

MORTGAGE AND SECURITY AGREEMENT

Cover Sheet

100

Date: January 2, 1985

Borrower: ASHY-POWELL PELHAM, a Louisiana limited partnership

Borrower's Federal Income Tax Employer's Identification No. or Social Security
No.: [REDACTED]

Borrower's Notice Address: Post Office Box 1009
Eunice, Louisiana 70535

Lender: **NEW ENGLAND GENERAL LIFE INSURANCE COMPANY, a Massachusetts corporation, together
with other holders from time to time of the Note (as herein defined)**

Lender's Notice Address: **501 Boylston Street
Boston, Massachusetts 02117
Attention: Mortgage Department**

Note Amount: \$ 2,000,000

Maturity Date: January 1, 1990

State: Alabama

Record Owner of the Land (as defined herein): ASHY-POWELL PELHAM
(name)

Exhibits A and B hereto are incorporated
herein by reference.

This document prepared by:

Guy V. Martin, Jr.
North Haskell Slaughter Young
& Lewis, P.A.
800 First National-Southern
National Building
Birmingham, Alabama 35203

(Handwritten signature)

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MORTGAGE AND SECURITY AGREEMENT

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1. **DEFINITION OF TERMS.** As used herein, the terms defined in the cover sheet hereof shall have the meanings given on such sheet, and the following terms shall have the following meanings:

- 1.1 **Application:** as defined in Paragraph 3.7.
- 1.2 **Borrower's Notice Address:** as defined on cover hereof.
- 1.3 **Casualty:** as defined in Paragraph 5.1.
- 1.4 **Contested Sum:** as defined in clause (e) of Paragraph 4.1.
- 1.5 **Events of Default:** as defined in Paragraph 8.1.
- 1.6 **Improvements:** all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures and other articles of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the operation and maintenance of the Realty or Personality.
- 1.7 **In its sole unfettered discretion:** as defined in Paragraph 10.8.
- 1.8 **Indenture:** this Mortgage and Security Agreement.
- 1.9 **Insurance Premiums:** as defined in Paragraph 4.3.
- 1.10 **Insurance Proceeds:** as defined in clause (a) of Paragraph 5.3.
- 1.11 **Laws:** as defined in clause (c) of Paragraph 4.2.
- 1.12 **Land:** the land described in Exhibit "A" attached hereto, together with all estate, title, interests, title reversion rights, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of Borrower therein or thereto, either in law or in equity, in possession or in expectancy and all estate, right, title and interest of Borrower in and to all streets, roads and public places, opened or proposed, now or thereafter appertaining to, the Land.
- 1.13 **Leases:** all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof, and all rents, royalties, issues, profits, revenues, income and other benefits of the Property arising from the use or enjoyment thereof or from the Leases, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due.
- 1.14 **Lease Assignment:** a certain Assignment of Leases and Rents of even date herewith and all modifications or amendments thereto or extensions thereof.
- 1.15 **Loan Documents:** this Indenture, the Note, the Lease Assignment and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower to Lender.
- 1.16 **Note:** a certain Promissory Note of even date herewith made by Borrower in favor of Lender in the Note Amount and all modifications, renewals and extensions thereof, which Note is payable in monthly installments until the Maturity Date (as defined in the Note).

- 1.17 *Parties in Interest*: as defined in clause (d) of Paragraph 8.1.
- 1.18 *Permitted Encumbrances*: matters set forth or referred to in the Lender's title insurance policy issued in connection with the execution and recording of this Indenture.
- 1.19 *Personalty*: all of Borrower's interest in personal property of any kind or nature whatsoever, whether tangible or intangible, which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the Realty or Personalty, including, without limitation, all accounts, documents, instruments, chattel paper, equipment, general intangibles, inventory (as those terms are defined in the Uniform Commercial Code of the State), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees, Insurance Premiums or deposits paid to any governmental authority, letters of credit, policies and Insurance Proceeds, together with all present and future attachments, accretions, accessions, replacements and additions thereto and products and proceeds thereof.
- 1.20 *Property*: the Realty and Personalty or any portion thereof or interest therein except as the context otherwise requires.
- 1.21 *Property Liabilities*: as defined in clause (d) of Paragraph 4.1.
- 1.22 *Property Taxes and Charges*: as defined in clause (b) of Paragraph 4.1.
- 1.23 *Realty*: the Land and Improvements or any portion thereof or interest therein, as the context requires.
- 1.24 *Secured Debt*: to the extent not prohibited by Law, all principal, interest, late charges and other sums, charges, premiums or amounts due or to become due under the Loan Documents, together with any other sums expended or advanced by Lender under the Loan Documents or otherwise with respect to the care, maintenance or preservation of the Property or the enforcement of the Loan Documents.
- 1.25 *Taking*: as defined in Paragraph 5.1.
- 1.26 *Taking Proceeds*: as defined in clause (a) of Paragraph 5.3.

2. **GRANTING CLAUSES.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, bargains, sells and conveys to Lender, with all **POWERS OF SALE AND STATUTORY RIGHTS** in the State, all of Borrower's estate, right, title and interest in, to and under, and grants to Lender a first and prior security interest in, the Property and any and all of the following, whether now owned or held or hereafter acquired or owned by Borrower:

- (a) All Leases;
- (b) All profits and sales proceeds, including, without limitation, earnest money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property;
- (c) All proceeds (including claims thereto or demands therefor) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims; and
- (d) All Insurance Proceeds and all Taking Proceeds.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO LENDER, in such order of priority as Lender may elect:

- (1) Payment of the Secured Debt;
- (2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the Loan Documents, even if the sum of the amounts outstanding at any time exceeds the Note Amount; and
- (3) Due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

This Indenture is also intended to be a Security Agreement under the Uniform Commercial Code as in force from time to time in the State. Time is of the essence.

3. **REPRESENTATIONS AND WARRANTIES.** It is a condition of this Indenture that the warranties and representations below in this Paragraph 3 be true, correct and complete upon the execution and delivery of the Loan Documents, and Borrower hereby represents and warrants to Lender as follows:

- 3.1 **Due Organization, Authority.** Borrower is duly organized and validly existing and in good standing under the laws of the State and has power adequate to carry on its business as presently conducted, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.
- 3.2 **Execution, Delivery and Effect of Loan Documents.** The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless whether enforcement is sought in a proceeding in equity or at law).
- 3.3 **Other Obligations.** Borrower is not in violation of any term or provision of any document governing its organization or existence or in default under any instruments or obligations relating to Borrower's business, Borrower's assets or the Property. No party has asserted any claim or default relating to any of Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any Law to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. Borrower has filed all federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Borrower. Borrower does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.
- 3.4 **Construction and Completion of Improvements.** The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with Laws and the plans and specifications previously delivered to, and approved in writing by, Lender. The Improvements are served by electric, gas, sewer, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, other off-site improvements, access to the Property necessary for its present and contemplated uses and operation and service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

- 3.5 **Legal Actions.** There are no (i) actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's knowledge and belief, threatened, against or affecting Borrower, its business or the Property, or (ii) investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the best knowledge and belief of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect (a) the validity or enforceability of the Loan Documents, or (b) the condition (financial or otherwise) or ability of Borrower to meet Borrower's obligations under the Loan Documents.
- 3.6 **Financial Statements.** If delivered to Lender in connection with the Application, all statements, financial or otherwise, submitted to Lender in connection with the transaction evidenced by the Loan Documents are true, correct and complete in all material respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of the parties or entities covered by such statement as of the date thereof. No additional borrowings have been made by such parties or entities or any of them, since the date thereof, nor has Borrower, or any such party or entity experienced a material, adverse change in its finances, business, operations, affairs or prospects since the date thereof. Borrower and each such party or entity is now solvent.
- 3.7 **Solvency of Tenants.** To the best of Borrower's knowledge and belief, no Major Tenant (as defined in the Mortgage Loan Application to Lender (the "Application")) for the loan secured hereby) has suffered or incurred any material, adverse change in its finances, business, operations, affairs or prospects since the date of the Application.
- 3.8 **Adverse Change To Property.** No event or series of events has or have intervened or occurred since the date of Borrower's submission of the Application which would, either individually or collectively materially, adversely affect the Property.
- 3.9 **Title to Property.** Borrower has good and clear record and marketable title to the Realty and good and merchantable title to the Personality, free of all liens, encumbrances or restrictions other than the Permitted Encumbrances.
- 3.10 **Compliance With Laws and Private Covenants.** The Property complies in all material respects with all Laws. The Land is a separate and distinct parcel for tax purposes and is not subject to Property Taxes and Charges against any other land. Borrower has examined and is familiar with the Permitted Encumbrances and there now exists no violation thereof. Borrower has no notice that any of the Improvements encroaches upon any easement over the Land or upon adjacent property.
- 3.11 **Independence of the Property.** Borrower has not by act or omission permitted any building or other improvements on property not covered by this Indenture to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvement; and no Improvement on the Property shall rely on any property not covered by this Indenture or any interest therein to fulfill any governmental or municipal requirement. Borrower has not by act or omission impaired the integrity of the Property as a single, separate, subdivided zoning lot separate and apart from all other property.

4. BORROWER'S COVENANTS.

4.1 Payments.

- (a) **Secured Debt.** Borrower shall pay promptly to Lender, when due, the Secured Debt at the times and in the manner provided in the Loan Documents.
- (b) **Property Taxes and Charges.** Except as provided in Paragraph 4.1(e), Borrower shall pay, prior to delinquency, all real estate taxes and personal property taxes, betterments, assessments (general and special), imports, levies, water, utility and sewer charges, and any and all income, franchise, withholding, profits and gross receipts taxes, other taxes and charges, all other public charges whether of a like or different nature, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits of use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed ("Property Taxes and Charges"). Borrower shall furnish Lender with receipts showing payment of the Property Taxes and Charges prior to the applicable delinquency date thereof.

As used in this Paragraph 4.1(b), the term "real estate taxes" shall include any form of assessment, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property.

If requested by Lender, Borrower shall cause to be furnished to Lender a tax reporting service covering the Property of the type and duration, and with a company, satisfactory to Lender.

- (c) **Taxes on Lender.** If any Law of the State or the United States or any other governmental authority imposes upon Lender the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way the Laws relating to taxation so as to adversely affect the Loan Documents, then Borrower shall pay Property Taxes and Charges or reimburse Lender immediately therefor, unless in the opinion of counsel to either Lender, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Law. In such case, an Event of Default shall exist.
- (d) **Liabilities.** Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration and management of the Property ("Property Liabilities"), including, without limitation, utility charges, sums due mechanics and materialmen and other sums secured or which might be secured by liens on the Property.
- (e) **Right to Contest.** Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges or Property Liabilities ("Contested Sum"), after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the Contested Sum, Borrower deposits with Lender cash or other security, in form satisfactory to Lender in its sole unfettered discretion, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

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- (f) **Expenses.** Borrower shall, to the extent allowed by Law, pay, on demand but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction, all fees (including, without limitation, reasonable attorneys' fees and disbursements), taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with (i) the making or enforcement of the Loan Documents; (ii) Lender's exercise and enforcement of its rights and remedies under Paragraph 7 hereof; and (iii) Lender's protection of the Property and its interest therein.

Borrower shall not be entitled to any credit on the Secured Debt by reason of the payment of any sums required to be paid under subparagraph 4.1(b) through (f).

4.2 Operation of the Property.

- (a) **Maintenance; Alterations.** Borrower shall maintain and preserve the Property in good repair and condition and shall correct any defects or faults in the Property. Borrower shall pursue diligently any remedies or recourse which Borrower may have under agreements, warranties and guarantees relating to the Property. Borrower shall not commit, permit or suffer any demolition or waste of the Property or any use or occupancy which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of any part of the Property may be decreased. Borrower shall not make any material alterations, improvements, additions, utility installations or the like to the Property without the prior written consent of Lender in each instance; *provided, however*, Borrower may make replacements or substitution of any items of the Personalty if the replacement or substitution is of a quality, utility, value, condition and character similar or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Indenture.
- (b) **Liens.** Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar lien, charge, attachment, or *lis pendens* filed or recorded which relates to Borrower or the Property.
- (c) **Compliance with Laws and Private Covenants.** Borrower shall truly keep, observe and satisfy all, and not suffer violations of any, Federal, regional, state and local laws, ordinances, rules, regulations statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority court or arbitrator (herein collectively "Laws") and private covenants (whether or not listed as Permitted Encumbrances) materially affecting the Property.
- (d) **Use.** Borrower shall not permit the use or occupancy of the Property other than pursuant to Leases which shall have been approved in advance and in writing by Lender pursuant to the Lease Assignment.
- (e) **Inspection.** Borrower shall permit Lender to enter upon and inspect the Property at reasonable times without delay, hindrance or restriction.

- 4.3 **Insurance.** Borrower shall obtain and keep in force, with one or more insurers acceptable to Lender, such insurance as Lender may from time to time specify by notice to Borrower, including, without limitation, insurance providing (i) comprehensive general public liability and property damage coverage with a broad form coverage endorsement and a combined single limit of at least \$1,000,000, (ii) protection against fire, "extended coverage" and other "All Risk" perils, including earthquake and, where required, flood to the full replacement value of the Property with a waiver of subrogation endorsement, and (iii) rent loss insurance in an amount of not less than a sum equal to 12-months' rental income from all Leases. All property insurance policies shall include the standard mortgagee clause in the State naming Lender as the first mortgagee with loss payable to Lender as such mortgagee and all other policies shall name Lender as an additional named insured. All insurance policies shall not be cancellable or modifiable without 30 days' prior written notice to Lender and shall not have more than a \$10,000 deductible for any single Casualty. Borrower shall provide Lender with evidence of compliance with this Paragraph 4.3, in such forms as required from time to time by Lender, upon notice from Lender or at least 15 days prior to the expiration date of any policy required hereunder, each bearing notations evidencing the prior payment of premiums ("Insurance Premiums") or accompanied by other evidence satisfactory to Lender that such payment shall be delivered by Borrower to Lender.

Borrower, to the full extent permitted by Law and to the full extent permitted without invalidating the insurance policies required above, shall obtain endorsements by all insurers waiving any right of subrogation against tenants under any Leases and shall require the same of such tenants.

Lender shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses.

Borrower shall keep, observe and satisfy, and not suffer violations of, the requirements of insurance companies and any bureau or agency which establishes standards of insurability affecting the Property, and pertaining to acts committed or conditions existing thereon.

Upon foreclosure of this Indenture or other transfer of title or assignment of the Property in discharge, in whole or part, of the Secured Debt, all right, title and interest of Borrower in and to all policies of insurance required by this Paragraph 4.3 shall inure to the benefit of and pass to Lender.

- 4.4 **Escrow.** At any time and from time to time, upon request of Lender, or such other person as Lender may from time to time designate by written notice to Borrower, Borrower shall pay to Lender monthly, on each date on which a payment is due under the Note, 1/12 of such amount as Lender from time to time estimates will be required to pay all Property Taxes and Charges before becoming past due and Insurance Premiums. Lender's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the year preceding that for which such payments are being made. Any deficiencies shall be promptly paid by Borrower to Lender on demand. Borrower shall transmit bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Lender has received from Borrower or on its account funds sufficient to pay the same, Lender shall, except as provided in Paragraph 8.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Payments from said account for such purposes may be made by Lender at its discretion even though subsequent owners of the Property may benefit thereby. Lender shall not be a trustee of funds in said account and may commingle such funds with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds.

4.5 *Sales and Encumbrances.* Borrower shall not, without the prior written consent of Lender, which consent, if given in Lender's sole unfettered discretion, may be conditional upon a change in the interest rate under the Note, payment of a fee or change in the term of the Note or one or more of the foregoing or other requirements of Lender:

- (i) convey, assign, sell, mortgage, encumber, pledge, dispose of, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly or by operation of law or otherwise, of record or not), all or any part of any legal or beneficial interest in any part or all of the Property or the Leases, or any interest therein, or any or all of the rents, issues, deposits or profits therefrom; or
- (ii) sell, assign or otherwise dispose of (whether or not of record or for consideration or not), or permit the sale, assignment or other disposition of, any legal or beneficial interest in the stock of Borrower, if a corporation, or in any general or limited partnership interest in Borrower, if a general or limited partnership or joint venture.

Any breach of the foregoing by a holder of any interest (legal or beneficial) or stock in Borrower shall constitute an Event of Default under Section 8.1(a).

4.6 *Financial Records and Statements.* Borrower shall keep accurate books and records in accordance with generally accepted accounting principles consistently applied, in which full, true and correct entries shall be promptly made as to all operations of the Property and shall permit all such books and records to be inspected and copied by Lender, its designee or its representatives during customary business hours. Borrower shall deliver or cause to be delivered to Lender within 90 days after the close of its financial year a statement of condition or balance sheet of Borrower relating solely to the Property as at the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Borrower with respect to the Property, both certified as to accuracy by either an independent certified public accountant acceptable to Lender (if requested by Lender) or the senior financial officer or partner of Borrower; and a current list of all persons then occupying portions of the Property under their Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to their accuracy by a representative of Borrower acceptable to Lender, and in form and substance satisfactory to Lender.

4.7 *Further Assurances.* Borrower shall promptly upon request of Lender (a) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgment thereof; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and specific assignments of rents or leases) and do such further acts, in either case as may be necessary, desirable or proper in Lender's opinion to (i) protect and preserve the first and valid lien and security interest of this Indenture on the Property or to subject thereto any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions or replacements thereto or (ii) protect the interest and security interest of Lender in the Property against the rights or interests of third parties.

Borrower hereby appoints Lender as its attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense, if Borrower fails to comply fully with Borrower's obligations under this Paragraph 4.7.

- 4.8 *Indemnity.* Borrower shall indemnify, defend and hold harmless Lender from and against, and reimburse Lender for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by either Lender by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever, or asserted against Lender on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents, except as a result of the willful misconduct or gross negligence of Lender.
- 4.9 *Notices.* Borrower shall deliver to Lender at Lender's Notice Address promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases.
- 4.10 *Estoppel Certificates.* Borrower shall promptly furnish to Lender from time to time, on the request of Lender, written statements signed and, if so requested, acknowledged, setting forth the then unpaid principal, premium and interest on the Note and specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Lender.
- 4.11 *Legal Existence.* Borrower shall continuously maintain its existence as a legal entity and its right to own the Property and to do business in the State.
- 4.12 *Defense and Notice of Actions.* Borrower shall, without liability, cost or expense to Lender, protect, preserve and defend title to the Property, the security hereof and the rights or powers of Lender, against all adverse claimants to title or any possessory or non-possessory interests therein, whether or not such claimants or encumbrances assert title paramount to that of Borrower or Lender or claim their interest on the basis of events or conditions arising subsequent to the date hereof.
- 4.13 *Lost Note.* Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Lender, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest.
- 4.14 *Personalty.* Borrower shall use the Personalty primarily for business purposes and keep it at the Land. Borrower represents that the Land is Borrower's only place of business in the State or, if not, that it shall maintain its principal place of business in the State. Borrower shall immediately notify Lender in writing of any change in its place of business and, as of the execution hereof and hereafter from time to time when requested by Lender, upon any acquisition of items of property constituting Personalty, Borrower shall provide Lender with a current, accurate inventory of the Personalty.

5. CASUALTIES AND TAKINGS.

5.1 *Notice to Lender.* In the case of any act or occurrence of any kind or nature which results in damage, loss or destruction to the Property (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the Property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Borrower shall immediately notify Lender describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Lender copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations.

5.2 *Repair and Replacement.* In case of a Casualty or Taking, Borrower shall promptly (at Borrower's sole cost and expense and regardless of whether the insurance or other proceeds, if any, shall be sufficient or made available by Lender for the purpose) restore, repair, replace and rebuild the Property as nearly as possible to its quality, utility, value, condition and character immediately prior to the Casualty or the Taking, as the case may be. However, upon a Casualty or Taking resulting in a restoration cost that exceeds 25% of the then replacement value of the Improvements or a Taking of more than 25% of the area of the Land, and application by Lender of the Insurance Proceeds or of the Taking Proceeds to reduction of the Secured Debt in accordance with this Indenture, Borrower shall be obligated only to remove any debris from the Property and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional economic unit, insofar as is possible under the circumstances.

5.3 *Proceeds.*

(a) *Collection.* Borrower shall use its best efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award or payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Lender may, at its sole option, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Lender's prior written consent.

(b) *Assignment to Lender.* Borrower hereby assigns, sets over and transfers to Lender all Insurance Proceeds and Taking Proceeds and authorizes payment of such Proceeds to be made directly to Lender. Lender may, in its sole unfettered discretion, apply such Proceeds to either of the following, or any combination thereof:

(i) payment of the Secured Debt, either in whole or in part, in any order determined by Lender in its sole unfettered discretion; or

(ii) repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Lender may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its sole unfettered discretion, deems advisable. Lender shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

If any portion of the Secured Debt shall thereafter be unpaid, Borrower shall not be excused from the payment thereof in accordance with the terms of the Loan Documents. Lender shall not, in any event or circumstances, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds.

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6.

7. **LEGAL PROCEEDINGS.** Whether or not an Event of Default (as defined in Paragraph 8.1) has occurred and exists, Lender shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings (including, without limitation, any eminent domain proceedings) which, in Lender's sole unfettered discretion, affect the Property, the Leases or any of the rights created by the Loan Documents, but only after notice to Borrower and if permitted by Law.

8. **DEFAULTS; REMEDIES OF LENDER.**

8.1 **Defaults; Events of Default.** Any of the following shall constitute an "Event of Default" hereunder:

- (a) **Breach of Named Covenant.** Any breach by Borrower of the covenants in the Indenture in Paragraph 4.1(a) (Secured Debt), 4.3 (Insurance), 4.5 (Sales and Encumbrances) or 4.8 (Indemnity), which breach shall immediately thereupon, without notice or opportunity to cure, constitute an Event of Default hereunder; or
- (b) **Misrepresentations.** Any material representation or warranty made by Borrower in the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled; or
- (c) **Breach of Other Covenants.** Any breach by Borrower of any other covenant in the Loan Documents or failure to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents, which breach or failure continues for 30 days after written notice thereof by Lender to Borrower; or
- (d) **Bankruptcy.** Immediately upon the occurrence of any of the following without the doing of any act or the giving of any notice by Lender, (i) any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on the Secured Debt (including, without limitation, any guarantor) or, if Borrower is a partnership, any general partner or joint venturer (collectively the "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or assignment for the benefit of, creditors or admits in writing its inability, or is unable, to pay debts as they become due; or (ii) a receiver or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and not discharged within 60 days after such appointment, or a Party in Interest consents or acquiesces in such appointment; or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, is adjudged a debtor under the Bankruptcy Code or insolvent; or (iv) a petition or answer proposing the adjudication of a Party in Interest as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law is filed in any court and such petition or answer is not discharged or denied within 60 days after the filing thereof; or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest; or

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- (e) *Adverse Court Action.* A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a substantial part of, the Property, or the Property is taken on execution or by other process of law.

8.2 Remedies. In case of an Event of Default, Lender may, at any time thereafter, at its option and without notice, exercise any or all of the following remedies:

- (a) *Acceleration.* Declare the entire Secured Debt due and payable, and it shall thereupon be immediately due and payable; and
- (b) *Foreclosure.* Foreclose this Indenture by instituting a foreclosure suit in any court having jurisdiction. Borrower hereby waives all right to appraisal allowed under any Laws, which appraisal may be obtained at the option of Lender; and
- (c) *Offset Rights.* Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Lender to Borrower, including, without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.4; and
- (d) *Cure of Default.* Without releasing Borrower from any obligation hereunder or under the Loan Documents, cure any Event of Default. In connection therewith, Lender may enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the Property or the Leases, including, without limitation: (i) paying, purchasing, contesting or compromising any encumbrance, charge, lien, claim of lien, Property Taxes and Charges or Property Liabilities; (ii) paying any Insurance Premiums and (iii) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing; and
- (e) *Possession of Property.* Take physical possession of the Property and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense, to rent and lease the same and to hire a professional property manager for the Property. If necessary to obtain possession as provided for above, Lender may, without exposure to liability from Borrower or other persons, invoke any and all legal remedies to dispossess Borrower, including, without limitation, one or more actions for forcible entry and detainer, trespass and restitution. In connection with any action taken by Lender pursuant to this subparagraph (e), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property or from any other act or omission of Lender in managing the Property unless caused by the willful misconduct or bad faith of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease or by reason of any Loan Document. Borrower hereby agrees to indemnify, hold harmless and defend Lender from and against any liability, loss or damage incurred by Lender under any Lease or under the Loan Documents as a result of Lender's exercise of rights or remedies under any of the Loan Documents. Should Lender incur any such liability, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand. Lender shall have full power to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Lender; and
- (f) *Remedies under State Law.* Take such actions as are set forth, described or referred to in Exhibit "B" of the Indenture and permitted by Law;

- (g) *Receiver.* Secure the appointment of a receiver or receivers, as a matter of right for the Property whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Lender. The appointment of such receiver, trustee or other appointee by virtue of any court order, or Laws shall not impair or in any manner prejudice the rights of Lender to receive payment of the rents and income pursuant to the Lease Assignment;
- (h) *Uniform Commercial Code Remedies.* Exercise any and all rights of a secured party with respect to the Personality under the Uniform Commercial Code of the State and in conjunction with, in addition to or in substitution for those rights and remedies:
 - (i) take possession of, assemble and collect the Personality or render it unusable by Borrower; and
 - (ii) require Borrower to assemble the Personality and make it available at any place Lender may designate so as to allow Lender to take possession or dispose of the Personality.

Written notice mailed to Borrower, as provided herein, 15 days prior to the date of public sale of the Personality or prior to the date, after which private sale of the Personality will be made, shall constitute reasonable notice. Any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with the sale of Property as provided in Paragraph 8.2(i) of this Indenture. In the event of a foreclosure sale, whether made by Lender under the terms hereof, or under judgment of a court, the Personality and the other parts of the Property may, at the option of Lender, be sold in parts or as a whole. It shall not be necessary that Lender take possession of the Personality prior to the time that any sale pursuant to the provisions of this subparagraph is conducted and it shall not be necessary that the Personality be present at the location of such sale; and

A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INDENTURE OR ANY FINANCING STATEMENT RELATING TO THIS INDENTURE SHALL BE SUFFICIENT AS A FINANCING STATEMENT. THIS INDENTURE IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE LOCATION IN THE STATE WHERE THE PROPERTY IS SITUATED. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED ARE SET FORTH ON THE COVER SHEET HEREOF; and

- (i) *Judicial Actions.* Commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Indenture pursuant to the Laws of the State or to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy; and
- (j) *Subrogation.* Have and exercise all rights and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without limitation, any rights or remedies under any mechanic's or vendor's lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record; and
- (k) *Sale.* Sell the Property in accordance with Laws; and

- (i) *Other.* Take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under Laws.

Any sums advanced by Lender under this Paragraph 8.2 shall bear interest at the interest rate specified in the Note plus 2%, shall be payable by Borrower on demand and together with such interest, shall constitute a part of the Secured Debt.

All sums realized by Lender under this Paragraph 8.2, less all costs and expenses incurred by Lender under this Paragraph 8.2, including, without limitation, reasonable attorneys' fees and disbursements, property management fees, costs of alterations, renovations, repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Property, and such sums as Lender deems appropriate as a reserve to meet future expenses of the Property, shall be applied to the Secured Debt in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

- 8.3 *Holding Over.* Should Borrower, after an Event of Default, continue in possession of the Property, either lawfully or unlawfully, Borrower shall be a tenant from day to day, terminable at the will of either Borrower or Lender, at a reasonable rental per diem, based upon the value of the Property occupied computed by Lender in its sole unfettered discretion, such rental to be due and payable daily to Lender.

- 8.4 *General Provisions.*

- (a) *Multiple Sales.* Several sales may be made pursuant to Paragraph 8.2 without exhausting Lender's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 8.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made.
- (b) *Cumulative Remedies.* All of the rights, remedies and options set forth in Paragraph 8.2 or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of or exclusion of, any other right, remedy, option or security held by Lender.
- (c) *Right to Purchase.* At any sales of the Property pursuant to Paragraph 8.2, Lender shall have the right to purchase the Property being sold, and in such cases the right to credit upon the amount of the bid made therefor (to the extent necessary to satisfy such bid) against the amount of the Secured Debt then due.
- (d) *Right to Terminate Proceedings.* Lender may, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 8.2, terminate, without prejudice to Lender, such proceedings or actions.
- (e) *No Waiver or Release.* Lender may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Lender in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Lender and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Lender's interest in the Property or the liability of Borrower to pay the Secured Debt.

(f) *Waivers and Agreements Regarding Remedies.* To the full extent Borrower may do so, Borrower hereby:

- (i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any Laws now or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisalment, stay of execution, extension and notice of election to mature or declare due the whole of the Secured Debt;
 - (ii) waives all rights to a marshalling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of the Loan Documents to a sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Lender to the payment of the Secured Debt out of the proceeds of sale of the Property in preference to every other claimant whatsoever; and
 - (iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which the action is grounded or which is based on Lender's wrongful actions. If any defense, counterclaim or setoff, other than one permitted by the preceding sentence, is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action unless such claim is required by Laws or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Lender, and such separate action shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's action; and
 - (iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and
 - (v) waives the defense of laches and any applicable statutes of limitation.
- (g) *Lender's Discretion.* Lender may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.
- (h) *Sales.* In the event of a sale or other disposition of the Property pursuant to Section 8.2 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

The acknowledgement of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefor as herein provided. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental agreement or Lease made in violation of any provision of the Loan Documents, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement, rental agreement or Lease.

9. POSSESSION AND DEFEASANCE.

- 9.1 *Possession.* Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Property, *subject, however,* to all of the terms and provisions of the Loan Documents.
- 9.2 *Defeasance.* If all of the Secured Debt is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then in that event only, all rights under the Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Lender shall release or cause to be released, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Indenture shall be void.

Recitals of any matters or facts in any instrument executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by Law, such an instrument may describe the grantee as "the person or persons legally entitled thereto". Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Property. When the Property has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

10. GENERAL

- 10.1 *Lender's Right to Waive, Consent or Release.* Lender may at any time and from time to time, in writing: (a) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (b) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (c) release any part of the Property, or any interest therein from this Indenture and the lien of the Loan Documents. No such act shall in any way impair the rights hereunder of Lender, except to the extent specifically agreed to by Lender in such writing.
- 10.2 *No Impairment.* The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including, without limitation, (a) any renewal, extension or modification which Lender may grant with respect to any of the Secured Debt, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant in respect of the Property or any interest therein, or (c) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Secured Debt.
- 10.3 *Amendments.* The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Lender, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Such waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.
- 10.4 *No Usury.* Any provision contained in any of the Loan Documents notwithstanding, Lender shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on any of the Secured Debt in excess of the maximum rate of interest permitted by Laws, and if any provision of the Loan Documents shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 10.4 shall control unless contrary or inconsistent with any provision of the Note, in which case the provision of the Note shall control. Borrower's and Lender's intent is to conform strictly to the usury laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to reduction to conform to said Laws as now or hereafter construed.

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- 10.5 **Notices.** Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail, postage prepaid or telegram sent to the intended addressee at the applicable Notice Address or to such different address as either Borrower or Lender shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or, if earlier, in the case of delivery by certified United States Mail, two days after deposit therein. No notice to or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice of demand in similar or other circumstances.
- 10.6 **Successors and Assigns.** The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Lender and its successors, substitutes and assigns, and shall constitute covenants running with the Land. All references in this Indenture to Borrower or Lender shall be deemed to include all such successors, substitutes and assigns.
- If in contravention of the provisions of this Indenture or otherwise ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to the Borrower, whether or not Lender has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in the same manner as with Borrower, without in any way vitiating or discharging Lender's remedies under or Borrower's liability under the Loan Documents or on the Secured Debt.
- 10.7 **Severability.** A determination that any provision of Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.
- 10.8 **Gender and Construction.** Within this Indenture, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Indenture to "herein", "hereunder" or "hereby" shall refer to this entire Indenture, unless the context otherwise requires. When the phrase "in its sole unfettered discretion" is used in the Loan Documents with respect to Lender, it shall permit Lender to evaluate such criteria (without allowance for reasonableness) as it chooses in approving or disapproving the requested or pending action.
- 10.9 **Joint and Several Liability.** If Borrower is composed of more than one party, the obligations, covenants, agreements, representations and warranties contained within the Loan Documents, as well as the obligations arising thereunder, are and shall be joint and several as to each such party.
- 10.10 **Modifications.** References to any of the Loan Documents in this Indenture shall include all amendments, modifications, extensions and renewals thereof.
- 10.11 **Governing Laws.** This Indenture shall be construed according to and governed by the laws of the State.
- 10.12 **Captions.** All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provision herein.

10.13 *Nonrecourse.* Borrower shall be liable upon the indebtedness evidenced by the Note, all sums to accrue or to become payable thereon and for performance of any covenants contained in the Note or in any of the Loan Documents to the extent, but only to the extent, of Lender's security for the same, including without limitation, all properties, rights, estates and interests covered by this Indenture and the other Loan Documents. No attachment, execution or other writ or process shall be sought, issued or levied upon any assets, properties or funds of Borrower other than the properties, rights, estates and interests described in this Indenture and the other Loan Documents. In the event of foreclosure of such title, liens, mortgages or security interests, by private power of sale or otherwise, no judgment for any deficiency upon such indebtedness, sums and amounts shall be sought or obtained by Lender against Borrower. Nothing herein contained shall be construed to prevent Lender from exercising and enforcing any other remedy allowed at law or in equity or by any statute or by the terms of any of the Loan Documents. Nothing herein contained shall limit or be construed to limit the personal liability and obligations of Borrower for an Event of Default under paragraph 8.1(b) of this Indenture and to the extent that, after an Event of Default or an event or circumstance that with the passage of time, the giving of notice, or both, could constitute an Event of Default, Borrower collects any rents, issues or profits of any of the Property and does not apply the same to the normal operating expenses of the Property or any payments due under the Note or any of the Loan Documents, it being intended hereby that Borrower shall be personally liable and obligated hereunder to the full extent of such rentals and other items so collected and not so applied and that Lender or other holder hereof or of the Note shall not be limited in any way in enforcing such personal liability and obligation of Borrower. Nothing herein contained shall limit or be construed to limit the personal liabilities and obligations of any Guarantor (as defined in the Note) in accordance with the terms of the instruments creating such liabilities and obligations with respect to the Secured Debt.

10.14 *Acknowledgment of Receipt.* Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Indenture.

10.15 *Exhibits.* The following are the Exhibits referred to in this Indenture, which are hereby incorporated by reference herein:

- Exhibit A — Property Description
- Exhibit B — Applicable State Law Provisions

IN WITNESS WHEREOF, Borrower, by its general partners, has hereunto set its hand and seal this 2d day of January, 1985.

ASHY-POWELL PELHAM, a
Louisiana Limited Partnership

By: Mitchell N. Ashy
Mitchell N. Ashy, its
General Partner

By: Thomas E. Powell
Thomas E. Powell, its
General Partner

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Mitchell N. Ashy and Thomas E. Powell, whose names as general partners of ASHY-POWELL PELHAM, a Louisiana limited partnership, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they as such general partners and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal, this 2d day of January, 1985.

Guy M. [Signature]
Notary Public

My Commission Expires: 11-19-86

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EXHIBIT A

A parcel of land located in the Southwest 1/4 of the Northwest 1/4 of Section 13, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southwest corner of said 1/4-1/4 Section, thence in an Easterly direction, along the South line of said 1/4-1/4 Section, a distance of 552.40 feet to a point on the Easterly Right of Way Line of U. S. Highway 31, said point being on a curve to the right, said curve having a radius of 2192.18 feet and a central angle of 0 degrees 15 minutes 44 seconds, thence 86 degrees 01 minute 23 seconds to tangent of said curve, thence along arc of said curve and said Right of way line, in a Northeasterly direction, a distance of 10.03 feet to the Point of Beginning; thence 85 degrees 45 minutes 39 seconds right, measured from tangent of said curve, in an Easterly direction, parallel to the South line of said 1/4-1/4 Section, a distance of 495.84 feet, thence 81 degrees 09 minutes 02 seconds left, in a Northeasterly direction, a distance of 289.88 feet; thence 54 degrees 14 minutes 46 seconds left in a Northwesterly direction, a distance of 102.69 feet, thence 54 degrees 14 minutes 46 seconds right, in a Northeasterly direction, a distance of 313.0 feet, thence 90 degrees left, in a Northwesterly direction, a distance of 115.22 feet, thence 90 degrees right, in a Northeasterly direction, a distance of 174.22 feet to the Southerly Right of Way Line of Court Place, thence 99 degrees 57 minutes 43 seconds left, in a Westerly direction, along said Right of Way Line, a distance of 50.77 feet, thence 80 degrees 02 minutes 17 seconds left, in a Southwesterly direction, a distance of 165.44 feet, thence 90 degrees right, in a Northwesterly direction, a distance of 175.0 feet to a point on the Southeasterly Right of Way Line of said U. S. Highway 31, said point being on a curve to the left, said curve having a radius of 2240.86 feet and a central angle of 02 degrees 00 minutes 05 seconds, thence 75 degrees 09 minutes 49 seconds left, to tangent of said curve, thence along arc of said curve and said Right of Way Line, in a Southwesterly direction, a distance of 78.27 feet to the end of said curve and the beginning of a curve to the left, said curve having a radius of 2192.18 feet and a central angle of 17 degrees 26 minutes 41 seconds, thence along arc of said curve and said Right of Way Line, in a Southwesterly direction, a distance of 667.45 feet to the Point of Beginning.

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J.P.

WMA

EXHIBIT B

Borrower hereby further agrees as follows:

2(A) **Habendum Clause.** The following provision is inserted after Paragraph 2(d):

TO HAVE AND TO HOLD the Property and all parts thereof unto Lender and to its successors and assigns forever, subject, however, to the terms and conditions herein.

4.15 **Covenants.** Borrower further covenants that it is lawfully seized of an indefeasible estate in fee simple in the Property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, except for the Permitted Encumbrances; and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the claims of all persons whomsoever.

8.2 **Remedies.** In addition to the provisions of Paragraph 8, in case of an Event of Default, Lender may, at any time thereafter, at its option and without notice, exercise any or all of the following further remedies:

(m) Sell the Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Lender may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion.

(n) The proceeds of any sale under this Mortgage will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including but not limited to Lender's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, and advances of the Lender, together with interest at the rate provided under the Note, plus 2%, on all advances made by the Lender.

SECOND: Payment of all sums expended by the Lender under the terms of this Mortgage and the other Loan Documents and not yet repaid, including but not limited to management fees, costs of alterations, renovations, repairs or replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Property, together with interest on such sums at the rate provided under the Note, plus 2%.

THIRD: Payment of the Secured Debt and obligations of the Borrower secured by this Mortgage and the other Loan Documents in any order that the Lender chooses.

FOURTH: The remainder, if any, to the person or persons appearing of record to be the owner of the Property.

10.16 Waiver of Exemption/Homestead. Borrower further waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage and the other Loan Documents, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Property be set off against any part of the indebtedness secured hereby. Borrower represents that no part of the Property comprises the homestead of any person nor is used for any residential purposes.

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ASHY-POWELL PELHAM, a
Louisiana Limited Partnership

By: *Mitchell N. Ashy*
Mitchell N. Ashy, its
General Partner

By: *Thomas E. Powell*
Thomas E. Powell, its
General Partner

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1985 JAN -3 PM 2:38

Thomas A. Sullivan, Jr.
JUDGE OF PROBATE

RECORDING FEES

Mortgage Tax	\$ 3,000.00
Deed Tax	
Mineral Tax	
Recording Fee	65.00
Index Fee	1.00
TOTAL	3,066.00

Please return this instrument to
CIVIL SERVICE
NORTH HASKELL SLAUGHTER HOUSE & LEWIS
800 First National-Southern National Bldg.
BIRMINGHAM, ALABAMA 35203

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ASSIGNMENT OF LEASES AND RENTS

Cover Sheet

Date: January 2, 1985

Borrower: ASHY-POWELL PELHAM, a
Louisiana limited partnership

Borrower's Notice Address: Post Office Box 1009
Eunice, Louisiana 70535

Lender: NEW ENGLAND GENERAL LIFE INSURANCE COMPANY,
a Massachusetts corporation, together with
other holders from time to time
of the Note (as herein defined)

Lender's Notice Address: 501 Boylston Street
Boston, Massachusetts 02117
Attention: Mortgage Department

Note: A Promissory Note dated January 2, 1985
from Borrower to Lender in the Note Amount.

Note Amount: \$ 2,000,000

Maturity Date: January 1, 1990

State: Alabama

Exhibits A (Legal description of land), B (List of leases with relevant information) and C (Applicable State Law Provisions)
hereto are incorporated herein by reference.

L-98-84

This instrument was prepared by
GUY V. MARTIN, JR.
800 First National-Southern Natural Bldg.
BIRMINGHAM, ALABAMA 35203