

After recording return to:

Birmingham Project
Birmingham Project Loan

Martha Harris
Thompson & Knight, P.C.
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201

**MORTGAGE, SECURITY AGREEMENT
AND FIXTURE FILING**
(With Power of Sale)

THE STATE OF ALABAMA

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF SHELBY

§

§

THAT, CAR WASH HEADQUARTERS OF ALABAMA, LLC, a Delaware limited liability company (herein called "Mortgagor"), whose address is 3040 Post Oak Boulevard, Suite 445, Houston, Texas 77056, for and in consideration of the loan evidenced by the Note (hereinafter defined) made by BANK UNITED, a federal savings bank, whose address is 3200 Southwest Freeway, Suite 2000, Houston, Texas 77027, Attention: Commercial Real Estate Lending, in order to secure the payment of the indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements and undertakings of Mortgagor hereinafter described, does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, MORTGAGE, HYPOTHECATE, ASSIGN and SET OVER WITH POWER OF SALE to Mortgagee (hereinafter defined) the real estate situated in the County of Shelby and State of Alabama described in Exhibit A attached hereto and made a part hereof, together with (i) all the buildings and other improvements now on or hereafter located thereon; (ii) all materials, equipment, fixtures or other property whatsoever now or hereafter attached or affixed to or installed in said buildings and other improvements, including, but not limited to, all heating, plumbing, lighting, water heating, cooking, laundry, refrigerating, incinerating, ventilating and air conditioning equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and apparatus, utility lines and equipment (whether owned individually or jointly with others), sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, engines, machines, elevators, motors, cabinets, shades, blinds, partitions, window screens, screen doors, storm windows, awnings, drapes, and rugs and other floor coverings, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all of which materials, equipment, fixtures and other property are hereby declared to be permanent fixtures and accessions to the freehold and part of the realty conveyed herein as security for the indebtedness herein mentioned; (iii) all easements and rights of way now and at any time hereafter used in connection with any of the foregoing property or as a means of ingress to or egress from said property or for utilities to said property; (iv) all interests of Mortgagor in and to any streets, ways, alleys and/or strips of land adjoining said land or any part thereof; and (v) all rights, estates, powers and privileges appurtenant or incident to the foregoing.

02/19/1999-07175
03:54 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
036 NWS 2669.20

Inst # 1999-07175

TO HAVE AND TO HOLD the foregoing property (herein called the "Mortgaged Property") unto Mortgagee and each subsequent holder of the indebtedness secured hereby, and its successors and assigns, upon the terms, provisions and conditions herein set forth.

In order to secure the payment of the indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements and undertakings of Mortgagor hereinafter described, Mortgagor hereby grants to Mortgagee a security interest in (i) all goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature owned by Mortgagor now or hereafter located or used in and about the building or buildings or other improvements now erected or hereafter to be erected on the land described in Exhibit A attached hereto and made a part hereof, or otherwise located on said land, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, (ii) all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein, (iii) all security deposits and advance rentals under lease agreements now or at any time hereafter covering or affecting any of the Property (as hereinafter defined) and held by or for the benefit of Mortgagor, (iv) all monetary deposits which Mortgagor has been required to give to any public or private utility with respect to utility services furnished to the Property, (v) all rents and other amounts from and under leases of all or any part of the Property and all issues, profits and proceeds from all or any part of the Property, (vi) all proceeds (including premium refunds) of each policy of insurance relating to the Property, (vii) all proceeds from the taking of the Property or any part thereof or any interest therein or right or estate appurtenant thereto by eminent domain or by purchase in lieu thereof, (viii) all amounts deposited in escrow for the payment of ad valorem taxes, assessments and charges and/or premiums for policies of insurance with respect to the Property, (ix) all accounts arising from the operation of the Property, (x) all contracts related to the Property, (xi) all money, funds, accounts, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), (xii) all notes or chattel paper arising from or related to the Property, (xiii) all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property, (xiv) all plans, specifications, maps, surveys, reports, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Property, (xv) all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property, (xvi) all oil, gas and other hydrocarbons and other minerals produced from or allocated to the Property and all products processed or obtained therefrom, the proceeds thereof, and all accounts and general intangibles under which such proceeds may arise, together with any sums of money that may now or at any time hereafter become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mining leases covering the Property or any part thereof (all of the property described in this paragraph hereinafter collectively called the "Collateral") and (xvii) all proceeds of the Collateral. (The Mortgaged Property and the Collateral are herein sometimes collectively called the "Property").

ARTICLE I.

Secured Indebtedness

1.1. Secured Indebtedness. This Mortgage, Security Agreement and Fixture Filing (hereinafter called this "Mortgage") is made to secure and enforce the payment of the following notes, obligations, indebtedness and liabilities:

(a) All indebtedness and other obligations now or hereafter incurred or arising pursuant to the provisions of that certain Master Loan Agreement dated as of February 9, 1999 by and among Car Wash Headquarters, Inc., a Maryland corporation, the Designated Subsidiaries (as such term is defined therein) including, without limitation, Mortgagor, and Mortgagee, and all supplements thereto and amendments or modifications thereof, and all agreements given in substitution therefor or in restatement, renewal or extension thereof, in whole or in part (all of the foregoing being hereinafter collectively called the "Master Loan Agreement"), which Master Loan Agreement provides for a loan facility in the amount of TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) subject to the terms and conditions set forth therein;

(b) Each Note delivered by Mortgagor and all other Related Persons pursuant to the Master Loan Agreement, including, without limitation, that certain promissory note dated February __, 1999, in the original principal amount of ONE MILLION SEVEN HUNDRED FOURTEEN THOUSAND EIGHT HUNDRED Dollars (\$1,714,800) executed by Mortgagor and payable to the order of Mortgagee, and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part (such notes and all amendments, modifications, renewals and extensions thereof and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part, being hereinafter collectively called the "Note"), and said payee and all subsequent holders of the Note or any part thereof or any interest therein or any of the "secured indebtedness" (as hereinafter defined) being hereinafter called the "Mortgagee";

(c) All indebtedness and other obligations now or hereafter incurred or arising pursuant to the provisions of that certain Project Loan Agreement dated of even date herewith between Mortgagor and Mortgagee and all supplements thereto and amendments or modifications thereof, and all agreements given in substitution therefor or in restatement, renewal or extension thereof, in whole or in part (all of the foregoing being hereinafter collectively called the "Project Loan Agreement");

(d) All indebtedness and other obligations now or hereafter incurred or arising pursuant to the provisions of the Loan Documents (as such term is defined in the Master Loan Agreement), and all supplements thereto and amendments or modifications thereof, and all agreements given in substitution therefor or in restatement, renewal or extension thereof, in whole or in part;

(e) All indebtedness now or hereafter incurred or arising pursuant to the provisions of this Mortgage or any loan agreement relating to the above described indebtedness, or any other instrument now or hereafter evidencing, governing, or securing the above described indebtedness or any part thereof, and all other debts, obligations, and liabilities of Mortgagor of every kind and character now or hereafter existing in favor of Mortgagee, it being contemplated that Mortgagor may hereafter become indebted to Mortgagee for such further debts, obligations and liabilities, whether such debts, obligations, or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to Mortgagee or to a third party and subsequently acquired by Mortgagee and whether such debts, obligations and liabilities are evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise; and

(f) Without limiting the generality of the foregoing, all post-petition interest, expenses, and other duties and liabilities with respect to indebtedness or other obligations described above in this section, which would be owed but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization, or similar proceeding.

The indebtedness referred to in subparagraphs (a) - (f) above, together with all renewals, extensions and modifications thereof, and all substitutions therefor, in whole or in part, is hereinafter sometimes called the "secured indebtedness" or the "indebtedness secured hereby." Notwithstanding anything to the contrary contained herein, if a Mortgage (as such term is defined in the Master Loan Agreement) delivered in connection with a Project Loan (as such term is defined in the Master Loan Agreement) specifically provides that the indebtedness secured by such Mortgage is secured by the Project Loan Documents (as such term is defined in the Master Loan Agreement) related to such Project Loan and only such Project Loan Documents, then such Project Loan and the indebtedness secured by such Mortgage shall not be secured by this Mortgage and shall not constitute any part of the indebtedness secured hereby.

1.2. Certain Terms. The Note, this Mortgage and the Loan Documents were executed and delivered pursuant to the Master Loan Agreement. Terms used, but not defined, herein are defined in the Master Loan Agreement and shall have the meaning given such terms in the Master Loan Agreement.

ARTICLE II.

Representations, Warranties and Covenants

2.1. Representations, Warranties and Covenants. Mortgagor represents, warrants and covenants to and with Mortgagee as follows:

(a) Title and Authority. Mortgagor is the lawful owner of good and indefeasible title to the Property and has good right and authority to grant, bargain, sell, convey, transfer, assign and mortgage the Mortgaged Property and to grant a security

interest in the Collateral. Mortgagor does not do business with respect to the Property under any trade name, except CAR NASH HEADQUARTERS

(b) Permitted Encumbrances. The Property is free and clear from all liens, security interests and encumbrances except the lien and security interest evidenced hereby and the encumbrances set forth in Exhibit B attached hereto and made a part hereof (hereinafter called the "Permitted Encumbrances"). There are no mechanic's or materialmen's liens, lienable bills or other claims constituting or that may constitute a lien on the Property, or any part thereof.

(c) No Financing Statement. There is no financing statement covering all or any part of the Property or its proceeds on file in any public office.

(d) Location of Collateral. All tangible Collateral is located on the property described in Exhibit A attached hereto and made a part hereof.

(e) No Homestead. No portion of the Property is being used, as Mortgagor's business or residential homestead.

(f) Compliance with Covenants and Laws. The Property and the intended use thereof by Mortgagor comply with all applicable restrictive covenants, zoning ordinances and building codes, flood disaster laws, health and safety laws and regulations and laws related to the disabled (including but not limited to The Americans with Disabilities Act of 1990, 42 U.S.C. §§12101 et seq. and regulations thereunder [hereinafter called the "ADA"]) and all applicable environmental laws and regulations and all other applicable laws, statutes, ordinances, rules, regulations, orders, determinations and court decisions (all of the foregoing hereinafter sometimes collectively called "Applicable Laws") without reliance upon grandfather provisions or adjacent or other properties. Mortgagor has obtained all requisite zoning, utility, building, health and operating permits from the governmental authority or municipality having jurisdiction over the Property.

(g) Environmental. Without limitation of the foregoing, to the best knowledge of Mortgagor after due and diligent inquiry, no asbestos, material containing asbestos which is or may become friable or material containing asbestos deemed hazardous by Applicable Laws has been installed in the Property and the Property and Mortgagor are not in violation of or subject to any existing, pending or, to the best knowledge of Mortgagor, threatened investigation or inquiry by any governmental authority or to any remedial obligations under any Applicable Laws pertaining to health, safety or the environment (such Applicable Laws as they now exist or are hereafter enacted and/or amended hereinafter sometimes collectively called "Applicable Environmental Laws"), including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (hereinafter called "CERCLA") and the Resource Conservation and Recovery Act of 1976, as amended, (hereinafter called "RCRA"), and this representation would continue to be true and correct in all material respects following disclosure to the applicable governmental

authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Property and Mortgagor. Mortgagor has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Property by reason of any Applicable Environmental Laws. Mortgagor undertook, at the time of acquisition of the Property, all appropriate inquiry into the previous ownership and uses of the Property consistent with good commercial or customary practice. Mortgagor has taken all steps necessary to determine and has determined that no hazardous substances or solid wastes have been disposed of or otherwise released on or to the Property in violation of Applicable Environmental Laws. The use which Mortgagor makes and intends to make of the Property will not result in the disposal or other release of any hazardous substance or solid waste on or to the Property in violation of Applicable Environmental Laws. As used in this Mortgage, the term "release" shall have the meaning specified in CERCLA, the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA, and the term "hazardous substance" shall mean (i) any "hazardous substance" as defined in CERCLA and regulations promulgated thereunder, (ii) any "hazardous waste" as defined in RCRA and regulations promulgated thereunder, (iii) any petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under the definition of hazardous substance in CERCLA as well as natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), and other petroleum products and by-products (iv) formaldehyde, urea, polychlorinated biphenyls, radon, and "source", "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 et seq., (v) any material defined as hazardous or toxic under any statute, rule, ordinance or regulation of the state in which the Property is located or any agency thereof and (vi) any other material or substance which is toxic, ignitable, reactive or corrosive and which is regulated by any Applicable Environmental Law; provided, (i) all such terms shall be deemed to include all similar terms used in any Applicable Environmental Laws or regulations thereunder (including by way of example, but not limitation, pollutant, contaminant, toxic substance, discharge and migration), and (ii) to the extent that any Applicable Environmental Laws or regulations thereunder are amended so as to broaden the meaning, or otherwise establish a meaning, for "hazardous substance," "release," "solid waste," or "disposal" (or "disposed"), or any similar terms, which is broader than that specified above, such broader meaning shall apply.

(h) No Suits. There are no judicial or administrative actions, suits or proceedings pending or, to the best of Mortgagor's knowledge, threatened against or affecting the Property.

(i) Condition of Property. The Property is served by electric, gas, storm and sanitary sewers, sanitary water supply, telephone and other utilities required for the use thereof as represented by Mortgagor at or within the boundary lines of the Property. All streets, alleys and easements necessary to serve the Property for the use represented by Mortgagor have been completed and are serviceable and such streets have been dedicated and accepted by applicable governmental entities. The Property is in good condition and

repair and is free from damage caused by fire or other casualty. Mortgagor is aware of no latent or patent structural or other significant defect or deficiency in the Property. None of the Property is within a flood plain except as indicated on a survey of the Property delivered to Mortgagee. None of the improvements on the Property create an encroachment over, across or upon any of the Property boundary lines, rights of way or easements, and no buildings or other improvements on adjoining land create such an encroachment.

(j) Not a Foreign Person. Mortgagor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), Sections 1445 and 7701 (i.e. Mortgagor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(k) Warranty. Mortgagor will warrant and forever defend the title to the Property against the claims of all persons whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Permitted Encumbrances.

2.2. Covenants and Agreements. So long as the secured indebtedness or any part thereof remains unpaid, Mortgagor covenants and agrees with Mortgagee as follows:

(a) Payment. Mortgagor will make prompt payment, as the same becomes due, of the Note and of all installments of principal and interest thereon and of all other secured indebtedness.

(b) Existence. Mortgagor will continuously maintain its existence in the state in which the Property is located and its right to do business in the state in which the Property is located together with its franchises and trade names.

(c) Taxes on Note and Other Taxes. Mortgagor will promptly pay when due all income, franchise and other taxes owing by Mortgagor and any stamp taxes which may be required to be paid with respect to the Note, this Mortgage or any other instrument evidencing or securing any of the secured indebtedness.

(d) Operation of Property. Mortgagor will operate the Property in a good and workmanlike manner and in accordance with all Applicable Laws (including without limitation all laws, orders, regulations and requirements relating to the operation of the Property as a full service car care facility) and will pay all fees or charges of any kind in connection therewith. Mortgagor will keep the Property occupied so as not to impair the insurance carried thereon. Mortgagor will not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any Applicable Law or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Mortgagor will comply with and use reasonable efforts to cause all occupants of the Property to comply with the ADA and shall provide Mortgagee with copies of all plans for

compliance with the ADA and all surveys relating to such compliance now in Mortgagor's possession or obtained by Mortgagor during the term of the loan evidenced by the Note. Mortgagor will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Applicable Laws. Mortgagor will not impose any restrictive covenants or encumbrances upon the Property, execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Mortgagee. Mortgagor shall not operate the Property, or permit the Property to be operated, as a cooperative or condominium building or buildings in which the tenants or occupants participate in the ownership, control or management of the Property or any part thereof, as tenant stockholders or otherwise. Mortgagor shall not cause or permit any drilling or exploration for, or extraction, removal or production of, minerals from the surface or subsurface of the Property. Mortgagor will not do or knowingly suffer to be done any act whereby the value of any part of the Property may be lessened. Mortgagee or its authorized representatives, including but not limited to third party appraisers, environmental engineers, employees of Mortgagee, architects and engineers, shall have the right to inspect and conduct testing on the Property at any reasonable time with reasonable prior written notice to Mortgagor and Mortgagor will assist Mortgagee and/or said representatives in whatever reasonable way necessary to make such inspections and/or testing. If Mortgagor receives a notice or claim from any federal, state or other governmental entity pertaining to the Property, including specifically but without limitation a notice that the Property is not in compliance with any Applicable Law, Mortgagor will promptly furnish a copy of such notice or claim to Mortgagee.

(e) Debts for Construction. Mortgagor will cause all debts and liabilities of any character, including without limitation all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Property, incurred in the construction, maintenance, operation and development of the Property to be promptly paid, except for those being contested in accordance with the applicable provisions of the Project Loan Agreement.

(f) Ad Valorem Taxes. Mortgagor will cause to be paid prior to delinquency all taxes and assessments heretofore or hereafter levied or assessed against the Property, or any part thereof, or against Mortgagee for or on account of the Note or the other indebtedness secured hereby or the interest created by this Mortgage and will furnish Mortgagee with receipts showing payment of such taxes and assessments prior to the applicable default date therefor; except that Mortgagor may in good faith, by appropriate proceedings, contest the validity, applicability, or amount of any asserted tax or assessment, and pending such contest Mortgagor shall not be deemed in default hereunder if (i) prior to delinquency of the asserted tax or assessment Mortgagor establishes an escrow reasonably acceptable to Mortgagee adequate to cover the payment of such tax or assessment with interest, costs and penalties and a reasonable additional sum to cover possible costs, interest and penalties (which escrow shall be returned to Mortgagor upon

payment of all such taxes, assessments, interest, costs and penalties); (ii) Mortgagor pays to Mortgagee promptly after demand therefor all reasonable costs and expenses incurred by Mortgagee in connection with such contest; and (iii) Mortgagor promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, promptly after such judgment becomes final; provided, however, that in any event each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date any writ or order is issued under which the Property may be sold.

(g) Repair and Maintenance. Mortgagor will keep the Property in good order, repair, condition and appearance, ordinary wear and tear excepted, causing all necessary structural and non-structural repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Mortgagor will promptly replace all worn-out or obsolete fixtures or personal property covered by this Mortgage and used or useful in the operation of the Property with fixtures or personal property comparable to the replaced fixtures or personal property when new, and will repaint the Property when needed. Notwithstanding the foregoing, except for the initial improvements to the Property, Mortgagor will not, without the prior written consent of Mortgagee, (i) erect any new buildings, structures or other improvements on the Property; (ii) remove from the Property any fixtures or personal property covered by this Mortgage and used or useful in the operation of the Property except such as is replaced by Mortgagor by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest (except that created by this Mortgage), (iii) make any structural or material alteration to the Property or any other alteration thereto which impairs the value thereof or (iv) make any alteration to the Property involving an estimated expenditure exceeding \$25,000 except pursuant to plans and specifications approved in writing by Mortgagee. Upon written request of Mortgagee, Mortgagor will deliver to Mortgagee an inventory describing and showing the make, model, serial number and location of all fixtures and personal property used in the management, maintenance and operation of the Property with a certification by Mortgagor that said inventory is a true and complete schedule of all such fixtures and personal property used in the management, maintenance and operation of the Property, that such items specified in the inventory constitute all of the fixtures and personal property required in the management, maintenance and operation of the Property, and that all such items are owned by Mortgagor free and clear of any lien or security interest (except that created by this Mortgage).

(h) Insurance and Casualty. Mortgagor will keep the Property insured against loss or damage by fire, explosion, windstorm, hail, flood (if the Property shall at any time be located in an identified "flood prone area" in which flood insurance has been made available pursuant to the Flood Disaster Protection Act of 1973), tornado and such other hazards as may be reasonably required by Mortgagee (including war damage if available under sponsorship of the United States Government when war is threatened or declared) by policies of fire, extended coverage and other insurance in such company or companies, in such amounts, upon such terms and provisions, and with such endorsements as are

usual and customary in Mortgagor's type of business and in the geographic areas in which such business operates, all as may be reasonably acceptable to Mortgagee. Mortgagor will also provide such other insurance as is usual and customary in Mortgagor's type of business and in the geographic areas in which such business operates, in such companies, upon such terms and provisions, in such amounts, and with such endorsements, all as are reasonably approved by Mortgagee. Mortgagor further agrees that Mortgagor will deliver to Mortgagee certified copies of the original policies evidencing such insurance and any additional insurance which shall be taken out upon any part of the Property and receipts evidencing the payment of all premiums, and will deliver certificates evidencing renewals of all such policies of insurance to Mortgagee at least fifteen (15) days before any such insurance shall expire. Without limiting the discretion of Mortgagee with respect to required endorsements to insurance policies, Mortgagor further agrees that all such policies shall provide that proceeds thereunder will be payable to Mortgagee as its interest may appear pursuant and subject to a mortgagee clause (without contribution) of standard form attached to or otherwise made a part of the applicable policy. In the event of foreclosure of this Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of the Mortgagor in and to such policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Mortgagee or other transferee in the event of such other transfer of title. In the event any of the Property covered by such insurance is destroyed or damaged by fire, explosion, windstorm, hail or by any other casualty against which insurance shall have been required hereunder, (i) Mortgagee may, but shall not be obligated to, make proof of loss if not made promptly by Mortgagor, (ii) each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor, and (iii) Mortgagee shall apply the insurance proceeds as follows:

(i) first, to reimburse Mortgagee for all costs and expenses, including reasonable attorney's fees, incurred in connection with the collection of such proceeds; and

(ii) second, if either (a) the Property is so demolished, destroyed or damaged that, in the judgment of Mortgagee, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time, or (b) a default shall have occurred hereunder or there shall have occurred an event or circumstance which with the passage of time or the giving of notice, or both, would constitute a default, then in either such event, the remainder of said proceeds shall be applied to the payment (without premium or penalty) of the secured indebtedness, either in whole or in part, in the order determined by Mortgagee in its sole discretion; and

(iii) third, if neither of the facts described in (a) or (b) of subparagraph (ii) above exists (or if Mortgagee waives the matters described in (b) of subparagraph (ii)), the remainder of such proceeds shall be applied to the repair, restoration or replacement of the Property so destroyed or damaged and any

amounts not so applied shall be applied to the payment (without premium or penalty) of the secured indebtedness in the order determined by Mortgagee in its reasonable discretion, provided that, any insurance proceeds held by Mortgagee to be applied to the repair, restoration or replacement of the Property as provided above shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Mortgagor with such terms, conditions and requirements as may be imposed by Mortgagee.

Notwithstanding the foregoing, Mortgagee shall have the option to apply any such insurance proceeds, in whole or in part, to the repair, restoration or replacement of the Property rather than applying such proceeds to the payment of the secured indebtedness, without regard to the extent of the damage to the Property or the existence of a default hereunder. In any event, the unpaid portion of the secured indebtedness shall remain in full force and effect and Mortgagor shall not be excused in the payment thereof. If any act or occurrence of any kind or nature (including any casualty on which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Mortgagor shall give immediate notice thereof by mail to Mortgagee and, unless otherwise so instructed by Mortgagee, shall promptly, at Mortgagor's sole cost and expense and regardless of whether the insurance proceeds, if any, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction in accordance with plans and specifications submitted to and approved by Mortgagee.

(i) Condemnation. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Mortgagor will notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings, and Mortgagor shall from time to time deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Mortgagee, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be paid to Mortgagee and shall be applied, first, to reimburse Mortgagee for all reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with collection of such proceeds and, second, the remainder of said proceeds shall be applied, at the discretion of Mortgagee, to the payment (without premium or penalty) of the secured indebtedness, either in whole or in part, whether or not then due and payable, in the order determined by Mortgagee in its reasonable discretion or paid out to repair or restore the Property so affected by such condemnation, injury or damage in the same manner as provided in subparagraph (h) of this Paragraph 2.2. In any event, notwithstanding such condemnation, the unpaid portion of the secured indebtedness shall remain in full force and effect (except to the extent of application of condemnation proceeds as provided above) and Mortgagor shall not be excused in the payment thereof. In the event any of the foregoing proceeds are applied to

the repair, restoration or replacement of the Property, Mortgagor shall promptly commence and complete such repair, restoration or replacement of the Property as nearly as possible to its value, condition and character immediately prior to such damage or taking in accordance with plans and specifications submitted to and approved by Mortgagee and otherwise in accordance with the provisions of this Mortgage. Mortgagor hereby assigns and transfers all such proceeds, judgments, decrees and awards to Mortgagee and agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Mortgagee may request. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Mortgagee shall not be, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

(j) Protection and Defense of Lien. If the validity or priority of this Mortgage or of any rights, titles, liens or security interests created or evidenced hereby with respect to the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Mortgagor with respect thereto, Mortgagor will give prompt written notice thereof to Mortgagee and at Mortgagor's own cost and expense 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 legal proceedings, including but not limited to the employment of counsel, the prosecution or defense of litigation and the release or discharge of all adverse claims, and Mortgagee (whether or not named as a party to legal proceedings with respect thereto) is hereby authorized and empowered to take such additional steps as in its reasonable judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Mortgage and the rights, titles, liens and security interests created or evidenced hereby, including but not limited to the employment of counsel, the prosecution or defense of litigation, the compromise or discharge of any adverse claims made with respect to the Property, the purchase of any tax title and the removal of prior liens or security interests (including but not limited to the payment of debts as they mature or the payment in full of matured or nonmatured debts, which are secured by these prior liens or security interests), and all reasonable expenses so incurred of every kind and character shall be a demand obligation owing by Mortgagor and the party incurring such expenses shall be subrogated to all rights of the person receiving such payment.

(k) No Other Liens. Mortgagor will not, without the prior written consent of Mortgagee, 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 deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become

attached hereafter in any manner to any part of the Property without the prior written consent of Mortgagee, Mortgagor will cause the same to be promptly discharged and released. Mortgagor will own all parts of the Property and will not acquire any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license or similar agreement, without the prior written consent of Mortgagee.

(l) **Books and Records.** Mortgagor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made as to all operations on the Property, and will permit all such books and records (including without limitation all contracts, statements, invoices, bills and claims for labor, materials and services supplied for the construction and operation of the improvements forming a part of the Property) to be inspected and copied by Mortgagee and its duly accredited representatives upon reasonable notice and during reasonable business hours.

(m) **Financial Statements and Reports: Rent Roll.** Mortgagor will deliver to Mortgagee all financial and Property documentation in accordance with the terms of the Master Loan Agreement.

(n) **Escrow.** In order to secure the performance and discharge of Mortgagor's obligations under subparagraphs (f) and (h) of this Paragraph 2.2, but not in lieu of such obligations, upon written demand by Mortgagee, Mortgagor will deposit with Mortgagee a sum equal to ad valorem taxes, assessments and charges (which charges for the purpose of this paragraph shall include without limitation ground rents and water and sewer rents and any other recurring charge which could create or result in a lien against the Property) against the Property for the then current year and the premiums for policies of insurance covering the period for the then current year, all as reasonably estimated by Mortgagee and prorated to the end of the calendar month following the month during which such demand is made, and thereafter will deposit with Mortgagee, on each date when an installment of principal and/or interest is due on the Note, sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay, at least fifteen (15) days prior to the due date thereof, the next maturing ad valorem taxes, assessments and charges and premiums for such policies of insurance. Mortgagee shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Mortgagee for future use, applied to any secured indebtedness or refunded to Mortgagor, at Mortgagee's option, and any deficiency in such funds so deposited shall be made up by Mortgagor upon demand of Mortgagee. All such funds so deposited shall bear no interest whatsoever, may be mingled with the general funds of Mortgagee and shall be applied by Mortgagee toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Mortgagee by Mortgagor (which statements shall be presented by Mortgagor to Mortgagee a reasonable time before the applicable amount is due); provided, however, that, if a default shall have occurred and be continuing hereunder, such funds may at Mortgagee's option be applied to the payment of the secured

indebtedness in the order determined by Mortgagee in its sole discretion, and that Mortgagee may at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Mortgagor's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Mortgagor's interest in and rights to such funds held by Mortgagee under this subparagraph (n) but subject to the rights of Mortgagee hereunder.

(o) Further Assurances. Mortgagor will, on request of Mortgagee, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in any other instrument now or hereafter executed in connection herewith or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver and record or file such further instruments (including without limitation further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and such other instruments and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Mortgagee to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iv) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Mortgagee to enable Mortgagee to comply with the requirements or requests of any agency having jurisdiction over Mortgagee or any examiners of such agencies with respect to the indebtedness secured hereby, Mortgagor or the Property; and Mortgagor will pay all reasonable costs connected with any of the foregoing.

(p) Fees and Expenses; Indemnification. Mortgagor will pay all appraisal fees, filing and recording fees, inspection fees, survey fees, taxes, brokerage fees and commissions, abstract fees, title policy and title endorsement fees, uniform commercial code search fees, escrow fees, reasonable attorney's fees and all other costs and expenses of every character incurred by Mortgagor or Mortgagee in connection with the loan evidenced by the Note, either at the closing thereof or at any time during the term thereof, or otherwise attributable or chargeable to Mortgagor as owner of the Property, and will reimburse Mortgagee for all such costs and expenses incurred by it. Mortgagor shall pay all expenses and reimburse Mortgagee for any expenditures, including reasonable attorney's fees and legal expenses, incurred or expended in connection with (i) the breach by Mortgagor of any covenant herein or in any other instrument securing the payment of the Note, (ii) Mortgagee's exercise of any of its rights and remedies hereunder or under the Note or any other instrument securing the payment of the Note or Mortgagee's

protection of the Property and its lien and security interest therein, or (iii) any amendments to this Mortgage, the Note or any other Loan Document or any matter requested by Mortgagor or any approval required hereunder. Mortgagor will indemnify and hold harmless Mortgagee (for purposes of this paragraph, the term "Mortgagee" shall include the directors, officers, partners, employees and agents of the Mortgagee, and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Mortgagee) from and against, and reimburse Mortgagee for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorney's fees) 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 or upon or in the vicinity of the Property through any cause whatsoever or asserted against Mortgagee on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property or with this Mortgage, the Note or any other instrument securing the payment of the Note. **WITHOUT LIMITATION, IT IS THE INTENTION OF MORTGAGOR AND MORTGAGOR AGREES THAT THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY OR ANY STRICT LIABILITY. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO ANY INDEMNIFIED PARTY TO THE EXTENT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.** The foregoing indemnities shall not terminate upon release, foreclosure or other termination of this Mortgage but will survive foreclosure of this Mortgage or conveyance in lieu of foreclosure and the repayment of the secured indebtedness and the discharge and release of this Mortgage and the other documents evidencing and/or securing the secured indebtedness. Any amount to be paid under this subparagraph by Mortgagor to Mortgagee shall be a demand obligation owing by Mortgagor to Mortgagee and shall be subject to and governed by the provisions of Paragraph 2.3 hereof.

(q) **Liability Insurance.** Mortgagor shall maintain Commercial General Liability insurance against claims for bodily injury or death and property damage occurring in or upon or resulting from the Property, in standard form and with such insurance company or companies as may be reasonably acceptable to Mortgagee, such insurance to afford immediate protection, to the limit of not less than \$5,000,000 in respect of any one accident or occurrence, and to the limit of not less than \$1,000,000 for property damage, with not more than \$5,000 deductible. Such Commercial General Liability insurance shall include Blanket Contractual Liability coverage which insures contractual liability under the indemnifications of Mortgagee by Mortgagor set forth in this Mortgage (but such coverage or the amount thereof shall in no way limit such

indemnifications). Mortgagor shall maintain with respect to each policy or agreement evidencing such Commercial General Liability insurance such endorsements as may be reasonably required by Mortgagee and shall at all times deliver and maintain with Mortgagee a certificate with respect to such insurance in form reasonably satisfactory to Mortgagee. Not less than fifteen (15) days prior to the expiration date of each policy of insurance required of Mortgagor pursuant to this subparagraph 2.2(q), Mortgagor shall deliver to Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee. In the event of a foreclosure of this Mortgage, the purchaser of the Property shall succeed to all the rights of Mortgagor, including any right to unearned premiums, in and to all policies of insurance assigned pursuant to the provisions of this subparagraph, and Mortgagor hereby authorizes Mortgagee to notify any or all insurance carriers of this assignment.

(r) Tax on Lien. In the event of the enactment after this date of any law of the state in which the Property is located or of any other governmental entity deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the indebtedness secured hereby or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (i) it would be unlawful to require Mortgagor to make such payment or (ii) the making of such payment would result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare the Project Loan to be and become due and payable ninety (90) days from the giving of such notice.

(s) Change of Name, Identity or Structure. Mortgagor will not change Mortgagor's name, identity (including its trade name or names) or, if not an individual, Mortgagor's corporate, partnership or other structure without notifying Mortgagee of such change in writing at least thirty (30) days prior to the effective date of such change. Mortgagor will execute and deliver to Mortgagee, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Mortgagee to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Mortgagee, Mortgagor shall execute a certificate in form reasonably satisfactory to Mortgagee listing the trade names under which Mortgagor intends to operate the Property, and representing and warranting that Mortgagor does business under no other trade name with respect to the Property.

(t) Location and Use of Collateral. Except with respect to the financial books and records of Mortgagor, all tangible Collateral will be used in the business of

Mortgagor and shall remain in Mortgagor's possession or control at all times at Mortgagor's risk of loss and shall be located on the real property described in Exhibit A hereto.

(u) Estoppel Certificate. Mortgagor shall at any time and from time to time furnish promptly upon written request by Mortgagee a written statement in such reasonable form as may be required by Mortgagee stating that the Note, this Mortgage and the other instruments securing the payment of the Note are valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their terms subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights general and general equitable principles; the unpaid principal balance of the Note; the date to which interest on the Note is paid; that the Note, this Mortgage and the other instruments securing the payment of the Note have not been released, subordinated or modified; and that there are no offsets or defenses against the enforcement of the Note, this Mortgage or any other instrument securing the payment of the Note, or if any of the foregoing statements are untrue, specifying the reasons therefor.

(v) Proceeds of Collateral. Mortgagor shall account fully and faithfully for and, after the occurrence and during the continuance of a default hereunder, if Mortgagee so elects, shall promptly pay or turn over to Mortgagee the proceeds in whatever form received from disposition in any manner of any of the Collateral, except as otherwise specifically authorized herein. Mortgagor shall at all times keep the Collateral and its proceeds separate and distinct from other property of Mortgagor and shall keep accurate and complete records of the Collateral and its proceeds.

(w) Loan Agreements. Mortgagor will punctually perform and discharge each and every obligation and undertaking of Mortgagor under the Master Loan Agreement and Project Loan Agreement, and will not permit a default to occur thereunder.

(x) Permitted Encumbrances. Mortgagor will comply with and will perform in all material respects all of the covenants, agreements and obligations imposed upon it or the Property in the Permitted Encumbrances in accordance with their respective terms and provisions. Mortgagor will not modify or permit any modification of any Permitted Encumbrance, without the prior written consent of Mortgagee.

2.3. Right of Mortgagee to Perform. Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which hereunder Mortgagor is required to perform or take, or to pay any money which hereunder Mortgagor is required to pay, or takes any action prohibited hereby, Mortgagee, in Mortgagor's name or in its own name, may but shall not be obligated to perform or cause to be performed such act or take such action or pay such money or remedy any action so taken, and any reasonable expenses so incurred by Mortgagee, and any money paid by Mortgagee in connection therewith, shall be a demand obligation owing by Mortgagor to Mortgagee and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts due and owing by Mortgagor to Mortgagee pursuant to this Mortgage shall bear interest from the date such amount becomes

due until paid at the Late Payment Rate and shall be a part of the secured indebtedness and shall be secured by this Mortgage and by any other instrument securing the secured indebtedness.

ARTICLE III.

Assignment of Rents

3.1. Assignment. In order to provide a source of future payment of the indebtedness secured hereby, Mortgagor does hereby absolutely and unconditionally assign, transfer and set over to Mortgagee all of the rents, income, receipts, revenues, issues, profits and other sums of money (hereinafter collectively called the "Rent") that are now and/or at any time hereafter become due and payable to Mortgagor under the terms of any leases (hereinafter called the "Leases") now or hereafter covering the Property, or any part thereof, or arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, security deposits, advance rents, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, and all of Mortgagor's rights to recover monetary amounts from any lessee in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under any applicable Bankruptcy Law (as hereinafter defined), including specifically the immediate and continuing right to collect and receive each and all of the foregoing and any and all guaranties of payment of the Rent. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact at the option of Mortgagee at any time and from time to time after the occurrence and during the continuance of a default, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for any such rents, issues and profits and apply the same to the secured indebtedness. Until receipt from Mortgagee of notice of the occurrence and continuance of a default hereunder (hereinafter called a "Notice of Default"), each lessee under the Leases may pay Rent directly to Mortgagor and Mortgagor shall have the right to receive such Rent provided that Mortgagor shall hold such Rent as a trust fund to be applied as required by Mortgagee and Mortgagor hereby covenants so to apply the Rent, before using any part of the same for any other purposes, first, to the payment of taxes and assessments upon the Property before penalty or interest is due thereon; second, to the cost of insurance, maintenance and repairs required by the terms of this Mortgage; third, to the satisfaction of all obligations specifically set forth in the Leases; and, fourth, to the payment of interest and principal becoming due on the Note and this Mortgage. Upon receipt from Mortgagee of a Notice of Default, each lessee under the Leases is hereby authorized and directed to pay directly to Mortgagee all Rent thereafter accruing and the receipt of Rent by Mortgagee shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Notice of Default shall be sufficient authorization for such lessee to make all future payments of Rent directly to Mortgagee and each such lessee shall be entitled to rely on such Notice of Default and shall have no liability to Mortgagor for any Rent paid to Mortgagee after receipt of such Notice of Default. Rent so received by Mortgagee for any period prior to foreclosure under this Mortgage or acceptance of a deed in lieu of such foreclosure shall be applied by Mortgagee to the payment (in such order as Mortgagee shall determine) of: (a) all expenses of managing the Property, including

but not limited to the salaries, fees and wages of a managing agent and such other employees as Mortgagee may deem necessary or desirable; all expenses of operating and maintaining the Property, including but not limited to all taxes, assessments, charges, claims, utility costs and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements; and all expenses incident to taking and retaining possession of the Property and/or collecting the Rent due and payable under the Leases; and (b) the Note and other indebtedness secured by this Mortgage, principal, interest, reasonable attorneys' and collection fees and other reasonable amounts, in such order as Mortgagee in its sole discretion may determine. In no event will the assignment pursuant to this Paragraph reduce the indebtedness evidenced by the Note or otherwise secured by this Mortgage, except to the extent, if any, that Rent is actually received by Mortgagee and applied upon or after said receipt to such indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Mortgagee may, at its option, at any time and from time to time, release to Mortgagor Rent so received by Mortgagee or any part thereof. As between Mortgagor and Mortgagee, and any person claiming through or under Mortgagor, other than any lessee under the Leases who has not received a Notice of Default pursuant to this Paragraph, the assignment contained in this Paragraph is intended to be absolute, unconditional and presently effective and the provisions of this Paragraph for notification of lessees under the Leases upon the occurrence of a default are intended solely for the benefit of each such lessee and shall never inure to the benefit of Mortgagor or any person claiming through or under Mortgagor, other than a lessee who has not received such notice. It shall never be necessary for Mortgagee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Paragraph. At any time during which Mortgagor is receiving Rent directly from lessees under the Leases, Mortgagor shall, upon receipt of written direction from Mortgagee, make demand and/or sue for all Rent due and payable under one or more Leases, as directed by Mortgagee, as it becomes due and payable, including Rent which is past due and unpaid. In the event Mortgagor fails to take such action, or at any time during which Mortgagor is not receiving Rent directly from lessees under the Leases, Mortgagee shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Mortgagor, all Rent due and payable under the Leases, as it becomes due and payable, including Rent which is past due and unpaid. Mortgagee shall not be deemed to have taken possession of the Property except on the exercise of its option to do so, evidenced by its demand and overt act for such purpose. Mortgagor shall make no assignment or other disposition of the Rent, nor shall Mortgagor cancel or amend any Lease or any other instrument under which Rent is to be paid or waive, excuse, condone, discount, set off, compromise or in any manner release any obligation thereunder, nor shall Mortgagor receive or collect any Rent for a period of more than one month in advance of the date on which payment thereof is due and Mortgagor shall duly and punctually observe and perform every obligation to be performed by it under each Lease, and shall not do or permit to be done anything to impair the security thereof and shall enforce, to the extent such enforcement would be reasonably prudent under the circumstances, every obligation of each other party thereto. The assignment contained in this Paragraph 3.1 shall terminate upon the release of this Mortgage but no lessee under the Leases shall be required to take notice of such termination until a copy of a release of this Mortgage shall have been delivered to such lessee.

3.2. Controlling Provision. Contemporaneously with the execution of this Mortgage, Mortgagor is executing an Assignment of Leases and Rents in favor of Mortgagee. To the extent

any provision of this Article III is construed to contradict, conflict with or be inconsistent with any term, condition or provision contained in the Assignment of Leases and Rents, the applicable terms, conditions and provisions of the Assignment of Leases and Rents shall supersede such contradicting, conflicting or inconsistent provisions of this Article III and shall control.

ARTICLE IV.

Remedies in Event of Default

4.1. Defaults. The term "default" as used in this Mortgage shall mean the occurrence of any of the following events:

(a) the failure of Mortgagor to make due and punctual payment of the Note or of any other secured indebtedness or of any installment of principal thereof or interest thereon, or of any other amount required to be paid under the Note, this Mortgage or any other instrument securing the payment of the Note, as the same shall become due and payable, whether at maturity or when accelerated pursuant to any power to accelerate contained in the Note or contained herein and such failure continues for a period of five (5) days after the date due; or

(b) the failure of Mortgagor timely and properly to observe, keep or perform any covenant, agreement, warranty or condition herein required to be observed, kept or performed, other than those referred to in any other subparagraph of this Paragraph 4.1 except this subparagraph (b), if such failure continues for thirty (30) days after receipt by Mortgagor of written notice and demand for the performance of such covenant, agreement, warranty or condition, provided that if Mortgagor shall within such thirty (30) day period commence action to cure such failure but is unable, by reason of the nature of the performance required, to cure same within such period, and if Mortgagor continues such action thereafter diligently and without unnecessary delays, Mortgagor shall not be in default hereunder until the expiration of a period of time as may be reasonably necessary to cure such failure, provided further that in any event Mortgagor shall be in default hereunder if such failure is not cured on or before sixty (60) days after receipt by Mortgagor of the above described written demand for performance; or

(c) the Property or any part thereof is taken on execution or other process of law in any action against Mortgagor; or

(d) Mortgagor abandons all or a portion of the Property; or

(e) the holder of any lien or security interest on the Property (without hereby implying the consent of Mortgagee to the existence or creation of any such lien or security interest) declares a default thereunder or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; or

(f) without the prior written consent of Mortgagee (which consent may be withheld for any reason or for no reason), Mortgagor sells, leases, exchanges, assigns, transfers, conveys or otherwise disposes of all or any part of the Property or any interest therein (except for the disposition of worn-out or obsolete personal property or fixtures under the circumstances described in subparagraph 2.2(g) hereof), or legal or equitable title to the Property, or any part thereof or any interest therein, is vested in any other party, in any manner whatsoever, by operation of law or otherwise, whether any of the foregoing is voluntary or involuntary, it being understood that the consent of Mortgagee required hereunder may be refused by Mortgagee in its sole and absolute discretion or may be predicated upon any terms, conditions and covenants deemed advisable or necessary in the sole and absolute discretion of Mortgagee, including but not limited to the right to change the interest rate, date of maturity or payments of principal and/or interest on the Note, to require payment of any amount as additional consideration as a transfer fee or otherwise and to require assumption of the obligations under the Loan Documents; or

(g) without the prior written consent of Mortgagee (which consent may be withheld for any reason or for no reason), Mortgagor creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than encumbrances permitted by Mortgagee, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created herein or in any other Loan Document, or acquires any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license or similar agreement, it being understood that the consent of Mortgagee required hereunder may be refused by Mortgagee in its sole and absolute discretion or for any reason or may be predicated upon any terms, conditions and covenants deemed advisable or necessary in the sole and absolute discretion of Mortgagee including but not limited to the right to change the interest rate, date of maturity or payments of principal and/or interest on the Note, to require payment of any amount as a fee or other consideration and to require a payment on the principal of the Note; or

(h) the Property is so demolished, destroyed or damaged that, in the reasonable judgment of Mortgagee, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time; or

(i) so much of the Property is taken in condemnation, or sold in lieu of condemnation, or the Property is so diminished in value due to any injury or damages to the Property, that the remainder thereof cannot, in the reasonable judgment of Mortgagee, continue to be operated profitably for the purpose for which it was being used immediately prior to such taking, sale or diminution; or

(j) the failure of Mortgagor to provide or maintain any insurance coverages required by this Mortgage and such failure continues for three (3) Business Days after receipt by Mortgagor of written notice of such failure.

4.2. Acceleration. Upon the occurrence and during the continuance of a default, Mortgagee shall have the option of declaring all secured indebtedness in its entirety to be immediately due and payable, and the liens and security interests evidenced hereby shall be subject to foreclosure in any manner provided for herein or provided for by law as Mortgagee may elect.

4.3. Possession. Upon the occurrence and during the continuance of a default, Mortgagee is authorized prior or subsequent to the institution of any foreclosure proceedings to enter upon the Property, or any part thereof, and to take possession of the Property and of all books, records and accounts relating thereto and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Property, including the right to rent the same for the account of Mortgagor and to deduct from such rents all reasonable costs, expenses and liabilities of every character incurred by Mortgagee in collecting such rents and in managing, operating, maintaining, protecting or preserving the Property and to apply the remainder of such rents on the indebtedness secured hereby in such manner as Mortgagee may elect. All such reasonable costs, expenses and liabilities incurred by Mortgagee in collecting such rents and in managing, operating, maintaining, protecting or preserving the Property, if not paid out of rents as hereinabove provided, shall constitute a demand obligation owing by Mortgagor and shall bear interest from the date of expenditure until paid at the Late Payment Rate, all of which shall constitute a portion of the secured indebtedness. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution. **IN CONNECTION WITH ANY ACTION TAKEN BY MORTGAGEE PURSUANT TO THIS PARAGRAPH 4.3, MORTGAGEE SHALL NOT BE LIABLE FOR ANY LOSS SUSTAINED BY MORTGAGOR RESULTING FROM ANY FAILURE TO LET THE PROPERTY, OR ANY PART THEREOF, OR FROM ANY OTHER ACT OR OMISSION OF MORTGAGEE IN MANAGING THE PROPERTY (REGARDLESS OF WHETHER SUCH LOSS IS CAUSED BY THE NEGLIGENCE OF MORTGAGEE) UNLESS SUCH LOSS IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF MORTGAGEE, NOR SHALL MORTGAGEE BE OBLIGATED TO PERFORM OR DISCHARGE ANY OBLIGATION, DUTY OR LIABILITY UNDER ANY LEASE AGREEMENT COVERING THE PROPERTY OR ANY PART THEREOF OR UNDER OR BY REASON OF THIS INSTRUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER. MORTGAGOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY MORTGAGEE FOR, AND TO HOLD MORTGAGEE HARMLESS FROM, ANY AND ALL LIABILITY, LOSS OR DAMAGE WHICH MAY OR MIGHT BE INCURRED BY MORTGAGEE UNDER ANY SUCH LEASE AGREEMENT OR UNDER OR BY REASON OF THIS MORTGAGE OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST**

MORTGAGEE BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY SUCH LEASE AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY, LOSS, DAMAGE, CLAIMS OR DEMANDS ARE THE RESULT OF THE NEGLIGENCE OF MORTGAGEE; PROVIDED, HOWEVER, THIS INDEMNIFICATION SHALL NOT COVER ACTS OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY MORTGAGEE. Should Mortgagee incur any such liability, the amount thereof, including reasonable costs and expenses and reasonable attorney's fees, shall be secured hereby and Mortgagor shall reimburse Mortgagee therefor immediately upon demand. Nothing in this Paragraph 4.3 shall impose any duty, obligation or responsibility upon Mortgagee for the control, care, management or repair of the Property, nor for the carrying out of any of the terms and conditions of any such lease agreement; nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, **OR FOR ANY NEGLIGENCE IN THE MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY TENANT, LICENSEE, EMPLOYEE OR STRANGER OR ANY STRICT LIABILITY.** Mortgagor hereby assents to, ratifies and confirms any and all actions of Mortgagee with respect to the Property taken under this Paragraph 4.3. For purposes of this paragraph, the term "Mortgagee" shall include the directors, officers, employees, attorneys and agents of Mortgagee and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Mortgagee.

4.4. Power of Sale. Upon the occurrence and during the continuance of any default under this Mortgage, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, after giving notice by publication for twenty one (21) days, once per week for three (3) consecutive weeks, of the time, place and terms of each such sale by publication in some newspaper published in the county where the Property or any part thereof is located, to sell the Property (or such parts thereof as Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. Mortgagee, 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 Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Mortgagee, 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 secured indebtedness shall have been paid in full.

4.5. Judicial Foreclosure. Whether or not proceedings have commenced by the exercise of the power of sale granted herein, Mortgagee or the holder or holders of any of the indebtedness secured by this Mortgage, in lieu of proceeding with the power of sale (or in the event of homestead property where Mortgagor has elected judicial foreclosure, as provided in the above referenced statutes) may at its (their) option (after any applicable contractual cure period has expired without such default being cured) declare the whole amount of the indebtedness secured by this Mortgage remaining unpaid, immediately due and payable without notice, and proceed by suit or suits in equity or at law to foreclose this Mortgage.

4.6. Waiver of Appraisement. Appraisement of the Property is hereby waived or not waived at Mortgagee's option, which shall be exercised at the time judgment is rendered in any foreclosure hereof.

4.7. Receiver. In addition to all other remedies herein provided for, Mortgagor agrees that upon the occurrence and during the continuance of a default, Mortgagee shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Mortgagor does hereby consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Mortgagee, but nothing herein is to be construed to deprive Mortgagee of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of the rents and income pursuant to Paragraph 3.1 hereof. Any money advanced by Mortgagee in connection with any such receivership shall be a demand obligation owing by Mortgagor to Mortgagee and shall bear interest from the date of making such advancement by Mortgagee until paid at the rate of interest payable on matured but unpaid principal of or interest on the Note and shall be a part of the secured indebtedness and shall be secured by this Mortgage and by any other instrument securing the secured indebtedness.

4.8. Proceeds of Sale. The proceeds of any sale in foreclosure of the liens evidenced hereby shall be applied:

FIRST, to the payment of all necessary and reasonable costs and expenses incident to such foreclosure sale, including but not limited to all court costs and charges of every character;

SECOND, to the payment in full of the secured indebtedness (including specifically without limitation the principal, interest and reasonable attorney's fees due and unpaid on the Note and the amounts due and unpaid and owed to Mortgagee under the Loan Documents) in such order as Mortgagee may elect; and

THIRD, the remainder, if any there shall be, shall be paid to Mortgagor or to such other party or parties as may be entitled thereto by law.

4.9. Mortgagee as Purchaser. Mortgagee shall have the right to become the purchaser at any sale by any receiver or public officer, and any Mortgagee purchasing at any such sale shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the secured indebtedness owing to such Mortgagee, or if such Mortgagee holds less than all of such indebtedness the pro rata part thereof owing to such Mortgagee, accounting to all other Mortgagees not joining in such bid in cash for the portion of such bid or bids apportionable to such nonbidding Mortgagee or Mortgagees.

4.10. Uniform Commercial Code. Upon the occurrence of a default, Mortgagee may exercise its rights of enforcement with respect to the Collateral under the Uniform Commercial Code of the state in which the Property is located, as amended (the "UCC"), and in conjunction with, in addition to or in substitution for those rights and remedies:

(a) Mortgagee may enter upon the Property to take possession of, assemble and collect the Collateral; and

(b) Mortgagee may require Mortgagor to assemble the Collateral and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Collateral; and

(c) written notice mailed to Mortgagor as provided herein ten (10) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(d) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Collateral hereunder as is required for such sale of the Mortgaged Property under power of sale; and

(e) in the event of a foreclosure sale, the Collateral and the Mortgaged Property may, at the option of Mortgagee, be sold as a whole; and

(f) it shall not be necessary that Mortgagee take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this paragraph is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(g) prior to application of proceeds of disposition of the Collateral to the secured indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorney's fees and legal expenses incurred by Mortgagee; and

(h) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the indebtedness or as to the occurrence of any default, or as to Mortgagee having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(i) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee.

4.11. Remedies Cumulative. All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the secured indebtedness, or any part thereof, or otherwise benefiting Mortgagee, and Mortgagee shall, in addition to the remedies herein provided, be entitled to avail itself of all such other remedies as may now or hereafter exist at law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

4.12. Resort to Any Security. Mortgagee may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Mortgagee in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage.

4.13. Waiver. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or redemption, and Mortgagor, for Mortgagor and Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisement, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of the assets of Mortgagor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Property for the collection of

the secured indebtedness without any prior or different resort for collection, or the right of Mortgagee under the terms of this Mortgage to the payment of such indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. If any law referred to in this paragraph and now in force, of which Mortgagor or Mortgagor's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this Paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Paragraph.

4.14. Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale Mortgagor or Mortgagor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property by, through or under Mortgagor are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale. Subject to the terms of any applicable non-disturbance and/or attornment agreement between Mortgagee and any tenant(s) of the Property, such tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain an action for forcible entry and detainer of said property in the court of competent jurisdiction of the county in which the said property is located.

4.15. Tender After Acceleration. If, following the occurrence of a default and the acceleration of the secured indebtedness but prior to the foreclosure of this Mortgage against the Property, Mortgagor shall tender to Mortgagee payment of an amount sufficient to pay the entire secured indebtedness, such tender shall be deemed to be a voluntary prepayment under the Note and, consequently, Mortgagor shall also pay to Mortgagee any charge or premium (if any) required under the Note to be paid in order to prepay principal and, if such principal payment is made during any period when prepayment is prohibited by this Mortgage or the Note, the applicable charge or premium shall be the maximum prepayment penalty provided for in the Note; provided, however, that in no event shall any amount payable under this paragraph, when added to the interest otherwise payable on the Note and the other secured indebtedness, exceed the maximum interest permitted under applicable law.

4.16. Collection Expenses. Upon the occurrence of a default, Mortgagor shall reimburse Mortgagee for all reasonable expenses incurred by Mortgagee as a result of such default, including, but not limited to, all travel costs, third-party appraisal fees, environmental report preparation and testing fees, architectural and engineering expenses, and reasonable legal fees and expenses.

4.17. Waiver of Deficiency Statute Protections/Fair Market Value for Calculating Deficiencies.

(a) To the extent permitted by law, Mortgagor agrees that Mortgagee shall be entitled to seek a deficiency judgment from Mortgagor and any other party obligated on the Note or guaranty of the Note equal to the difference between the amount owing on the Note and the

amount for which the Property was sold pursuant to a judicial or nonjudicial foreclosure sale. Mortgagor recognizes that this provision is a waiver of any statute or law that permits Mortgagor or any guarantor to present competent evidence of the fair market value of the Property as of the date of any foreclosure sale and to offset against any deficiency the amount by which the foreclosure sale is determined to be less than such fair market value. Mortgagor further recognizes and agrees that this waiver will create an irrebuttable presumption that the foreclosure sales price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Mortgagor and guarantors, other borrowers on the Note, and others against whom recovery of a deficiency is sought.

(b) Alternatively, if a court of competent jurisdiction finds the foregoing waiver is unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of a foreclosure sale:

(i) The Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure.

(ii) The valuation shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Property for cash promptly (but no later than twelve months) following the foreclosure sale.

(iii) All reasonable closing costs customarily borne by the seller in a commercial real estate transaction should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax prorations, attorney's fees, and marketing costs.

(iv) The gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance expenses.

(v) Any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

ARTICLE V.

Miscellaneous

5.1. Defeasance. Upon compliance with the terms and provisions of the Master Loan Agreement regarding the release of the lien of this Mortgage, then and in that event only, all rights under this Mortgage shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Mortgagee in due form at Mortgagor's cost.

5.2. Waiver by Mortgagee. Mortgagee may at any time and from time to time (a) waive or not enforce compliance by Mortgagor with any covenant herein made by Mortgagor (b) consent to Mortgagor doing any act which hereunder Mortgagor is prohibited from doing, or consent to Mortgagor failing to do any act which hereunder Mortgagor is required to do, (c) release any part of the Property, or any interest therein, from the lien and security interest of this Mortgage, or (d) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other instrument now or hereafter securing the payment of the secured indebtedness, without impairing or releasing the liability of any other party. No such act shall in any way impair the rights of Mortgagee hereunder except to the extent specifically agreed to by Mortgagee in writing.

5.3. Actions by Mortgagee. The lien, security interest and other security rights of Mortgagee hereunder shall not be impaired by any indulgence, moratorium or release granted by Mortgagee, including but not limited to (a) any renewal, extension, increase or modification which Mortgagee may grant with respect to any secured indebtedness, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant in respect of the Property, or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any secured indebtedness. The taking of additional security by Mortgagee shall not release or impair the lien, security interest or other security rights of Mortgagee hereunder or affect the liability of Mortgagor or of any endorser or guarantor or other surety or improve the right of any permitted junior lienholder in the Property.

5.4. Rights of Mortgagee. Mortgagee may waive any default without waiving any other prior or subsequent default. Mortgagee may remedy any default without waiving the default remedied. Neither the failure by Mortgagee to exercise, nor the delay by Mortgagee in exercising, any right, power or remedy upon any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other

circumstances. Acceptance by Mortgagee of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

5.5. Notification of Account Debtors. Mortgagee may at any time during the continuance of a default by Mortgagor notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Mortgagee directly.

5.6. Reproduction as Financing Statement. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement.

5.7. Fixture Filing. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records in the Office of the Probate Clerk in the county where the Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, and is to be filed for record in the real estate records of the county where the Property is situated. The mailing address of Mortgagor is set on the first page of this Mortgage and the address of Mortgagee from which information concerning the security interest may be obtained is the address of Mortgagee set forth on the first page of this Mortgage.

5.8. Filing and Recordation. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

5.9. Dealing with Successor. In the event the ownership of the Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the indebtedness secured hereby in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness secured hereby. No sale of the Property, no forbearance on the part of Mortgagee and no extension of the time for the payment of the indebtedness secured hereby given by Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder or for the payment of the indebtedness secured hereby or the liability of any other person hereunder or for the payment of the indebtedness secured hereby, except as agreed to in writing by Mortgagee.

5.10. Place of Payment. The Note and all other secured indebtedness which may be owing hereunder at any time by Mortgagor shall be payable at the place designated in the Note, or if no such designation is made, at the office of Mortgagee at the address indicated in this Mortgage, or at such other place in Harris County, Texas as Mortgagee may designate in writing.

5.11. Subrogation. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Mortgagee at Mortgagor's request and Mortgagee shall be subrogated to any and all rights, security interests and liens owned or held by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released; provided, however, that the terms and provisions of this Mortgage shall govern the rights and remedies of Mortgagee and shall supersede the terms, provisions, rights and remedies under and pursuant to the instruments creating the lien or liens to which Mortgagee is subrogated hereunder.

5.12. Application of Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness or if the lien and security interest of the secured indebtedness of this Mortgage are invalid or unenforceable as to any part of the secured indebtedness or as to any part of the Property, then all payments made on the secured indebtedness, whether voluntary or under foreclosure or other enforcement action or procedure, shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured in whole or in part by this Mortgage.

5.13. Notice. Any notice, request, demand or other communication required or permitted hereunder shall be given in the manner set forth in the Master Loan Agreement; provided that, service of a notice required by the foreclosure statutes of the state in which the Property is located shall be considered complete when the requirements of that statute are met.

5.14. Heirs, Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the successors and assigns of Mortgagor including all successors in interest of Mortgagor in and to all or any part of the Property, and shall inure to the benefit of Mortgagee and its successors, and assigns and shall constitute covenants running with the land. All references in this Mortgage to Mortgagor or Mortgagee shall be deemed to include all such successors and assigns.

5.15. Severability. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

5.16. Gender and Number. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, and words in the plural number shall be held and construed to include the singular, unless in each instance the context otherwise requires.

5.17. Counterparts. This Mortgage may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall

be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

5.18. Reporting Requirements. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, and further agrees upon written request of Mortgagee to furnish Mortgagee with evidence of such compliance.

5.19. Headings. The paragraph headings contained in this Mortgage are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

5.20. Construction Mortgage. This Mortgage is a construction mortgage in that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land. It is understood and agreed that funds to be advanced upon the Note are to be used in the construction of certain improvements on the land herein described in accordance with the Project Loan Agreement.

5.21. Consent of Mortgagee. Except where otherwise provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Mortgagee is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee, and Mortgagee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Mortgagee's judgment.

5.22. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

5.23. Negation of Partnership. Nothing contained in the Loan Documents is intended to create any partnership, joint venture or association between Mortgagor and Mortgagee, or in any way make Mortgagee a co-principal with Mortgagor with reference to the Property, and any inferences to the contrary are hereby expressly negated.

5.24. Modification by Subsequent Owners. Mortgagor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Mortgagee and any subsequent owner of the Property, with or without notice to Mortgagor, and no such modification shall impair the obligations of Mortgagor under this Mortgage or under any Loan Document. Nothing in this paragraph shall be construed as permitting any transfer of the Property which would constitute a default under this Mortgage.

5.25. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in

connection with the indebtedness secured hereby and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Loan Documents.

5.26. Applicable Law. THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO TEXAS' PRINCIPLES OF CONFLICTS OF LAW), EXCEPT TO THE EXTENT (A) OF PROCEDURAL AND SUBSTANTIVE MATTERS RELATING ONLY TO THE CREATION, PERFECTION, FORECLOSURE AND ENFORCEMENT OF RIGHTS AND REMEDIES AGAINST THE PROPERTY, WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED AND (B) THAT THE LAWS OF THE UNITED STATES OF AMERICA AND ANY RULES, REGULATIONS, OR ORDERS ISSUED OR PROMULGATED THEREUNDER, APPLICABLE TO THE AFFAIRS AND TRANSACTIONS ENTERED INTO BY LENDER, OTHERWISE PREEMPT THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED OR TEXAS LAW; IN WHICH EVENT SUCH FEDERAL LAW SHALL CONTROL.

5.27. Conflicts. In the event of a conflict between the terms and conditions of this Mortgage and the terms and conditions of the Master Loan Agreement, the terms and conditions of the Master Loan Agreement shall govern and control.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage, Security Agreement and Fixture Filing on the date of acknowledgment, to be effective as of the ____ day of February, 1999.

MORTGAGOR:

CAR WASH HEADQUARTERS OF ALABAMA, LLC., a Delaware limited liability company

By: 

Name: JOSEPH KAPLAN

Title: PRESIDENT

The Address of Mortgagor is:

Car Wash Headquarters of Alabama, LLC
3040 Post Oak Boulevard, Suite 445
Houston, Texas 77056

The address of Mortgagee is:

Bank United
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027
Attention: Commercial Real Estate Lending

STATE OF TEXAS §

COUNTY OF HARRIS §

I, LINDA L. FARR, a Notary Public in and for said County, in said State, hereby certify that JOSEPH KAPLAN, whose name as PRESIDENT of Car Wash Headquarters of Alabama, LLC, a Delaware limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day that, being informed of the contents of such conveyance, he/she, as such officer and with full authority, executed the same voluntarily, for and as the act of said limited liability company.

Linda L. Farr
Notary Public, State of Texas

My Commission Expires:

Printed or Typed Name

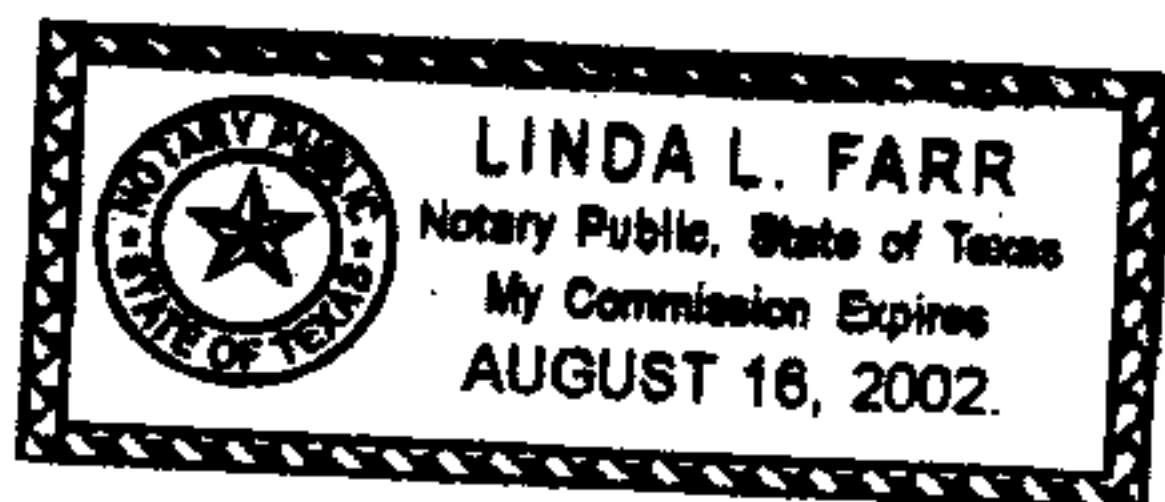


EXHIBIT A

(Legal Description)

Being all of Lot 3, according to the Survey of Cahaba Park South, as recorded in Map Book 9, Page 164, in the Probate Office of Shelby County, Alabama.

EXHIBIT B

Permitted Encumbrances

Subject to the matters set forth in Schedule B of the Mortgagee Policy of Title Insurance issued by Lawyers Title Insurance Corporation in favor of Bank United insuring the lien of this Mortgage, Security Agreement and Fixture Filing (With Power of Sale), but excluding any exceptions for mechanics's or materialmen's liens, if any.

Inst # 1999-07175

02/19/1999-07175
03:54 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
036 HNS 2669.20