

179694

Consideration
\$562,500.00

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (herein sometimes called the "Mortgage") is made as of December 28, 1998, by and between TERESA SCHULTZ BUCKLEY AS TRUSTEE OF THE TERESA BUCKLEY TRUST, having a mailing address at 4550 East Perry Parkway, Greenwood Village, Colorado 80121 (herein, together with her successors and assigns, called the "Mortgagor"), and NATIONAL CITY BANK OF INDIANA, a national banking association, having its mailing address at Commercial Loan Operations, P.O. Box 5043, Indianapolis, Indiana 46255 (herein, together with its successors and assigns, sometimes called the "Mortgagee").

RECITALS:

A. The Collateral. For purposes of this Mortgage, the term "Collateral" means and includes all of the following:

(i) Real Estate. The real estate located in Shelby County, Alabama, described in Exhibit "A", attached hereto, together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining thereto (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, and telephone services); and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "Real Estate");

(ii) Improvements and Fixtures. All structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected in or on the Real Estate, together with all equipment, appliances, machinery, fittings, fixtures and other articles of any kind or nature whatsoever now or hereafter affixed to or attached to the Real Estate in any manner, including (without limitation) all motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment, appliances (including stoves, refrigerators, water fountains and coolers, fans,

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heaters, incinerators, compactors, dishwashers, disposals, clothes washers and dryers, water heaters and similar equipment), blinds, window shades, carpeting, floor coverings, elevators, office equipment, fire sprinklers and alarms, control devices and equipment, light fixtures and nonstructural additions to the Real Estate, all of which shall be deemed to be fixtures and to constitute real property, but excluding any trade fixtures or other property owned by tenants (all of the foregoing is herein referred to collectively as the "Improvements");

(iii) Rents. All rents, issues, profits, royalties, avails, and other benefits derived or owned by the Mortgagor directly or indirectly from the Real Estate or the Improvements (all of the foregoing is herein collectively called the "Rents");

(iv) Leases. All rights of the Mortgagor under all leases, rental agreements, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whereby any person, other than the Mortgagor, agrees to pay money or any consideration for the use, possession or occupancy of, or any estate in, the Real Estate or the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing is herein referred to collectively as the "Leases");

(v) Specified General Intangibles. All goodwill, trademarks, trade names and books and records of the Mortgagor relating to the Real Estate or the Improvements, and all contracts, subcontracts, service agreements, management agreements, warranties, insurance policies and proceeds thereof and other contract rights of the Mortgagor, all construction plans, specifications and drawings, and all permits, licenses, approvals, certificates and deposits held by or for the benefit of the Mortgagor with respect to the construction, ownership, operation and/or maintenance of the Real Estate or the Improvements (all of the foregoing is herein referred to collectively as the "Intangibles"); and

(vi) Other Property. All other property or rights of the Mortgagor of any kind or character related to the Real Estate or the Improvements, and all proceeds (including insurance proceeds) and products of any of the foregoing. (All of the Real Estate and the Improvements, and any other property which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises").

B. Secured Indebtedness and Liabilities. This Mortgage secures indebtedness represented by a Mortgage Note (the "Note") issued by Mortgagor and TERESA SCHULTZ BUCKLEY, individually, jointly and severally, to Mortgagee, of even date herewith, in the principal sum of FIVE HUNDRED FIFTY-TWO THOUSAND AND NO/100 DOLLARS (\$552,000.00), which Note provides for monthly installments of principal and interest, with the entire balance being due and payable in full on January 1, 2009. Such Note (including all renewals, extensions, modifications and replacements thereof) is hereinafter sometimes referred to as the "Indebtedness."

In addition to the above-described Indebtedness, this Mortgage shall further secure (i) the performance of all of the covenants of Mortgagor and the payment of all sums payable by Mortgagor

under the terms of this Mortgage; (ii) the repayment of all sums advanced by Mortgagee to protect its interest in the Collateral or to perform any covenants of the Mortgagor hereunder which the Mortgagor shall have failed to perform and interest at the Default Rate on such sums advanced by Mortgagee; (iii) any and all modifications, extensions, renewals, substitutions and replacements of any indebtedness or obligation hereinabove described; and (iv) costs of collection of all such sums (including attorneys' fees). (All of the foregoing, including the Indebtedness, are sometimes herein collectively called the "Liabilities".) Without limiting any payment obligations of Mortgagor, the total Liabilities secured by this Mortgage shall not exceed twice the principal face amount of the Note.

"Default Rate," for purposes of this Mortgage, shall mean the rate of interest after maturity or the occurrence of any event of default as determined under the terms of the Note.

"Loan Documents," for purposes of this Mortgage, shall mean and include this Mortgage, the Note, and any and all loan agreements, notes, mortgages, assignments, security agreements, financing statements, and other agreements, affidavits, certificates and other documents executed by any Mortgagor, co-maker, guarantor or other person to Mortgagee in connection with or relating to the Indebtedness.

GRANT

NOW, THEREFORE, for and in consideration of the Mortgagee making the loan represented by the Indebtedness to or for the benefit of the Mortgagor, and for the purpose of securing the Liabilities and the performance by the Mortgagor of its obligations hereunder, and in consideration of the various agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Mortgagor,

THE MORTGAGOR HEREBY MORTGAGES, WARRANTS, CONVEYS, TRANSFERS, GRANTS AND ASSIGNS TO THE MORTGAGEE, AND GRANTS TO THE MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER A CONTINUING SECURITY INTEREST IN AND TO, ALL OF THE COLLATERAL,

TO HAVE AND TO HOLD the Premises unto the Mortgagee, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the State or other jurisdiction in which the Real Estate is located providing for the exemption of homesteads from sale on execution or otherwise.

The Mortgagor hereby covenants with and warrants to the Mortgagee and with the purchaser at any foreclosure sale: that at the execution and delivery hereof, it is well seized of the Premises, and of a good, indefeasible estate therein, in fee simple; that the Collateral is free from all encumbrances whatsoever (and any claim of any other person thereto) other than (i) a certain Lease Agreement between Mortgagor, as Lessor, and Rich Buckley, d/b/a Press-A-Dent ("Lessee"), dated October 19, 1998 (the "Press-A-Dent Lease"), which Press-A-Dent Lease is made subject and

subordinate to this Mortgage pursuant to a certain Subordination Agreement dated December 28, 1998; and (ii) current taxes, easements, and other matters identified in Exhibit "B", attached hereto (collectively, together with this Mortgage and any other liens, assignments and security interests granted to Mortgagee, being herein called the "Permitted Exceptions"); that it has good and lawful right to sell, encumber and convey the Collateral; that it has good and lawful right to grant a security interest hereunder; and that it and its successors and assigns will forever warrant and defend the Collateral against all claims and demands whatsoever.

I. REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

Mortgagor hereby represents and warrants to Mortgagee that the following warranties and representations are and will be true, correct and complete at all times:

1. Execution, Delivery and Effect of Loan Documents. The Teresa Buckley Trust (the "Trust") was created by a certain trust instrument dated July 21, 1997, entitled "The Teresa Buckley Trust" and is a duly formed and validly existing trust under the laws of the State of Colorado, with full power and authority under applicable Colorado and Alabama law to hold title to the Premises in the name of Mortgagor. Teresa Shultz Buckley is the duly appointed and acting Trustee of the Trust and has full power and authority under applicable law, as Trustee, to execute and deliver, and perform all obligations of Mortgagor under, this Mortgage and all other Loan Documents. The Loan Documents have each been duly authorized, executed and delivered by Mortgagor, and each is a legal, valid and binding obligation of Mortgagor, enforceable in accordance with its terms.

2. Other Obligations. Mortgagor is not in default under any instruments or obligations relating to Mortgagor's business, Mortgagor's assets, or the Collateral. No party has asserted any claim or default relating to any of Mortgagor's assets or the Collateral. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which any Mortgagor is a party or by which any Mortgagor may be bound or affected, and do not and will not violate or contravene any federal, state or local law, ordinance, rule, regulation, statute, decision, order, judgment or decree of any governmental or regulatory authority, court or arbitrator to which any Mortgagor is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. Each Mortgagor has filed all federal, state, county and municipal income tax returns required to have been filed by such Mortgagor and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by such Mortgagor. Mortgagor does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

3. Construction and Completion of Improvements. The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with all federal, state and local laws, ordinances, rules, regulations, statutes, decisions, orders,

judgment or decree of any governmental or regulatory authority, court or arbitrator, and the plans and specifications previously delivered to Mortgagee. The Improvements are served by electric, gas, sewer or septic system, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, other off-site improvements, access to the Premises necessary for its present and contemplated uses and operation and service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

4. Legal Actions. There are no (i) actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Mortgagor's knowledge and belief, threatened against or affecting any Mortgagor, any Mortgagor's business, or the Collateral, or (ii) investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Mortgagor's knowledge and belief, threatened against or affecting any Mortgagor, any Mortgagor's business or the Collateral, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Mortgagee. Mortgagor is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting any Mortgagor or the Collateral. Furthermore, to the best knowledge and belief of Mortgagor, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect (a) the validity or enforceability of the Loan Documents or (b) the condition (financial or otherwise) or ability of Mortgagor to meet Mortgagor's obligations under the Loan Documents.

5. Financial Statements. All statements, financial or otherwise, submitted to Mortgagee in connection with the transaction evidenced by the Loan Documents are true, correct and complete in all respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof and no additional borrowings have been made by such parties or entities or any of them, since the date thereof, nor has Mortgagor, or any such party or entity experienced a material, adverse change in its finances, business, operations, affairs or prospects since the date thereof. Mortgagor and each such party or entity is now solvent.

6. Solvency of Tenants. To the best of Mortgagor's knowledge and belief, no Tenant [as specified in the loan commitment or the loan application, if any, to Mortgagee (the "Commitment") for the loan secured hereby] of the Real Estate or any part thereof has suffered or incurred any material, adverse change in its finances, business, operations, affairs or prospects since the date of the Commitment.

7. Adverse Change to Property. No event or series of events has or have intervened or occurred since the date of Mortgagor's submission of the Commitment which would, either individually or collectively, have a material adverse effect on the Collateral.

8. Compliance with Laws and Private Covenants. The Premises complies with all federal, state and local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments or decrees of any governmental or regulatory authority, court or arbitrator. The Real Estate is a

separate and distinct parcel for tax purposes and shall not become subject to property taxes, assessments and charges against any other land. Borrower has examined and is familiar with any applicable agreements affecting the Real Estate and to Borrower's knowledge there now exists no violation of any such agreements except to the extent (if any) specifically set forth in the Permitted Exceptions. Mortgagor has no notice that any of the Improvements encroaches upon any easement over the Real Estate or upon adjacent property, except to the extent (if any) specifically set forth in the Permitted Exceptions.

9. Independence of the Premises. Mortgagor has not by act or omission permitted any building or other improvements on property not covered by this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvements; and no Improvement on the Real Estate shall rely on any property not covered by this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor has not by act or omission impaired the integrity of the Real Estate as a single, separate, subdivided zoning lot separate and apart from all other property.

10. Hazardous Materials. Mortgagor represents and warrants that (a) there are no Hazardous Materials (hereinafter defined) on the Premises, except those in compliance with all applicable federal, state and local laws, ordinances, rules and regulations, (b) Mortgagor and to the best of Mortgagor's knowledge no occupant nor any prior owner or occupant of the Premises has received any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Premises and (c) Mortgagor or any occupant and to the best of Mortgagor's knowledge prior owners or operators have not used Hazardous Materials, on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules and regulations, or policies governing the use, treatment, storage, transportation, or disposal of Hazardous Materials. The term "Hazardous Materials" includes, without limitation, hazardous wastes or constituents, as defined in the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, *et seq.*); hazardous substances, as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, *et seq.*); any pesticide (as defined in the Federal Insecticide Fungicide, and Rodenticide Act, as amended (7 U.S.C. Section 136, *et seq.*); or any hazardous or toxic chemical or extremely hazardous substance, as defined in Emergency Planning and Community Right-to-Know Act of 1986, as amended (42 U.S.C. Section 11001, *et seq.*) or any media contaminated with any hazardous material as defined above. As used in this Mortgage, "Hazardous Materials" shall also include, without limitation, gasoline, petroleum products, explosives, radioactive material, polychlorinated biphenyls or related or similar materials, asbestos or asbestos-containing materials or any other substance or material defined as a hazardous or toxic substance or material by any federal, state or local law, ordinance, rule or regulation.

II. COVENANTS AND AGREEMENTS OF MORTGAGOR

Further to secure the payment and performance of the Liabilities, the Mortgagor hereby covenants, warrants, and agrees with the Mortgagee as follows:

1. Payment of Liabilities. The Mortgagor agrees that it will pay, timely and in the manner required in the Note or this Mortgage, the principal of and interest on the Note evidencing the Indebtedness, and all other Liabilities.

2. Payment of Taxes. The Mortgagor will pay, when due, all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or nongovernmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith, and will pay, when due, any tax or other charge on the interest or estate in lands created or represented by this Mortgage, whether levied against the Mortgagor or the Mortgagee or otherwise; and will submit to the Mortgagee upon request all receipts showing payment of all of such taxes, assessments and charges.

3. Maintenance and Repair. The Mortgagor will not abandon the Premises; not do or suffer anything to be done which would depreciate or impair the value of the Collateral or the security of this Mortgage; not remove or demolish any of the Improvements, except in making nonmaterial changes, additions or alterations to the Premises; pay promptly for all labor and materials for all construction, repairs and improvements to or on the Premises; and not commit, suffer, or permit waste of any part of the Premises; not make any material changes, additions or alterations to the Premises or the Improvements, except as required by any applicable governmental requirement or as otherwise approved in writing by the Mortgagee; maintain, preserve and keep the Improvements in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction; promptly restore and replace any of the Improvements which are destroyed or damaged; and not commit, suffer, or permit waste of any part of the Premises.

4. Sales and Encumbrances. Mortgagor shall not, without the prior written consent of Mortgagee, which consent, if given in Mortgagee's sole unfettered discretion, may be conditioned upon a change in the interest rate under the Note, payment of a fee or change in the term of the Note, and/or the satisfaction of other conditions required by Mortgagee or one or more of the foregoing or other requirements of Mortgagee:

(i) convey, assign, sell, mortgage, encumber, pledge, dispose of, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly or by operation of law or otherwise, of record or not), all or any part of any legal or beneficial interest in any part or all of the Premises, or any interest therein, or any or all of the rents, issues, deposits or profits therefrom, or any other Collateral; provided, however, that after the principal balance of the Note has been reduced to an amount less than \$490,000.00, a second mortgage will be permitted to be placed upon the Premises subject to the following conditions:

(a) such mortgage, all other liens and security interests granted in connection therewith, and the debt secured thereby shall be fully subordinated as to lien priority and payment rights to this Mortgage, all other liens and security interests

granted under the Loan Documents, and the payment rights of Mortgagee with respect to the Liabilities pursuant to a subordination agreement or agreements in form and content satisfactory to Mortgagee;

(b) such mortgage and all other documents executed in connection therewith shall be subject to the prior review and approval of Mortgagee, which approval shall not be unreasonably withheld; and

(c) the principal amount secured by such mortgage shall not exceed \$200,000.00; or

(ii) sell, assign or otherwise dispose of (whether or not of record or for consideration or not), or permit the sale, assignment or other disposition of, any legal or beneficial interest in the stock of any Mortgagor which is a corporation, in any general or limited partnership interest in any Mortgagor which is a general or limited partnership or joint venture, or in any membership interest in any Mortgagor which is a limited liability company.

Any breach of the foregoing by any Mortgagor or any holder of any interest (legal or beneficial) or stock in any Mortgagor shall constitute a Default hereunder.

5. Access by Mortgagee; Future Appraisals. The Mortgagor will as and when requested by the Mortgagee: deliver to the Mortgagee copies of all leases, agreements creating or evidencing Intangibles, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Collateral; permit access by the Mortgagee to its books and records relating to the Collateral, construction progress reports, insurance policies and other papers for examination and the making of copies and extracts; prepare such schedules, summaries, reports and progress schedules as the Mortgagee may request; and permit the Mortgagee and its agents and designees, at all reasonable times, to enter on and inspect the Premises for any reasonable purpose, including, but not limited to, appraisals and reappraisals of the Premises from time to time as required by applicable laws or regulations now or hereafter in effect, or required by the Mortgagee in its discretion upon the occurrence of a Default, the cost of which appraisals and reappraisals shall be paid by Mortgagor upon demand by Mortgagee and shall be secured by this Mortgage.

6. Stamp and Other Taxes. If the Federal, or any State, county, local, municipal or other, government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any income, gross receipts or similar tax on the Mortgagee's receipt of interest payments on the principal portion of the Indebtedness secured hereby), assessment or imposition upon this Mortgage, the Liabilities, the Note, the interest of the Mortgagee in the Collateral, or any of the foregoing, or upon the Mortgagee by reason of or as holder of any of the foregoing, or shall, at any time or times, require revenue stamps to be affixed to the Note or this Mortgage, the Mortgagor shall pay all such taxes and stamps to or for the Mortgagee as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any such tax, assessment, stamp or imposition to be levied, assessed or charged, which law or

regulation prohibits the Mortgagor from paying the tax, assessment, stamp or imposition to or for the Mortgagee, then such event shall constitute a Default hereunder.

7. **Insurance.** The Mortgagor will, at all times, maintain on the Improvements and all other Collateral "all risk" hazard insurance coverage for the benefit of the Mortgagee, for the full replacement cost of the Improvements (but not less than the outstanding Indebtedness) and all other insurance reasonably required at any time or from time to time by the Mortgagee against loss or damage (whether to such Collateral or by loss of rentals, business interruption, loss of occupancy or other damage therefrom), including, without limitation, insurance against flood if required by the Federal Flood Disaster Protection Act of 1973, as amended, and regulations issued thereunder, at any time prior to the payment in full of the Liabilities. Mortgagor further agrees that the cost of determining at any time or times whether the Premises or any Improvements are located in a special flood hazard area shall be paid by Mortgagor upon demand and shall be secured by this Mortgage. Mortgagor shall, in addition, obtain and keep in force all other insurance commonly or, in the judgment of the Mortgagee, prudently maintained by those whose business, improvement to, and use of real estate is similar to that of the Mortgagor, including, without limitation, comprehensive public liability (naming Mortgagee as an additional insured), employer's liability and workmen's compensation insurance. All such insurance shall be in such amounts, in such form and with such companies as shall be reasonably satisfactory to the Mortgagee. Mortgagor shall deliver to and keep deposited with the Mortgagee true and correct copies of all policies of such insurance and renewals thereof, with premiums prepaid, and with mortgagee and loss payable clauses satisfactory to the Mortgagee, and noncancellation clauses providing for not less than 30 days' prior written notice to the Mortgagee, attached thereto in favor of the Mortgagee, its successors and assigns. Such insurance shall contain the so-called Replacement Cost or Restoration Endorsement, a provision to the effect that the waiver of subrogation rights by the insured does not void the coverage, and such special endorsements (not inconsistent herewith) as may be required by the terms of any leases assigned as security hereunder. The Mortgagor, in its discretion, may settle, compromise and adjust any and all claims or rights under any insurance policy maintained by the Mortgagor relating to the Collateral, provided no such settlement, compromise or adjustment shall be effected without the prior written consent of the Mortgagee. If (i) no Default (as hereinafter defined) has occurred and no condition exists, which with the passage of time or the giving of notice, would constitute a Default, and (ii) Mortgagee shall have determined in its sole discretion that the damage to the Improvements can be fully repaired and restored for a cost not exceeding the proceeds of insurance plus (to the extent such proceeds are not sufficient, in Mortgagee's sole discretion) additional funds deposited by Mortgagor to be held by Mortgagee in a non-interest bearing account, then any insurance proceeds collected by Mortgagee or Mortgagor as a result of the damage to or destruction of the Improvements (less the costs, if any, incurred by Mortgagee in connection with the collection of the insurance proceeds) shall be used to pay the cost of repairing, rebuilding and restoring the Improvements. If a Default has occurred or if a condition exists, which with the passage of time or the giving of notice, would constitute a Default, or if Mortgagee shall determine at any time that such insurance proceeds plus any funds deposited by Mortgagor are insufficient to complete such repairs and restoration, then such insurance proceeds, at the option of Mortgagee, shall be (i) applied in reduction of the indebtedness secured hereby, whether or not then due and payable, or (ii) held by Mortgagee and used to reimburse Mortgagor for the cost of repairing, rebuilding and restoring

the Improvements. Regardless of the cause of any damage to or destruction of the Improvements or the availability of insurance proceeds, Mortgagor shall (i) repair, restore and rebuild the Improvements which are damaged or destroyed at Mortgagor's cost and expense, or (ii) pay in full all indebtedness secured hereby and discharge all other Liabilities. Mortgagor shall commence the repair, rebuilding and restoration of the Improvements promptly after the occurrence of the damage or destruction, and shall complete such repair, rebuilding and restoration diligently and in accordance with plans and specifications approved in writing by Mortgagee. In the event of foreclosure of this Mortgage or other transfer of title to the Premises in extinguishment of the Liabilities secured hereby, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. Nothing contained in this Mortgage shall create any responsibility or obligation on the Mortgagee to collect any amounts owing on any insurance policy or resulting from any condemnation, to rebuild or replace any damaged or destroyed Collateral or to perform any other act under this Paragraph 7.

8. Eminent Domain. In case the Collateral, or any part or interest in any thereof, is taken by condemnation, the Mortgagee is hereby empowered to collect and receive all compensation and awards of any kind whatsoever (referred to collectively herein as "Condemnation Awards") which may be paid for any property taken or for damages to any property not taken (all of which the Mortgagor hereby assigns to the Mortgagee), and all Condemnation Awards so received shall be forthwith applied by the Mortgagee, as it may elect, to the prepayment of the Indebtedness or any other Liabilities, or to the repair and restoration of any property so taken or damaged. The Mortgagor may settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Collateral or any portion thereof, provided that no such settlement, compromise or adjustment shall be effected without the prior written consent of the Mortgagee.

9. Governmental Requirements. Mortgagor will, at all times, fully comply with, and cause the Collateral and the use and condition thereof fully to comply with, all Federal, State, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate to the Mortgagor or the Collateral or the use thereof.

10. No Mechanics' Liens. The Mortgagor will not do or permit to be done any act or thing, and no person shall have any right of power to do any act or thing, whereby any mechanics' lien under the laws of the State in which the Real Estate is located can arise against or attach to the Premises or any part thereof unless such liens shall first be wholly waived as against this Mortgage. In addition, it is further expressly made a covenant and condition hereof that the lien of this Mortgage shall extend to any and all improvements and fixtures now or hereafter on the Premises, prior to any other lien thereon that may be claimed by any person, so that subsequently accruing claims for lien on the Premises shall be junior and subordinate to this Mortgage. All contractors, subcontractors, and other parties dealing with the Premises, or with any parties interested therein, are hereby required to take notice of the above provisions.

11. Continuing Priority. The Mortgagor will: pay such fees, taxes and charges, execute and file (at the Mortgagor's expense) such financing statements, obtain such acknowledgments or consents, notify such obligors or providers of services and materials and do all such other acts and things as the Mortgagee may from time to time request to establish and maintain a valid and perfected first and prior lien, subject to the Permitted Exceptions, on and security interest in the Collateral and to provide for payment to the Mortgagee directly of all cash proceeds thereof, with the Mortgagee in possession of the Collateral to the extent it requests; maintain Mortgagor's executive office and principal place of business at all times at the address shown above; keep all of Mortgagor's books and records relating to the Collateral on the Premises or at such address; keep all tangible Collateral on the Real Estate, except as the Mortgagee may otherwise consent in writing; make notations on Mortgagor's books and records sufficient to enable the Mortgagee, as well as third parties, to determine the interest of the Mortgagee hereunder; and not collect any rents or the proceeds of any of the Leases or Intangibles more than 30 days before the same shall be due and payable, except as the Mortgagee may otherwise consent in writing.

12. Utilities. The Mortgagor will pay all utility charges incurred in connection with the Collateral and maintain all utility services available for use at the Premises.

13. Leases, Covenants and Agreements. The Mortgagor will, for the benefit of the Mortgagee, fully and promptly perform each obligation and satisfy each condition imposed on the Mortgagor under any Lease, Intangible or other agreement so that there will be no default thereunder and so that the persons (other than the Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Mortgagee. Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such person to avoid such performance. The Mortgagor shall keep, observe, perform and comply with all covenants, conditions and restrictions affecting the Premises, and any operating agreements or other writings relating to the Collateral, and all leases, instruments and documents relating thereto. Mortgagor shall furnish to Mortgagee, immediately upon receipt, a copy of each and every notice received by Mortgagor concerning any default or failure to comply with any such leases, covenants, restrictions, agreements or other instruments.

Mortgagor further agrees that it shall not initiate, join in, or consent to any amendment or change in any easement benefitting or affecting the Real Estate or in any zoning ordinance or other public or private restrictions limiting or defining the uses of, or imposing obligations with respect to, the Real Estate, or any part thereof, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

14. No Assignments; Future Leases. The Mortgagor will not cause or permit any Rents, issues, profits, Leases or other contracts relating to the operation or maintenance of Premises to be assigned to any party other than the Mortgagee without first obtaining the written consent of the Mortgagee to any such assignment. In addition, the Mortgagor shall not cause or permit all or any portion of or interest in the Premises or the Improvements to be leased (that word having the same meaning for purposes hereof as it does in the law of landlord and tenant) directly or indirectly to any person, except pursuant to written Leases approved by the Mortgagee. Each such Lease executed

after the date hereof shall be, in all respects, subject and subordinate to this Mortgage and all renewals, extensions, modifications, substitutions and replacements of this Mortgage or the Indebtedness secured hereby; provided, however, no proceeding by the Mortgagee to foreclose this Mortgage, or action by way of its entry into possession after any Default hereunder, shall in or of itself operate to terminate such Lease unless the Mortgagee expressly requests such relief in writing, but the preceding provisions of this Paragraph 14 shall never be construed as subordinating this Mortgage to any such Lease or any other Lease. As a condition of Mortgagee's approval of any Lease, Mortgagee may require the tenant to execute a Subordination, Non-Disturbance and Attornment Agreement and an Estoppel Certificate, each in such form and substance required by Mortgagee, and may require that the tenant agree to execute, from time to time upon Mortgagee's request, such estoppel certificates as Mortgagee may require. Mortgagor shall not cause or permit the assignment, subletting or surrender of any tenant's interest under any Lease, nor the modification or amendment of any Lease, without the prior written consent of Mortgagee; provided, however, that, with respect to the Press-A-Dent Lease, so long as Richard Buckley shall at all times remain personally liable for the payment and performance of all obligations of the Lessee, Mortgagee shall not unreasonably withhold its consent to (i) an assignment of said Press-A-Dent Lease to a corporation or other entity wholly owned and controlled by Richard Buckley, or (ii) a sublease to any third party.

15. Collections. Until such time as the Mortgagee shall notify the Mortgagor of the revocation of such power and authority, the Mortgagor will, at Mortgagor's own expense, endeavor to collect, as and when due, but not more than one (1) month in advance, all amounts due with respect to any of the Rents, Leases, Intangibles and other Collateral, including the taking of such action with respect to such collection as the Mortgagee may reasonably request, or, in the absence of such request, as the Mortgagor may deem advisable. The Mortgagee, however, may, at any time, whether before or after any revocation or such power and authority or the maturity of any of the Liabilities, notify any parties obligated on any of the Rents, Leases, Intangibles and other Collateral to make payment to the Mortgagee of any amounts due or to become due thereunder and enforce collection of any of the Rents, Leases, Intangibles or other Collateral by suit or otherwise and surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby. Upon request of the Mortgagee, the Mortgagor will, at Mortgagor's own expense, notify any parties obligated on any of the Rents, Leases, Intangibles, or other Collateral to make payment to the Mortgagee of the amounts due or to become due thereunder.

16. Mortgagee's Performance. If the Mortgagor fails to pay or perform any of its obligations herein contained (including payment of expenses of foreclosure and court costs), the Mortgagee may (but need not), as agent or attorney-in-fact of the Mortgagor, make any payment or perform (or cause to be performed) any obligation of the Mortgagor hereunder, in any form and manner deemed expedient by the Mortgagee, and any amount so paid or expended (plus reasonable compensation to the Mortgagee for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the rate specified in the Note evidencing the Indebtedness after default, shall be added to the principal debt hereby secured and shall be repaid to the Mortgagee upon demand. In making any payment or securing any performance relating to any

obligation of the Mortgagor hereunder, the Mortgagee shall (as long as it acts in good faith) be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of the Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a Default (defined hereinafter).

17. Subrogation. To the extent that the Mortgagee, on or after the date hereof, pays any sum due under any provision of law or any instrument or document creating any lien prior or superior to the lien of this Mortgage, or the Mortgagor or any other person pays any such sum with the proceeds of any loan under the Indebtedness, the Mortgagee shall have and be entitled to a lien on the Collateral equal in priority to the lien discharged, and the Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit the Mortgagee in securing the Liabilities. The Mortgagee shall be subrogated, notwithstanding their release of record, to any lien under any mortgage or deed of trust, superior titles, vendors' liens, mechanics' liens, and any other liens, charges, encumbrances, rights and equities on the Premises, to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under the Note or of other Liabilities secured hereby.

18. Escrow Account. Notwithstanding anything herein to the contrary, upon request, Mortgagor shall pay to Mortgagee monthly, in addition to each monthly payment required hereunder, or under the terms of the Indebtedness secured hereby, a sum equivalent to one-twelfth (1/12) of the amount estimated by Mortgagee to be sufficient to enable Mortgagee to pay at least thirty (30) days before they become due, all taxes, assessments, and other similar charges levied against the Premises, and all insurance premiums on the policy or policies of insurance required hereunder. Provided, however, that Mortgagee shall not request such escrow payments until (a) Mortgagor shall have failed on one or more occasions to pay any such tax, assessment, charge, or insurance premium when due, or (b) a Default shall have occurred as defined in this Mortgage. Such additional payment may be commingled with the general funds of Mortgagee and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver and pay over to Mortgagee such additional sums as are necessary to make up any deficiency in the amount necessary to enable Mortgagee to fully pay any of the items hereinabove mentioned. In the event of any default by Mortgagor in performance of the terms, covenants or conditions herein contained, or in the evidence of the debt secured hereby, Mortgagee may apply against the Indebtedness secured hereby, in such manner as Mortgagee may determine, any funds of Mortgagor then held by Mortgagee under this Paragraph 18.

19. Hazardous Materials. Mortgagor covenants that the Premises shall be kept free of Hazardous Materials, and neither Mortgagor nor any occupant of the Premises shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Premises, except to the extent that such use, transport, storage or disposal shall be necessary and proper for the Mortgagor to use the Premises and carry out the activities set forth in the loan application, commitment letter, if any, or any separate loan agreement or other agreement executed concurrently with this Mortgage, provided that such use, transport, storage, disposal or handling of Hazardous Materials on the

Premises shall be in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. Mortgagor shall not without prior notice to Mortgagee, engage in or allow any use or activity on the Premises which results in initial use or increased use, as the case may be, of Hazardous Materials on the Premises which were not disclosed to the Mortgagee or described in the loan application, commitment letter, if any, or separate loan agreement or other agreement executed concurrently with this Mortgage. Mortgagor shall comply with, and ensure compliance by all occupants of the Premises with, all applicable federal, state and local laws, ordinances, rules and regulations, and shall keep the Premises free and clear of any liens imposed pursuant to laws, ordinances, rules or regulations. Mortgagor shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any occupant a release, spill, leak or emission of Hazardous Materials onto the Premises or onto any other contiguous property. In the event that Mortgagor receives or is aware of the receipt by any of its occupants of any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Premises, Mortgagor shall immediately notify Mortgagee. Mortgagor shall promptly conduct and complete all investigations, including any comprehensive environmental audit, studies, samplings and testing, and all removal or remedial actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Premises as required by all applicable federal, state and local laws, ordinances, rules, regulations and policies and in accordance with the orders and directives of all federal, state and local governmental authorities. Mortgagor further covenants that it will promptly notify Mortgagee of any changes in the nature or extent of any Hazardous Materials, substances or wastes maintained on, in or under the Premises or used in connection therewith, and will transmit to Mortgagee copies of any citations, orders, notices or other governmental or other communication received with respect to any other Hazardous Materials, substances, wastes or other environmentally regulated substances affecting the Premises.

Mortgagor's violation of any covenant, representation, or warranty within this Paragraph shall be an Event of Default, and the Mortgagee may pursue all rights and remedies to which it is entitled as set forth in this Mortgage. If Mortgagee shall at any time reasonably believe that any of the foregoing covenants and agreements of Mortgagor with respect to Hazardous Materials shall have been violated in any respect, or upon the occurrence of any Default, as defined in this Mortgage, Mortgagee may, at its option and at the expense of Mortgagor, cause such investigations, including a comprehensive environmental audit, studies, sampling, and testing, to be conducted to determine whether the Premises is free of contamination by Hazardous Materials and whether the ownership, use and operation of the Premises is in compliance with federal, state and local environmental laws, rules and regulations. All of the costs and expenses incurred by Mortgagee with respect to the audits, tests, inspections and examinations which Mortgagee may conduct, including the fees of the engineers, laboratories and contractors, shall be paid by Mortgagor. Mortgagee may, but shall not be required to, advance such costs and expenses on behalf of Mortgagor. All sums so advanced shall bear interest at the highest rate provided under the Note.

Mortgagor hereby irrevocably grants and conveys to Mortgagee the right to enter on and upon the Premises at any time and from time to time for the purpose of making such audit tests, inspections, and examinations, including subsurface exploration and testing, as Mortgagee, in its discretion, deems necessary, convenient or proper to accomplish the purposes above indicated.

Mortgagee, or its designated agents, shall have the right to inspect and copy all of Mortgagor's records relating to environmental matters and to enter all buildings or facilities of Mortgagor for such purpose. A release of this Mortgage shall evidence a termination of Mortgagee's rights hereunder. Mortgagor acknowledges that no adequate remedy at law exists for a violation of the rights granted hereby and agrees that the Mortgagee shall have the right to enforce such rights by equitable writ or decree, including temporary and preliminary injunctive relief. In the event Mortgagee is required to enforce its rights hereunder, the Mortgagor shall pay all of Mortgagee's costs and expenses in connection therewith, including, but not limited to, all reasonable attorney's fees and paralegal fees incurred by Mortgagee. The exercise of the rights granted hereunder shall not constitute the Mortgagee a mortgagee in possession with respect to the Premises.

Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, response and cleanup costs, and other costs and expenses (including, without limitation, reasonable attorneys' fees, the costs of any remedial action, consultant fees, investigation and laboratory fees, court costs and litigation expenses), imposed upon or incurred by or asserted against Mortgagee by reason of (a) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials (as defined above in this Mortgage) on, from, or affecting the Premises or any other property; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (c) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; or (d) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or in any way related to such Hazardous Materials, including, but not limited to the following laws and any regulations promulgated pursuant thereto: the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act; the Clean Water Act; the Toxic Substances Control Act; Hazardous Waste Treatment, Storage and Disposal Act; and the Clean Air Act. Any amounts payable to Mortgagee by reason of the application of this paragraph shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this indemnification paragraph of this Mortgage shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Mortgage.

20. Financial Records and Statements. Mortgagor shall keep accurate books and records in accordance with generally accepted accounting principles, consistently applied, in which full, true and correct entries shall be promptly made as to all operations of the Premises, and shall permit all such books and records to be inspected and copied by Mortgagee, its designee or its representatives during customary business hours. Mortgagor shall deliver or cause to be delivered to Mortgagee within one hundred twenty (120) days after the end of each calendar year (i) a statement of condition or balance sheet of Mortgagor relating solely to the Premises as of the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Mortgagor with respect to the Premises, both certified as to accuracy (a) by Mortgagor, provided no Default exists hereunder, or (b) by an independent certified public accountant acceptable to Mortgagee (said documents need not be audited but shall be reviewed), if a Default occurs hereunder and Mortgagee

requests such a certification in writing; and (ii) a current rent roll of all persons then occupying portions of the Premises under any and all Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to accuracy by Mortgagor, and in form and substance satisfactory to Mortgagee. Mortgagor shall further deliver or cause to be delivered to Mortgagee, upon Mortgagee's request, copies of all federal and state income tax returns filed by or on behalf of Mortgagor for the most recent fiscal or calendar year of Mortgagor. Mortgagor shall further deliver or cause to be delivered to Mortgagee, within one hundred twenty (120) days after the end of each calendar year, annual personal financial statements of Teresa Schultz Buckley and Richard Buckley, certified as to accuracy by each such individual. Mortgagor shall furnish such other financial statements, reports, and information as Mortgagee may reasonably request from time to time.

21. Indemnity. Mortgagor shall indemnify, defend and hold harmless Mortgagee from and against, and, upon demand, reimburse Mortgagee for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by Mortgagee by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Premises through any cause whatsoever, or asserted against Mortgagee on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Collateral or the Loan Documents, except as a result of the willful misconduct or gross negligence of Mortgagee.

22. No Preferences. Mortgagor shall not repay any sums borrowed from anyone other than Mortgagee, if, as a result of, or concurrently with the making of, such payments, Mortgagor would then be in default under the Loan Documents or in the payment of obligations incurred in the ordinary operation of the Premises.

23. Legal Existence. If any Mortgagor is executing this instrument as a partnership, corporation, limited liability company or trust, such Mortgagor agrees that so long as any of its obligations hereunder, or under any of the Loan Documents, remain unsatisfied, it will not dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or partnership, without the prior express written consent of the Mortgagee, except as may be otherwise provided herein.

I. DEFAULT: REMEDIES

The Mortgagor and the Mortgagee hereby agree further as follows:

1. Defaults; Acceleration. The occurrence of any of the following shall constitute a "Default" hereunder:

(i) Failure by Mortgagor to pay within ten (10) days of the date when due any installment of principal or interest under the Note or other Indebtedness secured by this Mortgage or any other sum that may be due and payable under this Mortgage;

(ii) Any sale, transfer, creation of lien, or other act or occurrence described in Paragraph 4 of Article II to which Mortgagee shall not have first consented in writing;

(iii) Failure by Mortgagor duly to observe or perform any other term, covenant, condition or agreement contained in this Mortgage or in any loan agreement, assignment of rents and leases, or any other assignment, agreement or document securing or relating to the Note or Indebtedness and the continuance of such failure for a period of thirty (30) days from the date of a written notice to Mortgagor;

(iv) The fact that any representation or warranty of Mortgagor contained in this Mortgage or in any other document or writing furnished by Mortgagor to Mortgagee proves to be untrue or misleading in any respect as of the time made or as of any subsequent time prior to the satisfaction in full of all of the Indebtedness;

(v) The filing of any federal tax lien against the Premises;

(vi) The filing by Mortgagor or any co-maker or guarantor of the Note, or any tenant or guarantor of a lease of the Premises, of a voluntary petition in bankruptcy pursuant to any federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors (hereafter referred to collectively as "Bankruptcy Law") or the issuing of an order for relief against Mortgagor or any such co-maker, guarantor, tenant, or lease guarantor under any such Bankruptcy Law, or the filing by Mortgagor or any such co-maker, guarantor, tenant, or lease guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future Bankruptcy Law;

(vii) Mortgagor's or any such co-maker's, guarantor's, tenant's or lease guarantor's seeking or consenting to or acquiescing in the appointment of any trustee, custodian, receiver, or liquidator of Mortgagor or any such co-maker, guarantor, tenant, or lease guarantor or of all or any substantial part of the Collateral or of any or all of the income, rents, revenues, issues, earnings, profits or income thereof or of any other property or assets of Mortgagor or any such co-maker, guarantor, tenant, or lease guarantor or the making by Mortgagor or any such co-maker, guarantor, tenant, or lease guarantor of any general assignment for the benefit of creditors, or the admission in writing by Mortgagor or any such co-maker, guarantor, tenant, or lease guarantor of its inability to pay its debts generally as they become due, or the commission by Mortgagor or any such co-maker, guarantor, tenant, or lease guarantor of any act providing grounds for the entry of an order for relief under any Bankruptcy Law;

(viii) Failure by Mortgagor or any such co-maker, guarantor, tenant, or lease guarantor to cause the dismissal of any involuntary petition in bankruptcy brought against Mortgagor or any such co-maker, guarantor, tenant, or lease guarantor within sixty (60) calendar days after the same is filed but in any event prior to the entry of an order, judgment, or decree approving such petition;

(ix) The Premises are subjected to actual or threatened waste, or any part of the Collateral is removed, demolished, or altered without the prior written consent of Mortgagee;

(x) Any individual Mortgagor or co-maker or guarantor of the Note dies, or any Mortgagor, co-maker or guarantor which is a corporation, partnership or limited liability company dissolves or otherwise ceases to exist;

(xi) This Mortgage ceases to be the legally valid, binding and enforceable obligation of Mortgagor, or Mortgagor or any party claiming through Mortgagor contests, in any manner, such validity, binding nature or enforceability of this Mortgage, or any lien created pursuant hereto is not or ceases to be a perfected, valid, binding and enforceable lien;

(xii) The occurrence of any event of default under any agreement or document evidencing or securing any of the Liabilities which is not cured within the applicable notice and/or grace period (if any).

Upon the occurrence of any Default, the entire Indebtedness, together with interest thereon at the rate specified in the Note after maturity, and any or all of the other Liabilities shall, at the option of the Mortgagee, without demand or notice to Mortgagor or any other person, become and be immediately due and payable, and Mortgagee shall be entitled to the remedies hereinafter provided and as provided in any of the Loan Documents.

2. Remedies Cumulative. No remedy or right of the Mortgagee hereunder or under the Note or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right now or hereafter existing under any such document or under applicable law shall be cumulative. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Default shall impair any such remedy or right or be construed to be a waiver of any such Default or an acquiescence therein, nor shall it affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by the Mortgagee. All obligations of the Mortgagee, and all rights, powers and remedies of the Mortgagee, expressed herein shall be in addition to, and not limitation of, those provided by law or in the Note, or any other written agreement or instrument relating to any of the Liabilities or any security therefor.

3. Possession of Premises. The Mortgagor hereby waives all right to the possession, income, and rents of the Premises from and after the occurrence of any Default, and the Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Premises or any part thereof, to complete any construction in

progress thereon at the expense of the Mortgagor, to lease the same, to collect and receive all Rents and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Premises or, at the election of the Mortgagee in its sole discretion, to a reduction of such of the Liabilities in such order as the Mortgagee may elect. From and after the occurrence of any Default, the Mortgagee, either by itself or its agents or attorneys, is also hereby granted full and complete authority to enter upon the Premises, employ watchmen to protect the Improvements from depreciation or injury and to preserve and protect the Collateral, and to continue any and all outstanding contracts for the erection and completion of Improvements to the Premises, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of the Mortgagor hereunder.

4. Foreclosure. If a Default shall occur, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Premises is taken, to sell the Premises (or such part or parts thereof as the Mortgagee may from time to time elect to sell) under the power of sale which is hereby given to the Mortgagee, 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 Premises 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 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 Mortgagee may bid at any sale held under this Mortgage and may purchase the Premises, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Premises, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Borrower hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Premises 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 Premises not previously sold shall have been sold or all the Obligations shall have been paid in full and this Mortgage shall have been terminated as provided herein. In the event the proceeds of such foreclosure sale of the Premises are insufficient to pay the full amount of the Liabilities, including all such costs and expenses of foreclosure, the Mortgagee shall be entitled to a deficiency judgment against Mortgagor and any other person(s) indebted to Mortgagee with respect to the Liabilities.

5. Receiver. Upon the occurrence of any Default, in any action to foreclose the Mortgage or upon the actual or threatened waste to any of the Premises, or any portions thereof, and

without notice to the Mortgagor, or to any party claiming under the Mortgagor, and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the Liabilities, without regard to the then value of the Premises, or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without requiring any bond from the complainant in such proceedings, the Mortgagee shall be entitled to have a receiver appointed for the benefit of the Mortgagee, with such powers as the court making the appointment may confer, including, but not limited to, power to take possession, charge, and control of the Premises, to lease the same, to keep the Improvements insured and in good repair, and to collect all Rents prior to the filing of a foreclosure suit, and, in case of foreclosure sale, and a deficiency, during any period of redemption and the Mortgagor hereby irrevocably consents to such appointment. The court may, from time to time, authorize said receiver to apply the net amounts remaining in the receiver's hands, after deducting reasonable compensation for the receiver and the receiver's counsel as allowed by the court, in payment (in whole or in part) of any or all of the Liabilities, including, without limitation, the following, in such order of application as the Mortgagee may elect: (i) amounts due upon the Note and upon any and all other unpaid notes or obligations included among the Liabilities, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises, (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises, (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (vi) all monies advanced by the Mortgagee to cure or attempt to cure any default by the Mortgagor in the performance of any obligation or condition contained in this Mortgage or otherwise, to protect the security hereof or provided herein, with interest at the rate specified in the Note after default. The overplus of the proceeds of sale, if any, shall then be paid to the Mortgagor, or the court, upon reasonable request.

6. Purchase by Mortgagee. In the case of any sale of the Premises pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt.

7. Remedies for Leases and Rents. If any Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Mortgagee shall be entitled, in its discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto (except medical records); (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted, to the extent permitted by law, hold, operate, manage, and control the Premises, the Rents, the Leases and other Collateral relating thereto, either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or

necessary to enforce the payment of the Rents, the Leases and other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof (unless Mortgagee shall have entered into a nondisturbance and attornment agreement with the tenant); (vi) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure the Collateral for all risks incidental to the Mortgagee's possession, operation and management thereof; and (viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as the Mortgagee in its discretion may deem proper, the Mortgagor hereby granting the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Default without notice to the Mortgagor or any other person. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and (c) to the payment of the Indebtedness or the Liabilities as described herein.

IV. GENERAL

1. Permitted Acts. The Mortgagor agrees that, without affecting or diminishing in any way the liability of the Mortgagor or any other person (except any person expressly released in writing by the Mortgagee) for the payment or performance of any of the Liabilities or for the performance of any obligation contained herein or affecting the lien hereof upon the Collateral or any part thereof, the Mortgagee may, at any time and from time to time, without notice to or the consent of any person: release any person liable for the payment or performance of any of the Liabilities; extend the time for, or agree to alter the terms of payment of, any indebtedness under the Note, or any of the Liabilities; modify or waive any obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind; release any Collateral or other property securing any or all of the Liabilities; make releases of any portion of the Premises; consent to the creation of any easements on the Premises or of any covenants restricting the use or occupancy thereof; or exercise or refrain from exercising, or waive, any right the Mortgagee may have.

2. Legal Expenses. The Mortgagor agrees to indemnify the Mortgagee from all loss, damage and expense, including attorneys' fees, incurred in connection with any suit or proceeding

in or to which the Mortgagee may be made or become a party for the purpose of protecting the lien or priority of this Mortgage.

3. Security Agreement and Fixture Filing. This Mortgage, to the extent that it conveys or otherwise deals with personal property or items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the State of Alabama. This Mortgage constitutes a financing statement filed as a fixture filing under the Uniform Commercial Code as in effect in the State of Alabama in the real estate records in the county in which the Premises are located with respect to any and all fixtures included within the term "Collateral" and with respect to any goods or other personal property that may now or hereafter become fixtures. Mortgagor's and Mortgagee's addresses are as set forth at the beginning of this Mortgage, and Mortgagee's address is an address from which information concerning the security interests of Mortgagee may be obtained.

4. Defeasance. Upon full payment of all indebtedness secured hereby and satisfaction of all the Liabilities in accordance with their respective terms and at the time and in the manner provided, this conveyance shall be null and void, and thereafter, upon demand therefor, an appropriate instrument of reconveyance or release shall be made by the Mortgagee to the Mortgagor at the Mortgagor's expense.

5. Notices. Each notice, demand or other communication in connection with this Mortgage shall be in writing and shall be deemed to be given to and served upon the addressee thereof (i) upon actual delivery to such addressee at the address set out above, or (ii) on the third business day after the deposit thereof in the United States mail, certified mail or registered mail, first-class postage prepaid, addressed to such addressee at the address set out above. By notice complying with this section, any party may from time to time designate a different address as the address for the purpose of the receipt of notices hereunder.

6. Successors; The Mortgagor; Gender. All provisions hereof shall inure to the benefit of and bind the parties and their respective successors, vendees, and assigns. The word "Mortgagor" shall include all persons claiming under or through the Mortgagor and all persons liable for the payment or performance of any of the Liabilities whether or not such persons shall have executed the Note or this Mortgage. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

7. Care by the Mortgagee. The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as the Mortgagor requests in writing, but failure of the Mortgagee to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of the Mortgagee to preserve or protect any rights with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by the Mortgagor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

8. No Obligation on Mortgagee. This Mortgage is intended only as security for the Liabilities. Anything herein to the contrary notwithstanding, (i) the Mortgagor shall be and remain liable under and with respect to the Collateral to perform all of the obligations assumed by the Mortgagor under or with respect to each thereof, (ii) the Mortgagee shall have no obligation or liability under or with respect to the Collateral by reason or arising out of this Mortgage, and (iii) the Mortgagee shall not be required or obligated in any manner to perform or fulfill any of the obligations of the Mortgagor under, pursuant to or with respect to any of the Collateral.

9. No Waiver; Writing. No delay on the part of the Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No amendment, waiver or supplement in any way affecting this Mortgage shall in any event be effective unless set out in a writing signed by the Mortgagee.

10. Governing Law; Severability. This Mortgage shall be deemed to be a contract entered into pursuant to the laws of the State of Indiana and shall in all respects be governed, construed, applied, and enforced in accordance with the laws of the State of Indiana; provided, however, that with respect to the creation, perfection, priority, and enforcement of the lien of this Mortgage, and the determination of deficiency judgments, the laws of the State of Alabama shall apply. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

11. Waiver. The Mortgagor, on behalf of itself and all persons now or hereafter interested in the Premises or the Collateral, to the fullest extent permitted by applicable law hereby waives all rights under all appraisement, homestead, moratorium, valuation, exemption, extension, and marshaling statutes, laws or equities now or hereafter existing, and the Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of this Collateral.


12. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should the Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

13. Mortgagee Not a Joint Venturer or Partner. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession

or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Liability secured hereby, or otherwise.

14. Waiver of Jury Trial. MORTGAGEE AND MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF MORTGAGEE OR MORTGAGOR. MORTGAGOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER CREDIT DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE MAKING THE LOAN TO MORTGAGOR.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing to be executed the date first above set forth.

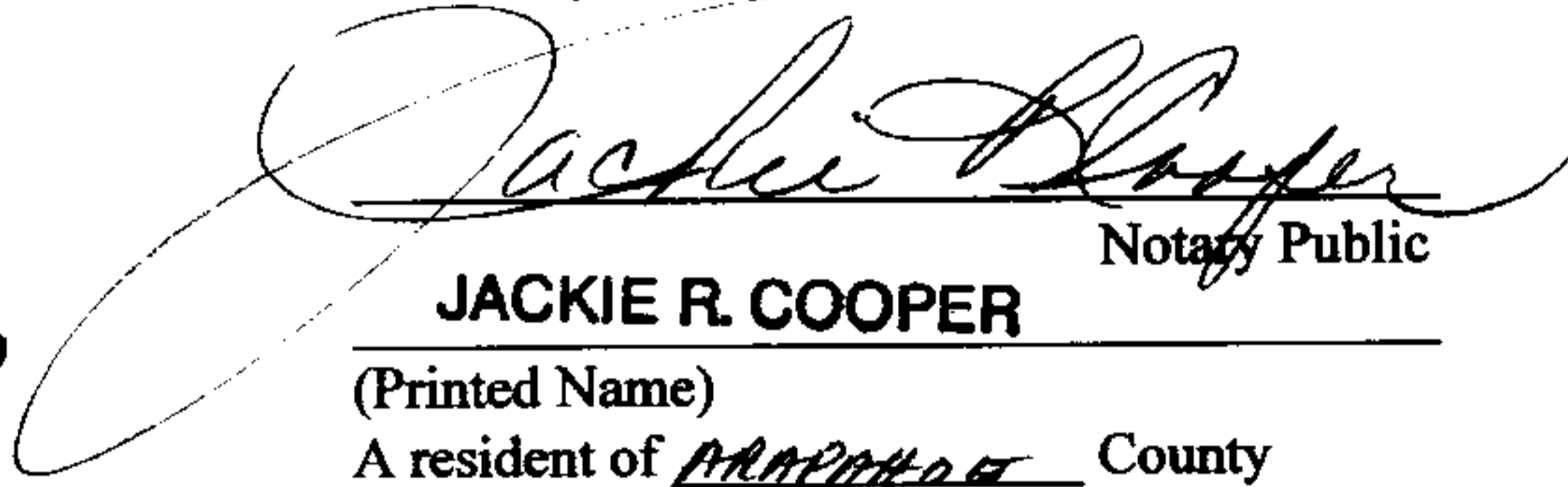

TERESA SHULTZ BUCKLEY AS TRUSTEE
OF THE TERESA BUCKLEY TRUST

STATE OF COLORADO)
) SS:
COUNTY OF ARAPAHOE)

Before me, a Notary Public, in and for the State of COLORADO, personally appeared TERESA SHULTZ BUCKLEY AS TRUSTEE OF THE TERESA BUCKLEY TRUST, who, having been first duly sworn, acknowledged the execution of the foregoing Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, and stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 28th day of December, 1998.

My Commission Expires:
JACKIE R. COOPER
My Commission Expires 10/18/99


Notary Public
JACKIE R. COOPER
(Printed Name)
A resident of ARAPAHOE County

THIS INSTRUMENT PREPARED by David A. Scott, Attorney at Law, Baker & Daniels, 111 East Wayne Street, Suite 800, Fort Wayne, Indiana 46802.

EXHIBIT "A"

Lot 3-B, according to the Survey of Lots 1-7, Greystone Highlands Commercial Subdivision, as recorded in Map Book 20, Page 25 A & B, in the Probate Office of Shelby County, Alabama.

EXHIBIT "B"

PERMITTED EXCEPTIONS

1. The first installment of real estate taxes for the year 1998, due and payable in May of 1999, and taxes for all subsequent years.
2. Restrictions appearing of record in Instrument No. 1995-18410 in the Probate Office of Shelby County, Alabama.
3. Easements and building line as shown on the recorded subdivision map.
4. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto as recorded in Deed Book 349, page 230, Deed Book 4, Page 486 and Deed Book 4, page 488 in said Probate Office.
5. Covenant and agreement for water service as recorded in Real Volume 235, page 611 in said Office.
6. Terms and conditions as described in Instrument No. 1996-34645 in said Probate Office.

Inst # 1999-03757