facility. The Borrower will not remove or demolish any of the Facility. The Borrower will not make any alterations to the Facility without the prior written consent of the Lender, but the Lender agrees not to unreasonably withhold its consent to alterations which increase the utility or value of the Improvements. The Borrower will not permit the Facility to become vacant or deserted.

6.2. **Good Repair.** The Borrower shall keep the Facility, including abutting walkways and driveways, in good condition and repair at all times, and will protect the Facility against loss, damage or destruction. All work performed at the Facility by or on behalf of the Borrower shall be done in good and



workmanlike manner and in accordance with all applicable Legal Requirements.

6.3. **No Removal.** The Borrower shall not remove, sell or otherwise dispose of any Equipment without the prior written consent of the Lender, unless replaced by other Equipment of substantially equivalent character and equivalent or greater value, and to which the first lien and security interest of this Indenture shall likewise attach.

6.4. **Compliance.** The Borrower will comply at its sole cost and expense with all Legal Requirements applicable to the Facility and shall not operate the Facility or use or allow the Facility to be used for any illegal, noxious, amoral or objectionable purpose.

6.5. **Inspection Rights.** The Lender, and any Persons authorized by the Lender, shall have the right (but not the obligation) to enter upon the Facility and to inspect, photograph and otherwise evaluate and document the condition and state of repair of the Facility. Notwithstanding any exercise of inspection rights, the Lender shall have no obligation to make any repairs to the Facility.

## 7. **IMPOSITIONS.**

7.1. **Payment When Due.** The Borrower shall pay or cause to be paid all Impositions in respect of the Facility when due and payable, and before any interest, fine or penalty accrues. The Borrower will provide the Lender with receipts for payment of these amounts upon request. So long as no Default Event has occurred, the Borrower, may, in good faith and by appropriate legal action, diligently contest the validity or amount of any Imposition, provided that the Borrower either pays the disputed item in full pending the outcome of the contest, or establishes on its books or by deposit of cash with the Lender, as the Lender may elect, a reserve for the contested payment in an amount reasonably required by the Lender. No contest shall be conducted or continued if the Facility or the lien or security of this Indenture could be adversely affected as a result of the contest.

7.2. **Deposit for Impositions and Insurance Premiums.** Without limiting the effect of Section 7.1, at the Lender's written request, the Borrower shall pay to the Lender monthly, on the same day that monthly installments of principal and interest are due under the Note, an amount, as reasonably determined by the Lender, equal to one-twelfth (1/12th) of the annual real estate taxes and other Impositions and/or insurance premiums with respect to the Facility, in each case as specified by the Lender, such that the Lender is able to pay the Impositions and insurance premiums at least thirty (30) days before they become due. Whenever the Lender determines that the balance on deposit with the Lender may be insufficient to pay Impositions and insurance premiums when due, the Borrower will pay the amount of the deficiency to the Lender **on demand**. Amounts deposited with the Lender pursuant to this Section 7.2 will constitute additional security for the Obligations, to which the lien and security interest of this Indenture attaches, and shall not bear interest. They shall not constitute trust funds, but may be commingled with the general funds of the Lender. In addition to paying Impositions and insurance premiums, the Lender may at any time draw upon the deposited amount to reimburse the Lender for any costs or expenses advanced or incurred by the Lender under this Indenture, any Loan Agreement or any other Loan Documents, to collect any payment past due under any Note, or to make any other payment required by the Borrower or by any Guarantor under the Loan Documents which the Borrower has failed to pay when due. The Lender reserves the right to require the

Borrower to restore **upon demand** any amounts so deducted from the deposit balance, and to adjust the balance from time to time based on changes in property tax rates, assessments or insurance premiums, so that at all times the balance on deposit with the Lender remains sufficient to pay Impositions and insurance premiums at least thirty (30) days before the date when due.

7.2.1. At the Lender's option, the Lender may waive, and after any waiver may reinstate, the deposit requirements of Section 7.2.

7.2.2. Amounts required to be deposited monthly with the Lender pursuant to Section 7.2 are in addition to the monthly payments of principal and interest required by any Note.

7.3. **Excise Tax.** If after the date of this Indenture, Legal Requirements are enacted imposing a tax or other excise (except for income taxes payable by the Lender in respect of payments received under any Note, to the extent that they constitute income or gain to the Lender) on the Lender with respect to the Mortgaged Property, the value of the Borrower's equity in the Mortgaged Property, the amount of the Obligations or this Indenture, the entire amount of the tax or other excise shall be paid by the Borrower to the Lender **upon demand**. In the event that the Borrower is prohibited by applicable Legal Requirements from paying or reimbursing the entire amount to the Lender, the Lender may upon notice to the Borrower accelerate the maturity of the Notes and declare all accrued and unpaid interest and the entire principal balance of the Notes immediately due and payable in full, and if not immediately so paid, the Lender shall be entitled to exercise all of the Lender's rights and remedies reserved under this Indenture, the other Loan Documents and under applicable law for a Default Event.

## **8. CONDEMNATION OR CASUALTY.**

8.1. **Notice of Intended Taking.** The Borrower shall give the Lender immediate notice of the actual or threatened institution of any eminent domain or condemnation proceeding affecting the Facility, and will give the Lender copies of any papers served on the Borrower in connection with the proceeding. The Lender shall be entitled to participate in any negotiations or proceedings relating to the Mortgaged Property, and the Borrower will not make any settlement with the condemning authority without the Lender's prior written approval. If a Default Event has occurred, the Lender shall have the sole right (but not the obligation) to control, to the exclusion of the Borrower, the conduct or settlement of any eminent domain or similar proceeding with regard to the Mortgaged Property.

8.2. **Notice of Casualty Loss or Damage.** In the event of casualty loss, vandalism or other damage to the Facility where the reasonably estimated cost of repair would exceed \$5,000, the Borrower will give immediate notice to the Lender, and the Lender may make proof of loss if not promptly made by the Borrower. The Borrower appoints the Lender as the Borrower's irrevocable attorney-in-fact, coupled with an interest, to file claims with regard to any casualty loss or damage, and to sign and deliver any other documents and take any and all other actions with regard to filing, prosecuting, adjusting or settling insurance claims. If the Lender directs the Borrower to file or adjust any such claim, the Borrower will promptly do so in accordance with the applicable policy requirements. If a Default Event has occurred, the Borrower shall have no right to participate in the adjustment of insurance losses except and to the extent as may be permitted or directed by the Lender in the Lender's sole and nonreviewable discretion. Each insurance carrier is hereby



authorized and directed to make payment under its policies, including return of unearned premiums, directly to the Lender instead of to the Borrower. Any insurance proceeds which, notwithstanding such directive, are paid to the Borrower rather than directly to the Lender shall be deemed held in trust by the Borrower for the benefit of the Lender and shall immediately be remitted by the Borrower to the Lender.

**8.3. Application of Proceeds.** Except as otherwise provided in Section 8.3.1, the proceeds of any award made or damages paid for the taking or damaging of the Mortgaged Property by eminent domain, or for any conveyance in lieu of a taking, and all insurance proceeds payable in respect of casualty loss or other damage to the Mortgaged Property, are assigned to and shall be paid over to the Lender. The Lender shall apply the award, damages or insurance proceeds first toward reimbursement of all reasonable costs and expenses incurred by the Lender and (so long as the Borrower is not in default under this Indenture, the Loan Agreements, the Notes or any other Loan Document) by the Borrower in connection with recovering them. The balance shall be applied by the Lender, at its election, in whole or in part to reduce the Obligations, whether or not then due, and in such order and in such manner as the Lender shall determine, or to the restoration or repair of the Mortgaged Property in accordance with such disbursement procedures as the Lender shall specify, all as the Lender determines in its sole and nonreviewable discretion.

8.3.1. Notwithstanding the foregoing, at the Borrower's written request (which must be received within thirty (30) days after the loss or damage or condemnation occurs, or before the Lender's receipt of insurance or condemnation proceeds, whichever occurs first), but subject to the provisions of Section 8.4, the Lender will not unreasonably withhold or delay its consent to make available and disburse for the repair or restoration of the Mortgaged Property the net insurance proceeds or net condemnation award actually received by the Lender (after deducting all collection costs, including adjustors', appraisers' and attorneys' fees), but only if at the time the net proceeds or net award is received and at the time of each disbursement, all of the following conditions are satisfied:

- (i) There shall exist no Default Event;
- (ii) The Borrower shall have provided the Lender with a construction budget, including a schedule of values, which shall be reasonably satisfactory to the Lender;
- (iii) All disbursement requests and disbursements of insurance or condemnation proceeds shall be made in accordance with and subject to the Borrower's compliance with normal and customary construction lending practices of institutional lenders regularly engaged in construction lending, including requirements to provide copies of material contracts, invoices and lien waivers from contractors and subcontractors, holdbacks for retainage amounts, and completion certificates from the Borrower and the architect, general contractor or such other Person having overall responsibility with the repair or restoration work as shall be approved by the Lender;
- (iv) The Borrower shall have provided evidence of compliance with all applicable Legal Requirements, including obtaining building permits, building inspections and certificates of occupancy; and
- (v) Unless the Lender consents otherwise in its sole and nonreviewable discretion, net insurance or

condemnation proceeds shall be used solely to repair or restore the Improvements to substantially their same quality and configuration existing immediately before the loss or damage, subject only to any changes or upgrades mandated by intervening Legal Requirements and (in the case of condemnation) physical constraints occasioned by the taking.

**provided, however,** that in the event the net insurance or condemnation proceeds received by the Lender are not sufficient to pay the entire cost of repair or restoration in full, then the Borrower must provide evidence satisfactory to the Lender of the availability to the Borrower of equity capital in immediately available funds sufficient to cover any deficiency.

8.4. **Acceleration Upon Total Condemnation or Casualty.** In the event that: (i) all or substantially all of the Facility is taken by eminent domain or condemnation proceeding or by deed in lieu of condemnation, or is damaged or destroyed by fire or other casualty; or (ii) such lesser portion of the Facility shall be taken with the result that the remainder cannot reasonably be restored on an integrated, functional basis within six (6) months; or (iii) such lesser portion of the Facility shall be damaged so as to result in the closure or shut-down of any material portion of the Borrower's service station facility operations, and cannot reasonably be expected to be repaired or restored within six (6) months; then the taking or destruction shall, at the election of the Lender, constitute a Default Event, in which case the Lender may, in its sole and nonreviewable discretion, accelerate the maturity of the Notes and declare the Obligations immediately due and payable in full. In addition, if for any reason (except in the case of minor damage not exceeding the applicable policy deductible) any condemnation award or insurance proceeds in respect of the Mortgaged Property, including business interruption insurance proceeds, are not available to the Lender following the taking or destruction, the Lender shall likewise be entitled to declare a Default Event, accelerate the Notes and receive immediate payment of the Obligations in full.

8.5. **Repair and Restoration.** Except in the case of a taking or destruction which results in acceleration pursuant to Section 8.4, the Borrower shall promptly repair or restore, as nearly as possible to their condition prior to the occurrence of the taking or destruction, those portions of the Facility damaged by reason of the taking or casualty loss or other damage. The Borrower shall perform such repair and restoration at the Borrower's own cost and expense in compliance with all applicable Legal Requirements and the provisions of Section 6.

## **9. SECURITY AGREEMENT.**

9.1. **Security Interest.** This Indenture shall constitute a security agreement and a fixture filing, within the meaning of the UCC, with respect to: (i) all of the goods, Improvements, Equipment and other portions of the Mortgaged Property which are, or are to become, personal property or "fixtures" as defined in the UCC; and (ii) any replacements, substitutions or additions to the foregoing. The Borrower grants to the Lender a continuing security interest in all such collateral to secure the Obligations. The Borrower agrees to execute any financing and continuation statements as the Lender may request, and authorizes the Lender to file financing and continuation statements covering such collateral without the signature of the Borrower, all at the Borrower's cost and expense.



9.2. **Secured Party's Remedies.** Upon the occurrence of a Default Event, the Lender shall have all of the rights and remedies of a secured party as provided by the UCC. These rights and remedies shall be in addition to, and not in derogation or in lieu of, the rights and remedies provided by this Indenture, the Loan Agreements or otherwise available to the Lender under applicable law. In the event that the Lender elects to proceed with respect to any collateral referred to in Section 9.1 separately from the rest of the Mortgaged Property, then unless a greater period is required by the UCC, ten (10) days' notice of any sale of collateral shall be deemed reasonable notice. All expenses incurred by the Lender in retaking, holding, preparing for sale and selling collateral, including but not limited to reasonable attorneys' fees, shall be assessed against the Borrower with interest at the Default Rate, and until paid in full shall constitute part of the Obligations secured by this Indenture and the other Loan Documents.

## 10. **ASSIGNMENT OF LEASES.**

10.1. **Assignment.** The Borrower expressly assigns and transfers to the Lender, as additional security for the Obligations, all rents, receipts, profits, income and other payments under all Leases.

10.2. **Landlord's Remedies.** From and after the occurrence of a Default Event, the Lender may, with or without notice to the Borrower, and in addition to any of its other rights and remedies: (i) enter and take possession of the Facility and exercise the rights of the landlord under the Leases; (ii) collect rents or other amounts due or becoming due under Leases; (iii) let or sublet the Facility or any part of the Facility; (iv) assign any of the Leases; (v) notify any tenants, licensees, concessionaires or other occupants or cancel or modify any Leases, evict subtenants or such other occupants and bring or defend any suits in connection with the possession of the Facility, in its own name or in the Borrower's name; and (vi) make such repairs or alterations to the Facility and take such other actions in connection with the management and operation of the Facility as the Lender deems advisable or appropriate in its discretion.

10.2.1. Without limiting any of the Lender's other rights and remedies, if for any reason the Borrower continues to occupy any part of the Facility following a Default Event, the Borrower shall pay to the Lender, upon demand, a reasonable rental for such occupancy, in advance on the first day of each and every month on a month-to-month basis, and in default of such payment, the Borrower may be dispossessed by summary proceedings for eviction or ejectment brought by the Lender. Any such occupancy by the Borrower shall in any event terminate upon delivery of a deed upon foreclosure under execution and sale to the Lender or purchaser at the sale.

10.3. **No Implied Consent to Leases.** Nothing contained in this Section 10 shall be deemed to authorize or permit the Borrower to assign the Facility or to lease or grant any other rights of use or occupancy of any kind with respect to the Facility.

11. **NO OTHER LIENS.** Except as expressly permitted by the Lender pursuant to this Indenture, the Borrower shall not: (i) give any mortgage or deed of trust or grant any security interest in the Real Estate, the Improvements or any of the other Mortgaged Property, other than to the Lender; or (ii) suffer or permit to exist any other lien, attachment, levy, encumbrance or other claim in or on the Real Estate, the Improvements or any of the other Mortgaged Property.



## **12. LENDER'S RIGHT TO REMEDY DEFAULTS; INTEREST.**

12.1. **Lender's Right to Perform.** If the Borrower fails to pay or cause to be paid when due any Imposition, including real estate taxes, or any insurance premiums or utility bills, or fails to perform or observe any other covenant or condition contained in this Indenture, then the Lender shall have the right, but never the obligation, to make any payment or expenditure or to undertake any action that the Borrower should have made, or that the Lender otherwise deems advisable. Any payment so made or action so undertaken by the Lender, as the case may be, shall not prejudice or be deemed to constitute a waiver of the Lender's other rights and remedies under this Indenture or the other Loan Documents.

12.2. **Reimbursement with Interest.** All amounts advanced or incurred by the Lender or required to be reimbursed to the Lender pursuant to this Indenture shall be due from the Borrower immediately **upon demand**, shall constitute Obligations secured by this Indenture and the other Loan Documents, and shall accrue interest at the Default Rate from the date so advanced, incurred or required to be reimbursed until the date when paid in full.

13. **DEFAULT EVENTS.** The "Default Events" set forth below are in addition to and not in lieu of those specified in each Note, each Loan Agreement, any Guaranty or any of the other Loan Documents. Each of the following shall constitute a "Default Event":

13.1. **Substantial Taking or Destruction.** The Facility is taken by eminent domain or condemnation proceeding or by deed in lieu of condemnation, or is damaged or destroyed, under circumstances described in Section 8, where the Lender elects to exercise any right there provided to accelerate the maturity of the Notes.

13.2. **Inability to Pay Tax.** The Lender elects to exercise its right to accelerate the Notes pursuant to Section 7.3 by reason of the Borrower's legal disability to pay or reimburse the Lender for any mortgage-related tax or excise as there provided.

13.3. **Failure to Pay.** The Borrower fails to (i) pay any Imposition or deposit as required by Section 7 in full when due, or (ii) make any other payment pursuant to this Indenture in full when due and such nonpayment continues for ten (10) days after written notice from the Lender.

13.4. **Failure to Perform.** The Borrower fails to perform or comply with any other requirement, covenant or condition contained in this Indenture as and when required, and such noncompliance continues for a period equal to the earlier of: (i) fifteen (15) days after written notice from the Lender, or (ii) fifteen (15) days after the Borrower initially has or obtains knowledge of the noncompliance, whichever occurs first.

13.5. **Default Under Other Loan Documents.** There occurs any "Default Event" under any Note, any Loan Agreement, any Guaranty or any other Loan Document.

13.6. **Failure to Pay Note.** The Borrower fails to make any payment required by any Note in accordance with its terms, including, without limitation, a failure to pay the Note at maturity or upon

acceleration.

13.7. **Other Failure to Pay.** The Borrower fails to make any other payment required by any Loan Agreement or any other Loan Document when due or (but only where such a period is expressly specified) within any applicable notice or cure period.

13.8. **Failure to Comply with Financial Covenants.** The Borrower breaches, is in default under or fails to achieve or comply with any of the Borrower's covenants or obligations under Section 5 of any Loan Agreement.

13.9. **Representations and Statements.** Any representation, warranty, certificate, statement or information made or provided at any time by the Borrower or any Guarantor in or pursuant to any Loan Document, including financial statements, shall have been untrue or incorrect or shall have been misleading or incomplete in any material respect when made.

13.10. **Financial Information and Inspections.** The Borrower or any Guarantor shall fail, promptly after request by the Lender, to furnish financial information or to permit inspection of any books or records or of the Collateral or Mortgaged Property as required under any Loan Document.

13.11. **Contested Obligation.** (i) Any Loan Document shall for any reason cease to be, or is asserted by the Borrower or any Guarantor, as applicable, not to be, a legal, valid and binding obligation of that Person, enforceable in accordance with its terms; or (ii) the validity, perfection or priority of the Lender's first lien and security interest on any of the Collateral under any Loan Agreement or any of the Mortgage Property under this Indenture is contested by any Person; or (iii) any Guarantor repudiates, revokes, contests or disputes, in whole or in part, such Guarantor's obligations under any Guaranty Agreement.

13.12. **Judgments.** A judgment shall be entered against the Borrower in excess of \$20,000 or against any Guarantor in excess of \$20,000 and, in either such case, the judgment is not paid in full and discharged, or stayed and bonded to the satisfaction of the Lender, within thirty (30) days after being entered, unless the amount of the judgment is fully covered by insurance and an insurer has, in writing, unconditionally accepted responsibility for payment.

13.13. **Insolvency.**

(a) The Borrower or any Guarantor shall: (i) voluntarily begin any proceeding or file any petition seeking relief under Title 11 of the United States Code (the "**Bankruptcy Code**") or any other federal, state or foreign bankruptcy, insolvency, receivership, liquidation or similar law; (ii) consent to or fail to oppose the institution of any such proceeding or the filing of any such petition; (iii) apply for, or consent to or fail to oppose, the appointment of a receiver, trustee, custodian, fiscal agent or similar official for the Borrower or any Guarantor or for any substantial part of any of their respective property or assets; (iv) file an answer admitting the material allegations of a petition filed against the Borrower or any Guarantor for the benefit of creditors; (v) make a general assignment in writing for the benefit of creditors; (vi) become unable, admit in writing an inability or fail generally to pay their respective debts as they become due; (vii) take advantage of any other law or procedure for the relief of debtors; or (viii) take any action for the

purpose of or with a view towards effecting any of the foregoing.

(a) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking: (i) relief in respect of the Borrower or any Guarantor under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership, liquidation or similar law; (ii) appointment of a receiver, trustee, custodian, fiscal agent or similar official for the Borrower or any Guarantor or for any substantial part of any of their respective property or assets; or (iii) the winding up or liquidation of the Borrower or any Guarantor which is an entity and not a natural person; **and** such proceeding shall continue undismissed for sixty (60) days, or an order or decree approving or ordering any of the foregoing shall continue unstayed or in effect for sixty (60) days.

13.14. **Additional Liens; Loss of Priority.** Any of the Collateral becomes subject to a Lien other than the Permitted Liens, or the Lender does not obtain or continue to have a perfected first priority security interest in any of the Collateral, subject to the Permitted Liens.

13.15. **Seizure of Property or Collateral.** Any of the Collateral or the Facility is seized or foreclosed upon pursuant to process of law or by way of legal self-help.

13.16. **Default under Supply Agreement; Loss of Supply Agreement or License.** There occurs a default beyond any applicable grace or cure period on the part of the Borrower under any real property or Equipment Lease which is material to the operation of the Facility or under the Supply Agreement; or the Supply Agreement or any license, permit or other governmental authorization necessary or material to the operation of the Facility is terminated, is suspended for more than seven (7) days, or is allowed to lapse or expire, in each case without being immediately renewed or without an equivalent substitute satisfactory to the Lender being immediately applied for and obtained by the Borrower.

13.17. **Suspension of Business.** The Borrower shuts down or suspends the transaction of business at the Facility for more than fifteen (15) days total in any calendar year.

13.18. **Material Adverse Change.** There occurs any adverse change in the Collateral, the Mortgaged Property or the operations, prospects or condition, financial or otherwise, of the Borrower or any Guarantor, and such change, in the Lender's sole and nonreviewable opinion, is material or could otherwise materially increase the Lender's credit or collection risk under any Note or any other Obligation owed to the Lender.

13.19. **Environmental Violation.** The Borrower fails to take immediate steps to respond appropriately (or thereafter to diligently resolve) to the Lender's satisfaction and in compliance with Legal Requirements and all Environmental Laws, any environmental incident as described in Section 7.2 of the Loan Agreement.

13.20. **Prohibited Transfer.** There occurs any Change in Ownership or Change in Control prohibited by Sections 9.1 or 9.2 of any Loan Agreement.

13.21. **Failure to Perform Generally.** The Borrower fails to perform or comply when



required with any other requirement, covenant or condition contained in any Loan Agreement or any other Loan Document.

13.22. **Cross-Default with Lender.** There occurs a default beyond any applicable grace or cure period on the part of the Borrower, any Guarantor or any of their respective Affiliates under any other note, loan agreement, security instrument or financial arrangement of any kind, whether now existing or subsequently entered into, with the Lender or any Affiliate of the Lender.

13.23. **Cross-Default with Other Debt.** The Borrower fails to pay when due (whether at scheduled maturity, upon acceleration, demand or otherwise) or within any applicable grace or cure period any amount in respect of any Debt in excess of \$20,000 (excluding the Debt outstanding under the Note), or there occurs any other default in respect of such Debt which entitles the creditor or obligee to accelerate the balance due or exercise any other collection remedies.

14. **REMEDIES.** Upon the occurrence of a Default Event:

14.1. **Acceleration.** All of the Obligations shall at the option of the Lender become immediately due and payable without further notice or demand.

14.2. **Foreclosure.** The Lender, with or without entering the Facility, may institute foreclosure proceedings or take any other action at law or in equity to enforce this Indenture and realize on the Lender's security. If the Borrower's interest in the Mortgaged Property is sold in any judicial proceeding or pursuant to any power of sale, the interest may be sold in one parcel as an entirety or in two or more separate parcels, and in such manner or order, as the Lender may elect in its sole and nonreviewable discretion. The failure to make tenants, licensees, concessionaires or other occupants under any Subleases defendants to any foreclosure or sale proceedings shall not be asserted against the Lender as a defense.

14.3. **Other Proceedings.** The Lender, with or without entering the Facility, may take such steps to protect and enforce its rights by action, suit or proceeding, in equity or at law, for the specific performance of any covenant, condition or agreement in any Note, this Indenture or any other Loan Document, or in aid of the execution of any power granted by this Indenture, or for any foreclosure under this Indenture, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Lender shall elect.

14.4. **Retaking Possession.** The Lender, either in person or by its agents or attorneys or by a court-appointed receiver, may enter into possession of the Facility, with or (to the extent permitted under applicable law) without legal process, and exclude the Borrower, its agents, representatives and Affiliates from the Facility. The Lender shall be entitled (but in no way be obligated), either directly or by managers, agents, servants, attorneys, other Affiliates or a court-appointed receiver, to: (i) operate, manage and control the Facility; (ii) terminate the services of the existing manager, if any; (iii) retain or not retain a new manager; (iv) make repairs, renewals, replacements, alterations, additions and improvements; and (v) collect and receive all earnings, revenues, cash receipts, profits, deposits, rents and income (collectively, "**Cash Flow**") from the Facility. The Lender shall also be entitled to the appointment of a receiver, without regard to the solvency of the Borrower and regardless of whether the Lender has an adequate remedy at law. The Borrower

consents to the appointment of a receiver, and will so re-affirm in writing at any time upon the Lender's demand. Notwithstanding the appointment of any receiver, the Lender shall remain entitled to retain possession and control of the Facility. The Lender or a receiver may operate or rent out the Facility for any period and on any terms and conditions that the Lender deems appropriate, collect Cash Flow and, after deducting all reasonable costs of collection and administration, apply the net Cash Flow to the payment of Impositions, other charges and claims which could constitute liens on the Facility, insurance premiums, and the costs of maintaining, repairing, renting or restoring the Facility, or to the payment of the Obligations, all as they may elect. Any Lease entered into by the Lender or the receiver pursuant to this Section 14.4 shall survive foreclosure of this Indenture and the repayment of the Obligations. No action taken by the Lender pursuant to this Section 14.4 shall impose on the Lender, or be deemed to constitute an assumption by the Lender of, any of the obligations, duties or responsibilities of the Borrower as landlord under any Leases or under any other agreements relating to the Mortgaged Property or the operation of the Facility.

14.4.1. The Lender shall have absolutely no obligation to operate or to rent out the Facility in order to mitigate the Lender's damages, and the Borrower specifically waives any right or claim against the Lender for failure to do so. If notwithstanding the Borrower's waiver applicable Legal Requirements ever require the Lender to take such action, the Borrower acknowledges and agrees that the Lender shall be deemed to have satisfied its obligation in full by listing the Facility with any realtor or service station broker or management consultant selected by the Lender.

14.5. **Collection Action**. The Lender shall be entitled to bring an appropriate action to recover the amounts due under the Notes, this Indenture and the other Loan Documents as they become due. The right to bring such an action will not affect the right of the Lender to subsequently bring an action to foreclose this Indenture for any Default Event existing at the time the earlier action was commenced, or for any subsequent Default Event.

14.6. **Other Remedies**. The Lender shall be entitled to exercise all other rights and remedies available under this Indenture, each Loan Agreement, each Note and the other Loan Documents, any rights and remedies conferred upon secured parties by the UCC, and all other rights and remedies available under applicable law and in equity.

14.7. **Judgment for Possession**. The Lender shall be entitled to recover judgment for possession before, during or after the pendency of any proceedings for the enforcement of the provisions of this Indenture. The right of the Lender to recover judgment for possession shall not be affected by any entry or sale, or by the exercise of any other right, power or remedy for the enforcement or foreclosure of this Indenture.

14.8. **Remedies Cumulative**. The Lender's remedies are cumulative, and by reason of exercising any particular remedy the Lender shall not be prevented from later exercising any other remedy. The Lender shall not have any obligation to foreclose first on the Mortgaged Property, but may proceed directly against the Borrower, or against both the Borrower and some or all of the Mortgaged Property, or against neither, with or without proceeding at the same time against any Guarantor, all as the Lender decides in the Lender's sole and nonreviewable discretion. Even if the Lender does not immediately require the Borrower to make payment in full or does not immediately exercise its other rights and remedies upon the



occurrence of a particular Default Event, the Lender shall still have the right to do so if the Default Event continues or if another Default Event subsequently occurs.

14.9. **Default Interest.** Following the occurrence of a Default Event, and in addition to all of the Lender's other rights and remedies, the Obligations shall bear interest at the Default Rate and, notwithstanding any subsequent entry of judgment in the Lender's favor, shall continue to accrue interest at the Default Rate until paid in full.

15. **INDEMNIFICATION.** The Borrower covenants and agrees to indemnify, defend (with counsel acceptable to the Lender) and hold the Lender and all of the other Indemnitees harmless in full against all liability (including liability in tort or contract, whether strict or otherwise), damage (whether direct, indirect, consequential, punitive, incidental, special or otherwise), obligation, loss, penalty, fines, claims, suits or other proceedings, costs, disbursements and expenses (including legal and other professional fees and disbursements) incurred by or asserted against the Lender, or asserted against the Facility, which in any way arise out of or in connection with or are incidental to the ownership, use, occupancy, operation or leasing of the Facility, or any injuries or damages occurring on or about the Facility, or otherwise involving the Facility or the interest of the Lender in the Facility, both before and after any retaking of possession or foreclosure pursuant to Section 14, and whether or not a Default Event has occurred or is continuing. The Borrower's obligation to indemnify the Lender and the other Indemnitees shall survive any repossession, sale or foreclosure pursuant to Section 14 and the termination, discharge or cancellation of this Indenture for any reason, and is in addition to, and not in derogation or in lieu of, any other indemnity obligations contained in the Loan Agreements or elsewhere in the Loan Documents.

#### 16. **BORROWER'S WAIVERS.**

16.1. **No Abatement.** All amounts payable by the Borrower pursuant to this Indenture shall be paid without the need for any notice or demand (except as otherwise expressly set forth in this Indenture), and without setoff, deduction, abatement, suspension, deferment, diminution or reduction whatsoever (whether by reason of any purported counterclaim or defense, or otherwise). The Obligations shall in no way be released, discharged or (except as expressly provided in this Indenture) otherwise affected by reason of: (i) any damage to or taking of the Facility; (ii) any restriction or interference, whether by reason of Legal Requirements or otherwise, with the use of the Facility; (iii) any title defect or encumbrance; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to the Lender, or any action taken with respect to this Indenture by any trustee or receiver of the Lender, or by any court in any such proceeding; (v) any claim which the Borrower may have now or in the future against the Lender; (vi) any default or failure on the Lender's or any Affiliate's part to perform or comply with any provision of this Indenture or any other agreement with the Borrower or any Affiliate of the Borrower; or (vii) any other event or condition whatsoever, whether reasonably foreseeable or not, and whether or not the Borrower has notice or knowledge. The Borrower waives all rights which are or may at any time be conferred by applicable law or otherwise to any abatement, suspension, deferment, diminution or reduction of any Obligation secured by this Indenture.

16.2. **No Extension or Redemption.** The Borrower, for itself and for all Persons claiming through or under the Borrower or who may at any time hold liens junior to the lien of this Indenture, waives



the benefit of all laws now existing or subsequently enacted which: (i) require or provide for appraisal before sale of any of the Mortgaged Property in foreclosure or otherwise; or (ii) impose a moratorium or stay on the exercise of foreclosure or other remedies; or (iii) extend the time for enforcement of the collection of the Obligations or create or extend any period of redemption from a sale made to collect the Obligations. The Borrower agrees not to assert, plead, claim or attempt to benefit from or take advantage of any law now or subsequently in force requiring or providing for appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution and notice of the Lender's election to accelerate or declare the Obligations due.

16.3. **Waiver of Marshalling.** The Borrower, for itself and for all Persons claiming through or under the Borrower or who may at any time hold liens junior to the lien of this Indenture, expressly waives and releases all rights to marshal or direct the order in which any of the Mortgaged Property, or any other security for the Obligations, shall be sold in the event of any sale pursuant to this Indenture, or to have any of the Mortgaged Property or other security marshalled upon any foreclosure of this Indenture.

16.4. **No Jury Trial. The Borrower and the Lender each hereby irrevocably waive all rights to trial by jury, and any right to request or demand a jury trial, in any litigation or other proceeding relating to or arising out of this Indenture, the Notes or any of the other Loan Documents.** The Borrower covenants and agrees not to seek to consolidate any such litigation or proceeding in which a jury trial has been waived with any other action in which a jury trial cannot or has not been waived. The Borrower acknowledges that:

16.4.1. The provisions of this waiver have been fully disclosed to and discussed by the Borrower and the Lender, and shall be subject to no exceptions.

16.4.2. The Borrower's waiver of trial by jury is made knowingly, intentionally and willingly by the Borrower as part of a bargained-for loan transaction.

16.4.3. The Lender has not in any way agreed with, represented or intimated to the Borrower or any Affiliate or representative of the Borrower that the provisions of this jury trial waiver shall not be fully enforced in all instances.

17. **ATTORNEYS' FEES.** Without regard to whether a Default Event has occurred or is continuing, if: (i) the Lender becomes a party to any third-party suit or proceeding involving the lien and security interest created by this Indenture or otherwise relating to or arising out of the Lender's interest in any of the Mortgaged Property; or (ii) the Lender engages counsel to collect any of the Obligations or to enforce the Lender's rights or remedies or the performance of any of the agreements or covenants of this Indenture, any Loan Agreement, any Note or any of the other Loan Documents; then, in each such case, the Borrower shall pay to the Lender **upon demand**, the Lender's costs, expenses and reasonable attorneys' fees incurred in so doing. Until paid in full, all such amounts shall be deemed to be part of the Obligations secured by this Indenture, and shall bear interest at the Default Rate from the date incurred until the date reimbursed in full.

18. **NO MERGER.** If at any time the estates of the Borrower and the Lender become vested in a single owner, this Indenture and the lien and security interest created by this Indenture shall not terminate by

application of the doctrine of merger and, in such event and unless and until they elect otherwise, the Lender or its designee(s) and their respective assigns and successors in interest shall continue to have and enjoy all of the rights and privileges of the Lender under this Indenture.

#### **19. ASSIGNMENT BY LENDER; LIMITATION OF CLAIMS.**

19.1. **Assignment.** The Lender reserves the right at any time while the Obligations remain outstanding to sell, assign, syndicate or otherwise transfer or dispose of any or all of the Lender's interest under the Loan Documents. The Lender also reserves the right at any time to pool the loan represented by each Note and the other Loan Documents with one or more other loans originated by the Lender or any other Person, and to securitize or offer interests in such pool on whatever terms and conditions the Lender shall determine. The Borrower consents to the Lender's releasing financial and other information regarding the Borrower, the Facility and the loan represented by each Note in connection with any such sale, pooling and other offering.

19.2. **Limitation of Claims.** In the event that the Borrower, any Guarantor or any of their respective Affiliates or successors or assigns asserts any claim (including counterclaims and third-party claims) or seeks any relief relating to or arising out of the transaction evidenced by each Note and the other Loan Documents, including any claim asserting an act or omission by the Lender, its Affiliates or agents, then: (i) such claim or relief shall be sought or asserted only against the then holder and owner of the applicable Note and the other Loan Documents; (ii) the Borrower, for itself and for all persons claiming through or under the Borrower, expressly covenants not to sue, make claim or seek relief against any prior holder of the applicable Note or other Loan Documents, or against any officer, director, shareholder, equity holder, employee, agent or attorney of any past, present or future holder of the applicable Note or other Loan Documents; and (iii) the Borrower and the other claimants shall be limited in any such claim solely to injunctive relief or actual out-of-pocket damages only, and hereby waive and agree not to claim or seek any incidental, consequential, exemplary or punitive damages.

20. **NO PARTNERSHIP OR JOINT VENTURE.** The relationship between the Lender and the Borrower is that of creditor and debtor only. Nothing contained in this Indenture or elsewhere in the Loan Documents, nor any act or omission by the Borrower, the Lender, any of their Affiliates or their respective successors or assigns, shall be interpreted to create a partnership, joint venture or other such relationship between the Borrower and the Lender.

#### **21. MISCELLANEOUS.**

21.1. **Notices.** Any notice given pursuant to this Indenture shall be in writing and shall be mailed by certified mail, return receipt requested, or sent by Federal Express or other nationwide overnight courier service capable of providing delivery confirmation, or delivered by hand. Each such notice shall be deemed duly given when so mailed, sent or hand-delivered. Notices shall be addressed to the Borrower and to the Lender at their respective addresses set forth at the beginning of this Indenture, or to any other address which either of them may designate in a notice to the other that meets the requirements of this Section 21.1.

21.2. **Final Agreement.** This Indenture, together with the other Loan Documents, represents



the final agreement and understanding between the Borrower and the Lender, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements or understandings between the Borrower and the Lender. The Borrower understands and agrees that oral agreements and oral commitments to loan money, extend or renew credit, or to waive or forbear from enforcing repayment of a debt or any particular requirements of the Loan Documents, are not enforceable. The Borrower represents, warrants and acknowledges that there are no oral agreements between the Borrower and the Lender.

21.3. **Amendments.** This Indenture cannot be amended or modified except in writing, signed by the Borrower and Lender.

21.4. **Binding Effect.** This Indenture shall be binding upon the Borrower and its successors in interest and assigns, and shall inure to the benefit of the Lender and the Lender's successors in interest and assigns. Nothing contained in this Section 21.4 shall be deemed to permit the Borrower to engage in or undergo any Change in Ownership or Change in Control which is otherwise proscribed by the Loan Agreements.

21.5. **Interpretation; Construction.**

21.5.1. The terms of this Indenture have been fully reviewed and negotiated by the Borrower and the Lender in consultation with counsel, and the wording of this Indenture reflects their mutual discussions. No provision of this Indenture shall be construed against a particular party or in favor of another party merely because of which party (or its representative) drafted or supplied the wording for such provision.

21.5.2. Except as may be otherwise noted in context, all references to "Sections" shall be deemed to refer to the sections or subsections, as appropriate, of this Indenture. References to "Schedules" mean the Schedules attached to and made a part of this Indenture.

21.5.3. Where the context requires: (i) use of the singular or plural incorporates the other, and (ii) pronouns and modifiers in the masculine, feminine or neuter gender shall be deemed to refer to or include the other genders.

21.5.4. As used in this Indenture, the terms "include[s]" and "including" mean "including but not limited to"; that is, in each case the example or enumeration which follows the use of either term is illustrative, but not exclusive or exhaustive.

21.5.5. Section headings appearing in this Indenture are inserted solely as reference aids for the ease and convenience of the reader; they shall not be deemed to modify, limit or define the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

21.6. **Further Assurances.** The Borrower shall, promptly and at the Borrower's sole cost and expense, execute, acknowledge and deliver such other documents and instruments, and take such further actions, as the Lender may from time to time request in order to evidence, confirm or perfect this Indenture or any of the interests granted to the Lender under this Indenture, or to confirm the outstanding balance of any



Note, or to file, register or record this Indenture or any other security instrument or financing statement, or to otherwise carry out the purpose and intent of this Indenture and the other Loan Documents. The Borrower shall pay all recording and filing fees and any mortgage taxes or other charges incident to the filing or recording of this Indenture or the granting or continuing perfection of the lien and security interest created by this Indenture.

21.7. **Survival**. All representations, warranties, agreements and covenants contained in this Indenture shall survive the execution and delivery of this Indenture, and all of the waivers made and indemnification obligations undertaken by the Borrower shall survive the termination, discharge or cancellation for any reason of this Indenture.

21.8. **Severability**. If any provision of this Indenture is for any reason held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the provision shall only be enforced to the extent, if any, reasonable under the facts and circumstances, and otherwise shall be deemed deleted from this Indenture. The remaining provisions of this Indenture shall not be affected, and shall continue in full force and effect.

21.9. **Time of the Essence**. Time is of the essence with respect to the payment and performance by the Borrower of the Borrower's obligations under this Indenture.

21.10. **Governing Law**. The respective rights, remedies and obligations of the Lender and the Borrower under this Indenture shall be governed by and interpreted according to the laws of the jurisdiction where the Real Estate is located, but without giving effect to any choice of law provisions which might otherwise make the laws of a different jurisdiction govern or apply.

21.11. **Receipt of Copy Acknowledged**. By signing below, the Borrower acknowledges having received a true copy of this Indenture, without charge.

\* \* \*

**RESTRUCTURE PARTNERS, LLC**, a Florida limited liability company (Seal)

By: **RESTRUCTURE PETROLEUM MARKETING SERVICES, INC.**, a Delaware corporation, Manager

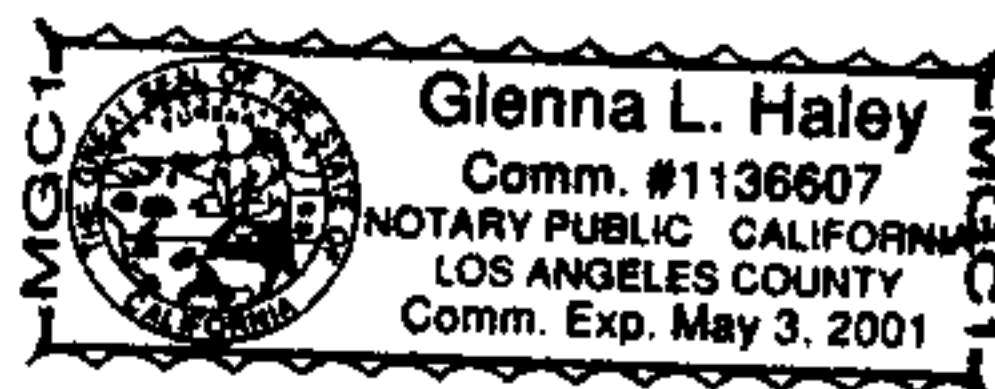
By:   
Bradford C. Vassey, General Counsel

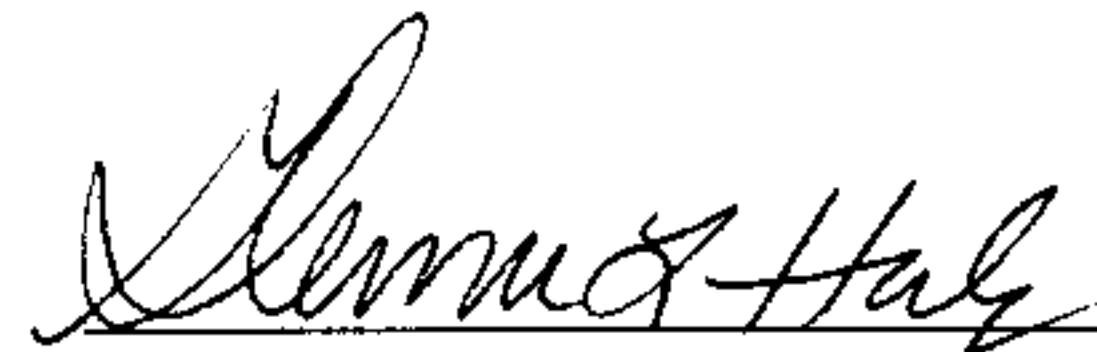
STATE OF CALIFORNIA                    )  
  )  
COUNTY OF LOS ANGELES            )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Bradford C. Vassey, whose name as General Counsel of Restructure Petroleum Marketing Services, Inc., a Delaware corporation, as manager of Restructure Partners, LLC, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he (she), as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as manager of said limited liability company as aforesaid.

Given under my hand an official seal this 27th day of July, 1999.

AFFIX SEAL



  
Notary Public

My commission expires: MAY 3, 2001



**RESTRUCTURE PARTNERS, LLC**  
**A FLORIDA LIMITED LIABILITY COMPANY**  
**MEMBER CONSENT IN LIEU OF MEETING**

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Resolve that Restructure Partners, LLC, through the action of its sole member in lieu of a formal member's meeting, hereby agrees to assume all obligations, duties, and liabilities of Restructure, Inc. arising out of the Purchase and Sale Agreement with Murphy Oil USA in so far as it relates to the fifty-three (53) of the gas station and convenience store properties identified in the attached list (A).

Further resolve that Restructure Partners, LLC, is authorized to finance the purchase of the fifty-three (53) properties through Franchise Mortgage Acceptance Corporation ("FMAC") in the amount of THIRTY MILLION AND NO/100 DOLLARS (\$30,000,000.00).

Further resolve that Restructure Partners, LLC, specifically authorizes Bradford C. Vassey, General Counsel, to execute all loan documents required by FMAC under such terms and conditions that he, in his best judgement, deems to be in the best interest of the company.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of this corporation this the 27 day of July, 1999.

Restructure Petroleum Marketing Services, Inc.

By its President:

  
Jack J. Ceccarelli

## **EXHIBIT "A"**

Commence at the Southeast corner of the Southwest one-quarter of the Northeast One-Quarter of Section 2, Township 21 South, Range 3 West; run thence in an Easterly direction along the South line of said quarter-quarter section for a distance of 925.85 feet to a point of the Southwesterly right-of-way line of L & N Railroad; thence turn an angle to the left to the tangent of the following described curve, said curve being a curve to the left having a central angel of 14 deg. 17 min. 6 sec. and a radius of 1382.40 feet; thence run along the arc of said curve to the left along the Southwesterly right-of-way line of the L & N Railroad for a distance of 344.56 feet to the end of said curve; thence run along the tangent if extended to said curve in a Northwesterly direction along the Southwesterly right-of-way line of L & N Railroad for a distance of 735.23 feet to the point of beginning of a curve to the right. Said curve having a central angle of 2 deg. 9 min. 14 sec. and a radius 1959.86 feet; thence run along the arc of said curve to the right in a Northwesterly direction along the Southwesterly right-of-way line of L & N Railroad for a distance of 73.67 feet; thence turn an angle to the left from the tangent of last described course of 105 deg. 14 min. 26 sec. and run in a Southwesterly direction for a distance of 78.0 feet to the point of beginning, from the point of beginning thus obtained; thence continue along last described course for a distance of 135.27 feet to a point on the center line of Allen Branch outfall sewer; thence turn an angle to the right 89 deg. 48 min. 54 sec. and run in a Northwesterly direction along the center line of the Allen Branch outfall sewer line for a distance of 205 feet; thence turn an angle to the left of 6 deg. 47 min. 04 sec. and run in a Northwesterly direction for a distance of 5.33 feet; thence turn an angle to the right of 73 deg. 04 min. 36 sec. to the tangent of the following described course, said course being situated on a curve to the left having a central angle of 5 deg. 33 min. 44 sec. and a radius of 1075.46 feet; thence run along the arc of said curve to the left in a Northeasterly direction for a distance of 104.40 feet to the end of said curve; thence run along the tangent if extended to said curve in a Northeasterly direction for a distance of 70 feet; thence turn an angle to the right of 122 deg. 54 min. 57 sec. and run in a Southeasterly direction for a distance of 292.09 feet to the point of beginning. Said property being situated in Shelby County, Alabama.

## **EXHIBIT "B"**

1. General and special taxes or assessments for 1999 and subsequent years not yet due and payable.
2. Right of Way granted to Alabama Power Company by instrument(s) recorded in Deed Book 194, page 61 and Deed Book 203, page 256.
3. Less and except any part of subject property lying within the right of way of a public road.

**Inst # 2000-30197**

**09/01/2000-30197  
12:42 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
026 MMS 72.00**