

## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made as of the <sup>th</sup> 20 day of June, 2000, from James J. Nizzo, TRUSTEE OF THE WB EQUITIES I TRUST, INC. U/T/A/D March 3 2000, whose address is 14 Monterey Drive, Manhasset Hills, New York 11040-1030 ("Mortgagor"), to ROYAL INDEMNITY COMPANY, a Delaware corporation, whose address is c/o Royal Investment Management Company, 9300 Arrowpoint Boulevard, Charlotte, North Carolina 28273-8135, its successors and assigns ("Mortgagee").

### WITNESSETH:

That, to secure the payment of all of the following indebtedness and liabilities of Mortgagor to Mortgagee, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, howsoever evidenced (herein collectively called the "Mortgage Indebtedness"), namely, (i) the repayment of all sums borrowed by Mortgagor pursuant to the loan commitment identified in Section 38 of the Addendum to Mortgage (the "Loan Commitment") in the principal amount of \$3,127,661.00 and evidenced by that certain Promissory Note attached hereto as Exhibit "D" together with any and all renewals, amendments, modifications, replacements and extensions thereof (the "Note") and any other notes issued to evidence such borrowings, including any and all renewals, amendments, modifications, replacements and extensions thereof (the "Notes"), (ii) the performance of the covenants contained herein, in the Loan Commitment and/or in the Notes and any monies expended by Mortgagee in connection therewith and (iii) the payment of all obligations and performance of all covenants of Mortgagor under any other loan documents, agreements or instruments between Mortgagor and Mortgagee given in connection with or related to this Mortgage, the Loan Commitment or the Notes (all of the documents, agreements and instruments between Mortgagor and Mortgagee evidencing or securing the repayment of, or otherwise pertaining to, the Mortgage Indebtedness, including, without limitation, Borrower's Closing Certificate of even date herewith, being herein collectively called the "Loan Documents"), Mortgagor does hereby MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, CONVEY, ALIEN, SET OVER AND CONFIRM unto Mortgagee and its successors and assigns, all of Mortgagor's right, title and interest now owned and hereafter acquired in and to that certain ground lease dated May 28, 1998, as amended by Amendment to Ground Lease dated November 19, 1998, made by and between D and R Properties ("Ground Lessor") and Mortgagor, as ground lessee, for the lands, premises and properties described in Exhibit "A" annexed hereto (the "Ground Lease"), together with Mortgagor's leasehold estate described therein and created by virtue thereof and the lands, premises and properties described in Exhibit "A" annexed hereto (herein called the "mortgaged premises").

TOGETHER with all easements, rights-of-way, licenses and privileges, thereunto belonging or in anywise appertaining, including without limitation all of Mortgagor's right, title and interest in and to those easements, rights-of-way, licenses and privileges described in Exhibit "B" which is annexed hereto and made a part hereof.

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TOGETHER with all buildings and improvements now or hereafter situated upon the mortgaged premises or any part hereof.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders thereof; and also all the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor, of, in and to the same and of, in and to every part and parcel thereof.

TOGETHER with all the rents, issues and profits thereof under present or future leases or otherwise, which are hereby specifically pledged, assigned, transferred and set over to Mortgagee.

TOGETHER with all right, title and interest of Mortgagor, if any, in and to the land lying in the bed of any street, road, avenue, alley or walkway, opened or proposed or vacated, or any strip or gore, in front of or adjoining the mortgaged premises.

TOGETHER with all machinery, apparatus, equipment, fittings, fixtures, and articles of personal property of every kind and nature whatsoever, other than consumable goods, now or hereafter located in or upon the mortgaged premises or any part thereof and used or useable in connection with any present or future operation of the mortgaged premises or any building or buildings now or thereafter on the mortgaged premises and now owned or hereafter acquired by Mortgagor (all of which is herein called "equipment"), including, but without limiting the generality of the foregoing, all lighting, heating, cooling, ventilating, air-conditioning, incinerating, refrigerating, plumbing, sprinkling, communicating and electrical systems, and the machinery, appliances, fixtures and equipment pertaining thereto, and all of the right, title and interest of Mortgagor in and to any equipment which may be subject to any title retention or security agreement superior in lien to the lien of this Mortgage. It is understood and agreed that all equipment is part and parcel of the mortgaged premises and appropriated to the use of said real estate and, whether affixed or annexed or not, shall for the purposes of this Mortgage, unless Mortgagee shall otherwise elect, be deemed conclusively to be real estate and mortgaged hereby.

TOGETHER with any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the mortgaged premises as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, (c) any loss of or damage to any building or other improvement on the mortgaged premises, (d) any other injury to or decrease in the value of the mortgaged premises or (e) any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the mortgaged premises, (f) the proceeds of any insurance policy covering any loss or otherwise relating to the mortgaged premises whether or not such policy is required by the terms of this Mortgage to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagee, and of the reasonable counsel fees, costs and disbursements



incurred by Mortgagee in connection with the collection of such award or payment. Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by Mortgagee to confirm such assignment to Mortgagee of any such award or payment.

TOGETHER with all of Mortgagor's rights, title and interest in, to and under all present and future land contracts, sales agreements and/or option agreements relating to the mortgaged premises or any portion thereof and Mortgagor's rights under all construction contracts and all plans and specifications relating to the mortgaged premises.

TOGETHER with all of Mortgagor's rights, title and interest in, to and under all present and future permits, licenses, authorizations, franchises, liquor licenses, management agreements, all books and records, general intangibles, accounts and contract rights used or intended to be used in connection with the ownership or operation of the mortgaged premises or any portion thereof, and all names, trade names, trademarks, logos and material used to advertise the mortgaged premises.

The security interest created herein covers all property of the same character as that covered by this Mortgage, as stated hereinabove, which Mortgagor may hereafter acquire at any time until the termination of the security interest created herein, together with all parts, fittings, accessories, equipment, renewals and replacements of all or any part thereof and other goods of the same class, whether now owned or hereafter acquired by Mortgagor.

The mortgaged premises are not now and have never been the homestead of Mortgagor, as the homestead is defined by the applicable provisions of the Code of Alabama.

TO HAVE AND TO HOLD the mortgaged premises, and each and every part thereof, unto Mortgagee, its successors and assigns, FOREVER; provided, however, that should Mortgagor faithfully and fully perform all obligations under this Mortgage and under all other documents evidencing or otherwise related to the Mortgage Indebtedness, then this Mortgage shall become null and void; otherwise, it is to remain in full force and effect. Mortgagor hereby binds itself and its successors and assigns not to sell, alienate or encumber the same to the prejudice of these presents. Any reference herein to the "mortgaged premises" shall, unless the context shall require otherwise, be deemed to include and apply to the Ground Lease, the above described land and said buildings, improvements, equipment, rents, issues, profits, leases, easements, tenements, hereditaments and appurtenances and all other rights, privileges and interests thereinabove or hereinafter described.

SUBJECT only to those matters set forth in Exhibit "B", if any (the "Permitted Exceptions to Title").

AND, Mortgagor does hereby covenant, represent and warrant as follows:

1. Payment of Mortgage Indebtedness; Performance of Agreements. Mortgagor shall pay, or cause to be paid, the principal of and interest on the Mortgage Indebtedness according to the terms thereof, and will keep and perform all the covenants, promises and agreements in (a) the Loan Commitment, the Notes or any other promissory note or notes at any time hereafter issued to evidence the Mortgage Indebtedness, (b) this Mortgage, and (c) the other Loan Documents, all in the manner herein or therein set forth.

2. Covenants of Title. Mortgagor has a good and marketable leasehold interest in the entire mortgaged premises in fee simple and with good right and full power to sell, mortgage and convey the same; the mortgaged premises are free and clear of easements, restrictions, liens, leases and encumbrances, except for the Permitted Exceptions to Title; and Mortgagor will warrant and defend the mortgaged premises against all lawful claims and demands whatsoever and the lien created hereby is and will be kept as a first lien upon the mortgaged premises and every part thereof subject only to the Permitted Exceptions to Title. Mortgagee shall have the right, at its option and at such time or times as it, in its sole discretion, shall deem necessary to take whatever action it may deem necessary to defend or uphold the lien of this Mortgage or otherwise enforce any of the rights of Mortgagee hereunder or any obligation secured hereby, including without limitation, the right to institute appropriate legal proceedings for such purposes.

3. Payment of Taxes, Assessments and Charges. Mortgagor shall pay or cause to be paid when due, and before any interest, collection fees or penalties shall accrue, all real estate taxes, special assessments, rental payments due under the Ground Lease, water and sewer charges or other governmental charges and impositions levied or assessed with respect to the mortgaged premises or any part thereof. Should Mortgagor fail to pay such taxes, special assessments, water and sewer charges or other governmental charges or impositions, Mortgagee may, at its option, pay the same for the account of Mortgagor.

4. Reserves for Taxes. Upon and after the occurrence of any default under the Loan Documents, Mortgagor shall pay to Mortgagee, monthly, and in addition to any payment of principal and interest on the Note, installments of the taxes and assessments levied or to be levied upon the mortgaged premises, said installments to be substantially equal and to be in such amount as will assure to Mortgagee that not less than thirty (30) days before the time when such taxes would become due and payable Mortgagor will have paid to Mortgagee a sufficient amount to pay the same in full. In the event that sufficient funds have not been deposited as aforesaid to cover the amount of such taxes, assessments and other charges and encumbrances at least thirty (30) days prior to the time when the same become due and payable, Mortgagor shall forthwith upon request by Mortgagee pay such balance to Mortgagee. Said amounts paid to Mortgagee hereunder need not be segregated nor kept in a separate fund, and no interest shall be payable thereon. Said amounts shall be held by Mortgagee as additional security for the Mortgage Indebtedness and be applied to the payment of said taxes and assessments when the same become due and payable. Nothing herein contained shall in any manner limit the obligations of Mortgagor to pay taxes as above provided. Upon acceleration



of the Mortgage Indebtedness, Mortgagee may, at its option, but without any obligation on its part so to do, apply said amounts upon said taxes and assessments or toward the payment of the Mortgage Indebtedness or any portion thereof, whether or not then due or payable. Mortgagee may make payments from any of such monies on deposit with Mortgagee for taxes, assessments, other charges or encumbrances on or with respect to the mortgaged premises notwithstanding that subsequent owners of the mortgaged premises may benefit thereby.

Upon an assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of such deposits in its possession to the assignee and Mortgagee shall thereupon be released from all liability with respect to such deposits and Mortgagor or owner of the mortgaged premises shall look solely to the assignee or transferee in reference thereto to the extent that the assignee or transferee has assumed the obligation therefor. This provision shall apply to every transfer of such deposits to a new assignee. Upon full payment and satisfaction of the Mortgage Indebtedness or at any prior time upon the election of Mortgagee, the balance of the deposits in its possession shall be paid over to the record owner of the mortgaged premises and no other party shall have any right or claim thereto in any event. Mortgagor agrees, at Mortgagee's request, to make the aforesaid deposits with such servicer or financial institution as Mortgagee shall from time to time designate.

In the event payment by Mortgagor of any tax referred to in this Mortgage would result in the payment of interest in excess of the rate permitted by law, then Mortgagor shall have no obligation to pay the portion of such tax which would result in the payment of such excess; provided, however, in such event, at any time after the enactment of a law providing for such tax, Mortgagee, at its option, may declare the entire principal balance of the indebtedness secured hereby, together with all interest thereon, to be due and payable immediately, without notice.

5. Payment of Other Obligations. Mortgagor shall also pay or cause to be paid any and all other obligations, liabilities or debts which may become liens, security interests, or encumbrances upon or charges against the mortgaged premises for any repairs or improvements that are now completed or are in progress or which may hereafter be made thereon, or for any other goods, services, or utilities furnished to the mortgaged premises, and shall not permit any lien, security interest, encumbrance or charge of any kind securing the repayment of borrowed or guaranteed funds (including the deferred purchase price for any property) to accrue and remain outstanding against the mortgaged premises or any part thereof, or any improvements thereon, except as expressly consented to in writing by Mortgagee, provided, however, that Mortgagor may contest in good faith, by appropriate proceedings, diligently pursued, any asserted obligation, liability or debt which may give rise to a lien for services or materials provided for the repair or improvement of the mortgaged premises on the condition that Mortgagor shall promptly cause such lien to be removed or bonded with adequate surety acceptable to Mortgagee.

6. Maintenance and Repair; Alterations; Inspection. Mortgagor will keep, or cause to be kept, the mortgaged premises and all of the improvements thereon in good order and

repair, and Mortgagor expressly agrees that it will not do or permit waste on the mortgaged premises nor do any other act whereby the mortgaged premises will become less valuable or the lien hereof may be impaired. Should Mortgagor fail to effect the necessary repairs, Mortgagee may at its option make such repairs for the account of Mortgagor. Mortgagor shall make no alterations, additions or improvements of any type whatever to the mortgaged premises, regardless of whether such alterations, additions or improvements would increase the value of the mortgaged premises, nor permit anyone to do so, without Mortgagee's prior written consent. Mortgagor will comply promptly with all laws, ordinances, regulations and orders of all public authorities having jurisdiction over the mortgaged premises relating to the use, occupancy and maintenance thereof, and shall upon request promptly submit to Mortgagee evidence of such compliance. Nothing herein shall be deemed to prohibit Mortgagor from contesting the enforceability or applicability of any law, ordinance, regulation or order; provided, however, that Mortgagee, in its sole discretion, may require that Mortgagor comply with any such law, ordinance, regulation or order during the pendency of any such contest and all appeals therefrom. Mortgagee, and any person authorized by Mortgagee, shall have the right to enter upon and inspect the mortgaged premises at all reasonable times.

#### 7. Insurance.

(a) Mortgagor shall keep or cause to be kept the buildings and other improvements on the mortgaged premises, or which may hereafter be erected thereon, constantly insured for the benefit of Mortgagee, until the Mortgage Indebtedness and all interest thereon and all of the amounts due hereunder are fully paid, against fire and such other hazards and risks customarily covered by the standard form of extended coverage endorsement available in the State where the mortgaged premises are located, including risks of vandalism and malicious mischief, and shall further provide flood insurance (if the mortgaged premises are situated in an area which is considered a flood risk area by the U.S. Department of Housing and Urban Development or as otherwise required by the Flood Disaster Protection Act of 1973 and regulations issued thereunder), business or rent loss insurance for a minimum of twelve (12) months, war risk insurance (if available) and such other appropriate insurance as Mortgagee may require from time to time, all in such amounts and in such forms and with such companies as may be satisfactory to Mortgagee, and shall deliver to Mortgagee at its principal office aforesaid or at such other place as may be designated by the holder hereof the insurance policies with premiums fully paid and with standard mortgagee clauses or such other mortgagee clauses as may be satisfactory to Mortgagee attached, and renewals thereof shall likewise be delivered to Mortgagee at least thirty (30) days before the expiration of any existing policies.

(b) All such policies shall include standard loss payable clauses in favor of Mortgagee and shall provide that the same may not be canceled, terminated or modified without giving Mortgagee at least thirty (30) days prior written notice of such cancellation, termination or modification.



(c) Should Mortgagor fail to insure or fail to pay the premiums on any such insurance or fail to deliver the policies or renewals thereof as provided above, Mortgagee at its option may have such insurance written or renewed and pay the premiums thereon for the account of Mortgagor.

(d) In the event of loss or damage, the proceeds of said insurance shall be paid to Mortgagee alone. No such loss or damage shall itself reduce the Mortgage Indebtedness. Mortgagee is authorized to adjust and compromise such loss without the consent of Mortgagor, to collect, receive and receipt for such proceeds in the name of Mortgagee and Mortgagor and to endorse Mortgagor's name upon any check in payment thereof. Such proceeds shall be applied first toward reimbursement of all reasonable costs and expenses of Mortgagee in collecting said proceeds and then toward payment of the Mortgage Indebtedness or any portion thereof, whether or not then due or payable, and the balance, if any, shall be paid to Mortgagor. No such application of proceeds by Mortgagee toward payment of the Mortgage Indebtedness shall reduce the amount of the installment payments required to be made on the Note in accordance with its terms. In the event that Mortgagor is entitled to receive the proceeds of any insurance policy which covers damage or destruction to the mortgaged premises and which Mortgagor is not required to carry pursuant to this Mortgage, Mortgagor shall cause such proceeds to be paid directly to Mortgagee to be applied in accordance with the terms of this Paragraph 7. In furtherance of the foregoing, Mortgagor hereby grants Mortgagee a lien on and security interest in the proceeds of any such insurance policy.

(e) In the event of a foreclosure of this Mortgage, the purchaser of the mortgaged premises shall succeed to all of the rights of Mortgagor under said insurance policies payable to Mortgagee, including any right to unearned premiums and the right to receive the proceeds of any insurance payable by reason of any loss theretofore or thereafter occurring.

(f) Notwithstanding anything to the contrary contained in this Section 7, if (i) the casualty occurs more than five (5) years prior to the Due Date (as defined in the Note); (ii) immediately prior to the loss or damage Mortgagor was not in default under this Mortgage or the other Loan Documents; (iii) Mortgagee determines, in its discretion, that it is likely that all such restoration and repair work relating to such loss or damage will be completed within one (1) year from the date on which such insurance proceeds are released; and (iv) each tenant affected by the loss or damage unconditionally confirms in writing to Mortgagor and Mortgagee that if the loss or damage is repaired and restored its lease will remain in effect, Mortgagee, after first applying such insurance proceeds to the payment of all reasonable expenses incurred by Mortgagee in obtaining such proceeds, agrees upon Mortgagor's request, to make the balance of the insurance proceeds available for restoration and repair of the loss or damage upon the following terms and conditions:

(1) The restoration or repair work shall be done pursuant to plans and specifications approved by Mortgagee, and Mortgagor shall cause to be prepared and presented to Mortgagee a certified construction statement, acceptable to Mortgagee, showing the total cost of the restoration or repair; to the extent such cost exceeds the available

insurance proceeds, Mortgagor shall pay the amount of such excess cost, in cash, to Mortgagee, before any disbursement is made by Mortgagee pursuant hereto, to be held and disbursed by Mortgagee pursuant hereto (which insurance proceeds and such funds paid to Mortgagee are hereinafter called the "Funds");

(2) The Funds shall be made available to Mortgagor as the restoration and repair work progresses pursuant to certificates of an architect acceptable to Mortgagee, which certificates shall be in form and substance acceptable to Mortgagee; the funds paid by Mortgagor to Mortgagee to pay all excess costs shall be disbursed prior to disbursement of any insurance proceeds;

(3) There shall be delivered to Mortgagee, with such certificates, sworn statements and lien waivers in an amount at least equal to the amount of Funds to be paid out to Mortgagor pursuant to each architect's certificate and dated as of the date of the disbursement to which they relate;

(4) There shall be delivered to Mortgagee such other evidence as Mortgagee may reasonably request, from time to time, during the restoration and repair, as to the progress of the work, compliance with the approved plans and specifications, the cost of restoration and repair and the total amount needed to complete the restoration and repair;

(5) There shall be delivered to Mortgagee such other evidence as Mortgagee may reasonably request, from time to time, showing that there are no liens against the mortgaged premises arising in connection with the restoration and repair, that value has been added to the mortgaged premises in connection with such restoration and repair in an amount at least equal to the total amount of Funds then disbursed to Mortgagor hereunder, and that this Mortgage is then still a valid first lien on all the mortgaged premises;

(6) If such Funds are at any time reasonably determined by Mortgagee not to be adequate for completion of the restoration and repair, Mortgagor shall immediately pay any deficiency to Mortgagee to be held and disbursed as Funds and prior to any other funds then held by Mortgagee for disbursement pursuant hereto;

(7) In the event Mortgagor at any time shall fail to promptly and fully perform the conditions and covenants set out in subsections (1) through (6) above, or in the event during the restoration or repair an Event of Default occurs hereunder, Mortgagee may, at its option, immediately cease making any further payments to Mortgagor for such restoration and repair, and may further, at its option, apply the Funds then in its possession either to the reduction of the indebtedness hereby secured or to the restoration and repair of the mortgaged premises in the manner above provided and notwithstanding any such default or defaults, without affecting the lien of this Mortgage and the obligations hereunder. Funds



may be disbursed by Mortgagee to Mortgagor or to the persons entitled to receive payment thereof from Mortgagor, and such disbursement in either case may be made directly or through a third party escrow agent, such as, but not limited to, a title insurance company, or its agent, all as Mortgagee may determine in its sole discretion. Any excess Funds, at Mortgagee's option, may be applied to the reduction of the Mortgage Indebtedness in the manner above stated or released to Mortgagor.

(g) Mortgagor shall also, at Mortgagee's request and at Mortgagor's sole expense, maintain public liability and property damage insurance in such amounts as Mortgagee shall require, cause Mortgagee to be added as an additional named insured under the applicable policies, and deliver satisfactory evidence of that insurance to Mortgagee.

(h) Should Mortgagor fail to insure or fail to pay the premiums on any such insurance or fail to deliver the policies or renewals thereof as provided above (in a form and content satisfactory to Mortgagee), Mortgagee at its option may have such insurance written or renewed and pay the premiums thereon for the account of Mortgagor.

8. Eminent Domain. Notwithstanding any taking under the power of eminent domain, alteration of the grade of any street, or other injury to or decrease in value of the mortgaged premises by any public or quasi-public authority or corporation, Mortgagor shall continue to pay the Mortgage Indebtedness in accordance with the terms of the Note or of any promissory note or notes then evidencing the same, or the Loan Documents, as the case may be, and any reduction in the principal sum resulting from the application by Mortgagee of such award or payment as hereinafter set forth shall be deemed to take effect only upon the receipt by Mortgagee of such award. Mortgagor hereby assigns the entire proceeds of any award or payment to payable to Mortgagor Mortgagee. Such proceeds shall be applied first toward reimbursement of all costs and expenses of Mortgagee in collecting said proceeds and then toward payment of the last maturing installments of principal and interest due or to become due under the Note and then toward the Mortgage Indebtedness or any portion thereof, whether or not then due or payable, and the balance, if any, shall be paid to Mortgagor. No such application of proceeds by Mortgagee toward payment of the Mortgage Indebtedness shall reduce the amount of the installment payments required to be made on the Note in accordance with its terms. Mortgagee is hereby empowered in the name of Mortgagor to receive, and give acquittance for, any such award or payment, whether it is joint or several; provided, however, that Mortgagee shall not be held responsible for failure to collect any such award or payment, regardless of the cause of such failure.

9. Reimbursement of Advances by Mortgagee. Mortgagor shall pay to Mortgagee, upon demand, all reasonable sums expended by Mortgagee (a) to pay taxes, assessments, rental payment under the Ground Lease, water and sewer charges and other governmental charges and impositions and insurance premiums, with respect to the mortgaged premises, or (b) to maintain, repair or improve the mortgaged premises, whether expended by Mortgagee or any

receiver appointed at the request of Mortgagee, unless such sums shall be paid out of the rents, income and profits from the mortgaged premises, or (c) to defend the lien of this Mortgage as a first lien against the mortgaged premises subject only to the Permitted Exceptions to Title, or (d) to discharge any lien or encumbrance affecting the mortgaged premises which shall be superior to the lien of this Mortgage and as to which this Mortgage is not expressly subject and subordinate, or (e) to cure any default of Mortgagor under any lease or other agreement covering the mortgaged premises, or (f) to cure any default of Mortgagor hereunder or under any of the other Loan Documents, or (g) for or in connection with any other reasonable action taken by Mortgagee to preserve the security of this Mortgage or any other security for the Mortgage Indebtedness or to protect any of Mortgagee's rights hereunder. All such expenditures as shall reasonably be made by Mortgagee hereunder or pursuant to any other provision of this Mortgage or the other Loan Documents, including any reasonable attorneys' fees incurred by Mortgagee in connection with the foregoing, shall be secured by this Mortgage and shall be payable upon demand and shall bear interest at the default rate set forth in the Note or in any other promissory note or notes now or hereafter evidencing the Mortgage Indebtedness or any portion thereof, including penalty interest, if any.

10. Change in Taxes. In the event any tax shall be due or become due and payable to the United States of America, the state where the mortgaged premises are located or any political subdivision thereof with respect to the execution and delivery or recordation of this Mortgage or any note or other instrument or agreement evidencing or securing repayment of the Mortgage Indebtedness or the interest of Mortgagee in the mortgaged premises, then either (a) Mortgagor may at least thirty (30) days prior to the effective date of such tax agree to pay such tax at the time and in the manner required by applicable law and Mortgagor shall hold Mortgagee harmless and shall indemnify Mortgagee against any liability of any nature whatsoever as a result of the imposition of any such tax or (b) the Mortgage Indebtedness shall without notice or demand, become due and payable fifteen (15) days prior to such effective date. In the event that Mortgagor fails to pay the Mortgage Indebtedness prior to the effective date of such tax and as a consequence of such failure such tax is imposed against Mortgagee, Mortgagor shall pay the tax and hold Mortgagee harmless and shall indemnify Mortgagee against any liability of any nature whatsoever as a result of the imposition of such tax.

In the event of the passage after the date of this Mortgage of any law in the state where the mortgaged premises are located deducting from the value of real property for purposes of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured thereby (including the interest thereon) for state or local purposes, or changing the manner of collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage or the Note, the holder of this Mortgage shall have the right to declare the entire unpaid amount of the Mortgage Indebtedness, together with accrued and unpaid interest thereon, to be due and payable on a date to be specified by not less than thirty (30) days' written notice to Mortgagor, provided, however, that such election shall not be effective if Mortgagor is permitted by law to pay



the whole of such tax in addition to all other payments required hereunder and if Mortgagor, prior to such specified date, makes payment of such tax then due and agrees to pay any such tax when thereafter levied or assessed against the mortgaged premises, this Mortgage or the Note.

11. Events of Default. The occurrence of any of the following events shall constitute a default under this Mortgage and under the other Loan Documents and after the passage of any applicable cure or grace period set forth in this Section (or immediately upon the occurrence of any of the following events if no cure or grace period is set forth in this Section) shall constitute an Event of Default under this Mortgage and under the other Loan Documents ("Event of Default"):

- A. Default in any payment of principal or interest on the Note when due; or
- B. Default in any additional payments as and at the time required under this Mortgage or any of the Loan Documents; or
- C. Default in the observance or performance of any other agreement of Mortgagor herein set forth or set forth in any of the other Loan Documents and the continuation thereof for thirty (30) days after notice from Mortgagee; provided, however, in no event shall Mortgagor be entitled to notice or any opportunity to cure its or their failure to promptly and faithfully observe and perform any of the terms and conditions contained in Sections 3, 4, 5, 7, 17 and/or 18 of this Mortgage; or
- D. Any representation or warranty made by Mortgagor and/or the Individual (as defined in the Note) herein or set forth in any of the other Loan Documents proves untrue at the time made or as of the date hereof in any respect; or
- E. Failure by Mortgagor and/or the Individual to comply with all of the terms, covenants and provisions of any and all leases or other agreements, documents or restrictions that now encumber, affect or pertain to the mortgaged premises or any portion thereof; or
- F. Any of the information or other materials furnished by or on behalf of Mortgagor and/or the Individual to Mortgagee in connection with the making of the loan(s) secured hereby shall prove false in any respect as of the date given or as of the date hereof; or
- G. Mortgagor and/or the Individual shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts generally, or shall make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver for itself or for the greater part of its properties; or a trustee or receiver is appointed for Mortgagor and/or the Individual or for the greater part of any of its properties without its consent and is not discharged within sixty (60) days; or bankruptcy, reorganization or liquidation proceedings under bankruptcy or similar laws are instituted by or against Mortgagor and/or the Individual are consented to by it or

remain undismissed for sixty (60) days, or a receiver, conservator, liquidating agent or committee or governmental authority shall be appointed for or take possession or charge of Mortgagor and/or the Individual or its business or assets, or the rights, privileges and franchises of Mortgagor and/or the Individual shall be declared forfeited by any governmental authority; or

H. A judgment or order for the payment of money shall be rendered against Mortgagor and/or the Individual and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order and such judgment or order shall have remained unsatisfied and such proceedings shall have remained unstayed for a period of twenty (20) consecutive days, or (ii) for a period of twenty (20) consecutive days, such judgment shall have remained unsatisfied and a stay of enforcement of such judgment or order, by reason of pending appeal or otherwise, shall not have been in effect; or

I. Institution of foreclosure or other proceedings to enforce any security interest, lien or encumbrance of any kind upon any of the collateral securing any part of the Mortgage Indebtedness; or

J. Any provision of this Mortgage or the other Loan Documents shall at any time for any reason cease to be valid and binding on Mortgagor and/or the Individual or shall be declared null and void, or the validity or enforceability thereof against Mortgagor and/or the Individual shall be contested by Mortgagor and/or the Individual; or Mortgagor and/or the Individual shall deny that it has any further liability or obligation under this Mortgage or the other Loan Documents; or

K. Termination of Mortgagor's existence under state law, unless reconstituted according to all applicable laws; or

L. The failure of Mortgagor or any agent of Mortgagor to comply promptly with any applicable legal requirements of the State of Alabama (or any other governmental entity, agency or instrumentality) relating to the use or condition of the mortgaged premises, or to keep in full force and effect all licenses or certificates required to operate the improvements located on the mortgaged premises; or

M. If any lease (including without limitation Mortgagor's interest in the Ground Lease) for all or part of the mortgaged premises and/or any guaranty of any lease for all or part of the mortgaged premises is assigned, terminated or canceled for any reason or is amended in any respect without the prior written consent of Mortgagee; or

O. Mortgagor shall fail to comply with any of its obligations under the Ground Lease.



12. Remedies Upon Default. Immediately upon the occurrence of any Event of Default, Mortgagee shall have the option, in addition to and not in lieu of or substitution for all other rights and remedies provided in this Mortgage, provided in any other Loan Document, or provided by law, and is hereby authorized and empowered by Mortgagor, to do any or all of the following:

(a) Declare the entire unpaid amount of the Mortgage Indebtedness, together with accrued and unpaid interest thereon, and any and all charges payable by Mortgagor to Mortgagee pursuant to any of the Loan Documents, immediately due and payable and, at Mortgagee's option, (i) to bring suit therefor, or (ii) to bring suit for any delinquent payment of or upon the Mortgage Indebtedness, (iii) to take any and all steps and institute any and all other proceedings that Mortgagee deems necessary to enforce payment of the Mortgage Indebtedness and performance of other obligations secured hereunder and to protect its rights under this Mortgage.

(b) Commence foreclosure proceedings against the mortgaged premises through judicial proceedings or by power of sale, at the option of Mortgagee, pursuant to the statutes in such case made and provided, and to sell the mortgaged premises or to cause the same to be sold at public sale, and to convey the same to the purchaser, in accordance with said statutes in a single parcel or in several parcels at the option of Mortgagee, and Mortgagee shall be authorized, at its option, whether or not possession of the mortgaged premises is taken, after giving notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the mortgaged premises (or such part of 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 held under the terms of this Mortgage and may purchase the mortgaged premises, 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 mortgaged premises, 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 any such proceeds, Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the mortgaged premises in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the mortgaged premises not previously sold shall have been sold or all the Mortgage Indebtedness shall have been paid in full.

(c) Obtain a receiver to manage the mortgaged premises and collect the rents, profits and income therefrom, after notice and opportunity to be heard, as provided by statute.

(d) In the event of any sale of the mortgaged premises by foreclosure, through judicial proceedings, by power of sale, or otherwise, apply the proceeds of any such sale in the

following order to: (i) all expenses incurred for the collection of the Mortgage Indebtedness and the foreclosure of this Mortgage, including attorneys' fees, or such attorneys' fees as are permitted by law; (ii) all sums expended or incurred by Mortgagee directly or indirectly in carrying out the terms, covenants and agreements of the Note or Notes evidencing the Mortgage Indebtedness, of this Mortgage and of the Loan Documents, together with interest thereon as therein provided; (iii) all accrued and unpaid interest upon the Mortgage Indebtedness; (iv) the unpaid principal amount of the Mortgage Indebtedness; and (v) the surplus, if any there be, unless a court of competent jurisdiction decrees otherwise, to Mortgagor.

No failure or delay on the part of Mortgagee in exercising any right, power, or remedy hereunder or under the other Loan Documents shall operate as a waiver thereof. No single or partial exercise by Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. All of the rights and remedies of Mortgagee shall be deemed to be cumulative.

13. Successors in Ownership. In the event ownership of the mortgaged premises or any part thereof becomes vested in a person or persons other than Mortgagor without the prior written approval of Mortgagee, Mortgagee may (but shall not be obligated to) deal with such successor or successors in interest with reference to this Mortgage and the other Loan Documents in the same manner as with Mortgagor, without in any manner discharging or otherwise affecting Mortgagor's liability hereunder or upon the Mortgage Indebtedness.

14. Warranties Respecting Personal Property. Mortgagor warrants that as of the date hereof Mortgagor does not own any equipment nor other personal property described located on the mortgaged premises. At any time Mortgagor shall own any equipment and/or other personal property described in this Mortgage, Mortgagor may from time to time substitute personal property covered hereby, provided that the personal property so substituted shall be (i) of at least equivalent value to that replaced as determined by Mortgagee in its reasonable judgment and (ii) free and clear of any liens or security interests, except as expressly permitted under the Loan Documents. Mortgagor shall give ten (10) days prior written notice to Mortgagee of any proposed substitution.

15. Security Interest. As to all equipment and other personal property covered hereby, Mortgagor does hereby grant a continuing security interest therein to Mortgagee pursuant to the Uniform Commercial Code. Mortgagor agrees, upon request of Mortgagee, to furnish an inventory of personal property owned by Mortgagor and subject to this Mortgage and, upon request by Mortgagee, to execute any supplements to this Mortgage, any separate security agreement and any financing statements to include specifically said inventory of personal property. Upon the occurrence of a default under any of the Loan Documents, Mortgagee shall have all of the rights and remedies therein provided or otherwise provided by law or by this Mortgage, including but not limited to the right to require Mortgagor to assemble such personal property and make it available



to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to both parties, the right to take possession of such personal property with or without demand and with or without process of law and the right to sell and dispose of the same and distribute the proceeds according to law. The parties hereto agree that any requirement of reasonable notice shall be met if Mortgagee sends such notice to Mortgagor at least ten (10) days prior to the date of sale, disposition or other event giving rise to the required notice, and that the proceeds of any disposition of any such personal property may be applied by Mortgagee first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and legal expenses incurred, and then to payment of the Mortgage Indebtedness.

Further, Mortgagor hereby assigns to Mortgagee, as further security for the indebtedness mortgaged hereby, Mortgagor's interest in all agreements, contracts (including contracts for any lease or sale of the mortgaged premises or any portion thereof), licenses and permits affecting the mortgaged premises. Such assignment shall not be construed as a consent by Mortgagee to any agreement, contract, license, or permit so assigned, or to impose upon Mortgagee any obligations with respect thereto. Mortgagor shall not cancel or amend any of the agreements, contracts, licenses and permits hereby assigned (nor permit any of the same to terminate if they are necessary or desirable for the operation of the mortgaged premises) without first obtaining, on each occasion, the written approval of Mortgagee. This Section shall not be applicable to any agreement, contract, license or permit that terminates if it is assigned without the consent of any party thereto (other than Mortgagor) or issuer thereof, unless such consent has been obtained or this assignment is ratified by such party or issuer; nor shall this Section be construed as a present assignment of any contract, license or permit that Mortgagor is required by law to hold in order to operate the mortgaged premises for the purposes intended.

16. Assignment of Leases and Rents; Lease Provisions. A. As of the date of this Mortgage, Mortgagor hereby transfers, assign, and sets over to Mortgagee all its right, title and interest in and to all written and oral leases, whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension thereof, covering the mortgaged premises, or any part thereof (but without an assumption by Mortgagee of liabilities of Mortgagor under any such leases by virtue of this assignment), and Mortgagor hereby transfers, assigns, and sets over to Mortgagee the rents, issues and profits of the mortgaged premises and all payments to become due under all such leases. It is intended by Mortgagor and Mortgagee that this assignment constitutes an immediate, absolute, unconditional and presently effective assignment of any leases and rents to Mortgagee as a source of payment of all sums due on the Note and not merely an assignment for additional security. There shall be no merger of title between the fee to the mortgaged premises and any leasehold interest therein if any tenant of all or any portion of the mortgaged premises shall acquire all or any portion of the mortgaged premises and such lease(s) shall not be terminated by merger and shall remain in full force and effect. All amounts due under the leases covering all or any portion of the mortgaged premises shall be paid directly by all tenants to Mortgagee at its address first above written, or as Mortgagee may otherwise direct in writing. All

amounts collected or received by Mortgagee shall be applied as set forth in the Absolute Assignment of Rents and Leases being delivered by Mortgagor to Mortgagee contemporaneously herewith. It is hereby acknowledged and agreed that this assignment of rents and leases shall be perfected upon recordation of this Mortgage and without the necessity of any further action on the part of Mortgagor or Mortgagee.

B. All future leases shall be approved by Mortgagee as to form and terms. Mortgagor covenants and agrees that all future leases affecting the mortgaged premises shall contain the following provisions:

(1) Tenant agrees not to look to Mortgagee as Mortgagee, mortgagee in possession, or successor in title to the mortgaged premises, for accountability for any security deposit required by the landlord hereunder as security for the tenant's performance of this lease.

(2) Tenant agrees not to handle, store, or dispose of any hazardous or toxic waste or substance upon the mortgaged premises which are prohibited by any federal, state or local statute, ordinance or regulation. Tenant hereby covenants to indemnify and hold landlord, its successors and assigns, harmless from any loss, damage, claims, costs, liability or cleanup costs arising out of tenant's use, handling, storage or disposal of any such hazardous or toxic wastes, constituents or substances on the mortgaged premises.

(3) If Mortgagee or any other person acquires title to the mortgaged premises pursuant to the exercise of any remedy provided for in the Mortgage, Tenant covenants and agrees to attorn to Mortgagee or such person as its new landlord, and the lease shall continue in full force and effect as a direct lease between Tenant and Mortgagee or such other person upon all the terms, covenants, conditions and agreements set forth in the lease. However, in no event shall Mortgagee or such person be (A) bound by any payment of rent or additional rent made by the Tenant to the Landlord for more than one (1) month in advance; or (B) bound by any amendment, modification and/or termination of the lease and/or guaranty of the lease made without the written consent of Mortgagee; or (C) liable for any act or omission of any prior landlord (including Landlord); or (D) liable for the return of any security deposit (unless any such security deposit has actually been received by Mortgagee); or (E) liable for any offsets, credits or other claims against rentals for any prior periods and/or against any other party or landlord (including Landlord). Tenant agrees to execute all tenant estoppel certificates and attornment agreements as Mortgagee shall reasonably require.

(4) At the option of Mortgagee, such lease may at any time during its continuation be made superior or subordinate to the lien of any one or more mortgages affecting the mortgaged premises.



All leases hereafter made for a term in excess of three (3) years (including renewal options) shall have received the prior approval of the Mortgagee and, at Mortgagee's option, (i) the lessor's interest therein shall be assigned to Mortgagee as collateral security and/or (ii) said lease shall be subordinated to the Mortgage. In addition, Mortgagor shall be required to obtain Mortgagee's prior written approval of any lease, regardless of its term, for any proposed tenant who is a generator of, or who will maintain, Hazardous Materials (as defined in the Guaranty and Indemnification Agreement) upon the mortgaged premises. It is hereby acknowledged and agreed that this assignment of leases and rents shall be perfected upon recordation of this Mortgage and without the necessity of any further action on the part of Mortgagor or Mortgagee.

17. No Other Liens. Mortgagor will not mortgage or pledge the mortgaged premises or any part thereof as security for any other loans obtained by Mortgagor or its affiliates without the prior written consent of Mortgagee, which Mortgagee may withhold for any reason whatsoever or without reason. If any such mortgage or pledge is entered into without the prior written consent of Mortgagee, such event shall constitute an Event of Default and among other remedies the entire indebtedness secured hereby, may, at the option of Mortgagee, be declared immediately due and payable without notice. Neither Mortgagor nor the partners, members, managers or shareholders of Mortgagor will mortgage or pledge their interest in Mortgagor or in the mortgaged premises or any part thereof as security for any other loans obtained by Mortgagor or the partners, members, managers or shareholders of Mortgagor without the prior written consent of Mortgagee, which Mortgagee may withhold for any reason whatsoever or without reason. If any such mortgage or pledge is entered into without the prior written consent of Mortgagee, such event shall constitute an Event of Default and among other remedies the entire indebtedness secured hereby, may, at the option of Mortgagee, be declared immediately due and payable without notice.

Mortgagor also shall pay any and all other obligations, liabilities or debts which may become liens, security interests, or encumbrances upon or charges against the mortgaged premises for any repairs or improvements that are now or may hereafter be made thereon, and shall not, without Mortgagee's prior written consent, permit any lien, security interest, encumbrance or charge of any kind to accrue and remain outstanding against the mortgaged premises or any part thereof, or any improvements thereon, irrespective of whether such lien, security interest, encumbrance or charge is junior to the lien of this Mortgage. Notwithstanding the foregoing, if any personal property by way of additions, replacements or substitutions is hereafter purchased and installed, affixed or placed by Mortgagor on the mortgaged premises under a security agreement the lien or title of which is superior to the lien created by this Mortgage, all the right, title and interest of Mortgagor in and to any and all such personal property, together with the benefit of any deposits or payments made thereon by Mortgagor, shall nevertheless be and are hereby assigned to Mortgagee and are covered by the lien of this Mortgage.

18. Due on Sale. In making the Loan, Mortgagee is relying upon the integrity, experience and general reputation of Mortgagor in operating the mortgaged premises for the intended

purposes. In reviewing Mortgagor's application for the Loan, Mortgagee recognized that the value of its security is inextricably intertwined with the effectiveness of Mortgagor's operation of the mortgaged premises and accordingly gave consideration to Mortgagor's experience, integrity and general reputation in the community before deciding if, and upon what terms, this Loan was to be offered. Therefore, if Mortgagor should convey its interest in the mortgaged premises or if any partner, member, manager or shareholder of Mortgagor shall transfer or convey any of their interest in Mortgagor or the mortgaged premises, Mortgagee shall have the right in its sole option thereafter to declare all sums secured hereby and then unpaid to be immediately due and payable, although the period originally agreed upon by Mortgagor and Mortgagee for the payment thereof shall not then have expired, and thereupon to exercise all of its rights and remedies under this Mortgage. For purposes hereof, a "conveyance" of Mortgagor's interest in the mortgaged premises or of any of the constituent partner's, member's, manager's or shareholder's interest in Mortgagor or the mortgaged premises shall include, without limitation (a) any voluntary or involuntary disposition of legal or beneficial title to the mortgaged premises or any portion thereof by whatever means, (b) any voluntary or involuntary disposition of legal or beneficial title to or control of Mortgagor, and (c) any other arrangement by which the Mortgagor or any partner, member, manager or shareholder of Mortgagor shall transfer or convey any of its or their interest in Mortgagor, divests itself of the degree of control it currently exercises or may exercise over the decisions affecting the ownership and operation of Mortgagor and/or the mortgaged premises. If legal or beneficial ownership of the mortgaged premises or any part thereof becomes vested in a person or persons other than Mortgagor (with or without Mortgagee's consent), Mortgagee may, without notice to Mortgagor deal with such successor or successors in interest with reference to this Mortgage and the Note, without in any way releasing, discharging, or otherwise affecting Mortgagor's liability hereunder of thereunder. No sale of the mortgaged premises, and no forbearance or extension by Mortgagee of the time for the payment of the Mortgage Indebtedness or the performance of the covenants and agreements hereby secured, shall in any way whatever operate to release, discharge, modify, change or affect the lien of this Mortgage or the liability of Mortgagor on the Mortgage Indebtedness or for the performance hereof, either in whole or in part. Notwithstanding anything contained herein to the contrary, prior to any Event of Default hereunder and so long as the mortgaged premises is and remains managed by a property manager satisfactory to Mortgagee, the members of Mortgagor may transfer membership interests in Mortgagor among themselves, family members or family trusts for estate planning purposes, so long as following any such transfer the Individual or entities owned and controlled by the Individual continue to own and control a majority interest in Mortgagor.

19. Severability. If any provision hereof is in conflict with any statute or rule of applicable law or is otherwise unenforceable for any reason whatsoever, then such provision shall be deemed null and void to the extent of such conflict or unenforceability and shall be deemed severable from but shall not invalidate any other provisions of this Mortgage.

20. Waiver. No waiver by Mortgagee of any right or remedy granted hereunder or failure to insist on strict performance by Mortgagor hereunder shall affect or extend to or act as



a waiver of any other right or remedy of Mortgagee hereunder, nor affect the subsequent exercise of the same right or remedy by Mortgagee for any further or subsequent default by Mortgagor hereunder, and all such rights and remedies of Mortgagee hereunder are cumulative. Time is of the essence.

21. Marshalling. Mortgagor hereby waives, in the event of foreclosure of this Mortgage or the enforcement by Mortgagee of any other rights and remedies hereunder, any right otherwise available in respect to marshalling of assets which secure the Mortgage Indebtedness or to require Mortgagee to pursue its remedies against any other such assets. Further, Mortgagor agrees that neither Mortgagor nor anyone claiming through or under Mortgagor shall or will set up, claim or seek an advantage of any exemption (including homestead exemptions), stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the mortgaged premises, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat and Mortgagor does hereby waive the benefit of all such laws or right of redemption, exemption or stay.

22. Environmental Matters. Mortgagor shall keep and maintain the mortgaged premises in compliance with, all federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the mortgaged premises including, but not limited to, soil and ground water conditions. Mortgagor has not used or permitted and will not use or permit the mortgaged premises to be used for (whether directly or indirectly), and the mortgaged premises has not been used for the generation, manufacture, storage, treating, transporting or disposal of, on, under or about the mortgaged premises or transport to or from the mortgaged premises any Hazardous Materials.

There have been no investigations, reports or violations involving Mortgagor or the mortgaged premises by any governmental authority pertaining to Hazardous Materials; the operation of the mortgaged premises does not now and has not violated any Hazardous Materials Laws (as hereinafter defined); neither Mortgagor nor any tenant of the mortgaged premises has received any notice, order, claim, demand or citation from any environmental or health agency or department having jurisdiction of the mortgaged premises or of Mortgagor pertaining to Hazardous Materials; Mortgagor is not aware of the presence, release, or threatened release of any Hazardous Materials on the mortgaged premises or on any adjacent property; and no environmental liens, whether federal, state or local in nature, will be placed on the mortgaged premises.

Mortgagor shall immediately advise Mortgagee in writing of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials affecting the mortgaged premises ("Hazardous Materials Laws"); (ii) all claims made or threatened by any third party against Mortgagor or the mortgaged premises relating to damage, contribution, cost recovery compensation, loss or injury to persons or property resulting

from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining, or within one square mile of the mortgaged premises that could cause the mortgaged premises or any part thereof to be classified as an environmental clean-up site under any applicable state or federal laws, or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the mortgaged premises under any Hazardous Materials Laws.

Mortgagee shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Mortgagor. Mortgagor shall be solely responsible for, and shall indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, costs, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the mortgaged premises, or any violation of Hazardous Materials Laws, including, without limitation: (a) all foreseeable consequential damages; (b) the costs of any repair, cleanup, removal, remediation or detoxification of the mortgaged premises, and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Mortgagee in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

Without Mortgagee's prior written consent, Mortgagor shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the mortgaged premises, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent or compromise might, in Mortgagee's reasonable judgment, impair the value of Mortgagee's security hereunder; provided, however, that Mortgagee's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the mortgaged premises either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Mortgagee's consent before taking such action, provided that in such event Mortgagor notify Mortgagee as soon as practicable of any action so taken. Mortgagee agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, or (ii) Mortgagor establishes to the reasonable satisfaction of Mortgagee that there is no reasonable alternative to such remedial action which would result in less impairment of Mortgagor's security hereunder. Mortgagor acknowledges that Mortgagee may enter upon the mortgaged premises, at any time or times, to conduct such environmental tests and studies as Mortgagee may determine to be necessary or appropriate.

23. The Loan Commitment. The terms and conditions of the Loan Commitment are hereby incorporated herein by this reference and the Mortgage Indebtedness is hereby made



expressly subject thereto. In the event of a conflict between the terms and conditions contained in the Loan Commitment and the terms and conditions contained herein and in the other Loan Documents, the terms and conditions contained herein and in the other Loan Documents shall control.

24. Additional Covenants. Mortgagor covenants and agrees that until the Mortgage Indebtedness is paid in full, unless Mortgagee shall otherwise consent in writing:

A. It will maintain its existence under state law, comply with all laws and regulations applicable thereto and maintain its qualification under the laws of the state where the mortgaged premises are located and comply with all laws and regulations applicable thereto.

B. Within ninety (90) days of the end of Mortgagor's fiscal year, it shall, for that previous fiscal year, provide Mortgagee with (i) an annual statement itemizing the income and expenses of the mortgaged premises, including an itemized rent roll, (ii) a complete financial statement of Mortgagor's assets and liabilities as of the last day of its fiscal year, and (iii) a profit and loss statement for the fiscal year. The financial statements shall be certified as accurate by Mortgagor. Within thirty (30) days after filing, Mortgagor shall provide Mortgagee with a copy of its tax return filed with the United States government for that fiscal year. In addition, Mortgagor shall provide Mortgagee with such interim financial and other information as Mortgagee shall from time to time reasonably request. All financial statements and other information provided by Mortgagor hereunder shall be in a form that is acceptable to Mortgagee and all costs of providing the same shall be borne entirely by Mortgagor.

C. It shall promptly notify Mortgagee in writing of any litigation, governmental proceeding, default or any other occurrence which may have a adverse effect on Mortgagor's business, financial condition, or the mortgaged premises.

D. It shall manage and operate the mortgaged premises or cause the mortgaged premises to be managed and operated in compliance with all material federal, state, and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, water pollution, and the use, generation, storage, handling or disposal of Hazardous Materials; remove from the mortgaged premises and properly dispose of any Hazardous Materials when and as required by applicable laws, rules, regulations and ordinances; and immediately notify Mortgagee of its or any tenant's receipt of any notice, order, claim, demand or citation from any environmental or health agency or department pertaining to Hazardous Materials on or in the vicinity of the mortgaged premises.

E. It shall permit Mortgagee and its agents to inspect and make copies of Mortgagor's books, records and income tax returns pertaining to the mortgaged premise at all reasonable times. Mortgagor shall maintain all of the books and records relating to Mortgagor and

the mortgaged premises at Mortgagor's address set forth in Exhibit "C" and shall furnish Mortgagee with at least three (3) days' prior written notice of any change in location thereof.

F. It will not enter into a management agreement with respect to the management of the mortgaged premises without Mortgagee's prior written consent, which consent will not be unreasonably withheld. Notwithstanding the foregoing, any management agreement affecting the mortgaged premises must be immediately terminable by Mortgagee if Mortgagee acquires title to the mortgaged premises, whether by foreclosure, deed in lieu of foreclosure, or otherwise and must commit the property manager to reasonably cooperate with Mortgagee and its property manager, at no cost or expense to Mortgagee or its property manager, to effectuate an orderly transition of management of the mortgaged premises to Mortgagee and its property manager if Mortgagee acquires title to the mortgaged premises, whether by foreclosure, deed in lieu of foreclosure or otherwise.

G. The mortgaged premises shall at all times be managed by a property manager approved by Mortgagee. The approved property manager must be responsible for leasing and management of the entire mortgaged premises.

25. Complete Agreement; Modifications. The parties hereby acknowledge and agree that all prior and contemporaneous understandings of the parties with respect to the transactions contemplated herein and/or in the other documents executed in connection herewith are expressly set forth in writing herein and/or therein. Each party hereby releases and forever discharges each of the other parties hereto from any and all understandings which have not so been expressly set forth in writing. This document and the other documents executed in connection herewith may not be modified except by written instrument signed by all of the parties hereto.

26. Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing, shall be addressed as set forth on Exhibit "C" attached hereto, and shall be either (i) personally delivered to the party, (ii) sent by U.S. registered or certified mail, (iii) sent by a reputable express mail company which guarantees next day delivery, or (iv) telecopied to the respective telecopier numbers set forth on Exhibit "C". Any party may redesignate the address or telecopier number to which notices are to be sent to it by written notice to the other parties. Notwithstanding the foregoing, any notice which is in fact received shall be deemed to have been delivered pursuant to this Section, even if such delivery is not accomplished in accordance with this Section.

27. Headings. The headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.



28. Number and Gender. The use of any gender shall be deemed to be or include the other genders, including neuter, and the use of the singular shall be deemed to be or include the plural (and vice versa), whenever appropriate.

29. Fees, Costs and Expenses. Mortgagor agrees to pay on demand all reasonable fees, costs and expenses of Mortgagee in connection with the preparation, execution, delivery and administration of the Loan Documents, any and all amendments, supplements and modifications thereof and the other instruments and documents to be delivered hereunder, including the reasonable fees and out-of-pocket expenses of counsel for Mortgagee, including local counsel, if any, and all reasonable fees, costs and expenses, if any, in connection with the preparation and enforcement of the Loan Documents. In addition, Mortgagor shall pay any and all mortgage recording, mortgage registration, stamp and other taxes, charges and fees payable or determined to be payable in connection with the execution, delivery, and filing or recording of any of the Loan Documents and the other instruments and documents to be delivered hereunder, and agrees to save Mortgagee harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes, charges or fees.

30. Further Assurances. Mortgagor agrees to do such further acts and things and to execute and deliver to Mortgagee such additional assignments, agreements, powers and instruments that Mortgagee may reasonably require or deem advisable to carry into effect the purpose of this Mortgage or to better assure and confirm to Mortgagee its security interests or any of its rights, powers and remedies hereunder and under the other Loan Documents.

31. Governing Law. It is understood and agreed that this Mortgage and the other Loan Documents are being accepted by Mortgagee in the State of Michigan, which state the parties agree has a substantial relationship to the parties and the underlying transactions embodied by the Loan Documents. The parties agree that this Mortgage and the other Loan Documents shall be governed by, and construed in accordance with the laws of the State of Michigan, except to the extent that the law of the state where the mortgaged premises are located must govern with respect to issues effecting the perfection, priority and enforcement of this Mortgage and the other Loan Documents.

32. Assignment by Mortgagee. Notwithstanding any other provision to the contrary herein, or in any document executed in conjunction herewith, Mortgagee's interest in and rights under this Mortgage and the other Loan Documents, and all other rights, interests and security which Mortgagee has in relation hereto and thereto may be assigned or participated, in whole or in part, by Mortgagee, which assignment(s) or participation(s) shall be effective for all purposes to give to the assignee(s) or participant(s) thereof all of their proportionate share of the rights which Mortgagee has or may have had hereunder. Mortgagor agrees to cooperate with Mortgagee, at no cost or expense to Mortgagor (other than legal fees or other expenses Mortgagor may incur in connection with the review of any such documents), in the event additional documentation is

necessary to consummate such transaction(s) or certain of the Loan Documents require immaterial modification(s). Mortgagor shall not terminate any lease of the mortgaged premises without Mortgagee's prior written consent, which consent may be unreasonably withheld and Mortgagor hereby acknowledges that all leases of the mortgaged premises are in full force and effect.

33. Reserve Account; Mortgagor's Lease Obligations. Mortgagor shall faithfully and timely perform all of its maintenance, repair and replacement obligations, if any, as landlord under all leases relating to the mortgaged premises or any part thereof. At any time Mortgagor has any obligation under any leases relating to the mortgaged premises or any part thereof, Mortgagor shall maintain a segregated reserve account for the mortgaged premises (the "Reserve Account") into which Mortgagor shall make monthly deposits of the amount set forth in the Loan Commitment. Mortgagor may, prior to a default under the Loan Documents, withdraw funds from the Reserve Account to satisfy its obligations as landlord under the leases pursuant to such requirements as shall be reasonably imposed by Mortgagee. All funds deposited into the Reserve Account are hereby pledged to Mortgagee, and Mortgagor hereby grants a continuing security interest in and to all such funds to Mortgagee as additional security for the repayment of the Mortgage Indebtedness. Upon a default under the Loan Documents any funds remaining in the Reserve Account may, in Mortgagee's sole discretion and without notice to Mortgagor, be applied against the Mortgage Indebtedness.

In the event that Mortgagor defaults in any of its obligations under any lease relating to the mortgaged premises or any part thereof, Mortgagee may, in addition to its other remedies hereunder and under the other Loan Documents, but shall not be obligated to, take such action and incur such costs as it, in its sole discretion, deems necessary to cure such default(s), whereupon, Mortgagor shall forthwith reimburse Mortgagee for such costs, together with interest thereon at the default rate of interest set forth in the Note, from the time incurred until paid in full. Mortgagor shall provide such proof as may be required by Mortgagee to insure compliance by Mortgagor of its obligations under this Section.

34. Miscellaneous Provisions.

A. Upon the occurrence of an Event of Default and following the acceleration of maturity as provided herein, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby, made at or at any time prior to the foreclosure sale by Mortgagor, or by anyone in behalf of Mortgagor, shall constitute an evasion of the payment terms of the Note and shall be deemed to be a voluntary prepayment thereunder, and any such payment, to the extent permitted by law, will therefore include the Prepayment Premium required under the prepayment privilege contained in the Note, if any.

B. If Mortgagor shall fail to comply with any of the terms, covenants, and agreements contained herein or in any of the Loan Documents, or any other agreement now or at any



time hereafter existing between Mortgagor and Mortgagee, then Mortgagee may (but shall not be obligated to), without further demand upon Mortgagor and without waiving or releasing Mortgagor from any such obligation, remedy such default for the account of Mortgagor. Mortgagor agrees to repay, upon demand by Mortgagee, all sums advanced by Mortgagee to remedy such defaults, together with interest at the default rate set forth in the Note. All such sums, together with interest as aforesaid, shall become additional indebtedness secured by this Mortgage and by the Loan Documents. No such payment by Mortgagee shall be deemed to relieve Mortgagor from any default or Event of Default hereunder.

C. In the event that Mortgagee (a) grants any extension of time or forbearance with respect to the payment of any indebtedness secured by this Mortgage; (b) takes other or additional security for the payment thereof; (c) waives or fails to exercise any right granted herein or under the Note or any Loan Document; (d) grants any release, with or without consideration, of the whole or any part of the security held for the payment of the debts secured hereby or the release of any person liable for payment of such debts; (e) amends or modifies, in any respect, any of the terms and provisions hereof of any of the Loan Documents; then and in any such event, such act or omission to act shall not release Mortgagor or any co-maker, surety, or guarantor, nor preclude Mortgagee from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default or Event of Default, nor in any way impair or affect the lien or priority of this Mortgage or of any other Loan Document.

D. Mortgagee and its authorized agents, representatives, and employees shall have the right, at the option of Mortgagee, to enter into the mortgaged premises at all times for the purpose of inspecting the same and, at the option of Mortgagee, remedying any default or Event of Default, including, but not limited to, any failure on the part of Mortgagor to repair the mortgaged premises.

E. In the event Mortgagor fails to perform any of its undertakings set forth in this Mortgage or the other Loan Documents, Mortgagee may, but shall not be required to, perform the same, and any amounts expended by Mortgagee in so doing shall constitute indebtedness hereunder and shall be secured by this Mortgage and the other Loan Documents.

F. The relationship between Mortgagee and Mortgagor is and shall remain solely that of a Mortgagee and Mortgagor, and nothing contained herein, in the Loan Documents, or in any other agreement shall in any manner be construed as making Mortgagee and Mortgagor partners or joint venturers or as creating any relationship between Mortgagee and Mortgagor other than that of Mortgagee and Mortgagor.

G. The Notes or any part of the principal or interest thereof or any other item secured hereunder may be renewed or extended from time to time by Mortgagee at the request of the owners at that time of the mortgaged premises or at the request of any party bound thereon, without

the consent of or notice to other parties who are bound thereon or who have assumed or may hereafter assume payment thereof, and without releasing them from any liability then existing.

H. Mortgagor, upon request, made either personally or by mail, shall certify by a writing, duly acknowledged, to Mortgagee or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on the Mortgaged Indebtedness and whether or not any offsets or defenses exist against the Mortgaged Indebtedness, within six (6) days in case the request is made personally, or within ten (10) days after the mailing of such request in case the request is made by mail.

I. The obligations of this Mortgage and the Notes shall continue until the entire debt is paid, notwithstanding any action or actions of partial foreclosure which may be brought to recover any amount or amounts for installments of principal, interest, taxes, assessments, levies, late charges or insurance premiums due and payable under the provisions of this Mortgage. The right is hereby given by Mortgagor to Mortgagee to make a partial release or releases of the mortgaged premises (whether or not such releases are required by agreement among the parties) agreeable to Mortgagee without notice to, or the consent, approval or agreement of other parties in interest, including junior lienors and purchasers subject to this lien, which partial release or releases shall not impair in any manner the validity or priority of this Mortgage on the mortgaged premises remaining hereunder, nor release Mortgagor from personal liability for the indebtedness hereby secured.

J. All of the covenants and conditions hereof shall run with the land and shall be binding upon the successors and assigns of Mortgagor and shall inure to the benefit of the successors and assigns of Mortgagee. Any reference herein to "Mortgagor" or "Mortgagee" shall include their respective successors and assigns.

K. Mortgagee shall have authority, in its discretion, to employ agents and attorneys in the execution of this Mortgage and in protecting the interest of Mortgagee, and, to the extent permitted by law, the same shall be compensated, and all reasonable expenses in and about the employment shall be paid out of the proceeds of sale of the mortgaged premises and the property and rights should a sale be had, and all sums so paid out shall be recoverable, to the extent permitted by law, by all remedies at law or in equity by which the debt hereby secured may be recovered. Without limiting the foregoing, Mortgagor covenants to pay Mortgagee, promptly upon demand, any reasonable counsel fees or other costs or expenses incurred by Mortgagee in connection with the collection of the Mortgage Indebtedness, or in connection with litigation or threatened litigation arising from any cause whatsoever, respecting the rights of Mortgagee, or in any manner affecting the lien of this Mortgage, including such litigation as may concern the right to enforce this lien by any and all rights or remedies provided by law, including but not limited to, any reasonable counsel fees reasonably incurred in connection with litigation or threatened litigation which may be caused by the bankruptcy or the insolvency or the receivership of Mortgagor; and whenever in this Mortgage reference is made to the payment of "counsel fees" or other costs or expenses, such



reference shall be construed to include such reasonable counsel fees, costs, and expenses as are referred to elsewhere in this Mortgage or in the Notes.

35. Release. Notwithstanding anything herein to the contrary and so long as a default under any of the Loan Documents has not occurred, Mortgagee agrees that, upon prior written request by Mortgagor and upon the payment of the release price as set forth on Exhibit "E" attached hereto, together with the applicable prepayment premium to be paid with respect to a partial payment as set forth in the Note and all accrued and unpaid interest due under the Note and all other sums then due under the Loan Documents in immediately available funds (collectively, the "Release Price"), Mortgagee will execute and deliver a release of the mortgaged premises from the lien of this Mortgage and the other Loan Documents. Mortgagor shall be responsible for the payment of the Release Price, together with all of Mortgagee's reasonable costs and expenses, including reasonable attorneys' fees, in connection with such release.

36. Additional Ground Lease Covenants. Mortgagor hereby represents, warrants, covenants and agrees that:

- A. The Ground Lease is in full force and effect, unmodified by any writing or otherwise.
- B. All rent, additional rent, and other charges reserved under the Ground Lease have been paid to the extent they are payable to the date hereof.
- C. Mortgagor enjoys the quiet and peaceful possession of the premises demised under the Ground Lease and Mortgagor agrees to defend the ground leasehold estate created under the Ground Lease for the entire remainder of the term set forth therein, against each and every person or persons lawfully claiming, or who may claim, the same or any part thereof.
- D. Mortgagor is not in default under the terms of the Ground Lease and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute a default or an event of default thereunder.
- E. Ground Lessor is not in default under any of the terms or provisions of the Ground Lease and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute a default or an event of default thereunder.
- F. Mortgagor shall promptly and faithfully observe, perform and comply with all the terms, covenants and provisions of the Ground Lease on its part to be observed, performed and complied with at the time set forth therein.
- G. Mortgagor shall not permit, suffer or refrain from doing anything, as a result of which there could be a default or breach of any of the terms of the Ground Lease.

H. Mortgagor shall not cancel, surrender, modify, amend, terminate or in any way alter or permit the alteration of any of the terms of the Ground Lease, without Mortgagee's prior written consent.

I. Mortgagor shall give Mortgagee immediate notice of any default under the Ground Lease and shall promptly deliver to Mortgagee each notice of default and all other notices, communications, plans, specifications, and other similar instruments received or delivered to or by Mortgagor in connection therewith. Mortgagor shall furnish to Mortgagee copies of such information and evidence as Mortgagee may reasonably require concerning Mortgagor's or Ground Lessor's due observance, performance and compliance with the terms, covenants and provisions of the Ground Lease.

J. In the event of any default by Mortgagor in the performance of any of its obligations under the Ground Lease, including without limitation, any default in the payment of rent and other charges payable by Mortgagor under the Ground Lease, then, in each and every case, Mortgagee may, at its option, and without notice, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Mortgagor thereunder in the name and on behalf of Mortgagor. Mortgagor shall on demand reimburse Mortgagee for all advances made and expenses incurred by Mortgagee in curing any such default(s) (including, but without limitation, reasonable attorneys' fees), together with interest thereon computed at the Default Rate provided for in the Note from the date that an advance is made or expense incurred, to and including the date the same is paid.

K. Mortgagor shall not cause, whether by acts or omissions, the fee title and the leasehold estate in the property demised by the Ground Lease to merge. The fee title and the leasehold estate in the property demised by the Ground Lease shall always be kept separate and distinct, notwithstanding the union of said estates in either the lessor thereunder, Mortgagor or a third party, whether by purchase or otherwise.

L. If the Ground Lease is canceled or terminated, and if Mortgagee or its nominee shall acquire an interest in any new lease of the property demised thereby, Mortgagor shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease.

37. Additional Terms. Additional terms, if any, applicable to the Mortgage Indebtedness are set forth in the Addendum to Mortgage attached hereto, which is hereby incorporated herein by this reference.

38. WAIVERS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND MORTGAGEE MUTUALLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS MORTGAGE AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN



CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER WRITTEN OR ORAL) OR ACTIONS OF MORTGAGOR, MORTGAGEE OR ANY OTHER PERSON OR ENTITY RELATING HERETO OR THERETO.

39. JURISDICTION. THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS ARE SUBMITTED TO MORTGAGEE IN MICHIGAN AND SHALL BE DEEMED TO HAVE BEEN MADE THEREAT. MORTGAGOR HEREBY SUBMITS TO PERSONAL JURISDICTION AND VENUE IN THE STATE OF MICHIGAN FOR THE ENFORCEMENT OF ITS OBLIGATIONS IN CONNECTION HEREWITH AND IN CONNECTION WITH ITS OBLIGATIONS UNDER THE OTHER LOAN DOCUMENTS, AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION AND VENUE WITHIN SUCH STATE FOR THE PURPOSES OF LITIGATION TO ENFORCE SUCH OBLIGATIONS. IN THE EVENT SUCH LITIGATION IS COMMENCED, MORTGAGOR AGREES THAT SERVICE OF PROCESS MAY BE MADE AND PERSONAL JURISDICTION OVER MORTGAGOR OBTAINED, BY SERVICE OF A COPY OF THE SUMMONS, COMPLAINT AND OTHER PLEADINGS REQUIRED TO COMMENCE SUCH LITIGATION UPON MORTGAGOR'S APPOINTED AGENT FOR SERVICE OF PROCESS, AS DESIGNATED IN EXHIBIT C ATTACHED HERETO OR SUCH OTHER AGENT AS MORTGAGOR HEREAFTER DESIGNATES IN WRITING TO MORTGAGEE.

IN WITNESS WHEREOF, on June 8, 2000, Mortgagor has duly executed this Mortgage to be effective as of the date first written above, and if Mortgagor is other than a natural person, Mortgagor has caused this Mortgage to be duly executed by its duly authorized officer(s), partner(s) or other authorized representative(s), as the case may be.

WITNESSES:

Shela Lee, Jr.  
Jacqueline D. Young

WB EQUITIES I TRUST, INC., a Delaware business Trust

By:   
Its: TRUSTEE

248058.2

STATE OF New York )  
 ) ss  
COUNTY OF New York )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that James J. Nizzo, Trustee of WB EQUITIES I TRUST, INC., a Delaware business trust, is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that, being informed of the contents of said instrument, he as such Trustee, and with full authority, executed the same voluntarily on the \_\_\_\_ day of \_\_\_\_, 2000, for and as the act of WB EQUITIES I TRUST, INC.

Given my hand and seal of office this 8th day of June, 2000.

**NANCY JEAN ROCKER**  
Notary Public, State of New York  
No. 02RO6019131  
Qualified in Suffolk County  
Commission Expires 02/01/2001

Nancy Jean Rock  
Notary Public, \_\_\_\_\_ County,  
State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

DRAFTED BY AND WHEN RECORDED,  
PLEASE RETURN TO:

Amy L. Schlüssel, Esq.  
DYKEMA GOSSETT PLLC  
1577 North Woodward Avenue, Suite 300  
Bloomfield Hills, MI 48304-2820



**EXHIBIT "A"****LEGAL DESCRIPTION****PARCEL 1:**

A parcel of land situated in the Northeast 1/4 of Section 36, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of said Section 36; thence run South along the East line of said Section 36 a distance of 266.80 feet; thence turn  $117^{\circ}40'00''$  right and run Northwesterly 165.21 feet to a point on the Westerly right of way line of U.S. Highway 31; thence turn  $110^{\circ}54'05''$  left to the tangent of a curve to the left, said curve having a radius of 1,752.68 feet, run along the arc of said curve and said road right of way for 16.26 feet to the Southeast corner of Lot 1 according to the survey of Walgreens-Pelham, as recorded in Map Book 23, page 88, in the Office of the Probate of Shelby County, Alabama, and the point of beginning; thence continue along said curve and said road right of way for 70.67 feet to a point; thence turn  $90^{\circ}00'00''$  left from the tangent to said curve at said point and run Easterly along said road right of way for 15.00 feet; thence turn  $90^{\circ}00'00''$  right to the tangent of a curve to the left, said curve having a radius of 1,737.68 feet, and run along the arc of said curve and said road right of way for 189.15 feet to a point; thence turn  $94^{\circ}22'17''$  right from the tangent to said curve at said point and run Westerly for 239.68 feet; thence turn  $95^{\circ}24'00''$  right and run Northeasterly for 116.68 feet to a point on the Southeast line of said Lot 1; thence turn  $50^{\circ}36'53''$  right and run Northeasterly along said lot line for 257.43 feet to the point of beginning.

Now Known As:

Lot 1, according to the Survey of Dinsmore Resurvey, as recorded in Map Book 26, page 94, in the Probate Office of Shelby County, Alabama.

**PARCEL 2:**

Perpetual, non-exclusive easements, appurtenant to Parcel 2, for access, drainage, sanitary sewer, and retaining wall, over, under and across that certain adjoining property, as set forth and described in (a) that certain Declaration of Easements for Joint Access, Drainage Pipe, Sewer Pipe, and Construction/Maintenance/Repair of Retaining Wall, dated 8-29-97 between J. Wilson Dinsmore and R.K.M. 'Bama, Inc., recorded 8-29-97, as Instrument No. 1997-27813, Shelby County, Alabama, Records; and (b) that certain Declaration of Easements for Joint Access, Drainage Pipe, Sewer Pipe, and Construction/Maintenance/Repair, dated 9-5-97, between J. Wilson Dinsmore and North Pelham, L.L.C., recorded 9-11-97, as Instrument No. 1997-29355, Shelby County, Alabama, Records.

248058.2

**PARCEL 3:**

**Perpetual, non-exclusive easements, appurtenant to Parcel 1, for ingress, egress, parking, utility lines and drainage, over, under and across that certain adjoining property, as set forth and described in that certain Declaration of Easements and Restrictions and Joint Maintenance Agreement dated May, 1998, made by J. Wilson Dinsmore, recorded 6-1-98, as Instrument No. 1998-20066, Shelby County, Alabama, Records.**



**EXHIBIT "B"**

**PERMITTED EXCEPTIONS TO TITLE**

1. Declaration of easements for joint access, drainage pipes, sewer pipes and construction/maintenance repair of retaining wall between J. Wilson Dinsmore and R.K.M. 'Bama, Inc., recorded in Instrument 1997-27813, in the Probate Office of Shelby County, Alabama.
2. Declaration of easements for joint access, draining pipe, sewer pipe and construction/maintenance repair between J. Wilson Dinsmore and North Pelham, L.L.C., recorded in Instrument 1997-29355, in the above office.
3. Right of Way granted to Alabama Power Company by instrument recorded in Deed Volume 251, Page 504; Deed Volume 251, Page 506; Deed Volume 251, Page 508 and Deed Volume 130, Page 602, in the above office.
4. Mineral and mining rights and rights incident thereto recorded in Deed Volume 121, Page 437, in the above office.
5. Declaration of easements and restrictions and joint maintenance agreement recorded in Instrument 1998-20066, in the above office.

**EXHIBIT "C"**

**ADDRESSES AND TELECOPIER NUMBERS FOR NOTICES**

If to Mortgagee:

Royal Indemnity Company  
c/o Royal Investment Management Company  
9300 Arrowpoint Boulevard  
Charlotte, NC 28273-8135  
ATTN: Stephen A. Rozich

Telecopier Number: (704) 522-2210

With a copy to (which shall not constitute notice):

Dykema Gossett PLLC  
1577 N. Woodward Avenue  
Suite 300  
Bloomfield Hills, Michigan 48304-2820  
ATTN: Howard N. Luckoff, Esq.

Telecopier Number: (248) 203-0763

If to Mortgagor:

WB Equities I Trust  
14 Monterey Drive  
Manhasset Hills, New York 11040-1030  
ATTN: \_\_\_\_\_

Telecopier Number: ( ) -

**MORTGAGOR'S AGENT FOR SERVICE OF PROCESS:**

ROBERT SYLVOR, ESQ  
Suite 1501, 605 Third Av.  
NEW YORK, NY 10158



**EXHIBIT "D"****PROMISSORY NOTE**  
**PROMISSORY NOTE****\$3,127,661.00**Bloomfield Hills, Michigan  
June \_\_, 2000

For value received, \_\_\_\_\_, TRUSTEE OF THE WB EQUITIES I TRUST DATED \_\_\_\_\_, a Delaware business trust ("Borrower"), promises to pay to the order of ROYAL INDEMNITY COMPANY, at its office located c/o Royal Investment Management Company, 9300 Arrowpoint, Charlotte, North Carolina 28273-8135, its successors and assigns ("Lender"), or at such other place as Lender may from time to time specify, the principal sum of THREE MILLION ONE HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED SIXTY ONE DOLLARS (\$3,127,661.00) with interest on any part thereof at any time unpaid at the rate of 9.13% per annum (the "Interest Rate"), except as set forth below in the event of certain defaults, which principal and interest shall be paid as follows:

- (1) Interest only shall be paid in advance on the date hereof for the period until July 14, 2000; and
- (2) 37 combined payments of principal and interest in the amount of \$23,542.00 each on August 15, 2000 and on the 15th day of each month thereafter through and including August 15, 2003;
- (3) 60 combined payments of principal and interest in the amount of \$25,897.00 each on September 15, 2003 and on the 15th day of each month thereafter through and including August 15, 2008;
- (4) 60 combined payments of principal and interest in the amount of \$28,486.00 each on September 15, 2008 and on the 15th day of each month thereafter through and including August 15, 2013;
- (5) 60 combined payments of principal and interest in the amount of \$31,335.00 each on September 15, 2013 and on the 15th day of each month thereafter through and including August 15, 2018; and
- (6) 60 combined payments of principal and interest in the amount of \$34,258.87 each on September 15, 2018 and on the 15th day of each month thereafter through and including August 15, 2023 (the "Due Date"), when the entire outstanding principal and any accrued interest shall be due and payable.

All payments received hereunder shall be applied first to accrued interest, next to any unpaid escrow or other charge(s) owing pursuant to any of the Loan Documents (as defined in the Mortgage [as hereinafter defined]) and the remainder, if any, to principal. All interest payable hereunder shall be calculated on the basis of a 360-day year consisting of twelve (12) months of thirty (30) days each.

During any period in which there is a default under any of the Loan Documents, the outstanding principal amount hereof shall bear interest for the entire period in which such default exists at a rate which is equal to Five Percent (5%) in excess of the Interest Rate (the "Default Rate"). Borrower shall also pay to Lender a late charge equal to Four Percent (4%) of each payment due hereunder that is not received by Lender within ten (10) days after the due date of such payment. For purposes of computing the late charge, the interest component of each late payment shall be computed at the Interest Rate and not at the Default Rate. Borrower shall be liable for late charges in addition to default interest, and all such charges and default interest, if any, shall be paid with the next regular payment that falls due after such charges and/or default interest are incurred.

Upon the occurrence of an Event of Default, the entire principal of this Promissory Note remaining at that time unmatured, together with the accrued interest thereon and all other sums due under this Promissory Note, shall, at the election of Lender and without notice of such election and without demand or presentment, become immediately due and payable, anything contained herein or in the Mortgage to the contrary notwithstanding.

Upon an Event of Default, neither the failure of Lender promptly to exercise its right to declare the outstanding principal and accrued and unpaid interest hereunder and all other sums due under this Promissory Note to be immediately due and payable, nor failure to exercise any other right or remedy Lender may have for the occurrence of an Event of Default, nor the acceptance by Lender of late payments, nor the failure of Lender to demand strict performance of any obligation of Borrower or of any other person who may be liable hereunder, shall constitute a waiver of any such rights while such Event of Default continues, nor a waiver of such rights in connection with any future default on the part of Borrower or any other person who may be liable hereunder. Further, acceptance by Lender of partial payments following due acceleration of the indebtedness evidenced hereby shall not constitute a waiver by Lender of the acceleration of such indebtedness.

At no time shall the interest charged hereunder be greater than the highest rate of interest allowed by applicable law. Payments received by Lender which would otherwise cause the interest rate to exceed such highest allowable interest rate shall, to the extent of such excess, be deemed principal payments. If Lender shall reasonably determine that the legal authority to charge the applicable interest rate hereunder has been adjudicated to be usurious or otherwise limited by law, the Interest Rate shall be reduced to the highest rate then permitted to be charged and the appropriate adjustment shall be made hereunder.



Borrower and any other person who may be liable hereunder as endorser, maker, guarantor, accommodation party, acceptor or otherwise, waive presentment, protest and demand, notice of protest, demand, dishonor and nonpayment of this Promissory Note, and consent that Lender may extend the time of payment or otherwise modify the terms of payment of any part or the whole of the debt evidenced by this Promissory Note, and may modify the terms of any instrument securing or otherwise related to this Promissory Note, at the request of any person liable hereon in any capacity, and such consent shall not alter or diminish the liability of any other person for the debt evidenced hereby.

Borrower and any other person who may be liable hereunder in any capacity, agree(s) to pay all reasonable costs of collection, including attorney fees, in case the principal of this Promissory Note or any payment of interest thereon is not paid at the respective maturity thereof, or in case it becomes necessary to protect the security for this Promissory Note, whether suit is brought or not.

Borrower may, upon sixty (60) days prior written notice to Lender, pay the indebtedness evidenced herewith in full (but not in part) at any date when principal and/or interest becomes due and payable; provided, however, that (i) no prepayment shall be permitted prior to the date that is one (1) year from the date the first regularly scheduled payment of principal and interest is due under this Promissory Note, and (ii) at the time of making such payment, a prepayment premium equal to the greater of (a) one percent (1%) of the then outstanding principal balance due and owing under this Promissory Note, or (b) Lender's Yield Maintenance, shall be paid to Lender upon any prepayment of the Loan (as defined in the Mortgage). The prepayment premium, where applicable, shall be paid under all circumstances under which the Loan is prepaid prior to the Due Date, whether voluntary or involuntary, or results from an acceleration of this Promissory Note by Lender as permitted herein or under any of the Loan Documents. The additional consideration due in connection with a prepayment hereunder is intended to compensate Lender for the loss of interest that Lender may incur upon reinvestment of the amount prepaid for the remaining term of this Promissory Note, and is not intended as a penalty.

For purposes hereof, "Yield Maintenance" means (a) the "Present Value" (as hereinafter defined) of (i) Borrower's monthly installments under this Promissory Note from the date of the prepayment of this Promissory Note to, but not including, the Due Date; plus (ii) the outstanding unpaid interest and principal due under this Promissory Note on the Due Date, including all other charges and expenses due Lender in accordance with the terms and conditions contained in this Promissory Note; less, (b) the amount of the prepayment; plus (c) the amount, as reasonably determined by Lender, of Lender's reasonable out-of-pocket costs and expenses of reinvesting the amount of the prepayment, including, but not limited to, transaction and processing fees and costs, legal fees, brokerage expenses and Lender's expenses incurred in termination any service agreement relating to the Loan (as defined in the Loan Documents). "Present Value" will be computed on a monthly basis as of the date of prepayment, at a yield equal to the most current weeks "Treasury

Constant Maturity" rate for the term most equal to, but not greater than, the number of years remaining in the term of this Promissory Note (as published in document H.15(519) issued by the Board of Governors of the Federal Reserve System) prior to receipt by Lender of Borrower's notice of the intended prepayment.

Except as expressly provided below and except for their obligations under the Guaranty and Indemnification Agreement executed by Borrower and James J. Nizzo (the "Individual") on even date herewith (the "Guaranty"), the liability of Borrower shall at all times be limited to its interest in the mortgaged premises (as hereafter defined), the rents, issues and profits of the mortgaged premises, and any other property pledged as security for the payment of the Loan, and Lender shall take no action against Borrower and the Individual except such action as may be necessary at law or in equity to subject the property pledged as security for the payment of the Loan to the satisfaction of the Promissory Note and the other Loan Documents. Notwithstanding the foregoing, Borrower and the Individual acknowledge that Lender is relying upon the truth of the statements made by Borrower and the Individual in making the Loan to Borrower. Borrower and the Individual absolutely and unconditionally and jointly and severally agree that if they (or any one of them) (a) falsified any of the statements contained in the Loan Commitment (as defined in the Mortgage), in the Loan Documents or any of the other documents or items furnished to Lender in connection with the Loan, or if those statements shall hereafter prove to have been untrue in any respect as of the date hereof or as of the date made, and/or (b) directly or indirectly direct and/or cause any tenant of the mortgaged premises not to pay any rent to Lender, then Borrower and the Individual shall be absolutely and unconditionally and jointly and severally liable for all of Borrower's obligations under the Loan Documents, without regard to any limitations on liability which may be set forth in any of the Loan Documents. In addition Borrower and the Individual shall be absolutely and unconditionally and jointly and severally liable for (i) the payment of taxes, assessments, insurance premiums (including penalties and interest) which are due or assessed with respect to the mortgaged premises prior to the time Lender takes actual possession and control of the mortgaged premises and any rents and profits of the mortgaged premises collected by or on behalf of Borrower after the occurrence of a default under the Loan Documents; (ii) all expenses for which Borrower is obligated to pay under the Loan Commitment; (iii) all losses sustained by Lender as a result of Borrower's misapplication of condemnation or insurance proceeds or security deposits; (iv) all losses sustained by Lender as a result of any fraud or misrepresentation on the part of Borrower, the Individual, their employees, agents or representatives; (v) all losses sustained by Lender for Borrower's failure to apply rents and other income of the mortgaged premises for the necessary maintenance and operation of the mortgaged premises and/or payment of the debt service of the Loan (provided, except for (i) above, there is sufficient rent or other income from the mortgaged premises to apply to such maintenance or operation or debt service); (vi) all costs and expenses incurred by Lender as a result of the presence of, removal of, or production of, any materials, wastes, constituents or substances defined or classified as hazardous or toxic, or defined as environmental problems, under Federal law, state or local laws or regulations which are contained or released on the mortgaged premises prior to the time Lender takes actual possession and control of the



mortgaged premises; (vii) all losses sustained by Lender as a result of any amendments or modifications to and/or termination of any lease and/or any guaranty of any lease with respect to all or any portion of the mortgaged premises made without Lender's prior written consent; (viii) any sums expended by Lender in fulfilling the obligations of Borrower, as lessor, under any leases with respect to all or any portion of the mortgaged premises; (ix) any loss due to waste of the mortgaged premises or any portion thereof, and all costs, including reasonable attorneys fees, incurred by Lender to protect the mortgaged premises and any other security for the Loan, or to enforce any of the Loan Documents; (x) any loss sustained by Lender as a result of Borrower's failure to maintain the insurance coverage set forth in the Loan Documents; (xi) any and all costs incurred by Lender in order to cause the mortgaged premises to comply with the provisions of The Americans with Disabilities Act; (xii) any rents that are collected more than one (1) month in advance; and (xiii) any losses sustained by Lender as a result of Borrower's failure to maintain and fund the Reserve Account (as defined in the Commitment Letter), if any, and/or any funds withdrawn from the Reserve Account, if any, in violation of the Loan Documents.

In no event shall Borrower be required to make any payment hereunder which would violate any applicable law regulating or limiting the rate of interest that Lender may lawfully collect. In the event any such payment is made by or for the account of Borrower, such payment shall, to the extent it exceeds the maximum payment that Lender lawfully may collect, be applied toward reduction of the principal balance hereof.

This Promissory Note is secured by a Mortgage and Security Agreement of even date herewith which is a lien upon real property in Shelby County, Alabama (the "Alabama premises") (the "Alabama Mortgage"), a Deed of Trust and Security Agreement of even date herewith which is a lien upon real property in Harris County, Texas (the "Texas premises") (the "Texas Deed of Trust"), and a Deed of Trust and Security Agreement of even date herewith which is a lien upon real property in Norfolk, Virginia (the "Virginia premises") (the "Virginia Deed of Trust") (the Alabama premises, Texas premises and Virginia premises are hereinafter collectively referred to as, the "mortgaged premises") (the Alabama Mortgage, Texas Deed of Trust and Virginia Deed of Trust are hereinafter collectively referred to as, the "Mortgage") and evidences a Loan pursuant to the Loan Commitment and the Loan Documents.

Borrower and Lender each acknowledge and agree that it may have a constitutional right to a jury trial in connection with any claim, dispute or lawsuit arising between them, but that such right may be waived. Accordingly, each of Borrower and Lender agree that it shall be in its best interest to waive its right to a jury trial, and, accordingly, hereby waives such right to a jury trial, and further agrees that the best forum for hearing any claim, dispute or lawsuit, if any, arising out of or in connection with the Loan, this Promissory Note, the Mortgage or the other Loan Documents shall be a court of competent jurisdiction sitting without a jury.

248058.2

*Confirmed copy*

This Promissory Note shall be construed in accordance with the laws of the State of Michigan.

IN WITNESS WHEREOF, on the \_\_\_\_ day of June, 2000, Borrower has duly executed this instrument to be effective as of the date first written above, and if Borrower is other than a natural person, Borrower has caused this instrument to be duly executed by its duly authorized officer(s), partner(s) or other authorized representative(s), as the case may be.

WITNESSES:

"BORROWER"

WB EQUITIES I TRUST

*Jaqueline E. Young*  
*Glee van Slyke*

By: *[Signature]*  
Its: *Trustee*

EIN: 11-3541914

STATE OF NEW YORK )  
 ) ss  
COUNTY OF NEW YORK )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of June, 2000 by YAMEY Y. NIZZO, Trustee of WB EQUITIES I TRUST, under Trust Agreement dated MARCH 3, 2000, on behalf of the Trust.

(NOTARIAL SEAL)

NANCY JEAN ROCKER  
Notary Public, State of New York  
No. 02806019131  
Qualified in Suffolk County  
Commission Expires 02/01/2001

Notary Public, \_\_\_\_\_ County,  
State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_



248058.2

**EXHIBIT "E"**

**RELEASE PRICE**

The Release Price is equal to \$975,303.00, together with the applicable prepayment premium to be paid with respect to a partial payment as set forth in the Note and all accrued and unpaid interest due under the Note and all other sums then due under the Loan Documents in immediately available funds. Mortgagor shall be responsible for the payment of the Release Price, together with all of Mortgagee's reasonable costs and expenses, including reasonable attorneys' fees, in connection with such release.

**ADDENDUM TO MORTGAGE****Additional Terms:**

40. "Loan Commitment" means that certain commitment letter from Mortgagee to Mortgagor dated February 18, 2000, as amended. "Note" means that certain Promissory Note from Mortgagor to Mortgagee of even date herewith in the original principal amount of \$3,127,661.00, the form of which is attached as Exhibit "D" and incorporated herein by reference.

41. The obligations of Mortgagor under this Mortgage are subject to the limitations on liability set forth in the Note.

42. Notwithstanding anything to the contrary contained in this Mortgage, Mortgagee may in its sole discretion permit a one time sale of the mortgaged premises and assumption of the Loan if all of the following standards have been met to Mortgagee's satisfaction prior to any proposed sale and assumption of the Loan:

(a) Mortgagor shall have obtained Mortgagee's prior written approval of the proposed sale and assumption of the Loan;

(b) The proposed buyer of the mortgaged premises is not a tenant of all or any portion of the mortgaged premises and has experience in the operation of a project of a comparable size and for a comparable use and has a good reputation in the community;

(c) The proposed buyer has a net worth comparable to that of Mortgagor and sufficient to sustain Mortgagor's obligations under the Loan Documents;

(d) Mortgagee shall receive a mortgage assumption fee of one percent (1%) of the then unpaid principal balance of the Loan in the form of cash or certified or cashier's check; provided, however, there shall be no assumption fee within the first twelve (12) months after the date hereof;

(e) The proposed buyer is acceptable to Mortgagee in all respects;

(f) As of the date of any such sale of the mortgaged premises, Mortgagor shall not then be in default in the performance of any of its obligations under any of the Loan Documents; and

(g) The proposed buyer (and its principals) agree to assume all of Mortgagor's obligations under the Loan Documents in a form and content satisfactory to Mortgagee.

Inst # 2000-21563

06/28/2000-21563  
10:11 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
042 NWS 1574.10