

[EXECUTION COPY]

STATE OF ALABAMA)
SHELBY COUNTY)

**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES**

This MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES (hereinafter, with all amendments hereto called this "Mortgage") dated January 28, 1994 is made and entered into by and between ELI T. STEVENS (the "Borrower"), PATRICIA M. STEVENS and ELI'S, INC., an Alabama corporation (collectively, the "Mortgagors"), and NATIONAL BANK OF COMMERCE OF BIRMINGHAM, a national banking association (the "Lender").

Inst • 1994-03468

Recitals

A. Each of the Borrower, Patricia M. Stevens, the wife of the Borrower, and Eli's, Inc., the lessee under that certain Lease Agreement dated December 18, 1986 executed in favor of Patricia M. Stevens with respect to a portion of the Property (as defined herein), have requested the Lender to make the following three loans available to the Borrower: (i) a revolving line of credit in the maximum principal amount of \$1,000,000, which line of credit shall convert to a term loan on December 1, 1994; (ii) a term loan in the principal amount of \$640,000; and (iii) a term loan in the principal amount of \$410,000 (collectively, the "Loans").

B. The Loans are to be evidenced respectively by the following (collectively, the "Notes"): (i) the Borrower's master note dated of even date herewith in the maximum principal amount of \$1,000,000 (the "Master Note"); (ii) the Borrower's promissory note dated of even date herewith in the principal amount of \$640,000; and (iii) the Borrower's promissory note dated of even date herewith in the principal amount of \$410,000, which Notes bear interest as provided therein and which Notes are each payable in full on February 1, 1999.

C. To secure the Notes and to induce the Lender to extend credit to the Borrower on the strength of the security provided by this Mortgage, each of the Mortgagors have agreed to execute and deliver this Mortgage to the Lender.

D. ~~This is a FUTURE ADVANCE MORTGAGE. The obligations secured by this Mortgage include (among other things) (i) a revolving line of credit to be made by the Lender to the Borrower pursuant to the Master Note, under the terms of which advances may be made, prepaid and reborrowed from time to time, and (ii) all other Liabilities (as hereinafter defined)~~

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SHELBY COUNTY JUDGE OF PROBATE
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Maynard Cooker

of the Borrower to the Lender, due or to become due, and now existing or hereafter incurred, contracted or arising.

Agreement

NOW, THEREFORE, in consideration of the premises, and to induce the Lender to extend credit to the Borrower, each of the Mortgagors hereby agree with the Lender as follows:

I. DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 1.01. Rules of Construction. For the purposes of this Mortgage, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

(b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Mortgage.

(c) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

(d) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Mortgage as a whole and not to any particular Article, Section, other subdivision or Exhibit.

(e) All recitals set forth in, and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage by reference.

(f) All obligations of the Mortgagors hereunder shall be performed and satisfied by or on behalf of the Mortgagors at the Mortgagors' sole cost and expense.

(g) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof.

SECTION 1.02. Definitions. As used in this Mortgage the following terms shall have the respective meanings attributed to them as follows:

CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq.

Default Interest Rate shall mean a rate of interest equal to two percentage points (200 basis points) in excess of the interest rate that would otherwise be payable under the Notes from time to time, or the maximum rate permitted by law, whichever is less.

Environmental Indemnity Agreement shall mean that certain Environmental Indemnity Agreement dated of even date herewith executed by each of the Mortgagors in favor of the Lender.

Environmental Law shall mean and include any Governmental Requirement (including CERCLA) relating to pollution or protection of human health or the environment, including any relating to Hazardous Substances, and any and all regulations, codes, plans, orders, decrees, judgments, injunctions, notices and demand letters issued, entered, promulgated or approved thereunder.

Existing Tenant Leases shall have the meaning attributed to that term in Section 2.02.

Governmental Authority shall mean any national, federal, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

Governmental Requirements shall mean all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority.

Hazardous Substances shall mean and include all pollutants, contaminants, toxic or hazardous wastes and other substances (including, without limitation, asbestos, urea formaldehyde foam insulation and materials containing either petroleum or any of the substances referenced in Section 101(14) of CERCLA), the removal of which is required or the manufacture, use, maintenance and handling of which is regulated, restricted, prohibited or penalized by any Environmental Law, or even though not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property on which it is located or the occupants of the property adjacent thereto.

Impositions shall mean all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the use or occupancy thereof, the Liens or other interests created by this Mortgage, the filing or recording of this Mortgage or the Obligations.

Improvements shall have the meaning attributed to that term in Section 2.02(b).

Land shall have the meaning attributed to that term in Section 2.02(a).

Liabilities shall mean (i) the principal indebtedness evidenced by each of the Notes, and all interest thereon and all other fees and charges payable thereunder; (ii) all sums becoming due and payable by any of the Mortgagors under the terms of this Mortgage or any of the other Loan

Documents, including sums advanced by the Lender pursuant to the terms of this Mortgage or any of the other Loan Documents; (iii) all other indebtedness, obligations and liabilities of the Borrower to the Lender (including obligations of performance) of every kind and description whatsoever, arising directly between the Borrower and the Lender or acquired outright, as a participation or as collateral security from another by the Lender, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, (iv) any and all extensions, renewals and modifications of any of the items described in (i) through (iii) above; and (v) the compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in the Loan Documents.

Lien shall mean any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement.

Loan Documents shall mean each of the Notes, this Mortgage, the Environmental Indemnity Agreement, the other Security Documents, and all other documents now or hereafter executed or delivered in connection with the Loans or any of the foregoing documents, or to evidence or secure the Loans, and all amendments, renewals, extensions and modifications thereto or thereof.

Obligations shall have the meaning attributed to that term in Section 2.01.

Obligors shall mean and include each of the Mortgagors and any other maker, endorser, surety or guarantor in whole or in part of any of the Notes or any of the other Obligations.

Permitted Encumbrances shall mean any Liens and other matters affecting title to the Property that are described in Exhibit B.

Personal Property shall have the meaning attributed to that term in Section 2.02.

Property shall have the meaning attributed to that term in Section 2.02.

Real Property shall have the meaning attributed to that term in Section 2.02(b).

Rents shall have the meaning attributed to that term in Section 2.02.

Security Documents shall mean this Mortgage and any other documents now or hereafter executed by any Obligor or any other person in favor of the Lender as security for any of the Loans or any of the other Liabilities.

Tenant Leases shall have the meaning attributed to that term in Section 2.02.

Tenants shall have the meaning attributed to that term in Section 2.02.

UCC Property shall have the meaning attributed to that term in Section 5.03(e).

II. OBLIGATIONS, GRANTING CLAUSES, ASSIGNMENTS, ETC.

SECTION 2.01. Obligations. This Mortgage is given to secure and shall secure the following (collectively, the "Obligations"): (i) the payment of all amounts now or hereafter becoming due and payable under each of the Notes, including the principal of each of the Loans, and all interest thereon and all other fees, charges and costs (including reasonable attorneys' fees) payable in connection therewith; (ii) the payment of any and all other fees, charges and other sums now or hereafter becoming due and payable by any of the Mortgagors to the Lender under the terms of the other Loan Documents; (iii) the payment of all other Liabilities of any of the Mortgagors to the Lender of every kind and description whatsoever; (iv) the payment of any and all sums now or hereafter becoming due and payable by the Mortgagors under the terms of this Mortgage, including advancements made by the Lender pursuant to the terms and conditions of this Mortgage; (v) all renewals, extensions, modifications and amendments of any or all of the obligations described in clauses (i) through (iv) of this Section 2.01, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith; (vi) the full and complete performance of and compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in this Mortgage and the other Loan Documents; and (vii) all sums advanced or paid by the Lender in exercising any of its remedies under this Mortgage or any of the other Loan Documents, and all interest thereon.

SECTION 2.02. Granting Clauses. As security for the Obligations each of the Mortgagors does hereby grant, bargain, sell, mortgage, assign and convey unto the Lender, its successors and assigns, and does grant to the Lender, its successors and assigns, a security interest in, the following property and interests in property (collectively, the "Property"):

(a) **Land.** All those certain lot(s), piece(s) or parcel(s) of land located in Shelby County, Alabama more particularly described in Exhibit A, as the description of the same may be amended or supplemented from time to time, and all and singular the reversions and remainders in and to said land and the tenements, hereditaments, easements, rights-of-way or use, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any right, title, interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any way affecting other property and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land, all rights of ingress and egress by motor vehicles to parking facilities on or within said land, and all claims or demands of the Mortgagors either at law or in equity, in possession or expectancy of, in or to the same (all of the foregoing hereinafter collectively called the "Land").

(b) **Improvements.** All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building material, building equipment and fixtures of every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, now owned or hereafter acquired by each of the Mortgagors (all of the foregoing hereinafter collectively called the "Improvements," and together with the Land called the "Real Property").

(c) **Personal Property.** All chattels and other articles of personal property and fixtures, both tangible and intangible (including appurtenances, additions and accessions thereto and replacements, substitutions, betterments and renewals thereof), of every kind or character now owned or hereafter constructed, created or acquired by any of the Mortgagors and attached to the Real Property; or placed on the Real Property and used or useful in connection with, or in any way appertaining or relating to, the Real Property (or the operations of the Mortgagors thereon) though not attached to the Real Property; or for which the proceeds of any of the Loans have been or may be advanced, wherever the same may be located; including: (i) all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, wires, wiring and other building materials; and (ii) all machinery, equipment, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for incinerating or compacting plants, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse, sewage, or garbage, and all furniture, furnishings, decorations, art, mirrors, wall-beds, wall-safes, built-in furniture, appliances and installations, linens, towels, cutlery, dishes, shelving, partitions, screens, doorstops, vaults, elevators, escalators, dumbwaiters, awnings, window shades, venetian blinds, curtains, window treatments, light fixtures, bathroom fixtures, fire hoses and brackets and boxes for same, fire sprinklers, alarm systems, drapery rods and brackets, screens, storm doors and windows, linoleum, carpets, rugs, wall coverings, plumbing, laundry and drying equipment, vacuum and other cleaning systems and equipment, call systems, switchboards, iceboxes, refrigerators, heating units, dishwashing equipment, stoves, ovens, water heaters, generators, tanks, motors, engines, boilers, furnaces, incinerators, garbage disposers, video and audio equipment, entertainment equipment and systems, recreation equipment, communication systems, and signage and graphics (all of the foregoing hereinafter collectively called the "Personal Property").

(d) **Tenant Leases and Rents.** (i) (A) All leases, subleases, lettings and licenses, and other use and occupancy agreements, written or oral, covering any of the Real Property or Personal Property with respect to which any of the Mortgagors is the lessor, licensor or sublessor, including any of the same now in existence (all of the foregoing described in this clause (A) hereinafter collectively called the "Existing Tenant Leases"), (B) any and all renewals, extensions and modifications of, or substitutions for, any of the foregoing and (C) any and all other such agreements hereafter made or entered into (all of the foregoing described in clauses (A), (B) and (C) hereinafter collectively called the "Tenant Leases"); (ii) any and all guaranties of the performance of the lessee, licensee, sublessee or occupant (all of the foregoing hereinafter collectively called the "Tenants") under any of the Tenant Leases; (iii) the immediate

and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or that may become due or to which any of the Mortgagors may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Tenant Leases, the Real Property, the Personal Property, or any part thereof, including minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any Tenant upon the exercise of any cancellation privilege provided for in any of the Tenant Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Property or Personal Property, together with any and all rights and claims of any kind that the Mortgagors may have against any Tenant (all such moneys, rights and claims described in this Section 2.02(d)(iii) hereinafter collectively referred to as the "Rents"); provided, however, that so long as no Event of Default has occurred, the Mortgagors shall have the right under a license granted hereby (but limited as set forth in Section 5.03(f)(1)(A) hereof) to collect, receive and retain the Rents, but no Rents shall be collected prior to the due date thereof; and (iv) any award, dividend or other payment made hereafter to the Mortgagors in any court procedure involving any of the Tenants in any bankruptcy, insolvency or reorganization proceedings before any Governmental Authority and any and all payments made by Tenants in lieu of Rents. Each of the Mortgagors hereby appoints the Lender as the Mortgagors' irrevocable attorney-in-fact to appear in any action and to collect any such award, dividend or other payment.

(e) Insurance Policies. Each and every policy of hazard insurance now or hereafter in effect that insures the Improvements, the Personal Property, or any part thereof, together with all right, title and interest of the Mortgagors in and to each and every such policy, including any premiums paid on each such policy and rights to returned premiums.

(f) Litigation Awards. Any and all judgments, damages, settlements, awards, payments and compensation, including all interest thereon, together with the right to receive the same, that may be made or due to any of the Mortgagors or any subsequent owner of any of the Real Property, the Personal Property or any other property or rights conveyed or encumbered hereby, as a result of (i) the exercise of the right of eminent domain or condemnation, (ii) the alteration of the grade of any street or (iii) any other injury to or diminution or decrease in value of the Real Property, the Personal Property, the Tenant Leases, the Rents or any other such property or rights.

(g) General Intangibles and Agreements. (i) All general intangibles relating to the development or use of the Real Property, the Personal Property, or any other property or rights conveyed or encumbered hereby, or the management and operation of any business of any of the Mortgagors thereon, including all patents, patent applications, trade names, trademarks, trademark applications, knowledge and process, licensing arrangements, blueprints, technical specifications, manuals and other trade secrets; (ii) the good will of any business conducted or operated on the Real Property, all governmental licenses and permits relating to the construction, renovation or operation thereof, and all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant

thereof; and (iii) and all contracts and agreements (including leasing, management, operating and concession agreements) affecting the Real Property, the Personal Property or any other property conveyed or encumbered by this Mortgage, or used or useful in connection therewith, whether now or hereafter entered into.

(h) **Supplemental Documents.** All changes, additions, supplements, modifications, amendments, extensions, renewals, revisions and guaranties to, of or for any agreement or instrument included in the foregoing.

(i) **Proceeds.** All proceeds (including insurance proceeds) of any of the foregoing, or of any part thereof.

(j) **Other Property.** Any and all other real or personal property, rights, titles and interests from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to Lender, or in which the Lender is granted a security interest, as and for additional security hereunder by the Mortgagors with respect to the Obligations, or by anyone on behalf of, or with the written consent of, the Mortgagors.

SUBJECT, HOWEVER, to Permitted Encumbrances.

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto the Lender, its successors and assigns forever.

III. REPRESENTATIONS AND WARRANTIES

Each of the Mortgagors represents and warrants to the Lender that:

SECTION 3.01. Valid Title, etc. (i) The Mortgagors are lawfully seized in fee simple of the Real Property and are the lawful owners of, and have good title to, the Personal Property and the remainder of the Property and have good right to mortgage, assign and grant a security interest in the Property as aforesaid; (ii) the Property is free of all Liens other than Permitted Encumbrances; (iii) each of the Mortgagors has and will have full power and lawful authority to encumber and convey the Property as provided herein; (iv) this Mortgage is and will remain a valid and enforceable first priority mortgage lien on, and security interest in, the Property, subject only to Permitted Encumbrances; and (v) each of the Mortgagors will forever warrant and defend the title to the Property unto the Lender against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

SECTION 3.02. Rents and Tenant Leases. (i) Each of the Mortgagors has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Existing Tenant Leases on such Mortgagor's part to be kept, observed and performed; (ii) except for Permitted Encumbrances, none of the Mortgagors has previously sold, assigned or transferred or granted or permitted any Lien on the Tenant Leases or the Rents, whether now due or hereafter to become due; (iii) no Rents due for any period subsequent to the month next succeeding the date of this Mortgage have been collected, and no payment of any of the Rents

has otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised; (iv) none of the Mortgagors has received any funds or deposits from any Tenant in excess of one month's rent for which credit has not already been made on account of accrued rents; and (v) to the best of each of the Mortgagor's knowledge, the Tenants under the Existing Tenant Leases are not in default under any of the terms thereof.

SECTION 3.03. Environmental Compliance. To the best knowledge of each of the Mortgagors, (i) the Property has not been used by any of the Mortgagors, and has never been used by any other person, to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substance; (ii) the Property is not now, and has never been, in violation of any applicable Environmental Law; (iii) the Property does not contain, and has never contained, any Hazardous Substance; (iv) there are no pending investigations, claims or threats of claims with respect to the Property by any Governmental Authority or other person relating to any Environmental Law; (v) there are no Hazardous Substances present on property adjacent to the Property that could migrate to, through or under the Property; (vi) the past, current and intended uses of the Property comply and will comply with all Environmental Laws; and (vii) the Mortgagors have obtained all certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities required by Environmental Laws.

SECTION 3.04. Other Governmental Compliance, etc. (i) The Property and the use and operation thereof comply with all applicable Governmental Requirements; and (ii) no Lien exists on the Property, or any part thereof, in favor of any Governmental Authority or other person under any Governmental Requirement that might have priority over this Mortgage.

SECTION 3.05. Bankruptcy. Each of the Mortgagors is, and after giving effect to the transactions contemplated under the Loan Documents will be, solvent, and no bankruptcy, insolvency or similar proceeding is pending or contemplated by or against any of the Mortgagors.

SECTION 3.06. Certificates and Permits. (i) The Mortgagors have obtained all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the operation of any of the Property and the conduct of the Mortgagors' business at the Real Property, including all required zoning, building, land use, environmental, occupancy, fire and other approvals, (ii) the use and occupancy of the Property do not conflict with or violate any of the same, and (iii) the Mortgagors, promptly upon request by the Lender, shall deliver to the Lender copies of all of the same.

SECTION 3.07. Statements, etc. Correct. All reports, statements, certificates and other data furnished by or on behalf of the Mortgagors to the Lender in connection with the Loan Documents or the transactions contemplated thereunder, and all representations and warranties made in the Loan Documents, or any certificate or other instrument delivered in connection therewith, are true and correct in all material respects and do not omit to state any material fact or circumstance necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading as to the date of such information, reports, statements or certificates.

IV. COVENANTS AND AGREEMENTS OF MORTGAGOR

Each of the Mortgagors covenants and agrees that, until the Obligations are paid and this Mortgage is satisfied in writing by the Lender:

SECTION 4.01. Payment of Impositions. Unless the Mortgagors are making monthly deposits pursuant to Section 4.06 hereof, the Mortgagors will pay or cause to be paid all Impositions and will deliver receipts therefor to the Lender at least ten (10) days before the Impositions are due, or at the Lender's request will pay to the Lender an amount equal to such Impositions. The Mortgagors may, at the Mortgagors' own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of such contested items shall be effectively stayed.

SECTION 4.02. Insurance. The Mortgagors shall keep or cause to be kept the Property insured against loss or damage by flood (if the Property is located in a flood-prone area) fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties or other contingencies as from time to time may be required by the Lender in such manner and in such companies and amounts as the Lender may approve. All such policies shall name the Lender as a named Insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content acceptable to the Lender, to be attached to each policy) be payable to the Lender, subject to the rights of the holders of any prior mortgages, and provide that the insurance provided thereby, as to the interest of the Lender, shall not be invalidated by any act or neglect of the Mortgagors, nor by the commencement of any proceedings by or against any of the Mortgagors in bankruptcy, insolvency, receivership or any other proceedings for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy. The Mortgagors shall cause duplicate originals of any and all such insurance policies to be deposited with the Lender. At least ten days prior to the date the premiums on each such policy or policies shall become due and payable, the Mortgagors shall furnish to the Lender evidence of the payment of such premiums. The Mortgagors will cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to the Lender) to give the Lender at least ten business days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. Each of the Mortgagors agrees that the Mortgagors will not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Property in extinguishment of the Obligations, complete title to all insurance policies held by the Lender and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Property.

SECTION 4.03. Damage and Destruction.

(a) Mortgagors' Obligations. In the event of any damage to or loss or destruction of the Property, the Mortgagors shall (i) promptly notify the Lender of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property and (ii) unless otherwise instructed by the Lender, promptly, regardless whether the Insurance proceeds, if any, shall be sufficient for the purpose or shall be otherwise applied by the Lender as provided herein, commence and diligently pursue to completion the restoration, replacement or rebuilding of the Property as nearly as possible to the value, condition and character thereof immediately prior to such damage, loss or destruction and in accordance with plans and specifications reasonably approved, and with other reasonable provisions for the preservation of the security hereunder established, by the Lender.

(b) Lender's Rights: Application of Proceeds. If any portion of the Property is so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance described in Section 4.02, then (i) the Lender may, but shall not be obligated to, make proof of loss if proof of loss is not made promptly by the Mortgagors, and is hereby authorized and empowered by the Mortgagors to settle, adjust or compromise any claims for damage, destruction or loss thereunder, (ii) each insurance company concerned is hereby authorized and directed to make payment therefor directly to the Lender, and (iii) except as provided in Section 4.03(c), the Lender shall have the right to apply the insurance proceeds, first, to reimburse the Lender for all reasonable costs and expenses, including all attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and second, the remainder of such proceeds shall be applied, at the Lender's option, (A) in payment of all or any part of the Obligations in the order and manner determined by the Lender in its sole discretion (provided that the remainder of the Obligations shall continue in full force and effect and the Mortgagors shall not be excused in the payment thereof), (B) to the cure of any then-current default hereunder, or (C) to the repair, restoration, or replacement, in whole or in part, of the portion of the Property so damaged, destroyed or lost. Each of the Mortgagors expressly assumes all risk of loss, including a decrease in the use, enjoyment or value, of the Property from any casualty whatsoever, whether or not insurable or insured against.

(c) Availability of Proceeds for Restoration. If the Lender by reason of any damage or destruction receives any insurance proceeds for loss or damage, then so long as no Event of Default shall have occurred and be continuing, such amount shall be paid over wholly or in part to the Mortgagors for the repair of Improvements located on the Property or for the erection of new Improvements in their place, as is necessary to restore the Property as nearly as possible to the condition, character and value thereof existing immediately prior to such damage or destruction, but only upon satisfaction of each of the following conditions:

(1) The Mortgagors shall furnish evidence satisfactory to the Lender that (A) the restoration can be completed by or before six (6) months from the date of such damage or destruction; and (B) the amount of business interruption insurance to be paid during the restoration period shall equal or exceed the loss in rental income from the Property during the period required for restoration;

(2) If the estimated costs of restoration (as reasonably estimated by an architect approved by the Lender) shall exceed the insurance proceeds available, the Mortgagors shall either deposit with the Lender the amount of such deficit or furnish a satisfactory bond of completion or other evidence satisfactory to the Lender of the Mortgagors' ability to meet such excess costs;

(3) The Lender shall be furnished, for its approval (in its sole discretion) (A) with an estimate for its approval of the cost of restoration of the Improvements, accompanied by the architect's certification as to such costs and appropriate final plans and specifications for such restoration; and (B) with evidence that all Improvements to be so restored and their contemplated use will, when completed, fully comply with all zoning, environmental, building laws, ordinances and regulations and other Governmental Requirements and with the requirements of the Loan Documents;

(4) Disbursement of the proceeds during the course of reconstruction shall be upon the architect's certification as to the cost of materials furnished and work done and evidence that such work and materials are free and clear of Liens; no payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed or materials furnished and incorporated into the structure from time to time, and at all times the undisbursed balance of said proceeds, together with all amounts deposited, bonded or otherwise funded pursuant to this Section 4.03(c), shall at least be sufficient to pay for the cost of completion of the work, free and clear of Liens; and

(5) Final payment shall be made upon receipt by the Lender of a certification by the architect as to the completion substantially in accordance with the approved plans and specifications, the issuance of a permanent certificate of occupancy (or local equivalent) and the expiration of the period provided under the laws of Alabama for the filing of mechanic's and materialmen's liens or receipt by the Lender of proof, to the reasonable satisfaction of the Lender, of final payment in full of all mechanics, materialmen or any other persons who have provided services in connection with the restoration.

If any of the foregoing conditions is not satisfied, then all insurance proceeds may be retained and applied by the Lender toward payment of all or part of the Obligations in such order as the Lender may determine in its sole discretion. If all or a portion of the insurance proceeds are paid to the Mortgagors, the Lender shall not be obligated to see to the proper application of any amount paid to the Mortgagors.

SECTION 4.04. Condemnation.

(a) Mortgagors' Obligations; Proceedings. The Mortgagors, immediately upon obtaining knowledge thereof, will notify the Lender of any pending or threatened proceedings for the condemnation of the Property or any part thereof or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising

out of injury or damage to the Property or any part thereof. The Lender may participate in any such proceedings, and the Mortgagors from time to time will execute and deliver to the Lender all instruments requested by the Lender to permit such participation. The Mortgagors shall, at their expense, diligently prosecute any such proceedings, deliver to the Lender copies of all papers served in connection therewith and consult and cooperate with the Lender, its attorneys and agents, in carrying on and defense of any such proceedings, provided that no settlement of any such proceedings shall be made by the Mortgagors without the Lender's consent, not to be unreasonably withheld.

(b) **Lender's Rights to Proceeds.** All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property shall be paid to the Lender. The Mortgagors authorize the Lender to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. The Lender shall in no event be liable or responsible for failure to collect, or exercise diligence in the collection of, any of the same.

(c) **Application of Proceeds.** The Lender shall have the right to apply any proceeds, judgments, decrees or awards referred to in subsection (b) of this Section 4.04 first, to reimburse the Lender for all reasonable costs and expenses, including attorneys' fees, incurred in connection with the proceeding in question or the collection of such amounts, and second, the remainder thereof in the same manner as provided in Section 4.03(b) with respect to insurance proceeds held by the Lender. Notwithstanding the provisions of the first sentence of this Section 4.04(c), if the Property may be restored to an economically viable property having a value of not less than 95% of its value prior to such taking and the income, revenues and profits from the Property are not materially decreased by reason of such condemnation, then any such condemnation proceeds or award received by the Lender shall be paid over wholly or in part to the Mortgagors for the restoration of the Improvements located on the Property in the manner provided in Section 4.03(c), provided that the conditions set forth in Section 4.03(c) are satisfied.

SECTION 4.05. Liens and Liabilities.

(a) **Discharge of Liens.** The Mortgagors will pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a Lien on the Property, or any part thereof, and in general, the Mortgagors shall do, or cause to be done, at the Mortgagors' sole cost and expense, everything necessary to fully preserve the Lien and priority of this Mortgage.

(b) **Creation of Liens.** The Mortgagors will not, without the Lender's consent, create, place or permit to be created or placed, or through any act or failure to act acquiesce in the placing of, or allow to remain, any voluntary or involuntary Lien, whether statutory, constitutional or contractual, against or covering the Property, prior to, on a parity with or subordinate to the Lien of this Mortgage, other than Permitted Encumbrances. If any such Lien

becomes attached to the Property without such consent, the Mortgagors will promptly commence and diligently proceed to cause the same to be discharged and released.

(c) **No Consent.** Nothing in the Loan Documents shall be deemed or construed in any way as constituting the consent or request by the Lender, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration or repair of the Property. The Mortgagors further agree that the Lender does not stand in any fiduciary relationship to the Mortgagors by reason of the transactions contemplated by the Loan Documents.

SECTION 4.06. Tax and Insurance Deposits. At any time during the term of this Mortgage after an Event of Default shall have occurred and be continuing, upon demand by the Lender, the Mortgagors shall deposit with the Lender a sum that bears the same relation to the annual insurance premiums for all insurance required by the terms hereof and Impositions assessed against the Property for the insurance period or tax year then in effect, as the case may be, as the number of months elapsed as of the date of such demand since the last preceding installment of said premiums or Impositions shall have become due and payable bears to twelve (12). For the purpose of this computation, the month in which such last preceding installment of premiums or Impositions became due and payable and the month in which such demand is given shall be included and deemed to have elapsed. On the first day of the month next succeeding the month in which such demand is given, and thereafter on the first day of each and every month during the term of this Mortgage, the Mortgagors shall deposit with the Lender a sum equal to one-twelfth of such insurance premiums and such Impositions for the then-current annual insurance period and tax year, so that as each installment of such premiums and Impositions shall become due and payable, the Mortgagors shall have deposited with the Lender a sum sufficient to pay the same. All such deposits shall be received and held by the Lender, and shall be applied to the payment of each installment of such premiums and Impositions as they shall become due and payable. The Lender shall, upon demand, furnish evidence to the Mortgagors of the making of each such payment. If the amount of such premiums and Impositions has not been definitely ascertained at the time when any such monthly deposits are required to be made, the Mortgagors shall make such deposits based upon the amount of such premiums and Impositions for the preceding year, subject to adjustment as and when the amount of such premiums and Impositions are ascertained. If at any time when any installment of such premiums and such Impositions becomes due and payable the Mortgagors shall not have deposited a sum sufficient to pay the same, the Mortgagors shall, within ten days after demand, deposit any deficiency with the Lender. Upon payment in full of the Obligations secured by this Mortgage, any remaining amount on deposit with the Lender shall be repaid to the Mortgagors. The Mortgagors shall deliver to the Lender all insurance and tax bills promptly following receipt during any period when such monthly deposits are to be made with the Lender in such order as the Lender in its sole discretion may elect. If the Obligations shall be accelerated as herein provided, all funds so deposited may, at the Lender's option, be applied to the Obligations in the order determined by the Lender or to cure said Event of Default or to the payment of insurance premiums and Impositions as provided in this Section.

SECTION 4.07. Operations; Utilities; Waste; Demolition; Alteration or Replacement. The Mortgagors will continuously operate the Improvements in accordance with sound business practices, and will not engage in any activity that would diminish the value of the Property or decrease the income from the Property. The Mortgagors shall pay or cause to be paid all bills for utilities and other materials and services used on or in connection with the Property. The Mortgagors shall cause the Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition; shall not commit or permit waste thereon; shall not remove, demolish or alter the design or structural character of any Improvements erected on the Land without the express prior written consent of the Lender; and shall from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Each of the Mortgagors agrees not to remove any of the fixtures or Personal Property included in the Property without the express prior written consent of the Lender and unless the same are immediately replaced with like property of at least equal value and utility.

SECTION 4.08. Rents and Tenant Leases. Each of the Mortgagors shall: (i) observe and perform each obligation and condition provided for under the terms of the Tenant Leases to be observed and performed by the Mortgagors, and shall give prompt notice to the Lender in the event the Mortgagors fail to observe and perform the same; (ii) enforce or secure in the name of the Lender the observance and performance of each and every obligation and condition to be observed and performed by any Tenant under the terms of the Tenant Leases; (iii) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Tenant Leases or the obligations, duties or liabilities of the Mortgagors and any Tenant thereunder, and, upon request by the Lender shall do so in the name and on behalf of the Lender but at the expense of the Mortgagors, and shall pay all costs and expenses of the Lender, including reasonable attorneys' fees, in any action or proceeding in which the Lender may appear; (iv) not receive or collect any Rents from any present or future Tenant for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise grant or permit any Lien on future payments of the Rents; (v) not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any Tenant of and from any obligations and conditions by said Tenant to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Tenant Lease; (vi) not enter into any Tenant Leases except on a form approved by the Lender, nor cancel, terminate or consent to any surrender of any Tenant Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of the Lender; (vii) not renew or otherwise extend the term of the Existing Tenant Leases; provided, however, that nothing herein contained shall prevent the Mortgagors, upon expiration of the now-current term (or other expiration or termination) of the Existing Tenant Leases, from leasing the property covered thereby to the Tenant thereunder by a lease or leases expressly subject and fully subordinate to the Liens of this Mortgage; (viii) promptly upon the execution by any of the Mortgagors of any future Tenant Lease, (A) furnish the Lender with the name and address of the Tenant thereunder, the term of such Tenant Lease and a description of the premises covered thereby and, upon request of the Lender, a copy of such Tenant Lease, and (B) execute all such further assignments of such Tenant Lease and the Rents therefrom as the Lender may require; (ix) not, without the prior written approval of the Lender, execute any management or leasing agreements affecting any of

the Property; and (x) if required by the Lender, cause each Tenant Lease to provide, in a manner approved by the Lender, that the Tenant Lease is junior and subordinate to the Liens of this Mortgage and that the Tenant will recognize, as lessor, the Lender or any person succeeding to the interest of the Lender upon any foreclosure of this Mortgage and for the Lender to receive notice of and to have an opportunity to cure, any defaults under such Tenant Leases.

SECTION 4.09. Sale, Lease or Transfer, etc. Each of the Mortgagors covenants and agrees that neither the Real Property, nor any part thereof, nor any interest therein, shall be (i) sold, assigned, transferred, conveyed, leased with an option to purchase, exchanged or otherwise disposed of, nor shall the Mortgagors contract with any person for any of the foregoing, without the Lender's prior written consent; or (ii) subject to any additional Lien, either voluntarily or involuntarily, without the Lender's prior written consent. Upon the occurrence of any such sale, assignment, transfer, conveyance, lease with an option to purchase, exchange, other disposition, contract or Lien, this Mortgage shall be deemed to be in default at the option of the Lender and the Lender may, at its sole option: (A) declare the Obligations immediately due and payable in full and exercise the remedies on default hereunder; or (B) require the payment, after the date of such occurrence, of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such option to accelerate the Obligations and other remedies, whether such rights and remedies be exercised by the Lender to obtain a higher rate of interest on the Obligations or to protect the security of this Mortgage. Each of the Mortgagors further covenants and agrees that without the prior written consent of the Lender, the Mortgagors (if a partnership or corporation) shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise. Any such dissolution, liquidation or termination, without the Lender's prior written consent, shall constitute a default hereunder. Each of the Mortgagors (if a partnership or corporation) expressly covenants and agrees, and acknowledges the Lender's express reliance hereon, that any sale, pledge, encumbrance, contract to sell, assignment or other transfer of any equity interest in such Mortgagor, or any other transaction whereby the legal or beneficial ownership of the Mortgagors is changed, including the sale of additional stock or other equity interests, the liquidation or dissolution of the Mortgagors, or the merger or consolidation of the Mortgagors with any other person, shall be treated as a transfer of the Real Property for purposes of this section.

SECTION 4.10. Use, Governmental Compliance, etc. The Mortgagors will use the Property solely as a location for Lloyd's Restaurant and for no other purpose. The Mortgagors shall maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the operation of any of the Property and the conduct of the Mortgagors' business at the Real Property, including all required zoning, building, land use, environmental, occupancy, fire and other approvals. The Mortgagors shall comply with and make all payments required under all Governmental Requirements now or hereafter affecting the Property or any part thereof or the business or activity conducted or to be conducted thereon. The Mortgagors shall not commit, suffer, permit or allow any act to be done in or on the Property in violation of any such Governmental Requirements or that constitutes a public or private nuisance, or that makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. The Mortgagors shall not permit any Lien to exist on the Property, or any part thereof, in favor of any Governmental

Authority or other person under any Governmental Requirement that might have priority over this Mortgage.

SECTION 4.11. Zoning: Title Matters. The Mortgagors will not, without the Lender's consent, (i) initiate or support any zoning reclassification of the Property, seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in a manner that would result in such use becoming a non-conforming use under, or violate, applicable zoning ordinances, (ii) modify, amend or supplement any Permitted Encumbrances in any manner that would materially increase the obligations or decrease the rights of the Mortgagors or adversely affect the rights of the Lender under the Loan Documents, (iii) subject the Property to any restrictive covenants or encumbrances (other than the Permitted Encumbrances), execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality or (iv) permit or suffer the Property to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any Implied dedication easement or easement by prescription.

SECTION 4.12. Environmental Compliance. The Mortgagors shall (i) not, and shall not permit any Tenant or other person to, bring any Hazardous Substances on to the Property, (ii) if any Hazardous Substances are brought or found on the Property, immediately remove and properly dispose thereof and diligently undertake all cleanup procedures required in accordance with applicable Environmental Laws; (iii) cause the Property and the operations conducted thereon (including all operations conducted thereon by Tenants and other persons) to comply with all Environmental Laws; (iv) permit the Lender from time to time to inspect the Property and observe the Mortgagors' operations thereon and to perform tests (including soil and ground water tests) for Hazardous Substances on the Property; (v) undertake any and all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (A) required by any applicable Environmental Law or (B) necessary to prevent or minimize any property damage (including damage to any of the Property), personal injury or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or the operations of the Mortgagors on the Property; (vi) promptly give notice to the Lender in writing if the Mortgagors should become aware of (A) any spill, release or disposal of any Hazardous Substances, or imminent threat thereof, at the Property, in connection with the operations on the Property, or at any adjacent property that could migrate to, through or under the Property, (B) any violation of Environmental Laws regarding the Property or operations on the Property, and (C) any investigation, claim or threatened claim under any Environmental Law, or any notice of violation under any Environmental Law, involving the Mortgagors or the Property; and (vii) deliver to the Lender, at the Lender's request, copies of any and all documents in the Mortgagors' possession or to which the Mortgagors have access relating to Hazardous Substances or Environmental Laws and the Property, and the operations on the Property, including laboratory analyses, site assessments or studies, environmental audit reports and other environmental studies and reports. If the Lender at any time reasonably believes that any of the Mortgagors is not complying with all applicable Environmental Laws or the requirements of this Mortgage regarding the same, or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, the Lender may require the

Mortgagors to furnish to the Lender an environmental audit or site assessment reasonably satisfactory to the Lender with respect to the matters of concern to the Lender. Such audit or assessment shall be performed at the Mortgagors' expense by a qualified consultant approved by the Lender. Nothing contained in this Section 4.12 shall be deemed to impose any obligations on the Lender with respect to Hazardous Substances or otherwise.

SECTION 4.13. Maintenance of Lien Priority. The Mortgagors shall take all steps necessary to preserve and protect the perfection, validity and priority of the Liens on the Property created hereby. The Mortgagors shall execute, acknowledge, deliver, file and record such additional instruments as the Lender may deem necessary in order to perfect, preserve, protect, continue, extend or maintain the Liens created hereby as first priority Liens on the Property, subject to Permitted Encumbrances, or to subject after-acquired property of the Mortgagors or proceeds to such Liens. If the Liens, validity or priority of this Mortgage, or if title to any of the rights of the Mortgagors or the Lender in or to the Property shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against the Mortgagors or the Lender with respect thereto, the Mortgagors will promptly notify the Lender thereof and will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of the litigation, and subject to the Lender's approval, the compromise, release or discharge of any and all adverse claims other than Permitted Encumbrances. The Lender (whether or not named as a party to such actions or proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may reasonably deem necessary or proper for the defense of any such action or proceeding or the protection of the Liens, validity or priority of this Mortgage or of such title or rights, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, and the removal of prior Liens. The Mortgagors shall, on demand, reimburse the Lender for all expenses (including attorneys' fees and disbursements) reasonably incurred by the Lender in connection with any of the foregoing matters.

SECTION 4.14. Certificates. The Mortgagors, within ten days after request therefor by the Lender, shall furnish to the Lender a written statement, duly acknowledged, certifying to the Lender or the Lender's designee as to (i) the amount of the Obligations then owing under this Mortgage, (ii) the terms of payment and maturity date of the Obligations, (iii) the date to which interest has been paid under this Mortgage, (iv) whether any offsets or defenses exist against the Obligations and, if any are alleged to exist, a detailed description thereof, (v) the representations and warranties of the Mortgagors set forth herein being true and correct on the date of such certification, (vi) the Loan Documents being valid, in full force and effect and unmodified (except as may be specifically noted therein) on the date of such certification, and (vii) whether there are any defaults under the Loan Documents, and to the best knowledge of the Mortgagors, whether any event has occurred or any condition or state of facts exist which constitute, or with the giving of notice or the lapse of time or both would constitute a default under the Loan Documents. Such certificate shall be binding upon the Mortgagors and its successors and assigns, and may be relied upon by any prospective assignee of the Loan Documents.

V. DEFEASANCE, DEFAULT AND REMEDIES

SECTION 5.01. Defeasance. This Mortgage is made upon the condition that if the Mortgagors pay the Obligations, as defined in this Mortgage (which Obligations include all of the indebtedness, obligations and liabilities described in Section 2.01 of this Mortgage, including (i) the payment of all amounts now or hereafter becoming due and payable under each of the Notes, including the principal of each of the Loans, and all interest thereon and all other fees, charges and costs (including reasonable attorneys' fees), payable in connection therewith, (ii) the payment of any and all other fees, charges, costs (including attorneys' fees as provided therein) and other sums now or hereafter becoming due and payable by the Mortgagors to the Lender under the terms of each of the Notes, this Mortgage and the other Loan Documents, and (iii) the payment of all other ~~Liabilities of the Mortgagors to the Lender of every kind and description whatsoever, due or to become due, and now existing or hereafter incurred,~~ contracted or arising), and reimburses the Lender for any amounts the Lender has paid in respect of Liens, Impositions, prior mortgages, insurance premiums, keeping the Property in repair, performing the Mortgagors' obligations under any Tenant Lease, complying with Environmental Laws or the other provisions of Section 4.12 hereof, and any other advancements hereunder, and interest thereon, and fulfills all of its other obligations under this Mortgage, and if the Lender has no obligation to extend any further credit to or for the account of the Borrower, and if there is in existence no contingent liability of the Borrower that is secured by this Mortgage, and if any other conditions set forth in Section 6.15 hereof are fulfilled, this conveyance shall be null and void upon the filing by the Lender of the written instrument of termination described in Section 6.15.

SECTION 5.02. Events of Default. The happening of any one or more of the following events, or the happening of any other event of default as specified elsewhere in this Mortgage (collectively, "Events of Default"), shall constitute a default under this Mortgage:

- (a) if the Borrower fails to pay to the Lender any of the Obligations when due (at maturity, upon acceleration, as a result of mandatory prepayment or otherwise); or
- (b) if the Mortgagors default in the observance or performance of any provision of this Mortgage and such default continues unremedied for ten (10) days; or
- (c) if any guarantor of any of the Obligations fails to comply with any of the provisions of such guarantor's guaranty agreement (after giving effect to any applicable notice, grace or cure periods provided for therein); or
- (d) if the Lender determines that any statement, representation or warranty contained in this Mortgage or any of the other Loan Documents, or any report, certificate or other instrument delivered to Lender was misleading or untrue in any material respect at the time it was made; or

(e) if default is made with respect to any indebtedness (other than the Obligations) of any Obligor when due if the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity; or

(f) if any Obligor fails to pay such Obligor's debts generally as they become due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy or under any insolvency law is filed by or against any Obligor, or if any Obligor applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, or makes any transfer in fraud of, creditors; or

(g) if any Obligor dies, if an individual; or dissolves, if a corporation or a partnership; or if a partnership, any general partner becomes insolvent, dies or is replaced or withdraws; or if a corporation, any principal officer thereof becomes insolvent, dies or ceases to be employed by any such Obligor; or

(h) if final judgment for the payment of money is rendered against any Obligor, and the same remains undischarged for a period of thirty (30) days during which execution is not effectively stayed; or

(i) if the interest of the Lender, as mortgagee or secured party, in any of the Property becomes endangered by reason of the enforcement of any prior Lien thereon; or

(j) if any of the material stipulations contained in any of the Loan Documents is declared invalid or inoperative by any court of competent jurisdiction; or

(k) if any of the Mortgagors conveys or further encumbers all or part of the Property as prohibited by Section 4.09 hereof; or

(l) except for Permitted Encumbrances, if any Lien, statement of Lien or suit to enforce a Lien is filed against any of the Property and the Mortgagors fail to have such Lien satisfied or suit dismissed or to secure the payment of the amount claimed by such Lien, statement of Lien or suit by a bond, letter of credit or other security satisfactory to the Lender within ten days of the day such Lien or statement of Lien is filed in the office of the Judge of Probate of the County in which the Land is located or such suit is filed in court; or

(m) if any law is passed imposing, or authorizing the imposition of, any specific tax upon this Mortgage or the Obligations or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Obligations, or by virtue of which any tax, Lien or assessment upon the Property shall be chargeable against the owner of the Security Documents; or

(n) if any other default, event of default or other event that would permit the Lender to accelerate any of the Obligations occurs under any of the other Loan Documents (after giving effect to any applicable notice, grace and cure periods provided for therein); or

(o) any survey, report or examination shall disclose that the Improvements or any portion thereof encroaches upon or projects over a street or upon or over adjoining property or violates any setback or other restriction, however created, or any zoning regulations or building restriction of any Governmental Authority having Jurisdiction with respect to the Real Property, and such default shall not be cured within twenty (20) days after written notice from the Lender; or

(p) the Lender shall in good faith deem itself insecure for any reason whatsoever.

SECTION 5.03. Rights and Remedies of Lender Upon Default.

(a) **Acceleration of Obligations.** Upon the occurrence of an Event of Default or at any time thereafter, the Lender may at its option and without demand or notice to the Mortgagors, declare all or any part of the Obligations immediately due and payable, whereupon all such Obligations shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Mortgagors, and the Lender may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, each of the Notes, any of the other Loan Documents and applicable law. Each of the Mortgagors also waives any and all rights the Mortgagors may have to a hearing before any Governmental Authority prior to the exercise by the Lender of any of its rights under this Mortgage or any of the other Loan Documents and applicable law.

(b) **Operation of Property by Lender.** Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on the Lender, the Lender (or any person designated by the Lender) may, but will not be obligated to, (i) enter upon and take possession of any or all of the Property, exclude the Mortgagors therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagors could do so, without any liability to the Mortgagors resulting therefrom; (ii) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (iii) make repairs and purchase needed additional property; (iv) insure or reinsure the Property; (v) maintain and restore the Property; (vi) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (vii) exercise every power, right and privilege of the Mortgagors with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** Upon the occurrence of an Event of Default or at any time thereafter, the Lender, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Property, to sue the Mortgagors for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Lender shall be entitled, as a matter of right, upon bill filed or

other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to the Mortgagors or any other party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Power of Sale.** Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Lender may from time to time elect to sell) under the power of sale which is hereby given to the Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold under this Mortgage in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagors hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full.

(e) **Personal Property and Fixtures.** On the happening of any Event of Default or at any time thereafter, the Lender shall have and may exercise with respect to the Personal Property and all other personal property and fixtures included in the Property (the "UCC Property") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the UCC Property and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the UCC Property or its value and without the necessity of a court order. The Lender shall have, among other rights, the right to take possession of the UCC Property and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed

appropriate or desirable by the Lender, at its option and its sole discretion, to repair, restore or otherwise prepare the UCC Property for sale, lease or other use or disposition. At the Lender's request, the Mortgagors shall assemble the UCC Property and make the UCC Property available to the Lender at any place designated by the Lender. To the extent permitted by law, the Mortgagors expressly waive any notice of, and any other formalities prescribed by law with respect to, any sale or other disposition of the UCC Property or exercise of any other right or remedy of the Lender after default. To the extent that such notice is required and cannot be waived, the Mortgagors agree that if such notice is given to the Mortgagors in accordance with the provisions of Section 6.14 below, at least five days before the time of the sale or other disposition of UCC Property or exercise of such other right or remedy, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

Each of the Mortgagors agrees that the Lender may proceed to sell or dispose of both the real and personal property comprising the Property in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. The Mortgagors hereby grant the Lender the right, at its option after default hereunder, to transfer at any time to itself or its nominee the UCC Property or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as UCC Property or to apply it on the Obligations in such order and amounts and manner as the Lender may elect. Each of the Mortgagors covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the UCC Property or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Lender and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) **Rents and Tenant Leases.** Upon the occurrence of an Event of Default or at any time thereafter:

(1) The Lender, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Tenant Leases:

(A) to terminate the license granted to the Mortgagors in Section 2.02(d)(iii) hereof to collect the Rents, and, without taking possession, in the Lender's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and to apply the proceeds thereof as set forth in Section 5.03(h);

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Property or any part thereof for the account of the Mortgagors, make, modify, enforce, cancel or accept surrender of any Tenant Lease, remove and evict any Tenant, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses the Lender shall deem proper to protect

the security hereof, as fully and to the same extent as the Mortgagors could do if in possession, and in such event to apply any funds so collected to the operation and management of the Property (including payment of reasonable management, brokerage and attorney's fees) and as set forth in Section 5.03(h); and

(C) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Mortgagors under this Mortgage.

(2) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Lender, once exercised, shall continue for so long as the Lender shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Lender shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

(g) Foreclosure Deeds. To the extent permitted by applicable law, each of the Mortgagors hereby authorizes and empowers the Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Mortgagors, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(h) Order of Application of Proceeds. All payments received by the Lender as proceeds of the Property, or any part thereof, as well as any and all amounts realized by the Lender in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Lender as follows: (i) to the payment of all necessary expenses incident to the execution of any remedies under this Mortgage, including reasonable attorneys' fees as provided herein and in the other Loan Documents, appraisal fees, title search fees and foreclosure notice costs, (ii) to the payment in full of any of the Obligations that are then due and payable (including principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the other Loan Documents, all in such order as the Lender may elect in its sole discretion, (iii) to a cash collateral reserve fund to be held by the Lender in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (iv) the remainder, if any, shall be paid to the Mortgagors or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(i) Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, the Lender shall have the option to proceed with foreclosure, either through the courts or by power of sale foreclosure as provided for in this Mortgage, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the

Obligations secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Obligations secured by this Mortgage, but as to such unmatured part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Obligations whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting any power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(j) Waiver of Certain Laws. Each of the Mortgagors waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

(k) Prerequisites of Sales. In case of any sale of the Property as authorized by this Section 5.03, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

VI. MISCELLANEOUS

SECTION 6.01. Collection Costs. The Mortgagors agrees to pay all costs, including reasonable attorneys' fees, incurred by the Lender in collecting or securing, or attempting to collect or secure, the Obligations, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any Lien on the Property (unless this Mortgage is herein expressly made subject to any such Lien) and all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Lender shall be a part of the Obligations.

SECTION 6.02. No Obligations of Lender; Indemnification. The Lender shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to any Tenant Lease, the Improvements, the Personal Property, the Land or any of the other Property (unless expressly assumed by the Lender under a separate agreement in writing), and this Mortgage shall not be deemed to confer on the Lender any duties or obligations that would make the Lender directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Mortgagors agree to defend, indemnify and save harmless the Lender from and against any and all claims, causes of action, judgments and other loss, cost and expense (collectively called "claims and losses") relating to or arising out of any

default in the Mortgagors' performance of their representations, warranties, covenants, agreements, duties, responsibilities and obligations under this Mortgage or any of the other Loan Documents and with respect to any of the Property. The provisions of this Section 6.02 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Mortgage with respect to claims and losses asserted against or suffered by the Lender. Without limiting the generality of the foregoing, the Mortgagors agree that the Mortgagors' obligation to defend, indemnify and save harmless the Lender set forth in this Section shall specifically include all claims and losses asserted against or suffered by the Lender that are related to or arise out of (i) any representations or warranties set forth in Section 3.03 hereof that shall prove to be false or untrue in any material respect, (ii) any default in the performance or nonperformance of the Mortgagors' covenants and agreements set forth in Section 4.07 hereof, and (iii) any clean up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or included in the Property, or any part thereof, that may be required by any Environmental Law or Governmental Authority.

SECTION 6.03. Construction of Mortgage. This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the Liens created hereby and the purposes and agreements herein set forth.

SECTION 6.04. Successors and Assigns. All covenants and agreements herein made by the undersigned shall bind the undersigned and the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Lender shall inure to the benefit of the Lender's successors and assigns.

SECTION 6.05. Waiver and Election. The exercise by the Lender of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the Liens granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale; nor shall the publication of notices for foreclosure under power of sale preclude the prosecution of a later or simultaneous suit to collect the Obligations or foreclose the Liens granted by this Mortgage. No failure or delay on the part of the Lender in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage and in the other Loan Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage or any of the other Loan Documents, nor consent to any departure by the Mortgagors therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Lender, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to or demand on the Mortgagors in any case shall entitle the Mortgagors to any other or further notice or demand in similar or other circumstances.

SECTION 6.06. Landlord-Tenant Relationship. Any sale of the Property under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Mortgagors.

SECTION 6.07. Enforceability. If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Lender to effectuate the provisions hereof.

SECTION 6.08. Application of Payments. If the Liens created by this Mortgage are invalid or unenforceable as to any part of the Obligations or are invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Obligations that are not secured or not fully secured by said Liens created hereby.

SECTION 6.09. Other Mortgages Encumbering the Land. Each of the Mortgagors hereby authorizes the holder of any other mortgage encumbering any of the Real Property to disclose to the Lender from time to time and at any time the following information: (i) the amount of debt secured by such mortgage; (ii) the amount of such debt that is unpaid; (iii) whether such debt is or has been in arrears; (iv) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (v) any other information regarding such mortgage or the debt secured thereby that the Lender may request from time to time.

Each of the Mortgagors expressly agrees to comply with the terms of any other mortgage encumbering any of the Real Property and agrees not to consent to or permit any amendment or modification thereof without the prior written consent of the Lender. Each of the Mortgagors further agrees that if default should be made in the payment of principal, interest or any other sum secured by any other mortgage encumbering any of the Real Property, the Lender may (but shall not be required to) pay all or any part of such amount in default, without notice to the Mortgagors. The Mortgagors agree to repay any such sum advanced upon demand, with interest from the date such advance is made at the Default Interest Rate, and any sum so advanced with interest shall be a part of the Obligations.

SECTION 6.10. Meaning of Particular Terms. The words "Mortgagors" and "Lender" shall include their respective successors and assigns. The term "Mortgagors" as used in this Mortgage refers to each of the undersigned, jointly and severally, whether one or more natural persons, corporations, associations, trusts, partnerships or other entities or organizations.

SECTION 6.11. Advances by the Lender. If the Mortgagors shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of Liens or Impositions, the keeping of the Property in repair, the performance of the Mortgagors' obligations under any Tenant Lease, the payment or performance of any prior mortgages, the

compliance with Environmental Laws or the other provisions of Section 4.12 hereof, or the performance of any other term or covenant herein contained, the Lender may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing any such term or covenant. Each of the Mortgagors agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the Default Interest Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Lender of any Event of Default resulting from the Mortgagors' failure to pay the amounts paid.

SECTION 6.12. Release or Extension by the Lender. The Lender, without notice to the Mortgagors and without in any way affecting the rights of the Lender hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Obligations and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Obligations or to waive the prompt and full performance of any term, condition or covenant of any of the Notes or any of the other Loan Documents.

SECTION 6.13. Partial Payments. Acceptance by the Lender of any payment of less than the full amount due on the Obligations shall be deemed acceptance on account only, and the failure of the Mortgagors to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Obligations has been paid, the Lender shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

SECTION 6.14. Addresses for Notices. Any notice provided with respect to this Mortgage shall be conclusively deemed to have been received by a party hereto and be effective on the day on which delivered to such party at the address set forth below (or at such other address as a party shall specify to the other party in writing) or if sent by registered or certified mail, on the third business day after the day on which mailed to such address:

(a) If to the Mortgagors, at:

Eli T. Stevens
3161 Guilford Road
Birmingham, Alabama 35223

Patricia M. Stevens
3161 Guilford Road
Birmingham, Alabama 35223

Eli's, Inc.
3161 Guilford Road
Birmingham, Alabama 35223

(b) If to the Lender, at:

National Bank of Commerce of Birmingham
1927 First Avenue North
Birmingham, Alabama 35203
Attention: Commercial Lending Department

SECTION 6.15. Termination of Mortgage. This Mortgage and the Lender's Lien under this Mortgage in the 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 Land is located. Even if the Mortgagors should pay all of the Obligations owing to the Lender at any one time, this Mortgage will continue to secure any Obligations the Mortgagors should later owe the Lender until the mortgage satisfaction instrument referred to above has been executed by the Lender. Except as otherwise expressly provided in this Mortgage, no satisfaction of this Mortgage shall in any way affect or impair the representations, warranties, agreements, covenants, obligations, duties and liabilities of the Mortgagors or the powers, rights and remedies of the Lender under this Mortgage with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive such satisfaction. In no event shall the Lender be obligated to satisfy its Lien under this Mortgage or return or release the Property or any portion thereof to the Mortgagors (i) until payment in full of the Obligations then outstanding and the expiration of the applicable period for avoiding or setting aside such payment under bankruptcy or insolvency laws or (ii) if the Lender is obligated to extend credit to the Borrower.

IN WITNESS WHEREOF, the undersigned Mortgagors have executed this instrument on the date first written above.

WITNESSES:

James A. Powell
Theresa White

Eli T. Stevens
Eli T. Stevens

WITNESSES:

James A. Powell
Theresa White

Patricia M. Stevens
Patricia M. Stevens

ELI'S, INC., an Alabama corporation

By: Eli T. Stevens
Its: Pres.

ATTEST:

By: Patricia M. Stevens
Its: Secy.

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Eli T. Stevens, whose name is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 28 day of January, 1994.

Capitula Dempsey Rye
Notary Public

AFFIX SEAL

My commission expires: MY COMMISSION EXPIRES MAY 16, 1995

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Patricia M. Stevens, whose name is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 28 day of January, 1994.

Capitula Dempsey Rye
Notary Public

AFFIX SEAL

My commission expires: MY COMMISSION EXPIRES MAY 16, 1995

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Elli T. Steiner, whose name as President of Eli's, Inc., an Alabama corporation, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 28th day of January, 1994.

Cynthia Dugan Ray
Notary Public

[AFFIX SEAL]

My Commission Expires: THE COMMISSION EXPIRES MAY 16, 2000

This instrument prepared by:
Thomas C. Clark III
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000

EXHIBIT A

(Legal Description)

Parcels of land situated in the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West described as follows:

Parcel A

Commence at the Northeast corner of the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence run West along the North line of said 1/4 1/4 section for a distance of 1064.0 feet to a point; thence turn an angle left of 90 deg. 42 min. and run in a southerly direction for a distance of 560.0 feet to the point of beginning; thence continue on last described course for a distance of 260.0 feet to a point; thence turn an angle right of 90 deg. 42 min. and run West for a distance of 266.0 feet; thence turn an angle right of 89 deg. 18 min. and run in a Northerly direction for a distance of 260.0 feet; thence turn an angle right of 90 deg. 42 min. and run East for a distance of 266.0 feet to the point of beginning.

LESS AND EXCEPT the West 150 feet of the South 100 feet of the above described property.

ALSO EXCEPTED from this conveyance is the well which provides water to the 100 foot X 150 foot lot located at the SW corner of the property conveyed, which said well is and shall remain a part of the lot excluded from this conveyance by Grantors.

Parcel B

Commence at the Northeast corner of the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence run West along the North line of said 1/4 1/4 section for a distance of 1064.0 feet to a point; thence turn an angle left of 90 deg. 42 min. and run in a southerly direction for a distance of 1080.0 feet to the point of beginning; thence continue on last described course for a distance of 194.60 feet to a point on the Northerly right of way line of U.S. Highway No. 280; thence turn an angle right of 83 deg. 13 min. and run Southwesterly along said right of way line for a distance of 145.63 feet; thence turn an angle right of 54 deg. 47 min. 30 sec. and run along right of way line for a distance of 141.71 feet to a point; thence turn an angle right of 42 deg. 36 min. 30 sec. and run in a Northerly direction for a distance of 50.0 feet; thence turn an angle left of 90 deg. 00 min. and run West for a distance of 10.0 feet; thence turn an angle right of 90 deg. 00 min. and run in a Northerly direction for a distance of 59.41 feet to a point; thence turn an angle right of 90 deg. 05 min. and run east for a distance of 248.28 feet to the point of beginning.

/

EXHIBIT A

(Legal Description)

Parcel C

Commence at the Northeast corner of the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence run West along the North line of said 1/4 1/4 section for a distance of 1064.0 feet to a point; thence turn an angle left of 90 deg. 42 min. and run in a Southerly direction for a distance of 620.0 feet to the point of beginning; thence continue on last described course for a distance of 260.0 feet to a point; thence turn an angle right of 90 deg. 42 min. and run West for a distance of 248.28 feet to a point; thence turn an angle right of 89 deg. 55 min. and run in a Northerly direction for a distance of 40.59 feet to a point; thence turn an angle left of 90 deg. 00 min. and run West for a distance of 18.16 feet; thence turn an angle right of 89 deg. 23 min. and run in a Northerly direction for a distance of 219.43 feet to a point; thence turn an angle right of 90 deg. 42 min. and run East for a distance of 266 feet to the point of beginning.

Parcel D

Begin at the Northwest corner of the NE 1/4 of the SE 1/4 of Section 31, Township 18, Range 1 West, and run North 88 deg. 20 min. East 532 feet for a point of beginning of the lot herein conveyed; from said point of beginning, run thence North 88 deg. 20 min. East 266 feet; thence South 2 deg. 45 min. East 323 feet; thence South 87 deg. 15 min West 266 feet; thence North 2 deg. 45 min. East 323 feet to the point of beginning, and being a part of the NE 1/4 of the SE 1/4 of Section 31, Township 18, Range 1 West, Shelby County, Alabama.

Parcel E

Commence at the Northeast corner of the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West and run in a Westerly direction along the 1/4 1/4 line a distance of 271.21 feet to the point of beginning; thence deflect 90 deg. 28 min. 40 sec. to the left and leaving said 1/4 1/4 line run in a Southerly direction a distance of 1178.07 feet to a point on the North right of way line of U.S. Highway 280; thence turn an interior angle of 95 deg. 56 min. 20 sec. and run to the right in a Westerly direction along said right of way line a distance of 269.23 feet to a point; thence turn an interior angle of 83 deg. 58 min. 30 sec. and leaving said right of way line run to the right in a Northerly direction a distance of 1208.15 feet to a point on the previously described 1/4 1/4 line; thence turn an interior angle of 89 deg. 36 min. 30 sec. and run to the right in an easterly direction along said 1/4 1/4 line a distance of 266.00 feet to the point of beginning.

EXHIBIT A

(Legal Description)

Parcel F

A tract of land located in Section 31, Township 18 South, Range 1 West described as follows:

Commence at the Southeast corner of Section 31, Township 18 South, Range 1 West, thence run North along the East line of said Section a distance of 1663.70 feet; thence turn an angle of 90 deg. 18 min. 08 sec. to the left and run a distance of 799.06 feet to the point of beginning; thence turn an angle of 90 deg. 00 min. to the left and run a distance of 271.52 feet to the North right of way of U.S. Hwy. No. 280; thence turn an angle of 83 deg. 08 min. to the right and run along said right of way a distance of 267.18 feet; thence turn an angle of 9 deg. 47 min. to the right and run a distance of 1274.60 feet; thence turn an angle of 90 deg. 42 min. to the right and run a distance of 266.00 feet; thence turn an angle of 89 deg. 16 min. 31 sec. to the right and run a distance of 968.27 feet to the point of beginning.

Situated in the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West, Huntsville Meridian, Shelby County, Alabama.

All being situated in Shelby County, Alabama.

EXHIBIT B

(Permitted Encumbrances)

1. The Lien for ad valorem taxes on the Property so long as such taxes are not delinquent.
2. The leasehold interest of Tenants under the Existing Tenant Leases, if any.
3. The exceptions set forth in Schedule B-2 of the mortgagee's title insurance policy issued or to be issued pursuant to that certain Commitment to Issue Title Insurance No. 85977 prepared by First American Title Insurance Company, having an effective date of January 28, 1994 at 8:00 a.m., to the extent only that such exceptions refer expressly to instruments recorded against, or otherwise specifically affect, the Property and not to any general, standard or similar exceptions that may appear in said policy.

Inst # 1994-03468

Inst # 1994-03468

02/02/1994-03468
10:51 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MCD 3172.00